A.F.R.

Neutral Citation No. - 2024:AHC:178668

Reserved on: 05.11.2024

Delivered on: 14.11.2024

Court No. - 80

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 32236 of 2024

Applicant :- Padam Singhee

Opposite Party :- Directorate Of Enforcement

Counsel for Applicant :- Ram M. Kaushik

Counsel for Opposite Party :- Jitendra Prasad Mishra, Pawan Kumar Srivastava

Hon'ble Samit Gopal, J.

1. Heard Sri Kapil Sibal, learned Senior Advocate through Video Conferencing assisted by Sri Tanveer Ahmad Mir, Sri Ram M. Kaushik, learned counsels for the applicant, who are present in Court and Sri Gyan Prakash, learned Senior Advocate / Additional Solicitor General, Government of India assisted by Sri J.P. Mishra and Sri Kuldeep Srivastava, learned counsels for the Enforcement of Directorate/opposite party.

2. This Criminal Misc. Bail Application under Section 439 Code of Criminal Procedure,1973 has been filed by the applicant- Padam Singhee with the following prayers:-

"It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to allow the present bail application and direct to release the applicant on bail in Enforcement Case Information Report bearing No. ECIR/DLZO-I/35/2021 under Section ¾ of Prevention of Money Laundering Act, 2002 lodged by the Directorate of Enforcement on 26.03.2021.

It is further prayed that this Hon'ble Court may graciously be pleased to release the Applicant on Interim Bail in relation to Enforcement Case Information Report bearing No. ECIR/DLZO-I/35/2021 under Section ¾ of Prevention of Money Laundering Act, 2002 lodged by the Directorate of Enforcement on 26.03.2021; during the pendency of the present case before this Hon'ble Court, otherwise the personal liberty of the Applicant shall be at stake which cannot be compensated in any manner and/or to pass such other and further order this Hon'ble Court may deem fit and proper under the facts and circumstance of the case."

3. The facts of the case are that a complaint dated 05.04.2024 was filed by the Assistant Director (PMLA), Directorate of Enforcement, Delhi Zonal Office-I, New Delhi against (i) M/s SVOGL Oil Gas & Energy Limited (through the then Chairman and Managing Director, Sh. Prem Singhee and the then Joint Managing Director) Tower-1, Fifth Floor, NBCC Plaza, Sector V, Push Vihar, New Delhi-110017, (ii) Mr. Padam Singhee S/o Late Sh. Chimanlal Singhee, Director of M/s. SVOGL and; (iii) Mr. Prem Singhee S/o Late Sh. Chimanlal Singhee, Director of M/s. SVOGL, (iv) M/s Practical Properties Private Limited (through Authorized Representative), 432-E, F/F Devli Village New Delhi South Delhi-110052, (v) M/s Bee Tee Credit Marketing Private Limited (through Authorized Representative), 90/N, New Alipore, 3rd Floor Flat No. 4, Block E, Kolkata West Bengal 700053, (vi) M/s Resimpex Real Estate Private Limited (through Authorized Representative), 605, Suncity Business Tower, Golf Course Road, Sector-54, Gurugram, Haryana 122001 and (vii) M/s Realtech Property Solution Private Limited (through Authorized Representative), 133-A, Flat No. 7, F/F, R/S, B/P, kh No. 301/350 Saidulajab Westend Marg, New Delhi South West Delhi 110030 with the following prayers:-

"Therefore, in the facts and circumstances stated hereinabove, it is most humbly prayed that;

a. This Hon'ble Court may be pleased to take cognizance of the offence of money laundering as defined u/s 3, punishable u/s 4 of Prevention of Money Laundering Act, 2002, and proceed in accordance with law, issue summons against accused persons, try and punish according to law.

b. To pass appropriate order for confiscation of properties, to the extent of proceeds of crime of this case, frozen during search action dated 15.12.2024 and 06.01.2024 being proceeds of crime in terms of section 8 (5) of Prevention of Money Laundering Act, 2002.

c. Confiscate the properties attached vide Provisional Attachment Order No. 04/2024 dated 25.01.2024 in terms of section 8(5) of PMLA, 2002.

d. Confiscate the properties attached vide Provisional Attachment Order No.06/2024 dated 22.03.2024 in terms of section 8(5) of PMLA, 2002.

e. The Complaint craves leave of the Hon'ble Court to file Supplementary prosecution Complaint, if required.

f. To grant any other relief, which this Hon'ble Court deem fit and proper, in the facts and circumstances of the case."

The court took cognizance upon the same and summoned the accused persons vide an order of the same date. The applicant is in jail since 07.02.2024 in the said case.

4. The allegation involved are under the Prevention of Money Laundering Act, 2002 in the present matter. M/s SVOGL Oil Gas & Energy Limited availed credit facilities from Punjab National Bank between 2006 and 2017. Padam Singhee and Prem Singhee key managerial persons of M/s SVOGL and others through associate entities siphoned off the loans availed by indulging in criminal conspiracy and generated Proceeds of Crime within the meaning of Section 2(1) (u) of

PMLA. The loss incurred to the Complainant Bank is to the tune of Rs. 252,61,46,476/- which constitutes Proceeds of Crime in the instant case.

5. Learned counsel for the applicant submitted as under:-

(1) Loan was taken by the company of which the applicant is the Joint Managing Director.

(2) The said loan was not repaid.

(3) The account of loan of the company was declared NPA with retrospective effect from 26.12.2013.

(4) No offence thus is made out in the above mentioned situation and circumstances.

(5) On the basis of a complaint lodged by Punjab National Bank, NOIDA, a First Information Report bearing FIR No. RCBD1/2021/E/0001, dated 10.03.2021 was registered by the Central Bureau of Investigation under Sections 120B r/w 409 & 420 I.P.C. and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 against the applicant and others being the predicate offence in which the applicant has been granted bail vide order dated 14.5.2024 passed by Special Judicial Magistrate (C.B.I.), Ghaziabad, copy of the said order has been annexed as annexure no. 5 to the affidavit.

(6) No charge sheet till date has been submitted in the predicate offence particularly with regards to the issue relating to Punjab National Bank.

(7) The claim of the Bank for declaring M/s SVOGL Oil Gas & Energy Limited as a “Wilful Defaulter” or its account as “Fraud” has been struck down by Hon’ble Delhi High Court vide its order dated 12.5.2023 in which the challenge was of classifying the accounts as “Red Flag Accounts” or “Fraud Accounts” in writ petition being Writ Petition (C) No. 306 of 2019 connected with other petitions. The said order has been placed before the Court which is annexure no. 11 to the affidavit.

(8) The predicate offence since remains to see the charge sheet and the present matter is also to be tried together by the same court, there will be delay in the trial since charge sheet has not been submitted in the predicate offence and as such the trial cannot proceed.

(9) No fraud has been committed since the claim of the Bank for declaring the Company as "Wilful Defaulter" or its account as "Fraud" has been struck down by Hon'ble Delhi High Court.

(10) After release of the applicant on bail in the predicate offence the said order is not under challenge and has attained finality till date.

(11) Reliance has been placed on orders / judgments of the Apex Court to submit that subsequent to grant of bail to the accused in the predicate offence, he is entitled to bail, delay in trial violates the right of the accused under Article 21 of the Constitution of India, the period of detention of the accused also has to be considered, the twin conditions under Section 45 of PMLA imposing restraint of grant of bail to an accused is not absolute, the grant of bail is a rule whereas jail is an exception and that the principle of law of bail is not to be withheld as a punishment. The following judgments / orders of the Apex Court have been placed for the same before the Court:

A. In the case of **V. Senthil Balaji v. Deputy Director, Directorate of Enforcement : 2024 SCC OnLine SC 2626** the Apex Court has been held as under:

> **"EFFECT OF THE DELAY IN DISPOSAL OF THE CASES**
>
> **14. As of now, the appellant has been incarcerated for more than 15 months in connection with the offence punishable under Section 4 of the PMLA.** The minimum punishment for an offence punishable under Section 4 is imprisonment for three years, which may extend to seven years. If the scheduled offences are under paragraph 2 of Part A of the Schedule in the PMLA, the sentence may extend to 10

years. In the appellant's case, the maximum sentence can be of 7 years as there is no scheduled offence under paragraph 2 of Part A of Schedule II alleged against the appellant.

15. We have already narrated that there are three scheduled offences. In the main case (CC Nos. 22 and 24 of 2021), there are about 2000 accused and 550 prosecution witnesses cited. Thus, it can be said that there are more than 2000 accused in the three scheduled offences, and the number of witnesses proposed to be examined exceeds 600.

16. This Bench is also dealing with MA no. 1381 of 2024 seeking various reliefs such as a transfer of investigation of scheduled offences, appointment of special public prosecutor etc. The orders passed in the said application would reveal that the sanction to prosecute all public servants, including the appellant, has now been granted. Charges have not been framed in the scheduled offences.

17. Thus, on the issue of framing of charge or discharge, a large number of accused will have to be heard. The trial of the scheduled offences will be a warrant case. Therefore, even if the trials of the scheduled offences are expedited, the process of framing charges may take a few months as many advocates representing more than 2000 accused persons will have to be heard. There are bound to be further proceedings arising out of orders on charge. After that, more than 600 witnesses will have to be examined. Documentary and electronic evidence is relied upon in the scheduled offences. Even if few witnesses are dropped, a few hundred witnesses will have to be examined. Presence of all the accused will have to be procured and their statements under Section 313 of the Criminal Procedure Code, 1973 will have to be recorded. Therefore, even in ideal conditions, the possibility of the trial of scheduled offences concluding even within a reasonable time of three to four years appears to be completely ruled out.

18. In the offence under the PMLA, the charge has not been framed. In view of Clause (d) of sub-section (1) of Section 44 of PMLA, the procedure for sessions trial will have to be followed for the prosecution of an offence punishable under Section 4 of the PMLA. In view of clause (c) of sub-section (1) of Section 44, it is possible to transfer the trial of the scheduled offences to the Special Court under the PMLA.

19. The offence of money laundering has been defined under Section 3 of the PMLA which reads thus:

"3. Offence of money-laundering.—Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the [proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming] it as untainted property shall be guilty of offence of money-laundering.

[Explanation.—For the removal of doubts, it is hereby clarified that,—

(i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:—

(a) concealment; or

(b) possession; or

(c) acquisition; or

(d) use; or

(e) projecting as untainted property; or

(f) claiming as untainted property, in any manner whatsoever;

(ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.]

20. Existence of proceeds of crime is a condition precedent for the offence under Section 3. Proceeds of crime have been defined in Section 2(u) of the PMLA which reads thus:

"2 .....

(u) "**proceeds of crime**" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country [or abroad];

Explanation.—For the removal of doubts, it is hereby clarified that "proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence;"

21. Hence, the existence of a scheduled offence is *sine qua non* for alleging the existence of proceeds of crime. A property derived or obtained, directly or indirectly, by a person as a result of the criminal activity relating to a scheduled offence constitutes proceeds of crime. The existence of proceeds of crime at the time of the trial of the offence under Section 3 of PMLA can be proved only if the scheduled offence is established in the prosecution of the scheduled offence. Therefore, **even if the trial of the case under the PMLA proceeds, it cannot be finally decided unless the trial of**

scheduled offences concludes. In the facts of the case, there is no possibility of the trial of the scheduled offences commencing in the near future. Therefore, we see no possibility of both trials concluding within a few years.

22. In the case of *K.A. Najeeb, (2021) 3 SCC 713*, in paragraph 17 this Court held thus:

"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."**

(emphasis added)

23. In the case of *Manish Sisodia* v. *Directorate of Enforcement, 2024 SCC OnLine SC 1920* in paragraphs 49 to 57, this Court held thus:

"49. We find that, on account of a long period of incarceration running for around 17 months and the trial even not having been commenced, the appellant has been deprived of his right to speedy trial.

50. As observed by this Court, the right to speedy trial and the right to liberty are sacrosanct rights. On denial of these

rights, the trial court as well as the High Court ought to have given due weightage to this factor.

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*[6] 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*[7], *Shri Gurbaksh Singh Sibbia* v. *State of Punjab*[8], *Hussainara Khatoon (I)* v. *Home Secretary, State of Bihar*[9], *Union of India* v. *K.A. Najeeb*[10] and *Satender Kumar Antil* v. *Central Bureau of Investigation*[11]. The Court observed thus:

"**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 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*, (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 a 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.

55. As observed by this Court in the case of *Gudikanti Narasimhulu* (supra), the objective to keep a person in judicial custody pending trial or disposal of an appeal is to secure the attendance of the prisoner at trial.

56. In the present case, the appellant is having deep roots in the society. There is no possibility of him fleeing away from

the country and not being available for facing the trial. In any case, conditions can be imposed to address the concern of the State.

57. Insofar as the apprehension given by the learned ASG regarding the possibility of tampering the evidence is concerned, it is to be noted that the case largely depends on documentary evidence which is already seized by the prosecution. As such, there is no possibility of tampering with the evidence. Insofar as the concern with regard to influencing the witnesses is concerned, the said concern can be addressed by imposing stringent conditions upon the appellant.

…….”

(emphasis added)

24. There are a few penal statutes that make a departure from the provisions of Sections 437, 438, and 439 of the Criminal Procedure Code, 1973. A higher threshold is provided in these statutes for the grant of bail. By way of illustration, we may refer to Section 45(1)(ii) of PMLA, proviso to Section 43D(5) of the Unlawful Activities (Prevention) Act, 1967 and Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, ‘NDPS Act’). The provisions regarding bail in some of such statutes start with a nonobstante clause for overriding the provisions of Sections 437 to 439 of the CrPC. The legislature has done so to secure the object of making the penal provisions in such enactments. For example, the PMLA provides for Section 45(1)(ii) as money laundering poses a serious threat not only to the country's financial system but also to its integrity and sovereignty.

25. Considering the gravity of the offences in such statutes, expeditious disposal of trials for the crimes under these statutes is contemplated. Moreover, such statutes contain provisions laying down higher threshold for the grant of bail.

The expeditious disposal of the trial is also warranted considering the higher threshold set for the grant of bail. Hence, the requirement of expeditious disposal of cases must be read into these statutes. **Inordinate delay in the conclusion of the trial and the higher threshold for the grant of bail cannot go together. It is a well-settled principle of our criminal jurisprudence that "bail is the rule, and jail is the exception." These stringent provisions regarding the grant of bail, such as Section 45(1)(iii) of the PMLA, cannot become a tool which can be used to incarcerate the accused without trial for an unreasonably long time.**

26. There are a series of decisions of this Court starting from the decision in the case of ***K.A. Najeeb***[2]**, which hold that such stringent provisions for the grant of bail do not take away the power of Constitutional Courts to grant bail on the grounds of violation of Part III of the Constitution of India.** We have already referred to paragraph 17 of the said decision, which lays down that the rigours of such provisions will melt down where there is no likelihood of trial being completed in a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. One of the reasons is that if, because of such provisions, incarceration of an undertrial accused is continued for an unreasonably long time, the provisions may be exposed to the vice of being violative of Article 21 of the Constitution of India.

27. Under the Statutes like PMLA, the minimum sentence is three years, and the maximum is seven years. The minimum sentence is higher when the scheduled offence is under the NDPS Act. **When the trial of the complaint under PMLA is likely to prolong beyond reasonable limits, the Constitutional Courts will have to consider exercising their powers to grant bail. The reason is that Section 45(1)(ii) does not confer power on the State to detain an accused for an unreasonably long time, especially when there is no**

possibility of trial concluding within a reasonable time. What a reasonable time is will depend on the provisions under which the accused is being tried and other factors. **One of the most relevant factor is the duration of the minimum and maximum sentence for the offence.** Another important consideration is the higher threshold or stringent conditions which a statute provides for the grant of bail. Even an outer limit provided by the relevant law for the completion of the trial, if any, is also a factor to be considered. The extraordinary powers, as held in the case of *K.A. Najeeb*[2], can only be exercised by the Constitutional Courts. The Judges of the Constitutional Courts have vast experience. **Based on the facts on record, if the Judges conclude that there is no possibility of a trial concluding in a reasonable time, the power of granting bail can always be exercised by the Constitutional Courts on the grounds of violation of Part III of the Constitution of India notwithstanding the statutory provisions.** The Constitutional Courts can always exercise its jurisdiction under Article 32 or Article 226, as the case may be. **The Constitutional Courts have to bear in mind while dealing with the cases under the PMLA that, except in a few exceptional cases, the maximum sentence can be of seven years. The Constitutional Courts cannot allow provisions like Section 45(1)(ii) to become instruments in the hands of the ED to continue incarceration for a long time when there is no possibility of a trial of the scheduled offence and the PMLA offence concluding within a reasonable time. If the Constitutional Courts do not exercise their jurisdiction in such cases, the rights of the undertrials under Article 21 of the Constitution of India will be defeated. In a given case, if an undue delay in the disposal of the trial of scheduled offences or disposal of trial under the PMLA can be substantially attributed to the accused, the Constitutional Courts can always decline to exercise jurisdiction to issue prerogative writs.** An exception will also be in a case where,

considering the antecedents of the accused, there is every possibility of the accused becoming a real threat to society if enlarged on bail. The jurisdiction to issue prerogative writs is always discretionary.

28. Some day, the courts, especially the Constitutional Courts, will have to take a call on a peculiar situation that arises in our justice delivery system. There are cases where clean acquittal is granted by the criminal courts to the accused after very long incarceration as an undertrial. When we say clean acquittal, we are excluding the cases where the witnesses have turned hostile or there is a bona fide defective investigation. In such cases of clean acquittal, crucial years in the life of the accused are lost. **In a given case, it may amount to violation of rights of the accused under Article 21 of the Constitution which may give rise to a claim for compensation.**

29. As stated earlier, the appellant has been incarcerated for 15 months or more for the offence punishable under the PMLA. In the facts of the case, the trial of the scheduled offences and, consequently, the PMLA offence is not likely to be completed in three to four years or even more. If the appellant's detention is continued, it will amount to an infringement of his fundamental right under Article 21 of the Constitution of India of speedy trial."

B. In the case of **Arvind Kejriwal v. Central Bureau of Investigation : 2024 SCC OnLine SC 2550** the Apex Court has held as under:

"38. The evolution of bail jurisprudence in India underscores that the 'issue of bail is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitised judicial process'.[4] **The principle has further been**

> **expanded to establish that the prolonged incarceration of an accused person, pending trial, amounts to an unjust deprivation of personal liberty.** This Court in *Union of India* v. *K.A. Najeeb* has expanded this principle even in a case under the provisions of the Unlawful Activities (Prevention) Act, 1967 (**hereinafter 'UAPA**') notwithstanding the statutory embargo contained in Section 43-D(5) of that Act, laying down that the legislative policy **against the grant of bail will melt down where there is no likelihood of trial being completed within a reasonable time.**[5] **The courts would invariably bend towards 'liberty' with a flexible approach towards an undertrial**, save and except when the release of such person is likely to shatter societal aspirations, derail the trial or deface the very criminal justice system which is integral to rule of law.**"**

C. In the case of **Prem Prakash v. Union of India through the Directorate of Enforcement : 2024 SCC OnLine SC 2270** the Apex Court has held as under:

> **"9.** The appellant was taken into custody on 11.08.2023. He was already in custody from 25.08.2022 in ECIR No. 4 of 2022. His application for bail was rejected by the Special Judge on 20.09.2023. He preferred a bail application before the High Court. The High Court has declined bail to the appellant. Aggrieved, the appellant is before us.
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> **10.** We have heard Mr. Ranjit Kumar, Learned Senior counsel for the appellant, ably assisted by Mr. Indrajit Sinha and Mr. Siddharth Naidu, learned advocates. We have also heard Mr. S.V. Raju, Learned Additional Solicitor General, ably assisted by Mr. Zoheb Hussain and Mr. Kanu Agarwal for the respondents. Learned Senior Counsels on both sides have placed their respective contentions and also filed detailed written submissions.

SECTION 45 PMLA-CONTOURS

11. Considering that the present is a bail application for the offence under Section 45 of PMLA, the twin conditions mentioned thereof become relevant. Section 45(1) of PMLA reads as under:—

"45. Offences to be cognizable and non-bailable. (1) Notwithstanding anything contained in the Criminal Procedure Code, 1973 (2 of 1974), no person accused of an offence [under this Act] shall be released on bail or on his own bond unless-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(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:

Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm 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."

In *Vijay Madanlal Choudhary* v. *Union of India*, 2022 SCC OnLine SC 929, this Court categorically held that while

Section 45 of PMLA restricts the right of the accused to grant of bail, it could not be said that the conditions provided under Section 45 impose absolute restraint on the grant of bail. Para 131 is extracted hereinbelow:—

"131. It is important to note that the twin conditions provided under Section 45 of the 2002 Act, though restrict the right of the accused to grant of bail, **but it cannot be said that the conditions provided under Section 45 impose absolute restraint on the grant of bail**. The discretion vests in the court, which is not arbitrary or irrational but judicial, guided by the principles of law as provided under Section 45 of the 2002 Act. …"

These observations are significant and if read in the context of the recent pronouncement of this Court dated 09.08.2024 in Criminal Appeal No. 3295 of 2024 [*Manish Sisodia (II)* v. *Directorate of Enforcement*], it will be amply clear that even under PMLA the governing principle is that **"*Bail is the Rule and Jail is the Exception*"**. In para 53 of [***Manish Sisodia (II)***, this Court observed as under:—

"53…..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**."

All that Section 45 of PMLA mentions is that certain conditions are to be satisfied. **The principle that, "*bail is the rule and jail is the exception*" is only a paraphrasing of Article 21 of the Constitution of India, which states that no person shall be deprived of his life or personal liberty except according to the procedure established by law.**

Liberty of the individual is always a Rule and deprivation is the exception. Deprivation can only be by the procedure established by law, which has to be a valid and reasonable procedure. Section 45 of PMLA by imposing twin conditions does not re-write this principle to mean that deprivation is the norm and liberty is the exception. **As set out earlier, all that is required is that in cases where bail is subject to the satisfaction of twin conditions, those conditions must be satisfied**.

12. Independently and as has been emphatically reiterated in *Manish Sisodia (II)* (supra) relying on *Ramkripal Meena* v. *Directorate of Enforcement* (SLP (Crl.) No. 3205 of 2024 dated 30.07.2024) and *Javed Gulam Nabi Shaikh* v. *State of Maharashtra*, 2024 SCC OnLine SC 1693, **where the accused has already been in custody for a considerable number of months and there being no likelihood of conclusion of trial within a short span, the rigours of Section 45 of PMLA can be suitably relaxed to afford conditional liberty**. Further, *Manish Sisodia (II)* (supra) reiterated the holding in *Javed Gulam Nabi Sheikh* (Supra), that keeping persons behind the bars for unlimited periods of time in the hope of speedy completion of trial would deprive the fundamental right of persons under Article 21 of the Constitution of India and that prolonged incarceration before being pronounced guilty ought not to be permitted to become the punishment without trial. In fact, *Manish Sisodia (II)* (Supra) reiterated the holding in *Manish Sisodia (I)* v. *Directorate of Enforcement* (judgment dated 30.10.2023 in Criminal Appeal No. 3352 of 2023) where it was held as under:—

"28. Detention or jail before being pronounced guilty of an offence should not become punishment without trial. **If the trial gets protracted despite assurances of the prosecution, and it is clear that case will not be decided within a foreseeable time, the prayer for bail may be meritorious**.

While the prosecution may pertain to an economic offence, yet it may not be proper to equate these cases with those punishable with death, imprisonment for life, ten years or more like offences under the Narcotic Drugs and Psychotropic Substances Act, 1985, murder, cases of rape, dacoity, kidnaping for ransom, mass violence, etc. Neither is this a case where 100/1000s of depositors have been defrauded. The allegations have to be established and proven. **The right to bail in cases of delay, coupled with incarceration for a long period, depending on the nature of the allegations, should be read into Section 439 of the Code and Section 45 of the PML Act. The reason is that the constitutional mandate is the higher law, and it is the basic right of the person charged of an offence and not convicted, that he be ensured and given a speedy trial. When the trial is not proceeding for reasons not attributable to the accused, the court, unless there are good reasons, may well be guided to exercise the power to grant bail. This would be truer where the trial would take years**."

It is in this background that Section 45 of PMLA needs to be understood and applied. Article 21 being a higher constitutional right, statutory provisions should align themselves to the said higher constitutional edict."

D. In the case of **Jalaluddin Khan v. Union of India : 2024 SCC OnLine SC 1945** the Apex Court held as under:

"18. Now, we come to Section 20 of UAPA, which reads thus:

"20. Punishment for being member of terrorist gang or organisation.—Any person who is a member of a terrorist gang or a terrorist organisation, which is involved in terrorist act, shall be punishable with imprisonment for a term which may extend to imprisonment for life, and shall also be liable to fine."

Terrorist gang has been defined in Section 2(L), which reads thus:

"2 Definitions.—…….

(L) "terrorist gang" means any association, other than terrorist organisation, whether systematic or otherwise, which is concerned with, or involved in, terrorist act;

…….."

There is not even an allegation in the charge sheet that the appellant was a member of any terrorist gang. As regards the second part of being a member of a terrorist organisation, as per Section 2(m), a terrorist organisation means an organisation listed in the first schedule or an organisation operating under the same name as the organisation was listed. The charge sheet does not mention the name of the terrorist organisation within the meaning of Section 2(m) of which the appellant was a member. We find that the PFI is not a terrorist organisation, as is evident from the first schedule.

19. Therefore, on plain reading of the charge sheet, it is not possible to record a conclusion that there are reasonable grounds for believing that the accusation against the appellant of commission of offences punishable under the UAPA is *prima facie* true. We have taken the charge sheet and the statement of witness Z as they are without conducting a mini-trial. Looking at what we have held earlier, it is impossible to record a *prima facie* finding that there were reasonable grounds for believing that the accusation against the appellant of commission of offences under the UAPA was *prima facie* true. No antecedents of the appellant have been brought on record.

20. The upshot of the above discussion is that there was no reason to reject the bail application filed by the appellant.

> **21.** Before we part with the Judgment, we must mention here that the Special Court and the High Court did not consider the material in the charge sheet objectively. Perhaps the focus was more on the activities of PFI, and therefore, the appellant's case could not be properly appreciated. **When a case is made out for a grant of bail, the Courts should not have any hesitation in granting bail. The allegations of the prosecution may be very serious. But, the duty of the Courts is to consider the case for grant of bail in accordance with the law. "Bail is the rule and jail is an exception" is a settled law. Even in a case like the present case where there are stringent conditions for the grant of bail in the relevant statutes, the same rule holds good with only modification that the bail can be granted if the conditions in the statute are satisfied. The rule also means that once a case is made out for the grant of bail, the Court cannot decline to grant bail. If the Courts start denying bail in deserving cases, it will be a violation of the rights guaranteed under Article 21 of our Constitution."**

E. In the case of **Manish Sisodia v. Directorate of Enforcement : 2024 SCC OnLine SC 1920** the Apex Court has held as under:

> **"49.** We find that, on account of a long period of incarceration running for around 17 months and the trial even not having been commenced, the appellant has been deprived of his right to speedy trial.
>
> **50.** As observed by this Court, the right to speedy trial and the right to liberty are sacrosanct rights. On denial of these rights, the trial court as well as the High Court ought to have given due weightage to this factor.
>
> **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*[6] 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*[7], *Shri Gurbaksh Singh Sibbia* v. *State of Punjab*[8], *Hussainara Khatoon (I)* v. *Home Secretary, State of Bihar*[9], *Union of India* v. *K.A. Najeeb*[10] and *Satender Kumar Antil* v. *Central Bureau of Investigation*[11]. The Court observed thus:

"**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 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 a 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.

55. As observed by this Court in the case of *Gudikanti Narasimhulu* (supra), **the objective to keep a person in judicial custody pending trial or disposal of an appeal is to secure the attendance of the prisoner at trial**.**"**

E. In the case of **Ramkripal Meena v. Directorate of Enforcement : 2024 SCC OnLine SC 2276** the Apex Court has held as under:

"7. Adverting to the prayer for grant of bail in the instant case, it is pointed out by learned counsel for ED that **the complaint case is at the stage of framing of charges** and 24 witnesses are proposed to be examined. The conclusion of proceedings, thus, will take some reasonable time. **The petitioner has**

already been in custody for more than a year. Taking into consideration the period spent in custody and there being no likelihood of conclusion of trial within a short span, coupled with the fact that the petitioner is already on bail in the predicate offence, and keeping in view the peculiar facts and circumstances of this case, it seems to us that the rigours of Section 45 of the Act can be suitably relaxed to afford conditional liberty to the petitioner. Ordered accordingly.

8. In view of the above and without expressing any views on the merits of the case, we are inclined to release the petitioner on bail. The petitioner is, accordingly, directed to be enlarged on bail subject to such terms and conditions as may be imposed by the learned Special Judge. In addition, the petitioner shall abide by the following conditions:

(i) If the passport of the petitioner is still with him, the same shall be deposited with the Special Court.

(ii) The petitioner shall not make any direct or indirect attempt to contact the witnesses, who are likely to depose against him.

(iii) The petitioner shall not indulge in tampering of the evidence and any such attempt by him shall be taken as a misuse of concession of this bail order.

(iv) The petitioner shall furnish a fresh list of immovable assets owned by him and his family and the ED shall be at liberty to attach all such assets. The bank account of the petitioner shall also remain seized.

(v) The petitioner shall appear before the Trial Court regularly and in the event he is found absent, the ED shall be at liberty to seek cancellation of bail granted to him today by this Court.**"**

F. In the case of **Sk. Javed Iqbal v. State of U.P. : (2024) 8 SCC 293** the Apex Court has held as under:

"41. In Gurwinder Singh [Gurwinder Singh v. State of Punjab, (2024) 5 SCC 403 : (2024) 2 SCC (Cri) 676] on which reliance has been placed by the respondent, a two-Judge Bench of this Court distinguished K.A. Najeeb [Union of India v. K.A. Najeeb, (2021) 3 SCC 713] holding that the appellant in K.A. Najeeb [Union of India v. K.A. Najeeb, (2021) 3 SCC 713] was in custody for five years and that the trial of the appellant in that case was severed from the other co-accused whose trial had concluded whereupon they were sentenced to imprisonment of eight years; but in Gurwinder Singh [Gurwinder Singh v. State of Punjab, (2024) 5 SCC 403 : (2024) 2 SCC (Cri) 676], the trial was already underway and that twenty-two witnesses including the protected witnesses have been examined. It was in that context, the two-Judge Bench of this Court in Gurwinder Singh [Gurwinder Singh v. State of Punjab, (2024) 5 SCC 403 : (2024) 2 SCC (Cri) 676] observed that mere delay in trial pertaining to grave offences cannot be used as a ground to grant bail.

42**. This Court has, time and again, emphasised 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 21of 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 wrong to say that under a particular statute, bail cannot be granted**. It would run counter to the very grain of our constitutional jurisprudence. In any view of the

matter, K.A. Najeeb [Union of India v. K.A. Najeeb, (2021) 3 SCC 713] being rendered by a three-Judge Bench is binding on a Bench of two Judges like us.**"**

G. In the case of **Javed Gulam Nabi Shaikh v. State of Maharashtra and Another : 2024 SCC OnLine SC 1693** the Apex Court has held as under:

> **"8.** Having regard to the aforesaid, we wonder by what period of time, the trial will ultimately conclude. Howsoever serious a crime may be, **an accused has a right to speedy trial as enshrined under the Constitution of India**.
>
> **9.** 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.
>
> **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 a punishment, but that the requirements as to bail are merely to secure the attendance of the prisoner at trial."*
>
> **11.** The same principle has been reiterated by this Court in *Gurbaksh Singh Sibba* v. *State of Punjab*, (1980) 2 SCC 565 that the object of bail is to secure the attendance of the accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to

take his trial and that it is indisputable that bail is not to be withheld as a punishment.

12. Long back, in *Hussainara Khatoon* v. *Home Secy., State of Bihar*, (1980) 1 SCC 81, this court had declared that the right to speedy trial of offenders facing criminal charges is "implicit in the broad sweep and content of Article 21 as interpreted by this Court". Remarking that a valid procedure under Article 21 is one which contains a procedure that is "reasonable, fair and just" it was held that:

"Now obviously procedure prescribed by law for depriving a person of liberty cannot be "reasonable, fair or just" unless that procedure ensures a speedy trial for determination of the guilt of such person. No procedure which does not ensure a reasonably quick trial can be regarded as "reasonable, fair or just" and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. The question which would, however, arise is as to what would be the consequence if a person accused of an offence is denied speedy trial and is sought to be deprived of his liberty by imprisonment as a result of a long delayed trial in violation of his fundamental right under Article 21."

13. The aforesaid observations have resonated, time and again, in several judgments, such as *Kadra Pahadiya* v. *State of Bihar*, (1981) 3 SCC 671 and *Abdul Rehman Antulay* v. *R.S. Nayak*, (1992) 1 SCC 225. In the latter the court re-emphasized the right to speedy trial, and further held that an accused, facing prolonged trial, has no option:

"The State or complainant prosecutes him. It is, thus, the obligation of the State or the complainant, as the case may be, to proceed with the case with reasonable promptitude. Particularly, in this country, where the large majority of accused come from poorer and weaker sections of the society,

not versed in the ways of law, where they do not often get competent legal advice, the application of the said rule is wholly inadvisable. Of course, in a given case, if an accused demands speedy trial and yet he is not given one, may be a relevant factor in his favour. But we cannot disentitle an accused from complaining of infringement of his right to speedy trial on the ground that he did not ask for or insist upon a speedy trial."

14. In *Mohd Muslim @ Hussain* v. *State (NCT of Delhi)*, 2023 INSC 311, this Court observed as under:

"21. Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not, appalling. According to the Union Home Ministry's response to Parliament, the National Crime Records Bureau had recorded that as on 31st December 2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069 lakhs in the country. Of these 122,852 were convicts; the rest 4,27,165 were undertrials.

22. The danger of unjust imprisonment, is that inmates are at risk of "prisonisation" a term described by the Kerala High Court in A Convict Prisoner *v.* State, *1993 Cri LJ 3242, as "a radical transformation" whereby the prisoner:*

"loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships. Psychological problems result from loss of freedom, status, possessions, dignity any autonomy of personal life. The inmate culture of prison turns out to be dreadful. The prisoner becomes hostile by ordinary standards. Self-perception changes."

23. There is a further danger of the prisoner turning to crime, "as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal" (also see Donald Clemmer's 'The Prison Community' published in 1940). Incarceration has further deleterious effects - where the accused belongs to the weakest economic strata : immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials - especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily."

15. The requirement of law as being envisaged under Section 19 of the National Investigation Agency Act, 2008 (hereinafter being referred to as "the 2008 Act") mandates that the trial under the Act of any offence by a Special Court shall be held on day-to-day basis on all working days and have precedence over the trial of any other case and Special Courts are to be designated for such an offence by the Central Government in consultation with the Chief Justice of the High Court as contemplated under Section 11 of the 2008.

16. A three-Judge Bench of this Court in *Union of India* v. *K.A. Najeeb*, (2021) 3 SCC 713] had an occasion to consider the long incarceration and at the same time the effect of Section 43-D(5) of the UAP Act and observed as under : (SCC p. 722, para 17)

"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."

17. In the recent decision, *Satender Kumar Antil* v. *Central Bureau of Investigation*, (2022) 10 SCC 51, prolonged incarceration and inordinate delay engaged the attention of the court, which considered the correct approach towards bail, with respect to several enactments, including Section 37 NDPS Act. The court expressed the opinion that Section 436A (which requires inter alia the accused to be enlarged on bail if the trial is not concluded within specified periods) of the Criminal Procedure Code, 1973 would apply:

"We do not wish to deal with individual enactments as each special Act has got an objective behind it, followed by the rigour imposed. The general principle governing delay would apply to these categories also. To make it clear, the provision contained in Section 436-A of the Code would apply to the Special Acts also in the absence of any specific provision. For example, the rigour as provided under Section 37 of the NDPS Act would not come in the way in such a case as we are dealing with the liberty of a person. We do feel that more the rigour, the quicker the adjudication ought to be. After all, in these types of cases number of witnesses would be very less and there may not be any justification for prolonging the trial. Perhaps there is a need to comply with the directions of this Court to expedite the process and also a stricter compliance of Section 309 of the Code."

18. Criminals are not born out but made. The human potential in everyone is good and so, never write off any criminal as beyond redemption. This humanist fundamental is often missed when dealing with delinquents, juvenile and adult. Indeed, every saint has a past and every sinner a future. When a crime is committed, a variety of factors is responsible for making the offender commit the crime. Those factors may be social and economic, may be, the result of value erosion or parental neglect; may be, because of the stress of circumstances, or the manifestation of temptations in a milieu of affluence contrasted with indigence or other privations.

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 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."

G. In the case of **Shoma Kanti Sen v. State of Maharashtra : (2024) 6 SCC 591,** the Apex Court has held as under:

"46. Pre-conviction detention is necessary to collect evidence (at the investigation stage), to maintain purity in the course of trial and also to prevent an accused from being fugitive from justice. Such detention is also necessary to prevent further commission of offence by the same accused. Depending on gravity and seriousness of the offence alleged to have been committed by an accused, detention before conclusion of trial at the investigation and post charge-sheet stage has the sanction of law broadly on these reasonings. **But any form of deprival of liberty results in breach of Article 21 of the Constitution of India and must be justified on the ground of being reasonable, following a just and fair procedure and such deprival must be proportionate in the facts of a given case**. These would be the overarching principles which

the law courts would have to apply while testing prosecution's plea of pre-trial detention, both at investigation and post charge-sheet stage.**"**

H. In the case of **Sanjay Agarwal v. Directorate of Enforcement : 2022 SCC OnLine SC 1748** the Apex Court has held as under:

> **"5. It appears that the appellant was admitted to regular bail in connection with the aforesaid offences punishable under the provisions of Customs Act *vide* order dated 28.08.2018**. Upon registration of the proceedings by the Enforcement Directorate on 03.02.2021, the appellant came to be arrested in said PMLA case on 28.11.2021 and has since then been in custody.
>
> **6.** At this stage, we need not go into the submissions raised on behalf of either side. **The fact of the matter is that for an offence where the maximum sentence could be punishable with imprisonment for seven years, the appellant has undergone custody for about a year**.
>
> **7. It further appears that the investigation is still pending and the matter is not ripe for trial on merits before the appropriate Court**.
>
> **8.** Considering the entirety of the circumstances on record and in the peculiar facts, in our view, the appellant is entitled to the relief of bail. We, therefore, proceed to pass following directions:
>
> (a) The appellant shall be produced before the concerned Court within three days and the concerned Court shall release the appellant on bail subject to such conditions as the Court may deem it appropriate to impose.
>
> (b) Such conditions shall include following stipulations-
>
> (i) that the appellant shall swear an affidavit as to the details of the passport(s) held by him, which along with affidavit, shall be tendered before the Enforcement Directorate.

(c) The appellant upon being released on bail shall mark his presence in the office of the Enforcement Directorate every Monday between 11.00 am to 1.00 pm.

(d) The appellant shall not in any way hamper the investigation and/or seek to influence the course of investigation or the witnesses. Any such attempt or infraction in that behalf shall entail in cancellation of the relief granted vide this Order."

(12) The applicant is in jail since 07.02.2024 and therefore, he be released on bail.

6. Learned counsel for the Enforcement Directorate submitted as under:-

(1) The complaint under PMLA has been filed with regards to the proceeds of crime.

(2) After taking money from the bank the same was transferred to shell companies and then siphoned off.

(3) No joint trial is required as per Sections 44(1) (c) of Prevention of Money Laundering Act.

(4) There is no requirement of charge sheet in the predicate offence.

(5) The complaint particularly Table Nos. 6 to 13 clearly shows involvement of the applicant and the modus operandi.

(6) Prevention of Money Laundering Act lays down its twin conditions for grant of bail under Section 45 which is applicable and due to the same, bail is not liable to be granted to the applicant.

(7) The prayer for bail thus be rejected.

7. In rejoinder, learned counsel for the applicant submitted and reiterated as under:-

(1) No charge sheet has been submitted in the predicate offence.

(2) The statements of said two persons is of someone else which cannot be relied on.

(3) No investigation is needed in the present matter and as such custody is not needed.

(4) There are no chances of tempering with the evidence.

(5) Rigours of twin conditions under Section 45 of PML Act do not apply.

(6) It is a fit case for grant of bail.

8. After having heard learned counsels for the parties and perusing the records, it is evident that-

(1) The applicant is in custody in connection with an offence under Prevention of Money Laundering Act.

(2) In the predicate offence he has been granted bail. The said order stands final till date.

(3) No charge sheet has been submitted in the predicate offence with regards to the present issue being committed relating to Punjab National Bank till date.

(4) The law with regards to trial is clear and well settled.

(5) The case under PMLA and the predicate offence has to be tried together by the same court which is not possible in the present case as of now since predicate offence is yet to see its charge sheet, if any.

(6) The challenge to declaring M/s SVOGL Oil Gas & Energy Limited as “Wilful Defaulter” and its account as “Fraud” was successful and the same was struck down by Hon’ble Delhi High Court. The said order also attains finality.

(7) Custodial interrogation is not needed.

(8) The principle of “bail is a rule and jail is an exception” is being consistently followed and repeatedly being reiterated and reminded by the Apex Court and other Courts.

(9) The applicant is in jail since 07.02.2024.

(10) There are no chances of his absconding.

(11) Looking to the facts and circumstances of the case, it is a fit case for grant of bail.

9. Let the applicant- **Padam Singhee,** be released on bail in the aforesaid case crime number on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice:-

i) The applicant will not tamper with prosecution evidence.

ii) The applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(iv) The applicant will not misuse the liberty of bail in any manner whatsoever. In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under section 82 Cr.P.C., may be issued and if applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under section 174-A I.P.C.

(v) The applicant shall remain present, in person, before the trial court on dates fixed for (1) opening of the case, (2) framing of charge and (3) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as

abuse of liberty of bail and proceed against him in accordance with law and the trial court may proceed against him under Section 229-A IPC.

(vi) The applicant shall deposit his passport before the trial court forthwith and shall also not leave the country without prior permission of the Court.

(vii) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicant.

10. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail and send the applicant to prison.

11. The bail application is allowed.

ISSUE REGARDING E-MAILS BEING SENT BY THE COUNSEL(S) FOR THE APPLICANT TO THE INVESTIGATING OFFICER

12. Before closing the present matter an important issue which was raised by learned counsel for the Enforcement Directorate with regards to the competency of an Advocate representing the parties to interact directly with the investigating agency with regards to the matter pending in the court in which the said agency is duly represented by its counsel needs to be considered and decided.

13. Learned counsel for the Enforcement Directorate submitted that Supplementary Affidavit dated 29.10.2024 filed on behalf of the applicant encloses with it an e-mail dated 23.09.2024 at 18:36 hours by Mr. Ashul Agarwal from e-mail id- “ashulagarwal7@gmail.com” to e-mail id- “addlzoi43-ed@gov.in” with the following contents:-

“Sir,

As you are aware that bail application filed by my client, Padam Singhee is pending before Allahabad High Court and is listed on 21st October 2024. Vide order dated 02.09.2024, ED was directed to file reply within 3 weeks, however, no reply has been received till now. You are kindly requested to file reply, if so desires.”

14. It is submitted that another e-mail dated 23.09.2024 at 06:48 PM was sent by Mr. Tanveer Ahmad Mir from e-mail id- "tanveer@tamlaw.in" to e-mail id- "addlzoi43-ed@gov.in" with its copy marked on e-mail id-"tamlaw.yash@gmail.com" of Mr. Yash Datt at that time by Advocate Tanveer Ahmed Mir with the following text:-

"Sir,

I am the counsel on record for the petition Mr. Padam Singhee in Application No. 32236/2024 which was last listed for 02.09.2024 on which the Hon'ble High Court vide order of the even date had directed your office to file a reply to the Bail Application within a period of 3 weeks from 02.09.2024 which expire today.

Vide the present communication I intend to apprise you that neither my office nor the office of my counsel on record has received any reply from your office.

Therefore, in order to avoid any further delay in the above captioned matter, I request you to file the reply to the aforementioned bail matter as expeditiously as possible so that the bail application can be adjudicated finally on the next date of hearing.

Sincerely."

15. It is submitted that an identical supplementary affidavit dated 16.10.2024 has again been filed on behalf of the applicant with the same contents and annexures and both the affidavits have been sworn by the wife of the applicant. It is submitted that sending such emails by counsel(s) of accused to the Investigating Officer cannot be permitted as a lawyer cannot interact directly with the Investigating Agency and the said act is objectionable and is beyond the professional work of a lawyer since the said officer gets harassed by the same.

16. Learned counsel for the Enforcement Directorate further placed para-2 of the said supplementary affidavit dated 16.10.2024 before the Court which reads as under:-

"2. That I state that the below mentioned submissions are critical for proper and effective adjudication of the instant bail application.

a) The above captioned case was listed before this Hon'ble Court for first time on 02.09.2024, whereby this Hon'ble Court had granted three weeks time to the Directorate of Enforcement for filing a counter affidavit to the bail application of the Applicant. It is pertinent to state herein that the said time of three weeks to file a counter affidavit was specifically granted on the request of the counsels representing the Directorate of Enforcement (ED) and further this Hon'ble Court had granted a further time of two weeks to the Applicant to file a rejoinder to the counter affidavit filed by the Respondent ED and had posted the matter for 21.10.2024. Copy of the order dated 02.09.2024 passed by this Hon'ble Court in Criminal Misc. Bail Application No. 32326 of 2024 is marked as ANNEXURE-SA "1" to the present supplementary affidavit.

b) The Applicant herein has been compelled to prefer the present miscellaneous application as the Respondent ED has not yet filed any counter affidavit despite the lapse of three weeks period granted to it from 02.09.2024 which came to an end on 23.09.2024. It is further stated that the counsels for the Applicant even tendered 2 emlails to the concerned investigating officer thereby requesting him to expedite the filing of the Counter affidavit so that the present bail application could be disposed of expeditiously, however, the same was also of no avail. It is further pertinent to state herein that the Applicant is languishing in judicial custody since more than 7 months now. It is imperative that the Respondent ED tenders its reply in time so that the present bail application can be disposed of on the next date of hearing. Copy of the emails dated 23.09.2024 tendered by the counsels for the Applicant to the Investigating Officer from ED are marked as ANNEXURE-SA- "2" to the present supplementary affidavit.

17. Learned counsel for the applicant in reply/response to the said objection submitted that it is only a reminder to the said agency to comply with the Court's order dated 02.09.2024 and nothing more.

18. The objection of learned counsel for the Enforcement Directorate is with reasonable substance. The Court had passed an order dated 02.09.2024 in the presence of learned counsel for the said agency. If the said order is not complied with, the remedy as available to the party was to bring it to the notice of the Court and intimate the Court about its non-compliance. Sending e-mails and reminding the authorities of the order(s) of Court and requesting them to comply with it, is not in the realm of the duties of counsel(s) appearing in the matter. Even the "Standards of Professional Conduct and Etiquette to be Observed by Advocates" [Made by the Bar Council of India under Section 49(1) (c) of the Advocates Act, 1961] in Section III - "Duty to Opponent" in para-34 states as under:-

> *"34. An Advocate shall not in any way communicate or negotiate upon the subject matter of controversy with any party represented by an Advocate except through that Advocate."*

19. The action of learned counsel(s) for the applicant of sending emails directly to the Investigating Officer was not proper and cannot be appreciated. The investigating agency was duly represented by its Counsel/Standing Counsel right from the first day and were expected to comply with any direction(s) given by the Court. If the rival party needed to demonstrate that the same has not been complied with, the proper forum was to apprise the Court when the matter was next placed. A counsel cannot identify himself with his client. He cannot interact directly with agencies like Investigating Officer, etc. unless and until ordered so by a court particularly with regards to sub judice proceedings. Interacting directly with agencies, Investigating Officers, etc., is not the duty of a counsel appointed by an accused. He is to represent him in

Court only. His work is to assist the Court. An order passed by a Court is expected to be followed and complied with by parties and if any party has any grievance against the other, the proper procedure is to apprise the Court about it.

20. Thus this Court does not appreciate the said act/conduct of the counsel(s) for the applicant to send emails directly to the Investigating Officer in a matter which was pending before the Court and considers the objection of learned counsel for the Enforcement Directorate to be valid.

21. Pending application(s), if any, shall stand disposed of.

(Samit Gopal, J.)

Order Date: - 14.11.2024

Naresh