Manoj Kumar Soni vs Directorate Of Enforcement on 9 May, 2025

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2025:CGHC:21801
AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

ORDER RESERVED ON 15.04.2025
ORDER DELIVERED ON 09.05.2025

MCRC No. 1950 of 2025

1 - Manoj Kumar Soni S/o Sh. Narayan Prasad Soni Aged About 52 Years R/o 48, Khushi Watika, Amlidih, Raipur, Chhattisgarh 492006.
... Applicant(s)

versus

Directorate of Enforcement, Through Assistant Director, ED, Raipur Zonal Office, Raipur, District Raipur CG
... Respondent(s)

For Petitioner(s) : Mr. Akshat Gupta, Advocate through VC assisted by Ms. Sameeksha Gupta, Advocate For Respondent/ED : Dr.Saurabh Kumar Pandey, Advocate (Hon'ble Shri Justice Arvind Kumar Verma) C A V Order This is the second bail application on behalf of the applicant who has come up before this Court under Section 483 of the Bhartiya Nagrik Suraksha Sanhita [BNSS] 2023 read with Section 45 of the PMLA read with Section 346(2) BNSS on behalf of the applicant seeking bail in ECIR/RPZO/04/2023 dated 14.10.2023 registered with Enforcement Directorate Office [ED] for the offence punishable under Section 3 read with Section 4 of the Prevention of Money Laundering Act, 2002.

2. The brief facts that led to the filing of the instant application are as follows:

i. Earlier the applicant had preferred a bail application under Section 483 of the BNSS seeking regular bail, which was dismissed by this Court on 21.01.2025 in M.Cr.C. No. 6676 of 2024.

ii. On 24.01.2025, the applicant challenged the above order before the Apex Court vide SLP (Cri.) No. 1300 of 2025.

iii. On 29.01.2025, subsequent to the dismissal of the bail application of the applicant by this Court, this Court set aside the cognizance order dated 5.10.2024 vide its judgment dated 29.01.2025 in Cr.R. No. 1326/2024.

iv. On 31.01.2025, in the SLP listed before the Apex Court, it was brought to notice of the Apex Court and accordingly while declining to interfere with order dated 21.01.2025, Apex court granted liberty to the applicant to again approach the trial court in view of the aforesaid subsequent development which reads thus:

> "We do not find any ground to interfere with the impugned order passed by the High Court. However, liberty is given to the petitioner to move the trial particularly taking notice of the subsequent development."

v. Thereafter, in terms of the liberty granted by the Apex Court and in view of the subsequent development ie. quashing and setting aside of the cognizance order dated 5.10.2024 vide judgment dated 29.01.2025 in Cr. R. No. 1326/2024, the applicant approached the learned trial court seeking grant of regular bail which was dismissed by the learned trial court vide order dated 17.02.2025. Hence, the applicant has filed the instant second bail application seeking regular bail.

3. Contention of the counsel for the applicant is that once the cognizance order passed by the learned trial court has been quashed and set aside by this Court, there is enquiry proceeding/trial/prosecution pending against the applicant w.e.f. 29.01.2025. the post arrest, detention of an accused can be authorized only under Section 167(2) Cr.P.C. or Section 309(2) Cr.P.C. In the present case, the prosecution complaint against the applicant stands filed by the respondent, the detention of the applicant cannot be authorized under Section 167(2) Cr.P.C. and since the cognizance order has been set aside, no inquiry or prosecution would be pending and therefore detention of the applicant cannot be authorized under Section 309(2) Cr.P.C. he submits that the trial court does not have the power to remand the applicant to judicial custody. He submits that in similar facts and circumstances ie. setting aside of the cognizance order for want of sanction from the appropriate government authority, the Apex Court in Arun Pati Tripathi Vs. Directorate of Enforcement, Criminal Appeal No. 725/2025 vide order dated 12.02.2025, the appellant was granted bail on the ground that the custody of the appellant therein cannot be continued. He has placed his reliance upon the relevant portion which is extracted below:

"4. appellant is in custody from 8th August 2024.

Order taking cognizance passed by the Special Court has been set aside by the High Court and by acting upon the order of the High Court, a fresh application has been moved by the respondent for taking cognizance. The said application is yet to be heard by the Special Court.

5. In view of these peculiar fact, custody of the appellant cannot be continued. As there re allegations against the appellant, appropriate stringent terms and conditions can be imposed by the Special Court. We direct the respondent to produce the appellant before the Special Court within a period of one week from today. The Special Court shall enlarge the appellant on bail, pending the complaint,

subject to stringent terms and conditions, including the condition of surrender of passport. Another condition will be of appellant furnishing undertaking to the Special Court stating that, in case, cognizance of the complaint is taken, he will regularly and punctually attend the Special Court and shall cooperate with the special court for the early disposal of the case. In the event, it is found that, the appellant is no cooperating....."

4. He submits that it is a settled law that when the detention of an accused itself is illegal, the arrest of the accused person, as per provisions of Section 45 of the PMLA itself stands vitiated. He has placed his reliance in the matters of Directorate of Enforcement Vs. Subhash Sharma, SLP (Crl.) No. 1136/2023 dated 21.01.2025 upholding the judgment of this Court in Subhash Sharma Vs. Directorate of Enforcement in MCRC No. 5288 of 2022 dated 21.09.2022 and in the matter of Vihaan Kumar Vs. State of Haryana. SLP(Crl.) No. 13320 of 2024 dated 06.02.2025. The Court highlighted that holding someone in custody indefinitely while they await trial infringes on their fundamental right to liberty under Article 21 of the Constitution, effectively transforming pre-trial detention into a form of punishment.

5. He submits that the "Proceeds of Crime" being the core of the ingredients constituting the offence of money-laundering, that expression needs to be construed strictly, as such, all properties recovered or attached by the respondent in connection with the criminal activity relating to a scheduled offence under the general law, cannot be regarded as proceeds of crime, therefore, the property must be derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence. For being regarded as proceeds of crime, the property associated with the scheduled offence must have been derived or obtained by a person as a result of criminal activity relating to the concerned scheduled offence. This apart, the applicant in the instant case was arrested on 30.04.2024 and is in custody for more than 9 months. There is no allegation against the applicant that he is involved in any process or activity connected with the proceeds of crime nor has there any recovery of unaccounted cash, jewellery or assets from the applicant. that the accused/applicant cannot be stated to be absconding or defying summons. He further submits that the applicant is not a flight risk and that the applicant satisfies the test for grant of bail.

6. In reply, Dr. Saurabh Pandey, learned counsel for the Enforcement Directorate referring to the ECIR submits that the bail application in the PMLA cases are required to be decided in the light of twin conditions laid down in Section 45 of the PMLA. He contended that the present applicant had a specific role who actively assisted the cop- accused Roshan Chandrakar in collecting the extortion amount from rice millers in Chhattisgarh from passing their custom milling and special incentive bills. The present applicant had actively assisted in generating and acquiring proceeds of crime which constitute the offence of money laundering under Section 3 of the PMLA, 2002 and punishable under Section 4 of the PMLA Act, 2002. He next submitted that the trial court had dismissed the bail application after considering the facts and evidence against the applicant which clearly establishes his involvement in the offence of money laundering and therefore he has failed to satisfy the twin conditions as per Section 45 of the PMLA Act. He further submits that thought he investigation is complete and till date the proceeds of crime worth Rs. 19 crores approximately, has been attached out of total 147 crores and the investigation is underway as such, release on bail at this juncture is not desirable for the strong likelihood that he might try to influence the witness of

this case to hamper further investigation. To substantiate the submission, he referred to the judgment rendered by the Apex Court in case of Vijay Madanlal Chaudhary & others Vs. Union of India & others [2022 SCC OnLine SC 929] which has been duly upheld as under:

> "60. As a matter of fact, prior to amendment of 2015, the first proviso acted as an impediment for taking such urgent measure even by the authorized officer, who is no less than the rank of Deputy Director. We must hasten to add that the nuanced distinction must be kept in mind that to initiate "prosecution" for offence under Section 3 of the Act registration of scheduled offence is a prerequisite, but for initiating action of "provisional attachment" under Section 5 there need not be a pre-registered criminal case in connection with scheduled offence. This is because the machinery provisions cannot be construed in a manner which would eventually frustrate the proceedings under the 2002 Act. Such dispensation alone can secure the proceeds of crime including prevent and regulate the commission of offence of money-laundering. The authorized officer would, thus, be expected to and, also in a given case, justified in acting with utmost speed to ensure that the proceeds of crime/property is available for being proceeded with appropriately under the 2002 Act so as not to frustrate any proceedings envisaged by the 2002 Act. In case the scheduled offence is not already registered by the jurisdictional police or complaint filed before the Magistrate, it is open to the authorized officer to still proceed under Section 5 of the 2002 Act whilst contemporaneously sending information to the jurisdictional police under Section 66(2) of the 2002 Act for registering FIR in respect of cognizable offence or report regarding non- cognizable offence and if the jurisdictional police fails to respond appropriately to such information, the authorized officer under the 2002 Act can take recourse to appropriate remedy, as may be permissible in law to ensure that the culprits do not go unpunished and the proceeds of crime are secured and dealt with as per the dispensation provided for in the 2002 Act. Suffice it to observe that the amendment effected in 2015 in the second proviso has reasonable nexus with the object sought to be achieved by the 2002 Act."

7. He further submits that the applicant with proceed of crime and having deep roots in the society, is in a position to influence witnesses. He submits that the applicant was arrested in compliance of Section 19 of the PMLA. So far as the order of this Court in Cr. R. No. 1326/2024 dated 29.01.2025 is concerned, the cognizance order against the applicant has been set aside by the Special Court on 5.10.2024 in relation to the prosecution complaint dated 28.06.2024 filed in connection with ECIR bearing No.ECIR/RPZO/04/2023 dated 14.10.2023. No adverse remarks were made on the prosecution complaint and it is still active and therefore the claim of the applicant that no enquiry/proceeding/trial is pending against him is factually and legally incorrect. Though in the order, it has been held by this Court that liberty is granted to the Enforcement Directorate to proceed further in line of taking of cognizance once prosecution sanction would have been granted in the said matter. The competent authority in the case of the present applicant is State of Chhattisgarh for granting prosecution sanction under Section 197 Cr.P.C. and vide its order bearing No. 08/15-,/2025/21-d (vfHk;kstu) dated 05.02.2025 has accorded the prosecution sanction in the present case for prosecution of the accused under Section 3 read with Section 4 of the PMLA Act,

2002. In view of the liberty granted by this Court vide judgment dated 29.01.2025 and after considering the judgment of the Apex Court in the case of Enforcement Directorate Vs. Bibhu Prasad Acharya, 2024 SC OnLine SC 3181, application has been filed by the complainant before this Court to take the prosecution sanction order dated 05.02.2025 against the applicant on record and to resume the proceedings from the stage where it was before the judgment of the Hight Court. He further denied the contention of the applicant with regard to non-existence of cognizance order and that in the present case, cognizance order dated 22.03.2025 is already in the record. It has been held in catena of judgments that the validity of the prosecution sanction is to be decided by the trial court during trial. The same has been substantiated by the judgment of the Apex Court in the case of P.K.Pardhan V. State of Sikkim, (2001) 6 SCC 704. Similarly, in the case of Fulleshwar Gope Vs. UOI and Others, SLP (Crl.) NO. 4866 of 2023, while interpreting the law given under Section 465 of the Cr.P.C. has observed as follows:

> "17. The aforecited authorities point to only one conclusion which is that sanction through should be challenged t the earliest possible opportunity, it can be challenged at a later stge as well. These judgments, although not specifically in the context of laws such a UAPA, posit a generally acceptable rule that a right available to the accused, which may provide an opportunity to establish innocence, should not be foreclosed by operation of law, unless specifically provided within the statutory text. At the same time, challenging validity of sanction cannot and should not be a weapon to slow down or stall otherwise valid prosecution.
>
> Other legislation such as the CrPC provide mechanisms for the sanction and subsequent actions to be save from being invalidated due to any irregularity etc." Section 465 Cr.P.C. provides for the possibility that a sanction granted under Section 197 Cr.P.C can be saved by its operation. Similarly, a sanction under the PC Act, if found that there was any error, omission or irregularity would not be vitiated unless the same has resulted in failure of justice.
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> 18. ..... In the attending facts and circumstances of the present case, keeping in view the submission made at the a bar that the trial is underway and numerous witnesses (113 out of 125) already stand examined, we refrain from returning any finding on the challenge to the validity of the sanction qua the present appellant and leave it to be raised before the Trial Judge, who shall, if such a question is raised decide, it promptly."

8. In the case of Shantaben Bhurabhai Bhuriya Vs. Anand Athabhai Chaudhari (2022) 15 SCC 228, has some relevant in the present situation and the same is reproduced as under:

> "15. Now, so far as the observation made by the High Court that in view of bar under Section 197 of the Code of Criminal Procedure and no sanction was obtained is concerned, the aforesaid also cannot be ground to quash criminal proceedings in exercise of powers under Section 482 of the Code of Criminal Procedure. Looking to serious allegations against the Police Officers of misuse of powers and it is alleged

> that innocent persons residing in the society were beaten and even in the earlier day the phone call was made by the complainant / victim informing that thieves have come in the society and complaint was made that nothing is being done despite repeated such incidents and the alleged incident in the present case is in the midnight when again Police Officers along with additional police staff went to the village and the allegation against the accused are with respect to second incident, it is very debatable whether power under Section 197 of the Code of Criminal Procedure would apply and the acts which are alleged to have been done by the accused / Police Officers can be said to be part of official duties. Therefore, at this stage, to quash the entire criminal proceedings in exercise of powers under Section 482 of the Code of Criminal Procedure is impermissible. Even assuming that the High Court was right that in absence of sanction under Section 197, the proceedings are vitiated, in that case, the High Court could have directed the authority to take sanction and then proceed, instead of completely quashing the entire criminal proceedings."

9. He has further placed his reliance in the matter of State Rep. By the Deputy Superintendent of Police, Vigilance and Anti corruption Chennai City-1, Department Vs. G. Easwaran, Criminal Appeal No. 1405 of 2019 decided on 26.03.2025 wherein it has been held as under:

> "14. Thus, there is no doubt that the High Court committed an error in quashing the prosecution on the ground that the sanction to prosecute is illegal and invalid. In conclusion, we find that the objections raised in the revision petition against the Special Court's order dismissing the discharge application were identical to the grounds raised in the petition under Section 482 Cr.P.C., from which the present appeal arises. Second, apart from being congruent and overlapping, the respondent could not demonstrate any material change in facts and circumstances between the dismissal of the revision petition by the High Court and the filing of the quashing petition under Section 482 Cr.P.C. Third, the validity of the sanction can always be examined during the course of the trial and the problems due to the typographical error as 14 (2015) 16 SCC 163. alleged by the State could have been explained by producing the file at the time of trial. Fourth, it is settled that a mere delay in the grant of sanction for prosecuting a public authority is not a ground to quash a criminal case."

10. Lastly, he contends that the factual matrix of the case of Arun Pati Tripathi V. Directorate of Enforcement in Cr.A. No. 725 of 2023 which has been relied upon by the learned counsel for the applicant in the present case is completely different because during the hearing of the present case, the Special Court has already taken re-cognizance against the applicant. He has placed his reliance in the case of Tarun Kumar Vs. Assistant Directorate of Enforcement (SLP (Crl.) No.9431 of 2023), the Apex Court observed as under:

> "18..... It may be noted that parity is not the law. While applying the principle of parity, the Court is required to focus upon the role attached to the accused whose application is under consideration."

11. He submits that during investigation, the role of the applicant has surfaced as one of the prime accused in collecting the extortion amounts and the applicant has not putforth any new and existing substantial facts which entitle him to be enlarged on bail. Since there is no change in the factual situation present bail application may be dismissed.

12. Heard, learned counsel for the parties and considered the rival contentions and also perused the record.

13. From the perusal of the abovementioned facts, it is clear that prima facie the Enforcement Directorate has collected evidence of offence of money laundering against the present applicant though its correctness is required to be adjudicated during trial. The submission of learned counsel for the applicant that the applicant is in custody since 30.04.2024 i.e. about one year, therefore, he should be released on bail on account of long incarceration period. Earlier bail application filed by the applicant has been dismissed by this court on 21.01.2025 in M.Cr.C. No. 6676/2024 and the applicant had preferred SLP against the said order before the Apex Court vide SLP (Crl.) No. 1300/2025. On 31.01.2025, when the matter was listed before the Apex Court a subsequent development was brought to the notice and the Apex Court declined to interfere with the order of the High Court dated 21.01.2025 and has granted liberty to the applicant to again approach the trial court in view of the subsequent development.

14. Since the offence pertains to money laundering, apart from the usual considerations, it would have to be seen whether the twin conditions stipulated in Section 45 of the PMLA are met. A plain reading of Section 45 of the PMLA shows that the respondent/ED must be given an opportunity to oppose the application and the Court should have 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. The twin conditions though restricts the right of accused to be released on bail but do not impose absolute restraint and the discretion vests in the Court.

15. Bail is the rule and jail is the exception. This principle is nothing but a crystallization of the constitutional mandate enshrined in Article 21, which says that that no person shall be deprived of his life or personal liberty except according to the procedure established by law. Liberty is the usual course of action and deprivation of it a detour. The deprivation of liberty must only by procedure established by law, which should be fair and reasonable. Right of the accused to speedy trial is an important aspect which the Court must keep in contemplation when deciding a bail application as the same are higher sacrosanct constitutional rights, which ought to take precedence.

16. Section 45 of the PMLA while imposing additional conditions to be met for granting bail, does not create an absolute prohibition on the grant of bail. When there is no possibility of trial being concluded in a reasonable time and the accused is incarcerated for a long time, depending on the nature of allegations, the conditions under Section 45 of the PMLA would have to give way to the constitutional mandate of Article 21. What is a reasonable period for completion of trial would have to be seen in light of the minimum and maximum sentences provided for the offence, whether there are any stringent conditions which have been provided, etc. It would also have to be seen whether the delay in trial is attributable to the accused.

17. Section 309(2) of the Code of Criminal Procedure reads as under:

> "(2) If the Court after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody.....

In the present case, it is pertinent to mention here that in Cr.R. No. 1326 of 2024 vide order dated 29.01.2025, this Court has set aside the order of taking cognizance therefore, detention from the date of earlier cognizance ie. on 5.10.2024 to the date of taking re-cognizance by the Special Court vide order dated 22.03.2025 is not as per provisions contained under Section 309(2) Cr.P.C. The applicant is in custody since 30.04.2024 i.e. about one year and the maximum punishment prescribed is 7 years as of today and the position is that though the complaint has been filed on 21.08.2023, the trial has not yet commenced and even hearing on charges has not taken place. In the matter of Arun Pati Tripathi Vs. Directorate of Enforcement (supra) in liquor scam case in the State of Chhattisgarh, (Arun Pati Tripathi Vs. State of Chhattisgarh (Criminal Appeal No. 1264 of 2025, (SLP (Crl.) No. 14646 of 2024), Criminal Appeal No. 1265 of 2025 (SLP (Crl.) No. 17645 of 2024) and Criminal Appeal No.1266 of 2025 (SLP (Crl.) NO. 298 of 2025), it has been observed as under:

> "The appellant is being prosecuted for the various offences punishable under Sections 420,467,468,471 and 120-B of the IPC,1860 and Sections 7 & 12 of the Prevention of Corruption Act, 1988. The appellant is in custody for approximately 8 months.
>
> However, to ensure that the investigation is not affected in any manner, we direct that the appellant shall be enlarged on bail on 10 th April 2025 subject to appropriate terms and conditions fixed by the concerned Sessions Court."

18. Similarly, in liquor scam in the State of Chhattisgarh, in the matter of Anil Tuteja Vs. Directorate of Enforcement, Criminal Appeal No. 1961 of 2025, it has been held as under:

> ".....3. Thus, the factual position which emerges is that (a) as of today cognizance of the offence under the PMLA has not been taken as far as the appellant is concerned; (b) the appellant has undergone incarceration for about one year; (c) there are 20 accused who will have to be heard n charge and (d) more than 30 prosecution witnesses have been cited.
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> 4. The maximum sentence which can be imposed in this Case is for imprisonment for 7 years. Looking to the aforesaid factual aspects noted in pare 3 there is no possibility of commencement of trial in near future. Therefore, the principles laid down by this Court in the case of V. Senthil Balaji Vs. The Deputy Director, Directorate of Enforcement, 2024 INSC 739 will apply. Moreover, in similar fact situation, this Court by order dated 12th February 2025 in Criminal Appeal No. 725 of 2025 has

granted bail to a co-accused. Hence, the appellant is entitled to be enlarged on bail. "

19. In the present case also, the principle laid down by the Apex Court in the matter of V. Senthil Balaji Vs. The Deputy Director, Directorate of Enforcement, 2024 INSC 739 (Criminal Appeal No. 4011 of 2024 arising out of SLP (Crl.) No.3986 of 2024 would apply. The court has noted that where there are multiple accused persons and the trial is not expected to end anytime in the near future and the delay is not attributable to the accused, keeping the accused in custody by using Section 45 PMLA a tool for incarceration or as a shackle is not permissible. Liberty of an accused cannot be curtailed by Section 45 without taking all other germane considerations into account.

20. Therefore, the Apex Court in the matter of Arun Pati Tripathi Vs. Directorate of Enforcement in Cr.A. No. 725 of 2025 (SLP (Crl.) No. 16219 of 2024) vide order dated 12th February 2025, has observed that the custody of the appellant cannot be continued. Similarly, the Apex Court in the matter of Anil Tuteja Vs. Directorate of Enforcement Cr.A. No. 1961 of 2025 (SLP Crl.) No. 3148 of 2025, has observed that the custody of the appellant cannot be continued.

20. After considering the entire facts and circumstances of the case, particularly the long incarceration of the applicant in custody ie. about one year, charge sheet has already been filed, the maximum punishment prescribed is 7 years as of today and further that this Court vide order dated 29.01.2025 in Cr.Rev. No. 1326 of 2024 has set aside the order taking cognizance ie. 5.10.2024 to the date of taking re- cogniance by the Special Court vide order dated 22.03.2025 which is not as per provisions contained under Section 309(2) Cr.P.C. and applying the principle laid down by the Apex Court in the matter of V. Senthil Balaji (supra) as also Arun Pati Tripathi (supra) and Anil Tuteja (supra), this court is of the view that the applicant deserves to be granted regular bail. The concerned trial court shall enlarge the applicant on bail subject to stringent terms and conditions as may be fixed after hearing the ED/respondent. The condition shall include (a) surrender of passport if any (b) furnishing an undertaking on oath to the concerned court that he will regularly and punctually attend the trial court and shall cooperate with the trial court for early disposal of the case and (c) in the event it is found that the applicant is not cooperating with the concerned court for early disposal of the case or commits a breach of any of the conditions of bail, it will be open for the respondent to apply for cancellation of bail before the concerned court.

21. Accordingly, the bail application is allowed.

Sd/-

(Arvind Kumar Verma) Judge SUGUNA Date:

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