2024:JHHC:42779

IN THE HIGH COURT OF JHARKHAND AT RANCHI
B.A. No.9384 of 2022

Panna Lal Mahto @ Ganjhu aged about 39 years, S/o Late Choyata Mahto, Resident at Ganaloya, P.O. & P.S.-Murhu, District-Khunti. ... ... **Petitioner**

Versus

U.O.I. through Directorate of Enforcement, Govt. of India, Plot No.1502/B, Airport Road, Hinoo, Ranchi, P.O. + P.S.-Doranda, Dist.-Ranchi, Jharkhand 834002

... ... **Opp. Party**

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD

For the Petitioner : Mr. Sourabh Kumar Das, Advocate
For the Opp. Party : Mr. Amit Kumar Das, Advocate
: Mr. Saurav Kumar, Advocate

Order No. 15/Dated 6th December, 2024

1. The jurisdiction of this Court has been invoked by filing application under Section 439 and 440 of the Code of Criminal Procedure, reason being that the application was filed on 20.08.2022. Subsequent thereto, i.e., with effect from 01.07.2024, the Code of Criminal Procedure has been superseded by new enactment, i.e., B.N.S.S. (Bhartiya Nagarik Suraksha Sanhita), 2023 and the *pari materia* provisions to that of Sections 439 and 440 of the Cr.P.C are 483 and 484 of the B.N.S.S respectively.

2. Since the matter is being heard as on the date when the new Act is in vogue, hence, in view of the power as conferred under Sections 439 and 440 of the Cr.P.C read with Section 483 of the BNSS, 2023, this Court is now adverting to the factual aspect of the instant case in order to find out that whether the prima facie case to enlarge the petitioner on bail is made out or not.

3. This application has been filed for a direction to release the present petitioner from judicial custody by granting him regular bail in connection with ECIR Case No.04/2021 (ECIR/RNSZO/12/2020) for the offence under Section 3 read with Section 4 of the PML Act.

4. The facts leading to filing of the present case reads as under:-

The prosecution case in brief is that the investigation under the Prevention of Money Laundering Act, 2002 was initiated by recording ECIR No. RNSZO/12/2020 dated 30.05.2020 against the accused persons on the basis of information received that the Anti Human Trafficking Unit (AHTU), District Khunti, Jharkhand had registered several cases related to the offences of Human Trafficking wherein the charge-sheet has also been filed.

The FIR bearing No. 07/2019 dated 19.07.2019 of Anti Human Trafficking Unit(AHTU) Jharkhand Police, Khunti has been taken over by the National Investigation Agency(NIA), Ranchi, Jharkhand wherein the NIA has filed first supplementary charge-sheet vide no. 09/2021 dated 27.02.2021 for violation of section 120B, 363, 370(2), 370(3), 370(4), 370(5), 370A, 371, 374, 376, 420 and 34 of

IPC, section 6 and 12 r/w section 25 of Inter-State Migrant Workmen (Regulation of Employment Rules and Services of condition) Act, 1979 and section 79 of Juvenile Justice (Care and Protection) Act, 2015 against Panna Lal Mahto @ Panna Lal Ganjhu (Petitioner), Sunita Devi, Shiv Shankar Ganjhu, Gopal Oraon, who were running Human Trafficking racket in connivance with several placement agencies in Delhi.

Since the offences registered under the FIR mentioned contains Scheduled offences under PML Act, 2002 also, hence to prevent Money Laundering related to proceeds of crime including its concealment or possession or acquisition or use or projecting as untainted property and claiming as untainted property, enquiries were initiated by the department and it was found that the accused persons have amassed huge property out of the indulgence into the aforesaid activities related to illegal Human Trafficking.

The details of proceeds of crime attached/ seized/ frozen from the accused persons are mentioned in the charge-sheet. The properties (movable/immovable) are worth Rs. 3,36,65,968.86/- (Rupees Three Crore Thirty Six Lacs Sixty Five Thousand and Nine Hundred Sixty Eight and Eighty Six Paise) were provisionally attached by authorized officers of Directorate of Enforcement after finding specific role of the accused persons in the commission of offence of Money Laundering by directly/indirectly attempt to indulge or knowingly assist or knowingly is a party or is involve in concealment/ possession/ acquisition or use in projecting or claiming proceeds of crime as untainted property.

5. It needs to refer herein that the learned counsel appearing for the petitioner, Mr. Saurav Kumar Das, who has entered his appearance after getting NOC from the earlier counsel, namely, Niranjan Kumar and Kumari Supriya, has submitted that he is not pressing the present application on merit although, the bail application has been taken into consideration by the learned sessions court on merit which would be evident from the order rejecting the prayer for regular bail.

6. The submission has been made that he is only pressing the present application on the ground of completion of 1/3rd of the custody out of the maximum punishment under the Section in which the charge has been framed.

7. Learned counsel for the petitioner has referred the provision of Section 479 of the BNSS, 2023. It has been submitted that the alleged offence has been said to be committed by the petitioner under Section 3/4 of the Prevention of Money Laundering Act, 2002 and the maximum punishment under Section 3 is 7 years and out of which 1/3rd has already been undergone and therefore, considering the completion of custody of 1/3rd and applying the position of law as per the provision as contained under Section 479 of the BNSS, the petitioner may be directed to be released on bail.

8. Learned counsel for the petitioner has relied upon an order passed by the Hon'ble Apex Court in the case of ***Badshah Majid Malik Vrs. Directorate of Enforcement and Ors.,*** passed in ***Special Leave Petition (Cri.) No.10846 of 2024***.

9. As per the learned counsel for the petitioner, the Hon'ble Apex Court by taking note of the provision of Sub-section 1 of Section 479 of the BNSS as also taking into consideration the fact that 1/3rd of the period has been undergone in the custody, hence, has passed an order for release of the appellant of the said case, namely, Badshah Majid Malik on regular bail.

10. Herein also since the petitioner has already completed more than 1/3rd of the custody out of maximum punishment prescribed for the penal offence, hence, it is a fit case where the petitioner deserves to be released on bail.

11. While on the other hand, Mr. Amit Kumar Das, learned counsel appearing for the Enforcement Directorate, has vehemently opposed the prayer for bail.

12. The submission has been made that in pursuance to the order dated 05.07.2024, a detailed counter affidavit has been filed raising the complicity of the petitioner in the present case as also in the cases of Scheduled Offences in which the petitioner is facing trial registered under Sections 363/370/371/372/323 and 34 of the IPC as also the investigating agency of the present case, i.e., the Enforcement Directorate, has instituted 5 cases said to be of predicate offences and in addition to that criminal antecedent of nine cases pertaining to the Scheduled Offences.

13. The argument has been advanced that although, the prayer for regular bail of the petitioner was pressed before the learned Sessions Judge on merit and no ground was taken so far as his release on the basis of completion of $1/3^{rd}$ custody. However, here before this Court, no pleading is also there that his prayer for regular bail may be considered on the ground of completion of $1/3^{rd}$ of the custody against the maximum punishment prescribed.

14. However, submission has been made that the pleading has been added by filing additional affidavit wherein the said ground has been taken.

15. Learned counsel for the respondent-ED has submitted that the provision as contained under Section 479 of the BNSS is not blanket in nature, rather, if the second proviso to the aforesaid provision will be taken into consideration, such power is to be exercised after providing an opportunity to the Public Prosecutor concerned which itself suggests that the gravity of the offence is required to be considered.

16. The submission has been made that herein the allegation against the present petitioner is of serious nature of trafficking as also under the Scheduled Offences and basis from which, huge wealth has been earned which, as per the allegation which has come in course in investigation, is being used in laundering.

17. The further submission has been made that the provision of Section 479(1) of the BNSS cannot be used with respect to the person who is facing the charge but has committed so many offences which is habitual of committing the offences of like nature.

18. The submission has been made that so far as the applicability of the order passed by the Hon'ble Apex Court in the case of ***Badshah Majid Mallick Vrs. Directorate of Enforcement and Ors.*** (Supra) wherein, the factual aspect involved is that the person concerned in the said appeal was facing prosecution for commission of Scheduled Offences under Section 132, 135(1)(a)(ii) and 135(1)(b)(ii) read with Section 140 of the Custom Act, 1862 for which the maximum punishment is three years.

19. It has been submitted that here in the present case, the Scheduled Offences are also there and in consequence thereof, the cases have been instituted under PMLA and so far as the predicate offence is concerned for which the maximum sentence is ten years and it cannot be said that the appellant has completed 1/3rd of his custody.

20. Learned counsel for the respondent-ED, on the basis of the aforesaid argument, has submitted that it is not a case to release the petitioner on bail and as such, the present application is fit to be rejected.

21. This Court has heard the learned counsel for the parties and gone through the pleading as also the finding recorded by the learned court while rejecting the prayer for regular bail.

22. Since the argument has been advanced on behalf of the petitioner that the present application is not being pressed on merit but even then the issue on merit is required to be delved into, reason being that the argument has been advanced regarding applicability of the provision of Section 479 of the BNSS, 2023.

23. As per the statutory requirement for the purpose of granting benefit under Section 479 of the BNSS, the conduct of the person concerned who is facing the prosecution is required to be seen.

24. Such conclusion has been arrived by this Court after going through the scheme of the provision of Section 479 of the BNSS which comprises in three parts having three sub-sections, for ready reference Section 479 of the B.N.S.S. is being referred herein :-

> **479. Maximum period for which undertrial prisoner can be detailed** - **(1)** Where a person has, during the period of investigation, inquiry or trial under this Sanhita of an offence under any law (not being an offence for which the punishment of death or life imprisonment 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 bail:
>
> Provided that where such person is a first-time offender (who has never been convicted of any offence in the past) he shall be released on bond by the Court, if he has undergone detention for the period extending up to one-third of the maximum period of imprisonment specified for such offence under that law:
>
> Provided further 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 bond instead of his bond:
>
> Provided also 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.
>
> *Explanation.*—In computing the period of detention under this section for granting bail, the period of

> detention passed due to delay in proceeding caused by the accused shall be excluded.
>
> **(2)** Notwithstanding anything in sub-section (1), and subject to the third proviso thereof, where an investigation, inquiry or trial in more than one offence or in multiple cases are pending against a person, he shall not be released on bail by the Court.
>
> **(3)** The Superintendent of jail, where the accused person is detained, on completion of one-half or one-third of the period mentioned in sub-section (1), as the case may be, shall forthwith make an application in writing to the Court to proceed under sub-section (1) for the release of such person on bail.

25. In accordance with Section 479 of the BNSS, if an accused, during the period of investigation/inquiry/trial, undergoes one-half of the maximum period of imprisonment specified for the offence, he is entitled to bail. However, Section 479 of the BNSS is not without qualifications. In accordance with Section 479 of the BNSS, for any offence for which the punishment of death or life imprisonment is specified as one of the punishments, Section 479 of the BNSS would not apply.

26. It is however pertinent to mention that the *proviso* to Section 479 of the BNSS provides that when the accused is a first-time offender, the accused shall be released on bond if the accused undergoes detention for a period extending up to one-third of the maximum period of imprisonment specified for such offence.

27. Thus, the first proviso to Section 479 to urge that a first-time offender (who has never been convicted for any offence in the past) is required to be released on bond by the Court, if he has undergone detention for the period extending up to one-third of the maximum period of imprisonment specified for such an offence under a particular law.

28. But, before applying the said provision, two provisos are also to be taken into consideration. Herein, the implication of second proviso is relevant by which it has been provided that before taking any decision under Sub-section (1) of Section 479 of B.N.S.S., an opportunity of hearing is to be provided to Public Prosecutor in order to come to the conclusion as to whether the provision of Sub-section (1) of Section 479 of the B.N.S.S. is to be applied. Otherwise, there was no purpose for insertion of Second proviso to give an opportunity of hearing to the Public Prosecutor on the issue regarding release in pursuance to Sub-section (1) of Section 479 of the B.N.S.S.

29. Further, Section 479(2) specifies that individuals facing multiple charges are not eligible for bail, even if they have served more than one-third or one-half of the maximum sentence for any of those charges. Thus it is evident from bare perusal of Section 479(2) that this section disqualifies those involved in multiple offences or cases from seeking bail.

30. It needs to refer herein that the Section 479 of BNSS makes it clear that the benefit of first proviso to Section 479 is subject to Section 479(2) of BNSS and the Court has to take note of the third proviso, thereof, wherein investigation, inquiry or trial in more than one offence are in multiple cases are pending against a person, he shall not be released on bail by the Court.

31. The counter affidavit has been filed on behalf of the Enforcement Directorate giving therein the details of the material collected in course of the investigation, for ready reference, the same is being referred herein :-

> **"9.** As per the chargesheet filed by NIA in case no. RC-09/2020/NIA/DLI dated 04.03.2020, Panna Lal Mahto and his accomplices were running various placement Agencies namely (i) Birsa Bhagwan Tribal Welfare Society (ii) Birsa Security and Placement Agency (iii) Laxmi Placement Service (iv) Panna Lal Placement Services (v) Secureluck Consultancy and (vi) Pahal Security Service (Pvt.) Ltd., which were being operated from the same location i.e. M-662/663, M- Block, DDA Flats, Shakurpur, J.J. Colony Saraswati Vihar, North West Delhi-110034,
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> Out of the above agencies, the following placement agencies are mentioned to be registered with the Labour Department, Delhi NCT:

Sr. No.	**Particulars of the Placement Agency**	**Registration Number & date**	**Name of the owner**	**Name of the manager**
1	Birsa Bhagwan Placement Bureau	i) 2011024073 Dated 13.07.2011	Shiv Shankar Ganjhu	Panna Lal Mahto
2	Birsa Security and Placement	i) 2012000502 Dated 04.01.2012	Shiv Shankar Ganjhu	Gopal Oraon

	i) Laxmi Placement Service	ii) 2013012116 Dated 19.04.2013	Gopal Oraon	Gopal Oraon

11. It has also been established that none of the victims were registered under the provision of "The Inter- State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979" which was enacted to regulate the condition of service of inter-state labourers and to protect workers, whose services are requisitioned outside their native States in India, which is violation of sections 6 & 12 r/w section 25 of abovesaid Act. Further, the petitioner Panna Lal Mahto and his accomplices used to ill-treat the victims and did not allow them to return back to their respective native villages and forced them to work against their desire.

12. It has further been ascertained from the NIA's charge sheet that a total of 22 victims including 09 victims, who were rescued during the investigation, have revealed that the petitioner and his accomplices, facilitated these victims to indulge in domestic work through their placement agencies and collected their monthly payment from their employers, but these victims had never received any money/remuneration for their services even after rendering many years of service. He and his accomplices used to ill-treat the victims and did not allow them to return to their respective native village and forced them to work against their desire. Several of them were found to be minor as per the medical report of Civil Surgeon, Sadar Hospital, Khunti. Panna Lal Mahto has amassed huge property out of the indulgence into the aforesaid activities related to illegal Human Trafficking.

13. During the course of investigation, statement of Smt. Birtha @ Sumitra Purti, Ms. Jambi Tiru and Smt. Rupam Saroj Kumari, all resident of District Khunti, Jharkhand, who were trafficked have been recorded. In their statement, they narrated their ordeal that when they were minors, they were trafficked in the pretext for providing them employment by the petitioner through placement agency and taken to Delhi. The petitioner Panna

Lal Mahto and his accomplices, facilitated them to indulge in household work through their placement agencies and collected their monthly payments from the house owners, but no payment was made to them for their services.

14. The petitioner Panna Lal Mahto in connivance with his accomplices indulged in the abovestated illegal activities and had trafficked about 5000 persons, through their well-organized placement agency racket in Delhi, which has also been admitted in his statement recorded under section 50 of PMLA, 2002. They supplied trafficked women and girls as domestic servants, but they were instead ploughed into either cheap labour or subjected to extreme conditions of Bonded/Forced labour. These placement agencies did not pay the employed person properly, although they collected the payment from the employers on their behalf. The petitioner acquired proceeds of crime in his name & his wife' Sunita Kumal and projected and claimed the same as untainted properties while in possession, acquisition and use of the same

15. During the course of investigation Statement of Gopal Oraon an accomplice of Panna Lal Mahto was recorded on 22.01.2022 in Birsa Munda Central Jail, Hotwar, Ranchi under section 50 of PMLA 2002 vide order dated 21.01.2022 passed by the Ld. Special Court (NIA), Ranchi, Jharkhand, wherein he revealed that the petitioner and his associates in the guise of Placement Agencies had trafficked 05 to 06 thousand persons, in which mostly consists of minor girls, from the rural areas of Jharkhand to Delhi and other metropolitan cities, without the consent of their family members, after luring them, in the pretext of providing them job and money. He has further stated that payment of domestic workers was collected by placement agency, either by him, or the petitioner or Sunita Kumari and disbursement to a smaller extent was made to them by the petitioner Panna Lal Mahto. After working for years, when the girls wanted to return to their home, the part payment was made promising that when they would again come to Delhi, the remaining payment will be made. But actual wages or promised wages was never been paid and Panna Lal Mahto used to grab their remuneration. In addition, Panna Lal Mahto also used to take commission from the owners, where the girls were employed. In this process he has acquired more than 05 crore rupees from engagement of 5000 boys and girls in domestic work. 6000

16. Bank accounts and statements as gathered during investigation under PMLA, 2002 revealed that the money generated from offences under Section 120 B, 418, 420, 467,471 of Indian Penal Code, 1860 and section 16 & 18 of the Bonded Labour System (Abolition) Act, 1976 (schedule offence) are 'proceeds of crime and the same was deposited in the account opened in the name of Panna Lal Mahto (Petitioner), Sunita Kumari, Gopal Oraon, Shiv Shankar Ganjhu and the account of placement agencies. They were possessing and projecting these amounts as legitimate property by investing it in various pieces of land, movable assets i.e. vehicle and also channelising these 'proceeds of crime" through bank accounts to project the same as untainted. The petitioner Panna Lal Mahto was also operating the accounts opened in the name of Birsa Bhagwan Tribal Welfare Society as individual beneficiary. Commission of such an act and omission constitutes the offence of money laundering as defined under section 3 of PMLA."

32. It is further evident that in addition to the culpability so shown in the counter affidavit based upon the statement recorded under Section 50 of the P.M.L. Act, one case of P.M.L.A. is pending which the present one.

33. Further, 05 criminal cases have also been instituted under the predicate offence which would be evident from paragraph 8 as available in the counter affidavit which reads hereunder as :-

8. That, an ECIR/RNSZO/12/2020 dated 30.05.2020 was recorded' under PMLA, 2002 by the Directorate of Enforcement, Ranchi Zonal Office on the basis of scheduled offences as mentioned under the following FIR's registered by Anti-Human Trafficking Unit (AHTU), Khunti Police, Jharkhand related to the offences of human trafficking, wherein the consequent charge sheets have also been filed inter alia as under:

i. FIR 'no. 15/2014 dated 02.09.2014 under section 363, 370, 371, 372, 323, 34 of IPC was registered by Anti-Human Trafficking Unit (AHTU), Khunti Police Station, District Khunti, Jharkhand on the basis of complaint of informant Smt Aman Lili Dodrai regarding kidnapping and trafficking of her minor daughter Rupam Saroj Kumari by Panna Lal Mahto and his associates. In this case Anti-Human Trafficking Unit (AHTU), Khunti filed Charge sheet No. 06/2014 dated 27.10.2014 in the Court of Ld. Chief Judicial Magistrate, Khunti under sections 363, 370, 371, 372, 323and 34 of IPC alongwith the first supplementary charge sheet No. 08/2014 dated 09.12.2014 under sections 363, 370, 371, 372, and 34 of IPC and 2ndsupplementary charge sheet vide No. 11/2015 dated 19.05.2015 under sections 363, 370, 371, 372, 323, 418, 420, 467, 468, 471 and 34 of Indian Penal Code (IPC), 1860 (as amended).

ii. FIR no. 24/2015 dated 14.08.2015 under section 363, 370(4), 120B of IPC was registered by Anti- Human Trafficking Unit (AHTU), Khunti Police Station, District Khunti, Jharkhand on the basis of complaint of informant Smt Anuradha Singh, officer in-charge of AHTU, Khunti regarding rescue of a minor girl Soboduni Mudari @ Birsi Mundri, age 12 years from a train, while she was being trafficked to Delhi by Navin Ganjhu, nephew of Panna Lal Mahto for providing her employment through the placement agency operated by Panna Lal Mahto. In this case Anti-Human Trafficking Unit (AHTU), Khunti filed Charge sheet No. 22/2015 dated 06.11.2015 in the Court of Ld. Chief Judicial Magistrate, Khunti under sections 363, 370(4), 120B of IPC.

iii. FIR no. 06/2018 dated 06.08.2018 under section 363, 370(4), 371, 374, 354 (A), 120 (B) of IPC, sections 16 18 of the Child Labour System (abolition) Act and section 8 of POCSO Act was registered by Anti-Human Trafficking Unit (AHTU), Khunti Police Station, District Khunti, Jharkhand, Child Welfare on the basis of complaint of Committee, District Khunti, Jharkhand regarding exploitation and sexual harassment of a minor girl called Aasarita Bhuiya, who was trafficked to Delhi and engaged by placement agency of Panna Lal Mahto in domestic work. In this case Anti-Human Trafficking Unit (AHTU), Khunti filed Charge sheet No. 32/2019 dated 08.09.2019 in the Court of Ld Sub- Divisional Judicial Magistrate Khunti under section 363, 370(3), 370(4), 371, 374, 354 (A), 120 (b) of IPC, section 16 &18 of The Child Labour System (Abolition) Act and section 8 of Protection of Children from Sexual Offences (POCSO) Act, 2012 alongwith supplementary charge sheet No. 09/2019 dated 26.10.2019 filed before the Ld. District and Session Court, Khunti under sections 363, 370 (3), 370(4), 371, 374, 354 (A), 120 (b) of IPC, section 16 & 18 of the Child Labour System (Abolition) Act and section 8 of POCSO Act.

iv. FIR no. 07/2019 dated 19.07.2019 lodged by Anti-Human Trafficking Unit (AHTU), Khunti Police Station, District Khunti, wherein it is mentioned that a minor girl namely Jambi Tiru D/o Lt Mangra Tiru R/o Ithe Pokla, PS-Murhu, Dist- Khunti, Jharkhand, who was trafficked to Delhi long ago, did not return to her native village. Further, Shri Madho Gudiya father of Ms. Kishma Guriya R/o Sondar, PS Torpa, Dist Khunti has alleged that about 15 years ago, when her daughter was minor, she was trafficked by Panna Lal Mahto In this case Anti-Human Trafficking Unit (AHTU), Khunti filed Charge sheet No. 08/2019 dated 16.10.2019 before the Court of the Ld. Chief Judicial Magistrate, Khunti under sections 363, 370(A), 371, 374, 120 B, 420& 34 of IPC and sections 166 18 of the Bonded Labour System (Abolition) Act, 1976.

v. Further, the FIR bearing no.07/19 dated 19.07.2019 of AHTU (Anti Human Trafficking Unit), Jharkhand Police, Khunti has been taken over by the National Investigation Agency (NIA), Ranchi, Jharkhand and the said FIR re-registered was as RC- 09/2020/NIA/DLI dated 04.03.2020, wherein the NIA has filed 1st Supplementary Charge Sheet vide No. 09/2021 dated 27.02.2021 under section 173 of Cr.P.C. in the Court of Ld. Special Judge, NIA's Cases, Ranchi, Jharkhand for violation of sections 1208, 363, 370(2), 370 (3), 370 (4), 370 (5), 370A, 371, 374, 376, 420 & 34 of Indian Penal Code (IPC), Sections 06 & 12 r/w section 25 of Inter-State Migrant workmen (Regulation of Employment and Conditions of Services) Act, 1979 and section 79 of the Juvenile Justice (Care and protection) Act, 2015 against Panna Lal Mahto @ Panna Lal Ganjhu S/o Late Choyata Mahto R/O Ganaloya PS Murhu, Dist Khunti Jharkhand his wife Sunita Devi D/o MatukSahu, brother Shiv Shankar Ganjhu S/o Late Choyata Mahto R/O Ganaloya PS Murhu, Dist Khunti Jharkhand and Gopal Oraon S/o Pramod Oraon R/o village Tungaon, PS Karra Dist Khunti Jharkhand, who were running Human Trafficking racket in the guise of and through several placement agencies in Delhi."

34. This Court, therefore, is of the view that the provision of Section 479(1) of B.N.S.S. is required to be considered along with second proviso as contained therein. Such requirement is there, reason being that the petitioner has relied upon the provision of Sub-section(1) of Section 479 of the B.N.S.S. and based upon that, the order passed by Hon'ble Apex Court in the case of ***Badshah Majid Mallick Vrs. Directorate of Enforcement and Ors.*** (Supra).

35. Serious opposition is there with respect to the nature of the gravity of charge so far as the involvement of present petitioner is concerned.

36. Further, the nature of allegation as also the antecedents against the petitioner and 05 cases instituted under the predicate offences is the basis of making serious opposition in passing an order directing to release the present petitioner on bail.

37. There is no dispute that the statutory arrangement by providing provision under Section 479(1) of the B.N.S.S. is there but the same cannot be applied in a blanket manner which would be evident from the Second proviso to Section 479(1) of the B.N.S.S.

38. The Hon'ble Apex Court has considered the provision of Section 479(1) of the B.N.S.S. in the case of ***Badshah Majid Mallick Vrs. Directorate of Enforcement and Ors.*** (Supra) which has been placed reliance by the learned counsel for the petitioner, has been considered by this Court.

39. It is evident therefrom that in the said case, the offences were under Sections 132, 135(1)(a)(ii) and 135(1)(b)(ii) read with Section 140 of the Custom Act, 1862 said to be schedule offences wherein the maximum punishment as prescribed is three years and out of which 1/3rd of the custody since has been completed, the same has been taken into consideration for the purpose of release of the said appellant on bail.

40. Herein, the distinguishable fact so far as the present case is concerned, in comparison to that of the case of ***Badshah Majid Mallick Vrs. Directorate of Enforcement and Ors.*** (Supra) upon which the petitioner has relied upon, is that the petitioner is facing the prosecution/trial in 05 predicate offence cases and 09 cases arising out of schedule offences in addition to the present one which has been instituted under Section 3/4 of the P.M.L. Act.

41. Serious opposition has been made by filing counter affidavit which this Court has taken note in view of the statutory scheme as provided under Second proviso, hence, the principle of parity is not applicable if the case of the present petitioner will be taken into consideration and if it will be compared to the case of ***Badshah Majid Mallick Vrs. Directorate of Enforcement and Ors.*** (Supra) wherein the appellant of the said case was facing prosecution/trial under Sections 132, 135(1)(a)(ii) and 135(1)(b)(ii) read with Section 140 of the Custom Act, 1862 for which the maximum punishment is three years but herein the case has been instituted under Section 3/4 of the P.M.L. Act but the predicate offence cases which are 05 in number is of schedule offences and the maximum punishment for the same is 10 years.

42. It is further evident from the counter affidavit that the allegation against the present petitioner is inhuman in nature, i.e., as per the material surfaced in course of investigation, he is involved in trafficking of the minor female child as also commission of rape upon the minor.

43. Further, it is pertinent to mention that while deciding the question of bail, the court must carefully balance the individual's right to liberty with the interests of justice. While the presumption of innocence and the right to liberty are fundamental principles of law, they must be considered in conjunction with the gravity of the offence and its impact on society.

44. This Court may also refer to the decision of the Hon'ble Apex Court rendered in the case of **Vijay Madanlal Choudhary v. Union of India, 2022 SCC OnLine *SC 929***. On the application of Section 436A of the Criminal Procedure Code, 1973 which is corresponding Section to the Section 479 of the BNSS, it has been categorically held therein that:

> "419. Section 436A of the 1973 Code, is a wholesome beneficial provision, which is for effectuating the right of speedy trial guaranteed by Article 21 of the Constitution and which merely specifies the outer limits within which the trial is expected to be concluded, failing which, the accused ought not to be

detained further. Indeed, Section 436A of the 1973 Code also contemplates that the relief under this provision cannot be granted mechanically. It is still within the discretion of the Court, unlike the default bail under Section 167 of the 1973 Code. Under Section 436A of the 1973 Code, however, the Court is required to consider the relief on case-to-case basis. As the proviso therein itself recognises that, in a given case, the detention can be continued by the Court even longer than one-half of the period, for which, reasons are to be recorded by it in writing and also by imposing such terms and conditions so as to ensure that after release, the accused makes himself/herself available for expeditious completion of the trial."

45. It needs to refer herein that Section 439 of CrPC has been reincarnated into the BNSS, 2023 under Section 483. The provision grants special powers to the High Court and the Sessions Court regarding grant of bail under BNSS. It leaves scope for the two Courts to release a person on bail while imposing necessary conditions, and also improve or set aside the bail orders passed by the Magistrate. There are powers to cancel the bail granted and to order arrest and custody of the person released on bail.

46. The Hon'ble Apex Court while taking in to consideration of the core of Section 439 Cr.P.C. in the case of ***Prasanta Kumar Sarkar v. Ashis Chatterjee,*** **(2010) 14 SCC 496** has opined that while exercising the power under Section 439 of the Cr.P.C. High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles of law. For ready reference the relevant paragraph of the aforesaid judgment is being quoted as under:

> **9.** We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:
>
> (*i*) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
>
> (*ii*) nature and gravity of the accusation;
>
> (*iii*) severity of the punishment in the event of conviction;
>
> (*iv*) danger of the accused absconding or fleeing, if released on bail;
>
> (*v*) character, behaviour, means, position and standing of the accused;
>
> (*vi*) likelihood of the offence being repeated;
>
> (*vii*) reasonable apprehension of the witnesses being influenced; and
>
> (*viii*) danger, of course, of justice being thwarted by grant of bail.

47. This Court has also considered the order passed by the High Court of Karnataka at Bengaluru in the case of ***Mr. K. Ramakrishna v. The Assistant Director, Directorate of Enforcement*** in ***Criminal Petition No.9930 of 2024*** upon which Mr. Das, learned counsel for the Enforcement Directorate, has relied upon wherein taking into consideration the seriousness of the nature of allegation, the benefit of the provision of Section 479(1) of the B.N.S.S. has been denied.

48. This Court, considering the gravity of nature of allegation as also as per the discussion made hereinabove, is of the view that the present case is not of like nature for passing an order for release of the petitioner on bail.

49. Accordingly, the present bail application is hereby dismissed.

(Sujit Narayan Prasad, J.)

Birendra/**A.F.R.**