IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2350 OF 2024

Dheeraj Wadhawan .. Applicant
Versus
Directorate of Enforcement and Anr. .. Respondents

WITH
BAIL APPLICATION NO.2347 OF 2024

Kapil Wadhawan .. Applicant
Versus
Directorate of Enforcement and Anr. .. Respondents

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- Mr. Amit Desai, Senior Advocate a/w. Mr. Gopalkrishna Shenoy, Mr. Kushal Mor, Ms. Pooja Kothari, Ms. Janaki Garde and Mr. Raghav Dharmadhikari, Advocate i/by M/s. Rashmikant and Partners for Applicant in both Bail Applications.
- Mr. H.S. Venegavkar a/w Mr. Aayush Kedia and Ms. Diksha Ramnani, Advocates for Respondent No.1 – ED.
- Mr. H. J. Dedhia, APP for Respondent No.2 – State.

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CORAM : MILIND N. JADHAV, J.
DATE : FEBRUARY 12, 2025

JUDGEMENT:

1. Heard Mr. Desai, learned Senior Advocate for Applicants; Mr. Venegavkar, learned Advocate for Respondent – ED and Mr. Dedhia, learned Advocate for Respondent – State.

2. The twin Bail Applications have been filed under Section 436-A read with Sections 439 and 482 of Code of Criminal Procedure, 1973 (for short '**Cr.P.C.**') seeking Bail in connection with ECIR/MBZO-I/03/2020 dated 07.03.2020 registered with Central Bureau of

Corrected / Modified judgement as per order dated 21.02.2025.

Investigation ('**CBI**'), EO-I, New Delhi for offences punishable under Sections 120-B read with 420 of the Indian Penal Code, 1860 (for short '**IPC**') and Section 3 of the Prevention of Money Laundering Act, 2002 (for short '**PMLA'**). There are in all 36 accused in the matter and Applicants before me are arraigned as Accused Nos.9 and 10 in the crime incarcerated since 14.05.2020 i.e. almost 4 years 9 months. Since facts are common as also charges qua both accused arising out of the same ECIR, both Applications are disposed of by this common order.

3. Briefly stated on 07.03.2020 CBI filed FIR bearing No. RC 219 of 2020 E0004 for offences under Sections 120-B read with 420 of the IPC and on the basis of that FIR, on the same date i.e. 07.03.2020 Directorate of Enforcement ('**ED**') registered ECIR/MBZO- I/03/2020 under Section 3 of the PMLA. On 14.05.2020, Applicants were arrested by the ED in connection with ECIR/MBZO- I/03/2020.

3.1. On 13.07.2020 Applicants filed Applications for default bail under Section 167(2) of the Cr.P.C. before the Special Court established under the PMLA (hereinafter referred to as '**PMLA Court**') and on the same date ED filed 1st supplementary prosecution complaint before the PMLA Court, *inter alia*, against present Applicants before stating that investigation was completed with respect to the properties mentioned in the principal complaint and investigation with respect to

other properties / transactions / persons / entities was underway.

3.2. By order dated 14.07.2020 the PMLA Court rejected Applicants' Application for default bail which was assailed by the Applicants before this Court and this Court by order dated 20.08.2020 granted default bail to the Applicants. The Order dated 20.08.2020 was challenged by the ED before the Supreme Court and the Supreme Court stayed the operation of order dated 20.08.2020 pending the Appeals.

3.3. On 14.03.2022 ED filed 2nd supplementary prosecution complaint citing pendency of investigation in respect of other properties / transaction / persons/ entities and the 3rd supplementary prosecution complaint was filed by ED on 05.08.2022 keeping open further investigation in respect of other properties / transaction / persons/ entities. In this complaint, ED has relied upon the evidence of total 51 witnesses.

3.4. By order dated 10.05.2023 passed by the Supreme Court in Criminal Appeal Nos.701-702 of 2020 Applicants were granted interim bail for a period of 3 months initially and the same has been extended from time to time.

3.5. On 20.07.2023 ED filed draft charges before the PMLA Court.

3.6. On 13.11.2023 Applicants filed Bail Application under Section 436-A of the CrPC before the PMLA Court which was rejected by the PMLA Court by its order dated 10.05.2024. Hence the Applicants are before this Court seeking Bail under Section 436-A of the CrPC.

4. Mr. Desai, learned Senior Advocate for the Applicants has streamlined his submissions under three main grounds. Firstly, Mr. Desai has argued that the maximum punishment which can be imposed on Applicants upon conviction is 7 years however Applicants have already undergone pre-trial incarceration of almost a period of 4 years and 9 months. He would submit that it is a settled position of law that Section 436-A of the CrPC[1] recognising the constitutional right to speedy trial of the accused – undertrial emanating from Article 21 of the Constitution of India. He would submit that the same is equally applicable to offences under the PMLA as held by the Supreme Court in the case of ***Vijay Madanlal Choudhary Vs. Union of India*** [2].

4.1. Next Mr. Desai would submit that the PMLA Court has completely ignored the intent behind the incorporation of Section 436-A of CrPC and applied the proviso to the said Section to deny the statutory relief to present Applicants when the trial has not commenced. He would submit that the PMLA Court ought to have

1 Inserted in the Code by CrPC (Amendment) Act, 2005 (25 of 2005)
2 2022 SCC OnLine 929

considered the decisions of the Supreme Court in the case of ***Vijay Madanlal Choudhary*** (*supra*) and this Court in the case of ***Sarang Wadhawan @ Rakesh Kumar Wadhawan*** [3] in its true essence and granted bail to the present Applicants.

4.2. Lastly on the count of delay on part of present Applicants, he would submit that admittedly as per the 3rd supplementary prosecution complaint dated 05.08.2022 filed by ED investigation is still pending and till date there is no statement or intimation made by ED that investigation is completed. He would therefore submit it is the responsibility of the investigating agency and the state machinery to ensure that the trial commences expeditiously. He would submit that the PMLA Court in order dated 26.03.2024 passed below Exhibit 586 in the present case has observed that the trial in the matter is yet to begin and there is no likelihood of the trial to commence in future in view of Section 44(1)(c) of the PMLA. He has also drawn my attention to the order dated 06.02.2025 passed by the PMLA Court below Exhibit 688 wherein in paragraph No.3 thereof the Court has observed that it would take time for the trial to commence. He would therefore submit that the delay in commencement of the trial cannot and should not be attributed to the Applicants as the same is completely contrary to the well-settled principles of law and natural justice.

3 Bail Application Nos.3377/2023 and 3867/2023

4.3. He would submit that all accused except the present Applicants are on bail and hence considering the pre-trial incarceration of the Applicants of more than one-half of the maximum imprisonment specified for the offence coupled with the slow progress of the trial, this Court should enlarge the Applicants on bail considering the provisions of Section 436-A of CrPC.

5. Mr. Venegavkar, learned Advocate appearing on behalf of Respondent No.1 – Directorate of Enforcement would forcefully refute the contention of Mr. Desai. He would submit that the Application is liable to be rejected since considerable period of the delay would be attributable to Applicants' conduct itself. He would elaborate on his contention by submitting that Applicants strategically kept their bail applications pending before the PMLA Court for a period of more than one year. He would draw my attention to the Affidavit-in-reply dated 25.07.2024 on behalf of Respondent No.1 - ED and more particularly in paragraph Nos. 2.7 to 2.17 containing details of various Applications filed by the Applicants seeking various interim reliefs during their period of custody thus delaying the trial. He would submit that the progress of trial before the PMLA Court is significantly impacted due to these very pending applications as highlighted before the higher courts. He would therefore submit that the time spent in prosecuting these applications should not be included while computing the *'one-half of maximum period of imprisonment specified for that offence"*

provided under Section 436-A of CrPC in the facts of the present case. In support of his submissions, he would refer to the *orbiter dicta* of the Supreme Court in the case of ***In Re 122 Prisoners*** [4] which reads thus:-

> ***"9.*** *It is also provided under Section 436-A of the Code that no person shall in any case be detained during the period of investigation inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law. In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded. Yet, as per the first proviso to section 436-A, the court may order continued detention of a person for a period longer than one-half of the said period or release him on bail, instead of the personal bond with or without sureties, after hearing the Public Prosecutor, and for reason to be recorded by the court in writing."*

5.1. He would submit that the provision of Section 436-A do not provide an absolute right of bail like default bail under Section 167 of CrPC and the Court adjudicating Bail Application based on the ground of Section 436-A reserves the authority to deny the relief if trial is being delayed at the instance of Applicant himself. In support of this submissions he would refer to and rely on the decision of the Supreme Court in the case of ***Vijay Madanlal Choudhary*** *(supra).* He would submit that although the maximum period of punishment prescribed under the law for the relevant offence is 7 years out of which Applicants have been incarcerated for a period of about 5 years (thereby making it a case for consideration under 436-A) but the peculiar facts of the case and more particularly Applicants themselves having filed several Interim Applications before various forums should

4 2006 SCC OnLine Ker 691

be considered a ground for delay while deciding the present Applications. He would submit that when the said period is accounted for and reconciled, the period of incarceration of Applicants falls below the threshold of 3 and half years and therefore provisions of Section 436-A would be squarely inapplicable. He would submit that filing of interim Applications is a strategy based on the belief of 'Judicial Gamble' where the accused, especially ones hailing from financially strong backgrounds make attempts to exhaust all chances available at their disposal with an endeavor to secure their liberty. He would submit that although there cannot be any legislation to restrict individuals from availing their legal remedies, Courts have adopted the approach of imposing costs on such vexatious proceedings when determined. He would argue that when liberty is at stake and in such grave economic offences as the present one where pockets are filled with embezzled funds, costs are not a deterrent to such accused persons. He would submit that hence economic offences should be dealt with on a different footing than other offences while granting bail. In support of his submissions he would draw my attention to paragraph Nos.34 and 35 in decision of the Supreme Court in the case of ***Y.S. Jagan Mohan Reddy v. CBI***[5] which read thus:-

> *"**34.** Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously*

5 (2013) 7 SCC 439

> *and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.*
>
> ***35.*** *While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations."*

5.2. Next, he has referred to and relied upon the decision of the Supreme Court in the case of ***State of Gujarat Vs. Mohanlal Jitamalji Porwal*** [6] wherein the Supreme Court while considering the long term ramifications of economic offences laid down basis for distinct treatment of such offender. Paragraph No.5 therein reads thus:-

> *"**5.** ..... The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest....."*

5.3. He has next drawn my attention to the decision of the Supreme Court in the case of ***Nimmagadda Prasad Vs. Central Bureau of Investigation*** [7] wherein in paragraph Nos.24 and 25 the Supreme Court has observed as under:-

6 (1987) 2 SCC 364
7 AIR 2013 SC 2821

> *"**24.** While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy itself as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.*
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> ***25.** Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep-rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as a grave offence affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country."*

5.4. In view of the above, he would submit that in that view of the foregoing submissions, courts should not be liberal in calculating the period of incarceration since such a practice would open floodgates for litigation across forums of the country and practically cut the sentence of each offence in half. He would thus pray for both the Applications to be rejected.

6. Mr. Dedhia, learned APP appearing for the Respondent No.2 – State has adopted and supported the submissions made by Mr. Venegavkar and urged the Court to reject both Applications.

7. The relevant applicable statutory provision in the present case i.e. Section 436-A of CrPC reads thus:-

"436-A. Maximum period for which an undertrial prisoner can be detained -

Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties;

Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties;

Provided further that no such person shall in any case be detained during the period of investigation inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law."

8. As the offence invoked in the present case is under Section 3 of the PMLA, it will be appropriate to refer to provisions of Section 45 of PMLA which read thus:-

"45. Offences to be cognizable and non-bailable. -
(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence under this Act shall be released on bail or on his own bond unless -

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that a person, who is under the age of sixteen years or is a woman or is sick or infirm or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees may be released on bail, if the Special Court so directs:

Provided further that the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by-

(i) the Director; or

(ii) any officer of the Central Government or State Government authorised in writing in this behalf by the Central Government by a general or a special order made in this behalf by that Government.

> *(1-A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.*
> *(2) The limitation on granting of bail specified in [***] of sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail."*

9. Considering the above twin provisions, it will be fruitful to refer to the observations of the Supreme Court in the case of ***Vijay Madanlal Choudhary*** (*supra*) wherein in paragraph Nos. 316 to 322 the Supreme Court has observed that Section 436-A having come into force on 23.06.2006 which is subsequent to the enactment of PMLA will prevail and apply despite rigours of Section 45 of the PMLA. Paragraphs Nos. 316 to 322 read thus:-

> *" **316.** As a result, we have no hesitation in observing that in whatever form the relief is couched including the nature of proceedings, be it under Section 438 of the 1973 Code or for that matter, by invoking the jurisdiction of the constitutional court, **the underlying principles and rigours of Section 45 of the 2002 Act must come into play and without exception ought to be reckoned to uphold the objectives of the 2002 Act, which is a special legislation providing for stringent regulatory measures for combating the menace of money laundering.***
>
> *317. **There is, however, an exception carved out to the strict compliance of the twin conditions in the form of Section 436-A of the 1973 Code, which has come into being on 23-6-2006 vide Act 25 of 2005. This, being the subsequent law enacted by Parliament, must prevail.** Section 436-A of the 1973 Code reads as under:*
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> > *"[Inserted by Act 25 of 2005, Section 36 (w.e.f. 23-6-2006).] [**436-A. Maximum period for which an undertrial prisoner can be detained**.—Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of*

imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:

Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:

Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

Explanation.—In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded.]"

318. *In the Statement of Objects and Reasons, it was stated thus:*

"There had been instances, where undertrial prisoners were detained in jail for periods beyond the maximum period of imprisonment provided for the alleged offence. ***As remedial measure Section 436-A has been inserted to provide that where an undertrial prisoner other than the one accused of an offence for which death has been prescribed as one of the punishments, has been under detention for a period extending to one-half of the maximum period of imprisonment provided for the alleged offence, he should be released on his personal bond, with or without sureties.*** *It has also been provided that in no case will an undertrial prisoner be detained beyond the maximum period of imprisonment for which he can be convicted for the alleged offence."*

319. *In Hussainara Khatoon v. State of Bihar [Hussainara Khatoon v. State of Bihar, (1980) 1 SCC 98 : 1980 SCC (Cri) 40], this Court stated that* ***the right to speedy trial is one of the facets of Article 21 and recognised the right to speedy trial as a fundamental right.*** *This dictum has been consistently followed by this Court in several cases. Parliament in its wisdom inserted Section 436-A under the 1973 Code recognising the deteriorating state of undertrial prisoners so as to provide them with a remedy in case of unjustified detention.*

320. *In Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India [Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India, (1994) 6 SCC 731 : 1995 SCC (Cri) 39],* ***the Court, relying on Hussainara Khatoon [Hussainara Khatoon v. State of***

Bihar, (1980) 1 SCC 98 : 1980 SCC (Cri) 40], directed the release of prisoners charged under the Narcotic Drugs and Psychotropic Substances Act after completion of one-half of the maximum term prescribed under the Act. The Court issued such direction after taking into account the non obstante provision of Section 37 of the NDPS Act, which imposed the rigours of twin conditions for release on bail. It was observed : (Supreme Court Legal Aid Committee Representing Undertrial Prisoners case [Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India, (1994) 6 SCC 731 : 1995 SCC (Cri) 39] , SCC pp. 747-48, para 15)

> *"15. … We are conscious of the statutory provision finding place in Section 37 of the Act prescribing the conditions which have to be satisfied before a person accused of an offence under the Act can be released. Indeed we have adverted to this section in the earlier part of the judgment. We have also kept in mind the interpretation placed on a similar provision in Section 20 of the TADA Act by the Constitution Bench in Kartar Singh v. State of Punjab [Kartar Singh v. State of Punjab, (1994) 3 SCC 569 : 1994 SCC (Cri) 899]. Despite this provision, we have directed as above mainly at the call of Article 21 as the right to speedy trial may even require in some cases quashing of a criminal proceeding altogether, as held by a Constitution Bench of this Court in Abdul Rehman Antulay v. R.S. Nayak [Abdul Rehman Antulay v. R.S. Nayak, (1992) 1 SCC 225 : 1992 SCC (Cri) 93], release on bail, which can be taken to be embedded in the right of speedy trial, may, in some cases be the demand of Article 21. As we have not felt inclined to accept the extreme submission of quashing the proceedings and setting free the accused whose trials have been delayed beyond reasonable time for reasons already alluded to, we have felt that deprivation of the personal liberty without ensuring speedy trial would also not be in consonance with the right guaranteed by Article 21. Of course, some amount of deprivation of personal liberty cannot be avoided in such cases; but if the period of deprivation pending trial becomes unduly long, the fairness assured by Article 21 would receive a jolt. It is because of this that we have felt that after the accused persons have suffered imprisonment which is half of the maximum punishment provided for the offence, any further deprivation of personal liberty would be violative of the fundamental right visualised by Article 21, which has to be telescoped with the right guaranteed by Article 14 which also promises justness, fairness and reasonableness in procedural matters."*

321. *The Union of India also recognised the right to speedy trial and access to justice as fundamental right in their written submissions and, thus, submitted that in a limited situation right of bail can be granted in case of violation of*

> *Article 21 of the Constitution. Further, it is to be noted that Section 436-A of the 1973 Code was inserted after the enactment of the 2002 Act. Thus, it would not be appropriate to deny the relief of Section 436-A of the 1973 Code which is a wholesome provision beneficial to a person accused under the 2002 Act. However, Section 436-A of the 1973 Code, does not provide for an absolute right of bail as in the case of default bail under Section 167 of the 1973 Code. For, in the fact situation of a case, the court may still deny the relief owing to ground, such as where the trial was delayed at the instance of the accused himself.*
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> ***322.*** *Be that as it may, in our opinion, this provision is comparable with the statutory bail provision or, so to say, the default bail, to be granted in terms of Section 167 of the 1973 Code consequent to failure of the investigating agency to file the charge-sheet within the statutory period and, in the context of the 2002 Act, complaint within the specified period after arrest of the person concerned. In the case of Section 167 of the 1973 Code, an indefeasible right is triggered in favour of the accused the moment the investigating agency commits default in filing the charge-sheet/complaint within the statutory period. The provision in the form of Section 436-A of the 1973 Code, as has now come into being is in recognition of the constitutional right of the accused regarding speedy trial under Article 21 of the Constitution. For, it is a sanguine hope of every accused, who is in custody in particular, that he/she should be tried expeditiously — so as to uphold the tenets of speedy justice. If the trial cannot proceed even after the accused has undergone one-half of the maximum period of imprisonment provided by law, there is no reason to deny him this lesser relief of considering his prayer for release on bail or bond, as the case may be, with appropriate conditions, including to secure his/her presence during the trial."*
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> *(emphasis supplied)*

10. The right to bail has been effectively summarised as far back as in the year 1923 in the decision of the Calcutta High Court in the case of ***In Re: Nagendra Nath Chakravarti*** [8] by stating that the principal object of bail is to secure the attendance of the Accused at the trial.

11. It is settled law by a plethora of cases passed by the Supreme Court that a Court while deciding a Bail Application has to keep in

8 1923 SCC OnLine Cal 318

mind the principal rule of bail which is to ascertain whether the Accused is likely to appear before the Court for trial. Though there would be consideration for the other broad parameters like gravity of offence, likelihood of Accused repeating the offence while on bail, whether he would influence the witnesses and tamper with the evidence which will have to be considered. However juxtaposed that with the fact that almost 4 years 9 months of incarceration and trial having not commenced is required to be seen especially when trial has indeed not commenced.

12. Argued before me is the case of the Applicants concerning their right to speedy justice and liberty who are undertrial - accused having been incarcerated almost 4 years 9 months, a situation impacting their right conferred by Article 21 of the Constitution of India to speedy justice as also personal liberty further extended by the provisions of Section 436-A. In so far as the power of High Court to grant bail is concerned, the Allahabad High Court as far back as in the year 1931 in the famous Meerut Conspiracy case of ***Emperor Vs. H. L. Hutchinson***[9] laid down that when the case involves a question of personal liberty of an under-trial who is incarcerated for a very long period, the powers of the Court are wide and unfettered by the conditions and the principle rule being that bail is the rule and refusal is the exception should be applied. In that said case, it held that

9 AIR 1931 ALL 356.

legislature has given the High Court and the Court of Session discretion unfettered by any limitation other than that which controls all discretionary powers vested in a Judge, viz. that the discretion must be exercised judiciously. The Court has given primacy to the fact that accused person if granted bail will be in a much better position to defend himself. In this very case, it was delineated that grant of Bail is the Rule and refusal is an exception. Justice Mukerji writing the judgment for himself and on behalf of Justice Boys in paragraph No.9 of the aforesaid decision observed thus:-

> *"9. Speaking for myself, I think it very unwise to make an attempt to lay down any particular rules for the guidance of the High Court, having regard to the fact that the legislature itself left the discretion of the Court entirely unfettered. The reason for this action on the part of the legislature is not far to seek. The High Court might be safely trusted in this matter and it goes without saying that it would act in the best interests of justice whether it decides in favour of the prosecution or the defence. The variety of cases that may arise from time to time cannot be safely classified and it will be dangerous to make an attempt to classify the cases and to say that in particular classes a bail may be granted but not in other classes."*

13. The above judgment is approved by the Supreme Court in the case of ***Satender Kumar Antil Vs. Central Bureau of Investigation***[10] and in paragraph Nos.6 to 15 the Supreme Court has considered the prevailing situation of prisons in India, definition of trial and bail, principle of presumption of innocence and reiterated the well recognised principle that bail is the rule and jail is the exception in bail jurisprudence on the touchstone of Article 21 of the Constitution of

10 (2022) 10 SCC 51

India. Paragraph Nos.6 to 15 of the said judgement read as under:-

> *"Prevailing situation*
>
> *6. Jails in India are flooded with undertrial prisoners. The statistics placed before us would indicate that more than 2/3rd of the inmates of the prisons constitute undertrial prisoners. Of this category of prisoners, majority may not even be required to be arrested despite registration of a cognizable offence, being charged with offences punishable for seven years or less. They are not only poor and illiterate but also would include women. Thus, there is a culture of offence being inherited by many of them. As observed by this Court, it certainly exhibits the mindset, a vestige of colonial India, on the part of the investigating agency, notwithstanding the fact arrest is a draconian measure resulting in curtailment of liberty, and thus to be used sparingly. In a democracy, there can never be an impression that it is a police State as both are conceptually opposite to each other.*
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> *Definition of trial*
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> *7. The word "trial" is not explained and defined under the Code. An extended meaning has to be given to this word for the purpose of enlargement on bail to include, the stage of investigation and thereafter. Primary considerations would obviously be different between these two stages. In the former stage, an arrest followed by a police custody may be warranted for a thorough investigation, while in the latter what matters substantially is the proceedings before the court in the form of a trial. If we keep the above distinction in mind, the consequence to be drawn is for a more favourable consideration towards enlargement when investigation is completed, of course, among other factors.*
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> *8. Similarly, an appeal or revision shall also be construed as a facet of trial when it comes to the consideration of bail on suspension of sentence.*
>
> *Definition of bail*
>
> *9. The term "bail" has not been defined in the Code, though is used very often. A bail is nothing but a surety inclusive of a personal bond from the accused. It means the release of an accused person either by the orders of the court or by the police or by the investigating agency.*
>
> *10. It is a set of pre-trial restrictions imposed on a suspect while enabling any interference in the judicial process. Thus, it is a conditional release on the solemn undertaking by the suspect that he would cooperate both with the investigation and the trial. The word "bail" has been defined in Black's Law Dictionary, 9th Edn., p. 160 as:*

"A security such as cash or a bond; esp., security required by a court for the release of a prisoner who must appear in court at a future time."

11. *Wharton's Law Lexicon, 14th Edn., p. 105 defines "bail" as:*

"to set at liberty a person arrested or imprisoned, on security being taken for his appearance on a day and at a place certain, which security is called bail, because the party arrested or imprisoned is delivered into the hands of those who bind themselves or become bail for his due appearance when required, in order that he may be safely protected from prison, to which they have, if they fear his escape, etc. the legal power to deliver him."

Bail is the rule

12. *The principle that bail is the rule and jail is the exception has been well recognised through the repetitive pronouncements of this Court. This again is on the touchstone of Article 21 of the Constitution of India. This Court in Nikesh Tarachand Shah v. Union of India [Nikesh Tarachand Shah v. Union of India, (2018) 11 SCC 1 : (2018) 2 SCC (Cri) 302] , held that : (SCC pp. 22-23 & 27, paras 19 & 24)*

"19. In Gurbaksh Singh Sibbia v. State of Punjab [Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 : 1980 SCC (Cri) 465] , the purpose of granting bail is set out with great felicity as follows : (SCC pp. 586-88, paras 27-30)

'27. It is not necessary to refer to decisions which deal with the right to ordinary bail because that right does not furnish an exact parallel to the right to anticipatory bail. It is, however, interesting that as long back as in 1924 it was held by the High Court of Calcutta in Nagendra Nath Chakravarti, In re [Nagendra Nath Chakravarti, In re, 1923 SCC OnLine Cal 318 : AIR 1924 Cal 476] , AIR pp. 479-80 that the object of bail is to secure the attendance of the accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial and that it is indisputable that bail is not to be withheld as a punishment. In two other cases which, significantly, are the "Meerut Conspiracy cases" observations are to be found regarding the right to bail which deserve a special mention. In K.N. Joglekar v. Emperor [K.N. Joglekar v. Emperor, 1931 SCC OnLine All 60 : AIR 1931 All 504] it was observed, while dealing with Section 498 which corresponds to the present Section 439 of the Code, that it conferred upon the Sessions Judge or the High Court wide powers to grant bail which were

not handicapped by the restrictions in the preceding Section 497 which corresponds to the present Section 437. It was observed by the court that there was no hard-and-fast rule and no inflexible principle governing the exercise of the discretion conferred by Section 498 and that the only principle which was established was that the discretion should be exercised judiciously. In Emperor v. H.L. Hutchinson [Emperor v. H.L. Hutchinson, 1931 SCC OnLine All 14 : AIR 1931 All 356] , AIR p. 358 it was said that it was very unwise to make an attempt to lay down any particular rules which will bind the High Court, having regard to the fact that the legislature itself left the discretion of the court unfettered. According to the High Court, the variety of cases that may arise from time to time cannot be safely classified and it is dangerous to make an attempt to classify the cases and to say that in particular classes a bail may be granted but not in other classes. It was observed that the principle to be deduced from the various sections in the Criminal Procedure Code was that grant of bail is the rule and refusal is the exception. An accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. As a presumably innocent person he is therefore entitled to freedom and every opportunity to look after his own case. A presumably innocent person must have his freedom to enable him to establish his innocence.

28. Coming nearer home, it was observed by Krishna Iyer, J., in Gudikanti Narasimhulu v. Public Prosecutor [Gudikanti Narasimhulu v. Public Prosecutor, (1978) 1 SCC 240 : 1978 SCC (Cri) 115] that : (SCC p. 242, para 1)

> *"1. … the issue [of bail] is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitised judicial process. … After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of "procedure established by law". The last four words of Article 21 are the life of that human right."*

29. In Gurcharan Singh v. State (Delhi Admn.) [Gurcharan Singh v. State (Delhi Admn.), (1978) 1 SCC 118 : 1978 SCC (Cri) 41] it was observed by Goswami, J., who spoke for the Court, that : (SCC p. 129, para 29)

> *"29. … There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or cancelling bail."*
>
> *30. In American Jurisprudence (2nd Edn., Vol. 8, p. 806, para 39), it is stated:*
>
> > *"Where the granting of bail lies within the discretion of the court, the granting or denial is regulated, to a large extent, by the facts and circumstances of each particular case. Since the object of the detention or imprisonment of the accused is to secure his appearance and submission to the jurisdiction and the judgment of the court, the primary inquiry is whether a recognizance or bond would effect that end."*
> >
> > *It is thus clear that the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail.'*
>
> * * *
>
> *24. Article 21 is the Ark of the Covenant so far as the Fundamental Rights Chapter of the Constitution is concerned. It deals with nothing less sacrosanct than the rights of life and personal liberty of the citizens of India and other persons. It is the only article in the Fundamental Rights Chapter (along with Article 20) that cannot be suspended even in an emergency [see Article 359(1) of the Constitution]. At present, Article 21 is the repository of a vast number of substantive and procedural rights post Maneka Gandhi v. Union of India [Maneka Gandhi v. Union of India, (1978) 1 SCC 248] ."*

13. *Further this Court in Sanjay Chandra v. CBI [Sanjay Chandra v. CBI, (2012) 1 SCC 40 : (2012) 1 SCC (Cri) 26 : (2012) 2 SCC (L&S) 397] , has observed that : (SCC p. 52, paras 21-23)*

> *"21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the*

principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson."

Presumption of innocence

14. *Innocence of a person accused of an offence is presumed through a legal fiction, placing the onus on the prosecution to prove the guilt before the court. Thus, it is for that agency to satisfy the court that the arrest made was warranted and enlargement on bail is to be denied.*

15. *Presumption of innocence has been acknowledged throughout the world. Article 14(2) of the International Covenant on Civil and Political Rights, 1966 and Article 11 of the Universal Declaration of Human Rights, 1948 acknowledge the presumption of innocence, as a cardinal principle of law, until the individual is proven guilty."*

14. The Supreme Court in a landmark decision of 1978 in the case of ***Gudikanti Narasimhulu & Ors. Vs. Public Prosecutor, High Court of Andhra Pradesh***[11] *observed as under:-*

"6. Let us have a glance at the pros and cons and the true principle around which other relevant factors must revolve.

11 1978 (1) SCC 240

> *When the case is finally disposed of and a person is sentenced to incarceration, things stand on a different footing. We are concerned with the penultimate stage and the* ***principal rule to guide release on bail should be to secure the presence of the applicant who seeks to be liberated, to take judgment and serve sentence in the event of the court punishing him with imprisonment.*** *In this perspective…" (emphasis supplied)*

15. Thereafter the Supreme Court in a plethora of judgements have discussed the rights conferred by Article 21 qua grant of bail and that such rights cannot be taken away unless the procedure is reasonable and fair and in cases where there is unreasonable delay in trial it would undoubtedly impact the rights of an undertrial. Some of the important decisions of the Supreme Court and some of the High Courts are discussed herein under:-

15.1. In the landmark judgement of ***Maneka Gandhi Vs. Union of India***[12], the Supreme Court held that the right to life and personal liberty under Article 21 is not limited to mere animal existence but includes the right to live with dignity. The court emphasized that the procedure established by law must be fair, just, and reasonable, and it cannot be arbitrary, oppressive, or unreasonable.

15.2. In the case of ***Hussainara Khatoon Vs. Home Secy., State of Bihar***[13] the Supreme Court held as under:-

> *"Now obviously procedure prescribed by law for depriving a person of liberty cannot "reasonable, fair or just" unless that procedure ensures a speedy trial for determination of the guilt of such person. No procedure which does not ensure a*

12 1978 (1) SCC 248
13 (1980) 1 SCC 81

> *reasonably quick trial can be regarded as "reasonable, fair or just" and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. The question which would, however, arise is as to what would be the consequence if a person accused of an offence is denied speedy trial and is sought to be deprived of his liberty by imprisonment as a result of a long delayed trial in violation of his fundamental right under Article 21."*

15.3. The Supreme Court in the case of ***Shaheen Welfare Association Vs. Union Of India***[14] dealing with a Public Interest Litigation seeking relief for under-trial prisoners charged under the Terrorist and Disruptive Activities (Prevention) Act, 1987 due to gross delay in disposal of cases qua Article 21 of the Constitution of India held as under:-

> *"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's case (supra), 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."*

15.4. The Supreme Court in the case of ***Union of India v. K. A. Najeeb***[15] while commenting upon the possibility of early completion of trial and extended incarceration held as under:-

> *"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*

14 1996 SCC (2) 616
15 Criminal Appeal No. 98 of 2021

> *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."*

16. Applicants in present case are in custody since 4 years 9 months. There is no possibility of the trial commencing in the near future. Detaining an under-trial prisoner for such an extended period further violates his fundamental right to speedy trial flowing from Article 21 of the Constitution. At this juncture I deem it appropriate to list certain observations of the Supreme Court shedding light on concerns underlying the "Right to speedy trial" from the point of view of an accused in custody whose liberty is affected. In the case of ***Abdul Rehman Antulay & Ors. Vs R.S. Nayak & Anr.***[16] the Supreme Court held as under:-

> *"86. In view of the above discussion, the following propositions emerge, meant to serve as guidelines. We must forewarn that these propositions are not exhaustive. It is difficult to foresee all situations. Nor is it possible to lay down any hard and fast rules. These propositions are:*
>
> *(1) Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the societal interest also, does not make it any-the-less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.*
>
> *(2) Right to Speedy Trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial. That is how, this Court has*

16 1992 (1) SCC 225

understood this right and there is no reason to take a restricted view.

(3) The concerns underlying the Right to speedy trial from the point of view of the accused are:

(a) the period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;

(b) the worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and

(c) undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise.

(4) – (11) -------x-------" *(emphasis supplied)*

17. The Supreme Court has also held in a series of judgements and orders that in situations where the under-trial-prisoner / accused persons have suffered incarceration rather long incarceration for a considerable period of time and there is no possibility of the trial being completed within the foreseeable future, Constitutional Courts can exercise power to release the accused under-trial on bail, as bail is the rule and jail is the exception.

18. In the case of ***Supreme Court Legal Aid Committee (Representing undertrial prisoners) Vs. Union of India***[17], the Supreme Court has held that:-

"17. We are conscious of the fact that the menace of drug trafficking has to be controlled by providing stringent punishments and those who indulge in such nefarious activities do not deserve any sympathy. But at the same time we cannot be oblivious to the fact that many innocent persons may also be languishing in jails if we recall to mind the percentage of acquittals. Since harsh punishments have been provided for under the Act, the percentage of disposals on plea of guilt is

17 (1995) 4 SCC 695

> *bound to be small; the State Government should, therefore, have realised the need for setting up sufficient number of Special Courts immediately after the amendment of the Act by Amendment Act 2 of 1989. Even after the Division Bench of the Bombay High Court refused to grant en bloc enlargement on bail on 1-2-1993 in Criminal Application No. 3480 of 1992 and B.D. Criminal No. 565 of 1992, no substantial improvement in the pendency is shown since new cases continue to pour in, and, therefore, a one-time exercise has become imperative to place the system on an even keel. We also recommend to the State Government to set up Review Committees headed by a Judicial Officer, preferably a retired High Court Judge, with one or two other members to review the cases of undertrials who have been in jail for long including those released under this order and to recommend to the State Government which of the cases deserve withdrawal. The State Government can then advise the Public Prosecutor to move the court for withdrawal of such cases. This will not only. help reduce the pendency but will also increase the credibility of the prosecuting agency. After giving effect to this order the Special Court may consider giving priority to cases of those undertrials who continue in jail despite this order on account of their inability to furnish bail."*

19. In the case of ***Javed Gulam Nabi Shaikh Vs. State of Maharashtra and Anr.***[18], the Supreme Court while granting bail to accused incarcerated for 4 years in paragraph Nos.16 and 17 held as under:-

> *"16. Criminals are not born but made. The human potential in everyone is good and so, never write off any criminal as beyond redemption. This humanist fundamental is often missed when dealing with delinquents, juvenile and adult. Indeed, every saint has a past and every sinner a future. When a crime is committed, a variety of factors is responsible for making the offender commit the crime. Those factors may be social and economic, may be, the result of value erosion or parental neglect; may be, because of the stress of circumstances, or the manifestation of temptations in a milieu of affluence contrasted with indigence or other privations.*
>
> *17. 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*

18 (2024) 9 SCC 813

21 of the Constitution applies irrespective of the nature of the crime."

20. In the case of ***Balwinder Singh Vs. State of Punjab and Anr.***[19], in a case under Sections 302 and 307 of IPC the Supreme Court granted bail to the accused who was behind bars for 4 years citing unlikelihood of completion of trial in the near future as also on parity with the co-accused.

21. In this regard, support is also drawn from the decision of the Supreme Court in the case of ***Sanjay Chandra Vs. Central Bureau of Investigation*** [20] wherein the Supreme Court has held that in economic offences while considering an application for bail, the nature of charge may be relevant but at the same the punishment to which the party may be liable, if convicted is also a significant aspect and therefore both, the seriousness of the charge and the severity of the punishment should be taken into consideration for arriving at decision of grant of bail. It further observed that deprivation of liberty must be considered a punishment unless it is absolutely necessary in the interest of justice and that object of bail is merely to secure appearance of accused at the trial.

22. In the present case it is seen that Applicants have been indicted in the predicate offence under Section 120-B read with 420 of the IPC for which the maximum sentence which can be imposed is

19 SLP (Crl.) No.8523 of 2024
20 (2012) 1 SCC 40

imprisonment which may extend to 7 years alongwith fine. Even otherwise as the scheduled offence against Applicants falls under paragraph 1 of part A of the schedule to the PMLA, the maximum period for which the Applicants can be punished with imprisonment of 7 years. Applicants have been in custody in connection with the present offence since 14.05.2020 i.e. for almost 4 years and 9 months which is beyond the one-half of maximum period of imprisonment which can be imposed upon conviction.

23. In so far as the delay in conducting the trial is concerned, Applicants have placed before me the roznama of the trial in the PMLA Court which clarifies that Applicants have sought adjournments on only few occasions and hence the delay in trial cannot be solely attributed to them when admittedly ED has filed draft charges before the PMLA Court only on 10.05.2023 despite which charges have not been framed till date. There are in all 36 accused involved in the matter and as per the 3rd supplementary prosecution complaint there are total 51 witnesses in the case.

24. It is seen that statutory provisions of Section 436-A of CrPC if seen contain the word “shall” which clearly indicates that gravity of the offence is not relevant for considering bail neither it distinguishes that rigours of Section 45 of PMLA would be applicable. It is plain and simple on interpretation meaning that once the undertrial – accused

crosses one-half of the maximum sentence, the rigours of the twin conditions contemplated under Section 45(1) of PMLA would not apply and applicant will be entitled to be released on bail. It is a statutory provision which has to be read as it is without any fetter and must be applied based on applicable facts. Only if the Court feels that further incarceration of the undertrial – accused is required beyond the said period, the Court will have to give appropriate reasons. In the facts of this case in my opinion due to the observations made herein above, further incarceration of Applicants is not required and they are entitled to bail under Section 436-A of Cr.P.C. without entering into the merits of the case at this stage.

25. Considering the present status of the trial and no possibility of it being concluded in the foreseeable future coupled with the pre-trial incarceration of the Applicants beyond one-half of the maximum period of imprisonment which can be imposed on them upon conviction, Applicants are entitled to bail.

26. In view of my above observations and findings and facet of pre-trial incarceration of Applicants beyond one-half of the maximum period of imprisonment which may be imposed on them upon conviction as delineated above and no probability of trial being completed in the foreseeable future, invoking the right to speedy justice and personal liberty as enshrined in Article 21 of the

Constitution of India, the Bail Applications stand allowed subject to following conditions:-

(i) Both Applicants are directed to be released on bail on furnishing P.R. Bond in the sum of Rs.1,00,000/- each with one or two sureties in the like amount;

(ii) Applicants shall report to the Investigating Officer of ED once every month on the third Saturday of every month between 10:00 a.m. to 12:00 noon for the first six months after release and thereafter as and when called;

(iii) Applicants shall co-operate with the conduct of trial and attend the Trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if they do so, it will entitle the prosecution to apply for cancellation of this order;

(iv) Both Applicants shall surrender their passport before the Trial Court within one week from their release;

(v) If the Applicants are required to leave the State of Maharashtra for any reason, they shall inform the Investigating Officer the details of their travel, destination and reason for travelling outside the State of Maharashtra including their date of return, until the

completion of trial. It is clarified that if they have to travel in any exigency then details of travel shall be informed to the Investigating Officer even after the date of their travel within a reasonable period with all other relevant details;

(vi) Applicants shall not influence any of the witnesses or tamper with the evidence in any manner;

(vii) Applicants shall keep the Investigating Officer informed of their current address and mobile contact number and / or change of residence or mobile details, if any, from time to time;

(viii) Any infraction of the above conditions shall entail cancellation of this order.

27. The aforesaid observations are *prima facie* on the basis of record of the case which have been argued before me and is an expression of opinion by this Court only for the purpose of enlargement of Applicant on bail and shall not influence the trial in the present case.

28. Bail Applications stand allowed and disposed.

H. H. SAWANT

HARSHADA HANUMANT SAWANT

Digitally signed by HARSHADA HANUMANT SAWANT
Date: 2025.02.21 19:23:21 +0530

[MILIND N. JADHAV, J.]

Corrected / Modified judgement as per order dated 21.02.2025.