

Udhaw Singh vs Enforcement Directorate on 17 February, 2025

Author: Abhay S.Oka

Bench: Abhay S.Oka

2025 INSC 247

NON-RE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.799 OF 2025
(Arising out of S.L.P.(Criminal) No.18369 of 2024)

UDHAW SINGH

... AP

VS.

ENFORCEMENT DIRECTORATE

... RE

J U D G M E N T

Abhay S.Oka, J.

Leave granted.

2. Heard the learned senior counsel appearing for the appellant and the learned Solicitor General appearing for the respondent.

3. The appellant has been arrested for the offence under Section 3 of the Prevention of Money Laundering Act, 2002 (for short "the PMLA")

4. In this case, the appellant has undergone incarceration for a period of 1 year and 2 months. There are 225 witnesses cited, out of which only 1 has been examined. Therefore, the trial is not likely to be concluded within few years. Hence, a decision of this Court in the case of V.Senthil Balaji v. Deputy Director, Directorate of Enforcement¹ will apply. Paragraphs 27 and 29 of the said decision read thus:

"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

1. 2024 SCC OnLine SC 2626 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. Najeeb³, can only be exercised by the Constitutional Courts. The Judges of the Constitutional Courts have vast experience. Based on the facts on record, if the Judges conclude that there is no possibility of a trial concluding in a reasonable time, the power of granting bail can always be exercised by the Constitutional Courts on the grounds of violation of Part III of the Constitution of India notwithstanding the statutory provisions. The Constitutional Courts can always exercise its jurisdiction under Article 32 or Article 226, as the case may be. The Constitutional Courts have to bear in mind while dealing with the cases under the PMLA that, except in a few exceptional cases, the maximum sentence can be of seven years. The Constitutional Courts cannot allow provisions like Section 45(1)(ii) to become instruments in the hands of the ED to continue incarceration for a long time when there is no possibility of a trial of the scheduled offence and the PMLA offence concluding within a reasonable time. If the Constitutional Courts do not exercise their jurisdiction in such cases, the rights of the undertrials under Article 21 of the Constitution of India will be defeated. In a given case, if an undue delay in the disposal of the trial of scheduled offences or disposal of trial under the PMLA can be substantially attributed to the accused, the Constitutional Courts can always decline to exercise jurisdiction to issue prerogative writs. An exception will also be in a case where, considering the antecedents of the accused, there is every possibility of the accused becoming a real threat to society if enlarged on bail. The jurisdiction to issue prerogative writs is always discretionary.

XXXX XXXX

29. As stated earlier, the appellant has been incarcerated for 15 months or more for the offence punishable under the PMLA. In the facts of the case, the trial of the scheduled offences and, consequently, the PMLA offence is not likely to be completed in three to four years or even more. If the appellant's detention is continued, it will amount to an infringement of his fundamental right under Article 21 of the Constitution of India of speedy trial."

5. Our attention is invited to a decision of a coordinate Bench in the case of Union of India through the Assistant Director v. Kanhaiya Prasad². After having perused the judgment, we find that this was a case where the decisions of this Court in the case of Union of India v. K.A.Najeeb³ and in the case of V.Senthil Balaji¹ were not applicable on facts. Perhaps that is the reason why these decisions were not placed before the coordinate Bench. The respondent-accused therein was arrested on 18th September, 2023 and the High Court granted him bail on 6th May, 2024. He was in custody for less than 7 months before he was granted bail. There was no finding recorded that the trial is not likely to be concluded in a reasonable time. In the facts of the case, this Court cancelled the bail granted by the High Court. Therefore, there was no departure made from the law laid down in the case of Union of India v. K.A.Najeeb³ and V.Senthil Balaji¹.

2. 2025 SCC OnLine SC 306

3. (2021) 3 SCC 713

6. The learned Solicitor General of India very fairly stated that in the facts of the case, the decision in the case of V.Senthil Balaji¹ may be followed. Hence, the appellant deserves to be enlarged on bail, pending trial.

7. For that purpose, the appellant shall be produced before the Special Court within a maximum period of one week from today. The Special Court shall enlarge the appellant on bail on appropriate terms and conditions including the condition of regularly and punctually attending the Special Court and cooperating with the Special Court for early disposal of the case. A further condition shall be imposed directing the appellant to surrender his passport, if any.

8. The appeal is accordingly allowed on the above terms.

.....J. (ABHAY S.OKA)J. (UJJAL BHUYAN) NEW DELHI;

February 17, 2025