

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.4843 OF 2024

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Anil Shivajirao Bhosale

...Applicant

Versus

Directorate of Enforcement

...Respondent

Mr. Niranjan Mundargi a/w. Ms. Keral Mehta, Mr. Chandansingh Shekawat, Advocates, i/b. Parinam Law Associates, for the Applicant.

Mr. Hiten Venegavkar, P.P. a/w. Ms. Diksha Ramnani, for the Respondent-ED.

CORAM: MADHAV J. JAMDAR, J.

DATED : 24th JANUARY 2025

JUDGMENT:

1. Heard Mr. Mundargi, learned Counsel along with Ms. Keral Mehta, learned Counsel appearing for the Applicant and Mr. Venegavkar, learned P.P. appearing for the Respondent-ED.

2. This regular Bail Application is preferred under Section 439 of the Code of Criminal Procedure, 1973 (“CrPC”) r/w. Section 45 and Section 65 of the Prevention of Money Laundering Act, 2002 (“PMLA”) in ECIR/MBZO-II/20/2020 lodged by Respondent - ED.

The relevant details are as follows:

1.	ECIR No.	ECIR/MBZO-II/ 20/2020
	C.R./F.I.R. Number (Scheduled Offence)	C. R. No. 0026/2020
2.	Date of Registration of ECIR	16.03.2021
	Date of Registration of C.R./F.I.R. (Scheduled Offence)	08.01.2020
3.	Prosecuting Agency	
	ECIR	Enforcement Directorate
	Scheduled Offences	Shivaji Nagar Police Station, Pune
4.	Sections invoked (ECIR)	Section 3 r/w. 70 of the Prevention of Money Laundering Act, 2002
	Scheduled offences	Sections 420 r/w. 34, 406, 408, 409, 465, 468 & 471 of the Indian Penal Code, 1860
5.	Date of arrest of the Applicant in Scheduled Offence	25.02.2020
	Date of arrest in ECIR	05.03.2021
6.	Date of filing of Charge-sheet in Scheduled Offence	Charge-sheet bearing No. 32/2020 dated 18 th May 2020
	ECIR Complaint	April 2021
7.	Status of Bail Application in scheduled offence	Scheduled Offence – Bail granted on 19 th August 2024 by this Court in B. A. No. 653 of 2023
8.	Main grounds for seeking bail	The Applicant has undergone 3 years 10 months in ECIR i. e. more than half of the

		punishment. The maximum punishment which can be awarded is 7 years. The Applicant is in custody for more than 4 years and 11 months.
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3. Respondent – the Directorate of Enforcement (“ED”) by filing affidavit-in-reply of Mr. Venkata Naren Garapaty, Assistant Director, Zonal Office-II, Mumbai, Directorate of Enforcement, Ministry of Finance, Department of Revenue, Government of India dated 03.01.2025 opposed the Bail Application. In the said affidavit, the prosecution case is set out in Paragraph Nos.6, 7 and 11 which read as under:

“6. BRIEF FACTS OF THE CASE

6.1. *That, On January 8, 2020, the Shivajinagar Police Station, Pune registered FIR No. 0026/2020 based on a complaint filed by Mr. Yogesh Rajgopa Lakde, Chartered Accountant (Partner of Mis Torvi Pethe & Co.) against Mr. Anil Shivaji Rao Bhosale, Mr. Suryaji Pandurang Jadhav, Mr. Tanaji Dattu Padwal, Mr. Shailesh Sampatrao Bhosale, Mr. Vishnu Tukaram Jagtap, Mr. Hanuman Babanrao Sorte, and others, invoking 420, 34, 406, 408, 409, 468, and 471 of the IPC, 1860.*

6.2. *That as the case was further transferred to*

*Economic Offence Wing, the Economic Offence Wing. Pune filed charge-sheet No. 32/2020 on 18.05.2020, before the Hon'ble Additional Sessions Judge, Special M.P.I.D Court, Pune against Mr Anil Shivajirao Bhosale, Mr Suryaji Pandurang Jadhav, Mr Tanaji Dattu Padwal, Mr Shailesh S. Bhosale and others for constituting the offences punishable under Sections 34, 406, 408, 409, 420, 468 and 471 of IPC, 1860 read with Section 3, 4 & 5 of MPID Act Further during course of investigation, Economic Offence Wing filed Supplementary Chargesheet and the details of the various charge sheets and the accused individuals are annexed herewith as "**EXHIBIT B**".*

6.3. *That, based on the FIR no. 0026/2020 and the chargesheets mentioned in the Table above filed by the EOW, this Enforcement Directorate recorded an Enforcement case Information Report (ECIR) bearing No. ECIR/MBZO-II/03/2020 dated 16.03.2020 against Shri Anil Shivajirao Bhosale, the Chairman of Shivajirao Bhosale Sahakari Bank, Shri Suryaji Pandurang Jadhav, one of the directors of the bank, Shri Tanaji Dattu Padwal, Shailesh Sampatrao Bhosale and 12 others in the case of Shivajirao Bhosale Sahakari Bank to investigate the offence of Money Laundering under the prevention of Money Laundering Act, 2002 to the tune of Rs. 494 crores (approx.)*

6.4. *That, the said accused persons were arrested with respect to the case under PMLA and released on bail by the Hon'ble High court on these respective dates:*

Name of Accused	Date Of Arrest	Bail Granted On
Suryaji Pandurang Jadhav	06.03.2021	19.09.24
Shailesh Bhosale	06.03.2021	06.09.24
Tanaji Dattu Padwal	06.03.2021	14.10.24

7. ROLE OF THE APPLICANT

7.1. Mr. Anil S Bhosale was the chairman and promoter of Shivajirao Bhosale Sahakari Bank Limited. Shivajirao Bhosale Sahakari Bank Limited (SBSBL) is a family-oriented bank which Mr. Anil S Bhosale inherited from his father. He had the sole authority to take decisions and dictate terms to staff and Board of Directors.

7.2. On the instructions of Mr. Anil S Bhosale, Rs 27,13,70,000/- in cash were withdrawn from 24 Nationalized and Co-operative banks where the account of Shivajirao Bhosale Sahakari Bank Limited was maintained. Out of the said Rs 27.13 Crores, Rs 23.89 Crore was withdrawn by Anil Bhosale. The remaining amount was available with SBSBL

7.3. Further, Mr. Anil S Bhosale withdrawn Rs 168.74 Lakhs in cash from Deccan Gymkhana branch of SBSBL. However, Rs 98.99 Lacs were paid back by Mr. Anil S Bhosale. In total, net cash of Rs 69.75 Lacs was withdrawn from Deccan Gymkhana Branch on the instructions of Mr. Anil S Bhosale.

7.4. It is observed that RTGS transfers of Rs 2.75 Crore were made from Head Office of SBSBL on the instructions of Mr. Anil S Bhosale.

7.5. In total, 67 cheques of Rs 5,82,90,175/- on various dates during the period from 17.05.2017 to 11.04.2019 are paid on behalf of Anil Bhosale for his personal expenditure from Deccan Branch.

7.6. The said cheques were issued from the accounts No. 012001000000001 maintained with Deccan Gymkhana Branch of the bank to Prerna Cooperative Bank and Sarswat Cooperative Bank for repayment of loan dues. Even though there was insufficient balance in the said account, still the amount was used to be transferred to the other bank.

7.7. It was observed that, later all said cheques were

paid by head office from its own funds (i.e. from depositor's fund) on behalf of Anil Bhosale. The Cashier and branch manager of Deccan Gymkhana Branch made bogus entries in books of accounts of Deccan Gymkhana branch of the bank. The total amount in respect of 67 cheques of Rs 5,82,90,175/- has been added to the FORCED loan account created/opened in the name of Anil S. Bhosale by the bank.

7.8. The transactions show manipulation of accounts by paying money for dishonoured cheques, which can be seen from the flow of funds from the Prosecution Complaint as well. The list of transactions showing the utilization of POC is marked and annexed herewith as on Page No. 398 of the Prosecution Complaint.

7.9. Mr Anil Shivajirao Bhosale and Mr Suryaji Pandurang Jadhav devised a well-planned conspiracy to standardize the NPA accounts in Shivajirao Bhosale Sahakari Bank Limited for which they got opened savings accounts in the name of their known person Mr Amar Shrirang Jadhav and his wife Mrs. Aruna Amar Jadhav.

7.10. The account was used for making repayments in 97 NPA accounts in the Bank by granting cheque discounting facility even though the cheques submitted to bank got returned from the issuer bank i.e. Bajirao Appa Sahakari Bank Limited, Sangli, due to insufficient funds. Since amount of Cheque discounting was transferred to different loan accounts, position of overdue & NPA accounts were affected on 31.03.17

7.11. The cheque discounting facility was granted in gross violation of the rules & regulations of RBI and banking operating system since a cooperative bank is not authorized to grant cheque discounting facility. Later, the cheque discounting facility was treated as loan extended to Mr Amar Jadhav and Mrs. Aruna

Jadhav, by the bank itself. The amounts transferred to Interest and Loan accounts on 31st March 2017 were reversed on 31st March 2019. It is clear that the intention of SBSBL was to reduce NPA position also to mislead to the depositors of the bank and to increase profit as on 31st March 2017

7.12. *Commission income of Rs 31.90 Lacs from the account of Amar Jadhav and Rs 24.81 Lacs from Aruna Amar Jadhav is taken to income General Ledger. This has led to manipulation of accounts by overstating profit of Rs 56.71 Lacs.*

7.13. *Mr. Anil S Bhosale, in conspiracy with Mr. Mangaldas Bandal and officials of the bank sanctioned several fraudulent loans for their personal benefit. It is revealed during investigation that during sanctioning loan to various borrowers, the bank had failed to comply with By-laws of the Cooperative Bank, and rules, regulations, guidelines issued by the RBI and rules made under Maharashtra Cooperative Societies Act, 1960. Consequently, most of the loan accounts slipped to NPA category. There was total 432 NPA accounts and outstanding principle amount was Rs 392 Crore.*

7.14. *Bank used to maintain bifurcated lists of 96 loan accounts in the name of Mr. Anil S Bhosale and Mr. Mangaldas Bandal. In the said lists, 44 loan accounts pertained to Mr Anil Shivajirao Bhosale in List A. Shri Rajaram Dhondkar, Liquidator of Shivajirao Bhosale Sahakari Bank vide email dated 01.11.2023, provided the said List A in respect of loans sanctioned on behalf of Mr. Anil S Bhosale. On perusal of said list, it is revealed that total principal amount used and utilized by Mr. Anil S Bhosale is Rs 113.147 Crore.*

7.15. *The breakdown of proceeds of crime used and utilized by Mr. Anil S Bhosale is as under:*

Particulars	Amount (Rupees in crores)
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Deccan Branch pending Cheques	5.83
Shortage Cash at Shivaji Nagar Branch	23.89
Shortage Cash at Deccan Branch	0.69
Fake FDR at Vadgaon Sheri Branch	1.00
Payment through RTGS from Head Office	2.74
NPA Loan Amount	113.147
<u>Total</u>	147.307

11. That Mr. Anil S Bhosale had a major role to play in all the frauds committed by SBSBL viz. misappropriation of cash, misappropriation of SBSBL funds through RTGS and pending cheques, sanction of illegal loans and cheque discounting. Hence, the applicant is actually involved and also knowingly facilitated the other co-accused persons in acquiring, concealing, misappropriating, utilizing and projecting & claiming to be untainted property, had committed the offence of money laundering under Section 3 of the PMLA, 2002 which is punishable under Section 4 of the prevention of the money laundering Act 2002 and therefore, he is not entitled to get bail as stated by the Applicant in the present bail application.”

4. It is the submission of Mr. Mundargi, learned Counsel along with Ms. Keral Mehta, learned Counsel appearing for the Applicant that insofar as the scheduled offence is concerned, the Applicant has already been granted bail by this Court by Order dated 19.08.2024 passed in Bail Application No. 653 of 2023. He submits

that the Applicant was arrested in scheduled offence on 25.02.2020 and in the present case, he is in custody since 05.03.2021. He submitted that the Applicant is incarcerated for more than 4 years and 11 months. He submits that in PMLA Case, the Applicant has completed 3 years and 10 months. He submitted that insofar as the present case is concerned, the maximum punishment which can be awarded is 7 years, out of which the Applicant has already completed more than half of the total punishment. He, therefore, submitted that the Applicant is entitled to be released on bail. He relied on the following Judgments :

- (i) *Javed Gulam Nabi Shaikh vs. State of Maharashtra*¹;
- (ii) *Vijay Madanlal Choudhary vs. Union of India*²;
- (iii) *Manish Sisodia vs. Directorate of Enforcement*³;
- (iv) *Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari vs. The State of Uttar Pradesh*⁴.

5. He submitted that it is well established that speedy trial is a right guaranteed to the Applicant under Article 21 of the

12024 SCC OnLine SC 1693

22022 SCC OnLine SC 929

32024 SCC OnLine SC 1920

42024 SCC OnLine SC 1755

Constitution of India. He submitted that the factual position on record clearly shows that the said fundamental right of the Applicant is violated. In support of the said contention, he also relied on Section 436A of the Cr.PC.. He submitted that he is seeking bail only on the ground of long incarceration. He also submitted that the Applicant is senior citizen of 60 years. He, therefore, submitted that the Applicant is entitled to be enlarged on bail.

6. On the other hand, Mr. Venegavkar, learned PP for Respondent – ED strongly opposed the Bail Application. He submitted that the Applicant was the Chairman of the said Bank and therefore, he is the prime accused. He submitted that Mr. Anil S Bhosale had a major role to play in the frauds committed by SBSBL viz. misappropriation of cash, misappropriation of SBSBL funds through RTGS and pending cheques, sanction of illegal loans and cheque discounting. Hence, the applicant is actually involved and also knowingly facilitated the other co-accused persons in acquiring, concealing, misappropriating, utilizing and projecting & claiming to be untainted property, had committed the offence of money laundering under Section 3 of the PMLA which is

punishable under Section 4 of the PMLA and therefore, he is not entitled to get bail. He submitted that the material on record shows that the Applicant is involved in a very serious crime. He submitted that therefore, the Applicant is not entitled to be released on bail in view of Section 45 of the PMLA. Mr. Venegavkar, learned PP for Respondent– ED has relied on the Judgment of the Supreme Court in the case of *Tarun Kumar vs. Assistant Director, Directorate of Enforcement* ⁵.

7. A perusal of the record shows that insofar as the scheduled offence is concerned, C. R. No. 0026/2020 was registered on 08.01.2020 under Sections 420 r/w. 34, 406, 408, 409, 465, 468, 471 of the Indian Penal Code, 1860 (“**IPC**”). The present case is ECIR/MBZO-II/20/2020 registered under Section 3 r/w. 70 of the PMLA. The Applicant has been arrested in scheduled offence on 25.02.2020 and the date of arrest in the present offence is 05.03.2021. Thus, the Applicant has completed 4 years and 10 months from the date of arrest in the scheduled offence, wherein he has been granted bail by this Court by Order dated 19.08.2024 passed in Bail Application No. 653 of 2023.

5SLP (Cri.) No. 9431 of 2023.

8. Before considering this Bail Application it is necessary to set out Paragraph Nos.5 and 6 of the Order dated 19th August 2024 passed by this Court in Bail Application No.653 of 2023 filed by the present Applicant concerning scheduled offences i.e. C.R. No.26 of 2020 registered with Shivaji Nagar Police Station, District – Pune.

“5. On 10th April 2023, Mr. Mundargi, learned Senior Counsel had produced a Chart before a learned Single Judge, showing the recovery of the amount against the Applicant – Anil Shivajirao Bhosale and also the liability attributable towards the Applicant. The said Chart is reproduced herein below for ready reference:

“RECOVERY CHART – ANIL BHOSALE

1. LIABILITY ATTRIBUTABLE TOWARDS MR. ANIL BHOSALE:

<i>Embezzlement of Short cash– 103 Crores (@pg 181 of B.A)</i>	
<i>Amount attributable to Mr. Anil Bhosale</i>	<i>34.16 Crore (@pg 127 of B.A)</i>
<i>96 NPA Account – 247 Crores (@pg 133 of B.A)</i>	
<i>44 NPA Accounts attributed to Mr. Anil Bhosale</i>	<i>113.14 crore</i>
<i>TOTAL ATTRIBUTABLE</i>	<i>146.63 Crore</i>

2. ACTUAL RECOVERY AGAINST LIABILITY ATTRIBUTABLE:

1.	<i>Amount Recovered from Applicant by auctioning land by Shivaji Rao Bhosale Sahakari Bank Ltd. u/s 101 of MCS Act.</i>	53.17 Crore	(@pg 21 of CoD)
2.	<i>Amount recovered out of 02 NPA Accounts from 44 NPA Accounts.</i>	10.88 Lakh	(@OTS chart)
TOTAL		Rs. 53.27 Crore	

3. **AMOUNT RECEIVABLE**

Sr. no	Receivable Amount	Amount	Reference
1.	<i>OTS offer proposed in 13 NPA Accounts out of 44 NPA Accounts. (Sanction pending)</i>	43.21 Crore	@Correspondence to Registrar of Cooperative Society.
2.	<i>Valuation of properties of Mr. Anil Bhosale attached by EOW/ED/Bank as on 2017. Applicant has no objection if sale of the attached properties is made absolute.</i>	14.05 Crore (approx.)	@valuation reports
3.	<i>Government Valuation (as per IGR) of properties mortgaged and attached in lieu of loan in balance 31 NPA Accounts out of 44 NPA accounts. Recovery certificate u/s 101 of MCS Act of 29 NPA Accounts out of 44 NPA Accounts received.</i>	41.00 Crore (approx.)	@Bank chart
TOTAL		Rs. 98.26 Crore	

4. SUMMARY:

<u>Sr. no</u>	<u>Particulars</u>	<u>Amount</u> (In Crores)
1.	<i>Liability attributed</i>	146.63
2.	<i>Actual realisation and amount to be received</i>	151.60 "

6. In view of the above Chart, the learned Single Judge by Order dated 10th April 2023 directed the Respondent – State of Maharashtra to file the Additional Affidavit and in view thereof an Affidavit of Mr. Sanjay G. Chavan, Police Inspector, Economic Offences Wing, Pune City, Pune has been filed on 10th June 2024. In the said Affidavit, the role of the present Applicant is explained with respect to the said Chart submitted by Mr. Mundargi, learned Senior Counsel. The relevant portion of the said Affidavit dated 10th June 2024 is at Paragraph Nos.6 to 9, which reads as under:

“6. I say that in the aforesaid matter, the compilation was filed by the Applicant/Accused in support of his claim mentioned in **Point No.1** under the title as Amount Receivable which is as under:-

Liability attributable towards Mr. Anil Bhosale

<i>Embezzlement of Short Cash – 103 Crores</i>
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<i>Amount attributable to Mr. Anil Bhosale</i>	<i>34.16 Crores</i>
<i>44 NPA Accounts attributable to Mr. Anil Bhosale</i>	<i>113.14 Crores</i>
<i>Total attributable</i>	<i>146.63 Crores</i>

Explanation -

*As per the above mentioned chart, out of the embezzled Short Cash amount of Rs.103 Cr, **Applicant had used a total amount of Rs.34.16 Cr**, which is not disputed.*

*I state that as per the applicant, the NPA Loan of applicant shown in above chart is 113.14 Cr. However it is submitted that **Rs.113.14 Cr is the Principal amount and the total amount with interest is Rs. 156,66,50,901/-**.*

*7. I say that in the aforesaid matter, the compilation was filed by the Applicant/Accused in support of his claim mentioned in **Point No.2** under the title as amount receivable which is as under:-*

Actual Recovery against liability attributable

<i>1</i>	<i>Amount recovered from applicant by auctioning land by Shivajirao Bhosale Sahakari Bank Ltd u/s 101 of MCS Act</i>	<i>53.17 Crore</i>	<i>@pg 21 of cod</i>
<i>2</i>	<i>Amount recovered out of 02 NPA Accounts from 44 NPA accounts</i>	<i>10.88 lakh</i>	<i>@OTS chart</i>
	<i>Total</i>	<i>53.27 Crore</i>	

Explanation -

The above chart as submitted by the applicant is true and correct to the best of my knowledge based on documents on record.

8. I say that in the aforesaid matter, the compilation was filed by the Applicant/Accused in support of his claim mentioned in Point No.3 under the title as amount receivable which is as under:-

Sr. No.	Receivable Amount	Amount	Reference
1	OTS offer proposed in 13 NPA Accounts out of 44 NPA Accounts (Sanction pending)	43.21 Crore	@ Correspondence to Registrar of Co-operative Society.
2	Valuation of properties of Mr. Anil Bhosale attached by EOW/ED/Bank as on 2017 Applicant has no objection if sale of the attached properties is made absolute.	14.05 Crores (Approx.)	@ Valuation reports
3	Govt Valuation (as per IGR) of properties mortgaged and attached in lieu of loan in balance 31 NPA Accounts out of 44 NPA accounts received Recovery certificate u/s 101 of MCS Act of 29 NPA accounts out of 44 NPA accounts received	41.00 Crore (approx)	@bank chart
	Total	98.26 Crore	

Explanation -

8.1 In pursuance of the aforesaid compilation submitted by the Applicant/Accused, it is submitted that the following are the details and particulars of the below-mentioned NPA Loan

Accounts:-

Sr. No.	Particulars	OTS Loan Amount	30% Amt. received against OTS by Applicant
1	WCTL-406 Kakade Palace Mangal Karyalaya	2,37,53,354/-	93,35,426/-
2	WCTL-408 Jons Holding Pvt. Ltd.	8,83,70,649/-	2,58,11,103/-
3	WCTL-409 Kakade Green Estate Pvt. Ltd.	8,87,53,205/-	2,56,80,954/-
4	WCTL-01 Pushpak Ply	7,49,36,336/-	2,22,68,104/-
5	WCTL-107 V.Y. Infra Structure Pvt. Ltd.	8,14,96,800/-	2,47,38,380/-
	Total	35,73,10,344/-	10,78,33,967/-

I state that, in pursuance of above chart, OTS offer was proposed in 13 NPA Accounts out of 44 NPA Accounts out of which in above mentioned 5 loan accounts, One Time Settlement was done by Shivajirao Bhosale Co Op Bank, Pune, in which Applicant has paid 10.78 cr as on date 14/05/2024 and amount of 24.94 Cr is pending payment with monthly 11 installments fixed. Out of 13 NPA loan account 08 loan accounts is pending for sanction at the office of Commissioner of Co-operative, Pune for OTS. If the proposed OTS is approved by the concerned authority and the petitioner / accused undertakes to clear the OTS installments as approved it takes care of the 13 NPA accounts out of the 44 NPA accounts.

8.2. In respect of the valuation of properties attached by ED/EOW/Bank, mentioned as Rs.14.05 Cr, it is submitted that as per valuation by the Sub Registrar Office, Pune, the amount is

Rs.11.43 Crores (Approx.) as on 2020. Fresh valuation is being obtained from the concerned department.

8.3 I say that, applicant has shown receivable amount of 41 Cr against 31 NPA loan accounts mortgaged properties. The mortgaged properties of 31 NPA loan accounts are owned by the respective loan holders. One loan account holder has closed his loan account. The valuation of mortgaged properties of remaining 30 NPA loan accounts are 27.14 Cr. as per IGR report. As per the statement received from the Loan A/C holders the 30 NPA Loan Account Holders are not willing to go in for OTS as on date and since the property is in the name of loan account holders, it will not be proper to expect this is a receivable amount in favour of the petitioner.

*9. I say that in the aforesaid matter, the compilation was filed by the Applicant/Accused in support of his claim mentioned in **point No.4** under the title as Amount Receivable which is as under:-*

Summary

Sr.NO	Particulars	Amount (in Crores)
<i>1</i>	<i>Liability attributed</i>	<i>146.63</i>
<i>2</i>	<i>Actual realisation and amount to be received</i>	<i>151.60</i>

Explanation -

*I say that, applicant has showed total liability of Rs. 146.63 Cr., which is not a matter of fact. **As per details of investigation, total liability would be Rs.190,82,50,901/-.** (Rs.34.16 Cr + 113.14 Cr + 43.51 Cr (Interest Amount)) As regards the actual realisation, details have been submitted in preceding paragraphs. This is*

subject to the condition that the petitioner clears the outstanding on 5 OTS NPA accounts and also clears the OTS once sanctioned in case of the other NPA accounts. A chart of the present status is enclosed herewith for the sake of clarity.

A) Amount recovered from applicant by Shivajirao Bhosale Co Op Bank Ltd, Pune

Sr.NO	Particulars	Amount (in Crores)
1	Amount recovered from applicant by auctioning land by Shivajirao Bhosale Sahakari Bank Ltd u/s 101	53.17 Crore
2	Amount recovered out of 01 NPA Accounts from 44 NPA accounts	10.78 lakhs
3	5 loan accounts, One Time Settlement was done by Shivajirao Bhosale Co Op Bank, Pune, (30% amount)	10.78 Cr
	Total	64.05 Cr

B) Amount will be recover from applicant in future

Sr.NO	Particulars	Amount (in Crores)
1	Valuation of properties of Applicant attached by ED/EOW/Bank,	11.43 Cr
2	5 loan accounts, One Time Settlement was done by Shivajirao Bhosale Co Op Bank, Pune and pending payment with monthly 11 installments fixed. (70% amount)	24.94 Cr
3	Out of 13 NPA loan account 08 loan accounts is pending for sanction at the office of Commissioner of Co-operative, Pune for OTS.	17.40 Cr (Approx.)
	Total	53.77 Cr

C) Valuation of mortgaged properties 30 NPA loan accounts

<i>Sr.NO</i>	<i>Particulars</i>	<i>Amount (in Crores)</i>
<i>1</i>	<i>Valuation of mortgaged properties of remaining 30 NPA loan accounts</i>	<i>27.14 Cr””</i>

Thus, it is clear that substantial amount which is subject matter of the crime is either recovered or secured. This is very relevant factor as the money involved in the crime is public money.

9. Insofar as the present offence is concerned, the Applicant is incarcerated since 05.03.2021. Thus, the Applicant has completed 3 years and 10 months. Admittedly, insofar as the present offence is concerned, the maximum punishment is 7 years. As the Applicant has completed more than 3 years and 10 months, more than half of the punishment is completed.

10. In the light of the above factual aspects, it is necessary to consider whether the Applicant is entitled to be released on bail.

11. Section 45 of the PMLA Act concerning grant of bail in the PMLA offences is as follows:

“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
113[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.

[(1-A) 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 [* *] 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.

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

(Emphasis added)

12. Thus, as per Section 45 of the PMLA Act, the following requirements are mandatory to be complied with before releasing the accused on bail:

- (i) The Public Prosecutor is to be given an opportunity to oppose the Application seeking bail;
- (ii) Where the Public Prosecutor opposes the Application :
 - (a) The Court is required to record

satisfaction that there are reasonable grounds for believing that the Applicant is not guilty of such offence;

(b) The Court is required to record satisfaction that the Applicant is not likely to commit any offence while on bail.

13. In this Bail Application, the Respondent – ED filed affidavit opposing the Bail Application and Mr. Venegavkar, learned PP for Respondent has opposed the Bail Application. Thus, requirement as set out in Clause (i) hereinabove is satisfied. Thus, now what is required to be seen is whether twin conditions as contained in Clause (ii) noted hereinabove are fulfilled and effect of the said twin conditions on the entitlement of the Applicant in getting bail.

14. The material on record clearly show that the Applicant at the relevant time was the Chairman of the SBSL and by misusing his position committed fraud, misappropriation of cash, misappropriation of SBSBL funds through RTGS and pending cheques, sanction of illegal loans and cheque discounting, had committed the offence of money laundering under Section 3 of the PMLA, 2002 which is punishable under Section 4 of the PMLA. The Applicant by said method has used and utilised principal amount of about Rs.147.307 Crores. The material on record shows that the Applicant is involved in commission of very serious offence under

Section 3 of the PMLA. The manner in which the offence is committed clearly show that the Applicant is not able to fulfill the twin conditions as contemplated under Section 45 of the PMLA. Thus, the Applicant is not entitled to be released on bail on merits.

15. In the above background, it is necessary to consider whether the Applicant is entitled to be released on bail inspite of failing to fulfill the twin conditions as contemplated under Section 45 of the PMLA.

16. In this background of the matter, it is required to be noted that the Supreme Court in the case of ***Vijay Madanlal Choudhary*** (supra) in Paragraph Nos. 412 to 421, considered the applicability of Section 436A of the Cr. P. C. which is concerning the maximum punishment for which an under trial prisoner can be detained, held that Section 436A of the Cr. P. C. has come into effect on 23.06.2006 and the said provision is the subsequent law enacted by the Parliament and the same will prevail and will apply in spite of rigors of Section 45 of the PMLA Act. The relevant part of the said paragraphs 412 to 421 read as under :

“412. As a result, we have no hesitation in observing that in whatever form the relief is couched including the nature of proceedings, be it

under Section 438 of the 1973 Code or for that matter, by invoking the jurisdiction of the Constitutional Court, the underlying principles and rigors of Section 45 of the 2002 must come into play and without exception ought to be reckoned to uphold the objectives of the 2002 Act, which is a special legislation providing for stringent regulatory measures for combating the menace of money-laundering.

413. There is, however, an exception carved out to the strict compliance of the twin conditions in the form of Section 436A of the 1973 Code, which has come into being on 23.6.2006 vide Act 25 of 2005. This, being the subsequent law enacted by the Parliament, must prevail. Section 436A of the 1973 Code reads as under:

“[436A. Maximum period for which an undertrial prisoner can be detained.— Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:

Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:

Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under

that law.

Explanation.-In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded.]

415. *In Hussainara Khatoon v. Home Secretary, State of Bihar, Patna, this Court stated that the **right to speedy trial is one of the facets of Article 21 and recognized the right to speedy trial as a fundamental right.** This dictum has been consistently followed by this Court in several cases. The Parliament in its wisdom inserted Section 436A under the 1973 Code recognizing the deteriorating state of undertrial prisoners so as to provide them with a remedy in case of unjustified detention. **In Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India, the Court, relying on Hussainara Khatoon, directed the release of prisoners charged under the Narcotic Drugs and Psychotropic Act after completion of one-half of the maximum term prescribed under the Act. The Court issued such direction after taking into account the non obstante provision of Section 37 of the NDPS Act, which imposed the rigors of twin conditions for release on bail. It was observed:***

"15. ...We are conscious of the statutory provision finding place in Section 37 of the Act prescribing the conditions which have to be satisfied before a person accused of an offence under the Act can be released. Indeed we have adverted to this section in the earlier part of the judgment. We have also kept in mind the interpretation placed on a similar provision in Section 20 of the TADA Act by the Constitution Bench in Kartar Singh V. State of Punjab. Despite this provision, we have directed as above mainly at the call of Article 21 as the right to speedy trial may even require in some cases quashing of a criminal proceeding altogether, as

held by a Constitution Bench of this Court in A.R. Antulay v. R.S. Nayak, release on bail, which can be taken to be embedded in the right of speedy trial, may, in some cases be the demand of Article 21. As we have not felt inclined to accept the extreme submission of quashing the proceedings and setting free the accused whose trials have been delayed beyond reasonable time for reasons already alluded to, we have felt that deprivation of the personal liberty without ensuring speedy trial would also not be in consonance with the right guaranteed by Article 21. Of course, some amount of deprivation of personal liberty cannot be avoided in such cases; but if the period of deprivation pending trial becomes unduly long, the fairness assured by Article 21 would receive a jolt. It is because of this that we have felt that after the accused persons have suffered imprisonment which is half of the maximum punishment provided for the offence, any further deprivation of personal liberty would be violative of the fundamental right visualised by Article 21, which has to be telescoped with the right guaranteed by Article 14 which also promises justness, fairness and reasonableness in procedural matters. ..."

416. The Union of India also recognized the right to speedy trial and access to justice as fundamental right in their written submissions and, thus, submitted that in a limited situation right of bail can be granted in case of violation of Article 21 of the Constitution. Further, it is to be noted that the Section 436A of the 1973 Code was inserted after the enactment of the 2002 Act. Thus, it would not be appropriate to deny the relief of Section 436A of the 1973 Code which is a wholesome provision beneficial to a person accused under the 2002 Act. However, Section 436A of the 1973 Code, does not provide for an absolute right of bail as in the case of default bail under Section 167 of the 1973 Code. For, in the fact situation of a case, the Court may still deny the relief owing to ground, such as where the

trial was delayed at the instance of accused himself.

417. *Be that as it may, in our opinion, this provision is comparable with the statutory bail provision or, so to say, the default bail, to be granted in terms of section 167 of the 1973 Code consequent to failure period of the investigating agency to file the chargesheet within the statutory and, in the context of the 2002 Act, complaint within the specified period after arrest of the person concerned. In the case of Section 167 of the 1973 Code, an indefeasible right is triggered in favour of the accused the moment the investigating agency commits default in filing the chargesheet/complaint within the statutory period. The provision in the form of Section 436A of the 1973 Code, as has now come into being is in recognition of the constitutional right of the accused regarding speedy trial under Article 21 of the Constitution. For, it is a sanguine hope of every accused, who is in custody in particular, that he/she should be tried expeditiously - so as to uphold the tenets of speedy justice. If the trial cannot proceed even after the accused has undergone one-half of the maximum period of imprisonment provided by law, there is no reason to deny him this lesser relief of considering his prayer for release on bail or bond, as the case may be, with appropriate conditions, including to secure his/her presence during the trial.*

418. *Learned Solicitor General was at pains to persuade us that this view would impact the objectives of the 2002 Act and is in the nature of super imposition of Section 436A of the 1973 Code over Section 45 of the 2002 Act. He has also expressed concern that the same logic may be invoked in respect of other serious offences, including terrorist offences which would be counterproductive. So be it. We are not impressed by this submission. For, it is the constitutional obligation of the State to ensure that trials are concluded expeditiously and at least within a reasonable time*

where strict bail provisions apply. If a person is detained for a period extending up to one-half of the maximum period of imprisonment specified by law and is still facing trial, it is nothing short of failure of the State in upholding the constitutional rights of the citizens, including person accused of an offence.

419. Section 436A of the 1973 Code, is a wholesome beneficial provision, which is for effectuating the right of speedy trial guaranteed by Article 21 of the Constitution and which merely specifies the outer limits within which the trial is expected to be concluded, failing which, the accused ought not to be detained further. Indeed, Section 436A of the 1973 Code also contemplates that the relief under this provision cannot be granted mechanically. It is still within the discretion of the Court, unlike the default bail under Section 167 of the 1973 Code. Under Section 436A of the 1973 Code, however, the Court is required to consider the relief on case-to-case basis. As the proviso therein itself recognises that, in a given case, the detention can be continued by the Court even longer than one-half of the period, for which, reasons are to be recorded by it in writing and also by imposing such terms and conditions so as to ensure that after release, the accused makes himself/herself available for expeditious completion of the trial.

420. However, that does not mean that the principle enunciated by this Court in Supreme Court Legal Aid Committee Representing Under trial Prisoners, to ameliorate the agony and pain of persons kept in jail for unreasonably long time, even without trial, can be whittled down on such specious plea of the State. If the Parliament/Legislature provides for stringent provision of no bail, unless the stringent conditions are fulfilled, it is the bounden duty of the State to ensure that such trials get precedence and are concluded within a reasonable time, at least before the accused undergoes detention for a period extending up to one-half of the

maximum period of imprisonment specified for the concerned offence by law. [Be it noted, this provision (Section 436A of the 1973 Code) is not available to accused who is facing trial for offences punishable with death sentence]

421. *In our opinion, therefore, Section 436A needs to be construed as a statutory bail provision and akin to Section 167 of the 1973 Code. Notably, learned Solicitor General has fairly accepted during the arguments and also restated in the written notes that the mandate of Section 167 of the 1973 Code would apply with full force even to cases falling under Section 3 of the 2002 Act, regarding money-laundering offences. On the same logic, we must hold that Section 436A of the 1973 Code could be invoked by accused arrested for offence punishable under the 2002 Act, being a statutory bail.”*

(Emphasis added)

17. The Supreme Court in the case of Sheikh *Javed Iqbal @ Ashfaq Ansari @ Javed Ansari* (supra) held in paragraph 32 as under :

“32. This Court has, time and again, emphasized that right to life and personal liberty enshrined under Article 21 of the Constitution of India is overarching and sacrosanct. A constitutional court cannot be restrained from granting bail to an accused on account of restrictive statutory provisions in a penal statute if it finds that the right of the accused-undertrial under Article 21 of the Constitution of India has been infringed. In that event, such statutory restrictions would not come in the way. Even in the case of interpretation of a penal statute, howsoever stringent it may be, a constitutional court has to lean in favour of constitutionalism and the rule of law of which liberty is

an intrinsic part. In the given facts of a particular case, a constitutional court may decline to grant bail. But it would be very strong to say that under a particular statute, bail cannot be granted. It would run counter to the very gain of our constitutional jurisprudence. In any view of the matter, K. A. Najeeb (supra) being rendered by a three Judge Bench is binding on a Bench of two Judges like us.”

(Emphasis added)

18. The Supreme Court in the case of ***Union of India vs. K. A.***

Najeeb⁶ held in Paragraph No. 17 as under :

“17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.”

(Emphasis added)

19. The Supreme Court in the case of ***Manish Sisodia*** (supra)

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held as follows :

“51. Recently, this Court had an occasion to consider an application for bail in the case of Javed Gulam Nabi Shaikh v. State of Maharashtra wherein the accused was prosecuted under the provisions of the Unlawful Activities (Prevention) Act, 1967. This Court surveyed the entire law right from the judgment of this Court in the cases of Gudikanti Narasimhulu v. Public Prosecutor, High Court of Andhra Pradesh, Shri Gurbaksh Singh Sibbia v. State of Punjab, Hussainara Khatoon (1) v. Home Secretary, State of Bihar, Union of India v. K.A. Najeeb®and Satender Kumar Antil v. Central Bureau of Investigation. The Court observed thus:

"19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime."

52. The Court also reproduced the observations made in Gudikanti Narasimhulu (supra), which read thus:

"10. In the aforesaid context, we may remind the trial courts and the High Courts of what came to be observed by this Court in Gudikanti Narasimhulu v. Public Prosecutor, High Court reported in (1978) 1 SCC 240. We quote:

*"What is often forgotten, and therefore warrants reminder, is the **object to keep a person in judicial custody pending trial or disposal of an appeal.** Lord Russel, C.J., said [R v. Rose (1898)18 Cox]:*

*"I observe that in this case bail was refused for the prisoner. It cannot be too strongly impressed on the, magistracy of the country that **bail is not to be withheld as punishment, but that the requirements as to bail are merely to secure the attendance of the prisoner at trial.**"*"

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

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

(Emphasis added)

20. The Supreme Court in the case of *Arvind Kejriwal vs. Central*

*Bureau of Investigation*⁷ held as under:

“38. The evolution of bail jurisprudence in India underscores that 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’. The principle has further been expanded to establish that the prolonged incarceration of an accused person, pending trial, amounts to an unjust deprivation of personal liberty. This Court in Union of India v. K.A. Najeer has expanded this principle even in a case under the provisions of the Unlawful Activities (Prevention) Act, 1967 (hereinafter ‘UAPA’) notwithstanding the statutory embargo contained in Section 43-D(5) of that Act, laying down that the legislative policy against the grant of bail will melt down where there is no likelihood of trial being completed within a reasonable time. The courts would invariably bend towards ‘liberty’ with a flexible approach towards an undertrial, save and except when the release of such person is likely to shatter societal aspirations, derail the trial or deface the very criminal justice system which is integral to rule of law.”

(Emphasis added)

21. Following position emerges from the analysis of the above decisions of the Supreme Court:-

- A) The underlying principles and rigors of Section 45 of the PMLA must come into play and without exception ought to be reckoned to uphold the objectives of the PMLA which is a special legislation providing for stringent regulatory measures for combating the menace of money-

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laundering.

- B) There is, however, an exception carved out to the strict compliance of the twin conditions in the form of Section 436A of the CrPC, which has come into being on 23.6.2006 vide Act 25 of 2005. Section 436A of the CrPC being the subsequent law enacted by the Parliament, must prevail over Section 45 of the PMLA.
- C) If the period of deprivation pending trial becomes unduly long, the fundamental right of Accused of the speedy trial and fairness assured by Article 21 would receive a jolt. After the accused persons have suffered imprisonment which is half of the maximum punishment provided for the offence, any further deprivation of personal liberty would be violative of the fundamental right visualised by Article 21, which has to be telescoped with the right guaranteed by Article 14 which also promises justness, fairness and reasonableness in procedural matters.
- D) The provision in the form of Section 436A of the CrPC, as has now come into being is in recognition of the constitutional right of the accused regarding speedy trial under Article 21 of the Constitution. For, it is a sanguine

hope of every accused, who is in custody in particular, that he/she should be tried expeditiously - so as to uphold the tenets of speedy justice. If the trial cannot proceed even after the accused has undergone one-half of the maximum period of imprisonment provided by law, there is no reason to deny him this lesser relief of considering his prayer for release on bail or bond, as the case may be, with appropriate conditions, including to secure his/her presence during the trial.

- E)** It is the constitutional obligation of the State to ensure that trials are concluded expeditiously and at least within a reasonable time where strict bail provisions apply. If a person is detained for a period extending up to one-half of the maximum period of imprisonment specified by law and is still facing trial, it is nothing short of failure of the State in upholding the constitutional rights of the citizens, including person accused of an offence.
- F)** Section 436A of the CrPC, is a wholesome beneficial provision, which is for effectuating the right of speedy trial guaranteed by Article 21 of the Constitution and which merely specifies the outer limits within which the trial is

expected to be concluded, failing which, the accused ought not to be detained further. Indeed, Section 436A of the CrPC also contemplates that the relief under this provision cannot be granted mechanically. It is still within the discretion of the Court, unlike the default bail under Section 167 of the CrPC. Under Section 436A of the CrPC, however, the Court is required to consider the relief on case-to-case basis. As the proviso therein itself recognises that, in a given case, the detention can be continued by the Court even longer than one-half of the period, for which, reasons are to be recorded by it in writing and also by imposing such terms and conditions so as to ensure that after release, the accused makes himself/herself available for expeditious completion of the trial.

- G)** Right to life and personal liberty enshrined under Article 21 of the Constitution of India is overarching and sacrosanct. A constitutional court cannot be restrained from granting bail to an accused on account of restrictive statutory provisions in a penal statute if it finds that the right of the accused-undertrial under Article 21 of the Constitution of India has been infringed. In that event, such statutory

restrictions like Section 45 of the PMLA would not come in the way.

- H) The presence of statutory restrictions like Section 45 of the PMLA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence.
- I) If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of

the nature of the crime.

J) Notwithstanding the statutory embargo contained in Section 45 of the PMLA, the legislative policy against the grant of bail will melt down where there is no likelihood of trial being completed within a reasonable time. The courts would invariably bend towards 'liberty' with a flexible approach towards an undertrial, save and except when the release of such person is likely to shatter societal aspirations, derail the trial or deface the very criminal justice system which is integral to rule of law.

22. Thus, as per the settled legal position whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail as enacted under Section 45 of the PMLA Act, but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence.

23. Thus, inspite of restrictive statutory provisions like Section 45 of the PMLA Act, the right of the accused undertrial under

Article 21 of the Constitution of India cannot be allowed to be infringed. In such a situation, statutory restrictions will not come in the way of the Court to grant bail to protect the fundamental right of the accused under Article 21 of the Constitution of India.

24. The Supreme Court in the case of *V. Senthil Balaji vs. Deputy Director, Directorate of Enforcement* ⁸ discussed the duty of the Constitutional Courts while considering bail applications under the provisions of the PMLA. The Supreme Court held as follows:

“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

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

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

Constitution which may give rise to a claim for compensation.”

(Emphasis added)

25. With regard to Section 45 of the PMLA, the Supreme Court in the said case of ***V. Senthil Balaji*** (supra) in paragraph No.25 held as under:

26. ***“25. Considering the gravity of the offences in such statutes, expeditious disposal of trials for the crimes under these statutes is contemplated. Moreover, such statutes contain provisions laying down higher threshold for the grant of bail. The expeditious disposal of the trial is also warranted considering the higher threshold set for the grant of bail. Hence, the requirement of expeditious disposal of cases must be read into these statutes. Inordinate delay in the conclusion of the trial and the higher threshold for the grant of bail cannot go together. It is a well-settled principle of our criminal jurisprudence that “bail is the rule, and jail is the exception.” These stringent provisions regarding the grant of bail, such as Section 45(1)(iii) of the PMLA, cannot become a tool which can be used to incarcerate the accused without trial for an unreasonably long time.”***

Thus, what has been held by the Supreme Court that the expeditious disposal of the trial is also warranted under PMLA considering the higher threshold set for the grant of bail. Hence, the requirement of expeditious disposal of cases must be read into statutes like PMLA.

27. Thus, it is necessary to consider this Bail Application on the touchstone of the above legal position and to consider whether the

Applicant is entitled to be released on bail inspite of not fulfilling the twin conditions as contemplated by Section 45 of the PMLA.

28. In this case, as far as the scheduled offences are concerned i.e. C. R. No. 26 of 2020, there are about 256 witnesses proposed to be examined by the prosecution. Insofar as the present case i.e. ECIR case there are about 150 witnesses proposed to be examined by the prosecution. The Charge-sheet in both the cases is voluminous.

29. Mr. Mundargi, learned Counsel appearing for the Applicant submitted that in fact, in PMLA case the investigation is still going on and last supplementary charge-sheet has been filed on 16th October 2024.

30. Mr. Venegavkar, learned SPP submits that the investigation is still going on and the Respondent-ED is proposing to file further supplementary charge-sheet. Thus, it is clear that the investigation is not yet completed.

31. It is an admitted position that both the cases will be tried simultaneously and trial has not yet commenced. Thus, this is a case where the trial is unlikely to conclude any time soon and is likely to take a considerably long time. As noted hereinabove, the

Applicant has completed more than half of the punishment. The maximum punishment which can be imposed on the Applicant is 7 years and the Applicant has completed about 3 years and 10 months of imprisonment i.e. more than half of the punishment. As noted earlier although the offence is very serious and laundering of public fund is involved, substantial part of money is either recovered or secured. Thus, by taking into consideration overall circumstances, the Applicant is entitled to the benefit of Section 436A of the CrPC. The Judgment cited by Mr. Venegavkar, learned PP in the case of ***Tarun Kumar*** (Supra) is not applicable to the facts of the present case, as in that case, the Accused has not completed half of the punishment.

32. However, as the offence is very serious, stringent conditions are required to be imposed on the Applicant.

33. Mr. Mundargi, learned Counsel appearing for the Applicant, after taking instructions, states that as most of the witnesses are from District-Pune, the Applicant will therefore, not reside within District-Pune and that the Applicant will reside at Sukhada Building, Sir Pochkhanawala Road, Worli, Mumbai and he will report to the Worli Police Station, Mumbai.

34. The Applicant does not appear to be at risk of flight.

35. Accordingly, the Applicant can be enlarged on bail by imposing conditions. In view thereof, the following order:

ORDER

- (a) The Applicant – Anil Shivajirao Bhosale be released on bail in connection with ECIR No. ECIR/MBZO-II/20/2020 registered with the Enforcement Directorate on his furnishing P R. Bond of Rs. 10,00,000/- with one or two solvent sureties in the like amount;
- (b) The Applicant shall not enter District – Pune after being released on bail, except for reporting to the Investigating Officer, if called and for attending the trial;
- (c) On being released on bail, the Applicant shall furnish his cell phone number and residential address to the Investigating Officer and shall keep the same updated, in case of any change thereto;
- (d) The Applicant shall report to the office of Director of Enforcement, Government of India, Mumbai Zonal Office-II, 301-303, Ceejay House, Dr. Annie Besant Road, Worli, Mumbai 400018 twice in a month on the first and thrid Wednesday between 11:00 a.m. and 1:00 p.m. till the conclusion of the trial;

- (e) The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade such a person from disclosing the facts to the Court or to any Police personnel;
- (f) The Applicant shall not tamper with the prosecution evidence and shall not contact or influence the Complainant or any witness in any manner;
- (g) The Applicant shall attend the trial regularly. The Applicant shall co-operate with the Trial Court and shall not seek unnecessary adjournments there at;
- (h) The Applicant shall surrender his passport, if any, to the Investigating Officer;

36. The Bail Application stands disposed of accordingly.

37. It is clarified that the observations made herein are *prima facie* and the trial Court shall decide the case on its merits, uninfluenced by the observations made in this order.

[MADHAV J. JAMDAR, J.]