

IN THE COURT OF SESSION FOR GR.BOMBAY AT  
BOMBAY

ORDER BELOW EXH. 23  
IN  
PMLA SPL. CASE NO. 518/2022

**Bharat Shah**

S/o Vanmalidas Tribhovandas Shah  
R/o : B/501, Udaygiri, Ashok Nagar,  
Kandivali (E), Mumbai – 400 101.

..Applicant

Versus

**Directorate of Enforcement**

(ECIR/HIU-1/01/2022

..Respondent

**Appearance:**

Mr. Aniket Nikam @ Prem Kumar Pandey,  
Ld. Advs. for applicant.  
Mr.Sunil Gonsalves, Ld. Spl. P.P.

**CORAM** : M. G. DESHPANDE,  
SPECIAL JUDGE UNDER PML ACT,  
(C.R.No.16)

**DATE** : June 16, 2022.

**ORDER**

1. Applicant Mr. Bharat Vanmalidas Shah is accused no.9 in this case seeking his release as per Sec. 88 Cr.P.C. Complainant ED, vide their say, strongly opposed the application vide say (Exh.24) alleging involvement of the applicant in money laundering and contended to reject the application as offence is serious.

2. Heard Ld. Adv. Mr. Prem Kumar Pandey for the applicant and Ld. SPP Mr. Sunil Gonsalves at length. Following points arise for my determination. I am recording

following findings thereon for the reasons discussed below.

	<b>POINTS</b>	<b>FINDINGS</b>
1.	Whether applicant is likely to appear in this Court for trial and deserves to be released as per Sec. 88 Cr.P.C. ?	Yes
2.	What Order ?	Application is allowed.

**REASONS**

**POINT NO. 1 :**

3. Applicant contended that many times he appeared before complainant/ED and co-operated the investigation. Complainant ED had never sought his custody nor arrested him. In future he would scrupulously appear in the Court for trial.

**GROUND ON WHICH THE ED RESISTED THE APPLICATION :**

- a. The role of accused is specified in paragraphs 59 to 61 of the complaint. He has major role as he is the Chartered Accountant, who in collusion with Nihal Garware has been providing accommodation entries in form of arranging cheques in lieu of cash and vice-versa.
- b. He was well aware of bogus transactions and was earning commission @ 3 % of total amount of consideration.
- c. He was the person who knowingly indulged in the process related to Proceeds Of Crime and assisted Nihal Galvare in money laundering and to conceal the actual proceeds of crime.
- d. There are likely chances that he may abscond and influence the witnesses.

- e. The offence of money laundering is a serious Economic offence which is a class apart and Economic offenders have to be viewed with a heavy hand.

These are the grounds, ED opposed the application and contended to reject.

4. I carefully examined the objections of ED. Admittedly, the applicant has scrupulously joined investigation. He was not arrested under Sec. 19 of the PML Act. Nothing reflects from the say of ED that the applicant had not co-operated the investigation. Accused, responding the direction in the summons, appeared today. Recently the Hon'ble Supreme Court on 16.12.2021 laid down further guidelines **clarifying the previous guidelines dt.07.10.2021 in Satender Kumar Antil Vs. Central Bureau of Investigation & Anr., (in Miscellaneous Application No.1849/2021 in SLP(Crl) No.5191/2021)**, and further clearly laid down as follows,

**“We make it clear that our intent was to ease the process of bail and not to restrict it. The order, in no way, imposes any additional fetters but is in furtherance of the line of judicial thinking to enlarge the scope of bail.**

**At this stage, suffice for us to say that while referring category 'C', inadvertently, Section 45 of Prevention of Money Laundering Act (PMLA) has been mentioned which has been struck down by this Court. Learned ASG states that an amendment was made and that is pending challenge before this Court before a different bench. That would be**

**a matter to be considered by that Bench.”**

The Hon'ble Supreme Court further held that,  
**“We may also clarify that if during the course of investigation, there has been no cause to arrest the accused, merely because a chargesheet is filed, would not be an ipso factor cause to arrest the petitioner, an aspect in general clarified by us in Criminal Appeal No.838/2021 Siddharth v. State of Uttar Pradesh & Anr., dt.16.08.2021.**

5. Admittedly, there is nothing before the Court to show that after co-operating ED, the applicant has ever tried to tamper with the evidence, tried to vanish material documentary evidence and influenced material ED witnesses. All materials are already documented with the complaint. It has to be noted that, ED themselves had never such apprehensions as contended in their say, when they opted not to arrest the applicant during the course of the investigation. Nothing to indicate that ED ever perceived objectionable conduct of the applicant ever since they relieved him from the process of investigation, till date. This is also one of the aspects of merits.

6 In my opinion once the accused has appeared before the Court responding summons and prayed for release under Sec.88 Cr.P.C., it is for the Court to decide whether the applicant will attend the Court for the trial. I strongly feel that applicant who had cooperated the investigation, will certainly cooperate the trial by attending it scrupulously. He was not arrested under Sec.19 of PML Act. Therefore question of application of Sec.45 of PML Act does not arise. There is no

point in keeping him behind bars for uncertain period by taking him in judicial custody, when ED had never thought to arrest him for the grounds mentioned in their say. No one is sure when the trial will begin and conclude. In this background taking him in judicial custody by rejecting the present application is not justified. Hence, Point No.1 is answered in the affirmative and following order is passed :-

**ORDER**

1. Application (Exh.23) is allowed.
2. Applicant **Bharat Shah (A9)** be released under Sec.88 Cr.P.C. on his executing PR bond of Rs.2,00,000/- with surety bond of like amount, on following conditions,
  - i. In future, the applicant shall attend each and every date of the trial scrupulously.
  - ii. The applicant shall undertake not to tamper with the evidence of ED and not to pressurize the witnesses of ED.
  - iii. The applicant shall undertake not to travel abroad without permission of the Court.
3. The applicant be released on provisional cash security of Rs.2,00,000/- with PR bond on condition to furnish surety within four weeks.

Dt.: 16.06.2022

( M.G. Deshpande )  
Spl. Judge  
under PML Act,  
City Sessions Court, Mumbai.

Signed on : 16.06.2022

**“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER”**

<b>16.06.2022 at 5.30 pm.</b> <b>UPLOAD DATE AND TIME</b>	<b>( Mrs. S.W. Tuscano)</b> <b>NAME OF STENOGRAPHER</b>
<b>Name of the Judge</b>	<b>HHJ M. G. DESHPANDE</b> <b>(COURT ROOM NO.16)</b>
<b>Date of pronouncement of judgment/order</b>	<b>16.06.2022</b>
<b>Judgment/order signed by P.O. on</b>	<b>16.06.2022</b>
<b>Judgment/order uploaded on</b>	<b>16.06.2022</b>