Neeraj Saluja vs Directorate Of Enforcement on 20 January, 2025

Neutral Citation No:=2025:PHHC:008356

CRM M-55991-2024 -1-

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

239 CRM M-55991-2024
Date of Decision: 20.01.2025

Neeraj Saluja ... Petitioner

Versus

Directorate of Enforcement ... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. R.S. Rai, Senior Advocate and
Mr. Anand Chiber, Senior Advocate
Ms. Rubina Virmani, Advocate
Mr. Shikhar Sarin, Advocate
Mr. Arjun S. Rai, Advocate
Ms. Prachi Gupta, Advocate
for the petitioner.

Mr. Satya Pal Jain, Additional Solicitor General of India
(through VC) with Ms. Meghna Malik, Advocate
for the respondent.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the instant petition under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 with a prayer to grant a regular bail in ECIR/JLZO/36/2020 under Sections 3 and 4 of the Prevention of Money Laundering Act, 2002, (hereinafter to be referred as 'the PML Act') registered by Enforcement Directorate, Jalandhar.

2. Learned senior counsel appearing on behalf of the petitioner vehemently argues that the petitioner is a guarantor and suspended director of a company known as SEL Textiles Limited 1 of 25 Neutral Citation No:=2025:PHHC:008356 (hereinafter to be referred as 'the Company'). The said Company was a leading manufacturer of textiles products in North India and in the year 2009, the Central Bank of India and Allahabad Bank had formed a consortium to extend the credit facilities to the companies after observing the performance as well as financial returns of the

Company. Later on, various financial facilities were availed by the Company from a consortium of 10 banks between the years 2009 to 2014. During this period, the Company also acquired various spinning units, situated at different places to expand the business. He further contends that in the meantime, the Company being severely prejudiced by the actions of the bank and on recommendations of the Central Bank of India, the Company underwent Corporate Debt Restructuring in the year 2013-2014. Even, a Master Restructuring Agreement was signed between the Company and all the ten lenders on 30.09.2024 (including the complainant bank, i.e., the Central Bank of India). The Board of Directors of each bank approved the financial package submitted with the CDR Cell and the Master Restructuring Agreement. The Company duly complied with the terms and conditions stipulated by the CDR Cell and after the approval of the CDR package in September 2014, the funds were required to be released to the Company by the banks. However, the banks defaulted in fulfilling their own commitments and did not disburse the funds. He further contends that even the accounts of the Company were under the extensive monitoring of the bank and there was no question 2 of 25 Neutral Citation No:=2025:PHHC:008356 of any kind of fraud by the Company. Later on, the bank accounts of the Company were classified as NPAs in the year 2015 and the complainant bank had also filed an application under Section 7 of the Insolvency and Bankruptcy Code before the National Company Law Tribunal, Chandigarh for initiating insolvency proceedings against the petitioner. All the member banks of the consortium also filed applications before the Debts Recovery Tribunal, Chandigarh against the Company as well as its guarantors, which includes the petitioner.

3. Learned senior counsel further argues that in violation of the Master Restructuring Agreement, the consortium banks exited from the CDR and without providing any opportunity of hearing, reported the accounts of the Company as 'Fraud' on different dates. The complainant reported the accounts of the Company as well as guarantors as 'Fraud' on 18.04.2018 and the same was followed by other consortium members. On 29.07.2020, the complainant bank lodged a formal complaint with the Superintendent of Police, Central Bureau of Investigation, Anti Corruption-V, Branch, New Delhi which was later on converted into a FIR bearing No. RC2232020A0004 dated 06.08.2020 registered at Police Station AC-V Delhi, under Sections 403, 420, 467, 468, 471 and 120-B of the Indian Penal Code, 1860 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (Annexure P-5). The petitioner joined the investigation and cooperated with CBI on multiple occasions, however, the petitioner was arrested on 28.10.2022 and remained in 3 of 25 Neutral Citation No:=2025:PHHC:008356 custody till 03.05.2023, when he was ordered to be released on bail by this Court, vide order dated 03.05.2023 (Annexure P-6) passed in CRM M-4424-2023 titled as "Neeraj Saluja Vs. Central Bureau of Investigation". The investigation was completed by the CBI and challan (Annexure P-7) was filed against the petitioner only under Sections 120-B read with Section 420, 477-A of the IPC and other offences were deleted.

4. Learned senior counsel further argues that during the interregnum period, on the basis of the FIR (Annexure P-5) registered by the CBI, the Enforcement Directorate registered ECIR/JLZO/36/2020 against the Company and its directors including the present petitioner. The petitioner was summoned by the ED on 17.02.2021 and on different dates and the petitioner had fully cooperated with the investigation in all respects. However, after more than 3½ years of ECIR and after more than 1½ years of last summoning, the ED conducted search at the residence of the petitioner on

12.01.2024 and the petitioner was directed to appear before the ED on 18.01.2024. On 18.01.2024, the petitioner appeared before the ED and by alleging that the petitioner was not cooperated with the investigation, the ED had arrested the petitioner on the same day, i.e., 18.01.2024. He further argues that on 19.01.2024, the ED filed an application for remand and pleadings in the remand application by the CBI and the ED were exactly the same and there were no reasons or satisfaction of the Arresting Officer, which is 4 of 25 Neutral Citation No:=2025:PHHC:008356 apparent from both the remand applications filed by the CBI as well as ED (Annexures P-10 and P-11).

5. Learned senior counsel further argues that the petitioner had challenged the declaration of 'Fraud' of the accounts of the Company on the ground of violation of principles of natural justice. Vide order dated 09.02.2024 (Annexure P-13), a Division Bench of this Court had stayed all further proceedings including the registration of FIR No. RC2232020A0004 dated 06.08.2020 at Police Station AC-V Delhi, under Sections 403, 420, 467, 468, 471 and 120-B of the Indian Penal Code, 1860 and 1391)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (Annexure P-5); investigation and arrest in relation to complaints/FIRs already registered on the complaint made by the respondent/bank. He further contends that the FIR registered by the CBI (Annexure P-5) in the present case had been stayed by this Court on the same very ground, the continuation of proceedings by the ED have to be stopped and the petitioner filed a CWP 15438 of 2024 before this Court, challenging the ECIR. Ultimately, vide order dated 08.07.2024 (Annexure P-15), a Division Bench of this Court held that the order passed on 09.02.2024 in respect of CBI (ECIR No. ECIR/JLZO/36/2020 dated 08.10.2020) shall also apply to the ED report as both arise from a common cause of action as also relate to the common facts. Thus, the proceedings arising out of ECIR have already been stayed by this Court.

5 of 25 Neutral Citation No:=2025:PHHC:008356

6. Learned senior counsel further argues that the respondent has already completed its investigation and filed a complaint under the PML Act on 15.03.2024. Learned senior counsel submits that the petitioner was arrested in the present case by the respondent on 18.01.2024 and is in custody for the last more than 01 year. Even otherwise, the petitioner had already suffered 06 months of incarceration in the FIR and was granted the concession of bail and in the present case, the petitioner has again suffered an incarceration of more 02 months, i.e., he has undergone more than 01 year and 06 months of custody, on the same set of allegations, in both the proceedings. He further contends that in fact the ECIR in the present case has been challenged and further proceedings have been stayed, the twin conditions as mentioned under Section 45 of the PML Act would not come into effect and the present bail application have to be dealt like normal bail petition. As per learned counsel, the petitioner had cooperated with the respondent on each occasion, still, he was wrongly arrested by the respondent without any justification.

7. Learned senior counsel has relied upon the law laid down by the Hon'ble Supreme Court in the matter of Ramkripal Meena Vs. Enforcement Directorate, 2024, SCC Online SC 2276, wherein, the Hon'ble Supreme Court has held as follows:-

> "7.Adverting to the prayer for grant of bail in the instant case, it is pointed out by learned counsel for ED that the complaint case is at the stage of framing of charges and 24 witnesses are proposed to be examined. The 6 of 25 Neutral Citation No:=2025:PHHC:008356 conclusion of proceedings, thus, will take some reasonable time. The petitioner has already been in custody for more than a year. Taking into consideration the period spent in custody and there being no likelihood of conclusion of trial within a short span, coupled with the fact that the petitioner is already on bail in the predicate offence, and keeping in view the peculiar facts and circumstances of this case, it seems to us that the rigours of Section 45 of the Act can be suitably relaxed to afford conditional liberty to the petitioner. Ordered accordingly."

8. Still further, the learned senior counsel has relied upon the law laid down by the Hon'ble Supreme Court in the matter of Manish Sisodia Vs. Enforcement Directorate, 2024 SCC Online SC 1920 as follows:-

> "37. Insofar as the contention of the learned ASG that since the conditions as provided under Section 45 of the PMLA are not satisfied, the appellant is not entitled to grant of bail is concerned, it will be apposite to refer to the first order of this Court. No doubt that this Court in its first order in paragraph 25, after recapitulating in paragraph 24 as to what was stated in the charge-sheet filed by the CBI against the appellant, observed that, in view of the aforesaid discussion, the Court was not inclined to accept the prayer for grant of bail at that stage. However, certain paragraphs of the said order cannot be read in isolation from the other paragraphs. The order will have to be read in its entirety. In paragraph 28 of the said order, this Court observed that the right to bail in cases of delay, coupled with 7 of 25 Neutral Citation No:=2025:PHHC:008356 incarceration for a long period, depending on the nature of the allegations, should be read into Section 439 Cr.P.C., 1973 and Section 45 of the PMLA. The Court held that the constitutional mandate is the higher law, and it is the basic right of the person charged of an offence and not convicted that he be ensured and given a speedy trial. It further observed that when the trial is not proceeding for reasons not attributable to the accused, the court, unless there are good reasons, would be guided to exercise the power to grant bail. The Court specifically observed that this would be true where the trial would take years. It could thus clearly be seen that this Court, in the first round of litigation between the parties, has specifically observed that in case of delay coupled with incarceration for a long period and depending on the nature of the allegations, the right to bail will have to be read into Section 45 of PMLA.
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> 39. In the light of the specific observations of this Court in paragraph 28 of the first order, we are not inclined to accept the submission of the learned ASG that the provisions of Section 45 of the PMLA would come in the way of consideration of the application of the appellant for grant of bail.

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43. A perusal of the material placed on record would clearly reveal that far from the trial being concluded within a period of 6-8 months, it is even yet to commence. Though in the first order of this Court, liberty was reserved to move afresh for bail if the trial proceeded at a snail's pace within a period of three 8 of 25 Neutral Citation No:=2025:PHHC:008356 months from the date of the said order, the commencement of the trial is yet to see the light of the day. In these circumstances, in view of the first order of this Court, the appellant was entitled to renew his request. When the appellant renewed his request, the learned Special Judge (trial court) as well as the High Court was required to consider the said applications in the light of the observations made by this Court in paragraphs 28 and 29 of the first order. In paragraph 29 of the first order, this Court specifically observed that though the observations on the aspect of merit were not binding, the observations of right to speedy trial were required to be taken into consideration.

44. The learned Special Judge and the learned Single Judge of the High Court have considered the applications on merits as well as on the grounds of delay and denial of right to speedy trial. We see no error in the judgments and orders of the learned Special Judge as well as the High Court in considering the merits of the matter. In view of the observations made by this Court in the first order, they were entitled to consider the same. However, the question that arises is as to whether the trial court and the High Court have correctly considered the observations made by this Court with regard to right to speedy trial and prolonged period of incarceration. The courts below have rejected the claim of the appellant applying the triple test as contemplated under Section 45 of the PMLA. In our view, this is in ignorance of the observations made by this Court in paragraph 28 of the first order wherein this Court specifically observed that right to bail in cases of delay coupled with incarceration

9 of 25 Neutral Citation No:=2025:PHHC:008356 for a long period should be read into Section 439 Cr.P.C., 1973 and Section 45 of the PMLA.

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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 and Another 2024 SCC OnLine SC 1693 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 and Others v. Public Prosecutor, High Court of Andhra Pradesh (1978) 1 SCC 240 : 1977 INSC 232, Shri Gurbaksh Singh Sibbia and Others v. State of Punjab (1980) 2 SCC 565 : 1980 INSC 68, Hussainara Khatoon and Others (I) v. Home Secretary, State of Bihar (1980) 1 SCC 81 : 1979 INSC 34, Union of India v. K.A. Najeeb (2021) 3 SCC 713 : 2021 INSC 50 and Satender Kumar Antil v. Central Bureau of Investigation and Another (2022) 10 SCC 51 : 2022 INSC 690. 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 10 of 25 Neutral Citation No:=2025:PHHC:008356 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:
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> "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]:
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> "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 11 of 25 Neutral Citation No:=2025:PHHC:008356 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".

9. Learned senior counsel has further relied upon the law laid down by the Hon'ble Supreme Court in the matter of Prem Prakash Vs. Union of India, 2024 SCC Online SC 2270, wherein, the Hon'ble Supreme Court held that the fundamental right under Article 21 of the Constitution of India is a higher constitutional right and the statutory provisions will have to align themselves to the higher constitutional edict and held as follows:-

> 12 of 25 Neutral Citation No:=2025:PHHC:008356 "11. Considering that the present is a bail application for the offence under Section 45 of PMLA, the twin conditions mentioned thereof become relevant. Section 45(1) of PMLA reads as under:-
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> "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-
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> (i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and
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> (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:
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> Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees, may be released on bail, if the Special Court so directs:
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> 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-
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> (i) the Director; or
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> (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".

In Vijay Madanlal Choudhary and Ors. v. Union of India and Ors. reported in (2022) SCC OnLine SC 929, this 13 of 25 Neutral Citation No:=2025:PHHC:008356 Court categorically held that while Section 45 of PMLA restricts the right of the accused to grant of bail, it could not be said that the conditions provided under Section 45 impose absolute restraint on the grant of bail. Para 131 is extracted hereinbelow:-

> "131. It is important to note that the twin conditions provided under Section 45 of the 2002 Act, though restrict the right of the accused to grant of bail, but it cannot be said that the conditions provided under Section 45 impose absolute restraint on the grant of bail. The discretion vests in the court, which is not arbitrary or irrational but judicial, guided by the principles of law as provided under Section 45 of the 2002 Act. ..."

These observations are significant and if read in the context of the recent pronouncement of this Court dated 09.08.2024 in Criminal Appeal No. 3295 of 2024 [Manish Sisodia (II) v. Directorate of Enforcement], it will be amply clear that even under PMLA the governing principle is that "Bail is the Rule and Jail is the Exception". In para 53 of [Manish Sisodia (II), this Court observed as under:-

> "53.....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."

14 of 25 Neutral Citation No:=2025:PHHC:008356 All that Section 45 of PMLA mentions is that certain conditions are to be satisfied. The principle that, "bail is the rule and jail is the exception" is only a paraphrasing of Article 21 of the Constitution of India, which states that no person shall be deprived of his life or personal liberty except according to the procedure established by law. Liberty of the individual is always a Rule and deprivation is the exception. Deprivation can only be by the procedure established by law, which has to be a valid and reasonable procedure. Section 45 of PMLA by imposing twin conditions does not re-write this principle to mean that deprivation is the norm and liberty is the exception. As set out earlier, all that is required is that in cases where bail is subject to the satisfaction of twin conditions, those conditions must be satisfied.

12. Independently and as has been emphatically reiterated in Manish Sisodia (II) (supra) relying on Ramkripal Meena v. Directorate of Enforcement (SLP (Crl.) No. 3205 of 2024 dated 30.07.2024) and Javed Gulam Nabi Shaikh v. State of Maharashtra and Another, 2024 SCC online 1693, where the accused has already been in custody for a considerable number of months and there being no likelihood of conclusion of trial within a short span, the rigours of Section 45 of PMLA can be suitably relaxed to afford conditional liberty. Further, Manish Sisodia (II) (supra) reiterated the holding in Javed Gulam Nabi Sheikh (Supra), that keeping persons behind the bars for unlimited

periods of time in the hope of speedy completion of trial would deprive the fundamental right of persons under Article 21 of the Constitution of India and that prolonged incarceration before being pronounced guilty ought not to be permitted 15 of 25 Neutral Citation No:=2025:PHHC:008356 to become the punishment without trial. In fact, Manish Sisodia (II) (Supra) reiterated the holding in Manish Sisodia (I) v. Directorate of Enforcement (judgment dated 30.10.2023 in Criminal Appeal No. 3352 of 2023) where it was held as under:-

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

It is in this background that Section 45 of PMLA needs to be understood and applied. Article 21 being a higher 16 of 25 Neutral Citation No:=2025:PHHC:008356 constitutional right, statutory provisions should align themselves to the said higher constitutional edict".

10. Learned senior counsel has further relied upon the law laid down by the Hon'ble Supreme Court in the matter of V. Senthil Balaji Vs. Enforcement Directorate, 2024 SCC Online SC 2626, wherein the Apex Court had laid down various principles of law, which governed the grant of bail under the Provisions of the PML Act and held as follows:-

> "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.

26. There are a series of decisions of this Court starting from the decision in the case of K.A. Najeeb2, which hold that such stringent provisions for the grant of bail do not take away the power of Constitutional Courts to grant bail on the grounds of violation of Part III of the Constitution of India. We have already referred to 17 of 25 Neutral Citation No:=2025:PHHC:008356 paragraph 17 of the said decision, which lays down that the rigours of such provisions will melt down where there is no likelihood of trial being completed in a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. One of the reasons is that if, because of such provisions, incarceration of an undertrial accused is continued for an unreasonably long time, the provisions may be exposed to the vice of being violative of Article 21 of the Constitution of India.

27. Under the Statutes like PMLA, the minimum sentence is three years, and the maximum is seven years. The minimum sentence is higher when the scheduled offence is under the NDPS Act. When the trial of the complaint under PMLA is likely to prolong beyond reasonable limits, the Constitutional Courts will have to consider exercising their powers to grant bail. The reason is that Section 45(1)(ii) does not confer power on the State to detain an accused for an unreasonably long time, especially when there is no possibility of trial concluding within a reasonable time. What a reasonable time is will depend on the provisions under which the accused is being tried and other factors. One of the most relevant factor is the duration of the minimum and maximum sentence for the offence. Another important consideration is the higher threshold or stringent conditions which a statute provides for the grant of bail. Even an outer limit provided by the relevant law for the completion of the trial, if any, is also a factor to be considered. The extraordinary powers, as held in the case of K.A. Najeeb2, can only be exercised by the Constitutional Courts. The Judges of the Constitutional 18 of 25 Neutral Citation No:=2025:PHHC:008356 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.
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> 28. Some day, the courts, especially the Constitutional Courts, will have to take a call on a peculiar situation 19 of 25 Neutral Citation No:=2025:PHHC:008356 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.
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> 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."

11. On the other hand, learned senior counsel appearing on behalf of the respondents submits that the present petition was not maintainable before this Court as the petitioner was not entitled to seeking discretionary relief of bail without fulfilling the twin conditions as laid down under Section 45 of the PML Act. He further further contends that the mandate of twin conditions under Sections 45 of the PML Act had been upheld by the Hon'ble Supreme Court in the matter of Vijay Modanlal Choudhary and others Vs. UOI and others 2022 SCC Online SC 929. He further argues that the law is 20 of 25 Neutral Citation No:=2025:PHHC:008356 well settled that the economic offences constitute a different class and need to be visited with a different approach, while considering the concession of bail to such an accused. These offences affect the economic fiber of the country and pose serious threat to the financial health of the nation. Even, the money laundering offence is a serious threat to the national interest and the offence was committed with proper conspiracy and is a deliberate attempt to loot the money of the banks. He further contends that on the basis of the FIR registered by the CBI, the ECIR/JLZO/36/2020 dated 08.10.2020 was recorded and the investigation under the provisions of the PML Act was initiated. During investigation, it was found that the consortium of banks led by the Central Bank of India had disbursed the loan amount to the Company for the purpose of setting up manufacturing plants and working capital. However, the petitioner in connivance with other accused had illegally diverted part of loan amount to the tune of Rs. 81.03 crores to two companies, i.e., M/s Silverline Corporation Limited and M/s Rhythm Textiles and Apparels Park Limited, which were not owned/controlled by him. Thus, an amount of Rs. 81.03 crores was diverted illegally, without explicit permission from the consortium of banks and in clear violation of terms and conditions of the loan. Apart from that, an amount of Rs. 191 crores approximately was diverted by the petitioner and other accused in the guise of export,

causing a wrongful loss to the banks. Still further, the account of the Company was declared NPA by the consortium of banks led by 21 of 25 Neutral Citation No:=2025:PHHC:008356 the complainant bank on 28.02.2016 and the account was further declared as 'Fraud' by the banks on 18.04.2018. Still further, it was also revealed that an amount of Rs. 35.19 crores was also diverted from the Company to M/s 3-A Exports in the guise of advance payments for procurement of goods and services. During investigation, the assets worth Rs. 828.90 crores in the form of movable and immovable properties had been provisionally attached under Section 5 of the PML Act, 2002, vide attachment order dated 17.02.2023.

12. While referring to the specific role of the petitioner, learned senior counsel submits that the Company was a family owned concern, which was controlled by the petitioner and his brother Dhiraj Saluja after the death of their father late Ram Saran Saluja. The petitioner is one of the directors of the Company and was responsible for managing/controlling the day to day affairs of the Company. The credit facilities availed by the Company have been illegally diverted and siphoned off, thus, causing wrongful loss to the banks and causing wrongful gains to themselves. The petitioner was actively involved in the decision making of the Company and was also an authorized signatory to the various bank transactions, including taking of bank loan proceeds. He had full control over the board meetings, where the decision regarding investment in subsidiaries was taken and was at the helm of the affairs.

22 of 25 Neutral Citation No:=2025:PHHC:008356

13. I have heard learned the rival submissions made by learned counsel for the parties and perused the record carefully.

14. In the present case, the FIR (Annexure P-5) was ordered to be registered against the petitioner on 06.08.2020 under Sections 403, 420, 467, 468, 471 and 120-B of the Indian Penal Code, 1860 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 at Police Station AC-V Delhi. Thereafter, the petitioner joined investigation and was arrested on 28.10.2022. However, after 06 months of custody, vide order dated 03.05.2023 passed in CRM M-4424-2023 (Annexure P-6), the petitioner was ordered to be released on bail. After concluding the investigation, the challan (Annexure P-7) filed against the petitioner by the CBI, however, the charge has not been framed against the petitioner so far. Later on, with regard to the predicate offence, the respondent-ED also registered ECIR/JLZO/36/2020 dated 08.10.2020 against the Company and its directors including the petitioners. After 3 ½ years of registration of ECIR and more than 1 ½ years of the summoning, the petitioner was directed to appear before the ED on 18.01.2024 on the ground that he was not cooperating with the investigation. In the present case, the petitioner challenged the registration of the FIR by CBI as well as the declaration of the accounts of the Company as 'Fraud' by the banks. Vide order dated 09.02.2024 (Annexure P-13), a Division Bench of this Court had stayed further proceedings initiated against the petitioner in pursuance of FIR No. RC2232020A0004 23 of 25 Neutral Citation No:=2025:PHHC:008356 dated 06.08.2020 passed in CWP-2771-2024 (O&M) titled as "Neeraj Saluja Vs. Reserve Bank of India and another". Thereafter, the petitioner filed CWP 15438-2024 titled as "Neeraj Saluja Vs. Union of India and another', before this Court and vide order dated 08.07.2024 (Annexure P-15), this Court further stayed the

proceedings arising out of the present ECIR No. ECIR/JLZO/36/2020 dated 08.10.2020 as the FIR as well as the ECIR arise from a common cause of action as also relate to common facts. Thus, when further proceedings in pursuance of FIR as well as ECIR have been stayed by a Division Bench of this Court; the matter is still sub-judice before this Court; no purpose will be served by keeping the petitioner behind the bars.

15. Apart from that, the petitioner was arrested in the present case on 18.01.2024 and continues to be in custody for the last more than 01 year. Even though, it has been stated that the complaint has been filed under the provisions of the PML Act, however, the further proceedings have been stayed and there is no likelihood of trial being completed within a reasonable time period. Apart from that, the Hon'ble Supreme Court has held in number of judgments that right to speedy trial and right to liberty are sacrosanct rights and this Court being a constitutional Court has to give due weightage to this factor. Thus, on account of a long period of incarceration running for more than 01 year and trial having not been commenced before the trial Court, the petitioner has apparently been denied of his right to speedy 24 of 25 Neutral Citation No:=2025:PHHC:008356 trial. Apart from that, to prevent the escape of the petitioner from the country and to make him available before the trial Court during trial, stringent conditions can be imposed to address the concern raised by the learned State counsel. Thus, the present petition is allowed and the petitioner is ordered to be released on bail till the disposal of the matter before the concerned Special Court subject to the following conditions:-

(i) The petitioner shall furnish bail bonds in the sum of Rs. 10,00,000/- with three sureties in the like amount.

(ii) The petitioner shall not directly or indirectly attempt to contact or communicate with the prosecution witnesses.

(iii) The petitioner shall submit his passport before the concerned Special Court, PML Act, if not already surrendered in any proceedings/investigation and shall not leave the country without prior permission of the concerned Court.

(iv) The petitioner shall regularly appear before the Court and shall also cooperate with the concerned Court for early disposal of the case and shall not seek adjournment on frivolous grounds and shall not create hurdle in the disposal of the matter.

(v) The petitioner shall not dispose any of the assets as mentioned in the ECIR, without seeking prior permission of the Special Court.

20.01.2025 (N.S.SHEKHAWAT) amit rana JUDGE Whether reasoned/speaking : Yes/No Whether reportable : Yes/No 25 of 25