* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on : 15.10.2024
Pronounced on : 13.11.2024

\+ **BAIL APPLN. 1864/2024**

JAWED IMAM SIDDIQUI ..... Petitioner

Through: Mr. Manu Sharma, Mr. Arjun Kakkar, Mr. Abhyuday Sharma, Ms. Akansha Kaul, Mr. Harsh Sethi, Mr. Raghav Luthra and Mr. Anant Nigam, Advocates.

Versus

DIRECTORATE OF ENFORCEMENT ..... Respondent

Through: Mr. Manish Jain, Special Counsel with Mr. Sougata Ganguly, Ms. Gulnaz Khan, Ms. Snehal Sharda and Mr. Deepanshu Kumar, Advocates.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. By way of present bail application, the petitioner/applicant seeks regular bail in the proceedings emanating out of ECIR/35/DLZO/I/2022 dated 16.09.2022 which was registered on the basis of the FIR bearing No. 9A dated 23.11.2016 registered by the Central Bureau of Investigation (hereafter, the CBI), AC-III, New Delhi under Sections 120-B of IPC & 13(1)(d) r/w 13(2) of PC Act, 1988.

2. The allegations made in the aforesaid FIR, in nutshell, are that Mr. *Amanatullah Khan*, i.e. the main accused, in his tenure as chairman of the Delhi Waqf Board (hereafter, the 'DWB'), misused his position from March

2016 - October 2016 to appoint and engage relatives and other known persons to various posts in the DWB, from which they derived pecuniary benefits. It was further alleged that the tenancies of DWF properties were allotted without inviting bids and leased out only on reserve price. There were also allegations of misuse of DWB funds.

The predicate offence was investigated by the CBI which culminated into filing of chargesheet bearing No. 07/2022 dated 31.08.2022. While the appointments of Mr. *Mehboob Alam* as CEO, four persons under the NAWADCO Scheme, Mr. *R.K. Yadav* and Mr. *Hamid Akhtar* were found to have been made illegally, the rest of the allegations were found to be administrative irregularities. Indisputably, the applicant is neither arrayed nor summoned as an accused in the predicate case.

3. In the ECIR, apart from the abovementioned FIR, three more FIRs registered subsequently, have also been clubbed. As per ED's case, the main accused, who had acquired huge cash amounts being the proceeds of crime arising out of his involvement in illegal recruitment in DWB, in order to launder the same, invested the proceeds of crime in immovable properties through his associates, namely, *Zeeshan Haider*, *Daud Nasir* and others by concealing and suppressing their actual value by showing false amounts in the sale deeds which were very nominal in comparison to their actual sale value. It is alleged that these actively concealed amounts that were paid in cash to the applicant being the seller of one of the immovable properties are nothing but the proceeds of crime acquired by the main accused vide his involvement in the scheduled offence.

4. Mr. Manu Sharma, learned counsel for the applicant submits that the applicant is innocent and has been falsely roped in the present case without

an iota of evidence available against him.

It is contended that though the CBI during the investigation of the predicate offence had restricted the investigation to the aspect of appointments to the DWB, the respondent agency without any basis extended the ambit of investigation to leasing out of waqf properties and misuse of DWB funds, both of which the CBI had found to be only administrative irregularities. Further, the CBI had not alleged that the main accused *Amanatullah Khan* received any pecuniary gains out of the scheduled offence and even no scheduled offence was made out against the applicant herein. Therefore, even if assuming that money has flown from the main accused via other accused persons for purchase of the applicant's property, the said money cannot be said to have been derived from this scheduled offence and hence the said money are not proceeds of crime. No evidence has been brought on record to show that the applicant had any knowledge of the source of funds of the purchasers.

5. As far as the sale transaction of the property is concerned, it is contended that the applicant is an Indian passport holder who has been working and residing in Dubai with his wife and three children since 2007. He made investments in India by purchasing properties in accordance with law. The properties in question, being property bearing No. 275 and 276, Zaidi Villa, TTI Road, Jamia Nagar, Okhla, New Delhi-110025 were purchased by the applicant in the name of his wife on 12.04.2019 from one Syed Ahmed Raza Zaidi and Samina Zaidi, Heba Zaidi Khosla and Aashti Zaidi for around 10.76 Crore rupees. The funding for the said purchase was arranged by the applicant by selling his two other properties vide sale deeds dated 09.12.2017 and 20.02.2018 for 2.29 Crore and 3.70 Crore rupees

respectively. It is submitted that on account of some dispute with their neighbour *Naseer Mohsin*, who had filed a suit for enforcement of easement rights being CS SCJ 698/20, the wife of the applicant, in order to avoid unnecessary litigation agreed to sell the said properties to the builders – M/s. Sky Powers (partnership company through its authorized partner Mr. *Zeeshan Haider*) and M/s. Sara Construction Company (proprietorship firm through its proprietor – Mr. *Daud Nasir*) for the amount of Rs. 13,40,00,000/- through agreement to sell dated 17.09.2021. Out of the said amount, the purchasers had paid Rs 9,14,30,000/- through banking channels and rest of the consideration amount was deposited in the accounts of the applicant and his wife by cash by their property dealer *Kauser Imam Siddique @Laddan.*

6. It is further submitted that not only the applicant was not named in either the FIR or Chargesheet of the Predicate Offence but also in the investigation conducted by the ACB in relation to FIR No. 05/2020. Prior to his arrest, the applicant had joined investigation on 15 occasions between 15.02.2023 to 10.11.2023. He states that the applicant has been in custody since 11.11.2023 and the trial has been stuck at the stage of supply of documents under Section 207 CrPC. Though the Trial Court had directed the respondent agency to supply to the applicant the list of unrelied upon documents, the respondent challenged the same before this Court vide CRL.MC. 5091/2024. The petition was eventually withdrawn by the respondent on 15.10.2024. It is submitted that there are 28 witnesses and over 4000 pages of documents which are required to be gone through. The trial would inevitably take a long time affecting the applicant's right to life and liberty.

7. Ms. Akansha Kaul, learned counsel for the petitioner, additionally submits that the applicant is a victim of the vindictiveness and *malefide* of the respondent agency. It is submitted that despite the applicant not evading investigation at any stage, a Look Out Circular was issued against him on 26.07.2023. This LOC was rightly quashed by the Trial Court on 08.11.2023 and just three days thereafter, on 11.11.2023, the applicant was arrested by the respondent agency in their office.

8. *Per Contra*, Mr. Manish Jain, learned Special Counsel for the respondent has vehemently opposed the present bail application. He submits that the applicant was a knowing recipient of part of the proceeds of crime derived from the criminal activity of the main accused and was involved in the laundering of the proceeds of crime through investments in immovable property along with the co-accused, namely, *Zeeshan Haider, Daud Nasir, Kauser Imam Siddiqui*.

9. Between 2017 to 2022, about 11 crore rupees have been deposited in the bank accounts of the applicant and his wife. The same is alleged to be the proceeds of sale of different properties. The role of the applicant figures in the sale transaction relating to said property which was in the name of applicant's wife *Smt. Ayesha Quamar* and was transferred to *Zeeshan* and *Daud,* who are close associates of the main accused, with *Kauser,* who is a cousin of the applicant and also the fund manager of the main accused, acting as a middleman. Reference is made to a bounded diary seized from the possession of co-accused *Kausar Imam Siddiqui@ Laddan*, in which entries have been made from page Nos 92-103 under the heading "2021 Sale Plot-12 Gj 17.09.2021 Sale for *Zeeshan*" relating to the sale of the

abovementioned property. This diary is stated to be countersigned by *Zeeshan.* Out of the 36 crore rupees, around 9 crore rupees have been given in form of cheques and the remaining amount of Rs. 27 crore is nothing but the proceeds of crime which have been given in cash to the applicant. A copy of an agreement to sell was found in the phone seized from co-accused *Zeeshan* showing consideration amount to be Rs. 36 Crores. The said agreement is stated to be witnessed by *Kauser,* who is a co-accused and Waqar, who is not traceable. *Kauser* in his statement recorded under Section 50 PMLA, when confronted with both the agreements to sell, denied having any knowledge of the Rs 13.40 Crore agreement or of witnessing it, being the middleman. He also confirmed the agreement showing the consideration amount to be Rs. 36 Crores to be genuine and stated that the property was sold by the applicant to *Zeeshan* and *Daud* at the behest of the main accused. *Kauser* also admitted to the contents of the white diaries.

10. Additionally, reference is also made to the applicant's statements recorded under Section 50 of PMLA, 2002 wherein there is some variance on the mode of receiving sale transaction amount. It is contended that the applicant has engaged in forgery for the purpose of misleading the Court and hence, the case of the applicant fails in the Triple Test as well as falls in the exception carved out by the Supreme Court in V. Senthil Balaji v. The Deputy Director, Directorate of Enforcement.[1]

As regards to the present stage of the investigation, it is submitted that prosecution complaint is yet to be filed against the main accused *Amanatullah Khan* and the ACB has registered a fresh FIR against the 5

[1] V. Senthil Balaji v. The Deputy Director, Directorate of Enforcement, reported as 2024 INSC 739

accused under Section 13(1)(2) of the PC Act. It is also stated that no further investigation is pending with regard to the applicant.

11. In rejoinder, learned counsel for the applicant submitted that the other agreement to sell put forth by the respondent agency has the same stamp paper but wherein the consideration amount has been maliciously changed to Rs 36 Crores is the one which is actually forged and the veracity of both the sale deeds would be tested at the stage of trial. Moreover, it is contended that the applicant was never asked during investigation to explain the said discrepancy in the two sale deeds. With respect to the diary containing transaction entries, it is submitted that the said diary mentioned about two cheques being issued by the main accused to the applicant, however the same is not reflected in the bank accounts of either the applicant or his wife. Insofar as the statements given under Section 50 of the PMLA by the co-accused *Kauser Imam Siddiqui* is concerned, it is submitted that the evidentiary value of the same would be tested at the stage of trial.

12. I have heard learned counsel for the parties and have gone through the record.

13. Pertinently, as noted above, CBI registered an FIR-RC 09(A)/2016/AC-III on 23.11.2016 against *Amanatullah Khan* and other accused persons, not including the present applicant. Chargesheet was filed without arrest under Sections 120B IPC, and Section13(2) r/w 13(1) (d) of PC Act, 1988 against the main accused and 10 other persons.

As noted above, predicate offence had the allegations that *Amantullah Khan*, as chairman of Delhi Waqf Board, misused his position during his tenure from March 2016 - October 2016 to appoint and engage relatives and other known persons to various posts in the DWB, from which they derived

pecuniary benefits. It is pertinent to note that on conclusion of investigation, CBI found the allegations to be administrative irregularities and nowhere it is stated in the chargesheet that *Amanatullah Khan* derived any pecuniary benefits on account of this irregularity.

Another FIR No. 05/2020 under Section 7 of the Prevention of Corruption Act, 1988 was registered at PS ACB based on similar allegations as stated in the CBI case on 28.01.2020. It was during the investigation of this FIR that a raid was conducted at the premises of *Kausar Imam Siddiqui @ Laddan* on 16.09.2022 and 3 diaries were recovered. In the ACB investigation, wife of the applicant was summoned once to join investigation and the applicant was also asked to join investigation, which he did telephonically. The main accused was arrested in this case but was released by the Trial Court vide order dated 28.09.2022. In this order, in paragraph 49, it was observed that the tenancies were created at higher rent than reserved price and no loss was caused to the exchequer. In para 53 of the said order, it was observed that the main accused did not have exclusive control over the DWB funds.

ECIR/DLZO-I/35/2022 was recorded on 16.09.2022 on the FIR bearing No. 9A dated 23.11.2016 registered by CBI. The respondents case is based on proceeds of crime being derived from both leasing out waqf properties and irregularities in appointment as well as misuse of funds of DWB while being its chairman. The anticipatory bail application of the main accused was rejected by this Court vide order dated 11.03.2024. The Supreme Court vide order dated 15.04.2024 clarified that the observations made in the order rejecting bail would not be treated as finding on merits.

The applicant has joined investigation on 15 occasions from

15.02.2023- 10.11.2023. a Look Out Circular (LOC) was issued by the respondent agency on 26.07.2023 which was quashed by Trial Court on 08.11.2023. Three days later, the applicant came to be arrested on 11.11.2023 from the ED office. The applicant was in custody of ED from 13.11.2023-17.11.2023 and has been in Judicial Custody since then.

14. The material cited against the applicant is, firstly, the transactions recorded in the diary which was seized from the premises of *Kauser*. The said diary has already been seized by the respondent agency and the bank account statements with which the entries would need to be matched are also available with the respondent Agency.

The second material cited against the applicant is the seizure of the second agreement to sell showing the consideration amount to be Rs 36 Crores which was recovered from the phone of *Zeeshan*. The two agreements to sell have the same stamp paper. The determination as to which one of them is forged would require detailed assessment of the evidence which is to be undertaken by the Trial Court and the same cannot be carried out by this Court while hearing a bail application.

15. Lastly, so far as the statement of co-accused *Kauser* recorded under Section 50 of the PMLA is concerned, the veracity of the same would be tested at the stage of trial. Indeed in terms of sub section (4) of Section 50, the statements are recorded in proceedings that are deemed to be judicial proceedings, and are also held to be admissible in evidence. At the same time, this Court makes a positive reference to the observations of the Co-ordinate bench which while being seized with the same issue observed as

under[2]:

> *"56. The principle that emerges from Vijay Madanlal Choudhary (supra), as well as the above decisions as regards the statement recorded under Section 50 of the Act is that such statements are recorded in a proceeding which is deemed to be a judicial proceeding within the meaning of Section 193 and Section 228 of the Penal Code, 1860 and is admissible in evidence. The said statements are to be meticulously appreciated only by the Trial Court during the course of the trial and there cannot be a mini-trial at the stage of bail. However, when the statements recorded under Section 50 of PMLA are part of the material collected during investigation, such statements can certainly be looked into at the stage of considering bail application albeit for the limited purpose of ascertaining whether there are broad probabilities, or reasons to believe, that the bail applicant is not guilty. Meaning thereby, the statements under Section 50 of the PMLA have to be taken at their face value, but in case any such statement is patently self-contradictory or two separate statements of the same witness are inconsistent with each other on material aspects, then such contradictions and inconsistencies will be one of the factors that will enure to the benefit of the bail applicant whilst ascertaining the broad probabilities, though undoubtedly the probative value of the statement(s) of the witnesses and their credibility or reliability, will be analyzed by the trial court only at the stage of trial for arriving at a conclusive finding apropos the guilt of the applicant."*

16. Since the offence pertains to money laundering, apart from the usual considerations, it would have to be seen whether the twin conditions stipulated in Section 45 of the PMLA are met. A plain reading of Section 45 of the PMLA shows that the public prosecutor must be given an opportunity to oppose the application and the Court should have 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. The twin conditions though restricts the right of accused to be released on bail but do not impose absolute restraint and the discretion vests in the Court. [3]

17. At this juncture, the Court also takes note of another important aspect

[2] Sanjay Jain v. Enforcement Directorate 2024 SCC OnLine Del 16

of the case i.e., whether the trial is likely to be concluded in near future and if the answer is in negative, then should this circumstance inure to the benefit of the accused. This aspect is to be seen in light of the period of incarceration and the nature of allegations.

18. Bail is the rule and jail is the exception. This principle is nothing but a crystallisation of the constitutional mandate enshrined in Article 21, which says that that no person shall be deprived of his life or personal liberty except according to the procedure established by law. Liberty is the usual course of action and deprivation of it a detour. The deprivation of liberty must only by procedure established by law, which should be fair and reasonable. Right of the accused to speedy trial is an important aspect which the Court must keep in contemplation when deciding a bail application as the same are higher sacrosanct constitutional rights, which ought to take precedence.

Section 45 of the PMLA while imposing additional conditions to be met for granting bail, does not create an absolute prohibition on the grant of bail. When there is no possibility of trial being concluded in a reasonable time and the accused is incarcerated for a long time, depending on the nature of allegations, the conditions under Section 45 of the PMLA would have to give way to the constitutional mandate of Article 21. What is a reasonable period for completion of trial would have to be seen in light of the minimum and maximum sentences provided for the offence, whether there are any stringent conditions which have been provided, etc. It would also have to be seen whether the delay in trial is attributable to the accused.[4]

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[3] Vijay Madanlal Choudhary v. Union of India, reported as 2022 SCC OnLine SC 929
[4] V. Senthil Balaji v. The Deputy Director, Directorate of Enforcement reported as 2024 INSC 739

19. In Senthil (Supra), the Supreme Court while reiterating the ratio enunciated in Union of India v. K.A. Najeeb (Three Judge bench)[5], also held that if the Constitutional Court comes to the conclusion that the trial would not be able to be completed in a reasonable time, the power of granting bail could be exercised on the grounds of violation of Part III of the Constitution of India notwithstanding the statutory provisions. It was held that:-

> *"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.*
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> *25…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.*
> *xxx*
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> *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*

[5] (2021) 3 SCC 713

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, 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."

(emphasis added)

20. The issue of long incarceration and right of speedy trial also cropped up in Manish Sisodia v Directorate of Enforcement,[6] wherein it has been held by the Supreme Court that the right to bail in cases of delay in trial, coupled with long period of incarceration would have to be read into the

[6] Manish Sisodia v Directorate of Enforcement, reported as 2024 SCC OnLine SC 1920

Section 439 CrPC as well as Section 45 of PMLA while interpreting the said provisions.

> *37. Insofar as the contention of the learned ASG that since the conditions as provided under Section 45 of the PMLA are not satisfied, the appellant is not entitled to grant of bail is concerned, it will be apposite to refer to the first order of this Court. No doubt that this Court in its first order in paragraph 25, after recapitulating in paragraph 24 as to what was stated in the charge-sheet filed by the CBI against the appellant, observed that, in view of the aforesaid discussion, the Court was not inclined to accept the prayer for grant of bail at that stage. However, certain paragraphs of the said order cannot be read in isolation from the other paragraphs. The order will have to be read in its entirety. In paragraph 28 of the said order, this Court observed that 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 Cr.P.C. and Section 45 of the PMLA. The Court held 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. It further observed that when the trial is not proceeding for reasons not attributable to the accused, the court, unless there are good reasons, would be guided to exercise the power to grant bail. The Court specifically observed that this would be true where the trial would take years. It could thus clearly be seen that this Court, in the first round of litigation between the parties, has specifically observed that in case of delay coupled with incarceration for a long period and depending on the nature of the allegations, the right to bail will have to be read into Section 45 of PMLA.*
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> *xxx*
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> *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.*
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> *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.*

21. Prem Prakash v. Union of India through the Directorate of

Enforcement,[7] is another recent decision where it has been reiterated that the fundamental right enshrined under Article 21 cannot be arbitrarily subjugated to the statutory bar in Section 45 of the Act and the constitutional mandate being the higher law, the right to speedy trial must be ensured and if the trial is being delayed for reasons not attributable to the accused, his incarceration should not be prolonged on that account. The relevant extract of the said judgement is enacted below for convenience:-

> *"11….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.*
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> *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:—*

[7] Prem Prakash v. Union of India through the Directorate of Enforcement, reported as 2024 SCC OnLine SC 2270

> *"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."*
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> *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."*

(emphasis added)

22. The view taken in the Manish Sisodia and Prem Prakash cases (Supra) was reiterated recently by the Supreme Court in the case of Vijay Nair v. Directorate of Enforcement,[8] where it was held that liberty guaranteed under Article 21 of the Constitution does not get abrogated. It was held that:-

> *12. Here the accused is lodged in jail for a considerable period and there is little possibility of trial reaching finality in the near future. The liberty guaranteed under Article 21 of the Constitution does not get abrogated even for special statutes where the threshold twin bar is provided and such statutes, in our opinion, cannot carve out an exception to the principle of bail being the rule and jail being the exception. The cardinal principle of bail being the rule and jail being the exception will be entirely defeated if the petitioner is kept in custody as an under-trial for such a long duration. This is particularly glaring since in the event of conviction, the maximum*

[8] Vijay Nair v. Directorate of Enforcement, [8]decided on 02.09.2024 in SLP (Crl) Diary No. 22137/2024

sentence prescribed is only 7 years for the offence of money laundering.

23. On similar lines, is the decision of Supreme Court, in Sunil Dammani v. Directorate of Enforcement[9], where considering the one-year custody of the accused and the factum of investigation being complete, the bail was granted noting that the prosecution had cited 98 witnesses.

24. The right to speedy trial was also upheld and other special legislations where provisions akin to Section 45 PMLA exist. Notable ones being, the decision in the case of Javed Gulam Nabi Shaikh v. State of Maharashtra[10], wherein Supreme Court while granting bail to an accused under UAPA, observed as under:-

> *"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."*
>
> *(Emphasis added)*

On similar lines is the case of Union of India v. K.A. Najeeb (Supra), wherein the Supreme Court held as under:-

> *"12. Even in the case of special legislations like the Terrorist and Disruptive Activities (Prevention) Act, 1987 or the Narcotic Drugs and Psychotropic Substances Act, 1985 ("the NDPS Act") which too have somewhat rigorous conditions for grant of bail, this Court in Paramjit Singh v. State (NCT of Delhi) [Paramjit Singh v. State (NCT of Delhi), (1999) 9 SCC 252 : 1999 SCC (Cri) 1156] , Babba v. State of Maharashtra [Babba v. State of Maharashtra, (2005) 11 SCC 569 : (2006) 2 SCC (Cri) 118] and Umarmia v. State of Gujarat [Umarmia v. State of Gujarat, (2017) 2 SCC 731 : (2017) 2 SCC (Cri) 114] enlarged the accused on bail when they had been in jail for an extended period of time with little possibility of early completion of trial. The constitutionality of*

[9] Criminal Appeal No. 4108/2024 decided on 03.10.2024
[10] 2024 SCC OnLine SC 1693

harsh conditions for bail in such special enactments, has thus been primarily justified on the touchstone of speedy trials to ensure the protection of innocent civilians.

15. This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India [Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India, (1994) 6 SCC 731, para 15 : 1995 SCC (Cri) 39] , it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, the courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.

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)

Taking note of above decision, in the case of Sk. Javed Iqbal v. State of U.P.,[11] the Supreme Court held that:-

"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

[11] (2024) 8 SCC 293

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."

(Emphasis added)

To a similar extent are the decisions in Mohd. Muslim alias Hussain v State (NCT of Delhi[12], Jitendra Jain v. Narcotics Control Bureau[13], Rabi Prakash *v.* State of Odisha[14] and Man Mandal and Anr. *v.* State of West Bengal[15], wherein while taking into account the prolonged custody and unlikelihood of completion of trial in immediate future, the accused was granted bail.

25. Examining the present case in the aforenoted backdrop, it is noted that the investigation was initiated in the year 2022 and the prosecution has named 5 accused persons and cited 28 witnesses. There are 4000 pages of documents which need to be analysed.

26. In a situation such as the present case, where there are multiple accused persons, thousands of pages of evidence to assess, large number of witnesses to be examined, the trial is not expected to end anytime in the near future and the delay is not attributable to the accused, keeping the accused in

[12] 2023 SCC OnLine SC 352
[13] 2022 SCC OnLine SC 2021
[14] 2023 SCC OnLine SC 1109
[15] 2023 SCC OnLine SC 1868

custody by using Section 45 PMLA a tool for incarceration or as a shackle is not permissible. Liberty of an accused cannot be curtailed by Section 45 without taking all other germane considerations into account. It is also pertinent 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 accused in a money laundering case cannot be equated 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, etc.

As held in the catena of judgements discussed hereinabove, Constitutional Courts have the power to grant bails on the grounds of violation of Part III of the Constitution and Section 45 does not act as an hindrance to the same. The sacrosanct right to liberty and fair trial is to be protected even in cases of stringent provisions present in special legislations.

27. The applicant has been in custody since 11.11.2023 and the trial has been stuck at the stage of supply of documents under Section 207 CrPC. The Trial Court had directed the respondent agency to supply to the applicant the list of unrelied upon documents. This order was challenged by the respondent before this Court vide CRL.MC. 5091/2024 on account of which the trial could not proceed. Ironically, the respondent agency withdrew the petition on 15.10.2024. In these circumstances, it is evident that the trial would take some time to conclude.

28. Considering the totality of the facts and circumstances, the fact that the main accused is out on bail, the period of custody undergone, the likelihood of supplementary challan being filed qua the main accused and that the trial has been stuck at the stage of supply of documents under

Section 207 Cr.P.C., keeping in mind the import of the catena of decisions of Supreme Court discussed hereinabove, it is directed that the applicant be released on regular bail subject to him furnishing respective personal bond in the sum of Rs.1,00,000/- with one surety of the like amount to the satisfaction of the concerned Jail Superintendent/concerned Court/Duty J.M./link J.M. and subject to the following further conditions: -

i) The applicant shall not leave Delhi/NCR without prior permission of the concerned Court .

ii) The applicant shall deposit his passport, if any, with the trial court.

iii) The applicant shall provide his mobile number to the Investigating Officer on which he will remain available during the pendency of the trial.

iv) In case of change of residential address or contact details, the applicant shall promptly inform the same to the concerned Investigating Officer as well as to the concerned Court.

v) The applicant shall not directly/indirectly try to get in touch with the prosecution witnesses or tamper with the evidence.

vi) The applicant shall regularly appear before the concerned Court during the pendency of the proceedings.

29. The bail applications are disposed of in the above terms.

30. Copy of the order be communicated to the concerned Jail Superintendent electronically for information.

31. Copy of the order be uploaded on the website forthwith.

32. Needless to state that this Court has not expressed any opinion on the

merits of the case and has made the observations only with regard to present bail applications and nothing observed hereinabove shall amount to an expression on the merits of the case and shall not have a bearing on the trial of the case as the same has been expressed only for the purpose of the disposal of the present bail applications.

MANOJ KUMAR OHRI
(JUDGE)

NOVEMBER 13, 2024js/ry