

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL No(s). 1223 OF 2017

(Arising out of SLP(Crl.) No. 5647 of 2016)

UNION OF INDIA

Appellant(s)

VERSUS

VARINDER SINGH @ RAJA & ANR.

Respondent(s)

O R D E R

Leave granted.

Heard learned counsel for the parties.

The High Court has not complied with the requirement of Section 45 of the Prevention of Money Laundering Act, 2002 (in short 'the PMLA'). While granting bail, the High Court has failed to comply with the requirement of condition (ii) of Section 45 of the PMLA. This Court in Gautam Kundu vs. Directorate of Enforcement (Prevention of Money

Laundering Act), Government of India through Manoj Kumar, Assistant Director, Eastern Region [(2015)16

SCC 1] has laid down thus:

"26. The learned Solicitor General submitted that Section 45 of PMLA refers only to the term "Special Court" and therefore has to be given restricted meaning. According to him, PMLA is a "Special Law" applicable to the subject of money-laundering, and deals with economic offenders and white collar criminals. The object of PMLA is to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering. To enable the scheme of the Act, reliance was placed on various provisions of the PMLA. He further submitted that Section 44 of the PMLA only confers jurisdiction on the Special Court to deal with offences under the PMLA. Section 45 of PMLA makes the offence of money laundering cognizable and non-bailable and also provides that notwithstanding the provisions of Criminal Procedure Code, 1973, no person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule shall be released on bail or on his own bond, unless the Public Prosecutor has been given an opportunity to oppose the application for such release.

27. The learned Solicitor General lastly submitted that "money laundering" being an economic offence poses a serious threat to the National Economy and National Interest and committed with cool calculation and deliberate design with the motive of personal gain regardless of the consequences to the society. Hence, for Money Launderers 'jail is the

rule and bail is an exception' which finds support from many landmark judgments of this Court.

28. Before dealing with the application for bail on merit, it is to be considered whether the provisions of Section 45 of PMLA are binding on the High Court while considering the application for bail under Section 439 of the Code of Criminal Procedure. There is no doubt that PMLA deals with the offence of money laundering and Parliament has enacted this law as per commitment of the country to the United Nations General Assembly. PMLA is a special statute enacted by the Parliament for dealing with money laundering. Section 5 of the Code of Criminal Procedure, 1973 clearly lays down that the provisions of the Code of Criminal Procedure will not affect any special statute or any local law. In other words, the provisions of any special statute will prevail over the general provisions of the Code of Criminal Procedure in case of any conflict.

29. Section 45 of the PMLA starts with a non obstante clause which indicates that the provisions laid down in Section 45 of PMLA will have overriding effect on the general provisions of the Code of Criminal Procedure in case of conflict between them. Section 45 of PMLA imposes the following two conditions for grant of bail to any person accused of an offence punishable for a term of imprisonment of more than three years under Part-A of the Schedule to PMLA:

(i) That the prosecutor must be given an opportunity to oppose the application for bail; and

(ii) That the Court must be satisfied that there are reasonable grounds for believing

that the accused person is not guilty of such offence and that he is not likely to commit any offence while on bail.

30. The conditions specified under Section 45 of PMLA are mandatory and needs to be complied with which is further strengthened by the provisions of Section 65 and also Section 71 of PMLA. Section 65 requires that the provisions of Cr.P.C. shall apply in so far as they are not inconsistent with the provisions of this Act and Section 71 provides that the provisions of PMLA shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. PMLA has an overriding effect and the provisions of Cr.P.C. would apply only if they are not inconsistent with the provisions of this Act. Therefore, the conditions enumerated in Section 45 of PMLA will have to be complied with even in respect of an application for bail made under Section 439 Cr.P.C. That coupled with the provisions of Section 24 provides that unless the contrary is proved, the Authority or the Court shall presume that proceeds of crime are involved in money laundering and the burden to prove that the proceeds of crime are not involved, lies on the appellant.

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34. We note that admittedly the complaint is filed against the appellant on the allegations of committing the offence punishable under Section 4 of PMLA. The contention raised on behalf of the appellant that no offence under Section 24 of the SEBI Act is made out against the appellant, which is a scheduled offence under PMLA, needs to be

considered from the materials collected during the investigation by the respondents. There is no order as yet passed by a competent court of law, holding that no offence is made out against the appellant under Section 24 of the SEBI Act and it would be noteworthy that a criminal revision praying for quashing the proceedings initiated against the appellant under Section 24 of the SEBI Act is still pending for hearing before the High Court. We have noted that Section 45 of PMLA will have overriding effect on the general provisions of the Code of Criminal Procedure in case of conflict between them. As mentioned earlier, Section 45 of PMLA imposes two conditions for grant of bail, specified under the said Act. We have not missed the proviso to Section 45 of the said Act which indicates that the legislature has carved out an exception for grant of bail by a Special Court when any person is under the age of 16 years or is a woman or is a sick or infirm. Therefore, there is no doubt that the conditions laid down under Section 45A of PMLA, would bind the High Court as the provisions of special law having overriding effect on the provisions of Section 439 of the Code of Criminal Procedure for grant of bail to any person accused of committing offence punishable under Section 4 of PMLA, even when the application for bail is considered under Section 439 of the Code of Criminal Procedure."

It is the case where the appellant is not only involved in the PMLA but also in the Narcotic

Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act'). Without complying with the requirements of Section 45 of the PMLA, the High Court should not have granted the bail. As such the impugned order is set aside. The respondents be arrested forthwith.

The appeal is allowed.

.....J.

(ARUN MISHRA)

.....J.

(AMITAVA ROY)

NEW DELHI;

JULY 21, 2017

ITEM NO.56

COURT NO.11

SECTION II-B

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No(s). 5647/2016

(Arising out of impugned final judgment and order dated 05-08-2015 in CRM No. 20171/2015 passed by the High Court Of Punjab & Haryana At Chandigarh)

UNION OF INDIA

Petitioner(s)

VERSUS

VARINDER SINGH @ RAJA & ANR.

Respondent(s)

Date : 21-07-2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ARUN MISHRA

HON'BLE MR. JUSTICE AMITAVA ROY

For Petitioner(s) Mr. Ranjit Kumar, SG
Ms. Binu Tamta, Adv.
Mr. Amal Chitale, Adv.
Mr. B. Krishna Prasad, AOR

For Respondent(s) Ms. Kiran Bhardwaj, AOR

Mr. R.K. Thakur, Adv.

Mr. Vishnu Sharma, AOR

UPON hearing the counsel the Court made the following

O R D E R

Leave granted.

The impugned order is set aside. The respondents be arrested forthwith.

The appeal is allowed in terms of the signed order.

(NEELAM GULATI)

(TAPAN KUMAR CHAKRABORTY)

COURT MASTER (SH)

BRANCH OFFICER

(SIGNED ORDER IS PLACED ON THE FILE)