

**IN THE HIGH COURT AT CALCUTTA  
CRIMINAL REVISIONAL JURISDICTION  
APPELLATE SIDE**

The Hon'ble **JUSTICE SUVRA GHOSH**

CRM (SB) 72 of 2024

Manik Bhattacharya  
v/s.

Enforcement Directorate Kolkata Zonal Office-II

The petitioner in person:

Mr. Manik Bhattacharya

For the Enforcement Directorate:

Mr. Phiroze Edulji, Adv.,  
Ms. Anamika Pandey, Adv.

Judgment delivered on:

12-09-2024

**SUVRA GHOSH, J. :-**

- 1) The petitioner is the erstwhile President of the West Bengal Board of Primary Education and a member of the Legislative Assembly. He was arrested in connection with M.L. case no. 13 of 2022 on 10<sup>th</sup> October, 2022 for alleged commission of offence under section 3 read with section 70 and punishable under section 4 of The Prevention of Money Laundering Act, 2002 (hereinafter referred to as the Act of 2002), pending before the learned Judge in Charge (CBI) Court No. 1 cum Special Judge, Prevention of Money Laundering Act, 2002, Bichar Bhavan, Kolkata and is in custody till date.

2) The petitioner appearing in person has referred to the prisoner's petition filed by him before the learned trial Court on 8<sup>th</sup> March, 2024 and has submitted that he was arrested on the basis of a letter disclosing an allegation against him that he received Rs. 7,00,000/- from 44 candidates and also the statement recorded under section 50 of the Act of 2002 of one of the co-accused Tapas Kumar Mondal. The petitioner's prayer for bail was turned down by this Court on two occasions in CRM (SB) 82 of 2023 and CRM (SB) 182 of 2023 on 26<sup>th</sup> June, 2023 and 16<sup>th</sup> November, 2023 respectively. The petitioner has renewed his prayer for bail on the ground of subsequent developments in the case.

3) The argument canvassed by the petitioner is as follows:-

The opposite party has furnished copies of all relied upon documents under section 208 of the Code of Criminal Procedure to the petitioner on 17<sup>th</sup> June, 2023 as claimed by the opposite party but the TET result sheet of the list of 325 candidates as submitted by Tapas Kumar Mondal were not made over to him. Scrutiny of the said list is necessary in view of the fact that since the result of TET is published through N.I.C. any change made therein shall result in discrepancy in the results published. In the list of 325 candidates, there is reiteration of the names of 100 candidates which brings down the list to 225. The Enforcement Directorate submitted report comprising 12,000 documents and cognizance of the same was taken by the learned trial Court on the same date, i.e., on 7<sup>th</sup> December, 2022. It is inconceivable

that the learned trial Court perused the entire report including the documents on that date prior to taking cognizance of the report.

- 4) The provision of section 19(1) of the Act of 2002 was not complied with at the time of his arrest. The petitioner or his learned counsel was not informed of the grounds of his arrest. The petitioner has referred to the confrontational proceeding wherein Tapas Kumar Mondal and Kuntal Ghosh were questioned in presence of each other. Question 5 of the confrontation and the answer thereto demonstrate that as per advice of Kuntal Ghosh, Tapas Kumar Mondal gave Kuntal Ghosh a list of 325 candidates of TET-2014 and cleared all of them for appointment with the help of this petitioner and others. Kuntal Ghosh charged a total of Rs. 3.25 Crores @ Rs. 1 lakh per candidate from Tapas Kumar Mondal. The said fact has been admitted by both Kuntal Ghosh and Tapas Kumar Mondal. Therefore proceeds of crime passed on to Kuntal Ghosh and no money was paid to the petitioner who was in no manner connected with the incident. The list of successful candidates include 150 names in duplicate and 12 names in triplicate, meaning thereby, that 162 candidates are in fact repetitive and non-existent. 96 candidates did not qualify and remaining 77 candidates passed initially. So there was no malpractice in the entire process. Two candidates who initially did not succeed were subsequently made to pass by Court order. The confrontational proceeding which was held in presence of officers of the E.D. does not indicate that proceeds of crime were made over to the petitioner. The break-up of payment is also part of the record. Though the opposite party has alleged that the petitioner

gave Rs. 2 Crores to Ghoraiakshetra S.K.B. Memorial High School, Kaliganj, Nadia, only an amount of Rs. 1 Lakh was donated to the school by the petitioner's son.

- 5) A malicious and frivolous proceeding has been drawn up against the petitioner, thereby depriving the public at large from his service as an elected representative of the people. Though the opposite party has submitted that charge will be framed against the petitioner soon, it is a fact that investigation is yet to be completed. The petitioner had a professional career for more than 40 years and his hard-earned money including his retiral benefits have been attached by the opposite party in course of investigation. The petitioner is suffering from several ailments including eye problem which cannot be effectively taken care of while in custody.
- 6) The letter sent to the petitioner by unemployed youth of North Bengal on 22<sup>nd</sup> July, 2022 on the anvil of which he was arrested does not contain any allegation against him. Not a single penny was recovered from the possession/house of the petitioner and he was taken into custody only on the basis of the statement of Tapas Kumar Mondal and the letter sent to him. His name has not appeared as recipient of the money in course of investigation. Relying upon section 2(1) (u) of the Act of 2022, the petitioner has submitted that proceeds of crime is the foundation of the offence and no offence has been made out against him under section 3 of the Act. All the documents relied upon by the opposite party were also not supplied to him in order to enable him to defend his cause. The petitioner undertakes to assist the opposite party

in unveiling the truth and to co-operate in investigation of the case. The petitioner has placed reliance on the authority in Vijay Madan Lal Chaudhury and Others v/s. Union of India and others reported in 2022 SCC OnLine Sc 929 wherein the Hon'ble Supreme Court has recorded the submission made by the accused therein that section 24 of the Act of 2002 provides for rebuttable presumption and therefore, the accused has an opportunity to lead evidence so as to displace the presumption against him. The two conditions that are required to be satisfied for the presumption under section 24(a) to apply are first, person should be charged with an offence of money-laundering and second, there should be proceeds of crime. It is only when both the conditions are satisfied that it can be said that the presumption will operate against the accused. The Hon'ble Supreme Court, in the said authority, has held that section 24 of the Act has reasonable nexus with the purposes and objects sought to be achieved by the 2002 Act and cannot be regarded as manifestly arbitrary or unconstitutional.

- 7) In dealing with the twin conditions provided under section 45 of the 2002 Act, the Hon'ble Supreme Court has observed that it cannot be said that the conditions impose absolute restraint on grant of bail. The discretion vests in the Court which is not arbitrary or irrational but judicial, guided by the principles of law as provided under section 45.
- 8) The petitioner has placed reliance on the following authorities in support of his contention.

1. Pankaj Bansal vs Union of India reported in 2023 INSC 866

2. Arvind Kejriwal vs Directorate of Enforcement reported in 2024 INSC 512
3. Madhu Limaye and others v/s Unknown reported in (1969) 1 SCC 292
4. Prabir Purakaystha vs NCT of Delhi reported in 2024 INSC 414
5. Ram Govind Upadhyay vs Sudarshan Singh & others reported in (2002) 3 SCC 598
6. Deepak Yadav vs State of Uttar Pradesh reported in (2022) 8 SCC 559
7. Parvathi Kollur vs State by Directorate of Enforcement reported in 2022 SCC OnLine SC 1975
8. Sunil Kumar Agarwal vs Directorate of Enforcement reported in SLP(Crl) No. 5890/2024
9. Sanjay Jain vs Directorate of Enforcement reported in 2024 SCC OnLine Del 1656
10. Vijay Agarwal through Parokar vs Directorate of Enforcement reported in 2023 SCC OnLine Del 3176
11. Pavana Dibbur vs Enforcement Directorate reported in 2023 SCC OnLine SC 1586
12. Kashmira Singh vs State of Madhya Pradesh reported in (1952) 1 SCC 275: 1952 SCC OnLine SC 19
13. Haricharan Kurmi & Anr. vs State of Bihar reported in 1964 SCC OnLine SC 28
14. Sri Hemant Soren vs Directorate of Enforcement reported in B.A NO. 4892 of 2024 before the Hon'ble High Court at Ranchi-upheld by SC in SLP(Crl) No. 9599/2024
15. K. Govindaraj vs Union of India, reported in W.P No. 5402 of 2024 before the The Hon'ble Division Bench at Madras High Court
16. Kalyan Chandra Sarkar vs Rajesh Ranjan reported in (2004) 7 SCC 528

17. Basanta Panda vs State of Orissa reported in BLAPL NO. 8126 of 2020
  18. Vanshika Yadav vs Union of India reported in 2024 INSC 568
  19. Union of India vs K.A Najeeb reported in (2021) 3 SCC 713
  20. Manish Sisodia vs Directorate of Enforcement reported in 2024 INSC 595
  21. Ramkripal Meena vs Directorate of Enforcement reported in SLP(Crl) No. 3205/2024
  22. Javed Gulam Nabi Shaikh vs State of Maharashtra reported in Criminal Appeal No. 2787 of 2024
  23. Sheikh Javed Iqbal vs State of Uttar Pradesh reported in 2024 INSC 534
  24. Ranjitsing Brahmajeetsing Sharma vs State of Maharashtra reported in (2005) 5 SCC 294
  25. Vijay Madanlal Choudhary vs Union Of India reported in 2022 SCC OnLine SC 929
- 9) Vehemently opposing the prayer of the petitioner, learned counsel for the E.D. has submitted as follows:-

No subsequent event as stated by the petitioner has occurred requiring consideration of the bail of the petitioner afresh. Relying upon extracts of two medical journals in respect of heart by-pass surgery, learned counsel has pointed out that a thirty years follow up study comprises almost complete life cycle after CABG surgery. Most people get a good fifteen years after heart by-pass before needing another intervention. Therefore the plea of the petitioner with regard to his health and life expectation of another two years is not correct.

- 10) In an order passed on 9<sup>th</sup> July, 2024 in W.P.A. 16278 of 2022, a co-ordinate Bench of this Court has referred to a supplementary affidavit filed by the State before the Court which states that OMR sheets of TET 2014 were scrapped as per resolution of the ad-hoc committee and that of TET 2017 were scrapped without any resolution of the Board and as per verbal instruction of the then President (the petitioner herein). The money trail as revealed in course of investigation leads to the accounts in the names of the petitioner's brothers under control of the petitioner. The supplementary prosecution complaint demonstrates a chart indicating such money trail. It has been admitted by the petitioner that joint bank accounts were not disclosed before the investigating agency where his wife and son were the second holders of the accounts and the principal holders were other persons.
- 11) No explanation has been offered by the petitioner as to why original admit cards of candidates were found in the petitioner's house.
- 12) Learned counsel has taken this Court to paragraph 3f of the fourth supplementary complaint which demonstrates that co-accused Sujoy Krishna Bhadra used to visit the office of the petitioner for work related to selection/appointment of candidates in lieu of money and Tapas Kumar Mondal also sent a list of 325 candidates of TET 2014 to the petitioner through Shri Bhadra for getting them illegally qualified. An amount of Rs. 3.25 crores was collected by Shri Kuntal Ghosh from Sri Tapas Kumar Mondal for the purpose. The said fact is revealed from the statement of Tapas Kumar Mondal recorded under section 50 of the 2002 Act. The whatsapp chats extracted from the seized mobile phone



of the petitioner shows connection between the petitioner and Sujoy Krishna Bhadra who sent details of many TET 2014 candidates to the petitioner from his mobile phone along with other details like mark sheets, admit cards, etc., since 2018. The fact has also been accepted by Sujoy Krishna Bhadra. Learned counsel has taken this Court to the statements of various witnesses including Asfaque Alam, Ruhul Amin, Rajib Kundu, Biswabrata Das, Sudip Ganguly, Panna Lal Bhattacharya, Hira Lal Bhattacharya and wife of Hiral Lal Bhattacharya implicating the petitioner in the alleged offence. In reply to the query of the petitioner as to why the LTI of Hira Lal Bhattacharya was taken in his statement under section 50 despite the fact that he is an Associate Professor, learned counsel for the E.D. has submitted that since Hira Lal Bhattacharya is suffering from parkinsons disease, he put his LTI in his statement which was countersigned by his wife Sanchita Bhattacharjee in whose presence the statement was recorded.

- 13) Learned counsel has further submitted that though the petitioner has alleged that his arrest was not in conformity with section 19 of the 2002 Act and he was not informed of the grounds of his arrest, the arrest memo discloses that the petitioner went through each page of the memo of arrest including the grounds for arrest stated therein but refused to receive the same. The arrest was made in strict compliance of section 19 of the Act. The earlier bail prayers were rejected by this Court after supply of relied upon documents to the petitioner. Charge sheet has been submitted against the petitioner and charge could not

be framed as the petitioner and other co-accused of the case sought adjournment before the learned trial Court on several occasions.

14) Learned counsel has placed reliance on the following authorities in support of his contention:-

1. Satyendar Kumar Jain vs Enforcement Directorate reported in 2024 SCC OnLine SC 317
2. Partha Chatterjee vs Enforcement Directorate [ CRM (SB) 180 of 2023 ]
3. Manish Sisodia vs C.B.I reported in 2023 SCC OnLine SC 1393
4. Tarun Kumar vs Enforcement Directorate reported in 2023 SCC OnLine SC 1486
5. Vijay Madanlal Choudhary vs Union Of India reported in 2022 SCC OnLine SC 929
6. State of Gujarat vs Mohanlal Jitamalji Porwal reported in (1987) 2 SCC 364
7. Y.S Jagan Mohan Reddy vs C.B.I reported in (2013) 7 SCC 439
8. Nimmagadda Prasad vs C.B.I reported in (2013) 7 SCC 466
9. Gautam Kundu vs Directorate of Enforcement (Prevention of Money-Laundering Act) reported in (2015) 16 SCC 1
10. State of Bihar vs Amit Kumar reported in (2017) 13 SCC 751
11. Anil Kumar Yadav vs State (NCT of Delhi) reported in (2018) 12 SCC 129
12. Tofan Singh vs State of T.N. reported in (2021) 4 SCC 1
13. Subires Bhattacharyya v/s. C.B.I. reported in 2022 SCC OnLine Cal 4307

14. Anubrata Mondal vs C.B.I, reported in 2023 SCC OnLine Cal 23
  15. Kuntal Ghosh v/s. C.B.I. [ CRM (DB) 681 of 2024 ]
  16. Ranjitsing Brahmajeetsing Sharma vs State of Maharashtra reported in (2005) 5 SCC 294
  17. Union of India vs Varinder Singh reported in (2018) 15 SCC 248
  18. Directorate of Enforcement vs Aditya Tripathi reported in 2023 SCC OnLine SC 619
  19. Saumya Chaurasia vs Enforcement Directorate reported in 2023 SCC OnLine SC 1674
  20. Pavana Dibbur vs Enforcement Directorate reported in 2023 SCC OnLine SC 1586
- 15) In reply, the petitioner has submitted that he was not named in the first and second complaints filed on 18<sup>th</sup> May, 2023 and 12<sup>th</sup> January 2024 respectively. Placing reliance on paragraph 250 of the authority in Vijay Madan Lal Choudhary (supra), the petitioner has submitted that property in whatever form mentioned in section 2 (1) (v) which is linked to criminal activity relatable to scheduled offence must be recorded as proceeds of crime for the purpose of the 2002 Act. No predicate offence having been made out against the petitioner, offence under the 2002 Act is not attracted against him. The entire allegation against the petitioner is based on statements under section 50 of the Act which cannot be the foundation of any proceeding.
- 16) Pursuant to an order passed by a co-ordinate Bench of this Court on 29<sup>th</sup> August, 2023 in W.P.A. 7907 of 2019 with W.P.A. 9979 of 2022 directing the West Bengal Board of Primary Education to verify the

credentials of the candidates on the anvil of a list submitted by the Enforcement Directorate and also pursuant to a subsequent order of the said learned Court on 14<sup>th</sup> September 2023, report in the form of affidavit was submitted by the Board explaining the status of 1894 candidates who qualified for the service and remaining 63 candidates whose break up scores were published in the Board's website in terms of the order of the Court. No candidate raised a voice against the appointments which were dealt with by the School Service Commission with which the petitioner has no connection. According to the petitioner, the fixed/recurring deposits of the petitioner were shown to be separate bank accounts and the said deposits are the hard-earned money of the petitioner which were re-invested upon maturity. Such deposits do not fall within the definition of "proceeds of crime". Referring to paragraph 282 of Vijay Madan Lal (supra), the petitioner has submitted that not even in a case of existence of undisclosed income and irrespective of its volume, the definition of "proceeds of crime" under section 2 (1) (u) will get attracted unless the property has been derived or obtained as a result of criminal activity relating to a scheduled offence. The petitioner does not possess any criminal antecedent and has a responsible social standing. Investigation qua the petitioner has concluded on 11<sup>th</sup> May, 2023 but charge is yet to be framed. The petitioner has not been named in the predicate offence in respect of which investigation is continuing for the last two years and two charge sheets have been filed. He has co-operated in investigation all throughout. The E.D. has failed to establish the foundational facts of

predicate offence, proceeds of crime and the involvement of the petitioner in the alleged offence.

- 17) I have considered the rival contention of the parties and the material on record.
- 18) Bail prayers of the petitioner were turned down by this Court on merits on two occasions vide order dated 26<sup>th</sup> June, 2023 in C.R.M. (SB) 82 of 2023 and 16<sup>th</sup> November, 2023 in C.R.M. (SB) 182 of 2023. The petitioner filed a Special Leave to Appeal being no. 16087 of 2023 and sought to produce additional documents and subsequent events which occurred after his bail prayers were turned down.
- 19) By an order passed on 10<sup>th</sup> May, 2024 the Hon'ble Supreme Court granted liberty to the petitioner to file a fresh application before this Court in view of subsequent events having taken place. By the term "subsequent events" the petitioner has meant that all the relied upon documents ("in short RUDs) were not made over to him for rebuttal of the presumption under section 24A of the 2002 Act. Also, investigation qua the petitioner has concluded but charge is yet to be framed.
- 20) It appears from a letter issued by the E.D. to the Jail Superintendent, Presidency Correctional Home that a pen-drive containing prosecution compliant, supplementary prosecution complaints and RUDs was received on behalf of the petitioner by the Controller, Presidency Correctional Home on 17<sup>th</sup> June, 2023. Therefore it is evident that the petitioner was in possession of the relevant documents before both his bail applications were considered. The petitioner filed a prisoner's petition before the learned trial Court on 7<sup>th</sup> March, 2024 which

contains the averments of the petitioner as made out in the present application.

- 21) The petitioner has alleged that the provision of section 19 (1) of the 2002 Act was not complied with at the time of his arrest. The petitioner or his learned counsel was not informed of the grounds of his arrest and therefore, the arrest is bad in law. The petitioner has placed reliance on several authorities including Pankaj Bansal (supra), Arvind Kejriwal (supra) Madhu Limaye (supra) and Prabir Purkayastha (supra) in this connection. The arrest memo discloses that the petitioner refused to receive the same after going through each page of the grounds of arrest stated therein and conveyed to him. Therefore the plea taken by the petitioner is too weak to stand on its own feet. No illegality or irregularity in the arrest procedure has been made out.
- 22) The Hon'ble Supreme Court, in the authority in Prosanta Kumar Sarkar v/s. Ashis Chatterjee and another reported in (2010) 14 Supreme Court Cases 496 has laid down the factors which are required to borne in mind while considering an application for bail which are as follows:-
- i. whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
  - ii. nature and gravity of the accusation;
  - iii. severity of the punishment in the event of conviction;
  - iv. danger of the accused absconding or fleeing, if released on bail;
  - v. character, behaviour, means, position and standing of the accused.
  - vi. likelihood of the offence being repeated.

- vii. reasonable apprehension of the witnesses being influenced; and
  - viii. Danger, of course, of justice being thwarted by grant of bail-
- 23) These factors appear to have been taken into consideration by this Court in the earlier applications for bail.
- 24) It is trite law an accused has a right to make successive applications for grant of bail and the Court entertaining such subsequent applications has a duty to consider the reasons and grounds on which the earlier bail applications were rejected. In the present case, this Court, while turning down the prayer of the petitioner on two occasions has dealt with the matter on merits and has come to a conclusion that there is material to show that the Enforcement Directorate has been able to collect material which would satisfy the presumptions attached to sections 22 and 23 of the 2002 Act and it cannot be held that the petitioner is “not guilty of such offence” at this stage. Dealing with the parameters for consideration of bail laid down by the Hon’ble Supreme Court in a catena of decisions, this Court has held as hereunder:-

*“In the instant case, there was not even an FIR by the State Police or the State agencies and it was on the direction of the Hon’ble High Court that the CBI initiated the investigation wherein the main thrust of allegations related to the primary teachers’ job which have been purchased in lieu of huge amount of money and extraneous consideration extended to the ineligible candidates to get appointment as Assistant Teachers in primary schools.*

*To that extent the process of selection, the question papers, its evaluation process, which has been alleged to be done in a dubious manner as wrong questions and answer keys were designed in a mode for depriving the eligible candidates.*

*Thus, having regard to the issue relating to which the investigation of the case is being continued, the number of victims being involved, and the accused person being an influential person, whose means, position are beyond question at the State administrative level as also the education department, his release, will have an impact at this stage of the investigation when an outer limit of 31<sup>st</sup> December, 2023 has been fixed by the Hon'ble Division Bench to conclude the investigation, which is being carried on by the E.D.*

*Having regard to the aforesaid, particularly, with regard to the means, position, the standing of the present petitioner, the gravity of the offence as also the stage of the investigation which is at the final stage, I am of the view that this is not a fit case for the petitioner to be released on bail at this stage."*

- 25) True, the conditions laid down in section 45 of the 2002 Act are the guiding factors for grant of bail to an accused under the said Act and the accused has to satisfy the said conditions for earning an order of bail in his favour. In a recent judgment in Manish Sisodia (supra) the Hon'ble Court has held that the right to bail in cases of delay coupled with incarceration for a long period should be read into section 439 of the Code of Criminal Procedure and section 45 of the 2002 Act. The



Hon'ble Court has referred to the authority in Javed Gulam Nabi Shaikh v/s. State of Maharashtra and Another reported in 2024 SCC OnLine SC 1693 wherein the law laid down in the judgments in Gudikanti Narasimhulu and Others v/s. Public Prosecutor, High Court of Andhra Pradesh reported in (1978) 1 Supreme Court Cases 240, Shri Gurbaksh Singh Sibbia and Others v/s. State of Punjab reported in (1980) 2 Supreme Court Cases 565, Hussainara Khaton and Others (I) v/s. Home Secretary, State of Bihar reported in (1980) 1 Supreme Court Cases 81, Union of India v/s. K.A. Najeeb reported in (2021) 3 Supreme Court Cases 713 and Satender Kumar Antil v/s. Central Bureau of Investigation and Another reported in (2022) 10 Supreme Court Cases 51. was surveyed by the Hon'ble Court. The Hon'ble Court has observed thus:- “ 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.” In the words of the Hon'ble Court, “bail is not to be withheld as a punishment”. ..... The principle that bail is a rule and refusal is an exception is, at times, followed in breach..... It is high time that the trial Courts and the High Courts should recognize the principle that bail is rule and jail is exception.”

- 26) Section 436A of the Code of Criminal Procedure provides for release of an accused upon his detention during the period of investigation, inquiry or trial under the Code for offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under the law) for a period extending up to one-half of the maximum period of imprisonment specified for that offence. Section 4 of the 2002 Act provides for rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and is also be liable to fine. Though one-half of the maximum period of detention has not been undergone by the petitioner during investigation, this Court may consider release of the petitioner on bail in view of the petitioner having undergone more than half of the minimum period of imprisonment specified for the offence in exercise of plenary powers of the High Court under Article 21 of the Constitution. It is important to note that Article 21 of the Constitution and section 436A of the Code complement each other and may not be regarded as adversarial.
- 27) The petitioner is in custody for little less than two years. Charge is yet to be framed. Delay in trial cannot be wholly attributable to the petitioner. The case involves several thousands of pages of documents and a good number of witnesses to be examined. Chance of trial being concluded in near future is bleak. The case is based on documentary evidence which has been collected by the E.D. and is in their custody. Therefore there is no scope for the petitioner to tamper with the evidence. Further detention of the petitioner shall not serve any

purpose and his unlimited detention shall deprive him of his fundamental right to liberty under Article 21 of the Constitution.

- 28) Section 479 of the Bharatiya Nagarik Suraksha Sanhita, 2023 as it stands after amendment of section 436A of the Code of Criminal Procedure envisages that a first-time offender (who has never been convicted for any offence in the past) shall be released on bond by the Court if he has undergone detention for the period extending up to one-third of the maximum period of imprisonment specified for such offence under that law. The Hon'ble Supreme Court, in the order passed on 23<sup>rd</sup> August, 2024 in Writ Petition (Civil) no. 406 of 2013, has made the amended provision applicable to all under trials in pending cases irrespective of whether the case was registered against them before 1<sup>st</sup> July, 2024 when the new legislation came into effect.
- 29) The petitioner being in custody for about two years is short of about four months in completing one-third of the maximum period of imprisonment. It is also not in dispute that he has not been convicted of any offence earlier and is therefore a first-time offender. Bearing in mind the number of documents and witnesses relied upon by the prosecution, completion of trial within the next four months is almost impossible. Granting liberty to the petitioner to renew his prayer for bail after four months upon completion of one-third of the maximum period of imprisonment shall be a futile exercise. In the judgment in *Manish Sisodia (supra)*, the Hon'ble Supreme Court has granted bail to the appellant therein on account of incarceration for seventeen months

upon observing that the appellant has been deprived of his right to speedy trial, trial not having been commenced.

- 30) As observed the Hon'ble Supreme Court time and again, prolonged incarceration before being pronounced guilty of an offence should not be permitted to become punishment without trial and in such a case Article 21 applies irrespective of the seriousness of the crime.
- 31) With regard to the apprehension of the petitioner influencing the witnesses, stringent conditions can be imposed upon him to address the concern. The attendance of the petitioner may also be secured by imposing stringent conditions. The petitioner has no criminal antecedent to his credit and no other criminal case except the present one is pending against him.
- 32) In the authority in Manik Madhukar Sarve and Others v/s. Vitthal Damuji Meher and Others in Criminal Appeal no. 3573 of 2024, the Hon'ble Supreme Court has held that in case of Commission of an economic offence affecting a large number of people, it would be fit for the Court to impose strict additional conditions in granting bail to the accused. The bail of the accused was cancelled by the Hon'ble Court on such ground coupled with the fact that the bail petition was not considered in its proper perspective. The facts and circumstances of the said case can be distinguished from that of the present case.
- 33) It is pertinent to refer to a judgment of the Hon'ble Supreme Court in Criminal Appeal no. 2790 of 2024 wherein the Hon'ble Court has dealt with the right to life and personal liberty under Article 21 of the Constitution. The relevant portion of the judgment is set out:-

“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 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.”

- 34) In the backdrop of the subsequent development/change of circumstances as well as the observation of the Hon'ble Supreme Court with regard to the right to speedy trial under Article 21 of the Constitution as well as prolonged incarceration, this Court is inclined to release the petitioner on bail subject to stringent conditions.
- 35) The petitioner be released on bail upon furnishing bond of Rs. 10,00,000/- with two sureties of like amount each, one of whom should be local, subject to the following conditions:-
- a. The petitioner shall surrender his passport with the learned trial Court at once.

- b. He shall not leave the territorial jurisdiction of the learned trial Court without leave of the trial Court.
  - c. He shall appear before the learned trial Court on every date of hearing fixed before the learned Court.
  - d. He shall not tamper with evidence or intimidate witnesses in any manner whatsoever.
  - e. He shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses.
  - f. He shall provide his mobile number before the learned trial Court and shall not change the said number without prior intimation to the Court.
- 36) In the event the petitioner violates any of the bail conditions as stated above, the learned trial Court shall be at liberty to cancel the bail in accordance with law without further reference to this Court.
- 37) It is made clear that the observation made in this judgment is for the limited purpose of deciding the bail application and shall not be construed as an expression of opinion on the merits of the case. The learned trial Court shall deal with the matter independently in accordance with law without being influenced by any observation which may have been made in this judgment.
- 38) Accordingly, C.R.M. (S.B) 72 of 2024 is allowed.
- 39) All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

- 40) Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

**(Suvra Ghosh, J)**