

MHCC020079172024



IN THE COURT OF SESSIONS, DESIGNATED AS SPECIAL COURT
UNDER THE PML ACT, 2002, GR. BOMBAY
BAIL APPLICATION - EXH.39
IN
SPECIAL CASE NO. 866 OF 2024

Lalit Shyam Tekchandani
@ Dr. Lalit Kumar Shyaam
Aged about 52 Years,
Indian Inhabitant,
Residing at Flat No.103,
Sunteck Signia Isles, BKC,
Bandra East, Mumbai 400 051. ...Applicant

Versus

Directorate of Enforcement ...Respondent

Appearance:

Ld. Advocate Taraq Sayed for the Applicant
Ld. SPP Mr. Arvind A. Aghav for ED, Mumbai

CORAM : A.C.DAGA,
ADDITIONAL SESSIONS JUDGE
DESIGNATED SPECIAL COURT UNDER
THE PML ACT, 2002. (C.R.N.16)

DATE : 15th MAY, 2025.

ORDER

1. Instant application is filed by the applicant/accused Lalit Shyam Tekchandani @ Dr. Lalit Kumar Shyaam for grant of bail under section 483 of the BNSS r/w Section 45 of the Prevention of Money Laundering Act, 2002.

2. It is pleaded in the application that based on FIR, instant ECIR has been registered and accused has been arrested. Hence, the application on the following grounds-

[i] Applicant is innocent and has been falsely implicated in the instant matter.

[ii] Applicant is in Judicial Custody since 18/3/2024 for more than 1 year and the matter is pending at the stage of framing of charge.

[iii] No progress in the trial.

[iv] Schedule offences are also pending before this Court for framing of charge and appearance, respectively in the matter of ***Dr. Kishore Bisure Vs. State of Maharashtra***, the Hon'ble Apex Court has held that "even if trial of the case under the PMLA proceeds, it cannot be officially tested unless the trial of the Scheduled Offence concludes."

[v] In the PMLA matter, there are 36 witnesses. In the first scheduled offence of Chembur Police Station, there are 42 witnesses and in the second scheduled offence of Taloja Police Station, there are 526 witnesses. Accordingly, under no reasonable time, the trial can be expected to be completed in near future.

[vi] It is further pleaded in the application that in view of the judgment in the matter of ***Vijay Madanlal Choudhary Vs. Union of India***, the Hon'ble Apex Court has held that, '*rigours under Section 45 can be relaxed if the custody is for a considerable period of time and there is no likelihood of conclusion of trial within a short span.*'

[vii] The other accused persons having involvement in the offence has not been arrested and there is pick and choose policy adopted by the Investigating Agency.

[viii] The custody of the applicant is unwarranted and lead to pre-trial conviction.

[ix] Applicant is ready and willing to abide by all conditions imposed upon by this Court.

Hence, the application.

3. Complainant contested by filing reply at Exh.39A and pleaded that by instant application, applicant is trying to secure the bail without satisfying the rigours of section 45 of the PMLA, 2002. The twin conditions as laid in Section 45 of the PMLA, 2002 are mandatory conditions and need to be compulsory observed by the Court while granting bail to the person accused of the offence of money laundering. Reliance is placed in the matter of ***Tarun Kumar Versus Assistant Director, Directorate of Enforcement in SLP (Cri) No.9431 of 2023***. It is pleaded in the reply that accused is the Director of M/s Supreme Construction and Developers Pvt. Ltd. During the period 2008-2009, said company purchased 56980 sq.mtr of land at Taloja, Navi Mumbai to develop a residential project under Rental Housing Scheme floated by the Government of Maharashtra. He started developing the said property and in turn M/s Supreme Construction and Developers Pvt. Ltd. collected an amount of Rs.423 Crores approximately from various prospective flat buyers. Possession of flats was to be made by 2016, however till date no possession has been given to any of the buyers. The said prospective buyers were cheated of their life saving. The amount collected by the company is proceeds of crime. More than 1000

people who have booked their flats have been defrauded by the applicant/accused. While deciding the bail, the Court is required to take note of the gravity of the offence, nature of accusation and the magnitude of offence involved. Applicant/Accused is the main kingpin in the commission of the crime and had siphoned off the funds received by M/s Supreme Construction and Developers Pvt. Ltd., purchased various immovable properties. He has transferred some of the assets at a value much lower than the market value of such assets. Hence, prayed for rejection of the application.

4. Considering the rival contentions, following points arise for my determination and I have recorded my findings thereon, for the reasons thereto are as under:-

POINTS

FINDINGS

1. Whether the applicant/accused Lalit Shyam Tekchandani @ Dr. Lalit Kumar Shyaam has made out a *prima-facie* case to release him on bail?

In the Affirmative

2. What Order ?

**Bail Application is allowed
as per final Order**

REASONS

AS TO POINT NO.1-

5. Heard Ld. Advocate for applicant/accused and Ld. SPP at length. Perused the record.

6. Ld. Advocate for the applicant/accused has submitted that instant application is filed for bail on the ground of delay in trial and

fact that co-accused were not arrested as pick and choose policy. He has also submitted that accused has been released on bail in all predicate offence. He has also submitted that in predicate offence, there were allegations of identical nature but still applicant/accused was released on bail. He has further submitted that the project is 75% completed. 12 towers have already been constructed but the project could not have been completed in all respect because of civil litigation pending before various Courts between the land owner and company of the applicant/accused. Accordingly, for the reason beyond the control of the applicant and flats could not be delivered. Construction of drainage, pathway of access is yet to be made. He tried to impress upon this Court that no case for cheating is made out and stated that in case, intentions were to cheat then naturally the construction would not have reached stage of 75% completion.

7. During further arguments, Ld. Advocate for the applicant/accused has submitted that there are in all 593 witnesses to be examined in the instant matter plus the predicate offence and the charge-sheet plus complaint runs into more than 44,000 pages. Therefore, he submitted that there is no likelihood of commencement and completion of trial in near future. Ld. Advocate for the applicant/accused has further submitted that investigation in the instant matter is still pending then how charge can be framed.

8. Ld. SPP during arguments has submitted that the applicant/accused was having 100% share in the M/s Supreme Construction and Developers Pvt. Ltd. He acquired property at Taloja around 1800 people have booked flat by paying Rs.423 Crores. The

possession was to be given in the year 2014, then extended to 2016 and then extended to 2018 but till date no possession is given. Applicant/accused has diverted the funds, created FD, properties. Accordingly, the intention was to siphon off the proceeds of crime and layer it, projecting it as untainted amount. Both scheduled offences are before this Court. There is no delay on the part of investigation. Draft charge is given. Charge be framed and trial to proceed. Hence, prayed for rejection of the application.

9. It is important to note that the instant bail application is not on the merits of the matter but on technical ground of delay in commencement of the trial and no possibility of trial starting and concluding in near future. It is also important to note that both the predicate offences are before this Court and the matter is placed for charge in one of the predicate offence and for appearance in another predicate offence. As per section 44 of PMLA, trial of predicate offence as well as PMLA has to be taken of simultaneously. Reliance can be placed upon the judgment in the matter of ***Dr. Kishore Bisure Vs. The State of Maharashtra and Anr. in Bail Application No.4055/2024 decided on 12/02/2025*** wherein the Hon'ble Apex Court has clearly held that, "existence of proceeds of crime at the time of trial of the offence under section 3 of the PMLA can be proved only if the Scheduled Offence is established in prosecution of the Scheduled Offence. This clearly envisages that even if trial of the case under the PMLA proceeds it cannot be officially tested unless the trial of the Scheduled offence concludes." Accordingly, until and unless, the trial in Scheduled Offence concludes. The trial under PMLA Act never be concluded.

10. It is important to note that in the first Scheduled Offence which is filed by Chembur Police Station, there are 42 witnesses. In the second Scheduled Offence which is filed by Taloja Police Station, there are 518 witnesses and in the instant matter there are 36 witnesses. As such, total witnesses to be examined in all the three matters are 596 witnesses. The charge-sheet and complaint totally is running into more than 44000 pages.

11. Keeping the aforesaid facts in the mind, now it has to be seen, as to whether there is any possibility of starting and conclusion of the trial in near future. It is also important to note that the Ld. SPP during arguments has relied upon the judgment in the matter of ***Tarun Kumar Vs. Assistant Director Directorate of Enforcement reported in 2023 SCC OnLine SC 1486***. Para 20 of the said judgment is reproduced for the sake of convenience as under-

‘It is also difficult to countenance the submission of learned Counsel Mr. Luthra that the investigation qua the appellant is complete and the trial of the cases likely to take long time. According to him the appellant ought not to be incarcerated indefinitely merely because the investigation is kept open with regard to the other accused. In this regard, it may be noted that the appellant has not been able to overcome the threshold stipulations contemplated in Section 45 namely he has failed to prima facie prove that he is not guilty of the alleged offence and is not likely to commit any offence while on bail. It cannot be gainsaid that the burden of proof lies on the accused for the purpose of the condition set out in the Section 45 that he is not guilty of such offence. Of course, such discharge of burden could be on the probabilities, nonetheless in the instant case there being sufficient material on record adduced by the respondent showing the thick involvement of the appellant in the alleged offence of money laundering

under Section 3 of the said Act, the Court is not inclined to grant bail to the appellant.”

12. Relying on this judgment, Ld. SPP has submitted that unless and untill, twin conditions given under section 45 of PMLA are not complied. Accused is not entitled for release on bail. It is important to note that said judgment was delivered by the Hon’ble Apex Court on 20/11/2023. It is important to note that after November 2023, the Hon’ble Apex Court in Catena of judgments has taken other view on which reliance has been placed by the Ld.Avocate for the applicant/accused.

13. Ld. Advocate for the applicant/accused has placed reliance on the judgment in the matter of ***Manish Sisodia (I) Vs. Directorate of Enforcement in Criminal Appeal No.3352 of 2023***. The Hon’ble Apex Court has held that-

“The right to bail in cases of delay, coupled with incarceration for a long period, depending on the nature of the allegations, should be read into Section 439 of the Code and section 45 of the PML Act. The reason is that the constitutional mandate is the higher law, and it is the basic right of the person charged of an offence and not convicted, that he be ensured and given a speedy trial.

14. Ld. Advocate for the applicant/accused has further relied upon the judgment in the matter of ***Manish Sisodia (II) Vs. Directorate of Enforcement in Criminal Appeal No.3295 of 2024***, the Hon’ble Apex Court has held that-

‘From our experience, we can say that it appears that the trial courts and the High Courts attempt to play safe in matters of grant of bail. The principle that bail is a rule and refusal is an exception is, at times, followed in

breach. On account of non-grant of bail even in straight forward open and shut cases, this Court is flooded with huge number of bail petitions thereby adding to the huge pendency. It is high time that the trial courts and the High Courts should recognize the principle that "bail is rule and jail is exception".

15. Ld. Advocate for the applicant/accused has further relied upon the judgment in the matter of *Vijay Nair Vs. Directorate of Enforcement in SLP (Cri) No.12031 of 2024 decided on 02/09/2024*, the Hon'ble Apex Court has held that-

"Here the accused is lodged in jail for a considerable period and there is little possibility of trial reaching finality in the near future. The liberty guaranteed under Article 21 of the Constitution does not get abrogated even for special statutes where the threshold twin bar is provided and such statutes, in our opinion, cannot carve out an exception to the principle of bail being the rule and jail being the exception. The cardinal principle of bail being the rule and jail being the exception will be entirely defeated if the petitioner is kept in custody as an under-trial for such a long duration. This is particularly glaring since in the event of conviction, the maximum sentence prescribed 5 2024 SCC OnLine SC 2270 is only 7 years for the offence of money laundering."

16. Ld. Advocate for the applicant/accused has further relied upon the judgment in the matter of *V. Senthil Balaji Vs. Deputy Director, Directorate of Enforcement reported in Criminal Appeal No.4011 of 2024 decided on 26/09/2024*, in which it is held that-

"As stated earlier, the appellant has been incarcerated for 15 months of more for the offence punishable under the PMLA. In the facts of the case, the trial of the scheduled offences and, consequently, the PMLA offence is not likely to be completed in three to four years or even more. If the appellant's detention is continued, it will amount to an infringement of his

fundamental right under Article 21 of the Constitution of India of speedy trial.”

17. Ld. Advocate for the applicant/accused has further relied upon the judgment in the matter of *Padam Chand Jain Vs. Enforcement Directorate in Petition(s) for Special Leave to Appeal (Crl) No(s). 17476/2024*, wherein the Hon’ble Apex Court has held that-

‘The Court has held that the twin conditions under Section 45 of the PMLA cannot override the constitutional safeguards, as provided under Article 21 of the Constitution of India. This Court has held that a prolonged incarceration cannot be permitted to be converted pre-trial detention into a sentence without trial. Like in the case of Manish Sisodia (supra) in the present case also thousands of documents are required to be considered at the stage of trial, so also around 50 witnesses are required to be examined. The main evidence in the present case is documentary in nature, which is already seized by the prosecution agency.’

18. Thereafter, there are judgments of the Hon’ble Bombay High Court relied upon by the Ld. Advocate for the applicant/accused as under-

[a] *Suraj Satish Chavan Versus Directorate of Enforcement and Anr. in Criminal Bail Application No.4141/2024*. In para 20 and para 21 of the said judgment are reproduced for the sake of convenience as under-

“Since the case before me is restricted to grant of bail on account of long incarceration of the under-trial accused/Applicant before me after he having fully co-operated in the investigation and made all disclosures, I refrain to comment on any of the merits of the matter. Any comment made above on the merits is cursory and only to the extent of considering the Applicant's case for grant of bail and is not an opinion expressed by the Court so as to influence the trial which may be noted.

It is seen that Applicant was arrested 17.01.2024. Thus he is in custody for the last more than 1 year, except from taking cognizance there is no other progress of the trial and the charges are yet to be framed and considered by the Special Court. There are 20 prosecution witnesses cited by the ED in their complaint and it would therefore be difficult to comprehend that trial is likely to be completed in the foreseeable future, rather there seems to be no possibility that trial would be concluded in a reasonable time.”

[b] *Ramchand Kotumal Issrani Vs. Directorate of Enforcement and Anr. in Bail Application No.5350 of 2024.* In para 8 of the said judgment is reproduced for the sake of convenience as under-

“In view of the above and while adhering to the decision of the Supreme Court in the case of ‘Udhaw Singh V. Enforcement Directorate’ solely on the ground of incarceration of the applicant in present case which is of 1 year 6 months and 23 days, Applicant is directed to be released on bail.”

[c] *Dr. Kishore Bisure Vs. The State of Maharashtra and Anr. in Bail Application No.4055/2024 decided on 12/02/2025.* In para 31 of the said judgment is reproduced for the sake of convenience as under-

“ The Applicant was arrested on 19.07.2023 and has been in custody for last 1 year 6 months and 25 days. Except for cognizance being taken, no substantial progress has been made in the trial, and charges are yet to be framed. The prosecution has cited 82 witnesses, making the conclusion of the trial in the near future unlikely. The Applicant has cooperated fully with the investigation.

Given the incarceration of Applicant and the absence of any foreseeable conclusion of the trial, continued detention would violate the Applicant’s fundamental right under Article 21 of the Constitution, which guarantees a speedy trial and personal liberty.”

19. I have carefully gone through the orders passed by the Hon'ble Bombay High Court referred supra, while passing the order, the Hon'ble Bombay High Court has relied upon the judgments of the Hon'ble Apex Court which has been referred supra, laid down the law that the twin condition under section 45 of the PMLA cannot override the constitutional safeguards, as provided under Article 21 of the Constitution of India. A prolonged incarceration cannot be permitted to be converted pre-trial detention into a sentence without trial.

20. Considering the position of the law as has been laid down by the Hon'ble Apex Court and the Hon'ble Bombay High Court in the judgements referred supra and in the matter of ***Tarun Kumar referred supra***, law is very clearly laid down that the twin conditions under Section 45 of the PMLA cannot override the constitutional safeguards, as provided under Article 21 of the Constitution of India of right of speedy trial.

21. Now it has to be seen, as to whether there is any possibility for trial commence and conclude the near future in the matter. As already pointed out that the matter of PMLA can never conclude prior to the predicate offence. Total number of witnesses in both the predicate offences and the instant matter are 560. It is also important to note that in the prosecution complaint prayer clause (d), it is specifically mentioned that, the complainant craves leave of this Court to file further/supplementary complaint(s). This prayer clearly indicates that investigation under PMLA as on today has not yet been completed. As the investigation under PMLA has not been completed, therefore,

without completion of the investigation, it is difficult for this Court to frame the charge and start with the trial of PMLA itself.

22. Though at the time of hearing of bail application, Ld. SPP has tendered draft charge and has requested for framing of charge and proceeding further with the trial under PMLA. The fact remains that no intimation has been filed on record by the complainant intimating this Court that the investigation has been completed in all respect and complainant does not intend to file any supplementary complaint. As such, it appears that at the time of hearing of the bail application, the draft charge was given only with an intention to see that the applicant should not be released on bail on the ground of delay in proceeding further with the trial.

23. Till date investigation in PMLA has not been completed, even if, charge is framed in all the three matters, asking the prosecution to start with their evidence. As there are 596 witnesses, there is no possibility that the trial will start and conclude in near future or in reasonable time. Already since last 14 months, applicant/accused is in judicial custody. All the documents about the crime are already in the custody of the Investigating Agency. Applicant/Accused is having permanent resident at Mumbai. He is also having roots in the society. No possibility that the applicant/accused will flee away from the justice. There is no possibility of completion of trial in near future. In case, the incarceration of the applicant/accused continued, it will amount to an infringement of his fundamental right under Article 21 of the Constitution of India.

24. Considering law laid down by the Hon'ble Apex Court and Hon'ble Bombay High Court which has been reproduced about and particularly in the matter of ***Padam Chand Jain referred supra***, it has been held that the provisions of *Section 45* of the PMLA cannot override the constitutional safeguards, as provided under Article 21 of the Constitution of India. As such, the prolong incarceration cannot be permitted to convert into pretrial detention without any proceedings concluding in near future. In view of the aforesaid discussions, applicant/accused is entitled for bail. Hence, Point No.1 is answered in the affirmative and following order is passed:-

ORDER

1. Bail Application (Exh.39) in PMLA Special Case No.866/2024 is allowed.

2 The applicant/accused **Lalit Shyam Tekchandani @ Dr. Lalit Kumar Shyaam** be released on bail in this matter under Section 439 of the Code of Criminal Procedure, 1973 (Section 483 of the BNSS) r/w section 45 of the Prevention of Money Laundering Act, 2002 in ECIR bearing No.ECIR/MBZO-II/04/2024 for offence u/s 3 r/w 4 of PMLA on his executing PR bond of **Rs.2,00,000/- (Rupees Two Lakhs only) with one or more surety/sureties** in the like amount on following conditions:-

(i) The applicant/accused shall not directly or indirectly make any inducement, threat or promise to any person including witnesses and first informant.

(ii) The applicant/accused shall mark his presence at Officer of the ED before the Investigating Officer as and when called for.

(iii) The applicant/accused shall not tamper with prosecution evidence.

(iv) The applicant/accused shall undertake not to leave Maharashtra, without prior permission of this Court.

(v) The applicant/accused shall undertake to remain present before the Court every time during the course of trial, unless exempted.

(vi) The applicant/accused shall not directly or indirectly make any attempt to contact or influence the prosecution witnesses and also shall not tamper with the prosecution evidence collected by the Investigating Officer and will not create any obstruction in the investigation and the trial.

(vii) The applicant/accused shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case, he want to change the phone number and residential address.

(viii) The applicant/accused shall not indulge in any activity which is detrimental to the case and shall not indulge in any criminal activity.

(ix) The applicant/accused shall deposit his passport with the officer of ED forthwith.

(x) The applicant/accused be released on furnishing provisional cash security of Rs.2,00,000/- for a period of one month, with PR bond as directed above.

3. Bail Application (Exh.39) in PMLA Special Case No.866/2024 stands disposed of, accordingly.

Dictated and pronounced in the open Court.



Dt.: 15.05.2025

**(A.C. Daga)
Additional Sessions Judge
Designated as Special Court under
the PML Act, 2002
City Civil & Sessions Court, Mumbai**

**Dictated on : 14.05.2025
Transcribed on : 14.05.2025
Signed on : 15.05.2025**

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED ORDER”	
15.05.2025 UPLOAD DATE AND TIME	(MRUNAL S. PENDKHALKAR) NAME OF STENOGRAPHER
Name of the Judge	H.H. THE ADDITIONAL SESSIONS JUDGE A.C. DAGA (COURT ROOM NO.16)
Date of pronouncement of order	15.05.2025
Order signed by P.O. on	15.05.2025
Order uploaded on	15.05.2025