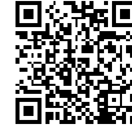

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment delivered on: 04.03.2025*

\+ **<u>BAIL APPLN. 1337/2024</u>**

CHRISTIAN JAMES MICHEL .....Petitioner

Through: Mr. Aljo K. Joseph, Mr. Vishnu Shankar and Mr. Sriram P., Advocates

versus

DIRECTORATE OF ENFORCEMENT .....Respondent

Through: Mr. Zoheb Hossain, Special counsel for ED with Mr. Vivek Gurnani, Standing Counsel for ED with Mr. Kartik Sabharwal, Advocate

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

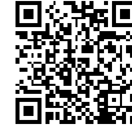
JUDGMENT

SWARANA KANTA SHARMA, J

1. The applicant, Christian James Michel, seeks regular bail by way of the present application, in case arising out of ECIR No. DLZO/15/2014/AD(VM) 7551-7584, dated 03.07.2014, recorded for offence under Sections 3 and 4 of the Prevention of Money Laundering Act, 2002 [hereafter '*PMLA*'].

FACTUAL BACKDROP

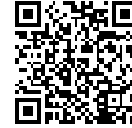
2. The brief facts of the case, as discernible from the material on



record, are that based on a disclosure made by the then Head of External Relations of M/s Finmeccanica, the holding company of M/s AgustaWestland International Ltd. [hereafter '*AWIL*'], Italian authorities had initiated an investigation in 2011 regarding alleged bribe payments through middlemen, including Guido Ralph Haschke and the present applicant i.e. Christian James Michel, in connection with the supply of 12 VVIP helicopters by AWIL to the Government of India. The Public Prosecutors' Office in Naples and Rome had conducted telephonic and technical surveillance on Guido Ralph Haschke and others, including the then CEO of M/s Finmeccanica. The surveillance had revealed that AWIL had disguised bribes as payments for engineering jobs. During a search at the residence of Guido Ralph Haschke's mother, Swiss Police had recovered incriminating documents, including a payment/balance sheet.

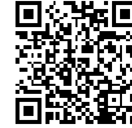
3. Subsequently, the Director General (Acquisition), Ministry of Defence, Government of India, had lodged a complaint with the Central Bureau of Investigation (CBI) on 12.02.2013, requesting an inquiry into the allegations. A preliminary inquiry was conducted, leading to the registration of an FIR/RC No. 217-2013-A-0003 on 12.03.2013, for offences under Sections 120B read with Section 420 of the Indian Penal Code, 1860 [hereafter '*IPC*'] and Sections 7/8/9/12/13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 [hereafter '*PC Act*'].

4. During the investigation, it emerged that the Indian Air Force (IAF) had issued a Request for Proposal (RFP) in March 2002 for



procuring eight VVIP helicopters, with a mandatory altitude requirement of 6000 meters. Of the four firms that had responded, three helicopters – MI-172, EC-225, and EH-101 (also known as AW-101) – were shortlisted for evaluation. However, only the first two were flight-tested, as EH-101 was certified to fly only up to 4572 meters, below the mandatory requirement. The Field Evaluation Trial (FET) found only EC-225 conforming to all parameters. When the FET report was sent to the Ministry of Defence for approval, the PMO had noted in a meeting that the altitude requirement had resulted in a single-vendor situation. The matter was deliberated at various levels, with the IAF maintaining its stance on the 6000-meter altitude requirement. However, after Air Chief Marshal S.P. Tyagi took over as Chief of Air Staff, the IAF's position softened, and the altitude requirement was reduced to 4500 meters, making M/s AgustaWestland UK eligible to bid. Additionally, the revised operational requirements (ORs) introduced a cabin height of 180 cm and added the phrase "at least" before "twin-engine". With these modifications, a fresh RFP was issued on 27.09.2006, following which EC-225 was eliminated, allowing AW-101 to qualify. On 08.02.2010, AWIL was awarded a contract for supplying 12 AW-101 helicopters for Euro 556.262 million (Rs. 3726.96 crores). However, when bribery allegations had surfaced, the Government of India had terminated the contract on 01.01.2014.

5. Based on the FIR/RC registered by the CBI, the present ECIR was recorded against the applicant and others on 03.07.2014.



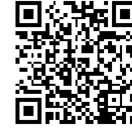
Following an investigation by the Directorate of Enforcement (DoE), a prosecution complaint was filed against five accused persons on 20.11.2014. The applicant was named as an accused in the first supplementary complaint dated 10.06.2016.

6. To secure the presence of the applicant, an open-ended Non-Bailable Warrant was issued on 23.10.2015, followed by a Red Corner Notice published by INTERPOL on 04.01.2016. An extradition request for the applicant was also sent to the authorities of the United Arab Emirates (UAE) on 23.12.2017. He was extradited to India in December 2018 and was arrested by the DoE on 22.12.2018, following which his custodial interrogation was conducted. On 05.01.2019, he was sent to judicial custody by the learned. Special Court, PMLA. Another prosecution complaint against him was filed on 04.04.2019.

7. Insofar as the applicant's role is concerned, it is alleged that money laundering in this case was primarily executed through two channels, with the applicant being the key figure in one. He was allegedly paid Euro 42 million to influence the contract in favor of M/s AgustaWestland under the guise of five contracts (two of which were repeatedly revised) through his firms, M/s Global Trade & Commerce Ltd. London and M/s Global Services FZE, Dubai. These payments were allegedly made by M/s Finmeccanica, M/s AgustaWestland, and M/s Westland Helicopters UK to legitimize illicit commissions/kickbacks in the VVIP helicopter procurement by the Ministry of Defence, India. Allegedly, M/s AgustaWestland

Holdings Ltd. had executed an agreement dated 01.03.2010 with M/s Global Services FZE, Dubai (a firm owned by the applicant) for rendering assistance in securing the contract dated 08.02.2010 between the Government of India and AWIL. Under this agreement, the applicant's firm was to receive Euro 275,000 per month for 22 months, and an amount of Euro 6.05 million was subsequently paid from April 2010 to December 2011. It is alleged that the applicant was appointed as a consultant/agent by AWIL, UK, in violation of the Pre-Contract Integrity Pact dated 03.10.2008, while AWIL had falsely declared to the Ministry of Defence that it was in full compliance. Furthermore, an Aircraft Purchase Order was placed by M/s Westland Helicopters Ltd. (WHL) on M/s Global Trade & Commerce Ltd. London, a company owned by the applicant, on 26.05.2010 for repurchasing 14 WG-30 helicopters from M/s Pawan Hans Ltd. for Euro 18.2 million. However, investigations in India revealed that neither the applicant nor his companies had made any communication with M/s Pawan Hans Ltd. or engaged with any of its officials regarding this buyback, indicating that the agreement was a sham transaction. The applicant is therefore alleged to have committed a grave economic offence of significant magnitude and subsequently laundered the proceeds of crime.

8. Previously, the regular bail application of the applicant was dismissed by the Coordinate Bench of this Court *vide* judgment dated 11.03.2022. The SLP against the said judgment was also dismissed *vide* order dated 07.02.2023. Thereafter, another bail application was



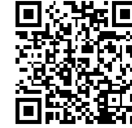
filed by the applicant before the learned Special Court, which came to dismissed *vide* order dated 15.03.2023. Accordingly, the applicant has approached this Court by way of the present bail application.

SUBMISSIONS BEFORE THE COURT

Submissions on Behalf of the Applicant

9. The learned counsel appearing for the applicant argues that the supplementary prosecution complaint filed by the DoE does not attribute any specific role to the applicant regarding the alleged act of lowering the height of the VVIP helicopters from 6000 meters to 4500 meters and there is no material evidence to connect the applicant with the alleged offence. It is contended that the applicant has already undergone six years and two months of incarceration, in addition to 130 days of pre-extradition detention in Dubai. It is contended that the maximum sentence prescribed under Sections 3 and 4 of PMLA is seven years, and the applicant has nearly served this period without any conviction, and thus, the continued detention of the applicant without trial amounts to pre-trial punishment, violating his fundamental right under Article 21 of the Constitution of India to a fair and expeditious trial.

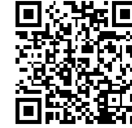
10. It is argued that the investigation in both the predicate offence and the PMLA case remains ongoing, and there is no reasonable likelihood of its conclusion in the near future. Despite the passage of several years, the trial has not even commenced. It is submitted that the prosecution itself has submitted that there are a voluminous



number of documents and a large number of witnesses are to be examined, which will inevitably prolong the proceedings for several more years. The learned counsel for the applicant further argues that the case against the applicant is based entirely on documentary evidence, which has already been collected and produced before the trial court by the investigating agency. There is no possibility of tampering with evidence, and there are no allegations that the applicant has ever attempted to interfere with witnesses or obstruct the judicial process.

11. Next, it is contended that the learned Special Court erred in mechanically rejecting the bail application on the sole ground that the applicant is a flight risk, without appreciating the prolonged incarceration, the documentary nature of evidence, and the undue delay in the trial. It is argued that the Hon'ble Supreme Court has repeatedly held that bail cannot be denied solely on the apprehension of flight risk, especially when stringent conditions can be imposed to mitigate such concerns. The learned counsel for the applicant vehemently argues that during the pendency of the present bail application, the Hon'ble Supreme Court has granted bail to the applicant in the predicate offence. Since the offence under PMLA is contingent on the predicate offence, the very basis for continued incarceration in the present case is substantially weakened and therefore, he should be granted bail in this case as well.

12. It is also argued by the learned counsel for the applicant that while Section 45 of PMLA imposes stringent conditions for the grant



of bail, the inordinate delay in completion of investigation and initiation of trial, coupled with prolonged incarceration, would override the twin conditions of Section 45 of PMLA. On these grounds, therefore, it is prayed that the applicant be enlarged on regular bail.

Submissions on Behalf of the DoE

13. Conversely, the learned counsel appearing for the DoE contends that the conduct of the applicant clearly establishes that he is a flight risk. It is stated that the applicant evaded investigation at every stage and did not voluntarily cooperate with the authorities. To secure his presence, the learned Special Judge (PMLA) was compelled to issue an open-ended Non-Bailable Warrant (NBW) on 23.10.2015. Despite this, the applicant remained outside India, necessitating further coercive measures, including the issuance of a Red Corner Notice by INTERPOL on 04.01.2016. Subsequently, another open-ended Non-Bailable Warrant was issued against him on 17.10.2017. The applicant's blatant refusal to submit himself to the jurisdiction of Indian courts compelled the Indian authorities to seek his extradition from UAE, which was granted, leading to his arrest on 22.12.2018.

14. It is further submitted that the applicant made deliberate and systematic efforts to evade the investigating agencies. While he was a frequent visitor to India before the AgustaWestland helicopter deal investigation came to light, he absconded once his involvement became public. Notably, on 12.02.2013, when Giuseppe Orsi, a key

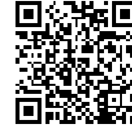
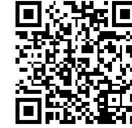


figure in the deal, was arrested by Italian authorities, the applicant had arrived at Delhi Airport on the same day but, upon learning of Orsi's arrest, immediately left India. This sequence of events clearly demonstrates his intention to evade the investigation. Furthermore, even after being brought into custody, the applicant attempted to obstruct the investigative process. During interrogation, he was caught trying to pass confidential papers to his counsel at the time of legal access.

15. It is also argued on behalf of the DoE that the applicant cannot claim parity with other accused persons in the case as they are Indian citizens with established roots in the country, whereas the applicant is a British national with no ties to India. His past conduct shows that, if released on bail, he would likely flee the country once again, thereby frustrating the trial. It is also pointed out that this Court as well as the learned Special Court, while rejecting the applicant's previous bail applications, have categorically held that he poses a flight risk.

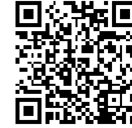
16. The learned counsel appearing for DoE further contends that while Section 436A of the Cr.P.C. provides that an undertrial who has served more than half of the maximum sentence may be considered for release, this provision is discretionary in nature. The use of the word "may" in the proviso empowers the court to deny such relief where further detention is necessary. In the present case, the applicant has though spent a considerable period of time in custody, but given his past conduct, there is high risk of him absconding if he is granted bail. It is submitted that the applicant's



presence was secured only through an elaborate extradition process, and there is every likelihood that he would flee once again if granted bail. Therefore, it is argued that this is a fit case for the exercise of judicial discretion under proviso to Section 436A of Cr.P.C. to continue the applicant's detention until the conclusion of trial.

17. Next, it is argued on behalf of the DoE that it is well settled that the seriousness of an offence can be a sufficient ground to reject bail, even if the trial is likely to take time to conclude. It is further stated that the applicant is facing prosecution under PMLA, which deals with offences that pose a serious threat to the national economy and security. Economic offences, particularly money laundering, are committed with careful planning and calculated intent for personal gain, irrespective of their devastating impact on society. Given the gravity of the offence, it is submitted that 'jail is the rule and bail is an exception' in cases of money laundering. Therefore, the prolonged nature of the trial cannot, in itself, be a ground for releasing the applicant when the allegations involve large-scale corruption and financial misconduct.

18. Lastly, it is submitted that, at this stage, the material placed on record is sufficient to persuade this Court that the twin conditions under Section 45 of PMLA have not been satisfied. As per the decision in ***Vijay Madanlal Chaudhary v. Union of India:*** *2022 SCC OnLine SC 929*, the accused must demonstrate that (i) there are reasonable grounds to believe that he is not guilty of the offence and (ii) he is not likely to commit any offence while on bail. In the



present case, given the overwhelming evidence of evasion, obstruction of investigation, and the serious nature of the allegations, it is contended that the applicant fails to meet these requirements.

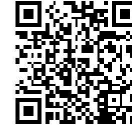
19. On the above grounds, the learned counsel for the DoE prays that the present bail application be dismissed.

20. This Court has **heard** arguments addressed by the learned counsel for the applicant, as well as learned Special Counsel for the DoE. The material placed on record by either side has also been perused and examined.

ANALYSIS & FINDINGS

21. The case against the applicant arises from the alleged AgustaWestland VVIP helicopter scam, where he is accused of being a middleman who had facilitated bribes to Indian officials to secure a deal for the supply of 12 AW-101 helicopters. The DoE alleges that he had laundered proceeds of crime by routing illicit funds through shell companies. He is accused of receiving around Euro 42 million from AgustaWestland and distributing kickbacks to influence the contract.

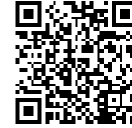
22. However, at the outset, this Court notes that the learned counsel for the applicant primarily argued the present bail application on the ground of delay in concluding investigation and consequently the trial, and placed reliance on the order of the Hon'ble Supreme Court whereby the applicant herein has been granted bail in the predicate offence – on the ground of delay in trial itself.



23. In this context, this Court has given consideration to the material placed on record as well as the stage of the investigation and the fact that in the present case, though the applicant has been in judicial custody for more than six years, investigation in the case has yet not been concluded, charges have not been framed and the trial has not begun.

24. This Court while deciding the present bail application, in the backdrop of the fact that applicant has been granted bail by the Hon'ble Supreme Court in the predicate offence, has considered the issue of grant of bail to the applicant *viz-a-viz* the delay in conclusion of investigation and initiation of trial, especially the fact that the applicant has almost completed the period of judicial custody equivalent to the maximum punishment attracted in the present case i.e. under Section 4 of PMLA. Considering these circumstances, the merits of the allegations against the applicant were not considered at this stage.

25. In cases under PMLA, while the legislature has incorporated stringent provisions such as Section 45 to regulate the grant of bail, by prescribing the twin test, the Hon'ble Supreme Court has also held that such provisions must be harmoniously interpreted with Article 21 of the Constitution of India. It has also been held that the statutory bar under such bail provisions cannot be permitted to override an accused's right to speedy trial, nor can statutory restrictions be construed as a tool for indefinite incarceration.



26. In ***Prem Prakash v. Union of India:*** *2024 SCC OnLine SC 2270*, the Hon'ble Supreme Court has reiterated the fundamental right to speedy trial enshrined under Article 21 of the Constitution of India, and held that keeping persons behind bars for unlimited periods of time, in the hope of speedy completion of trial, would deprive the fundamental right of persons under Article 21. It was observed as under:

> "12. …. All that Section 45 of the 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 the PMLA by imposing twin conditions does not rewrite 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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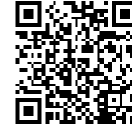
> 13. Independently and as has been emphatically reiterated in *Manish Sisodia case4* relying on *Ramkripal Meena v. Enforcement Directorate3* and *Javed Gulam Nabi Shaikh v. State of Maharashtra6*, where the accused has already been in custody for a considerable number of months and there being no likelihood of conclusion of trial within a short span, the rigours of Section 45 of the PMLA can be suitably relaxed to afford conditional liberty. Further, *Manish Sisodia case4* reiterated the holding in *Javed Gulam Nabi Shaikh case6,* 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."



27. Notably, the Hon'ble Supreme Court in ***V. Senthil Balaji v. Enforcement Directorate:*** *2024 SCC OnLine SC 2626*, while emphasizing the importance of Article 21 of the Constitution and the effect of delays in trial in PMLA cases, in context of Section 45 of PMLA, had observed as under:

> "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 the 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.
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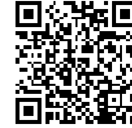
> 27. Under the statutes like the PMLA, the minimum sentence is three years, and the maximum is seven years. The minimum sentence is higher when the scheduled offence is under the NDPS Act. When the trial of the complaint under the PMLA is likely to prolong beyond reasonable limits, the Constitutional 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 K.A. Najeeb v. Union of India, 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.

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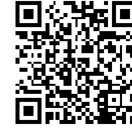
29. As stated earlier, the appellant has been incarcerated for 15 months or more for the offence punishable under the PMLA. In the facts of the case, the trial of the scheduled offences and, consequently, the PMLA offence is not likely to be completed in three to four years or even more. If the appellant's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



> fundamental right under Article 21 of the Constitution of India of speedy trial."

28. Most recently, in ***Udhaw Singh v. Directorate Enforcement:*** *2025 SCC OnLine SC 357* (decision dated 17.02.2025), the Hon'ble Supreme Court, following the decision in ***V. Senthil Balaji v. Enforcement Directorate*** *(supra),* observed as follows while granting bail to the accused:

> "3. The appellant has been arrested for the offence under Section 3 of the Prevention of Money Laundering Act, 2002 (for short "the PMLA")
>
> 4. In this case, the appellant has undergone incarceration for a period of 1 year and 2 months. There are 225 witnesses cited, out of which only 1 has been examined. Therefore, the trial is not likely to be concluded within few years. Hence, a decision of this Court in the case of *V. Senthil Balaji v. Deputy Director, Directorate of Enforcement* will apply.
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> ***
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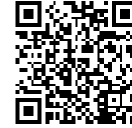
> 5. Our attention is invited to a decision of a coordinate Bench in the case of Union of India through the *Assistant Director v. Kanhaiya Prasad*. After having perused the judgment, we find that this was a case where the decisions of this Court in the case of *Union of India v. K.A. Najeeb* and in the case of *V. Senthil Balaji* were not applicable on facts. Perhaps that is the reason why these decisions were not placed before the coordinate Bench. The respondent-accused therein was arrested on 18th September, 2023 and the High Court granted him bail on 6th May, 2024. He was in custody for less than 7 months before he was granted bail. There was no fining recorded that the trial is not likely to be concluded in a reasonable time. In the facts of the case, this Court cancelled the bail granted by the High Court. Therefore, there was no departure made from the law laid down in the case of *Union of India v. K.A. Najeeb* and *V. Senthil Balaji*.
>
> 6. The learned Solicitor General of India very fairly stated that in the facts of the case, the decision in the case of *V. Senthil Balaji* may be followed. Hence, the appellant deserves to be

enlarged on bail, pending trial."

29. Having taken note of the aforesaid judicial precedents, this Court is of the view that while Section 45 of PMLA imposes stringent conditions for the grant of bail, constitutional courts, including the Hon'ble Supreme Court, have also emphasized time and again that this provision cannot be interpreted in a manner, to confine the accused in judicial custody for an indefinite period of time. As noted above, the Hon'ble Supreme Court, in multiple decisions, has held that the right to bail must be read into such provisions where there is an inordinate delay in the completion of trial which effectively converts pre-trial custody into a punitive sentence.

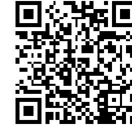
30. The present case presents an exceptional situation where the applicant has already been in custody for over six years and two months, yet the trial has not even commenced due to the incomplete investigation. Such prolonged incarceration, without any foreseeable conclusion of trial, would infringe upon the applicant's fundamental right to a speedy trial under Article 21 of the Constitution.

31. Further, during the course of arguments, both sides had extensively argued on the provisions of Section 436A of the Cr.P.C. It was contended on behalf of the applicant that since he had already served more than one half of the maximum term of punishment, he should be granted bail. On the other hand, the DoE had vehemently opposed the said contention and argued that taking into account the



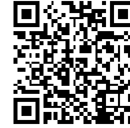
proviso of Section 436A and considering the previous conduct of the applicant herein, there were clear ground to exercise discretion as per proviso to Section 436A of Cr.P.C. and not grant bail to the applicant, till the trial is concluded.

32. It is to be noted in this regard, that Section 436A of the Cr.P.C. is a statutory safeguard designed to prevent excessive and disproportionate pre-trial detention. It provides that an accused, who has undergone detention for a period equivalent to one-half of the maximum sentence prescribed for the offence, shall ordinarily be released on bail unless the court, for reasons recorded in writing, directs otherwise. In the context of offences under PMLA, where the maximum sentence is ordinarily seven years, the one-half threshold would be three and a half years. Although the proviso to Section 436A of Cr.P.C. allows the court to extend the period of detention beyond the one-half threshold based on the facts of the case, yet such extended detention cannot be indefinite and the Courts must assess the necessity of continued incarceration in light of the specific facts, the stage of the trial, and the overall interests of justice. For an offence under Section 4 of PMLA, where the maximum punishment is seven years, the threshold for Section 436A of Cr.P.C. would be three and a half years. While the proviso to Section 436A allows courts to extend detention beyond this period in exceptional circumstances, the present case is not one where the applicant's custody is only marginally beyond the halfway mark. Instead, the applicant has been in custody for over six years and two months –



which is alarmingly close to the maximum punishment – without even being adjudicated guilty. It was pointed out that more than 100 witnesses are to be examined in the present case and there are more than 1000 documents relied upon by the prosecution. Given that the trial is unlikely to conclude before the applicant completes even seven years in jail, further incarceration would render the entire purpose of a trial meaningless.

33. In ***V. Senthil Balaji v. Enforcement Directorate*** *(supra)*, it was observed that existence of proceeds of crime at the time of the trial of the offence under Section 3 of the PMLA can be proved only if the scheduled offence is established in the prosecution of the scheduled offence. Thus, even if the trial of the case under PMLA proceeds, it cannot be finally decided unless the trial of scheduled offences concludes. *Applying the said principle to the present case*, this Court observes that the trial has not begun either in the case pertaining to scheduled offence or in the case under PMLA. Moreover, in the case pertaining to scheduled offence, i.e. case arising out of FIR/RC No. 217-2013-A-0003, the Hon'ble Supreme Court has already enlarged the present applicant on regular bail, by way of order dated 18.02.2025 passed in *Special Leave to Appeal (CRL.) Nos. 17016/2024*. The Hon'ble Supreme Court took into consideration that the applicant had been in custody since his extradition in December 2018, amounting to over six years, while the investigation remained ongoing despite the filing of three charge sheets and two supplementary charge sheets, and the trial had not yet

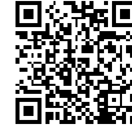


commenced. The said decision is set out below:

> " …Considering the facts and circumstances of the case and in particular that the petitioner, who was extradited in December, 2018, has been in custody since then, i.e. more than six years by now, and according to the learned senior counsel, appearing for the respondent-CBI, despite filing three charge-sheets and two supplementary charge-sheets, the investigation is still on going, as is also apparent from the counter affidavit, and the fact that the trial has not yet commenced, we are inclined to grant bail to the petitioner on such terms and conditions as may be determined by the Trial Court in connection with FIR/RC No.RC-217-2013-A0003 dated 12.03.2013.
>
> The CBI will make appropriate request before the Trial Court for imposing necessary conditions before releasing the petitioner on bail.
>
> It goes without saying that the petitioner will extend all co-operation during the trial, which, although, has still not commenced.
>
> In the event the Trial Court or the State finds that the petitioner is delaying the conclusion of trial, it will be open for them to approach this Court for recall of this order.
>
> The Special Leave Petition and pending applications are disposed of accordingly...."

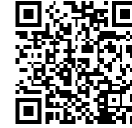
34. Therefore, in this Court's opinion, the prolonged incarceration of the accused, of about six years and two months, and the fact that investigation is not yet complete and trial has not yet begun, and there are more than 100 witness to be examined in this case, would entitle him to grant of regular bail, thereby overriding the statutory bar under Section 45 of PMLA and proviso to Section 436A of Cr.P.C.

35. Insofar as the argument of the DoE, that applicant is a flight



risk, is concerned, this Court is of the view that though the Coordinate Bench of this Court, while dismissing the previous bail applications of the applicant had taken note of the conduct of the applicant, and held that he was a flight risk, the said argument would not be of any help to the DoE at this stage, inasmuch as the applicant herein has already been granted regular bail by the Hon'ble Supreme Court *vide* order dated 18.05.2025, and it has been directed that the CBI would make appropriate request before the learned Trial Court for imposing necessary conditions before releasing the petitioner on bail.

36. **In view of the above discussion**, considering the period of incarceration of about six years and two months undergone by the applicant, and in view of the fact that he has also been granted bail in the case pertaining to predicate offence by the Hon'ble Supreme Court on the ground that the investigation has not been completed and the trial has not even begun, and considering that there seems to be no possibility of trial in this case concluding too within the remaining duration of the maximum prescribed sentence under Section 4 of PMLA, inasmuch as the same has not even begun as of now, this Court is inclined to grant regular bail to the present applicant, on furnishing a personal bond and surety in the sum of ₹5,00,000/- each and on surrendering the passport before the learned Trial Court, which be not released without permission of this Court, considering that investigation *qua* the present applicant is still pending. The rest of the conditions be imposed by the learned Special



Court, since as per order of the Hon'ble Apex Court, the learned Trial Court has been directed to impose conditions as deemed appropriate while granting bail in predicate offence.

37. Taking into account the directions in order dated 18.02.2025 of the Hon'ble Supreme Court, and lest any order of this Court is in conflict with order of Supreme court and following the judicial discipline, it is directed that the DoE shall be at liberty to request the concerned Court for imposing necessary/ stringent conditions before releasing the applicant on bail, considering the previous conduct of the applicant and the fact that he was extradited to India. It is also clarified that the applicant will extend all co-operation in the investigation (if required) and during the trial, as and when the same would commence.

38. In above terms, the present application is allowed and accordingly disposed of.

39. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MARCH 4, 2025/ns