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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **BAIL APPLN. 1878/2021**

ASHOK KUMAR MISHRA

.....Petitioner

Through: Mr. Manu Sharma, Sr. Adv. with Mr. Abhir Datt, Mr. Abhyuday Sharma, Mr. Anant Gupta, Mr. Vedant Singh, Ms. Nishtha Singh and Mr. Debayan Gangopadhyay, Advs.

versus

DIRECTORATE OF ENFORCEMENTRespondent

Through: Mr. Anupam S. Sharma, Special Counsel with Mr. Prakarsh Airan, Ms. Harpreet Kalsi, Mr. Vashisht Rao and Mr. Ripudaman Sharma, Advs.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

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12.03.2025

1. The present petition has been filed under Section 439 of CrPC read with Section 65 of PMLA seeking regular bail in connection with ECIR No.17/HIU/2020 under Sections 120B, 409 IPC and Section 13(2) read with Section 13(1)(A) of PACT, P.S. CBI, ACB, Kolkata.
2. Mr. Manu Sharma, the learned Senior Counsel appearing on behalf of the petitioner submits that the petitioner initially suffered incarceration between 03.04.2021 and July 2021 i.e. for a period of four months until he was granted interim bail. Thereafter, the petitioner surrendered on 27.03.2024 and since then he continues to be in custody. He submits that the petitioner



has now been incarcerated for almost about 16 months.

3. Mr. Sharma further submits that co-accused Gurupada Maji has already been granted bail by a co-ordinate bench of this court *vide* judgment dated 30.08.2024 passed in BAIL APPLN. 3595/2022 titled ***Gurupada Maji vs. Enforcement Directorate***, mainly on two grounds viz., delay in trial and the period of incarceration. To buttress his contention, Mr. Sharma has invited attention of the court to the decision in ***Gurupada Maji (supra)***, more particularly on paras 40 and 41 thereof, which read thus:

“40. Contentions of the rival parties need to be examined in light of these authoritative pronouncements laying down that Article 21 of the Constitution of India is a higher Constitutional right and Section 45 of PMLA would need to be aligned to the Constitutional mandate as also that right to bail in cases of delay in trial coupled with long incarceration, depending on the nature of allegations, would have to be read into Section 439 Cr.P.C. and Section 45 PMLA. Court is also conscious of the settled legal position that at the stage of considering a bail application under PMLA, it is not to enter into a meticulous examination of the merits of the case by delving into the statements of witnesses and/or documents produced in evidence and conduct a mini trial and only a prima facie satisfaction is to be recorded whether based on the material collected during the investigation, a reasonable belief can be formed that applicant is not guilty of the alleged offence and is not likely to commit an offence while on bail. [Ref.: Sangitaben Shaileshbhai Datanta v. State of Gujarat and Another, (2019) 14 SCC 522; Bikramjit Singh v. State (Govt. of NCT of Delhi), 2020 SCC OnLine Del 2309; and Jagjeet Singh and Others v. Ashish Mishra alias Monu and Another, (2022) 9 SCC 321.]

41. Guided by the observations of the Supreme Court in a very recent judgement in Manish Sisodia (supra) that right to bail in case of delayed trial and long incarceration would be read into Section 439 Cr.P.C. and Section 45 of PMLA, I would now proceed to examine this application seeking bail. Applicant has been in judicial custody since 02.06.2022 and the trial has not



even commenced. Applicant contends and in my view, rightly so, that many witnesses have been named and the case involves thousands of pages of documents which have to be examined on behalf of the prosecution and there is no possibility of the trial concluding in the near future more so, when the trial has not even commenced. A three-Judge Bench of the Supreme Court in K.A. Najeeb (supra), considered the long incarceration of the accused and counterbalancing the same with the effect of Section 43-D(v) of UAPA observed 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 supplied)

4. He submits that another co-accused, namely, Vikas Mishra has also been granted regular bail by the learned Special Judge vide judgment dated 10.10.2023.
5. Mr. Sharma further contends that the matter is still at the stage of scrutiny of documents and the charges are yet to be framed. According to him, the prosecution has relied upon documents running into 3700 pages and has cited as many as 94 witnesses. Thus, according to Mr. Sharma the conclusion



of trial, which has not yet commenced, is nowhere in sight.

6. Therefore, relying upon the decision of ***Manish Sisodia v. Directorate of Enforcement, 2024 SCC OnLine SC 1920***, he urges the Court to enlarge the petitioner on bail.

7. *Per contra* Mr. Anupam S. Sharma, the learned Special Counsel appearing on behalf of the respondent/ED has vehemently opposed the present petition. He also contends that the department has filed a petition seeking cancellation of bail of co-accused Vikas Mishra.

8. I have heard the learned counsel for the petitioner as well as learned Special Counsel for the respondent/ED and have perused the record.

9. On a query posed by the court, the learned Special Counsel for the respondent/ED, on instructions, fairly submits that the documents relied upon by the prosecution before the trial court runs into 3700 pages and the witnesses cited are also 94 in number. Undisputedly, the charges have not yet been framed, thus, the trial has not commenced. It is also not in controversy that the petitioner is in custody for almost 16 months and inevitably the conclusion of trial is likely to take very long time.

10. The maximum sentence that can be imposed for the alleged offence is seven years. It would indeed be travesty of justice to keep a person in jail for an indefinite period for an offence which is ultimately found not to have been committed by him.

11. The co-accused Gurupada Maji, as well as, Vikas Mishra have already been granted bail. A perusal of the bail of co-accused Gurupada Maji shows that his bail has been predicated mainly on two grounds viz., delay in trial as well as long incarceration. The present petitioner is also similarly situated as co-accused Gurupada Maji and there is no reason as to why the petitioner may



not be extended the benefit of parity of bail of said co-accused.

12. To be noted that in ***Prem Prakash vs. Union of India through the Directorate of Enforcement***,¹ the Hon'ble Supreme Court has observed that Article 21 being a higher constitutional right, statutory provisions must align themselves to the said higher constitutional edict.

13. Again, in ***Manish Sisodia v. Directorate of Enforcement, 2024 SCC OnLine SC 1920***, while considering the custody period of 17 months of the appellant therein and the likely delay to be expected in conclusion of trial and regard being had to the voluminous documents and number of witnesses, the Hon'ble Supreme Court observed that the appellant therein cannot be kept behind bars for an unlimited time in the hope of completion of speedy trial which would deprive the fundamental right to liberty under Article 21 of the Constitution. The relevant paragraphs of the decision which read thus:

“49. We find that, on account of a long period of incarceration running for around 17 months and the trial even not having been commenced, the appellant has been deprived of his right to speedy trial.

50. As observed by this Court, the right to speedy trial and the right to liberty are sacrosanct rights. On denial of these rights, the trial court as well as the High Court ought to have given due weightage to this factor.

51. Recently, this Court had an occasion to consider an application for bail in the case of Javed Gulam Nabi Shaikh v. State of Maharashtra 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 (I) v. Home Secretary, State of Bihar,

¹2024 SCC OnLine SC 2270



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 a punishment, but that the requirements as to bail are merely to secure the attendance of the prisoner at trial.”

53. The Court further observed that, over a period of time, the trial courts and the High Courts have forgotten a very well-settled principle 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.

55. As observed by this Court in the case of Gudikanti Narasimhulu (*supra*), the objective to keep a person in judicial custody pending trial or disposal of an appeal is to secure the attendance of the prisoner at trial.

56. In the present case, the appellant is having deep roots in the society. There is no possibility of him fleeing away from the country and not being available for facing the trial. In any case, conditions can be imposed to address the concern of the State.

57. Insofar as the apprehension given by the learned ASG regarding the possibility of tampering the evidence is concerned, it is to be noted that the case largely depends on documentary evidence which is already seized by the prosecution. As such, there is no possibility of tampering with the evidence. Insofar as the concern with regard to influencing the witnesses is concerned, the said concern can be addressed by imposing stringent conditions upon the appellant.”

14. Likewise, in **Ramkripal Meena vs. Directorate of Enforcement**,² the Hon’ble Apex Court considered that the custody period of the petitioner is more than one year and that there is no likelihood of conclusion of trial within a short span, observed that rigours of Section 45 of the Act can suitably be

²2024 SCC OnLine 2276



relaxed to afford conditional liberty to the petitioner.

15. In view of the legal position noted above and having regard to the custody period, the delay in commencement of trial and no likelihood of conclusion of trial anytime in near future, the rigors of Section 45 of the Act deserves to be relaxed, in the present case as well. Ordered accordingly.

16. Consequently, the petitioner is admitted to regular bail subject to his furnishing a personal bond in the sum of Rs.1,00,000/- with one surety of the like amount to the satisfaction of the learned Special Judge/Duty JM, further subject to the following conditions:

- (i) Petitioner will not leave the country without prior permission of the Trial Court and shall surrender his passport with the Trial Court.
- (ii) Petitioner shall furnish his permanent residential address to the Trial Court and the Investigating Officer (IO) and shall intimate the Court by way of an affidavit and the IO regarding any change in the residential address.
- (iii) Petitioner shall provide his mobile number to the IO concerned and keep the same active at all times and the mobile number shall not be changed without prior intimation to the IO.
- (iv) Petitioner shall appear before the Trial Court, as and when the matter is taken up for hearing.
- (v) Petitioner shall not indulge in any criminal activity directly or indirectly and will make no attempt to contact the witnesses associated with the case.
- (vi) Petitioner shall contact the IO on every Monday and Thursday between 10:00 and 11:00 AM.

17. It is clarified that the observations made herein above are only for the



limited purpose of deciding the present bail application and the same shall not be construed as an expression of opinion on merits of the case.

18. The petition is disposed of.

19. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance.

20. Order *dasti* under signatures of the Court Master.

VIKAS MAHAJAN, J

MARCH 12, 2025

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