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

Reserved on : 09.08.2023

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Pronounced on : 29.08.2023

+ BAIL APPLN. 79/2023

POOJA SINGH

..... Petitioner

Through: Mr. Satish Pandey, Ms. Mausumi Mishra, Mr. Danish Saifi, Mr. Jay Jaimini Pandey, Advs.

versus

DIRECTORATE OF ENFORCEMENT

..... Respondent

Through: Mr. Anupam S. Sharma, SPP with Mr. Prakarsh Airan, Ms. Harpreet Kalsi, Mr. Abhishek Batra and Mr. Ripudaman Sharma, Advs.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J.

1. The Present application has been filed seeking grant of bail under Section 45 of the Prevention of Money Laundering Act, 2002 (PMLA) r/w Section 439 of the Code of Criminal Procedure Code 1973, (Cr.P.C.) in FIR No. ECIR/DLZO-II/54 of 2021 aggrieved of the order dated 28.10.2022 whereby the learned Special Judge, dismissed the bail application of the petitioner.



2. Facts in brief, are that on the basis of the complainant, Aditi Shivinder Singh FIR no.208/2021 dated 07.08.2021 was registered at P.S: Special Cell, Delhi Police against unknown accused persons for different offences under Sections 170/384/386/388/419/420 IPC r/w 120-B IPC and under Section 66 (D) of IT Act.
3. As per the status report the prosecution has alleged, that through a newspaper article, it was revealed that a contractual nursing staff was caught in Tihar Jail for helping Sukesh Chandrashekhar in communicating/passing on certain information out of Tihar Jail, as per his instructions. On this, a communication was sent to DG Prisons seeking information regarding the said nursing staff. On the said communication, it was intimated that one Anurag Kumar was working as Nursing Orderly – Contractual Staff at Central Jail No. 03 and his mobile phone was provided to the department for further investigation. Thereafter, the Statement of Anurag Kumar u/s 50 PMLA was recorded wherein he revealed that the main accused Sukesh Chandrashekhar induced him to send pictures of his handwritten messages written by him (i.e. Sukesh Chandrashekhar) which were further sent to the petitioner for which he was promised to be paid around Rs. 10,000 to Rs. 15,000 per day. The said messages were sent by Anurag Kumar to the petitioner on her mobile phone.
4. The ED has further alleged that the petitioner was a resident of Chennai and had been working as a Salon Sales Manager in Nail Artistry Salon, Chennai Branch, which is owned by co-accused Leena Maria Paul, wife



of main accused Sukesh Chandrashekhar. During the investigation, the search was conducted u/s 17 PMLA at the residence of the petitioner, during which certain documents/bills/invoices, 06 mobile phones of her and associates and some luxurious articles were recovered. It was further, revealed by the Petitioner herein that various luxurious articles were purchased for and on behalf of accused Sukesh Chandrashekhar and co-accused Leena Maria Paul which were delivered inside the premises of Tihar Jail by way of mulakat by the Petitioner. The mobile phones were also purchased and given to jail officials at predetermined locations. Subsequently, summons were issued to the Petitioner on 07.07.2022 to record her statement under section 50, PMLA. However, during her statement, the Petitioner deliberately did not disclose the relevant information and made false statement. Thus, the petitioner was arrested on 08.07.2022.

5. It was further alleged that the extraction of data from the 06 mobile phones recovered from petitioner revealed that Petitioner was assisting accused Sukesh Chandrashekhar while he was lodged in Tihar Jail and was also providing updates on works/instructions allotted or given to her by Sukesh. The Petitioner was also making payments to various individuals including his lawyers/jail staff/relatives of jail inmates/Sukesh's mother as per the instructions of accused Sukesh Chandrashekhar. The Petitioner also assisted accused Sukesh Chandrashekhar in the illegal delivery of various items inside the premises of Tihar Jail in order to help and enable him to acquire undue



benefits and continue with his criminal activities within Tihar Jail. It has further been alleged that on 08.07.2022, a search was conducted at Nail Artistry Salon, at Chennai where the Petitioner worked as Sales Manager wherein one Manoj Kumar, Salon Sales Manager at the said salon was present and two mobile phones were seized from his possession by the ED. Later on, said Manoj Kumar tendered one more mobile phone which was concealed by him, which was found to have certain information relating to one Hip Hop @ H.Hop @ Nawaz, for collection of cash and a telegram number that belonged to Hip Hop, thereafter the telegram number was traced which was found to be from Dubai. In the subsequent statement u/s 50 PMLA, the petitioner revealed that Manoj Kumar had received a call from an unknown man who had identified himself as Hip Hop and asked Manoj to inform Sukesh Chandrashekhar that Hip Hop had called and if any help was needed, he could provide the same. This message given by Hip Hop was thereafter conveyed by Manoj Kumar to the petitioner who further conveyed it to the main accused Sukesh Chandrashekhar.

6. It has been further alleged that Petitioner started communicating written letters/notes of Sukesh Chandrashekhar to Hip Hop by sending photos of the said letters/notes to Manoj Kumar through WhatsApp which were then read verbatim by Manoj Kumar to Hip Hop on telegram calls. The investigation conducted by the ED has revealed that Hip Hop was handling the proceeds of crime for and on behalf of accused Sukesh Chandrashekhar and was arranging cash which was collected by Manoj



Kumar and then passed over to the Petitioner. The ED has alleged that the said amount was being laundered in India by the Petitioner with the assistance of Manoj Kumar, brother of co-accused Arun Muthu (A-7), who coordinated in the collection of cash from Hip Hop @H.Hop through Hawala channels and then depositing the same amount in the bank account of the petitioner and in the accounts of other staff members of the 'Nail Artistry Salon' on the direction of the Petitioner. It was alleged that this amount was ultimately collected by Petitioner through IMPS/UPI in her account for making payments through UPI/Gpay/Paytm to Lawyers/Jail Staff/Relatives of Jail inmates/Sukesh's mother etc. It has further been alleged that the cash that was collected from Hip Hop @ H.Hop amounted to Rs.94,80,500/- out of which Rs. 16,28,484/- was used for shopping for co-accused Leena Maria Paul and accused Sukesh Chandrashekhar. It was alleged that Rs.59,58,000/- were used for payments to lawyers of accused Sukesh Chandrashekhar and co-accused Leena Maria Paul. It was alleged that Rs. 24,05,512 were used for payments made to jail staff/ contract staff/ medical staff/ jail inmates for assistance and Rs 11,72,791/- were used for other expenses made on instructions of accused Sukesh Chandrashekhar and all these transactions were facilitated by the petitioner who was receiving proceeds of crime collected in cash in her own or her associate's bank accounts as further revealed from the statement of the petitioner under Section 50 PMLA dated 09.07.2022. The ED has further alleged that the cash collected by Manoj Kumar from H.Hop @ Hip Hop had been deposited in various



bank accounts, including the bank account of the Petitioner herein for making different purchases for accused Leena and Sukesh, for assistance in jail premises as also for payment to be made to lawyers. The aforementioned amount was proceeds of crime being utilized by the Petitioner at the behest of accused Sukesh Chandrashekhar obtained through various criminal activities. The ED has given the details of amounts deposited in the account of the Petitioner and the purpose for which the said amounts were utilized in the status report which has not been reproduced herein for the sake of brevity.

7. The investigation further revealed that the Petitioner had directly indulged, knowingly assisted and was knowingly a party in the process and activity connected with the proceeds of crime. The petitioner also admitted in her statement u/s 50 PMLA that she had been meeting accused Sukesh Chandrashekhar in Tihar Jail for the meeting (mulakaat) since March, 2022 and that she used to receive photos of handwritten notes from accused Sukesh Chandrashekhar through WhatsApp number of Anurag Kumar. The ED has also alleged that the petitioner in her statement u/s 50 PMLA dated 08.07.2022 admitted that the sale proceeds of the Nail Artistry Salon were received by her in her personal account as the account of salon was seized and these were being utilized for personal expenses of Leena and Sukesh. The ED has also further alleged that the petitioner was being repeatedly assured by Sukesh Chandrashekhar of a huge reward for her work. The ED has alleged that the sales proceeds shown by Nail Artistry Salon were not genuine and



fake card swipes were arranged by one Arun Muthu without any salon services being provided and in this regard, reliance is also placed on the statement u/s 50 PMLA given by Anand Moorthy (Chartered Accountant) for Nail Artistry, Salon as well the statement u/s 50 PMLA of co-accused Leena Maria Paul. The ED has further, alleged that admittedly the petitioner had done shopping for accused Sukesh Chandrashekhar and co-accused Leena from various luxurious brands such as Burberry, Louis Vuitton, Da Milano, Canali etc. and had these luxurious articles delivered inside the Tihar Jail whenever she visited them for mulakat. It is further alleged that the petitioner had also made a payment of Rs.40,000/- for getting a false medical certificate of the accused Sukesh Chandrashekhar. The ED has also alleged that the petitioner also admitted as per the instructions of accused Sukesh Chandrashekhar, that she had arranged phones and various other expensive materials for the jail staff. The ED has relied on the statements of Pooja Pilley (employees of Nail Artistry Salon Chennai), Muthu Kumar, Passang Diki Sherpa (employee of Nail Artistry Salon Chennai), Shrikant Bhagwan Humbe (Jail Staff), Lisha Paulose, sister of co-accused Leena Maria Paul. The ED has also alleged that the petitioner was actively assisting accused Sukesh Chandrashekhar in layering and concealing the proceeds and crime and utilized them for the purposes of manipulation of jail officials to get him transferred to another jail so that he could continue his illicit activities.



8. The ED has also alleged that Petitioner being a close associate, was aware of individuals who have been entrusted with the safekeeping of proceeds of crime and she has extensively carried out the work assigned to her by the accused and was very well aware of the nature of activities and tasks being undertaken by her and thus, she was involved in the offence of money laundering. It has been further alleged that as per investigation there are reasons to believe that the Petitioner is guilty of having committed the offence of money laundering under section 3 of PMLA, 2002 punishable under section 4 of the said Act. It has further been alleged that the petitioner was very well aware of the criminal antecedents of accused Sukesh Chandrashekhar and had been in touch with him regularly. Their familiarity and intimacy are supported by the fact that the Petitioner knew accused Sukesh's family members including co-accused Leena wife of accused no. 1, Leena and other member of the family Lisha, Leo and others. It has been alleged that the petitioner despite being aware of accused Sukesh Chandrashekhar being involved in criminal activities, went and met him in Tihar jail and has been instrumental in receiving instructions from him on a daily basis and relaying that information to the concerned individuals, and making every effort to fulfill all of his desires, no matter how small. It has further been alleged that further investigation is still pending against one of the prime accused having the fictitious name of Hip Hop@ Nawaz @ Sridhar @ Sriram stationed at Dubai and if the petitioner is released on bail, she will



put Hip Hop @ H.Hop to notice. The investigation regarding forged medical certificate is also pending.

SUBMISSION ON BEHALF OF PETITIONER

9. Learned counsel for the petitioner has submitted that the case against the petitioner is totally false and frivolous and based on the whims and fancies of the ED. It has been submitted that the petitioner is a young girl of around 28 years and is languishing in jail since 07.07.2022 wherein other accused persons namely Pradeep Ramdaani, Avinash Narula, Jitender Narula, Komal Poddar, Pinky Irani, Joel Daniel and Jacqueline Fernandez who have more grievous have been enlarged on bail. It has been submitted that the ED is opposing the bail of the petitioner only on the ground that her release on bail shall hinder in the way to reach the Hip-Hop.
10. Learned Counsel has also submitted that being in the custody and no one in the family the petitioner is unable to defend herself. It has further submitted that since even the charges have not been framed and the trial may take a long time. Learned counsel has submitted that the learned trial court dismissed the bail application merely on the ground that there is a possibility of her fleeing away from the judicial process or influencing the witness without any substantive material on record. It has further been submitted that the bail application has been rejected on the ground that the petitioner was involved in purchasing costly items like belts, and watches, wearing clothes and also in engaging an advocate for the main accused Sukash Chandrashekhar and Ms. Leena Maria Palouse. It has



been submitted that all this is a matter of documentary evidence. It has further been submitted that all these acts were being done by the petitioner under the course of the master and servant relationship. It has further been submitted that all relevant material has already been seized by the ED and there is no possibility of tampering with the same. Learned counsel for the petitioner also submitted that the petitioner also fulfills the triple test as there is no flight risk, the petitioner has roots in the society and the petitioner is also not in a position of tampering or influencing the prosecution witnesses.

11. Learned counsel for the petitioner has submitted that the petitioner has been available to the agency since 07.07.2022 however, no substantial investigation has been made and no witness has been confronted. It has been submitted that the personal liberty of the petitioner has been infringed without any substantive material on record. It has been submitted that the pretrial detention cannot be punitive in nature. Learned counsel for the petitioner also submits that no financial loss has been caused to the state exchequer. It has been submitted that the object of the bail is to secure the attendance at the trial and in case there is no probability to run from the trial, the bail should not be withheld as a punishment. Reliance has been placed on **Nagendra vs. King Emperor** AIR 1924 cal 476. It has further been submitted that strict conditions may be imposed to secure the presence of the accused.

12. Learned counsel further submitted that the petitioner undertakes to join the further investigation as and when directed by the ED. Learned



counsel submitted that the petitioner is a young of 28 years of age and has been in custody for the last more than one year and her continued incarceration will also diminish her prospects of getting married. Learned counsel has submitted that even in *P.Chidambram v. Directorate Enforcement* (2020) 13 SCC 791 it was inter alia held 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. Learned counsel has submitted that it was inter-alia held as under:*

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 a 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 a case-to-case basis on the facts involved therein and securing the presence of the accused to stand trial.

13. Learned counsel further submitted that in ***Nagendra vs. King Emperor*** 1924 Calcutta 476 it was inter alia held that bail is not to be withheld merely as punishment as the object is to secure attendance of accused at trial. It was further inter alia held that the test to determine whether bail is to be granted or not, is applied by reference to the following considerations; the nature of the accusation, the nature of the evidence, the severity of the punishment, the character, means and standing of the accused. The discretionary power of the Court to admit to bail is not arbitrary but is judicial.

14. Learned counsel has further relied upon ***Sanjay Chandra vs. CBI*** (2012) 1 SCC 40 wherein it was inter alia held as under:

40. The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, the right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the court. whether before or after conviction, to assure that he will submit



to the jurisdiction of the court and be in attendance thereon whenever his presence is required

41. This Court in Gurcharan Singh v. State (Delhi Admn.) observed that two paramount considerations, while considering a petition for grant of bail in a non-bailable offence, apart from the seriousness of the offence, are the likelihood of the accused fleeing from justice and his tampering with the prosecution witnesses. Both of them relate to ensure the fair trial of the case. Though, this aspect is dealt by the High Court in its impugned order, in our view, the same is not convincing.

42. When the undertrial prisoners are detained in jail custody for an indefinite period, Article 21 of the Constitution is violated. Every person, detained or arrested, is entitled to speedy trial, the question is: whether the same is possible in the present case.

SUBMISSION ON BEHALF OF ED

15. Mr. Anupam S. Sharma, learned special counsel for ED has submitted that initially a case FIR no. 208/2021 dated 07.08.2021 was registered by PS Special Cell under Sections 170/384/386/388/419/420 IPC r/w 120-B IPC on the complaint of Aditi Shivinder Singh. Since the offence alleged in the aforementioned FIR were a scheduled offence under PMLA as an ECIR was recorded on 08.08.2021. Learned counsel submitted that upon completion of the investigation by ED, a complaint under Section 44/45 PMLA was filed before the concerned Learned Special Judge for the offence under Section 3 of PMLA against Sukesh Chandrashekhar, Leena Maria Paul, Deepak Ramadani, Pradeep Ramdanee, Avtar Singh Kochar, B. Mohan Raj, Arun Muthu and D. Kamlesh Kothari on



04.12.2021. Subsequently, first supplementary complaint was filed against Pinky Irani (A-9) on 05.02.2022. The second supplementary complaint was filed against Jacqueline Fernandez on 17.08.2022. During the course of further investigation, it was revealed that the nursing staff of Tihar Jail was helping main accused Sukesh Chandrashekhar in prison by way of communication/passing certain information out of Tihar Jail and in this regard, information was by DG Prisons, Tihar Jail regarding the names of those nursing staff as well as mobile phone numbers and details of persons who had met said accused for legal mulaqaat. In this process, the role of the present petitioner came to the surface and therefore third supplementary complaint was filed against her on 06.09.2022.

16. Mr.Anupam S.Sharrma has submitted that the petitioner was a resident of Chennai and had been working as a Salon Sales Manager in Nail Artistry Salon, Chennai Branch, which is owned by co-accused Leena Maria Paul, wife of main accused Sukesh Chandrashekhar and she had been living in Delhi and had been meeting Sukesh Chandrashekhar in Tihar Jail since March, 2022 and was acting on his instructions. Learned counsel submitted that in the search conducted on 07.07.2022 certain documents/bills/invoices, 06 mobile phones and luxurious articles were recovered which were found to be purchased for and on behalf of the Sukesh Chandrashekhar and Ms. Leena Maria Palouse and to be delivered inside Tihar Jail by Mulaqaat by the petitioner and Passang Diki Sherpa (employee of Nail Artistry Salon Chennai). Learned Counsel



further submits that the data extracted from the recovered mobile phones revealed that the petitioner was assisting accused Sukesh Chandrashekhar in passing certain information received from Sukesh Chandrashekhar while he was lodged in Tihar Jail and providing updates on works/instructions allotted or given to her by him and was also making payments to various individuals including his lawyers/jail staff/relatives of jail inmates/Sukesh's mother as per the instructions of accused Sukesh Chandrashekhar besides assisting Sukesh Chandrashekhar to smuggle/deliver various items inside the premises of Tihar Jail in order to help and enable him to acquire undue benefits and continue with his criminal activities within Tihar Jail. It has been submitted that on 8.7.2022 a search was conducted at Nail Artistry Salon, in Chennai where the Petitioner worked as Sales Manager and is involved in the offence of money laundering.

17.Mr.Anupam S.Sharrma has submitted that the petitioner was actively involved in the offence of money laundering as revealed during the investigation. Mr.Anupam S.Sharrma has further submitted that the entire transactions and payments to be made to various individuals were facilitated by the petitioner who received the proceeds of crime collected in cash in her own bank account so that the same may be claimed to be untainted property. Mr.Anupam S.Sharrma has submitted that the laundered money was infused into her own bank account and also the bank accounts of staff members of the Salon. Learned counsel submitted that the investigation revealed that the sales proceeds shown of Nail



Artistry Salon were not genuine and the petitioner had played an active role in generating fake invoices to inflate the sale proceeds of the Salon and even submitted a fake customer list and documents in her statement.

18. Mr. Anupam S. Sharrma has further submitted that the petitioner had purchased luxurious items using proceeds of crime and delivered them inside the Tihar Jail. It has been submitted that the petitioner directly attempted to conceal the proceeds of crime by receiving the same in her bank account and from an account of her associates and as well as depositing the fund received from Hip Hop. as well as depositing the fund received from Hip Hop. Mr. Anupam S. Sharrma has submitted that Petitioner in her capacity as Sales Manager of the Salon has directly facilitated accused Sukesh Chandrashekhar's use of tainted funds to purchase goods himself, his wife, co-accused Leena and for the individuals he would like to award against their assistance while presenting the same as untainted funds by routing the same through various accounts and also creating fake invoices against the same. Mr. Sharrma has submitted that therefore the petitioner is not entitled to relief of bail in view of her overwhelming and active involvement in the laundering of money. Mr. Sharrma has submitted that the plea of the petitioner that she was sincerely following all the instructions of the boss i.e Leena Maria Paul and did not have any knowledge is false on the face of it. It has been submitted that the active complicity of the Petitioner in the commission of offences is manifest from a perusal of the pictures of handwritten letters/notes sent by accused Sukesh Chandrashekhar to the



Petitioner through Anurag Kumar. It has been submitted that in one such letter accused Sukesh, while passing ahead instructions to Petitioner herein specifically wrote as under:

“10. You don’t stress about Anything Just follow directions rest I will take care of Everything. As I said you are doing a great Job, And you will be well awarded It’s not a Joke, you will be the happiest that All your Hard work has paid off”.

19.Mr.Anupam S.Sharma has further submitted that if the accused is released on bail, she may alert the prime accused who has a fictitious name of Hip Hop@ Nawaz @ Sridhar @ Sriram stationed at Dubai and his identity and whereabouts are yet to be ascertained. It has been submitted that further investigation in respect of false NOC and recovery of Audi RS-6 and a white BMW 730 LD is still underway. It has been submitted that further investigation to trace further proceeds of the crime is also in progress and if the petitioner is released on bail, she may hamper the investigation.

20.Learned Counsel has further submitted that the petitioner was well aware of the criminal antecedents of the accused Sukash Chandrashekhar and had been in touch with him and his entire family regularly. Learned counsel also submitted that the petitioner cannot take benefit of the fact that other accused persons have been released on bail as her case stands on a different footing. It has been further submitted that the petitioner cannot take benefit of the proviso under Section 45 (1) of PMLA. Learned counsel submitted that even if the court uses its discretion to release the accused on bail without satisfying the twin condition of



section 45 PMLA, the court is required to give the reasons for exercising such power.

21. Learned special counsel has placed reliance upon ***Ramesh Bhavan Rathod vs. Vishanbhai Hirabhai Makwana Makwana (Koli) and Anr.*** CrI. Appeal No.422/2021 wherein it has *inter alia* been held that parity while granting bail must focus upon the role of the accused. In deciding the aspect of parity, the role attached to the accused, and their position in relation to the incident and to the victims is of utmost importance. Mr. Anupam S. Sharma has submitted that the petitioner may not be released on bail merely on the ground that her name does not appear in the predicate offence. Reliance has been placed upon the judgment passed by this court in ***Benoy Babu vs. Directorate of Enforcement*** 2023 SCC OnLine Del 3771.

FINDING & ANALYSIS

22. In ***Vijay Madanlal Choudhary and Others vs. Union of India and Others***, 2022 SCC OnLine SC 929 the Supreme Court while dealing with the twin conditions under Section 45 of PMLA, has *inter alia* held that

388. Such twin conditions in the concerned provisions 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.

23. In the recent judgement of Hon'ble Supreme Court in ***Mohd. Muslim @ Hussain vs. State (NCT of Delhi)***, 2023 SCC OnLineSC 352 while discussing the rigor of Section 37 of NDPS Act *inter alia* held as under:

13. When provisions of law curtail the right of an accused to secure bail, and correspondingly fetter judicial discretion (like Section 37 of the NDPS Act, in the present case), this court has upheld them for conflating two competing values, i.e., the right of the accused to enjoy freedom, based on the presumption of innocence, and societal interest – as observed in Vaman Narain Ghiya v. State of Rajasthan (“the concept of bail emerges from the conflict between the police power to restrict liberty of a man who is alleged to have committed a crime, and presumption of innocence in favour of the alleged criminal....”). They are, at the same time, upheld on the condition that the trial is concluded expeditiously. The Constitution Bench in Kartar Singh v. State of Punjab made observations to this effect. In Shaheen Welfare Association v. Union of India again, this court expressed the same sentiment, namely that when stringent provisions are enacted, curtailing the provisions of bail, and restricting judicial discretion, it is on the basis that investigation and trials would be concluded swiftly. The court said that Parliamentary intervention is based on:

“a conscious decision has been taken by the legislature to sacrifice to some extent, the personal liberty of an undertrial accused for the sake of protecting the community and the nation



against terrorist and disruptive activities or other activities harmful to society, it is all the more necessary that investigation of such crimes is done efficiently and an adequate number of Designated Courts are set up to bring to book persons accused of such serious crimes. This is the only way in which society can be protected against harmful activities. This would also ensure that persons ultimately found innocent are not unnecessarily kept in jail for long periods.”

14. In a recent decision, while considering bail under the Unlawful Activities Act (Prevention) Act, 1967, this court in *Union of India v. K. A. Najeeb* observed that:

*“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)*, (1999) 9 SCC 252] , *Babba v. State of Maharashtra*, (2005) 11 SCC 569 and *Umarmia v. State of Gujarat*, (2017) 2 SCC 731 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.”*

The court concluded that statutory restrictions like Section 43-D(5) of the UAPA, cannot fetter a constitutional court’s ability to grant bail on ground of violation of fundamental rights.

15. Even in the judgment reported as *Vijay Madanlal Chaudhary v. Union of India*¹⁵ this court while considering bail conditions under the Prevention of Money Laundering Act, 2002, held that:

“If the Parliament/Legislature provides for stringent provision of no bail, unless the stringent conditions are fulfilled, it is the bounden duty of the State to ensure that such trials get precedence and are concluded within a reasonable time, at least before the



accused undergoes detention for a period extending up to one-half of the maximum period of imprisonment specified for the concerned offence by law.”

16. In the most recent decision, *Satender Kumar Antil v. Central Bureau of Investigation* prolonged incarceration and inordinate delay engaged the attention of the court, which considered the correct approach towards bail, with respect to several enactments, including Section 37 NDPS Act. The court expressed the opinion that Section 436A17 (which requires inter alia the accused to be enlarged on bail if the trial is not concluded within specified periods) of the Criminal Procedure Code, 1973 would apply:

“We do not wish to deal with individual enactments as each special Act has got an objective behind it, followed by the rigour imposed. The general principle governing delay would apply to these categories also. To make it clear, the provision contained in Section 436-A of the Code would apply to the Special Acts also in the absence of any specific provision. For example, the rigour as provided under Section 37 of the NDPS Act would not come in the way in such a case as we are dealing with the liberty of a person. We do feel that more the rigour, the quicker the adjudication ought to be. After all, in these types of cases number of witnesses would be very less and there may not be any justification for prolonging the trial. Perhaps there is a need to comply with the directions of this Court to expedite the process and also a stricter compliance of Section 309 of the Code.”

24. In *Mohd. Muslim @ Hussain* (*supra*), 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. 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 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.

19. 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.

20. 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, 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.

22. The danger of unjust imprisonment, is that inmates are at risk of “prisonisation” a term described by the Kerala High Court in A Convict Prisoner v. State as “a radical transformation” whereby the prisoner:

23. There is a further danger of the prisoner turning to crime, “as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal”²² (also see Donald Clemmer’s ‘The Prison Community published in 1940²³). Incarceration has further deleterious effects - where the accused belongs to the weakest economic strata: immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials – especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily.

25. In nutshell, the bail application has been opposed by the ED predominantly on the ground that the petitioner had been working for main accused Sukesh Chandrashekar and her co-accused wife Leena Maria Paul. ED has also alleged that petitioner had been meeting Sukesh Chandrashekar after receiving messages from him, and doing the



needful in the form of buying mobile phones and costly branded items for the purpose that Sukesh Chandrashekhar may give it to the persons from whom he was taking undue and illegal favours. The allegations are also that the petitioner had been receiving the crime of proceeds from a source called Hip Hop @ Nawaz @ Sridhar @ Sriram stationed at Dubai through Manoj and was using it for the purpose of paying money to the lawyers and other persons. The contention of the ED is the petitioner was well aware of the activities and antecedents of Sukesh Chandrashekhar and in fact she was helping the accused in money laundering. The contention of the ED is also that in this way, the petitioner had been assisting accused Sukesh Chandrashekhar and was actively involved in the money laundering. It has also been alleged that for this the petitioner was being rewarded by Sukesh Chandrashekhar. The allegations are that a sum of Rs. 94,80,500/- was received by the petitioner through Hip Hop @ H.Hop and out of which Rs. 16,28,484/- was used for shopping for co-accused Leena Maria Paul and accused Sukesh Chandrashekhar. Rs.59,58,000/- were used for payments to lawyers of accused Sukesh Chandrashekhar and co-accused Leena Maria Paul. Further allegations are that Rs. 24,05,512/- were used for payments made to jail staff/ contract staff/ medical staff/ jail inmates and Rs 11,72,791/- were used for other expenses made on instructions of accused Sukesh Chandrashekhar and all these transactions were facilitated by the petitioner who was receiving proceeds of crime. The



allegation of the ED is also that it is a clear-cut case of money laundering as the money was transferred in the account of the petitioner.

26. It is a settled proposition that at the stage of bail, the court is only required to see the prima facie case and is not allowed to meticulously examine or appreciate the evidence or test the probative value of the witnesses. The court is required to maintain a delicate balance between the judgment of acquittal and conviction and an order granting bail before the commencement of the crime.

27. Even in *Vijay Madanlal Choudhary and Others (supra)* it has been *inter alia* 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. Thus, the court at this stage can grant the bail on the principle of broad probabilities. The court at this stage is required to examine the material in a broad manner and evaluate whether it can reasonably be said that the guilt of the accused can be proved. The court is only required to reach on a prima facie view based on a reasonable and prudent view without meticulous examination of the material collected during the investigation.

28. In the present case, the accused petitioner was a young girl of around 25-26 years of age. It is an admitted case that she was employed by Leena Maria Paul as Salon Sales Manager in Nail Artistry Salon. The possibility of a young girl with an immature mind falling to the tricks of



alleged accused Sukesh Chandrashekhar cannot be ruled out at this stage. Even ED has not alleged that the petitioner has used even a single paisa for her own benefit. The contention that the petitioner was assured of being rewarded is not sufficient for this court to reach to the conclusion that the accused has committed an offence under the PMLA. Persons of such tender age sometimes in the anxiety of getting easy money may deviate. The facts of each case are peculiar in nature. The present case involves act of a young girl who joined private service and finally ended up to allegedly committing serious offence. I consider that allegation of the petitioner in the present case requires to be tested on evidence and in particular '*mens rea*'. There is also no material on record to suggest that the petitioner will commit offence of similar nature, if released on bail.

29. Therefore, I consider that taking into account the totality of the facts and circumstances and in particular of the fact that the petitioner is a young girl of 25-26 years is entitled to be admitted to bail. Accordingly, the petitioner is admitted to bail on her furnishing personal bond in the sum of Rs.50,000/- with one surety of the like amount to the satisfaction of the trial court, subject to the following conditions:

1. The petitioner shall surrender her 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. She 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 as and when the matter is taken up for hearing;
 4. The petitioner shall provide her 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.
30. In view of the above, the present bail application along with pending applications stands disposed of. However no expression made herein shall tantamount to be an expression on the merits of the case.
31. Copy of the order be sent to the concerned Jail Superintendent for information and necessary compliance.

**DINESH KUMAR SHARMA
(JUDGE)**

AUGUST 29, 2023
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