



**IN THE COURT OF SH. VIDYA PRAKASH
SPECIAL JUDGE (PC ACT) (ACB)-01
ROUSE AVENUE COURT COMPLEX: NEW DELHI**

CNR No. DLCT11-000203-2019

I.A. No. 10/2026

In CC No. 26/2019

FIR No. 186/2017

PS : Crime Branch

State Vs. Sukesh @ Sukash Chandrashekhar, Etc.

ORDER

1. Vide this order, I shall dispose off the application u/s 436A Cr.P.C, (S.479 of BNSS, 2023) r/w Article-21 of the Constitution of India, seeking his release forthwith in the present case, moved on behalf of applicant/accused Sukesh @ Sukash Chandrashekhar.
2. Reply to the aforesaid application has been filed.
3. Arguments on the aforesaid application have been heard on behalf of both the sides. I have duly considered the rival submissions made on behalf of both the sides, in the light of material available on record.
4. Shorn off unnecessary facts, the applicant/accused is seeking his release from custody forthwith in the present case, on the ground that he has already undergone custody for the period beyond maximum period of punishment prescribed under the law in respect of the offences with which he has been charged with, while placing reliance upon 2nd Proviso to S. 436A Cr.P.C. (S.479 (1) of BNSS,

2023).

5. It is averred in the application and is also argued by the applicant/accused that he was arrested on 24.10.2017 and is continuously in custody in this case since then, except for the brief period during which he was granted custody parole or interim bail for the intermittent periods. It is submitted that even after excluding the period during which he was granted custody parole or interim bail on previous occasions, he has already undergone custody for a period of 8 years and 9 months in the present case.
6. While referring to the order dated 21.09.2022 passed by Ld. Predecessor, it is further contended that the applicant/accused was granted bail in view of First Proviso to S. 436A Cr.P.C., subject to his furnishing personal bond and two surety bonds, and since the applicant/accused has been in custody in other cases, he did not furnish surety bonds in this present case. It is pointed out that the applicant/accused has been charged with the offences u/s 12 of PC Act and S. 120B IPC r/w S. 12 of PC Act, for which maximum punishment provided under the law is 7 years. In the backdrop of these facts and circumstances, and while relying upon Second Proviso to S. 436A Cr.P.C. {S.479 (1) of BNSS, 2023}, it is urged on behalf of applicant/accused that he is entitled to be released in this case. The applicant/accused also submitted during the course of arguments that he undertakes to furnish his personal bond, and also that he shall be regular and punctual in his appearance on each and every date of

hearing in the event of his release from jail.

7. In support of aforesaid submissions made on behalf of applicant/accused, reliance is also placed upon the following authorities:

- (i) “*Bhim Singh Vs. Union of India*”, (2015) 13 SCC 605;
- (ii) “*Satender Kumar Antil Vs. CBI*”, (2022) 10 SCC 51;
- (iii) “*Hussainara Khatoon Vs. Home Secretary*”, State of Bihar (1980) 1 SCC 81;
- (iv) “*Supreme Court Legal Aid Committee Representing Undertrial Prisoners Vs. Union of India*”, (1994) 6 SCC 731;
- (v) “*Union of India Vs. K.A. Najeeb*” (2021) 3 SCC 713; and
- (vi) “*Maneka Gandhi Vs. Union of India*” (1978) 1 SCC 248.

8. *Per contra*, the application is opposed on behalf of State mainly on the ground that the applicant/accused is found involved in 29 criminal cases registered against him across various States in India, in which he has been charged with serious offences, including MCOCA; and therefore, he does not deserve to be released in terms of Second Proviso to S. 436A Cr.P.C.

9. Ld. PP for the State, duly assisted by ACP Ramesh Chander Lamba, has argued that considering the nature of allegations against the applicant/accused, the *modus operandi* used in the commission of offences involved in the present case, and in view of the apprehension that the

applicant/accused may influence and intimidate the material witnesses or otherwise in fair conduct of the trial in the event of his release, the application in hand may be dismissed. Ld. PP for State further submitted that the applicant/accused did not furnish surety bond in compliance of order dated 21.09.2022 passed by Ld. Predecessor of this Court, and therefore, he should not be allowed to take advantage of his own wrong under the garb of present application.

10. At this juncture, it would be apposite to reproduce the provision contained in S. 436A Cr.P.C. Same reads as under:

“436A. Maximum period for which an undertrial prisoner can be detained – Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties :

Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:

Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

Explanation – In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded.”

11. A bare reading of the aforesaid provision as a whole, and more particularly, its Second Proviso, would clearly show that no person shall in any case be detained during the period of investigation, inquiry or trial for more than maximum period of punishment provided under law. The use of word ‘shall’ would clearly show the intention of the legislature that this provision is mandatory in nature. At the same time, the explanation appended below the aforesaid provision, would provide that while computing the period of detention under this Section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded.
12. Now advertent back to the facts and circumstances of the present case. It is neither mentioned in the reply of the application in hand, nor it is the case of prosecution that the applicant/accused had been instrumental in causing delay in proceedings of the present case at any stage whatsoever. Ld. PP has not been able to draw attention of this Court, to such proceedings in this regard. Thus, the prosecution has failed to show that the case of applicant/accused would be covered by the explanation appended below S. 436A Cr.P.C. in any manner.
13. Otherwise, it is an admitted position on record that the applicant/accused was arrested in this case on 24.10.2017,

and he is continuously in custody since then till date, barring the intermittent periods during which he was either granted custody parole or interim bail from time to time. As per the Nominal Roll of applicant/accused as provided by the Jail Authority, he has already undergone custody of 8 years, 9 months and 14 days, as on 27.10.2026, even after excluding the period of his interim bail/parole granted to him from time to time.

14. As per the records of this case, charges in respect of offences punishable u/s 120B IPC r/w S. 12 PC Act, and S. 12 of PC Act were framed against the applicant/accused, vide order dated 13.10.2022 passed by Ld. Predecessor of this Court. It is also a matter of record that the applicant/accused was granted bail under First Proviso to S. 436A Cr.P.C., vide order dated 21.09.2022, however, subject to his furnishing personal bond in the sum of Rs. One Lakh, with two sureties each of the like amount. The relevant portion of said order is extracted as under:

“.... In the present case, chargesheet has been filed for the offences punishable U/s 7/12/13 PC Act read with section 120B IPC and the maximum punishment for which applicant has been chargesheeted is upto 7 years. Admittedly, the applicant is in J/C for a period more than half of the maximum period of imprisonment for which he has been chargesheeted. It is also matter of record that supplementary chargesheet alongwith the FSL result and sanction U/s 19 of PC Act against co-accused persons is filed on 25.07.2022. Hon’ble Supreme Court of India in Satender Kumar Antil Vs CBI & Anr., Misc. Application no. 1849/2021, SLP (Crl.) No. 5191/2021 decided

on 11.07.2022 by Hon'ble Supreme Court of India, has held as under :-

*“.....Under this provision, when a person has undergone detention for a period extending to one-half of the maximum period of imprisonment specified for that offense, he shall be released by the court on his personal bond with or without sureties. **The word 'shall' clearly denotes the mandatory compliance of this provision.** We do feel that there is not even a need for a bail application in a case of this nature particularly when the reasons for delay are not attributable against the accused. We are also conscious of the fact that while taking a decision the public prosecutor is to be heard, and the court, if it is of the view that there is a need for continued detention longer than one-half of the said period, has to do so. **However, such an exercise of power is expected to be undertaken sparingly being an exception to the general rule.** Once again, we have to reiterate that 'bail is the rule and jail is an exception' coupled with the principle governing the presumption of innocence. We have no doubt in our mind that this provision is a substantive one, facilitating liberty, being the core intendment of Article 21. The only caveat as furnished under the Explanation being the delay in the proceeding caused on account of the accused to be excluded*”

Keeping in view the fact that the applicant is in J/C for a period more than half of the maximum period of imprisonment for which he has been chargesheeted as well as the fact that co-accused persons are on bail and that charges are yet to be framed, the application U/s 436A Cr.P.C. as filed on behalf of Sukash @ Suresh Chandrashekhar is allowed. The applicant/accused is admitted to bail U/s 436A Cr.P.C. on his furnishing a personal bond in the sum of Rs.1,00,000/- with two sureties of like amount subject to the following conditions....”

15. It is thus evident from the above discussion that the

offences in respect of which the applicant/accused is facing trial in this matter, are punishable with maximum punishment upto 7 years. It is also beyond doubt that the total under-trial period of applicant/accused as on 27.10.2026, as per his Nominal Roll provided by Jail Authority, is 8 years, 9 months and 14 days in all, after excluding the period of his custody parole and interim bail. That being so, it is an admitted position on record that the applicant/accused has already undergone custody in this case for a period exceeding the maximum period of imprisonment provided for the offences with which, he has been charged with in this case.

16. The relevant observations made by Hon'ble Apex Court in celebrated decision of "*Satender Kumar Antil Vs. CBI*" (*supra.*), as already referred to and reproduced hereinabove while producing relevant portion of the order dated 21.09.2022 passed by Ld. Predecessor of this Court, would, therefore, be applicable herein.
17. Hon'ble Apex Court in the cited case of *Bhim Singh Vs. Union of India* (*supra.*) has issued directions to jurisdictional Magistrates, Chief Judicial Magistrates and Sessions Judges to identify under-trial prisoners who have completed half of the maximum period and to pass orders for their release. The case in hand has traveled even beyond that stage, in the sense that the applicant/accused is shown to have already undergone custody for a period exceeding the maximum period of punishment prescribed under law in respect of the offences for which charges

have been framed against him. Thus, the statutory obligation contained in Second Proviso to S. 436A Cr.P.C. would apply with greater force in these facts and circumstances.

18. In the celebrated decision of “Hussainara Khatoon Vs. Home Secretary (*supra*), Hon’ble Supreme Court has categorically held that under-trial prisoners who have been in custody for periods longer than the maximum term for which they could be sentenced, must be released forthwith as their continued detention is illegal and violative of Article-21 of the Constitution of India. Similar view is taken by Hon’ble Apex Court in the case of Supreme Court Legal Aid Committee Representing Under-trial Prisoners (*supra*).
19. In the light of discussion made hereinabove, and in view of the foregoing reasons, this Court is of the view that since the applicant/accused namely Suresh @ Sukesh Chandrashekhar has already undergone custody for a period beyond the maximum period of imprisonment prescribed for the offences for which he has been charged with in this case, the application in hand deserves to be allowed in view of Second Proviso to S. 436A Cr.P.C. Consequently, it is hereby directed that the applicant/accused namely Suresh @ Sukesh Chandrashekhar be not detained during pendency of trial in this case, and he be released from jail forthwith, if not required in any other case. He shall, however, furnish his personal bond in the sum of Rs. One Lakh, as undertaken

to be furnished by him, on or before the next date. However the release of applicant/accused shall be subject to the following conditions, as were imposed, vide order dated 21.09.2022 passed by Ld. Predecessor of this Court:

- (i) That the applicant/accused shall not try to contact or influence, directly or indirectly, any of the witnesses of present case;
- (ii) That the applicant/accused shall not indulge in commission of similar offences in future;
- (iii) That the applicant/accused shall not leave the country without prior permission of the Court; and
- (iv) That the applicant/accused shall intimate the Court in case of change of address.

20. However, it is hereby made clear that nothing mentioned hereinabove shall tantamount to an expression of opinion on merits of the case and the observations made hereinabove are solely for the purpose of deciding the present application.

21. Application stands disposed off in the aforesaid terms.

22. Copy of this order be sent to concerned Jail Superintendent for being delivered to the applicant/accused, as per the rules.

VIDYA
PRAKASH

Digitally signed
by VIDYA
PRAKASH

Date:
2026.10.26

17:13:32
Special Judge (PC Act) (ACB)-01
Rouse Avenue Court Complex
New Delhi/28-10-2026^(a)