



IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. _____/2024
(Arising Out of Special Leave Petition (Criminal) No.10846/2024)

BADSHAH MAJID MALIK

Appellant(s)

VERSUS

DIRECTORATE OF ENFORCEMENT & ORS.

Respondent(s)

O R D E R

1. Leave granted.

2. It has been observed that in the case of Vijay Madanlal Chaudhary vs. Union of India, (2022) SCC Online SC 926 that the beneficial provision of Section 436A of the Code of Criminal Procedure, 1973, (for short, 'the Cr.P.C.') may apply to prosecution under the Prevention of Money-Laundering Act, 2002 (for short, 'the PMLA') as Section 436A has come on statute book subsequent to enactment of the PMLA. Therefore, a corresponding provision of Section 479(1) of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, 'the BNSS') will apply to prosecution under the PMLA. Section 479(1) reads thus:

"479. Maximum period for which under trial prisoner can be detained.

(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."

In the facts of the case, it is not disputed that the appellant has not been convicted for any offence in the past. Therefore, the first proviso to sub-section (1) of Section 479 of the BNSS will apply to this case as admittedly, the appellant has undergone detention for a period of more than 1/3rd of the maximum period of imprisonment provided for the

offence alleged against him.

Learned counsel appearing for the respondent no.1 prays that second proviso to sub-section (1) of Section 479 of the BNSS must be invoked and the first proviso should not be applied. He pointed out that the allegation against the appellant in the scheduled offence is of indulging in smuggling of Red Sanders.

However, it is not in dispute that the maximum sentence for the scheduled offence under Sections 132, 135(1)(a)(ii) and 135(1)(b)(ii) read with Section 140 of the Customs Act, 1862 is three years.

On facts, this is not a case where this Court should exercise powers under second proviso to sub-section (1) of Section 479 of the BNSS and deny the benefit of the first proviso.

Hence, the appeal is allowed. The appellant is ordered to enlarged on bail in terms of the first proviso of sub-Section 1 of Section 479 of the BNSS. For that purpose, we direct that the appellant shall be produced before the Special Court within a maximum period of one week from today. The Special Court shall enlarge the appellant on bail on appropriate terms and conditions till the disposal of the case. One of the conditions shall be that the appellant will remain present before the Courts hearing the case of the scheduled offence as well as the offence under the PMLA and

shall cooperate with the Courts for early disposal of the case.

Pending applications stand disposed of.

.....J.
(ABHAY S.OKA)

.....J.
(AUGUSTINE GEORGE MASIH)

NEW DELHI;
October 18, 2024.

ITEM NO.13

COURT NO.6

SECTION II-A

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

Petition for Special Leave to Appeal (Crl.) No. 10846/2024

(Arising out of impugned final judgment and order dated 19-06-2024 in CRBA No. 3135/2022 passed by the High Court of Judicature At Bombay)

BADSHAH MAJID MALIK

Petitioner(s)

VERSUS

DIRECTORATE OF ENFORCEMENT & ORS.

Respondent(s)

(IA No.177265/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.179783/2024-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 18-10-2024 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ABHAY S. OKA

HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

For Petitioner(s) Mr. Mukul Rohatgi, Sr. Adv.
Mr. Amit Khemka, Adv.
Mr. Ashwani Taneja, Adv.
Mr. Divyam Agarwal, Adv.
Ms. Ishita Farsaiya, AOR
Mr. Sandeep Dash, Adv.
Mr. Deepak Singh, Adv.
Mr. Sparsh Bhargava, Adv.
Ms. Vanshika Taneja, Adv.
Ms. Misha Rohatgi, Adv.
Mr. Keshav Sehgal, Adv.

For Respondent(s) Mr. Suryaprakash V.Raju, A.S.G.
Mr. Zoheb Hussain, Adv.
Mr. Annam Venkatesh, Adv.
Mr. Arkaj Kumar, Adv.
Mr. Animesh Upadhyay, Adv.
Mr. Arvind Kumar Sharma, AOR
Ms. Aakriti Mishra, Adv.

Mr. Aniruddha Deshmukh, Adv.
Mr. Siddharth Dharmadhikari, Adv.
Mr. Aaditya Aniruddha Pande, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order. The operative portion of the order reads thus:

"Hence, the appeal is allowed. The appellant is ordered to enlarged on bail in terms of the first proviso of sub-Section 1 of Section 479 of the BNSS. For that purpose, we direct that the appellant shall be produced before the Special Court within a maximum period of one week from today. The Special Court shall enlarge the appellant on bail on appropriate terms and conditions till the disposal of the case. One of the conditions shall be that the appellant will remain present before the Courts hearing the case of the scheduled offence as well as the offence under the PMLA and shall cooperate with the Courts for early disposal of the case."

Pending application(s), if any, shall stand disposed of.

(KAVITA PAHUJA)
ASTT. REGISTRAR-cum-PS

(AVGV RAMU)
COURT MASTER (NSH)