

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.2688 of 2023

(In the matter of application under Section 439 of the Code of Criminal Procedure).

Archana Nag **Petitioner**

-versus-

Directorate of Enforcement ... **Opposite Party**

For Petitioner : **Mr. J.Pal, Advocate**

For Opposite Party : **Mr. G.Agarwal,
Advocate(E.D.)**

CORAM:

JUSTICE G. SATAPATHY

DATE OF JUDGMENT :04.12.2023

G. Satapathy, J.

1. This is a bail application U/S.439 of Cr.P.C. by the petitioner for grant of bail in connection with Complainant Case (PMLA) Case No.10 of 2022 for commission of offence Under Section 3 of the Prevention of Money Laundering Act, 2002 (In short "PMLA") which is punishable Under Section 4 of the

PMLA pending in the file of learned District and Sessions Judge, Khurda at Bhubaneswar.

2. An overview of the facts involved in this case are on 29.09.2022, one FIR was registered against the Petitioner and another vide Nayapalli PS Case No. 646 of 2022 for commission of offences punishable U/Ss. 384/385/387/506/120-B of Indian Penal Code (In short the "IPC") and Section 67 of Information Technology Act (In short the "IT Act"), 2000 and again on 02.10.2022, another FIR was registered against the Petitioner and others vide Khandagiri PS Case No. 496 of 2022 for commission of offences punishable Under Sections 341/328/324/354-C/370/386/387/ 388/ 389/ 419/ 420/ 465/ 506/120-B of Indian Penal Code (in short IPC), 1860 and Under Section 66-E/67 of the IT Act. In these FIRs against the Petitioner and others, it was alleged that the Petitioner and other co-accused persons had extorted crores of Rupees from different rich people by blackmailing them to

get their video footage containing objectionable and inappropriate photographs viral. The aforesaid cases were investigated into by the local police, but in the course of investigation, the Assistant Director of Enforcement, Bhubaneswar claiming the offences alleged against the Petitioner and others to be scheduled offences as defined Under Section 2(1)(y) of the PMLA instituted a complaint against the Petitioner and others before the Special Court under PMLA, Bhubaneswar for commission of offence U/S. 3 of PMLA which is punishable U/S. 4 of PMLA. It is stated in the complaint that soon after registration of the aforesaid police cases, PMLA Case No.10 of 2022 was recorded against the Petitioner and others for commission of aforesaid offence under PMLA and the matter was investigated into by ED. It is accordingly stated in the complaint that One Four Wheeler "Ford Endeavour" bearing Registration No. OD-02-BP-2324 belonging to the Petitioner with approximate

purchase value of Rs. 39,03,736/- was seized so also one G+2 storeyed residential building constructed over plot No. 1338/15105 of Khata No. 698 measuring an area ac 0.047 decimal (2050 sq. ft) with approximate market value of Rs. 3.6 Crores was attached. It is also alleged in the complaint that the Petitioner and others had generated illegal income of Crores of Rupees through extortion by way of honey trapping rich and influential people and making their nude videos and threatening as well as blackmailing them for lodging false police cases and getting their nude videos viral in social media and, thereby, the income of the Petitioner and others are proceeds of crime as defined Under Section 2(1)(u) of the PMLA. This is how the complaint against the Petitioner and others came to be instituted for commission of offences Under Sections 3/4 of PMLA.

3. Heard, Mr.J.Pal, learned counsel for the Petitioner and Mr. G.Agrawal, learned counsel for

the ED extensively. Mr. Pal has mainly confined his submission on two points; firstly, non-compliance of the the mandate of Section 19 of PMLA while arresting the Petitioner and thereby, the Petitioner is entitled to bail on that very score; secondly, the Petitioner being a woman can be directed to go on bail notwithstanding to the rigor of Section 45 of the PMLA in view of the proviso attached thereto. In addition, Mr. Pal has also submitted that there is no prima facie material to detain the Petitioner in custody and the Petitioner having successfully passed the tripod test, there would be no impediment to direct release of the Petitioner on bail. On the other hand, Mr. G. Agarawal, learned counsel for the ED has submitted that merely because the Petitioner is a woman would not confer any right on her to go on bail, when there is allegation against her for generating crores of rupees as a proceeds of crime and she being accused of offence of money laundering cannot be

extended with any relaxation through the proviso to overcome the rigor of 45(1) of PMLA which she having not satisfied, her bail application itself merits no consideration. In support of their rival submissions, learned counsels for both the parties have relied upon some decisions, which would be discussed if found relevant in subsequent paragraph.

4. Addressing the rival submissions, this Court now considers it apt to answer the first contention as advanced for the Petitioner as to whether there was total non-compliance of Sec. 19 of the PMLA while arresting the Petitioner. In this regard for non-compliance of Section 19 of the PMLA, the learned counsel for the Petitioner has relied upon the certified copy of the order sheet dated 13.12.2022 recorded in CMC (PMLA No. 10 of 2022) which go to indicate that the Petitioner was produced in custody on that day after completion of remand period of 7 days. It is, therefore,

suggestive of the fact that the Petitioner was neither taken into custody nor produced before the Special Court for the first time on that day, rather she was produced and taken into custody earlier just 7 days before that day. On the other hand, it is submitted on behalf of ED that the Petitioner was formally arrested on 13.12.2022 at about 12.45 PM on her submission to custody on an oral intimation of arrest by the Arresting Officer in presence of the father of the Petitioner and one independent witness by following due procedure laid down under Cr.P.C. and the Petitioner was handed over with the copy of her arrest order in form No.III of Rule-6 of the Prevention of money laundering (the Forms and the Manner of Forwarding a Copy of the Order of arrest of a Person along with the material to the Adjudicating Authority and its period of retention) Rules, 2005 (in short the "Rules"), along with copy of arrest memo and the grounds of arrest was also read over to the Petitioner. It appears from the

document produced by the ED in this case that the ED filed a petition before the Special Court on 21.11.2022 praying therein for production and remand of Petitioner (accused person) for the purpose of inquiry/investigation relating to the offence of money laundering and the Special Court vide its order dated 01.12.2022 allowed the application of ED by directing issue of production warrant for production of the Petitioner on 05.12.2022, on which date the Petitioner was remanded to the custody of ED for a period of 7 days w.e.f 06.12.2022 and the Petitioner was produced in the Special Court on 13.12.2022 on which date the Petitioner was formally arrested. Thus, the sequence of events as stated are clearly indicative of the fact that the Petitioner was taken into judicial custody on 05.12.2022 and immediately thereafter, on the same day she was given to the custody of ED and after she was formally arrested on 13.12.2022, she was produced

before the Special Court. It also clearly appears that the Petitioner was in the custody of the ED for 7 days before her formal arrest and the documents produced before this Court also disclose that the Petitioner was not only communicated about her arrest orally, but also in writing in form No.III of the Rules with copy of arrest memo and information about grounds of arrest vide separate sheets which the Petitioner has acknowledged by appending her signature on these documents. It is, however, found that the Petitioner was in ED custody for 7 days without any formal arrest, but neither of the parties produced any document to indicate as to on what basis the Petitioner was taken into custody on 05.12.2022 and in the sequence of events, especially when total non-compliance of Sec. 19 of the PMLA is claimed by the Petitioner, it would have been proper for the ED to produce the order of the Special Court while remanding the Petitioner to custody of the ED on 05.12.2022. In this regard,

this Court considers it apt to refer to the decision in ***Pankaj Bansal Vrs. Union of India & Ors;*** (2023) SCC Online SC 1244, wherein the Apex Court while dealing with a similar matter in respect of non-compliance of Sec. 19 of the PMLA held as under:-

"18. Viewed in this contest, the remand order dated 15.06.2022 passed by the learned Vacation Judge/Addl. Sessions Judge, Panchakula reflects total failure on his part in discharging his duty as per the expected standard. The learned Juge did not even record a finding that he perused the grounds of arrest to ascertain whether the ED had recorded reason to believe that the appellants were guilty of an offence under the act of 2002 and that there was proper compliance with the mandate of Sec. 19 of the Act, 2002".

05. Besides, the relevant order sheet of the Special Court dated 13.12.2022 reflects that Petitioner-accused Archana Nag was produced in custody after completion of remand period of 7 days and she was again given in the custody of ED for another 6 days. In this aforesaid situation, when liberty of a person is dearest to him/her, it should

not be interfered with lightly or casually and the agency taking a person accused of an offence on remand has to satisfy the requirement of law scrupulously. In this case, if at all some prima facie material was in possession of the ED and thereby, it took the custody of the Petitioner on 05.12.2022, the ED would have complied the provision of Sec. 19 of the PMLA immediate after taking her into custody or at best within the time not later than 24 hours as prescribed in Sec. 19(1) of the PMLA, but the ED having not done so, its action of formally arresting the Petitioner after 7 days of the custody was not in accordance with law. However, this Court found the ED to have complied the mandate of Sec. 19(1) of PMLA belatedly on 13.12.2022.

06. Be that as it may, reverting back to the next contention of the Petitioner, it appears that the Petitioner claims the benefit of proviso to sec. 45(1) of the PMLA, but this Court is firmly agreed with the contention of the ED that merely because the

Petitioner is a woman, she has no right to be released on bail only on the basis of proviso to Sec. 45(1) of the PMLA. It is undisputable that the proviso to sec. 45(1) of PMLA carves out some relaxation for the accused specified therein in complying the conditions embodied in this Section, but on the other hand, it clearly confers a discretion on the Court to grant bail, where the accused is a woman or sick or infirm. In the context, it would be profitable to refer to the decision in **Directorate of Enforcement Vrs. Preeti Chandra; (2023) SCC Online SC 930**, wherein a three Judge Bench of our Apex Court has been pleased to hold as under:-

The proviso to sec.45 of the prevention of money laundering act, 2002 confers a discretion on the Court to grant bail, where the accused is a woman. Similar provision of Sec. 437 of the Code Of Criminal Procedure, 1973 have been interpreted by this Court to mean that that the statutory provision does not mean that persons specified in the first proviso to sub sec. 1 of sec. 437 should necessarily be release on bail [Prahalad Singh Bhati Vrs. NCT Delhi; (2001) 4SCC 280].

07. This Court, however, considers that the discretion as conferred on a Court should be extended to person in deserving cases, but when the facts of the present case are taken into consideration on the face of aforesaid proviso, it somehow persuades this Court to exercise such discretion merely not on the status of petitioner as a woman, but for the other reason that might be a cause for delay in the trial in this case due to inability of the ED to apprehend the co-accused vis-à-vis the petitioner's incarceration in custody as a under trial prisoner for near about 1 year and in the context, it is quite uncertain as to when the trial will commence and how much time it would require for completion since it has not been disputed that the complaint in PMLA now stands posted for execution of warrant issued against co-accused and the case record against the Petitioner has not yet been separated. In this regard, it is considered profitable to refer to the decision in **Tarun Kumar**

Vrs. Assistant Director Directorate of Enforcement; (2023) SCC Online SC 1486,

wherein the Apex Court has held that "when the detention of the accused is continued by Court, the Courts are expected to conclude the trial within a reasonable time, further ensuring the right of this speedy trial guaranteed by Article 21 of the Constitution". It is also not disputed that the Petitioner was already subjected to custodial interrogation by the ED. In the aforesaid situation, this Court considers that the Petitioner has successfully demonstrated her case for relaxation of compliance of Sec. 45(1) of PMLA by way of the benefit of proviso appended to it.

08. According to the complaint of ED, the details of the movable and immovable property owned and acquired by the Petitioner is for a value of Rupees little more than 4 crores and she has been directed to be released on bail in the predicate offences. Besides, the important consideration of bail is

securing the attendance of the accused in trial, apart from the tripod test which is required to be satisfied by the Petitioner for grant of bail. The tripod test consists of flight risk, tampering of evidence and influencing of witnesses, but in the circumstance of the case, the Petitioner does not appear to be a flight risk and such apprehension can be arrested by directing the Petitioner to surrender her passport, if any. Furthermore, since the complaint has already been filed, there appears little apprehension of tampering of evidence by the petitioner and the third one i.e. influencing witnesses can be curbed by imposing appropriate conditions.

09. A cumulative discussions of the law laid down by the decisions referred to herein above together with the facts and allegations on record and the grounds for release of Petitioner on bail as noticed above and taking into consideration the vital aspect of the case which is the pre trial detention of the

Petitioner for near about 1 year with uncertainty prevailing about execution of NBWA against co-accused adversely affecting the commencement of the trial and, thereby, conclusion of trial being not possible in near future and regard being had to the status of the Petitioner as a woman, which puts her in the bracket of persons specified in the proviso to Sec. 45 of PMLA allowing her some relaxation in complying the rigor of provision of Section 45 of the PMLA, this Court considers that the Petitioner has made out a case for grant of bail.

10. The bail application of the petitioner stands allowed and the petitioner may be released on bail on furnishing bail bonds in the sum of Rs.2,00,000/-(Rupees Two lakhs) with two local solvent sureties each for the like amount to the satisfaction of the learned Court in seisin of the case on such terms and conditions as deem fit and proper by it with following additional conditions:-

(i) The petitioner shall not commit any offence while on bail and she shall not

directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any Officer of ED or tamper with the evidence,

(ii) The petitioner shall appear before the Court in seisin of the case on each and every date of posting without fail unless her attendance is dispensed with and **in case the Petitioner fails without sufficient cause to appear in the Court in accordance with the terms of the bail, the learned trial Court may proceed against the Petitioner for offence U/S.229-A of IPC in accordance with law,**

(iii) The petitioner shall deposit her Passport, if any, in the Court in seisin of the case till conclusion of trial, unless she is permitted to take back such Passport to use for specific purpose during the pendency of case.

(iv) The Petitioner shall inform the Court as well as the ED as to her place of residence during the trial by providing her mobile number(s), residential address, e-mail, if any, and other documents in support of proof of residence. The Petitioner shall not switch off her mobile phone or change its number without informing the Court.

(v) In case the petitioner misuses the liberty of bail and in order to secure his presence, proclamation U/S.82 of Cr.P.C. is issued and the petitioner fails to appear before the Court on the date fixed in such proclamation, then, the learned trial Court is at liberty to initiate

proceeding against her for offence U/S.174-A of the IPC in accordance with law.

(vi) The Petitioner shall appear before the ED as and when required and shall cooperate with the ED in the present case.

It is clarified that the Court in seisin of the case will be at liberty to cancel the bail of the Petitioner without further reference to this Court, if any of the above conditions are violated or a case for cancellation of bail is otherwise made out.

It is, however, made clear that nothing stated in the order shall be construed as a final expression or opinion on the merits of the case and the trial would proceed independently of the observation made above and such observation has been made purely for the purpose of adjudication of the present bail application.

Accordingly, the BLAPL stands disposed of.

(G. Satápathy)
Judge

*Orissa High Court, Cuttack,
Dated the 4th December, 2023/Priyajit*