

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**CrMP(M) No. : 2795 of 2025****Reserved on : 24.12.2025****Decided on : 05.01.2026**

Arvind Rajta ...Applicant

Versus

Directorate of Enforcement (ED) ...Respondent

Coram

The Hon'ble Mr. Justice Virender Singh, Judge.

*Whether approved for reporting?*¹ Yes.

For the applicant : Mr. Ajay Kochhar, Senior Advocate, with Ms. Pritika Thakur, Advocate.

For the respondent : Mr. Zoheb Hussain, Advocate (through VC), with Mr. Ajeet Singh Saklani, Mr. Surila Sangam and Ms. Ananya Srivastava, Advocates.

Virender Singh, Judge.

Applicant-Arvind Rajta has filed the present application, under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as the 'BNSS'), with a prayer to release him, on bail, during the pendency of the trial, in case No. **ECIR/SHSZO/04/2019**, **dated 22.07.2019**, registered with the **Enforcement**

¹ *Whether Reporters of local papers may be allowed to see the judgment?* Yes.

Directorate Office (ED), Sub-Zonal Office, Rani Villa, Bagrian House, Strawberry Hills, Chhota Shimla, Shimla, Himachal Pradesh.

2. According to the applicant, the said ECIR was registered on the basis of the source information of case FIR No. 133 of 2018, registered with Police Station East and RC registered by CBI, vide RC 0962019S0002, dated 7th March, 2019, under Sections 409, 420, 467, 468 and 471 IPC, read with Sections 13(1)(c) & 13(1)(d) read with Section 13 (2) of the Prevention of Corruption Act.

3. The investigation of FIR No. 133 of 2018 was, thereafter, handed over to CBI and searches and seizures from 22 private institutions were conducted. During investigation of the case by CBI, the applicant was arrested and released on bail, vide order, dated 24th September, 2020, passed in CrMP (M) No. 1040 of 2020.

4. According to the applicant, the CBI has filed the charge sheet in twelve cases, including the case, related to the present ECIR in the Court of learned Additional Sessions Judge (CBI), Shimla.

5. As per the stand taken by the applicant, after the investigation, in the present ECIR, the ED has filed the complaint, under Sections 44 and 45 of the PMLA, before the learned Special Judge (PMLA) and the case is now listed for consideration on charge.

6. It is the case of the applicant that there are hundreds of witnesses, in the CBI challans, apart from the thousands of documents, which are being relying upon. According to the applicant, in the supplementary challans, filed in the present ECIR, up till today, there are 132 witnesses apart from 83547 documents, relied upon, which are to be proved by the respondent-Department.

7. It is the further case of the applicant that he is being deprived of his fundamental right of speedy trial and he is in custody since 30th August, 2023, i.e. more than two years, without there being any progress in the ECIR, as well as, in the trial of the predicate offence, which is pending adjudication before the CBI Court, Shimla.

8. It is the stand of the applicant that the trial is being delayed, without any fault on the part of the

applicant and he is entitled to be released on bail, on the ground of delay in trial.

9. According to the applicant, the trial of the present complaint is going to take a considerable time and certainly years together and the stringent provisions of Section 45 of the PMLA cannot become a tool, which can be used to incarcerate the applicant, without trial.

10. As per the further case of the applicant, there is no evidence on record, collected by the investigating agency to show the involvement of the applicant, as, instead of collecting the evidence, the respondent-Department has created evidence to implicate him.

11. It is the specific case of the applicant that he has been arrayed as an accused, in this complaint, in the supplementary complainants, being filed from time to time, on the allegations that the applicant, in the capacity of public servant, i.e. Dealing Assistant, in the Scholarship Branch of the Department of Higher Education, for the scholarship, under PMS Scheme, for SC/ST/OBC students of H.P., has verified all the claims made by 28 institutions, without pointing out the irregularities, including the

change of course of students in subsequent years and change in caste category of students and is actually involved in generation, acquisition and concealment of proceeds of crime and also intentionally and dishonestly verified the claims of the PMS Scheme and entered into a partnership through his wife, with Rajdeep Singh and Krishan Kumar and formed shell entities by the name and style of M/s ASA Marketing Solutions, M/s Skill Development Society and M/s Skill Development School.

12. According to the applicant, his arrest, in this case, is malafide, which can be appreciated from the fact that out of around 50 accused persons, the Enforcement Department has picked and without any reason had chosen only a few accused and others are on bail, though, all the other persons are accused of having committed the offences, under Sections 3 and 4 of the PMLA.

13. As per the applicant, all the allegations, levelled against him, have been made for the sake of allegations, being false and incorrect and the same can only be proved during the trial, which has remote possibility of being concluded within a reasonable time. As such, according to

the applicant, no fruitful purpose will be served by keeping him in custody, for an indefinite amount of time.

14. The applicant is stated to be the permanent resident of District Shimla, belonging to a respectable family, as such, there is no chance of his, absconding from the course of justice.

15. According to the applicant, he had filed regular bail application, before this Court, bearing CrMP (M) No. 2444 of 2023, which was dismissed, vide order, dated 12th January, 2024.

16. The applicant has also given the details of the earlier bail applications, filed by him, before this Court, wherein he has been ordered to be released on interim bail, to contend that he has not abused the liberty granted to him, at any point of time, in the past.

17. It has been contended on behalf of the applicant that he had filed SLP before the Hon'ble Supreme Court, which came to be disposed of, vide order, dated 25th March, 2025.

18. Thereafter, the applicant had approached the learned trial Court, as per the directions of the Hon'ble

Supreme Court, by filing a regular bail application, which came to be rejected, vide order dated 18th November, 2025.

19. Apart from this, the applicant has given certain undertakings, for which, he is ready to abide by, in case, he is ordered to be released on bail, during the pendency of the trial.

20. On the basis of the above submissions, a prayer has been made to allow the bail application.

21. When put to notice, the reply, on behalf of the ED, has been filed, mentioning therein, that the applicant is facing serious allegations of money laundering, under Sections 3 and 4 of the PMLA, involving large scale misappropriation of Government sponsored scholarship funds, meant for SC/ST/OBC students, which has serious socio-economic impacts on economic system, as well as, the right of under-privileged students.

21.1. According to the ED, the nature of allegations against the applicant is such that no sanction, under Section 197 CrPC is required, however, the DoE has, out of abundant caution, obtained prosecution sanction from the

competent authority, qua the applicant, on 4th March, 2025.

21.2. According to ED, the matter revolves around a scam, involving the allocation of scholarships to SC, ST and OBC students, attending private institutions in Himachal Pradesh, under the Post Matric Scheme. In this fraudulent activity, officials from the Department of Higher Education, alongwith private Educational Institutions and Banks, were involved, which has resulted into misappropriation of scholarship funds of more than ₹ 200 crore.

21.3. The applicant, according to the stand taken by ED, alongwith others, has played a major role in the scam, wrongfully withholding the rightful scholarship entitlement of the scholarships of the students, belonging to SC, ST and OBC students of Himachal Pradesh. According to ED, they have diverted the said funds into their pockets/accounts. 22 institutions are stated to be involved. In this regard, ED has relied upon the charge sheet submitted by CBI. The investigation is stated to be

going on to unearth the illicit money and ascertain the proceeds of crime (PoC), obtained by way of this scam.

21.4. After recording the reason to believe in writing, the applicant and his co-accused were arrested by ED on 30th August, 2023, under Section 19 of PMLA, in the said ECIR. Thereafter, they were produced before the Special Designated Court (PMLA), Shimla, on 31st August, 2023, and the learned Special Court, after perusal of all the documents, including the arrest memo, grounds of arrest, reasons to believe and material for formation of such belief, has granted five days' ED custody, with a direction, to produce the accused persons before the Special Court on 4th September, 2023, on which date, they were produced before the Special Court and were remanded to judicial custody.

21.5. It is the further case of the ED that investigation is going on and is at crucial stage, which requires collection of additional evidence, examination of voluminous records and recording of statements of several persons associated with the applicant and other accused persons related to the case.

21.6. Elaborating their stand, it is the case of the ED that CBI registered the case vide RC0962019S0002, dated 7th May, 2019, under Sections 409, 419, 465, 466 and 471 IPC, against the unknown persons. As per the allegations of the said case, there were complicity of individuals, employees of State Government Education Department, Bank Officials and private institutions. Misappropriation in the disbursement of scholarship funds, in large scale, has also been alleged. The offences, under Sections 419 and 471 IPC, are also stated to be scheduled offences, mentioned in the schedule, appended to PMLA and as such, inquiry was initiated by ED and the present case, being ECIR/SHSZO/04/2019, dated 22nd July, 2019, was registered.

21.7. According to the ED, it has filed prosecution complaints in case of seven institutions, wherein, the applicant is common accused, being the Dealing Assistant in the Scholarship Branch of Directorate of Higher Education, Shimla, entrusted with the duty to verify the claims of scholarship under Post Matric Scheme for SC/ST/OBC students of Himachal Pradesh.

21.8. As per the stand of the ED, the applicant, intentionally and dishonestly, verified all the claims made by KCGI, Pandoga; KCGI, Nawanshahr; HGPI; AGPI; ITFT, New Chandigarh; ICL Group of Colleges, for various academic years, without pointing out the irregularities, including change of courses of students in subsequent years and change of caste category of students.

21.9. The applicant is also stated to have verified the claims made by KCGI Pandoga, KCGI Nawanshahr and ICL Group of Colleges, Ambala, whose complete documents were not uploaded on HP-ePass.

21.10. It is the case of the ED that the applicant held meeting with accused-Hitesh Gandhi outside the office and took money in cash from him for verifying the claims of KCGI Pandoga.

21.11. It is also the case of the ED that apart from his official role, as employee of DoHE, the applicant, through his wife and in partnership with accused-Rajdeep Singh and Krishan Kumar, formed shell entities, company, by the name and style of : (i) M/s ASA Marketing Solutions, (ii) M/s Skills Development School; and (iii) M/s Skills

Development Society. The applicant is also stated to have made his relatives, Naresh Kalta and Rakesh Kumar, members in shell entity, M/s Skill Development Society.

21.12. According to the ED, the role of the applicant, in these entities, was to help in timely release of scholarship claim, under PMS Scheme, which was claimed by using false and forged documents, related to affiliation and fees structure. The applicant, in complete knowledge of these facts, stated to have deliberately, with an eye on profit, verified the scholarship claims.

21.13. As per the stand of the ED, the proceeds of crime obtained through shell entities was concealed by the applicant, by transferring the same in the account of M/s Pee Pee Construction and ultimately, using it to acquire a plot at Fagu, Theog, Shimla, in the name of his wife.

21.14. The proceeds of crime are also stated to have been used for business concerns namely, M/s Avinash Rajta and M/s Avinash Rajta & Co., whose operations are stated to have been controlled and handled by the applicant. The applicant is also stated to have used the proceeds of crime by investing the same in M/s Grand

Emporio Hotels & Resorts Pvt. Ltd., in which, the applicant made his brother-in-law a Director, alongwith accused- Rajdeep Singh and Krishan Kumar.

21.15. As such, according to the ED, the applicant, is knowingly a party in acquisition of proceeds of crime, thereby, committing the offence of money laundering, as defined under Section 3 and punishable under Section 4 of the PMLA.

21.16. It is the stand of the ED that delay cannot be attributed to the prosecution in a case involving lakhs of beneficiaries, voluminous digital records and complex financial trails. The applicant cannot claim bail merely because the case is large.

21.17. According to the ED, the ongoing investigation does not justify bail. The complexity and magnitude of the fraud justify the time taken. The prosecution is stated to have acted with due diligence. The stage of consideration on charge, in both the predicate offence and the PMLA proceedings is stated to be a natural consequence of magnitude and complexity of the case and not due to any laxity or inaction on the part of the investigating agency.

21.18. It is the specific stand of the ED that the prosecution has been ready to proceed at every stage, as, the learned Special Court (PMLA), in its orders, dated 26th July, 2025; 11th August, 2025; 3rd September, 2025; and 23rd September, 2025, has observed that the delay in framing of charges is entirely on account of the conduct of the accused persons, who have repeatedly sought adjournments and on several occasions, failed to remain present before the Court. As such, according to the ED, the delay in the progress of the trial cannot, by any stretch, be attributed to the ED.

21.19. Denying the allegation that the evidence has been created, against the applicant, it is the stand of the ED that the evidence includes bank records, statements, digital records, shell entity documents and beneficiary verification linked directly to the applicant and the strong material establishes the applicant's deliberate role in verifying the falsified claims, and participating in shell entities controlled through his family members and associates.

21.20. According to the ED, although, the Hon'ble Supreme Court granted liberty to renew the bail application after some time, the same does not restrict power of either High Court or trial Court to adjudicate the matter independently and on its merit. Mere grant of liberty to re-file a bail cannot be construed as a right to be enlarged on bail, at a later stage.

21.21. It has been averred in the reply that filing of successive bail applications without any change in circumstances cannot be entertained. In this regard, reliance has been placed on the judgments of the Hon'ble Supreme Court in *Viruakshappa Gouda versus State of Karnataka, (2017) 5 SCC 406; Kalyan Chandra Sarkar versus Rajesh Ranjan, (2005) 2 SCC 42.*

21.22. It has also been averred by the respondent-ED that mere the period of incarceration cannot be the sole consideration for grant of bail in a case of this nature, involving large scale embezzlement and laundering of public money meant for scholarships of poor students, as, the trial, in the present case, is at the stage of framing charge and the primary reason for non-framing of charges

is the absence of majority of the accused persons. According to the ED, the applicant should not be allowed to derive benefit from the obstructive behaviour of his co-accused.

21.23. In this regard, reliance has been placed on the judgment of the Delhi High Court in *CRL.A No. 1207/2024*, titled as *Tasleem Ahmed versus State of NCT of Delhi*, decided on 2nd September, 2025, wherein, it has been held that delay in trial caused by other co-accused persons cannot constitute a valid ground for seeking bail.

21.24. It is the case of the ED that there is no thumb-rule laid down by the Hon'ble Supreme Court that bail has to be granted upon a year being spent in custody and that the mandatory twin conditions under Section 45 of the PMLA will stop applying upon a person completing a year in custody. To substantiate this plea, the ED has relied upon the decisions of the Hon'ble Supreme Court in *Manish Sisodia versus CBI, 2023 SCC OnLine SC 1393* (*Manish Sisodia-I*) and *V. Senthil Balaji versus Deputy Director, Directorate of Enforcement, 2024 SCC OnLine SC 2626*.

21.25. As per the stand of the ED, it is well settled that the investigation into the offence of money laundering is independent of the investigation conducted by the predicate agency and that a person accused of the offence of money laundering need not necessarily be accused of a scheduled offence.

21.26. It is also the case of the ED that the mandatory twin conditions under Section 45 of the PMLA are applicable even while considering bail application, on medical grounds. The plea of emergency medical condition is stated to be wholly unfounded and cannot form a valid ground for the applicant's interim release.

21.27. According to the ED, the economic offences constitute a distinct category and need to be visited with a different approach in the matter of bail. Education is stated to be a multiplier right, which enables a person fulfill several other rights of himself and his family members, but, those unscrupulous persons, like the applicant, who deprive a chance of better education, by siphoning of scholarship money of poor students, do not deserve any sympathetic view in the matter of arrest.

21.28. It is the further case of the ED that the economic offences are not limited to physical records, digital trails, financial channels, witnesses and co-conspirators remain susceptible to influence. Investigation continues with respect to money-trail and connected persons.

21.29. The relief, as sought, in the application, has also been opposed on the ground, that the applicant is a public servant and was posted as Dealing Assistant, at the relevant time. According to the ED, he is the person, who had verified the claims, so submitted for scholarship, for the last so many years and without his assistance, other accused persons would not have been in a position to commit the crime. His role is stated to be on higher pedestal, than the other accused persons. Not only this, the applicant is stated to have constituted shell companies and proceeds of crime were invested in those shell companies.

22. On the basis of the above facts, a prayer has been made to dismiss the bail application.

23. The applicant, in this case, has been booked, under Section 3 of the PMLA and the punishment has been provided, under Section 4 of the PMLA. Section 4 of the PMLA is reproduced, as under:

“4. Punishment for money-laundering. -
Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Provided that where the proceeds of crime involved in money-laundering relates to any offence specified under paragraph 2 of Part A of the Schedule, the provisions of this section shall have effect as if for the words “which may extend to seven years”, the words “which may extend to ten years” had been substituted.”

24. It is not in dispute that before releasing the accused on bail, in a case, registered under PMLA, it is incumbent upon the Court to record the findings with regard to the satisfaction of the twin conditions, as per Section 45 of the PMLA, which are *pari materia* to provisions of Section 37 of the NDPS Act.

25. The main thrust of the arguments of the learned counsel appearing for the ED is that the delay, in the present case, has been caused by the accused persons and not on account of the prosecution. In order to buttress his

contention, the learned counsel for the ED has drawn the attention of this Court, towards the orders, dated 23rd September, 2025; 18th October, 2025; and 12th November, 2025, passed by the learned trial Court, in this case.

26. The applicant, in the present case, has been arrested in the month of August, 2023 and prior to that, he remained in judicial custody, in the case registered by CBI, bearing No. RC0962019A0002, dated 7th May, 2019. Even, in this case, the applicant is in custody for almost two years and four months.

27. The copy of the complaint has also been annexed with the reply. As per the complaint, there are as many as 71 witnesses and the documentary evidence is consisting of 31608 pages.

28. Apart from this, it has also been argued that the earlier bail application of the applicant has been dismissed on merit, by this Court; thereafter, the applicant has tried his luck by moving SLP before the learned Supreme Court and his SLP has also been dismissed. As such, it has been argued that the period of custody of the applicant is not

the sole criterion to accept the prayer for bail, made by him.

29. First of all, coming to the arguments of the learned counsel appearing for the ED, qua the fact that his earlier bail application has been dismissed, on merit, by this Court and SLP preferred by him before the Hon'ble Supreme Court has also been dismissed, by the Hon'ble Supreme Court. Copy of the order, dated 25th March, 2025, passed by the Hon'ble Supreme Court, in the SLP, has been placed on record, by the applicant. Relevant portion of the said order, is reproduced, as under:

"We do not find any ground to interfere with the impugned order(s) passed by the High Court. However, insofar as the petitioner(s) who have received interim relief from the High Court, we are inclined to give them four weeks time for surrendering.

Liberty is given to the petitioners to renew the prayer for bail by way of filing a fresh bail application before the concerned trial Court with a period of six months, if the trial does not proceed.

The Special Leave Petition are, accordingly, dismissed with the aforesaid liberty."

30. By way of the order, dated 25th March, 2025, reproduced hereinabove, liberty has been granted, by the

Hon'ble Supreme Court, to the applicant to file fresh bail application, before the concerned trial Court, within a period of six months, from the date of the order, in case, the trial does not proceed.

31. Consequently, the applicant had moved the bail application before the learned trial Court, which has been dismissed, by the learned trial Court, vide order, dated 18th November, 2025, and now, he is before this Court.

32. Now, coming to the objection of the learned counsel appearing for the ED, qua the fact that delay in the trial is caused due to the accused persons and not by the ED. As per orders, dated 23rd September, 2025; 16th October, 2025; and 12th November, 2025, produced on the record, this Court is of the view that no role can be attributed to the applicant for causing delay in the trial.

33. Moreover, whatsoever has been prayed, which resulted into adjournment of the proceedings, before the learned trial Court, that has been done by the other accused persons and learned counsel appearing for the ED could not satisfy the judicial conscience of this Court as to how the applicant can be said to be attributing delay in the

said proceedings. Even otherwise, no fault can be found with the applicant, on account of the exemption applications, moved by other accused persons.

34. Admittedly, charges have not been framed and considering the total number of witnesses to be examined by the prosecution and the voluminous record, relied upon, this Court can foresee the fact that in near future, chances of conclusion of the trial, against the applicant, are not so bright.

35. The view of this Court is being guided by the decision of the Hon'ble Supreme Court, in case titled as **Mahesh Joshi versus Directorate of Enforcement, Neutral Citation No. 2025 INSC 1377.** Relevant paras-10 to 14, of the said judgment, are reproduced, as under:

10. Furthermore, attention is drawn to the documentary nature of the case, wherein large number of pages, witnesses and documents are cited by the prosecution, and that the matter remains at the stage of supply of copy of the police report and other documents under Section 207, Code of Criminal Procedure (for short, "CrPC"). It is urged that the trial is unlikely to commence in the near future, and prolonged incarceration would be inconsistent with Article 21 of the Constitution of India.

11. On the contrary, the learned ASG submits that the allegations relate to serious economic offences. He refers to what the agency

describes as a financial trail involving movement of funds through M/s Mugdog Packaging India LLP, M/s Maxclenz Retail Pvt. Ltd., and M/s Jay The Victory, before reaching the firm of the Appellant's son, M/s Sumangalam LLP. According to the respondent, the layering of transactions is consistent with money-laundering methods.

12. Reliance is placed on statements of certain co-accused recorded during the investigation, with the submission that the later retractions are belated. It is contended that the Rs. 50 lakh entry is not isolated and forms part of a larger financial pattern which, according to the agency, totals Rs. 2.01 crore. The learned ASG submits that the Appellant, being a senior political figure, may influence witnesses who were departmental officials or contractors. Continued custody is therefore sought.

13. In **V. Senthil Balaji v. Deputy Director, Directorate of Enforcement**, 2024 SCC OnLine SC 2626, of which, one of us was a member (Augustine George Masih, J.), this Court, particularly in para 27, held that where a trial cannot be reasonably concluded and incarceration becomes prolonged, constitutional courts must intervene to safeguard the right to personal liberty under Article 21. The Court further emphasised that Section 45(1)(ii) of the PMLA cannot be interpreted to justify indefinite detention in cases involving voluminous, document-heavy material where trial is unlikely to begin promptly. The present case, in our view, stands on a similar footing. Para 27 of V. Senthil Balaji (*supra*) reads as follows:

“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* [(2021) 3 SCC 713], 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.”

14. Upon considering the material placed before us, we find that several co-accused, whose alleged roles will ultimately be evaluated at trial, have already been granted bail. The Appellant has remained in custody for over seven months. The record is entirely documentary, as of now there are 66 witnesses, 184 documents, and more than 14,600 pages are involved, and the proceedings are still at the stage of supply of copy of the police report and other documents under Section 207, CrPC. In our view, these circumstances indicate that the commencement of trial is not imminent and that the trial itself is not likely to conclude once started in the near future. The continued detention of the Appellant requires closer scrutiny in light of constitutional considerations.

36. The learned senior counsel appearing for the applicant has also argued that the case, filed by the CBI,

regarding the predicate offences, against the applicant, alongwith other accused persons are at the stage of consideration on charge.

37. In this background, the chances of commencement and conclusion of the trial, against the applicant, in near future, seem to be not so bright, as, the Hon'ble Supreme Court, in **V. Senthil Balaji versus Deputy Director, Directorate of Enforcement**, reported in **2024 SCC OnLine SC 2626**, has held that the existence of proceeds of crime, at the time of 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. Relevant paras-21 to 27, of the judgment, are reproduced, 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 PMLA can be proved only if the scheduled offence is established in the prosecution of the scheduled offence. Therefore, even if the trial of the case under the PMLA proceeds, it cannot be finally decided unless the trial of scheduled offences concludes. In the facts of the case, there is no

possibility of the trial of the scheduled offences commencing in the near future. Therefore, we see no possibility of both trials concluding within a few years.

22. In the case of K.A. Najeeb, in paragraph 17 this Court held thus:

“17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. **Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.”**

(emphasis added)

23. In the case of Manish Sisodia v. Directorate of Enforcement in paragraphs 49 to 57, this Court held thus:

“49. We find that, on account of a long period of incarceration running for around 17 months and the trial even not having been commenced, the

appellant has been deprived of his right to speedy trial.

50. As observed by this Court, the right to speedy trial and the right to liberty are sacrosanct rights. On denial of these rights, the trial court as well as the High Court ought to have given due weightage to this factor.

51. Recently, this Court had an occasion to consider an application for bail in the case of *Javed Gulam Nabi Shaikh v. State of Maharashtra* 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*, *Shri Gurbaksh Singh Sibia v. State of Punjab*, *Hussainara Khatoon (I) v. Home Secretary, State of Bihar*, *Union of India v. K.A. Najeeb and Satender Kumar Antil v. Central Bureau of Investigation*. 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 nonobstante clause for overriding the provisions of Sections 437 to 439 of the CrPC. The legislature has done so to secure the object of making the penal provisions in such enactments. For example, the PMLA provides for Section 45(1) (ii) as money laundering poses a serious threat not only to the country's financial system but also to its integrity and sovereignty.

25. Considering the gravity of the offences in such statutes, expeditious disposal of trials for the crimes under these statutes is contemplated. Moreover, such statutes contain provisions laying down higher threshold for the grant of bail. The expeditious disposal of the trial is also warranted considering the higher threshold set for the grant of bail. Hence, the requirement of expeditious disposal of cases must be read into these statutes. Inordinate delay in the conclusion of the trial and the higher threshold for the grant of bail cannot go together. It is a

well-settled principle of our criminal jurisprudence that "bail is the rule, and jail is the exception." These stringent provisions regarding the grant of bail, such as Section 45 (1) (iii) of the PMLA, cannot become a tool which can be used to incarcerate the accused without trial for an unreasonably long time.

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

27. Under the Statutes like PMLA, the minimum sentence is three years, and the maximum is seven years. The minimum sentence is higher when the scheduled offence is under the NDPS Act. When the trial of the complaint under PMLA is likely to prolong beyond reasonable limits, the Constitutional Courts will have to consider exercising their powers to grant bail. The reason is that Section 45 (1) (ii) does not confer power on the State to detain an accused for an unreasonably long time, especially when there is no possibility of trial concluding within a reasonable time. What a reasonable time is will depend on the provisions under which the accused is being tried and other factors. One of the most relevant factor is the duration of

the minimum and maximum sentence for the offence. Another important consideration is the higher threshold or stringent conditions which a statute provides for the grant of bail. Even an outer limit provided by the relevant law for the completion of the trial, if any, is also a factor to be considered. The extraordinary powers, as held in the case of K.A. Najeeb, 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.”

(self emphasis supplied)

38. As stated earlier, in the cases filed by the CBI, the charges have not yet been framed, what to talk about the commencement and conclusion of the trial, regarding the predicate offences.

39. The Hon'ble Supreme Court, in a case, titled as **Bachhu Yadav versus Directorate of Enforcement**, reported as **(2023) 19 Supreme Court Cases 815**, has released the applicant, before it, after considering the fact that out of 42 witnesses, five had been examined and the custody period of the said applicant was little over one year. Relevant paras-6 to 11, of the said judgment, are reproduced, as under:

6. In the light of the gist of the contentions noted above, we have perused the petition papers, but without adverting to much details at this stage since the basic facts required for considering an application for bail alone is to be noted without effecting the main contentions of the parties to be put forth during trial. The basic allegation as made against the petitioner as noted is regarding the illegal activity during the period 1-6-2022 to 26-6-2022. Though the learned Additional Solicitor General with reference to the objection statement wherein details of the FIR filed in three other cases is referred to indicate the illegal activities in which the petitioner is involved, it is needless to mention that in the said cases the proceedings in any event would

be taken against the petitioner to its logical conclusion.

7. In that background, keeping in view the allegation against the petitioner is of possessing the amount of Rs 30 lakhs in his bank account, apart from the fact that the very allegation is that the said amount was deposited on 24-1-2022 which is prior to the period of illegal activity alleged, for the present there is an explanation as put forth by the petitioner during the course of investigation in answer to the specific question on being confronted with the account details in Jharkhand Gramin Bank, Bhagiamari Branch. The explanation is that the amount was deposited by him in respect of the transaction for purchase of house with land in Asansol for Rs 26 lakhs. It is further stated that the sum of Rs 26,00,024 was transferred through NEFT to one Munmun Maji and it is stated that the said amount was the sale consideration for the property. To enable transfer of the same, it had been deposited in the bank account. At the point of hearing this petition, it was stated across the Bar that the sale has also been registered. Be that as it may, these are aspects which, in any event, would be looked at during the course of the trial.

8. Further, though the learned Additional Solicitor General has contended that the bail application filed by the main accused Pankaj Mishra has been dismissed by this Court on 26-4-2023 in Pankaj Mishra v. Union of India, it is seen that the application filed has in fact been withdrawn with liberty to file an application for interim bail on medical ground and also to file afresh bail application after six months.

9. Be that as it may, in the instant facts, the nature of the allegation in the present proceedings has been taken note. In that circumstance, it is seen that the petitioner was arrested on 5-8-2022 and he has spent a little

over one year of incarceration. The charge-sheet is filed and the trial court having framed the charges, no doubt has started the trial and it is stated across the Bar that five witnesses have been examined but it is also stated that in all 42 witnesses are cited to be examined.

10. *In that circumstance, taking into consideration all aspects of the matter and also making it subject to the condition that the petitioner shall diligently participate in the trial without interfering in the course of justice and also complying with the other appropriate conditions to be imposed by the trial court, the prayer is accepted.*

11. *Hence, we direct that the petitioner be enlarged on bail subject to appropriate conditions being imposed by the trial court and the petitioner diligently adhering to such conditions, as also not being required in any other case. For the purpose of imposition of such conditions and issue of release order the petitioner shall be produced forthwith before the trial court. The petition is disposed of in the above terms.”*

40. The Hon'ble Supreme Court in **Manish Sisodia versus Directorate of Enforcement**, reported as **2024 SCC OnLine SC 1920**, has elaborately discussed the provisions of PMLA, viz-a-viz, offences, which are punishable for death, imprisonment for life, ten years or more like offences under the Narcotic Drugs and Psychotropic Substances Act, murder, cases of rape, dacoity, kidnapping for ransom, mass violence, etc.

Relevant paras-28 and 49 to 57 of the judgment, are reproduced, as follows:

“28. Before considering the submissions of the learned ASG with regard to maintainability of the present appeals on account of the second order of this Court, it will be apposite to refer to certain observations made by this Court in its first order, which read thus:

“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, (2020) 13 SCC 791, the appellant therein was granted bail after being kept in custody for around 49 days [P. Chidambaram v. Central Bureau of Investigation, (2020) 13 SCC 337], relying on the Constitution Bench in Shri Gurbaksh Singh Sibia v. State of Punjab, (1980) 2 SCC 565, and Sanjay Chandra v. Central Bureau of Investigation, (2012) 1 SCC 40, 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, (2022) 10 SCC 51, this Court referred to Surinder Singh Alias Shingara Singh v. State of Punjab, (2005) 7 SCC 387 and Kashmira Singh versus State of Punjab, (1977) 4 SCC 291, to emphasise that the right to speedy trial is a fundamental right

within the broad scope of Article 21 of the Constitution. In *Vijay Mandanlal 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. (See also *Pankaj Bansal v Union of India*, 2023 SCC OnLine SC 1244) *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*, (2021) 2 SCC 427, 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.

27. The appellant - Manish Sisodia has argued that given the number of witnesses, 294 in the prosecution filed by the CBI and 162 in the prosecution filed by the DoE, and the documents 31,000 pages and 25,000 pages respectively, the fact that the CBI has filed multiple charge sheets, the arguments of charge have not commenced. The trial court has allowed application of the accused for furnishing

of additional documents, which order has been challenged by the prosecution under Section 482 of the Code before the High Court. It was stated at the Bar, on behalf of the prosecution that the said petition under Section 482 will be withdrawn. It was also stated at the Bar, by the prosecution that the trial would be concluded within next six to eight months.

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, kidnapping 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.

29. In view of the assurance given at the Bar on behalf of the prosecution that they shall conclude the trial by taking appropriate steps within next six to eight months, we give liberty to the appellant Manish Sisodia to move a fresh application for bail in case of change in circumstances, or in case the trial is protracted and proceeds at a snail's pace in next three months. If any application for bail is filed in the above circumstances, the same would be considered by the trial court on merits without being influenced by the dismissal of the earlier bail application, including the present Judgment. Observations made above, re. right to speedy trial, will, however, be taken into consideration. The appellant Manish Sisodia may also file an application for interim bail in case of ill health and medical emergency due to illness of his wife. Such application would be also examined on its own merits."

xxx

xxx

xxx

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

50. As observed by this Court, the right to speedy trial and the right to liberty are sacrosanct rights. On denial of these rights, the trial court as well as the High Court ought to have given due weightage to this factor.

51. Recently, this Court had an occasion to consider an application for bail in the case of Javed Gulam Nabi Shaikh v. State of

Maharashtra, 2024 SCC OnLine SC 1693, 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, (1978) 1 SCC 240, Shri Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565, Hussainara Khatoon (1) v. Home Secretary, State of Bihar, (1980) 1 SCC 81, Union of India v. K.A Najeeb, (2021) 3 SCC 713, and Satender Kumar Antil v Central Bureau of Investigation, (2022) 10 SCC 51. 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 Court 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 court 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."

(self emphasis supplied)

41. In view of the discussions made hereinabove, now, the next question, which arises for determination, before this Court, is, about the fact as to whether the twin conditions, as per Section 45 of the PMLA, are existing in favour of the applicant, on account of his long custody.

42. A three Judge Bench of the Hon'ble Supreme Court, in **Union of India versus K.A. Najeeb**, reported as **(2021) 3 Supreme Court Cases 713**, has elaborately discussed the statutory restrictions, provided under Section 43-D(5) of the UAPA. Relevant paras-10 to 19, of the judgment, are reproduced, as under:

"10. It is a fact that the High Court in the instant case has not determined the likelihood of the respondent being guilty or not, or whether rigours of Section 43-D(5) of the UAPA are alien to him. The High Court instead of incarceration and the unlikelihood of the trial being completed anytime appears to have exercised its power to grant bail owing to the long period in the near future. The reasons assigned by the High Court are apparently traceable back to Article 21 of our Constitution, of course without addressing the statutory embargo created by Section 43-D(5) of the UAPA.

11. The High Court's view draws support from a batch of decisions of this Court, including in Shaheen Welfare Assn. v. Union of India, (1996) 2 SCC 616, laying down that gross delay in disposal of such cases would justify the invocation of Article 21 of the Constitution and consequential necessity to release the undertrial on bail. It would be useful to quote the following observations from the cited case: (SCC p. 622, para 10)

"10. Bearing in mind the nature of the crime and the need to protect the society and the nation, TADA has prescribed in Section 20(8) stringent provisions for granting bail. Such stringent provisions can be justified looking to the nature of the crime, as was held in Kartar Singh v. State of Punjab, (1994) 3 SCC 569, on the presumption that the trial of the accused will take place without undue delay. No one can justify gross delay in disposal of cases when undertrials perforce remain in jail, giving rise to possible situations that may justify invocation of Article 21."

(emphasis supplied)

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)*, (1999) 9 SCC 252, *Babba v. State of Maharashtra*, (2005) 11 SCC 569 and *Umarmia v. State of Gujarat*, (2017) 2 SCC 731, 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 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.

13. We may also refer to the orders enlarging similarly-situated accused under UAPA passed by this Court in *Angela Harish Sontakke v. State of Maharashtra*, (2021) 3 SCC 723. That was also a case under Sections 10, 13, 17, 18, 18-A, 18-B, 20, 21, 38, 39 and 40(2) of the UAPA. This Court in its earnest effort to draw balance between the seriousness of the charges with the period of custody suffered and the likely period within which the trial could be expected to be completed took note of the five years' incarceration and over 200 witnesses left to be examined, and thus granted bail to the accused notwithstanding Section 43-D(5) of the UAPA. Similarly, in *Sagar Tatyaram Gorkhe v. State of Maharashtra*, (2021) 3 SCC 725, an accused under UAPA was enlarged for he had been in jail for four years and there were over 147 witnesses still unexamined.

14. The facts of the instant case are more egregious than these two abovecited instances. Not only has the respondent been in jail for much more than five years, but there are 276 witnesses left to be examined. Charges have been framed only on 27-11-2020. Still further, two opportunities were given to the appellant NIA who has shown no

inclination to screen its endless list of witnesses. It also deserves mention that of the thirteen co-accused who have been convicted, none have been given a sentence of more than eight years' rigorous imprisonment. It can, therefore, be legitimately expected that if found guilty, the respondent too would receive a sentence within the same ballpark. Given that two-third of such incarceration is already complete, it appears that the respondent has already paid heavily for his acts of fleeing from justice.

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*, (1994) 6 SCC 731, 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.

16. As regards the judgment in *NIA v. Zahoor Ahmad Shah Watali*, (2019) 5 SCC 1, cited by the learned ASG, we find that it dealt with an entirely different factual matrix. In that case, the High Court had reappreciated the entire evidence on record to overturn the Special Court's conclusion of their being a *prima facie* case of conviction and concomitant rejection of bail. The High Court had practically conducted

a mini-trial and determined admissibility of certain evidence, which exceeded the limited scope of a bail petition. This not only was beyond the statutory mandate of a *prima facie* assessment under Section 43-D(5), but it was premature and possibly would have prejudiced the trial itself. It was in these circumstances that this Court intervened and cancelled the 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.

18. Adverting to the case at hand, we are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent's prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the appellant's right to lead

evidence of its choice and establish the charges beyond any doubt and simultaneously the respondent's rights guaranteed under Part III of our Constitution have been well protected.

*19. Yet another reason which persuades us to enlarge the respondent on bail is that Section 43-D(5) of the UAPA is comparatively less stringent than Section 37 of the NDPS Act. Unlike the NDPS Act where the competent court needs to be satisfied that *prima facie* the accused is not guilty and that he is unlikely to commit another offence while on bail; there is no such precondition under UAPA. Instead, Section 43-D(5) of the UAPA merely provides another 9 possible ground for the competent court to refuse bail, in addition to the well-settled considerations like gravity of the offence, possibility of tampering with evidence, influencing the witnesses or chance of the accused evading the trial by absconson, etc.”*

(self emphasis supplied)

43. In view of the ratio of law, laid down by the Hon'ble Supreme Court, in the aforesaid dictum, this Court is of the view that the twin conditions, as enumerated in Section 45 of the PMLA can be said to be existing in favour of the applicant, on account of his long incarceration, by holding that, at this stage, it can be said that he is not guilty of such offence and while, on bail, he will not commit any offence. Moreover, for the second condition, that he will not commit any offence, reasonable conditions can be imposed on him.

44. In this case, the earlier bail application of the applicant was dismissed by this Court, on the basis of the non-fulfillment of the conditions, as enumerated under Section 45 of the PMLA, however, considering the fact that there is no possibility regarding the commencement and conclusion of the trial, against the applicant, in near future and considering the fact that the trial, arising out of the RC, registered by CBI, has also not yet been commenced, this Court is of the view that the embargo, as created by Section 45 of the PMLA, does not come in the way of releasing the applicant, on bail, as the applicant is in custody for about two years and four months, since, the Hon'ble Supreme Court in **Athar Parwez versus Union of India, Neutral Citation No. 2024 INSC 995**, has held that the constitutional jurisdiction, viz-a-viz, the restrictions, under the statute need to be harmonized. Relevant paras-19 to 21, of the judgment, are reproduced, as under:

“19. Long incarceration and unlikely likelihood of trial being completed in near future has also been taken as a ground for exercising its constitutional role by the Constitutional Courts to grant bail on violation of Article 21 of the Constitution of India which guarantees trial to be concluded within a reasonable time. Gross

delay in conclusion of the trial would justify such invocation leading to a conclusion of violation of Part III the Constitution of India, which may be taken as a ground to release an undertrial on bail. A reference in this regard may be made to the judgment of this Court in Union of India v. K.A. Najeeb, (2021) 3 SCC 713. It requires mention that in that case this Court considered the factum that there were 276 witnesses left to be examined which would lead to a prolong trial resulting in no possibility of the trial coming to an end at an early date resulting in suffering of incarceration for a significant period of time by an accused, making it an obligation on the Court on such consideration to enlarge such an accused on bail. It may be mentioned here that the Court was cautious enough to mention that the restrictions under the statute as in this case, Section 43-D (5) of UAPA, 1967 as well as the powers exercisable under the Constitutional jurisdiction by the Court need to be harmonized.

20. *At the initial stage, the legislative policy needs to be appreciated and followed by the Courts. Keeping the statutory provisions in mind but with the passage of time the effect of that statutory provision would in fact have to be diluted giving way to the mandate of Part III of the Constitution where the accused as of now is not a convict and is facing the charges. Constitutional right of speedy trial in such circumstances will have precedence over the bar/strict provisions of the statute and cannot be made the sole reason for denial of bail. Therefore, the period of incarceration of an accused could also be a relevant factor to be considered by the constitutional courts not to be merely governed by the statutory provisions.*

21. *Reference can also be made to the judgments of this Court in Thwaha Fasal v. Union of India, (2022) 14 SCC 766, as also Javed Gulam Nabi Shaikh v. State of*

Maharashtra and Anr., 2024 SCC OnLine SC 1693, where again, the Court was dealing with the provisions of UAPA, 1967 and had reiterated the abovesaid principles. Giving precedence to the protection of Fundamental Rights and emphasising upon their primacy over the statutory provisions in case of delayed trial. In the above judgments, this Court had even gone to the extent of asserting that the seriousness of the crime for which the accused is facing the trial would not be material as an accused is presumed to be innocent until proven guilty.”

45. The Hon'ble Supreme Court, in **Petition for Special Leave to Appeal (Crl.) No. 3205 of 2024, titled as Ramkripal Meena versus Directorate of Enforcement**, vide order, dated 30th July, 2024, has held that the rigors of Section 45 of the PMLA can be suitably relaxed to afford conditional liberty to the accused, who has spent considerable time in custody and there being no likelihood of the trial being concluded, in the short span. Relevant paras-6 and 7, of the judgment, are reproduced, as under:

“6. The only scheduled offence against the petitioner is the one under Section 420 IPC, which is in relation to the leakage of REET question paper, and in which the petitioner has already been enlarged on regular bail by this Court.

7. of Adverting to the prayer for grant of bail in the instant case, it is pointed out by learned counsel for ED that the complaint case is at the

stage of framing of charges and 24 witnesses are proposed to be examined. The conclusion proceedings, thus, will take some reasonable time. The petitioner has already been in custody for more than a year. Taking into consideration the period spent in custody and there being no likelihood of conclusion of trial within a short span, coupled with the fact that the petitioner is already on bail in the predicate offence, and keeping in view the peculiar facts and circumstances of this case, it seems to us that the rigours of Section 45 of the Act can be suitably relaxed to afford conditional liberty to the petitioner. Ordered accordingly.

46. Moreover, at the time of deciding the bail application, the Court should not dwell deep into the merits and de-merits of a case, to ascertain the guilt/innocence of the accused (applicant), as, it is the sole prerogative of the learned trial Court to decide, on the basis of the evidence, so adduced before it, during the trial. The decision of this Court, affecting the merits of the case would cause prejudice to the case of the prosecution, as well as, to the case of the accused (applicant). However, merely because the applicant falls within the definition of 'government servant', responsible for the verification of the claims submitted for scholarship, is too short to decline the relief to him, as, the bail is being granted, mainly, on the ground of undue delay, in the conclusion of trial, as, his

application for bail, on merit, has already been rejected by this Court. From the pace of the trial, it cannot be concluded, at this stage, that there are chances of commencement and conclusion of the trial, against the applicant, in near future.

47. Moreover, the applicant is permanent resident of District Shimla and in view of the apprehensions expressed by the ED, for securing his presence, during the trial, stringent conditions can be imposed. Even otherwise, the applicant has not misused the liberty, which was granted to him, by way of interim bail, on various occasions.

48. At the cost of repetition, keeping in view the number of witnesses, stage of the trial, as well as, the voluminous record, relied upon, by the prosecution, before the learned trial Court, read with the fact that the trial of the predicate offences has not yet commenced, this Court is of the considered opinion that the chances of commencement and conclusion of the trial, against the applicant, in near future, are not so bright and all these facts are sufficient to hold that the twin conditions, as per

section 45 of the PMLA, are existing in favour of the applicant.

49. Considering all these facts, this Court is of the view that the bail application is liable to be allowed and is accordingly allowed.

50. Consequently, the applicant is ordered to be released on bail, during the pendency of the trial, in case No. **ECIR/SHSZO/04/2019**, dated **22.07.2019**, registered with the **Enforcement Directorate Office (ED)**, Sub-Zonal Office, Rani Villa, Bagrian House, Strawberry Hills, Chhota Shimla, Shimla, Himachal Pradesh, on his furnishing personal bail bond, in the sum of ₹ 2,00,000/-, with two sureties of the like amount, to the satisfaction of the learned trial Court. This order, however, shall be subject to the following conditions:

a) The applicant shall regularly attend the trial Court on each and every date of hearing and if prevented by any reason to do so, seek exemption from appearance by filing appropriate application;

b) The applicant shall not tamper with the prosecution evidence nor hamper the investigation of the case in any manner whatsoever;

c) The applicant shall not make any inducement, threat or promises to any person

acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or the Police Officer;

d) The applicant shall not leave the territory of India without the prior permission of the Court; and

e) The applicant shall furnish an affidavit by tenth day of every month, before the learned trial Court, disclosing therein that he has not been named, as accused, in any other case, during that period.

51. Any of the observations, made hereinabove, shall not be taken as an expression of opinion, on the merits of the case, as these observations, are confined, only, to the disposal of the present bail application.

52. It is made clear that the respondent-ED is at liberty to move an appropriate application, in case, any of the bail conditions, is found to be violated by the applicant.

53. The Registry is directed to forward a soft copy of the bail order to the Superintendent of Jail, District Jail Kaithu, through e-mail, with a direction to enter the date of grant of bail in the e-prison software.

54. In case, the applicant is not released within a period of seven days from the date of grant of bail, the Superintendent of Jail, District Jail, Kaithu, is directed to inform this fact to the Secretary, DLSA, Shimla. The

Superintendent of Jail, District Jail, Kaithu, is further directed that if the applicant fails to furnish the bail bonds, as per the order passed by this Court, within a period of one month from today, then, the said fact be submitted to this Court.

(Virender Singh)
Judge

January 05, 2026
(*rajni*)