

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**CrMP(M) No. : 3038 of 2025****Reserved on : 06.01.2026****Decided on : 08.01.2026**

Krishan Kumar ...Applicant

Versus

Directorate of Enforcement (ED) ...Respondent

Coram

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

*Whether approved for reporting?*¹

For the applicant : Mr. Manoj Pathak, Advocate.

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

Virender Singh, Judge.

By way of present application, filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as the 'BNSS'), applicant-Krishan Kumar has sought his release, on bail, during the pendency of the trial, in case No. **ECIR/SHSZO/04/2019**, **dated 19.07.2019**, registered with the **Directorate of Enforcement**, Sub-Zonal Office, District Shimla, Himachal

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

Pradesh, under **Section 4 of the Prevention of Money Laundering Act, 2002** (hereinafter referred to as the 'PMLA').

2. According to the applicant, one FIR No. 133 of 2018, dated 16th November, 2018, was registered with Police Station East, Shimla, on the complaint made by State Project Officer, Department of Higher Education, Shimla, H.P., alleging financial irregularities regarding distribution of Pre-matric and Post-matric Scholarships (PMS) to SC/ST/OBC/MC students of the State, under Central Sponsored and State Sponsored Schemes.

3. It is the case of the applicant that subsequently, the investigation of the said FIR was entrusted to CBI, leading to registration of RC 0962019S0002, dated 7th May, 2019, under Section 120B read with Sections 409, 420, 467, 468 & 471 IPC, and Sections 13(1)(c), 13(1)(d) & 13(2) of the Prevention of Corruption Act.

4. The scheduled offences, under which, CBI registered the FIR, are stated to have been mentioned in a schedule appended to the PMLA, hence, Directorate of Enforcement (hereinafter referred to as 'ED') initiated

inquires under PMLA and after recording brief facts of scheduled offence, a case, bearing No. ECIR No. SHSZO/04/2019 dated 22nd July, 2019, was registered by the ED, against several persons, including the applicant.

5. The relief of bail has been sought on the ground that the applicant is innocent and is not having any connection with the alleged allegations, as, the allegations against him are false and he has nothing to do with the alleged offences.

6. According to the applicant, now, the investigation of the case is completed and the challan has been filed, before the learned trial Court.

7. As per the stand of the applicant, the evidence, so collected, is too fragile to support of the case of the ED.

8. It is the case of the applicant that there are no reasonable grounds to believe that he will tamper with the prosecution evidence or will abscond, if released on bail, during the pendency of the trial.

9. According to the applicant, he had filed regular bail applications, before this Court, bearing CrMPs(M) No. 48 of 2024 and 1868 of 2024, which were dismissed, vide

orders, dated 31st May, 2024 and 8th November, 2024, respectively.

10. The applicant has also given the details of the 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.

11. It has been contended on behalf of the applicant that after dismissal of his bail application, by this Court, he had filed SLP before the Hon'ble Supreme Court, which came to be disposed of, vide order, dated 25th March, 2025.

12. 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 27th December, 2025.

13. It has also been argued on behalf of the learned counsel appearing for the applicant that the applicant is also entitled to the relief of bail, on the ground of parity, as, his co-accused, namely Hitesh Gandhi and Arvind Rajta, have already been released on bail, by this Court.

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

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

16. When put to notice, the reply, on behalf of the ED, has been filed. It has been mentioned in the reply that an FIR No. 133 of 2018 was registered, with Police Station Shimla East, on the basis of complaint made by the State Project Officer, with respect to the distribution of scholarship to students of the State of Himachal Pradesh. The investigation of the said case was entrusted to CBI.

16.1. As per the further averments of the reply, during the course of inquiry, it was revealed that scholarships disbursed into the bank accounts of the students, were not received by them. Irregularities were found in the HP e-Pass portal, developed by the Directorate of Higher Education, for disbursement under Post Matric Scheme for SC/ST/OBC students.

16.2. It is the case of the ED that the applicant, in association with accused-Rajdeep Singh and Arvind Rajta, formed shell entities, i.e. (i) ASAMS Education Group, (ii) M/s Skill Development Society and (iii) M/s Skill Development School. The applicant is stated to be partner in M/s ASAMA Education Group and M/s Skill Development School and General Secretary of M/s Skill Development Society.

16.3. As per the stand of the ED, the applicant, alongwith accused-Rajdeep Singh opened centers at various locations in Himachal Pradesh and formed marketing team, which was directed to campaign for free education, to SC/ST/OBC students, with promise of job guarantee and to collect the documents required for claiming scholarship, under PMS Scheme, from the students. The Bank account opening forms and fund transfer letters were got signed from the students by the said team and on the basis of the said documents, the bank accounts of the students were opened at Panchkula and Chandigarh and their details were uploaded on HP-ePass software.

16.4. It is the further case of the ED that applicant, alongwith accused-Rajdeep Singh prepared forged affiliation letters and forged claim letters of Karnataka State Open University and Lovely Professional University and presented them before the DoHE, Shimla, for claiming scholarship under PMS Scheme. These claims were verified by accused-Arvind Rajta at Scholarship Branch of DoHE, Shimla.

16.5. The applicant, alongwith accused-Rajdeep Singh, is stated to have forged signatures of their staff members on the claim letters and verified the list of students, sent to DoHE, Shimla, for claiming scholarship, under PMS Scheme.

16.6. According to the ED, the scholarships disbursed by DoHE in the bank accounts of the students, were got transferred in the bank accounts of shell entities and the applicant, alongwith accused- Rajdeep Singh and Babita Rajta, was the authorized signatory in the bank accounts of the shell entities.

16.7. Further, the applicant, alongwith accused- Rajdeep Singh, through their firm M/s KR Consultancy, is

stated to have received payment from other private institutes, which were claiming scholarship under PMS Scheme, from DoHE, Shimla, for providing admissions.

16.8. It is the further case of the ED that proceeds of crime, to the tune of ₹ 28,09,00,055/-, were obtained by the applicant, alongwith others, by using fake and forged letters and also, by falsely showing students registered in distance learning courses and courses of NIELIT.

16.9. As per the stand of the ED, the proceeds of crime, so obtained, have been used by the applicant to acquire plot in his name and in the name of his wife and mother and for constructing house on the said plot. The house built on the plot was projected as untainted by claiming the same to be transferred from his name to the name of his mother and wife, however, in reality,

16.10. The applicant is also stated to have used the proceeds of crime by acquiring resort on lease, through his other company, by the name of M/s Grand Emporio Hotels & Resort Pvt. Ltd.

16.11. It is the specific stand of the ED that the applicant is actually involved in acquisition, concealment,

possession, use and projecting proceeds of crime as untainted, thereby committing the offence of money laundering, as defined under Section 3 and punishable under Section 4 of the PMLA.

16.12. According to the ED, in this regard, prosecution complaint has been filed against the applicant and cognizance has already been taken by the learned Special Court.

16.13. It is the specific stand of the ED that filing of the prosecution complaint against the applicant cannot be a ground to enlarge him on bail.

16.14. 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.

16.15. 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.

16.16. 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*.

16.17. 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.

16.18. 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; and *Kalyan Chandra Sarkar versus Rajesh Ranjan*, (2005) 2 SCC 42.

16.19. 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.

16.20. 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.

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

18. 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.”

19. 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 the provisions of Section 37 of the NDPS Act.

20. Learned counsel appearing for the ED has argued 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 various orders, including the orders, dated 23rd September, 2025; 16th October, 2025; and 12th November, 2025, passed by the learned trial Court, in this case.

21. 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 more than two years.

22. 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.

23. Apart from this, it has also been argued that the earlier bail applications of the applicant have 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.

24. Now, coming to the arguments of the learned counsel appearing for the ED, qua the fact that his earlier bail applications have been dismissed, on merit, by this Court and SLP preferred by him before the Hon'ble Supreme Court has also been dismissed. 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, the relevant portion of which reads, 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.”

25. By way of the order, reproduced hereinabove, the Hon'ble Supreme Court has granted liberty 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.

26. Consequently, the applicant had moved the bail applications before the learned trial Court, which have been dismissed, by the learned trial Court, vide orders, dated 26th June, 2025 and 27th December, 2025, and now, he is before this Court.

27. 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.

28. 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.

29. 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.

30. 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.

31. The learned 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.

32. 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)

33. 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.

34. 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.”

35. 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 Madanlal Choudhary (supra)*, this Court while highlighting the evil of economic offences like money laundering, and its adverse impact on the society and citizens, observed that arrest infringes the fundamental right to life. This Court referred to Section 19 of the PML Act, for the in-built safeguards to be adhered to by the authorised officers to ensure fairness, objectivity and accountability. (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 ad 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)

36. 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.

37. 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 above-cited 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)

38. 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.

39. As per the custody certificate, placed on record, the custody period of the applicant is two years and twenty four days, excluding the period of interim bail, as on 5th January, 2026.

40. The earlier bail applications of the applicant were 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 more than two years, 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."

(self emphasis supplied)

41. 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.

42. 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).

43. Merely because the applicant is permanent resident of Haryana and will not be available, for trial, in case, he is ordered to be released on bail, 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 applications for bail, on merit, have 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.

44. Moreover, for the apprehension that the applicant is resident of the adjoining State, 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.

45. 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.

46. Even otherwise, the applicant is also entitled for the relief of bail on the basis of parity, as, his co-accused, namely, Hitesh Gandhi and Arvind Rajta, have already been released on bail, by this Court, vide orders, dated 20th

December, 2025 and 5th January, 2026, passed in CrMPs (M) No. 2558 of 2025 and 2795 of 2025, respectively.

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

48. Consequently, the applicant is ordered to be released on bail, during the pendency of the trial, in case No. **ECIR/SHSZO/04/2019**, dated **19.07.2019**, registered with the **Enforcement Directorate Office (ED)**, Sub-Zonal Office, 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.

49. 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.

50. 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.

51. 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.

52. 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 08, 2026
(*rajni*)