

IN THE COURT OF MS. ANURADHA SHUKLA BHARDWAJ, SPL. JUDGE (PC  
ACT CASES), CBI-21, ROUSE AVENUE COURT COMPLEX, NEW DELHI

CT no.36/19  
Directorate of Enforcement  
v.

Ulhas Khaire @ Lokeshwar Dev & Ors  
ECIR no.29/DZ/2012/AD (SB)  
U/s 4 Prevention of Money Laundering Act, 2002

**ORDER ON BAIL APPLICATION**

10.07.2020

By this order I shall dispose off bail application filed by accused **Ulhas Khaire @ Lokeshwar Dev** u/s 436-A r/w 439 Cr. PC seeking grant of bail.

This is the second bail application of the accused, the first having been dismissed on 28.10.2016. The accused has submitted that the first bail application was dismissed on account of conditions mentioned u/s 45 of PMLA. The applicant submits that section 45 of the PML Act was struck down by Hon'ble Supreme Court in **Nikesh Tara Chand Shah v. Union of India & Anr. 2018 (11) SCC 1**. His bail application u/s 439 Cr. PC before the Hon'ble High Court was dismissed as withdrawn on 17.09.2018.

The accused was produced before the court on production warrants on 17.05.2014, however, his custody was not sought by the Investigating Officer. On 14.07.2015 the accused was summoned by the court and when he appeared he was formally taken in custody thus the accused is in custody for a period of 05 years.

The accused submits that the Hon'ble Delhi High Court in **Ravinder Singh v. CBI, 2014 (145) DRJ 162** had held that where an accused is not arrested during

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the investigation and the charge sheet is filed, the accused should ordinarily be granted bail on his appearance in the court.

Accused argued that he was never arrested during investigation and charge sheet was filed without arrest; he therefore, should not have been arrested by the court. He submits that he has been acquitted in many cases which were registered against him.

He submits in his application that he was apprised about the provisions (Sec. 436-A Cr. PC) by the court (Ld. Predecessor) itself and the report of the Ahlmad was also called which indicated his custody of three & half years at that time. He has submitted as against 07 years of maximum imprisonment he has suffered substantial period already.

Reply to the application was filed by the ED wherein it is stated that accused was not taken into custody as he was already in the judicial custody in the predicate offence and there was no likelihood of his being released on bail. The permission of the court was taken to investigate him in the jail, which was granted vide order dated 01.05.2013.

Ld. Prosecutor has relied upon judgments of Hon'ble Supreme court titled as **Ram Narain Popli v. CBI 2003 (3) SCC 641. Hari Narain Rai v. State of Jharkhand, 2010 Law Suit (Jharkhand) 448; Arvind Vyas v. State of Jharkhand (B.A. no.763 of 2011) decided on 03.05.2011.**

Arguments heard. Record seen.

The accused had filed the list of cases in which he has already been acquitted. The list says that he has been acquitted in 18 matters; closure reports

  
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have been submitted in 20 matters; 29 cases before the Consumer Court have been dismissed and 10 other suits have also been disposed. He says that he is confident that in all eventuality he will be acquitted in this matter also. Prosecution was granted sufficient time to verify the list of cases filed and relied upon by the applicant. However, verification in respect of maximum number of cases was not done till 11.12.2019. The applicant asserted before the court that his list is correct and he has been granted bail / acquitted in the number of cases mentioned by him in his list.

Before the judgment of Hon'ble Supreme Court in **Nikesh Tara Chand Shah (Supra)** the courts were not granting bail in the cases of PMLA on account of section 45 of the Act. The provision was struck down by the judgment. It has been argued by the Ld. Prosecutor that provision has been amended. However, even after the amendment, the courts have held that the provision has not been restored and remains struck down from the rule book (**Sameer M. Bhujbal v. Enforcement Directorate & Anr.- B A. N.286 of 2018**), (**Dr. Vinod Bhandari v. Enforcement Directorate - M.Cr. no. 34201 / 2018 dated 29.08.2018**). Section 45 of PMLA as such is not a bar to the application of the accused as on date.

Ld. Special Prosecutor submitted that accused was not taken in custody as he was in JC in another matter and there was no likelihood of his absconding. The provision of custody during the investigation is primarily for the purpose of aiding the investigation, as is the law laid down in various judgments also. The law laid down by Hon'ble High Court in **Raviner Singh (supra)** and similar other judgments pronounced that if there was no requirement of accused during

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investigation, the court should be slow in taking such accused persons in judicial custody. Be it whatever the accused was taken into custody in this matter on his appearance and for all practical purposes, he remains in JC by virtue of that order which was not challenged. However, there is no denying that accused was not taken in JC for the purpose of investigation. Also the ground taken by the Ld. Prosecutor that he was not taken in custody as there was no likelihood of his absconding also stands for the accused, since he remains in custody in several other matters including the predicate offence wherein the provisions invoked have harsher punishments and section 436-A Cr. PC would in all probabilities not apply.

This application primarily is being considered u/s 436-A Cr. PC.

**Section 436-A Cr. PC**

Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties;

Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties; Provided further that no such person shall in any case be detained during the period of investigation inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

Hon'ble Supreme Court in **RE-INHUMAN CONDITIONS IN 1382 PRESONS, Writ Petition (Civil) no.(s) 406/2013**, after concluding that 67% of all prisoners in jails were under trial prisoners, had directed the benefit of section 436 (A) of Cr. PC to be provided to the entitled prisoners. Hon'ble Supreme Court in case of **Gudikanti Narasimblu And Ors v. Public Prosecutor High Court of Andhra**

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**Pradesh, 1978 AIR 429** had held that the personal liberty of a person is too precious a value of our constitutional system recognized under Art.21 of the Constitution. It was also held that crucial power should not be exercised casually but judicially. Further, ordinary rule of law is bail and not jail. The accused has relied upon **R D Upadhyay v. State of Andhra Pradesh, 1996 Law Suit (SC) 2207**, wherein Hon'ble Supreme Court again observed that large number of undertrial prisoners had been languishing in Jail without trial for very long periods and it was directed that persons facing trial in certain category of cases and were in jail for a period of more than one half of the maximum punishment provided for the offences alleged against such persons should be released on bail. Hon'ble High Court in case of **Vijay Aggarwal v. Union of India 2012 LawSuit (Del) 4411** had given similar directions. The accused has also relied upon **Sanjay Chandra v. CBI, Criminal Appeal No.2178 of 2011 & Varinder Singh @ Raja v. State of Punjab, Crm. No.20171 of 2015**, date of decision 5<sup>th</sup> August, 2015, under 4 of PMLA wherein bail was granted.

The prosecution is taking the plea of gravity of offence as a reason for his continued custody. One measure of assessing of gravity of offences punishment prescribed, which in the instant case is 07 years. The offence as such cannot be treated such grave offence as would dis-entitle the accused a bail completely. As per the list filed by the accused he has already granted bail in several matters and has been acquitted in several other. The trial of this case is going to take substantial time as the matter is still at the stage of evidence and witnesses are being examined. The accused has spent five years in judicial custody already,

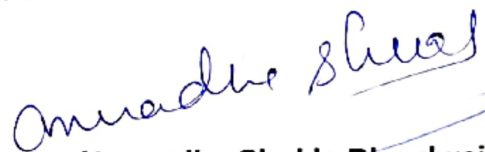
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which is more than half of the punishment prescribed for the offences as alleged against him.

In view of the entirety of facts bail application of accused is allowed. He is directed to be released on bail on furnishing personal bond in the sum of **Rs.1 lac (one lac)** with one surety of the like amount on the condition that he shall not leave the country without the permission of the court and shall not threaten the witnesses or tamper with the evidence.

The application stands disposed off in above terms. The copy of the order be sent to the Prosecutor on the email provided and be also sent to the Jail Supdt. Concerned on official ID with a direction to supply the copy to the accused.

**Announced in the court  
on this 10.07.2020.**



**(Anuradha Shukla Bhardwaj)  
Spl. Judge (PC Act) CBI-21  
Rouse Avenue Courts, New Delhi**