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Supreme Court limits ED's power to arrest PMLA accused

The Supreme Court said when an accused appears before a court in pursuance of a summons, the agency will have to apply to the court concerned to get his custody

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THE HINDU BUREAU



A view of Supreme Court of India in New Delhi. File | Photo Credit: The Hindu

The Supreme Court on Thursday gave a fillip to the right to personal liberty by holding that a person summoned by a designated special court under the Prevention of Money Laundering Act (PMLA), is presumed to be not in custody and need not apply for bail under the draconian conditions posed by the anti-money laundering law.

“If the accused appears before the special court pursuant to a summons, it cannot be treated that he is in custody. Therefore, it is not necessary for the accused to apply for bail,” a Bench of Justices A.S. Oka and Ujjal Bhuyan held in a judgment.

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The judgment limits the power of arrest by the Directorate of Enforcement (ED) after a special court takes cognisance of a case. The Bench said the ED would have to separately apply for the custody of a person once he appears in court. The Central agency would have to show specific grounds that necessitated custodial interrogation, said Justice Oka, who wrote the judgment.

However, the special court can direct the accused to furnish bonds in terms of Section 88 of the Code of Criminal Procedure. “A bond furnished in terms of Section 88 CrPC is only an undertaking. An order accepting bond under Section 88 does not amount to grant of bail and hence the twin conditions of Section 45 of the PMLA are not applicable to it,” Justice Oka clarified.

The judgment was based on an appeal filed by Tarsem Lal against the ED challenging a Punjab and Haryana High Court denying him anticipatory bail.

Stringent norms

The twin conditions of bail under Section 45 of the PMLA pose stringent thresholds for an accused. For one, the person has to prove in court that he or she is *prima facie* innocent of the offence. Secondly, the accused should be able to convince the judge he would not commit any offence while on bail. The burden of proof is entirely on the incarcerated accused, who would be often handicapped to fight the might of the state. The twin conditions make it almost impossible for an accused to get bail under the PMLA.

Spelling further relief, the judgment said an accused, who appears in a special court pursuant to its summons, could be exempted from personal appearance in the future. On the other hand, if an accused does not appear after a summons is served, the special court could issue aailable warrant followed by a non-ailable one.

In its judgment, the top court said the ED would have to separately apply for the custody of a person who appears in court. The Central agency would have to show specific grounds that necessitated custody. "If the ED wants custody after the person appears after summons, the ED can get custody after application to the special court. The court will only grant custody with reasons satisfying that custodial interrogation is needed," Justice Oka wrote, protecting the right to liberty.

However, when the ED wants to conduct a further investigation concerning the same offence, it may arrest a person not shown as an accused in the complaint filed under Section 44(1)(b) of the PMLA, provided the requirements of Section 19 (procedures of arrest) under the Act were fulfilled.

The questions of law in the case was whether an accused, appearing in the special court pursuant to its summons, can apply for bail under the regular provisions of the Code of Criminal Procedure. If so, whether such a bail plea would also have to satisfy the twin conditions imposed by Section 45 of the PMLA.