

# Raj Kumar Sharma vs Directorate Of Enforcement on 7 August, 2024

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.REV.P. 1151/2023 & CRL.M.A. 29467/  
RAJ KUMAR SHARMA

Through: Mr. Krishna  
Sharma, Mr. R  
Singh, Mr. As  
Mr. Preet Kam  
Adv.

ver

DIRECTORATE OF ENFORCEMENT .....

Through: Mr. Zoheb Hossai  
Counsel with Mr.  
Gurnani, Adv.  
Mr. Ravi Prakash  
with Mr. Ali Kha

+ W.P.(CRL) 3223/2023

RAMESH CHAND CHATURVEDI .....

Through: Mr. Krishan  
Sharma, Mr. Raghw  
Singh, Mr. Ashish  
Mr. Preet Kamal S  
Adv.

ver

DIRECTORATE OF ENFORCEMENT .....

Through: Mr. Ravi Prakash  
with Mr. Ali Kha  
Mr. Vishwajeet S  
Mr. Ayush Shri  
Adv. for Mr. Si  
Aggarwal, S  
(Amicus Curiae).

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN  
ORDER

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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 13/08/2024 at 21:02:24 % 07.08.2024 CRL.M.A. 29467/2023 (for stay) in CRL.REV.P. 1151/2023 & CRL.M.A. 29886/2023 (for suspension of sentence) & CRL.M.(BAIL) 837/2024 (seeking necessary direction on interim jail/interim suspension of sentence) in W.P.(CRL)

1. The Central Bureau of Investigation (CBI) had registered an FIR, bearing FIR No. RC - DAI - 2009 - 0033, alleging that the petitioners, while working as Assistant Meter Reader and UDC / Cashier in the Office of Zonal Regional Office, (West) West-II Zone, Delhi Jal Board, during the year 2008 entered into a criminal conspiracy and in furtherance of the same, misappropriated approximately 45 lakhs received against the payment of water consumption bills.

2. After the completion of investigation, chargesheet was filed under Section 13(1)(c) & (d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (PC Act) and also under Sections 420/468/471/477-A/409 read with Section 120B of the Indian Penal Code, 1860 (IPC). Since the offence was alleged to have been committed in some of the sections which are also referred in the scheduled offences under Prevention of Money Laundering Act, 2002 (PMLA), an ECIR was also recorded by the Enforcement Directorate in regard to the alleged offence of money laundering.

3. The petitioners were subsequently convicted by the learned Special Judge by order dated 07.12.2012 for offences punishable under Sections 420/468/471/477-A/409 read with Section 120B of the IPC and Sections 13(2)/13(1)(c) of the PC Act. By order on sentence dated 12.12.2012 in RC - DAI - 2009 - 0033, the petitioner- Raj Kumar Sharma was sentenced to undergo rigorous imprisonment of five years along with total cumulative fine of This is a digitally signed order.

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4. The appeal filed by the petitioners against the order of conviction and sentence was dismissed by judgment dated 17.09.2015, passed by this Court against which the SLP filed by the petitioner - Raj Kumar Sharma, was also dismissed by the Hon'ble Apex Court by order dated 22.04.2016.

5. It is not disputed that the petitioners have already undergone the sentence as awarded by the learned Trial Court and were released in October, 2016 and on 17.05.2018 respectively. The respondent, thereafter, filed a complaint bearing No. 08/2021 alleging offence of money laundering, followed by a supplementary complaint filed on 01.04.2022.

6. By order dated 03.03.2023, the learned Special Judge in the complaint filed by the respondent, framed charges under Section 3/4 of the PMLA, against the petitioners. It was noted that the petitioners expressed their desire to plead guilty after having discussed about this with their family members and their counsel.

7. By the order on sentence dated 18.03.2023, the petitioners were sentenced to undergo three years of rigorous imprisonment along with fine of 5,000/-. The petitioners were further sentenced to undergo simple imprisonment of seven days in case of default in payment of fine.

8. The said order was challenged by the petitioners by filing an appeal under Section 374 of the CrPC. However, the same was withdrawn by order dated 18.10.2023, passed by this Court, This is a digitally signed order.

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9. Arguments have been advanced on behalf of the petitioners by the learned Amicus Curiae. He submits that the petitioners,

10. having undergone complete period of sentence in a predicate offence, could not have been sentenced for further imprisonment in a complaint alleging money laundering. He submits that the complaint was filed by the respondent after an inordinate delay of more than 11 years. He submits that the trial in regard to allegations of money laundering, in terms of Section 43 of the PMLA is necessarily to be held together with the trial of the scheduled offence.

11. He submits that had the respondent filed the complaint on time, the trial for the offence as alleged by the CBI would have taken place with the trial under the PMLA. He submits that in such circumstances, the petitioners would have been entitled for the concurrent running of the sentences. He submits that the petitioners cannot be punished for the delay caused by the respondent.

12. He submits that the order sheet indicates that the petitioners were induced to plead guilty since they were of the opinion as already noted in the various orders passed by the learned Trial Court that since they have been sentenced in a scheduled offence, they would get the benefit of Section 427 of the CrPC.

13. He further submits that the convict cannot be left remedy less and if an appeal against the order of conviction is not maintainable, then an appropriate jurisdiction be invoked and This is a digitally signed order.

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accused. He submits that the Court is required to independently apply its mind whether or not to accept a plea of guilt and when it is apparent that the petitioner pleaded guilty on a presumption or misconception that he would not be sentenced further after having already undergone the sentence in a scheduled offence, the learned Special Judge should have proceeded with the trial.

14. The learned counsel for the respondent at the outset submits that the present petition is not maintainable. He submits that the High Court while exercising jurisdiction under Article 226 of the Constitution of India, cannot set aside a judicial order. He submits that the appeal against the conviction and order on sentence passed on the basis of the accused pleading guilty, is not an appealable order.

15. He submits that it is a settled law that the PMLA is a separate offence which relates to laundering of the proceeds generated from the scheduled offence and the order on sentence is not barred on the principles of double jeopardy. He contends that the learned Trial Court, while passing order on sentence, noted the arguments advanced by the petitioners and rightly sentenced the petitioners to undergo rigorous imprisonment of This is a digitally signed order.

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16. It is to be kept in mind that this Court at this stage is considering only an application seeking suspension of sentence and consequential orders of bail.

17. The substantial issues have been raised by the parties which requires consideration and further arguments.

18. It is not disputed that the FIR by the CBI for predicate offence was registered way back in the year 2009 and the respondent also recorded an ECIR in regard to investigation for money laundering, if any. The chargesheet was filed by the CBI on 27.07.2010. Though, it is not disputed that no limitation is prescribed for taking cognizance of an offence where the maximum punishment is seven years however, it cannot be denied that there had been inordinate delay on the part of the respondent in filing the complaint.

19. When the trial in regard to scheduled offence and offence of money laundering offence is to be held by the same Court in terms of Section 43 of the PMLA, the possibility of the accused getting the benefit of concurrent running of the sentence is admittedly a possibility. The right to raise the argument seeking benefit of Section 427 of the CrPC is admittedly taken away from the petitioners on account of delayed filing of the complaint.

20. Another issue that warrants consideration is whether the petitioners, having already 'served' a sentence for a related offence, can argue against further sentencing, and whether Section 427 of the CrPC applies only to cases where the accused is currently 'serving' another sentence.

21. Prima facie, there is also merit in the arguments raised by the learned Amicus Curiae that the learned Trial Court has failed This is a digitally signed order.

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22. The Hon'ble Apex Court in numerous cases has stressed that while recording the plea of guilt, the accused should be distinctly put to each fact alleged in the charge, and the fact that if proved, the same would constitute an offence. The Court has to be satisfied that the plea of guilt is made by the accused after fully understanding the repercussions. The same is not due to any misunderstanding.

23. The orders passed by the learned Trial Court indicate that the learned Trial Court itself noted that the petitioners may not deem it proper to contest because they have already been sentenced in a scheduled offence. In a cursory manner, it was noted that the petitioners wanted to plead guilty voluntarily after having discussed about the same with their family members and their counsel.

24. The learned Special Judge then recorded his satisfaction that the petitioners know the consequence of having accepted the guilt. The order on sentence dated 18.03.2023, however, clearly demonstrate that the arguments were raised by the petitioners that they ought not to be sentenced again after having undergone the rigorous imprisonment in the scheduled offence, which, prima facie, indicates that the accused were not aware of the consequence that may befall on them after having accepted the guilt. When the consent for pleading guilty is prima facie on the misconception, it cannot be contended that the convict is not be permitted to challenge the same.

25. Undoubtedly, an appeal against an order of conviction on accused pleading guilty is not appealable, however, the convict cannot be left remedy less. Whether such prayer is made in the form of a petition under Section 397 of the CrPC or under This is a digitally signed order.

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26. Various other arguments have been raised on behalf of the petitioners such as no money laundering can be alleged in the facts of the present case when admittedly the only allegations in regard to the money being siphoned off was that certain amount was paid to the lawyers.

27. As noted above, the petitioners did not get any chance to address arguments on merits of the case after having pleaded guilty, which prima facie appears to have been done on a misconception. Prima facie, in the opinion of this Court, the accused when contends that the plea of guilt was made on a misconception and he wants to withdraw such plea and is ready to face the consequences of

trial and the consequential sentence, if any, the Court cannot disallow the same.

28. The petitioners have already spent more than 9 months in the custody in the present case and thus, if at this stage, are willing to withdraw their consent to the plea of guilt, the same prima facie, cannot be denied.

29. An important issue is raised which will have implications in other cases as well. The petitioners at this stage, however, cannot be denied the benefit of the bail.

30. The petitioners are stated to be senior citizens. It is not alleged that the petitioners, if released, will misuse the liberty.

31. In view of the above, the order of sentence dated 18.03.2023 is suspended and the petitioners are directed to be This is a digitally signed order.

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- a. The petitioners shall provide their address where they would be residing to the concerned Jail Superintendent and they shall not change the address without informing the concerned Jail Superintendent;
- b. The petitioners shall, give their mobile numbers to the concerned Jail Superintendent and shall keep their mobile phones switched on at all times;
- c. The petitioners shall, under no circumstance, leave the country without the permission of the Court;
- d. The petitioners shall appear before this Court as and when directed.

32. The applications are allowed in the aforesaid terms.

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33. List on 19.11.2024.

34. A copy of this order be placed in both the matters.

AMIT MAHAJAN, J AUGUST 7, 2024 "SK"

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