

Tarun Kumar vs Assistant Director Directorate Of ... on 20 November, 2024

Author: Jasmeet Singh

Bench: Jasmeet Singh

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ BAIL APPLN. 2985/2024
TARUN KUMAR

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Through: Mr. Aarshdeep Singh Kh
Malak Bhatt, Ms. Neeha
Samridhi, Mr. Sidak Si
Mr. Naveen Sharma, Adv

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ASSISTANT DIRECTOR DIRECTORATE OF ENFORC

Through: Mr. Zoheb Hossain
for ED, Mr. Manis
Vivek Gurrani, Mr
Mr. Kanishk Maury
Tripathi, Mr. Kun

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH
ORDER

% 20.11.2024

1. This is an application filed under section 480 of Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS') read with Section 45 of Prevention of Money Laundering Act, 2002 ('PMLA') seeking grant of regular bail to the applicant/petitioner in Complaint Case No. 20/2021 bearing ECIR/DLZO-I/12/2021 arising out of FIR No. RCo742020E0014, dated 31.12.2020

2. The facts are that FIR No. RCo742020E0014 was registered by Central Bureau of Investigation, Bank Securities and Fraud Cell, New Delhi on the basis of written complaints of bank officials of State Bank of India against the Managing Director and directors/guarantors of Shakti Bhog Foods Limited ('SBFL') for commission of offences under section 13(2) This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 13/12/2024 at 22:12:11 read with section 13(1)(d) of Prevention of Corruption Act, 1988 and under sections 120B/420/465/467/468 and 471 of IPC, 1860. Since the offences committed by the accused persons are specified as Schedule Offences in terms of section 2 (1) (y) of the PMLA Act, an

ECIR/DLZO-I/12/2021 came to be registered on 31.01.2021 against M/s Shakti Bhog Foods Ltd. and others with regard to FIR No. RC0742020EO014 for investigation of commission of offence under Section 3 of PMLA, punishable under Section 4 of PMLA.

3. In the present case, the petitioner has only been named in the 3rd Supplementary Complaint dated 18.08.2022 and has not been named in the FIR or ECIR/DLZO-I/12/2021.

4. It is stated that the petitioner was working as the Vice President (Purchases) in SBFL and was also a director in 5 group entities of SBFL.

5. The petitioner has been in custody since 22.06.2022 and till date has undergone incarceration for a period of 29 months.

6. Mr. Khurana, learned counsel for the petitioner has restricted his arguments only to the right of liberty under Article 21 of the Constitution of India. He states that the courts are expected to conclude the trials within a reasonable period of time when the accused are detained by the law enforcement agencies, however in the present case the respondent agency has continuously requested for further time for the investigation and the matter is not likely to conclude anytime soon.

7. He further states that currently the proceedings under the PMLA Act are at the stage of section 207 Code of Criminal Procedure, 1973 ('CrPC') wherein the documents are being supplied to the parties.

8. In addition, there are a total of 178 witness named in the chargesheet This is a digitally signed order.

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9. He relies on a series of judgments but primarily on Manish Sisodia vs. Directorate of Enforcement 2024 SCC OnLine SC 1920 and more particularly paragraphs 37- 43 of the said judgement and the same are reproduced below:

"37. Insofar as the contention of the learned ASG that since the conditions as provided under Section 45 of the PMLA are not satisfied, the appellant is not entitled to grant of bail is concerned, it will be apposite to refer to the first order of this Court. No doubt that this Court in its first order in paragraph 25, after recapitulating in paragraph 24 as to what was stated in the charge-sheet filed by the CBI against the appellant, observed that, in view of the aforesaid discussion, the Court was not inclined to accept the prayer for grant of bail at that stage. However, certain paragraphs of the said order cannot be read in isolation from the other paragraphs. The order will have to be read in its entirety. In paragraph 28 of the said order, this

Court observed that the right to bail in cases of delay, coupled with incarceration for a long period, depending on the nature of the allegations, should be read into Section 439 Cr. P.C. and Section 45 of the PMLA. The Court held that the constitutional mandate is the higher law, and it is the basic right of the person charged of an offence and not convicted that he be ensured and given a speedy trial. It further observed that when the trial is not proceeding for reasons not attributable to the accused, the court, unless there are good reasons, would be guided to exercise the power to grant bail. The Court specifically This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 13/12/2024 at 22:12:12 observed that this would be true where the trial would take years. It could thus clearly be seen that this Court, in the first round of litigation between the parties, has specifically observed that in case of delay coupled with incarceration for a long period and depending on the nature of the allegations, the right to bail will have to be read into Section 45 of PMLA.

38. A Division Bench of this Court in the case of Ramkripal Meena v. Directorate of Enforcement was considering an application of the petitioner therein who was to receive a bribe of rupees five crore and from whom, an amount of Rs. 46,00,000/- was already recovered. In the said case, the petitioner was arrested on 26th January 2022 in connection with FIR No. 402/2021 registered against him for the offences punishable under sections 406, 420, 120B of IPC and Section 4/6 of the Rajasthan Public Examination (Prevention of Unfair Means) Act, 1992. He was released on bail by this Court vide order dated 18th January 2023. Thereafter, the petitioner was arrested by the ED on 21st June 2023. The Court observed thus:

"7. Adverting to the prayer for grant of bail in the instant case, it is pointed out by learned counsel for ED that the complaint case is at the stage of framing of charges and 24 witnesses are proposed to be examined. The conclusion of proceedings, thus, will take some reasonable time. The petitioner has already been in custody for more than a year. Taking into consideration the period spent in custody and there being no likelihood of conclusion of trial within a This is a digitally signed order.

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39. In the light of the specific observations of this Court in paragraph 28 of the first order, we are not inclined to accept the submission of the learned ASG that the provisions of Section 45 of the

PMLA would come in the way of consideration of the application of the appellant for grant of bail.

40. From the first order of this Court, it would be clear that an assurance was given at the Bar on behalf of the prosecution that they shall conclude the trial by taking appropriate steps within next 6-8 months. In view of the said statement, this Court did not consider the application of the appellant for bail at that stage, however, granted liberty to the appellant to move a fresh application for bail in case of change in circumstances, or in case the trial is protracted and proceeded at a snail's pace in next three months. Though, this Court observed that if any application for bail was filed on the grounds mentioned in paragraph 29, the same would be considered by the trial court without being influenced by the dismissal of the earlier bail applications including the present judgment, however, it clarified that the observations made by the Court with regard to right to speedy trial would be taken into consideration. The liberty was also This is a digitally signed order.

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41. A perusal of the impugned judgment and order would reveal that though the learned Single Judge of the High Court has dismissed the applications for bail on merits, on medical grounds, it has permitted the appellant to visit his residence to meet his wife in custody once every week.

42. It could thus clearly be seen that this Court expected the trial to be concluded within a period of 6-8 months. The liberty was reserved to approach afresh if the trial did not conclude within the period of 6-8 months. The liberty was also granted in case the trial proceeded at a snail's pace in next three months.

43. A perusal of the material placed on record would clearly reveal that far from the trial being concluded within a period of 6- 8 months, it is even yet to commence. Though in the first order of this Court, liberty was reserved to move afresh for bail if the trial proceeded at a snail's pace within a period of three months from the date of the said order, the commencement of the trial is yet to see the light of the day. In these circumstances, in view of the first order of this Court, the appellant was entitled to renew his request. When the appellant renewed his request, the learned Special Judge (trial court) as well as the High Court was required to consider the said applications in the light of the observations made by this Court in paragraphs 28 and 29 of the first order. In paragraph 29 of the first order, this Court specifically observed that though the observations on the aspect of merit were not This is a digitally signed order.

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10. He further places reliance on order dated 02.09.2024 passed in Vijay Nair vs. Directorate of Enforcement SLP (Crl) Diary No. 22137/2024, and more particularly para 9 and 10 of the said

order. Para 9 and 10 reads as under:-

"9. Mr. S.V. Raju would further place reliance on the three-judge bench decision of this Court in Vijay Madanlal Choudhary v. Union of India to argue that stringent conditions of Bail under Section 45 of the Act have to be satisfied before granting Bail. However, this Court in a series of decisions³ has held that the rigours under Section 45 can be relaxed if the custody is for a considerable period of time and there is no likelihood of conclusion of trial within a short span.

10. We have also perused the reasoning in this Court's judgment dated 09.08.2024 in Manish Sisodia v Directorate of Enforcement where Bail was granted to the co-accused. In the said judgment, the Court had reiterated the right of an accused for expeditious trial and that the fundamental rights guaranteed under Article 21 cannot be subjugated to the statutory bar in Section 45 of the Act. It was also observed that the right to bail in cases of prolonged incarceration and trial delays, depending on the nature of the allegations, should be considered under Section 439 Cr. P.C. and Section 45 of the Act. Most importantly, bail should not be withheld as a form of punishment, reiterating the principle that bail is the rule, and its refusal is the exception."

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11. Lastly, he also relies on order dated 18.10.2024 passed in Badshah Majid Malik vs. Directorate of Enforcement & Ors. SLP (Criminal) No. 10846/2024 and more particularly para 2 of the said order which reads as under:

"2. It has been observed that in the case of Vijay Madanlal Chaudhary vs. Union of India, (2022) SCC Online SC 926 that the beneficial provision of Section 436A of the Code of Criminal Procedure, 1973, (for short, „the Cr.P.C.) may apply to prosecution under the Prevention of Money-Laundering Act, 2002 (for short, „the PMLA) as Section 436A has come on statute book subsequent to enactment of the PMLA. Therefore, a corresponding provision of Section 479(1) of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, „the BNSS) will apply to prosecution under the PMLA. Section 479(1) reads thus:

"479. Maximum period for which under trial prisoner can be detained.

(i) Where a person has, during the period of investigation, inquiry or trial under this Sanhita of an offence under any law (not being an offence for which the punishment of death or life imprisonment has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum

period of imprisonment specified for that offence under that law, he shall be released by the Court on bail:

Provided that where such person is a first-time offender (who has never been convicted of any offence in the past) he This is a digitally signed order.

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Provided further that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail bond instead of his bond:

Provided also that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law. Explanation.-In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded."

In the facts of the case, it is not disputed that the appellant has not been convicted for any offence in the past. Therefore, the first proviso to sub-section (1) of Section 479 of the BNSS will apply to this case as admittedly, the appellant has undergone detention for a period of more than 1/3rd of the maximum period of imprisonment provided for the offence alleged against him."

12. Mr. Hossain, learned Special Counsel for the respondent agency vehemently opposes the contentions raised by the petitioner and relies on the This is a digitally signed order.

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"28. Detention or jail before being pronounced guilty of an offence should not become punishment without trial. If the trial gets protracted despite assurances of the prosecution, and it is clear that case will not be decided within a foreseeable time, the prayer for bail may be meritorious. While the prosecution may pertain to an economic offence, yet it may not be proper to equate these cases with those punishable with death, imprisonment for life, ten years or more like offences under the Narcotic Drugs and Psychotropic Substances Act, 1985, murder, cases of rape,

dacoity, kidnaping for ransom, mass violence, etc. Neither is this a case where 100/1000s of depositors have been defrauded. The allegations have to be established and proven. The right to bail in cases of delay, coupled with incarceration for a long period, depending on the nature of the allegations, should be read into Section 439 of the Code and Section 45 of the PML Act. The reason is that the constitutional mandate is the higher law, and it is the basic right of the person charged of an offence and not convicted, that he be ensured and given a speedy trial. When the trial is not proceeding for reasons not attributable to the accused, the court, unless there are good reasons, may well be guided to exercise the power to grant bail. This would be truer where the trial would take years."

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13. He further states that even Badshah Majid Malik (supra) will not be applicable to the petitioner as there is another EOW FIR pending against the petitioner and hence in view of section 479(2) Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS'), the petitioner is not entitled to be released after having undergone 1/3rd of the period of sentence.

14. Lastly, he states that a coordinate bench of this court has rejected the bail application of a co-accused vide judgement dated 19.11.2024 in the case titled Siddharth Kumar vs. Enforcement Directorate 2024:DHC:8909.

15. I have heard learned counsel for the parties.

16. In the present case, the petitioner had preferred a bail application earlier being Bail Application No. 152/2023 which was rejected by this Court vide judgement dated 18.07.2023 on the ground that the petitioner had failed to meet the twin conditions as envisaged under section 45 of the PMLA.

17. Thereafter, the petitioner had preferred a Special Leave Petition against the said judgment before the Hon'ble Supreme Court and the same was also dismissed on 20.11.2023. As of today, the total period of incarceration of the petitioner is about 29 months.

18. I am of the view that the liberty of a citizen is paramount and the same has also been held by the Hon'ble Supreme Court in Manish Sisodia (supra) and V. Senthil Balaji vs Enforcement Directorate 2024 SCC OnLine SC 2626.

19. The petitioner in those cases having undergone incarceration for a period of 15 months to 24 months were granted bail on the ground that the petitioner had undergone incarceration for a considerable period and the trial was yet to commence for reasons not attributable to the petitioner/accused.

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20. In the present case, the position is somewhat similar. The petitioner has already undergone incarceration for a period of 29 months and the trial is yet to conclude anytime soon.

21. In case the petitioner continues to be in jail, it can be very well be a situation where the entire period of sentence of the petitioner would be over before the trial concludes.

22. The judgment of Siddharth Kumar (supra) is distinguishable. The coordinate bench while dismissing the bail application of the other co-accused, namely, Mr. Siddharth Kumar has not adverted to the argument of primacy of Article 21 of the Constitution of India over the mandatory twin conditions of Section 45 PMLA.

23. The Hon'ble Supreme Court time and again has held that the fundamental rights under Article 21 of the Constitution of India are paramount and cannot be subjugated to the statutory bar under Section 45 of the PMLA and the same needs to be appreciated in its true context and meaning.

24. The emphasis of the Hon'ble Supreme Court in the aforesaid judgements is that even in PMLA offences, bail is to be considered by relaxing the rigors under Section 45 of PMLA, if an accused has undergone reasonable period of sentence and there is no likelihood of the trial concluding soon.

25. Since I am inclined to allow the petition on the ground that the petitioner has already undergone 29 months incarceration and the trial is not likely to conclude anytime soon, the argument with regard to Badshah Majid Malik (supra) is not relevant at this stage and the issue is left open to be adjudicated in appropriate proceedings.

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26. For the reasons noted above, the petition is allowed and the petitioner shall be released on bail subject to the following terms and conditions:-

- i. The petitioner shall furnish a personal bond and a surety bond in the sum of Rs. 20,000/- each, to the satisfaction of the concerned Judicial Magistrate;
- ii. The petitioner shall provide his mobile number to the Investigating Officer (IO) concerned, which shall be kept in working condition at all times. The petitioner shall not switch off, or change the same without prior intimation to the IO concerned, during the period of bail;

iii. The petitioner will furnish his permanent address to the IO and in case he changes his address, he will inform the IO concerned and this Court also;

iv. The petitioner shall not leave the country during the bail period without the permission of the competent court and shall surrender his passport, if any, at the time of release before the concerned IO;

v. The petitioner shall not indulge in any criminal activity during the bail period;

vi. The petitioner shall not communicate with, or come into contact with any of the witnesses or tamper with the evidence of the case.

27. Needless to state that nothing observed hereinabove shall amount to an expression on the merits of the case and shall not have a bearing on the trial of the case as the same has been expressed only for the purpose of the disposal of the present petition.

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28. The application/petition stands disposed of in the aforesaid terms.

JASMEET SINGH, J NOVEMBER 20, 2024/NG This is a digitally signed order.

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