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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 04.02.2025

Judgment pronounced on: 21.03.2025

+ **BAIL APPLN. 1913/2022**

RAMESH CHANDRA

.....Petitioner

Through: Ms. Rebecca M. John, Sr. Adv.
with Mr. Vishal Gosain, Mr. Anuroop
Chakravarti, Mr. Pravir Singh, Advs.

versus

THE DIRECTORATE OF ENFORCEMENT

.....Respondent

Through: Mr. Zoheb Hossain, Special
Counsel with Mr. Vivek Gurnani, Standing
Counsel with Mr. Kartik Sabharwal, Mr.
Pranjal Tripathi, Mr. Kanishk Maurya, Ms.
Ilma Khan, Mr. Suradhish Vats, Mr. Kunal
Kochar, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

: **JASMEET SINGH, J**

1. This is a petition seeking regular bail in ECIR/04/DLZO-II/2018 dated 06.06.2018 under Sections 406, 420 and 120-B of the Indian Penal Code, 1860 ("IPC") and Sections 3 read with 4 of the Prevention of Money Laundering Act, 2002 ("PMLA"). On 31.08.2021, the said ECIR was amended to include the offences under Sections 7, 8, 9, 10, 12 and 13 of the Prevention of Corruption Act, 1988 ("PCA").
2. It is stated that the petitioner is 86 years old and is suffering from multiple ailments. His medical reports indicate a deteriorating



condition, including a high risk of a lacunar stroke, repeated dizziness and a history of severe post COVID-19 complications.

3. The petitioner was arrested in the present case on 04.10.2021 and had been released on interim bail since 08.08.2022 on medical grounds *vide* the order dated 28.07.2022.

FACTUAL BACKGROUND

4. Between 2006 to 2022, 62 FIRs were registered by Delhi Police (EOW, Saket, Mandir Marg, Crime Branch Police Stations) and CBI, against Promoters of Unitech Group (“*the company*”) i.e. Ramesh Chandra, Ajay Chandra and Sanjay Chandra and their associates under Sections 34, 201, 406, 409, 120B and 420 of IPC and under Sections 7, 7(A), 8, 9, 10, 12 and 13 of PCA. Most of the said FIRs were recorded based on complaints made by homebuyers who were cheated by the accused persons. The Chandras promised the homebuyers that they would get their dream home and investors would get a handsome return on their investment. Induced by this promise the homebuyers and investors invested huge amounts in the company. These amounts were misutilised and laundered. On the basis of numerous FIRs, an investigation was taken up to trace proceeds of crime (“*POC*”) and to investigate possible money laundering under PMLA by Delhi Zonal Office-II, ED on 06.06.2018 *vide* ECIR/04/DLZO-II/2018.
5. The role ascribed to the petitioner in the prosecution complaint is that the petitioner was the main Promoter and Chairman of the company. During his tenure, thousands of homebuyers were persuaded to invest their lifelong savings in the company for residential units. However, it is alleged that a significant portion of these funds was misappropriated



for non-mandated activities. Based on complaints from aggrieved homebuyers, multiple criminal cases of cheating and fraud were filed against the petitioner. Subsequently, in 2016, the Hon'ble Supreme Court took cognizance of the matter and on 20.01.2020, ordered the removal of the petitioner from the company. He is a direct beneficiary of the POC to the tune of Rs. 5826 Crores (as identified by the forensic auditors Grant Thornton LLP in their forensic report conducted in view of the directions given by the Hon'ble Supreme Court) and therefore, liable for the offence under Section 3 of PMLA.

SUBMISSIONS ON BEHALF OF THE PETITIONER

6. Ms. Rebecca John, learned Senior Counsel appearing on behalf of the petitioner submits as follows:
 - A. The petitioner is an 86-year-old individual suffering from significant cognitive impairment, advanced pseudodementia and acute slowness of thought and speech. He has a history of allergic asthmatic lung disease, chronic artery disease and hypertension. In 2020, he underwent angioplasty and has three stents in his heart, along with a 15-day stay in the ICU due to Covid-19. He struggles with daily activities and has a history of falls. A medical board report from AIIMS indicates that he requires monitoring to prevent further falls.
 - B. The petitioner qualifies under the proviso to Section 45 of the PMLA, which addresses three specific categories: 1. Women, 2. Sick persons, and 3. Infirm persons. Infirmary is inherently related to age and the intent and scope of the proviso must remain intact, as clarified by the Supreme Court in the case of



Kalvakuntla Kavitha v. Directorate of Enforcement, 2024 SCC OnLine SC 2269. The petitioner is both sick and infirm and any argument from the ED suggesting that his medical conditions can be managed in jail is not valid under the proviso.

- C. She places reliance on the judgment of this Court in ***Devki Nandan Garg v. Directorate of Enforcement, (2022) SCC OnLine Del 3086*** to contend that the proviso to section 45(1) has been incorporated as a relaxation for persons below sixteen years of age; a woman; or one who is sick or infirm.
- D. The allegations regarding the petitioner influencing witnesses are also unsubstantiated. The evidence is primarily documentary and the ED previously stated before the Ld. Trial Court that the investigation was completed with the filing of the Supplementary Prosecution Complaint in 2022. A review of the statement of Sunil Kher reveals that he did not attribute any threats to the petitioner; rather, it was the co-accused who allegedly threatened him with dire consequences, as noted in the Written Statement of ED. Furthermore, no call detail records or location charts have been provided to support oral allegations of Sunil Kher. Additionally, the petitioner has no connection to the Trikar Group and these allegations do not relate to the predicate offence.
- E. The allegations of irregularities in Tihar Jail are vague and ambiguous, as the ED has not specified that any of the messages related to siphoning off of funds, monetary



transactions, or handling money. Not a single message allegedly sent by the petitioner has been submitted by the ED. Moreover, this matter pertains to a separate investigation by a different prosecuting agency and the petitioner has fully cooperated with that investigation. Therefore, these allegations should not impede the release of the petitioner on bail in the current case.

- F.** The co-accused, Preeti Chandra, was granted regular bail by this Court on 14.06.2023, which was upheld by the Hon'ble Supreme Court on 04.08.2023. Another co-accused, Rajesh Malik, received regular bail from the learned Special Court on 15.07.2023. Additionally, the former Managing Directors of the company, Sanjay Chandra and Ajay Chandra, were granted regular bail by the learned Special Court on 07.06.2024. Therefore, the petitioner is entitled to be released on bail based on the principle of parity. Although the ED had filed a petition seeking cancellation of bail, it was dismissed by the Hon'ble Supreme Court.
- G.** In the present case, there are a total of 17 accused persons, 66 companies, 121 witnesses and 77,812 pages of documents, along with substantial digital data to be analysed. The case was registered in 2018 and while the investigation concerning the petitioner is complete, the trial has yet to commence. The right to a speedy trial is guaranteed under Article 21 of the Constitution of India and applies to every accused person. The Hon'ble Supreme Court has consistently reiterated in various



judgments that an accused cannot be held in custody indefinitely when there is no reasonable likelihood of the trial concluding within a reasonable timeframe. Reference made to the judgments of *Manish Sisodia v. Directorate of Enforcement, 2024 SCC OnLine SC 1920*, *Vijay Nair v. Directorate of Enforcement, 2024 SCC OnLine SC 3597* and *V. Senthil Balaji v. The Deputy Director, Directorate of Enforcement, 2024 SCC OnLine SC 2626*.

- H. It is asserted that only the invested funds of the homebuyers from the 62 FIRs related to the 23 housing projects of the company should be considered as “Proceeds of Crime”. This amount is claimed to be INR 223 Crores, in contrast to the inflated claim of INR 6452 Crores of the ED. The investigating agency has misled this Court by presenting an exaggerated figure of POC, creating an unreasonable perception against the petitioner. This argument was upheld by the Special Judge at the Patiala House Court in the order granting bail to co-accused Sanjay Chandra and Ajay Chandra.
- I. All companies mentioned by the ED were lawfully established, with the necessary permissions and disclosures made to the relevant statutory authorities. Therefore, no valid allegation of creating and managing shell companies can be directed against the group or the petitioner.
- J. The ED alleges that the petitioner actively participated in the sale of assets held by Sky Event Management Pvt. Ltd. (“SEMPLE”). The sale deeds cited by the ED indicate



transactions between SEMPL and Gurugram Land and Flat Developers for property sales. The petitioner highlights that the money received from these transactions was directly paid to the Income Tax Department.

- K.** The petitioner asserts that there is no evidence to indicate that any amounts were transferred by the homebuyers prior to 2012. There is a complete lack of interconnectivity between the money received from homebuyers and the funds invested in Carnoustie Management Private Ltd. (“CMPL”). No statements from any homebuyer have been recorded, nor have any bank account statements or builder-buyer agreements been submitted. Additionally, there is no specified date of investment and no trailing of funds has been conducted. The investigation has not produced any evidence showing which of the 326 bank accounts of the company received deposits from the homebuyers for purchasing their homes, nor has it clarified how these amounts were diverted, on what dates and to what extent.
- L.** It is further submitted that the petitioner never instructed anyone to deliver cash to him, as alleged from the sale of these properties. No cash was found in the possession of the petitioner and there is no evidence of cash being delivered to him. Raids conducted at the residence and offices of the petitioner yielded no cash or evidence of cash usage, as indicated in the seizure memo. Additionally, the seized books of accounts and other documents do not support this allegation.



M. It is also submitted that the Forensic Audit Report by Grant Thornton lacks evidentiary value. The report is based on mere conjectures and surmises and cannot serve as the foundation for the case of ED. The author of the report has included a list of disclaimers, acknowledging that they cannot guarantee the report's reliability or verify the accuracy of the information it is based on. Additionally, the report frequently uses the phrase “*potential diversion*”, further undermining its credibility.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

7. *Per contra*, Mr. Zoheb Hossain, learned Special Counsel appearing on behalf of the respondent has stated that:

A. He submits that it is well settled that a bail application in PMLA cases has to be strictly decided in terms of the mandatory twin conditions under Section 45 of PMLA which prescribes that an accused may be released on bail only if he fulfils the mandatory twin conditions, which read as under:-

- i.** There are reasonable grounds for believing that he is not guilty of the offence of money laundering; and
- ii.** That he is not likely to commit any offence while on bail.

Reliance is placed on the decision of the Hon’ble Supreme Court in *Vijay Madanlal Choudhary & Ors. v. Union of India & Ors.*, (2023) 12 SCC 1, which has held that a person accused of the offence of money laundering has to satisfy the twin test laid down under Section 45 of PMLA.

B. He stated that bail should be granted sparingly and with caution and not every type of illness should automatically



qualify an accused for release on bail. The level of illness must pose a risk or danger to the life of the accused for bail to be granted on medical grounds. If the necessary medical treatment can be provided by prison authorities, then bail on medical grounds should not be granted. Furthermore, if the individual is found to be stable, they should not be released on medical bail.

- C. He further stated that mere old age does not automatically render a person infirm; therefore, the petitioner cannot claim infirmity solely based on being 86 years old. This claim must be supported by evidence of an incapacity to perform daily routine activities. Since the petitioner is not suffering from life-threatening or serious diseases and can receive treatment in jail, he does not qualify for a claim of infirmity.
- D. In his statement dated 10.09.2021 under Section 50 of the PMLA, Sunil Kher testified that on 05.03.2021, following the searches by ED on the Trikar Group companies on 04.03.2021, the petitioner called him and instructed him to meet at the Taj Vivanta hotel. Upon arrival, he found Ajay Chandra present as well. They inquired about the search by ED of the Trikar Group companies. When Kher raised the issue of fake bills related to the Trikar Group, the Chandras, particularly Ajay Chandra, threatened him with serious consequences if he disclosed the truth to the ED.
- E. The various claims made by the petitioner regarding the veracity of the statements are all subject to rejection, as it is



well established that statements made under Section 50 of the PMLA are admissible and can be relied upon during the remand stage or even to deny bail. Reliance in this regard is placed on *Vijay Madanlal Choudhary (supra)*.

- F. The investigation has revealed that the Chandra family of the company were operating a secret office related to their illegal activities from Tihar Jail. During the search and seizure operation on 30.07.2021, the ED confiscated handwritten letters from the petitioner and Ajay Chandra, which were being sent in and out of Tihar Jail through their associates.
- G. He argued that parity is not a legal principle in itself and when applying the principle of parity, the Courts must judiciously consider the specific role of the accused whose application is being reviewed. In this regard, reliance is placed on *Tarun Kumar v. Directorate of Enforcement, 2023 SCC OnLine SC 1486*.
- H. It is also submitted that the seriousness of an offence is a valid ground for rejecting bail, even if the trial is expected to take a considerable amount of time to conclude. Reliance in this regard is placed on the decision of this Hon'ble Court in *Religare Finvest Ltd. vs. State of NCT of Delhi & Anr., 2021 SCC OnLine Del 3258*.
- I. The petitioner and his family members incorporated, controlled and managed over 100 shell or benami entities both in India and abroad. POC amounting to Rs. 16.69 crores were laundered and deposited into the accounts of Actra



Construction and Infrastructure Services Pvt. Ltd. (“ACISPL”), which were operated for the benefit of the petitioner. Five properties of ACISPL were sold under the instructions of the petitioner. Additionally, the petitioner managed and controlled a shell company named SEMPL and in February 2021, he appointed Rajeev Kumar as a director of SEMPL through his confidants.

- J. By investing merely Rs. 94 lakhs, Rajesh Malik and Randeep Waraich acquired 85% of the Class A shares of CMPL, while parties who invested Rs. 350 crores were only allotted 15% of the Class B shares, which carried no voting rights. To obscure the true purpose of this transaction, the petitioner and Rajesh Malik created a facade of share applications. An examination of the tally data revealed a complex web of interconnected transactions between Unitech, CMPL, homebuyers and loan funds, amounting to Rs. 380.80 crores, which were illegally diverted to CMPL.
- K. The ED has relied on the Forensic Audit Report by Grant Thornton to assert that POC amounting to Rs. 5,826 crores were diverted by the company.

ANALYSIS AND FINDINGS

- 8. I have heard learned counsel for the parties and perused the material on record.
- 9. The relevant portion of Section 45 of PMLA reads as under:-
 - “Section 45. Offences to be cognizable and non-bailable.*
 - (1) Notwithstanding anything contained in the Criminal*



Procedure Code, 1973 (2 of 1974), no person accused of an offence under this Act shall be released on bail or on his own bond unless-

(i) the Public Prosecutor has been given a opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm, or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees may be released on bail, if the Special Court so directs: ... ”

10. The first question that arises for my consideration is whether the proviso to section 45(1) of PMLA will be applicable to the petitioner being ‘sick or infirm’.

Applicability of Section 45 of PMLA

11. To understand the term ‘sick’ as contemplated in the PMLA, it is essential to consider the legislative intent behind the inclusion of the proviso to section 45(1) of PMLA.
12. In the case of ***Devki Nandan Garg (supra)***, it has been observed as under:-

“32. At this juncture, it is imperative to have an overview of the Statement of Objects and Reasons of PMLA, 2002 with respect to “sick and infirm” which reads as under:



“In addition to above recommendations of the standing committee the Central Government proposes to (a) relax the conditions prescribed for grant of bail so that the Court may grant bail to a person who is below sixteen years of age, or woman, or sick or infirm...”

33. A bare perusal of the Statement of Objects and Reasons of PMLA goes to show that inclusion of the above conditions for grant of bail as a proviso to section 45(1) of PMLA elucidates the legislature's intent to incorporate relaxations for persons below sixteen years of age; a woman; or one who is sick or infirm.”

- 13.** In ***Kewal Krishan Kumar v. Enforcement Directorate, 2023 SCC OnLine Del 1547***, it has been held that the legislature has carved out the proviso to section 45(1) of PMLA as a lenient provision for persons below sixteen years of age, women or persons who are sick or infirm. The relevant paragraphs read as under:-

“18. The relevant clauses of the Finance Bill introduced on 1st February, 2018 for amending Section 45 of the PMLA reads as under:-

“Clauses 204 and 205 of the Bill seeks to amend certain provisions of the Prevention of Money laundering Act, 2002, which include the following, namely:-

-x-x-x-x-

(v) to amend section 45 of the Act relating to offences to be cognizable and non-bailable and to



amend sub-section (1) of section 45 to substitute the words “punishable for a term of imprisonment of more than three years under Part A of the Schedule” by the words “under this Act” so as to take a step further towards delinking the Scheduled offence and money laundering offence. Further, it seeks to amend the proviso in subsection (1) by inserting the words “or is accused either on his own or along with other co-accused of money laundering a sum of less than Rupees one crore”, after the words “sick or infirm” to allow the Court to apply lenient bail provisions in case of money laundering offence is not grave in nature.”

19. The 2018 Finance Bill gives an insight into the bail provisions stating that the inclusion of “sixteen years; woman; sick or infirm” along with the addition of “or is accused either on his own or along with other co-accused of money laundering a sum of less than Rupees one crore” is a lenient bail provision encapsulated in PMLA.”

14. Considering the above, a purposive interpretation of the proviso to section 45(1) of PMLA indicates that it was included as a lenient measure to provide ‘relaxation’ for a sick or infirm individual, as mentioned in the Statement of Objects and Reasons for the PMLA.
15. The next question for consideration is what is the level of sickness that qualifies an accused as ‘sick’ under the proviso to section 45(1) of PMLA.



16. It was further observed in ***Kewal Krishan Kumar (supra)*** that the proviso to section 45(1) of PMLA is similar to the proviso to Section 437 of CrPC. The relevant paragraphs read as under:-

“21. Proviso to Section 45(1) PMLA is analogous to the proviso to section 437 CrPC.

22. Report No. 268 of the Law Commission of India (“LCI”) on bail reforms titled ‘Amendments to Criminal Procedure Code, 1973 - Provisions Relating To Bail’ discusses the intent behind inclusion of the proviso in section 437 CrPC.

The relevant extract of Report 268, LCI reads as under:

“L. Exceptions

11.34 Absolute restriction on granting of bail would undermine

the right to liberty of the person accused of an offence. Therefore, when certain supervening and inexorable circumstances exist, bail must be allowed.

If the person accused of an offence is suffering from serious life-threatening ailment and requires medical help which may not be available in jail hospitals, then the bail shall be granted.”

17. In addition, the Hon’ble Supreme Court in ***Pawan alias Tamatar v. Ramprakash Pandey, (2002) 9 SCC 166*** has noted that every sickness does not *ipso facto* entitle an accused to medical bail. The said judgment was further relied upon by the Bombay High Court in the case of ***Mahendra Manilal Shah v. Rashmikant Mansukhlal Shah, 2009 SCC OnLine Bom 2095*** and more particularly in paragraphs 47



and 50 which read as under:-

“47. ... (1) Pawan alias Tamatar v. Ramprakash Pandey ((2002) 9 SCC 166 : AIR 2002 SC 2224) (supra). In this case the Hon'ble Supreme Court has set aside the order of the Allahabad High Court granting bail to the accused inter alia on the ground that the allegation of ailment of the applicant is not specifically denied. The Hon'ble Supreme Court was of the view that the ailment of the accused was not of such a nature as to require him to be released on bail. It was observed that the accused can always apply to the jail authorities to see that he gets the required treatment. It was observed that in the application, the applicant had not stated that he still needs medical treatment or that he has not received proper medical treatment from the jail authorities.

-x-x-x-x-

50. As observed in the various judgments cited above, mere admission of an accused to a hospital for medical treatment does not entitle an accused to obtain bail under the proviso to Section 437(1) Cr. P.C. In fact as observed earlier the said proviso cannot be resorted to in all cases of sickness. The Court must assess the nature of sickness and whether the sickness can be treated whilst in the custody or in government hospitals. The Court should also be satisfied that a case is made out by the Respondent Accused by himself or through the doctors attending to him that the treatment required to be administered to the Respondent



Accused, considering the nature of his ailment cannot be adequately or efficiently be administrated in the hospital in which he is at present and that he needs a better equipped or a speciality hospital. ... ”

18. While there is no strict formula to determine the level of illness required for bail under this proviso, the general guideline is that when the sickness is serious enough to pose a threat to life and requires medical assistance and treatment which is specialized and unavailable in jail facilities, the accused should be granted bail under the proviso to section 45(1) of PMLA. However, this is not an exhaustive criterion and each case should be evaluated based on its unique facts and circumstances.
19. In the present case, the medical board of AIIMS, Delhi constituted *vide* Order dated 18.09.2023 submitted its report on 04.12.2023. The medical assessment of the petitioner by the board was conducted on 18.10.2023 and 22.10.2023. Their conclusion is quoted as under:-
- “The Board opines that the present assessment is suggestive of subjective cognitive decline with risk of fall and he can be treated in jail but he should be monitored for fall and its related complications.”*
20. A division bench of this Court in ***Sandeep Aggarwal v. Priyanka Aggarwal, 2021 SCC OnLine Del 5521*** has observed that the courts cannot sit in appeal of the opinion of the medical board as the judges are not experts in medical fields. Thus, an opinion of doctors who are experts cannot be supplanted by a court overstepping its jurisdiction. The relevant paragraph of the said judgment reads as under:-



“30. At the outset, we may state that Judges are not medical professionals or experts, and acquire limited knowledge based on the arguments of the parties, and the medical literature produced before them; the testimonies of expert witnesses produced in court, and; the submissions advanced before the court. The courts, to be able to decide such issues, needs expert opinion from credible persons in the field. The parties are also entitled to grant of opportunity to either support, or challenge the opinion that the experts may give after examination of the person concerned, and all other relevant materials.”

21. Hence, I am of the view that the petitioner is not ‘sick’ to fall within the ambit of proviso to section 45(1) of PMLA since the petitioner can be treated in jail for the ailment as categorically opined by the medical board.
22. Having said that, the legislature has also carved out another category i.e. ‘infirm’ in the proviso to Section 45(1) of PMLA. PMLA does not define the word ‘infirm’ and this Court referred to the definitions of ‘infirm’ mentioned in several dictionaries in the decision of the case of ***Radhika Kapoor v. State & Ors., 2016 SCC OnLine Del 6652***. The definitions of ‘infirm’ are:-
 - A. Collins - weak or ill and usually old.
 - B. Concise Oxford Dictionary - a person who is not physically strong, especially due to age.
 - C. Black’s Law Dictionary - weak, feeble, lacking moral character or weak of health.



D. Webster's New World Law Dictionary - debility caused by ill health or advanced age.

E. American Heritage Dictionary of the English Language - the condition of being infirm, often as associated with old age; weakness or frailty; the infirmity brought on by the disease.

- 23.** In the present case, a perusal of the medical records of the petitioner show that on 07.01.2024, the petitioner was rushed to the emergency wing of the AIIMS Medicine Department. The doctor observed that he fell unconscious for a period of 5-6 minutes. The report stated that the ECG was abnormal, there was left anterior fascicular block (LAFB), which is considered a failure or delay of conduction in the left anterior fascicle and anterior infarction.
- 24.** On 21.01.2024, the petitioner had further visited the Lifestyle Clinic for treatment of major cognitive impairment and dementia. The doctor observed that he was suffering from forgetfulness and lack of intent that were due to cognitive impairment and dementia.
- 25.** On 10.02.2024, the petitioner had also visited the MAX Super Specialty Hospital Saket with a complaint of short-term memory loss. He was treated and advised on several medicines.
- 26.** On 19.08.2024, the petitioner was rushed to the emergency department of MAX Healthcare Saket on a complaint of chest pain coupled with giddiness. The family physician observed that such episodes had happened in the past and there was a high likelihood of these incidents recurring in the near future as well. He concluded that there was severe cognitive decline due to age, coupled with disorientation, incoherence and loss of consciousness. He advised heavy medication and complete



bed rest.

27. Admittedly, the petitioner, aged 86, suffers from cognitive impairment, pseudodementia and recurrent dizziness, along with a history of falls. A medical board from AIIMS has recommended that he requires constant monitoring due to the risk of falls. Given his diagnosed subjective cognitive decline, it is clear that he needs supervision throughout the day, which cannot be adequately provided by jail authorities. Furthermore, considering his age, the likelihood of improvement in his age-related infirmities is minimal and it is expected that his condition will continue to decline.
28. I am of the view that beneficial legislation in favour of a class of persons, which is reflective of constitutional spirit, should not be considered narrowly and must be given a liberal interpretation. Thus, the aforementioned infirmities in a senile stage combined with the need for constant '*monitoring*' coupled with frequent falls and forgetfulness makes the petitioner '*infirm*' under the proviso to section 45(1) of PMLA.
29. The Hon'ble Supreme Court in the case of ***Gautam Kundu v. Enforcement Directorate, (2015) 16 SCC 1*** has held as under:-

"34. ... As mentioned earlier, Section 45 of PMLA imposes two conditions for grant of bail, specified under the said Act. We have not missed the proviso to Section 45 of the said Act which indicates that the legislature has carved out an exception for grant of bail by a Special Court when any person is under the age of 16 years or is a woman or is sick or infirm. ... "



30. Therefore, I am of the view that the petitioner falls within the ambit of ‘*infirm*’ under the proviso to section 45(1) of PMLA and thus, he is not required to meet the twin test of section 45(1) of PMLA.
31. As regards the merits or demerits of the allegations against the petitioner are concerned, the same are pending adjudication before the learned trial court and any further appreciation of the evidence/material can be done at the trial stage.

Triple Test

32. Having said that, the petitioner, being the accused in the present case, will have to satisfy the triple test for grant of bail namely:-
- A. Flight risk
 - B. Influencing any witness
 - C. Tampering with evidence
33. Learned counsel for the respondent has argued that the petitioner fails to meet the triple test. It is stated that the petitioner has influenced witnesses in the past. It is also stated that the petitioner has tampered with the evidence. Thus, if granted bail, the petitioner will influence prosecution witnesses and tamper with evidence again.
34. To support the submissions, it is stated that the petitioner, along with Sanjay Chandra and Ajay Chandra, was running a covert office related to their illegal activities from Tihar Jail. Their associates namely, Lakhbir Sharma and Ravinder, were carrying out these illegal actions and bribing Tihar Jail staff to secure illegal favours.
35. Additionally, the statement of one Sunil Kher made on 10.09.2021 under section 50 of PMLA is relied upon, wherein it has been stated that Sunil Kher was threatened with severe consequences by the



petitioner and Ajay Chandra, if he disclosed anything to the ED officials regarding fake bills related to Trikar Group.

36. In the present case, the Order dated 26.08.2021 passed by the Hon'ble Supreme Court is only regarding Sanjay Chandra and Ajay Chandra, wherein they were shifted from Tihar Jail to Arthur Road Jail, Mumbai and Taloja Central Jail, Mumbai, respectively.
37. The said Order mentions no allegations against the petitioner with regard to the illegal activities in Tihar Jail and this matter is still under investigation in a separate case. In addition, there is no evidence, such as CDR records or location records, that has been placed on record to corroborate the statement of Sunil Kher under Section 50 of PMLA.
38. I am of the view that the statement of Sunil Kher under Section 50 of PMLA can only be analysed at the trial stage and not at the stage of grant of bail. In ***Chandra Prakash Khandelwal v. Directorate of Enforcement, 2023 SCC Online Del 1094***, this Court held as under:-

“34. ... What weight the statements under Section 50 of PMLA would carry at the end of trial cannot be tested at the stage of bail, more importantly when the intermediary companies were never made an accused in the present ECIR... ”
39. The petitioner has been released on interim bail since 08.08.2022 on medical grounds and there are no allegations of misuse of liberty by him while on bail.
40. As regards the flight risk, adequate restrictions can be imposed upon the petitioner.
41. For the said reasons, I am of the view that the petitioner meets the triple



test for grant of bail.

Delay in Trial

42. Furthermore, the present case was registered in 2018 and investigation *qua* the petitioner is complete but the trial is yet to begin.
43. There are 17 accused persons, 66 companies, 121 witnesses and 77,812 pages of documents plus enormous digital data which needs to be analysed in the present case. Thus, there is no likelihood of the trial to be concluded in the near future.
44. In the case of ***Pankaj Kumar Tiwari v. Directorate of Enforcement, 2024 SCC OnLine Del 7387***, a co-ordinate bench of this Court observed that the right of the accused to speedy trial is an important aspect which the courts must keep in contemplation while deciding a bail application as the same is higher sacrosanct constitutional right, which ought to take precedence. The relevant paragraph reads as under:-

“33. When there are multiple accused persons, lakhs of pages of evidence to assess, scores of witnesses to be examined, the trial is not expected to end anytime in the near future. Importantly, the delay being not attributable to accused, keeping the accused in custody by using Section 45 of the PMLA as a tool for incarceration is not permissible. Flow of liberty cannot be dammed by Section 45 without taking all other germane considerations into account. It is the duty of Constitutional Courts to champion the constitutional cause of liberty and uphold the majesty of Article 21.”



45. The Hon'ble Supreme Court in the case of **Manish Sisodia** (*supra*) upheld the right of an accused for expeditious trial even in PMLA cases and held as under:-

“37. ... In paragraph 28 of the said order, this Court observed that 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 Cr.P.C. and Section 45 of the PMLA. The Court held that the constitutional mandate is the higher law, and it is the basic right of the person charged of an offence and not convicted that he be ensured and given a speedy trial. It further observed that when the trial is not proceeding for reasons not attributable to the accused, the court, unless there are good reasons, would be guided to exercise the power to grant bail. The Court specifically observed that this would be true where the trial would take years. It could thus clearly be seen that this Court, in the first round of litigation between the parties, has specifically observed that in case of delay coupled with incarceration for a long period and depending on the nature of the allegations, the right to bail will have to be read into Section 45 of PMLA.

-x-x-x-x-

49. We find that, on account of a long period of incarceration running for around 17 months and the trial even not having been commenced, the appellant has been deprived of his right to speedy trial.



50. As observed by this Court, the right to speedy trial and the right to liberty are sacrosanct rights. On denial of these rights, the trial court as well as the High Court ought to have given due weightage to this factor.”

- 46.** Recently, in *V. Senthil Balaji (supra)*, again the Hon’ble Supreme Court whilst noting that the accused therein has undergone 15 months and considering the aforesaid judgment, observed as under:-

“25. Considering the gravity of the offences in such statutes, expeditious disposal of trials for the crimes under these statutes is contemplated. Moreover, such statutes contain provisions laying down higher threshold for the grant of bail. The expeditious disposal of the trial is also warranted considering the higher threshold set for the grant of bail. Hence, the requirement of expeditious disposal of cases must be read into these statutes. Inordinate delay in the conclusion of the trial and the higher threshold for the grant of bail cannot go together. It is a well-settled principle of our criminal jurisprudence that “bail is the rule, and jail is the exception.” These stringent provisions regarding the grant of bail, such as Section 45(1)(iii) of the PMLA, cannot become a tool which can be used to incarcerate the accused without trial for an unreasonably long time.

-x-x-x-x-

27. Under the Statutes like PMLA, the minimum sentence is three years, and the maximum is seven years. The minimum sentence is higher when the scheduled offence is under the



NDPS Act. When the trial of the complaint under PMLA is likely to prolong beyond reasonable limits, the Constitutional Courts will have to consider exercising their powers to grant bail. The reason is that Section 45(1)(ii) does not confer power on the State to detain an accused for an unreasonably long time, especially when there is no possibility of trial concluding within a reasonable time. What a reasonable time is will depend on the provisions under which the accused is being tried and other factors. One of the most relevant factor is the duration of the minimum and maximum sentence for the offence. Another important consideration is the higher threshold or stringent conditions which a statute provides for the grant of bail. Even an outer limit provided by the relevant law for the completion of the trial, if any, is also a factor to be considered. The extraordinary powers, as held in the case of K.A. Najeeb, can only be exercised by the Constitutional Courts. The Judges of the Constitutional Courts have vast experience. Based on the facts on record, if the Judges conclude that there is no possibility of a trial concluding in a reasonable time, the power of granting bail can always be exercised by the Constitutional Courts on the grounds of violation of Part III of the Constitution of India notwithstanding the statutory provisions. The Constitutional Courts can always exercise its jurisdiction under Article 32 or Article 226, as the case may be. The Constitutional



Courts have to bear in mind while dealing with the cases under the PMLA that, except in a few exceptional cases, the maximum sentence can be of seven years. The Constitutional Courts cannot allow provisions like Section 45(1)(ii) to become instruments in the hands of the ED to continue incarceration for a long time when there is no possibility of a trial of the scheduled offence and the PMLA offence concluding within a reasonable time. If the Constitutional Courts do not exercise their jurisdiction in such cases, the rights of the undertrials under Article 21 of the Constitution of India will be defeated. In a given case, if an undue delay in the disposal of the trial of scheduled offences or disposal of trial under the PMLA can be substantially attributed to the accused, the Constitutional Courts can always decline to exercise jurisdiction to issue prerogative writs. An exception will also be in a case where, considering the antecedents of the accused, there is every possibility of the accused becoming a real threat to society if enlarged on bail. The jurisdiction to issue prerogative writs is always discretionary.”

CONCLUSION

- 47.** In view of the above observations, the petitioner is entitled to grant of bail in the present case.
- 48.** For the aforesaid reasons, the petition is allowed and the petitioner is granted bail on the following terms and conditions:
 - A.** The petitioner shall furnish a personal bond with a surety in the



sum of Rs. 1,00,000 to the satisfaction of the Trial Court;

- B.** The petitioner shall appear before the Court as and when the matter is taken up for hearing unless exempted from personal appearance;
 - C.** The petitioner shall provide his mobile number to the Investigating Officer (IO) concerned at the time of release, which shall be kept in working condition at all times. The petitioner shall not switch off or change the same without prior intimation to the IO concerned, during the period of bail;
 - D.** In case the petitioner changes his address, he will inform the IO concerned and this Court also;
 - E.** The petitioner shall not leave the country during the bail period and surrender his passport at the time of release before the Trial Court;
 - F.** The petitioner shall not indulge in any criminal activity during the bail period;
 - G.** The petitioner shall not communicate with or intimidate or influence any of the prosecution witnesses or tamper with the evidence of the case.
- 49.** The observations hereinabove are only for the purposes of deciding the present bail petition and shall not affect the merits of the case.
- 50.** The petition is disposed of along with pending applications, if any.

JASMEET SINGH, J

MARCH 21st, 2025 / (SA)

Click here to check corrigendum, if any