



ITEM NO.4

COURT NO.5

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

SPECIAL LEAVE PETITION (CRIMINAL) Diary No(s). 22137/2024

(Arising out of impugned judgment and order dated 03-07-2023 in BA No. 1178/2023 passed by the High Court of Delhi at New Delhi)

VIJAY NAIR

Petitioner(s)

VERSUS

DIRECTORATE OF ENFORCEMENT

Respondent(s)

(IA No. 173256/2024 - APPLICATION FOR CONDONATION OF DELAY IN FILING THE SPECIAL LEAVE PETITION
IA No. 173258/2024 - APPLICATION FOR CONDONATION OF DELAY IN REFILING)

Date : 02-09-2024 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE HRISHIKESH ROY
HON'BLE MR. JUSTICE S.V.N. BHATTI

For Petitioner(s) Mr. Abhishek Manu Singhvi, Sr. Adv.
Ms. Rebecca M. John, Sr. Adv.
Mr. Vikram Chaudhri, Sr. Adv.
Mr. Rajat Bhardwaj, AOR
Mohd. Irshad, Adv.
Ms. Ankita M. Bhardwaj, Adv.
Mr. Kaustubh Khanna, Adv.
Mr. Rishi Sehgal, Adv.
Mr. Pravir Singh, Adv.
Mr. Arveen Sekhon, Adv.
Ms. Muskaan Khurana, Adv.
Mr. Saurav Kakroda, Adv.

For Respondent(s) Mr. Suryaprakash V. Raju, A.S.G.
Mr. Zoheb Hussain, Adv.
Mr. Annam Venkatesh, Adv.
Mr. Arkaj Kumar, Adv.
Mr. Vivek Gurnani, Adv.
Ms. Abhipriya, Adv.
Mr. Hitarth Raja, Adv.
Mr. Vivek Gaurav, Adv.
Ms. Shweta Desai, Adv.
Mr. Arvind Kumar Sharma, AOR

UPON hearing the counsel the Court made the following

O R D E R

1. As the petitioner is in jail, delay stands condoned.
2. Heard Mr. Abhishek Manu Singhvi and Ms. Rebecca M. John, learned senior counsel appearing for the petitioner. Also heard Mr. Suryaprakash V. Raju, learned ASG appearing for the Directorate of Enforcement.
3. The present SLP challenges the order of the Delhi High Court rejecting Bail of Vijay Nair who is a co-accused in Delhi Excise policy scam. It is alleged that the petitioner acted as a middleman and was involved in irregularities in framing and implementing the Delhi Excise policy.
4. In support of the bail plea for the petitioner, it is submitted that the petitioner was arrested on 13.11.2022 and has now been in custody for about 22 months. It is then pointed out that since the charge is of money laundering under Sections 3 and 4 of the *Prevention of Money Laundering Act, 2002* (for short, the "Act"), the maximum punishment in the event of conviction is 7 years and as such further detention will not be justified. The bail having been granted to the co-accused (Manish Sisodia and Kalvakuntla Kavitha) are also referred on behalf of the petitioner to claim bail on parity.
5. On the other hand, Mr. S.V. Raju, learned ASG would refer to the threshold bar under Section 45 of the Act to oppose bail.

Distinguishing the case of *Kalvakuntla Kavitha v Directorate of Enforcement*¹ who was granted bail, the learned ASG would submit that she being a woman, had the benefit of the proviso to Section 45(1) of the Act.

6. The submissions made by the rival counsel are taken into account. The right of liberty guaranteed under Article 21 of the Constitution is a sacrosanct right which needs to be respected even in cases where stringent provisions are incorporated in the special enactments. In the case at hand, the petitioner has been in custody for over 22 months and his incarceration as an under-trial cannot be the mode of punishment in the case.

7. The materials on record indicate that one Dinesh Arora who was arrayed as an accused in the case and who thereafter turned approver, in his 12th statement had implicated the accused petitioner but in all his previous statement(s) given under Section 50 of the Act, there was no implication for the petitioner. The Directorate of Enforcement has submitted as many as 9 prosecution complaints, one after the other and in the meantime, the petitioner has been in custody for about 22 months. As earlier noted, in the event of conviction, the maximum sentence that can be imposed on the petitioner is 7 years.

8. When the case of the co-accused (Manish Sisodia) was taken up by this Court, an assurance was given by the counsel representing the Directorate of Enforcement on 30.10.2023 that the trial would get concluded within 6-8 months. But as can be seen, the trial is

¹ 2024 SCC OnLine SC 2269

yet to commence. As many as 40 persons have been arrayed as accused in the cases with 9 complaints. The prosecution expects to examine around 350 witnesses. In this context, the learned ASG submits that the delay in commencement of trial cannot be entirely attributed to the prosecution as the petitioner had filed multiple applications before the authorities, which needed to be disposed of. On this aspect, it is to be noted that multiple supplementary complaints have been filed by the Directorate of Enforcement between 06.04.2023 and 28.06.2024. Around 40 persons have been arrayed as accused in the proceedings and documents filed by the Directorate of Enforcement runs into over 25,000 pages. It appears to be a case of continuing investigation for over 2 years.

9. Mr. S.V. Raju would further place reliance on the three-judge bench decision of this Court in *Vijay Madanlal Choudhary v. Union of India*² to argue that stringent conditions of Bail under Section 45 of the Act have to be satisfied before granting Bail. However, this Court in a series of decisions³ has held that the rigours under Section 45 can be relaxed if the custody is for a considerable period of time and there is no likelihood of conclusion of trial within a short span.

10. We have also perused the reasoning in this Court's judgment dated 09.08.2024 in *Manish Sisodia v Directorate of Enforcement*⁴ where Bail was granted to the co-accused. In the said judgment,

² (2022) SCC Online SC 929

³ Ramkripal Meena v Directorate of Enforcement 2024 SCC OnLine SC 2276; Javed Gulam Nabi Shaikh v State of Maharashtra and Anr 2024 SCC OnLine SC 1693; Manish Sisodia v Directorate of Enforcement 2024 SCC OnLine SC 1920

⁴ 2024 SCC OnLine SC 1920

the Court had reiterated the right of an accused for expeditious trial and that the fundamental rights guaranteed under Article 21 cannot be subjugated to the statutory bar in Section 45 of the Act. It was also observed that the right to bail in cases of prolonged incarceration and trial delays, depending on the nature of the allegations, should be considered under Section 439 Cr. P.C. and Section 45 of the Act. Most importantly, bail should not be withheld as a form of punishment, reiterating the principle that bail is the rule, and its refusal is the exception.

11. In a recent judgment of this Court, in *Prem Prakash v. Union of India through the Directorate of Enforcement*⁵, the Court again reiterated that fundamental right enshrined under Article 21 cannot be arbitrarily subjugated to the statutory bar in Section 45 of the Act.

12. Here the accused is lodged in jail for a considerable period and there is little possibility of trial reaching finality in the near future. The liberty guaranteed under Article 21 of the Constitution does not get abrogated even for special statutes where the threshold twin bar is provided and such statutes, in our opinion, cannot carve out an exception to the principle of bail being the rule and jail being the exception. The cardinal principle of bail being the rule and jail being the exception will be entirely defeated if the petitioner is kept in custody as an under-trial for such a long duration. This is particularly glaring since in the event of conviction, the maximum sentence prescribed

⁵ 2024 SCC OnLine SC 2270

is only 7 years for the offence of money laundering.

13. Considering the above, petitioner - Vijay Nair is held entitled to Bail on the following terms:

(i) The petitioner is directed to be released forthwith on bail in connection with the ECIR No. HIU-II/14/2022 dated 22.08.2022 registered by the Directorate of Enforcement on furnishing bail bonds in the sum of Rs. 10,00,000/- in each of the cases;

(ii) The petitioner shall not make any attempt to tamper with the evidence or influence the witnesses;

(iii) The petitioner shall deposit his passport with the learned Trial Court; and

(iv) The petitioner shall regularly attend the Trial Court and cooperate with the expeditious disposal of the trial.

14. Before parting, it is made clear that this order is to be understood only for the purpose of bail and should have no bearing on the merit of the trial.

15. With the above, the Special Leave Petition stands disposed of.

16. Pending application(s), if any, shall stand closed.

(NITIN TALREJA)
ASTT. REGISTRAR-cum-PS

(KAMLESH RAWAT)
ASSISTANT REGISTRAR