**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**CRIMINAL MISCELLANEOUS No.58371 of 2025**
Arising Out of PS. Case No.-27 Year-2023 Thana- E.C.I.R (GOVERNMENT OFFICIAL) District- Patna

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Nitesh Kumar S/o Arvind Kumar Resident of Raj Bhawan, Salimpur Ahara, Gali No. 03, Hajam Toli, Phulwari Sharif, P.S.- Phulwari Sharif, Distt.- Patna, Bihar.

... ... Petitioner

Versus

The Union of India through Assistant Director, Patna Zonal Office, Enforcement Directorate (E.D.) Govt. of Inida, New Delhi

... ... Opposite Party

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**Appearance :**

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| For the Petitioner | : | Mr. Prashant Kashyap, Advocate |
| For the Union of India | : | Mr. K.N.Singh, Addl. S.G. |
| For the E.D. | : | Mr. Prabhat Kumar Singh, Advocate |

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**CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR**

**C.A.V. JUDGMENT**

**Date : 16-01-2026**

Heard Mr. Prashant Kashyap, learned counsel for the petitioner, Dr. K.N. Singh, learned Additional Solicitor General of India and Mr. Prabhat Kumar Singh, learned retained counsel for the Enforcement Directorate.

**2**. The present application has been moved on behalf of the petitioner seeking regular bail in connection with Special Trial (P.M.L.A.) Case No.12 of 2023, arising out of E.C.I.R. No. PTZO/27/2023 dated 17.10.2023 registered for the offence under section 4 of the Prevention of Money Laundering Act, 2002, pending before the Court of learned Sessions Judge-cum- Special Judge (PMLA), Patna.

**3**. The prosecution case in brief is that an information was received from NCB-Ireland alleging therein

that cyber fraud was committed on 07.12.2021 with one Ms. Carmel Fox, an Irish National, to the tune of 950 Euros (Rs.84,941.40) received by the A.D., NCB, India (C.B.I.). It is alleged that Ms. Carmel Fox received a call from a Mobile No. 08339852316 identifying herself as Stephanie from Eircom Technological Service and asked her about her broadband connection and said that a refund of 250 Euros is due and asked her bank account details, to which Ms. Carmel Fox provided the information. It is further alleged that as per information provided by the NCB Ireland that Nitesh Kumar (petitioner) allegedly transferred an amount of 950 Euros from the credit card of Ms. Carmel Fox to a rewire bank account which was further transferred to M/s. Leconix Business Centre Pvt. Ltd. having its registered office at Kolkata. It is further alleged that during investigation, it was found that the petitioner and Sk. Lutfur Rehman are the Directors of the Company which was incorporated on 26.11.2020. It was revealed that M/s Leconix Business Centre Pvt. Ltd has financial transactions with M/s Scrapix Consultancy Services Pvt. Ltd., of which Sagar Yadav and Prativa Yadav are the directors. It is stated that co-accused Sagar Yadav was the beneficial owner of M/s Leconix Business Centre and Nitesh Kumar (petitioner) was his associate and was

working with them.

**3.1**. It is also the case of the prosecution that a search operation was carried out in the premises of co-accused Sagar Yadav situated at Kolkata and Kharagpur. Later on, Sagar Yadav, his associate Santosh Kumar and Robin Kumar Yadav were arrested.

**3.2**. It is alleged that during investigation, it was found that the petitioner was an associate of the co-accused Robin Yadav and was involved in running fake call centres for committing cyber fraud with foreign nationals.

**3.3**. It is further the case of the prosecution that the petitioner had arranged several bank accounts for receiving, layering and laundering the Proceeds of Crime in lieu of commission received from the co-accused Robin Kumar. It is also alleged that the petitioner had provided the signed copies of Aadhar Card, PAN card and photographs to accused Sagar Yadav for incorporating a shell company used for receiving Proceeds of Crime and further layering and laundering. Investigation has further revealed that out of the several bank accounts arranged by the petitioner, two of such bank accounts have received the proceeds of crime to the tune of Rs.19.31 Lakhs and Rs.19.53 Lakhs as foreign remittance. Further, it is

the case of the prosecution that the petitioner had been operating his bank accounts in consultation with other co-accused persons and the petitioner used to withdraw Proceeds of Crime in cash and was in regular touch with Robin Kumar Yadav and Santosh Kumar. Apart from his own accounts, the petitioner has also arranged 7 to 8 bank accounts and provided the same to co-accused Robin Kumar Yadav for payment in lieu of some commission.

**3.4.** It is, therefore, the case of the prosecution that the petitioner has been directly and knowingly involved in the process or activity connected with commission of scheduled offence and criminal activities relating thereto and thus, he has committed the offence of money laundering as defined under section 3 of PMLA, 2002 punishable under section 4 read with Section 71 of PMLA, 2002, which, according to the prosecution, is evident from the fact that the petitioner in his statement recorded under section 50 of the P.M.L.A., has admitted of being involved in the commission of offence of cyber fraud committed with foreign nationals and has also accepted to have provided nearly 15-16 bank accounts to co-accused Robin Kumar Yadav in lieu of commission. Further, co-accused Santosh Kumar in his statement under Section 50 of

PMLA, 2002 has stated that the petitioner has provided bank account details to co-accused Robin Yadav. Relying on bank account transactions, extraction of mobile data and other materials, the prosecution has contended that the Proceeds of Crime is in the form of foreign remittance received in the accounts of the accused persons.

**3.5**. Based on the basis of aforesaid, Special Trial (P.M.L.A.) Case No.12 of 2023, arising out of E.C.I.R. No. PTZO/27/2023 has been instituted.

**4.** The learned counsel for the petitioner, at the outset, submits that the petitioner is innocent and has been falsely implicated for oblique reasons in the present criminal case. He further submits that according to the prosecution the petitioner is alleged to have withdrawn cash, however, no cash amount has ever been recovered from the conscious possession of the petitioner. Further, the petitioner is totally unaware of any cash transaction occurring in his HDFC bank account.

**5**. It has been submitted by learned counsel for the petitioner that the petitioner is an unemployed youth, who came in contact with the co-accused Robin Yadav in the hope of getting employment, but the said co-accused Robin Yadav in the name of giving employment took the Aadhar Card and other

relevant documents of the petitioner and subsequently, opened a shell company namely, M/s. Leconix Business Centre Private Limited and made the petitioner as Director of the said Company. It has further been submitted that the aforesaid bank account was operated wholly and completely by co-accused Robin Yadav and Sagar Yadav.

**6**. Learned counsel for the petitioner has emphasized that the other co-accused persons, particularly, Robin Yadav and Sagar Yadav have misused the personal documents of the petitioner to open bank accounts and shell companies in the name of the petitioner, for which, the petitioner cannot be held liable.

**7**. Adverting to the statements of the witnesses namely, Tuhin Mukhopadhyay and Aniket Gupta, recorded under section 50 of the P.M.L.A., learned counsel for the petitioner has submitted that the co-accused Sagar Yadav has introduced himself to the aforesaid witnesses as Nitesh Kumar (petitioner), purportedly acting as the Director of M/s. Leconix Centre Business Private Limited and further upon such impersonation, the co-accused Sagar Yadav had also applied for hiring commercial spaces on rent in the name of the aforesaid shell company. Therefore, it is the categorical submission of

leanned counsel for the petitioner that the petitioner himself is a victim, whose identity and documents have been misused for the wrongful gain of the other accused persons.

**8**. Adverting to the proviso of Section 45 of the P.M.L.A., it has been submitted that in the present case, the allegation against the petitioner is that he had received a sum of Rs.83,941.40/- which is far less than Rs. 1 crore and therefore, no case under section 4 of the P.M.L.A. is made out.

**9**. It has been emphatically submitted by learned counsel for the petitioner that the petitioner is in custody since 20.12.2023 having clean antecedent and there is no likelihood of conclusion of trial in near future. The petitioner has already suffered a long period of incarceration while still being an under-trail and the trial itself is moving at a snail's pace and therefore, the petitioner is entitled to be enlarged on bail in view of the decision of the Hon'ble Supreme Court in the case of ***V. Senthil Balaji vs. The Deputy Director, Directorate of Enforcement*** reported as ***2024 SCC OnLine SC 2626*** wherein the Hon'ble Supreme Court has held that the Constitutional Courts can enlarge the accused on bail in cases of continued and prolonged incarceration and where there is no possibility of conclusion of trial in near future.

**10**. Lastly, learned counsel for the petitioner has submitted that similarly situated co-accused persons namely, Md. Hussain, Ravindran Prasad Verma and Ramesh Prasad Barnawal have been granted bail by a coordinate Bench of this Court vide orders dated 07.10.2025 passed in Criminal Miscellaneous Nos. 14280 of 2025, 8957 of 2025 and 11780 of 2025 respectively. Therefore, it is the contention of the petitioner that the petitioner also deserves bail on the ground of parity in view of the judgment of the Hon'ble Supreme Court in the case of ***Sagar vs. State of U.P. & Anr.*** reported as ***2025 SCC OnLine SC 2584.***

**11**. In this case, the Enforcement Directorate has filed a counter affidavit wherein the facts of the present case leading to the recording of the subject ECIR dated 17.10.2023 have been elaborated. It has been submitted by learned counsel for the Enforcement Directorate that the petitioner has been directly and knowingly involved in the process of laundering the Proceeds of Crime and has assisted co-accused Sagar Yadav and his associates in the crime.

**12**. Refuting the submission advanced on behalf of the petitioner, learned counsel for the Enforcement Directorate has submitted that Section 45 of the P.M.L.A.

imposes two conditions for grant of bail specified under the Act and the same would have overriding effect on the general provisions of the Cr.P.C. In support of this submission, he has placed reliance on a decision of the Hon'ble Supreme Court in the case of ***Gautam Kundu vs. Directorate of Enforcement*** reported as ***(2015) 16 SCC 1.***

**13**. The learned counsel for the Enforcement Directorate has relied upon the following decisions in order to contend that in the facts of the present case the threshold of section 45 of the P.M.L.A. is not met and therefore, the petitioner may not be enlarged on bail:-

***i.*** ***Tarun Kumar vs. Assistant Director, Directorate of Enforcement*** reported as ***2023 SCC OnLine SC 1486;***

***ii.*** ***Enforcement Directorate vs. Aditya Tripathi*** reported as ***2023 SCC OnLine SC 619***;

***iii***. ***State of Bihar & Anr. vs. Amit Kumar @ Bachcha Rai*** reported as ***(2017) 4 SCR 503***

***iv.*** ***Nitesh Purohit vs. Enforcement Directorate*** reported in ***2023 SCC OnLine Chh 3828.***

***v.*** ***Union of India vs. Kanhaiya Prasad***

reported as ***2025 SCC OnLine SC 306;***

***vi. Pradeep Nirankarnath Sharma vs. Union of India*** reported as ***2025 INSC 349.***

**14.** Lastly, it has been submitted that during the course of search at the premises of the petitioner, he tried to flee away and tried to frustrate the proceeding under the P.M.L.A. and therefore, the petitioner may not be granted bail.

**15.** I have considered the submissions of the parties and perused the material on record.

**16**. From perusal of the records, it appears that the thrust of allegation against the petitioner is that he had arranged several bank accounts in order to commit financial fraud on foreign nationals in lieu of commission from other co-accused persons. From the records, it appears that the NCB, Ireland provided information that the petitioner allegedly transferred an amount of 950 Euros from the credit card of Ms. Carmel Fox to a rewire bank account which was further transferred to M/s Leconix Business Centre Pvt. Ltd. having its registered office at Kolkata. Subsequently, the name of the petitioner has been arrayed as accused no.3 in the prosecution complaint based on the subject ECIR.

**17.** The grant of bail in the cases of P.M.L.A.

requires consideration in terms of section-45 of the Act and therefore, it will be relevant to quote Section 45 of the P.M.L.A., 2002, which reads as under:-

> ***"45. Offences to be cognizable and non-bailable.***
>
> *(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence [under this Act] shall be released on bail or on his own bond unless--*
>
> *(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:*
>
> *Provided further that the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by--*
>
> *(i) the Director; or*
>
> *(ii) any officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government by a general or special order made in this behalf*

*by that Government.*

*(1A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.]*

*(2) The limitation on granting of bail specified in sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.*

*Explanation.--For the removal of doubts, it is clarified that the expression "Offences to be cognizable and non-bailable" shall mean and shall be deemed to have always meant that all offences under this Act shall be cognizable offences and non-bailable offences notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (2 of 1974), and accordingly the officers authorised under this Act are empowered to arrest an accused without warrant, subject to the fulfillment of conditions under section 19 and subject to the conditions enshrined under this section."*

**18**. In the case of ***Vijay Madanlal Choudhary vs. Union of India*** reported as ***(2023) 12 SCC 1***, the Hon'ble Supreme Court while upholding the Constitutionality of section 45 of the P.M.L.A. has held that though the aforesaid provision imposes stringent twin conditions for grant of bail, but the aforesaid statutory condition does not impose an absolute

restraint on the grant of bail and the discretion vests in the Court, which is to be exercised fairly, judiciously and not in an arbitrary manner. The relevant paragraphs of the aforesaid decision read as under:-

> *"302. It is important to note that the twin conditions provided under Section 45 of the 2002 Act, though restrict the right of the accused to grant of bail, but it cannot be said that the conditions provided under Section 45 impose absolute restraint on the grant of bail. The discretion vests in the court which is not arbitrary or irrational but judicial, guided by the principles of law as provided under Section 45 of the 2002 Act. While dealing with a similar provision prescribing twin conditions in Mcoca, this Court in Ranjitsing Brahmajeetsing Sharma [(2005) 5 SCC 294] held as under :-*
>
> > *"44. The wording of Section 21(4), in our opinion, does not lead to the conclusion that the court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act. If such a construction is placed, the court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the applicant. Such cannot be the intention of the legislature. Section 21(4) of Mcoca, therefore, must be construed reasonably. It must be so construed that the court is able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much*

*before commencement of trial. Similarly, the court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in futuro must be an offence under the Act and not any other offence. Since it is difficult to predict the future conduct of an accused, the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence.*

*45. It is, furthermore, trite that for the purpose of considering an application for grant of bail, although detailed reasons are not necessary to be assigned, the order granting bail must demonstrate application of mind at least in serious cases as to why the applicant has been granted or denied the privilege of bail.*

*46. 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. However, while dealing with a special statute like Mcoca having regard to the provisions contained in sub-section (4) of Section 21 of the Act, the court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. The findings recorded by the court while granting or refusing bail undoubtedly would be tentative in nature, which may not have any bearing on the merit of the case and the trial court would,*

*thus, be free to decide the case on the basis of evidence adduced at the trial, without in any manner being prejudiced thereby." (emphasis supplied)*

*303. We are in agreement with the observation made by the Court in Ranjitsing Brahmajeetsing Sharma. The Court while dealing with the application for grant of bail need not delve deep into the merits of the case and only a view of the court based on available material on record is required. The court will not weigh the evidence to find the guilt of the accused which is, of course, the work of the trial court. The court is only required to place its view based on probability on the basis of reasonable material collected during investigation and the said view will not be taken into consideration by the trial court in recording its finding of the guilt or acquittal during trial which is based on the evidence adduced during the trial. As explained by this Court in Nimmagadda Prasad v. CBI, (2013) 7 SCC 466, the words used in Section 45 of the 2002 Act are "reasonable grounds for believing" which means the court has to see only if there is a genuine case against the accused and the prosecution is not required to prove the charge beyond reasonable doubt."*

**19**. The Hon'ble Supreme Court in its recent decision rendered in the case of ***Manish Sisodiya vs. Directorate of Enforcement*** reported as ***(2024) 12 SCC 660*** has clarified and crystallized the law on the aspect of harmonization between the stringent twin conditions under section 45 of the

P.M.L.A. and the valuable and treasured right to personal liberty enshrined under Article 21 of the Constitution of India. The relevant portion of the aforesaid decision read as under:-

> *"47. **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.***
>
> ***48. 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.***
>
> *49. Recently, this Court had an occasion to consider an application for bail in Javed Gulam Nabi Shaikh v. State of Maharashtra [(2024) 9 SCC 813] wherein the accused was prosecuted under the provisions of the Unlawful Activities (Prevention) Act, 1967. This Court surveyed the entire law right from the judgment of this Court in Gudikanti Narasimhulu v. High Court of A.P. [(1978) 1 SCC 240], Gurbaksh Singh Sibbia v. State of Punjab [(1980) 2 SCC 565], Hussainara Khatoon (1) v. State of Bihar [(1980) 1 SCC 81], Union of India v. K.A. Najeeb [(2021) 3 SCC 713] and Satender Kumar Antil v. CBI [(2022) 10 SCC 51] .*
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> *50. The Court observed thus: (Javed Gulam Nabi Shaikh case*
>
> > *"17. **If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21***

***of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime."***

51. *The Court also reproduced the observations made in Gudikanti Narasimhulu [(1978) 1 SCC 240], which read thus:*

> *"8. In the aforesaid context, we may remind the trial courts and the High Courts of what came to be observed by this Court in Gudikanti Narasimhulu v. High Court of A.P. (1978) 1 SCC 240. We quote (SCC p. 243, para 5):*
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> > *'5. ... What is often forgotten, and therefore warrants reminder, is the object to keep a person in judicial custody pending trial or disposal of an appeal. Lord Russel, C.J., said [R. v. Rose (1898) 18 Cox CC 717]:*
> >
> > *"**I observe that in this case bail was refused for the prisoner. It cannot be too strongly impressed on the magistracy of the country that bail is not to be withheld as a punishment, but that the requirements as to bail are merely to secure the attendance of the prisoner at trial.**"*

52. ***The Court in Javed Gulam Nabi Shaikh case further observed that, over a period of time, the trial courts and the High Courts have forgotten a***

***very well-settled principle of law that bail is not to be withheld as a punishment.*** *From our experience, we can say that it appears that the trial courts and the High Courts attempt to play safe in matters of grant of bail. The principle that bail is a rule and refusal is an exception is, at times, followed in breach. On account of non-grant of bail even in straightforward open-and-shut cases, this Court is flooded with huge number of bail petitions thereby adding to the huge pendency.* ***It is high time that the trial courts and the High Courts should recognise the principle that "bail is rule and jail is exception".***

53. ***In the present case, in ED matter as well as CBI matter, 493 witnesses have been named. The case involves thousands of pages of documents and over a lakh pages of digitised documents. It is thus clear that there is not even the remotest possibility of the trial being concluded in the near future. In our view, keeping the appellant behind bars for an unlimited period of time in the hope of speedy completion of trial would deprive his fundamental right to liberty under Article 21 of the Constitution. As observed time and again, the prolonged incarceration before being pronounced guilty of an offence should not be permitted to become punishment without trial.***

54. *As observed by this Court in Gudikanti Narasimhulu v. High Court of A.P., (1978) 1 SCC 240, the objective to keep a person in judicial custody pending trial or disposal of an appeal is to secure the attendance of the prisoner at trial.*

55. *In the present case, the appellant is having deep roots in the society. There is no possibility of him fleeing away from the country and not being*

*available for facing the trial. In any case, conditions can be imposed to address the concern of the State.*

*56. Insofar as the apprehension given by the learned ASG regarding the possibility of tampering the evidence is concerned, it is to be noted that the case largely depends on documentary evidence which is already seized by the prosecution. As such, there is no possibility of tampering with the evidence. Insofar as the concern with regard to influencing the witnesses is concerned, the said concern can be addressed by imposing stringent conditions upon the appellant." (emphasis supplied).*

**20.** In light of the aforesaid judgments, it is evident that the stringent requirement under section 45 of the P.M.L.A. for grant of bail i.e. the twin conditions do not create an absolute restraint or barrier in granting bail on the grounds of delay in conclusion of trial and long period of incarceration.

**21**. In cases involving money laundering, the PMLA provides stringent conditions under section 45 for grant of bail, however such provisions have to be harmoniously interpreted with the right of personal liberty enshrined under Article 21 of the Constitution of India. It is trite law that statutory bar under such bail provisions cannot override the rights of personal liberty and speedy trial, nor can such statutory restrictions be construed as an instrument for indefinite incarceration.

**22**. The Hon'ble Supreme Court in the case of ***Prem Prakash vs. Union of India through Directorate of Enforcement*** reported as ***(2024) 9 SCC 787*** relying upon ***Vijay Madanlal Choudhary (supra)*** has held as under:-

> *"12.* ***All that Section 45 PMLA mentions is that certain conditions are to be satisfied. The principle that, "bail is the rule and jail is the exception" is only a paraphrasing of Article 21 of the Constitution of India, which states that no person shall be deprived of his life or personal liberty except according to the procedure established by law. Liberty of the individual is always a Rule and deprivation is the exception. Deprivation can only be by the procedure established by law, which has to be a valid and reasonable procedure. Section 45 PMLA by imposing twin conditions does not re-write this principle to mean that deprivation is the norm and liberty is the exception. As set out earlier, all that is required is that in cases where bail is subject to the satisfaction of twin conditions, those conditions must be satisfied.***
>
> *13. Independently and as has been emphatically reiterated in Manish Sisodia v. Enforcement Directorate, (2024) 12 SCC 660, relying on Ramkripal Meena v. Enforcement Directorate, (2024) 12 SCC 684 and Javed Gulam Nabi Shaikh v. State of Maharashtra, (2024) 9 SCC 813,* ***where the accused has already been in custody for a considerable number of months and there being no likelihood of conclusion of trial within a short span, the rigours of Section 45 PMLA can be suitably relaxed to afford conditional liberty. Further, Manish Sisodia v. Enforcement***

***Directorate, (2024) 12 SCC 660 reiterated the holding in Javed Gulam Nabi Sheikh v. State of Maharashtra, (2024) 9 SCC 813], that keeping persons behind the bars for unlimited periods of time in the hope of speedy completion of trial would deprive the fundamental right of persons under Article 21 of the Constitution of India and that prolonged incarceration before being pronounced guilty ought not to be permitted to become the punishment without trial.***

14. *In fact, Manish Sisodia v. Enforcement Directorate, (2024) 12 SCC 660 reiterated the holding in Manish Sisodia v. CBI (2024) 12 SCC 691 : wherein it was held as under : (Manish Sisodia case [Manish Sisodia v. CBI, (2024) 12 SCC 691 : 2023 SCC OnLine SC 1393], SCC paras 34-35)*

> *"34. 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, kidnapping 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.*
>
> *35.* ***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****."*

*15.* ***It is in this background that Section 45 PMLA needs to be understood and applied. Article 21 being a higher constitutional right, statutory provisions should align themselves to the said higher constitutional edict." (emphasis supplied)***

**23**. In another decision, the Hon'ble Supreme Court in the case of ***V. Senthil Balaji (supra)*** has held as under:-

*"25. Considering the gravity of the offences in such statutes, expeditious disposal of trials for the crimes under these statutes is contemplated. Moreover, such statutes contain provisions laying down higher threshold for the grant of bail. T****he expeditious disposal of the trial is also warranted considering the higher threshold set for the grant of bail. Hence, the requirement of expeditious disposal of cases must be read into these statutes. Inordinate delay in the conclusion of the trial and the higher threshold for the grant of bail cannot go together****. It is a well-settled principle of our criminal*

***jurisprudence that "bail is the rule, and jail is the exception." These stringent provisions regarding the grant of bail, such as Section 45(1)(iii) of the PMLA, cannot become a tool which can be used to incarcerate the accused without trial for an unreasonably long time.***

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

27. *Under the Statutes like PMLA, the minimum sentence is three years, and the maximum is seven years. The minimum sentence is higher when the scheduled offence is under the NDPS Act. When the trial of the complaint under PMLA is likely to prolong beyond reasonable limits, the Constitutional Courts will have to consider exercising their powers to grant bail. The reason is that Section 45(1)(ii) does not confer power on the State to detain an accused for an unreasonably long time, especially when there is no possibility of trial concluding*

*within a reasonable time. What a reasonable time is will depend on the provisions under which the accused is being tried and other factors. One of the most relevant factor is the duration of the minimum and maximum sentence for the offence. Another important consideration is the higher threshold or stringent conditions which a statute provides for the grant of bail. Even an outer limit provided by the relevant law for the completion of the trial, if any, is also a factor to be considered. The extraordinary powers, as held in the case of K.A. Najeeb2, can only be exercised by the Constitutional Courts. The Judges of the Constitutional 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.*

28. *Some day, the courts, especially the Constitutional Courts, will have to take a call on a peculiar situation that arises in our justice delivery system. There are cases where clean acquittal is granted by the criminal courts to the accused after very long incarceration as an undertrial. When we say clean acquittal, we are excluding the cases where the witnesses have turned hostile or there is a bona fide defective investigation. In such cases of clean acquittal, crucial years in the life of the accused are lost. In a given case, it may amount to violation of rights of the accused under Article 21 of the Constitution which may give rise to a claim for compensation.*

29. *As stated earlier, the appellant has been incarcerated for 15 months or more for the offence punishable under the PMLA. In the facts of the case, the trial of the scheduled offences and, consequently, the PMLA offence is not likely to be completed in three to four years or even more. If the appellant's detention is continued, it will amount to an infringement of his fundamental right under Article 21 of the Constitution of India of speedy trial." (emphasis supplied).*

**24**. It is now settled principle that the stringent statutory provisions under section 45 of the PMLA has to be harmonized with the right to personal liberty enshrined under Article 21 of the Constitution in light of the decisions of the Hon'ble Supreme Court in the cases of ***V. Senthil Balaji (supra)*** and ***Manish Sisodia (supra).*** The prolonged incarceration before even being pronounced guilty of an offence should not be permitted to become a punishment without trial and when there is long period of incarceration and the trial is not likely to be concluded soon then the accused cannot be deprived of his liberty and weightage has to be given while considering his bail application. In the case of ***V. Senthil Balaji (supra),*** the Hon'ble Supreme Court has categorically held that if the Court concludes that there is no possibility of the trial concluding in a reasonable time, the power of granting bail can always be exercised by Constitutional Courts on the ground of violation of part-III of the Constitution notwithstanding the statutory provisions.

**25**. In the present case, there are altogether 31 prosecution witnesses and 44 documents, which runs into 6125 pages and the trial itself will take considerable time and it is not reasonably excepted to conclude soon and therefore, it would

not be in the interest of justice and would be affront to the fundamental rights of the petitioner, to keep him in custody as under-trial for an indefinite period. Further, the allegations levelled against the petitioner involves complex questions and issues which warrants detailed appreciation of evidence which is to be considered by the Special Court during trial.

**26**. In the considered opinion of this Court, the petitioner, who is in custody since 20.12.2023 having clean antecedent and similarly situated co-accused persons have been granted bail by a coordinate Bench of this Court, deserves to be enlarged on bail on the grounds of his prolonged incarceration and that there being no possibility of conclusion of trial in near future. Further, keeping the petitioner in custody without actually being held guilty would be against Article 21 of the Constitution of India and the law laid down by the Hon'ble Supreme Court in the cases of ***V. Senthil Balaji (supra)*** and ***Manish Sisodia (supra).***

**27.** Accordingly, let the petitioner be released on bail on furnishing bail bonds of Rs.1,00,000/- (Rupees One Lakh) with two sureties of the like amount each to the satisfaction of learned Sessions Judge-cum-Special Judge (PMLA), Patna / concerned Court below, in connection with

Special Trial (P.M.L.A.) Case No.12 of 2023, arising out of E.C.I.R. No. PTZO/27/2023, subject to the following conditions:-

i. The petitioner shall not leave the country without the permission of the Trial Court;

ii. The petitioner shall appear before the Special Court / concerned Court as and when the matter shall be taken up i.e. on each and every date.

iii. The petitioner shall provide his mobile number to the Enforcement Directorate at the time of his release, which shall be kept in working condition and active at all times and he shall not switch off or change the same without prior intimation to the Enforcement Directorate during the period of bail.

iv. In case, the petitioner changes his address, he will inform the Enforcement Directorate as well as to the concerned Court.

v. The petitioner shall not indulge in any criminal activity during the bail period.

vi. The petitioner shall not influence the

prosecution witnesses directly or remotely.

vii. The prosecuting agency will be at liberty to file an application for modification / recalling of the order passed by this Court if the petitioner violates any of the conditions imposed by this Court.

**28**. Accordingly, the present bail application is allowed with the aforesaid conditions.

**29.** Needless to state that this Court has not expressed any opinion on the merits of the case.

**(Sandeep Kumar, J)**

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| **AFR/NAFR** | N.A.F.R. |
| **CAV DATE** | 10.12.2025 |
| **Uploading Date** | 16.01.2026 |
| **Transmission Date** | 16.01.2026 |