



SLP(CrL.) No. 3474/2020

ITEM NO.50

COURT NO.15

SECTION II-C

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (CrL.) No(s). 3474/2020

(Arising out of impugned judgment and order dated 23-07-2020 in BA No. 1353/2020 passed by the High Court Of Delhi At New Delhi)

DIRECTORATE OF ENFORCEMENT THRU DEPUTY DIRECTOR PETITIONER(S)

VERSUS

DR. SHIVINDER MOHAN SINGH

RESPONDENT(S)

(FOR MODIFICATION OF COURT ORDER ON IA 142033/2022)

Date : 17-04-2023 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE V. RAMASUBRAMANIAN
HON'BLE MR. JUSTICE PANKAJ MITHAL

For Petitioner(s) Mr. Tushar Mehta, Ld. Solicitor General (NP)
Mr. K.M. Nataraj, Ld. A.S.G.
Mr. Mukesh Kumar Maroria, AOR
Mr. Kanu Agarwal, Adv.
Mr. Adit Khorana, Adv.
Mr. Rajan Kumar Choursia, Adv.
Mr. Anirudh Bhat, Adv.
Mr. Zoheb Hussain, Adv.

For Respondent(s) Mr. Mukul Rohatgi, Sr. Adv.
Mr. V Giri, Sr. Adv.
Mr. Aditya Dewan, Adv.
Mr. Shiven Varma, Adv.
Mr. Abhinav Agrawal, AOR

Mr. Avadh Bihari Kaushik, AOR

UPON hearing the counsel the Court made the following
O R D E R

The Directorate of Enforcement has come up with this Special Leave Petition challenging the judgment passed by the High Court of Delhi, ordering the release of the respondent herein on bail in connection with Enforcement Case Information Report (ECIR) lodged against him.

We have heard Mr. K.M. Nataraj, learned A.S.G. for the Enforcement Department and Mr. Mukul Rohatgi, learned Senior Advocate and Mr. V Giri, learned Senior Advocate appearing for the respondent.

The ECIR against the respondent was lodged on 24.07.2019, pursuant to a FIR registered against the respondent by the Economic Offences Wing, New Delhi, for offences punishable under Sections 409, 420 read with Section 120B of the Indian Penal Code, 1860.

The respondent was arrested on 10.10.2019 in connection with the FIR for the predicate offence and was arrested on 12.12.2019 in connection with the ECIR. By the judgment impugned herein, the High Court granted bail, to the respondent, forcing Enforcement Directorate to come up with this Special Leave Petition.

In the Special Leave Petition, this Court ordered notice on 31.07.2020 along with an order of *status quo* with respect to the

release of the respondent. This Court also made it clear that the impugned judgment shall not be treated as a precedent in any other case. As a consequence, the respondent continues to be in jail, for the past more than three years.

Admittedly, the maximum penalty that can be imposed upon the respondent, if he is found guilty by the Special Court, will be a sentence for a period of seven years. The respondent has now completed nearly half of the maximum period of punishment that can be imposed upon him. Therefore, it is contended that there is no justification for the continued detention of the respondent.

However, Mr. K.M. Nataraj, learned A.S.G raised three objections, namely, (1) that the respondent is still in custody in connection with the predicate offence and he has even withdrawn the Special Leave Petition arising out of the rejection of his prayer for bail; (2) that the High Court in the impugned judgment gave a completely wrong interpretation of Section 45 of the Prevention of Money Laundering Act, 2002 (for short 'the PMLA, 2002"); and (3) that the respondent is actually a flight risk.

Insofar as the first objection is concerned, it is true that the respondent moved this Court by way of a Special Leave Petition against the refusal of the High Court to grant bail in the predicate offence. But the withdrawal of the said Special Leave Petition need not stand in the way of this Court independently

considering the correctness of the impugned judgment.

Insofar as the second objection is concerned, it is true that the interpretation given by the High Court to Section 45 of the PMLA, 2002 is not in tune with the law laid down by this Court. But, we can always make it clear that the interpretation given by the High Court in the impugned judgment to Section 45 is not correct.

Insofar as the third objection is concerned, the respondent is still in custody in connection with the predicate offence. Therefore, at least as on date, the question of the respondent being a flight risk does not arise. As to what happens to the bail application moved by him in the predicate offence, as and when it comes up for hearing, will at present be a matter of guesswork. In any case, by directing the respondent to surrender his passport, the said apprehension can also be taken care of. It is stated that the passport is already surrendered.

Therefore, in fine, we are of the view that the continued incarceration of the respondent, who has now completed nearly half of the penalty that can be imposed, may not be necessary. Therefore, the Special Leave Petition is dismissed.

The order dated 31.07.2020 granting *status quo* stands vacated.

The respondent may be released subject to such conditions as can be imposed by the Special Court, including the condition for

surrender of his passport, if not already surrendered.

However, we make it clear that the observations and the interpretation given by the High Court to Section 45 of the PMLA, 2002, are not in tune with the law laid down by this Court. Therefore, they shall not be considered as a precedent in any other case.

Pending application(s), if any, shall stand disposed of.

(POOJA SHARMA)
COURT MASTER (SH)

(RENU BALA GAMBHIR)
COURT MASTER (NSH)