

(2024) 11 KAR CK 0018
In the Karnataka High Court
Case No : Criminal Petition No. 9930 Of 2024

K. Ramakrishna

APPELLANT

Vs

Assistant Director, Directorate Of Enforcement, Bengaluru
Zonal Office, 3rd Floor, B Block, BMTC, Shanthinagar, TTMC,
K.H.Road, Bengaluru ? 560027

RESPONDENT

Date of Decision : 23-11-2024

Acts Referred:

Barathiya Nagarik Suraksha Sanhitha, 2023 — Section 479, 479(1), 479(2), 531
Prevention Of Money Laundering Act, 2002 — Section 3, 4, 5, 45
Unlawful Activities (Prevention) Act, 1967 — Section 43D(5)
Indian Penal Code, 1860 — Section 34, 120B, 406, 409, 420
Karnataka Protection Of Interest Of Depositors In Financial Establishment Act, 2004 —
Section 9
Constitution Of India, 1949 — Article 21

Citation : (2024) 11 KAR CK 0018

Hon'ble Judges : H.P. Sandesh, J

Bench : Single Bench

Advocate : Balakrishna M.R, Unnikrishnan M

Final Decision : Dismissed

Judgement

H.P. Sandesh, J

CAV ORDER

1. This successive bail petition is the third petition before this Court and this Court heard and dismissed the earlier petition and the same was challenged before the Apex Court and the Apex Court also dismissed the same and the petitioner again approached this Court and the same was rejected. Thereafter, the petitioner approached the Trial Court once again seeking the relief on different grounds invoking Section 479(1) of BNSS, 2023 and also on the ground that there is a delay in trial and trial has not yet commenced and he has been in custody from two years seven months.

2. It is contended by the learned counsel for the petitioner that maximum punishment is upto seven years and minimum sentence is three years under Section 5 of the Prevention of Money Laundering Act ('PML Act' for short) and he was arrested on 14.02.2022 and the very observation of the Trial Court is that another case is filed and it is not a case of multiple case. The reasons of the Trial Court are not correct. The learned counsel contend that the judgment of the Apex Court is very clear that BNSS is applicable.

3. The learned counsel in support of his arguments relies upon the order passed by the Apex Court in Writ petition (Civil) No.406/2013, in Re-inhuman conditions in 1382 prisons and referring paragraph Nos.3 and 4 would contend that the provisions under the BNSS shall apply to all undertrials in pending cases irrespective of whether the case was registered against them before 1st July, 2024 and also contend that it is deemed appropriate to direct immediate implementation of Section 479 of the BNSS by calling upon the Superintendents of Jails across the country wherever accused persons are detained as undertrials, to process their applications to the concerned Courts upon their completion of one-half/one-third, as the case may be, of the period mentioned in sub-section (1) of the said provision, for their release on bail. The learned counsel also relied upon paragraph Nos.6, 7 and 14 of the same petition with regard to directions given for implementation.

4. The learned counsel also relied upon the judgment of the Apex Court in SLP(Criminal) No.10846/2024 in the case of BADSHAH MAJID MALIK v. DIRECTORATE OF ENFORCEMENT AND OTHERS and brought to the notice of this Court that an observation is made with regard to the judgment in the case of VIJAY MADANLAL CHAUDHARY v. UNION OF INDIA reported in (2022) SCC Online Sc 926 and corresponding provision of Section 479(1) of BNSS, 2023.

5. The learned counsel also relied upon the judgment of the Apex Court in the case of MANISH SISODIA v. DIRECTORATE OR ENFORCEMENT reported in 2024 SCC Online SC 1920 and brought to the notice of this Court paragraph No.49, 50 and 53, wherein discussion was made that on account of a long period of incarceration running for around 17 months and the trial even not having been commenced, the appellant has been deprived of his right to speedy trial. The learned counsel referring this judgment would contend that the petitioner is in custody from two years seven months and the Court has to take note of that the trial has not been commenced.

6. The learned counsel also relied upon the judgment of the Apex Court in the case of MOHD MUSLIM ALIAS HUSSAIN v. STATE (NCT OF DELHI) reported in 2023 SCC Online SC 352 and brought to the notice of this Court paragraph Nos.15 and 16 wherein discussion was made with regard to the statutory restrictions like Section 43-D(5) of the UAPA, cannot fetter a constitutional court's ability to grant bail on ground of violation of fundamental rights. In paragraph No.16 it was also discussed with regard to Vijay Madanlal Chaudhary (supra) case.

7. The learned counsel also relied upon the judgment of the Apex Court in the case of HUSSAINARA KHATOON AND OTHERS v. HOME SECRETARY, STATE OF BIHAR reported in (1980) 1 SCC 81, wherein discussion was made with regard to Article 21 of the Constitution.

8. The learned counsel contend that recently other accused persons are added and charges are yet to be framed and additional accused are also added from 20 to 30 and this petitioner is accused No.4.

9. Per contra, the learned CGSC appearing for the respondent has filed the statement of objections and contend that earlier this Court in detail dealt with the matter and rejected the petition and thereafter the petitioner approached the Apex Court and the Apex Court also dismissed the bail petition and once again approached this Court on medical ground and the same was also rejected. This Court twice rejected the bail petition having taken note of the fact that allegation of fraud invoking PML Act offence is to the tune of Rs.1,544 Crores and the same is money invested by the general public and this petitioner being the Chairman of the said Bank indulged in committing such breach of trust. A detailed order was passed on both the occasions in CrI.P.Nos.2561/2022 and 5974/2023 and the Apex Court also while rejecting the petition held that the High Court in detail discussed the same. It is a clear case of fraud of more than Rs.1,544 Crores and hence the petitioner is not entitled for bail. The learned counsel contend that there are two cases, one under PML Act and the other case is by ED and both the trials are different. May be accused in both the cases and already trial has been commenced in Crime No.69 and both are different cases, different procedure and different trials and hence the Trial Court rightly comes to the conclusion that Section 479(1) of BNSS is not applicable to the case on hand. The learned counsel contend that the Court has to take note of the gravity of the offence and the very proviso to Section 479(1) of BNSS is not applicable to the case on hand.

10. Having heard the learned counsel for the petitioner and the learned CGSC for the respondent, this Court taken note of the material on record earlier while rejecting the two petitions and this is the third successive petition. The main ground urged before this Court is that the petitioner is entitled for bail under Section 479(1) of BNSS, since he is in custody from last two years seven months and also relied upon the judgments referred supra. The Court has to take note of the fact that case is filed against the petitioner under Section 3 of PML Act and punishable under Section 4 of PML Act and also Court has to take note of Section 45 of PML Act. The said provision casts bar on granting bail to an accused from offence under PML Act, unless he complies with the requirement thereunder, notwithstanding anything contained in the Code of Criminal Procedure which is not replaced by BNSS. It is important to note that Section 479 of BNSS makes it clear that the benefit of first proviso to Section 479 is subject to Section 479(2) of BNSS and the Court has to take note of the third proviso, thereof, wherein investigation, inquiry or trial in more than one offence are in multiple cases are pending against a person, he shall not be released on bail by the Court. It is

important to note that the second proviso to Section 479(1) of BNSS empowers the Court to order the continued detention of a person for a period longer than one-half of the period. All the provisions have to be read conjointly, including Sections 479(1) and 479(2). The Trial Court also taken note of the said fact into consideration since there are more than one offence against the petitioner and IPC offences are invoked and separate case is also invoked by invoking PML offence.

11. It is important to note that the Court has to take note of the fact that the petitioner is the founder of the said Bank and the allegation against him is that Rs.1,544 Crores are misused by creating bogus and fake deposits. Particularly taken note of out of that Rs.882.85 Crores has been sanctioned only to 24 major beneficiaries and specific allegation is made that this petitioner is the architect of the fraud and this fact has been considered by this Court twice and the Apex Court also dismissed SLP (Crl.) No.8032/2022 vide order dated 16.09.2022. It is important to note that other case is registered against him in Crime No.69/2020 for the offences punishable under Sections 406, 420, 409, 120B read with 34 of IPC and Section 9 of the Karnataka Protection of Interest of Depositors in Financial Establishment Act. When the offences are different as well as when more number of cases are registered against the petitioner, he cannot invoke the proviso under Section 479 of BNSS seeking the relief on the ground of one third punishment even if it is considered, maximum punishment he has already underwent and the said proviso is not applicable to the facts of the case on hand, since the Court has to take note of the gravity of the offence and multiple cases against the petitioner and more than Rs.1,544 Crores fraud has been committed that too this petitioner being a founder Chairman of the said bank.

12. The other provision is also clear that under Section 531 of BNSS, there is a saving clause while repealing Cr.P.C. regarding applicability of the old Act also. When there is a saving clause, the question of invoking the provision of new enactment is not applicable and while rejecting the bail application, the Trial Court taken note of the same and in detail discussed the same and hence I do not find any ground to grant bail on the ground that no trial has been commenced. In other connected case already trial has been commenced. In this case, additional accused are added and hence there was a delay in framing the charge. Merely because he is in custody from past two years seven months cannot be a ground to enlarge the petitioner on bail when PML offence is invoked and the charges leveled against him is committing fraud to the tune of Rs.1,553 Crores by creating fictitious documents and granting loan in favour of fictitious persons, particularly 24 persons and Rs.928 Crores was misappropriated. Hence, there is no merit in the petition to exercise the discretion in favour of the petitioner and the judgments which have been referred by the learned counsel for the petitioner will not come to the aid of the petitioner to exercise the discretion.

13. In view of the discussions made above, I pass the following:

ORDER

The criminal petition is rejected.