



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 4<sup>TH</sup> DAY OF SEPTEMBER, 2024**

**BEFORE**

**THE HON'BLE MR JUSTICE S VISHWAJITH SHETTY**

**CRIMINAL PETITION NO. 7787 OF 2024**

**C/W**

**CRIMINAL PETITION NO.7811/2024,**  
**7809/2024, 7805/2024**

**IN CRL.P.No.7787/2024:**

**BETWEEN:**

SRI BHARAT JAYAWANT KURANE  
S/O JAYAWANT  
AGED ABOUT 42 YEARS  
R/AT HOUSE NO.348/2  
SAMBHAJI GALLI, MAHADWAR  
ROAD, HUKKERI, BELAGUAM  
DISTRICT - 590 001.

AS INDICATED IN SESSIONS  
COURT AS SRI BHARAT KURANE  
S/O JYAWANTH KURNE  
AGED ABOUT 40 YEARS  
R/AT 348/2, DHARAMAVEER  
SAMBHAJI GALLI, MAHADWAR  
ROAD, BELAGAUM  
DISTRICT - 590 001.

AS INDICATED IN CHARGE SHEET AS  
SRI BHARAT KURANE @ BARAT KURANE  
@ UNCLE ALIS TOMOTER  
S/O JAYWANTH KURNE  
R/AT 348/2, DHARMAVEER  
SAMBHAHI GALLI, MAHADWAR  
ROAD, BELGAUM  
DISTRICT - 590 001.

...PETITIONER

(BY SRI AMAR CORREA, ADV.)





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CRL.P No. 7787 of 2024  
C/W CRL.P NO.7811/2024,  
7809/2024, 7805/2024**

**AND:**

STATE OF KARNATAKA  
BY RAJARAJESHWARI NAGAR  
POLICE STATION  
BENGALURU - 560 098  
REP BY SPECIAL PUBLIC PROSECUTOR  
HIGH COURT OF KARNATAKA  
BENGALURU - 560 001.

...RESPONDENT

(BY SRI ASHOK N. NAIK, SPL. P.P.)

THIS CRL.P IS FILED U/S 439 CR.PC PRAYING TO ALLOW THIS PETITION AND RELEASE THE PETITIONER ON BAIL WHO IS ARRAYED AS ACCUSED NO.6, IN SPL.C.C.NO.872/2018, (ARISING OUT OF CR.NO.221/2017 OF THE RESPONDENT RAJARAJESHWARI NAGAR POLICE) PENDING ON THE FILE OF THE PRL. CITY CIVIL AND SESSINS JUDGE, BENGALURU (CCH-1) FOR THE OFFENCE P/U/S 302, 120B, 114, 118, 109, 201, 203, 204 AND 35 OF IPC AND SEC. 25(1), 25(1B), 27(1) OF INDIAN ARMS ACT AND SEC. 3(1)(i), 3(2), 3(3), 3(4) OF KOCA ACT, WITH REASONABLE CONDITIONS AS DEEMED FIT BY THIS HON'BLE COURT.

**IN CRL.P.No.7811/2024:**

**BETWEEN:**

SRI SRIKANTH PANGARKAR  
S/O JAGANNATH  
AGED ABOUT 48 YEARS  
R/AT FLAT NO.19  
DYANESHWAR NAGAR  
GHARKEDHA AREA  
AURANGABAD  
MAHARASTRA - 431 009.

...PETITIONER

(BY SRI ARUNA SHYAM, SR. COUNSEL FOR  
MS. DIVYA R.B, ADV.)

**AND:**

STATE OF KARNATAKA  
RAJARAJESHWARI NAGAR P.S,



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(BY SPECIAL INVESTIGATION TEAM)  
BY SPL. PUBLIC PROSECUTOR  
HIGH COURT, BENGALURU - 560 001.

...RESPONDENT

(BY SRI ASHOK N. NAIK, SPL. P.P)

THIS CRL.P FILED U/S.439 CR.P.C PRAYING TO DIRECT THE RESPONDENT POLICE TO ENLARGE THE PETITIONER/ACCUSED NO.16 ON BAIL IN CONNECTION WITH CRIME NO.221/2017 REGISTERED BY THE RAJARAJESHWARINAGAR POLICE STATION, BENGALURU CITY FOR THE OFFENCE P/US/ 302,120-B,114,118,109,201,203,204,35 OF IPC AND SEC.25(1),25(1)(B) AND 27(1) OF INDIAN ARMS ACT AND SEC.3(1)(i),3(2),3(3),3(4) OF KARNATAKA CONTROL OF ORGANIZED CRIME ACT 2000 PENDING BEFORE THE PRINCIPAL CITY CIVIL AND SESSIONS JUDGE, AT BENGALURU.

**IN CRL.P.No.7809/2024:**

**BETWEEN:**

SRI SUJITH KUMAR @  
SUJITH S.R @ SANJAY @  
PRAVEEN @ MANJUNATH @ GOPINATH  
S/O RANGASWAMY S.B  
AGED ABOUT 42 YEARS  
NEAR CIVIL BUS STAND  
KAPPANAHALLI VILLAGE  
SHIKARIPURA TALUK  
SHIMOGA - 577 427.

...PETITIONER

(BY SRI ARUNA SHYAM, SR. COUNSEL FOR  
MS. DIVYA R.B, ADV.)

**AND:**

STATE OF KARNATAKA  
RAJARAJESHWARI NAGAR P.S  
(BY SPECIAL INVESTIGATION TEAM)  
BY SPL. PUBLIC PROSECUTOR  
HIGH COURT, BENGALURU - 560 001.

...RESPONDENT

(BY SRI ASHOK N. NAIK, SPL.P.P)



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THIS CRL.P IS FILED U/S.439 CR.P.C PRAYING TO DIRECT THE RESPONDENT POLICE TO ENLARGE THE PETITIONER/ACCUSED NO.13 ON BAIL IN CONNECTION WITH CRIME NO.221/2017 REGISTERED BY THE RAJARAJESHWARINAGAR POLICE STATION, BENGALURU CITY FOR THE OFFENCE P/US/ 302,120-B,114,118,109,201,203,204,35 OF IPC AND SEC.25(1),25(1)(B) AND 27(1) OF INDIAN ARMS ACT AND SEC.3(1)(i),3(2),3(3),3(4) OF KARNATAKA CONTROL OF ORGANIZED CRIME ACT 2000 PENDING BEFORE THE PRINCIPAL CITY CIVIL AND SESSIONS JUDGE, AT BENGALURU.

**IN CRL.P.No.7805/2024:**

**BETWEEN:**

SRI SUDHANVA GONDHALEKAR  
@ PANDEJI @ PANDE @ GUJJAR  
@ MAHESH PATIL  
S/O SUDHIR SANKAR GONDHALEKAR  
AGED ABOUT 43 YEARS  
R/A, FLAT NO. 424, NEAR SIDDHIVINAYAK  
TEMPLE, KARANJIPET, SATARA  
MAHARASTRA - 415 001.

...PETITIONER

(BY SRI ARUNA SHYAM, SR. COUNSEL FOR  
MS. DIVYA R.B, ADV.)

**AND:**

STATE OF KARNATAKA  
RAJARAJESHWARI NAGAR P.S  
(BY SPECIAL INVESTIGATION TEAM)  
BY SPL. PUBLIC PROSECUTOR  
HIGH COURT, BENGALURU - 560 001.

...RESPONDENT

(BY SRI ASHOK N. NAIK, SPL. P.P)

THIS CRL.P IS FILED U/S.439 CR.P.C BY THE ADVOCATE FOR THE PETITIONER PRAYING THAT THIS HONOURABLE COURT MAY BE PLEASED TO DIRECT THE RESPONDENT POLICE TO ENLARGE THE PETITIONER/ACCUSED NO.9 ON BAIL IN CONNECTION WITH CRIME NO.221/2017 REGISTERED BY THE RAJARAJESHWARINAGAR POLICE STATION, BENGALURU CITY FOR THE OFFENCE P/US/ 302,120-B,114,118,109,201,203,204,35 OF IPC AND SEC.25(1),25(1)(B) AND



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27(1) OF INDIAN ARMS ACT AND SEC.3(1)(i),3(2),3(3),3(4) OF KARNATAKA CONTROL OF ORGANISED CRIME ACT 2000 PENDING BEFORE THE PRINCIPAL CITY CIVIL AND SESSIONS JUDGE, AT BENGALURU.

THESE PETITIONS, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE S VISHWAJITH SHETTY

**ORAL ORDER**

1. Accused nos.6, 9, 13 & 16 in Special.C.C.No.872/2018 pending before the Court of Prl. City Civil & Sessions Judge, Bengaluru, arising out of Crime No.221/2017 registered by Rajarajeshwari Nagar Police Station, Bengaluru City, for the offences punishable under Sections 302, 120B, 118, 203 & 35 IPC, Sections 25(1) & 27(1) of the Indian Arms Act, 1959, and Sections 3(1)(i), 3(2), 3(3) & 3(4) of the Karnataka Control of Organized Crimes Act, 2000 (for short 'COCA Act'), are before this Court under Section 439 Cr.PC seeking regular bail.

2. Heard the learned Counsel for the parties.

3. Facts leading to filing of these petitions as revealed from the records are, based on the complaint filed by CW-1, the Station House Officer of Rajarajeshwari Nagar Police Station, Bengaluru, had registered FIR in Crime No.221/2017 against



unknown persons for the offences punishable under Section 302 IPC and Section 25 of the Arms Act.

4. Complainant/Kavitha Lankesh - CW-1 had averred in the complaint that deceased Gouri Lankesh, who was her sister, was a journalist and a progressive thinker and was residing alone in a house at Rajarajeshwari Nagar. She was often visiting the house of the complainant to meet her mother Indira Lankesh. A week prior to the date of the complaint, deceased Gouri Lankesh had come to the house of the complainant and informed her that somebody was moving around her house in a suspicious manner. On 05.09.2017 at about 2.00 p.m., complainant had gone to the office of the deceased at Gandhi Bazaar and had met her. At about 8.20 p.m., on 05.09.2017, when the complainant and her mother Indira Lankesh were at home, somebody telephoned her and informed that something had happened to Gouri Lankesh in her house. Immediately, complainant went near the house of Gouri Lankesh and saw that her car bearing registration No.KA-5/MR-3782 was parked in front of the gate, which was partially open. The complainant saw that her sister was lying in a pool of blood and besides her



body cartridge pieces were found. She suspected that somebody had shot dead her sister and escaped. Accordingly, she approached the police at about 10.00 p.m. on 05.09.2017 and lodged a complaint, which had resulted in registering FIR in Crime No.221/2017 against unknown persons.

5. During the course of investigation, accused no.6 was produced before the Trial Court and remanded to judicial custody on 08.08.2018. Accused no.9 was produced before the Trial Court and remanded to judicial custody on 07.09.2018. Accused no.13 was produced before the Trial Court and remanded to judicial custody on 31.05.2018, and accused no.16 was produced before the Trial Court and remanded to judicial custody on 16.09.2018. Bail application filed by them before the Trial Court was rejected. Therefore, they are before this Court.

6. Learned Counsel appearing for accused no.6 submits that accused nos.2 & 3 are the alleged assailants in the present case. The allegation against accused no.6 is that he had conspired with the other accused to commit the murder of deceased Gouri Lankesh. It is also alleged that accused no.6



had facilitated to transport accused nos.2 & 3 on 02.09.2017 from Nelamangala Tollgate to Kumbalagodu for the purpose of staying in the house of accused no.11, and after the crime was committed, he had facilitated for transport of accused nos.2 & 3 from Kumbalagodu to Nelamangala Tollgate. He submits that accused no.6 was implicated in two other cases after he was arrested in the present case and in one case, he has been granted bail by the Bombay High Court. He has placed reliance on the judgments of the Hon'ble Supreme Court in the case of **JAVED GULAM NABI SHAIKH VS STATE OF MAHARASHTRA & ANOTHER - 2024 SCC OnLine SC 1693.**

7. Learned Senior Counsel Sri Aruna Shyam appearing on behalf of accused nos.9, 13 & 16 submits that the allegations against these accused is also about conspiring with the other accused persons to commit the murder of deceased Gouri Lankesh. Accused no.9 allegedly had collected weapons and arranged vehicles. Accused no.16 allegedly had attended a training camp and also had handed over fire arms to accused no.10, which was subsequently used in committing the crime. He submits that accused nos.5, 7, 11 & 17 as against whom





similar allegations are found in the charge sheet, have been granted regular bail by this Court on the ground of their long incarceration. He submits that the order passed by this Court granting bail to accused no.11 in Crl.P.No.7963/2023 has been unsuccessfully challenged by the State and the defacto complainant before the Hon'ble Supreme Court. In support of his arguments, he has placed reliance on the judgment of the Hon'ble Supreme Court in the case of **ANKUR CHAUDHARY VS STATE OF MADHYA PRADESH** - Special Leave Petition No.4648/2024 disposed of on 28.05.2024.

8. Learned Special Public Prosecutor who has opposed the petition does not seriously dispute the submissions made by the learned Counsel for the petitioners. He also does not dispute that the allegations found as against the petitioners and accused nos.5, 7, 11 & 17 who have been enlarged on bail by this Court in Crl.P.No.927/2023, Crl.P.No.9417/2023, Crl.P.No.7963/2023, Crl.P.No.9465/2023, are almost similar. He submits that the Hon'ble Supreme Court while dismissing the petition filed by the State challenging the order passed by this Court in Crl.P.No.7963/2023, wherein accused no.11 was



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granted regular bail, has made certain observations and liberty is granted to the State to apply for cancellation of bail.

9. Undisputedly, petitioners herein were not present at the spot of crime on the date of incident. Accused nos.2 & 3 are the alleged assailants of deceased Gouri Lankesh. The allegation against the petitioners is about conspiring with the other accused persons and also facilitating the commission of crime by arranging vehicles, fire arms, etc. Almost similar allegations are found even as against accused nos.5, 7, 11 & 17 who have been granted regular bail by this Court in CrI.P.No.927/2023, CrI.P.No.9417/2023, CrI.P.No.7963/2023, CrI.P.No.9465/2023. Accused nos.5, 7, 11 & 17 also had antecedents which are similar to the antecedents of the petitioners herein. Petitioners herein are all in custody for the last six years. Considering the long period of incarceration by accused nos.5, 7, 11 & 17, placing reliance on the judgments in the case of **PRAVEEN RATHORE VS STATE OF RAJASTHAN & ANOTHER - 2023 SCC Online SC 1268, STATE OF MAHARASHTRA VS RITESH - 2001(4) SCC 224, KALYAN CHANDRA SARKAR VS RAJESH RANJAN @ PAPPU YADAV - 2004(7) SCC 528, ANGELA HARISH SONTAKKE VS STATE OF MAHARASHTRA - (2021)3 SCC 723,**



**SAGAR TATYARAM GORKHE VS STATE OF MAHARASHTRA - (2021)3 SCC 725, UNION OF INDIA VS K.A.NAJEEB - (2021)3 SCC 713, MOHD. MUSLIM ALIAS HUSSAIN VS STATE (NCT OF DELHI) - 2023 SCC OnLine SC 352, INDRANI PRATIM MUKERJEA VS CENTRAL BUREAU OF INVESTIGATION - 2022 SCC OnLine SC 695, SATENDAR KUMAR ANTIL VS CENTRAL BUREAU OF INVESTIGATION - (2022)10 SCC 51, JAVED GULAM NABI SHAIKH's case supra, this Court has enlarged them on regular bail.**

10. The Hon'ble Supreme Court in the case of **JALALUDDIN KHAN VS UNION OF INDIA - 2024 SCC OnLine SC 1945**, in paragraph 21, it is observed as under:

"21. Before we part with the Judgment, we must mention here that the Special Court and the High Court did not consider the material in the charge sheet objectively. Perhaps the focus was more on the activities of PFI, and therefore, the appellant's case could not be properly appreciated. When a case is made out for a grant of bail, the Courts should not have any hesitation in granting bail. The allegations of the prosecution may be very serious. But, the duty of the Courts is to consider the case for grant of bail in accordance with the law. "Bail is the rule and jail is an exception" is a settled law. Even in a case like the present case where there are stringent conditions for



the grant of bail in the relevant statutes, the same rule holds good with only modification that the bail can be granted if the conditions in the statute are satisfied. The rule also means that once a case is made out for the grant of bail, the Court cannot decline to grant bail. If the Courts start denying bail in deserving cases, it will be a violation of the rights guaranteed under Article 21 of our Constitution."

11. In the case of **MANISH SISODIA VS DIRECTORATE OF ENFORCEMENT - 2024 SCC OnLine 1920**, the Hon'ble Supreme Court in paragraphs 28, 29, 37, 39, 49, 50, 51, 53 & 54, has observed as under:

"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 v. State of Punjab*, (1977) 4 SCC 291, to emphasise that the right to speedy trial is a fundamental right within the broad scope of Article 21 of the Constitution. In *Vijay Madanlal Choudhary* (supra), this Court while highlighting the evil of economic offences like money laundering, and its adverse impact on the society and citizens, observed that arrest infringes the fundamental right to life. This Court referred to Section 19 of the PML Act, for the in-built safeguards to be adhered to by the authorised officers to ensure fairness, objectivity and accountability. [See also *Pankaj Bansal v. Union of India*, 2023 SCC



OnLine SC 1244] *Vijay Madanlal Choudhary* (supra), also held that Section 436A of the Code can apply to offences under the PML Act, as it effectuates the right to speedy trial, a facet of the right to life, except for a valid ground such as where the trial is delayed at the instance of the accused himself. In our opinion, Section 436A should not be construed as a mandate that an accused should not be granted bail under the PML Act till he has suffered incarceration for the specified period. This Court, in *Arnab Manoranjan Goswami v. State of Maharashtra*, (2021) 2 SCC 427, held that while ensuring proper enforcement of criminal law on one hand, the court must be conscious that liberty across human eras is as tenacious as tenacious can be.

27. The appellant - Manish Sisodia has argued that given the number of witnesses, 294 in the prosecution filed by the CBI and 162 in the prosecution filed by the DoE, and the documents 31,000 pages and 25,000 pages respectively, the fact that the CBI has filed multiple charge sheets, the arguments of charge have not commenced. The trial court has allowed application of the accused for furnishing of additional documents, which order has been challenged by the prosecution under Section 482 of the Code before the High



Court. It was stated at the Bar, on behalf of the prosecution that the said petition under Section 482 will be withdrawn. It was also stated at the Bar, by the prosecution that the trial would be concluded within next six to eight months.

28. Detention or jail before being pronounced guilty of an offence should not become punishment without trial. If the trial gets protracted despite assurances of the prosecution, and it is clear that case will not be decided within a foreseeable time, the prayer for bail may be meritorious. While the prosecution may pertain to an economic offence, yet it may not be proper to equate these cases with those punishable with death, imprisonment for life, ten years or more like offences under the Narcotic Drugs and Psychotropic Substances Act, 1985, murder, cases of rape, dacoity, kidnaping 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."





29. A perusal of the aforesaid would reveal that this Court was concerned about the prolonged period of incarceration suffered by the appellant. After considering various earlier pronouncements, this Court emphasised that the right to speedy trial is a fundamental right within the broad scope of Article 21 of the Constitution. Relying on *Vijay Madanlal Choudhary v. Union of India*<sup>3</sup>, this Court observed that Section 436A Cr. P.C. should not be construed as a mandate that an accused should not be granted bail under the PMLA till he has suffered incarceration for the specified period. This Court recorded the assurance given by the prosecution that they shall conclude the trial by taking appropriate steps within next 6-8 months. This Court, after recording the said submissions, granted liberty to the appellant to move a fresh application for bail in case of change in circumstances or in case the trial was protracted and proceeded at a snail's pace in next three months. This Court observed that if any application was filed, the same would be considered by the trial court on merits without being influenced by the dismissal of the earlier bail applications including its own judgment. It further observed that the observations made regarding the right to speedy trial will be taken into consideration.

37. Insofar as the contention of the learned ASG that since the conditions as provided under Section 45 of the PMLA are not satisfied, the appellant is not entitled to grant of bail is concerned, it will be apposite to refer to the first order of this Court. No doubt that



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this Court in its first order in paragraph 25, after recapitulating in paragraph 24 as to what was stated in the charge-sheet filed by the CBI against the appellant, observed that, in view of the aforesaid discussion, the Court was not inclined to accept the prayer for grant of bail at that stage. However, certain paragraphs of the said order cannot be read in isolation from the other paragraphs. The order will have to be read in its entirety. In paragraph 28 of the said order, this Court observed that 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 Cr. P.C. and Section 45 of the PMLA. The Court held 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. It further observed that when the trial is not proceeding for reasons not attributable to the accused, the court, unless there are good reasons, would be guided to exercise the power to grant bail. The Court specifically observed that this would be true where the trial would take years. It could thus clearly be seen that this Court, in the first round of litigation between the parties, has specifically observed that in case of delay coupled with incarceration for a long period and depending on the nature of the allegations, the right to bail will have to be read into Section 45 of PMLA.



39. In the light of the specific observations of this Court in paragraph 28 of the first order, we are not inclined to accept the submission of the learned ASG that the provisions of Section 45 of the PMLA would come in the way of consideration of the application of the appellant for grant of bail.

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*<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 v. Public Prosecutor, High Court of Andhra Pradesh*<sup>7</sup>, *Shri Gurbaksh Singh Sibbia v. State of Punjab*<sup>8</sup>, *Hussainara Khatoon (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*<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.”

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."

12. In the case of **PREM PRAKASH VS UNION OF INDIA THROUGH THE DIRECTORATE OF ENFORCEMENT - 2024 SCC OnLine SC 2270**, in paragraph 12, the Hon'ble Supreme Court has observed as under:

"12. Independently and as has been emphatically reiterated in *Manish Sisodia (II)* (supra) relying on *Ramkripal Meena v. Directorate of Enforcement* (SLP (CrI.) No. 3205 of 2024 dated 30.07.2024) and *Javed Gulam Nabi Shaikh v. State of Maharashtra*, 2024 SCC OnLine SC 1693, where the accused has already been in custody for a considerable number of months and there being no likelihood of conclusion of trial within a short span, the rigours of Section 45 of PMLA can be suitably relaxed to afford conditional liberty. Further, *Manish Sisodia (II)* (supra) reiterated the holding in *Javed Gulam Nabi Sheikh* (Supra), that keeping persons behind the bars for unlimited periods of time in the



hope of speedy completion of trial would deprive the fundamental right of persons under Article 21 of the Constitution of India and that prolonged incarceration before being pronounced guilty ought not to be permitted to become the punishment without trial. In fact, *Manish Sisodia (II)* (Supra) reiterated the holding in *Manish Sisodia (I) v. Directorate of Enforcement* (judgment dated 30.10.2023 in Criminal Appeal No. 3352 of 2023) where it was held as under:—

“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, kidnaping 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."

It is in this background that Section 45 of PMLA needs to be understood and applied. Article 21 being a higher constitutional right, statutory provisions should align themselves to the said higher constitutional edict."

13. In the case of **SHEIKH JAVED IQBAL @ ASHFAQ ANSARI @ JAVED ANSARI VS STATE OF UTTAR PRADESH - 2024 SCC OnLine SC 1755**, the Hon'ble Supreme Court in paragraph 32, has observed as under:

"32. This Court has, time and again, emphasized that right to life and personal liberty enshrined under Article 21 of the Constitution of India is overarching and sacrosanct. A constitutional court cannot be restrained from granting bail to an accused on account of



restrictive statutory provisions in a penal statute if it finds that the right of the accused-undertrial under Article 21 of the Constitution of India has been infringed. In that event, such statutory restrictions would not come in the way. Even in the case of interpretation of a penal statute, howsoever stringent it may be, a constitutional court has to lean in favour of constitutionalism and the rule of law of which liberty is an intrinsic part. In the given facts of a particular case, a constitutional court may decline to grant bail. But it would be very wrong to say that under a particular statute, bail cannot be granted. It would run counter to the very grain of our constitutional jurisprudence. In any view of the matter, *K.A. Najeeb* (supra) being rendered by a three Judge Bench is binding on a Bench of two Judges like us.

14. The order passed by this Court in Crl.P.No.7963/2023 enlarging accused no.11 on regular bail was challenged by the State and the defacto complainant unsuccessfully. The Hon'ble Supreme Court while dismissing the special leave petitions filed by the State and the defacto complainant has taken note of the fact that the prosecution is still required to examine about 100 charge sheet witnesses and it is in this background, the Hon'ble Supreme Court has refused to interfere with the order passed by this Court.





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15. Under the circumstances, the prayer made by the petitioners for grant of regular bail who stand almost on the same footing along with accused nos.5, 7, 11 & 17 requires to be answered affirmatively. Accordingly, the following order:

16. The petitions are allowed. The petitioners are directed to be enlarged on bail Spl.C.C.No.872/2018 pending before the Court of Prl. City Civil & Sessions Judge, Bengaluru, arising out of Crime No.221/2017 registered by Rajarajeshwari Nagar Police Station, Bengaluru City, for the offences punishable under Sections 302, 120B, 118, 203, 35 IPC, Sections 25(1) & 27(1) of the Indian Arms Act, 1959, and Sections 3(1)(i), 3(2), 3(3) & 3(4) of the Karnataka Control of Organized Crimes Act, 2000, subject to the following conditions:

a) Petitioners shall execute personal bond for a sum of Rs.1,00,000/- each with two sureties for the likesum, to the satisfaction of the jurisdictional Court;

b) The petitioners shall appear regularly on all the dates of hearing before the Trial Court unless the Trial Court exempts their appearance for valid reasons;



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c) The petitioners shall not directly or indirectly threaten or tamper with the prosecution witnesses;

d) The petitioners shall not involve in similar offences in future;

e) The petitioners shall not leave the jurisdiction of the Trial Court without permission of the said Court until the case registered against him is disposed off.

f) In the event petitioners violate any one of the aforesaid bail conditions, prosecution is at liberty to seek cancellation of their bail.

**Sd/-  
(S VISHWAJITH SHETTY)  
JUDGE**

KK