 2026:HHC:6750

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CrMP(M) No. : 3041 of 2025

Reserved on : 02.03.2026

Decided on : 12.03.2026

Vikas Bansal ...Applicant

Versus

Directorate of Enforcement (ED) ...Respondent

Coram

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

Whether approved for reporting?[1] *Yes.*

For the applicant : Mr. Ajay Kochhar, Senior Advocate, with Ms. Swati Sharma, Advocate.

For the respondent : Mr. Zoheb Hossain, Advocate (through Video Conferencing), with Mr. Ajeet Singh Saklani & Mr. Surila Sangam, Advocates, and Mr. Vikash Kumar, Assistant Director, ED.

Virender Singh, Judge.

Applicant-Vikas Bansal has filed the present application, under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as the 'BNSS'), with a prayer to release him, on bail, during the pendency of the trial, pending before the learned Special Judge (PMLA), Shimla, arising out of case No. **ECIR/SHSZO/04/2019, dated 19.07.2019**, registered

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

with the **Enforcement Directorate Office (ED),** Sub-Zonal Office, Shimla, Himachal Pradesh, under **Sections 3 and 4 of the Prevention of Money Laundering Act, 2002** (hereinafter referred to as 'PMLA').

2. According to the applicant, the said ECIR was registered on the basis of the source information of case FIR No. 133 of 2018, registered under Sections 409, 419, 465, 466 and 477 of the Indian Penal Code (hereinafter referred to as 'IPC'), with Police Station East, Shimla, H.P. The investigation of the said case was entrusted to CBI, and a case, vide RC 0962019S0002, dated 7th May, 2019, was registered by CBI/ACB, Shimla, under Sections 409, 419, 465, 466 and 471 IPC. Since, Sections 419 and 471 IPC were the scheduled offences, as defined under the PMLA, as, such, the present ECIR was registered by the respondent-ED.

3. It is the further case of the applicant that after the registration of RC 0962019S0002, dated 7th May, 2019, by the CBI, raids were conducted at 22 private institutions, including Himalayan Group of Professional Institutions (hereinafter referred to as 'HGPI') and Apex Group of

Professional Institutions (hereinafter referred to as 'AGPI'), which had applied for and received post matric scholarship scheme for SC, ST, OBC students of Himachal Pradesh and the records were seized.

4. The applicant is stated to be the Vice Chairman of HGPI and AGPI. The applicant is also stated to be one of the Trustees of Maa Saraswati Educational Trust and People Welfare Educational Trust.

5. According to the applicant, during the course of investigation, in the aforesaid RC, he was arrested by the CBI on 8th April, 2022, and was later on, released on bail, by this Court, vide order, dated 9th May, 2022, passed, in CrMP (M) No. 856 of 2022.

6. As per the further case of the applicant, after investigation, the CBI has filed different charge sheets in the Court of Special Judge (CBI), Shimla, and the applicant has been arrayed as accused, alongwith eight other persons, in one of the cases, which has been filed in the Court of learned Special Judge (CBI), Shimla, on 18th April, 2022, under Section 120-B read with Sections 409 and 471 IPC and Section 13(2) read with Section 13 (1) (c) and

(d) of the Prevention of Corruption Act (hereinafter referred to as 'PC Act').

7. As per the applicant, the ED conducted searches under Section 17 of the PMLA on 29th August, 2023, at various premises of the applicant, including the residential premises of his brother Rajnish Bansal, who was Chairman of HGPI and AGPI and took into possession the relevant documents.

8. According to the applicant, he was summoned only once on 5th November, 2019, by the then Investigating Officer. The applicant joined the investigation and submitted all the documents and material related to the present ECIR.

9. It is the case of the applicant that even in the present ECIR, before his arrest, the prosecution complaint, dated 21st October, 2023, has already been submitted by the ED before the PMLA Court and the said Court has already taken cognizance on 23rd February, 2024, in the said complaint, against 28 accused persons. Thereafter, the ED has filed five more supplementary complaints,

including the supplementary complaint filed against the applicant and the institutions – HGPI and AGPI.

10. It is the specific case of the applicant that in the year 2024, the investigation was handed over to Mr. Vishal Deep, Assistant Director of ED, who demanded an amount of ₹ 60.00 lacs from the brother of the applicant, who being a law abiding citizen was disinclined to pay the bribe and was continuously harassed by the said Vishal Deep, upon which, the matter was reported to the CBI. After verification, CBI registered RC0052024A0034, dated 22nd December, 2024, under Section 7 (a) of the PC Act and a trap was laid. During the trap, said Vishal Deep succeeded in fleeing from the spot, but, during investigation, the money was recovered from the friend of Vishal Deep, namely Yash Deep. Consequently, according to the applicant, he was put under arrest, in this case.

11. As per the stand of the applicant, from the year 2019 till 2024, he has been cooperating throughout, in the investigation, without any requirement of being arrested and after the arrest of said Vishal Deep, the applicant has been arrested out of sheer vengeance.

12. According to the applicant, the act, conduct and motive of the investigating agency is biased, prejudiced and embroiled with personal aggrandizement and are sufficient to establish that the entire exercise was done to clean the image of the ED and insignia of corruption on ED.

13. As per the stand of the applicant, the complaint filed against the applicant and others is devoid of truth and has been filed by distorting the facts to show the involvement of the applicant, in this case.

14. As per the stand taken by the applicant, after completion of the investigation, the ED has filed supplementary complaint against the applicant, Maa Saraswati Trust, People Welfare Educational Trust, Shivender Singh, Panna Lal and Preeti Bansal; and the same is pending adjudication before the learned Special Judge, PMLA Court, Shimla.

15. It is the further case of the applicant that there are reasonable grounds for believing that he is not guilty of offence and that he is not likely to commit any offence, if granted bail. Further, according to the applicant, there is no flight risk as he has already been granted the

concession of regular bail by this Court in RC, registered by the CBI and the applicant, is complying with all the conditions imposed by this Court.

16. It is the case of the applicant that there are 71 witnesses in the original complaint and hundreds of witnesses in the supplementary complaints, apart from thousands of documents relied upon. According to the applicant, in the supplementary challans, the ED has relied upon 107 witnesses and 63749 documents. The investigation is stated to have been kept open and the matter is still under investigation.

17. It is the further case of the applicant that he is being deprived of his fundamental right of speedy trial and keeping the applicant in custody would only violate his fundamental right of life and personal liberty, enshrined under Article 21 of the Constitution of India.

18. According to the applicant, in the original complaint, 28 persons were arrayed as accused and the ED only arrested four persons. In the subsequent complaints, filed as supplementary complaints, also, a few persons have been arrested. The approach of the ED, of

arresting the persons by adopting the procedure of pick and choose, is not sustainable in the eyes of the law and shows biasness on the part of the Investigating Agency.

19. According to the applicant, he had filed regular bail application, before this Court, bearing CrMP (M) No. 1959 of 2025, which was dismissed as withdrawn, vide order, dated 9th December, 2025. Subsequently, the applicant approached the Court of learned Special Judge, Shimla, by way of similar bail application, which came to be rejected, vide order, dated 27th December, 2025.

20. The relief of bail has also been sought on the ground of parity, as, according to the applicant, one of his co-accused, namely Hitesh Gandhi, has already been released on bail, by this Court, vide order, dated 20th December, 2025, passed in CrMP (M) No. 2558 of 2025.

21. Learned senior counsel for the applicant has also argued that the other co-accused of the applicant, namely, Arvind Rajta, Krishan Kumar and Rajdeep Singh, have also been released on bail, by this Court, vide orders, dated 5th January, 2026 and 8th January, 2026, passed in

CrMPs (M) No. 2795 of 2025; 3028 of 2025 and 3039 of 2025, respectively.

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

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

24. When put to notice, the reply, on behalf of the ED, has been filed, mentioning therein, that the applicant has been arrested, on 30th January, 2025, as per the procedure.

24.1. The necessary facts, giving rise to the present case, as mentioned by the ED, are as under:

24.2. The CBI had registered RC0962019A0002, dated 7th May, 2019, under Sections 409, 419, 465, 466, 471 IPC. As per the said RC, on 20th March, 2019, the investigation of FIR No. 133 of 2018, dated 16th November, 2018, was entrusted by the Government of Himachal Pradesh, from Police Station Shimla East to CBI, Shimla,

upon which, CBI has registered the aforestated RC, against unknown persons.

24.3. It has been mentioned, in the reply, that FIR No. 133 of 2018 was registered, on the basis of the complaint made by one Shakti Bhushan, the then State Project Officer of the Education Department, wherein, he has alleged that on receiving a number of complaints regarding non-receipt of scholarship, the Secretary (Education) to the Government of Himachal Pradesh, vide its letter, dated 7th July, 2018, appointed him to conduct inquiry into the distribution of scholarship to the students of the State of Himachal Pradesh. During the course of inquiry, conducted by said Shakti Bhushan and on the statement of students, it was found that the scholarships, which had been disbursed into the bank accounts opened in the names of the students, were not received by them. Irregularities were found in the H.P. e-Pass portal, developed by the Directorate of Higher Education, Shimla, for disbursement of Post Matric Scholarship for SC/ST/OBC students. Thereafter, CBI conducted the search and seizures at 22 private institutions, including,

the Himalayan Group of Professional Institutions, Kala Amb (HGPI) and Apex Group of Professional Institutions, Indri, Karnal (AGPI). Rajnish Bansal, being Chairman of HGPI and AGPI and applicant-Vikas Bansal, being Vice Chairman of HGPI and AGPI, were arrested by the CBI, in the predicate offence, on 8th April, 2022 and both of them were released on bail, by this Court, on 9th May 2022.

24.4. Thereafter, charge sheet No. 4, in case of AGPI was filed by the CBI, in the aforesaid FIR, under Sections 120-B read with Sections 409, 420, 467, 468 and 471 IPC and Sections 13 (1) (c), 13 (1) (d) read with Section 13 (2) of PC Act, against Arvind Rajta, Mala Mehta, Shriram Sharma, Surender Mohan Kanwar, Ashok Kumar, Rajnish Bansal and Shivender Singh.

24.5. Subsequently, charge sheet No. 5, in the case of HGPI, was filed by the CBI, in the aforesaid FIR, under Sections 120-B read with Sections 409, 420, 467, 468 and 471 IPC and Sections 13 (1) (c), 13 (1) (d) read with Section 13 (2) of PC Act, against Arvind Rajta, Mala Mehta, Shriram Sharma, Surender Mohan Kanwar, Virender Kumar, Rajnish Bansal, Vikas Bansal (applicant), Panna

Lal and Shivender Singh, before the Court of learned Special Judge (CBI), Shimla.

24.6. Highlighting the role alleged against the applicant, it has been pleaded that applicant-Vikas Bansal became Trustee in Maa Saraswati Educational Trust in the year 2012 and in People Welfare Education Trust in the year 2014. Applicant-Vikas Bansal controlled the operations of the bank accounts of Maa Saraswati Educational Trust, People Welfare Education Trust and the colleges under these Trusts. He was also looking after the day-to-day affairs of both these institutions, being Chairman of HGPI and AGPI.

24.7. According to the ED, applicant-Rajnish Bansal, alongwith his brother Vikas Bansal and his employees, had signed claim letters and forwarded the said claim letters, alongwith the verified details of students of HGPI and AGPI to Directorate of Higher Education, Shimla, for disbursal of scholarship, under PMS in the name of bogus SC/ST/OBC students.

24.8. It is the further case of the ED that on the instructions of applicant-Vikas Bansal and Rajnish Bansal,

HGPI had fraudulently submitted the claim letters to Directorate of Higher Education, through his staff, by projecting one Panna Lal, who was working as Superintendent at HGPI, as Director General (Academics) at HGPI, Director at Himalayan Institute of Engineering and Technology, Principal at HP College of Law and Chief Administrator at HGPI.

24.9. As per the stand of the ED, under the knowledge and directions of the applicant, those claim letters were signed by Panna Lal and Shivender Singh, both, the then Registrars at HGPI, for claiming scholarship under PMS and the same were then forwarded to Directorate of Higher Education, however, both of them never remained employed with AGPI. As such, according to the ED, the claim letters signed by them, on behalf of HGPI and AGPI, were bogus and ineligible for claiming scholarship under PMS scheme.

24.10. According to the ED, when the scholarship under PMS was received in the bank accounts of the students, the applicant, while holding the post of Vice Chairman of HGPI, used to get the information of credit of

scholarship from the officials of the Directorate of Higher Education, Shimla, via e-mail or telephone, which amount, under supervision and instructions of applicant-Vikas Bansal, was fraudulently transferred in the bank accounts of the students to the bank accounts of Maa Saraswati Educational Trust, through, pre-signed cheques/vouchers, collected from the students, at the time of admission process. The said amount, later on, was withdrawn in cash from the bank accounts of the students, which were controlled by the applicant.

24.11. It is the further case of the ED that under the supervision of the applicant, HGPI had made 2162 false and bogus scholarship claims and had generated proceeds of crime worth ₹ 14,49,36,065/- and AGPI had made 636 false and bogus scholarship claims, pertaining to proceeds of crime worth ₹ 3,79,95,870/-.

24.12. According to the ED, the applicant is actually involved in acquisition, concealment, possession, use, projecting and claiming the 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.

24.13. It is the stand of the ED that the allegations relating to the FIR registered under PC Act, against one Vishal Deep, Assistant Director of ED, are wholly extraneous, misconceived and irrelevant to the present proceedings, under the PMLA and the arrest of the applicant has no nexus with the said FIR, as, the investigation under the PMLA is based upon evidence and carried out strictly in accordance with law and the allegations against an individual officer cannot vitiate or taint the independent statutory proceedings under the PMLA. The applicant is stated to have been arrested only after sufficient material surfaced during investigation, establishing his involvement in the offence of money laundering and after recording reasons to believe, as mandated under Section 19 of the PMLA.

24.14. As per the stand taken by the ED, the complaint filed before the learned Special Court is based on cogent evidence, including verification from Universities, statements of students and financial record. The attempt

of the applicant to label the complaint as distortion is stated to be not sustainable in the eyes of law.

24.15. The attempt of the applicant to shift liability on ex-trustees is stated to be a diversionary tactic. The undertakings given by the applicant to co-operate in the investigation are also stated to be non-substitute of the requirement of custodial interrogation.

24.16. According to the ED, the bail application is liable to be dismissed, as, the applicant has failed to satisfy the mandatory twin conditions, prescribed under Section 45 of the PMLA.

24.17. The plea of the applicant that he be enlarged on bail due to long period of incarceration is stated to be misconceived, due to serious allegations against him and the complexity of the offence.

24.18. 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.

24.19. 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.*

24.20. 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.

24.21. 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.

24.22. The contention of the applicant seeking bail on the basis of parity has also been objected to by the ED, on the ground, that bail granted to other co-accused cannot be a consideration for grant of bail in PMLA cases, which are governed solely by the rigors of Section 45 of the PMLA.

24.23. It has also been submitted on behalf of the ED that the economic offences constitute a distinct category and warrant a differential approach in the grant of bail.

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

25. The applicant, in the present case, has been arrested in the month of January, 2025 and prior to that, he remained in judicial custody, in the case registered by CBI, bearing No. RC0962019A0002, dated 7th May, 2019.

26. The copy of the complaint has also been annexed with the reply. As per the complaint, there are as

many as 107 witnesses and the documentary evidence is consisting of 63749 pages.

27. 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."*

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

29. 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 said findings can be recorded, in view of 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.*
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> *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.*
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> *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."*
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> *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.*
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> *(self emphasis supplied)*

31. 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 as 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.*
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> *22. In the case of K.A. Najeeb, in paragraph 17 this Court held thus:*
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> > *"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.*
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> *50. As observed by this Court, the right to speedy trial and the right to liberty are sacrosanct rights. On denial of these rights, the trial court as well as the High Court ought to have given due weightage to this factor.*
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> *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 Sibbia 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:*
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> > *"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. <u>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</u>

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 o 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 rial 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)*

32. 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."

33. If the facts and circumstances of the present case are seen, in view of the decision of the Hon'ble Supreme Court in **Bachhu Yadav's** case (supra), then, the

case of the applicant is at better footing, as, in the present case, even the charges have not been framed against the applicant and his co-accused, that too, not only in the present case, but, also, in the case, which has been registered by the CBI against him.

34. 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 Sibbia v. State of Punjab, (1980) 2 SCC 565, and Sanjay Chandra v. Central Bureau of Investigation, (2012) 1 SCC 40, that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case. Ultimately, the consideration has to be made on a case to case basis, on the facts. The primary object is to secure the presence of the accused to stand trial. The argument that the appellant therein was a flight risk or that there was a possibility of tampering with the evidence or influencing the witnesses, was rejected by the Court. Again, in Satender Kumar Antil v. Central Bureau of Investigation, (2022) 10 SCC 51, this Court referred to Surinder Singh Alias Shingara Singh v. State of Punjab, (2005) 7 SCC 387 and Kashmira Singh versus State of Punjab, (1977) 4 SCC 291, to emphasise that the right to speedy trial is a fundamental right within the broad scope of Article 21 of the Constitution. In Vijay Mandanlal Choudhary (supra), this Court while highlighting the evil of economic offences like money laundering, and its adverse impact on the society and citizens, observed that arrest infringes the fundamental right to life. This Court referred to Section 19 of the PML Act, for the in-built safeguards to be adhered to by the authorised officers to ensure fairness, objectivity and accountability. (See also Pankaj Bansal v Union of India, 2023 SCC OnLine SC 1244] Vijay Madanlal Choudhary (supra), also held that section 436A of the Code can apply to offences under the PML Act, as it effectuates the right to speedy trial, a

facet of the right to life, except for a valid ground such as where the trial is delayed at the instance of the accused himself. In our opinion, Section 436A should not be construed as a mandate that an accused should not be granted bail under the PML Act till he has suffered incarceration for the specified period. This Court, in Arnab Manoranjan Goswami v. State of Maharashtra, (2021) 2 SCC 427, held that while ensuring proper enforcement of criminal law on one hand, the court must be conscious that liberty across human eras is as tenacious as tenacious can be.

27. The appellant - Manish Sisodia has argued that given the number of witnesses, 294 in the prosecution filed by the CBI and 162 in the prosecution filed by the DoE, and the documents 31,000 pages and 25,000 pages respectively, the fact that the CBI has filed multiple charge sheets, the arguments of charge have not commenced. The trial court has allowed application of the accused for furnishing of additional documents, which order has been challenged by the prosecution under Section 482 of the Code before the High Court. It was stated at the Bar, on behalf of the prosecution that the said petition under Section 482 will be withdrawn. It was also stated at the Bar, by the prosecution that the trial would be concluded within next six to eight months.

28. Detention or jail before being pronounced guilty of an offence should not become punishment without trial. If the trial gets protracted despite assurances of the prosecution, and it is clear that case will not be decided within a foreseeable time, the prayer for

bail may be meritorious. While the prosecution may pertain to an economic offence, yet it may not be proper to equate these cases with those punishable with death, imprisonment for life, ten years or more like offences under the Narcotic Drugs and Psychotropic Substances Act, 1985, murder, cases of rape, dacoity, kidnapping for ransom, mass violence, etc. Neither is this a case where 100/1000s of depositors have been defrauded. The allegations have to be established and proven. The right to bail in cases of delay, coupled with incarceration for a long period, depending on the nature of the allegations, should be read into Section 439 of the Code and Section 45 of the PML Act. The reason is that the constitutional mandate is the higher law, and it is the basic right of the person charged of an offence and not convicted, that he be ensured and given a speedy trial. When the trial is not proceeding for reasons not attributable to the accused, the court, unless there are good reasons, may well be guided to exercise the power to grant bail. This would be truer where the trial would take years.

29. In view of the assurance given at the Bar on behalf of the prosecution that they shall conclude the trial by taking appropriate steps within next six to eight months, we give liberty to the appellant Manish Sisodia to move a fresh application for bail in case of change in circumstances, or in case the trial is protracted and proceeds at a snail's pace in next three months. If any application for bail is filed in the above circumstances, the same would be considered by the trial court on merits without being influenced by the

dismissal of the earlier bail application, including the present Judgment. Observations made above, re. right to speedy trial, will, however, be taken into consideration. The appellant Manish Sisodia may also file an application for interim bail in case of ill health and medical emergency due to illness of his wife. Such application would be also examined on its own merits."

xxx xxx xxx

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

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

51. Recently, this Court had an occasion to consider an application for bail in the case of Javed Gulam Nabi Shaikh v. State of Maharashtra, 2024 SCC OnLine SC 1693, wherein the accused was prosecuted under the provisions of the Unlawful Activities (Prevention) Act, 1967. This Court surveyed the entire law right from the judgment of this Court in the cases of Gudikanti Narasimhulu v. Public Prosecutor, High Court of Andhra Pradesh, (1978) 1 SCC 240, Shri Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565, Hussainara Khatoon (1) v. Home Secretary, State of Bihar, (1980) 1 SCC 81, Union of India v. K.A Najeeb, (2021) 3 SCC 713, and Satender Kumar Antil v Central Bureau of Investigation, (2022) 10 SCC 51. The Court observed thus:

"19. If the State or any prosecuting agency including the court concerned

has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime."

52. The Court also reproduced the observations made in Gudikanti Narasimhulu (supra), which read thus:

> *10. In the aforesaid context, we may remind the trial courts and the High Courts of what came to be observed by this Court in Gudikanti Narasimhulu v. Public Prosecutor, High Court reported in (1978) 1 SCC 240. We quote:*
>
> *"What is often forgotten, and therefore warrants reminder, is the object to keep a person in judicial custody pending trial or disposal of an appeal, Lord Russel, C.J., said [R v. Rose, (1898) 18 Cox]:*
>
> > *"I observe that in this case bail was refused for the prisoner. It cannot be too strongly impressed on the, magistracy of the country that bail is not to be withheld as a punishment, but that the requirements as to bail are merely to secure the attendance of the prisoner at trial.""*

53. The Court further observed that, over a period of time, the trial courts and the High Courts have forgotten a very well-settled principle of law that bail is not to be withheld as a punishment. From our experience, we can say that it appears that the trial courts and the High Court attempt to play safe in matters of grant of bail. The principle that bail is a rule and refusal is an exception is, at times,

followed in breach on account of non-grant of bail even in straightforward open and shut cases, this Court is flooded with huge number of bail petitions thereby adding to the huge pendency. It is high time that the trial court 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)*

35. 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.

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

> *"10. It is a fact that the High Court in the instant case has not determined the likelihood of the respondent being guilty or not, or whether rigours of Section 43-D(5) of the UAPA are alien to him. The High Court instead of incarceration and the unlikelihood of the trial being completed anytime appears to have exercised its power to grant bail owing to the long period in the near future. The reasons assigned by the High Court are apparently traceable back to Article 21 of our Constitution, of course without addressing the statutory embargo created by Section 43-D(5) of the UAPA.*
>
> *11. The High Court's view draws support from a batch of decisions of this Court, including in Shaheen Welfare Assn. v. Union of India,*

(1996) 2 SCC 616, laying down that gross delay in disposal of such cases would justify the invocation of Article 21 of the Constitution and consequential necessity to release the undertrial on bail. It would be useful to quote the following observations from the cited case: (SCC p. 622, para 10)

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

12. Even in the case of special legislations like the Terrorist and Disruptive Activities (Prevention) Act, 1987 or the Narcotic Drugs and Psychotropic Substances Act, 1985 ("the NDPS Act") which too have somewhat rigorous conditions for grant of bail, this Court in Paramjit Singh v. State (NCT of Delhi), (1999) 9 SCC 252, Babba v. State of Maharashtra, (2005) 11 SCC 569 and Umarmia v. State of Gujarat, (2017) 2 SCC 731, enlarged the accused on bail when they had been in jail for an extended period of time with little possibility of early completion of trial. The constitutionality of harsh conditions for bail in such special enactments, has thus been primarily justified on the touchstone of speedy trials to ensure the protection of innocent civilians.

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

14. The facts of the instant case are more egregious than these two abovecited instances. Not only has the respondent been in jail for much more than five years, but there are 276 witnesses left to be examined. Charges have been framed only on 27-11-2020. Still further, two opportunities were given to the appellant NIA who has shown no inclination to screen its endless list of witnesses. It also deserves mention that of the thirteen co-accused who have been convicted, none have been given a sentence of more than eight years' rigorous imprisonment. It can, therefore, be legitimately expected that if found guilty, the respondent too would receive a sentence within the same ballpark. Given that two-third of such incarceration is already complete, it appears that the respondent has already paid heavily for his acts of fleeing from justice.

15. This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and

fairness but also access to justice and a speedy trial. In Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India, (1994) 6 SCC 731, it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, the courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.

16. As regards the judgment in NIA v. Zahoor Ahmad Shah Watali, (2019) 5 SCC 1, cited by the learned ASG, we find that it dealt with an entirely different factual matrix. In that case, the High Court had reappreciated the entire evidence on record to overturn the Special Court's conclusion of their being a prima facie case of conviction and concomitant rejection of bail. The High Court had practically conducted a mini-trial and determined admissibility of certain evidence, which exceeded the limited scope of a bail petition. This not only was beyond the statutory mandate of a prima facie assessment under Section 43-D(5), but it was premature and possibly would have prejudiced the trial itself. It was in these b 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 absconsion, etc."*
>
> *(self emphasis supplied)*

37. 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.

38. 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.*

39. A feeble attempt has been made by the learned counsel for the ED, when, he argued that the principle of parity is not applicable, in the present case, as, the role attributed to the applicant, is altogether different and serious, in comparison to the role, which has been alleged against his co-accused. In order to buttress his

contention, he has further argued that the other accused, arrayed in this case, are subordinate staff of the applicant.

40. To counter these arguments, the learned senior counsel for the applicant has argued that the role attributed to the applicant is similar to the role, which has been alleged against the other accused persons, who even have not been arrested by the ED, in the present case.

41. In this case, the applicant has mainly sought the relief of bail, on the ground of inordinate delay in trial and at the time of deciding the said question, it is not permissible for this Court to distinguish the role attributed to other accused persons, by the investigating agency.

42. Although, the relief, in the present case, has also been sought on the ground that the applicant has been arrested, in this case, after the arrest of Mr. Vishal Deep, the then Investigating Officer, however, the said plea is not available to the applicant, as, he has unsuccessfully assailed his arrest before this Court and all his contentions have been negated by a coordinate Bench of this Court, while delivering judgment in CWP No. 3600 of 2025. As

such, his release can be considered only on account of undue delay in trial.

43. It has rightly been argued by the learned senior counsel for the applicant that even, the charges have not been framed in the present case, as well as, in the trial of predicate offence. As such, the chances of conclusion of the trial, in the absence of definite findings qua the existence of proceeds of crime, cannot be anticipated in near future.

44. The learned counsel for the ED has also argued that the applicant is not entitled for the relief on the ground of parity, as, the other co-accused, namely Hitesh Gandhi, Arvind Rajta, Krishan Kumar and Rajdeep Singh, have been granted the relief of bail, when, the period of their custody was more than two years and as such, till the completion of the custody of the applicant at par with his co-accused, he is not entitled for the relief on the ground of parity.

45. This argument does not hold water as a person cannot be compelled to seek parity only after undergoing similar period of custody as of his co-accused. It is the

stage of the trial, which has to be considered for determining the fact whether there are chances of commencement and conclusion of the trial, within a reasonable period. Compelling the applicant to undergo the custody for the period similar to that of his co-accused, to seek relief of bail, would be nothing, but, fallacy of law.

46. Now, coming to the argument of the learned senior counsel for the applicant qua the fact that the investigating agency/ED has adopted pick and choose method to arrest the applicant, as, the other accused persons, in this case, against whom, similar allegations have been levelled, have not been arrested. Although, it is the sole prerogative of the investigating agency to arrest, but, this fact cannot go unnoticed by this Court, as, the arrest of the applicant was made, when complaint against him had already been filed. Merely, a stand has been taken by the ED that the investigation is still going on, is not sufficient to discard the allegations of the learned senior counsel for the applicant qua selective arrest, as, unfettered powers have not been granted to the investigating agency.

47. It has rightly been pointed out by the learned counsel for the applicant that the applicant is permanent resident of Haryana and 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 bail, on earlier occasion.

48. At the cost of repetition, keeping in view the number of witnesses, stage of the trial, as well as, the voluminous record, relied upon, by the prosecution, before the learned trial Court, read with the fact that the trial of the predicate offences has not yet commenced, this Court is of the considered opinion that the chances of commencement and conclusion of the trial, against the applicant, in near future, are not so bright and all these facts are sufficient to hold that the twin conditions, as per section 45 of the PMLA, are existing in favour of the applicant.

49. Even otherwise, the applicant is also entitled to be released on bail on the ground of parity, as, his co-accused, namely Hitesh Gandhi, Arvind Rajta, Krishan Kumar and Rajdeep Singh, have already been released on

bail, by this Court, vide order, dated 20th December, 2025; 5th January, 2026 and 8th January, 2026, passed in CrMPs (M) No. 2558 of 2025; 2795 of 2025; 3028 of 2025 and 3039 of 2025, respectively.

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

51. 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.

52. 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.

53. 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.

54. 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.

55. 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

March 12, 2026
(rajni)