



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

CRIMINAL WRIT PETITION (STAMP) NO. 15417 OF 2023

Ram Kotumal Issrani,
Aged about 64 years,
S/o Kotumal Teoman Issrani,
R/o. Plot No. 15, Survey No. 98,
Village Galpadar, Gandhidham,
Gujrat – 370 201
[Currently in judicial custody at
Arthur Road Jail]

... Petitioner

Versus

1. Directorate of Enforcement,
through Assistant Director,
Enforcement Directorate,
Headquarters Investigation,
Unit-II, B-Block, Pravartan Bhawan,
New Delhi – 110 011

Also at

4th Floor, Kaiser-I-Hind,
Ballard Estate, Fort, Mumbai-400 001

2. State of Maharashtra,
Through Public Prosecutor,
High Court, Bombay

... Respondents

Mr. Vijay Aggarwal a/w Mr. Ayush Jindal, Mr. Yash Wardhan Tiwari, Mr. Yash Agrawal, Mr. Suyash Shanker and Mr. Karan Lala for the Applicant

Mr. H. S. Venegavkar, P. P. a/w Mr. Ayush Kedia for the Respondent No.1-ED

Mr. R. M. Pethe, A.P.P for the Respondent No. 2-State

**CORAM : REVATI MOHITE DERE &
MANJUSHA DESHPANDE, JJ.**

RESERVED ON : 6th MARCH 2024

PRONOUNCED ON : 15th APRIL 2024

JUDGMENT (Per Revati Mohite Dere, J.) :

1 By this petition preferred under Article 226 of the Constitution of India, the petitioner seeks the following substantive relief :

“i. Pass necessary orders and directions thereby declaring the arrest to be illegal and quashing the order granting remand, dated 08.08.2023 passed by the Ld. Special PMLA Court Mumbai, Maharashtra in the matter titled "Assistant Director, Directorate of Enforcement vs Shri Ram Kotumal Issrani" in PMLA RA No. 995/2023, and all other consequential proceedings arising therefrom and thereby declaring the arrest and remand of the Petitioner as illegal and thereby releasing the Petitioner forthwith as the same is passed in violation of Constitutional mandate as enshrined in Article 22(2) of the Constitution of India and Section 19 of PMLA.”

2 Mr. Aggarwal, learned counsel for the petitioner submitted that the petitioner's arrest and consequential remand was illegal and as such, the petitioner be released forthwith. According to Mr. Aggarwal, the petitioner not having been produced before the learned Special Court within 24 hours of his arrest as mandated in law, makes the petitioner's arrest illegal.

3 Mr. Aggarwal relied on the following dates :

DATE		EVENTS
03.08.2023	-	The 4 th summons was issued to the petitioner by the respondent-ED to join investigation on 07.08.2023 at 10:30 a.m.
07.08.2023	-	The petitioner joined the investigation at 10:30 a.m. According to the petitioner, his personal liberty was curtailed and his movements restricted, inasmuch as, his mobile phone was seized by the respondent-ED at 10:30 a.m; and at all times since the petitioner entered the respondent-ED Office, the petitioner was

		surrounded by officers and the petitioner was not permitted to talk to anyone and that even when he used the washroom, the ED Officers accompanied him, thus showing that the petitioner's liberty was curtailed.
07.08.2023-08.08.2023	-	Respondent-ED interrogated the petitioner the whole night despite the petitioner being medically unfit and was kept awake for 20 hours and was not allowed to sleep, despite the petitioner having joined investigation on three previous occasions where his statement under Section 50 of the PMLA was recorded on every occasion. Thus, according to the learned counsel for the petitioner, it was in clear violation of the petitioner's fundamental right 'Right to Sleep', which forms part of his right to life, enshrined under Article 21 of the Constitution of India.
08.08.2023 at 5:30 a.m.	-	The petitioner was shown formally arrested on the said date and time.
08.08.2023 5:30 a.m-5:00 p.m.	-	The petitioner was not produced before the nearest Magistrate / nearest Spl. PMLA Court, New Delhi and nor any transit remand was sought from the nearest PMLA Court, New Delhi and instead, the petitioner was brought to Mumbai by a flight and was taken to the office of the ED at Mumbai. This, according to the learned counsel for the petitioner, was in violation of Article 22(3) of the Constitution of India which provides for accused to be produced before the nearest Magistrate.

08.08.2023 at 5:00 p.m.	-	<p>Petitioner was produced before the learned Special Judge, PMLA Court, Mumbai at 5:00 p.m. on 08.08.2023, wherein the respondent-ED sought transit remand of the petitioner on the ground that the petitioner was non-cooperative. It appears that the respondent-ED did not press for transit remand to take the petitioner to Gujarat and instead, the petitioner was remanded to the respondent-ED's custody.</p> <p>According to the learned counsel for the petitioner, the period of 24 hours from 07.08.2023 at 10:30 a.m. i.e. from the time when the petitioner was taken into custody by the respondent-ED and his liberty was curtailed, expired on 08.08.2023 at 10:30 a.m, since the petitioner was not produced before the nearest Magistrate, even excluding the travel time. This, according to the learned counsel for the petitioner, was in violation of Article 22(2) of the Constitution of India.</p>

4 Mr. Aggarwal submitted that although the petitioner objected to his remand, since his arrest was illegal, before the learned Special Judge and also pleaded that he was not produced within 24 hours from the time of his arrest, the learned Special Judge failed to consider the same and accordingly, allowed the

remand application filed by the respondent-Enforcement Directorate (‘ED’) and remanded the petitioner to custody till 10.08.2023. Learned counsel for the petitioner submitted that the learned Special Judge failed to consider the judgment of the Apex Court in the case of *V. Senthil Balaji vs. State Represented by Deputy Director & Ors.*¹.

5 Per contra, Mr. Venegavkar, learned P.P submitted that there was no illegality in the arrest of the petitioner and that the petitioner was produced before the Court of competent jurisdiction well within 24 hours as mandated in law. According to Mr. Venegavkar, the time-line of events leading to the arrest and production of the petitioner is as under :

DATE	TIME	EVENTS
07.08.2023	11:00 am	Petitioner enters the premises of the ED, Delhi.
		Intervening period-accused was at the ED Office and no restriction on his movement

1 2023 SCC OnLine SC 934

07.08.2023	10:00 pm	Accused taken into investigation room
08.08.2023	03:30 am	Questioning of the accused got over
08.08.2023	05:30 am	Petitioner was arrested by the ED
08.08.2023	07:00 am	Petitioner and ED Officer left for the airport
08.08.2023	10:00 am	Flight takes off from Delhi
08.08.2023	12:15 pm	Flight lands in Mumbai Airport
08.08.2023	02:00 pm	Petitioner and ED Officer arrive at the ED Office in Mumbai
08.08.2023	05:15 pm	Accused was produced before the Ld. Special Court
08.08.2023	05:50 pm	Matter is taken up by the Court

6 Mr. Venegavkar submitted that the calculation of 24 hours period would have to be computed from 5:30 a.m. on 08.08.2023 i.e. at the time of arrest till the petitioner was produced before the learned Special Judge on 08.08.2023 at 5:00 p.m. According to Mr. Venegavkar, the submission of the

learned counsel for the petitioner that the period would have to be computed from the time the petitioner entered the office of the ED i.e. on 07.08.2023 at 11:00 a.m, is far-fetched, inasmuch as, the petitioner was not detained at any point of time by the respondent-ED and the petitioner was allowed to move freely. He submitted that the respondent-ED was interrogating two other co-accused in the said case, prior to recording of the statement of the petitioner and as such, by no stretch of imagination, can it be said that the petitioner was detained from the time he arrived in the office of the respondent-ED. Mr. Venegavkar relied on the definition of the term 'investigation' as defined under Section 2(1)(na) and Section 50 of the Prevention of Money Laundering Act ('PMLA Act'), in particular, Section 50(2) which shows that the person so summoned under Section 50 are not accused persons, but can be "any person" including witnesses or any other person who is associated or has knowledge about the offence under investigation. He submitted that the stage at which an individual

is called pursuant to the summons under section 50, does not make the person an accused and that it is under section 19 of the PMLA which empowers the investigating officer to arrest an individual against whom material is collected as contemplated under Section 2(1)(na), after following the process under Section 50 of the PMLA. He submitted that the petitioner attended the Office of the ED under a lawful summons and that merely because the petitioner was asked to wait in the office of the ED , does not mean that he was in the custody of the ED, as contemplated under Section 19 of the PMLA. Mr Venegavkar further submitted that thus, the petitioner when he entered the office of the ED under Section 50, was not an accused and as such, became an accused only when his arrest was effected. In this connection, Mr. Venegavkar placed reliance on the judgment of *Vijay Madanlal Choudhary v. Union of India*² and *Vakamulla Chandrashekhhar v. Enforcement Directorate*³.

2 2022 SCC OnLine SC 929

3 2017 SCC OnLine Del. 12905

7 Mr. Venegavkar further submitted that even otherwise, if the contention of the petitioner that the petitioner was not produced within 24 hours from 11:00 a.m on 07.08.2023 as contemplated under Section 167 Cr.P.C, is taken into consideration, even then, the petitioner was produced well within time before the learned Special Court, taking into consideration that the period of travel would have to be excluded, i.e. the travel period from Delhi to Mumbai as contemplated under Section 167 Cr.P.C.

8 As far as the submission that the petitioner was not produced before the nearest Magistrate is concerned, according to Mr. Venegavkar, the said submission is flawed, inasmuch as, the term 'nearest Magistrate' used in Section 167 Cr.P.C needs to be read in a situation, where it is not possible for the investigating agency to take the arrestee before the jurisdictional Magistrate within 24 hours and it is in these circumstances that transit remand is sought before the jurisdictional Magistrate.

9 Mr. Venegavkar submitted that the PMLA being a special statute, Section 19 deals with production of an arrestee before a Special Court or before a jurisdictional Magistrate. He submitted that even if the time to travel is excluded from Delhi to Mumbai, i.e. travel time of about 8 hours is excluded, the petitioner was produced within 23 hours i.e. well within the stipulated period of 24 hours. Thus, according to the learned Spl. P.P, there is no merit in the petition and as such, the petition is liable to be dismissed.

10 Perused the petition. It appears that the petitioner entered the Office of the ED, pursuant to the summons under Section 50 of the PMLA on 07.08.2023 at 11:00 a.m. It is not in dispute, that this was the 4th summons issued to the petitioner for recording of his statement. It is also not in dispute, that in addition to the petitioner, two more persons were summoned on the very same day i.e. on 07.08.2023. It appears that as is the

practice, when a person enters the Office of the ED, his/her mobile phone is kept with the security and as such the petitioner's phone was kept with the security. It appears that the statements of two persons who were summoned, were recorded prior to the recording of the petitioner and as such, the recording of the petitioner's statement started at 10:30 p.m. It appears that the petitioner was taken to the investigation room at 10:00 p.m on 07.08.2023, pursuant to which, recording of his statement started at 10:30 p.m. and at around 3:30 a.m, petitioner's questioning was over i.e. recording of his statement, after which, the petitioner was arrested by the ED on 08.08.2023 at 5:30 a.m. It is not in dispute that the petitioner and the ED Officer left for the airport on 08.08.2023 at 7:00 a.m from the office of the ED situated at Delhi; that the flight took-off at 10:00 a.m on 08.08.2023; that the flight landed in Mumbai airport at 12:15 p.m on 08.08.2023; and at 2:00 p.m, the petitioner and the ED Officer arrived at the Office of the ED in Mumbai. It is also not in dispute that at about 5:00 p.m, the petitioner was produced

before the learned Special Judge, PMLA and the matter was taken up by the Court at around 5:15 p.m.

11 Having regard to the time-line and the facts, we are of the opinion that the time when the petitioner entered the Office of the ED, pursuant to summons under Section 50 of the PMLA, the petitioner was not kept in confinement, much less, detained. It is not in dispute that when Section 50 summons was issued, the petitioner was not an accused, inasmuch as, Section 50(2) of the PMLA clearly states that the Director, Additional Director, Joint Director, Deputy Director or Assistant Director shall have the power to summon “any person” whose attendance is considered necessary, whether to give evidence or to produce any records during the course of any investigation or proceeding under the Act. It is Section 19 of the PMLA which gives power to the Investigating Officer to arrest an individual against whom material is collected as contemplated under Section 2(1)(na), after following the process contemplated under Section 50 of the

PMLA. Thus, the petitioner became an accused only when he was arrested under Section 19 of the PMLA, after the authority on the basis of material in his possession had reason to believe that the petitioner was guilty of the offence. Thus, when the petitioner came to the ED office under a summons under Section 50 of the PMLA, the petitioner was not an accused. Thus, if the said time-line is considered the petitioner was produced well within 24 hours of his arrest before the Special Court.

12 Even for the sake of argument, if we consider that the petitioner was detained from 07.08.2023 at 11:00 a.m, and was produced before the learned Special Judge at 5:00 p.m on 08.08.2023, and exclude the period of travel i.e. from 7:00 a.m to 2:00 p.m, the petitioner was still produced before the learned Judge, well within 24 hours, as mandated in law.

13 As far as producing the petitioner before the nearest Magistrate is concerned under Section 167 Cr.PC, the term

`nearest Magistrate' used in Section 167 has to be considered where it is not possible for the investigating agency to take the arrestee before the jurisdictional Magistrate within 24 hours. It is for this purpose, that the term `nearest Magistrate' is used in Section 167 so as to enable the investigating agency to seek transit remand, and, thereafter produce the arrestee before the jurisdictional Magistrate. In a case, where the arrestee can safely be produced before the jurisdictional Magistrate within 24 hours, then, there is no necessity of taking him first before the nearest Magistrate and then before the jurisdictional Magistrate. Thus, we do not agree with the submission of Mr. Aggarwal that the petitioner ought to have been produced before the nearest Magistrate before being brought to Mumbai. Thus, there is no merit in the allegations that the petitioner was not produced within 24 hours before the jurisdictional Court and as such, the petitioner's arrest cannot be termed as `illegal'.

14 Thus, we hold that the petitioner was produced

before the Special Court well within 24 hours as stated herein-above and as such, do not find any illegality in the arrest of the petitioner and as such, the petition being devoid of merit, is dismissed.

15 Before we part, we deem it appropriate to make certain observations with respect to the manner in which the petitioner was kept overnight for recording of his statement, whether voluntarily or otherwise. According to the petitioner, he was made to wait in the office of the ED and that his statement was recorded from 10:30 p.m till 3:00 a.m, thereby depriving him of his right to sleep, as guaranteed under Article 21 of the Constitution. Mr. Aggarwal submitted that the petitioner is aged about 64 years, having medical issues and as such, there was no tearing hurry for the ED to record the statement of the petitioner post mid-night and the petitioner could have well been summoned on the next date or even a few days thereafter. When we questioned Mr. Venegavkar with respect to why the statement

was recorded so belatedly, post midnight, he submitted that the petitioner had no objection to the recording of his statement belatedly and hence, the same was recorded.

16 Voluntary or otherwise, we deprecate the manner in which the petitioner's statement was recorded so late in the night which went on post midnight, till 3:30 a.m. It is pertinent to note and as contended by the learned Spl. P.P, when a person is summoned under Section 50 of the PMLA, the person is 'not an accused', and that the said person could well be a witness or a person who is associated or has knowledge about the offence being investigated. True and hence, at this juncture, it would be apposite to reproduce S. 50 of the PMLA, which reads thus:

“(1) The Director shall, for the purposes of section 13, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:--

(a) discovery and inspection;

- (b) enforcing the attendance of any person, including any officer of a 1[reporting entity] and examining him on oath;*
- (c) compelling the production of records;*
- (d) receiving evidence on affidavits;*
- (e) issuing commissions for examination of witnesses and documents; and*
- (f) any other matter which may be prescribed.*

(2) The Director, Additional Director, Joint Director, Deputy Director or Assistant Director shall have power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this Act.

(3) All the persons so summoned shall be bound to attend in person or through authorised agents, as such officer may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.

(4) Every proceeding under sub-sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860).

(5) Subject to any rules made in this behalf by the Central Government, any officer referred to in sub-

section (2) may impound and retain in his custody for such period, as he thinks fit, any records produced before him in any proceedings under this Act:

Provided that an Assistant Director or a Deputy Director shall not--

(a) impound any records without recording his reasons for so doing; or

(b) retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the Joint Director.”

(emphasis supplied)

17 From a perusal of Section 50, it is evident that summons are issued under Section 50(2) by the Director, Additional Director, Joint Director, Deputy Director or Assistant Director to ‘any person’ whose attendance they consider necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this Act. Section 50(3) of the PMLA provides that all such summoned persons shall be bound to attend in person or through an authorised officer. It is pertinent to note that Section 50(4) of

PMLA provides that proceedings under sub-Section (2) and (3) shall be deemed to be a '*judicial proceeding*' with the meaning of Section 193 and Section 228 of the Penal Code, 1860.

18 Thus, statements recorded under Section 50(2) of the PMLA are not statements recorded under Section 161 of the Cr.P.C; and infact, are treated as evidence. It is also pertinent to note, that the ED officers are not police officers, inasmuch as, the said proceeding before the officers is a judicial proceeding, as evident from Section 50(4) and as held in *Vijay Madanlal Choudhary (Supra)*. Therefore, it can be gauged from the scheme of the statute that investigation under the PMLA stands on a different footing from an investigation under the Cr.P.C, inasmuch as, the statements given under Section 50(2) and (3) of the PMLA are required to be signed and the proceeding under sub-sections (2) and (3) of Section 50 are deemed to be judicial proceedings within the meaning of Sections 193 and 228 of the IPC.

19 Thus, a person summoned under Section 50 of the PMLA, should have his statement necessarily recorded during earthly hours, as the investigating agency is yet to arrive at a `reason to believe' that the said person is guilty of an offence punishable under this Act. The `right to sleep' / `right to blink' is a basic human requirement, inasmuch as, non-providing of the same, violates a person's human rights. It affects a person's health, may impair his mental faculties, cognitive skills and so on. The said person, so summoned, cannot be deprived of his basic human right i.e. right to sleep, by the agency, beyond a reasonable time. Statements must necessarily be recorded during earthly hours and not in the night when the person's cognitive skills may be impaired. It is pertinent to note that Apex Court in the case of *Ramlila Maidan Incident v. Home Secretary, Union of India*⁴, has in para 327 observed as under :

“327. An individual is entitled to sleep as comfortably and as freely as he breathes. Sleep is essential for a human being

4 (2012) 5 SCC 1

to maintain the delicate balance of health necessary for its very existence and survival. Sleep is, therefore, a fundamental and basic requirement without which the existence of life itself would be in peril. To disturb sleep, therefore, would amount to torture which is now accepted as a violation of human right. It would be similar to a third degree method which at times is sought to be justified as a necessary police action to extract the truth out of an accused involved in heinous and cold-blooded crimes. It is also a device adopted during warfare where prisoners of war and those involved in espionage are subjected to treatments depriving them of normal sleep.”

20 In the facts, it is not as if the petitioner, aged 64 years had not reported to the Office of the ED on 3 earlier occasions, post the summons issued under Section 50 of the PMLA. This was the 4th summons which was issued to the petitioner. On all the earlier occasions, his statements were recorded and as such, the petitioner could have well been summoned on some other day or even on the next day, instead of keeping him waiting post midnight, despite his alleged consent. Consent is immaterial. Recording of statement, at unearthly hours, definitely results in deprivation of a person's sleep, a basic human right of an individual. We disapprove this practice. Thus, we deem it

appropriate to direct the ED to issue a circular/directions, as to the timings, for recording of statements, when summons under Section 50 of the PMLA are issued, having regard to what is observed by us hereinabove.

21 Accordingly, the petition stands dismissed with the aforesaid observations. To be listed on **9th September 2024** for recording compliance of the directions issued by this Court to the ED in para 20 above.

22 All concerned to act on the authenticated copy of this judgment.

MANJUSHA DESHPANDE, J.

REVATI MOHITE DERE, J.