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

Reserved on: 19th March, 2025
Pronounced on: 09th April, 2025

\+ **BAIL APPLN. 4825/2024**

ANIL KUMAR AGGARWAL .....Petitioner

Through: Mr. Vijay Aggarwal, Mr. Nagesh Behl, Mr. Rachit Bansal, Mr. Ketan Kumar Roy, Mr. Saurabh Nayar, Mr. Shekhar Pathak, Ms. Muskan Agarwal, Mr. Kartikay Kumar and Mr. Aditya Choudhary, Advocates.

versus

DIRECTORATE OF ENFORCEMENT .....Respondent

Through: Mr. Zoheb Hossain and Mr. Manish Jain, Special Counsel with Mr. Vivek Gurnani, Standing Counsel with Mr. Suradhish Vats, Advocate.

\+ **BAIL APPLN. 434/2025**

JAGDISH KUMAR ARORA

.....Petitioner

Through: Mr. Arshdeep Singh Khurana, Mr. Debopriyo Moulik, Mr. Peeyush Bhatia and Mr. Manan Khana, Advocates

Versus

DIRECTORATE OF ENFORCEMENT .....Respondent

Through: Mr. Zoheb Hossain and Mr. Manish Jain, Special Counsel with Mr. Vivek Gurnani, Standing Counsel with Mr. Suradhish Vats, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J.:

1. The Applicants seek regular bail under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023,[1] read with Section 45 of the Prevention of Money Laundering Act, 2002[2] in CT Case No. 12/2024 titled as ***Directorate of Enforcement v. Jagdish Kumar Arora & Ors.*** arising from ECIR bearing No. DLZO-I/45/2022, dated 28th September, 2022, under sections 3 and 4 of the PMLA.

2. Since both Applicants raise overlapping legal and factual grounds in support of their applications, a common order is being passed. To the extent their respective pleas differ, the same shall be addressed separately.

3. Briefly, the facts of the case, as per the Enforcement Directorate, are as follows:

3.1 The case pertains to illegal allotment of tender for supply, installation, testing and commissioning of electromagnetic flow meters and corresponding operations. The tender was secured by NKG Infrastructure Limited[3] on the basis of alleged fake performance certificates.

3.2 It is alleged that Mr. Anil Kumar Aggarwal (the Applicant in BAIL APPLN. 4825/2024) not only facilitated the issuance of these forged performance certificates but also benefited directly from the proceeds of crime. Mr. Anil Kumar Aggarwal paid bribe to Mr. Jagdish Kumar Arora (Applicant in BAIL APPLN. 434/2025), who was then serving as Chief

[1] "BNSS"
[2] "PMLA"
[3] "NKGIL"

Engineer, Delhi Jal Board,[4] to ensure the tender was awarded to NKGIL.

3.3 On the basis of these fraudulent certificates, a contract worth approximately INR 38.02 crores, was awarded to NKGIL by DJB. Out of the funds received from DJB, NKGIL transferred around INR 18.38 crores to Integral Screw Industries[5] under a sub-contract agreement dated 15th November, 2018. A portion of these funds was allegedly used by Anil Kumar Aggarwal to pay bribe to Jagdish Kumar Arora through one Tajinder Pal Singh, while the remainder was retained and laundered by showing fictitious sale and purchase transactions. Based on these allegations, the CBI registered FIR No. RC2182022A0010 dated 6th July, 2022, under Sections 420 read with 120B IPC and Sections 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988[6]. The present ECIR was registered on the basis of the aforenoted predicate offences. The Applicants were arrested pursuant thereto on 31st January, 2024.

Grounds based on legal principles

4. Mr. Vijay Aggarwal, counsel for Applicant in BAIL APPLN. 4825/2024, and Mr. Arshdeep Singh Khurana, counsel for Applicant in BAIL APPLN. 434/2025, have advanced the following common grounds in support of their prayer for bail:

4.1 The Supreme Court in several cases,[7] has observed that an accused would be entitled to be released on bail, in case, the Court were to come to a conclusion, that there was no likelihood of commencement of trial in near future. In the present case, not only has the trial under PMLA not

[4] "DJB"
[5] "ISI"
[6] "PC Act"
[7] ***Manish Sisodia v. ED*** 2024 SCC OnLine SC 1920; ***Sanjay Agarwal vs the Directorate of Enforcement***

commenced, even the trial in the scheduled offence is yet to begin. There is, therefore, no immediate prospect of trial in either case. The voluminous nature of the record to demonstrate the improbability of early conclusion is as follows: the prosecution complaint in the PMLA case spans over 17,950 pages, with the Enforcement Directorate relying on 35 witnesses and documents running into 122 volumes having 15750 pages. Likewise, in the predicate offence, the chargesheet runs into 209 volumes comprising over 14,385 pages, with 101 witnesses cited, four articles relied upon, and additional documents and statements yet to be supplied. The CFSL report in the predicate offence is also stated to be pending. In these circumstances, it is contended that the indefinite delay militates against continued incarceration.

4.2. The trial is unlikely to commence in the near future, as the framing of charges has to be deferred pending the completion of further investigation.[8]

4.3 The Applicants have already undergone over one year and one month in custody. Prolonged incarceration without trial, constitutes a direct infringement of the Applicants' right to life and liberty under Article 21 of Constitution of India, 1950[9] and ought to weigh heavily in the Court's consideration for bail.

4.4 Even if the trial under the PMLA were to conclude, no final judgment can be rendered unless and until the trial in the scheduled offence is also concluded. Considering the evident delay in both proceedings, the Applicants are entitled to bail on the same principles as enunciated by the

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2022 SCC Online SC 1748; ***Ramkripal Meena vs Directorate of Enforcement*** 2024 SCC Online SC 2276

[8] See: Decision dated 8th February, 2023 of the Delhi High Court in ***Raman Bhuraria vs, Directorate of Enforcement*** Bail Appln. No. 4330/2021

[9] "Constitution"

Supreme Court in similar cases.

4.5 The right of accused under Article 21 of the Constitution for release on bail, in the event, there is delay has been well recognised by the Supreme Court in the cases i.e. ***Manish Sisodia v. Directorate of Enforcement***;[10] ***Satender Kumar Antil v. CBI,***[11] ***Chanpreet Singh Rayat v. Enforcement Directorate***[12] passed by Delhi High Court.

4.6 Mr. Aggarwal argues that the arrest of Applicant in BAIL APPLN. 4825/2024 is discriminatory. This is evident from the fact that the prosecution complaint has been filed against the other co-accused persons who have not been arrested. In the instant case, the ED has not arrested many key persons including Mr. Tajinder Pal and Mr. D.K. Mittal. Thus, the Applicant is entitled to bail on the grounds of parity with other co-accused persons who have been granted bail on ground of not being arrested while being arrayed as an accused in the Scheduled offence. Reliance is placed on ***Ramesh Manglani Vs. Directorate of Enforcement***,[13] where the Court granted bail on the ground of discriminatory arrest of the accused and on the principles of parity.

Grounds on merits

5. **BAIL APPLN. 4825/2024**

5.1 The allegation of payment of bribe to co-accused Mr. Jagdish Kumar Arora, as levelled by the Enforcement Directorate,[14] is not borne out from the investigation conducted by the CBI, which is the agency empowered to

[10] 2024 SCC Online SC 19
[11] 2022 INSC 690
[12] Decision dated 9th September, 2024 in BAIL APPLN. 2095/2024
[13] 2023 SCC OnLine Del 3234
[14] "ED"

investigate offences under the Prevention of Corruption Act, 1988.[15] The chargesheet filed by the CBI in the scheduled offence case contains no allegation that the present Applicant paid any bribe to JKA or any other public servant. In fact, the CBI case proceeds solely on the allegation that NKG Infrastructure Limited obtained the contract by submitting forged performance certificates. Neither the Applicant nor Mr. Tajinder Pal Singh, through whom the ED claims the bribe was routed, is named as an accused or a witness in the chargesheet filed by the CBI. It is therefore argued that in the absence of any allegation of bribery in the predicate offence, the ED cannot independently investigate and prosecute the Applicant for the same.

5.2 The value of the alleged "proceeds of crime" attributed to the Applicant falls below the monetary threshold of INR 1 crore, as prescribed under the proviso to Section 45(1) of the PMLA. The said proviso exempts persons accused of laundering less than INR 1 crore from the twin conditions for grant of bail. The prosecution complaint identifies three components forming the alleged proceeds of crime: (i) INR 1.10 crore, claimed as deemed profit by the Applicant; (ii) INR 2.42 crores (approx); and (iii) INR 73.50 lakhs. It is contended that the latter two amounts cannot be classified as "proceeds of crime," since there is no allegation in the CBI chargesheet of any bribe being paid. These amounts, it is argued, were used towards lawful expenses or retained in the ordinary course of business.

5.3 The figure of INR 1.10 crore, identified as deemed profit, is based solely on the Applicant's own statement and is derived from an assumed profit margin of 6% on the project value of INR 18.38 crores. The Applicant, however, had stated that his profit margin ranged between 5%

[15] PC Act

and 6%.

5.4 On a transaction value of ₹18.38 crores, a 5% margin would amount to INR 91.90 lakhs, which is below the threshold of INR 1 crore stipulated in the proviso to Section 45(1) of the PMLA. However, the Enforcement Directorate has proceeded on a deemed profit rate of 6%, apparently to bring the figure above INR 1 crore. It is evident that if the profit margin is reasonably assessed on a consistent basis, the alleged proceeds of crime would fall below the statutory threshold.

5.5 Moreover, the amount of INR 18.38 crores received by the Applicant's firm was inclusive of Goods and Services Tax (GST) amounting to INR 2,00,22,889/-, which was duly paid to the Government of India. It is submitted that GST cannot form part of the proceeds of crime and must be excluded while determining whether the alleged gain crosses the statutory threshold.

5.6 The ED has failed to account for legitimate business expenditure while computing the alleged proceeds of crime. The Applicant had incurred expenses totalling INR 16,91,31,905.52/- on the execution of the project. There is no explanation in the prosecution complaint as to why these figures were disregarded, or why the deemed profit computation was adopted without a proper forensic audit or expert assessment.

5.7 The Applicant has also submitted documentary evidence in support of the expenditure incurred, including confirmations by one Ms. Khushi Gupta. It is contended that there was no lawful justification for the ED to disbelieve this material, especially in the absence of any contrary findings based on independent inquiry or audit.

6. **BAIL APPLN. 434/2025**

6.1 It is a well-settled principle of law that the offence of money laundering under Section 3 of the Prevention of Money Laundering Act, 2002, necessarily requires the generation of "proceeds of crime" from a scheduled offence. In the present case, the chargesheet filed by CBI in relation to scheduled offence contains no allegation of illegal gratification or any specific criminal activity from which "proceeds of crime" are alleged to have originated. Absent such a foundational allegation in the predicate offence, the invocation of PMLA against the present Applicant stands on tenuous legal footing.

6.2 The prosecution's case, in so far as the Applicant is concerned, rests almost entirely on the statements recorded under Section 50 of the PMLA by co-accused-turned-approver Mr. Tajinder Pal Singh. It is trite law that statements of an accomplice, even when recorded by an authorised officer under the PMLA, constitute the weakest form of evidence and cannot form the sole basis of a conviction or prosecution unless corroborated by independent and reliable material.[16] Such statements, being confessional in nature and made by a person who is himself an accused, require heightened scrutiny before relying upon, especially in a bail proceeding where liberty is at stake.

6.3 Furthermore, there is no independent corroboration of the statements made by Mr. Tajinder Pal Singh. The reliance placed by the ED on certain excel spreadsheets is misconceived. These spreadsheets, in the absence of authentication, authorship, or supporting material, are akin to loose sheets,

[16] ***Haricharan Kurmi v. State of Bihar***. 1964 SCC OnLine SC 28; ***Somasundaram v State*** (2020) 7 SCC 722

which cannot be treated as books of account maintained in the ordinary course of business. The settled position in law is that such documents, unless duly proved, are inadmissible and devoid of evidentiary value. Crucially, the excel sheets do not bear the name of the Applicant, contain no identifiable reference to him, nor do they bear any signatures or lead to any recovery from the Applicant. In the absence of such material, no *prima facie* case is made out against the Applicant.

Arguments of Enforcement Directorate relating to delay in Trial

7. Mr. Zoheb Hossain, Counsel for ED, on the other hand, strongly opposes the bail application and submits as follows:

7.1. The Applicants' argument that since they have spent little more than a year in custody, and hence they are *ipso facto* entitled to bail is entirely misconceived. There exists no absolute or mechanical rule that mandates the grant of bail merely on the ground that an accused has completed a certain period in custody.

7.2. The judgments relied upon by the Applicants pertain to exceptional situations where, on the peculiar facts of each case, the Court was satisfied that the trial could not be concluded within a reasonable timeframe. The principles enunciated in those decisions cannot be applied in a mechanical or abstract manner, particularly in prosecutions arising under special statutes such as the PMLA, which deal with complex economic offences and involve a distinct statutory framework.

7.3. In the cases relied upon by the Applicants, there was sufficient basis for the Court to conclude that there was not even the remotest possibility of

the trial being concluded in the near future. In ***V. Senthil Balaji v. State***,[17] for instance, there were three scheduled offences, approximately 2000 accused, and over 550 witnesses. These circumstances render the conclusion of trial unfeasible in the foreseeable future. By contrast, in the present case, there are only 5 accused persons and 55 witnesses to be examined in the PMLA trial and therefore, it cannot be said that the trial is not likely to be completed within a reasonable time or is likely to take many years. The Trial Court has specifically noted in its orders dated 9th October and 24th October, 2024 that the matter has progressed beyond the stage of compliance with Sections 207/208 CrPC, and is now listed for consideration on charge. The Court has further observed that there exists no impediment to the trial proceeding swiftly. Thus, there is no reason why the trial will not complete within a reasonable time.

7.4. The delay in conclusion of trial is attributable partially to the conduct of the Applicants and the co-accused, NKG Infrastructure Ltd., which has filed a baseless application seeking deferment of arguments on charge on the pretext of further investigation. This plea has already been held to be legally untenable in ***Tahir Hussain v. Assistant Director Enforcement Directorate***.[18] The accused cannot now seek to benefit from delay of their own making.

7.5. The mere fact that an accused has spent over a year in custody does not create a vested right to bail in serious offences under the PMLA. The Supreme Court has denied bail in similarly situated cases involving longer periods of incarceration. To note a few:

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[17] 2024 SCC Online SC 2626
[18] 2022 SCC OnLine Del 4038

a. ***Shahnawz Ahmed Jeelani Vs. Enforcement Directorate***, SLP (Crl. 14173/2023. (Applicant had been in custody for over 1 year, 6 months and 14 days.

b. ***Vipin Kumar Sharma v. Directorate of Enforcement***, SLP (Crl.) No. 9540/2024. (Applicant had been in custody for over 1 years 3 months and 22 days)

c. ***Bimal Kumar Jain v. Directorate of Enforcement***, SLP (Crl) No. 9656/2022. (Applicant has been in custody for over 2 years 5 months and 26 days)

7.6. The grant of bail in predicate offence is an irrelevant factor while considering bail application in PMLA case. As per explanation (i) in Section 44 of the PMLA, the orders passed in respect of the scheduled offence do not extend to the independent proceedings under PMLA.

7.7. The non-arrest of other individuals, such as Mr. Tajinder Pal Singh and Mr. D.K. Mittal, cannot by itself be a ground for grant of bail. Mr. Tajinder Pal Singh has cooperated with the investigation and has not been shown as a direct beneficiary of the proceeds of crime. Mr. D.K. Mittal's role was limited to issuing forged certificates; he neither received nor retained any part of the proceeds of crime. In contrast, Mr. Anil Kumar Aggarwal is alleged to have retained INR 1.62 crore and paid INR 2.63 crore to co-accused Mr. Jagdish Kumar Arora. In any event, the Supreme Court in ***Central Bureau of Investigation v. V. Vijay Sai Reddy***.[19] has held that non-arrest of co-accused is not a determinative ground for granting bail

7.8. The delay in trial cannot be urged by Applicant Jagdish Kumar Arora in view of his own conduct. He has threatened co-accused-turned-approver

Mr. Tajinder Pal Singh, from revealing facts to the ED, who has turned approver *vide* order dated 03rd December, 2024 of this Court.

7.9. In his statement dated 7th January, 2024, Mr. Tajinder Pal Singh categorically stated that Mr. Jagdish Kumar Arora had been threatening him since August, 2023, and had also used armed goons to intimidate him. He further alleged that his mobile phone, laptop, and registers containing transaction details were forcibly destroyed. These facts were recorded in proceedings dated 3rd December, 2024, wherein Mr. Tajinder Pal Singh was granted the status of an approver by this Court.

7.10. In light of the above, there is a strong apprehension that Mr. Jagdish Kumar Arora may tamper with evidence while on bail.

Contentions of ED on merits

8. On merits, Mr. Zoheb Hossain, Special Counsel for ED, submits as follows:

8.1 At the stage of bail, the Court is not expected to delve into the sufficiency of evidence for conviction. The relevant consideration is whether the prosecution's case appears to be *prima facie* credible and supported by material on record. If the Court is satisfied that the prosecution's case is genuine, bail must be denied by applying the mandatory twin conditions under Section 45 of the PMLA. Reliance is placed on ***Vijay Madanlal Choudhary & Ors v Union of India & Ors.***[20]

8.2. The Applicants' contention that since there is no allegation of bribe in the chargesheet filed by the CBI, and therefore there is no proceeds of crime, reflects a misunderstanding of the definition of "proceeds of crime" under

[19] 2013 (7) SCC 452

the PMLA. Moreover, the scheduled offences in the present case include not only Section 13(1)(d) of the Prevention of Corruption Act but also Section 420 (cheating) and Section 120B (criminal conspiracy) of the IPC, which have been explicitly invoked in the CBI chargesheet. Thus, even in the absence of a charge of bribery under the PC Act, the offence of money laundering is clearly attracted.

8.3. The investigation has revealed that Mr. Anil Kumar Aggarwal laundered proceeds of crime through fictitious entries in the books of ISI, amounting to INR 18.38 crores in relation to the DJB contract. Bogus purchases were booked in the names of several shell entities, including M/s Xpert Solutions, M/s Modern Enterprises, M/s Shiva Trading Co., and M/s Integrated Hydraulic System. The forensic audit of bank records indicates cash withdrawals and layering amounting to INR 2,42,95,503/-, which constitute proceeds of crime laundered by the Applicant.

8.4. The contention that the threshold of INR 1 crore is not met is factually incorrect. The prosecution complaint specifically quantifies the proceeds of crime in respect of Mr. Anil Kumar Aggarwal at INR 4.26 crores. Out of this, INR 1.63 crores were retained and used by him. Once the proceeds of crime exceed the ₹1 crore threshold, the proviso to Section 45(1) does not apply, and the rigours of the twin conditions under the main provision are attracted. The Applicants cannot seek to artificially lower the quantum by relying on selective calculations or speculative deductions.

8.5. Further, as per the plain language of proviso to Section 45(1) of PMLA, which reads as "…is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees." it is

[20] (2023) 12 SCC 1

not the individual role that is determinative of what is total sum of money laundering. It is the total sum of money laundering in the offence which is to be seen for the purpose of applying the proviso. This amount in the present case is to the tune of INR. 8.80 Crores.

8.6. The challenge to the admissibility of the Section 50 statement of co-accused-turned-approver Tajinder Pal Singh is also misconceived. In ***Laxmipat Choraria v. State of Maharashtra***,[21] the Supreme Court held that the statement of a person who is also an accused can be relied upon as substantive evidence if recorded under a statutory provision. Section 50 statements are admissible and carry evidentiary value. At the bail stage, even statements under Section 161 CrPC—which are not admissible—may be considered for *prima facie* evaluation.

8.7. The Applicants' attempt to discredit the electronic evidence, namely the Excel files retrieved from the pen drive seized under Section 50(5) of the PMLA, is equally untenable. These files contain entries that have been independently corroborated through matching bank records. The documents are not "dumb" but form part of an incriminating chain of circumstantial evidence. Furthermore, a valid certificate under Section 65B of the Indian Evidence Act has been furnished, rendering the electronic record admissible.

8.8. That apart, the entries in the pen drive directly show the involvement of the accused in the criminal conspiracy. During the course of investigation, Mr. Tajinder Pal Singh gave a statement under Section 50 of PMLA and on 09th January, 2024, a pen drive was impounded under Section 50(5) of PMLA. The forensic examination has been carried out on the same along with certificate under Section 65-B of the Evidence Act and the contents

reveal incriminating evidence like excel sheets containing details of monetary transactions including bribe collected by Mr. Tajinder Pal Singh on behalf of Mr. Jagdish Kumar Arora and utilisation of the said bribe funds. The entries mentioned in the excel have been directly corroborated by the entries in the bank accounts during the relevant period.

8.9. The contention that GST payments should be excluded from the computation of proceeds of crime has no basis in law. Similar arguments have been rejected by the Supreme Court in ***Rohit Tandon v. Directorate of Enforcement,***[22] as well as ***Manish Sisodia vs, CBI***.[23]

8.10 In light of the above, the Applicants have failed to demonstrate any infirmity in the case of the prosecution. The material placed on record sufficiently satisfies the standard required under Section 45 of the PMLA. The statements, electronic evidence, and banking transactions collectively establish a *prima facie* case for money laundering. Accordingly, the Applicants have not discharged the burden of demonstrating that they are not guilty of the offence and are not likely to commit any offence while on bail.

Analysis

Whether the Petitioners are entitled to be released on the ground of delay in trial?

9. One of the main planks of the Applicants' case is the delay in conclusion of trial. Both counsels have laid considerable emphasis on this ground, citing constitutional rights enshrined under Article 21 and the

[21] 1967 SCC OnLine SC 30
[22] (2018) 11 SCC 46
[23] 2023 SCC OnLine SC 1393

judicial recognition that prolonged incarceration without trial undermines the right to personal liberty. The Applicants have stressed that they have remained in custody for over one year, and that this, in itself, entitles them to bail – irrespective of the merits of the case and notwithstanding the rigours of Section 45 of the PMLA.

10. It is now a well-settled position in law that the right to personal liberty under Article 21 of the Constitution is not fettered by the rigours of Section 45 of the PMLA. Consequently, where a prolonged delay in trial infringes upon this fundamental right, an accused may justifiably seek bail on constitutional grounds. The Supreme Court, as well as various High Courts, have consistently affirmed that undue delay in the conduct of trial constitutes a legitimate ground for grant of bail, even in cases governed by stringent statutory frameworks such as the NDPS Act and the PMLA. The right to a speedy trial is thus an essential facet of Article 21 of the Constitution, and in appropriate circumstances, prolonged incarceration without any foreseeable conclusion to the trial can, constitutes a valid ground for seeking bail.

Tracing legal precedents

11. At this juncture, it is instructive to refer to the recent judgment of the Supreme Court in ***V. Senthil Balaji*** where the Court dealt extensively with the constitutional implications of delay in trial, particularly in the context of special statutes such as the PMLA. The Court categorically held that the stringent conditions for grant of bail under provisions like Section 45(1)(ii) of the PMLA cannot be allowed to operate as a mechanism for indefinite pre-trial incarceration. The statutory bar, the Court emphasised, must yield where the right to personal liberty under Article 21 is at serious risk of being

eroded by delay. The Court's pertinent observations are as follows:

> *"**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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> *..xx. ..xx.. ..xx..*
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> ***25.** Considering the gravity of the offences in such statutes, expeditious disposal of trials for the crimes under these statutes is contemplated. Moreover, such statutes contain provisions laying down higher threshold for the grant of bail. The expeditious disposal of the trial is also warranted considering the higher threshold set for the grant of bail. Hence, the requirement of expeditious disposal of cases must be read into these statutes. 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.*
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> ***26.** There are a series of decisions of this Court starting from the decision in the case of K.A. Najeeb, which hold that such stringent provisions for the grant of bail do not take away the power of Constitutional Courts to grant bail on the grounds of violation of Part III of the Constitution of India. We have already referred to paragraph 17 of the said decision, which lays down that the rigours of such provisions will melt down where there is no likelihood of trial being completed in a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. One of the reasons is that if, because of such provisions, incarceration of an undertrial accused is continued for an unreasonably long time, the provisions may be exposed to the vice of being violative of Article 21 of the Constitution of India.*
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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, 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[2], 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.

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29. *As stated earlier, the appellant has been incarcerated for 15 months or more for the offence punishable under the PMLA. In the facts of the case, the trial of the scheduled offences and, consequently, the PMLA offence is not likely to be completed in three to four years or even more. If the appellant's detention is continued, it will amount to an infringement of his fundamental right under Article 21 of the Constitution of India of*

speedy trial."

12. In ***Manish Sisodia vs. Directorate of Enforcement***[24] the Supreme Court made the observations:

> *"49. We find that, on account of a long period of incarceration running for around 17 months and the trial even not having been commenced, the appellant has been deprived of his right to speedy trial.*
> *50. As observed by this Court,* ***the right to speedy trial and the right to liberty are sacrosanct rights. On denial of these rights, the trial court as well as the High Court ought to have given due weightage to this factor****.*
> *51. Recently, this Court had an occasion to consider an application for bail in the case of* ***Javed Gulam Nabi Shaikh v. State of Maharashtra and Another*** *wherein the accused was prosecuted under the provisions of the* ***Unlawful Activities (Prevention) Act, 1967****. This Court surveyed the entire law right from the judgment of this Court in the cases of* ***Gudikanti Narasimhulu and Others v. Public Prosecutor, High Court of Andhra Pradesh, Shri Gurbaksh Singh Sibbia and Others v. State of Punjab, Hussainara Khatoon and Others (I) v. Home Secretary, State of Bihar, Union of India v. K.A. Najeeb and Satender Kumar Antil v. Central Bureau of Investigation and Another****. The Court observed thus:*
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> > ***"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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> *52. The Court also reproduced the observations made in* ***Gudikanti Narasimhulu*** *(supra), which read thus:*
> > *"10. In the* ***aforesaid*** *context, we may remind the trial courts and the High Courts of what came to be observed by this Court in* ***Gudikanti Narasimhulu v. Public Prosecutor, High Court reported in (1978) 1 SCC 240****. We quote:*

[24] 2024 SCC OnLine SC 1393

> *"What is often forgotten, and therefore warrants reminder, is the object to keep a person in judicial custody pending trial or disposal of an appeal.*
> *Lord Russel, C.J., said [R v. Rose, (1898) 18 Cox]:*
> *"I observe that in this case bail was refused for the prisoner. It cannot be too strongly impressed on the, magistracy of the country that bail is not to be withheld as a punishment, but that the requirements as to bail are merely to secure the attendance of the prisoner at trial."*

> *53. The Court further observed that, over a period of time,* ***the trial courts and the High Courts have forgotten a very well-settled principle of law that bail is not to be withheld as a punishment****. From our experience, we can say that it appears that the trial courts and the High Courts attempt to play safe in matters of grant of bail.* ***The principle that bail is a rule and refusal is an exception is, at times, followed in breach****. On account of non-grant of bail even in straight forward open and shut cases, this Court is flooded with huge number of bail petitions thereby adding to the huge pendency.* ***It is high time that the trial courts and the High Courts should recognize the principle that "bail is rule and jail is exception".***

13. The Supreme Court in its judgment dated 13th September, 2024 in ***Arvind Kejriwal v. Central Bureau of Investigation***[25], observed as under:

> *"40. In our considered view, although the procedure for the Appellant's arrest meets the requisite criteria for legality and compliance,* ***continued incarceration for an extended period pending trial would infringe upon established legal principles and the Appellant's right to liberty, traceable to Article 21 of our Constitution****...."*

14. The constitutional safeguard under Article 21 has also been reasserted in ***Satender Kumar Antil v. CBI & Anr.,***[26] wherein the Supreme Court

[25] 2024 SCC OnLine SC 2550
[26] (2022) 10 SCC 51

observed as under:

> *"41. Sub-section (2) has to be read along with sub-section (1). The proviso to sub-section (2) restricts the period of remand to a maximum of 15 days at a time. The second proviso prohibits an adjournment when the witnesses are in attendance except for special reasons, which are to be recorded. Certain reasons for seeking adjournment are held to be permissible. One must read this provision from the point of view of the dispensation of justice. After all, right to a fair and speedy trial is yet another facet of Article 21. Therefore, while it is expected of the court to comply with Section 309 of the Code to the extent possible,* ***an unexplained, avoidable and prolonged delay in concluding a trial, appeal or revision would certainly be a factor for the consideration of bail. This we hold so notwithstanding the beneficial provision under Section 436A of the Code which stands on a different footing.***
>
> *xx* *xx* *xx*
>
> *64. Now we shall come to category (C). We do not wish to deal with individual enactments as each special Act has got an objective behind it, followed by the rigor imposed. The general principle governing delay would apply to these categories also.* ***To make it clear, the provision contained in Section 436A of the Code would apply to the Special Acts also in the absence of any specific provision. For example, the rigor as provided under Section 37 of the NDPS Act would not come in the way in such a case as we are dealing with the liberty of a person.*** *We do feel that more the rigor, the quicker the adjudication ought to be. After all, in these types of cases number of witnesses would be very less and there may not be any justification for prolonging the trial.* ***Perhaps there is a need to comply with the directions of this Court to expedite the process and also a stricter compliance of Section 309 of the Code****."*

15. It must also be noted that recently, in ***Union of India through the Assistant Director v. Kanhaiya Prasad***,[27] the Supreme Court has reiterated that the twin conditions under Section 45 of the PMLA are mandatory and must be objectively satisfied while considering a bail application. Emphasising the legislative intent behind the stringent bail provisions under

[27] In SLP Crl. No. 7140 of 2024

the PMLA, the Court set aside the order of the High Court and cancelled the bail granted to the accused. This ruling reaffirmed the importance of strict adherence to the conditions stipulated in Section 45 while adjudicating bail pleas under the PMLA.

16. However, in the opinion of the Court, the afore-noted ruling does not negate the constitutional mandate under Article 21, nor does it preclude Constitutional Courts from considering bail in appropriate cases involving undue delay and prolonged incarceration. Indeed, the Supreme Court in ***Udhaw Singh vs. Enforcement Directorate***,[28] while granting bail to an accused who had been in custody for a period of one year and two months, specifically took into account the earlier ruling in ***Kanhaiya Prasad*** and clarified that the said decision did not dilute or override the constitutional position laid down in ***Union of India Vs K.A. Najeeb***[29] **and** ***V. Senthil Balaji***. The Court reaffirmed that the fundamental right to liberty under Article 21 remains enforceable even in cases under the PMLA, where incarceration is prolonged and the trial unlikely to conclude within a reasonable time.

17. The relevant observations in ***Udhaw Singh,*** to this effect, are as follows:

> *"5. Our attention is invited to a decision of a coordinate Bench in the case of Union of India through the Assistant Director v. Kanhaiya Prasad. After having perused the judgment, we find that this was a case where the decisions of this Court in the case of Union of India v. K.A. Najeeb and in the case of V. Senthil Balaji1 were not applicable on facts. Perhaps that is the reason why these decisions were not placed before the coordinate Bench. The respondent-accused therein was arrested on 18th September, 2023 and the High Court granted him bail on 6th May, 2024. He was in custody for less than 7 months before he*

[28] in SLP Crl.No. 18369/2024
[29] (2021) 3 SCC 713

> *was granted bail. There was no fining recorded that the trial is not likely to be concluded in a reasonable time. In the facts of the case, this Court cancelled the bail granted by the High Court. Therefore, there was no departure made from the law laid down in the case of Union of India v. K.A. Najeeb and V. Senthil Balaji."*

18. From the preceding analysis, it is evident that prolonged incarceration, when coupled with a demonstrable delay in the progress of trial, may constitute a compelling ground for the grant of bail. This principle also applies to cases matters governed by special statutes such PMLA. Courts have repeatedly affirmed that the twin conditions prescribed under Section 45 are not absolute barriers; they do not eclipse the overarching constitutional mandate under Article 21.

19. However, as correctly contended by Mr. Hossain, there exists no universal rule that the passage of one year in custody, in and of itself, confers an automatic right to bail. Delay, to be relevant, must be substantive, unreasonable, and is case-specific. The law does not fix a temporal threshold beyond which statutory rigours are suspended. If it becomes evident that trial is unlikely to reach conclusion within any reasonable span of time, and where such delay is not occasioned by the conduct of the accused, the constitutional imperative of securing personal liberty must assume primacy. The length of custody is undoubtedly a relevant consideration but that by in itself cannot be determinative; the real inquiry lies in whether continued detention serves any legitimate purpose or merely perpetuates incarceration without foreseeable adjudication. The determination must be grounded in context, not abstraction. It requires the Court to engage with the realities of the case – the stage of the proceedings, the stage of prosecution, the conduct of the parties, and the likelihood of meaningful progress in the foreseeable

future. In such situations, in cases of prolongation bail is not granted as a concession but as a constitutional necessity.

20. That said, it is pertinent to acknowledge that the factual matrix in ***Udhaw Singh*** **and** ***V. Senthil Balaji*** involved far large volume of evidence and number of witnesses. In ***Udhaw Singh***, the prosecution had cited 225 witnesses, of whom only one had been examined despite the accused having remained in custody for over a year. Similarly, in ***V. Senthil Balaji***, the Court was faced with a trial that required involving around 200 accused persons and more than 550 witnesses. In that context, the Court held that there was no realistic prospect of the trial concluding within even three to four years.

21. In contrast, the Applicants have in the present case have been in custody for approximately one year and two months. On its face, that period may not appear disproportionate relative to the maximum sentence under the PMLA. But the inquiry cannot rest on arithmetic alone. The more pressing concern lies in the likely delay in the conclusion of trial—particularly in respect of the scheduled offence, which forms the legal and evidentiary foundation of the present PMLA case. Although the offence under the PMLA is distinct in statutory form, it is structurally dependent on the scheduled offence. The existence of a scheduled offence is a *sine qua non* for alleging the existence of 'proceeds of crime'. Under the statutory scheme, any property is treated as such only if it is shown to have been derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence. Accordingly, the existence of proceeds of crime can be established at trial only if the prosecution succeeds in proving the scheduled offence. As a result, even if the PMLA case proceeds

independently, its final determination remains contingent on the outcome of the scheduled offence. In the absence of progress in the latter, the former cannot reach a conclusive adjudication**.**

22. The final judgment in PMLA case cannot be delivered unless the scheduled offence prosecution reaches its logical conclusion. This legal proposition is not controverted by the ED.

23. Thus, even though the number of accused in the PMLA prosecution is limited to five, and only 35 witnesses have been cited, the broader context cannot be ignored. The intrinsic link between the PMLA proceedings and the trial in the scheduled offence, makes it imperative to take into account the likely trajectory and pace of the trial in predicate offence, for any realistic assessment of progress in the present case. The time estimation of prosecution under the PMLA cannot be meaningfully evaluated in isolation; it must be appreciated in light of the expected duration and complexity of the proceedings in the predicate offence. Therefore, reliance solely on the number of PMLA witnesses or the Special Court's observation that the trial "ought to proceed swiftly" may not be conclusive.

24. Moreover, the scale of the prosecution record in both proceedings is significant. The PMLA complaint alone spans 122 volumes, comprising over 15,750 pages. In parallel, the chargesheet filed by the CBI in the scheduled offence extends across 209 volumes, with 14,385 pages, 101 prosecution witnesses, and a mix of relied-upon and unrelied documents. This sheer volume leaves little doubt that both trials will be document-intensive and procedurally complex. The process of framing charges, issuing summons, examining witnesses, recording statements under Section 313 of the CrPC, and concluding final arguments is unlikely to unfold within any

short or predictable timeframe. Against this backdrop, the continued incarceration of the Applicants, despite the absence of any delay attributable to them, would risk converting pre-trial detention into *de facto* punishment.

25. As regards the contention that the delay is attributable to the Applicants, the Court finds no merit in that argument. The application seeking deferment of argument on charge has admittedly been moved not by the Applicants but by the co-accused company, NKGIL. Even assuming the ED's characterisation of that application as frivolous were accepted, it would be impermissible to attribute that delay to the Applicants. No material has been placed on record to show that the Applicants have either encouraged or benefited from any obstruction to the progress of the trial. In the absence of any demonstrable conduct suggesting abuse of process by the Applicants themselves, the inference of delay cannot be drawn against them.

CONCLUSION:

26. In light of the above discussion and particularly considering the period of incarceration already undergone by the Applicants, coupled with the absence of any real likelihood of the trial concluding in the near future, the rigours of Section 45 of the PMLA must yield to the constitutional safeguard under Article 21. The Supreme Court's ruling in ***V. Senthil Balaji, K.A. Najeeb, Manish Sisodia v. Directorate of Enforcement, and Arvind Kejriwal v. CBI*** fortify this view. On this foundational principle, this Court is of the opinion that the continued detention of the Applicants cannot be justified on the sole ground of the statutory bar under Section 45.

27. In view of the above, although the rigours of Section 45 are diluted, nonetheless, since the prosecution has strongly opposed the bail on merits, this Court proceeds to examine the rival submissions on merits as well.

Applicability of threshold Clause under proviso to Section 45(1) of PMLA

28. The Applicant (Mr. Anil Kumar Aggarwal) has also argued that his case is covered by the proviso to Section 45(1) of the Act, which exempts offences involving proceeds of crime below INR 1 crore from the rigours of the twin conditions. However, this argument is untenable. The prosecution complaint, as filed by the Enforcement Directorate, clearly records that the proceeds of crime attributable to Applicant Anil Kumar Aggarwal amount to INR 4.26 crores, of which INR1.63 crores were allegedly retained and utilised by him. These figures have not been shown to be incorrect on the face of the record. Further, the court finds merit in the contention of ED that as per the plain language of proviso to Section 45(1) of PMLA, reads as "…is accused **either on his own or along with other co-accused** of money-laundering a sum of less than one crore rupees.." and thus it is not the individual role that is determinative of what is total sum of money laundering. It is the total sum of money laundering in the offence which is to be seen for the purpose of the proviso, which in the present case is to the tune of INR. 8.80 Crores.

29. In view of the above, the Applicant cannot avail the benefit of the monetary threshold under the proviso to Section 45 of the PMLA. The entire scheme, as unearthed during the course of investigation, involves multiple layers of laundering and routing of funds well above the statutory limit of INR 1 crore.

Scope of the Court's Jurisdiction and the Twin Conditions under Section 45(1)(ii) of the PMLA

30. Before addressing the grounds of challenge on the merits, it is necessary to first delineate the scope of the Court's jurisdiction in

considering an application for bail under the PMLA. The Enforcement Directorate has rightly stressed that the jurisdiction of this Court, at this stage, is not to conduct a meticulous assessment of the entire evidence or to test the veracity of every factual assertion. Rather, the Court is required to form a *prima facie* view — confined to examining whether there are reasonable grounds for believing that the accused is not guilty of the alleged offence and whether he is unlikely to commit any offence while on bail.

31. This limited but crucial scope has been judicially recognised and consistently explained by the Supreme Court across decisions concerning special statutes imposing stringent bail conditions. In ***Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra***,[30] the Court held that the twin conditions must be interpreted reasonably to strike a balance between the liberty of the accused and the objective of the statute. The Court is not expected to render a definitive finding on guilt or innocence but must be satisfied on the basis of the material gathered during investigation, that the case is not frivolous, and the likelihood of conviction exists. Similar observations were reiterated in ***Vijay Madanlal Choudhary Vs. Union of India and Ors***,[31] where the Supreme Court underscored that while the satisfaction of the Court must be rooted in the material collected by the prosecution, the Court is not to weigh such evidence as if rendering a verdict. The standard to be applied is one of broad probabilities, not proof beyond reasonable doubt. The relevant portion of ***Vijay Madanlal*** is extracted hereinbelow:

> *"131….. this court in Ranjitsingh Brahmajeetsingh Sharma(supra),*

[30] 2005 (31)AIC 202
[31] (2022) SCC OnLine SC 929

held as under:

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 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 future 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)

xx ... xx ... xx

"388. ... Notably, there are several other legislations where such twin conditions have been provided for. Such twin conditions in the concerned provisions have been tested from time to time and have

stood the challenge of the constitutional validity thereof. 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.***

xxx… xxx… xxx

"401. We are in agreement with the observation made by the Court in Ranjitsing Brahmajeetsing Sharma. ***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 Trial Court.* ***The Court is only required to place its view based on probability on the basis of reasonable material 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, 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.*

(emphasis supplied)

40.3 ***Mohd. Muslim alias Hussain v. State (NCT of Delhi)***

"19. The conditions which courts have to be cognizant of are that there are reasonable grounds for believing that the accused is "not guilty of such offence" and that he is not likely to commit any offence while on bail. ***What is meant by "not guilty" when all the evidence is not before the court? It can only be a prima facie determination****. That places the court's discretion within a very narrow margin. Given the mandate of the general law on bails (Sections 436, 437 and 439 CrPC) which classify offences based on their gravity, and instruct that certain serious crimes have to be dealt with differently while considering bail applications, the additional condition that the court should be satisfied that the accused (who is in law presumed to be innocent) is not guilty, has to be interpreted reasonably. Further the*

*classification of offences under Special Acts (NDPS Act, etc.), which apply over and above the ordinary bail conditions required to be assessed by courts, require that the court records its satisfaction that the accused **might not be guilty** of the offence and that upon release, they are not likely to commit any offence. These two conditions have the effect of overshadowing other conditions. In cases where bail is sought, the court assesses the material on record such as the nature of the offence, likelihood of the accused cooperating with the investigation, not fleeing from justice : even in serious offences like murder, kidnapping, rape, etc.*

On the other hand, the court in these cases under such special Acts, have to address itself principally on two facts : likely guilt of the accused and the likelihood of them not committing any offence upon release. This court has generally upheld such conditions on the ground that liberty of such citizens have to - in cases when accused of offences enacted under special laws - be balanced against the public interest.

*"20. **A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well.** Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is **reasonably satisfied on a prima facie look at the material on record** (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.*

*"21. The standard to be considered therefore, is one, where **the court would look at the material in a broad manner, and reasonably see whether the accused's guilt may be proved**. The judgments of this court have, therefore, emphasized that the satisfaction which courts are expected to record, i.e., that the accused may not be guilty, is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation (as held in Union of India v. Rattan Malik). Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. Satender Kumar Antil (supra). Having regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail."*

(emphasis supplied)

32. The legal principles laid down in ***Mohd. Muslim v. State (NCT of Delhi***[32] further clarify that even in the context of special legislations with stringent bail clauses such as the NDPS Act or PMLA, the Court's assessment must remain confined to a *prima facie* view of the material. Accordingly, unless the material before the Court raises serious doubts as to the legitimacy of the prosecution's case, bail may be declined; however, such a conclusion must be reached with circumspection and based on concrete material — not speculation or the gravity of the charge alone.

33. We now proceed to apply the above framework to the present case. One of the contentions raised by the Applicants is that the CBI chargesheet in the scheduled offence contains no allegation of bribery rendering the PMLA case unfounded. However, the Court finds merit in the submission of Mr. Hossain, that while the CBI may not have specifically charged the Applicants with offences under the Prevention of Corruption Act, 1988, the scheduled offences forming the predicate include Sections 420 and 120B of the Indian Penal Code, 1860 — Cheating and Criminal Conspiracy. These offences are sufficient to trigger the jurisdiction under the PMLA. Therefore, the absence of bribery charges in the predicate offence cannot ipso facto lead to the conclusion that no proceeds of crime exist or that the prosecution case is wholly lacking in substance.

34. Further, the term 'proceeds of crime' is defined under Section 2(1)(u) of the PMLA Act and means as follows:

> *"any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property [or where such property is taken or held outside the country, then the property equivalent in value held within the country] [or abroad]".*

[32] 2023 LiveLaw (SC) 260

35. A plain reading of the provision indicates that the definition is broad and intentionally expansive. The use of the phrase "criminal activity relating to a scheduled offence" rather than "as a result of a scheduled offence" is significant. It reflects a deliberate legislative choice to widen the scope beyond direct proceeds of a specific offence to encompass property derived from any activity connected to such an offence. In this light, the contention that the absence of a charge of bribery in the CBI chargesheet negates the very existence of 'proceeds of crime' is misconceived. So long as the property or value thereof is traceable to criminal activity linked to the scheduled offence, it falls within the net of money laundering under Section 3 of the Act.

Evaluation of Evidentiary Basis and Role of Accomplice Testimony

36. The Applicants also emphasise that the prosecution case hinges almost entirely on the statements of Mr. Tajinder Pal Singh, an approver and self-confessed participant in the alleged conspiracy. It is submitted that his testimony, being that of an accomplice, is inherently tainted and incapable of forming the sole basis for denial of bail without independent corroboration. On a *prima facie* view of the material placed before this Court, there appears to be some merit in the submission. The law in this regard is well-settled. In ***Haricharan Kurmi v. State of Bihar***,[33] the Supreme Court held that while the confession of a co-accused under Section 30 of the Evidence Act may be taken into consideration, it is not substantive evidence and cannot be the foundation of conviction in the absence of other evidence. The Court observed that such confessions are "evidence of a very weak type" and must

[33] 1964 SCC OnLine SC 28

only serve to lend "assurance" to otherwise satisfactory evidence. The judgment reiterates the principle that a confession cannot substitute the primary burden of proof and must be corroborated with material evidence.

37. Further, reliance is also placed in ***Somasundaram v. State***[34], relevant portion of which reads as follows:

> "***Accomplice evidence***
>
> ***71.*** *Section 133 of the Evidence Act declares that an accomplice is a competent witness and further that a conviction based on the uncorroborated testimony of an accomplice is not illegal only on account of it being so. Section 133 reads as follows:*
>
> ***"133. Accomplice.–*** *An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice."*
>
> ***72.*** *It is apposite to notice Section 114 of the Evidence Act, Illustration (b), the court may presume:*
>
> *"(b) that an accomplice is unworthy of credit, unless he is corroborated in material particulars."*
>
> ***73.*** *Thus, there appears to be a contradiction between these provisions. The matter is no longer res Integra. We may notice the following statement of the law contained in an early judgment of this Court in Sarwan Singh v. State of Punjab (AIR pp. 640-41, para 7)*
>
> *"7.... It is hardly necessary to deal at length with the true legal position in this matter. An accomplice is undoubtedly a competent witness under the Evidence Act. There can be, however, no doubt that the very fact that he has participated in the commission of the offence introduces a serious stain in his evidence and courts are naturally reluctant to act on such tainted evidence unless it is corroborated in material particulars by other independent evidence.*
>
> *It would not be right to expect that such independent corroboration should cover the whole of the prosecution story or even all the material particulars. If such a view is adopted it would render the evidence of the accomplice wholly superfluous. On the other hand, it would not be safe to act upon such evidence merely because it is corroborated in minor particulars or incidental details because, in such a case, corroboration*

[34] (2020) 7 SCC 722

does not afford the necessary assurance that the main story disclosed by the approver can be reasonably and safely accepted as true.

But it must never be forgotten that before the court reaches the stage of considering the question of corroboration and its adequacy or otherwise, the first initial and essential question to consider is whether even as an accomplice the approver is a reliable witness. If the answer to this question is against the approver then there is an end of the matter, and no question as to whether his evidence is corroborated or not falls to be considered.

In other words, the appreciation of an approver's evidence has to satisfy a double Find test. His evidence must show that he is a reliable witness and that is a test which is common to all witnesses. If this test is satisfied the second test which still remains to be applied is that the approver's evidence must receive sufficient corroboration. This test is special to the cases of weak or tainted evidence like that of the approver."

(emphasis supplied)

74. *We may profitably also refer to the views expressed in Haroon Haji Abdulla v. State of Maharashtra: AIR. 835-36, para 8)*

"8… The law as to accomplice evidence is well settled. The Evidence Act in Section 133 provides that an accomplice is a competent witness against an accused person and that a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. The effect of this provision is that the court trying an accused may legally convict him on the single evidence, of an accomplice. To this there is a rider in Illustration (b) to Section 114 of the Act which provides that the court may presume that an accomplice is unworthy of credit unless he is corroborated in material particulars. This cautionary provision incorporates a rule of prudence because an accomplice, who betrays his associates, is not a fair witness and it is possible that he may, to please the prosecution, weave false details into those which are true and his whole story appearing true, there may be no means at hand to sever the false from that which is true. It is for this reason that courts, before they act on accomplice evidence, Insist on corroboration in material respects as to the offence itself and also implicating in some satisfactory way, however small, each accused named by the accomplice. In this way the commission of the offence is confirmed by some competent evidence other than the single or unconfirmed testimony of the accomplice and the Inclusion by the accomplice of an innocent person is defeated. This rule of caution or prudence has become so ingrained in the consideration of accomplice evidence as to have almost the standing of a rule of law."

(emphasis supplied)

75. *The dichotomy between the mandate of Section 133 and Illustration (D) to Section 114 of the Evidence Act has been explained as follows in Sheshanna Bhumanna Yadav v State of Maharashtra (SCC pp. 125-26, para 12)*

"12. The law with regard to appreciation of approver's evidence is based on the effect of Sections 133 and 114, Illustration (0) of the Evidence Act, namely, that that an accomplice is competent to depose but as a rule of caution it will be unsafe to convict upon his testimony alone. The warning of the danger of convicting on uncorroborated evidence is therefore given when the evidence is that of an accomplice. The primary meaning of accomplice is any party to the crime charged and someone who aids and abets the commission of crime. The nature of corroboration is that it is confirmatory evidence and it may consist of the evidence of second witness or of circumstances like the conduct of the person against whom it is required. Corroboration must connect or tend to connect the accused with the crime. When it is said that the corroborative evidence must implicate the accused in material particulars it means that it is not enough that a piece of evidence tends to confirm the truth of a part of the testimony to be corroborated. That evidence must confirm that part of the testimony which suggests that the crime was committed by the accused. If a witness says that the accused and he stole the sheep and he put the skins in a certain place, the discovery of the sad and would not corroborate the evidence of the witness as against the accused. But if the skins were found in the accused's house, this would corroborate because it would tend to confirm the statement that the accused had some hand in the theft."

(emphasis supplied)

76. *We may finally advert to a recent pronouncement of this Court In K. Hashim v. State of T.: (SCC 250-51, paras 38-42)*

"38. First, it is not necessary that there should be independent confirmation of every material circumstance in the sense that the independent evidence in the case, apart from the testimony of the complainant or the accomplice, should in itself be sufficient to sustain conviction. As Lord Reading says:

"Indeed, if it were required that the accomplice should be confirmed in every detail of the crime, his evidence would not be essential to the case; it would be merely confirmatory of other and Independent testimony. (Baskerville case, KB p. 664 : All ER p. 42 B-C)

39. All that is required is that there must be some additional evidence rendering it probable that the story of the accomplice (or complainant) is true and that it is reasonably safe to act upon it.

40. Secondly, the independent evidence must not only make it safe to believe that the crime was committed but must in some way reasonably connect or tend to connect the accused with it by confirming in some material particular the testimony of the accomplice or complainant

that the accused committed the crime. This does not mean that the corroboration as to identification must extend to all the circumstances necessary to identify the accused with the offence. Again, all that is necessary is that there should be independent evidence which will make it reasonably safe to believe the witness's story that the accused was the one, or among those, who committed the offence. The reason for this part of the rule is that:

"A man who has been guilty of a crime himself will always be able to relate the facts of the case, and if the confirmation be only on the truth of that history, without identifying the persons, that is really no corroboration at all... It would not at all tend to show that the party accused participated in it.'

41. Thirdly, the corroboration must come from independent sources and thus ordinarily the testimony of one accomplice would not be sufficient to corroborate that of another. But of course the circumstances may be such as to make it safe to dispense with the necessity of corroboration and in those special circumstances a conviction so based would not be illegal. I say this because it was contended that the mother in this case was not an independent source.

42. Fourthly, the corroboration need not be direct evidence that the accused committed the crime. It is sufficient if it is merely circumstantial evidence of his connection with the crime. Were it otherwise, 'many crimes which are usually committed between accomplices in secret, such as incest, offences with females' (or unnatural offences) 'could never be brought to justice'. (See M.O. Shamsudhin v. State of Kerala

(emphasis supplied)

77. *To summarise, by way of culling out the principles which emerge on a conspectus of the aforesaid decisions, we would hold as follows: the combined result of Section 133 read with Illustration (b) to Section 114 of the Evidence Act is that the courts have evolved, as a rule of prudence, the requirement that it would be unsafe to convict an accused solely based on uncorroborated testimony of an accomplice. The corroboration must be in relation to the material particulars of the testimony of an accomplice. It is clear that an accomplice would be familiar with the general outline of the crime as he would be one who has participated in the same and therefore, Indeed, be familiar with the matter in general terms. The connecting link between a particular accused and the crime, is where corroboration of the testimony of an accomplice would assume crucial significance. The evidence of an accomplice must point to the involvement of a particular accused. It would, no doubt, be sufficient, if his testimony in conjunction with other relevant evidence unmistakably makes out the case for convicting an accused.*

78. *As laid down by this Court, every material circumstance against the accused need not be independently confirmed. Corroboration must be*

such that it renders the testimony of the approver believable in the facts and circumstances of each case. The testimony of one accomplice cannot be, ordinarily, be supported by the testimony of another approver. We have used the word "ordinarily" inspired by the statement of the law in para 4 in K. Hashim wherein this Court did contemplate special and extraordinary cases where the principle embedded in Section 133 would literally apply. In other words, in the common run of cases, the rule of prudence which has evolved into a principle of law is that an accomplice, to be believed, he must be corroborated in material particulars of his testimony. The evidence which is used to corroborate an accomplice need not be a direct evidence and can be in the form of circumstantial evidence.

Accomplice and approver

79. *An accomplice is in many cases, par pardoned and he becomes what is known as an approver. An elaborate procedure for making a person an approver, has been set out in Section 306 CrPC. Briefly, the person is proposed as an approver. The exercise is undertaken before the competent Magistrate. His evidence is recorded. He receives pardon in exchange for the undertaking that he will give an unvarnished version of the events in which he is a participant in the crime. He would expose himself to proceedings under Section 308 CrPC. Section 308 contemplates that if such person has not complied with the condition on which the tender of pardon was given either by wilfully concealing anything essential or by giving false evidence, he can be put on trial for the offence in respect to which the pardon was so tendered or for any other offence of which he appears to be guilty in connection with the same matters. This is besides the liability to be proceeded against for the offence of perjury. Sub-section (2) of Section 308 declares that any statement which is given by the person accepting the tender of pardon and recorded under Section 164 and Section 306 can be used against him as evidence in the trial under Section 308(1) CrPC."*

38. Thus, while Section 133 of the Indian Evidence Act declares an accomplice to be a competent witness, Illustration (b) to Section 114 introduces a rule of prudence, namely, that it is unsafe to convict solely on the uncorroborated testimony of such a witness. The jurisprudence on this aspect, requires not only that the accomplice be shown to be a reliable witness, but also that his version of events be supported by independent evidence that implicates the accused. Corroboration may take the form of circumstantial evidence, but it must clearly connect the accused to the

offence, not merely confirm the narrative generally.

39. The general proposition advanced by ED relying upon ***Laxmipat Choraria v. State of Maharashtra***[35] that the testimony of an accomplice can form part of the evidentiary basis, is legally correct. However, it must be viewed in context. At this stage the Court is not to evaluate guilt or innocence, nor to weigh evidence with exactitude. The inquiry is limited to whether, on a *prima facie* and reasonable appraisal of the material, the prosecution has made out a case of sufficient gravity to justify continued pre-trial detention.

40. In the present case, the core of the ED's case against the Applicants appears to be grounded in the statements of the approver and a set of Excel sheets recovered from a pen drive. These sheets are unsigned, do not bear the Applicants' names, and were not recovered from their possession. Further, the prosecution complaint does not disclose any direct financial flow of alleged bribe money to Applicant Mr. Jagdish Kumar Arora. It is rather the case that such funds were allegedly collected by Mr. Tajinder Pal Singh, now an approver. In these circumstances, while the evidentiary weight and reliability of the said materials can only be tested during trial, at present, the same are not conclusive enough for the court to deny the benefit of bail to the Applicants.

41. Further, the Applicants have no prior criminal record. There is no reasonable apprehension raised by the ED to demonstrate that the Applicants will commit similar offence while on bail.

42. Accordingly, in the opinion of the court, the Applicants have *prima facie* satisfied the twin conditions under Section 45(1)(ii) of the PMLA and

are thus entitled to be enlarged on bail.

Whether there is evidence to infer that the Applicant (Jagdish Kumar Arora) is likely to tamper with the evidence?

43. One of the objections raised by the ED against the grant of bail to Applicant–Mr. Jagdish Kumar Arora is the apprehension that he is likely to tamper with witnesses and evidence, should he be released. Mr. Hossain drew the Court's attention to the statement of approver Mr. Tajinder Pal Singh, recorded under Section 50 of the PMLA on 7th January, 2024, wherein he alleged that since August, 2023, he had been facing threats from Mr. Arora aimed at preventing him from disclosing facts to the ED. It was further alleged that, in January, Mr. Arora used armed goons to threaten the witness and destroyed key materials including his mobile phone, laptop, and registers allegedly containing details of cash transactions. Mr. Hossain submitted that such conduct, coupled with the pending investigation, demonstrates a real and imminent risk of interference with witnesses and evidence, thereby disqualifying the Applicant under the triple test for bail.

44. In response, Mr. Arshdeep Singh Khurana, counsel for the Applicant, contended that these allegations are false and *malafide*. It was submitted that the Applicant had in fact lodged a prior complaint regarding the conduct of Mr. Tajinder Pal Singh, which casts doubt on the credibility of the latter's subsequent accusations. Furthermore, it was submitted that the underlying dispute between the two is entirely extraneous to the present proceedings and pertains to the ownership of a residential apartment, thereby diluting the probative value of the alleged threats.

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[35] 1967 SCC OnLine SC 30

45. Upon examining the material placed on record, this Court finds that the alleged incident occurred in January, 2023. There is no contemporaneous complaint, police report, or corroborative material placed on record by the approver to support his version. It is also not the case that he reported these threats to the ED or any other authority at the earliest available opportunity. His allegations were disclosed belatedly to the Respondent i.e., six months after his initial statement, which significantly weakens their reliability. Moreover, there is no material to suggest that the Applicant attempted to interfere with the investigation during his time in custody or that he possesses the capacity to subvert the course of justice, especially now that the ED's investigation is substantially complete, and the prosecution complaint has been filed.

46. In the considered view of this Court, the mere assertion of an apprehension of interference—absent credible corroboration—cannot form the basis for denying bail. The prosecution's concern in this regard can be adequately addressed by imposing stringent conditions on the Applicant to prevent any misuse of liberty or contact with witnesses during the pendency of trial.

47. In light of the foregoing, this Court is satisfied that the Applicants have made a sufficient case for the grant of regular bail. Both the Applicants are, therefore, directed to be released on bail, in connection to CT Case No. 12/2024 arising from ECIR bearing No. DLZO-I/45/2022, on furnishing a bail bond for a sum of INR 50,000/-, each, with two sureties of the like amount to the satisfaction of the Jail Superintendent/Trial Court/ Duty MM, subject to the following terms and conditions:

47.1 The Applicants shall surrender their passport with the concerned

special court, if not already submitted.

47.2 The Applicants shall join and cooperate with further investigation as and when directed by the Respondent.

47.3 The Applicants shall give their mobile number to the concerned investigating officer and shall keep their mobile phone switched on at all times.

47.4 The Applicants shall not take adjournment and attend the Trial Court proceedings on every date.

47.5 The Applicants will not leave the country without the permission of the Trial Court.

47.6 The Applicants shall not, in any manner, contact the witnesses or tamper with evidence.

48. Needless to state, any observations concerning the merits of the case are solely for the purpose of deciding the question of grant of bail and shall not be construed as an expression of opinion on the merits of the case.

49. A copy of the order be sent to the Jail Superintendent for information and necessary compliance.

50. With the foregoing directions, the present applications are allowed. Pending application(s), if any, are disposed of.

SANJEEV NARULA, J

APRIL 9, 2025
nk/ab