

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 4055 OF 2024

Dr. Kishore Bisure

.. Applicant

Versus

The State of Maharashtra and Anr.

.. Respondents

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- Mr. Niranjan Mundargi a/w Mr. Subir Sarkar, a/w Sumit Erande a/w Ms. Keral Mehta, Advocates for Applicant.
- Mr. D.J. Haldankar, APP for Respondent No. 1 – State.
- Mr.H.S. Venegavkar a/w Mr. Aayush Kedia, Advocates for Respondent No. 2 – ED.

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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 12, 2025.

JUDGEMENT:

1. The present Application is filed by the Applicant – Accused No. 2¹ for grant of bail under Section 439 of Code of Criminal Procedure, 1973 (for short ‘**Cr.PC.**’) read with Section 45 of Prevention of Money Laundering Act, 2002 (for short ‘**PMLA**’) in connection with ECIR No. ECIR/MBZO-1/63/2022 registered for offence under Section 3 and 4 of the PMLA.

2. Applicant was arrested by the Directorate of Enforcement (for short ‘ED’) on 19.07.2023. Applicant is incarcerated for 1 year 6 months 25 days. The Special Court rejected the bail Application preferred by the Applicant in Special PMLA Case No. 1500 of 2023 vide order dated 04.05.2024. Hence, the present Bail Application.

¹ Applicant is Accused No. 2 in the Prosecution Complaint filed by ED.

3. The predicate offence was registered on 24.08.2022 as FIR No. 0756 of 2022 with Azad Maidan Police Station, Mumbai for offences punishable under Sections 120B, 304A, 406, 420, 465, 467, 468, 471 readwith 34 of Indian Penal Code, 1860 (for short 'IPC'). On 12.10.2022 the case was transferred to Economic Offence Wing (for short 'EOW') Mumbai and renumbered as FIR No. 144 of 2022. Subsequently ECIR No. ECIR/MBZO-1/63/2022 was registered on 21.11.2022. Applicant was not named as Accused in the FIR and ECIR.

4. A complaint was lodged by one Member of Parliament alleging that during Covid-19 pandemic, Municipal Corporation of Greater Mumbai (for short 'MCGM') issued two Expressions of Interest (for short EOI) on 22.06.2023 and 25.06.2023 awarding contracts to various agencies including M/s. Lifeline Hospital Management Services Hospital Management Services for providing manpower supply to operate and manage ICU and general Units at Jumbo Covid Centres for the purpose of making treatment available to the citizens. Dr. Hemant Gupta, Sujit Mukund Patkar, Sanjay Madanlal Shah and Raju Salunke were its Partners.

5. A *prima facie* delay in filing the compliant is evident. Allegation in the complaint is that M/s. Lifeline Hospital Management Services, an entity established on 26.06.2020 with no prior experience in providing medical services was awarded a tender on the basis of its

Partnership Deed of the same date. Further it is alleged that M/s. Lifeline Hospital Management Services failed to fulfill its contractual obligations, submitted fabricated invoices and generated fabricated bills for medical services purportedly provided to and in regard with the Jumbo Covid Centre and swindled approximately Rs. 38 Crores of public money. It is alleged that Applicant in his capacity as the Dean of Dahisar Jumbo Covid Center is alleged to have received monthly kickbacks to verify and forward the fabricated bills based on fake / fabricated attendance sheets of staff record facilitating these fraudulent activities.

6. Briefly stated prosecution case is as follows:-

7. Primary allegation is that M/s. Lifeline Hospital Management Services did not fulfill its contractual obligation under the contract as there was under-employment of staff members and provisions contrary to EOI conditions which were shown through fabricated attendance sheets and staff records at Dahisar Jumbo Covid Center and public money received from the MCGM against those bills / invoices which were fraudulently transferred to Service Provider Firms namely M/s. M.S. Consultancy of Ravikant Singh and M/s. Elegant Multiservices of Sanjay Parab which were created at the instance of Partners of M/s. Lifeline Hospital Management Services.

8. Second allegation is that M/s. Lifeline Hospital Management Services obtained contract for two Jumbo Centers at Worli- NSCI and Dahisar on the basis of a fabricated Partnership Deed.

9. Third allegation is that in connivance with BMC staff M/s. Lifeline Hospital Management Services managed to get the invoices / bills cleared and received an amount of Rs. 32,44,86,784.9/-.

10. Fourth allegation is that Applicant was appointed as a Dean at Dahisar Jumbo Covid Center for the period between 9th July 2020 and 27th December, 2020. Under the EOI conditions he was required to ensure proper functioning of the center which was not done instead he was found to be hand in glove with Partners of M/s. Lifeline Hospital Management Services during his tenure.

11. Fifth allegation is that Applicant approved fabricated invoices which were prepared showing requisite deployment of medical personnel on the basis of fabricated attendance sheets aiding generation of proceeds of crime to M/s. Lifeline Hospital Management Services.

12. Sixth allegation is that proceeds of crime were received by Applicant on a monthly basis in kind i.e. laptop and cash approximately amounting to Rs. 20 lakhs. It is alleged that he received

proceeds of crime through Dr. Arvind Singh – Accused No. 7² which were routed via Applicant's driver to the Applicant.

13. Mr. Mundargi, learned Advocate for the Applicant has made the following submissions for seeking Applicant's enlargement on Bail.

13.1. He has drawn my attention to the FIR filed by the complainant dated 24.08.2022 appended at page No. 30 of the Application to contend that there are five (5) accused however Applicant is not named as Accused therein. Next he has drawn my attention to ECIR dated 21.11.2022 at page No. 49 of the Application to contend that same five (5) accused are named in ECIR. Those five (5) accused are M/s. Lifeline Hospital Management Services Hospital Management Services, Dr. Hemant Ramsharan Gupta, Sujit Mukund Patkar, Sanjay Madanlal Shah and Raju Nandkumar Salunke. He would submit that in the first chargesheet of the predicate offence Applicant is not named however in the supplementary chargesheet appended at page No. 305 of the Application he is shown as Accused No.5. He would submit that Applicant is not named in ECIR however in supplementary Prosecution Complaint filed on 15.09.2023 by the ED he is named as Accused No.2. He would submit that Applicant was arrested by ED on the basis of ECIR.

² Accused No. 7 in the Prosecution Complaint filed by ED.

13.2. He would submit that Applicant was solely arrested on the basis of statement of the co-accused for hatching criminal conspiracy, facilitating misappropriation of public money and receiving proceeds of crime. He would submit that prosecution has relied upon the statements of other Accused persons as witnesses solely for arrest of Applicant which is completely arbitrary in nature. He would submit that initially offence under Section 304A of IPC was levelled but in supplementary chargesheet it was removed and no offence under the Prevention of Corruption Act, 1988 was instituted. He would submit that there is nothing on record to show that Applicant directly or indirectly obtained any property i.e. in cash or kind in relation to the Scheduled Offence. Hence, Applicant cannot be termed as beneficiary of any proceeds of crime.

13.3. He would submit that first leg of allegation is in respect to Applicant failing to discharge his duties as Dean and his purported role in facilitating fraudulent activities for wrongful gain. He would submit that Applicant was appointed only for a period of 5 months during the interregnum period after the first Covid-19 pandemic wave and his specific duties during this period must be examined by Court. He would submit that Applicant being head of the Medical team managed the functions of Dahisar Jumbo Covid Center. However he would submit that Center Operator - Dr. Arvind Singh (Accused No. 7) and

Clerk - Prince Vishwakarma were in charge on behalf of the Vendor and used to prepare attendance sheets, Doctor to patient ratio, and verify bills / invoices which were reviewed by Dr. Jyoti Contractor, Dr. Shiv Shankar, Dr. Rohan Patani and Dr. Kusum Gupta before being forwarded to Applicant for verification and endorsement. Subsequently bills / invoices were forwarded to the Accounts Officer of MCGM for final verification and clearance.

13.4. He would draw my attention to statement of Prince Vishwakarma appended at page No. 160 of the Application. In that statement he has admitted that he prepared fabricated attendance sheets on the instructions of Mr. Sujit Patker³ and Mr. Sunil Kadam to ensure that staff per bed ratio as mentioned in the EOI was maintained. Hence he would submit that Applicant was not the only person dealing with it.

13.5. He would draw my attention to the statement of Ms. Varsha Desai – Junior Accountant and Audit Assistant at MCGM appended at page No. 176 of the Application. It is stated that Additional Municipal Commissioner (Western Suburban) directed her to clear the invoices of M/s. Lifeline Hospital Management Services with complete documents. Hence this would clearly show and reflect

3 Accused No. 1 in the Prosecution Compliant filed by ED.

that Applicant had no role to play in facilitating fraudulent activities to swindle public money.

13.6. He would submit that bill amount was not based on staff provided but on bed occupancy on day to day basis as stated in the EOI. He would submit that Applicant being a Dean for a period of 5 months i.e. July 2020 to December 2020 cannot be alleged to have received proceeds of crime for the period of July 2020 till February 2022 when the Jumbo Covid Center was in operation. Hence, by no means Applicant could be held liable for receipt of alleged proceeds of crime. He would submit that 82 invoices were raised (63 for Dahisar and 19 for Worli-NSCI) however Applicant had only verified and approved 15 bills, one of the bill for the period of 25.09.2020 to 09.10.2020 amounting to Rs. 84,04,200/- was appended at page No. 495 of the Application.

13.7. He would submit that merely on the basis of Accused statements which are purely confessional statements, Applicant has been arrested. He would submit that such statements are hit by Sections 25 to 27 of the Indian Evidence Act, 1872 without being corroborated with any evidence. He would submit that if it is prosecution case that Applicant aided fraudulent activities of M/s. Lifeline Hospital Management Services for financial gain then Dean Dr. Harshvardhan Tikle at Worli - NSCI Jumbo Center performed similar

duties as stated in his statement appended at page No. 195 but Applicant alone is singled out for arrest.

13.8. He would submit that the second leg of allegation is in respect of the contract allotted to M/s. Lifeline Hospital Management Services wherein Applicant has no role to play in availing the tender / contract as he was empaneled and in service of MCGM and had no cause to grant or favour M/s. Lifeline Hospital Management Services in availing the tender / contract. Attention is drawn to EOI appended at page No. 216 of the Application wherein it is stated in clause 'E' that the Evaluation Committee was formed to scrutinize the bidders / service providers on the following aspects. He would submit that considering the aforementioned scrutiny conducted by MCGM there is no role attributable to Applicant in obtaining the said tender / contract.

13.9. He would submit that on the basis of the complaint filed on 15.02.2022 by the Complainant, MCGM conducted an Audit wherein Audit Committee concluded that none of the MCGM Officers could be prosecuted by the Azad Maidan Police Station as nothing incriminating was found on their part and in consonance with the provisions of the Epidemic Disease Act and Disaster Management Act.

13.10. He would draw my attention to the provisions of PMLA. He would draw my attention to Section 19(1) and he would and argue that for enforcement of the said provisions to arrest the Applicant, Competent Authority is required to record and form a belief of the reasons on which it desires to proceed against the Accused. He would submit that such belief ought to have been recorded in writing which is not done in the present case nor the Applicant is informed of the reasons. He would submit that the grounds of arrest required to be conveyed as mandated under Section 50(1) of Cr.P.C. are not informed. He would submit that indictment of Applicant and his arrest in the present case is on illegal grounds as Applicant had no role in obtaining the Vendor's contract and he did not gain any alleged proceeds of crime. The allegation of conspiracy of the Applicant falls to the ground as he being an employee of MCGM was appointed only for a period of 5 months and only 15 bills were approved / signed by him which were scrutinised by the MCGM's accounts department. He would submit that no proceeds of crime have been recovered from the Applicant till date.

13.11. In support of his above submissions he would refer to and rely upon the following judgments:-

i. Y.S. Jagamohan Reddy Vs. CBI⁴

⁴ 2013 (7) SCC 439

*ii. Vijay Madanlal Choudhary Vs. Union of India*⁵

*iii. State of Gujarat Vs. Mohanlal Jitmalji Porwal & Anr.*⁶

*iv. Gautam Kundu Vs. Manoj Kumar*⁷

13.12. He would submit that statements of accused / co-accused are inadmissible under Section 25 of the Indian Evidence Act, 1872. He would submit that investigation in the crime is completed and Applicant has rendered full cooperation and all disclosures have been made by him. Chargesheet has been filed on 28.04.2023, however conclusion of trial in the foreseeable future is doubtful. He would submit that Applicant is not an accused either in the predicate offense or ECIR and keeping in view the aforementioned peculiar facts and circumstances rigors of Section 45 of the PMLA be suitably relaxed to afford conditional liberty to Applicant as his further incarceration is unwarranted in such facts and he should be released on bail.

14. Mr. Venegavkar, learned Special PP alongwith Mr. Kedia, learned Advocate appearing on behalf of the Prosecution in reply to the Applicant's case for grant of bail has made the following submissions:-

5 2022 SCC OnLine 929

6 1987 AIR 1321

7 (2015) 16 SCC 1

14.1. He would submit that Applicant is involved in and has committed the offence of money laundering as stated in the FIR and ECIR. He would submit that Applicant was heading a team as Dean at Dahisar Jumbo Covid Center during July 2020 to December 2020. He was required to ensure proper functioning of the Center but he failed to do so. Applicant allowed / approved the fabricated bills which were prepared by showing requisite deployment of medical personnel in line with terms of EOI on the basis of fake attendance sheets of staff. He would submit that Applicant is not entitled to bail as he received proceeds of crime in kind i.e. laptop and cash amounting to Rs. 20 Lakhs. He would submit that from the statements of Dr. Jyoti Contractor – Nodal Officer and Dr. Rohan Patani – A.M.O at Dahisar Jumbo Covid Center appended at page Nos.477 and 487 it is *prima facie* seen that even after they raised audit objections and flagged the issue of under-employment and the issue of Doctor to patient ratio not being maintained, Applicant ignored the same and gave instructions to clear the invoices. He would draw my attention to the statement of Dr. Arvind Singh who was the Center Operator / in-charge of Dahisar Jumbo Covid Center recorded on 12.07.2023 and 24.07.2023 wherein he has stated that he paid money to Applicant in cash sent in an envelope. He has stated that a laptop worth Rs.47,418/- was also given to the Applicant. He would draw my attention to the statement

of the cheques amounting to Rs. 2,30,000/- without name which were handed over to him which were subsequently deposited in Rajkumar Vishwakarma's account i.e. the driver of Applicant. Attention is also drawn to statement of the driver wherein he states that two cheques of 1,30,000/- and 1,00,000/- without name were handed over by the Applicant and he was instructed to encash them and return the amount in cash. He would submit that this itself shows and reflects the kickback received by Applicant from the Partners of M/s. Lifeline Hospital Management Services which are proceeds of crime.

14.2. On the legal aspect, he would submit that argument of Applicant is that it is necessary to record the belief and reasons in writing and apprise it to the Applicant before his arrest and required to be shown to him is incorrect. He would submit that the said belief and reasons of Competent Authority have been recorded in writing as stated in the ECIR case file maintained by the prosecution and argued that it is not necessary for the prosecution to share the same with the Applicant. He would submit that once the record and reasons are reduced down in writing the same can be conveyed to the Applicant and therefore there cannot be any further argument on 19(1) of PMLA. He would submit that first chargesheet in the present case is filed on 27.04.2023 and subsequently supplementary chargesheet is filed on 07.10.2023. He would submit that prosecution desires to

examine 82 witnesses as stated in the chargesheet and would persuade the Court to consider his submissions to oppose the Application for grant of bail to the Applicant.

15. Mr. Haldankar, learned APP appearing on behalf of the State has adopted the submissions made by Mr. Venegavkar and persuaded me to take cognizance of the said submissions for the State.

16. Heard Mr. Mundargi, appearing for the Applicant, Mr. Venegavkar, appearing for Respondent No. - ED and Mr. Haldankar, learned APP appearing for the State. I have perused the record placed before me and the submissions made by the learned Advocates have received due consideration of the Court.

17. At the outset, the statutory legal position as applicable is required to be considered and stated. Chapter III of the Constitution of India enumerates the fundamental rights which have been time and again construed to be inherent and any law which abrogates and abridges such fundamental rights would be violative of the basic structure doctrine including right of protection imposed against arrest and detention in certain cases contemplated under Article 22 of the Constitution of India. Article 22(1) and (2) read thus:

"22. Protection against arrest and detention in certain cases - (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he

be denied the right to consult, and to be defended by, a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate."

18. Corresponding to the aforementioned rights enshrined in the Constitution is the provisions of Section 50 of the Cr.P.C. pertaining to the grounds of arrest and right of bail to be informed to the person arrested. Section 50 of the Cr.P.C. reads thus:-

"50. Person arrested to be informed of grounds of arrest and of right to bail - (1) Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.

(2) Where a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf."

19. In the present case it is seen that on 19.07.2023 Applicant was summoned by ED in connection with the investigation however ED exercised its power under Section 19(1) of the PMLA arrested Applicant on the same day. It is seen that no grounds of arrest as mandated under Section 50 of Cr.P.C were provided save and expect an

arrest memo. It is *prima facie* seen that Applicant before me has fully co-operated with the investigation and made all disclosures which is evident from the prosecution complaint appended at page No. 54 of the Application. Prosecution Compliant is filed on 15.09.2023

20. It is seen that during the Covid-19 pandemic two EOI dated 22.06.2023 (for ICU beds at various Jumbo Centers) appended at page No. 216 and other dated 25.06.2023 (for oxygenated beds and non-oxygenated beds at various Jumbo Centers) appended at page No.241 were published. It is seen that M/s. Lifeline Hospital Management Services received acceptance letters issued by MCGM. It is seen that M/s. Lifeline Hospital Management Services received contract for two Jumbo Covid Centers one at Worli-NSCI and other at Dahisar. I have perused the EOI and it is pertinent to note that under clause 'E' an Evaluation Committee was setup for scrutinizing documents of bidders / service providers hence the allegation of prosecution regarding allotment of contract on fraudulent basis falls to the ground and hence it dispels any doubt or suspicion regarding the Applicant's involvement in allotment of the said tender / contract. Infact Applicant was empaneled as Dean of the Centre for the period of 5 months only.

21. The material on record indicates that the prosecution's case in the predicate FIR and ECIR primarily pertains to M/s. Lifeline

Hospital Management Services. Veracity of the Partnership Deed of Lifeline Hospital Management Services is a matter of trial. The sole allegation against the Applicant is that he signed and approved fabricated invoices based on falsified attendance sheets of staff records thereby facilitating alleged fraudulent activities and generation of proceeds of crime. The Applicant held his position for only five months and verified 15 bills / invoices, one of the bill / invoice is appended at page Nos. 494 and 495 of the Application. There is no impediment or provision in EOI guidelines that mandated Dean of Jumbo Covid Centres to physically verify deployment of staff, their attendance or doctor to patient ratio which has been brought to my notice *prima facie* since that is one of the allegation in the prosecution complainant. Instead, designated staff members performed this duty and reported to the Dean. It is *prima facie* seen that Dr. Arvind Singh and Prince Vishwakarma were responsible for preparing the attendance lists on behalf of the Vendor which were subsequently verified by Dr. Rohan Patani and Dr. Jyoti Contractor before being approved by the Applicant. Furthermore, the invoices were later reviewed and cleared by the MCGM's accounts team, indicating that the Applicant did not unilaterally prepare or approve bills for clearance. Considering the statement of Data Entry Operator / Clerk Prince Vishwakarma appended at page No. 160 and read at page No. 165 for indictment of

Applicant it is seen that he has stated that bogus and fabricated invoices / bills used to be prepared on the instructions of Mr. Sujit Patker i.e. Accused No. 1 and one person called Mr. Sunil Kadam. Mr. Sunil Kadam is not an Accused in predicate offence or ECIR. It is further seen that allegation of Applicant receiving 21.6 lakhs is not substantiated by the prosecution *prima facie* though it is vehemently argued by the learned prosecutor. That apart allegation of prosecution that it was responsibility and duty of Applicant to have verified on daily basis *prima facie* cannot be contended as duties of the Dean which are placed before the Court in the statement of Dr. Harshvardhan Tikle, Dean at Worli - NSCI Jumbo Center appended at page No. 195 and read at page No. 197 of the Application clearly spells out the same. Even assuming the prosecution's case that false attendance sheets were used to generate invoices, it is *prima facie* seen in EOI guidelines that bills were prepared based on bed occupancy per day and not on the basis of staff deployment, thereby undermining the prosecution's allegation. It *prima facie* shows and reflects from one of the invoices appended at page Nos. 494 and 495 out of the fifteen (15) invoices placed before me that before it is signed by the Applicant the invoice is first verified by a Medical Officer who had the duty to prepare invoices on behalf of the Vendor as seen from the signature appended on the left side of the invoice. Subsequently it was the duty

of the Dean to verify and forward the same to the Accounts Officer of MCGM as seen from the signature appended on the right side of the invoice before clearance. Additionally, there is material placed on record to show that M/s. Lifeline Hospital Management Services continued to be a service provider during the second wave of Covid-19 pandemic at the Worli-NSCI and Dahisar Jumbo Covid Centres. It is seen that Applicant is not named as an accused in the predicate offence. On the contrary Audit Report dated 23.08.2022 appended at page No. 420 concluded that no MCGM Officers, including the Applicant, could be prosecuted under the Epidemic Diseases Act and Disaster Management Act, as no criminality was found on their part. Consequently, in the supplementary chargesheet, the charge under Section 304A IPC was removed. This fact *prima facie* militates against the prosecution case on the face of record. If at all it is prosecution case that Applicant aided fraudulent activities of M/s. Lifeline Hospital Management Services, *prima facie* there is no material on record to substantiate this allegation. The chargesheet encloses statements of co-accused which is the sole basis of allegation so as to come to conclusion that illegal proceeds of crime under the contract were routed to the Applicant via his driver once again will be a matter of trial. However, no recovery has been made till date.

22. Question arising before the Court in the above facts is that when the investigation is completed, can twin conditions under Section 45 of PMLA be applied mechanically despite in absence of *prima facie* evidence, warranting further incarceration of the Applicant or otherwise? In this regard I would like to refer to provisions of Section 45 of PMLA reads as under:-

“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 authorised in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government.”

⁴*[(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 ^{5***} subsection (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.”

23. As delineated and observed herein above and also while recording submissions made by the Learned Advocates appearing for the parties it is seen that Applicant is not made an accused in predicate offence or in the ECIR. Chargesheet has been filed in predicate offence, however charges are yet to be framed. Trial is not likely to commence hence trial in PMLA offence cannot commence. Applicant is incarcerated for 1 year 6 months 25 days after duly co-operating with the investigation.

24. In this regard, attention is drawn to the observations made by the Supreme Court in paragraph Nos. 24 to 28 of the decision in the case of ***V. Senthil Balaji Vs. The Deputy Director, Directorate of Enforcement***.⁸ Paragraph Nos. 24 to 28 read as under:-

"24. There are a few penal statutes that make a departure from the provisions of Sections 437, 438, and 439 of the Code of Criminal Procedure, 1973. A higher threshold is provided in these statutes for the grant of bail. By way of illustration, we may refer to Section 45(1) (ii) of PMLA, proviso to Section 43D(5) of the Unlawful Activities (Prevention) Act, 1967 and Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'NDPS Act'). The provisions regarding bail in some of such statutes start with a non-obstante Clause for overriding the provisions of Sections 437 to 439 of the Code of Criminal Procedure. The legislature has done so to secure the object of making the penal provisions in such enactments. For example, the PMLA provides for Section 45(1)(ii) as money laundering poses a serious threat not only to the country's financial system but also to its integrity and sovereignty

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

8 AIR 2024 SC 4760

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.

26. There are a series of decisions of this Court starting from the decision in the case of K.A. Najeeb (2021) 3 SCC 713, 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. Najeeb, can only be exercised by the Constitutional Courts. The Judges of the Constitutional Courts have vast experience. Based on the facts on record, if the Judges conclude that there is no possibility of a trial concluding in a reasonable time, the power of granting bail can always be exercised by the Constitutional Courts on the grounds of violation of Part III of the Constitution of India notwithstanding the statutory provisions. The

Constitutional Courts can always exercise its jurisdiction Under Article 32 or Article 226, as the case may be. The Constitutional Courts have to bear in mind while dealing with the cases under the PMLA that, except in a few exceptional cases, the maximum sentence can be of seven years. The Constitutional Courts cannot allow provisions like Section 45(1)(ii) to become instruments in the hands of the ED to continue incarceration for a long time when there is no possibility of a trial of the scheduled offence and the PMLA offence concluding within a reasonable time. If the Constitutional Courts do not exercise their jurisdiction in such cases, the rights of the undertrials Under Article 21 of the Constitution of India will be defeated. In a given case, if an undue delay in the disposal of the trial of scheduled offences or disposal of trial under the PMLA can be substantially attributed to the Accused, the Constitutional Courts can always decline to exercise jurisdiction to issue prerogative writs. An exception will also be in a case where, considering the antecedents of the Accused, there is every possibility of the Accused becoming a real threat to society if enlarged on bail. The jurisdiction to issue prerogative writs is always discretionary.

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 under trial. 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."

25. Offence of money-laundering has been defined under Section 3 of the PMLA and existence of proceeds of crime is the condition precedent for the offence under Section 3. Proceeds of crime has been defined in Section 2(1)(u) of the PMLA. Section 2(1)(u) and Section 3 of PMLA read as under:-

"2. Definitions: - (1)

(a)

(u) "proceeds of crime" means 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];"

"3. Offence of money-laundering - Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the 1[proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming] it as untainted property shall be guilty of offence of money-laundering.

²[Explanation.--For the removal of doubts, it is hereby clarified that,--

(i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:--

(a) concealment; or

(b) possession; or

(c) acquisition; or

(d) use; or

(e) projecting as untainted property; or

(f) claiming as untainted property, in any manner whatsoever;

(ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.]"

26. Perusal of the above statutory provisions clearly depict that existence of the Scheduled Offence is a *sine qua non* for alleging the existence of proceeds of crime. Property derived or obtained, directly or indirectly, by a person as a result of criminal activity relating to a Scheduled Offence constitutes proceeds of crime. Thus existence of proceeds of crime at the time of trial of the offence under Section 3 of

the PMLA can be proved only if the Scheduled Offence is established in prosecution of the Scheduled Offence. This clearly envisages that even if trial of the case under the PMLA proceeds it cannot be officially tested unless the trial of the Scheduled Offence concludes. In the present case before me in the Scheduled Offence, Chargesheet has been filed but trial is not likely to start in the near foreseeable future. Therefore *prima facie*, I see no possibility of both trials concluding in the foreseeable future. Applicant before me is in judicial custody pending trial for more than one year.

27. In the year 1923, the Calcutta High Court in the case of *Nagendra Nath Chakrabarti Vs. King-Emperor*⁹, through Justice Mookerjee, J. writing the judgment on behalf of the Division Bench. The Court has taken a view that the proper test to be applied in the solution of question for grant of bail is whether it is probable that the party will appear to take his trial. Applicant before me is a Doctor having deep roots in society. It is seen that Applicant has held the post as Dean of various Government Medical Facilities and has been a Lecturer and Professor attached to various Government Hospitals. There is no possibility of him fleeing away from the country and not being available for facing the trial. In any case appropriate conditions can be imposed if that be the case to address the concern of the State.

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The Supreme Court in the case of *Gudikanti Narasimhulu & Ors. Vs. Public Prosecutor, High Court of Andhra Pradesh*¹⁰ has reiterated the same principle. Keeping the aforesaid principle in mind and the facts of the present case, it is *prima facie* seen that the present case would largely depend upon documentary evidence which is already seized by the prosecution and is made part of the Chargesheet. As such there is no possibility of tampering with the evidence.

28. In the case of *Prem Prakash v. Union of India through the Directorate of Enforcement*¹¹, the Supreme Court reiterated that the fundamental right enshrined under Article 21 cannot be arbitrarily subjugated to the statutory bar in Section 45 of the Act by holding as follows:-

“11....All that Section 45 of PMLA mentions is that certain conditions are to be satisfied. The principle that, “bail is the rule and jail is the exception” is only a paraphrasing of Article 21 of the Constitution of India, which states that no person shall be deprived of his life or personal liberty except according to the procedure established by law. Liberty of the individual is always a Rule and deprivation is the exception. Deprivation can only be by the procedure established by law, which has to be a valid and reasonable procedure. Section 45 of PMLA by imposing twin conditions does not re-write this principle to mean that deprivation is the norm and liberty is the exception. As set out earlier, all that is required is that in cases where bail is subject to the satisfaction of twin conditions, those conditions must be satisfied.

12. Independently and as has been emphatically reiterated in Manish Sisodia (II) (supra) relying on Ramkripal Meena v. Directorate of Enforcement (SLP (Crl.) No. 3205 of 2024 dated 30.07.2024) and Javed Gulam Nabi Shaikh v. State of Maharashtra, 2024 SCC OnLine SC 1693, where the accused has

¹⁰ 1978(1) SCC 240

¹¹ AIR 2024 SC 4286

already been in custody for a considerable number of months and there being no likelihood of conclusion of trial within a short span, the rigours of Section 45 of PMLA can be suitably relaxed to afford conditional liberty. Further, Manish Sisodia (II) (supra) reiterated the holding in Javed Gulam Nabi Sheikh (Supra), that keeping persons behind the bars for unlimited periods of time in the hope of speedy completion of trial would deprive the fundamental right of persons under Article 21 of the Constitution of India and that prolonged incarceration before being pronounced guilty ought not to be permitted to become the punishment without trial. In fact, Manish Sisodia (II) (Supra) reiterated the holding in Manish Sisodia (I) v. Directorate of Enforcement (judgment dated 30.10.2023 in Criminal Appeal No. 3352 of 2023) where it was held as under:

“28. Detention or jail before being pronounced guilty of an offence should not become punishment without trial. If the trial gets protracted despite assurances of the prosecution, and it is clear that case will not be decided within a foreseeable time, the prayer for bail may be meritorious. While the prosecution may pertain to an economic offence, yet it may not be proper to equate these cases with those punishable with death, imprisonment for life, ten years or more like offences under the Narcotic Drugs and Psychotropic Substances Act, 1985, murder, cases of rape, dacoity, kidnaping for ransom, mass violence, etc. Neither is this a case where 100/1000s of depositors have been defrauded. The allegations have to be established and proven. The right to bail in cases of delay, coupled with incarceration for a long period, depending on the nature of the allegations, should be read into Section 439 of the Code and Section 45 of the PML Act. The reason is that the constitutional mandate is the higher law, and it is the basic right of the person charged of an offence and not convicted, that he be ensured and given a speedy trial. When the trial is not proceeding for reasons not attributable to the accused, the court, unless there are good reasons, may well be guided to exercise the power to grant bail. This would be truer where the trial would take years.”

It is in this background that Section 45 of PMLA needs to be understood and applied. Article 21 being a higher constitutional right, statutory provisions should align themselves to the said higher constitutional edict. *(emphasis supplied)*

29. The present case in hand is restricted to grant of bail on account of incarceration of the under trial accused / Applicant having fully co-operated in the investigation and made all disclosures, I refrain to comment on any of the merits of the matter. Any comment made above on the merits is cursory and only to the extent of considering the Applicant's case for grant of bail and is not an opinion expressed by the Court so as to influence the trial which may be noted.

30. The Applicant was arrested on 19.07.2023 and has been in custody for last 1 year 6 months and 25 days. Except for cognizance being taken, no substantial progress has been made in the trial, and charges are yet to be framed. The prosecution has cited 82 witnesses, making the conclusion of the trial in the near future unlikely. The Applicant has cooperated fully with the investigation.

31. Given the incarceration of Applicant and the absence of any foreseeable conclusion of the trial, continued detention would violate the Applicant's fundamental right under Article 21 of the Constitution, which guarantees a speedy trial and personal liberty. The primary allegation relates to the Applicant's temporary position which no longer persists, mitigating concerns of tampering with the evidence. Any such apprehension can be addressed through appropriate conditions. Continued incarceration of the Applicant would be

unwarranted and would amount to punitive detention prior to the establishment of guilt.

32. In view of the above *prima facie* observations from the record, Applicant is granted bail subject to the following terms and conditions:-

- i. Applicant is directed to be released on bail in connection with Enforcement Case Information Report (ECIR) bearing No. ECIR/MBZO-1/63/2022 for alleged offences under Section 3 and 4 of Prevention of Money-Laundering Act - 2002 on furnishing PR. Bond in the sum of Rs. 1,00,000/- with one or two sureties in the like amount;
- ii. Applicant shall report to the Investigating Officer in the office of the Enforcement Directorate once every month on the third Saturday between 10:00 a.m. to 12:00 noon for the first three months and thereafter as and when called;
- iii. Applicant shall co-operate with the conduct of trial and attend the Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if he does so, it will entitle the prosecution to apply for cancellation of this order;

- iv. Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court.
- v. Applicant shall deposit his passport, if any, with the Special Court under the PMLA at Mumbai within one week after his release from prison on bail;
- vi. Applicant shall not influence any of the witnesses or tamper with the evidence in any manner;
- vii. Applicant shall keep the Investigating Officer informed of his current address and mobile contact number and / or change of residence or mobile details, if any, from time to time;
- viii. Any infraction of the above conditions shall entail the prosecution to seek cancellation of this order.

33. It is clarified that observations made in this order are limited for the purpose of granting Bail only and they are not to be construed as an expression of opinion by the Court on the merits of the case in any manner so as to influence the trial.

34. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]