

(2022) 02 OHC CK 0104
In the Orissa High Court
Case No : Bail Application No. 65 Of 2022

Srikrushna Padhi

APPELLANT

Vs

Enforcement Directorate, Govt. Of India

RESPONDENT

Date of Decision : 14-02-2022

Acts Referred:

Constitution of India, 1950 — Article 14, 21
Code of Criminal Procedure, 1973 — Section 439
Prize Cheat and Money Circulation Scheme (Banning) Act, 1976 — Section 3, 4, 5
Prevention of Money Laundering Act, 2002 — Section 3, 45, 45(1)
Indian Penal Code, 1860 — Section 34, 120B, 294, 341, 406, 409, 420, 467, 468, 471, 506

Citation : (2022) 02 OHC CK 0104

Hon'ble Judges : B. P. Routray, J

Bench : Single Bench

Advocate : A. Mishra, G. Agarwal

Final Decision : Disposed Of

Judgement

B. P. Routray, J

1. Present application has been filed under Section 439, Cr.P.C. praying to release the Petitioner on bail in connection with CrI. Misc. (PMLA) Case

No34 of 2016 pending in the court of learned Sessions Judge-cum-Special Judge, Bhubaneswar.

2. The facts of the case reveal that, initially Kharavela Nagar P.S. Case No.44 of 2013 and 45 of 2013 were registered against Arthatatwa Group of

Companies and others. Subsequently, Central Bureau of Investigation (CBI) took up investigation of the said cases along with other cases in

pursuance to the directions issued by the Supreme Court of India. As such, SPE Case No.42 of 2014 (arising out of Kolkata

CBI/SCB/RC/No.47/S/2014-Kol. dated 5th June, 2014) has been registered alleging commission of offences under Section 120-

B/294/341/406/409/420/467/468/471/506/34 of the Indian Penal Code and Sections 3/4/5 of the Prize Cheat and Money Circulation Scheme (Banning)

Act, 1976. Keeping in view the nature of allegations and as materials surfaced revealing commission of schedule offences under the Prevention of

Money Laundering Act, 2002 (hereinafter â??PML Act?) the complaint under Section 45 was lodged before the learned Special Judge, Bhubaneswar

which was registered as CrI. Misc. (PMLA) Case No.34 of 2016 and the learned Special Judge, Bhubaneswar by order dated 1st November, 2016

took cognizance of the offences under Section 3 of the PML Act, punishable under Section 4 of the said Act. The present Petitioner is one amongst

seven accused persons in the afore-stated case.

3. The allegations leveled against the Petitioner are that, he was the Director of Arthatatwa Infra India Pvt. Ltd. and also the Finance Manager of

Arthatatwa Consultancy Pvt. Ltd. The Petitioner was looking after accounts related deposits collected from the public and thereafter depositing the

cheques and supervising the works related to accounts, deposits, payments, etc. He being aware of all the financial transactions and collection of

money from public with false promise of high returns was actively involved in commission of offences of Money Laundering with the principal

accused Pradeep Kumar Sethy and enjoyed the proceeds of crime to his personal benefits.

4. It needs to be mentioned here that the prayer for bail of the Petitioner was earlier rejected by this Court in BLAPL No.4165 of 2020 vide order

dated 24.09.2021.

5. It is submitted by the counsel for the Petitioner that in the meantime the principal accused of the case, namely, Pradeep Kumar Sethy has been

released on bail in BLAPL No.5606 of 2020 vide order dated 17.12.2021 and one more accused, namely, Jyoti Prakash Jay Prakash has also been

released on anticipatory bail in ABLAPL No.15091 of 2019 vide order dated 27.10.2021 by different coordinate Benches of this Court.

6. Mr. G. Agarwal, learned counsel for the Enforcement Directorate (ED) (complainant) submits that there are ample materials against the Petitioner

evidencing commission of offences of Money Laundering where the Petitioner has

taken active role to siphon public money in close association of other accused persons.

7. After hearing both the parties, it reveals that two other co-accused persons, namely, Pradeep Kumar Sethy and Jyoti Prakash Jay Prakash, whose release on bail has been referred by the Petitioner were granted on bail upon reliance of the decision of the Supreme Court in the case of Nikesh

Tarachand Shah vs. Union of India and another, (2018) 11 SCC 1, wherein the Supreme Court held the twin conditions prescribed for release on

bail as per Section 45(1) of the PML Act, 2002 to be unconstitutional as violative of Articles 14 and 21 of the Constitution of India.

8. The Supreme Court in the case of Nikesh Tarachand Shah (supra) at paragraphs 46 and 54 have observed that:

“46. We must not forget that Section 45 is a drastic provision which turns on its head the presumption of innocence which is fundamental to a person accused of

any offence. Before application of a section which makes drastic inroads into the fundamental right of personal liberty guaranteed by Article 21 of the Constitution of

India, we must be doubly sure that such provision furthers a compelling State interest for tackling serious crime. Absent any such compelling State interest, the

indiscriminate application of the provisions of Section 45 will certainly violate Article 21 of the Constitution. Provisions akin to Section 45 have only been upheld on

the ground that there is a compelling State interest in tackling crimes of an extremely heinous nature.

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54. Regard being had to the above, we declare Section 45(1) of the Prevention of Money-Laundering Act, 2002, insofar as it imposes two further conditions for release

on bail, to be unconstitutional as it violates Articles 14 and 21 of the Constitution of India. All the matters before us in which bail has been denied, because of the

presence of the twin conditions contained in Section 45, will now go back to the respective courts which denied bail. All such orders are set aside, and the cases

remanded to the respective courts to be heard on merits, without application of the twin conditions contained in Section 45 of the 2002 Act. Considering that the

persons are languishing in jail and that personal liberty is involved, all these

matters are to be taken up at the earliest by the respective courts for fresh decision. The

writ petitions and the appeals are disposed of accordingly.â??

9. In the case of Jyoti Prakash Jay Prakash vs. Union of India (E.D.)(disposed of on 27.10.2021 in ABLAPL No.15091 of 2019) this Court has

further held at paragraph 22 that, the amendment introduced to sub-Section (1) of Section 45 of the PML Act after the decision in the case of Nikesh

Tarachand Shah (supra) does not have the effect of reviving those twin conditions in the PML Act. It is observed as follows:

â??13. That clause (ii) of sub-Section (1) of Section 45 of the PMLA places two conditions for release of a person accused of an offence under the PMLA, on bail, if

that the Public Prosecutor opposes the bail application, the Court has to arrive at the satisfactions (i) that there are reasonable grounds for believing that the accused

is not guilty of such offence and (ii) that he is not likely to commit any offence while on bail. Whether substitution of the words â??under this Act? in place of the

words â??punishable for a term of imprisonment of more than three years under Part A of the Schedule? in Section 45(1) of the Act, has the impact of meeting with the

reasoning and logic incorporated and discussed by the Hon?ble Supreme Court in case of Nikesh Tarachand Shah (supra) for declaring the Clause (ii) of sub-Section

(1) of Section 45 of the Act ultra vires and, therefore, Clause (ii) of sub-Section (1) of Section 45 of the PMLA in present form how far the impact, despite Hon?ble

Supreme Court?s decision in case of Nikesh Tarachand Shah (supra) is the matter to be seen, so that on said touchstone, the factual settings of the case would stand

for consideration.

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21. The Hon?ble Apex Court thus noticed anomalies in prescribing conditions for entertaining petition for grant of bail under Section 45(1) of the PMLA with

reference to the Scheduled offences. In paragraph 46 of the judgment in case of Nikesh Tarachand Shah (supra), it has been held that Section 45 of the PMLA is a

drastic provision which makes drastic inroads into the fundamental right of personal liberty guaranteed under Article 21 of the Constitution of India. It was observed

that before application of such provision, one must be doubly sure that it furthers a compelling State interest in tackling serious crimes. Absence of any such

compelling State's interest, indiscriminate application of the provisions of Section 45 will certainly violate Article 21 of the Constitution. The Hon'ble Supreme Court

noted that the provisions akin to Section 45 have been upheld on the ground that there was compelling State interest in tackling crimes of an extremely heinous

nature. For better appreciation, paragraph 46 in the case of Nimesh Tarachand Shah (supra) is quoted below:-

“46. We must not forget that Section 45 is a drastic provision which turns on its head the presumption of innocence which is fundamental to a person accused of

any offence. Before application of a section which makes drastic inroads into the fundamental right of personal liberty guaranteed by Article 21 of the Constitution of

India, we must be doubly sure that such provision furthers a compelling State interest for tackling serious crime. Absent any such compelling State interest, the

indiscriminate application of the provisions of Section 45 will certainly violate Article 21 of the Constitution. Provisions akin to Section 45 have only been upheld on

the ground that there is a compelling State interest in tackling crimes of an extremely heinous nature.”

The Hon'ble Apex Court clearly held that indiscriminate application of the provision of Section 45 of the PMLA will certainly violate Article 21 of the Constitution of

India.

22. In the aforesaid background, it is to be seen as to if by the amendment introduced in Section 45 of the PMLA, as noted above, by Act No.13 of 2018; the entire

Section 45 has been reframed in reviving and resurrecting the requirement of twin-conditions under sub-Section (1) of Section 45 of the PMLA for grant of bail. In

view of clear language used in paragraph 46 of the Hon'ble Supreme Court's decision in case of Nimesh Tarachand Shah (supra), this Court is of the considered view

that the amendment in sub-Section (1) of Section 45 of the PMLA introduced

after the Hon'ble Supreme Court's decision in case of Nikesh Tarachand Shah (supra)

does not have the effect of reviving the twin-conditions for grant of bail, which have been declared vires Articles 14 and 21 of the Constitution of India.â??

10. In the case of Pradeep Kumar Sethy vs. Enforcement Directorate, Government of India, Bhubaneswar Zone, 2021 SCC OnLine Ori 2307,

this Court by order dated 17.12.2021 directed him to be released on bail after taking note of the decisions rendered in the case of Nikesh Tarachand

Shah (supra) and other decisions rendered by Bombay High Court in the case of Deepak Virendra Kochhar vs. Directorate of Enforcement

(Order dated 25.3.2021 in Bail Application No.1322 of 2020), Sameer M. Bhujbal vs. Assistant Director, Directorate of Enforcement, (Order

dated 06.06.2018 in Bail Application No.286 of 2018), by Delhi High Court in the case of Sai Chandrasekhar vs. Directorate of Enforcement, 2021

SCC OnLine Delhi 1081, and the decisions of various other High Courts.

11. The present Petitioner is inside custody since 30.5.2013 relating to Kharavela Nagar P.S. Case No.44 of 2013 and in respect of the present case

since 16.10.2017. It is admitted by the parties that despite such long detention of the Petitioner inside custody, the trial has not commenced yet. Thus

keeping in view the period of detention of the Petitioner inside custody, the delay in trial, release of other two co-accused persons, namely, Pradeep

Kumar Sethy and Jyoti Prakash Jay Prakash as well as the observations rendered by this Court and other High Courts with regard to applicability of

the provisions of Section 45 of the PML Act, 2002, it is directed to release the Petitioner on bail. The Petitioner be released on bail for Rs.1,00,000/-

(rupees one lakh) with two sureties each to the satisfaction of learned Sessions Judge, Khurda at Bhubaneswar in connection with Crl. Misc.

(PMLA) Case No.34 of 2016 with further condition that out of two such sureties furnished by the Petitioner, one shall be his relative and that, he shall

not be involved in any other offence while on bail and shall not dissuade any witness directly or indirectly by way of inducement, threat or promise

acquainted with the facts of the case from disclosing such facts before the court or tamper with the evidence.

12. The BLAPL is disposed of.

13. An urgent certified copy of this order be granted on proper application.

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