* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on :22.10.2024
Pronounced on :29.10.2024

\+ **BAIL APPLN. 3301/2024, CRL.M.(BAIL) 1529/2024**

VAIBHAV JAIN .....Petitioner

Through: Mr. Siddarth Aggarwal, Sr. Advocate with Mr. Malak Bhatt, Ms. Neeha Nagpal, Mr. Shreyansh Chopra and Mr. Vishwajeet Singh Bhati, Advs.

versus

DIRECTORATE OF ENFORCEMENT .....Respondent

Through: Mr. Zoheb Hossain, Special Counsel for ED with Mr. Vivek Gurnani,Panel Counsel,Mr. PranjalTripahti&Mr. Kunal Kochar, Advocate.

\+ **BAIL APPLN. 3406/2024**

ANKUSH JAIN .....Petitioner

Through: Ms. Rebecca M. John Sr. Advocate with Dr. Sushil Kumar Gupta, Mrs. Sunita Gupta, Mr. Sushil Kumar Satrawala, Mr. Sakshit Bhardwaj, Mr. Parvir Singh and Ms. Anushka Baruah, Advocates.

versus

DIRECTORATE OF ENFORCEMENT .....Respondent

Through: Mr. Zoheb Hossain, Special Counsel For ED with Mr. Vivek Gurnani, Panel Counsel, Mr. PranjalTripahti& Mr. Kunal Kochar, Advocates

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. By way of present bail applications, the petitioners/applicants seek regular bail in the Complaint Case No. 23 of 2022 arising out of ECIR No. ECIR/HQ/14/2017 dated 30.08.2017.

2. Since the applicants are similarly situated and the submissions urged in their respective bail applications are also similar, the applications are being decided by way of a common judgement.

3. Learned Senior Counsels appearing on behalf of the applicants, at the outset, concede that the applications are not pressed on merits however, at the same time the right to life and liberty of the applicants, who have been in custody since 24 months and 25 months respectively, has been severely hampered on account of the delay in the commencement of trial for reasons which are not attributable to them. It is submitted that while usually the case is that parameters of Section 45 of Prevention of Money Laundering Act, 2002 (hereafter, PMLA) must be met, but where the system is not able to demonstrate that the trial would conclude in a reasonable amount of time and the incarceration is long, the same would override the consideration under Section 45 of PMLA.

4. It is submitted that both the applicants were arrested on 30.06.2022. They were released on interim bails on different occasions, a concession which they have not misused. It is stated that while Vaibhav Jain was released on interim bail from 18.08.2023 to 27.12.2023 on account of the illness of his mother, Ankush Jain was released on interim bail from 18.09.2023 and 27.12.2023 on grounds of illness of his son.

5. Learned Senior Counsels for the applicants contend that the snail's pace of the trial proceedings have severely affected the fundamental right to life and liberty of the present applicants. It is submitted that in the PMLA case, prosecution complaint stood filed on 27.07.2022, following which the arguments on charge were commenced. While the arguments on charge were duly addressed on behalf of the present applicants but before it could be concluded on behalf of other accused, the Presiding Officer demitted office on 30.09.2024 and a new Presiding Officer is yet to be appointed.

6. Insofar as the predicate offence is concerned, it is submitted that though the CBI had filed chargesheet without arrest on 03.12.2018 but on ED's request, CBI is conducting further investigation. CBI has sought repeated extensions from the concerned court to conclude further investigation and file the supplementary chargesheet. In this regard, reference is made to the status reports filed by the CBI before the concerned court on 05.06.2024, 19.09.2024 and 05.10.2024. Moreover, attention is also drawn to the *para 5.7* of order dated 04.09.2024 passed by the Special court wherein while dismissing the bail application of the main accused, ED's submission is recorded to the effect that further investigation in the present ECIR is still ongoing.

7. While seeking parity and claiming change in circumstance after the dismissal of applicants' bail application by Supreme Court on 18.03.2024, it is urged that now the main accused has been enlarged on regular bail by the Trial Court vide order dated 18.10.2024. It is also submitted that as the trial is not likely to conclude in a reasonable period, the constitutional mandate of Article 21 would supersede the conditions stipulated under Section 45 of the PMLA. Reliance is placed upon the decision of the Supreme Court in

Abhishek Boinpally v. Directorate of Enforcement[1] and Manish Sisodia v Directorate of Enforcement[2].

8. Mr Zoheb Hossain, learned Special Counsel for the respondent agency, while opposing the applicants' prayer, submitted that the delay in trial is attributable to all the accused persons who sought repeated adjournments.

It is next contended that the bail applications having been already rejected on merits, the only option available with the applicants is to seek the same on completions of the period of incarceration stipulated under Section 436A Cr.P.C.

On the aspect of further investigation, learned Special Counsel submits that as of now, no further investigation is being conducted. However, on a specific query, Mr Hossain states that there is a possibility of respondent filing a supplementary complaint if in the supplementary challan to be filed by CBI, any further proceeds of crime are detected.

9. Opposing the applicants' claim of seeking parity with the main accused, learned Special Counsel submits that Trial Court while granting bail to the main accused i.e., *Satyendra Jain* on 18.10.2024 failed to appreciate that repeated adjournments were taken which contributed to the delay in the commencement of trial. Lastly, it is submitted that the applicants' also cannot seek benefit of the decision in *Manish Sisodia* (Supra) as the fact situation in the said case was different as there are lesser numbers of accused, witness and documents. Moreover, in the said case, an undertaking was given on behalf the agency to conclude investigation which

[1] Abhishek Boinpally v. Directorate of Enforcement, decided in Crl.A. No. 4188/2024 dated 14.10.2024
[2] Manish Sisodia v Directorate of Enforcement, reported as 2024 SCC OnLine SC 1920

is not so in the present case.

10. I have heard learned Senior Counsels for the applicants and the learned Special Counsel for the ED and also gone through the material on record.

11. Bail is the rule and jail is the exception. This principle is nothing but a crystallisation of the constitutional mandate enshrined in Article 21, which says that that no person shall be deprived of his life or personal liberty except according to the procedure established by law. Liberty is the usual course of action and deprivation of it a detour. The deprivation of liberty must only by procedure established by law, which should be fair and reasonable. Right of the accused to speedy trial is an important aspect which the Court must keep in contemplation when deciding a bail application as the same are higher sacrosanct constitutional rights, which ought to take precedence.

Section 45 of the PMLA while imposing additional conditions to be met for granting bail, does not create an absolute prohibition on the grant of bail. When there is no possibility of trial being concluded in a reasonable time and the accused is incarcerated for a long time, depending on the nature of allegations, the conditions under Section 45 of the PMLA would have to give way to the constitutional mandate of Article 21. What is a reasonable period for completion of trial would have to be seen in light of the minimum and maximum sentences provided for the offence, whether there are any stringent conditions which have been provided, etc. It would also have to be seen whether the delay in trial is attributable to the accused.[3]

[3] V. Senthil Balaji v. The Deputy Director, Directorate of Enforcement reported as 2024 INSC 739

12. In Senthil (Supra), the Supreme Court while reiterating the ratio enunciated in Union of India v. K.A. Najeeb (Three Judge bench)[4], also held that if the Constitutional Court comes to the conclusion that the trial would not be able to be completed in a reasonable time, the power of granting bail could be exercised on the grounds of violation of Part III of the Constitution of India notwithstanding the statutory provisions. It was held that:-

> *"21. Hence, the existence of a scheduled offence is sine qua non for alleging the existence of proceeds of crime. A property derived or obtained, directly or indirectly, by a person as a result of the criminal activity relating to a scheduled offence constitutes proceeds of crime. The existence of proceeds of crime at the time of the trial of the offence under Section 3 of PMLA can be proved only if the scheduled offence is established in the prosecution of the scheduled offence. Therefore, even if the trial of the case under the PMLA proceeds, it cannot be finally decided unless the trial of scheduled offences concludes. In the facts of the case, there is no possibility of the trial of the scheduled offences commencing in the near future. Therefore, we see no possibility of both trials concluding within a few years.*
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> *25…Inordinate delay in the conclusion of the trial and the higher threshold for the grant of bail cannot go together. It is a well settled principle of our criminal jurisprudence that "bail is the rule, and jail is the exception." These stringent provisions regarding the grant of bail, such as Section 45(1)(iii) of the PMLA, cannot become a tool which can be used to incarcerate the accused without trial for an unreasonably long time.*
> *xxx*
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> *27. Under the Statutes like PMLA, the minimum sentence is three years, and the maximum is seven years. The minimum sentence is higher when the scheduled offence is under the NDPS Act. When the trial of the complaint under PMLA is likely to prolong beyond reasonable limits, the Constitutional Courts will have to consider exercising their powers to grant bail. The reason is that Section 45(1)(ii) does not confer power on the State to detain an accused for an unreasonably long time,*

[4] (2021) 3 SCC 713

especially when there is no possibility of trial concluding within a reasonable time. What a reasonable time is will depend on the provisions under which the accused is being tried and other factors. One of the most relevant factor is the duration of the minimum and maximum sentence for the offence. Another important consideration is the higher threshold or stringent conditions which a statute provides for the grant of bail. Even an outer limit provided by the relevant law for the completion of the trial, if any, is also a factor to be considered. The extraordinary powers, as held in the case of K.A. Najeeb, can only be exercised by the Constitutional Courts. The Judges of the Constitutional Courts have vast experience. Based on the facts on record, if the Judges conclude that there is no possibility of a trial concluding in a reasonable time, the power of granting bail can always be exercised by the Constitutional Courts on the grounds of violation of Part III of the Constitution of India notwithstanding the statutory provisions. The Constitutional Courts can always exercise its jurisdiction under Article 32 or Article 226, as the case may be. The Constitutional Courts have to bear in mind while dealing with the cases under the PMLA that, except in a few exceptional cases, the maximum sentence can be of seven years. The Constitutional Courts cannot allow provisions like Section 45(1)(ii) to become instruments in the hands of the ED to continue incarceration for a long time when there is no possibility of a trial of the scheduled offence and the PMLA offence concluding within a reasonable time. If the Constitutional Courts do not exercise their jurisdiction in such cases, the rights of the undertrials under Article 21 of the Constitution of India will be defeated. In a given case, if an undue delay in the disposal of the trial of scheduled offences or disposal of trial under the PMLA can be substantially attributed to the accused, the Constitutional Courts can always decline to exercise jurisdiction to issue prerogative writs. An exception will also be in a case where, considering the antecedents of the accused, there is every possibility of the accused becoming a real threat to society if enlarged on bail. The jurisdiction to issue prerogative writs is always discretionary."

(emphasis added)

13. The issue of long incarceration and right of speedy trial also cropped up in Manish Sisodia v Directorate of Enforcement,[5] wherein it has been held by the Supreme Court that the right to bail in cases of delay in trial, coupled with long period of incarceration would have to be read into the Section 439 CrPC as well as Section 45 of PMLA while interpreting the said

[5] Manish Sisodia v Directorate of Enforcement, reported as 2024 SCC OnLine SC 1920

provisions.

> *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 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.*
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> *xxx*
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> *49. We find that, on account of a long period of incarceration running for around 17 months and the trial even not having been commenced, the appellant has been deprived of his right to speedy trial.*
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> *50. As observed by this Court, the right to speedy trial and the right to liberty are sacrosanct rights. On denial of these rights, the trial court as well as the High Court ought to have given due weightage to this factor.*

14. Prem Prakash v. Union of India through the Directorate of Enforcement,[6] is another recent decision where it has been reiterated that the

[6] Prem Prakash v. Union of India through the Directorate of Enforcement, reported as 2024 SCC OnLine SC 2270

fundamental right enshrined under Article 21 cannot be arbitrarily subjugated to the statutory bar in Section 45 of the Act and the constitutional mandate being the higher law, the right to speedy trial must be ensured and if the trial is being delayed for reasons not attributable to the accused, his incarceration should not be prolonged on that account. The relevant extract of the said judgement is enacted below for convenience:-

> *"11….All that Section 45 of PMLA mentions is that certain conditions are to be satisfied. The principle that, "bail is the rule and jail is the exception" is only a paraphrasing of Article 21 of the Constitution of India, which states that no person shall be deprived of his life or personal liberty except according to the procedure established by law. Liberty of the individual is always a Rule and deprivation is the exception. Deprivation can only be by the procedure established by law, which has to be a valid and reasonable procedure. Section 45 of PMLA by imposing twin conditions does not re-write this principle to mean that deprivation is the norm and liberty is the exception. As set out earlier, all that is required is that in cases where bail is subject to the satisfaction of twin conditions, those conditions must be satisfied.*
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> *12. Independently and as has been emphatically reiterated in Manish Sisodia (II) (supra) relying on Ramkripal Meena v. Directorate of Enforcement (SLP (Crl.) 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:—*
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> > *"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."

(emphasis added)

15. The view taken in the Manish Sisodia and Prem Prakash cases (Supra) was reiterated recently by the Supreme Court in the case of Vijay Nair v. Directorate of Enforcement,[7] where it was held that liberty guaranteed under Article 21 of the Constitution does not get abrogated. It was held that:-

12. Here the accused is lodged in jail for a considerable period and there is little possibility of trial reaching finality in the near future. The liberty guaranteed under Article 21 of the Constitution does not get abrogated even for special statutes where the threshold twin bar is provided and such statutes, in our opinion, cannot carve out an exception to the principle of bail being the rule and jail being the exception. The cardinal principle of bail being the rule and jail being the exception will be entirely defeated if the petitioner is kept in custody as an under-trial for such a long duration. This is particularly glaring since in the event of conviction, the maximum sentence prescribed is only 7 years for the offence of money laundering.

16. On similar lines, is the decision of Supreme Court, in Sunil Dammani

[7] Vijay Nair v. Directorate of Enforcement, [7]decided on 02.09.2024 in SLP (Crl) Diary No. 22137/2024

v. Directorate of Enforcement[8], where considering the one-year custody of the accused and the factum of investigation being complete, the bail was granted noting that the prosecution had cited 98 witnesses.

17. The right to speedy trial was also upheld and other special legislations where provisions akin to Section 45 PMLA exist. Notable ones being, the decision in the case of Javed Gulam Nabi Shaikh v. State of Maharashtra[9], wherein Supreme Court while granting bail to an accused under UAPA, observed as under:-

> *"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."*
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> *(Emphasis added)*

On similar lines is the case of Union of India v. K.A. Najeeb (Supra), wherein the Supreme Court held as under:-

> *"12. Even in the case of special legislations like the Terrorist and Disruptive Activities (Prevention) Act, 1987 or the Narcotic Drugs and Psychotropic Substances Act, 1985 ("the NDPS Act") which too have somewhat rigorous conditions for grant of bail, this Court in Paramjit Singh v. State (NCT of Delhi) [Paramjit Singh v. State (NCT of Delhi), (1999) 9 SCC 252 : 1999 SCC (Cri) 1156] , Babba v. State of Maharashtra [Babba v. State of Maharashtra, (2005) 11 SCC 569 : (2006) 2 SCC (Cri) 118] and Umarmia v. State of Gujarat [Umarmia v. State of Gujarat, (2017) 2 SCC 731 : (2017) 2 SCC (Cri) 114] enlarged the accused on bail when they had been in jail for an extended period of time with little possibility of early completion of trial. The constitutionality of harsh conditions for bail in such special enactments, has thus been primarily justified on the touchstone of speedy trials to ensure the protection of innocent civilians.*

[8] Criminal Appeal No. 4108/2024 decided on 03.10.2024
[9] 2024 SCC OnLine SC 1693

> *15. This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India [Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India, (1994) 6 SCC 731, para 15 : 1995 SCC (Cri) 39] , it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, the courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.*
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> *17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial."*
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> *(Emphasis added)*

Taking note of above decision, in the case of Sk. Javed Iqbal v. State of U.P.,[10] the Supreme Court held that:-

> *"42. This Court has, time and again, emphasised 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 21of the Constitution of India has been infringed.*

[10] (2024) 8 SCC 293

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 [Union of India v. K.A. Najeeb, (2021) 3 SCC 713] being rendered by a three-Judge Bench is binding on a Bench of two Judges like us."

(Emphasis added)

To the similar extent are the decisions in Mohd. Muslim alias Hussain v State (NCT of Delhi[11], Jitendra Jain v. Narcotics Control Bureau[12], Rabi Prakash *v.* State of Odisha[13] and Man Mandal and Anr. *v.* State of West Bengal[14], wherein while taking into account the prolonged custody and unlikelihood of completion of trial in immediate future, the accused was granted bail.

18. The predicate offence was investigated by the Central Bureau of Investigation (CBI, AC-1) which culminated into filing of FIR No. RC-AC-1-2017-A0005 dated 24.08.2017 under Section 109 IPC and Sections 13(2) r/w 13(1)(e) of Prevention of Corruption Act,1988. CBI filed the chargesheet without arrest. On basis of scheduled offence, the present ECIR came to be registered on 30.08.2017. The applicants were arrested on 30.06.2022 and the prosecution complaint came to be filed on 27.07.2022.

The prosecution has named 10 accused persons and cited 108 witnesses. There are 5172 pages of documents which need to be analysed. Moreover, it is noted that the Trial is still at the stage of arguments on

[11] 2023 SCC OnLine SC 352
[12] 2022 SCC OnLine SC 2021
[13] 2023 SCC OnLine SC 1109
[14] 2023 SCC OnLine SC 1868

charge. In addition, this Court has also been informed that the Presiding Officer of the Trial Court hearing the matter on charge has demitted office on 30.09.2024 and a replacement has not yet been appointed to take over the said Court. There is also likelihood of supplementary challan being filed. It is thus observed that the delay at present cannot be said to be attributable to the present applicants.

19. In a situation such as the present case, where there are multiple accused persons, thousands of pages of evidence to assess, scores of witnesses to be examined and 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.

As held in the Catena of judgements discussed hereinabove, Constitutional Courts have the power to grant bails on the grounds of violation of Part III of the Constitution and Section 45 does not act as an hindrance to the same. The sacrosanct right to liberty and fair trial is to be protected even in cases of stringent provisions present in special legislations.

20. In the present case, both the applicants were arrested on 30.06.2022. They have been in custody since more than 24 months. Moreover, the trial is

yet to commence and is likely take some time to conclude. It is also pertinent to note that the main accused *Satyendra Jain* has already been granted bail by the Sessions Judge vide order dated 18.10.2024. Parity as a ground is applicable even in PMLA cases, as held in Abhishek Boinpally (Supra).

No evidence has been led to show that the present applicants are a flight risk. In fact, records would show that both the applicants have joined investigation on multiple occasions. Both the applicants have been released once on interim bail and during that period no incident has been alleged by the respondent to have occurred wherein the applicants have tried to tamper with evidence or influence witnesses.

In addition, it is also noted that since further investigation by the CBI is still pending, there is no possibility of the trial commencing, let alone concluding in the predicate offence in the foreseeable future and consequently, the present case under the PMLA also cannot be finally determined and would inevitably be delayed due to the lack of progress of the trial in the predicate offence. In this regard, the Court deems it apposite to refer to the decision of Supreme Court in the case of Senthil (Supra), wherein the Court has held that the trial of the case under PMLA cannot be finally decided unless the trial of scheduled offence proceeds, since the existence of the scheduled offence would have to be established in the trial under PMLA. The relevant extract is reproduced below:-

> *"21. Hence, the existence of a scheduled offence is sine qua non for alleging the existence of proceeds of crime. A property derived or obtained, directly or indirectly, by a person as a result of the criminal activity relating to a scheduled offence constitutes proceeds of crime. The existence of proceeds of crime at the time of the trial of the offence under Section 3 of PMLA can be proved only if the scheduled offence is*

established in the prosecution of the scheduled offence. Therefore, even if the trial of the case under the PMLA proceeds, it cannot be finally decided unless the trial of scheduled offences concludes. In the facts of the case, there is no possibility of the trial of the scheduled offences commencing in the near future. Therefore, we see no possibility of both trials concluding within a few years."

As far as the respondents contention with respect to Section 436A CrPC is concerned, the same is misplaced as Section 436A does not stipulate denial of bail till the accused has undergone a specified period of detention. Rather, aforesaid Section subject to provisos stipulate that on undergoing one half of the of the maximum period of imprisonment of the offence, the accused can be released on bail Same is the position of law as elucidated by the Supreme Court in the Manish Sisodia (Supra) Case, which held as follows:-

"28. Before considering the submissions of the learned ASG with regard to maintainability of the present appeals on account of the second order of this Court, it will be apposite to refer to certain observations made by this Court in its first order, which read thus:

"26. .... 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…"

(emphasis added)

21. Considering the totality of the facts and circumstances, the fact that the main accused is out on bail, the period of custody undergone, likelihood of supplementary challan being filed and that the trial is yet to commence,

keeping in mind the import of the Catena of decisions of Supreme Court discussed hereinabove, it is directed that both the applicants be released on regular bail subject to them furnishing respective personal bonds in the sum of Rs.1,00,000/- with one surety of the like amount each to the satisfaction of the concerned Jail Superintendent/concerned Court/Duty J.M./link J.M. and subject to the following further conditions: -

i) The applicants shall not leave Delhi/NCR without prior permission of the concerned Court and surrender his passport, if any.

ii) The applicants shall provide his mobile number to the Investigating Officer on which he will remain available during the pendency of the trial.

iii) In case of change of residential address or contact details, the applicants shall promptly inform the same to the concerned Investigating Officer as well as to the concerned Court.

iv) The applicants shall not directly/indirectly try to get in touch with the prosecution witnesses or tamper with the evidence.

v) The applicants shall regularly appear before the concerned Court during the pendency of the proceedings.

22. The bail applications are disposed of in the above terms.

23. Copy of the order be communicated to the concerned Jail Superintendent electronically for information.

24. Copy of the order be uploaded on the website forthwith.

25. Needless to state that this Court has not expressed any opinion on the merits of the case and has made the observations only with regard to present

bail applications and nothing observed hereinabove shall amount to an expression on the merits of the case and shall not have a bearing on the trial of the case as the same has been expressed only for the purpose of the disposal of the present bail applications.

DASTI

MANOJ KUMAR OHRI
(JUDGE)

OCTOBER 29, 2024
ry/js