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

Reserved on: 4th February, 2025
Pronounced on: 20th February, 2025

\+ BAIL APPLN. 1821/2024

ARUN MUTHU .....Petitioner

Through: Mr. Naveen Malhotra & Mr. Ritvik Malhotra, Advs.

versus

DIRECTORATE OF ENFORCEMENT .....Respondent

Through: Mr. Manish Jain, Special Counsel for ED with Ms. Sougata Ganguly, Mr. Snehal Sharda & Mr. Gulnaz Khan, Advs.

CORAM:
HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present application under Section 439 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') read with Section 45 of the Prevention of Money Laundering Act, 2002 (for short, 'PMLA') seeks regular bail in CC No. 123/2021 (ECIR/DLZO-II/54/2021) under Section 3/4 of the PMLA.

2. The brief facts as detailed in the counter affidavit filed on behalf of the respondent are as under: -

> "5.1 That a letter dated 14.06.2020 was received from Directorate of Enforcement, Delhi Zone-I, informing that Amarendra Dhari Singh has made certain financial transactions with Aditi Shivender Singh. As the matter of Religare Finvest Limited was being investigated vide ECIR/DLZO-II/05/20 I 9 by Directorate of Enforcement, Delhi Zone-II, the same was transmitted to Delhi Zone-II for further necessary action.
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> 5.2 On 17.06.2021, Aditi Singh was summoned and her statement was recorded u/s 50 of PMLA in ECIR/DLZO-II/05/2019 and during her statement she tendered her Iphone X, which was sent to DFS, Gandhinagar for forensic analysis on 18. 06.2021. On analysis of call data records (CDR), it was revealed that CDR contained multiple calls from various numbers belonging to Union Government offices and Ministries of the Government of India. It was intriguing to see that multiple calls were received from landlines of various Government offices, which on verification revealed that these calls were not made from the said landlines.
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> 5.3 That investigation revealed that the said calls were spoofed calls which meant that the calls had been made through an' App' which enables the caller to hide its real number and choose the number that the caller intends to reflect on the screen of the recipient of the call. The Respondent in order to identify the caller who had masked himself with the use of technology, decided to use technology get the IP address of the caller and eventually, the Respondent Directorate caught the IP address of the caller.
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> 5.4 To further investigate the issue, the location of the caller was plotted and it was revealed that Sukesh Chandrashekhar was involved in this case. Once Aditi Singh was convinced that she was conned and extortion had been done, she reported the same to Delhi Police on 07.08.2021.

5.1 That on the basis of the complaint filed by Aditi Shivinder Singh with Delhi Police with respect to extortion of money to the tune of Rs. 200 crore by unknown persons, FIR No. 208/2021 dated 07.08.2021 was registered by Special Cell, Delhi Police under Sections 170, 384, 386, 388, 419, 420, 506 and 120B of the Indian Penal Code, 1860 and Section 66(D) of the Information and Technology Act, 2000 against some unknown persons for hatching a criminal conspiracy by impersonating as Government Officers of highest ranks and extorted money to the tune of Rs. 200 crore from the complainant.

5.2 That the offences committed by the accused persons as per the FIR mentioned *(supra)* under sections 120-B, 384, 386, 388, 419, 420 of the Indian Penal Code, 1860 are specified as Scheduled Offences of Part A of the Prevention of Money Laundering Act, 2002, in terms of section 2(1)(y). On the basis of above referred FIR, an ECIR bearing number ECIR/DLZO-II/31/2022 was recorded by the Respondent Directorate on 08.08.2021 to investigate the offence of Money Laundering under Section 3 of the Prevention of Money Laundering Act, 2002 punishable under section 4 of the said Act to trace the proceeds of crime.

5.3 That during the course of investigation, it was revealed that the Applicant/Accused Arun Muthu had been an accomplice of Sukesh Chandrashekhar and his wife Leena Paulose. The Applicant has been instrumental in receiving the proceeds of crime in Chennai from Hawala operators and also ensuring that the proceeds of crime were brought into formal financial channels by getting the cash deposited through accommodation entry providers and also routing it through his personal and company accounts to accord legitimacy and lent his name to assets created and for various transactions."

3. After investigation, a complaint was filed, the role of the present applicant has been described in the complaint at Para 20.5 in the following manner: -

"i. Arun Muthu has been an accomplice of Sukash Chandrashekhar and Leena. He has been instrumental in receiving the proceeds of

crime in Chennai from Hawala operators and also ensuring that the proceeds of crime were brought into formal financial channels by getting the cash deposited through accommodation entry providers and also routing it through his personal and company accounts to accord legitimacy and lent his name to assets created and for various transactions.

ii. He had ensured that the proceeds of crime received in cash were transferred to the accounts of Nail Artistry through getting credit cards swiped for a lesser commission as compared to B. Mohanraj which resulted in inflated sales credited into the accounts of Nail Artistry. He has himself admitted that he was sent to Dubai to avoid being present in case any law enforcement agency land at Chennai to search/ any action so that details of transactions are not divulged which itself show how crucial is he in these money laundering activities. Further, he has lent his name as business partner of Leena Paulose and has received and given cash which is proceed of crime.

iii. Therefore, Arun Muthu knowingly assisted Sukash Chandrasekhar and Leena Paulose in acquisition and laundering of proceeds of crime generated through criminal activity and, thereby Arun Muthu has committed the offence of money laundering under section 3 of PMLA, 2002 punishable under section 4 of the said Act."

4. Further, the role of the applicant has been described in the said complaint at Para 14, in the following manner:

14. xxx xxx xxx

Arun Muthu:

Arun Muthu was aware of the all the entries done by him for Leena Paulose against cash through entry operators, however, he did not disclose all transactions either before his arrest or during ED custody. He was aware of the money being spent behalf of the accused Leena Paulose as various bank accounts of different firms were used for making payments on behalf of Leela Paulose against which cash

provided by her were known to him but he only disclosed those transactions which were shown to him via bank account statements. Investigation proves that he did various transactions for Leena Paulose in addition to those which he disclosed. He arranged inflating sales for Leena Paulose's Saloon by swiping cards of different people a fact he concealed during his statements recorded before and during ED custody revealing his in depth knowledge of financials of Leena Paulose. He is witness in CBI case and he was aware of the criminal acts of Sukash Chandrasekhar & Leena Paulose and yet was in regular contact with Leena Paulose and even spoke to Sukash Chandrasekhar through Leena Paulose' phone and followed his instructions with respect to collection of cash sent by Sukash Chandrasekhar through· hawala operator in Chennai. Further, he was asked to leave the country for Dubai fearing an impending action by Law Enforcement Agencies reveals his knowledge and connection with Sukesh and Leena."

SUBMISSIONS ON BEHALF OF THE APPLICANT

5. Learned counsel appearing on behalf of the applicant submits that for committing an offence under Section 3 of the PMLA, the accused must be shown to have *mens rea* with regard to the offence which is alleged to have been committed by him. It is the case of the applicant that he lacks both the knowledge and *mens rea* with regard to the offence alleged to have been committed by him. It is submitted that no proceeds of crime have been earned or acquired directly or indirectly or illegally by the present applicant. It is submitted that the alleged role of the present applicant was that he was associated with co-accused Leena Paulose, who is the wife of co-accused Sukash Chandrasekhar. It is pointed out that the evidence against the present applicant is in the form of confessional statements by the other co-accused persons which cannot be relied

upon with respect to the prosecution of the present applicant. It is further submitted that the accused did not receive any money from co-accused Sukash Chandrasekhar or Leena Paulose. It was submitted that the applicant is a young person in his twenties and had directed a web-series along with the co-accused Leena Paulose and out of the earning from the said series a major chunk was remitted to co-accused Leena Paulose and the present applicant had retained his commission.

6. Learned counsel vehemently argued that the applicant has been in custody since 21.10.2021 and 4 supplementary complaints have been filed, the trial has not commenced as charges have still not been framed. The maximum sentence provided for the offence under Section 4 of the PMLA is 7 years, with a minimum sentence of 3 years. A total of 300 prosecution witnesses have been cited by the prosecution and trial is not likely to conclude in the near future. It is further submitted that certain co-accused persons have already been granted bail by this Court or by the learned Trial Court. Co-accused persons namely, Avatar Singh Kochhar @ Dolly in **BAIL APPLN. 1814/2023** was granted bail by a Coordinate Bench *vide* judgement dated 29.11.2023, Pradeep Ramdani was granted bail *vide* order dated 02.08.2022 by the learned Special Judge-NIA, Pinky Irani was granted bail *vide* order dated 15.02.2022 by the learned Special Judge-NIA, Jacqueline Fernandez who was charge sheeted without arrest was granted bail *vide* order dated 15.11.2022 and co-accused Pooja Singh has been granted bail by a Coordinate Bench in **BAIL APPLN. No. 79/2023** *vide* judgement dated 29.08.2023.

7. Learned counsel appearing on behalf of the applicant has relied upon the following judgments:

i. V. Senthil Balaji vs. The Deputy Director, Directorate of Enforcement[1] (Paras 21, 23, 24, 25, 27, 28, 29).

> "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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> 23. In the case of **Manish Sisodia v. Directorate of Enforcement[1]** in paragraphs 49 to 57, this Court held thus:
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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,

[1] 2024 INSC 739

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.

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.

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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 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."

ii. Ajay Ajit Peter Kerkar v. Enforcement Directorate[2] (Paras 3,4,5,6).

> "3. In the facts of this case, the appellant will complete 3½ years of incarceration on 26th May, 2024. Thus, he will complete half of the prescribed sentence. In this case, obviously the trial has not started, as the charge has not been framed. This Court has held that Section 436A of the Code of Criminal Procedure, 1973 (for short "CRPC") will apply even to a case under the PMLA. But the Court can still deny the relief owing to the ground such as where the trial was delayed at the instance of the accused. As stated earlier, here there is no occasion for the appellant to cause the delay in trial, as even charge has not been framed. Moreover, there is no other circumstance brought on record which will compel us to deny the benefit of Section 436A of the CRPC to the appellant.
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> 4. The learned Additional Solicitor General submitted that the power under Section 436A of the CRPC has to be exercised by the Court of first instance.
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> 5. In the facts of the case, we find that there is no prospect of even the trial commencing, as the charge has not been framed. In these facts, we find that the appellant will be entitled to be enlarged on bail under section 436A of the CRPC on 27th May, 2024. Hence, there is no need to have multiplicity of proceedings.
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> 6. Hence, we allow these appeals and direct that the appellant shall be enlarged on bail under Section 436A of the CRPC on 27th May, 2024."

iii. Veerendra Kumar Ram v. Union of India[3] (Para 1).

[2] 2024 SCC OnLine SC 4055
[3] *Vide* order dated 18.11.2024 in Criminal Appeal No. 4615/2024

> "1. The appellant was arrested on 23rd February, 2023. He is in custody for a period of approximately 01 year and 09 months. Charge has not been framed. There is no possibility of the trial even commencing in near future. Therefore, in the facts of this case, following the principles laid down by this Court in paragraphs 26 to 28 of **V. Senthil Balaji vs. The Deputy Director, Directorate of Enforcement**, the appellant is entitled to be enlarged on bail, pending the trial."

8. It is further submitted that in the present case the applicant has already undergone minimum period under Section 4 of the PMLA, *i.e.*, 3 years and the trial has not commenced. Leaned counsel for the applicant further relies on the following judgments:

i. **Vijay Madanlal Chaudhary v. Union of India[4] (Paras 251-253,281-283, 388, 400, & 401)**
ii. **Manish Sisodia v. Directorate of Enforcement[5] (Paras 29, 50-57)**
iii. **Prem Prakash v. Union of India[6] (Paras 27-34)**
iv. **Javed Gulam Nabi Shaikh v. State of Maharashtra[7]**
v. **Chanpreet Singh Rayat vs Enforcement Directorate[8] (Para 80)**
vi. **Ramkripal Meena v. Enforcement Directorate[9]**
vii. **Bhagwan Bhagat vs Directorate of Enforcement[10]**
viii. **Kumar Ganesaperumal v. Directorate of Enforcement[11] (Para 15)**

[4] (2022) SCC Online SC 929
[5] 2024 INSC 595
[6] 2024 SCC Online SC 2270
[7] (2024) 9 SCC 813
[8] (2024) SCC Online Del 6264
[9] 2024 SCC OnLine SC 2276
[10] Criminal Appeal No. 3392/2024
[11] 2021 SCC OnLine Mad 8689

ix. **Vijay Nair v. Enforcement Directorate**[12]

x. **VMT Spinning Mills India Private Limited vs The Assistant Director, Directorate of Enforcement**[13] **(Para 12)**

xi. **Chandra Prakash Khandelwal v. Directorate of Enforcement**[14] **(Paras 31,32,34)**

xii. **Vijay Aggarwal v. Directorate of Enforcement** [15] **(Paras 22-24,27,39,34,35,36)**

xiii. **Sanjay Jain v. Directorate of Enforcement**[16]

xiv. **Sameer Mahendru v. Directorate of Enforcement**[17]

xv. **Raman Bhuraria vs Directorate of Enforcement**[18] **(Paras 65-71)**

xvi. **Parveen @ Sonu v. State of Haryana**[19] **(Paras-12-13)**

xvii. **Ramesh Manglani vs Directorate of Enforcement**[20] **(Paras- 51- 53)**

xviii. **Jafar Mohammed Hasanfatta v. Deputy Director**[21] **(Paras 36-45)**

SUBMISSIONS ON BEHALF OF THE RESPONDENT.

9. *Per contra,* learned Special Counsel for the Enforcement Directorate submitted that the applicant is not entitled to bail as he has not satisfied the mandatory requirement of Section 45 of the PMLA. It is submitted that proceeds

[12] 2024 SCC OnLine SC 3597
[13] CRL.O.P.No.3890 of 2017
[14] (2023) SCC Online Del 1094
[15] (2023) SCC Online Del 3176
[16] 2024 SCC OnLine Del 1656
[17] (2024) SCC OnLine Del 6261
[18] 2023 SCC OnLine Del 657
[19] 2021 SCC OnLine SC 1184
[20] 2023 SCC Online Del 3234
[21] 2017 SCC OnLine Guj 2476

of crime to the tune of more than Rs. 200 crores have been attributed to the applicant and the various co-accused persons. The present applicant is involved in the offence of money laundering defined as under Section 3 of the PMLA which is proved by the following:

i) Applicant Arun Muthu's statement before arrest dated 17.08.2021 which shows his direct connection with co-accused Sukash Chandrasekhar and Leena Paulose. Applicant's statement before the arrest dated 27.08.2021, shows that he assisted accused Sukash Chandrasekhar by collecting and depositing cash in his account and making payment for purchase of car.

ii) Statement dated 27.08.2021 and 28.08.2021 by Leena Paulose (Co-accused) showing that the applicant was in direct contact with Sukash Chandrasekhar and assisted him in his transactions. However, after a raid by the CBI, they avoided direct contact and Leena Paulose facilitated their communication by putting call on speaker.

iii) Statement dated 16.10.2021 of Sukash Chandrasekhar showing that the applicant had done various transactions at his behest.

iv) Statement dated 20.10.2021 of Siva Subramaniam to show that he received Rs. 4 crores approximately in cash from the applicant over the period of 7 to 8 months. It is case of the prosecution that aforesaid Siva Subramaniam provided entries to the bank account which was in turn provided by the applicant from his account as well as the account of his companies.

v) Statement dated 22.09.2021 by one Mr. Anand Moorthy (Chartered Accountant of Nail Artistry) which shows the financials of company of Leena Paulose for the Financial Year 2019-20 and Financial Year of 2020-2021 to demonstrate that the Nail Artistry Salon had no profit in 2019-20 but in 2020-22, it records profit of Rs. 81,13,084.25/- with sales growing from 2.9 crores to 4.5 crores.

vi) Statement of Pooja Singh (Co-accused) who was the Manager at Nail Artistry shows that the customers of Nail Artistry from 07.05.2021 to 07.08.2021 were fake customers during COVID.

10. Learned Special Counsel for the Enforcement Directorate further submitted that the learned Special Court while rejecting the bail application of the present applicant has specifically noted that the applicant was in fact one of the witnesses in another case where the co-accused Sukash Chandrasekhar was facing trial and despite the said knowledge the present applicant chose to become an accomplice of the same person against whom he is a witness. Learned counsel submits that the case of the other co-accused persons who have been granted bail are distinguishable as their roles were different and some of them are granted bail on medical grounds.

11. The learned Special Counsel further draws the attention of this Court to the observation in **V. Senthil Balaji (supra)** that a Court may decline to grant bail in circumstances if the person, in view of the antecedents, if released on bail is a threat to the society. It was pointed out that the applicant is already facing a

trial under The Maharashtra Control of Organised Crime Act, 1999 (for short, 'MCOCA') and, therefore, the observation would be applicable to the present applicant. The respondent department in their counter affidavit has expressed apprehension on account of conduct and strong association of the applicant with the main accused Sukash Chandrashekhar, that he may commit any such offence and hamper the ongoing investigation in the present case.

12. Reliance is placed on the following judgments:

i. **Vijay Madanlal Choudhary vs. Union of India & Ors.**[22]
ii. **Bimal Kumar Jain v. Directorate of Enforcement**[23]
iii. **Christian Michel James v. Enforcement Directorate**[24]
iv. **Raj Singh Gehlot v. Directorate of Enforcement**[25]
v. **Gautam Thapar v. Directorate of Enforcement**[26]
vi. **Sajjan Kumar vs. Directorate of Enforcement**[27]
vii. **Tarun Kumar v. Enforcement Directorate**[28]
viii. **Gautam Kundu v. Directorate of Enforcement**[29]
ix. **Serious Fraud Investigation Office vs. Rahul Modi**[30]
x. **Pavana Dibbur v. Enforcement Directorate**[31]

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[22] (2022) SCC OnLine SC 929
[23] 2021 SCC OnLine Del 4342
[24] (2022) SCC OnLine (Del) 731
[25] 2022 SCC OnLine Del 643
[26]2022 SCC OnLine Del 642
[27] 2022 SCC OnLine Del 1769
[28] (2023) SCC OnLine SC 1486
[29] (2015) 16 SCC 1
[30] (2019) 5 SCC 266
[31] (2023) 15 SCC 91

xi. **M/s Jagati Publications Ltd. vs. Directorate of Enforcement**[32]

xii. **Radha Mohan Lakhotia v. Deputy Director**[33]

xiii. **Manharibhai Muljibhai Kakadi & Anr v. Shaileshbhai Mohanbhai Pata & Ors**[34]**,**

xiv. **Rohit Tandon v. Directorate of Enforcement**[35]

xv. **Satish Jaggi v. State of Chhattisgarh**[36]

xvi. **Anirudh Kamal Shukla vs. Union of India Through Assistant Director, Directorate of Enforcement**[37]

xvii. **Y.S. Jagan Mohan Reddy v. CBI**[38]

xviii. **Anil Kumar Yadav v. State (NCT of Delhi)**[39]

xix. **Sunil Dahiya v. State (Govt. of NCT of Delhi)**[40]

xx. **Pramod Kumar Saxena v. Union of India**[41]**,**

xxi. **Religare Finvest Ltd. v. State (NCT of Delhi)**[42]

xxii. **Tarun Kumar v. Assistant Director, Tarun Kumar v. Enforcement Directorate**[43]**.**

ANALYSIS AND FINDINGS

13. Heard the learned counsel for the parties and perused the records.

[32] 2021 SCC Online TS 3293
[33] 2010 SCC OnLine Bom 1116
[34] (2012)10 SCC 517
[35] (2018) 11 SCC 46
[36] (2007) 11 SCC 195
[37] 2022 SCC OnLine All 176
[38] (2013) 7 SCC 439
[39] (2018) 12 SCC 129
[40] 2016 SCC Online Del 5566
[41] (2008) 9 SCC 685
[42] (2024) 1 SCC 797
[43] 2023 SCC OnLine SC 1486

14. The present ECIR was registered on 08.08.2021, on the basis of a predicate offence *i.e.,* FIR No. 208/2021 registered at P.S. Special Cell dated 07.08.2021. The present applicant was arrested by the Enforcement Directorate on 12.10.2021. He was in police custody of the Enforcement Directorate for seven days w.e.f. 13.10.2021 to 21.10.2021 during which period his statements were recorded and thereafter he was sent to judicial custody. In the predicate offence, the Special Cell filed charge-sheet on 02.11.2021 under Sections 170, 384, 386, 388, 419, 420, 506, 186, 353, 468, 471, 120B of the IPC, Section 66 (d) of the IT Act, Section 3 of the MCOCA.

15. The first complaint filed by the respondent/Enforcement Directorate in the present ECIR was on 04.12.2021, thereafter, it is pointed out that 4 supplementary complaints have been filed, last of which was filed on 06.04.2023. The Hon'ble Supreme Court in **V. Senthil Balaji (supra)** has clearly held that since the existence of a scheduled offence is the *sine qua non* for alleging existence of proceeds of crime then, the said existence of proceeds of crime at the time of the trial of offence under Section 3 of PMLA can be proved only if the scheduled offence is established in the prosecution of the said offence. In these circumstances, it was held, that trial in the case under PMLA cannot be finally decided unless a trial of scheduled offence concludes. In the present case, as pointed out by the learned counsel for the applicant, in the scheduled offence wherein the charge-sheet has also been filed, the trial has not yet commenced and the charges have not been framed so far. Even in the present case it is noted that the stage of the present complaint is still at the point of

consideration of charge and 300 prosecution witnesses have been cited by the Enforcement Directorate. In **V. Senthil Balaji (supra),** the Hon'ble Supreme Court while reiterating the ratio of judgments given by the Hon'ble Supreme Court in **Union of India v. K.A. Najeeb[44] and Manish Sisodia v. Enforcement Directorate[45]** has held that if the Constitutional Court comes to the conclusion that the trial is not likely to be completed in a reasonable time, the power of granting bail could be exercised on the ground of violation of Part III of the Constitution of India. Such power, it was held, can be exercised even in case of stringent statutory provisions with regard to bail like Section 45 of PMLA.

16. The Hon'ble Supreme Court in **Prem Prakash v. Enforcement Directorate[46]** held as under:

> **"11.** In ***Vijay Madanlal Choudhary*** **v.** ***Union of India*** **[*Vijay Madanlal Choudhary* v. *Union of India*, (2023) 12 SCC 1]** , this Court categorically held that while Section 45 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 302 is extracted hereinbelow: (SCC p. 259)
>
> "*302*. 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."

[44] (2021) 3 SCC 713
[45] 2024 SCC OnLine SC 1920
[46] (2024) 9 SCC 787

These observations are significant and if read in the context of the recent pronouncement of this Court dated 9-8-2024 in ***Manish Sisodia* v. *Enforcement Directorate* [*Manish Sisodia* v. *Enforcement Directorate,* (2024) 12 SCC 660 : 2024 SCC OnLine SC 1920]** , 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 52 of ***Manish Sisodia* [*Manish Sisodia* v. *Enforcement Directorate,* (2024) 12 SCC 660 : 2024 SCC OnLine SC 1920]** , this Court observed as under:

"*52.* … 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 straightforward 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 recognise the principle that "bail is rule and jail is exception."

12. All that Section 45 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 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.

28. In ***Vijay Madanlal Choudhary* [*Vijay Madanlal Choudhary* v. *Union of India,* (2023) 12 SCC 1]** , addressing the scope of Section 50, following has been held : (SCC p. 276, para 339)

"*339.* … *However, if his/her statement is recorded after a formal arrest by the ED official, the consequences of Article 20(3) or Section*

25 of the Evidence Act may come into play to urge that the same being in the nature of confession, shall not be proved against him.""

(emphasis supplied)

17. Similarly, in the case of **Vijay Nair vs Directorate of Enforcement (supra)** it was held as under:

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

18. In **Javed Gulam Nabi Shaikh vs. State of Maharashtra**[47] the Hon'ble Supreme Court while dealing with a case under the stringent provisions of Unlawful Activities (Prevention) Act, 1967 observed as under:

> "18. We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be.
>
> 19. We are convinced that the manner in which the prosecuting agency as well as the Court have proceeded, the right of the accused to have a speedy trial could be said to have been infringed thereby violating Article 21 of the Constitution."

[47] (2024) 9 SCC 813

19. Similarly, in **S.K. Javed Iqbal vs. State of UP**[48] the Hon'ble Supreme Court while dealing with the case under the Unlawful Activities (Prevention) Act, 1967 held as under:

> "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."

20. The present applicant as per the nominal roll dated 16.07.2024 has been in custody since 21.10.2021 bringing his custody period to around three years and four months approximately. In **Ajay Ajit Peter Kerkar vs. Directorate of Enforcement & Anr., (supra)** the Hon'ble Supreme Court while giving benefit to the appellant therein of Section 436A of the Cr.P.C. granted bail. As pointed out hereinabove, the maximum punishment provided in the PMLA is seven years

[48] (2024) 8 SCC 293

(except in certain category of cases which do not include the present offence), and the applicant has already undergone three years and four months.

21. The role of the present applicant as per the case of the prosecution was for providing entries in order to assist the main accused in laundering the proceeds of crime. The said allegation is sought to be proved by the prosecution on basis of statements made by the other co-accused persons as well as the present applicant. The statements made under Section 50 of the PMLA, no doubt is admissible in evidence, however, the veracity and sanctity of the same has to be tested during the course of the trial.

22. The trial, as pointed out hereinabove, has not even commenced. The present applicant who is accused in a case of money-laundering cannot be considered to be a threat to the society without any material to demonstrate the same. The continued incarceration of the applicant with no possibility of trial being completed in near future, cannot be ignored and in case of conflict with a restrictive statutory provision like Section 45 of PMLA, the latter would not come in way ensuring the right to liberty and speedy trial under Article 21 of the Constitution of India.

23. As pointed out hereinabove, five of the co-accused have been granted bail. The coordinate bench of this Court while granting bail to the co-accused Avatar Singh Kochhar @ Dolly in **Avtar Singh Kocchar v. Enforcement Directorate** [49] observed and held as under:

[49]2023 SCC OnLine Del 7518

"18. It is pertinent to mention here that the petitioner who is around 69 years of age and has a medical history is in custody for last more than two years. It has been submitted that the case is still at the initial stage and the trial may take a long time. **It is necessary to take into account that the detention during trial cannot be taken as punitive detention.** The rule is bail and not jail. Recently, in **Manish Sisodia vs. Central Bureau of Investigation & Anr. in Criminal Appeal a/o. of SLP (Crl.) No. 8167 of 2023** the Hon'ble Supreme Court has held as under:

> 26. However, we are also concerned about the prolonged period of incarceration suffered by the appellant – Manish Sisodia. In **P. Chidambaram v. Directorate of Enforcement,** the appellant therein was granted bail after being kept in custody for around 49 days, relying on the Constitution Bench in **Shri Gurbaksh Singh Sibbia and Others v. State of Punjab, and Sanjay Chandra v. Central Bureau of Investigation**, that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case. Ultimately, the consideration has to be made on a case to case basis, on the facts. The primary object is to secure the presence of the accused to stand trial. The argument that the appellant therein was a flight risk or that there was a possibility of tampering with the evidence or influencing the witnesses, was rejected by the Court. Again, in **Satender Kumar Antil v. Central Bureau of Investigation** and Another, this Court referred to **Surinder Singh Alias Shingara Singh v. State of Punjab and Kashmira Singh v. State of Punjab**, to emphasise that the right to speedy trial is a fundamental right within the broad scope of Article 21 of the Constitution. In **Vijay Madanlal Choudhary (supra),** this Court while highlighting the evil of economic offences like money laundering, and its adverse impact on the society and citizens, observed that arrest infringes the fundamental right to life.
>
> This Court referred to Section 19 of the PML Act, for the in- built safeguards to be adhered to by the authorised officers to ensure fairness, objectivity and accountability. **Vijay Madanlal Choudhary (supra),** also held that Section 436A of the Code can apply to offences under the PML Act, as it effectuates the right to speedy trial, a facet of the right to life, except for a valid ground such as where the trial is delayed at the instance of the accused himself. In our opinion, Section 436A should not be construed as a mandate that an accused

should not be granted bail under the PML Act till he has suffered incarceration for the specified period. This Court, in **Arnab Manoranjan Goswami v. State of Maharashtra and Others**, held that while ensuring proper enforcement of criminal law on one hand, the court must be conscious that liberty across human eras is as tenacious as tenacious can be."

(emphasis supplied)

"20. It is necessary to mention that even in the reply to the bail application filed by the ED and perusal of the statement recorded under Section 50 of PMLA, the evidence against the petitioner is of his dealing with Deepak Ramnani. **Whether the petitioner was acting as an agent of the main accused or was in any way indulging or knowingly assisting or knowingly party in "any process or activity" connected with the proceeds of crime is to be proved during the trial. The factum of · knowledge regarding dealing in "proceeds of crime" and 'mens rea" in the present peculiar facts and circumstances is to be proved during the trial.**

21. Though the allegations against the accused are very serious in nature, however, the court at this stage would restrain itself from making "any detailed discussion about the merit of the case as it may prejudice the parties. In order to deny the bail to the petitioner, there has to be more than mere allegations.

xxx xxx xxx

24. It is also a settled proposition that even in the economic offence case, it not a rule that the bail should be denied in every case. It is a also settled proposition that merely levelling the allegation of 'flight risk' is not sufficient to deny the bail in the absence of any substantive material. The court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities.

25. I consider that here is the case where the petitioner is 69 years of age with several ailments and is in custody for the last more than 2 years. If the case of the· petitioner is seen on broad

probabilities, he seems to be entitled to be admitted to bail. The offence alleged against the accused is punishable with imprisonment for a term which shall not. be less than three years and may extend to seven years and shall also" be liable to fine. The case of the petitioner does not fall under Paragraph 2 of para 2 A of the Schedule.

(emphasis supplied)

24. It is thus seen that the Coordinate Bench while granting the bail to the co-accused did consider the delay, the period of incarceration as well as the fact that the trial is not likely to be completed in the near future. The said judgement was delivered on 29.11.2023 and pertinently, the trial has still not commenced. The applicant therein, was also ascribed a similar role of assisting the main accused in the movement of proceeds of crime. In the present case as well the requisite *mens rea* on part of the applicant has to be proved by prosecution which is a matter of trial.

25. In the present case, the applicant was arrested on 12.10.2021 and has been in custody for a period of 3 years and 4 months approximately. The trial in the present complaint as noted hereinbefore, is yet to commence and would take time to conclude. Apart from expressing apprehension of the applicant being a flight risk, no material has been shown to demonstrate the same. The evidence in the present case is primarily documentary in nature which is already in possession of the prosecution.

26. In totality of the facts and circumstances of the case, the application is allowed. The applicant is directed to be released on bail upon his furnishing a

personal bond in the sum of Rs. 1,00,000/- alongwith one surety of like amount to the satisfaction of the learned Trial Court/Link Court, further subject to the following conditions:

i. The memo of parties shows that the applicant is residing at H. No. 40, Seshachalam Streets, Sai Kripa Apartment, Flat No. B-1, Saidapet, Chennai, 600015. In case of any change of address, the applicant is directed to inform the same to the learned Trial Court and the Investigating Officer.

ii. The applicant shall not leave the country without the prior permission of the learned Trial Court.

iii. The applicant is directed to give all his mobile numbers to the Investigating Officer and keep them operational at all times.

iv. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witnesses in any manner.

v. The applicant shall join the investigation, as and when required by the Investigating Officer.

27. The application stands disposed of along with all the pending application(s), if any.

28. Needless to state, nothing mentioned hereinabove, is an opinion on the merits of the case and any observations made are only for the purpose of the present application.

29. Copy of the judgment be sent to the concerned Jail Superintendent for necessary information and compliance.

30. Judgment be uploaded on the website of this Court, *forthwith.*

AMIT SHARMA, J

FEBRUARY 20, 2025*/kr*