Form No.J(1)

IN THE HIGH COURT AT CALCUTTA
CRIMINAL MISCELLENEOUS JURISDICTION

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

CRM (SB) 206 of 2023

Sri Shailesh Kumar Pandey
versus
The Union of India

For the Petitioner : Mr. Ayan Bhattacherjee,
Mr. Jakir Hossain,
Mr. Molla Asraful Zamal,
Mr. Arpit Choudhury,
Mr. Ajeet Kumar Mahato.

For the ED : Mr. Arijit Chakrabarti,
Mr. Deepak Sharma,
Ms. Swati Singh.

Heard On : 20-04-2024, 02-05-2024, 06-05-2024.

Judgement On : 07-05-2024.

Tirthankar Ghosh, J. :

Petitioner has prayed for bail in connection with M.L. Case No. 01/2023 pending before the Learned Special Judge, CBI Court No.1 (being the learned Judge-in-charge of E.D. Court) as he is in custody for more than 14 months and there has been no progress in the case, further according to the petitioner

investigation is still continuing and there is hardly any possibility of the trial commencing soon.

The genesis of the case was on the basis of a complaint by the Regional Manager, Regional Office III, Canara Bank, Kolkata and the subject related to one of the branches of the Bank at Narendrapur, B.D. Memorial Institute, West Bengal wherein M/s. T.M. Traders (A/C No. 120001761068) and M/s. K.K. Traders (A/C no. 120001761042) opened current account in their names on 31.08.2022. The aforesaid two firms submitted their KYC documents alongwith the account opening forms. Transactions were made on 12.09.2022 by M/s. T.M. Traders and on 03.09.2022 by M/s. K.K. Traders in their account. During the initial stage there were no huge transactions noticed by OTM Cell, Bangalore, (which is the controlling office of the bank, engaged in vigilance over abnormal transactions in newly opened accounts). On 17.09.2022 after observing huge debit transaction in the account of the aforesaid two firms Regional Office –III was informed for confirming regarding the genuineness of the account and for KYC compliance. As there were huge debit credit entries within a span of less than a month, the credibility of the transactions were suspected, thus to cross-check the authenticity of the residential permanent address appearing in Aadhar and PAN Card address the bank officials visited the addresses so furnished when it was detected that the parties were hailing from Jamshedppur, Jharkhand. No parties were carrying out business at the address which were furnished in the account opening form and also no such parties existed at the address furnished in Jamshedpur.

It was alleged that the entire credits were effected through UPI, NEFT, RTGS transaction and therefore transferred to multiple accounts by the customer to the parties via internet banking channel initiated by the customer either on the same day or next day. M/s. National Payment Corporation of India alerted the head office of Canara Bank on 30.09.2022 regarding unauthorized entity using account of Canara Bank for forex funding purposes prohibited by RBI. Name of the entity/website was TP Global FX account, A/C M/s. T.M. Traders, A/c no. 120001761068, IFSC-CNRB0019754. A criminal case was directed to be initiated as the parties have committed a criminal act against the bank by involving themselves in the process of some money laundering activities by a group of unscrupulous person/persons.

On the basis of the aforesaid complaint dated 01.10.2022 referred to the Deputy Commissioner, Cyber Crime Police the criminal case being Hare Street P.S. Case no. 290 dated 14.10.2022 was registered for investigation under Section 120B/420/467/468/471 of the Indian Penal Code.

Based upon Hare Street P.S. case no. 290/2022 dated 14.10.2022 under Section 120B/420/467/471 of the Indian Penal Code, the Enforcement Directorate initiated their investigation/enquiry being ECIR/KLZO-II/21/2022 dated 21.10.2022.

The ECIR by and large reflected transactions made through internet banking channel used by the entity/website T.P. Global FX. Further the transfer of funds which were made from the two accounts through online mode

to Punjab National Bank, Salt Lake Branch in the name of M/s. P.K. Traders, M/s. M.R. Traders and M/s R.K. Trading all of them having same address with that of the other two firms named above. On enquiry it surfaced that the 5 firms did not exist. The address of the entities furnished were temporarily on rent for two months by another company namely M/s. T.P.G. Commercial Pvt. Ltd. The transactions in the fictitious accounts were through non-existent companies to different bank accounts by online mode involving Rs.77 crore (approx.) and it was suspected that an interstate racket was involved. In course of investigation, police authorities searched a Maruti Ertiga Car bearing registration no. WB12C 7751 at Club Town River Dale Complex, P.S. Shibpur, Howrah wherein recovery and seizure of electronic devices, gold jewellery and cash amounting to Rs.2,20,50,000/- were recovered. The police authorities prayed for issuance of warrant of arrest against the present petitioner namely Shailesh Kumar Pandey. As the IPC offences referred to in the FIR are Scheduled Offences under Prevention of Money Laundering Act, 2002 (hereinafter referred to as "PMLA") the ECIR was recorded.

The investigating authority in course of their investigation filed complaint against the petitioner informing the Court in respect of further investigation being carried on. The allegations levelled against the petitioner in the complaint were as follows:

> ***"15.2 Sh. Shailesh Kumar Pandey (A-2):*** *The investigation conducted by this Directorate under PMLA reveals A-2 was assisting A-1 for opening of bank accounts of dummy firms as well as maintaining*

the accountancy of balance credited in dummy firms, filing of necessary compliances with income tax department, GST department, etc. A-2 has assisted A-1 and Tushar Patel & their family members like Ankit Patel, Heena Patel, Manisha Patel, Manjulaben Patel, in preparation of Balance Sheet and Profit & Loss account, filing of ITRs etc. A-2 has made all necessary compliances on behalf of A-1 and Tushar Patel during the formation of new company, as and when required. A-2 received the bank accounts and other related documents in his email-id. A-2 in turn received a huge commission of Rs.18-20 crore in cash as well as in his related bank accounts (like his firms/enities, his brother, his mother) from the scam money collected by the accused. The amount of Rs. 14.39 crore in cash has been recovered and seized from the premsies of A-2 which is nothing but the public funds collected in the name of forex trading on TP Global FX Platform. A-2 has also received commission from various other parties during the purchase of immovable properties by A-1 in the name of A-3 to A-8 and such commission has been received by A-2 in his companies namely Wonderland Agrotech Pvt Ltd, Akshay Financials Consultants Pvt Ltd etc and in the accounts of his family members like his mother and brother. A-2 has knowingly received commission of 2% on the entire credits received in the accounts of dummy firms which appeared on TP Global FX Platform into which gullible investors/ public made their investments in the name of forex trading and actually involved in the processes and activities connected with the proceeds of crime and also knowingly is a party connected with the concealment, possession, acquisition and use of proceeds of crime, and so, has committed the offence under Section 3 of PMLA and punishable under Section 4 of the said Act.”

A supplementary affidavit has been filed by the petitioner dated 07-05-2024 as in course of the argument none of the parties addressed on the issue relating to default bail under Section 167(2) of the Code of Criminal Procedure although major part of the application for bail application, affidavit-in-opposition, affidavit-in-reply covered the said issue. As the petitioner has not pressed the said issue relating to default bail this court has not deliberated on the said issue.

Mr. Bhattacherjee, learned advocate appearing on behalf of the petitioner has mainly canvassed his arguments on the principles of bail, in the background of Section 45 of the PMLA Act, the period of detention of the petitioner and the provisions of Article 21 of the Constitution of India and its overriding effect over Section 45 of PMLA, the presumption of innocence and its appreciation in respect of the offences under the Prevention of Money Laundering Act. Bail in respect of cases involving economic offences and also relied upon judgements of the various High Courts wherein under similar circumstances, according to the petitioner bail has been granted.

In order to substantiate his argument that even if the twin conditions are satisfied under Section 45 of the PMLA Act, bail can be granted in appropriate case. Reference was made to P. Chidambaram –vs.- Enforcement Directorate reported in (2020) 13 SCC 791. Emphasis was made in paragraphs 23 and 29 of the said Judgement which are set out as follows :

*“**23.** Thus, from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of “grave offence” and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provide so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case-to-case basis on the facts involved therein and securing the presence of the accused to stand trial.*

> ***29.*** *As noted, the appellant has not been named as one of the accused in the ECIR but the allegation while being made against the co-accused it is indicated the appellant who was the Finance Minister at that point, has aided the illegal transactions since one of the co-accused is the son of the appellant. In this context, even if the statements on record and materials gathered are taken note of, the complicity of the appellant will have to be established in the trial and if convicted, the appellant will undergo sentence. For the present, as taken note of, the anticipatory bail had been declined earlier and the appellant was available for custodial interrogation for more than 45 days. In addition to the custodial interrogation if further investigation is to be made, the appellant would be bound to participate in such investigation as is required by the respondent.”*

Learned advocate also relied upon the judgement of Manish Sisodia –vs.- Central Bureau of Investigation reported in (2023) SCC OnLine SCC 1393 to emphasize on the issue of Article 21 of the Constitution of India vis-à-vis the provisions of Section 45 of the PMLA and to that effect relied upon paragraphs 27 and 29 of the said Judgement which are set out as follows:-

> ***“27.*** *However, we are also concerned about the prolonged period of incarceration suffered by the appellant - Manish Sisodia. In P. Chidambaram v. Directorate of Enforcement (2020) 13 SCC 791 , the appellant therein was granted bail after being kept in custody for around 49 days, relying on the Constitution Bench in Shri Gurbaksh Singh Sibbia v. State of Punjab (1980) 2 SCC 565, and Sanjay Chandra v. Central Bureau of Investigation (2012) 1 SCC 40, that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case. Ultimately, the consideration has to be made on a case to case basis, on the facts. The primary object is*

to secure the presence of the accused to stand trial. The argument that the appellant therein was a flight risk or that there was a possibility of tampering with the evidence or influencing the witnesses, was rejected by the Court. Again, in Satender Kumar Antil v. Central Bureau of Investigation (2022) 10 SCC 51, this Court referred to Surinder Singh Alias Shingara Singh v. State of Punjab (2005) 7 SCC 387 and Kashmira Singh v. State of Punjab (1977) 4 SCC 291, to emphasise that the right to speedy trial is a fundamental right within the broad scope of Article 21 of the Constitution. In Vijay Madanlal Choudhary (supra), this Court while highlighting the evil of economic offences like money laundering, and its adverse impact on the society and citizens, observed that arrest infringes the fundamental right to life. This Court referred to Section 19 of the PML Act, for the in-built safeguards to be adhered to by the authorised officers to ensure fairness, objectivity and accountability. Vijay Madanlal Choudhary (supra), also held that Section 436A of the Code can apply to offences under the PML Act, as it effectuates the right to speedy trial, a facet of the right to life, except for a valid ground such as where the trial is delayed at the instance of the accused himself. In our opinion, Section 436A should not be construed as a mandate that an accused should not be granted bail under the PML Act till he has suffered incarceration for the specified period. This Court, in Arnab Manoranjan Goswami v. State of Maharashtra (2021) 2 SCC 427, held that while ensuring proper enforcement of criminal law on one hand, the court must be conscious that liberty across human eras is as tenacious as tenacious can be.

29. *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.***"**

On similar issue of long incarceration and the right to bail of the accused in cases under the provisions of PMLA, petitioner has relied upon Avtar Singh Kocchar -vs.- Enforcement Directorate reported in 2023 SCC OnLine DEL 7518. Reference was made on paragraphs 17 and 18 of the said judgement which are as follows:-

"17. *While discussing about making a balance between statutory emargo and period of incarceration, the Hon'ble Supreme Court in Union of India v. K.A. Najeeb in Criminal Appeal No. 98 of 2021 inter alia held as under:*

18. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of UAPA per-se does not oust the ability of Constitutional Courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a Statue as

well as the powers exercisable under Constitutional Jurisdiction can be well harmonised. Whereas at commencement of proceedings, 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 43D(5) of UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

19. Adverting to the case at hand, we are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent's prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the appellant's right to lead evidence of its choice and establish the charges beyond any doubt and simultaneously the respondent's rights guaranteed under Part III of our Constitution have been well protected.

18. *It is pertinent to mention here that the petitioner who is around 69 years of age and has a medical history is in custody for last more than two years. It has been submitted that the case is still at the initial stage and the trial may take a long time. It is necessary to take into account that the detention during trial cannot be taken as punitive detention. The rule is bail and not jail. Recently, in Manish Sisodia v. Central Bureau of Investigation in Criminal Appeal a/o. of*

SLP (Crl.) No. 8167 of 2023 the Hon'ble Supreme Court has held as under:

26. However, we are also concerned about the prolonged period of incarceration suffered by the appellant - Manish Sisodia. In P. Chidambaram v. Directorate of Enforcement, the appellant therein was granted bail after being kept in custody for around 49 days, relying on the Constitution Bench in Shri Gurbaksh Singh Sibbia v. State of Punjab, and Sanjay Chandra v. Central Bureau of Investigation, that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case. Ultimately, the consideration has to be made on a case to case basis, on the facts. The primary object is to secure the presence of the accused to stand trial. The argument that the appellant therein was a flight risk or that there was a possibility of tampering with the evidence or influencing the witnesses, was rejected by the Court. Again, in Satender Kumar Antil v. Central Bureau of Investigation, this Court referred to Surinder Singh Alias Shingara Singh v. State of Punjab and Kashmira Singh v. State of Punjab, to emphasise that the right to speedy trial is a fundamental right within the broad scope of Article 21 of the Constitution. In Vijay Madanlal Choudhary (supra), this Court while highlighting the evil of economic offences like money laundering, and its adverse impact on the society and citizens, observed that arrest infringes the fundamental right to life.

This Court referred to Section 19 of the PML Act, for the in-built safeguards to be adhered to by the authorised officers to ensure fairness, objectivity and accountability. Vijay Madanlal Choudhary (supra), also held that Section 436A of the Code can apply to offences under the PML Act, as it effectuates the right to speedy trial, a facet of the right to life, except for a valid ground such as where the

trial is delayed at the instance of the accused himself. In our opinion, Section 436A should not be construed as a mandate that an accused should not be granted bail under the PML Act till he has suffered incarceration for the specified period. This Court, in Arnab Manoranjan Goswami v. State of Maharashtra, held that while ensuring proper enforcement of criminal law on one hand, the court must be conscious that liberty across human eras is as tenacious as tenacious can be."

Petitioner also emphasized on the issue relating to delay and bail in heinous offences by referring to Union of India –vs.- K. A. Najeeb reported in (2021) 3 SCC 713. Reliance was made to paragraphs 10 to 14, 15, 17 which are set out as follows:-

"***10.*** *It is a fact that the High Court in the instant case has not determined the likelihood of the respondent being guilty or not, or whether rigours of Section 43-D(5) of the UAPA are alien to him. The High Court instead appears to have exercised its power to grant bail owing to the long period of incarceration and the unlikelihood of the trial being completed anytime in the near future. The reasons assigned by the High Court are apparently traceable back to Article 21 of our Constitution, of course without addressing the statutory embargo created by Section 43-D(5) of the UAPA.*

11. *The High Court's view draws support from a batch of decisions of this Court, including in Shaheen Welfare Assn. [Shaheen Welfare Assn. v. Union of India, (1996) 2 SCC 616: 1996 SCC (Cri) 366], laying down that gross delay in disposal of such cases would justify the invocation of Article 21 of the Constitution and consequential necessity to release the undertrial on bail. It would be useful to quote the following observations from the cited case: (SCC p. 622, para 10)*

"10. Bearing in mind the nature of the crime and the need to protect the society and the nation, TADA has prescribed in Section 20(8) stringent provisions for granting bail. Such stringent provisions can be justified looking to the nature of the crime, as was held in Kartar Singh case [Kartar Singh v. State of Punjab, (1994) 3 SCC 569: 1994 SCC (Cri) 899], on the presumption that the trial of the accused will take place without undue delay. No one can justify gross delay in disposal of cases when undertrials perforce remain in jail, giving rise to possible situations that may justify invocation of Article 21."

(emphasis supplied)

12. *Even in the case of special legislations like the Terrorist and Disruptive Activities (Prevention) Act, 1987 or the Narcotic Drugs and Psychotropic Substances Act, 1985 ("the NDPS Act") which too have somewhat rigorous conditions for grant of bail, this Court in Paramjit Singh v. State (NCT of Delhi) [Paramjit Singh v. State (NCT of Delhi), (1999) 9 SCC 252 : 1999 SCC (Cri) 1156] , Babba v. State of Maharashtra [Babba v. State of Maharashtra, (2005) 11 SCC 569 : (2006) 2 SCC (Cri) 118] and Umarmia v. State of Gujarat [Umarmia v. State of Gujarat, (2017) 2 SCC 731 : (2017) 2 SCC (Cri) 114] enlarged the accused on bail when they had been in jail for an extended period of time with little possibility of early completion of trial. The constitutionality of harsh conditions for bail in such special enactments, has thus been primarily justified on the touchstone of speedy trials to ensure the protection of innocent civilians.*

13. *We may also refer to the orders enlarging similarly-situated accused under UAPA passed by this Court in Angela Harish Sontakke v. State of Maharashtra [Angela Harish Sontakke v. State of Maharashtra, (2021) 3 SCC 723] . That was also a case under Sections 10, 13, 17, 18, 18-A, 18-B, 20, 21, 38, 39 and 40(2) of the UAPA. This Court in its earnest effort to draw balance between the seriousness of*

the charges with the period of custody suffered and the likely period within which the trial could be expected to be completed took note of the five years' incarceration and over 200 witnesses left to be examined, and thus granted bail to the accused notwithstanding Section 43-D(5) of the UAPA. Similarly, in Sagar Tatyaram Gorkhe v. State of Maharashtra [Sagar Tatyaram Gorkhe v. State of Maharashtra, (2021) 3 SCC 725] , an accused under UAPA was enlarged for he had been in jail for four years and there were over 147 witnesses still unexamined.

15. *This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India [Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India, (1994) 6 SCC 731, para 15: 1995 SCC (Cri) 39] , it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, the courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.*

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."

In respect of the same point petitioner also relied upon Zahir Hak vs. State of Rajasthan reported in 2022 SCC OnLine SC 441. Reference was made to paragraphs 12 to 15 of the said judgement which has referred to as follows:

> ***"12.*** *We bear in mind the judgment of this Court reported in Union of India v. K.A. Najeeb (2021) 3 SCC 713. Therein, the following observations cannot be overlooked:*
>
> > *"12. Even in the case of special legislations like the Terrorist and Disruptive Activities (Prevention) Act, 1987 or the Narcotic Drugs and Psychotropic Substances Act, 1985 ("the NDPS Act") which too have somewhat rigorous conditions for grant of bail, this Court in Paramjit Singh v. State (NCT of Delhi) [Paramjit Singh v. State (NCT of Delhi), (1999) 9 SCC 252 : 1999 SCC (Cri) 1156], Babba v. State of Maharashtra [Babba v. State of Maharashtra, (2005) 11 SCC 569 : (2006) 2 SCC (Cri) 118] and Umarmia v. State of Gujarat [Umarmia v. State of Gujarat, (2017) 2 SCC 731 : (2017) 2 SCC (Cri) 114] enlarged the accused on bail when they had been in jail for an extended period of time with little possibility of early completion of trial. The constitutionality of harsh conditions for bail*

in such special enactments, has thus been primarily justified on the touchstone of speedy trials to ensure the protection of innocent civilians.

19. Yet another reason which persuades us to enlarge the respondent on bail is that Section 43-D(5) of the UAPA is comparatively less stringent than Section 37 of the NDPS Act. Unlike the NDPS Act where the competent court needs to be satisfied that prima facie the accused is not guilty and that he is unlikely to commit another offence while on bail; there is no such precondition under UAPA. Instead, Section 43-D(5) of the UAPA merely provides another possible ground for the competent court to refuse bail, in addition to the well-settled considerations like gravity of the offence, possibility of tampering with evidence, influencing the witnesses or chance of the accused evading the trial by absconsion, etc."

13. *No doubt, in the said case, as pointed out by the learned counsel appearing on behalf of the State, the Court was dealing with an order passed by the High Court granting bail, whereas, in this case, the converse is true, that is, the impugned order is one rejecting the application for bail. The fact remains that the appellant has been in custody as an undertrial prisoner for a period of nearly 8 years already. The appellant, it may be noted, is charged with offences, some of which are punishable with a minimum punishment of 10 years and the sentence may extend to imprisonment for life. Learned counsel for the appellant also points out that one of the co-accused namely Shri Aadil Ansari has been released on bail on 30.09.2020 by this Court. No doubt, in this regard, we keep in mind the submission of the State that the role attributed to the said accused is different.*

14. *The condition in Section 43D(5) of the Act of 1967 has been understood to be less stringent than the provisions contained in*

Narcotic Drugs and Psychotropic Substances Act, 1985, as already noticed by us. We would think that in the nature of the case against the appellant, the evidence which has already unfolded and above all, the long period of incarceration that the appellant has already undergone, time has arrived when the appellant be enlarged on bail. We bear in mind the fact that the prosecution seeks to examine as many as 109 witnesses of which only 6 witnesses have been fully examined so far. Accordingly, we allow the appeal, set aside the impugned order and direct that the appellant shall be released on bail subject to such conditions as shall be fixed by the trial Court.

15. *Needless to say, the observations which have been made in this order are for the purpose of deciding the application for bail and the Court will, undoubtedly, decide upon the fate of the appellant in the trial on the basis of the evidence and in accordance with law.*"

Reiterating his submissions on the same issue, learned advocate for the petitioner has relied upon Shoma Kanti Sen –vs.- State of Maharashtra & Anr. -Vs State of Maharashtra and Anr. reported in 2024 SCC OnLine SC 498. Attention was drawn to paragraphs 37 to 39 which are reads as follows:-

"***37.*** *In the case of K.A. Najeeb v. Union of India [(2021) 3 SCC 713], a three Judge Bench of this Court (of which one of us Aniruddha Bose, J was a party), has held that a Constitutional Court is not strictly bound by the prohibitory provisions of grant of bail in the 1967 Act and can exercise its constitutional jurisdiction to release an accused on bail who has been incarcerated for a long period of time, relying on Article 21 of Constitution of India. This decision was sought to be distinguished by Mr. Nataraj on facts relying on judgment of this Court in the case of Gurwinder Singh v. State of Punjab [2024 INSC 92]. In this judgment, it has been held:—*

"32. The Appellant's counsel has relied upon the case of KA Najeeb (supra) to back its contention that the appellant has been in jail for last five years which is contrary to law laid down in the said case. While this argument may appear compelling at first glance, it lacks depth and 22 substance. In KA Najeeb's case this court was confronted with a circumstance wherein except the respondent-accused, other co-accused had already undergone trial and were sentenced to imprisonment of not exceeding eight years therefore this court's decision to consider bail was grounded in the anticipation of the impending sentence that the respondent accused might face upon conviction and since the respondent-accused had already served portion of the maximum imprisonment i.e., more than five years, this court took it as a factor influencing its assessment to grant bail. Further, in KA Najeeb's case the trial of the respondent-accused was severed from the other co-accused owing to his absconding and he was traced back in 2015 and was being separately tried thereafter and the NIA had filed a long list of witnesses that were left to be examined with reference to the said accused therefore this court was of the view of unlikelihood of completion of trial in near future. However, in the present case the trial is already under way and 22 witnesses including the protected witnesses have been examined. As already discussed, the material available on record indicates the involvement of the appellant in furtherance of terrorist activities backed by members of banned terrorist organization involving exchange of large quantum of money through different channels which needs to be deciphered and therefore in such a scenario if the appellant is released on bail there is every likelihood that he will influence the key witnesses of the case which might hamper the process of justice. 23 Therefore, mere delay in trial pertaining to grave offences as one involved in the

instant case cannot be used as a ground to grant bail. Hence, the aforesaid argument on the behalf the appellant cannot be accepted."

38. *Relying on this judgment, Mr. Nataraj, submits that bail is not a fundamental right. Secondly, to be entitled to be enlarged on bail, an accused charged with offences enumerated in Chapters IV and VI of the 1967 Act, must fulfil the conditions specified in Section 43D (5) thereof. We do not accept the first part of this submission. This Court has already accepted right of an accused under the said offences of the 1967 Act to be enlarged on bail founding such right on Article 21 of the Constitution of India. This was in the case of Najeeb (supra), and in that judgment, long period of incarceration was held to be a valid ground to enlarge an accused on bail in spite of the bail-restricting provision of Section 43D (5) of the 1967 Act. Pre-conviction detention is necessary to collect evidence (at the investigation stage), to maintain purity in the course of trial and also to prevent an accused from being fugitive from justice. Such detention is also necessary to prevent further commission of offence by the same accused. Depending on gravity and seriousness of the offence alleged to have been committed by an accused, detention before conclusion of trial at the investigation and post-chargesheet stage has the sanction of law broadly on these reasonings. But any form of deprival of liberty results in breach of Article 21 of the Constitution of India and must be justified on the ground of being reasonable, following a just and fair procedure and such deprival must be proportionate in the facts of a given case. These would be the overarching principles which the law Courts would have to apply while testing prosecution's plea of pre-trial detention, both at investigation and post-chargesheet stage.*

39. *As regards second part of Mr. Nataraj's argument which we have noted in the preceding paragraph, we accept it with a qualification. The*

*reasoning in Najeeb's (supra) case would also have to be examined, if it is the Constitutional Court which is examining prosecution's plea for retaining in custody an accused charged with bail-restricting offences. He cited the case of Gurwinder Singh (supra) in which the judgment of K.A. Najeeb (supra) was distinguished on facts and a judgment of the High Court rejecting the prayer for bail of the appellant was upheld. But this was a judgment in the given facts of that case and did not dislocate the axis of reasoning on constitutional ground enunciated in the case of Najeeb (supra). On behalf of the prosecution, another order of a Coordinate Bench passed on 18.01.2024, in the case of Mazhar Khan v. N.I.A. New Delhi [Special Leave Petition (Crl) No. 14091 of 2023] was cited. In this order, the petitioner's prayer for overturning a bail-rejection order of the High Court under similar provisions of the 1967 Act was rejected by the Coordinate Bench applying the ratio of the case of Watali (supra) judgment and also considering the case of Vernon (supra). We have proceeded in this judgment accepting the restrictive provisions to be valid and applicable and then dealt with the individual allegations in terms of the proviso to Section 43D (5) of the 1967 Act. Thus, the prosecution's case, so far as the appellant is concerned, does not gain any premium from the reasoning forming the basis of the case of Mazhar Khan (supra).***"**

Advancing his arguments on the issue relating to presumption of innocence vis-à-vis prevention of Money Laundering Act, ld. advocate for the petitioner, has relied upon paragraphs 339 and 340 of the judgment in Vijay Madanlal Choudhary & Ors.-vs.- Union of India & Ors. reported in 2022 SCC OnLine SC 929 which are as follows:

339. *Indeed, in a criminal trial, the principle of innocence of the accused/offender is regarded as a human right — as held by this*

Court in Narendra Singh v. State of M.P. (2004) 10 SCC 699. However, that presumption can be interdicted by a law made by the Parliament/Legislature. It is well-settled that statutory provisions regarding presumptions are nothing but rule of evidence. As observed by this Court in State of W.B. v. Mir Mohammad Omar (2000) 8 382, the pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilised doctrine as though it admits no process of intelligent reasoning. The Court went on to observe that the doctrine of presumption is not alien to such a rule, nor would it impair the temper of the rule. On the other hand, if the traditional Rule relating to burden of proof of the prosecution is allowed to be wrapped in pedantic coverage, the offenders in serious offences would be the major beneficiaries and the society would be the casualty. This observation has been quoted with approval in Sucha Singh (2001) 4 SCC 375. In the latter judgment, the Court relying upon other decisions including in Shambhu Nath Mehra v. The State of Ajmer AIR 1956 SC 404, noted that the provisions, such as Section 106 of the Evidence Act, is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the Section would apply to cases where the prosecution has succeeded in proving facts for which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of special knowledge regarding such facts failed to offer any explanation which might drive the Court to draw a different inference. The Court quoted with approval paragraph 33 of the decision in Shambhu Nath Mehra (1956) SCC OnLine SC 27, which reads thus:

> *"**33. Presumption of fact is an inference as to the existence of one fact from the existence of some other facts, unless the truth of such inference is disproved. Presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be***

inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above principle has gained legislative recognition in India when Section 114 is incorporated in the Evidence Act. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process the court shall have regard to the common course of natural events, human conduct etc. in relation to the facts of the case."

(emphasis supplied)

340. *On similar lines, this Court in Hiten P. Dalal (2001) 6 SCC 16, in paragraphs 22 and 23 observed thus:*

*"**22.** Because both Sections 138 and 139 require that the court "shall presume" the liability of the drawer of the cheques for the amounts for which the cheques are drawn, as noted in State of Madras v. A. Vaidyanatha Iyer AIR 1958 SC 61 it is obligatory on the court to raise this presumption in every case where the factual basis for the raising of the presumption had been established. "It introduces an exception to the general rule as to the burden of proof in criminal cases and shifts the onus on to the accused." (Ibid. at p. 65, para 14.)* ***Such a presumption is a presumption of law, as distinguished from a presumption of fact which describes provisions by which the court "may presume" a certain state of affairs. Presumptions are rules of evidence and do not conflict with the presumption of innocence, because by the latter, all that is meant is that the prosecution is obliged to prove the case against the accused beyond reasonable doubt. The obligation on the prosecution may be discharged with the***

help of presumptions of law or fact unless the accused adduces evidence showing the reasonable possibility of the non-existence of the presumed fact.

23. In other words, provided the facts required to form the basis of a presumption of law exist, no discretion is left with the court but to draw the statutory conclusion, but this does not preclude the person against whom the presumption is drawn from rebutting it and proving the contrary. A fact is said to be proved when,

"after considering the matters before it, the court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists".

Therefore, the rebuttal does not have to be conclusively established but such evidence must be adduced before the court in support of the defence that the court must either believe the defence to exist or consider its existence to be reasonably probable, the standard of reasonability being that of the "prudent man"."

(emphasis supplied)"

Learned advocate for the petitioner has emphasized that the present petitioner happens to be a Chartered Accountant and, as such, he being a professional rendered his services for which he cannot be detained in custody.

It was also submitted that the Hon'ble Delhi High Court in the case of Manish Kothari –vs.- Director of Enforcement reported in 2023 SCC OnLine Del 5921, was pleased to set out the principles and release the accused on

bail. To that effect, reference was made to paragraphs 21 to 28 of the said judgment, which is as follows:

> ***"21.*** *As per the law laid down that in Vijay Madanlal Choudhary (Supra), it has inter alia been held that at the stage of considering the bail application, the court is expected to consider the question from the perspective of whether the accused possessed the requisite mens rea. It was further held that no definite finding is required whether the accused has not committed an offence under the Act. It is a well settled proposition of law that the jurisprudence of bail lays down that the liberty of a person should not be interfered with except in exceptional cases. At this stage, the court has to examine the case on the scale of broad probabilities.*
>
> ***22.*** *In Sanjay Pandey v. Directorate of Enforcement, 2022 SCC OnLine Del 4279, bail was granted on the principles of broad probabilities.*
>
> ***23.*** *In Ranjit Singh Brahamjeet Singh Sharma v. State of Maharastra, (2005) 1 SCR 876, it has inter alia held as under:*
>
> *"38. We are furthermore of the opinion that the restrictions on the power of the Court to grant bail should not be pushed too far. If the Court, having regard to the materials brought on record, is satisfied that in all probability he may not be ultimately convicted, an order granting bail may be passed. The satisfaction of the Court as regards his likelihood of not committing an offence while on bail must be construed to mean an offence under the Act and not any offence whatsoever be it a minor or major offence. If such an expansive meaning is given, even likelihood of commission of an offence under Section 279 of the Penal Code, 1860 may debar the Court from releasing the accused on bail. A statute, it is trite, should not be interpreted in such a manner as would lead to absurdity. What would*

further be necessary on the part of the Court is to see the culpability of the accused and his involvement in the commission of an organised crime either directly or indirectly. The Court at the time of considering the application for grant of bail shall consider the question from the angle as to whether he was possessed of the requisite mens rea. Every little omission or commission, negligence or dereliction may not lead to a possibility of his having culpability in the matter which is not the sine qua non for attracting the provisions of MCOCA. A person in a given situation may not do that which he ought to have done. The Court may in a situation of this nature keep in mind the broad principles of law that some acts of omission and commission on the part of a public servant may attract disciplinary proceedings but may not attract a penal provision."

24. *In Mohd. Muslim @ Hussain v. State (NCT of Delhi), 2023 SCC OnLine SC 352 it has further inter alia been held as under:*

"18. 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. … In cases where bail is sought, the court assesses the material on record such as the nature of the offence, likelihood of the accused co-operating with the 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. The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonable see whether the accused's guilt may be proven. The judgments of this court have, therefore, emphasized 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 Malik19). 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 436A which is applicable to offences under the NDPS Act too (ref. Satender Kumar Antil supra). 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."

25. *This Court is conscious of the fact that* ***Ranjit Singh Brahamjeet Singh Sharma*** *was a judgment on Section 21 (4) MCOCA and that* ***Mohd. Muslim @ Hussain*** *was a judgment on Section 37 of NDPS Act but the proposition as laid down the Apex Court is squarely applicable on the facts of the present case.*

26. *It is an admitted case that the petitioner herein was a chartered accountant of Anubrata Mondal. The case of the ED is that present petitioner was instrumental in projecting the tainted money as untainted money. The apparent role of the petitioner is filing of the income tax return. It is a settled a proposition that at the stage of consideration of the bail even under PMLA the court has only to see the preponderance of probability. The court at this stage is not required to record the positive finding of acquittal. Such finding can be recorded only after recording and appreciation of the evidence by the learned*

trial court. The case of the petitioner that Anubrata Mondal is shifting his blame on the petitioner only to save himself has to be tested during the course of the trial. Generally speaking, the professional would act on the instructions of his client. However, whether he has gone beyond his professional duty is something which is required to be seen and examined during the trial. The allegation against the present petitioner is not that he has done something which was beyond his scope of profession i.e. indulging in some activities which are totally unconnected with the chartered accountancy. The plea of the petitioner that he has acted on the basis of information and record provided to him cannot be rejected outrightly at this stage. This is required to be tested during the course of the trial.

27. *Any further appreciation of the evidence at this stage may prejudice the case and therefore is not expected. It has repeatedly been held that stage of bail cannot convert into a mini trial. It is also pertinent to mention here that that the court has only to take a prima facie view on the basis of the material on record.*

28. *In the facts and circumstances, the petitioner is admitted to bail on furnishing personal bond in the sum of Rs. 5 lakhs with a surety of the like amount to the satisfaction of the trial court on the following terms and conditions:*

> *1. The petitioner shall surrender his passport before the learned Trial Court and shall not leave the country without prior permission of the learned trial court.*
>
> *2. The petitioner shall ordinarily reside at his place of residence and keep his phone operational at all times. He shall immediately inform in case of change in the address by way of an affidavit, to the investigation officer.*

3. The petitioner shall appear and attend before the Court/Investigating Agency as and when required;

4. The petitioner shall provide his mobile number to the Investigating Officer (IO)/Court concerned at the time of release.

5. The petitioner shall not directly or indirectly communicate or visit co-accused persons or the witnesses or offer any inducement, threat or intimidate or influence any of the prosecution witnesses or tamper with the evidence of the case.

*6. The petitioner shall not indulge in any criminal activity during the bail period.***"**

The petitioner referred to following judgments of different High Courts: [(2020) SCC OnLine Del 766 (*Dr. Shivinder Mohan Singh v. Directorate of Enforcement*); [(2022) SCC OnLine Bom 7710 (*Madan Gopal Chaturvedi –v.- Directorate of Enforcement & Anr.*); [(2023) SCC OnLine P&H 6651 (*Hartej Singh v. State of Haryana & Anr.*); [(2023) SCC OnLine Del 5285 (*Pooja Singh –v.- Directorate of Enforcement*)]; [(2023) SCC OnLine Pat 2815 (*Dhanik Lal Mandal –v.- Union of India*)] and [(2023) SCC OnLine Ori 6518 (*Archana Nag –v.- Directorate of Enforcement*] to emphasise that the twin conditions in Section 45 of the PMLA do not deter the court from granting bail and bail should be granted in such cases by taking into account the broad probabilities and the overall attending circumstances.

According to the petitioner, under no circumstances, there is a settled law that once the petitioner is in custody being implicated in a case under the

provisions of PMLA, the concept of bail is alien and is outside the scope of the general jurisprudence relating to release, pending trial of the case.

Learned advocate for the petitioner also submitted that on any stringent condition, the petitioner may be released on bail as there is no scope for the trial commencing in near future and as the investigation of the case is still in progress, further detention of the petitioner, as such, is unwarranted.

Mr. Arijit Chakrabarti, learned advocate appearing for the Enforcement Directorate submitted that according to the prosecution in a nutshell the key persons involved and who perpetuated the crime are Tushar Patil and Prasenjit Das as mastermind, Viraj S Patil as influencer and face of the scam and the present petitioner viz. Shailesh Kumar Pandey provided help in opening and managing the bank accounts and helped in audit and taxation related matters.

According to the complaint as also the relevant role of the present petitioner, Mr. Chakrabarti submitted that the present petitioner viz., Shailesh Kumar Pandey received commission of 2% of the total transactions made as investment from the public in Canara Bank accounts. He facilitated in opening of bank accounts which were used for deposit/investment of public money and routing of the same to some other bank accounts which were dummy firms. In course of investigation, it revealed that the petitioner was maintaining bank accounts (in SBI and Axis Bank) in the name of his brother wherein he had received huge commission from several dummy firms like TPG Techno Services, Angel Markets, Nuvoteq Solutions, S B Vintrade, S S Agro, K S

Vintrade. The accused/petitioner declared that he received Rs.18-20 crores of commission either in cash or in his, mother's and his brother's bank accounts. The e-mail account of the petitioner reflected that various communications were made with Tushar Patil and his associates. He received several documents related to digital signatures of different persons, customer pay-sheets, PAN card, Aadhar card, details of companies like M/s Haltech Pvt. Ltd and various documents concerning the family members of Tushar Patil. It has been submitted that Tushar Patil who has been described to be the mastermind and has not joined the investigation is still absconding and his whereabouts are being investigated and lastly LOC has been issued. In respect of immovable properties of the said Tushar Patil, identification of the same has been made in India as well as abroad.

Learned advocate for the Enforcement Directorate relied upon the statements of Rohit Kumar Pandey, Mutta Srinivas Sankar apart from the statements of the petitioner as well as Prasenjit Das under Section 50 of the PMLA and a number of agreements of different companies who were involved in the transactions. According to the learned advocate, the said companies are dummy firms created for routing out the amount which are proceeds of crime. Learned advocate in order to substantiate his contentions emphasised on the twin conditions of Section 45 of the PMLA and to that effect relied upon paragraph 20 of Tarun Kumar Vs. Assistant Director, Directorate of Enforcement reported in 2023 SCC OnLine SC 1486 which is as follows :

> ***"20.*** *It is also difficult to countenance the submission of learned Counsel Mr. Luthra that the investigation qua the appellant is complete and the trial of the cases likely to take long time. According to him the appellant ought not to be incarcerated indefinitely merely because the investigation is kept open with regard to the other accused. In this regard, it may be noted that the appellant has not been able to overcome the threshold stipulations contemplated in Section 45 namely he has failed to prima facie prove that he is not guilty of the alleged offence and is not likely to commit any offence while on bail. It cannot be gainsaid that the burden of proof lies on the accused for the purpose of the condition set out in the Section 45 that he is not guilty of such offence. Of course, such discharge of burden could be on the probabilities, nonetheless in the instant case there being sufficient material on record adduced by the respondent showing the thick involvement of the appellant in the alleged offence of money laundering under Section 3 of the said Act, the Court is not inclined to grant bail to the appellant."*

Reference was made by the learned advocate for the Enforcement Directorate to paragraph 34 of Y. S. Jagan Mohan Reddy Vs. CBI reported in (2013) 7 SCC 439 for emphasizing on the issue of economic offences which forms a class of its own. Paragraph 34 is set out as follows :

> ***"34.*** *Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country."*

Reference was made by the learned advocate for the Enforcement Directorate to paragraph 21 of Rohit Tandon Vs. Directorate of Enforcement reported in (2018) 11 SCC 46 for emphasizing on the same issue relating to economic offences and the conspiracies involved in such offences. Paragraph 21 is set out as follows :

> ***"21.*** *The consistent view taken by this Court is that economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country. Further, when attempt is made to project the proceeds of crime as untainted money and also that the allegations may not ultimately be established, but having been made, the burden of proof that the monies were not the proceeds of crime and were not, therefore, tainted shifts on the accused persons under Section 24 of the 2002 Act.*"

Reference was also made to judgement of Vijay Madanlal Choudhary & Ors. Vs. Union of India & Ors. reported in 2022 SCC OnLine SC 929. Learned advocate has emphasised on the issue relating to the offences under Section 3 of the PMLA being independent of other offences particularly the predicate offence. To that effect, learned advocate has stressed on the phrase "under this Act" used in paragraph 380 of the said judgement and submitted that in spite of repeated challenge on the issue relating to the constitutionality of the twin conditions it has been reiterated by the Hon'ble Supreme Court that the twin conditions so imposed are constitutionally valid and do not violate the

fundamental right of a citizen. Paragraph 380 of Vijay Madanlal Choudhary (supra) is set out as follows :

> ***"380.*** *By the amendment vide Act 13 of 2018, the defects noted by this Court in the aforementioned decision have been duly cured by deleting the words "punishable for a term of imprisonment of more than three years under Part A of the Schedule" in Section 45(1) of the 2002 Act and substituted by words "under this Act". The question is: whether it was open to the Parliament to undo the effect of the judgment of this Court declaring the twin conditions unconstitutional? On a fair reading of the judgment, we must observe that although the Court declared the twin conditions as unconstitutional, but it was in the context of the opening part of the sub-section (1) of Section 45, as it stood then, which resulted in discrimination and arbitrariness as noticed in the judgment. But that opening part referring to class of offences, namely punishable for a term of imprisonment of more than three years under Part A of the Schedule having been deleted and, instead, the twin conditions have now been associated with all the offences under the 2002 Act, the defect pointed out in the stated decision, stands cured. To answer the question posed above, we may also usefully refer to the enunciation of the Constitution Bench of this Court, which recognises power of the Legislature to cure the defect when the law is struck down by the Constitutional Court as violative of some fundamental rights traceable to Part-III of the Constitution. It has been consistently held that such declaration does not have the effect of repealing the relevant provision as such. For, the power to repeal vests only in the Parliament and none else. Only upon such repeal by the Parliament, the provision would become non est for all purposes until re-enacted, but it is open to the Parliament to cure the defect noticed by the Constitutional Court so that the provision, as amended by removing such defect gets revived. This is so because, the declaration by the*

Constitutional Court and striking down of a legal provision being violative of fundamental rights traceable to Part III of the Constitution, merely results in the provision, as it existed then, becoming inoperative and unenforceable, even though it may continue to remain on the statute book."

Learned advocate for the Enforcement Directorate also derived his inspiration in respect of other judgements wherein similar provisions are available particularly the NDPS Act and the observations made by the Hon'ble Supreme Court in Collector of Customs, New Delhi Vs. Ahmadalieva Nodira reported in (2004) 3 SCC 549.

Reference was also made to the judgements of Anil Kumar Yadav Vs. State (NCT of Delhi) reported in (2018) 12 SCC 129, Neeru Yadav Vs. State of Uttar Pradesh & Anr. reported in (2016) 15 SCC 422 and Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav & Anr. reported in (2004) 7 SCC 528 which relate to principles of bail and different criteria to be considered before releasing a person in respect of offences are heinous in nature.

According to the learned advocate for the Enforcement Directorate the present petitioner do not satisfy any of the conditions for which he may be released in connection with the instant case. It has been reiterated that the petitioner's locus is distinguishable from the case of Manish Kothari (supra) which has been relied upon by the petitioner as in that case the chartered accountant was getting monthly remuneration while in this case, the petitioner happens to be in an agreement of receiving commission of 2% of the total

proceeds which relate to a process or activity connected with the proceeds of crime and was also enjoying the proceeds of crime which is reflected from the amount of seizure which has been effected and the creation of several companies which was detected by OTM CELL of Canara Bank and National Payments Corporation of India.

The Enforcement Directorate has opposed the prayer for bail of the present petitioner as according to them, the petitioner has not overcome the twin conditions under Section 45 of the PMLA as also on the grounds that investigation of the case is still in progress for both recovery of immovable assets relating to one of the absconding accused who at the relevant point of time had relation with the present petitioner.

I have considered the submissions advanced by Mr. Bhattacharya, learned Advocate appearing for the petitioner who has emphasised on the issues as have been referred to above as also that of Mr. Chakrabarti, learned Advocate appearing for the Enforcement Directorate. In this Case amount transpired in course of investigation initially is recovering of the seized cash amount and the same was at the behest of a complaint lodged by a nationalised bank in respect of transactions/debit credit taking place in some of the accounts and the same being routed through another nationalised bank. The holder of the main five companies were found to have a single address which was rented for two months and so far as shell-companies are concerned which were from Jamshedpur, Jharkhand mainly in those case on scrutiny of

the records which were furnished for opening the accounts the same were found to be fake or non-existent. Going by the allegations against the present petitioner in the complaint the petitioner was applying his mind, knowledge and conscience for routing out the money which was illegally acquired by Tushar Patil, Prasenjit Das, Viraj Suhas Patil. The role of the petitioner was for concealment and projecting proceeds of crime as untainted money. The petitioner is by profession as contended a Chartered Accountant, however, he has been working in a commission basis and for that purpose created huge number of accounts for routing out the said money to the advantage of the other accused persons. The petitioner has enriched himself by way of services rendered which are no-way related to his professional work. In fact, he has in his statement accepted that in the name of his brother he had received commission from dummy firms being TPG Techno Services, Angel Markets, Nuvoteq Solutions, S.B. Vintrade, S.S. Agro, K.S. Vintrade. Needless to state that those were apart from the cash seizures which were effected.

Delay and long detention in custody have never been accepted by the constitutional courts and wherever there has been unreasonable delay the Courts have favoured the constitutional mandate of liberty. However, there are cases where the statute is built in such a manner that the complicity simpliciter is not a criteria but the detention is on the basis of guilt and the present case is one of such nature. In such cases it has been emphasised by the Hon'ble Apex Court that so far as the standard relating to delay are concerned the same should be resorted to by applying yardstick of Section

436A of the Code of Criminal Procedure. To that effect also reliance can be made in the case of Manish Sisodia –Vs. – Central Bureau of Investigation, 2023 SCC OnLine SC 1393 and Satyendar Kumar Jain vs. Directorate of Enforcement, 2024 SCC Online SC 317 wherein the right to speedy trial and access to justice is a valuable right as enshrined in the Constitution of India and the provisions of Section 436A of the Code of Criminal Procedure have been held to be applicable in case of provisions of Prevention of Money Laundering Act, 2002 subject to the explanations provided therein. It is a fact that the petitioner is in custody for more than 14 months but the nature of the offence complained of requires time for investigation as the procedure adopted in concealment and its unearthing both are time consuming. It has been submitted by the Enforcement Directorate that not only investigation is continuing but immovable assets which have been the outcome of such proceeds of crime are being traced to countries or abroad and for which time is being consumed.

Having regard to the fact that although complaint has been filed in this case but yet further investigation is at a crucial stage, I am not inclined to release the petitioner on bail only on the ground of delay having regard to the fact that he has not been able to overcome the twin conditions under Section 45 of the PMLA, 2002.

Accordingly, prayer for bail of the petitioner is **rejected**.

Thus, the application for bail being CRM (SB) 206 of 2023 is dismissed.

Pending connected application, if any, is consequently disposed of.

All concerned parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copy of the judgement, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)