

Diksha Rane

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.2927/2022

ANIL VASANTRAO DESHMUKH

..APPLICANT

VS.

CENTRAL BUREAU OF INVESTIGATION
AND ANR

..RESPONDENTS

Senior Counsel Mr. Vikram Chaudhari a/w. Adv. Aniket Nikam, Adv. Inderpal Singh, Adv. Hargun Sandhu, Adv. Devyani Chemburkar, Adv. Arveen Sekhon for the applicant.

Mr. Anil Singh, ASG a/w. Mr. Ashish Chavan, Mr. Aditya Thakkar, Ms. Smita Thakur, Mr. Zishan Quazi, Mr. Manuj Borkar for the respondent no.1-CBI.

Ms. A. A. Takalkar, APP for State.

CORAM : M. S. KARNIK, J.

RESERVED ON : DECEMBER 8, 2022.

PRONOUNCED ON : DECEMBER 12, 2022.

ORDER :

1. Heard learned senior counsel for the applicant, learned Additional Solicitor General (ASG) for the respondent no.1-Central Bureau of Investigation (CBI) and learned APP for the respondent no.2-State.

2. This is an application for grant of bail to the applicant in FIR No.RC2232021A0003 registered by the respondent No.1-Central Bureau of Investigation (hereafter 'the CBI' for short) for the offences under Section 7 of the Prevention of the Corruption Act, 1988 and under Section 120-B of the Indian Penal Code, 1860 (hereafter 'the IPC' for short).

3. The applicant is 73 years of age. The CBI investigation in the instant case commenced pursuant to a preliminary enquiry which was ordered by the Division Bench of this Court by an order dated April 5, 2022. While doing so, the Division Bench had noted that the matter is quite serious and affects the administration at large. The Special Leave Petitions preferred therefrom by the applicant and the State of Maharashtra came to be dismissed by the Supreme Court by an order dated April, 8, 2021, observing that the nature of allegations, the persons involved and the seriousness of the allegations required an independent agency to enquire into the matter.

4. Pursuant to the preliminary enquiry, CBI registered the First Information Report (FIR) on April 21, 2021. Writ

Petition No.1904/2021 preferred by the petitioner for quashing the FIR was dismissed by the Division Bench by a detailed order dated July 22, 2021. Even the SLP preferred therefrom was dismissed by the Supreme Court by an order dated August 18, 2021.

5. The preliminary enquiry, *prima facie*, revealed that cognizable offence was made out wherein the applicant and unknown others attempted to obtain undue advantage for improper and dishonest performance of their public duty. The applicant and others allegedly exercised undue influence over the transfers and postings of the police officials and thereby also exercised undue influence over the performance of the official duty by the officials. Thus, a regular case under Section 7 of the Prevention of the Corruption Act, 1988 and Section 120-B of the IPC came to be registered against the applicant and unknown persons.

6. Treating the aforesaid FIR registered by the CBI as a source from which information is received and the offence alleged therein as a predicate offence, the Enforcement Directorate (ED) registered ECIR No.MBZO/1/66/2021 for

the offences punishable under Sections 4 read with 3 of the Prevention of Money-Laundering Act, 2002 (hereafter 'PMLA' for short). In PMLA offence the applicant was arrested on November 2, 2021. The trial Court refused to grant bail to the applicant. The applicant preferred Bail Application No.1021/2022 in the PMLA case in this Court. By an order dated October 4, 2022, the applicant was enlarged on bail in PMLA case.

7. So far as the offence registered by the CBI is concerned, for which the applicant has preferred this application, the applicant was arrested on April 6, 2022. The CBI has filed its charge-sheet on June 2, 2022 with respect to the issue of corruption on the basis of collecting/extorting monies from restaurants and bar owners. According to Mr. Anil Singh, learned ASG appearing for the CBI, the two other facets of corruption, that is, transfers and postings within the police and influencing the investigation, are still under investigation. The cognizance has been taken by the Special Court by an order dated June 20, 2022. The default bail application of the applicant was

dismissed by an order dated July 11, 2022. The Special CBI Court rejected the bail application preferred by the applicant on October 6, 2022.

8. Learned senior advocate for the applicant submitted that as the applicant has been granted bail in the PMLA case which originates from the CBI's case and all accusations including the effect of the statements recorded under Sections 161 and 164 of the Code of Criminal Procedure, 1973 (hereafter 'the Cr.PC' for short) have gone into mind making formation of this Court while granting bail in the said case, which order passed by this Court has been accorded imprimatur by the Hon'ble Supreme Court, the applicant deserves to be released on bail.

9. Learned senior advocate submitted that to rely on the statement of the approver (Mr. Sachin Waze) is fraught with peril and is in the teeth of the settled law that such a person is unworthy of credit unless corroborated in material particulars.

10. Learned ASG invited my attention to the order passed by this Court granting bail in the PMLA case whereunder it is

clarified that the observations made are limited to the consideration of question of grant of bail and that they shall not be construed as an expression of opinion which bears on the merits of the matter in this case (PMLA) as well as the prosecution for the predicate offences. Further, from the decision of the Supreme Court, it is pointed out that the observation in the order granting bail in PMLA case shall not affect the merits of the trial or be pressed in any other collateral proceedings. Though learned senior advocate extensively relied upon the observations of this Court while granting bail in PMLA case, I find force in the submission of learned ASG that the present application will have to be dealt with on its own merits without being influenced by the observations of this court in the PMLA bail matter.

11. According to learned ASG, the relevant statements in the charge-sheet which would bare out the involvement of the applicant in the above offences are that of Section 161 statement of Mr. Sanjay Patil (PW-24), Section 164 statement of Mr. Sachin Waze (PW-36)-approver, Section 161 statement of Mr. Gajanana Katkade (PW-27), Section

161 statement of Mr. Venkatesh Bhat (PW-28), Section 161 statement of Mr. Ramesh Manale (PW-29) and Section 161 statement of Mr. Parm Bir Singh (PW-30). Learned ASG inviting my attention to pertinent portions of the statements submitted that the evidence would evince that the applicant has committed acts of corruption. It is submitted that by an order dated June 1, 2022, Mr. Sachin Waze has been granted pardon and has turned approver. It is submitted that Mr. Sachin Waze is now a prosecution witness and that the evidence of an approver is at par with the evidence of a prosecution witness once he is granted pardon.

12. I completely agree with the submissions of learned ASG that economic offences are treated as a separate category of offences and must be viewed very seriously. The acts in the instant case are alleged to have been committed by the holder of a high public office who at the relevant time was the Home Minister of the State of Maharashtra. The allegations in the present case are undoubtedly serious.

13. Having carefully gone through the materials on record, the prosecution mainly relies on the statement of Mr. Sachin

Waze, who has been now granted pardon and has turned approver. I have to bear in mind that the evidence of an approver is at par with the evidence of prosecution witness once he is granted pardon. I must also bear in mind that it is not open for me to conduct a mini trial while considering this application for bail. The allegation is that the applicant instructed Sachin Waze to collect Rs.3 lakhs each from 1750 Orchestra Bars/Pubs/establishments in Mumbai totalling Rs.40 to Rs.50 crores approximately. Learned ASG vehemently submitted that the statements of Mr. Param Bir Singh, the Commissioner of Police, Mumbai and Mr. Sanjay Patil, ACP, Crime Branch, corroborate the allegations made by Sachin Waze that the money was to be collected at the behest of and handed over to the applicant. For the limited purpose of considering the matter from the standpoint of an application for bail, the statement of Mr. Sanjay Patil assumes relevance, which according to the prosecution corroborate the version of Mr. Sachin Waze. It is indicated by Mr. Sanjay Patil that Mr. Sachin Waze informed him that he is collecting the money for 'No.1', and when Sanjay Patil

asked Sachin Waze as to who is 'No.1', he was informed that it is 'CP, Mumbai'. The statements as they stand, even without testing its veracity, which is a subject matter of trial, creates some doubt as to whose behest the money was collected. I may hasten to add that these are very *prima facie* observations limited to considering this application for bail.

14. Learned ASG submitted that the statement of Mr. Sachin Waze was recorded under Section 164 of the Cr.PC and therefore, it carries great evidentiary value. He has stated that Rs.4,70,00,000/- was collected from the Bar owners by Mr. Sachin Waze during the period December 2020 to February 2021 and the total money was handed over to the applicant through Mr. Kundan Shinde in two installments.

15. As the charge-sheet stands, the prosecution case is mainly based on Sachin Waze's statement, who has been granted pardon and turned approver. The question of reliability of Mr. Sachin Waze's version is a matter for trial.

16. It is a matter of record that Sachin Waze was suspended for 16 years. According to him, he was promised reinstatement by the applicant. Post reinstatement, the money is collected by Sachin Waze from the Bar owners. Sachin Waze says that the money was delivered to Mr. Kundan Shinde as instructed by the applicant. For the limited purpose of considering the credentials of Sachin Waze, I have no hesitation in relying on the observations of this Court while granting bail to the applicant in the PMLA case. The tenure of Sachin Waze as a Police Officer has been controversial. He was under suspension for almost 16 years. He came to be arrested by NIA in C.R. No. 35/ 2021 for the alleged murder of a person in connection with the planting of giletin sticks in a SUV outside the house of an industrialist. He is allegedly involved in extortion cases, fake encounter case, etc.

17. Except for Mr. Sachin Waze, none of the statements recorded indicate that it was under the instructions of the applicant that the money was to be collected. It is for the trial Court to look for corroboration in material particulars

for relying on the statement of Sachin Waze, the approver. It has to be borne in mind that Mr. Sachin Waze was a suspect and accomplice who has been granted pardon and has turned approver. To prolong the custody of the applicant on the basis of these materials may not be sound. I am, therefore, inclined to exercise the discretion for grant of bail, this being one of the circumstance.

18. Though I have not taken into consideration the observations made in the PMLA bail case, the circumstance that the applicant has been granted bail in the PMLA case despite the rigour of the restrictions envisaged by the main part of sub-section (1) of Section 45 of the PMLA cannot be overlooked.

19. The applicant is 73 years old and suffering from multiple ailments which is a factor which deserves to be taken into consideration. Apart from the medical history of the applicant which is placed on record, it would be pertinent to make a note of paragraph 85 of the order of this Court in the PMLA bail case which records that the applicant has been suffering from multiple ailments and that

few of the ailments are classified as de-generative. In all fairness to the respondents, it is not the applicant's case that he is not receiving proper medical treatment while in custody. The age and the medical history of the applicant is another circumstance which falls for consideration. The medical reports/certificates show that the applicant is suffering from chronic ailments. This Court in the PMLA case has noted that in the light of the materials on record, it would be audacious to observe that the applicant is not a sick person. I have relied upon the observations for the limited extent of examining the medical condition of the applicant and as this is one of the circumstance considered by me for enlarging the applicant on bail.

20. The applicant has been in the custody of the CBI from April 6, 2022. Earlier he was in the custody of ED from November 2, 2021. The applicant is in custody for more than a year. The charge-sheet has already been filed by the CBI on June 2, 2022 with respect to the issue of corruption, the basis being collecting/extorting monies from restaurants and bar owners. The two other facets of corruption, that is,

the transfers and postings within the police and influencing investigations, according to the CBI, are still under investigation.

21. The applicant is no more the Home Minister and therefore, there is no question of his influencing the investigation. The charge-sheet in respect of the two other facets as spelt out by the CBI is yet to be filed and therefore, there is no question of the trial concluding any time soon in the near future. The CBI may proceed with the investigation but not at the cost of continued incarceration of the applicant. I also have no hesitation in relying on paragraph 88 of the order granting bail to the applicant in the PMLA case wherein it is observed that the applicant appears to have roots in society and the possibility of fleeing away from justice seems remote. The apprehension on the part of the prosecution of tampering with the evidence and threatening the witnesses can be taken care of by imposing stringent conditions.

22. I may hasten to add that since the proposition of law canvassed by learned senior advocate and learned ASG is

well settled, I have not burdened this order with the authorities which are relied upon.

23. It is made clear that I have not gone into question of non-compliance of Section 41-A of the Cr.PC which was argued by learned senior advocate for the applicant and the response thereon by learned ASG, since I am satisfied that on the grounds mentioned above, the applicant deserves to be enlarged on bail.

24. The offence with which the applicant is charged with is punishable with imprisonment upto 7 years but not with life or death. There are no criminal antecedents reported against the applicant. Having regard to the totality of the circumstances, in my opinion, the applicant can be released on bail. The application is, therefore, allowed in terms of the following order.

: ORDER :

(a) Applicant- Anil Vasantrao Deshmukh be released on bail in connection with FIR No.RC2232021A0003 registered by the CBI, on furnishing P.R. Bond in the sum of Rs.1,00,000/- with one or more sureties in the like amount.

(b) The applicant shall report to the office of the CBI on every Tuesday, between 10.00 a.m. to 12.00 noon for a period of one month from the date of his release and thereafter, the applicant shall report to the office of the CBI on every alternate Tuesday, between 10.00 a.m. and 12.00 noon, for the next three months.

(c) The applicant shall remain within the area of Greater Mumbai till the trial is concluded and shall not leave the area without permission of the competent Court.

(d) The applicant shall surrender his passport to the trial Court, if not already surrendered.

(e) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.

(f) The applicant shall co-operate with the expeditious disposal of the trial.

(g) On being released on bail, the applicant shall furnish his contact number and residential address to the office of the CBI and shall keep them updated, in case there is any change.

(h) Suffice it to observe that the observations made are for the limited purpose of considering the question of bail and shall not influence the trial Court while

considering the matter on merits.

25. The application is disposed of.

(M. S. KARNIK, J.)

Note:-

26. After the order is pronounced, learned counsel for the CBI requested that this order be made effective after 10 days from today. This request is strongly opposed by learned counsel for the applicant. However, considering the nature of the controversy, in my opinion, it would be in the interest of justice to make the order effective after a period of ten (10) days from today.

(M. S. KARNIK, J.)