



Uday S. Jagtap

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 2104 OF 2021
WITH
INTERIM APPLICATION NO. 4753 OF 2023
IN
CRIMINAL BAIL APPLICATION NO. 2104 OF 2021

Ajay Ajit Peter Kerkar .. Applicant

Vs.

Directorate of Enforcement and Anr. .. Respondents

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Mr. D.U. Mirajkar i/b Mr. S.J. Khera for the applicant
Mr. Hiten S. Venegavkar, Spl. P.P. for the respondent – State

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CORAM : PRITHVIRAJ K. CHAVAN, J.

RESERVED ON : 8th JANUARY, 2024
PRONOUNCED ON : 10th JANUARY, 2024

P.C.

1. Heard Mr. Mirajkar, learned Counsel for the applicant and Mr. Venegavkar, learned Special Public Prosecutor for the respondent no.1.- E.D.

2. At the outset, learned Counsel for the applicant has prayed for release of the applicant on bail mainly on the premise that he

has undergone 2 years and 340 days in the custody as an under trial prisoner in light of the fact that the maximum sentence under Section 4 of the Prevention of Money-Laundering Act, 2002 (for short “PML Act”) is 3 years. The charge has not yet been framed and that the prospects of the trial commencing in time in the near future is bleak. As such, *dehors* merits, Counsel prays for release of the applicant only on the ground of inordinate delay in commencing the trial.

3. A few facts germane for disposal of this application are as follows.

4. The applicant came to be arrested by the Enforcement of Directorate on 27.11.2020. Before his arrest, on 07.03.2020 CBI filed an FIR (RC No.219 of 2020) at New Delhi against Cox & Kind Group of Companies (for short “CKL”) and others alleging a bank fraud. CKL was in insolvency since 2019. Forensic audit revealed serious financial misconduct. The applicant filed a complaint on 19.08.2020 for such financial misconduct against the CFO and other senior executives of CKL at Nagpada Police Station, Mumbai, which were registered as C.R. No.3/2020 and 4/2020

after orders under Section 156(3) of the Cr.P.C. Another case was opened by the Enforcement Directorate at Mumbai being No. 38 of 2020. Subsequently, CFO and internal auditor of CKL were arrested in the month of September / October 2020. Before his arrest, the applicant attended the office of the Enforcement Directorate on several occasions for the purpose of investigation. The Enforcement Directorate filed a complaint for the offence under Section 4 of the PML Act in Special Court, Mumbai on 02.12.2020, which is registered as Special Case No.1090 of 2020. An application moved for bail by the applicant came to be rejected on 29.04.2021 after considering the merits of the case.

5. The applicant has moved the present application on 03.06.2021. The Special Court granted temporary bail to enable the applicant to undergo medical treatment at his own cost at Bombay Hospital, subject to his custody in other cases registered with the Economic Offence Wing, Mumbai. The applicant moved 8 applications for bail on medical ground being Bail Application Nos. 2723 of 2023, 2730 of 2023, 2729 of 2023, 2728 of 2023, 2727 of 2023, 2733 of 2023, 2725 of 2023 and 2724 of 2023. This Court had also permitted the applicant to take medical

treatment by an order dated 16.03.2023. However, subsequently by an order dated 02.11.2023, this Court rejected the prayer of the applicant seeking continuation of the medical bail on the ground of his serious health issues as well as unfavourable medical history, which finds a mention in the certificates issued by one Dr. Pravin Amin dated 24.08.2023.

6. No doubt, right of an under trial prisoner to have a speedy trial is one of the facets of Article 21 of the Constitution of India being a fundamental right. Mr. Venegavkar, learned Special Public Prosecutor has contended that in view of Section 436A of the Code of Criminal Procedure, the right to be released on bail would be accrued to the applicant on the day when half of the maximum period of imprisonment, specified under Section 4 of the PML Act would be over. Mr. Venegavkar has, therefore, placed useful reliance on a judgment of the Supreme Court in the case of *Vijay Madanlal Choudhary & Ors. Vs. Union of India & Ors. 2022 SCC Online SC 929*. It would be apposite to extract paragraph 416, 417 and 418 of the judgment, which read thus :-

“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 of the investigating agency to file the chargesheet within the statutory period 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 trial 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.”

7. In view of the dicta of the Supreme Court enunciated hereinabove, there is no question of denying the relief of Section 436A of the Cr.P.C. to the applicant. However, it is submitted by Mr. Venegavkar that one half of the maximum period of imprisonment provided under Section 4 of the PML Act is yet to complete and, therefore, as and when the said period would be over, the applicant would be at liberty to pray for his release in view of Section 436A of the Cr.P.C. It is to be noted that even the right to be enlarged on bail after undergoing detention for a period exceeding one half of the minimum period of imprisonment is not an absolute right. The Court may still deny the relief on the grounds such as delay of the trial at the instance of the accused himself.

8. In light of the observations made hereinabove, the applicant is not entitled to be released on bail on the ground of delayed trial at this stage.

(PRITHVIRAJ K. CHAVAN, J.)