

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

**BAIL APPLICATION NO.2641 OF 2024**

|                                |                |
|--------------------------------|----------------|
| Vinay Vivek Aranha             | ...Applicant   |
| vs.                            |                |
| The Union of India and Another | ...Respondents |

Mr. Ashok Mundargi, Senior Advocate a/w. Anurag Mishra h/f. Mr. Mithilesh Mishra, for the Applicant.

Mr. H.S. Venegaonkar a/w. Mr. Aayush Kedia, for Respondent-ED.

Mr. A.A. Naik, APP for the State.

VISHAL  
SUBHASH  
PAREKAR

Digitally signed by  
VISHAL SUBHASH  
PAREKAR  
Date: 2025.03.12  
20:45:19 +0530

**CORAM : N. J. JAMADAR, J.**  
**RESERVED ON : FEBRUARY 10, 2025**  
**PRONOUNCED ON: MARCH 12, 2025**

**ORDER**

1. The applicant, who is arraigned in the PMLA Special Case No. 637 of 2023 arising out of ECIR/MBZO-II/11/2021 registered with Directorate of Enforcement, Mumbai (ED) for an offence punishable under section 4 of the Prevention of Money-Laundering Act, 2002 (PMLA) has preferred this application to enlarge him on bail.

2. The applicant(A2) is a partner of M/s. Rosary Education Group. The said firm has availed loans amounting to Rs. 46.50 Crore from Cosmos Cooperative Bank, allegedly on the basis of forged and fabricated documents. In connection with the said loan transaction on 2<sup>nd</sup> September, 2015 FIR bearing No. 131 of 2015 came to be registered at Lashkar police station, Pune for the offences punishable under sections 120-B, 406, 420, 467, 468 and 471 of Indian Penal Code, 1860 (the Penal Code) with the allegation

that the property bearing Survey No. 394/2/1 situated at Talegaon-Dabhade was an agricultural land. However, the applicant mortgaged the said property as a non-agricultural land and submitted false and fabricated NA order to avail higher loan amount. It was further alleged that the applicant had suppressed the *lis pendens* in respect of the said property and thereby duped the Cosmos Bank.

3. Treating the aforesaid crime, registered vide FIR No. 131 of 2015, as a predicate offence, ED registered ECIR/MBZO-II/11/2021 on 31<sup>st</sup> March, 2021. The applicant came to be arrested on 10<sup>th</sup> March, 2023. Eventually, a prosecution complaint for an offence punishable under section 4 of the PMLA came to be lodged against the applicant and the co-accused on 6<sup>th</sup> May, 2023.

4. The gravamen of indictment against the applicant and the co-accused is that loans were taken by M/s. Rosary Education Group run and controlled by the applicant, from Cosmos Bank for specific purposes. The loan amounts were disbursed to the purported suppliers and vendors. However, the said loan amount was subsequently withdrawn in cash and delivered to the applicant. Eventually, the loan accounts turned NPA.

5. In the prosecution complaint the specific role attributed to the applicant is that, the applicant with intent to defraud Cosmos Bank

availed loan from the bank in the name of M/s. Rosary Education Group by submitting forged and fabricated documents in respect of the above numbered property which was mortgaged, and grossly overvaluing the said property. The loan amount so availed, was subsequently withdrawn in cash and the said amount was diverted and misutilized by the applicant. There was default in repayment of the loan. Resultantly, accounts turned NPA. The applicant had also availed vehicle loan to the tune of Rs. 7.25 Crores and the said loan accounts also turned NPA under an year. Thus, the applicant had intentionally defrauded the Cosmos Bank and thereby the applicant was involved in generation, acquisition, layering, placement, use and concealment of proceeds of crime through M/s. Rosary Education Group and other fraudulent ways.

6. By an order dated 30<sup>th</sup> April, 2024, the learned Special Judge rejected the application for bail.

7. I have heard Mr. Ashok Mundargi, learned Senior Advocate for the applicant and Mr. Venegaonkar, learned counsel for respondent No. 1-ED. With the assistance of the learned counsel for the parties, I have perused the material on record including the documents pressed into service by the counsel for the parties.

8. Mr. Mundargi, learned Senior Advocate urged multifold grounds for bail. First and foremost, Mr. Mundargi urged the arrest

of the applicant was in gross violation of the statutory mandate. The predicate offence was registered prior to eight years. Even ECIR/MBZO-II/11/2021 was registered two years prior to the arrest of the applicant. Emphasizing the distinction between the power to arrest and necessity of arrest, Mr. Mundargi would urge that the threshold requirement to justify the arrest as warranted by the provisions contained in section 19 of PMLA was not at all fulfilled. Mr. Mundargi also questioned the manner in which the arrest was effected. The applicant was summoned to appear before ED officials in connection with ECIR/MBZO-II/10/2021 and was arbitrarily arrested in ECIR/MBZO-II/11/2021. On this ground alone, Mr. Mundargi would urge the applicant deserves to be enlarged on bail.

9. Secondly, Mr. Mundargi would urge the very basis of the prosecution of the applicant in the predicate offence is demonstrably flawed. Taking the Court through the registered instrument with regard to the property bearing Survey No. 394/2/1 Mr. Mundargi strenuously urged that the said property was in fact mortgaged by the applicant as an agricultural land only. Neither the applicant claimed that it was a non-agricultural property nor the Cosmos Bank treated it as NA land. Mr. Mundargi would urge that the said inference has a judicial imprimatur in the form of an order passed by this Court in ABA No. 1973 of 2015 in connection with

C.R. No. 131 of 2015 (the predicate offence). This Court has recorded a prima facie view that at the time of availing the loan, the property bearing Survey No. 394/2 was valued as an agricultural land and the applicant had not suppressed the fact that the said property was an agricultural land. Thus, it was urged by Mr. Mundargi that since the predicate offence itself cannot be said to have been made out, the allegations of money laundering cannot be sustained.

10. Thirdly, Mr. Mundargi would urge the gravamen of indictment against the applicant is the non utilization of the loan for the purpose for which the said loan was availed. The allegation is not that the acquisition of the proceeds of crime was in relation to mortgaged properties. The money trail hinges upon the statement of witnesses who claimed to have withdrawn the amount and paid over the same to the applicant. The veracity of the statements of such witnesses would be a matter for trial.

11. Lastly, Mr. Mundargi would urge the applicant has been in custody for two years. The charge has yet not been framed. Having regard to the nature of the accusation, the number of witnesses the prosecution proposes to examine, and voluminous documents which the prosecution may be required to tender in evidence, it is extremely unlikely that the trial can be concluded within a

reasonable period. As the offence under section 4 entails punishment which may extend to seven years, further detention of the applicant as an under-trial prisoner would be in complete negation of the right of the accused to a speedy trial which is a facet of right to life. To buttress the aforesaid submissions, Mr. Mundargi placed reliance on a number of judgments; reference to a few which are relevant for the determination of this application would be made in the course of this order.

12. In opposition to this, Mr. Venegaonkar, the learned Special Public Prosecutor, strongly opposed the prayer for bail. Mr. Venegaonkar would urge that a very strong prima facie case of money-laundering has been made out. Mr. Venegaonkar took the Court through the statements of witnesses, who have categorically divulged the manner in which the applicant first got the loan amount credited to their accounts and, subsequently, made them to either withdraw the amount in cash or transfer the said amount to the accounts of the applicants and his associates. The witnesses have categorically stated that they had never provided any quotation nor raised any bills and invoices to M/s. Rosary Education Group and their accounts were used to for layering and placement of the proceeds of crime. Mr. Venegaonkar would thus urge that the interdict contained in section 45(1) of the PMLA

operates with full force and rigor. The twin conditions envisaged by the said provision to enlarge an accused on bail cannot be said to have been satisfied. Therefore, the applicant does not deserve to be enlarged on bail.

13. On the aspect of long period of incarceration, Mr. Venegaonkar would urge that an application to club the prosecution in the predicate offence and the instant PMLA case has been filed. Once the proceedings are clubbed, trial can be concluded within few months. Therefore, a direction for expeditious conclusion of the trial would meet the ends of justice.

14. I have given careful consideration to the submissions canvassed across the bar.

15. Section 19 of PMLA empowers the authorized officer to arrest any person if he has on the basis of material in his possession, reason to believe that such person has been guilty of an offence punishable under the said Act. The reasons for such belief are to be recorded in writing. The power to arrest is thus not unregulated or uncontrolled. The power to arrest is controlled by the necessity of arrest in the facts of the given case. The distinction between the power to arrest and the necessity of arrest is well marked.

16. From this standpoint, reverting to the facts of the case, it is to be seen whether the threshold requirement of the aforesaid

provision were duly satisfied. The remand application filed before the Special Judge post arrest of the applicant (Exh.F) indicates the reasons which weighed with the officer effecting the arrest. It was recorded, inter alia, that the summons issued in the month of July, 2022 were returned un-served with the remarks “refused” which showed non-cooperative behavior of the applicant. Secondly, the statement of the applicant was recorded on 9<sup>th</sup> March, 2023 wherein the applicant was found to be non-cooperative and evasive in his replies regarding utilization of loan amount and the purpose of cash withdrawal. In paragraph 4 of the remand report, it was contended that the applicant needs to be investigated for his involvement in the process and activity connected to the proceeds of crime and that he appeared to be involved in the offence of money-laundering defined under section 3 of the PMLA. Therefore, it became expedient to exercise the power under section 19(1) of the PMLA.

17. If the remand application is to be construed as the record of the reasons for the belief that the applicant has been guilty of the offence punishable under section 4 of the PMLA, prima facie, there appears substance in the submission of Mr. Mundargi. In the facts of the case, the reason of non-cooperation during the course of investigation, does not appear to be a sustainable ground

necessitating the arrest of the applicant. Prima facie, the applicant was summoned on 9<sup>th</sup> March, 2023 in another ECIR i.e. ECIR/MBZO-II/10/2021 (page 563). The applicant appeared before the officers of ED. Thus, the contention that the applicant had refused the summons issued in the month of July, 2022 and that showed the non-cooperation of the applicant appears debatable.

18. The inference of non-cooperation in the investigation on the basis of the statement recorded on 9<sup>th</sup> March, 2023 also may not also pass the muster. In the case of **Pankaj Bansal vs. Union of India and Ors.**<sup>1</sup>, the Supreme Court enunciated that mere non-cooperation of a witness in response to the summons issued under section 50 of PMLA would not be enough to render him/her liable to be arrested under section 19 of the PMLA. It was not open to ED to expect an admission of guilt from the person summoned for interrogation and assert that anything short of such admission would be an 'evasive reply'.

19. Again in the case of **Arvind Kejriwal vs. Central Bureau of Investigation**<sup>2</sup> the Supreme Court emphasized that it can not be the proposition that only when an accused answers the questions put to him by the investigation agency in the manner in which the investigating agency would like the accused to answer, would mean

---

1 2023 SCC OnLine SC 1244.

2 2024 SCC OnLine SC 2550.

that the accused is co-operating with the investigation. The prosecution cannot justify arrest and continued detention citing evasive reply.

20. The satisfaction of the threshold requirement under section 19(1) of PMLA is also required to be appreciated in the light of the time lag since registration of the predicate offence in the year 2015 and ECIR/MBZO-II/11/2021 almost two years prior to arrest of the applicant. Cumulatively, the need and necessity of arrest becomes tenuous.

21. The nature of the indictment against the applicant in the predicate offence also assumes significance. The conditions precedent for attracting the offence under section 3 of PMLA are that there must be a scheduled offence and that there must be proceeds of crime in relation to the scheduled offence as defined in clause (a) of sub section (1) of section 2 of PMLA. In the case of **V. Senthil Balaji vs. Deputy Director, Directorate of Enforcement**<sup>3</sup> the Supreme Court enunciated that the nexus between the scheduled offence and the proceeds of crime as under:-

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

---

3 2024 SCC OnLine SC 2626.

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.

22. If the prosecution for the scheduled offence ends in the acquittal of all the accused or discharge of all the accused or the proceedings of the scheduled offence are quashed in its entirety, the scheduled offence will not exist, and therefore, no one can be prosecuted for the offence punishable under Section 3 of PMLA as there will not be any proceeds of crime. Thus, in such a case, the accused against whom the complaint under Section 3 of the PMLA is filed will benefit from the scheduled offence ending by acquittal or discharge of all the accused. (**Pavana Dibbur vs. Directorate of Enforcement<sup>4</sup>**).

23. As noted above, this Court in ABA No. 1973 of 2015 has recorded a prima facie finding that when the property bearing Survey No. 394/2/1 situated at Talegaon-Dabhade was mortgaged, it was represented to be an agricultural land only and not NA land, which the prosecution alleges the applicant had fraudulently claimed.

24. The indenture of Sale dated 31<sup>st</sup> January, 2013 (page 362) describes the said property as an agricultural land. The Composite Deed of Mortgage executed in favour of Cosmos Bank (page 395)

---

4 2023 SCC OnLine SC 1586.

also describes the said land as an agricultural land. Schedule 3 appended to the Deed of Mortgage specifically refers to the mortgaged property as an agricultural land. The Internal Legal Opinion dated 18<sup>th</sup> March, 2013 (page 521) explicitly records the nature of the property in which security interest was credited as an agricultural land. Thus, the documents, prima facie, lend credence to the submission on behalf of the applicant that the applicant had not then represented to the Cosmos Bank that the said land was NA land.

25. It is true there are statements of witnesses and the money trail which prima facie indicates that the loan amount was not utilized for the purpose for which the loans were availed. The submission of Mr. Venegaonkar that the loan amount was diverted and resultantly the loan accounts turned NPA and the modus operandi of the applicant was disclosed by the witnesses are borne out by the material on record. The further submission of Mr. Venegaonkar that the interdict contained in section 45(1) of PMLA is required to be appreciated in balance with the aforesaid consideration on the need and necessity of arrest and the quality of material pressed into service qua the predicate offence.

26. The interdict contained in section 45(1) of PMLA is also required to be appreciated in the light of the period of incarceration

of the applicant as an under-trial prisoner. The applicant has been in custody since two years. The offence under section 4 entails punishment which may extend to seven years. Charge has yet not been framed. In the very nature of the prosecution, where the prosecution would be required to adduce evidence of a number of witnesses and also tender a substantial documentary evidence, it is extremely unlikely that the trial can be commenced and concluded within a reasonable period.

27. By a catena of decisions, it is now fairly crystallized that the statutory restrictions in the matter of grant of bail melt down in the face of long period of incarceration without a real prospect of expeditious conclusion of the trial. In fact, the statutory restrictions draw their justification on the premise that the trial in such cases would be concluded expeditiously. The Constitutional Courts are thus not precluded from releasing the accused on bail where the accused has been in custody for a prolonged period despite the statutory restriction in the matter of grant of bail. The prolonged period of incarceration as an under-trial prisoner infringes the right of the accused to a speedy trial, which has been construed to be a facet of right to life under Article 21 of the Constitution of India. It would be suffice to make a reference to two recent decisions of the Supreme Court.

28. In the case of **Manish Sisodia vs. Directorate of Enforcement**<sup>5</sup>, the Supreme Court observed as under:-

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:

“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.”

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:

“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

<sup>5</sup> 2024 SCC OnLine SC 1920.

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”.

54] In the present case, in the ED matter as well as the CBI matter, 493 witnesses have been named. The case involves thousands of pages of documents and over a lakh pages of digitized documents. It is thus clear that there is not even the remotest possibility of the trial being concluded in the near future. In our view, keeping the appellant behind the bars for an unlimited period of time in the hope of speedy completion of trial would deprive his fundamental right to liberty under Article 21 of the Constitution. As observed time and again, the prolonged incarceration before being pronounced guilty of an offence should not be permitted to become punishment without trial.

(emphasis supplied)

29. Following the aforesaid pronouncement in the case of **V.**

**Senthil Balaji** (supra) the Supreme Court observed as under:-

26] There are a series of decisions of this Court starting from the decision in the case of K.A. Najeer, 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.

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. Najeer, 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.

28] Some day, the courts, especially the Constitutional Courts, will have to take a call on a peculiar situation that arises in our justice delivery system. There are cases where clean acquittal is granted by the criminal courts to the accused after very long incarceration as an undertrial. When we say clean acquittal, we are excluding the cases where the witnesses have turned hostile or there is a bona fide defective investigation. In such cases of clean acquittal, crucial years in the life of the accused are lost. In a given case, it may amount to violation of rights of the accused under Article 21 of the Constitution which may give rise to a claim for compensation.

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.

(emphasis supplied)

30. The Supreme Court has thus enunciated in no uncertain terms that the absence of real prospect of commencement and conclusion of trial in the scheduled offence and the PMLA offence is a decisive consideration for grant of bail, as in such a situation the continued detention as an under-trial prisoner infringes the guarantee under Article 21 of the Constitution of India. The Supreme Court has held in emphatic terms, that the pristine principle that, “bail is rule and refusal is an exception” applies even to the prosecutions under PMLA. Long period of incarceration infringes upon the fundamental right guaranteed under Article 21, which overrides the statutory restrictions in the matter of grant of bail.

31. Applying the aforesaid principles to the facts of the instant case, in the light of the period of incarceration, the unlikelihood conclusion of the trial in near future and the consideration adverted to above, I am impelled to exercise the discretion in favour of the applicant.

Hence, the following order.

**ORDER**

1] The application is allowed.

2] The applicant Vinay Vivek Aranha be released on bail in PMLA Special Case No. 637 of 2023 arising out of ECIR/MBZO-II/11/2021 registered with Directorate of Enforcement, Mumbai (ED), on furnishing a P.R. Bond of Rs. 1,00,000/- with one or more sureties in the like amount to the satisfaction of the learned Judge, PMLA Court, Mumbai.

3] The applicant shall remain within the jurisdiction of PMLA Court i.e. Greater Mumbai and shall not leave the area without prior permission of PMLA Court.

4] The applicant shall surrender his passport before the PMLA Court, if not already surrendered.

5] The applicant shall furnish his contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.

6] The applicant shall not tamper with the prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses or any person acquainted with the facts of the case.

7] The applicant shall regularly attend the proceedings before the jurisdictional Court.

8] By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of

the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

Application disposed.

**(N. J. JAMADAR, J.)**