

JITENDRA SINGH,

Special Judge (PC Act) (CBI)-23  
(MPs/MLAs Cases)

1/17

Court No. 612, Sixth Floor  
Rouse Avenue Court Complex  
New Delhi

**IN THE COURT OF SH. JITENDRA SINGH,  
SPECIAL JUDGE (PC ACT) CBI-23, (MPs/MLAs CASES),  
ROUSE AVENUE COURT COMPLEX, NEW DELHI.**

ECIR No. DLZO-I/35/2022 dated 16.09.2022

CNR No. DLCT11-000035-2024

Directorate of Enforcement (ED)

Vs.

Zeeshan Haider and Ors.

27.11.2024

Reserved on 22.11.2024

Pronounced on 27.11.2024

**BAIL APPLICATION No. IA 11/2024**

KAUSAR IMAM SIDDIQUI

Versus

DIRECTORATE OF ENFORCEMENT

Present: Sh. Simon Benjamin, Ld. SPP and IO/AD Vijay  
Kumar for ED (through V/C).  
Sh. Anand Kirti and Sh. Aditya Jain, Ld.  
Counsels for ED.  
Sh. Hemant Shah (through V/C), Sh. Akshay  
Rana, Sh. Saurabh Pal and Sh. Vishal  
Mann, Ld. Counsel(s) for the applicant/accused.

1.1 By way of the present bail application, the applicant/accused namely Kausar Imam Siddiqui (A-4) seeks regular bail in the proceedings emanating out of ECIR No. DLZO-I/35/2022 dated 16.09.2022, which was registered on the basis of First Information Report (**hereinafter referred to as 'FIR'**) bearing number 9A, dated 23.11.2016 registered by the Central Bureau of Investigation, AC-III, New Delhi under Sections 120-B of IPC & 13(1)(d) r/w 13(2) of PC Act, 1988.





2.1 Reply to the instant bail application has already been filed by Department of Enforcement (**hereinafter referred to as 'ED'**).

**Brief Facts:-**

3.1 As the present bail application has been moved on the grounds of long incarceration, delay in trial and parity with accused Jawed Imam Siddiqui (A-3), who has already been granted bail on the abovesaid grounds by the Hon'ble High Court of Delhi on 13.11.2024, therefore, it is not necessary to discuss the facts of the case in detail. Briefly, the allegations against A-4 is that he acted as a middleman on behalf of accused Amanatullah Khan (A-6) for purchase of the property bearing no. 275 and 276, located at Tikona plot, Jamia Nagar, Okhla, Delhi, which was purchased by accused Zeeshan Haider (A1) and accused Daud Nasir ( A-2). In the said transactions allegedly part consideration amount was paid from the proceeds of crime generated by A-6.

**Submissions by the Ld. Counsel for the accused:-**

4.1 It is submitted by Ld. Counsel for the accused that he is seeking the bail mainly on two grounds that is long incarceration, delay in trial and parity with A-3. It is further submitted that the present accused is running in custody since 24.11.2023. It is further submitted that by delivering the judgment, Hon'ble High Court was cognizant of the fact that the earlier bail applications of other accused persons have been dismissed. The ground of long incarceration for granting bail has been developed by the Hon'ble Supreme Court in case reported as Manish Sisodia vs. Directorate of Enforcement,





2024 SCC OnLine SC 1920, delivered on 09.08.2024. The bail application(s) of the other accused persons were dismissed prior to the said date. It is further stated that parity is a relevant ground for consideration of granting of bail. Reliance is placed upon the judgment titled as *Abhishek Boinpally vs. Directorate of Enforcement*, Criminal Appeal No. 4188 /2024 dated 14.10.2024, Supreme Court and *Vaibhav Jain vs. Directorate of Enforcement*, 2024 SCC OnLine Del 7478.

4.2 It is argued and have been taken as defence to such bail pleas that only constitutional Court can grant bail in long incarceration cases by ED before various trial Court(s). However, trial Court(s) have granted bail rejecting the contentions of the ED in case titled as *Directorate of Enforcement vs. Satyendar Kumar Jain & Ors.*, dated 18.10.2024 in Ct No. 23/2022, Rouse Avenue District Court and *Directorate of Enforcement vs. Madhav Acharya & Anr.*, dated 14.10.2024. It is further stated that the accused is neither the buyer nor the seller of the property in question and has been shown as 'middle man' and therefore, his case is at higher pedestal as compared to others. Ld. Counsel for the accused has relied upon the following judgments:-

(1) *Manish Sisodia vs. Directorate of Enforcement*, 2024 SCC OnLine SC 1920.

(2) *Neeraj Singhal vs. Directorate of Enforcement*, SLP (Crl.) Nos. 8439-8440/2024, dated 06.09.2024, Supreme Court.

(3) *Ram Kripal Meena vs. Directorate of Enforcement*, 2024 SCC OnLine SC 2276.





- (4) Kalvakuntla Kavitha vs. Directorate of Enforcement, SLP (Crl.) No. 10778/2024 dated 27.08.2024, Supreme Court
- (5) Vijay Nair vs. Directorate of Enforcement, SLP (Crl.) Diary No. 22137/2024 dated 02.09.2024, Supreme Court.
- (6) Sameer Mahandru vs. Directorate of Enforcement, 2024 SCC OnLine Del 6261.
- (7) Prem Prakash vs. Union of India through the Directorate of Enforcement, 2024 SCC OnLine SC 2270.
- (8) Mohd. Muslim @ Hussain vs. State (NCT of Delhi), Criminal Appeal No(S). of 2023 [Special Leave Petition (Crl.) No(S). 915 of 2023.
- (9) Javed Gulam Nabi Shaikh vs. State of Maharashtra & Anr., Criminal Appeal No. 2787/2024, 2024 SCC OnLine SC 1693.
- (10) Directorate of Enforcement vs. Satyendar Kumar Jain & Ors. Order Dated 18.10.2024 in CT Case No. 23/2022, Rouse Avenue District Court.
- (11) Directorate of Enforcement vs. Madhav Acharya & Anr., Order dated 04.10.2024 in CT Case No. 09/2024, Rouse Avenue District Court.
- (12) Abhishek Boinpally vs. Rouse Avenue District Court, Criminal Appeal No. 4188/2024 dated 14.10.2024, Supreme Court.

(13) Vaibhav Jain vs. Directorate of Enforcement, 2024 SCC OnLine Del 7478.





(14) *Krishan Lal Chawla & Ors. vs. State of Uttar Pradesh & Anr.*, (2021) 5 SCC 435.

(15) *Union of India Vs. K.A. Najeeb* (2021) 3 Supreme Court Cases 713.

(16) *SK. Javed Iqbal v. State of U.P.* (2024) 8 SCC 293

(17) *V. Senthil Balaji vs. The Deputy Director, Directorate of Enforcement*, Criminal Appeal No. 4011 of 2024.

(18) *Vijay Nair vs. Directorate of Enforcement*, SLP (Crl.) Diary No. 22137/2024.

**Submissions by the Ld. SPP for ED:-**

5.1 It is submitted by Ld. SPP for ED that in view of the judgment titled as *V. Senthil Balaji vs. The Deputy Director, Directorate of Enforcement*, Criminal Appeal Number 4011 of 2024, only the constitutional Court can grant bail on the ground of long incarceration and delay in trial. It is further submitted that considering the conduct of the accused and role of the accused in the case, he can not be granted bail on the ground of long incarceration. It is further submitted that anticipatory bail of the main accused Amanatullah Khan was dismissed by the Trial Court, Hon'ble High Court and Hon'ble Supreme Court. Moreover, the bail application of A-1 and A-2 has been dismissed by the Trial Court on merits.

5.2 It is further submitted by Ld. SPP that role of the present accused is more significant than the role played by other accused persons as present accused had acted as a middleman on behalf of A-6 and therefore, he cannot seek parity. At the time of search by Anti Corruption Bureau,





recovery of arms has been effected, for which separate FIR has been registered under Arms Act. Ld. SPP has stated that para-4 of his reply to the bail application may be reproduced in his submissions-

“...That it is submitted that bail cannot be granted casually or on the same grounds previously rejected. Courts must adhere to established principles, focusing on both individual rights and societal interests. It is further submitted that once the Court has declined to enlarge the applicant on bail, endeavors to project same factual score ought not to be allowed, as the same would lead to judicial impropriety. That the Hon’ble Apex Court has observed in *Virupakshappa Goudu & Anr. Vs. State of Karnataka & Anr.*, (2017) 5 SCC 406...”.

5.3 It is further submitted that other accused A-1 and A-2 are already in judicial custody and their bail applications are pending before the Hon’ble Supreme Court. The ground of parity is not available to the present applicant as held by the Hon’ble Supreme Court in case titled as *Tarun Kumar Vs. Assistant Director, Directorate of Enforcement, Criminal Appeal No. of 2023 (@ SLP (Crl.) No. 9431 of 2023)* decided on November 20,2023. Therefore, it is prayed that bail should not be granted to the present applicant/accused.

6.1 In-rebuttal, it is submitted by the Ld. Counsel for A-4 that the recovery of weapons have been shown in the absence of the accused, therefore, it cannot be presumed that the same was in the custody of A-4. It is further submitted that





A-4 has already been granted bail in the said matter on 14.10.2022. Moreover, the said FIR bearing number 380/2022 has no connection with the alleged offence of money laundering.

**Findings:-**

7.1 In the instant case, the petitioner is accused of having committed offence as defined in section 3 and punishable under section 4 of The Prevention of Money Laundering Act, 2002 (**hereinafter referred to as 'PMLA'**). Under PMLA, as per Section 45(1), a person may be released on bail only under following conditions; namely:-

(i) there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail; or

(ii) he is under the age of 16 years, or is a woman, or is a sick or infirm, or is accused either on his own or along with other other co-accused of money-laundering a sum of less than one crore rupees.

7.2 In addition to the aforementioned statutory conditions for release on bail under PMLA, the Hon'ble Supreme Court, vide its judgment in **Manish Sisodia (Supra)** has laid down another ground for granting bail with regard to offences allegedly committed under PMLA. The Hon'ble Supreme Court has held in the aforementioned judgment that long incarceration of the accused in custody without trial is in violation of fundamental right of speedy trial (Article 21) and granted bail to the petitioner under PMLA on the ground that





the petitioner has been in custody for quite long period and there was remote possibility of trial being concluded soon. The Hon'ble Supreme Court in ***Manish Sisodia(supra)*** has held that the right to bail in cases of delay in trial, coupled with long period of incarceration would have to be read into section 439 of Criminal Procedure Code (**hereinafter referred to as Cr.P.C**) as well as Section 45 of PMLA. The relevant paragraph of the said judgment is produced below for ready reference:-

*“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”.*

*emphasis supplied.*





7.3 The *ratio decidendi* of the said judgment has been followed in *Prem Prakash (supra)*, *Vijay Nair (supra)*, *K.A. Najeeb (supra)*, *Javed Gulam Nabi Shaikh (supra)*, *S.K. Javed Iqbal (supra)* and *V. Senthil Balaji(supra)*.

7.4 Similarly, Hon'ble High Court of Delhi, while taking into account prolong custody and remote possibility of completion of trial has granted bail in *Amit Katiyal vs. ED Bail Application No. 2024/2024 dated 17.09.2024*; *Amit Arora vs. ED Bail Application No. 2727/2023 dated 17.09.2024*; *Amandeep Singh Dhall vs. ED Bail application No. 2761/2024* : *Chanpreet Singh Rayat vs. ED 2024 SCC Online 6264*; *Vaibhav Jain Vs. ED Bail Application No. 3301/2024*; *Pankaj Kumar Tiwari vs. ED Bail Application No. 3210/2024 dated 24.10.2024*.

7.5 Thus, as per the law, laid down in the aforementioned cases, if a person, being accused under PMLA, has been incarcerated in jail for too long without there being remote possibility of trial likely to be concluded soon, he may be released on bail, despite, the twin conditions mentioned Section 45 (1) not being met.

**The power of trial Court to grant bail on the ground of delay in trial and long incarceration:-**

7.6 During the course of hearing as discussed above, Ld. SPP for the ED, vehemently argued that only a constitutional Court can grant bail on the aforementioned additional ground that is long incarceration without the likelihood of trial being completed soon. He has heavily relied





upon the paragraph number 27 of *V. Senthil Balaji(supra)* in this regard.

7.7 At the outset, the Court will observe that the tendency to read a judgment as a statute is not a correct practice. The observation in the judgment, cannot be read as a section or clauses of legislation and it has to be read with reference to context and preceding decision on similar aspect. The powers to enforce constitutional remedies is provided under Article 32 and 226 against breach of fundamental rights and the said powers are solely vested with Hon'ble Supreme Court and High Court. At the same time, all Courts including the Trial Court are mandated to adhere to protect and enforce constitutional rights and constitutionalism perse. In-fact duty is cast upon the Trial Court to see that the constitutional rights of individual are not violated. The right to speedy trial is one of the most important facet of Article 21, which lies in exclusive domain of all trial Courts to enforce.

7.8 In this regard, it needs to be mentioned that there is difference between laying down condition by the Constitutional Court for grant of bail in addition to statutory conditions and granting of bail by the Trial Court upon fulfillment of the said conditions. Once the Constitutional Court has laid down the conditions for grant of bail in addition to the statutory conditions, the Trial Court is duty bound to comply the same while deciding bail petitions. It may be noted that as per *Article 141 of the Constitution of India*, the law declared by Apex Court shall be binding on all Courts within the territory of India. Thus, deciding the bail petition, by the





Trial Court on the ground laid down by the Supreme Court is not akin to laying down new ground by the Trial Court in addition to statutory conditions. Moreover, the Hon'ble Supreme Court in *Manish Sisodia (supra)* has categorically held that the long incarceration shall be read as a ground of bail in section 439 Cr.P.C and section 45 of PMLA, which is a authoritative and binding precedent.

7.9 Therefore, the aforesaid submission of the Ld. SPP seems to be untenable and fallacious as there is no legal bar to entertain bail petition on the ground of petitioner being in custody for quite long period with remote possibility of the trial likely to be completed in near future.

**Delay in trial and long incarceration:-**

7.10 The accused has been in judicial custody for more than a year now. The accused is in custody since 24.11.2023. Till date, copy of documents could not be supplied to accused. The case has not even reached the stage of framing of charge. Perusal of case file reveals that delay of about 5 months can be attributed to ED as instead of supplying copy of unrelieved documents as ordered on 27.05.2024, ED preferred to move to Hon'ble Delhi High Court assailing the said order. Ironically, after obtaining stay in that proceedings, the petition was withdrawn on 15.10.2024. Thus, the case was relegated back to the same position as was on 27.05.2024. From the sequence of events, it can be said that the only result achieved by the prosecuting agency was to stall the proceedings for full 5 months, while the accused kept on languishing in jail waiting for his trial to begin.





7.11 Now, at this stage, when ED has an opportunity to admit its responsibility for violating the fundamental right of speedy trial of the accused (causing delay in trial as explained above) by way of not opposing the bail, it has opted to oppose the bail with full vigor and vehemence, which is nothing short of defiance of mandate of Hon'ble Supreme Court in case titled as **Javed Gulam Nabi Shaikh (supra)**, wherein it has been held that in case of failure to protect fundamental right of an accused to have a speedy trial, the state or prosecuting agency shall not oppose the plea for bail of the accused. The said observations find explicitly recorded in **Manish Sisodia (supra)**. The Apex Court observed as under:-

*"....Recently, this Court had an occasion to consider an application for bail in the case of **Javed Gulam Nabi Shaikh v. State of Maharashtra and Another**<sup>6</sup> 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 and Others v. Public Prosecutor, High Court of Andhra Pradesh**<sup>7</sup>, **Shri Gurbaksh Singh Sibbia and Others v. State of Punjab**<sup>8</sup>, **Hussainara Khatoon and Others (I) v. Home Secretary, State of Bihar**<sup>9</sup>, **Union of India v. K.A. Najeeb**<sup>10</sup> and **Satender Kumar Antil v. Central Bureau of Investigation and Another**<sup>11</sup>. 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...”.*

*emphasis supplied.*

7.12 The state and its agency are expected to be equal votaries of liberty. Instead of channelizing their energy and resources for speedy trial, it appears that the entire thrust of the prosecuting agency is to keep the accused in detention without trial. The prosecuting agency cannot shy away from the responsibility in contributing towards speedy trial. Pre-trial detention undermines the rule of law and adversely affects the credibility of state towards its commitment in protecting the basic human rights of an Individual.

7.13 In criminal justice system, the prosecuting agency has dual role to play. The first role is as adversary where the prosecution has a right to seek conviction upon evidence against the accused. Secondly, it has also a duty to protect its citizens from prolonged Pre-trial detention. Presumption of innocence has been acknowledged throughout the world. Article 14 (2) of the International Covenant on Civil and Political Rights, 1966 and Article 11 of Universal Declaration of Human Rights acknowledge the presumption of innocence, as a cardinal principle of law, until the individual is proven guilty. Innocence of a person accused of an offence is presumed through a legal fiction, placing the onus on the prosecution to prove the guilt before the Court. Reliance is placed upon the judgment titled as *Satender Kumar Antil Vs.*

*Central Bureau of Investigation, SLP (Crl.) No. 5191 of 2021.*





7.14 The Successive decisions emanating from the Superior Courts in the context of PMLA offences have emancipated bail from the exclusive grasp of Section 45 and subjected the stringent bail conditions to the mandate of Article 21. The decision in **Manish Sisodia (supra)** and succeeding decisions of the Superior Courts have reiterated the reading of principles of liberty under Article 21 into S. 439 Cr.P.C. and S. 45 PMLA.

7.15 The Hon'ble High Court of Delhi, while granting bail to the co-accused Jawed Imam Siddique has categorically held that there is no likelihood of conclusion of trial in near future and the accused has been incarcerated for a long period. Moreover, the delay in trial cannot be contributed to the accused. The relevant extract of the order dated 13.11.2024 is reproduced below for ready reference:-

*"....25. Examining the present case in the aforementioned backdrop, it is noted that the investigation was initiated in the year 2022 and the prosecution has named 5 accused persons and cited 28 witnesses. There are 4000 pages of documents which need to be analysed.*

*26. In a situation such as the present case, where there are multiple accused persons, thousands of pages of evidence to assess, large number of witnesses to be examined, the trial is not expected to end anytime in the near future and the delay is not attributable to the accused, keeping the accused in custody by using Section 45 PMLA a tool for incarceration or as a shackle is not permissible. Liberty of an accused cannot be curtailed by Section 45 without taking all other germane considerations into account. It is also pertinent 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 accused in a money laundering case cannot be equated 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, etc.

27. The applicant has been in custody since 11.11.2023 and the trial has been stuck at the stage of supply of documents under Section 207 CrPC. The Trial Court had directed the respondent agency to supply to the applicant the list of unrelayed documents. This order was challenged by the respondent before the Court vide CRL.MC. 5091/2024 on account of which the trial could not proceed. Ironically, the respondent agency withdrew the petition on 15.10.2024. In these circumstances, it is evident that the trial would take some time to conclude.

28. Considering the totality of facts and circumstances, the fact that the main accused is out on bail, the period of custody undergone, the likelihood of supplementary challan being filed qua the main accused and that the trial has been stuck at the stage of supply of documents under Section 207 Cr.P.C., keeping in the mind the import of catena of decisions of Supreme Court discussed hereinabove, it is directed that the applicant be released on regular bail...”

*emphasis supplied.*

7.16 Further, there is not even remotest possibility for the trial to be concluded in near future as the cognizance of offence under section 3 punishable under section 4 of PMLA has been declined qua the main accused A-6 for lack of sanction. Substantial time will be required by ED to obtain sanction and which shall further contribute in delay of trial. The benefit of bail on the ground of parity is to be granted to the accused as admittedly he is neither the owner nor the purchaser of the property allegedly involved in money laundering and therefore, the role attributed to A-4 is not significant to deny the benefit of parity.

7.17 Considering the period of custody and remote possibility of the trial being completed in near future and





keeping in mind the mandate of Hon'ble Supreme Court and High Court as discussed hereinabove, it is directed that the applicant/accused namely **Kausar Imam Siddiqui** be released on regular bail on furnishing of personal bond in the tune of Rs. 1,00,000/- (Rupees One Lac only) with one surety of the like amount.

7.18 The condition which has been imposed by the Hon'ble High Court of Delhi with respect to A-3 shall be also applicable to the present accused. The said conditions are produced below:-

*(i) The applicant shall not leave Delhi/NCR without prior permission of this Court.*

*(ii) The applicant shall deposit his passport, if any, with this court.*

*(iii) The applicant shall provide his mobile number to the Investigating Officer on which he will remain available during the pendency of the trial.*

*(iv) In case of change of residential address or contact details, the applicant shall promptly inform the same to the concerned Investigating Officer as well as to this Court.*

*(v) The applicant shall not directly/indirectly try to get in touch with the prosecution witnesses or tamper with the evidence.*

*(vi) The applicant shall regularly appear before this Court during the pendency of the proceedings.*

7.19 **With these observations, application for bail stands allowed.**





7.20 Before parting, with the order, it will be in the interest of justice to draw the kind attention of the legal wing of ED regarding the directions issued by the Apex Court in ***Javed Gulam Nabi Shaikh (supra)*** as find mentioned in paragraph 7.11 of this order. It is expected of Worthy Director that he shall issue appropriate instructions to the Ld. SPP's not to oppose the bail plea where the delay of trial has been occasioned due to the conduct of ED.

7.21 Nothing mentioned herein above shall tantamount to expression of opinion on the merits of the case.

7.22 Copy of this order be given dasti to both the parties and copy of this order be uploaded on the CIS portal forthwith.

Announced in the open Court  
today i.e. 27.11.2024



-sd-  
(Jitendra Singh)  
Special Judge (PC Act) CBI-23  
(MPs/MLAs Cases),  
Rouse Avenue Court Complex,  
New Delhi,  
Special Judge (PC Act) CBI-23  
(MPs/MLAs Cases)  
Rouse Avenue District Court  
New Delhi