



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

**DATED THIS THE 20<sup>TH</sup> DAY OF JANUARY, 2026**

**BEFORE**

**THE HON'BLE MR. JUSTICE S SUNIL DUTT YADAV**

**CRIMINAL PETITION NO. 14793 OF 2025**

**BETWEEN:**

G. T. DINESH KUMAR  
S/O THIPPERUDRAPPA,  
AGED ABOUT 46 YEARS,  
FLAT NO.A1-107, BLOCK-A,  
VAISHNAVI NORTH, HEBBAL,  
BENGALURU-560024  
(CURRENTLY PETITIONER IS IN  
JUDICIAL CUSTODY FROM 16.09.2025)

...PETITIONER

(BY SRI. SANDESH J CHOUTA, SENIOR ADVOCATE A/W  
SRI. MADESH V M., ADVOCATE)

**AND:**

DIRECTOR OF ENFORCEMENT  
REP. BY ASSISTANT DIRECTOR,  
GOVERNMENT OF INDIA,  
BENGALURU ZONAL OFFICE,  
3RD FLOOR, B BLOCK, BMTC,  
SHANTHINAGARA-TTMC,  
K H ROAD, SHANTHINAGARA,  
BENGALURU-560 027.

...RESPONDENT

(BY SRI. ARVIND KAMATH, ADDL. SOLICITOR GENERAL A/W  
SRI. MADHUKAR DESHPANDE, ADVOCATE)

THIS CRL.P IS FILED UNDER SECTION 439 OF THE CODE  
OF CRIMINAL PROCEDURE, 1973 (SECTION 483 OF BNSS,  
2023) R/W 45 OF PMLA ACT, 2002 PRAYING THAT TO RELEASE  
THE PETITIONER FROM CUSTODY IN THE CASE REGISTERED





BY THE RESPONDENT IN ECIR/BGZO/25/2024 REGISTERED BY ENFORCEMENT DIRECTORATE PENDING ON THE FILE OF HONBLE LXXXI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU (CCH-82) (SPECIAL COURT EXCLUSIVELY TO DEAL WITH CRIMINAL CASES RELATED TO ELECTED FORMER AND SITTING MPS/MLAS IN THE STATE OF KARNATAKA) FOR THE O/P/U/S 45 OF PMLA ACT AND ETC.,

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED ON 18.12.2025 AND COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, THE COURT, MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE S SUNIL DUTT YADAV

**CAV ORDER**

**S. SUNIL DUTT YADAV. J**

This Order has been divided into the following Sections to facilitate analysis:

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The present petition has been filed seeking to release the petitioner from custody in the case registered by the respondent-Directorate of Enforcement (hereinafter referred to as 'ED') in Case No. ECIR/BGZO/25/2024 pending on the file of LXXXI Additional City Civil and Sessions Judge and Special Court for Trial of MPs/MLAs Cases at Bengaluru (CCH-82).

**[I] BRIEF FACTS:-**

2. The brief facts are that the petitioner has been arraigned as an accused in Case No. ECIR/BGZO/25/2024 ('hereinafter referred to as 'ECIR'). It is made out from the records that initially, a Private Complaint came to be filed in PCR No. 28/2024 as well as FIR in Crime No. 11/2024 which was registered by the Karnataka Lokayukta Police, Mysuru. The FIR has been registered for the offences punishable under Sections 120B, 166, 403, 406, 420, 426, 465, 468, 340, 351 of IPC, 1860 read with Sections 9 and 13 of the Prevention of Corruption Act, 1988 ['P.C. Act' for brevity] and read with Sections 3, 53



and 54 of the Prohibition of Benami Property Transactions Act, 1988 and read with Sections 3 and 4 of the Karnataka Land Grabbing Prohibition Act, 2011.

3. It is asserted that pursuant to PCR No.28/2024 (Crime No.11/2024), the Karnataka Lokayukta Police, Mysuru has filed 'B' Final Report only against accused Nos.1 to 4 in the PCR and had sought permission to conduct further investigation in terms of Section 173(8) of the Code of Criminal Procedure, 1973 ['Cr.P.C.' for brevity].

4. The Court, while keeping open acceptance or rejection of 'B' Final Report had adjourned the proceedings. In the interregnum, Case No. ECIR/BGZO/25/2024 was registered on 01.10.2024 for the scheduled offences punishable under the Prevention of Money Laundering Act, 2002 ['PMLA' for brevity].

5. It is stated that there had been search under Section 17 of PMLA by the respondent - 'ED' in the house



of the petitioner on 18.10.2024, that the respondent-'ED' has recorded the statement of Mr. Prashant Raju, who is the Personal Assistant of petitioner, that on 28.10.2024, the respondent - 'ED' had conducted search and seizure under Section 17 of PMLA in the house of father-in-law and brother-in-law of the petitioner and Panchanama was drawn, that the respondent - 'ED' had also conducted search and seizure by exercise of power under Section 17 of PMLA in the house of accused from 28.10.2024 to 29.10.2024, that the statement of petitioner was recorded on 09.11.2024 and 20.11.2024 and accordingly, the investigation was conducted.

6. It is submitted that the respondent - 'ED' has recorded the statement of accused under Section 17(1)(f) of PMLA on 16.09.2025 and on the same day, the petitioner was arrested and remanded for custody and subsequently he has been remanded to judicial custody from 29.09.2025 onwards.



7. The petitioner had filed an application seeking enlargement on bail, which however, has been rejected. In light of the same, the petitioner is now seeking to be enlarged on bail.

8. Insofar as the grant of bail under the provisions of PMLA, Section 45 stipulates that notwithstanding anything contained under Cr.P.C., no person accused of an offence shall be released on bail, unless (a) the Public Prosecutor has been given an opportunity to oppose the application for bail and (b) the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and not likely to commit any offence while on bail.

9. It may also be necessary to keep in mind the provision of Section 19 of PMLA which refers to the power of arrest and specifies that the arrest could be resorted to, if the Authorized Officer on the basis of material in his possession has reason to believe that any person has been guilty of an offence punishable under the PMLA. The said



provision further stipulates that upon arrest, the accused must be informed of the grounds of such arrest. Apart from Section 45 of PMLA, Section 19 of PMLA would be of relevance, as the petitioner has raised a contention regarding violation of Section 19 of PMLA while resorting to arrest and other procedural lapses in such process of arrest warranting release on bail irrespective of the compliance under Section 45 of PMLA.

10. It is necessary to also note that an application under Section 167(2) of Cr.P.C. read with Section 45 of PMLA seeking to be enlarged on statutory/default bail on the ground that the respondent - 'ED' had failed to file a complete and final Prosecution Complaint within the statutory period.

11. The petitioner's contentions in the petition were essentially on the grounds:-



- (i) That the investigation of the predicate offence not having concluded, the Prosecution ought not to have proceeded to file the Prosecution Complaint;
- (ii) That the PMLA offence is not a stand alone offence and is intertwined with the predicate offence and accordingly, the proceedings under the PMLA ought to have been deferred till Final Report was filed in the predicate offence;
- (iii) That the criminal activity relating to predicate offence could not have been adjudicated upon by the investigating machinery under the PMLA;
- (iv) That the Former Commissioner of MUDA Sri D.B.Natesh has had the summons in proceedings under PMLA quashed as per the order dated 27.01.2025 passed in W.P.No.32956/2024 [GM-RES];
- (v) That the proceedings against others stated to have been involved in money laundering have been stayed by orders passed in petitions filed challenging the



summons issued (*details of the proceedings mentioned at para-24 of the memorandum of petition*);

(vi) That there have been procedural lapses during the procedure of arrest;

(vii) That the petitioner has co-operated with the investigation by appearing on relevant dates;

(viii) That the Tripod Test for grant of bail was satisfied;

(ix) That the petitioner has been continuing under prolonged incarceration and there is no further necessity of continuing him in incarceration after Final Report is filed;

(x) That the petitioner has been singled out, while the other alleged co-accused have not been arrested;

(xi) That there is a possibility of delayed trial, as investigation is pending in respect of the predicate offence though FIR was registered on 27.09.2024;



(xii) That there has been no incriminatory material seized from the petitioner during search.

(xiii) Though the predicate offence that was made out consequent to FIR lodged pursuant to PCR was as regards body of offenders, including petitioner's relatives, real estate agents, and private persons, however, the Prosecution Complaint was filed only vis-à-vis the petitioner solely with the view to prevent the petitioner from obtaining default bail.

(xiv) A contention was also raised that the petitioner was entitled for bail on medical grounds.

12. The respondent - 'ED', on the other hand, has taken a stand contending that the proceedings under PMLA are not necessarily tied to the predicate offence, that once an FIR is registered, the proceedings under PMLA can continue. It is contended that unless the conditions mentioned by the Apex Court in **Vijay Madanlal**



**Choudhary and Others v. Union of India and Others<sup>1</sup>**

**[Vijay Madanlal Choudhary]** are satisfied, viz., where there is acquittal on merits after trial as regards the predicate offence, when the person accused of the predicate offence is absolved from the allegations on merits, when it is established through evidence that the property in question was rightfully owned by the person and was not derived from any criminal activity and only under such enumerated circumstances it could be said that the proceedings under PMLA would come to a close. Such conditions, it is submitted, are not found in the present case.

13. The respondent - 'ED' has further contended that there is substantial evidence in establishing the involvement of accused, that the grounds of arrest and reasons to believe are detailed and sufficient, that in light of the statutory presumption under Section 24 of PMLA and the mandatory twin conditions under Section 45 of

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<sup>1</sup>(2023) 12 SCC 1



PMLA, no grounds are made out to enlarge the petitioner on bail.

14. It is also contended that no grounds are made out for enlarging the petitioner on default bail on the ground of incomplete chargesheet and once a Final Report has been filed in the form of Prosecution Complaint (in the present case, complaint is to be taken as referring to chargesheet), the right of claiming default bail does not arise.

15. Various other contentions have also been raised, including that the findings of Special Court on the bail application are detailed and that the Economic Offences warrant a differential approach in case of bail.

**[II] TWIN CONDITIONS FOR GRANT OF BAIL UNDER SECTION 45 OF THE PMLA :-**

16. While the statutory mandate of Section 45 of PMLA lays down two essential requirements to be fulfilled for grant of bail which are referred to as twin conditions, viz., (i) there are reasonable grounds for believing that the



accused is not guilty of such offence; and (ii) accused is not likely to commit an offence while on bail. However, such requirement must not be taken to require findings to be recorded based upon the burden of proof which is of a higher requirement, i.e. as may be required in the case of judgment of conviction.

17. The observations made in ***Vijay Madanlal Choudhary (supra)*** would be of relevance in the present context. The relevant paragraphs of the said decision is extracted hereinbelow:-

*"288. The successive decisions of this Court dealing with analogous provision have stated that the court at the stage of considering the application for grant of bail, is expected to consider the question from the angle as to whether the accused was possessed of the requisite mens rea. The court is not required to record a positive finding that the accused had not committed an offence under the Act. The court ought to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. The duty of the court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities.*



*Further, the court is required to record a finding as to the possibility of the accused committing a crime which is an offence under the Act after grant of bail.*

*302. It is important to note that the twin conditions provided under Section 45 of the 2002 Act, though restrict the right of the accused to grant of bail, but it cannot be said that the conditions provided under Section 45 impose absolute restraint on the 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 of the 2002 Act. While dealing with a similar provision prescribing twin conditions in MCOCA, this Court in Ranjitsing Brahmajeetsing Sharma<sup>2</sup>, held as under : (SCC pp. 318-19, paras 44-46)*

*"44. The wording of Section 21(4), in our opinion, does not lead to the conclusion that the court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act. If such a construction is placed, the court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the applicant. Such cannot be the intention of the*

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<sup>2</sup>(2005) 5 SCC 294



*legislature. Section 21(4) of MCOCA, therefore, must be construed reasonably. It must be so construed that the court is able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. Similarly, the court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in futuro must be an offence under the Act and not any other offence. Since it is difficult to predict the future conduct of an accused, the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence.*

*45. It is, furthermore, trite that for the purpose of considering an application for grant of bail, although detailed reasons are not necessary to be assigned, the order granting bail must demonstrate application of mind at least in serious cases as to why the applicant has been granted or denied the privilege of bail.*

*46. The duty of the court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities.*



*However, while dealing with a special statute like MCOCA having regard to the provisions contained in sub-section (4) of Section 21 of the Act, the court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. The findings recorded by the court while granting or refusing bail undoubtedly would be tentative in nature, which may not have any bearing on the merit of the case and the trial court would, thus, be free to decide the case on the basis of evidence adduced at the trial, without in any manner being prejudiced thereby."*

*(emphasis supplied)*

303. We are in agreement with the observation made by the Court in *Ranjitsing Brahmajeetsing Sharma*<sup>3</sup>. The Court while dealing with the application for grant of bail need not delve deep into the merits of the case and only a view of the court based on available material on record is required. The court will not weigh the evidence to find the guilt of the accused which is, of course, the work of the trial court. The court is only required to place its view based on probability on the basis of reasonable material

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<sup>3</sup>*Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra - (2005) 5 SCC 294*



*collected during investigation and the said view will not be taken into consideration by the trial court in recording its finding of the guilt or acquittal during trial which is based on the evidence adduced during the trial. As explained by this Court in Nimmagadda Prasad<sup>4</sup>, the words used in Section 45 of the 2002 Act are "reasonable grounds for believing" which means the court has to see only if there is a genuine case against the accused and the prosecution is not required to prove the charge beyond reasonable doubt."*

18. Accordingly, it is clear that the Court while considering grant of bail on the twin conditions under Section 45 of PMLA is to arrive at a finding on the basis of broad probabilities, while being fully conscious that the stage at which such findings are being made is on the basis of pre-trial stage investigation records and pleadings. It is also a settled position that such findings required to be made while referring to the twin tests of Section 45 of PMLA would be tentative and would not

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<sup>4</sup>Nimmagadda Prasad v. CBI, (2013) 7 SCC 466



prejudice the conclusive findings still to be arrived at after trial.

19. The nature of such findings in a factual matrix is best elucidated by referring to the findings on *prima facie* case vis-à-vis twin tests of Section 45 of PMLA in the case of **Manish Sisodia-1 (supra)** at paras-24 to 28 which would demonstrate the manner in which the Court had recorded findings as regards Section 45 of PMLA in the particular factual context.

20. The Prosecution Complaint is detailed and makes out a case against the petitioner herein. As regards *prima facie* case made out regarding the money laundering offence under Section 3 of PMLA, the investigation is stated to have revealed the following:-

- (i) The illegal allotment of sites in the guise of allotment of sites *in lieu* of compensation made to the ineligible beneficiaries;



- (ii) Such allotment was made on the basis of false facts, forgery, cheating and use of undue influence;
- (iii) The illegally allotted sites constitute the proceeds of crime;
- (iv) Such proceeds of crime were layered/routed through Power of Attorney, Sale Deeds to obfuscate the true nature of proceeds of crime;
- (v) The criminal activities associated with the scheduled offence included undue gratification/bribe obtained by accused persons for making the illegal allotment;
- (vi) Charts are enclosed evidencing the manner of commission of offences;

21. A reference is made to the illegal allotment of 48 sites in favour of Chamundeshwari Nagar Sarvodaya Sangha, all of which were made by G.T.Dinesh Kumar, the petitioner herein (See *para-11.7 of Prosecution Complaint*).



22. It is stated that when G.T. Dinesh Kumar was confronted regarding such illegalities during custody, he has admitted that Government of Karnataka did not grant any permission to allot sites to the said Chamundeshwari Nagar Sarvodaya Sangha though MUDA had requested. It is specifically observed that he has not provided any "plausible answers to the fact that 03 out of 48 sites allotted in the case has been obtained by his relatives through Sale Agreements without paying any money and also the fact that huge sums of money were received by his relatives from Sri N. Manjunath, who is a major beneficiary of illegal allotment in this case." (See para-11.7(d) of Prosecution Complaint).

23. It is specifically recorded in the Prosecution Complaint that the allotment of sites to the aforesaid Chamundeshwari Nagar Sarvodaya Sangha have been obtained through GPA by real estate businessman Sri N. Manjunath and one of the allottees of site No.65 Smt.J.S.Sunanda Devi had submitted to the adjudicating



authority that the site was obtained by Sri N. Manjunath under undue pressure [*see para-11.7(f) of Prosecution Complaint*].

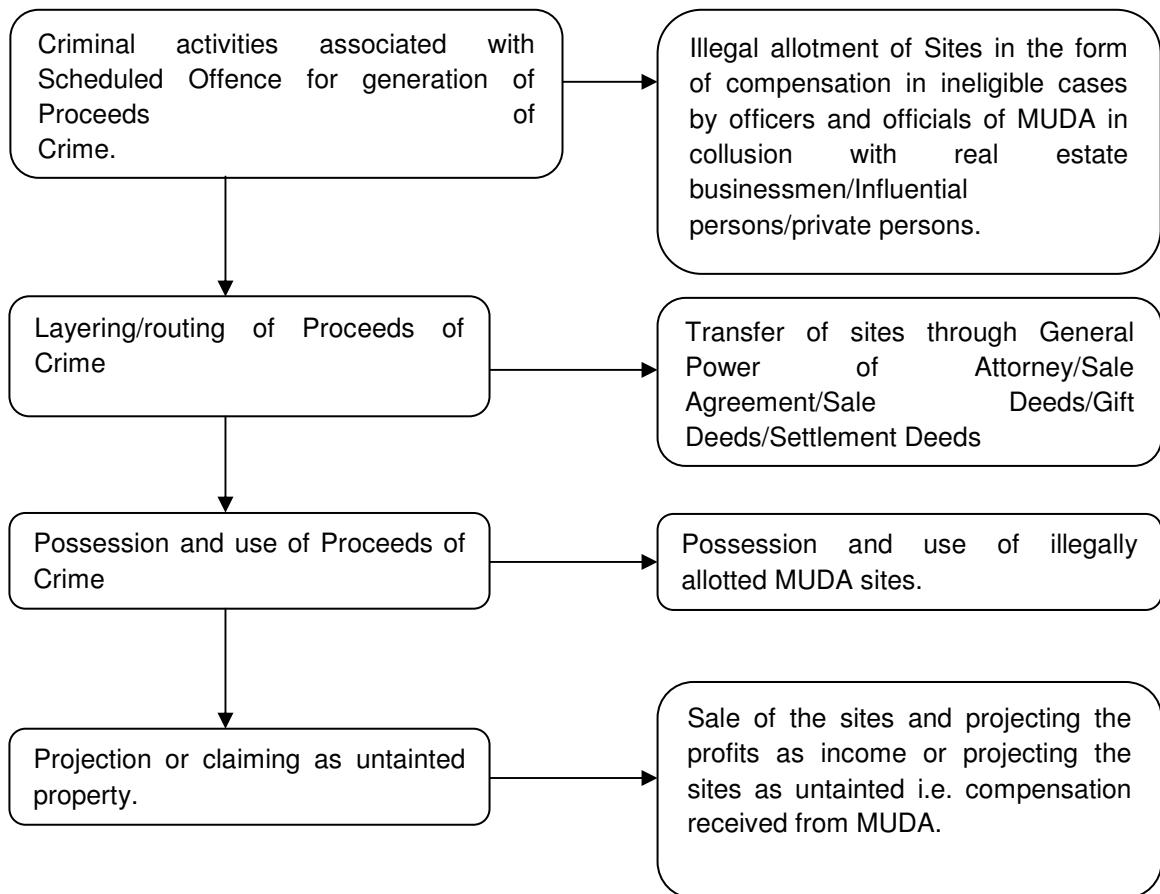
24. It is narrated that, there is a specific finding that the sites allotted to Chamundeshwari Nagar Sarvodaya Sangha have been transferred to the close relatives and associates of the petitioner, G.T.Dinesh Kumar through Sale Agreements and the details are provided at para-11.7(i) of the Prosecution Complaint and the further assertion that the amount for such Agreement was paid by Sri N. Manjunath is evidenced by the Bank payments by way of Demand Draft [*see para-11.7(j) of the Prosecution Complaint*].

25. It is also stated that the said Sri N. Manjunath in his statement under Section 50 of PMLA has not given any explanation for such payments made.



26. It is made out that huge payments have been made to the relatives of G.T. Dinesh Kumar by N. Manjunath including to maternal grandfather of wife of G.T. Dinesh Kumar, brother of mother-in-law of G.T. Dinesh Kumar, maternal grandmother of wife of G.T. Dinesh Kumar and sister of mother-in-law of G.T. Dinesh Kumar and no explanation has been made as regards such payments.

27. Such details referred to above would make out an offence of money laundering in terms of the ingredients of the offence. The Flow Chart reflecting generation, layering, routing and integration of proceeds of crime at para-11.1 of the Prosecution Complaint is self-explanatory, which is extracted as below:-



28. On similar lines, it is stated that offence has been made out in the case of Chamundeshwari Nagar Sarvodaya Sangha. A reference is also made to the illegal allotments to Cathedral Parish Society, JSS MVP Employees House Building Co-operative Society (EHBCS), Smt. Neelamma and Others, K. Chandra, R. Jayamma, and A. Papanna. The Prosecution Complaint contains the



details as regards each of the said illegal allotment made and includes the aspect of proceeds of crime, undue gratification, payments made to relatives illustrated by appropriate Flow Charts and tabular depictions.

29. Para-13 of the Prosecution Complaint discusses the specific role of G.T.Dinesh Kumar, the petitioner herein as regards the offence of money laundering as also the aspect of proceeds of crime, there is a detailed table explaining the alleged proceeds of crime pursuant to illegal allotments made, which is extracted below:-

<b><u>PAO No.</u></b>	<b><u>No. of Sites</u></b>	<b><u>Value</u></b>
02/2025 17.01.2025	160	Rs.81.91 Crores
14/2025 09.06.2025	92	Rs.36.29 Crores
28/2025 04.10.2025	31	Rs.20.60 Crores

30. The further details of proceeds of crime are detailed in para-13 of the Prosecution Complaint and the Table illustrating the same is extracted below:-



<u>Sl. No.</u>	<u>PoC obtained in the case</u>	<u>Value of PoC (in Rs.)</u>
1	Cash collected	34,65,000
2	Misuse of high security bond papers	8,28,80,000
3	Members of Chamundeshwari Nagar Sarvodaya Sangha	5,86,80,000
4	Shri Abdul Waheed	3,62,20,000
5	Cathedral Parish Society	1,70,00,000
6	Smt.Ningamma (Sy.No.157/1 in Hinkal Village)	1,13,30,000
7	JSS MVP EHBCS	1,02,74,000
8	Smt.Ningamma (incentive allotment)	49,00,000
Total		22,47,49,000

31. The petitioner has however not specifically adverted to the factual contents of the Prosecution Complaint, while contending that the Prosecution Complaint itself was filed during the pendency of the present proceedings. However, the filing of the Prosecution Complaint is an aspect that needs to be adverted to and taken note of, though filed subsequent to



the petition. The Prosecution Complaint crystallises the stand of the Prosecution.

**[III] OTHER CONTENTIONS:-**

32. As regards other contentions, the same are dealt with *infra*. As regards the contention relating to the proceedings under PMLA having overshot by investigation of the predicate offence, it could be stated that the legal requirement of a First Information Report would be sufficient for the progress of proceedings under PMLA. The proceedings under PMLA would fail only if the proceedings relating to the predicate offence vis-à-vis the accused has resulted in discharge/acquittal or quashment of the predicate offence as against the accused. In the absence of such termination of such proceedings of the predicate offence, it could be stated that there is no bar for continuance of the proceedings under PMLA.

33. It would also be necessary to notice that the present proceedings being limited to grant of bail, the



finding regarding *prima facie* case as regards the offence of money laundering cannot result in conversion of present petition to one under Section 482 of Cr.P.C. / Section 528 of BNSS or petition to discharge and accordingly, a detailed consideration of the ingredients of the offence of money laundering, including adjudication relating to criminal activity in relation to scheduled offence need not be entertained.

34. Insofar as the contention that the petitioner is entitled to be enlarged on bail on the ground of parity, it must be noticed that the orders relied on by the petitioner are the orders passed in exercise of Section 482 of Cr.P.C. quashing the summons and proceedings. The ground of parity must rest on bail to a co-accused and cannot be permissible to take note of the orders passed quashing the proceedings against other co-accused.

35. The mere stay of proceedings against other accused would be no ground to seek for enlargement of bail and considerations for enlargement of bail are distinct.



36. At this stage of pre-trial proceedings looking into the detailed narration made regarding the offence of money laundering, criminal activity in relation to scheduled offence, proceeds of crime, the Court is not in a position to record a finding that there are no reasonable grounds for believing that the petitioner is not guilty of such offence. Though various contentions have been raised by the learned counsel appearing for accused, suffice it to state that the contents of Prosecution Complaint could not permit negativing the *prima facie* role of the petitioner in the commission of offence.

**[IV] LEGALITY REGARDING PROCEDURE FOLLOWED DURING ARREST:-**

37. The petitioner has also raised contentions regarding the validity of arrest on various grounds and had submitted that the petitioner is entitled to be enlarged on bail.



38. The identical contentions raised before the trial Court has been rejected by a well reasoned order and relevant findings are made at paras-13 to 25 of the order rejecting bail. No doubt, the present proceedings are in the nature of concurrent jurisdiction requiring fresh consideration. However, the elaborate discussion and sound reasoning appeals to the Court and this Court is in broad agreement with the observations made.

39. As regards the contention that the satisfaction of the Officer that he has reasons to believe that the accused is guilty of an offence punishable under the Act and only there upon power of arrest could be exercised, the trial Court after having perused the records has stated that the remand application and grounds of arrest when perused would make out a case for exercise of power of arrest. This Court has no reason to disagree with such finding and endorses such conclusion.



40. The trial Court has also recorded a finding after consideration that grounds of arrest are communicated, that reasons for arrest are also communicated.

41. Further, the trial Court at para-21 has referred to the grounds of arrest and in para-22 regarding reasons to believe. A finding has been recorded as regards non-circumvention of Section 19 of PMLA.

42. The remand applications are detailed and record that grounds of arrest have been communicated and acknowledged by him.

43. At paragraphs-14 to 18 of the order of the trial Court, there is detailed analysis of adherence to the factual guidelines of Apex Court in **D.K. Basu v. State of W.B.**<sup>5</sup> and such factual finding also requires endorsement and petitioner has failed to make out a case for a divergent view.

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<sup>5</sup> (1997) 1 SCC 416



**[V] DEFAULT BAIL:-**

44. The petitioner has filed an application under Section 167(2) of Cr.P.C. [Section 187(3) of BNSS] read with Section 45 of PMLA. It is the case made out by the petitioner that the arrest was on 16.09.2025 and the sixty day period for completion of investigation had expired on 15.11.2025, while the 'ED' though had filed the Prosecution Complaint on 14.11.2025, the same was incomplete and defective and accordingly, have sought for release of the petitioner on statutory/default bail.

45. It is contended that the incomplete chargesheet is no chargesheet at all and that the investigation as regards the other accused as on the relevant date was still to be completed and accordingly, the mere filing of Prosecution Complaint against the petitioner has been made only to defeat the indefeasible right of the petitioner.



46. The statement of objections has been filed by the respondent and it is contended that the Prosecution Complaint has been filed within the stipulated period of sixty days.

47. It is further submitted that the observations made in the office note by the Registry cannot form the basis to come to a conclusion that incomplete complaint has been filed. It is submitted that the clarifications and compliances pointed out by the Pending Section of the Court relate to minor discrepancies, including pagination of relied upon documents and description in Index, which office objections have been duly complied with. It is submitted that such observations made by the Registry cannot form the basis for the petitioner to claim default bail.

48. It is further submitted that the technical defects do not have the effect of overruling the substantive contents of the chargesheet.



49. The defects that were noticed by the Registry have been complied and the Court has noticed that the discrepancies noted as regards the relied upon documents have been rectified by the Investigating Officer as on 27.11.2025. It is further observed that the learned SPP had submitted that they had not been intimated regarding the discrepancies in time.

50. It is to be noticed that the nature of defects appear to be formal in nature, including as regards the corrections in the Index Sheet of the Prosecution Complaint.

51. In the present case, the chargesheet has always continued to remain as a part of the Court record and there has been rectification of defects, and in the absence of any defect which the Court feels is fatal to the Final Report, the petitioner is not entitled to claim the benefit of default bail. The Special Court has not found the defects to be of such nature so as to vitiate the chargesheet itself. If that were to be so, it cannot be held



that the defects such as Index Sheet as noticed in the present case cannot have the effect of vitiating the chargesheet.

52. In the case of **Sajith v. State of Kerala**<sup>6</sup> relied on by the petitioner, the chargesheet was not re-presented after it was returned as defective. Accordingly, the said order would not come to the aid of the petitioner.

53. Insofar as the aspect of incomplete chargesheet being a ground for default bail, it must be noticed that as regards the petitioner is concerned, a Final Report was filed within the period of sixty days. No doubt, investigation against other accused is still under progress, however, by virtue of the law laid down by the Apex Court in **Central Bureau of Investigation v. Kapil Wadhawan and Another**<sup>7</sup> [*Kapil Wadhawan (supra)*],

wherein it is clarified that once the chargesheet is filed against the particular accused, the statutory right of

<sup>6</sup> Bail Appl. No.399/2007

<sup>7</sup> (2024) 3 SCC 734



default bail cannot be claimed on the ground that investigation *qua* other accused was pending, the question of contending that there was incomplete chargesheet warranting extending of relief of default bail does not arise.

54. The further contention is that while filing the Prosecution Complaint, liberty has been sought for Additional Prosecution Complaint by the prosecution for further investigation.

55. Once the essential contents of chargesheet are found, mere liberty reserved for further investigation would not take away the effect of filing of chargesheet, as long as the requirements of a Final Report under Section 173(2) of Cr.P.C. are found.

56. Accordingly, in the present case, it is not demonstrated that the requirements of Section 173(2) of Cr.P.C. is absent. If that were to be so, the Prosecution Complaint filed would fulfil the requirement of filing of the



Final Report within the time stipulated and liberty sought for to file Additional Prosecution Complaint after further investigation would not take away the effect of first complete Prosecution Complaint that was filed on 14.11.2025. This position would emanate from the reading of paras-21 to 24 of the decision in ***Kapil Wadhawan (supra)***. The same are extracted hereinbelow:-

*"21. In our opinion, the Constitution Bench in K. Veeraswami v. Union of India<sup>8</sup> has aptly explained the scope of Section 173(2) : (SCC p. 716, para 76)*

*"76. The charge-sheet is nothing but a final report of police officer under Section 173(2) of the CrPC. The Section 173(2) provides that on completion of the investigation the police officer investigating into a cognizable offence shall submit a report. The report must be in the form prescribed by the State Government and stating therein (a) the names of the parties; (b) the nature of the information; (c) the names of the persons who appear to be acquainted with the circumstances of the case; (d) whether any offence appears to have been committed and, if so, by whom*

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<sup>8</sup>(1991) 3 SCC 655



(e) whether the accused has been arrested; (f) whether he had been released on his bond and, if so, whether with or without sureties; and (g) whether he has been forwarded in custody under Section 170. As observed by this Court in *Satya Narain Musadi v. State of Bihar*<sup>9</sup> that the statutory requirement of the report under Section 173(2) would be complied with if the various details prescribed therein are included in the report. This report is an intimation to the magistrate that upon investigation into a cognizable offence the Investigating Officer has been able to procure sufficient evidence for the court to inquire into the offence and the necessary information is being sent to the court. In fact, the report under Section 173(2) purports to be an opinion of the Investigating Officer that as far as he is concerned he has been able to procure sufficient material for the trial of the accused by the court. The report is complete if it is accompanied with all the documents and statements of witnesses as required by Section 175(5). Nothing more need be stated in the report of the Investigating Officer. It is also not necessary that all the details of the offence must be stated. The details of the offence are required to be proved to bring home the guilt to the accused at a later stage i.e. in the course of the trial of the case by adducing acceptable evidence."

(emphasis supplied)

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<sup>9</sup> (1980) 3 SCC 152



22. *In view of the above settled legal position, there remains no shadow of doubt that the statutory requirement of the report under Section 173(2) would be complied with if the various details prescribed therein are included in the report. The report under Section 173 is an intimation to the court that upon investigation into the cognizable offence, the investigating officer has been able to procure sufficient evidence for the court to inquire into the offence and the necessary information is being sent to the court. The report is complete if it is accompanied with all the documents and statements of witnesses as required by Section 175(5). As settled in the aforesated case, it is not necessary that all the details of the offence must be stated.*

23. ... *It may be noted that the right of the investigating officer to pray for further investigation in terms of sub-section (8) of Section 173 is not taken away only because a charge-sheet is filed under sub-section (2) thereof against the accused. Though ordinarily all documents relied upon by the prosecution should accompany the charge-sheet, nonetheless for some reasons, if all the documents are not filed along with the charge-sheet, that reason by itself would not invalidate or vitiate the*



*charge-sheet. It is also well settled that the court takes cognizance of the offence and not the offender."*

57. The reliance may also be placed upon the Apex Court decision in **Dinesh Dalmia v. CBI**<sup>10</sup> [also referred to by the Apex Court in **Kapil Wadhawan (supra)**]. The relevant paragraph is extracted hereinbelow:-

*"39. ... The statutory scheme does not lead to a conclusion in regard to an investigation leading to filing of final form under sub-section (2) of Section 173 and further investigation contemplated under sub-section (8) thereof. Whereas only when a charge-sheet is not filed and investigation is kept pending, benefit of proviso appended to sub-section (2) of Section 167 of the Code would be available to an offender; once, however, a charge-sheet is filed, the said right ceases. Such a right does not revive only because a further investigation remains pending within the meaning of sub-section (8) of Section 173 of the Code."*

*(emphasis supplied)*

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<sup>10</sup>(2007) 8 SCC 770



58. Further, it must be noticed that, as this Court finds that the Prosecution Complaint filed in the first instance cannot be stated to be incomplete merely on the ground that further Prosecution Complaint would be filed upon further investigation. Accordingly, the question of granting default bail under Section 167(2) of Cr.P.C. does not arise. The petitioner has not been able to point out that the essential requirements of a chargesheet are absent.

59. Though the Apex Court in **Ritu Chhabaria v. Union of India and Others**<sup>11</sup> [*Ritu Chhabaria (supra)*] had observed that without completing investigation of a case, the Prosecution Complaint cannot be filed by the Investigating Agency only to deprive the accused of right of default bail under Section 167(2) of Cr.P.C. However, in the case of **Director of Enforcement v. Manpreet Singh Talwar**<sup>12</sup>, the Apex Court by its order of 12.05.2023 has clarified that the application for grant of default bail could

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<sup>11</sup> (2024) 12 SCC 116 - [W.P.(Crl.) No.60/2023]

<sup>12</sup> SPL (Crl.) 5724/2023



be proceeded independent of and without relying on the judgment in W.P.(Crl.) No.60/2023, disposed of on 26.04.2023. In effect, the Apex Court has held as hereunder:-

*"In continuation of the interim order of this Court dated 1 May 2023, we clarify that the order shall not preclude any trial court or, as the case may be, High Court from considering an application for the grant of default bail under Section 167 of the Code of Criminal Procedure 1973 independent of and without relying on the judgment dated 26 April 2023 in Writ Petition (Criminal) No 60 of 2023."*

#### **[VI] MEDICAL BAIL:-**

60. The petitioner has also raised the medical ground and seeks for bail on such ground as well. Reliance is placed on the *First Proviso* to Section 45 of PMLA, while seeking bail. Proviso to Section 45 reads as follows:-

*"Provided that a person who is under the age of sixteen years or is a woman or is sick or infirm or*



*is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees, may be released on bail, if the Special Court so directs:"*

61. It is averred in the petition that the petitioner is suffering from health issues, such as Haemorrhoids, Asthma, Hamstring injury and also that the Doctor has advised him to undergo 2D Scan for chest pain. The medical documents are enclosed at Annexure-'V6' to the petition.

62. Learned counsel for the petitioner submits that the petitioner is required to be operated regarding Haemorrhoids. It must be noticed that for the purpose of being enlarged on bail, it is to be established that the petitioner is to be sick or infirm. However, it is the settled position of law that sickness or infirmity must be of such nature that medical assistance cannot be provided in penitentiary hospitals. The nature of illness pleaded is such that it could be treated in Government Hospitals and



the respondents can be directed to ensure that medical treatment as may be required for the purpose of present medical ailment be provided. The material on hand does not make out a case of any serious life threatening ailment that cannot be treated in jail/Government Hospital. Further, it cannot be stated that the medical ailment is such that his continuance in custody would endanger life of the accused.

63. Accordingly, the bail sought on medical grounds is liable to be rejected, while observing that the respondent Authorities have to take appropriate action to ensure that the petitioner is given adequate treatment for his health ailment.

**[VII] LONG INCARCERATION AND DELAYED TRIAL AS A CONSIDERATION FOR GRANT OF BAIL:-**

64. While the satisfaction of twin conditions under Section 45 of PMLA are indeed necessary in order to consider grant of bail, the question as to whether general



principles of bail which may be considered to be the facets of Article 21 of the Constitution of India could be read into so as to enlarge the accused on bail in case the circumstances are made out, is a matter that has been dealt with by the Apex Court. The observations made by Apex Court in **Manish Sisodia v. Central Bureau of Investigation**<sup>13</sup> [*Manish Sisodia-1*] are extracted hereinbelow:-

*"28. In view of the aforesaid discussion and for the reasons stated, we are not inclined to accept the prayer for grant of bail at this stage.*

*29. However, we are also concerned about the prolonged period of incarceration suffered by the appellant Manish Sisodia. In *P. Chidambaram v. Enforcement Directorate*<sup>14</sup>, the appellant therein was granted bail after being kept in custody for around 49 days<sup>15</sup>, relying on the Constitution Bench in *Gurbaksh Singh Sibia v. State of Punjab*<sup>16</sup> and *Sanjay Chandra v. CBI*<sup>17</sup>, that even if the*

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<sup>13</sup>(2024) 12 SCC 691

<sup>14</sup>(2020) 13 SCC 791

<sup>15</sup>(2020) 13 SCC 337, the appellant therein was granted bail after being kept in custody for around 62 days.

<sup>16</sup>(1980) 2 SCC 565

<sup>17</sup>(2012) 1 SCC 40



*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.*

*30. Again, in Satender Kumar Antil v. CBI<sup>18</sup>, this Court referred to Surinder Singh v. State of Punjab<sup>19</sup> and Kashmira Singh v. State of Punjab<sup>20</sup>, to emphasise that the right to speedy trial is a fundamental right within the broad scope of Article 21 of the Constitution.*

*31. In Vijay Madanlal Choudhary<sup>21</sup>, 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<sup>22</sup>.*

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<sup>18</sup>(2022) 10 SCC 51

<sup>19</sup>(2005) 7 SCC 387

<sup>20</sup>(1977) 4 SCC 291

<sup>21</sup>(2023) 12 SCC 1

<sup>22</sup> See also Pankaj Bansal v. Union of India - (2024) 7 SCC 576



*32. Vijay Madanlal Choudhary<sup>23</sup>, also held that Section 436-A of the Code<sup>24</sup> 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 436-A 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<sup>25</sup>, 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.*

*34. Detention or jail before being pronounced guilty of an offence should not become punishment without trial. If the trial gets protracted despite assurances of*

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<sup>23</sup> (2023) 12 SCC 1

<sup>24</sup> 436-A of the Code reads:

**"436-A. Maximum period for which an undertrial prisoner can be detained.**—Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:

Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:

Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

Explanation.—In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded.”

<sup>25</sup>(2021) 2 SCC 427



*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.*

*35. 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."*



65. The observations at para-35 referred to above would indicate that constitutional protection flowing from a higher law could be read into the jurisprudence of bail and into Section 439 of Cr.P.C. and Section 45 of PMLA. The said principle has been reiterated in **Manish Sisodia v. Directorate of Enforcement<sup>26</sup> [Manish Sisodia -3]**. The relevant portions of the decision are extracted hereinbelow:-

*"25. 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.*

66. The Court had reiterated the observation made in paras-29 to 35 of **Manish Sisodia-1** and has made certain other relevant observations that are extracted below:-

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<sup>26</sup>(2024) 12 SCC 660



*36. 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."*

67. The relevant facts indicating the length of imprisonment are:-

(a) Date of registration of FIR:- 27.09.2024 - Pursuant to direction of the Special Court in PCR No.28/2024,



wherein matter was referred for investigation under Section 156(3) of Cr.P.C.

- (b) Date of arrest:- 16.09.2025
- (c) Period of incarceration as on date of pronouncement of order:- **127 days** (*from the date of arrest till the date of pronouncement*).

68. It is to be examined as to whether such period of incarceration would be sufficient to treat it as infringing upon rights of the petitioner under Article 21 of the Constitution of India and thus entitling the petitioner to be enlarged on bail.

69. It is to be noticed that the Apex Court in *Manish Sisodia-3 (supra)* while dealing with request for being enlarged on bail in light of the liberty granted under *Manish Sisodia - 1(supra)* has granted bail on the sole ground of long incarceration compounded by prospects of a delayed trial.



70. The Apex Court, while considering the objection of learned ASG that provisions of Section 45 of PMLA would come in the way of consideration of grant of bail to the accused has observed that the observations made in **Manish Sisodia -1 (supra)** at para-34 would be sufficient to proceed to consider grant of bail despite restrictions under Section 45 of PMLA. Para-37 of the decision in **Manish Sisodia-3 (supra)** is extracted hereinbelow:-

*"37. In the light of the specific observations of this Court in para 34 of the first order<sup>27</sup>, 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."*

71. A close scrutiny of the context in which bail was rejected in **Manish Sisodia-1 (supra)** would reveal that the application for bail was rejected on its merits after recording a finding regarding *prima facie* case made out as

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<sup>27</sup>Manish Sisodia v. CBI - (2024) 12 SCC 691



regards the ingredients of the offence of money laundering. Such rejection is detailed in the discussion at para-1 to para-25, what would be of substantial significance is the latter part of the order from para-26 onwards. The Apex Court has consciously adverted to the effect of long incarceration and the object of bail being to secure the accused to stand trial. The Apex Court has referred to the right of speedy trial flowing from Article 21 of the Constitution of India. A specific reference is made to the judgment in ***Vijay Madanlal Choudhary (supra)*** insofar as it refers to Section 436A of the Code as being applicable to offences under PMLA and observes that Section 436A effectuates the right to speedy trial being a facet of right to life, except where such delay is attributable to the accused himself. It re-emphasizes that:-

*"34. Detention or jail before being pronounced of guilty of an offence should not become punishment without crime. 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...."*

72. It is relevant to notice that it is in the context of an order granting bail under PMLA that the Apex Court has reiterated the principle, '*bail is rule and jail is exception*'. The observations at para-52 of **Manish Sisodia-3** reads as follows:-

*"52. The Court in Javed Gulam Nabi Shaikh case<sup>28</sup> 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 straightforward open-and-shut cases, this Court is flooded with huge number of bail petitions thereby adding to the huge pendency. It is high time that the trial courts and the High Courts should*

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<sup>28</sup> (2024) 9 SCC 813



*recognize the principle that "bail is rule and jail is exception".*

73. It is significant that the decision in **Manish Sisodia - 3(supra)** reiterates that Section 45 of PMLA would not come in the way of considering grant of bail due to long incarceration and delay in time.

74. That apart, what is noticeable is that the reiteration of the principle, '*bail is rule and jail is exception*', which observation is made even in the context of PMLA.

75. The other orders of the Apex Court in the same line of reasoning would require reference. The Apex Court in **Padamchand Jain v. Enforcement Directorate**<sup>29</sup> has specifically clarified that the law laid down in **Manish Sisodia-3 (supra)** was not under Article 142 of the Constitution of India and that the twin conditions under Section 45 of PMLA cannot override the constitutional

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<sup>29</sup> SLP No.(Cri.) 17476/2025



safeguard as enshrined in Article 21 of the Constitution of India. The observations at paras-6 and 7 of the decision would read as hereunder:-

*"6. Learned Single Judge of the High Court, while considering the law laid down by this Court in *Manish Sisodia v. Directorate of Enforcement*, 2024 SCC OnLine 1920, has observed that this Court has granted bail in the said matter in exercise of powers under Article 142 of the Constitution of India.*

*7. We may clarify that in the case of *Manish Sisodia* (supra) the Court has not exercised the powers under Article 142 of the Constitution of India. The Court has held that the twin conditions under Section 45 of the PMLA cannot override the constitutional safeguards, as provided under Article 21 of the Constitution of India. This Court has held that a prolonged incarceration cannot be permitted to be converted pre-trial detention into a sentence without trial. Like in the case of *Manish Sisodia* (supra) in the present case also thousands of documents are required to be considered at the stage of trial, so also around 50 witnesses are required to be examined. The main evidence in the present case is documentary in nature, which is already seized by the prosecution agency. As such,*



*there is no possibility of the same being tampered with."*

76. What would be of significance is that the observations were made by the Apex Court as extracted hereinabove, while specifically dealing with the contention of the learned Additional Solicitor General that, no bail could be granted unless twin conditions of Section 45 of PMLA are complied with (*see para-4*).

77. Accordingly, the Three Judge Bench of Apex Court while reiterating the order in ***Manish Sisodia-3 (supra)*** has set at rest the primacy of constitutional rights flowing from Article 21 of the Constitution of India vis-à-vis the statutory provisions of Section 45 of PMLA.

78. It is also an independent principle of bail jurisprudence that the object of pre-trial detention cannot be punitive nor could it be construed to constitute moral conviction.



79. The Apex Court has reiterated that the right to personal liberty under Article 21 of the Constitution of India that is to be safeguarded where there is indefinite detention in cases involving voluminous documents and heavy material where trial is unlikely to begin promptly. The observations of Apex Court at para-27 in **V. Senthil Balaji v. Deputy Director, Directorate of Enforcement**<sup>30</sup> [*Senthil Balaji (supra)*] is extracted hereinbelow:-

*"27. Under the Statutes like PMLA, the minimum sentence is three years, and the maximum is seven years. The minimum sentence is higher when the scheduled offence is under the NDPS Act. When the trial of the complaint under PMLA is likely to prolong beyond reasonable limits, the Constitutional Courts will have to consider exercising their powers to grant bail. The reason is that Section 45(1)(ii) does not confer power on the State to detain an accused for an unreasonably long time, especially when there is no possibility of trial concluding within a reasonable time. What a reasonable time is will depend on the provisions under which the accused is being tried and*

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<sup>30</sup>2024 SCC OnLine SC 2626



*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<sup>31</sup>, 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*

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<sup>31</sup>(2021) 3 SCC 713



*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."*

80. It thus becomes clear that the Apex Court has reiterated the supremacy of rights flowing from Part-III of the Constitution of India which stand abridged where there is no possibility of trial concluding within a reasonable time and the constitutional courts on such principle enlarge the accused on bail "notwithstanding the statutory provisions".



81. The observations in ***Senthil Balaji (supra)*** has been reiterated by the latest judgment of the Apex Court in ***Mahesh Joshi v. Directorate of Enforcement***<sup>32</sup> at paras-13 and 14.

*"13. In V. Senthil Balaji v. Deputy Director, Directorate of Enforcement, of which, one of us was a member (Augustine George Masih, J.,), this Court, particularly in para 27, held that where a trial cannot be reasonably concluded and incarceration becomes prolonged, constitutional courts must intervene to safeguard the right to personal liberty under Article 21. The Court further emphasised that Section 45(1)(ii) of the PMLA cannot be interpreted to justify indefinite detention in cases involving voluminous, document-heavy material where trial is unlikely to begin promptly.*

*14. Upon considering the material placed before us, we find that several co-accused, whose alleged roles will ultimately be evaluated at trial, have already been granted bail. The Appellant has remained in custody for over seven months. The record*

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<sup>32</sup>SLP (Crl.) No.13737/2025 vide order dated 03.12.2025.



*is entirely documentary, as of now there are 66 witnesses, 184 documents, and more than 14,600 pages are involved, and the proceedings are still at the stage of supply of copy of the police report and other documents under Section 207, CrPC. In our view, these circumstances indicate that the commencement of trial is not imminent and that the trial itself is not likely to conclude once started in the near future. The continued detention of the Appellant requires closer scrutiny in light of constitutional considerations.*

82. The Apex Court in **Udhaw Singh v. Enforcement Directorate**<sup>33</sup> has noticed the judgment in **Union of India Through Assistant Director v. Kanhaiya Prasad**<sup>34</sup> [**Kanhaiya Prasad (supra)**] which appeared to strike a discordant note has specifically observed at para-5 that the observations made in the said judgment was in the context of a particular factual matrix where the orders in **Senthil Balaji (supra)** were not

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<sup>33</sup>Crl.A No.799/2025 vide order dated 17.02.2025

<sup>34</sup>(2025) SCC OnLine SC 306



applicable and accordingly, the order in **Kanhaiya Prasad (supra)** does not refer to the judgment in **Senthil Balaji (supra)**.

83. The latest judgment of the Apex Court in the context of long detention being a ground to seek release on bail is that of the Apex Court in **Arvind Dham v. Directorate of Enforcement**<sup>35</sup>. The observations at para-15 to para-18 reiterate and sum up the legal position, which is as follows:-

*"15. We have given our thoughtful consideration to the rival submissions and have carefully perused the record. The court while dealing with the prayer for grant of bail has to consider gravity of offence, which has to be ascertained in the facts and circumstances of each case. One of the circumstances to consider the gravity of offences is also the term of sentence i.e., prescribed for the offence, the accused is alleged to have committed<sup>36</sup>. The court has also to take into account the object of the special Act, the gravity of offence and the attending circumstances along with period of*

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<sup>35</sup> 2026 SCC OnLine SC 30

<sup>36</sup> P.Chidambaram v. Directorate of Enforcement, (2020) 13 SCC 791



*sentence. All economic offences cannot be classified into one group as it may involve various activities and may differ from one case to another. Therefore, it is not advisable on the part of the Court to categorize all the offences into one group and deny bail on that basis<sup>37</sup>. It is well settled that 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<sup>38</sup>. The aforesaid proposition was quoted with approval by another two-Judge Bench of this Court and it was held that long period of incarceration for around 17 months and the trial not even having commenced, the appellant in that case has been deprived of his right to speedy trial<sup>39</sup>.*

*16. A two-Judge Bench of this Court in V. Senthil Balaji's case<sup>40</sup> has held that under the statutes such as PMLA, where maximum sentence is seven years, prolonged incarceration pending trial may warrant grant of bail by Constitutional Courts, if there is no*

<sup>37</sup> Satender Kumar Antil v. CBI, (2022) 10 SCC 51

<sup>38</sup> Javed Gulam Nabi Shaikh v. State of Maharashtra, (2024) 9 SCC 813

<sup>39</sup> Manish Sisodia v. Enforcement Directorate, (2024) 12 SCC 660

<sup>40</sup> V. Senthil Balaji v. Deputy Director, Enforcement Directorate, 2024 SCC OnLine SC 2626



*likelihood of the trial concluding within a reasonable time. Statutory restrictions cannot be permitted to result in indefinite pretrial detention in violation of Article 21.*

17. *A three Judge Bench of this Court in Padam Chand Jain (supra), reiterated that prolonged incarceration cannot be allowed to convert pretrial detention into punishment and that documentary evidence already seized by the prosecution eliminates the possibility of tampering with the same.*

18. *The right to speedy trial, enshrined under Article 21 of the Constitution, is not eclipsed by the nature of the offence. Prolonged incarceration of an undertrial, without commencement or reasonable progress of trial, cannot be countenanced, as it has the effect of converting pretrial detention into form of punishment. Economic offences, by their very nature, may differ in degree and fact, and therefore cannot be treated as homogeneous class warranting a blanket denial of bail."*

84. The Apex Court took note of the arrest of only the petitioner therein who was one of the 28 individuals, that the maximum sentence was seven years, that there



was no likelihood in the commencement of trial in the near future. It is observed at para-19 as follows:-

*"19. ..There is no likelihood of trial commencing in the near future. The continued incarceration in such circumstances particularly where the evidence which is primarily documentary in nature, is already in custody of the Prosecution, violates the right of the appellant to speedy trial under Article 21 of the Constitution of India. "*

Accordingly, taking note of all the above factors, the Court in the above factual matrix enlarged the accused on bail.

85. The consistent legal reasoning adopted while enlarging the accused on bail is in the context of long detention, factually dense material relied upon and absence of any possibility of trial being concluded early. Further, the Apex Court in ***Senthil Balaji (supra)*** has emphasized that judicial discretion is vested in the constitutional courts which is to be exercised in light of the particular factual matrix.



86. Accordingly, it is clear that the ground of speedy trial, context of delay in trial and long incarceration are by itself independent grounds to seek for being enlarged on bail on the premise of rights flowing from Article 21 of the Constitution of India which could be pressed into service *de hors* merits of the application in terms of Section 45 of PMLA. The Apex Court has referred to constitutional mandate being higher law must be read into Section 439 of Cr.P.C.

87. In light of the above legal framework, the request of the petitioner for being enlarged on bail in the present case is to be considered.

88. However, taking note that the length of incarceration is 127 days as of now, it can be stated that it would not qualify to be long incarceration entitling the petitioner to be released on bail for the present.



## **[VIII] CONCLUSION:-**

89. The approach of Apex Court in ***Manish Sisodia - 1 (supra)*** could be adopted in the present case as well. The Apex Court while recording a positive finding though for the purposes of Section 45 of PMLA that the prayer for grant of bail could not be considered, as a *prima facie* case of involvement of the petitioner was made out, however, reserved liberty to approach, if there was delay in the trial while discussing the effect of prolonged incarceration.

90. The observations made at paras-29 to 32 extracted supra in ***Manish Sisodia-1 (supra)*** as well as the observation at para-36 which is extracted as hereunder:-

*"36. 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."*

would indicate that the Apex Court taking note of the stand of the Prosecution regarding trial, reserved liberty to the appellant therein to move a fresh application for bail in case of change in circumstances or if trial is protracted and proceeds at a snail's pace in the next three months or if the trial is not concluded within six to eight months.

91. Subsequently, in **Manish Sisodia v. Directorate of Enforcement<sup>41</sup> [Manish Sisodia-2]**

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<sup>41</sup>(2024) SCC OnLine SC 1498



when the accused had approached the Apex Court once again, the Apex Court noticing that the period of six to eight months fixed by the previous order **[*Manish Sisodia-1 (supra)*]** not having expired, reserved liberty to revive his prayer to move afresh after filing of complaint/chargesheet.

92. Finally, the Apex Court in the third round of approach whereby a challenge was made to the rejection of application by the High Court in ***Manish Sisodia-3 (supra)*** enlarged the petitioner on bail recording that there was remote possibility of trial being concluded in the near future, that keeping the appellant behind the bars for an unlimited period of time would deprive his fundamental right to liberty under Article 21 of the Constitution of India, that prolonged incarceration before being pronounced guilty of an offence should not be permitted to become punishment without trial.

93. Finally, the Apex Court proceeded to grant bail after taking note of the aspect of long incarceration. In



the present case as well having held that the length of incarceration cannot qualify to be long incarceration, as the petitioner has been in custody for 127 days as of now, it would be appropriate to reserve liberty to the petitioner to approach this Court after a lapse of three months.

94. The petitioner then would have to point out as regards Prosecution having taken steps for commencement of trial and that there may be the possibility of joint trial contributing to further delay and that there was no possibility of trial concluding within a reasonable time.

95. The Prosecution also would have to keep such aspects in mind so as to demonstrate that trial would be concluded within a reasonable time. Upon consideration of such aspects, the Court may take an appropriate decision.

96. Reserving liberty would be justified while noticing that, as on date, it is the petitioner alone who has been arrested amongst the several accused, that prior to



his arrest, he had subjected himself to interrogation and that the investigation of the predicate offence is not yet concluded.

97. Accordingly, in light of the observations made above, the grant of bail for the present is **rejected**. However, liberty is reserved to the petitioner to re-approach after a period of three months directly before this Court and to make a renewed plea for bail.

98. Accordingly, the petition is **rejected**, while reserving liberty to the petitioner to approach afresh in terms of the relevant observations supra.

**Sd/-  
(S. SUNIL DUTT YADAV)  
JUDGE**

VGR