

LAWCHAKRA.IN

IN THE HIGH COURT OF JHARKHAND AT RANCHI
B. A. No. 4218 of 2024

Hemant Soren Petitioner

Versus

Directorate of Enforcement, Govt. of India through its Assistant Director,
Ranchi Opposite Party

CORAM : HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY

For the Petitioner : M/s. Jitendra S. Singh, Deepankar,
Piyush Chitresh & Shrey Mishra, Advocate
For the Opposite Party : M/s. Zohib Hussain, Amit Kumar Das,
Saurav Kumar & Rishabh Dubey, Advocate

2/03.05.2024 Heard Mr. J. S. Singh, learned counsel for the petitioner and Mr. Zohib Hussain, learned counsel appearing for the Enforcement Directorate.

In this application, the petitioner has prayed for grant of provisional bail in connection with ECIR Case No. 6 of 2023 arising out of ECIR/RNZO/25/2023 dated 26.06.2023 registered under Section 3 of the Prevention of Money Laundering Act, 2002 on account of the demise of his uncle namely, Shri Raja Ram Soren s/o late Sobran Soren whose last rites will take place at village Nemra, Gola, District Ramgarh.

It has been submitted by Mr. Jitendra S. Singh, learned counsel appearing for the petitioner that the deceased Raja Ram Soren is the uncle of the petitioner and since he does not have a son, the petitioner being the eldest nephew is required to perform his last rites which is to be held on 06.05.2024. Learned counsel has referred to the impugned order dated 27.04.2024 while submitting that the learned Special Judge had taken into consideration Section 45 of the Prevention of Money Laundering Act which in the circumstances of the present case is not at all to be considered regard being had to the exceptional circumstances under which the petitioner has prayed for provisional bail. Mr. Singh has referred to the case of "*Dr. P. Varavara Rao Vs. National Investigation Agency & Another*" reported in 2022 0 Supreme (SC) 1577 as well as the case of "*Rohit Tandon Vs. The Enforcement Directorate*"

reported in 2017 8 *Supreme* 249. It has been submitted that so far as the case of "*Dr. P. Varavara Rao*" (supra) is concerned, the same seems to be with respect to the embargo with respect to Section 43-D(5) of the UAP Act and considering the various circumstances enumerated therein including the age of the said petitioner, he was granted bail. So far as the case of "*Rohit Tandon*" (supra) is concerned, Mr. Singh has submitted that provisional bail granted by the High Court was affirmed by the Hon'ble Supreme Court. It has therefore been submitted that the reference of Section 45 of Prevention of Money Laundering Act would not cast a shadow in the case of this nature wherein the petitioner has prayed for grant of provisional bail on account of the death of his uncle.

Mr. Zohib Hussain, learned counsel for the Enforcement Directorate has referred to the present application while submitting that the last rites of the uncle of the petitioner is to be held on 06.05.2024 and the petitioner seems to have modified his prayer with respect to the period for grant of provisional bail. He has also referred to paragraph 4 of the said application which would indicate that such prayer is only with respect to provisional bail for a day as the customary rites are to be held on 06.05.2024. Reference has also been made to the order passed by the Delhi High Court in *Crl. Ref. Case No. 1 of 2015* wherein the question was with respect to whether the courts can grant interim bail when the conditions for grant of bail under Section 37 of the Narcotics and Psychotropic Substances Act, 1985 ('NDPS Act' for short) are not satisfied. He has submitted that so far as Section 45 of the Prevention of Money Laundering Act is concerned, the same is *pari-materia* to Section 37 of the NDPS Act with respect to the twin conditions which are required to be fulfilled. Mr. Hussain has drawn the attention of the court to the answer with respect to the reference in *Crl. Reference Case No. 1 of 2015* while submitting that there has to be compelling reasons which would justify the grant of interim bail and the court has also to consider as to whether sending the accused/convict in police custody would be suffice and meet the ends of justice keeping in view the nature of the offence with which the accused is charged or/and the past conduct of the accused. Distinguishing the case of "*Dr. P. Varavara Rao*" (supra) Mr.

Hussain has stated that the same was an exceptional circumstance wherein the accused was 82 years old and a sick and ailing person. He has also referred to the case of "*State of Maharashtra Vs. Vinod Sabaji Loke*" reported in 1996(2) *MH.L.J.* 1068, which also relates to the prohibition prescribed in Section 37 of the NDPS Act and which according to the learned counsel for the petitioner is *pari-materia* to Section 45 of the Prevention of Money Laundering Act. While drawing the attention of the court to Section 45 of the Prevention of Money Laundering Act especially to the proviso it has been stated that only in the circumstances which have been enumerated in the said proviso, an accused may be released on bail and save and except the relaxation as indicated in the proviso, the other stringent conditions have to be fulfilled in terms of Section 45 of Prevention of Money Laundering Act and which would thereafter entitle an accused to be considered for grant of bail.

Mr. J. S. Singh, learned counsel for the petitioner has tried to distinguish Section 37 of the NDPS Act with Section 45 of the Prevention of Money Laundering Act but the same has strongly been opposed by Mr. Zohib Hussain who has stated that save and except the *Proviso* in Section 45 of the Prevention of Money Laundering Act, the other conditions prescribed in both the sections are same and similar. Mr. Singh while referring to the case of "*Athar Pervez Vs. State*" in *Crl. Reference Case No. 1 of 2015* has stressed much upon the past conduct of the accused which according to him is not applicable so far as the case of the petitioner is concerned. He has further stated that there is no likelihood of the petitioner committing an offence, if he is granted interim bail.

Having considered the rival submissions, the present application has been perused which is with respect to the prayer of the petitioner for grant of provisional bail. The basis for making such prayer appears to be the fact that the uncle of the petitioner namely, Shri Raja Ram Soren had passed away in the last week of April 2024 at 02:30 hours at Hill View Hospital and Research Centre at Ranchi. It has also been stated that the petitioner belongs to a joint family and barring the petitioner, there is no

other person in the family to perform the last rites of the deceased since the deceased had no male child. The petitioner being the eldest male member of the joint family is dutybound and has customary obligation to perform the last rites of his deceased uncle. It has also been stated that the last rites is scheduled to be held on 06.05.2024 at Village Nemra, Gola, District Ramgarh.

The application for grant of provisional bail was moved before the learned Special Judge, PMLA, Ranchi which was dismissed on 27.04.2024 primarily basing his reasons on Section 45 of the Prevention of Money Laundering Act which is *pari-materia* to Section 37 of the NDPS Act. In "**Dr. P. Varavara Rao**" (supra), the reasons for grant of bail to him has been enumerated in the following manner:

“16. We need not go into the rival contentions as some of the notable factual aspects which emerge from the record are:

“a. The appellant is 82 years of age.

b. He was taken in custody initially on 28.08.2018 and has actually spent 2½ years of custody, leaving aside the period for which benefit of bail was granted pursuant to the order dated 22.02.2021.

c. Though the charge-sheet has been filed, some of the accused are still not apprehended and the matter has not even been taken up for consideration whether the charges need to be framed against the accused who are presently before the Trial Court or not.

d. Various applications preferred by the accused seeking discharge are still pending consideration.

e. The medical condition of the appellant has not improved to such an extent, over a period of time, that the facility of bail which was granted earlier be withdrawn.

17. Considering the totality of circumstances, in our view, the appellant is entitled to the relief of permanent bail on medical grounds.

18. We, therefore, grant bail to the appellant by deleting the condition which was placed in the Order dated 22.02.2021 limiting the relief in terms of time. We therefore direct as under:—

a. The appellant shall present himself before the Trial Court within seven days from today with advance intimation to the Public Prosecutor. The Trial Court shall then direct release of the petitioner on permanent bail, on medical grounds, subject to such conditions as the Trial Court may deem appropriate to impose.

b. *It shall be the conditions of bail that:*

- i. The appellant shall not leave the area of Greater Mumbai without the express permission from the Trial Court.*
- ii. The appellant shall not in any way misuse his liberty nor shall he get in touch with any of the witnesses or try to influence the course of investigation.*
- c. Any infraction of the conditions shall entail in cancellation of bail granted to the appellant.*
- d. The appellant shall be entitled to have the medical attention of his choice but shall keep the respondent authorities in touch with any such development including the medical attention received by him.*
- e. It is made clear that the benefit of bail is extended to the appellant only on his medical condition.*
- f. Any observations made in this order are purely from the standpoint of narration of events and shall not be taken as a reflection on merits of the matter or touching upon the rival contentions advanced by the parties."*

In the case of "***Rohit Tandon***" (supra), the High Court had granted provisional bail to him which was prayed for on account of the mother of the said petitioner having suffered some injuries. The interim bail was granted by the High Court and subsequently the same was confirmed by the Hon'ble Supreme Court. The references which have been made by the learned counsel appearing for the petitioner with respect to the aforesaid cases relate to exceptional circumstances.

Mr. Hussain has referred to the case of "***Athar Pervez Vs. State***" (supra) wherein the following issue was framed:

"Whether the Courts can grant "interim" bail when the conditions for grant of bail under Section 37 of the Narcotics and Psychotropic Substances Act, 1985 ('NDPS Act' for short) are not satisfied."

The same was answered in the following manner:

"20. Having considered the case law on the subject, we are inclined to answer the reference in the following manner:

[1] The trial or the appellate Courts after conviction are entitled to grant "interim" bail to the accused/convict when exceptional and extra-ordinary circumstances would justify this indulgence. The power is to be sparingly used, when intolerable grief and suffering in the given facts may justify temporary release.

[2] While rejecting or accepting an application for grant of "interim" bail, the trial/appellate Courts will keep in mind the strict provisions of Section 37/32A of the NDPS Act and only when there are compelling reasons which would justify and require the grant of "interim" bail, should the application be allowed. The Court must take into account whether or not the accused/convict is likely to commit or indulge in similar violations.

[3] While examining the question of grant of "interim" bail, the Court would consider whether sending accused/convict in police custody would be suffice and meets the ends of justice, keeping in view the nature of the offence with which the accused is charged or/and the past conduct of the accused.

[4] Where "interim" bail should be given, it would be granted for minimal time deservedly necessary and can be subject to certain conditions. Interim bail is interim or for a short duration."

It has been mandated that only when there are compelling reasons which would justify and require the grant of interim bail, should the application be allowed. It has also been mentioned therein that while examining the grant of interim bail, the court has to consider whether sending the accused/convict in police custody would be suffice and meet the ends of justice, keeping in view the nature of the offence to which the accused is charged and the past conduct of the accused.

It appears that the observation in connection with *Crl. Ref. No. 1 of 2015* which has much been stressed upon by the learned counsel for the Enforcement Directorate is with respect Section 37 of the NDPS Act and which was under consideration. So far as the present case is concerned, the same is related to the provisions of Section 45 of the Prevention of Money Laundering Act which is *para-materia* to Section 37 of the NDPS Act primarily with respect to fulfilling of the twin conditions. Section 45 of the Prevention of Money Laundering Act reads as follows:

45. Offences to be cognizable and non-bailable. – (1) 1 [Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence 2 [under this Act] shall be released on bail or on his own bond unless –]

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm, 3 [or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees] may be released on bail, if the Special Court so directs:

Provided further that the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by –

(i) the Director; or

(ii) any officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government.

[(1A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.]

(2) The limitation on granting of bail specified in sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

[Explanation. – For the removal of doubts, it is clarified that the expression "Offences to be cognizable and non-bailable" shall mean and shall be deemed to have always meant that all offences under this Act shall be cognizable offences and non-bailable offences notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (2 of 1974), and accordingly the officers authorised under this Act are empowered to arrest an accused without warrant, subject to the fulfillment of conditions under section 19 and subject to the conditions enshrined under this section.]"

Sub-section (1) (ii) of Section 45 envisages that where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail, the accused shall be released. The proviso reveals that when a person who is under the age of sixteen years or is a woman or is sick or infirm or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees, the Special court may release such person on bail.

While considering the pronouncements referred to above and the stringent conditions of Section 45 of the Prevention of Money Laundering Act, there has to be an exceptional circumstance for consideration of the grant of provisional bail. As it has been noted above, the last rites of the uncle of the petitioner is to be performed on 06.05.2024 and no statement has been made in the petition that there are no other male members in the family to perform the customary obligations as well as the last rites of the uncle of the petitioner. No exceptional circumstance has been highlighted to accede to the prayer of the petitioner made in this application.

On such consideration therefore, I am not inclined to grant provisional bail to the petitioner as prayed for and consequently this application stands dismissed.

However, at the same time taking a cue from the observation made in the case of "*Athar Pervez Vs. State*" (supra) to meet the ends of justice it would suffice that the petitioner be permitted to attend the last rites of his uncle scheduled to be held on 06.05.2024 under police custody, subject to the condition that the petitioner shall not indulge himself in any public speeches and shall have no interaction with any media personnel or any witness of this case. The administration shall ensure that these conditions are strictly complied with. It shall also ensure maintenance of law and order at the venue in question.

(Rongon Mukhopadhyay, J)

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