

HIGH COURT OF BOMBAY**Bench: M. S. Karnik****Date of Decision: 29th February 2024**

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3553 OF 2023

JAYRAM VINAYAK DESHPANDE ...APPLICANT**VERSUS****DIRECTORATE OF ENFORCEMENT****THE STATE OF MAHARASHTRA ...RESPONDENTS****Legislation:**

Section 439 of the Code of Criminal Procedure

Section 3, 4, 45 of the Prevention of Money Laundering Act, 2002 (PMLA)

Section 19, Section 15 read with Section 7 of the Environment (Protection) Act, 1986,

Subject: Bail application in connection with ECIR No. ECIR/MBZO-I/57/2022 for offences under the PMLA, arising from an environmental violation and subsequent money laundering activities.**Headnotes:**

Bail Application under Sections 439 of CrPC and 45 of PMLA – Accused, Jayram Vinayak Deshpande, former Sub-Divisional Officer, charged under PMLA for facilitating illegal land conversion and construction within Coastal Regulation Zone-III, aiding in money laundering activities. [Paras 1-4, 12.2]

Proceedings Originated from Environmental Violation – ECIR based on a complaint for violations of the Environment (Protection) Act, 1986 – Accused alleged to misuse authority, facilitating illegal land conversion and construction, leading to money laundering activities. [Paras 3, 12.2]

Accusations and Role in Money Laundering – Deshpande accused of assisting prime accused Sadanand Kadam and Anil Parab in laundering

proceeds of crime through unauthorized land development – Charged with ignoring regulations and providing illegal permissions. [Paras 4, 12.1, 12.2]

Comparison with Co-Accused's Bail – Supreme Court granted bail to co-accused Sadanand Kadam – Court considered this while deciding on Deshpande's bail, noting his lesser role in the crime compared to Kadam. [Paras 6, 12, 13]

Special Court's Observation – Special Court acknowledged Deshpande did not generate proceeds of crime but assisted in laundering – Noted that Deshpande was not a beneficiary of proceeds of crime. [Para 11]

Bail Granted – Considering observations and circumstances, including bail to co-accused, bail granted to Deshpande under stringent conditions, including bond and non-interference with witnesses or evidence. [Paras 12, 13, Order (a)-(f)]

Referred Cases: None.

Representing Advocates:

For Applicant: Mr. A.P. Mundargi, Senior Advocate with Mr. Subir Sarkar, Mr. Hrishikesh Mundargi, Ms. Paavani Chadha i/b Ms. Pravada Raut

For Respondent No.1: Mr. Ashish Chavan

For the State-Respondent No.2: Mr. B.B. Kulkarni, APP

JUDGMENT :

1. Heard Shri Mundargi, learned senior advocate appearing for the applicant and Shri Ashish Chavan, learned counsel for the respondent no.1.

2. This is an application for bail under section 439 of the Code of Criminal Procedure read with section 45 of the Prevention of Money Laundering Act, 2002 ("PMLA", for short) in connection with ECIR No. ECIR/MBZO-I/57/2022 registered with the Enforcement Directorate, Mumbai Zonal Office-1 ("ED", for short) for the offences punishable under sections 3 read with 4 of the PMLA.

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3. The applicant is the accused no.2 in the aforesaid ECIR registered by ED. The said ECIR arises out of a private complaint bearing no. 12 of 2022 dated 10/03/2022 lodged by the Ministry of Environment, Forest and Climate before the Judicial Magistrate First Class, Dapoli for violation of section 19 and section 15 read with section 7 of the Environment (Protection) Act, 1986. Section 15 read with section 7 being a scheduled offence under the PMLA, the said ECIR came to be registered. The applicant was arrested on 13/03/2023.

4. There are in all 6 accused in respect of the said ECIR. At the relevant time, the applicant was working as a Sub- Divisional Officer at Dapoli, posted since 19/11/2015. On 27/07/2017, an application was made on behalf of accused no.1- Sadanand Kadam for conversion of land into NA in respect of Gat No. 446 at Murud for approximately one acre accompanied by a proposal for construction of twin bungalows. The applicant in his capacity as Sub-Divisional Officer allowed the application on 12/09/2017 and granted NA permission. The accusation is that the applicant has misused his authority as despite the land falling within CRZ-

Urmila Ingale 902-ba-3553-23.doc III in respect of which no permission could have been granted, the applicant knowingly proceeded to grant such permission. So far as the role played by the accused no.1 and the present applicant is concerned, the same is part of PMLA complaint, the relevant portion of which reads thus :

"12.ROLE PLAYED BY THE ACCUSED & CHARGES UNDER PMLA:

12.1 Accused Sadanand Kadam acted on behalf of Anil Parab to negotiate the purchase of agricultural land admeasuring 42 Gunta located at Gut No.446, Murud Dapoli, Ratnagiri knowing very well that the said land falls within Coastal Regulation Zon-III which is No Development Zone and any new construction is strictly prohibited therein as per Coastal Regulation Zone Notification of 2011.

Further, Sadanand Kadam in connivance with Vinod Depolkar and on the instance of Shri Anil Parab filed an application for conversion of the said land into non agriculture for the purpose of construction of Twin Bungalow, under the forged signature of erstwhile owner Vibhas Sathe. Thereafter, Sadanand Kadam influenced and pressurized Revenue Department Authorities viz. Jayraz Deshpande, the then SDO, Dapoli & Sudhir

Shantaram Pardule, the then Circle officer, Dapoli, for acquiring illegal permission for conversion as well as construction over the said Agricultural Land and only after that Revenue Department authorities granted illegal permission for conversion of the said land into non agricultural and construction therein.

Sadanand Kadam on behalf Shri Anil Parab also looked after the construction of unauthorized structure and changed the construction plan to resort viz. Sai Resort NX even though the construction plan approved by Revenue Department was of Twin Bungalow. Further, Sadanand Kadam on behalf of Anil Parab had again used influence of Anil Parab, the then MLC and pressurized Suresh Shankar Tupe, Sarpanch & Anant Koli, Gram Sevak of Murud Gram Panchayat to assess & levy the tax immediately on the said unauthorized and illegal resort and to make entries in Gram Panchayat Form No.8, Urmila Ingale 902-ba-3553-23.doc therefore, tax was levied on the incomplete structure due to pressure and influence of Shri Anil Parab used by Sadanand Kadam.

Accused Sadanand Kadam has also manipulated the balance sheets and invoices in order to show expenses made for the construction of Sai Resort NX on his account and further falsified the ledger so that to justify the construction cost and hide the actual expenses made in cash by Shri Anil Parab.

In furtherance to this, when various complaints regarding the illegal construction of Sai Resort NX transpired, Accused Sadanand Kadam helped Shri Anil Parab to shift the onus and to conceal the illegalities and irregularities vis a vis construction of the said resort within CRZ-III i.e. No Development Zone, made a make-believe arrangement with Sadanand Kadam and sold the said land to him on paper, however, the fact that there was a structure over the said land was once again not brought into light in the said sale deed.

Thus, accused Sadanand Kadam by acts of using, utilizing and projecting the said property viz. Sai Resort NX (proceeds of crime), as untainted, has indulged in money laundering activities in terms of Section 3 of PMLA, 2002 and based on the investigation conducted, he was arrested on 10.03.2022 under the provisions of Section 19 of the PML Act, 2002 for his role in money laundering activities Accused Sadanand Kadam, therefore, was an active participant in the generation of proceeds of crime

and actually involved in the laundering of the said proceeds of crime as defined under Section 3 and is liable for punishment under Section 4 of PMLA, 2002.

12.2 Accused Jayram Vinayak Deshpande during his tenure as SDO, Dapoli, Ratnagiri has misused his position and directly assisted in money laundering activities of accused Sadanand Kadam which has been done on behalf of Shri Anil Parab, as defined u/s 3 of PMLA, 2002 punishable u/s 4 of PMLA, 2002. He granted illegal permission for conversion of agricultural land located at Gut No 446, Murud, Dapoli, Ratnagiri knowing very well that the said land falls within Coastal Regulation Zone-III which is No Development Zone and any new construction is strictly prohibited therein as per Coastal Regulation Zone Notification of 2011.

He had knowingly taken on record the false and Urmila Ingale 902-ba-3553-23.doc fabricated inspection report wherein his subordinate officer Sudhir Shantaram Pardule, the then Circle Officer has stated that Gram Panchayat Road is there, panchanama without details of panchas wherein Sudhir Shantaram Pardule stated there is no violation of the provisions of Coastal Regulation Zone Act. Further, Shri Jayram Deshpande also completed disregard and did not take on record, the reply from Town Planning Authorities wherein they had completely advise against the conversion of the said land into Non- Agricultural as well as construction therein as the said land fell into CRZ- III i.e. No Development Zone as per the coastal map. Further, accused Jayram Vinayak Deshpande passed illegal approval order dated. 12.09.2017 for conversion and construction of twin bungalow and later subsequent to receipt of reply from Town Planner, rather than cancelling the illegal order, did not take the said reply on record.

Thus, accused Jayram Vinayak Deshpande, directly & knowingly has indulged in generation of Proceeds of Crime in terms of section 2 (1)(u) of PMLA, 2002, r/w explanation to Section 2 (1)(v) of the Act, 2002, therefore, based on the investigation conducted, he was arrested on 13.03.2022 under the provisions of Section 19 of the PML Act, 2002 for his role in money laundering activities Accused Jayram Vinayak Deshpande, therefore was an active participant in the generation of proceeds of crime and actually involved in the laundering of the said proceeds of crime as

defined under Section 3 and is liable for punishment under Section 4 of PMLA, 2002. "

5. The applicant preferred PMLA Bail Application No. 236 of 2023 before the Special Court under the PMLA Act. By an order dated 26/10/2023, the application for bail was rejected by the Special Court.

6. At this stage, it is pertinent to note that the co-accused no.1 had preferred Bail Application No. 3233 of 2023 in this Court. By an order dated 06/12/2023, the Urmila Ingale 902-ba-3553-23.doc application for bail came to be rejected by this Court. The order dated 06/12/2023 was challenged before the Supreme Court by way of Criminal Appeal No. 815 of 2024. The Supreme Court by order dated 12/02/2024 allowed the appeal and thereby enlarged the co-accused no.1 on bail. According to me, the fate of this application depends much on the order dated 12/02/2024 and hence, the same is reproduced which reads thus :

"Leave granted.

Heard the learned counsel senior counsel appearing for the appellant and the learned ASG appearing for the first respondent/Directorate of Enforcement. The present appellant has been arrested on 10th March, 2023 in connection with the offence punishable under Section 3 of the Prevention of Money-Laundering Act, 2002 (for short, "the PMLA").

After the submissions are heard, the learned ASG has fairly left it to the Court to decide the prayer for grant of bail to the appellant.

Even otherwise, we find that the appellant is entitled to be enlarged on bail in accordance with Section 45(1)(ii) of the PMLA on appropriate terms and conditions, till the disposal of the complaint case filed by the first respondent/Directorate of Enforcement under the PMLA. In view of the fair stand taken by the learned ASG, we are not recording detailed reasons.

For that purpose, we direct that the appellant shall be produced before the Special Court within a period of one week from today. The Special Court shall enlarge the appellant on bail on appropriate

terms and conditions, till the trial of the complaint case concludes.
The Appeal is, accordingly, allowed."

(emphasis supplied by me)

7. So far as the present applicant is concerned, it would Urmila Ingale 902-ba-3553-23.doc be material to refer to the stand of the ED before the Sessions Court and observations made by the Special Court while rejecting the bail application preferred by the present applicant. In paragraph 45 which has a material bearing for a decision on this application, the Special Court observed thus:

"Admittedly, role of the applicant (A2) is not of generating proceeds of crime as defined under Sec.2(1)(u) and laundering the same as per Sec.3 of the PML Act. Even it is not contention of the ED that the applicant (A2) is beneficiary of POC or recipient thereof. Even ED's contention is clear that the applicant (A2) has not laundered the POC. Paragraph 12.2 of the Prosecution Complaint has clear mention that during his tenure as SDO, Dapoli, the applicant (A2) misused his position and directly assisted in money-laundering activities of accused Sadanand Kadam (A1). So, the role attributed to the applicant. (A2) is that he had knowingly assisted' the process of money-laundering."

8. Learned Senior Advocate Shri Mundargi submitted that in the light of the order passed by the Supreme Court in respect of the accused no.1 and having regard to the observations of the Special Court in paragraph 45 of the bail application preferred by this applicant, the applicant deserves to be enlarged on bail as the role of this applicant is much lesser compared to that of the accused no.1.
9. Learned counsel Shri Chavan appearing for the Urmila Ingale 902-ba-3553-23.doc respondent was at pains to support the order passed by the trial Court. It is submitted that the applicant granted illegal permission for conversion of agricultural land to non- agricultural land though he was fully aware that the land fell within Coastal Regulation Zone-III, where any new construction is strictly prohibited as per the Coastal Regulation Zone Notification of 2011. It is then submitted that the applicant knowingly took on record a false and fabricated inspection report dated 31/07/2017 prepared by his subordinate officer, Sudhir Shantaram Pardule, Circle

Officer. The report falsely stated that there was no violation of the provisions of the Coastal Regulation Zone Act. It is then submitted that the applicant deliberately with malafide intentions ignored the reply dated 12/10/2017 from Town Planning Authorities who opined against the conversion of the land into non-agricultural use and construction thereon due to its location within CRZ-III. Learned counsel submitted that the applicant passed an illegal approval order on 12/09/2017 for the conversion and construction of twin bungalows despite being aware of the illegalities. It is pointed out that upon receipt of the reply from the Town Urmila Ingale 902-ba-3553-23.doc Planner advising against the conversion, he failed to cancel the illegal order or take the reply into account. My attention is then invited to the statements under section 50 of the PMLA, 2002, where the applicant admits the acts of commission and omission due to the pressure and influence from Anil Parab. My attention is also invited to the statements of Sudhir Pardule, the then Circle Officer and statement of Shankar Koravi, the then Nayab Tahsildar. Shri Chavan emphasized that the applicant was an active participant in the generation of proceeds of crime and involved in the laundering of said proceeds, as defined under section 3 of PMLA, making him liable for punishment under section 4 of the PMLA Act. Shri Chavan submitted that though the accused no.1 has been enlarged on bail by the Supreme Court, however, considerations for enlarging the present applicant are fundamentally different as the role played by the applicant is completely different from the accused no.1. It is submitted that not only the applicant has misused his authority but is also being proceeded against with under the Prevention of Corruption Act. It is submitted that merely because the accused no.1 has been enlarged Urmila Ingale 902-ba-3553-23.doc on bail is no reason to grant the applicant bail having regard to the serious nature of the accusations against him and the role played as an active participant not only in the generation of proceeds of crime but due to his involvement in the laundering of the said proceeds

10. Heard learned counsel.

11. The allegations and the role played by the applicant, that by the co-accused no.1 is elaborated in the earlier part of this order. The relevant observations of the Special Court while rejecting the application for bail of the applicant are reproduced hereinbefore. The Special Court in paragraph 45 has observed that the role of the applicant is not of

generating proceeds of crime as defined under section 2(1) (u) and laundering the same as per section 3 of the PML Act. It is further observed that it is not even the contention of ED that the applicant is beneficiary of proceeds of crime or recipient thereof. The Special Court recorded the contention that the applicant has not laundered the proceeds of crime. The Special Court then referred to paragraph 12.2 of the prosecution complaint where it is mentioned that during the applicant's tenure as Sub-Divisional Officer, Dapoli, the Urmila Ingale 902-ba-3553-23.doc applicant misused his position and directly assisted in money laundering activities of accused Sadanand Kadam. In this context, it is important to note the observation of the trial Court that the role attributed to the applicant is that he had 'knowingly assisted' the process of money laundering.

12. In the light of the observations of the Special Court, it is significant to note the observations of the Hon'ble Supreme Court while enlarging the accused no.1 on bail which is already reproduced hereinbefore. Section 45 of PMLA provides that no person, accused of an offence under this Act shall be released on bail unless twin conditions mentioned therein are satisfied. A reading of the order passed by the Supreme Court in respect of the accused no.1 makes it clear that Their Lordships held accused no.1- Sadanand Kadam entitled to be enlarged on bail in accordance with section 45(1)(ii) of the PMLA on appropriate terms and conditions, till the disposal of the complaint case filed by the ED under the PMLA. Further, the Supreme Court has in no uncertain terms observed that in view of the fair stand taken by the learned ASG, detailed reasons are not recorded. In view of the order enlarging the accused no.1 Urmila Ingale 902-ba-3553-23.doc on bail by the Supreme Court, the observations of the Special Court in paragraph 45 of its order assume significance. The Special Court observed that the role attributed to the applicant is that he had 'knowingly assisted' the accused no.1 in the process of money laundering. The co-accused no.1 is the prime accused. The role of the present applicant is much lesser compared to the accused no.1 against whom the allegations are of money laundering and generating proceeds of crime. The Special Court having observed that the role of the applicant is not of generating proceeds of crime as defined under section 2(1) (u) and laundering the same as per section 3 of the PMLA, I have no hesitation whatsoever in allowing the present application.

13. Learned counsel Shri Chavan submitted that it is the stand of the ED before the Special Court that the applicant is also responsible for generating proceeds of crime and money laundering. This submission was dealt with by the Special Court. The submission is in the teeth of the observations of the Special Court in paragraph 45 of the order. I have therefore not dealt with the other contentions Urmila Ingale 902-ba-3553-23.doc of Shri Mundargi, learned senior advocate and Shri Chavan as I am more than satisfied that as the co-accused no.1 who is the prime accused having been enlarged on bail by the Supreme Court in accordance with section 45(1)(ii) of the PMLA, even the present applicant can be enlarged on bail. Hence, the following order.

ORDER

- (a) The bail application is allowed.
 - (b) The applicant - Jayram Vinayak Deshpande be released on bail in respect of ECIR/MBZO-I/57/2022 (PMLA Special Case No. 634 of 2023) on his furnishing P.R. Bond of Rs.1,00,000/- (Rs. One Lakh) with one or more sureties in the like amount.
 - (c) Until the applicant- Jayram Vinayak Deshpande furnishes surety, he be released on cash security of Rs. 1 lakh along with PR bond as directed above.
 - (d) The applicant shall undertake not to leave India without prior permission of the Court and also deposit his passport with the Registrar(S) of the trial Court.
 - (e) The applicant shall undertake not to pressurize the prosecution witnesses, tamper with the evidence and co-operate further with the investigation of the ED pertaining Urmila Ingale 902-ba-3553-23.doc to this ECIR.
 - (f) The applicant shall attend each and every date of the trial of this case unless his personal appearance is exempted.
14. Learned counsel Shri Chavan at this stage prayed that operation of this order be stayed for a reasonable period. The request is rejected.
15. The bail application is disposed of.

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