2024 INSC 739

Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.4011 OF 2024
(Arising out of Special Leave Petition (Crl.) No. 3986 of 2024)

V. Senthil Balaji ... **Appellant**

versus

The Deputy Director, Directorate of Enforcement ... **Respondent**

J U D G M E N T

ABHAY S. OKA, J.

FACTUAL ASPECTS

1. Leave granted.

2. This appeal takes exception to the judgment and order dated 28th February 2024 passed by a learned Single Judge of the High Court of Judicature at Madras by which a bail application preferred by the appellant under Section 439 of the Code of Criminal Procedure, 1973 has been rejected. The bail application was filed in connection with an alleged offence under Section 3 of the Prevention of Money Laundering Act,

2002 (for short, 'the PMLA'), which is punishable under Section 4 of the PMLA.

3. Between 2011 and 2016, the appellant was holding the post of Transport Minister in the Government of Tamil Nadu. Broadly, the allegation against the appellant is that while discharging his duties as a Minister, in connivance with his personal assistant and his brother, he collected large amounts by promising job opportunities to several persons in various positions in the Transport Department. This led to the registering of three First Information Reports against the appellant and others. The said First Information Reports are FIR no.441 of 2015 dated 29th October 2015 (CC Nos. 22 and 24 of 2021), FIR No.298 of 2017 registered on 9th September 2017 (CC No.19 of 2020) and FIR no. 344 dated 13th August 2018 (CC No. 25 of 2020). In the first FIR, six charge sheets have been filed. More than 2000 accused have been named in the charge sheets. 550 witnesses have been named. In the case of the second FIR, there are 14 accused named in the chargesheet. In connection with this FIR, 24 witnesses have been cited. In the third FIR, 24 accused have been named in the charge sheet and 50 prosecution witnesses have been cited. The offences alleged in the aforementioned crimes are mainly under Sections 120B, 419, 420, 467 and 471 of the Indian Penal Code and Sections 7, 12, 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. Section 34 of the Indian Penal Code has been invoked. These offences are scheduled offences within the meaning of Section 2(y) of

the PMLA. Therefore, relying on the final reports filed in aforementioned scheduled offences, for an offence of money laundering under Section 3 of the PMLA punishable under Section 4, the Enforcement Directorate (ED) registered an Enforcement Case Information Report (for short "ECIR") bearing ECIR No. MDSZO/21/2021 on 29th July 2021.

4. The appellant was arrested on 14th June 2023 in connection with the said ECIR and was remanded to judicial custody. A complaint was filed for the offence under Section 3 of the PMLA Act, which is punishable under Section 4, on 12th August 2023. The appellant is the only accused named in the complaint. Cognizance has been taken based on the complaint by the Special Court under the PMLA. The scheduled offences cases have been transferred to the learned Assistant Sessions Judge, Additional Special Court for Trial of Criminal Cases related to Elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu (Special MPMLA Court), Chennai.

SUBMISSIONS

5. Learned senior counsel appearing in support of the appeal pointed out that in this case, ED is relying upon material collected by the investigating agencies investigating the scheduled offences. He submitted that five articles were allegedly seized during the search on 6th February 2020 in the appellant's premises. He invited our attention to the averments made in the complaint and, in particular,

paragraph no.14.5, which deals with incriminating documents relating to money collected for providing jobs in the posts of Drivers, Conductors, Junior Tradesmen, Junior Engineers, Assistant Engineers, etc. He pointed out that the prosecution mainly relies upon a file named CS AC, allegedly found in the seized pen drive. The file allegedly gives details regarding the amounts received against each post. He submitted that the Tamil Nadu Forensic Science Laboratory (TNFSL)'s analysis of the seized pen drive shows that the said file CS AC was not found on the pen drive, and a file named csac.xlsx was found. As regards the allegation of the prosecution of the deposit of cash amount of Rs.1.34 crores in the appellant's bank account, the learned senior counsel urged that said amount represents the income received by way of remuneration as MLA and agriculture income. Learned senior counsel submitted that in any event, all the documents and all relevant electronic evidence have been seized in the predicate offences and statements of the witnesses under Section 50 of the PMLA have been recorded. He submitted that the appellant has undergone incarceration under the PMLA Act for more than 14 months. He pointed out that as far as three predicate offences are concerned, charges have not even been framed. There are more than 2000 accused and 600 prosecution witnesses in the predicate offences and therefore, there is no possibility of trial of scheduled offences getting over in the near future. He submitted that unless the trials pertaining to scheduled offences are concluded, the

complaint under the PMLA cannot be finally decided. He would, therefore, submit that there is no possibility of the trial for the PMLA offence concluding within five to six years and hence, the appellant deserves to be enlarged on bail. The learned senior counsel extensively relied upon a recent decision of this Court in the case of ***Manish Sisodia***[1] and especially what is observed in paragraph 54. He submitted that on facts, this case is similar to the case of ***Manish Sisodia***[1]. He also relied upon a decision of this Court in the case of ***Union of India v. K.A. Najeeb***[2].

6. The learned Solicitor General of India and learned counsel appearing for the E.D. have made separate detailed submissions. The first submission is that there is no discrepancy in the description of file name CS AC in the pen drive and the file name of the same file in the TNFSL report dated 31st March 2023, which shows collection of the sum of Rs. 67.74 crores by the appellant for providing employment in the various posts in the Transport Department. He submitted that if the TNFSL report is perused, the document at Sr.No.24 has the same name, CS AC. He submitted that the portion ".xlsx" is only a file extension, which signifies that it is a Microsoft Excel sheet. He submitted that a printout of the Microsoft Excel spreadsheet file with the name CS AC found in the seized pen drive was certified by the Special MPMLA Court, which is relied upon in the complaint. He submitted

1 (2024) SCC OnLine SC 1920
2 (2021) 3 SCC 713.

that at this stage, there is no reason to doubt the correctness of the printout of the file CS AC provided by the Special MPMLA Court. The learned counsel appearing for ED also pointed out that there is no discrepancy in the seizure of the H.P. hard disk. The learned counsel submitted that the salary/remuneration payable to MLAs is directly credited to the bank account of the concerned MLAs. Therefore, there is no question of any cash amount being received on the said count. He pointed out that the appellant claims that there is a cash deposit of salary to the tune of 68 lakhs in his account. He also pointed out that the appellant's agricultural income between 2014 and 2020 is to the tune of Rs. 20.24 lakhs, and therefore, the justification that a substantial part of the deposit of Rs.1.34 crores is his agricultural income must be rejected. Learned counsel pointed out that there is an unexplained cash deposit of Rs. 20.24 lakhs even in the appellant's wife's account.

7. Learned counsel also pointed out other documentary evidence indicating the appellant's involvement in the job racket scam, including the file AC1.xlsx. He pointed out that there is sufficient material on record to show that the posts of Drivers, Conductors, Junior Assistants and Technicians were priced and sold at Rs.1.5 lakhs, Rs.2.0 lakhs, Rs.1.25 lakhs and Rs.4 lakhs, respectively. He submitted that there is material on record to show that an amount of at least Rs.38 crores was collected from candidates by giving them the promise of providing jobs. He submitted that there are a large

number of email communications indicating more than *prima facie* material about the involvement of the appellant. His submission is that, in fact, the twin conditions under clause (ii) of sub-section (1) of Section 45 of the PMLA have not been satisfied in this case.

8. The Learned Solicitor General of India pointed out that three rounds of litigations have travelled to this Court arising out of scheduled offences. He pointed out that the decisions of this Court indicate how the complainants were won over and how a so-called compromise between the complainants and the accused was brought about. He submitted that the appellant had been a minister for a long time in the Tamil Nadu government. He pointed out that he continued to be a Minister without portfolio, even during the first few months of his detention, and that he continues to be a Member of Legislative Assembly (MLA).

9. He submitted that observations made by this Court indicate that the appellant will be able to influence the witnesses if he is enlarged on bail. Learned Solicitor General relied upon a decision of this Court in the case of ***P. Dharamraj v. Shanmugam and others***[3]. He submitted that the High Court's decision to quash one of the scheduled offences based on an alleged compromise between bribe givers and bribe recipients was under scrutiny in the case. He pointed out that this Court heavily came down on such

3 (2022) 15 SCC 136

compromises in the said decision. He relied upon various paragraphs of the said decision. He submitted that the argument of learned senior counsel for the appellant in the said case that one Shri Shanmugam, who is allegedly involved, was not his personal assistant, has been expressly rejected. This Court found that he was working as a personal assistant of the appellant.

10. Learned SG relied upon a decision of this Court in the case of ***Y. Balaji v. Karthik Desari and Another***[4]. He pointed out observations made from paragraph 17 onwards of the said decision. He pointed out that this Court objected strongly to not registering offences under the Prevention of Corruption Act, 1988. He pointed out the observations of this Court regarding the compromise entered in the scheduled offence. It was observed that two teams were created just for the record, and an investigation was carried out as if it were a friendly match between the complainants and the accused. This Court further observed that it was only because of the position of the appellant as a Minister that the complainants purported to enter into a compromise. He submitted that there is very strong material on record to show the appellant's involvement in the offence punishable under Section 4 of the PMLA and the predicate offences. He submitted that the appellant brought about such an illegal settlement between bribe givers and bribe receivers. Therefore, there is no manner of doubt that once he comes out, he will influence the

4 (2023) SCC OnLine SC 645

witnesses proposed to be examined by the prosecution, as he wields considerable influence in the State due to his political clout.

11. He submitted that though there are a large number of accused and witnesses in the scheduled offences, if a competent special public prosecutor is appointed, perhaps the prosecution may be in a position to drop a large number of witnesses. He submitted that in Misc. Application no.1381 of 2024 arising out of the decision of this Court in Criminal Appeal no.1677 of 2023, there is already a prayer made for the appointment of a special public prosecutor.

12. We have also heard learned senior counsel for the intervenors who supported the ED.

CONSIDERATION OF SUBMISSIONS

13. We have carefully considered the submissions. The main document relied upon by the ED showing incriminatory material against the appellant is a part of the pen drive seized by the State police from the appellant's premises in connection with scheduled offences. The concerned Court dealing with the scheduled offences has provided the printed version of the soft files in the seized pen drive. There is no reason, at this stage, to doubt the authenticity of the soft files. There is also prima facie material to show a deposit of cash amount of Rs.1.34 crores in the appellant's bank account. At this stage, the contention of the appellant

regarding the deposit of remuneration received as MLA and agriculture income cannot be accepted in the absence of any *prima facie* evidence to show the existence of the appellant's cash income as MLA and the appellant's agriculture income. Therefore, at this stage, it will be very difficult to hold that there is no *prima facie* case against the appellant in the complaint under Section 44 (1)(b) of the PMLA and material relied upon therein.

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 Code of Criminal Procedure,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***[2], 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***[1] 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.
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> **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.

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 Code of Criminal Procedure, 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 non-obstante 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.

30. The decisions the learned SG relied upon indicate that the appellant's influential position in the State may have resulted in a so-called compromise between the bribe givers and the bribe takers. Considering the apprehension of the appellant tampering with the evidence, stringent conditions must be imposed.

31. Therefore, the appeal is allowed, and the appellant shall be enlarged on bail till the final disposal of CC No. 9 of 2023 pending before the Principal Session Judge, Chennai, on the following conditions:

a. The appellant shall furnish bail bonds in the sum of Rs.25,00,000/- (Rupees twenty-five lakhs only) with two sureties in the like amount;

b. The appellant shall not directly or indirectly attempt to contact or communicate with the prosecution witnesses and victims of the three scheduled offences in any manner. If it is found that the appellant directly or indirectly made even an attempt to contact any prosecution witness or victim in the scheduled as well as offences under the PMLA, it will be a ground to cancel the bail granted to the appellant;

c. The appellant shall mark his attendance every Monday and Friday between 11 am and 12 noon in the office of the Deputy Director, the Directorate of Enforcement at Chennai. He shall also appear on the first Saturday of every calendar month before the investigating officers of the three scheduled offences;

d. Before the appellant is enlarged on bail, he shall surrender his passport to the Special Court under the PMLA at Chennai;

e. The appellant shall regularly and punctually remain present before the Courts dealing with scheduled offences as well as the Special Court and shall cooperate with the Courts for early disposal of cases; and

f. If the appellant seeks adjournments on non-existing or frivolous grounds or creates hurdles in the early disposal of the cases mentioned above, the bail granted to him shall be liable to be cancelled.

32. The appeal is allowed on the above terms.

.....J.
(Abhay S Oka)

.....J.
(Augustine George Masih)

New Delhi;
September 26, 2024.