



**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO.4142 OF 2024
(Arising out of S.L.P.(Criminal) No.11141 of 2024)**

LAXMIKANT TIWARI ... APPELLANT(S)

VS.

DIRECTORATE OF ENFORCEMENT ... RESPONDENT(S)

WITH

**CRIMINAL APPEAL NO.4143 OF 2024
(Arising out of S.L.P.(Criminal) No.11314 of 2024)**

O R D E R

Leave granted.

Heard the learned counsel appearing for the parties.

The facts of both the cases are the same, in the sense, that the same arise out of the same ECIR and the same complaint under Section 44 of the Prevention of Money Laundering Act, 2002 (for short "the PMLA Act"). The appellant in Criminal Appeal arising out of SLP(Criminal)No.11141 of 2024 has undergone incarceration for about 2 years and the appellant in Criminal Appeal arising out SLP(Criminal)No.11314 of 2024 has undergone incarceration for 1 year and 9 months.

Initially, a First Information Report was registered on 12th July, 2022 bearing FIR No.129 of 2022 with Kadugodi Police Station, Bangalore, Karnataka in which the offences punishable under Sections 186, 204, 353, 120-B of the Indian Penal Code, 1860 (for short, "IPC") were alleged. Admittedly, none of the offences, except Section 120-B is a scheduled offence. However, in view of the decision of this Court in the case of *Pavana Dibbur vs The Directorate Of Enforcement*¹, even Section 120-B cannot be treated as a scheduled offence, as conspiracy to commit any scheduled offence was not alleged. Subsequently, Section 384 of the IPC was added. ECIR was also recorded on the basis of the FIR.

We may note here that a complaint under Section 44 of the PMLA Act was filed by the Enforcement Directorate (ED) in the year 2022 before the Special Court. While filing the charge-sheet on 8th June, 2023 in FIR No.129 of 2022, it was mentioned that an offence under Section 384 of the IPC appears to have been committed in the State of Chhattisgarh. It is recorded that therefore, a report be submitted to the concerned Police Station in the State of Chhattisgarh through proper channel. While filing the charge-sheet, Section 120-B of the IPC was dropped.

1. 2023 INSC 1029

Thus, on the date of filing of the charge-sheet on 8th June, 2023, there was no scheduled offence. As late as on 17th January, 2024, another FIR was registered in Chhattisgarh in which allegation is made about the commission of offence punishable under Section 384 of the IPC. Thus, when the complaint under Section 44 of the PMLA Act was filed, the scheduled offence was not in existence. Even in the charge-sheet filed in the FIR which is stated to be a scheduled offence in the complaint, there was no allegation of commission of any scheduled offence. As late as on 19th July, 2024, now the charge-sheet has been filed in the State of Chhattisgarh for the offence punishable under Section 384 of the IPC.

Considering the long period of incarceration and considering the peculiar fact of these appeals, continuation of custody of the appellants will be violation of their right under Article 21 of the Constitution of India. Hence, the appellants are entitled to be enlarged on bail for the offence punishable under Section 4 of the PMLA Act.

For that purpose, the appellants shall be produced before the Special Court at the earliest. The Special Court shall enlarge the appellants on bail on appropriate terms and conditions after hearing the learned counsel for the Enforcement Directorate.

It is made clear that the observations made in this order are only for the limited purposes of considering the prayer for grant of bail and it will not affect the merits of the complaint.

The appeals are allowed on the above terms.

.....J.
(ABHAY S.OKA)

.....J.
(AUGUSTINE GEORGE MASIH)

NEW DELHI;
October 04, 2024.

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGSItem No.5:

Petition(s) for Special Leave to Appeal (Crl.) No(s). 11141/2024

(Arising out of impugned final judgment and order dated 17-07-2023 in MCRC No. 1735/2023 passed by the High Court of Chhatisgarh at Bilaspur)

LAXMIKANT TIWARI

Petitioner(s)

VERSUS

DIRECTORATE OF ENFORCEMENT

Respondent(s)

(IA No. 174664/2024 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

IA No. 174674/2024 - PERMISSION TO PLACE ADDITIONAL FACTS AND GROUNDS)

With

Item No.6:

Petition(s) for Special Leave to Appeal (Crl.) No(s). 11314/2024

Date : 04-10-2024 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ABHAY S. OKA

HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

For Petitioner(s)

Mr. Sriram P., AOR
Ms. Rajwant Kaur, Adv.
Ms. Amandeep Kaur, Adv.
Mr. M.S. Vishnu Shankar, Adv.
Mr. Rakesh Kumar Soni, Adv.
Ms. Isha Singh, Adv.
Ms. Anjali Singh, Adv.
Ms. Rajani, Adv.
Mr. Sreenath S., Adv.
Mr. Sheejish Pt., Adv.
Mr. Aditya Santosh, Adv.
Ms. Maneesha Sunil, Adv.
Mr. Nalukettil Anandhu S Nair, Adv.

Mr. S K Srivastava, Adv.
Mr. Surinder Kumar Gupta, AOR
Mr. Udit Gupta, Adv.
Mr. Prince Sharma, Adv.
Ms. Garima Singh, Adv.

For Respondent(s)

Mr. Zoheb Hussain, Adv.
Mr. Annam Venkatesh, Adv.
Mr. Arkaj Kumar, Adv.
Mr. Vivek Gurnani, Adv.
Mr. Sushil Raaja, Adv.
Mr. Samrat Goswami, Adv.
Mr. Animesh Upadhyay, Adv.
Mr. Arvind Kumar Sharma, AOR
Ms. Aakriti Mishra, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeals are allowed in terms of the signed order.

The appellants shall be produced before the Special Court at the earliest. The Special Court shall enlarge the appellants on bail on appropriate terms and conditions after hearing the learned counsel for the Enforcement Directorate.

Pending applications also stand disposed of.

(ANITA MALHOTRA)
AR-CUM-PS

(AVGV RAMU)
COURT MASTER

(Signed order is placed on the file.)