IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 2023 OF 2023

Suryaji Pandurang Jadhav .Applicant

Versus

The Directorate of Enforcement, Worli & anr. .Respondents

Mr. Aabad Ponda, Senior Advocate a/w. Mr. Prashant Patil, Mr. Swapnil Ambure, Ms. Nida Khan & Ms. Poorva Joshi, for the Applicant

Mr. Shriram Shirsat a/w. Ms. Karishma Singh, APP, for Respondent No. 1 – ED

Ms. Veera Shinde, APP, for Respondent No. 2 – State

CORAM : MADHAV J. JAMDAR, J.

DATE : 19.09.2024

P. C.

1. Heard Mr. Ponda, learned Senior Counsel for the Applicant, Mr. Shirsat, learned APP for Respondent No. 1 – Directorate of Enforcement (ED) and Ms. Shinde, learned APP for Respondent No. 2 – State.

2. This regular Bail Application is preferred under Section 439 of the ***Code of Criminal Procedure, 1973*** ('Cr.P.C.') r/w. Section 45 of the ***Prevention of Money Laundering Act, 2002*** ('PMLA') in ECIR/MB/ZO-II/03/2020 lodged by Respondent No. 1 - ED. The relevant details are

as follows:

1.	ECIR No. C.R./F.I.R. Number (Scheduled Offence)	ECIR/MB/ZO-II/03/2020 C. R. No. 0026/2020
2.	Date of Scheduled offence	2017 to 2018
3.	Date of Registration of ECIR No. C.R./F.I.R. Number (Scheduled Offence)	08.01.2020
4.	Prosecuting Agency Name of the Police Station of scheduled offence	Enforcement Directorate Shivaji Nagar, Pune
5.	Sections invoked Scheduled offences	Section 3 r/w. 70 of the Prevention of Money Laundering Act, 2002 Sections 420 r/w. 34, 406, 408, 409, 465, 468 & 471 of the Indian Penal Code, 1860
6.	Date of arrest of the Applicant in Scheduled Offence Date of arrest in ECIR	24.02.2020 05.03.2021
7.	Date of filing of Charge-sheet in Scheduled Offence ECIR Complaint	Charge-sheet bearing No. 32/2020 dated 18th May 2020 April 2021
8.	Status of Bail Application in scheduled offence	Scheduled Offence – Bail granted on 2nd March 2023 by a learned Single Judge in B. A. No. 2006 of 2021
9.	Main grounds for seeking bail	The Applicant has undergone 3 years 6 months in ECIR i. e. half of the punishment. The maximum punishment which

		can be awarded is 7 years. The Applicant is in custody for more than 4 years and 7 months.

3. Respondent No. 1 – the Directorate of Enforcement ('ED') by filing affidavit-in-reply of Mr. Sunil Kumar, Assistant Director, Zonal Office-II, Mumbai, Directorate of Enforcement, Ministry of Finance, Department of Revenue, Government of India dated 22.01.2024 opposed the Bail Application. In the said affidavit, the prosecution case is set out in Paragraph Nos. 7.1 to 7.7 which read as under :

> *"7.1 That, Shivajinagar Police Station, Pune registered FIR No. 0026/2020 dated 08.01.2020 against Mr. Anil Shivajirao Bhosale, Mr. Suryaji Pandurang Jadhav, Mr. Tanaji Dattu Padwal, Mr. Shailesh Sampatrao Bhosale and others on the basis of complaint filed by the Complainant Mr. Yogesh Rajgopal Lakade, Chartered Accountant (Partner of M/s. Torvi Pethe & Co.) invoking Sections 420 read with Sections 34, 406, 408, 409, 468 and 471 of Indian Penal Code, 1860 (hereinafter referred to as 'the IPC, 1860').*
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> *7.2 That, it is alleged in the FIR that RBI team during their periodical visit at head office of M/s. Shivajirao Bhosale Co-operative Bank Ltd. at Pune on 26.04.2019, noticed various discrepancies in records/books of accounts of the bank. Further, the RBI vide letter dated 16.05.2019 had given direction to M/s Torvi Pethe & Co. (Chartered Accountant Firm and Statutory auditor of the Bank) for verification of cash record of all the branches and head office of the Bank. Accordingly, on 25.05.2019 & 27.05.2019, statutory auditor verified all available cash of the branches and head office of the bank with their respective cash books. The Statutory auditor noticed that the entry of cash of Rs. 71.78 Crore which was kept pending at Head Office of the bank during the visit of RBI team was made by the head office of the bank on 04.05.2019 in their cash book. Further, in the head office of M/s. Shivajirao Bhosale Co-operative Bank, the statutory auditor found less cash of Rs.*

71.78 Crore than their cash book. The same was communicated to RBI and District Special Auditor Co-operative Dept., Pune by the statutory auditor. Consequently, the Complainant, Mr. Yogesh Rajgopal Lakade, Chartered Accountant (Partner of M/s. Torvi Pethe & Co.) had lodged the said FIR.

7.3 That, it is mentioned in the FIR that Mr. Anil Shivajirao Bhosale (Accused No. 2) who was the Chairman of Shivajirao Bhosale Sahakari Bank Ltd. had misused his position and conspired with the co-accused and siphoned off the amount totaling to tune of Rs. 71,78,87,723/- from Shivajirao Bhosale Sahakari Bank Ltd. & its branches for personal gains.

7.4 That, subsequently EOW, Pune City carried out investigation and filed charge sheet bearing No. 32/2020 dated 18.05.2020 before the Hon'ble Additional Sessions Judge, Special M.P. I.D. Court, Shivajinagar, Pune against Mr. Anil Shivajirao Bhosale, Mr. Suryaji Pandurang Jadhav, Mr. Tanaji Dattu Padwal, Mr. Shailesh Sampatrao Bhosale and others for constituting the offences punishable under Sections 34, 406, 408, 409, 420, 468 and 471 of IPC, 1860 read with Sections 3, 4 & 5 of MPID Act.

7.5 That, Mr. Anil Shivajirao Bhosale and his 3 associates including the present applicant were arrested by the Crime Branch, Pune and produced before Additional Session Judge and Special Maharashtra Protection of Interest of Depositors Act (MPID) Judge Shivaji Nagar, Pune. Subsequently, the said Court sent/remanded them into Police custody till 19 March, 2020 and thereafter in the judicial custody.

7.6 That, a case under PMLA, 2002 was recorded vide ECIR/MBZO-II/03/2020 dated 07.02.2020 by the Enforcement Directorate, Mumbai Zonal Office-II, Mumbai, against Mr. Anil Shivajirao Bhosale, Mr. Suryaji Pandurang Jadhav, Mr. Tanaji Dattu Padwal, Mr. Shailesh Sampatrao Bhosale and others as sections 420, 467 & 471 of IPC invoked in the FIR are scheduled offence under PMLA, 2002 within the meaning of section 2(1) (y) of PMLA, 2002 read with Part A Paragraph 1 of the schedule to the PMLA, 2002.

7.7 That, during the course of investigations conducted under the provisions of the PMLA, 2002, it was revealed that Anil Shivajirao Bhosale, the present applicant i. e. Suryaji Pandurang Jadhav (Accused no.3), Mr. Tanaji Dattu Padwal and Mr. Shailesh Sampatrao Bhosale being the Chairman,

> *Director, CEO and Officer of M/s. Shivajirao Bhosale Sahakari Bank Ltd. respectively were the mastermind behind activities connected with the proceeds of crime and under their directions the proceeds of the crime was projected as untainted property."*

4. It is the submission of Mr. Ponda, learned Senior Counsel for the Applicant that insofar as the scheduled offence is concerned, the Applicant has already been granted bail by a learned Single Judge by Order dated 02.03.2023 passed in B. A. No. 2006 of 2021. He submits that the Applicant was arrested in scheduled offence on 24.02.2020 and in the present case, he is in custody since 05.03.2021. He submitted that the Applicant is incarcerated for more than 4 years and 7 months. He submits that in PMLA Case, the Applicant has completed 3 years and 6 months on 05.09.2024. He submitted that insofar as the present case is concerned, the maximum punishment which can be awarded is 7 years, out of which the Applicant has already completed half of the total punishment. He, therefore, submitted that the Applicant is entitled to be released on bail. He relied on the following Judgments :

(i) ***Javed Gulam Nabi Shaikh vs. State of Maharasht***[1];

(ii) ***Vijay Madanlal Choudhary vs. Union of India***[2];

(iii) ***Manish Sisodia vs. Directorate of Enforcement***[3];

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[1]2024 SCC OnLine SC 1693
[2]2022 SCC OnLine SC 929
[3]2024 SCC OnLine SC 1920

(iv) ***Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari vs. The State of Uttar Pradesh***[4].

(v) The decision of this Court in the case of ***Hari Sankaran vs. Serious Fraud Investigation Office***[5].

5. He submitted that it is well established that speedy trial is a right guaranteed to the Applicant under Article 21 of the Constitution of India. He submitted that the factual position on record clearly shows that the said fundamental right of the Applicant is violated. In support of the said contention, he also relied on Section 436A of the Cr.P.C.. He submitted that he is seeking bail only on the ground of long incarceration. He further submitted that even on merits, insofar as the case of the prosecution is concerned, the Applicant's liability is Rs. 79,00,00,000/-. He tendered a chart which shows that substantial amount is recovered and valuable properties are attached by the ED. He, therefore, submitted that the Applicant is entitled to be enlarged on bail. He also submitted that the Applicant is 72 years old and suffering from stage 4 of colon cancer.

6. Mr. Shirsat, learned APP for Respondent No. 1 – ED strongly opposed the Bail Application. He submitted that the material on record shows that the Applicant is involved in a very serious crime. He

[4]2024 SCC OnLine SC 1755

[5]2024 SCC OnLine Bom 753

submitted that cash has been given to various persons as per the instructions of the present Applicant. He pointed out the statements of various persons including the statement of Mr. Santosh Sahebrao Kale recorded during the investigation by ED. He also pointed out the register maintained by the staff of the M/s. Shivajirao Bhosale Sahakari Bank Ltd.. He pointed out the entries in the said register (Page 100) of the compilation dated 06.02.2018 which shows that cash of Rs. 5,00,000/-, Rs. 2,45,00,000/- and Rs. 2,50,00,000/- have been handed over to certain persons as per the instructions of the present Applicant. He submitted that therefore, the Applicant is involved in a very serious crime and therefore, the Applicant is not entitled to be released on bail in view of Section 45 of the PMLA. Mr. Shirsat, learned APP for Respondent No. 1 – ED has relied on the Judgment of the Supreme Court in the case of ***Tarun Kumar vs. Assistant Director, Directorate of Enforcement*** [6].

7. A perusal of the record shows that insofar as the scheduled offence is concerned, C. R. No. 0026/2020 was registered on 08.01.2020 under Sections 420 r/w. 34, 406, 408, 409, 465, 468, 471 of the ***Indian Penal Code, 1860*** ('IPC'). The present case is ECIR/MB/ZO-II/03/2020 registered under Section 3 r/w. 70 of the PMLA. The Applicant has been arrested in scheduled offence on

[6]SLP (Cri.) No. 9431 of 2023.

24.02.2020 and the date of arrest in the present offence is 05.03.2021. Thus, the Applicant has completed 4 years and 6 months from the date of arrest in the scheduled offence, wherein he has been granted bail by a learned Single Judge by Order dated 02.03.2023 passed in B. A. No. 2006 of 2021.

8. Insofar as the present offence is concerned, the Applicant is incarcerated since 05.03.2021. Thus, the Applicant has completed 3 years and 6 months on 05.09.2024. Admittedly, insofar as the present offence is concerned, the maximum punishment is 7 years. Thus, the Applicant has completed 3 years and 6 months i. e. half of the punishment.

9. Section 45 of the PMLA Act is as follows :-

> "***45. Offences to be cognizable and non-bailable.***—*(1) [Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence [under this Act] shall be released on bail or on his own bond unless—]*
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> *(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and*
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> *(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:*
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> *Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm 113[or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees], may be released on bail, if the Special Court so directs:*

Provided further that the Special Court shall not take cognizance of any offence punishable under Section 4 except upon a complaint in writing made by—

(i) the Director; or

(ii) any officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government.

[(1-A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.]

(2) The limitation on granting of bail specified in [* *] subsection (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.*

[Explanation.—For the removal of doubts, it is clarified that the expression "Offences to be cognizable and non-bailable" shall mean and shall be deemed to have always meant that all offences under this Act shall be cognizable offences and non-bailable offences notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (2 of 1974), and accordingly the officers authorised under this Act are empowered to arrest an accused without warrant, subject to the fulfilment of conditions under Section 19 and subject to the conditions enshrined under this section.]"

10. Thus, as per Section 45 of the PMLA Act, the following requirements are mandatory to be complied with before releasing the accused on bail:

(i) The Public Prosecutor is to be given an opportunity to oppose the Application seeking bail;

(ii) Where the Public Prosecutor opposes the Application :

(a) The Court is required to record satisfaction that there are reasonable grounds for believing that the Applicant is not guilty of such offence;

(b) The Court is required to record satisfaction that the Applicant is not likely to commit any offence while on bail.

11. In this Bail Application, the Respondent No. 1 – ED filed affidavit opposing the Bail Application and Mr. Shirsat, learned APP for Respondent No. 1 has opposed the Bail Application. Thus, requirement as set out in Clause (i) hereinabove is satisfied. Thus, now what is required to be seen is whether twin conditions as contained in Clause (ii) noted hereinabove are fulfilled and effect of the said twin conditions on the entitlement of the Applicant in getting bail.

12. In this background of the matter, it is required to be noted that the Supreme Court in the case of ***Vijay Madanlal Choudhary*** (supra) in Paragraph Nos. 412 to 421 considered the applicability of Section 436A of the Cr. P. C. which is concerning the maximum punishment for which an under trial prisoner can be detained. It has been held that Section 436A of the Cr. P .C. has come into effect on 23.06.2006 and the said provision is the subsequent law enacted by the Parliament and the same will prevail and will apply in spite of rigors of Section 45 of the

PMLA Act. The relevant part of the said paragraphs 412 to 421 read as under :

> "***412.*** *As a result, we have no hesitation in observing that in whatever form the relief is couched including the nature of proceedings, be it under Section 438 of the 1973 Code or for that matter, by invoking the jurisdiction of the Constitutional Court,* ***the underlying principles and rigors of Section 45 of the 2002 must come into play and without exception ought to be reckoned to uphold the objectives of the 2002 Act, which is a special legislation providing for stringent regulatory measures for combating the menace of money-laundering****.*
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> ***413. There is, however, an exception carved out to the strict compliance of the twin conditions in the form of Section 436A of the 1973 Code, which has come into being on 23.6.2006 vide Act 25 of 2005. This, being the subsequent law enacted by the Parliament, must prevail. Section 436A of the 1973 Code*** *reads as under:*
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> *'[656][****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****:*
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> *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****:*
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> *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.]

415. *In Hussainara Khatoon v. Home Secretary, State of Bihar, Patna, this Court stated that the* ***right to speedy trial is one of the facets of Article 21 and recognized the right to speedy trial as a fundamental right****. This dictum has been consistently followed by this Court in several cases. The Parliament in its wisdom inserted Section 436A under the 1973 Code recognizing the deteriorating state of undertrial prisoners so as to provide them with a remedy in case of unjustified detention.* ***In Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India, the Court, relying on Hussainara Khatoon, directed the release of prisoners charged under the Narcotic Drugs and Psychotropic Act after completion of one-half of the maximum term prescribed under the Act. The Court issued such direction after taking into account the non obstante provision of Section 37 of the NDPS Act, which imposed the rigors of twin conditions for release on bail. It was observed****:*

"15. ...We are conscious of the statutory provision finding place in Section 37 of the Act prescribing the conditions which have to be satisfied before a person accused of an offence under the Act can be released. Indeed we have adverted to this section in the earlier part of the judgment. We have also kept in mind the interpretation placed on a similar provision in Section 20 of the TADA Act by the Constitution Bench in Kartar Singh V. State of Punjab. Despite this provision, we have directed as above mainly at the call of Article 21 as the right to speedy trial may even require in some cases quashing of a criminal proceeding altogether, as held by a Constitution Bench of this Court in A.R. Antulay v. R.S. Nayak, release on bail, which can be taken to be embedded in the right of speedy trial, may, in some cases be the demand of Article 21. As we have not felt inclined to accept the extreme submission of quashing the proceedings and setting free the accused whose trials have been delayed beyond reasonable time for reasons already alluded to, we have felt that ***deprivation of the personal liberty without ensuring speedy trial would also not be in consonance with the right guaranteed by Article21****. Of course, some amount of deprivation of personal liberty cannot be avoided in such cases; but* ***if the period of deprivation pending trial becomes unduly long, the fairness assured by Article 21 would receive a jolt. It is because of this***

that we have felt that after the accused persons have suffered imprisonment which is half of the maximum punishment provided for the offence, any further deprivation of personal liberty would be violative of the fundamental right visualised by Article 21, which has to be telescoped with the right guaranteed by Article 14 which also promises justness, fairness and reasonableness in procedural matters. ..."

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 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.*

417. *Be that as it may, in our opinion, this provision is comparable with the statutory bail provision or, so to say, the default bail, to be granted in terms of section 167 of the 1973 Code consequent to failure period of the investigating agency to file the chargesheet within the statutory and, in the context of the 2002 Act, complaint within the specified period after arrest of the person concerned. In the case of Section 167 of the 1973 Code, an indefeasible right is triggered in favour of the accused the moment the investigating agency commits default in filing the chargesheet/complaint within the statutory period.* ***The provision in the form of Section 436A of the 1973 Code, as has now come into being is in recognition of the constitutional right of the accused regarding speedy trial under Article 21 of the Constitution. For, it is a sanguine hope of every accused, who is in custody in particular, that he/she should be tried expeditiously - so as to uphold the tenets of speedy justice. If the trial cannot proceed even after the accused has undergone one-half of the maximum period of imprisonment provided by law, there is no reason to deny him this lesser relief of considering his prayer for release on bail or bond, as the case may be, with appropriate conditions, including to secure his/her presence during the trial****.*

418. Learned Solicitor General was at pains to persuade us that this view would impact the objectives of the 2002 Act and is in the nature of super imposition of Section 436A of the 1973 Code over Section 45 of the 2002 Act. He has also expressed concern that the same logic may be invoked in respect of other serious offences, including terrorist offences which would be counterproductive. So be it. We are not impressed by this submission. For, ***it is the constitutional obligation of the State to ensure that trials are concluded expeditiously and at least within a reasonable time where strict bail provisions apply. If a person is detained for a period extending up to one-half of the maximum period of imprisonment specified by law and is still facing trial, it is nothing short of failure of the State in upholding the constitutional rights of the citizens, including person accused of an offence****.*

419. Section 436A of the 1973 Code, is a wholesome beneficial provision, which is for effectuating the right of speedy trial guaranteed by Article 21 of the Constitution and which merely specifies the outer limits within which the trial is expected to be concluded, failing which, the accused ought not to be detained further. Indeed, Section 436A of the 1973 Code also contemplates that the relief under this provision cannot be granted mechanically. It is still within the discretion of the Court, unlike the default bail under Section 167 of the 1973 Code. Under Section 436A of the 1973 Code, however, the Court is required to consider the relief on case-to-case basis. As the proviso therein itself recognises that, in a given case, the detention can be continued by the Court even longer than one-half of the period, for which, reasons are to be recorded by it in writing and also by imposing such terms and conditions so as to ensure that after release, the accused makes himself/herself available for expeditious completion of the trial.

420. However, that does not mean that the principle enunciated by this Court in Supreme Court Legal Aid Committee Representing Under trial Prisoners, to ameliorate the agony and pain of persons kept in jail for unreasonably long time, even without trial, can be whittled down on such specious plea of the State. If the Parliament/Legislature provides for stringent provision of no bail, unless the stringent conditions are fulfilled, it is the bounden duty of the State to ensure that such trials get precedence and are concluded within a reasonable time, at least before the accused undergoes detention for a period extending up to one-half of

> ***the maximum period of imprisonment specified for the concerned offence by law.*** *[Be it noted, this provision (Section 436A of the 1973 Code) is not available to accused who is facing trial for offences punishable with death sentence]*
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> ***421.*** *In our opinion, therefore,* ***Section 436A needs to be construed as a statutory bail provision and akin to Section 167 of the 1973 Code****. Notably, learned Solicitor General has fairly accepted during the arguments and also restated in the written notes that* ***the mandate of Section 167 of the 1973 Code would apply with full force even to cases falling under Section 3 of the 2002 Act, regarding money-laundering offences. On the same logic, we must hold that Section 436A of the 1973 Code could be invoked by accused arrested for offence punishable under the 2002 Act, being a statutory bail.***"
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> (Emphasis added)

13. The Supreme Court in the case of Sheikh ***Javed Iqbal @ Ashfaq Ansari @ Javed Ansari*** (supra) held in paragraph 32 as under :

> *"32. This Court has, time and again, emphasized that* ***right to life and personal liberty enshrined under Article 21 of the Constitution of India is overarching and sacrosanct. A constitutional court cannot be restrained from granting bail to an accused on account of restrictive statutory provisions in a penal statute if it finds that the right of the accused-undertrial under Article 21 of the Constitution of India has been infringed. In that event, such statutory restrictions would not come in the way****. Even in the case of interpretation of a penal statute, howsoever stringent it may be, a constitutional court has to lean in favour of constitutionalism and the rule of law of which liberty is an intrinsic part. In the given facts of a particular case, a constitutional court may decline to grant bail. But it would be very strong to say that under a particular statute, bail cannot be granted. It would run counter to the very gain of our constitutional jurisprudence. In any view of the matter, K. A. Najeeb (supra) being rendered by a three Judge Bench is binding on a Bench of two Judges like us."*
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> (Emphasis added)

14. The Supreme Court in the case of ***Union of India vs. K. A. Najeeb***[7] held in Paragraph No. 17 as under :

> *"17. It is thus clear to us that the* ***presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence****. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial."*
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> (Emphasis added)

15. The Supreme Court in the case of ***Manish Sisodia*** (supra) held as follows :

> *"**51.** Recently, this Court had an occasion to consider an application for bail in the case of Javed Gulam Nabi Shaikh v. State of Maharashtra wherein the accused was prosecuted under the provisions of the Unlawful Activities (Prevention) Act, 1967. This Court surveyed the entire law right from the judgment of this Court in the cases of Gudikanti Narasimhulu v. Public Prosecutor, High Court of Andhra Pradesh, Shri Gurbaksh Singh Sibbia v. State of Punjab, Hussainara Khatoon (1) v. Home Secretary, State of Bihar, Union of India v. K.A. Najeeb®and Satender Kumar Antil v. Central Bureau of Investigation. The Court observed thus:*
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> *"19.* ***If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State***

[7] 2021(3) SCC 713

or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.*"*

52. *The Court also reproduced the observations made in Gudikanti Narasimhulu (supra), which read thus:*

"10. In the aforesaid context, we may remind the trial courts and the High Courts of what came to be observed by this Court in Gudikanti Narasimhulu v. Public Prosecutor, High Court reported in (1978) 1 SCC 240. We quote:

"What is often forgotten, and therefore warrants reminder, is the ***object to keep a person in judicial custody pending trial or disposal of an appeal.*** *Lord Russel, C.J., said [R v. Rose (1898)18 Cox]:*

"I observe that in this case bail was refused for the prisoner. It cannot be too strongly impressed on the, magistracy of the country that ***bail is not to be withheld as punishment, but that the requirements as to bail are merely to secure the attendance of the prisoner at trial.****""*

53. *The Court further observed that, over a period of time, the trial courts and the High Courts have forgotten a very well-settled principle of law that* ***bail is not to be withheld as a punishment.*** *From our experience, we can say that it appears that the trial courts and the High Courts attempt to play safe in matters of grant of bail.* ***The principle that bail is a rule and refusal is an exception is, at times, followed in breach.*** *On account of non-grant of bail even in straight forward open and shut cases, this Court is flooded with huge number of bail petitions thereby adding to the huge pendency. It is high time that the trial courts and the High Courts should recognize the principle that "bail is rule and jail is exception".*

54. In the present case, in the ED matter as well as the CBI matter, 493 witnesses have been named. The case involves thousands of pages of documents and over a lakh pages of digitized documents. It is thus clear that there is not even the remotest possibility of the trial being concluded in the near future. In our view, keeping the appellant behind the bars for an unlimited period of time in the hope of speedy completion of trial would deprive his fundamental right to liberty under Article 21 of the Constitution. As observed time and again, the

prolonged incarceration before being pronounced guilty of an offence should not be permitted to become punishment without trial."

(Emphasis added)

16. Thus, as per the settled legal position whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail as enacted under Section 45 of the PMLA Act but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence.

17. Thus, inspite of restrictive statutory provisions like Section 45 of the PMLA Act, the right of the accused undertrial under Article 21 of the Constitution of India cannot be allowed to be infringed. In such a situation, statutory restrictions will not come in the way of the Court to grant bail to protect the fundamental right of the accused under Article 21 of the Constitution of India.

18. As far as the scheduled offences are concerned i.e. C. R. No. 26 of 2020, there are about 256 witnesses proposed to be examined by the prosecution. Insofar as the present case is concerned, 9 witnesses are proposed to be examined by the prosecution. The Charge-sheet in both the cases is voluminous. It is an admitted position that both the cases

will be tried simultaneously and trial has not yet commenced. Thus, this is a case where the trial is unlikely to conclude any time soon and is likely to take a considerably long time. As noted hereinabove, the Applicant has completed more than half of the punishment and therefore, entitled to the benefit of Section 436A of the Cr.P.C.. The Judgment cited by Mr. Shirsat, learned APP in the case of ***Tarun Kumar*** (Supra) is not applicable to the facts of the present case, as in that case, the Accused has not completed half of the punishment.

19. Apart from that, one more factor is required to be taken into consideration. As noted hereinabove, Mr. Ponda, learned Senior Counsel for the Applicant has submitted a chart of the properties attached by the ED of the Applicant as well as his wife. As per the said chart in the recovery proceedings, various properties of the Applicant have been sold and an amount of Rs. 60,49,74,709/- has been recovered. The said chart is reproduced hereinbelow :

"PROPERTIES ATTACHED BY ENFORCEMENT OF DIRECTORATE OF SURYAJI PANDURANG JADHAV AND SUJATA SURYAJI JADHAV :

Sr No	Property Holder	Address	Area	Estimated Valuation
1	Suryaji Pandurang Jadhav	Gat No 436, Village Bholawade ,Taluka Bhor , District Pune	H.0-07R	50 Lakhs
2	Suryaji	Gat no 2191, Village	H.0-79R	70 Lakhs

	Pandurang Jadhav	Akiwat, Taluka Shirole, District Kolhapur (Agricultural Land)		
3	Sujata Suryaji Jadhav	Flat no 1, Yashodamai Apartments, CTS 783A , Final Plot no 192 A, Shivajinagar Bhambhurda Taluka Haveli, Dist Pune	959 Sq ft	1.5 Crore
4	Sujata Suryaji Jadhav	Flat no 8, Yashodamai Apartments, CTS 783A , Final Plot no 192 A, Shivajinagar Bhambhurda Taluka Haveli, Dist Pune	1147 Sq ft	1.7 Crore
				TOTAL: 4,40,00,000/-

Properties at Sr No. 3 and 4 are current residences of Applicant and his family. Suryaji Pandurang Jadhav has willingly deposited Rs 75 Lakhs (Seventy Five Lakhs) to the Liquidator of the Shivajirao Bhosale Bank on 2nd March 2023 (Please See High Court Order B. A. No. 2006/2021 passed by Hon'ble J. N R Borkar dated 2nd March 2023.)

RECOVERY PROCEEDING WERE CARRIED OUT, AGAINST RECOVERING CASH SHORT PROPERTIES OF ANIL SHIVAJIRAO BHOSALE WERE ATTACHED ON 08/09/2020 UNDER MCS ACT 1960 / 1961

Sr.No	Survey No	Area
1	Village Koregaon , Tal - Haveli, Dist Pune	2.25 hectares
2	Village Koregaon , Tal - Haveli, Dist Pune	1.89 Hectares
3	Village Koregaon , Tal - Haveli, Dist Pune	1.46 Hectares

Accordingly Fair Market Value /Reserve Price was decided on 22/11/2021.

Sr No	Survey No.	Area	Fair Market Value/ Reserve Price
1.	Village Koregaon , Tal - Haveli, Dist	2.5 Hectare	Rs. 27,85,18,500
2.	Pune Village, Koregaon, Tal-Haveli Dist	1.89 Hectare	for 1.89 Hectare Price was decided @ Rs 22,60,44,000/- and for 00.5 hectare @ Rs.
3.	Village Koregaon, Tal-Haveli, Dist	1.46 Hecatre	Rs. 23,57,31,600
4.			Total: 74,54,07,000/-

Auctions were conducted on 1st April 2022, 20th April 2022, 26th May

2022, 15 June 2022 and 15 July 2022 and Reserve price was set at Rs. 59,63,25,600/- and the properties were auctioned for Rs. 60,49,74,709/-. On 15th July 2022, 15% of Rs. 60,49,74,709/- that would be Rs. 09,06,26,208/- was deposited in Bank via Demand Draft. Rest 85% of Amount i. e. Rs. 51,35,48,501/- minus TDS @1% Rs. 50,75,06,753.91 was deposited in the Bank on 12th August 2022."

20. It is also required to be noted that the Applicant is 72 years old and is suffering from cancer.

21. Mr. Ponda, learned Senior Counsel for the Applicant states that as several witnesses are residing in the same locality as that of the Applicant, the Applicant will therefore not reside within District - Pune and that the Applicant will reside at the residence of Mr. Shivajirao Patil, R/o. 'Vikram' Bungalow, Chintamani Nagar, Madhavnagar Road, Sangli – 416 416 and will attend the Sanjay Nagar Police Station, Sangli.

22. The Applicant does not appear to be at risk of flight.

23. Accordingly, the Applicant can be enlarged on bail by imposing conditions. In view thereof, the following order:

ORDER

(a) The Applicant - Suryaji Pandurang Jadhav be released on bail in connection with ECIR No. ECIR/MB//ZO-II/03/2020 registered with the Enforcement Directorate on his furnishing P. R. Bond of Rs. 5,00,000/- with one or two solvent sureties in the like amount;

(b) The Applicant shall not enter District – Pune after being released on bail, except for reporting to the Investigating Officer, if called and for attending the trial;

(c) On being released on bail, the Applicant shall furnish his cell phone number and residential address to the Investigating Officer and shall keep the same updated, in case of any change thereto;

(d) The Applicant shall report to the Sanjay Nagar Police Station, Sangli once a week, on every Sunday between 11.00 a.m. and 1.00 p.m. till the conclusion of the trial and the Police Inspector of the Sanjay Nagar Police Station to communicate the details of the same to the Respondent No. 1 - ED;

(e) The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade such a person from disclosing the facts to the Court or to any Police personnel;

(f) The Applicant shall not tamper with the prosecution evidence

and shall not contact or influence the Complainant or any witness in any manner;

(g) The Applicant shall attend the trial regularly. The Applicant shall co-operate with the Trial Court and shall not seek unnecessary adjournments there at;

(h) The Applicant shall surrender his passport, if any, to the Investigating Officer;

24. The Bail Application stands disposed of accordingly.

25. It is clarified that the observations made herein are *prima facie* and the trial Court shall decide the case on its merits, uninfluenced by the observations made in this order.

[MADHAV J. JAMDAR, J.]