



2025:DHC:4764



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

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**Reserved on: 13.05.2025**

**Pronounced on: 31.05.2025**

+ **BAIL APPLN. 1282/2025 & CRL.M.A. 9981/2025 INTERIM BAIL**

**AJAY YADAV**

.....Petitioner

Through: Mr. Mohit Mathur,  
Senior Advocate with Mr.  
Yashvardhan, Ms. Kritika Nagpal &  
Mr. Pranav Das, Advocates

versus

**DIRECTORATE OF ENFORCEMENT** .....Respondent

Through: Mr. Vivek Gurnani,  
Panel Counsel, ED, Mr. Kanishk  
Maurya, Mr. Kartik Sabharwal & Mr.  
Kunal Kocchar, Advocates

**CORAM:**  
**HON'BLE MR. JUSTICE RAVINDER DUDEJA**

**JUDGMENT**

**RAVINDER DUDEJA, J.**

1. The present application has been filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 read with Section 45 of the Prevention of Money Laundering Act, 2002 [**PMLA, 2002**] on behalf of the applicant Ajay Yadav for grant of bail in Corruption Case



2025:DHC:4764



01/2024 titled as “*Enforcement of Directorate vs. Sunstar Overseas & Ors.*” arising out of ECIR/GNZO/09/2021 dated 09.04.2021.

### **FACTUAL BACKGROUND**

2. The present ECIR arises out of FIR being RCHG2020A0021 dated 31.12.2020 registered with CBI on a complaint filed by the then Chief Manager of Punjab National Bank, Sonipat [‘PNB’] against M/s Sunstar Overseas Ltd. [‘SOL’] and its Directors. As per the FIR, accounts of five banks, namely, PNB, ICICI Bank, IDBI Bank and State Bank of India were declared Non-Performing Assets [‘NPAs’]. It was alleged that SOL had availed various credit facilities from consortium of nine lender banks and had diverted /siphoned off the said loan amount, thereby failing to repay the said loan amounts to the banks. It was also alleged that the accused company had violated the terms and conditions of the loan agreements in respect of the hypothecated goods as the said goods were disposed of without depositing sale proceeds in the cash credit accounts. The case of CBI is that SOL, through its Directors/Promoters/employees and others had committed fraud by siphoning off and diverting funds, criminal misappropriation, criminal breach of trust, cheating, fraud etc., thereby causing wrongful loss of approximately Rs. 951.88 crores to the consortium of nine lenders banks. It has been alleged that SOL, after July 2017 failed to submit stock report to the consortium of lender banks, and subsequently, the said loan accounts of SOL were declared NPAs with effect from 31.03.2015 by the Statutory Auditor on



2025:DHC:4764



31.03.2017 and the consortium of lender banks approved a Master Re-Structuring Agreement Package on 07.11.2015. The allegation against SOL is that it, through its Directors had sold its entire stocks but the sale proceeds were not deposited with the banks in the loan accounts. It has also been alleged that SOL had advanced sums received by way of the credit facilities for investment in real estate, which is non-core business activity of the company.

### **ROLE OF THE APPLICANT AJAY YADAV**

3. An application was filed by ICICI Bank under Section 7 of the Insolvency of Bankruptcy Code, 2016 ['IBC'] before the National Company Law Tribunal ['NCLT']. Corporate Insolvency Resolution Process ['CIRP'] proceedings were initiated against SOL on 20.07.2018, wherein an Interim Resolution Professional was appointed for the SOL. NCLT, vide order dated 12.09.2019 approved the resolution plan of the resolution applicant Ajay Yadav and company, body of individuals, through its Special Purpose Vehicle [SPV], M/s Umaiza Infracon LLP ['Umaiza'] for a total amount of Rs.196 crores. The applicant is the partner in Umaiza. On approval of the resolution plan, the shareholding of SOL was to be held by Umaiza. The investigation revealed that the applicant being the active partner of Umaiza was acting on the directions and advise of the ex-directors/promoters of SOL so that they can indirectly acquire the SOL, while it was undergoing CIRP.



2025:DHC:4764



4. Following the Resolution Plan dated 12.09.2019, an alleged Facility Agreement 30.09.2019 was executed with Shivakriti Agro Private Limited which is presently under challenge in the ongoing arbitration proceedings.

5. The investigations revealed that SOL through its Directors/Promoters was indulged in generation of 'proceeds of crime' to the tune of Rs.539 crores approximately. The groups of firms/companies were created as fictitious debtor of SOL for the sole purpose of generation of 'proceeds of crime' by diversion/siphoning off rice stocks procured out of loan availed from the aforesaid consortium. It was further revealed that the said entities were owned and controlled by ex-directors/promoters of SOL and were diverting 'proceeds of crime' to NBFC, namely, Kalptaru Fincap Limited through layers of ARCs [**Assets Reconstruction Companies**]. It further emerged that dummy entities owned and controlled by ex-directors/promoters of SOL were used as mode for diversion of stocks of rice from SOL and its fictitious debtor company. It was revealed that 'proceeds of crime' to the tune of Rs.1.35 crores was possessed and diverted from SGMV to Shivakriti through a fictitious seller/buyer firm M/s Aastha Enterprise under the garb of sham trade transactions. It has been further alleged that Rs.146 crores were diverted through Shivakriti during the period commencing from 24.09.2019 to 20.03.2020 under the garb of sham instrument i.e Facility Agreement dated 30.09.2019 with intent to take over the assets of SOL. The ex-



2025:DHC:4764



directors/promoters of SOL were thus able to regain the actual control of SOL indirectly through Umaiza, of which applicant is the partner, whereby wrongful loss was caused to the consortium of lender banks.

**SUBMISSIONS ON BEHALF OF THE PARTIES**

6. Mr. Mohit Mathur, learned Senior Counsel for the applicant, submits that the applicant is not named in the FIR (RCHG2020A0021) and ECIR/GNZO/09/2021, or the CBI charge sheet filed on 20.11.2013, and no allegations have been made against the present applicant in the investigation which revolves around SOL and its promoters/directors. It has been further submitted that the applicant is not involved in the predicate offence which involves fraud, criminal breach of trust and siphoning off funds by SOL's promoters. The applicant's role as a partner in Umaiza, which legally took over SOL is in accordance with the Corporate Insolvency Resolution Process [**'CIRP'**] and was approved by NCLT.

7. Learned counsel submits that foundation of the predicate offence is nowhere related to the applicant, thereby rendering the PMLA proceedings against the applicant unsustainable. He further submits that the applicant was summoned by ED on multiple occasions for the purpose of investigation and applicant joined investigation as well as cooperated fully with the investigation by providing all material in his possession. Investigation by the ED has now been completed, complaint has been filed and cognizance has been taken by the trial court. Thus the applicant is not required to be





2025:DHC:4764



kept in custody. He submits that trial is at a preliminary stage with no foreseeable conclusion of the trial in near future. The applicant fulfills the 'triple test' for bail concerning flight risk, tampering with evidence and influencing the witnesses.

8. It is submitted that co-accused Rakesh Kumar Gulati and Paramjeet have since been enlarged on bail. The co-accused against whom there are graver and more serious allegations have not been arrested till date, and therefore, the applicant is entitled to be released on bail on the ground of parity.

9. Learned counsel for the petitioner further submits that *bail and not jail is the rule* and prolonged incarceration of the applicant is in violation of the fundamental rights under Article 21 of the Constitution of India. He places reliance on the judgments of the Hon'ble Supreme Court in the cases of **Prem Prakash Vs. Union of India through the Directorate of Enforcement (2024) 9 SCC 787** and **Manish Sisodia Vs. Directorate of Enforcement (2024) SCC OnLine SC 1920**. It is submitted that courts should holistically evaluate the overall circumstances including the applicant's alleged role, the evidentiary strength and delay in trial. He relies on the decision in the case of **Sanjay Jain vs. Enforcement Directorate, (2024) OnLine Del 1656**, wherein a co-ordinate Bench of this Court directed strict compliance with procedural safeguards under Article 21 of the Constitution of India and re-affirmed the principle in **Pankaj Bansal Vs. Union of India, 2023, SCC OnLine SC 1244** that the



2025:DHC:4764



grounds of arrest must be communicated in writing. The Court also held that the non-arrest on similarly placed co-accused is a relevant consideration and that the '*doctrine of parity*' is applicable.

10. On merits, it has been submitted that Umaiza Infracon LLP, of which the applicant is a partner, is the successful resolution applicant of SOL, and which has taken over SOL by due process of law under the aegis of the NCLT and thus Umaiza Infracon LLP is now the lawful owner of SOL, whose resolution plan has been approved by NCLT. It is submitted that the entire case against the applicant is premised upon the existence of the alleged Facility Agreement dated 30.09.2019 between Shivakriti Agro Pvt. Ltd and Umaiza Infracon LLP, which the prosecution states is a sham document purportedly executed to give back the control of SOL to its erstwhile promoters. It is stated that even the applicant case is that the said Facility Agreement is not the agreement/document signed by the applicant for the purpose of availing loan from Shivakriti Agro Pvt. Ltd.; secondly the Facility Agreement was never signed by the applicant in the form that has been produced by Shivakriti Agro Pvt. Ltd and thirdly, there was no agreement whatsoever to transfer the control or part of control of SOL to Shivakriti Agro Pvt. Ltd. Rather Umaiza had availed the said loan from Shivakriti Agro Pvt. Ltd. on interest basis alone. It is submitted that by doubting the authenticity of the takeover of SOL by Umaiza Infracon LLP, the respondent is doubting the entire corporate insolvency resolution process, which has been conducted under the



2025:DHC:4764



supervision of RP of SOL and NCLT. It is stated that merely on the basis of the alleged Facility Agreement which the applicant himself denies, the respondent cannot curtail the applicant's liberty particularly when the taking over of SOL by Umaiza Infracon LLP has the judicial approval of NCLT.

11. It has been further submitted that no knowledge can be attributed to by the applicant regarding the alleged proceeds of crime. Funds were borrowed from Shivakriti Agro Pvt. Ltd by Umaiza Infracon LLP as a loan to take over SOL. The applicant had no knowledge as to how the said funds were procured by Shivakriti Agro Pvt. Ltd., and therefore, the applicant is nowhere related to the alleged 'proceeds of crime' in any manner whatsoever. The applicant had no knowledge that the alleged funds borrowed by Umaiza were the tainted money.

12. *Per contra*, learned counsel for the respondent submits that cognizance of offence of money laundering was duly taken by the learned Special Court on 25.09.2024 based on prosecution complaint filed under Sections 44 and 45 of PMLA, 2002, following the investigation into the illicit acquisition and resolution of SOL. It is contended that the applicant Ajay Yadav knowingly participated in a conspiracy orchestrated by ex promoters of SOL to regain control over the company using 'proceeds of crime'.

13. It is submitted that shell companies like Umaiza were formed solely to route and project illicit funds as legitimate during the CIRP





2025:DHC:4764



proceedings with Ajay Yadav acting on instructions from former Director Rohit Aggarwal and others. It is submitted that the resolution funds amounting to Rs.196 crores were sourced from layered transactions involving NBFCs, ARCs and sham investments such as a Facility Agreement dated 30.09.2019 with Shivakriti Agro Pvt. Ltd. Furthermore, it has been submitted that the applicant lacks financial capacity and domain knowledge to independently propose the resolution plan and relied on diverted funds to do so. Investigation revealed his deep involvement with ex-directors/promoters well before the CIRP, as he participated in bank meetings and helped manage finances of the corporate debtor. It is thus submitted that applicant and its entities are not protected under Section 32A of the IBC 2016 and are guilty of money laundering under Section 3 read with Section 70(1) and are thus punishable under Section 4 of PMLA 2002.

14. The learned counsel further submits that applicant fails to satisfy the twin conditions under Section 45(1) of the PMLA, 2002, as there exists no reasonable grounds to believe he is not guilty or unlikely to commit the offence again. It is submitted that applicant played a key role in a deep rooted conspiracy involving diversion and laundering of public funds, with material evidence prevailing during investigation, his active involvement in acquiring SOL using 'proceeds of crime' routed through sham entities. The respondent relies on the decision in the case of **Vijay Madanlal Choudhary & Ors. Vs. Union of India & Ors. (2022) SCC OnLine SC 929;**



2025:DHC:4764



**Directorate of Enforcement Vs. Aditya Tripathi, 2023 SCC OnLine SC 619** and **Radha Mohan Lakhotia Vs. The Deputy Director, PMLA, Directorate of Enforcement 2010 SCC OnLine Bom 1116** to emphasize that the economic offence like money laundering are grave in nature and bail must be granted cautiously, especially when there is risk of tampering of evidence or influencing witnesses. It is further submitted that the sham Facility Agreement executed to transfer assets back to the ex-promoters through a dummy entity underscores the deliberate design to project tainted money as untainted.

15. Learned counsel for the respondent further submits that the applicant's arrest is based on circumstantial evidence indicating his active role in the offence of money laundering, and the ongoing investigation justifies differential treatment based on individual culpability. The contention that other accused have not been arrested does not entitle the applicant to bail, as parity in arrest is not a legally valid ground under the PMLA. Reliance has been placed on **CBI Vs. Vijay Sai Reddy (2013) 7 SCC 452** and **Tarun Gautam Vs. Directorate of Enforcement (2023) SCC OnLine SC 1486** wherein the Supreme Court clarified that each accused must be assessed independently based on their role of evidence. Hence, it has been submitted that applicant's arrest under Section 19 of PMLA is lawful and appropriate given the gravity of his involvement, and therefore, applicant is not entitled for being released on bail.



2025:DHC:4764



### **ANALYSIS & CONCLUSION:**

16. Before dealing with the merits of the submissions, it will be apposite to briefly set out the position of law as enunciated by the Supreme Court regarding the considerations in the grant or denial of bail under PMLA.

17. In **Vijay Madanlal Choudhary v. Union of India**, 2022 SCC OnLine SC 929, while dealing with the twin conditions provided in the PMLA, observed as under:-

“388. ... Notably, there are several other legislations where such twin conditions have been provided for. Such twin conditions in the provisions concerned have been tested from time to time and have stood the challenge of the constitutional validity thereof. *The successive decisions of this Court dealing with analogous provision have stated that the court at the stage of considering the application for grant of bail, is expected to consider the question from the angle as to whether the accused was possessed of the requisite mens rea. The court is not required to record a positive finding that the accused had not committed an offence under the act. The court ought to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. The duty of the court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. Further, the court is required to record a finding as to the possibility of the accused committing a crime which is an offence under the Act after grant of bail.*

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401. We are in agreement with the observation made by the court in *Ranjitsing Brahmajeetsing Sharma case* [*Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra*, (2005) 5 SCC 294 : 2005 SCC (Cri) 1057]. *The court while dealing with the application for grant of bail need not delve deep into the merits of the case and only a view of the court based on available material-on-record is required. The court will not weigh the evidence to find*



2025:DHC:4764



the guilt of the accused which is, of course, the work of trial court. *The court is only required to place its view based on probability on the basis of reasonable material collected during investigation and the said view will not be taken into consideration by the trial court in recording its finding of the guilt or acquittal during trial which is based on the evidence adduced during the trial.* As explained by this Court in *Nimmagadda Prasad v. CBI* [*Nimmagadda Prasad v. CBI*, (2013) 7 SCC 466 : (2013) 3 SCC (Cri) 575], the words used in Section 45 of the 2002 Act are ‘reasonable grounds for believing’ which means *the court has to see only if there is a genuine case against the accused* and the prosecution is not required to prove the charge beyond reasonable doubt.”

(emphasis supplied)

18. Similarly, while dealing with the question as to what is meant by “not guilty”, in the case of **Mohd. Muslim v. State (NCT of Delhi)**, 2023 SCC OnLine SC 352, it has been held as under:-

“19. The conditions which courts have to be cognizant of are that there are reasonable grounds for believing that the accused is ‘not guilty of such offence’ and that he is not likely to commit any offence while on bail. What is meant by ‘not guilty’ when all the evidence is not before the court? It can only be a prima facie determination. That places the court's discretion within a very narrow margin. Given the mandate of the general law on bails (Sections 436, 437 and 439, CrPC) which classify offences based on their gravity, and instruct that certain serious crimes have to be dealt with differently while considering bail applications, the additional condition that the court should be satisfied that the accused (who is in law presumed to be innocent) is not guilty, has to be interpreted reasonably. Further, the classification of offences under Special Acts (NDPS Act, etc.), which apply over and above the ordinary bail conditions required to be assessed by courts, require that the court records its satisfaction that the accused might not be guilty of the offence and that upon release, they are not likely to commit any offence. These two conditions have the effect of overshadowing other conditions. In cases where bail is sought, the court assesses the material-on-record such as the nature of the offence, likelihood of the accused cooperating with the



2025:DHC:4764



investigation, not fleeing from justice: even in serious offences like murder, kidnapping, rape, etc.

On the other hand, the court in these cases under such special Acts, have to address itself principally on two facts: likely guilt of the accused and the likelihood of them not committing any offence upon release. This court has generally upheld such conditions on the ground that liberty of such citizens have to — in cases when accused of offences enacted under special laws — be balanced against the public interest.

20. A plain and literal interpretation of the conditions under Section 37 (i.e. that court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a *prima facie* look at the material-on-record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

21. The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused's guilt may be proved. The judgments of this Court have, therefore, emphasised that the satisfaction which courts are expected to record i.e. that the accused may not be guilty, is only *prima facie*, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation (as held in *Union of India v. Rattan Mallik* [*Union of India v. Rattan Mallik*, (2009) 2 SCC 624 : (2009) 1 SCC (Cri) 831]). Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436-A which is applicable to offences under the NDPS Act too ref. *Satender Kumar Antil v. CBI* [*Satender Kumar Antil v. CBI*, (2022) 10 SCC 51 : (2023) 1 SCC (Cri) 1]. Having regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail.

22. Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not, appalling.





2025:DHC:4764



According to the Union Home Ministry's response to Parliament, the National Crime Records Bureau had recorded that as on 31-12-2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069 lakhs in the country. Of these 122,852 were convicts; the rest 4,27,165 were undertrials.”

(emphasis supplied)

19. The entire case of the Enforcement Directorate is that SOL had misappropriated the funds availed through loan from consortium of banks and thereafter diverted the same into different entities and used Umaiza, of which, applicant is the partner to acquire control of the said company through resolution plan passed by NCLT. It is thus the case of the ED that the entire process of the ED was misused and that the present applicant is a key member in the crime conspiracy.

20. Admittedly, the predicate offence registered by the CBI is against the SOL and its Directors and Promoters. It is also an admitted case that applicant is not an accused in the charge sheet filed in the predicate offence. Applicant is the successful resolution applicant of SOL, which has been taken over by the orders of NCLT after the resolution plan of Umaiza Infracon LLP was approved by the NCLT. The Facility Agreement, which is alleged to be a sham agreement, is already a subject matter of arbitration, which is pending adjudication, and therefore, imputations cannot be made till such time the arbitration is decided.

21. In the case of **V. Senthil Balaji Vs. State, 2024 SCC OnLine SC 2626**, it has been held that the existence of scheduled offence is a



2025:DHC:4764



*sine qua none* for alleging existence of proceeds of crime and the existence of proceeds of crime at the time of trial of offence under Section 3 of PMLA can be proved only if the predicate/scheduled offence is established during trial of the said offence. The trial in case under the PMLA cannot be finally decided unless the trial of predicate/scheduled offence concludes. As noted by the Coordinate Bench while granting bail to co-accused Paramjeet in Bail Application No. 4240/2024, the trial in the predicate/scheduled offence has not even started and is at a preliminary stage. The prosecution therein has cited 98 witnesses and the trial is not likely to be completed in a reasonable time. There are nearly 8000 documents in the predicate/scheduled offence registered with CBI and around 6000 documents in the present complaint case filed by the respondent/ED. Even as per the reply of respondent/ED, investigation is still continuing with respect to identification and location of the remaining proceeds of crime and determining the role of other persons/entities involved in the present case. In **V. Senthil Balaji** (*supra*), Supreme Court further observed and held as under:-

“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



2025:DHC:4764



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. Najeeb, 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 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. Najeeb, 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.”

22. Similarly, in the case of **Vijay Nair v. Directorate of Enforcement, 2024 SCC OnLine SC 3597**, it was observed and held as under:-

“12. Here the accused is lodged in jail for a considerable period and there is little possibility of trial reaching finality in the near future. The liberty guaranteed under Article 21 of the Constitution does not get abrogated even for special statutes where the threshold twin bar is provided and such statutes, in our opinion, cannot carve out an exception to the principle of bail being the rule and jail being the exception. The cardinal principle of bail being the rule and jail being the exception will be entirely defeated if the petitioner is kept in custody as an under-trial for such a long duration. This is particularly glaring since in the event of conviction, the maximum sentence prescribed is only 7 years for the offence of money laundering.”

23. A Coordinate Bench of this Court in **Pankaj Kumar Tiwari & Anr. Vs. Enforcement Directorate, 2024 DHC 8280**, has observed and held as under: -



2025:DHC:4764



“34. Moreover, as repeatedly held, Constitutional Courts can always exercise their powers to grant bail on the grounds of violation of Part III of the Constitution of India and stringent provisions for the grant of bail such as those provided in Section 45 of the PMLA do not take away the power of Constitutional Courts to do so. The right of liberty and speedy trial guaranteed under Article 21 is a sacrosanct right which needs to be protected and duly enforced even in cases where stringent provisions have been made applicable by way of special legislation. The stringent provisions would have to be interpreted with due regard to Article 21 and in case of a conflict, the stringent provisions, such as Section 45 of the PMLA in the instant case, would have to give way.

35. Thus, where it is evident that the trial is not likely to conclude in a reasonable time, Section 45 cannot be allowed to become a shackle which leads to unreasonably long detention of the accused persons. What is reasonable and unreasonable would have to be assessed in light of the maximum and minimum sentences provided for in the statute. In cases under the PMLA that, except in a few exceptional cases, the maximum sentence can be of seven years. The same has to be kept in mind while considering the period of incarceration which has been undergone.

36. In the present cases, both the applicants were arrested on 11-1-2024. They have been in custody since more than 9 months. Moreover, the trial in the predicate as well as the present complaint is yet to commence and would take some time to conclude. It is also pertinent to note that the main accused and other similarly placed co-accused persons have been enlarged on bail.

No evidence has been led to show that the present applicants are a flight risk. In fact, records would show that both the applicants have joined investigation on multiple occasions. There is no incident alleged by the respondent wherein the applicants have tried to tamper with evidence or influence witnesses.”

24. The whole case of the respondent is that applicant acted on the advice and instructions of the ex-promoters/Directors of SOL – Rohit Aggarwal and submitted the resolution plan in NCLT to acquire SOL





2025:DHC:4764



with a view to facilitate the diversion of proceeds of crime to Rohit Aggarwal, who thus is stated to be the main beneficiary. However, the alleged main beneficiary of the proceeds of crime, Rohit Aggarwal has not been arrested.

25. Even though, ED not having arrested the co-accused persons, against whom there are more serious allegations, would not be dispositive of a bail plea one way or the other, it will not be wholly irrelevant. In the case of **Ashish Mittal Vs. SFIO, 2023 SCC OnLine Del. 2484**, the Court held that considering the nature of the offence where the gravamen of the offence is that several persons acting in concert have siphoned off and “laundered” monies, it is manifestly arbitrary for the ED to have made selective arrests and arraignments. Similarly, the Hon’ble Supreme Court in **Himansh @ Himanshu Verma Vs. ED, Order dated 08.07.2024 passed in SLP (Crl.) Nos. 2438/2024**, held as under:-

“2. We are inclined to set aside the impugned judgment on the sole ground that the mastermind of the alleged offence named Bharat Bomb has never been arrested in view of the statement made on behalf of the Directorate of Enforcement. What the appellant seeks is enlargement on bail.

3. Thus, taking note of the aforesaid fact alone, we are inclined to set aside the impugned order by granting bail to the appellant subject to the conditions that may be imposed by the designated Court. We make it clear that it is well open to the designated Court to impose such conditions so as to enable it to proceed with the trial as it is submitted by Mr. S.V. Raju, learned Additional Solicitor General appearing for the respondent that the appellant may be a flight risk.”



2025:DHC:4764



26. Admittedly, the applicant has joined the investigation and has been in custody for the last about 11 months. In the case of **Udhaw Singh Vs. Enforcement Directorate, 2025 SCC OnLine SC 357**, the Hon'ble Supreme Court held as under:-

“4. In this case, the appellant has undergone incarceration for a period of 1 year a20-23nd 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, decision of this Court in the case of V. Senthil Balaji v. Deputy Director, Directorate of Enforcement will apply. ....

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 Prasad 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. Najeeb and in the case of V. Senthil Balaji 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. Najeeb and V. Senthil Balaji.

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 Balaji may be followed. Hence, the appellant deserves to be enlarged on bail, pending trial.”

27. In the most recent judgment in the case of **Anwar Dhebar Vs. Enforcement Directorate, Crl. Appeal No (s) 2669/2025**, arising out of SLP (Crl.) No (s) 3592/2025 in **Chhattisgarh Liquor Scam case**, following the law laid down in the case of **V. Senthil Balaji (supra)**,



2025:DHC:4764



the Court granted bail to the appellant, who was in custody for about 9 months.

28. While placing reliance on the aforesaid judicial pronouncements, the Coordinate Bench granted bail to co-accused Paramjeet and Rakesh Kumar Gulati, observing that continued incarceration of the accused with no possibility of trial being completed in near future, restrictions provided under Section 45 of the PMLA would not come in the way of ensuring the right to personal liberty and speedy trial under Article 21 of the Constitution of India.

29. The role of co-accused Paramjeet is that he being an ex-employee of SOL and close aide of ex-promoter of SOL i.e. Rohit Aggarwal, while acting as C.O.O./Director/ Shareholder/Controller of M/s. Shivakriti Agro Private Limited played a key role and facilitated the transfer of proceeds of crime through sham transactions of Shivakriti Agro Private Limited with SOL and other companies and facilitated the takeover of SOL indirectly via Umaiza. The role alleged against co-accused Paramjeet, already granted bail, is no lesser than the role of the present applicant.

30. There is nothing on record to indicate the previous criminal antecedents of the applicant, no reasonable apprehension has been raised by the ED to demonstrate that applicant will commit similar offence while on bail.



2025:DHC:4764



31. Hence, in the light of above discussion and particularly considering the period of incarceration already undergone by the applicant coupled with the absence of any real likelihood of the trial concluding in near future, the rigors of Section 45 of the PMLA must yield to the constitutional safeguard under Article 21. On this foundational principle, the Court is of the view that the continued detention of the applicant cannot be justified on the sole of ground of statutory bar under Section 45.

32. Hence, considering the entirety of facts and circumstances, the Court is inclined to grant bail to the present applicant. The applicant is therefore directed to be released upon his furnishing a personal bond in the sum of Rs. 1 lakh with two sureties of the like amount each to the satisfaction of learned trial court/Duty Magistrate, subject to following terms and conditions:-

- i) that applicant shall surrender his passport with the concerned Special Court, if not already deposited;
- ii) applicant shall not leave the country without the permission of the trial court;
- iii) upon release, the applicant shall share his mobile number with the concerned IO and shall keep the mobile phone switched on at all times;



2025:DHC:4764



iv) applicant shall regularly appear before the trial court, as and when directed;

v) applicant shall not in any manner contact the witnesses or tamper with the evidence;

vi) in case of change of address, applicant shall inform the same to the learned trial court/Investigating Officer.

33. Needless to state that any observation concerning the merits of the case are solely for the purpose of deciding the question of grant of bail and shall not be construed as an expression of opinion on the merits of the case.

34. The application stands allowed and disposed of along with all the pending application(s), if any.

35. Copy of this judgment be sent to the concerned Jail Superintendent and judgment be uploaded on the website of the Court forthwith.

**RAVINDER DUDEJA, J.**

**May 31, 2025**

*IB/RM*