

**Court No. - 15**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 12332 of 2023

**Applicant :-** Mohd. Mustafa Khan

**Opposite Party :-** Directorate Of Enforcement, Govt. Of India, Lucknow Zone Thru. Assistant Director, Lucknow

**Counsel for Applicant :-** Amrendra Nath Tripathi

**Counsel for Opposite Party :-** Rohit Tripathi, C.S.C., Kuldeep Srivastava

**Hon'ble Mohd. Faiz Alam Khan, J.**

1. Heard Shri Amrendra Nath Tripathi, learned counsel for the applicant as well as Shri Kuldeep Srivastava, learned counsel appearing for Directorate of Enforcement and perused the record.

2. This bail application has been moved by the accused/applicant- Mohd. Mustafa Khan for grant of bail, in ECIR No. ECIR/LKZO/55/2021, under Section 34 of Prevention of Money Laundering Act, 2002, Police Station Directorate of Enforcement , Lucknow Zone, Lucknow, District Lucknow, during trial.

3. Learned counsel for the applicant submits that the applicant has falsely been implicated in this case and he has not committed any offence as claimed by the Enforcement Directorate nor he received, possessed or dealt with any property which may be termed as proceeds of crime.

4. It is vehemently submitted that initially the grand father of the wife of the applicant and his real brother were owners and co-sharers of House No. 91, Motilal Bose Road, Lucknow and another Kothi namely, Faridi Building situated at Hazratganj, Lucknow and they created a *Waqf Alal Aulad* on 09.11.1945 'Waqf Faridi' by means of a registered deed of Wakf and dedicated the same for the benefit of their descendants as well as for some charitable purposes. The aforesaid Waqf was registered with Uttar Pradesh Sunni central Board of Waqf.

5. It is also submitted that in pursuant to the permission granted by the District Judge the grand father of the wife of the applicant sold certain properties of Waqf by executing sale deed

on 04.05.1960 in favour of Sunni Central Board of Waqf, U.P. and out of the consideration of the aforesaid property purchased lease hold properties bearing Plot no. 23 -B, Ashok Marg and Plot No.3/1, New Berry Road, Lucknow, the lease of which was expiring on 31.03.1991 and 27.03.1999, respectively.

6. It is further submitted that in the wake of the properties ceasing to be Waqf Properties with the lapse of the term of lease the father-in-law of applicant moved application before the U.P. Sunni Central Waqf Board for deletion of these properties from its record. However, the said application was rejected by the Waqf Board, despite holding that the properties in question may not be Waqf properties and its retention in the record of the Board is not proper.

7. It is also submitted that the father-in-law of the applicant filed a case before the Waqf Tribunal against the said order and vide order dated 4.7.2018 the Waqf Tribunal directed the U.P. Sunni Waqf Board to delete the above mentioned properties from their record and the properties were in fact deleted from the Waqf No. 42-A and thereafter the Plot No. 3/1, New Berry Road, Lucknow was transferred to the father-in-law of the applicant on 21.8.2018 by Nazul Adhikari/ L.D..A. after taking necessary approvals through registered Free Hold Deed for sale consideration of Rs 1,78,22,934/-

8. It is also submitted that father-in-law of the applicant, namely, Dr. Abdul Jalil Faridi also executed a Will in favour of his three daughters, i.e. wife of the applicant and her two sisters, namely, Farha Arif and Anush Faridi on 9.4.1918 and Anush Faridi was also appointed as 'Mutawalli' of the 'Waqf Faridi' pertaining to the Waqf Property No. 3, situated at 91, Motilal Bose Road, Lucknow and Property No. 4, Faridi Building, Hazratganj, Lucknow.

9. It is further submitted that the father-in-law of the applicant executed an agreement to sale in favour of Shri Shailesh Kumar with regard to the Property No. 3/1, New Berry Road, Lucknow on 6.6.2018 for consideration of Rs.4,40,00,000/-, out of which Rs., 60,00,000/- were paid as advance money, however, unfortunately the father-in-law of the applicant has died on 18.4.2018 and by virtue of Will made by him his three daughters became owner of the Free Hold Properties and in pursuance of the above agreement to sale executed by their father a sale deed was executed by wife of the applicant,

namely, Arsheen Faridi and her other two sisters on 24.12.2018 with regard to the property no. 3/1, New Berry Road, Lucknow.

10. It is also submitted that thereafter aunts of wife of the applicant, namely, Mrs. Amina Jung and Ms. Nasima Aziz sent a legal notice on 24.02.2020 with regard to the aforesaid properties stating that these properties have been wrongly converted into non-waqf property by late father-in-law of the applicant and suitable reply to the said notice was given on 2.3.2020 and aggrieved by the same on false claims the sister of the father-in-law of the applicant had lodged a First Information Report bearing Case Crime No. 0277/2020, under Sections 406, 420, 120-B of IPC, Police station Hazratganj, District Lucknow (predicate offence) and without making proper investigation the charge sheet was submitted therein under the pressure made by the complainant, namely, Amina Jung, wife of Mr. Najeeb Jung, however, the charge sheet and summoning order passed therein was challenged by the applicant by moving application under Section 482 Cr.P.C. bearing No. 5261 of 2021, which was disposed of by a Coordinate Bench of this Court on 14.12.2021 giving liberty to the applicant to move discharge application before trial court and in pursuance of the same a discharge application was accordingly moved before the trial court, which was rejected by the trial court on 22.3.2022 against which the applicant again approached this court by filing an application under Section 482 Cr.P.C. No. 18.28 of 2022, wherein vide order dated 18.4.2022 a Coordinate Bench of this Court stayed the proceedings of the trial court till the next date of listing and thereafter the ECIR was filed on 8.11.2021 and the allegations which have been levelled against the applicant are that he illegally helped his father in law in conversion of Private Waqf property into Non-Waqf by his father-in-law and thereafter these properties were sold and thus he had also misappropriated the proceeds of the said sale.

11. It is vehemently submitted that the applicant appeared before the Enforcement Directorate as and when he was directed to remain present i.e. on 29.11.2021, 30.11.2021, 01.12.2021, 13.12.2021 and 08.08.2023 and provided all the documents to the Enforcement Directorate and his statement under Section 50 of the P.M.L. Act, was also recorded. However, on insufficient basis the applicant was arrested on 8.8.2023 by the Enforcement Directorate, only with the

intention to harass him and hisfamily members.

12. It is further submitted that the Enforcement Directorate has not considered this aspect of the matter that the property in question has been declared Non-Waqf by an order passed by the Waqf Tribunal and the remedy against that order lies in approaching any higher forum.

13. It is also submitted that the order passed by the Waqf Tribunal has also been challenged by the complainant Mrs. Amina Jung by filing a Civil Revision (Defective) No. 40/2020 and a Coordinate Bench of this Court, vide order dated 22.2.2021 had not interfered with the judgment of the Waqf Tribunal and only a direction was given not to create any third party rights.

14. It is further submitted that allegations for invoking Prevention of Laundering Act against the applicant are pertaining to converting the Waqf Property into Non-Waqf Property, however, it has not been considered by the Investigating Officer of predicate offences or by the Enforcement Directorate that the property in question has been converted into Non-Waqf Property by an order of a competent Tribunal and also that a leased property may not be given in Waqf and it is evident that the Enforcement Directorate was acting under sheer pressure of complainant Amina Jung.

15. It is also submitted that even if all the contentions of the complainant of the predicate offence is believed it will emerge that a civil dispute has been given colour of criminal prosecution.

16. It is vehemently submitted that the allegations have also been levelled against the applicant of procuring order from Waqf Tribunal pertaining to declaration of property in question as Non-Waqf, however, neither any officer or official of the Waqf Tribunal has been arrayed as an accused and the purchaser of the sale deed executed by the wife of the applicant has also not been arrayed as an accused and as much as the third daughter of the father-in-law of the applicant, namely, Farha has also not been prosecuted and her accounts are also not attached seized.

17. Learned counsel for the applicant has also relied on following case laws:-

(1) ***Saumya Chaurasia Vs. Directorate of Enforcement*** 2023 SCC OnLine SC 167

18. It is further submitted that the applicant is in jail in this case since 9.8.2023. The charge sheet in this case has already been submitted. The applicant has cooperated in the investigation and would further cooperate in the trial and there is no reason to detain the applicant any further as all the evidence in this case is documentary and the bank account of the wife of the applicant has already been attached.

19. Shri Kuldeep Srivastava, learned counsel appearing for the Enforcement Directorate, vehemently opposes the prayer of bail of the applicant and submits that as per the evidence collected during the investigation conducted by the Enforcement Directorate, it is evident that the properties in question were Waqf properties and the lease rights of the aforesaid property were purchased by Dr. Abdul Jalil Faridi as Mutawalli of 'Faridi Waqf' from Sunni Central Waqf Board through a sale deed dated 31.10.1961, therefore the property in question was Waqf, however, he moved an application to delete these properties from the Waqf which was rejected by the Waqf Board, however, Dr. Abdul Jalil Faridi somehow managed to get the sale deed executed in his personal name by the Nazul Department.

20. It is further submitted that on one hand Dr. Abdul Jalil Faridi managed to get the lease deed executed in his personal name and on the other he keep on moving applications before the Waqf Board for deletion of the lease property from the list of Waqf.

21. It is further submitted that a conspiracy was hatched to alienate properties of Faridi Waqf and to use sale proceeds for personal enrichment of the conspirators, i. e. applicant, Anush Faridi, Saqib Khan and Arsheen Khan and immediately after the death of Dr. Abdul Jalil Faridi occurred on 18.10.2018, the sale deed was executed by Anush Faridi, Amina Faridi and Farha Arif on 24.12.2018 in respect of plot no. 3/1, New Berry Road, Lucknow for considering of Rs. 4,40,00,000/- and this has been noted by Dr. Abdul Jali Faridi in his diary of more than 10 Crores.

22. It is also submitted that the accused persons has gained Rs. 10.92 Crores as proceeds of the crime and the instant applicant has assisted Dr. Abdul Jalil Faridi in getting favourable orders

from the Waqf Tribunal and Sunni Central Waqf Board pertaining to the properties in question and also in removing the documents from the file of Waqf Board.

23. It is also submitted that the applicant was/is actively involved in generation of proceeds of crime and also in misappropriating the same.

24. Shri Kuldeep Srivastava has drawn the attention of this Court towards the various entries made in the diary allegedly written by Dr. Abdul Jalil Faridi and submits that involvement of the applicant in procuring an illegal order from the Waqf Tribunal or Waqf Board is evident from records.

25. It is also submitted that having regard to the twin conditions enumerated in Section 45 of P.M.L Act the applicant is not entitled to be released on bail.

26. Learned counsel for Enforcement Directorate in support of his submissions have relied on ***Y.S. Jagan Mohan Reddy Vs. Central Bureau of Investigation*** (2013)7 SCC 439, ***State of Bihar and another Vs. Amit Kumar*** (2017)13 SCC 751, ***Rohit Tandon Vs. DOE*** (2018) 11 SCC 46 as well as ***Vijay Madanlal Chaudhary Vs. Union of India. Directorate of Enforcement Vs. M. Gopal Reddy and another*** 2022 SCC OnLine SC 1862, ***Manish Sisodia Vs. Central Bureau of Investigation*** 2023 SCC OnLine SC 1393, ***Ram Kishor Arora VS. Directorate of Enforcement*** 2023 SCC OnLine SC 1682.

27. Having heard learned counsel for the parties and having perused the record before proceeding further it appears in the interest of justice that legal position with regard to the definition of proceeds of crime given in the Act as well as the twin conditions as enumerated under Section 45 of P.M.L. Act, 2002 be looked into.

28. Ho'ble Supreme Court in ***Vijay Madanlal Chaudhary V Union of India***, MANU/SC/0924/2022, with regard to 'proceeds of crime' held as under :-

*"31. The "proceeds of crime" being the core of the ingredients constituting the offence of money-laundering, that expression needs to be construed strictly. In that, all properties recovered or attached by the investigating agency in connection with the criminal activity relating to a scheduled offence under the general law cannot be regarded as proceeds of crime. There*

may be cases where the property involved in the commission of scheduled offence attached by the investigating agency dealing with that offence, cannot be wholly or partly regarded as proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act -- so long as the whole or some portion of the property has been derived or obtained by any person "as a result of criminal activity relating to the stated scheduled offence. To be proceeds of crime, therefore, the property must be derived or obtained, directly or indirectly, "as a result of criminal activity relating to a scheduled offence. To put it differently, the vehicle used in commission of scheduled offence may be attached as property in the concerned case (crime), it may still not be proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act. Similarly, possession of unaccounted property acquired by legal means may be actionable for tax violation and yet, will not be regarded as proceeds of crime unless the concerned tax legislation prescribes such violation as an offence and such offence is included in the Schedule of the 2002 Act. For being regarded as proceeds of crime, the property associated with the scheduled offence must have been derived or obtained by a person "as a result of" criminal activity relating to the concerned scheduled offence. This distinction must be borne in mind while reckoning any property referred to in the scheduled offence as proceeds of crime for the purpose of the 2002 Act. Dealing with proceeds of crime by way of any process or activity constitutes offence of money-laundering Under Section 3 of the Act.

33. Tersely put, it is only such property which is derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence can be regarded as proceeds of crime. The authorities under the 2002 Act cannot resort to action against any person for money-laundering on an assumption that the property recovered by them must be proceeds of crime and that a scheduled offence has been committed, unless the same is registered with the jurisdictional police or pending inquiry by way of complaint before the competent forum. For, the expression "derived or obtained" is indicative of criminal activity relating to a scheduled offence already accomplished."

29. Thus it is only such property which has been derived or obtained, directly or indirectly, as a result of criminal activity

relating to a scheduled offence which can be regarded as proceeds of crime. The authorities under the 2002 Act cannot resort to action against any person for money- laundering on an assumption that the property recovered by them must be proceeds of crime and that a scheduled offence has been committed, unless the same is registered with the jurisdictional police or pending inquiry by way of complaint before the competent forum. For, the expression "derived or obtained" is indicative of criminal activity relating to a scheduled offense already accomplished.

30. Section 45 of the said Act being relevant for the purpose of the instant bail application is reproduced hereunder for ready reference:

45. Offences to be cognizable and non-bailable. "" (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person Accused of an offence [under this Act] shall be released on bail or on his own bond unless

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

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:

Provided further that the Special Court shall not take cognizance of any offence punishable Under Section 4 except upon a complaint in writing made by""

(i) the Director; or

(ii) any officer of the Central Government or a State Government authorized in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government.

(1A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other provision of

this Act, no police officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.

(2) The limitation on granting of bail specified in Sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

Explanation. "For the removal of doubts, it is clarified that the expression "Offences to be cognizable and non-bailable" shall mean and shall be deemed to have always meant that all offences under this Act shall be cognizable offences and non-bailable offences notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (2 of 1974), and accordingly the officers authorised under this Act are empowered to arrest an Accused without warrant, subject to the fulfillment of conditions Under Section 19 and subject to the conditions enshrined under this section."

31. In the case relied on by Ld Counsel for Enforcement Directorate namely **Y.S. Jagan Mohan Reddy vs. Central Bureau of Investigation, MANU/SC/0487/2013** it is highlighted that economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country and while granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations.

32. In **Gautam Kundu v. Directorate of Enforcement (Prevention of Money-Laundering Act), Government of India Through Manoj Kumar, Assistant Director, Eastern Region MANU/SC/1453/2015 : (2015) 16 SCC 1**, it was

observed as under:

*"30. The conditions specified Under Section 45 of PMLA are mandatory and need to be complied with, which is further strengthened by the provisions of Section 65 and also Section 71 of PMLA. Section 65 requires that the provisions of Code of Criminal Procedure shall apply insofar as they are not inconsistent with the provisions of this Act and Section 71 provides that the provisions of PMLA shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. PMLA has an overriding effect and the provisions of Code of Criminal Procedure would apply only if they are not inconsistent with the provisions of this Act. Therefore, the conditions enumerated in Section 45 of PMLA will have to be complied with even in respect of an application for bail made Under Section 439 Code of Criminal Procedure. That coupled with the provisions of Section 24 provides that unless the contrary is proved, the authority or the Court shall presume that proceeds of crime are involved in money-laundering and the burden to prove that the proceeds of crime are not involved, lies on the Appellant."*

33. Hon'ble Supreme Court in **Vijay Madanlal Chaudhary V Union of India, MANU/SC/0924/2022**, while considering twin conditions enshrined under section 45 of the Act held as under :-

*"127.....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."*

131. 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.*

*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 17 , 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."*

*21. Thus from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the Rule and refusal is the exception so as to ensure that the Accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of "grave offence" and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the Accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is*

*prescribed for the offence the Accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a Rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provides so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case to case basis on the facts involved therein and securing the presence of the Accused to stand trial."*

34. Hon'ble Supreme Court in **P. Chidambaram vs. Directorate of Enforcement**, MANU/SC/1670/2019 while discussing the principles of bail opined as under :-

*"21- Though it is true that the Court while considering an application seeking bail is not required to weigh the evidence collected by the investigating agency meticulously, nonetheless the Court should keep in mind the nature of accusation, the nature of evidence collected in support thereof, the severity of the punishment prescribed for the alleged offences, the character of the Accused, the circumstances which are peculiar to the Accused, reasonable possibility of securing the presence of the Accused at the time of trial, reasonable apprehension of the witness being tempered with, the large interest of the public/ state etc. Though the findings recorded by the Court while granting or refusing to grant bail would be tentative in nature, nonetheless the Court is expected to express prima facie opinion while granting or refusing to grant bail which would demonstrate an application of mind, particularly dealing with the serious economic offences."*

35. In **Manish Sisodia Vs. Respondent: Central Bureau of Investigation**, MANU/SC/1193/2023, Supreme Court opined as under :-

*"8. Referring to Section 45 of the PML Act, in Vijay Madanlal Choudhary (supra), the three Judges' Bench has opined that the provision does not require that to grant bail, the court must arrive at a positive finding that the applicant has not committed*

an offence under the PML Act. Section 45 must be construed reasonably as the intent of the legislature cannot be read as requiring the court to examine the issue threadbare and in detail to pronounce whether an Accused is guilty or is entitled to acquittal. Further, an order on an application for bail is passed much before the end of trial and sometimes even before commencement of trial. Lastly, it is trite, that for the purpose of considering an application for bail, although detailed reasons are not necessary to be assigned, and, therefore, the evidence need not be weighed meticulously, a tentative finding should be recorded on the basis of broad probabilities. The order granting bail must demonstrate application of mind at least in serious cases where the applicant has been granted or denied bail. The findings recorded by the Court for grant or refusing bail being tentative, will not have any bearing on the merits of the case, and the trial court would proceed and decide the case on the basis of evidence produced during trial without in any manner being prejudiced thereby.

26. However, we are also concerned about the prolonged period of incarceration suffered by the Appellant - Manish Sisodia. In *P. Chidambaram v. Directorate of Enforcement* MANU/SC/1670/2019 : (2020) 13 SCC 791, the Appellant therein was granted bail after being kept in custody for around 49 days , relying on the Constitution Bench in *Shri Gurbaksh Singh Sibbia and Ors. v. State of Punjab* MANU/SC/0215/1980 : (1980) 2 SCC 565, and *Sanjay Chandra v. Central Bureau of Investigation* MANU/SC/1375/2011 : (2012) 1 SCC 40, that even if the allegation is one of grave economic offence, it is not a Rule that bail should be denied in every case. Ultimately, the consideration has to be made on a case to case basis, on the facts. The primary object is to secure the presence of the Accused to stand trial. The argument that the Appellant therein was a flight risk or that there was a possibility of tampering with the evidence or influencing the witnesses, was rejected by the Court. Again, in *Satender Kumar Antil v. Central Bureau of Investigation and Anr.* MANU/SC/0851/2022 : (2022) 10 SCC 51, this Court referred to *Surinder Singh Alias Shingara Singh v. State of Punjab* MANU/SC/0541/2005 : (2005) 7 SCC 387 and *Kashmira Singh v. State of Punjab* MANU/SC/0099/1977 : (1977) 4 SCC 291, to emphasise that the right to speedy trial is a fundamental right within the broad scope of Article 21 of the

Constitution. In *Vijay Madanlal Choudhary* (supra), this Court while highlighting the evil of economic offences like money laundering, and its adverse impact on the society and citizens, observed that arrest infringes the fundamental right to life. This Court referred to Section 19 of the PML Act, for the in-built safeguards to be adhered to by the authorised officers to ensure fairness, objectivity and accountability. *Vijay Madanlal Choudhary* (supra), also held that Section 436A of the Code can apply to offences under the PML Act, as it effectuates the right to speedy trial, a facet of the right to life, except for a valid ground such as where the trial is delayed at the instance of the Accused himself. In our opinion, Section 436A should not be construed as a mandate that an Accused should not be granted bail under the PML Act till he has suffered incarceration for the specified period. This Court, in *Arnab Manoranjan Goswami v. State of Maharashtra and Ors.* MANU/SC/0902/2020 : (2021) 2 SCC 427, held that while ensuring proper enforcement of criminal law on one hand, the court must be conscious that liberty across human eras is as tenacious as tenacious can be."

36. Thus the plea of bail of the applicant is to be assessed in the background of the law laid down by the Apex Court in the above mentioned cases.

37. Perusal of the record in the background of the law placed above would reveal that the allegations against the applicant as is evident from the record are to the tune that applicant before this Court is the husband of one of the three daughters of late Dr. Abdul Jalil Faridi and he used to visit late Abdul Jalil Faridi regularly and assisted/ helped him in his daily activities including delisting of Waqf Property from the register of waqf and illegal sale of the same and also of misappropriation of the proceeds of crime.

38. It is also alleged that the applicant had helped late Abdul Jalil Faridi in conversion of Waqf Property bearing Plot No. 3/1, New Berry Road, Lucknow as non Waqf Property and he was also instrumental in getting favorable orders from Waqf Tribunal and Sunni Central Waqf Board pertaining to deletion of these properties from the register of Waqf and he was also involved in generation of proceeds of crime by late Abdul Jalil Faridi and misappropriating the same and in this regard in furtherance of a conspiracy hatched with Abdul Jalil Faridi he laundered an amount of Rs.6.52 Crores out of the sale proceeds

of the said immovable property.

39. A perusal fo the pleadings exchanged between the parties would reveal that there are certain facts which are undisputed between the parties. It is not disputed that two properties were given in Waqf by late Abdul Jalil Faridi and his brother by a Waqf deed dated 9.11.1945 and one of the said properties was sold on 4.5.1960 in favour of Sunni Central Waqf Board, U.P. and thereafter two properties were purchased by Dr. Abdul Jalil Faridi, one bearing Plot No. 3, Ashok Marg Lucknow on 4.8.1960 and second property bearing plot no. 3/1, New Berry Road, Lucknow on 31.10.1961.

40. It is also not disputed that the property bearing plot no. 3/1, New Berry Road, Lucknow could not be entered in the Certificate of registration of Waqf and applications were moved by Dr. Abdul Jalil Faridi for deleting his properties from the list of Waqf Properties registered at U.P. Sunni Central Waqf Board.

41. It is also not in dispute that late Dr. Abdul Jalil Faridi has approached this Court by filing a Writ Petition No. 21686(M/B) of 2017 seeking a direction for the Waqf Board to decide his application for deletion of Waqf Properties from Register of Waqf expeditiously and an order was passed by a Division Bench of this Court on 9.10.2017 directing the Waqf Board to pass an order strictly in accordance with law within a period of six weeks.

22. It is also not in dispute that the Waqf Board vide its order dated 27.2.2018 though opined that as the terms of lease of the properties entered as Waqf has expired the Waqf therefore ceased to be in existence to the extent of the properties of plot no. 3/1, New Berry Road, Lucknow and house no. 23-B, Ashok Marg, Lucknow however rejected the application of Dr. Abdul Jalil Faridi on the ground that the Waqf Board has put a restraint upon itself by passing a resolution not to delete any such property and it is also not disputed that thereafter the matter was taken up to the Waqf Tribunal and Waqf Tribunal vide its order dated 4.7.2018 declared the aforesaid properties as non-waqf properties and further directed the Waqf Board to delete it from its record.

43. It is also not in dispute that on 21.8.2018 the property situated at plot no. 3/1, New Berry Road, Lucknow was

transferred to the father-in-law of the applicant by Nazul Adhikari, L.D.A. after taking necessary approvals for a sale consideration of Rs. 1,78,22,934/- and also that these properties were given to his daughters by late Abdul Jalil Faridi by executing a Will dated 9.4.2018.

44. It is also not in dispute that the order of the Waqf Tribunal dated 4.7.2018 was challenged by the complainant of the predicate offences by filing a Civil Revision (Defective) No. 40/2020 before this Court and it was vide order dated 22.2.2021 passed therein the respondents were restrained from creating any third party risk, thus it is admitted to the parties that order of the Waqf Tribunal dated 4.7.2018 whereby the property in question was declared as non-waqf has not been stayed, set aside or interfered with by any superior Court. The question which is involved in this case is with regard to the fact that as to whether any property which has been leased for a definite period may be given in waqf or if given may continue to be as a waqf property even after expiry of term of the lease period and the said question, in the considered opinion of this Court may only be decided in Civil litigation for which a civil revision appears to have already instituted by the complainant of predicate offence and is pending before a Coordinate Bench of this Court for disposal.

45. It has also not been denied that the applicant had remained present before the Enforcement Directorate on 29.11.2021, 30.11.2021, 1.12.2021, 13.12.2021 and 8.8.2023 and the complaint has already been filed before the special court. Some of the co-accused persons have still not been served in pursuance of the complaint filed by the Enforcement Directorate. Thus the trial is not going to conclude in near future.

46. The trial with regard to the predicate offences has also been stayed by a Coordinate bench of this Court, vide order passed in an application moved by the applicant under Section 482 Cr.P.C. till the next date of listing.

47. This Court is of considered view that the sting of twin conditions mentioned under Section 45 of the PMLA would depend upon the nature of accusation/ allegations levelled and the material collected/ available in support of the same. In the instant dispute genuine questions of law and facts are involved and adjudication of the same is still pending before this Court in

a civil revision filed by the complainant of predicate offences against the order of the Waqf Tribunal and the same has still not been set aside/quashed or stayed by any higher forum and rights with regard to the property in question , which is alleged to have been illegally acquired by the father of the wife of the applicant and is sold by his three daughters, are alleged to have been acquired only under that order. The Appellant before this Court is not a flight risk and there appears no possibility of him tampering with the evidence or influencing witnesses as the evidence placed against the applicant is mainly of documentary nature.

48. In view of all the facts, material and circumstances of the case and also keeping in view the nature of dispute existing between the parties the twin conditions as mentioned under Section 45 of P.M. L. Act stands satisfied and in the considered opinion of this Court the facility of bail with certain restrictions may be granted to the applicant.

49. Thus in view of the above discussion and after considering all facts, including incriminating material available against the applicant the statements made by the applicant and co-accused persons and other witnesses under Section 50 of PMLA and the fact that evidenciary value of these statements can only be tested at the stage of trial and also the fact that trial of the predicate offences has been stayed by a Coordinate Bench of this Court and the applicant is ready to cooperate in the trial and is detained in prison in this case since 09.08.2023, the instant bail application moved on behalf of the applicant is allowed.

50. Let the applicant- **Mohd. Mustafa Khan** involved in the aforesaid case be released on bail on furnishing a personal bond with two sureties of the like amount to the satisfaction of the court concerned subject to following conditions:-

- (i) The applicant shall deposit his passport before the trial court, if the same has already not been seized.
- (ii) The applicant shall not be leaved India without prior permission of the court concerned.
- (iii) The applicant shall not tamper with the prosecution evidence by intimidating/pressurizing the witnesses, during the investigation or trial.
- (iv) The applicant shall cooperate in the trial sincerely without

seeking any adjournment.

(v) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

(vi). The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code;

(vii). In case, the applicant misuses the liberty of bail and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the Court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him in accordance with law, under Section 174-A of the Indian Penal Code; and

(viii) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of his bail and proceed against him in accordance with law.

51. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

52. Identity, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

53. Observations made herein-above are only for the purpose of disposal of bail application and the same shall not have any bearing on the trial of the case.

**Order Date :- 19.1.2024**

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