(2020) 02 CAL CK 0106

In the Calcutta High Court

Case No : Criminal Misc. Case (Bail Application) (CRM) No. 9200 Of 2019

Arun Mukherjee APPELLANT

Vs

Enfocrmenrt Directorate, Government Of India RESPONDENT

Date of Decision : 28-02-2020

Acts Referred:

Prevention Of Money Laundering Act, 2002 — Section 4, 45, 50
Code Of Criminal Procedure, 1973 — Section 309, 436A, 439
Finance Act, 2015 — Section — Section 145
Customs Act, 1962 — Section 132
Finance Act, 2018 — Section 207

Citation : (2020) 02 CAL CK 0106

Hon'ble Judges : Shivakant Prasad, J

Bench : Single Bench

Advocate : Debasish Mulick Chowdhury, Satadru Lahiri, Uttam Basak

Final Decision : Disposed Of

Judgement

Shivakant Prasad, J

Petitionerâ??s prayer for bail in connection with ML Case No. 03 of 2015 under Section 4 of the Prevention of Money Laundering Act, 2002 has

been turned down by the learned Judge Special Court of PMLA, Bichar Bhawan, Calcutta vide order dated 28th August, 2019.

Being aggrieved the petitioner has moved this application under Section 439 of the Code of Criminal Procedure, 1973 for his release on bail on any

condition.

Earlier prayer for bail was turned down by this Honâ??ble Court in CRM No. 2033 of 2018 by order dated 28th September, 2018.

The ground on which the petitioner has renewed his prayer for release on bail is that he has been diagnosed as carcinoma patient and was having an abnormal growth in his left vocal cord during April, 2011 and the operation took place at Woodland Hospital, kolkata on 29th April, 2011 to remove the

squamous carcinoma cell. So obviously his diagnosis as a patient of carcinoma which he had developed was prior to the rejection of his bail prayer

vide order dated 28th September, 2018 of this Court. The petitioner has visited TATA Memorial Hospital, Mumbai for further check-up and various

tests were held at Bellevue clinic, Kolkata during April, 2011. Then he was referred for chemotherapy at Amri Hospital, Kolkata. The accused was

again referred to radiotherapy OPD at SSKM Hospital on 22.11.2016. Thus it is pointed out that the petitioner is suffering from different ailments and

he has to take several medicines in a day but he has to take medicines supplied from the correctional home, which virtually deteriorated his physical

condition.

It is also submitted that the petitioner is suffering from Diabetes Mellitus and hypertension with IHD for which he was also admitted in PCH Hospital

since 8th February, 2017 and has acute pain in his hip joint and lower leg and suffering from degenerative disc disease with secondary spinal canal

steno sis at L4-L5. The petitioner is also said to have suffered from diseases of urinary organs and was referred to Institute of Psychiatry as he was

suffering from depressive episodes with co-morbid physical illness. Thus, it is argued that the accused petitioner requires specialized treatment which

is not possible at the correctional home due to infrastructural deficiencies and the movement of the petitioner on every occasion on emergency basis to

super speciality hospitals is also not possible because of procedural complications involved therein.

It is pointed out that the petitioner has not received necessary medical assistance as well as treatment as it was not possible to provide necessary

logistic supports or the police escort for moving him to the hospitals. It is submitted that the learned Special Judge while rejecting the bail prayer of the

accused petitioner gave undue stress to the cryptic representations of the facts levelling allegations by the prosecution. The learned Judge ought to

have considered the prayer for bail of the petitioner on legal ground as provided in the proviso clause of Section 45 of Prevention of Money

Laundering Act, 2002. It is also pointed out that there are nine accused persons in connection with the case as per the petition of complaints and accused persons, namely, Amit Banerjee @ Raja, Sudhir Shaw and B.K. Mallick are already on bail and so far as the involvement and designation of

the said three persons are concerned, they are alleged to be Secretary of Rose Valley Field Employee Union, A.G.M. Accounts of Rose Valley Group

of Companies and Ex-Company Secretary/present advisor of Rose Valley Real Estates Constructions Limited respectively. The petitioner although

represented to be as one of the Debenture Trustees of the Accused Company but true and proper appreciation of the materials on record as well as

the statement recorded under Section 50 of the said Act would make it palpably clear that the said three accused persons who are enjoying liberty,

were thickly knit together and were in the helm of day to day business activity of the Accused Company by dint of their post and control over the

management of the company. Accordingly, it is submitted that parity be maintained in support of this petition by enlarging him on bail on any condition.

It is further submitted that the petitioner was an employee of the Accused Company who acted in accordance with provision of law equity and social

norms and practices whereas the Investigating Authority after investigation has submitted charge sheet under Section 4 of the Act arraigning the

petitioner as an accused in most arbitrary and mechanical manner without appreciating the materials collected in the course of investigation. The case

of the petitioner is that he on his own surrendered before the learned Judge on 21st October, 2016, since then is in custody for two years and eleven

months. The involvement of the petitioner in connection with this case is only based on a confessional statement of accused persons under Section 50

of the Act and while taking cognizance of the offence the learned Special Judge rejected the bail prayer of the petitioner and has committed an error

in law and fact without appreciating the settled principle of law as the statement of co-accused persons is the weakest piece of evidence and the same

cannot be the sole basis for curtailing the freedom of any citizen of the country for period until and unless the custodial interrogation of the persons is

required for further investigation.

It is also pointed out that close relations of Gautam Kundu, the Chairman of the Rose Valley Group of Company and the key person have not been

implicated in the case. The close relations are Abir Kundu brother-in-law and Subhra Dey wife of Gautam Kundu who happens to be the beneficiary of the proceeds of crime but they were not arraigned as accused persons. To support the contention on behalf of the accused petitioner reference has

been made to a decision in case of Upendra Rai Vs. Directorate of Enforcement dated 9th July, 2019 passed in bail application 249/2019 by the

Honâ??ble High Court of Delhi wherein in para 17 it has been observed that the maximum punishment which can be awarded after trial to the

petitioner would be imprisonment for a period of 7 years out of which more than 1 year has already elapsed for the petitioner being in custody and no

charge could be framed for the purported reason that the respondent claims that their investigation is in progress. It is true that honâ??ble Apex

Court in a decision in Nikesh Tara Chand Shah Vs. Union of India reported in 2018 (11) SCC 1 has done away with the twin conditions which were

imposed of under Section 45 of the Prevention of Money Laundering Act, 2002, declaring them unconstitutional which I have already dealt with in my

earlier order while rejecting the prayer of the accused petitioner. It has been observed in the cited decision in para 22 and 23 thusâ?

22. By the Amendment Act of 2012, which is Act 2 of 2013, a very important amendment was made to the Schedule by which the entire Part B

offences were transplanted into Part A. The object for this amendment, as stated in the Statement of Objects and Reasons for the amendment in

clause 3 (j), specifically provided:

â??(j) putting all the offences listed in Part A and Part B of the Schedule to the aforesaid Act into Part A of that Schedule instead of keeping them in

two Parts so that the provision of monetary threshold does not apply to the offences.â??

23. By the Finance Act of 2015, by Section 145, the limit of Rs.30 lakhs in Section 2(y) was raised to Rs.1 crore and in the Schedule after Part A,

Part B was populated with only one entry, namely Section 132 of the Customs Act. Certain other amendments were made, by the Finance Act of

2016, to the 2002 Act with which we are not directly concerned.

In the cited decision the Honâ??ble Delhi High Court was pleased to enlarge the accused on bail. The learned counsel for the accused petitioner

submitted for similar order taking cue from the above cited decisions.

In Upendra Raiâ??s case this Court finds that the accused was in custody for more than a year, in which case, the investigation was not yet completed whereas in the instant case this Court finds that though the petitioner was in custody for more than two years and eleven months but he is

involved in chit fund scam by securing huge money from the public at large as revealed from the charge sheet submitted against the petitioner and

eight other accused persons. Moreover, the case is set for trial upon framing of the charge.

A report from the trial Court was called for and the Special Judge has submitted his report dated 28.11.2019 regarding M.L. Case No. 03 of 2015 and

C 14214 of 2013 which reflects that the case was instituted in 2015 and by transfer from the Court of Chief Judge City Civil Court, the trial Court

received the record on 19.07.2016. Since then bail petition of the accused persons were filed and were disposed by the Court time to time and lastly

on 25.08.2017 the trial Court fixed the date for framing of charge and on the very date accused Ashok Kr. Saha also filed one discharge application

on 08.09.2017. The accused Arun Mukherjee petitioner has also filed one bail application on the ground of his health on 27.10.2017. He again filed bail

application on 27.11.2017 and accused Amit Banerjee thereafter on 20.04.2018 filed one application for permission to visit Assam. But on 10.5.2011

accused Gautam Kundu filed one application for grant of Parole. On 28.9.2019 accused B.K. Mallick filed one discharge application and also filed one

application for permission to visit Canada on 27.11.2018. The accused-petitioner filed another application for bail on 10.4.2019 on the ground of his

health and Gautam Kundu filed application for bail under Section 436A of Cr.P.C. On 11.9.2019 the Advocate for the accused Gautam Kundu raised

one question regarding inquiry about accused Ramlal Goswami. For the reason of various steps time to be taken by the accused persons the learned

trial Court could not frame the charge against the accused persons. The present case is now posted for framing of the charge on 27.11.2019.

It is also reported that SEBI had filed a complaint case being C 14214 of 2013 on 26.04.2013 and after a lapse of about 6 years the learned Chief

Metropolitan Magistrate vide order dated 25.02.2019 in compliance with the order of the learned Chief Judge, City Sessions Court, Calcutta in

connection with Criminal Revision being no. 227 of 2017 has been pleased to transfer the case with the learned Court and the trial Court received the

record on 14.03.2019 and after receiving the record this learned Court has directed the complainant SEBI to take fresh steps upon the accused persons so that the procedure of summons can be maintained in accordance with law. On behalf of the complainant steps were taken for bringing the

accused persons on record and the case is fixed on 28.11.2019 for service return, appearance of the accused persons and also the production of the

accused persons who are in jail. Thus, the learned trial Court has expressed circumstances which prevented him from framing the charge to set the

trial.

The fact remains that it is the attributes of the accused persons one after another who have taken out several applications for discharge and some for

release on bail and some of them have challenged the investigation process.

It must be borne in mind that charge can be framed prima facie based on the final report submitted by the Investigating Agency and there is no

necessity to discuss the issue involved at the stage of framing of charge. The learned trial Court can proceed to frame charge on the basis of charge-

sheet after production of the accused persons in custody and to schedule the dates for expeditious trial. The learned Advocates who have filed the

applications on behalf of the accused persons are also required to be disposed of prior to framing of the charge. Therefore, learned trial Court cannot

be blamed for delay in trial rather the accused persons are delaying the trial of the case.

On behalf of the E.D. Uttam Basak has objected to the ground for prayer of bail and has pointed out that the present petitioner being the Debenture

Trustees of the company was responsible for the acts and daily affairs of the company at the relevant time and as per his plan and advice, the

company designed illegal schemes to mobilise deposits from the innocent investors including the deposits under the scheme of issue of debentures with

false assurance of high return and thereby generated huge sums of money for different purposes by making fool the common people. As per the

provision of Section 45 of PMLA Act, 2002, and the notification of the Ministry of Finance (Department of Revenue) being Notification No. 2/2018/F.

No.M.11011/1/2015-S.O. (E.S. Cell) dated 19th April, 2018 that no person can be released on bail when there is an offence of more than one crore

and the said notification is subsisting and has not been challenged. It is also submitted that the amendment brought in with effect from 19.04.2018 vide

GSR 383 (E) in exercise of powers conferred under Section 207 of the Finance

Act, 2018 (13 of 2018) which is evident from Annexure R-1. It is also argued that nowhere from the records it was revealed that the Presidency Correctional Home is not providing the best treatment to the petitioner and my attention is invited to the medical report of the senior Medical Officer Presidency Correctional Home dated 22.03.2011 which shows that the petitioner was admitted in PCH Hospital and SSKM hospital. The petitioner was suffering from cardiac problem and he was referred to OPD at SSKM Hospital for check-up on 09.11.2016 and he was advised for ECG & Echocardiography and his ECG report dated 15.01.2016 indicates left atrial enlargement with RBBB. He was referred to Physical Medicine Dept. of SSKM Hospital and he attended physical medicine OPD of SSKM Hospital on 16.12.16, 02.01.2017, 05.01.2017, 06.01.2017, 10.01.2017, 14.01.2017, 14.02.2017. MRI-LS Spine study reveals degenerative disc disease with secondary spinal canal stenosis at L4-L5.

Thus, I find that this medical report was prior to the date of the order of rejection of bail passed by this Court in CRM 2033 of 2018 vide judgment dated 28.09.2018. The statement of the accused petitioner dated 24.03.2015 on being interrogated, he had disclosed that he was a Debenture Trustee as a guarantor of money return and according to him the company issued debentures of Rs. 10 crores. It was also revealed that Rose Valley Group of Companies had laundered a total amount of Rs. 11 crores 99 lakhs 35 thousands 385.6 in 14 fixed deposits in UBI Bank and the number of Debenture Trustee of the company and the debentures were issued two times for about 5 crores each time without waving the said objections but fully relying on those, it is submitted on behalf of the opposite party that in the hour of need for the medical treatment the Enforcement Directorate is ready to attend to urgent medical attention through a Super Speciality Hospital and which can be arranged by the Superintendent Presidency Correctional Home as per the provision of Jail Code since there are so many Super Speciality Hospital in West Bengal as such Superintendent Presidency Correctional Home may be directed to arrange proper medical treatment of the accused.

It would appear from the investigation report that the petitioner accused the Debenture Trustee member accused no. 1 was responsible for the acts and affairs of the company and at the relevant time he planned and designed the illegal schemes to mobilise deposits from the investors including deposits under the schemes of issue of debentures with false assurance of high return and thereby generated huge sums and diverted and laundered

the money for different purposes by be-fooling the common people. It is true that the debenture was advertised in 2001-2002 and this accused

petitioner was a field Officer appointed by the Chairman Gautam Kundu of the company who is the key person in planning of such chit fund

companies to the public at large but the accused petitioner was indicated as a Debenture Trustee of the accused company no. 1 obviously because of

his expertise and designed in mobilisation the public at large to procure more and more money befooling the common public on the assurance of giving

high return.

In the context of discussion above this Court does not find any ground to enlarge the accused petitioner on bail on the ground of his medical treatment

because Enforcement Directorate is ready to meet all expenditure on account of medical treatment through Super Speciality Hospitals in West Bengal

which can be availed through the Superintendent Presidency Correctional Home.

Thus the application under Section 439 Cr.P.C. is rejected and CRM being 9200 of 2019 is disposed of, however, with direction to the learned trial

Court to frame charge on the date fixed and to undertake trial adhering to provision of Section 309 of Cr.P.C. without giving

accommodation of time to any of the parties and to dispose of the case as expeditiously as possible with further direction to the Enforcement

Directorate to produce all its witnesses on the time schedule framed by the trial Court. The Presidency Correctional Home concern is directed

personally to see to it that the accused petitioner is rendered medical treatment in the hour of need from Super Speciality Hospital at the cost of

Enforcement Directorate.

Let a copy of this order be communicated to the learned Trial Court. Urgent certified photocopy of this order, if applied for, be supplied to the parties

upon compliance with all requisite formalities.