



MAJESTY LEGAL  
Advocates & Solicitors

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**BENEFIT OF SECTION 436 CrPC IN UNDERTRIAL CASES UNDER PMLA ACT**

**"AJAY AJIT PETER KERKAR V. DIRECTORATE OF ENFORCEMENT AND ANOTHER"**

Hon'ble Supreme Court, in case of *Ajay Ajit Peter Kerkar v. Directorate of Enforcement and anr.*<sup>1</sup>, ruled that Section 436A of the Code of Criminal Procedure, 1973, is applicable even to cases under the Prevention of Money Laundering Act, 2002 (PMLA,2002). In this case, appellant-accused was arrested for an offence punishable under Section 4 of the PMLA, 2002, and had completed half of the total prescribed time of punishment, thus asserting their right to seek bail. According to Section 436A of the Code of Criminal Procedure, 1973, a person who has spent half of the maximum period of the prescribed sentence as an undertrial shall be released on bail. However, bail can be denied if the trial has been delayed due to actions of the accused.

Hon'ble Supreme Court referred to its decision in the case of *Vijay Madanlal Choudhary & Ors. Vs. Union of India & Ors.*<sup>2</sup>. and held that denying relief of Section 436A of the 1973 Code which is a wholesome provision beneficial to a person accused under 2002 Act, is inappropriate.

Hence, appeal was allowed.

***TEAM MAJESTY LEGAL***<sup>3</sup>

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<sup>1</sup> Criminal Appeals @ SLP(Criminal)Nos.6090-6091/2024

<sup>2</sup> 2022 SCC OnLine SC 929.

<sup>3</sup> Majesty legal is a LAW FIRM established in 2013 by Ms. Mahi Yadav. Objective of this legal update is to provide insights on law, statutes and is personal in nature, not to be deemed as legal advice.



IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS.2601-2602 OF 2024  
(Arising out of S.L.P.(Criminal) Nos.6090-6091 of 2024)

AJAY AJIT PETER KERKAR ... APPELLANT(S)

VS.

DIRECTORATE OF ENFORCEMENT  
& ANR. ... RESPONDENT(S)

O R D E R

Leave granted.

1. Heard the learned senior counsel appearing for the appellant and the learned counsel Additional Solicitor General appearing for respondent No.1.

2. The appellant has been arrested in connection with an offence punishable under Section 4 of the Prevention of Money Laundering Act, 2002 (for short "the PMLA").

Paragraph 416 of a decision of this Court in the case *Vijay Madanlal Choudhary & Ors. Vs. Union of India & Ors.*<sup>1</sup>

reads thus:

"416. The Union of India also recognized the right to speedy trial and access to justice as fundamental right in their written submissions and, thus, submitted that in a limited situation right of bail can be granted in case of violation of Article 21 of the Constitution. Further, it

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Anita Malhotra  
Date: 2024.05.17  
17:10:42 IST  
Reason:

1. 2022 SCC OnLine SC 929.

is to be noted that the Section 436A of the 1973 Code was inserted after the enactment of the 2002 Act. Thus, it would not be appropriate to deny the relief of Section 436A of the 1973 Code which is a wholesome provision beneficial to a person accused under the 2002 Act. However, Section 436A of the 1973 Code, does not provide for an absolute right of bail as in the case of default bail under Section 167 of the 1973 Code. For, in the fact situation of a case, the Court may still deny the relief owing to ground, such as where the trial was delayed at the instance of accused himself."

(underline supplied)

3. In the facts of this case, the appellant will complete 3½ years of incarceration on 26<sup>th</sup> May, 2024. Thus, he will complete half of the prescribed sentence. In this case, obviously the trial has not started, as the charge has not been framed. This Court has held that Section 436A of the Code of Criminal Procedure, 1973 (for short "CRPC") will apply even to a case under the PMLA. But the Court can still deny the relief owing to the ground such as where the trial was delayed at the instance of the accused. As stated earlier, here there is no occasion for the appellant to cause the delay in trial, as even charge has not been framed. Moreover, there is no other circumstance brought on record which will compel us to deny the benefit of Section 436A of the CRPC to the appellant.

4. The learned Additional Solicitor General submitted that the power under Section 436A of the CRPC has to be exercised by the Court of first instance.

5. In the facts of the case, we find that there is no prospect of even the trial commencing, as the charge has not been framed. In these facts, we find that the appellant will be entitled to be enlarged on bail under section 436A of the CRPC on 27<sup>th</sup> May, 2024. Hence, there is no need to have multiplicity of proceedings.

6. Hence, we allow these appeals and direct that the appellant shall be enlarged on bail under Section 436A of the CRPC on 27<sup>th</sup> May, 2024.

7. For that purpose, the appellant shall be immediately produced before the Special Court to enable the appellant to complete the bail formalities such as furnishing bail bonds etc. The Special Court will pass a formal order fixing the terms and conditions for grant of bail. The bail formalities shall be completed by 26<sup>th</sup> May, 2024.

.....J.  
(ABHAY S.OKA)

.....J.  
(UJJAL BHUYAN)

NEW DELHI;  
May 16, 2024.

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (CrI.) No(s).6090-6091/2024

(Arising out of impugned final judgment and order dated 10-01-2024 in CRBA No. 2104/2021 along with IA No. 4753/2023 passed by the High Court of Judicature at Bombay)

AJAY AJIT PETER KERKAR

Petitioner(s)

VERSUS

DIRECTORATE OF ENFORCEMENT & ANR.

Respondent(s)

(IA No.95148/2024-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 16-05-2024 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ABHAY S. OKA  
HON'BLE MR. JUSTICE UJJAL BHUYAN

For Petitioner(s)

Mr. Amit Sibal, Sr. Adv.  
Ms. Neeha Nagpal, Adv.  
Mr. Malak Manish Bhatt, AOR  
Mr. Vishvendra Tomar, Adv.  
Mr. Nikunj Mahajan, Adv.  
Mr. Rishabh Sharma, Adv.  
Mr. Darpan Sachdeva, Adv.

For Respondent(s)

Mr. S.V. Raju, A.S.G.  
Mr. Mukesh Kumar Maroria, AOR  
Mr. Zoheb Hussain, Adv.  
Mr. Annam Venkatesh, Adv.  
Mr. Arkaj Kumar, Adv.  
  
Mr. Siddharth Dharmadhikari, Adv.  
Mr. Aaditya Aniruddha Pande, AOR  
Mr. Bharat Bagla, Adv.  
Mr. Sourav Singh, Adv.  
Mr. Aditya Krishna, Adv.  
Ms. Preet S. Phanse, Adv.  
Mr. Adarsh Dubey, Adv.  
Ms. Yamini Singh, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

Leave granted.

The appeals are allowed in terms of the signed order.

The appellant shall be enlarged on bail under Section 436A of the CRPC on 27<sup>th</sup> May, 2024. For that purpose, the appellant shall be immediately produced before the Special Court to enable the appellant to complete the bail formalities such as furnishing bail bonds etc. The Special Court will pass a formal order fixing the terms and conditions for grant of bail. The bail formalities shall be completed by 26<sup>th</sup> May, 2024.

Pending application also stands disposed of.

(ANITA MALHOTRA)  
AR-CUM-PS

(AVGV RAMU)  
COURT MASTER

(Signed order is placed on the file.)