Illegal Cash Withdrawals by Bank CEO

Case Name: Tanaji Dattu Padwal v. Director of Enforcement

Citation: 2024:BHC-AS:40673

Act: Prevention of Money Laundering Act, 2002, CrPC

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2251 OF 2023

Tanaji Dattu Padwal …Applicant

Versus

Director of Enforcement & Anr. …Respondents

Mr. Hasnain Kazi a/w. Ms. Shraddha Vavhal, Mr. Athar Qureshi, Mr. Raeed Kazi, Mr. Hafiz Kazi, Advocates, for the Applicant.
Mr. Hiten S. Venegavkar, SPP, a/w. Ms. Diksha Ramnani, for the Respondent No.1-ED.
Mr. C. D. Mali, APP, for the Respondent No.2-State.

CORAM: MADHAV J. JAMDAR, J.
DATED : 14th OCTOBER 2024

JUDGMENT:

1. Heard Mr. Kazi, learned Counsel for the Applicant and Mr. Venegavkar, learned Special Public Prosecutor, for the Respondent No.1-ED.

2. The Applicant has been enlarged on bail by this Court by order dated 7th October 2024 passed in Criminal Bail Application No.2528 of 2023 as far as the scheduled offence is concerned. The present Application is arising out of the offence punishable under

Section 4 of the *Prevention of Money Laundering Act, 2002* ("**PMLA**"). The relevant details are as follows:

1.	C. R. No.	Special Case No.485 of 2021 registered in connection with ECIR/MBZO-II/03/2020.
2.	Date of registration of F.I.R.	08/01/2020
3.	Name of Police Station	Shivaji Nagar, Dist. Pune (Directorate of Enforcement)
4.	Section/s invoked (Scheduled Offence)	406, 408, 409, 420, 468, 471 r/w. 34 of Indian Penal Code, 1960 along with Sections 3, 4 and 5 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999
5.	Section/s invoked (PMLA Offences)	4 of the Prevention of Money Laundering Act, 2002 ("PMLA")
6.	Date of arrest	24/02/2020 in IPC Offences/Scheduled Offences 05/03/2021 – In the offence under PMLA.

3. Mr. Kazi, learned Counsel appearing for the Applicant raised following contentions:-

(i) The role of the present Applicant and co-Accused-Shailesh Bhosale is at par. Shailesh Bhosale has been granted bail in

scheduled offence by a learned Single Judge by order dated 10th October 2023 passed in Criminal Bail Application No.1110 of 2023 and in PMLA offence this Court has granted bail to said co-accused by order dated 6th September 2024 passed in Bail Application No.3204 of 2022. He therefore, submitted that the Applicant is entitled to be released on bail on the ground of parity.

(ii) As far as merits are concerned, he submits that the Applicant is not beneficiary and there is no recovery at the instance of the Applicant and therefore the Applicant is entitled to be released on bail.

(iii) He submits that in any case, the Applicant is entitled to be released on bail due to long incarceration and he is entitled for benefit of Section 436A of the CrPC. He submitted that the Applicant has been arrested in the scheduled offence on 24th February 2020 and in PMLA offence on 5th March 2021. He submits that the Applicant is incarcerated since 3 years and 7 months in PMLA offence. He submits that the maximum punishment under Section 4 of the PMLA is seven years and therefore, the Applicant

is entitled for the benefit as provided under Section 436A of the Cr.P.C.

4. On the other hand, Mr. Venegavkar, learned Special Public Prosecutor strongly opposes the Bail Application. He raised the following contentions:-

(i) He submitted that the contention raised by Mr. Kazi, learned Counsel appearing for the Applicant that the Applicant is entitled to be released on bail on merits as he is not the beneficiary and there is no recovery at the instance of the Applicant is contrary to the material on record. He submitted that material on record clearly shows that the Applicant is involved in very serious crime.

(ii) Mr. Venegavkar, learned Special Public Prosecutor pointed out the statements of following witnesses:-

(a) Mr. Santosh Sahebrao Kale, Loan Officer, Shivajirao Bhosale Sahakari Bank ("**the said Bank**") (Page 87).

(b) Mrs. Sunita Lalasaheb Bandal, Branch Manager of the said Bank (Page 88).

(b) Mrs. Preeti Nitinrao Patil, Cashier of the said Bank (Page 89).

(c) Vinod Kachardas Paliwal, Branch Manager of Deccan Gymkhana Branch of the said Bank (Page 90).

On the basis of these statements, he submitted that the Applicant is involved in the serious crime.

(iii) Learned Special Public Prosecutor also pointed out detailed affidavit-in-reply dated 2nd January 2024 filed on behalf of the Respondent No.1-ED of Mr. Sunil Kumar, Assistant Director, Zonal Office-II, Mumbai Directorate of Enforcement, Ministry of Finance, Department of Revenue, Government of India. He pointed out paragraph Nos.7.1 to 7.6 of the said affidavit-in-reply which sets out the prosecution case. He also pointed out the role which the present Applicant has played in the crime which is described at page Nos.1214 to 1217 of the said affidavit-in-reply.

5. Before considering the rival submissions, it is necessary to set out the prosecution case. The same is set out in paragraph Nos.7.1 to 7.6 of the said affidavit-in-reply, which reads as under:

"***7.1.*** *That, Shivajinagar Police Station, Pune registered FIR No. 0026/2020 dated 08.01.2020 against Mr. Anil Shivajirao Bhosale, Mr. Suryaji Pandurang Jadhav, Mr. Tanaji Dattu Padwal, Mr. Shailesh Sampatrao Bhosale and others on the basis of complaint filed by the Complainant Mr. Yogesh Rajgopal Lakade, Chartered Accountant (Partner of M/s Torvi Pethe &Co.) invoking Sections 420 read with Sections 34, 406, 408, 409, 468 and 471 of Indian Penal Code, 1860 (herein after referred to as 'the IPC, 1860').*

7.2. *That, it is alleged in the FIR that RBI team during their periodical visit at head office of M/s Shivajirao Bhosale Co-operative Bank Ltd. at Pune on 26.04.2019, noticed various discrepancies in records / books of accounts of the bank. Further, the RBI vide letter dated 16.05.2019 had given direction to M/s Torvi Pethe & Co. (Chartered Accountant Firm and Statutory auditor of the Bank) for verification of cash record of all the branches and head office of the Bank. Accordingly, on 25.05.2019 & 27.05.2019, statutory auditor verified all available cash of the branches and head office of the bank with their respective cash books. The Statutory auditor noticed that the entry of cash of Rs. 71.78 Crore which was kept pending at Head Office of the bank during the visit of RBI team was made by the head office of the bank on 04.05.2019 in their cash book. Further, in the head office of M/s Shivajirao Bhosale Co-operative Bank, the statutory auditor found less cash of Rs. 71.78 Crore than their cash book. The same was communicated to RBI and District Special Auditor Co-operative Dept., Pune by the statutory auditor. Consequently, the Complainant, Mr. Yogesh Rajgopal Lakade, Chartered Accountant (Partner of M/s Torvi Pethe & Co.) had lodged the said FIR.*

7.3. That, it is mentioned in the FIR that Mr. Anil Shivajirao Bhosale (Accused No. 2) who was the Chairman of Shivajirao Bhosale Sahakari Bank Ltd. had misused his position and conspired with the co-accused and siphoned off the amount totalling to tune of Rs 71,78,87,723/- from Shivajirao Bhosale Sahakari Bank Ltd & its branches for personal gains.

7.4. That, subsequently EOW, Pune City carried out investigation and filed charge sheet bearing No. 32/2020 dated 18.05.2020 before the Hon'ble Additional Sessions Judge, Special M.P.I.D Court, Shivajinagar, Pune against Mr. Anil Shivajirao Bhosale, Mr. Suryaji Pandurang Jadhav, Mr. Tanaji Dattu Padwal, Mr. Shailesh Sampatrao Bhosale and others for constituting the offences punishable under Sections 34, 406, 408, 409, 420, 468 and 471 of IPC, 1860 read with Section 3, 4&5 of MPID Act.

7.5. That, Mr. Anil Shivajirao Bhosale and his 3 associates including the present applicant were arrested by the Crime Branch, Pune and produced before Additional Session Judge and Special Maharashtra Protection of Interest of Depositors Act (MPID) Judge Shivaji Nagar, Pune. Subsequently, the said Court sent / remanded them into Police custody till 19 March 2020 and thereafter in the judicial custody.

7.6. That, a case under PMLA, 2002 was recorded vide ECIR/MBZO- II/03/2020 dated 07.02.2020 by the Enforcement Directorate, Mumbai Zonal Office-Il, Mumbai, against Mr. Anil Shivajirao Bhosale, Mr. Suryaji Pandurang Jadhav, Mr. Tanaji Dattu Padwal, Mr. Shailesh Sampatrao Bhosale and others as sections 420, 467 & 471 of IPC invoked in the FIR are scheduled offence under PMLA, 2002 within the meaning of section 2(1) (y) of PMLA, 2002 read with Part A Paragraph 1 of the schedule to the PMLA, 2002."

6. In the said affidavit-in-reply role of the present Applicant is also set out in paragraph No.8.3. The same reads as under:

> *"**8.3.** That, the Management of the bank is vested in the Chief Executive Officer and Managing directors of the bank. Mr. Tanaji Dattu Padwal being a CEO of the bank, used to supervise all the 14 branches of the bank and used to prepare policies for implementation in the day-to-day affairs of the bank. He failed to comply his duties as a Chief Executive Officer of the bank. He neither adhered by laws of the bank nor guidelines of RBI issued from time to time while discharging his duties. He followed instructions regarding illegal withdrawal of cash for Anil S. Bhosale and Suryaji Pandurang Jadhav without filling any voucher/slip while taking out cash from the bank. He is also the person who used to manage and instruct employees of the bank to make bogus entries in the cash register to cover up the cash shortfall/ mismanagement. Mr. Tanaji Dattu Padwal in his statement dated 09.03.2021 has also admitted that the cash entries, in the cash register which was submitted as evidence in prosecution complaint, against him and others are true. At the outset, Mr. Tanaji Dattu Padwal knew about the cash siphoning off of Rs 71,78,87,723 from Shivajinagar Branch during the period 2016 to 2019 and he was actively assisting them in the cash siphoning off. Mr. Tanaji Dattu Padwal was in direct contact with Anil S. Bhosale and Suryaji Pandurang Jadhav and used to receive instructions/calls/messages from them in respect of their cash requirement, and subsequently, the same instructions used to be passed on to branch manager of Shivajinagar Branch. He never complained to any regulatory body including RBI. He used to produce all the books of accounts of the*

bank before Auditors for audit purposes based on which Audit Reports of the Banks were prepared. Had the real figures & condition of the bank been produced before the Auditors of the Bank for Audit, it could have saved the Shivajirao Bhosale Sahakari Bank Limited from such massive fraudulent activities and the interest of the depositors of the bank could have been protected. He, being an expert in banking sector, knew about al irregularities towards NPA, investment, cash embezzlement etc. but he never placed these facts before any regulatory bodies. Thus, the financial condition of the bank was adversely impacted, and it suffered huge loss for which the pity depositors have paid the price. He has been privy to the cheat the depositors of the Bank and has actively assisted Mr. Anil Shivajirao Bhosale and Mr. Suryaji Pandurang Jadhav in generation of proceeds of crime. The branch managers of the concerned branches of Shivajirao Bhosale Sahakari Bank have unambiguously stated in their statements under PMLA, 2002, that they used to get instructions from Mr. Tanaji Dattu Padwal for cash requirement and making adjustments/ bogus entries to cover up the 1216 fraud. As per statement of Sunita L. Bandal, Branch Manager of Shivajinagar Branch, it is revealed that she always used to receive instructions from Head office staff, Tanaji Dattu Padwal, Shailesh S. Bhosale and Santosh Sahebrao Kale in respect of illegally cash taken out from Shivajinagar branch for Anil S. Bhosale and Suryaji Pandurang Jadhav. Names of the persons to whom cash to be handed over by branch were instructed to her by Tanaji Dattu Padwal along with other officials on behalf of Mr. Anil Shivajirao Bhosale and Mr. Suryaji Pandurang Jadhav. She also stated that she had informed Mr. Tanaji Dattu Padwal regarding the shortfall in cash in Shivajinagar Branch and liquidity problems faced by the depositors since April 2019, this implies that Mr. Tanaji Dattu Padwal was very well aware about the financial

crisis faced by the bank due to illegal cash withdrawal. In reply to the same, Mr. Tanaji Dattu Padwal informed Mrs. Sunita Bandal that Mr. Anil Shivajirao Bhosale will repay the cash to the bank at the earliest. She also stated that Mr. Tanaji Dattu Padwal passed on instructions to her for cheque discounting to reduce the percentage of NPA. A Forced Loan account was created by the Administrator of Shivajirao Sahakari Bank Limited in the name of Mr. Tanaji Dattu Padwal for Rs. 2,14,00,000/- for cash withdrawal of the said amount from the IDBI Bank, Yes Bank and Axis Bank even after restriction imposed by the RBI for cash withdrawal by the Bank. This implies that Mr. Tanaji Dattu Padwal was responsible for illegal cash withdrawal even after restriction imposed by RBI. Mrs. Sunita Bandal also stated that cash amount of Rs.28,53,00,000/- was handed over to Mr. Santosh Sahebrao Kale, Mr. Shailesh Bhosale and Mr. Amar Pawar on the directions of Mr. Tanaji Dattu Padwal who was instructed by Mr. Anil Shivajirao Bhosale and Mr. Suryaji Pandurang Jadhav. As per statement of Vinod Paliwal, Branch manager of Deccan Gymkhana branch, it is revealed that he used to get instructions from Tanaji dattu Padwal for making bogus entries for cash deposits in the bank account no. 1 and 2 of Anil S. Bhosale and his wife Mrs. Reshma Anil Bhosale. When he contacted Mr. Tanaji Dattu Padwal and apprised about the discrepancies at the branch, Mr. Tanaji Padwal said that this is in his knowledge, and ti would be adjusted later on. Even, Mr. Tanaji Dattu Padwal instructed him to credit the account of Mr. Anil S Bhosale and Mrs. Reshma Bhosale with cash deposits as and when required. Mr. Tanaji Dattu Padwal instructed Mr. Vinod Paliwal for keeping 67 cheques pending for amount of Rs.5,82,90,175/- without having insufficient balance in the account of Anil S. Bhosale. As per statement of Santosh Saherao Kale, he admitted that he used to get instructions from Mr. Anil Shivajirao Bhosale, Mr. Suryaji Pandurang

Jadhav and Mr. Tanaji Dattu Padwal on landline phone of the office for illegal cash withdrawal from various branches of Shivajirao Bhosale Sahakari Bank Limited. Mr. Tanaji Dattu Padwal, even after imposing restrictions on 03.05.2019 by RBI on withdrawal of cash more than Rs 1000/-, had issued cheques to withdraw an amount of Rs 2.14 crores on various dates from the period of 26.06.2019 to 18.11.2019 from accounts of Shivajirao Bhosale Sahakari Bank which are maintained with Axis bank, IDBI bank and Yes Bank."

7. The material on record shows that the Applicant was working as the Chief Executive Officer of the said bank. He has duty to supervise all the 14 branches of the said Bank and he has facilitated illegal withdrawal of the cash on the instructions of the co-Accused. The material on record shows that the Applicant has actively participated in the commission of the crime. The Applicant as Chief Executive Officer could have prevented the commission of the offence, if he would not have participated in the commission of the offence. As the Chief Executive Officer of the said Bank, it is the duty of the Applicant to see that the Bank functions in accordance with the provisions of law. Perusal of record shows that Loan account was created of Shivajirao Sahakari Bank Limited in the name of the Applicant - Tanaji Dattu Padwal for Rs.2,14,00,000/- for cash withdrawal of the said amount from the

IDBI Bank, Yes Bank and Axis Bank even after restriction imposed by the RBI for cash withdrawal by the Bank. The Applicant even after imposing restrictions on 3rd May 2019 by RBI on withdrawal of cash more than Rs.1000/-, had issued cheques to withdraw an amount of Rs.2.14 crores on various dates from the period of 26th June 2019 to 18th November 2019 from accounts of Shivajirao Bhosale Sahakari Bank which are maintained with Axis bank, IDBI bank and Yes Bank. Thus, it is clear that the Applicant is involved in a very serious crime.

8. Mr. Venegavkar, learned Special Public Prosecutor also pointed out paragraph Nos.6 and 7 of this Court's order dated 7th October 2024 passed in Criminal Bail Application No.2528 of 2023 regarding scheduled offences. In said paragraph Nos. 6 and 7 after considering the record, it is *prima facie* recorded that the material on record shows that the Applicant is involved in very serious offence and therefore, not entitled to be released on bail on merits. By said order the Applicant has been granted bail on the ground of long incarceration.

9. Perusal of the record of the present case also clearly shows that the Applicant is involved in very serious offence and therefore, not entitled to be released on bail on merits. *Prima facie,* there is no substance in the contention of Mr. Kazi, learned Counsel appearing for the Applicant that the Applicant is not beneficiary and therefore, he is not involved in the crime.

10. However, it is required to be noted that in the scheduled offence the Applicant is incarcerated since 24th February 2020 and the Applicant has been granted bail by this Court vide order dated 7th October 2024 passed in Criminal Bail Application No.2528 of 2023. As far as the offence under PMLA is concerned, the Applicant is incarcerated since 5th March 2021. Thus, the Applicant has completed imprisonment of about 3 years and 7 months. It is an admitted position that the punishment for offence punishable under Section 4 of the PMLA is rigorous imprisonment for not less than 3 years but which may extend to 7 years. Thus, the maximum punishment for the offence punishable under Section 4 of the PMLA is 7 years of rigorous imprisonment. The Applicant has completed 3 years and 7 months i.e. more than one-half of the

maximum period of imprisonment specified for the offence alleged against him.

11. Section 436A of the CrPC provides as under:

> "***436-A. Maximum period for which an undertrial prisoner can be detained.—Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law*** *(not being an offence for which the punishment of death 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 his personal bond with or without sureties****:*
>
> ***Provided 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 instead of the personal bond with or without sureties****:*
>
> *Provided further 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.***"

12. However, it is required to be noted that the offence alleged against the present Applicant is under PMLA.

13. Section 45 of the PMLA Act is as follows :-

> "***45. Offences to be cognizable and non-bailable.***—*(1) [Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence [under this Act] shall be released on bail or on his own bond unless—]*
>
> *(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and*
>
> *(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:*
>
> *Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm 113[or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees], may be released on bail, if the Special Court so directs:*
>
> *Provided further that the Special Court shall not take cognizance of any offence punishable under Section 4 except upon a complaint in writing made by—*
>
> *(i) the Director; or*
>
> *(ii) any officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government.*
>
> *[(1-A) Notwithstanding anything contained in*

> *the Code of Criminal Procedure, 1973 (2 of 1974), or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.]*
>
> *(2) The limitation on granting of bail specified in [* * *] subsection (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.*
>
> *[Explanation.—For the removal of doubts, it is clarified that the expression "Offences to be cognizable and non-bailable" shall mean and shall be deemed to have always meant that all offences under this Act shall be cognizable offences and non-bailable offences notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (2 of 1974), and accordingly the officers authorised under this Act are empowered to arrest an accused without warrant, subject to the fulfilment of conditions under Section 19 and subject to the conditions enshrined under this section.]* "

14. Thus, as per Section 45 of the PMLA Act, the following requirements are mandatory to be complied with before releasing the accused on bail:

> (i) The Public Prosecutor is to be given an opportunity to oppose the Application seeking bail;
>
> (ii) Where the Public Prosecutor opposes the Application :
>
> > (a) The Court is required to record satisfaction that there are reasonable grounds for believing that the Applicant is not guilty of

such offence;
(b) The Court is required to record satisfaction that the Applicant is not likely to commit any offence while on bail.

15. In this Bail Application, the Respondent No. 1 – ED filed affidavit opposing the Bail Application and Mr. Venegavkar, learned Special Public Prosecutor for Respondent No.1 has opposed the Bail Application. Thus, requirement as set out in Clause (i) herein above is satisfied. Thus, now what is required to be seen is whether twin conditions as contained in Clause (ii) noted hereinabove are fulfilled and effect of the said twin conditions on the entitlement of the Applicant in getting bail.

16. In this background of the matter, it is required to be noted that the Supreme Court in the case of ***Vijay Madanlal Choudhary*** (supra) in Paragraph Nos.412 to 421 considered the applicability of Section 436A of the CrPC which is concerning the maximum punishment for which an under trial prisoner can be detained to the offence punishable under PMLA, in view of Section 45 of PMLA imposing twin conditions before considering application of the Accused facing prosecution for the offences under the PMLA. It has been held that Section 436A of the CrPC has come into effect on

23rd June 2006 and the said provision is the subsequent law enacted by the Parliament after enactment of PMLA and Section 436A will prevail and will apply in spite of rigors of Section 45 of the PMLA Act. The relevant part of the said Paragraphs Nos.412 to 421 read as under :

> "***412.*** *As a result, we have no hesitation in observing that in whatever form the relief is couched including the nature of proceedings, be it under Section 438 of the 1973 Code or for that matter, by invoking the jurisdiction of the Constitutional Court,* ***the underlying principles and rigors of Section 45 of the 2002 must come into play and without exception ought to be reckoned to uphold the objectives of the 2002 Act, which is a special legislation providing for stringent regulatory measures for combating the menace of money-laundering****.*
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> ***413. There is, however, an exception carved out to the strict compliance of the twin conditions in the form of Section 436A of the 1973 Code, which has come into being on 23.6.2006 vide Act 25 of 2005. This, being the subsequent law enacted by the Parliament, must prevail. Section 436A of the 1973 Code*** *reads as under:*
>
> *"[656]* ***[436A. Maximum period for which an undertrial prisoner can be detained.— Where a person has,*** *during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death 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 his personal bond with or without sureties****:*
>
> *Provided 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 instead of the personal bond with or without sureties****:*

Provided further 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.]

415. *In Hussainara Khatoon v. Home Secretary, State of Bihar, Patna, this Court stated that the* ***right to speedy trial is one of the facets of Article 21 and recognized the right to speedy trial as a fundamental right****. This dictum has been consistently followed by this Court in several cases. The Parliament in its wisdom inserted Section 436A under the 1973 Code recognizing the deteriorating state of undertrial prisoners so as to provide them with a remedy in case of unjustified detention.* ***In Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India, the Court, relying on Hussainara Khatoon, directed the release of prisoners charged under the Narcotic Drugs and Psychotropic Act after completion of one-half of the maximum term prescribed under the Act. The Court issued such direction after taking into account the non obstante provision of Section 37 of the NDPS Act, which imposed the rigors of twin conditions for release on bail. It was observed****:*

"15. ...We are conscious of the statutory provision finding place in Section 37 of the Act prescribing the conditions which have to be satisfied before a person accused of an offence under the Act can be released. Indeed we have adverted to this section in the earlier part of the judgment. We have also kept in mind the interpretation placed on a similar provision in Section 20 of the TADA Act by the Constitution Bench in Kartar Singh V. State of Punjab. Despite this provision, we have directed as above mainly at the call of Article 21 as the right to speedy trial may even require in some cases quashing of a criminal

proceeding altogether, as held by a Constitution Bench of this Court in A.R. Antulay v. R.S. Nayak, release on bail, which can be taken to be embedded in the right of speedy trial, may, in some cases be the demand of Article 21. As we have not felt inclined to accept the extreme submission of quashing the proceedings and setting free the accused whose trials have been delayed beyond reasonable time for reasons already alluded to, we have felt that deprivation of the personal liberty without ensuring speedy trial would also not be in consonance with the right guaranteed by Article21. Of course, some amount of deprivation of personal liberty cannot be avoided in such cases; but if the period of deprivation pending trial becomes unduly long, the fairness assured by Article 21 would receive a jolt. It is because of this that we have felt that after the accused persons have suffered imprisonment which is half of the maximum punishment provided for the offence, any further deprivation of personal liberty would be violative of the fundamental right visualised by Article 21, which has to be telescoped with the right guaranteed by Article 14 which also promises justness, fairness and reasonableness in procedural matters. …"

416. *The Union of India also recognized the right to speedy trial and access to justice as fundamental right in their written submissions and, thus, submitted that in a limited situation right of bail can be granted in case of violation of Article 21 of the Constitution. Further, it is to be noted that the Section 436A of the 1973 Code was inserted after the enactment of the 2002 Act. Thus, it would not be appropriate to deny the relief of Section 436A of the 1973 Code which is a wholesome provision beneficial to a person accused under the 2002 Act. However, Section 436A of the 1973 Code, does not provide for an absolute right of bail as in the case of default bail under Section 167 of the 1973 Code. For, in the fact situation of a case, the Court may still deny the relief owing to ground, such as where the trial was delayed at the instance of accused himself.*

417. *Be that as it may, in our opinion, this provision is comparable with the statutory bail provision or, so to say, the default bail, to be granted in terms of section 167 of the 1973 Code consequent to failure period of the*

investigating agency to file the chargesheet within the statutory and, in the context of the 2002 Act, complaint within the specified period after arrest of the person concerned. In the case of Section 167 of the 1973 Code, an indefeasible right is triggered in favour of the accused the moment the investigating agency commits default in filing the chargesheet/complaint within the statutory period. ***The provision in the form of Section 436A of the 1973 Code, as has now come into being is in recognition of the constitutional right of the accused regarding speedy trial under Article 21 of the Constitution. For, it is a sanguine hope of every accused, who is in custody in particular, that he/she should be tried expeditiously - so as to uphold the tenets of speedy justice. If the trial cannot proceed even after the accused has undergone one-half of the maximum period of imprisonment provided by law, there is no reason to deny him this lesser relief of considering his prayer for release on bail or bond, as the case may be, with appropriate conditions, including to secure his/her presence during the trial.***

418. *Learned Solicitor General was at pains to persuade us that this view would impact the objectives of the 2002 Act and is in the nature of super imposition of Section 436A of the 1973 Code over Section 45 of the 2002 Act. He has also expressed concern that the same logic may be invoked in respect of other serious offences, including terrorist offences which would be counterproductive. So be it. We are not impressed by this submission. For,* ***it is the constitutional obligation of the State to ensure that trials are concluded expeditiously and at least within a reasonable time where strict bail provisions apply. If a person is detained for a period extending up to one-half of the maximum period of imprisonment specified by law and is still facing trial, it is nothing short of failure of the State in upholding the constitutional rights of the citizens, including person accused of an offence.***

419. Section 436A of the 1973 Code, is a wholesome beneficial provision, which is for effectuating the right of speedy trial guaranteed by Article 21 of the Constitution and which merely specifies the outer limits within which the trial is expected to be concluded, failing which, the accused ought not to be detained further. Indeed, Section

436A of the 1973 Code also contemplates that the relief under this provision cannot be granted mechanically. It is still within the discretion of the Court, unlike the default bail under Section 167 of the 1973 Code. Under Section 436A of the 1973 Code, however, the Court is required to consider the relief on case-to-case basis. As the proviso therein itself recognises that, in a given case, the detention can be continued by the Court even longer than one-half of the period, for which, reasons are to be recorded by it in writing and also by imposing such terms and conditions so as to ensure that after release, the accused makes himself/herself available for expeditious completion of the trial.

420. However, that does not mean that the principle enunciated by this Court in Supreme Court Legal Aid Committee Representing Under trial Prisoners, to ameliorate the agony and pain of persons kept in jail for unreasonably long time, even without trial, can be whittled down on such specious plea of the State. If the Parliament/Legislature provides for stringent provision of no bail, unless the stringent conditions are fulfilled, it is the bounden duty of the State to ensure that such trials get precedence and are concluded within a reasonable time, at least before the accused undergoes detention for a period extending up to one-half of the maximum period of imprisonment specified for the concerned offence by law. [Be it noted, this provision (Section 436A of the 1973 Code) is not available to accused who is facing trial for offences punishable with death sentence]

421. In our opinion, therefore, Section 436A needs to be construed as a statutory bail provision and akin to Section 167 of the 1973 Code. Notably, learned Solicitor General has fairly accepted during the arguments and also restated in the written notes that the mandate of Section 167 of the 1973 Code would apply with full force even to cases falling under Section 3 of the 2002 Act, regarding money-laundering offences. On the same logic, we must hold that Section 436A of the 1973 Code could be invoked by accused arrested for offence punishable under the 2002 Act, being a statutory bail."

(Emphasis added)

17. Thus, the Supreme Court in ***Vijay Madanlal Choudhary vs. Union of India***[1] has held that Section 436A of the CrPC will apply even to the offences under the PMLA. Thus, what has been held is that in case of violation of Article 21 of the Constitution of India, the rigors of Section 45 of PMLA can suitably be relaxed.

18. The said observations in the decision of *Vijay Madanlal Choudhary* (supra) were considered by the Supreme Court in the decision of ***Ajay Ajit Peter Kerkar v. Directorate of Enforcement & Anr.***[2]. The Supreme Court in Paragraph No.3 of the said decision, has held as follows:-

> "*3. In the facts of this case, the appellant will complete 3½ years of incarceration on 26th May, 2024.* ***Thus, he will complete half of the prescribed sentence. In this case, obviously the trial has not started, as the charge has not been framed. This Court has held that Section 436A of the Code of Criminal Procedure, 1973 (for short "CRPC") will apply even to a case under the PMLA****. But the Court can still deny the relief owing to the ground such as where the trial was delayed at the instance of the accused. As stated earlier, here there is no occasion for the appellant to cause the delay in trial, as even charge has not been framed.* ***Moreover, there is no other circumstance brought on record which will***

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1 (2023) 21ITR-OL 1: 2022 SCC OnLine SC 929

2 Criminal Appeal Nos.2601-2602 of 2024 [Arising out of S.L.P. (Criminal) Nos.6090-6091 of 2024]

compel us to deny the benefit of Section 436A of the CRPC to the appellant."

(Emphasis added)

19. Speedy trial is one of the facets of right to life and liberty guaranteed under Article 21 of the Constitution of India. Speedy trial is an essential ingredient of "reasonable, fair and just" procedure guaranteed by Article 21 and it is the constitutional obligation of the State to device such a procedure as would ensure speedy trial to the Accused.[3]

20. As far as the scheduled offences are concerned i.e. C. R. No. 26 of 2020, there are about 256 witnesses proposed to be examined by the prosecution. Insofar as the present case is concerned, 9 witnesses are proposed to be examined by the prosecution. The Charge-sheet in both the cases is voluminous. It is an admitted position that both the cases will be tried simultaneously and trial has not yet commenced. Thus, this is a case where the trial is unlikely to conclude any time soon and is likely to take a considerably long time. As noted herein above, the Applicant has completed more than half of the punishment and

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3 Hussainara Khatoon (IV) v. Home Secy., State of Bihar, (1980) 1 SCC 98

therefore, entitled to the benefit of Section 436A of the CrPC. There is no material on record to show that the Applicant is responsible for delay in conducting the trial. There is no other circumstance brought to the notice of this Court which will disentitle the Applicant to seek benefit of Section 436A of CrPC.

21. In the present case, the Applicant has been arrested in the scheduled offences on 24th February 2020. The Applicant has been arrested in the PMLA case on 5th March 2021 when he was in custoday in scheduled offences. Thus, the Applicant is behind bar for about 4 years and 8 months. As the Applicant has been arrested in the PMLA case on 5th March 2021 and therefore even if the date of arrest in the PMLA case i.e. 5th March 2021 is taken into consideration then also the Applicant is incarcerated for about 3 years and 7 months which is half of the maximum punishment (i.e. 7 years) prescribed for offence punishable under Section 4 of the PMLA.

22. Thus, case is made for grant of bail to the Applicant on the ground of long incarceration.

23. Accordingly, the Applicant can be enlarged on bail by imposing conditions.

24. In view thereof, the following order:-

O R D E R

(a) The Applicant- Tanaji Dattu Padwal be released on bail in Special Case No.485 of 2021 registered in connection with EICR/MBZO-II/03/2020, registered at Mumbai Zonal Office-II, Mumbai, for the offence punishable under Section 4 of the *Prevention of Money Laundering Act, 2002*, on his furnishing P.R. Bond of Rs.50,000/- with one or two local solvent sureties in the like amount.

(b) On being released on bail, the Applicant shall furnish his cell phone number and residential address to the Investigating Officer and shall keep the same updated, in case of any change thereto.

(c) The Applicant shall report to the Mumbai Zonal Office-II, Mumbai once in a month, on first Friday between 11:00 a.m. and 1:00 p.m. until the conclusion of the trial.

(d) The Applicant shall not directly or indirectly make any inducement, threat, or promise to any person acquainted with the facts of the case, so as to dissuade such a person from disclosing the facts to the Court or to any Police personnel.

(e) The Applicant shall not tamper with the prosecution evidence and shall not contact or influence the Complainant or any witness in any manner.

(f) The Applicant shall attend the trial regularly. The Applicant shall co-operate with the Trial Court and shall not seek unnecessary adjournments thereat.

(g) The Applicant shall surrender his passport, if any, to the Investigating Officer.

25. The Bail Application is disposed of accordingly.

26. It is clarified that the Trial Court shall decide the case on its merits, uninfluenced by the *prima facie* observations made in this order.

[MADHAV J. JAMDAR, J.]

Sonali

Case Brief & MCQs on "Tanaji Dattu Padwal v. Director of Enforcement" (2024:BHC-AS:40673) is available in the eBook:

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