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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 4492 OF 2024

Kushal Shripal Singh .. Applicant
Versus
The State of Maharashtra and Anr. .. Respondents

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- Mr. Mithilesh Mishra a/w Mr. Agastya Desai, Advocates for Applicant.
- Ms. Megha S. Bajoria, APP for Respondent No. 1 – State.
- Ms. Priyal G. Sarda, Advocate for Respondent No. 2.
- Mr. Pacherwal, API, Unit – 6, EOW a/w Mr. Raorane, API, Unit -7, EOW, Mumbai.

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 21, 2025.

P.C.:

1. Heard Mr. Mishra, learned Advocate for Applicant, Ms. Bajoria, APP for Respondent No. 1 – State and Ms. Sarda, Advocate for Respondent No. 2.

2. This is an Application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 seeking Regular Bail in connection with C.R.No. 234 of 2021 (Online FIR No. 252 of 2021) registered with Marine Drive Police Station for offences punishable under Sections 409 and 120 -B of the Indian Penal Code, 1860 (for short 'IPC'). The same was transferred to EOW and re-registered as C.R. No. 58 of 2021. During the investigation Applicant and co-accused are arrested. Accused No. 2 has been granted bail by the Hon'ble Supreme

Court. On completion of investigation, Applicant and co-accused are charge-sheeted for offences punishable under Sections 409, 465, 467, 468, 471, 120-B of the Indian Penal Code. Applicant is arraigned as Accused No.1, he is arrested on 28.06.2021 and is incarcerated for 3 years 10 months, pending trial.

3. During investigation of the aforementioned crime the Enforcement Directorate (ED) took cognizance and registered an ECIR/MBZO-I/81/2021 for offences punishable under Sections 3 and 4 of the Prevention of Money Laundering Act, 2002. Pursuant to which Applicant was arrested however he has been granted bail by the Special Court by order dated 28.11.2023 appended at page No. 374 of the Application.

4. The aforesaid crime was registered pursuant to the FIR lodged by the Deputy General Manager at United India Insurance Company Ltd. having office at CBD Belapur, Navi Mumbai, hereinafter referred to as the 'Insurance Company'. The facts narrated in the FIR and other material on record indicate that Applicant had joined the Insurance Company in the year 2012 as an Administrative Officer, Circle Office, Nagarcoil, Tamilnadu. He was subsequently promoted as Assistant Manager, and was posted at Mumbai on 23.09.2016 in the Accounts Department and had overall dominion over operation of the bank accounts of the Insurance Company. It is prosecution case that his wife i.e. co-accused No. 2 joined the Insurance Company in the year 2012 as an Administrative Officer, Mumbai Regional office. She was promoted as Assistant Manager and continued to be posted at Mumbai Regional Office.

5. The Insurance Company received a letter dated 21.05.2021 from HDFC Bank stating that their internal team noticed multiple debit transactions made to a specific set of beneficiary accounts. It had flagged these transactions as irregular. Pursuant to the said letter the Insurance Company held preliminary inquiry and it was revealed that the transactions were fraudulent. Hence, the FIR.

6. It is prosecution case that during further inquiry it is seen that Applicant transferred an amount of Rs.8.09 crores from HDFC Bank Account of the Insurance Company to his seven personal accounts. He had further siphoned off Rs. 10.82 crores from the HDFC Bank Account of the Insurance Company to pay advance tax. He had also siphoned off Rs.120.83 crores from the account of the Insurance Company with Standard Chartered Bank by preparing 288 Demand Drafts in the names of third parties by forging the signature of a senior Officer. He had also siphoned off Rs.65.10 crores from the account of the Insurance Company with City Bank, Chennai. He has thus, siphoned off approximately an amount of Rs.204.69 crores from the account of the Insurance Company. However out of the misappropriated amount the prosecution has recovered / secured Rs. 88,99,09,747/- and has frozen certain immovable properties of the Applicant. It is in this context that present FIR was filed, registered and investigated.

7. Mr. Mishra, learned Advocate for the Applicant would submit that Applicant is falsely implicated in the present crime. He would submit that there is no evidence placed on record to establish any linkage of Applicant to the present crime. He would submit that the basic ingredients under Section 409 of the IPC are not made out as the Insurance Company is a listed government holding, where annual audit reports are prepared and the alleged mishap in the prosecution case is unescapable. He would submit that even if the prosecution case is considered then as alleged, siphoning of funds has been alleged over a period of few financial years which included multiple audits i.e. Statutory audit, CAG audit, Internal audit, vigilance audit but none of the committees / auditors red-flagged or marked any alleged irregularities. He would submit that perusal of Audit Reports of March, 2021 and March, 2022 does not show or reflect any loss suffered by the Insurance Company as alleged by the prosecution. He would submit that neither there has been an inexplicable decrease in the revenue nor any inexplicable increase in the expenses of the Insurance Company. He has referred to and relied upon the decision of the Supreme Court in the case of ***N. Raghavender Vs. The State of Andhra***

Pradesh[1] in support his aforementioned submissions.

7.1. In regard to the allegation of forgery of documents, he would submit that the transactions allegedly made by the Applicant for wrongful gain are transactions made through NEFT / RTGS which requires 2 approvers and further requires passwords from both the approvers. He would submit that HDFC Bank requires a company official to initiate the voucher and thereafter requires 2 approvers for completion of a transaction, hence contention of prosecution that Applicant solely concluded alleged fraudulent transactions is highly questionable and doubtful.

7.2. He would submit that with regard to alleged transactions initiated by Demand Draft, once again it requires 2 authorised signatories for approval of the Demand Draft. The allegation is that signature of the other official is forged by Applicant, however no CFSL Report regarding the same has been placed on record to prove the same *prima facie* which casts a doubt on the prosecution case. He would refer to and rely upon the decision of the Supreme Court in the case of ***Mohd Ibrahim V/s. State of Bihar***[2] in support his submissions.

7.3. He would submit that Applicant preferred Application before the learned Magistrate seeking production of certain documents listed in paragraph No. 11 of the Application, however the same was rejected

1 (2021) 18 SCC 70
2 (2009) 8 SCC 751

by order dated 29.12.2023 stating that production of documents is to be done in trial. He would submit that the said documents are crucial to support Applicant's defence and to further prove his innocence as no *prima facie* case has been made out by the prosecution to show Applicant's complicity.

7.4. To support his submissions he has referred to and relied upon the following decisions of the Supreme Court and this Court:-

i. ***Abdulmajid Abdulsattar Memon Vs. The State of Gujarat***[3]
ii. ***Kishore Raman Yadav Vs. The State of Maharashtra*** [4]
iii. ***Amit Harish Dave Vs. The State of Maharashtra***[5]
iv. ***Arvind Kejriwal Vs. Central Bureau of Investigation***[6]
v. ***Manish Sisodia Vs. Central Bureau of Investigation***[7]

7.5. He would submit that Applicant has been granted interim bail by this Court by order dated 08.01.2025 and also been granted bail by the PMLA Special Court vide order dated 28.11.2023, where the conditions are stricter, thus demonstrating that he would invariably meet the threshold, explicated by the 'triple test' in this matter as well. He would submit that Applicant has no criminal antecedents which is an additional ground which should be considered. Hence he would urge the Court to consider facts in the present case and enlarge the

3 Cri. Appeal NO. 3525 of 2024 decided on 27.08.2024.
4 Bail Application No. 2917 of 2024 decided on 05.09.2024
5 Bail Application No. 2994 of 2024 decided on 09.01.2025
6 2024 SCC OnLine SC 2550
7 2024 SCC OnLine SC 1920

Applicant on bail.

7.6. He would submit that Applicant is arrested on 28.06.2021 and is incarcerated for more than 3 years 10 months, pending trial. He would submit that the final chargesheet and FSL report is still pending. Commencement and completion of trial in the near foreseeable is therefore clearly doubtful as charge has not been framed till date. Hence he would urge the Court to allow the Bail Application.

8. Ms. Bajoria, learned APP for the State would vehemently oppose grant of bail to the Applicant. She would draw my attention to the Affidavit – in – Reply dated 13.01.2025 filed by Mr. Roshan Bharat Raorane, Assistant Police Inspector, Economic Offences Wing, Unit VI, Mumbai and contend that Applicant is indicted for an economic offence which is considered to be an offence against the economy of the nation and affects the financial fabric of the Society at large. She would submit that statements of Applicant's colleagues namely Sameer Beedu appended at page No. 296 and Siddharth Nayak appended at page No. 299 being 'Inputter' as well as 'Authoriser' confirms that Applicant was aware of their Login Ids and Passwords and that Applicant used to contact them for One Time Passwords for the alleged fraudulent transactions which they shared with him in good faith.

8.1. She would submit that with regard to Demand Draft transaction two signatories are required hence she would draw my attention to statement of Ms. Vijaya Krishnaprasath appended at page No. 268 which states that Applicant misused his position by forging her signature and submitted 123 letters to the said bank for preparing 288 Demand Drafts. She would thus emphasize that role of Applicant to be categorized as a major role in misappropriation of public funds.

8.2. She would submit that Applicant and his wife registered three different companies viz. Dharohar Hospitality Pvt. Ltd. on 12.02.2021, Unicorn Investing Ideas LLP on 18.02.2021 and Neelam Reality Pvt. Ltd. from 14.03.2021 in a span of 20 days with an intention to siphon off public monies and divert the proceeds of crime. She would submit that Applicant and his wife, whose monthly income did not exceed Rs.1,00,000/- each, purchased 22 properties including residential flats and commercial tenements at Delhi, Gurgaon, Greater Noida, Gaziabad, Ahmedabad and Jaipur, in their names and in the names of parents of Applicant and of third parties which itself shows Applicant's active role in the aforesaid crime.

8.3. She would submit that record of the case *prima facie* establishes role of Applicant in the present crime. She would submit that co-accused i.e. wife of Applicant is granted bail by the Supreme Court solely on the basis of she being a woman hence this does not establish a ground for parity. She would submit that filing of chargesheet coupled with Applicant's incarceration for 3 years cannot be a ground for grant of bail considering the gravity of offence. To support her aforementioned submissions she has referred to and relied upon the decisions of the Supreme Court in the case of ***Kalyan Chandra Sarkar Vs. Rajesh Ranjan Alias Pappu Yadav & Anr*** [8] and ***Rahul Gupta Vs. The State of Rajasthan and Anr.***[9] wherein it is held that bail cannot be granted solely on the ground that the trial may take a long time to conclude. She would submit that possibility of Applicant tampering with evidence and influencing the witnesses cannot be ruled out hence she would urge the Court to reject the present Application.

9. Ms. Sarda, learned Advocate for Respondent No. 2 – Intervenor / First – Informant has adopted the submissions made by Ms. Bajoria which are not reiterated herein for brevity. She has vehemently opposed grant of bail to Applicant. She would submit that offence committed by Applicant is serious in nature as siphoning off funds is a well planned and systematic operation involving multiple transactions for over several years. She would submit that Applicant being Assistant Manager was entrusted with handling financial transactions but instead misused his authority to commit fraud. She would submit that Applicant fabricated official documents by forging signature of a senior officer (second signatory) required for transactions through Demand Draft for siphoning an amount of Rs. 120.83 crores. She would submit that Applicant in collusion with his

8 2004 (7) SCC 528
9 2023 (7) SCC 781

wife created dummy / shell Companies within a period of 20 days to funnel / launder the proceeds of crime. She has placed reliance on the decision of the Supreme Court in the case of ***Nimmagadda Prasad Vs. Central Bureau of Investigation***[10] to support her submissions. She would submit that considering the facts of the case and magnitude of the crime the present application be rejected.

10. I have considered the submissions advanced by the learned Advocates at the bar and perused the record with their able assistance.

11. *Prima facie* it is seen that offences charged under Section 409 and 467 of IPC are the major offences as they provide for punishment of imprisonment of more than 7 years and contemplate maximum sentence of life imprisonment. Therefore if Applicant is able to demonstrate that the said offences *prima facie* cannot be said to be made out against him then Court would be inclined to grant bail particularly in the light of his long incarceration pending framing of charge and completion of trial as argued by his Advocate.

12. From the record of the case it is seen that Applicant was employed in the Insurance Company since the year 2012. *Prima facie* from the record of the case it is seen that siphoning of funds is alleged to have happened over a period of few financial years however the Audit Reports for Financial Year 2020-2021 and 2021-2022, despite multiple layers of statutory and internal auditing, do not reflect any

10 (2013) 7 SCC 466

glaring revenue deficit or misappropriation, which raises doubt about the allegation of siphoning of funds going undetected for years. However on receipt of a letter from HDFC Bank in the year 2021 is when the alleged incident came to light. If at all the prosecution case is to be considered it is seen that the Insurance Company has not faced any loss as also there was no sign of Revenue deficit or increase in expenses of the said Company as prosecution has failed to *prima facie* show the same. There is no explanation for delay in taking steps either since the charge is very serious. Rather there is no material placed on record *prima facie* to show that Applicant was solely entrusted with 'any property' in his individual capacity. The essential elements to constitute an offence under Section 409 of IPC are *prima facie* not established by the prosecution. Sections 409 and 467 of the IPC, both are serious non-bailable offences. *Prima facie* examination of record do not establish the essential ingredients of these Sections. There is no material to show that Applicant was individually entrusted with any property, as required under Section 409 of the IPC. The dual-approval mechanism in NEFT/RTGS transactions requiring two levels of authorization further weakens the prosecution's case of individual entrustment. Insofar as forgery under Section 467 of the IPC is concerned, no CFSL report, definitive material or incriminating evidence is placed on record to support the allegation of forged signatures. Prosecution's claim remains unsupported by expert evidence, thereby weakening the case at this preliminary stage. It is *prima facie* seen that Forensic Audit Report is still not filed. A sum of Rs.88.99 crores has been recovered, and multiple immovable properties belonging to Applicant and or his alleged companies, his family members have been attached. Thus, the apprehension of loss or tampering with the proceeds of crime is significantly mitigated.

13. It is an admitted fact that Applicant has been granted bail by the Special PMLA Court in proceedings initiated against him under the provisions of the Prevention of Money Laundering Act, 2002 in the present case. This is also a factor that needs to be taken into consideration. Regarding allegations of misappropriation of monies and routed to various other bogus or fictitious Companies, third parties and to his own accounts, undoubtedly that will be a case for trial if proved on the basis of evidence. Needless to state that complicity of the Applicant can be proved in trial

14. It is settled law that a Court while deciding a Bail Application has to keep in mind the principal rule of bail which is to ascertain whether the Accused is likely to appear before the court for trial. There are other broad parameters also like gravity of offence, likelihood of Accused repeating the offence while on bail, whether he would influence the witnesses and tamper with the evidence, his antecedents which are required to be considered in such cases.

15. Argued before me is a case concerning liberty of an undertrial who has been incarcerated for almost 3 years 10 months, a situation impacting the rights of undertrial conferred by Article 21 of Constitution to speedy justice as also personal liberty. In so far as the power of high courts to grant bail is concerned, when the case is such that involves a question of personal liberty of an undertrial who is incarcerated for a very long period, the powers are wide and unfettered by conditions, the principle rule being that bail is the rule and refusal is the exception, allowing accused persons to better prepare their defense.

16. In the case of ***Emperor vs H.L. Hutchinson***[11] the Allahabad High Court, as far back as in the year 1931 held that power of granting bail conferred on High Court is entirely unfettered by any conditions. It held that legislature has given the High Court and the Court of Session discretion unfettered by any limitation other than that which controls all discretionary powers vested in a Judge, viz. that the discretion must be exercised judiciously. The Court has given primacy to the fact that accused person if granted bail will be in a much better position to defend himself. In this very case, it was delineated that grant of Bail is the Rule and refusal is an exception. This was in the famous Meerut Conspiracy case. Justice Mukherjee writing for the Bench in paragraph No.9 held as under:-

> *"9. Speaking for myself, I think it very unwise to make an attempt to lay down any particular rules for the guidance of the*

11 AIR 1931 ALL 356

High Court, having regard to the fact that the legislature itself left the discretion of the Court entirely unfettered. The reason for this action on the part of the legislature is not far to seek. The High Court might be safely trusted in this matter and it goes without saying that it would act in the best interests of justice whether it decides in favour of the prosecution or the defence. The variety of cases that may arise from time to time cannot be safely classified and it will be dangerous to make an attempt to classify the cases and to say that in particular classes a bail may be granted but not in other classes."

17. In the case of ***Satender Kumar Antil Vs. Central Bureau of Investigation***[12], in paragraph Nos.6 to 15 the Supreme Court considered the prevailing situation of prisons in India, definition of trial and bail, principle of presumption of innocence and reiterated the well recognised principle that bail is the rule and jail is the exception in bail jurisprudence on the touchstone of Article 21 of the Constitution of India. Paragraph Nos.6 to 15 of the said judgement read as under:-

"Prevailing situation

6. *Jails in India are flooded with undertrial prisoners. The statistics placed before us would indicate that more than 2/3rd of the inmates of the prisons constitute undertrial prisoners. Of this category of prisoners, majority may not even be required to be arrested despite registration of a cognizable offence, being charged with offences punishable for seven years or less. They are not only poor and illiterate but also would include women. Thus, there is a culture of offence being inherited by many of them. As observed by this Court, it certainly exhibits the mindset, a vestige of colonial India, on the part of the investigating agency, notwithstanding the fact arrest is a draconian measure resulting in curtailment of liberty, and thus to be used sparingly. In a democracy, there can never be an impression that it is a police State as both are conceptually opposite to each other.*

Definition of trial

7. *The word "trial" is not explained and defined under the Code. An extended meaning has to be given to this word for the purpose of enlargement on bail to include, the stage of investigation and thereafter. Primary considerations would*

12 (2022) 10 SCC 51

obviously be different between these two stages. In the former stage, an arrest followed by a police custody may be warranted for a thorough investigation, while in the latter what matters substantially is the proceedings before the court in the form of a trial. If we keep the above distinction in mind, the consequence to be drawn is for a more favourable consideration towards enlargement when investigation is completed, of course, among other factors.

8. *Similarly, an appeal or revision shall also be construed as a facet of trial when it comes to the consideration of bail on suspension of sentence.*

Definition of bail

9. *The term "bail" has not been defined in the Code, though is used very often. A bail is nothing but a surety inclusive of a personal bond from the accused. It means the release of an accused person either by the orders of the court or by the police or by the investigating agency.*

10. *It is a set of pre-trial restrictions imposed on a suspect while enabling any interference in the judicial process. Thus, it is a conditional release on the solemn undertaking by the suspect that he would cooperate both with the investigation and the trial. The word "bail" has been defined in Black's Law Dictionary, 9th Edn., p. 160 as:*

> *"A security such as cash or a bond; esp., security required by a court for the release of a prisoner who must appear in court at a future time."*

11. *Wharton's Law Lexicon, 14th Edn., p. 105 defines "bail" as:*

> *"to set at liberty a person arrested or imprisoned, on security being taken for his appearance on a day and at a place certain, which security is called bail, because the party arrested or imprisoned is delivered into the hands of those who bind themselves or become bail for his due appearance when required, in order that he may be safely protected from prison, to which they have, if they fear his escape, etc. the legal power to deliver him."*

Bail is the rule

12. *The principle that bail is the rule and jail is the exception has been well recognised through the repetitive pronouncements of this Court. This again is on the touchstone of Article 21 of the Constitution of India. This Court in Nikesh Tarachand Shah v. Union of India [Nikesh Tarachand Shah v. Union of India, (2018) 11 SCC 1 : (2018) 2 SCC (Cri) 302] , held that : (SCC pp. 22-23 & 27, paras 19 & 24)*

> *"19. In Gurbaksh Singh Sibbia v. State of Punjab [Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 : 1980 SCC (Cri) 465] , the purpose of granting bail is*

set out with great felicity as follows : (SCC pp. 586-88, paras 27-30)

> *'27. It is not necessary to refer to decisions which deal with the right to ordinary bail because that right does not furnish an exact parallel to the right to anticipatory bail. It is, however, interesting that as long back as in 1924 it was held by the High Court of Calcutta in Nagendra Nath Chakravarti, In re [Nagendra Nath Chakravarti, In re, 1923 SCC OnLine Cal 318 : AIR 1924 Cal 476] , AIR pp. 479-80 that the object of bail is to secure the attendance of the accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial and that it is indisputable that bail is not to be withheld as a punishment. In two other cases which, significantly, are the "Meerut Conspiracy cases" observations are to be found regarding the right to bail which deserve a special mention. In K.N. Joglekar v. Emperor [K.N. Joglekar v. Emperor, 1931 SCC OnLine All 60 : AIR 1931 All 504] it was observed, while dealing with Section 498 which corresponds to the present Section 439 of the Code, that it conferred upon the Sessions Judge or the High Court wide powers to grant bail which were not handicapped by the restrictions in the preceding Section 497 which corresponds to the present Section 437. It was observed by the court that there was no hard-and-fast rule and no inflexible principle governing the exercise of the discretion conferred by Section 498 and that the only principle which was established was that the discretion should be exercised judiciously. In Emperor v. H.L. Hutchinson [Emperor v. H.L. Hutchinson, 1931 SCC OnLine All 14 : AIR 1931 All 356] , AIR p. 358 it was said that it was very unwise to make an attempt to lay down any particular rules which will bind the High Court, having regard to the fact that the legislature itself left the discretion of the court unfettered. According to the High Court, the variety of cases that may arise from time to time cannot be safely classified and it is dangerous to make an attempt to classify the cases and to say that in particular classes a bail may be granted but not in other classes. It was observed that the principle to be deduced from the various sections in the Criminal Procedure Code was that grant of bail is the rule and refusal is the exception. An accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. As a presumably innocent person he is therefore entitled*

to freedom and every opportunity to look after his own case. A presumably innocent person must have his freedom to enable him to establish his innocence.

28. Coming nearer home, it was observed by Krishna Iyer, J., in Gudikanti Narasimhulu v. Public Prosecutor [Gudikanti Narasimhulu v. Public Prosecutor, (1978) 1 SCC 240 : 1978 SCC (Cri) 115] that : (SCC p. 242, para 1)

> *"1. … the issue [of bail] is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitised judicial process. … After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of "procedure established by law". The last four words of Article 21 are the life of that human right."*

29. In Gurcharan Singh v. State (Delhi Admn.) [Gurcharan Singh v. State (Delhi Admn.), (1978) 1 SCC 118 : 1978 SCC (Cri) 41] it was observed by Goswami, J., who spoke for the Court, that : (SCC p. 129, para 29)

> *"29. … There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or cancelling bail."*

30. In American Jurisprudence (2nd Edn., Vol. 8, p. 806, para 39), it is stated:

> *"Where the granting of bail lies within the discretion of the court, the granting or denial is regulated, to a large extent, by the facts and circumstances of each particular case. Since the object of the detention or imprisonment of the accused is to secure his appearance and submission to the jurisdiction and the judgment of the court, the primary inquiry is whether a recognizance or bond would effect that end."*
>
> *It is thus clear that the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail.'*

*   *   *

> *24. Article 21 is the Ark of the Covenant so far as the Fundamental Rights Chapter of the Constitution is concerned. It deals with nothing less sacrosanct than the rights of life and personal liberty of the citizens of India and other persons. It is the only article in the Fundamental Rights Chapter (along with Article 20) that cannot be suspended even in an emergency [see Article 359(1) of the Constitution]. At present, Article 21 is the repository of a vast number of substantive and procedural rights post Maneka Gandhi v. Union of India [Maneka Gandhi v. Union of India, (1978) 1 SCC 248] ."*

13. *Further this Court in Sanjay Chandra v. CBI [Sanjay Chandra v. CBI, (2012) 1 SCC 40 : (2012) 1 SCC (Cri) 26 : (2012) 2 SCC (L&S) 397] , has observed that : (SCC p. 52, paras 21-23)*

> *"21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.*
>
> *22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.*
>
> *23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson."*

Presumption of innocence

> ***14.*** *Innocence of a person accused of an offence is presumed through a legal fiction, placing the onus on the prosecution to prove the guilt before the court. Thus, it is for that agency to satisfy the court that the arrest made was warranted and enlargement on bail is to be denied.*
>
> ***15.*** *Presumption of innocence has been acknowledged throughout the world. Article 14(2) of the International Covenant on Civil and Political Rights, 1966 and Article 11 of the Universal Declaration of Human Rights, 1948 acknowledge the presumption of innocence, as a cardinal principle of law, until the individual is proven guilty."*

18. The Supreme Court in a landmark decision of 1978 in the case of ***Gudikanti Narasimhulu & Ors. v. Public Prosecutor, High Court of Andhra Pradesh***[13] *observed as under:-*

> *"6. Let us have a glance at the pros and cons and the true principle around which other relevant factors must revolve. When the case is finally disposed of and a person is sentenced to incarceration, things stand on a different footing. We are concerned with the penultimate stage and the* ***principal rule to guide release on bail should be to secure the presence of the applicant who seeks to be liberated, to take judgment and serve sentence in the event of the court punishing him with imprisonment.*** *In this perspective…"* (emphasis supplied)

19. Thereafter the Supreme Court in a plethora of judgements have discussed the rights conferred by Article 21 qua grant of bail and that such rights cannot be taken away unless the procedure is reasonable and fair and in cases where there is unreasonable delay in trial it would undoubtedly impact the rights of an undertrial. Some of the important decisions of the Supreme Court and some of the High Courts are discussed hereinunder:-

19.1. In the landmark judgment of ***Maneka Gandhi V. Union***

13 1978 (1) SCC 240

of India[14], Supreme Court held that the right to life and personal liberty under Article 21 is not limited to mere physical existence but includes the right to live with dignity. The court emphasized that the procedure established by law must be fair, just, and reasonable, and it cannot be arbitrary, oppressive, or unreasonable.

19.2. In the case of ***Hussainara Khatoon Vs. Home Secy., State of Bihar***[15] the Supreme Court held as under:-

> *"Now obviously procedure prescribed by law for depriving a person of liberty cannot be "reasonable, fair or just" unless that procedure ensures a speedy trial for determination of the guilt of such person. No procedure which does not ensure a reasonably quick trial can be regarded as "reasonable, fair or just" and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. The question which would, however, arise is as to what would be the consequence if a person accused of an offence is denied speedy trial and is sought to be deprived of his liberty by imprisonment as a result of a long delayed trial in violation of his fundamental right under Article 21."*

19.3. The Supreme Court in the case of ***Shaheen Welfare Association vs Union Of India***[16] dealing with a Public Interest Litigation seeking relief for undertrial prisoners charged under the Terrorist and Disruptive Activities (Prevention) Act, 1987 due to gross delay in disposal of cases qua Article 21 of the Constitution of India held as under:-

> *"10. Bearing in mind the nature of the crime and the need to protect the society and the nation, TADA has prescribed in Section 20(8) stringent provisions for granting bail. Such stringent provisions can be justified looking to the nature of the*

14 1978 (1) SCC 248

15 (1980) 1 SCC 81

16 1996 SCC (2) 616

crime, as was held in Kartar Singh's case (supra), on the presumption that the trial of the accused will take place without undue delay. No one can justify gross delay in disposal of cases when undertrials perforce remain in jail, giving rise to possible situations that may justify invocation of Article 21."

19.4. The Supreme Court in the case of ***Union of India v. K. A. Najeeb***[17] while commenting upon the possibility of early completion of trial and extended incarceration held as under:-

"*12. Even in the case of special legislations like the Terrorist and Disruptive Activities (Prevention) Act, 1987 or the Narcotic Drugs and Psychotropic Substances Act, 1985 ("the NDPS Act") which too have somewhat rigorous conditions for grant of bail, this Court in Paramjit Singh v. State (NCT of Delhi), Babba v. State of Maharashtra and Umarmia v. State of Gujarat enlarged the accused on bail when they had been in jail for an extended period of time with little possibility of early completion of trial. The constitutionality of harsh conditions for bail in such special enactments, has thus been primarily justified on the touchstone of speedy trials to ensure the protection of innocent civilians."*

20. Applicant in present case has been in custody for almost 3 years 10 months, pending trial. There is no possibility of the trial commencing in the near future as charge is also not framed till date. Detaining an under-trial prisoner for such an extended period further violates his fundamental right to speedy trial flowing from Article 21 of the Constitution. At this juncture I deem it appropriate to list certain observations of the Supreme Court shedding light on concerns underlying the "Right to speedy trial" from the point of view of an accused in custody whose liberty is affected. In the case of ***Abdul Rehman Antulay & Ors. Vs R.S. Nayak & Anr.***[18] the Supreme Court

17 Criminal Appeal No. 98 of 2021
18 1992 (1) SCC 225

held as under:-

> *"86. In view of the above discussion, the following propositions emerge, meant to serve as guidelines. We must forewarn that these propositions are not exhaustive. It is difficult to foresee all situations. Nor is it possible to lay down any hard and fast rules. These propositions are:*
>
> *(1) Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the societal interest also, does not make it any-the-less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.*
>
> *(2) Right to Speedy Trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial. That is how, this Court has understood this right and there is no reason to take a restricted view.*
>
> ***(3) The concerns underlying the Right to speedy trial from the point of view of the accused are:***
>
> ***(a) the period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;***
>
> ***(b) the worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and***
>
> ***(c) undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise."***
>
> *(4) – (11) -------x------- (emphasis supplied)*

21. The Supreme Court has also held in a series of judgments and orders that in situations where the under-trial prisoner / accused persons have suffered incarceration rather long incarceration for considerable period of time and there is no possibility of the trial being completed within the foreseeable future, Constitutional Courts can exercise power to release the accused undertrial on bail, as bail is the rule and jail is the exception.

22. In the case of ***Supreme Court Legal Aid Committee (Representing undertrial prisoners) Vs. Union of India***[19] the Supreme Court has held that:-

> *"17.We are conscious of the fact that the menace of drug trafficking has to be controlled by providing stringent punishments and those who indulge in such nefarious activities do not deserve any sympathy. But at the same time we cannot be oblivious to the fact that many innocent persons may also be languishing in jails if we recall to mind the percentage of acquittals. Since harsh punishments have been provided for under the Act, the percentage of disposals on plea of guilt is bound to be small; the State Government should, therefore, have realised the need for setting up sufficient number of Special Courts immediately after the amendment of the Act by Amendment Act 2 of 1989. Even after the Division Bench of the Bombay High Court refused to grant en bloc enlargement on bail on 1-2-1993 in Criminal Application No. 3480 of 1992 and B.D. Criminal No. 565 of 1992, no substantial improvement in the pendency is shown since new cases continue to pour in, and, therefore, a one-time exercise has become imperative to place the system on an even keel. We also recommend to the State Government to set up Review Committees headed by a Judicial Officer, preferably a retired High Court Judge, with one or two other members to review the cases of undertrials who have been in jail for long including those released under this order and to recommend to the State Government which of the cases deserve withdrawal. The State Government can then advise the Public Prosecutor to move the court for withdrawal of such cases. This will not only. help reduce the pendency but will also increase the credibility of the prosecuting agency. After giving effect to this order the Special Court may consider giving priority to cases of those undertrials who continue in jail despite this order on account of their inability to furnish bail."*

23. In this regard, support is drawn from the decision of the Supreme Court in the case of ***Sanjay Chandra Vs. Central Bureau of Investigation***[20] wherein the Court has held that in economic offences while considering an application for bail, the nature of charge may be

19 (1995) 4 SCC 695

20 (2012) 1 SCC 40

relevant but at the same the punishment to which the party may be liable, if convicted is also a significant aspect and therefore both, the seriousness of the charge and the severity of the punishment should be taken into consideration for arriving at decision of grant of bail. It further observed that deprivation of liberty must be considered a punishment unless it is absolutely necessary in the interest of justice and that object of bail is merely to secure appearance of accused at the trial.

24. Next, in the context of the present case the decision of the Supreme Court in the case of ***P. Chidambaram Vs. Directorate of Enforcement***[21] is also relevant. The Supreme Court observed that economic offences would fall under the category of 'grave offences' and in such circumstances while considering application for bail, the Court will have to deal with the same being sensitive to the nature of allegations made against the accused, however the term of sentence that is prescribed for the offence which is in addition to the triple test or the tripod test that would be normally applied. In that regard the Supreme Court has further held that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case and 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.

21 (2020) 13 SCC 791

25. So far as the apprehension of the Applicant influencing the outcome of the trial is concerned, it seems that all evidence and material relevant to the prosecution's disposition is already in their possession, negating the likelihood of tampering by the Applicant.

26. In view of my above *prima facie* observations and findings and facet of pre-trial incarceration of Applicant for 3 years 10 months pending trial, charge not being framed, he being enlarged on bail by the Special PMLA Court in the same offence and no probability of the trial commencing and for that matter concluding in the near foreseeable future, invoking the right of Applicant to speedy justice and personal liberty as enshrined in Article 21 of the Constitution of India, I am of the opinion that Applicant can be released on bail.

27. Bail Application stands allowed subject to the following conditions:-

- **i.** Applicant is directed to be released on furnishing P.R. Bond in the sum of Rs. 1,00,000/- with one or two sureties in the like amount;
- **ii.** After his release from jail, Applicant shall report to the Investigating Officer as and when called for;
- **iii.** Applicant shall attend the trial Court on first Monday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Monday of the said month falls on a holiday and / or non Court working day, the Applicant

shall mark presence on the next working day;

iv. Applicant shall co-operate with the conduct of trial and attend the trial 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;

v. Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court; Applicant shall deposit his passport if any with the Trial Court;

vi. Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner;

vii. Before his actual release from jail, Applicant shall furnish his address where he proposes to reside after his release from jail, to the concerned Police Station and also to the trial Court;

viii. In case of any infraction of the above conditions and / or two consecutive defaults in marking his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

28. It is clarified that the above observations in this order are limited for the purpose of granting bail only and I have not made any observations on the merits of the case and the trial shall proceed uninfluenced by the present order.

29. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

Ajay

AJAY TRAMBAK UGALMUGALE

Digitally signed by AJAY TRAMBAK UGALMUGALE Date: 2025.04.21 14:55:08 +0530