

Supreme Court Of India

Justice A.M. Khanwilkar , Justice C.T. Ravikumar

The Asst. Director Enforcement Directorate v. Dr. V.C. Mohan

CRIMINAL APPEAL NO.21 OF 2022 (Arising from the SLP(Crl.) No. 8441 of 2021)

04.01.2022

(i) CrPC S. 438 - PMLA Act, S. 45 - High Court considered the matter as if it was dealing with prayer for anticipatory bail in connection with ordinary offence under the Indian Penal Code - Indeed, the offence under the PMLA Act is dependent on the predicate offence which would be under ordinary law, including provisions of Indian Penal Code - That does not mean that while considering the prayer for grant of anticipatory bail in connection with PMLA offence, the mandate of Section 45 of the PMLA Act would not come into play - It is one thing to say that Section 45 of the PMLA Act to offences under the ordinary law would not get attracted but once the prayer for anticipatory bail is made in connection with offence under the PMLA Act, the underlying principles and rigors of Section 45 of the PMLA Act must get triggered — although the application is under Section 438 of Code of Criminal Procedure.

(ii) Practice and procedure - Jurisdictional facts - Urged that the objection was never taken before the High Court as it is not reflected from the impugned judgment - It is not a question of taking objection but the duty of court to examine the jurisdictional facts including the mandate of Section 45 of the PMLA Act, which must be kept in mind.

ORDER

1. Leave granted.

2. This appeal takes exception to the judgment and order dated 25.06.2021 passed by the High Court of Telangana at Hyderabad in Criminal Petition No. 4134 of 2021, whereby the High Court granted anticipatory bail to the respondent in connection with offence concerning the Prevention of Money Laundering Act (for short 'PMLA Act') being F.No. ECIR/HYZO/20/2019/2246 bearing summons dated 11.05.2021.

3. For the nature of order that we propose to pass suffice it to observe that the High Court considered the matter as if it was dealing with prayer for anticipatory bail in connection with ordinary offence under the Indian Penal Code. Indeed, the offence under the PMLA Act is dependent on the predicate offence which would be under ordinary law, including provisions of Indian Penal Code. That does not mean that while considering the prayer for grant of anticipatory bail in connection with PMLA offence, the mandate of Section 45 of the PMLA Act would not come into play.

4. Mr. Dama Seshadri Naidu, learned senior counsel appearing for the respondent invited our attention to the dictum in paragraph 42 of the judgment in **Nikesh Tarachand Shah vs. Union of India & Anr.** reported in (2018) 11 SCC 1. The observations made therein have been misunderstood by the respondent. It is one thing to say that Section 45 of the PMLA Act to offences under the ordinary law would not get attracted but once the prayer for anticipatory bail is made in connection with offence under the PMLA Act, the underlying principles and rigors of Section 45 of the PMLA Act must get triggered — although the application is under Section 438 of Code of Criminal Procedure. As aforesaid, the High Court has not touched upon this aspect at all.
5. It is urged before us by the respondent that this objection was never taken before the High Court as it is not reflected from the impugned judgment. It is not a question of taking objection but the duty of court to examine the jurisdictional facts including the mandate of Section 45 of the PMLA Act, which must be kept in mind.
6. Accordingly, we deem it appropriate to set aside the impugned judgment and order and relegate the parties before the High Court for reconsideration of Criminal Petition No. 4134 of 2021 afresh for grant of anticipatory bail filed under Section 438 of the Code of Criminal Procedure in connection with stated PMLA offence.
7. The High Court may hear the remanded proceedings expeditiously, preferably within four weeks from the date of receipt of copy of this order. The interim protection given by the High Court to the respondent shall continue for a period of four weeks from today and to be subject to the outcome of the said remanded/restored petition, referred to above.
8. Needless to observe, the High Court will decide the remanded/restored petition on its own merits and in accordance with law.
9. The appeal(s) stands disposed of in the above terms.
10. Pending applications, if any, stand disposed of.