

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 1153 OF 2023**

Mohammed Farooq Mohamemed
Hanif Shaikh @ Farooqe Shaikh

.....Petitioner

Vs.

The Deputy Director & Anr.

.....Respondents

Mr. Rajiv Chavan, Senior Advocate a/w Mr. Pravin Bhoi a/w Ms. Shweta R. Rathod i/by Elixir Legal Services for the Petitioner.

Mr. Hiten Venegavkar a/w Aayush Kedia for the Respondent No.1-ED.

Ms. Mahalakshmi Ganpathy APP, for the Respondent No.2-State.

**CORAM : A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

DATE : 5th DECEMBER, 2023.

P.C.:-

- 1) Heard Mr. Chavan, learned senior Advocate for the Petitioner and Mr. Venegavkar, learned Special PP for Respondent No.1.
- 2) Arguable questions are raised.
Admit.
- 3) Interim relief in terms of prayer clause (c).
- 4) Mr. Chavan, learned senior counsel for the Petitioner submitted that, the Petitioner is arrested on 23rd April, 2018 in the present crime and since then is in custody for last about 5 years and 8 months. He submitted that, the Petitioner has been charged with the offence of money laundering

as defined under Section 3 which is punishable under Section 4 of the Prevention of Money-Laundering Act, (for short, "*the P.M.L.A.*") for which maximum punishment prescribed is 7 years. He submitted that, the trial Court has not yet framed charge. That, the likelihood of completion of trial of the Petitioner in near future is remote and therefore he may be released on bail, pending Petition.

5) Perusal of record indicates that, the Respondent No.1 arrested the Petitioner on 23rd April, 2018. The Bail Application No.1297 of 2018 preferred by the Petitioner for bail was rejected by the single Judge of this Court by its Order dated 10th August, 2018. The Petitioner thereafter preferred Criminal Writ Petition No. 2829 of 2019, before the Division Bench of this Court. By its Order dated 6th June, 2019, the Division Bench directed the Petitioner to be kept in house arrest for the reasons stated in the said Order. The interim relief granted by Order dated 6th June, 2019 was subsequently extended by an Order dated 25th June, 2019 and the said Petition was disposed off.

5.1) The Respondent No.1 challenged the Orders dated 6th June, 2019 and 25th June, 2019 before the Hon'ble Supreme Court by way of SLP (Crl.) No.6922 of 2018. The Petitioner preferred an Interim Application in the said SLP. The Hon'ble Supreme Court by its Order dated 3rd July, 2019 was pleased to direct that, the Orders of the High Court dated 6th June, 2019 and 25th June, 2019 insofar as the custody of the Petitioner is

concerned, shall continue until further Orders and was pleased to dispose off the Application preferred by the Petitioner. Record further indicates that, the Respondent No.1 preferred I.A. No.122402 of 2022 for vacation of interim Order in SLP (Crl.) No.6922 of 2018. The Hon'ble Supreme Court by its Order dated 28th April, 2023 was pleased to dismiss the said Application. Thus, the Orders passed by the co-ordinate Bench dated 6th June, 2019 and 25th June, 2019 have not been disturbed by the Hon'ble Supreme Court and the Petitioner continues to be in custody/house arrest of the Respondent No.1.

6) Mr. Venegavkar, learned counsel for the Respondent No.1-ED submitted that, the period of house arrest cannot be taken into consideration for computing the total period of custody of the Petitioner and it needs to be excluded. We are not in agreement with the learned counsel, as according to us house arrest is ultimately arrest of person, whereby his liberty to be a free person is ultimately curtailed by operation of law.

7) It is by now well settled and recognized principle of law that, prolonged custody amounts to infringement or violation of Article 21 of the Constitution of India of an accused. There is no debate that, incarceration in custody for long period without trial or completion of trial affects personal liberty guaranteed under Article 21 of the Constitution of India of an accused.

The Hon'ble Supreme Court in the case of *Union Of India V/s.*

K.A. Najeer reported in (2021) 3 SCC 713 , in paragraph No.17 has held as under:-

“17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

8) In the present case, as per the submissions of the learned senior counsel for the Petitioner, admittedly the Petitioner is in custody for more than five years and eight months. The trial Court has not yet framed charge in the case and the likelihood of completion of trial of the Petitioner in the present case within reasonable time is very bleak.

9) The maximum sentence prescribed under Section 3 of the PMLA is 7 years. The period of incarceration undergone by the Petitioner has exceeded the substantial part of the prescribed sentence. It appears that, the Petitioner has already completed 3/4 of his sentence, if convicted and sentenced for minimum punishment of 7 years. The fact on record remains that, the Petitioner is in custody/house arrest for last more than five years and eight months for an offence wherein the maximum punishment prescribed is seven years.

10) In view of the above, we release the Petitioner on bail during the pendency of the present Petition on the following terms and conditions:-

- i) Petitioner be released on bail on his furnishing P.R. bond of Rs.1,00,000/- with one or more solvent local sureties to make up the amount.
- ii) Petitioner shall not leave the jurisdiction of this Court without prior permission.
- iii) Petitioner shall submit his residential address and mobile number to the Investigating Officer of the Respondent No.1.

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)

SANJIV
SHARNAPPA
MASHALKAR

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by SANJIV
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Date: 2023.12.08
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