

IN THE HIGH COURT OF JHARKHAND AT RANCHI**B. A. No. 10861 of 2023**

Pankaj Mishra Petitioner(s)

Versus

Union of India through Directorate of Enforcement, Government of India
represented through its Assistant Director, Ranchi.Opp. Party(s)

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CORAM : HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY

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For the Petitioner : Mr. S. Naganuthu, Sr. Advocate
M/s Vikash Pandey, Arunagiri, Srishty,
J. Kr. Mishra, Advocates

For the ED : Mr. Anil Kumar, ASGI
Ms. Chandana Kumari, AC to ASGI

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06/ 08.02.2024. Heard, learned counsel for the parties.

1. Earlier bail application of the petitioner was rejected on merits by this Court vide order dated 28.02.2023 passed in B.A. No.58 of 2023 and subsequent thereto, the petitioner moved the Hon'ble Supreme Court in Special Leave Petition (Criminal) No.4682 of 2023. The petitioner withdrew the special leave to file a fresh application for bail after six months. Accordingly, the Special Leave application was dismissed as withdrawn, with liberty to move for interim bail on medical grounds.
2. Thereafter the petitioner moved before the learned Trial Court for bail which has been rejected and subsequent thereto, the present bail application has been preferred before this Court.
3. Petitioner, has renewed his prayer before this Court for grant of regular bail in connection with ECIR Case No.04 of 2022 registered under Section 3 of the Prevention of Money Laundering Act, 2002 (in short as PMLA) punishable under Section 4 of PMLA, pending in the Court of learned Special Judge, CBI cum Special Judge, PML Act, Ranchi.
4. The main ground for renewal of the bail application by the petitioner is that after earlier rejection, bail applications of the similarly situated co-accused persons have been allowed by Hon'ble the Supreme Court as well as by this Court. A specific reference has been made to the bail application of co-accused, Bachhu Yadav which has been allowed by the Hon'ble Supreme Court in Special Leave Petition (Crl.) No.7561 of 2023, inter alia, on the ground that he remained for a little over one year of incarceration, charge-sheet had been filed and after framing of the charge, five witnesses were examined in that case and that bail application of krishna Kumar Saha has been allowed in B.A. No.8709 of 2023 by this Court.

5. It is argued by learned Senior counsel for the petitioner that charge has been framed and out of 42 witnesses, ten witnesses have already been examined by the learned Trial Court in the present case.
6. As far as predicate offence is concerned, it is submitted that petitioner is not facing any trial, but as far as the other co-accused persons are concerned, trial has commenced in Barharwa P.S. Case No.85 of 2020 (G.R. No.13 of 2021). It is contended that trial cannot be concluded in ECIR Case No.04 of 2022 unless the trial of the predicate offence is not concluded. The scheme of PMLA does not postulate joint trial for predicate offence and for the offence of money laundering. It is however expected that there should be simultaneous trial of both predicate offence as well as for money laundering. The trial of scheduled offence should simultaneously be concluded, otherwise it may lead to anomalous result on acquittal of an accused for the scheduled offence.
7. Petitioner is in custody since 20.07.2022 and the maximum sentence for the offence under Section 3 read with Section 4 of the PML Act is of six years. Reliance in this regard is placed on the judgment rendered by the Supreme Court in the case of **Manish Sisodia vs. CBI** vide Special Leave Petition (Crl.) No.8167 of 2023, wherein it has been held that detention at the stage of trial cannot be equated as punishment to deny bail. Further, it was held that prosecution in these cases cannot be equated with that of offence relating to punishment of death or punishment of ten years or more. 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 with Section 439 of the Cr.P.C. and Section 45 of the PML Act.
8. Lastly, it is argued that from the averment made in the counter-affidavit, it appears that charge-sheet has been filed which does not disclose the fresh material against the petitioner. With regard to the averment made in the counter-affidavit that petitioner was involved in several other cases of predicate offence, it is submitted that the crime proceeds have not been found with respect to those offences to link the petitioner for commission of the offence of money laundering.
9. On medical ground of the petitioner, it is urged that petitioner is suffering from chronic Pancreatic disease apart from hyper tension and Type-2 Diabetics and he was sent for treatment at Fortis Escorts Hospital

and admitted into the Hospital on 12.06.2023 and was discharged on 21.06.2023.

Argument on behalf of Enforcement Directorate (ED).

10. Learned ASGI for the ED has vehemently opposed the prayer. It is submitted that case of the petitioner cannot be equated with that of other co-accused persons, Bachhu Yadav and Ors., as he is principal/main accused as noted by Hon'ble the Supreme Court in Para-8 of the order whereas said accused, Bachhu Yadav was said to be his henchman.
11. While dismissing the special leave application of the Petitioner, which was preferred against the order of rejection of bail by this Court, there was no direction to conclude the trial within six months. It was the counsel for the petitioner before the Hon'ble Supreme Court who had submitted that bail application will be renewed after six months and on that condition the said SLP (Criminal) was dismissed as withdrawn.
12. Further, with regard to reliance placed on in the case of *Manish Sisodia* (supra), it is submitted that it is only an observation and not a ratio as laid down by the Apex Court.
13. With regard to the plea that trial in money laundering case cannot be concluded until the trial for scheduled offence is concluded, it is submitted that Explanation (i) to Section 44 of PMLA clarifies the situation that it will not be dependent upon the disposal of the case of schedule offence.
14. With regard to medical treatment of the petitioner, it is submitted that best medical facilities are being provided to the petitioner as he was taken for treatment at Fortis Escorts Hospital.
15. Having considered the rival submissions advanced on behalf of both sides, it is apparent that case of this Petitioner cannot be equated with that of co-accused, Bachhu Yadav or co-accused, Krishna Kumar Saha who have been granted bail. Petitioner is the main accused and Bachhu Yadav was his henchman as the per the prosecution case. Accused, Krishna Kumar Saha was not named in the earlier two prosecution complaints and his name came up in the 3rd supplementary prosecution complaint submitted by the ED. Petitioner being the political representative of the then Chief Minister enjoys political and administrative connection. Matter involves crime proceed being generated by large scale illegal mining activity being carried out, and the Petitioner appears to be the king pin. There are prima facie materials to suggest his pivotal role in laundering of the crime proceed

generated in illegal mining activity. Trial is at its nascent stage with charge being framed on 03.03.2023 and out of 42 only 10 witnesses having been examined. Petitioner's health condition is monitored by the Jail doctors and was referred to and treated in higher centre at Delhi. With regard to any delay in concluding the trial it will be relevant to refer to the observation of Hon'ble Supreme Court made in **Tarun Kumar Vs Assistant Director ,Directorate 2023 SCC OnLine SC 1486**

21. The apprehension of the learned counsel for the appellant that the trial is likely to take long time and the appellant would be incarcerated for indefinite period, is also not well founded in view of the observations made by this Court in case of Vijay Madanlal (supra). On the application of Section 436A of the Criminal Procedure Code, 1973, it has been categorically held therein that:—

“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.”

I do not find any change of circumstance to enlarge the petitioner on regular bail and accordingly, the same is again rejected. Learned Trial Court is however directed to expedite the trial.

(Gautam Kumar Choudhary, J.)

Sandeep/

Uploaded.