2024 INSC 595

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2024
[Arising out of SLP(Criminal) No. 8781 of 2024]

MANISH SISODIA ...APPELLANT(S)

VERSUS

DIRECTORATE OF ENFORCEMENT ...RESPONDENT(S)

WITH

CRIMINAL APPEAL NO. OF 2024
[Arising out of SLP(Criminal) No. 8772 of 2024]

J U D G M E N T

B.R. GAVAI, J.

1. Leave granted. Appeals heard on merits.

2. The present appeals challenge the judgment and order dated 21st May 2024 passed by the learned Single Judge of the High Court of Delhi at New Delhi in Bail Application Nos. 1557 and 1559 of 2024, thereby rejecting the said applications filed by the present appellant for grant of bail. The aforesaid two applications were filed seeking bail in connection with ED Case No. HIU-II/14/2022 registered

against the appellant by the Directorate of Enforcement (for short, 'ED') and First Information Report (FIR) No. RC0032022A0053 of 2022 registered against the appellant by the Central Bureau of Investigation (for short, 'CBI').

3. FIR No. RC0032022A0053 of 2022 came to be registered by the CBI on 17th August 2022, and ED Case No. HIU-II/14/2022 came to be registered by the ED on 22nd August 2022.

4. Since both the cases arise out of similar facts, the latter being the predicate offence and the former being a case registered on the basis of the predicate offence, both these appeals are heard and decided together.

FACTS IN BRIEF:

5. The present case travelled two rounds before the trial court, the High Court and this Court. This is now the third round before this Court wherein the appellant is seeking bail in connection with the aforesaid two cases.

6. On the basis of a letter dated 20th July 2022 addressed by Shri Vinai Kumar Saxena, the Lieutenant Governor of Delhi, alleging irregularities in the framing and

implementation of Delhi's Excise Policy for the year 2021-22, the Director, Ministry of Home Affairs had directed an enquiry into the said matter vide Office Memorandum dated 22nd July 2022. On 26th February 2023, the appellant came to be arrested by the CBI. Subsequently, the appellant was arrested by the ED on 9th March 2023.

7. After investigation, CBI filed charge-sheet on 25th April 2023 for the offences punishable under Sections 7, 7A, 8 and 12 of the Prevention of Corruption Act, 1988 (for short, 'PC Act') read with Sections 420, 201 and 120B of the Indian Penal Code, 1860 (for short, 'IPC'). Upon completion of investigation, the ED filed a complaint under Section 3 of the Prevention of Money Laundering Act, 2002 (for short, 'PMLA') on 4th May 2023.

8. The first application for regular bail of the appellant in CBI matter came to be rejected by the High Court on 30th May 2023. Subsequently, the first application for regular bail of the appellant in ED matter came to be rejected by the High Court on 3rd July 2023. This Court, vide common order dated 30th October 2023 (hereinafter referred to as "the first order of this Court") rejected the regular bail applications of

the appellant in the CBI matter and the ED matter, with certain observations which we will refer to in the subsequent paragraphs.

9. Subsequently, in view of the liberty granted by this Court, the appellant filed second bail application before the trial court on 27th January 2024. In the said proceedings, the appellant was granted interim protection. However, by an order dated 30th April 2024, the trial court rejected the said bail application on the ground that there was no change in the circumstances.

10. The appellant thereafter filed second bail application before the High Court on 2nd May 2024. Vide impugned judgment and order dated 21st May 2024, the learned Single Judge of the High Court rejected the said bail application also.

11. Being aggrieved thereby, the appellant had approached this Court by filing Special Leave Petition (Criminal) Nos. 7795 and 7799 of 2024.

12. The matter was heard on 4th June 2024. This Court, in the said order (hereinafter referred to as "the second order of this Court") recorded the submissions of the learned Solicitor

General that the investigation would be concluded and final complaint/charge-sheet would be filed expeditiously and at any rate on or before 3rd July 2024 and immediately thereafter, the trial court would be free to proceed with the trial. This Court recorded the submissions made by the learned Solicitor General and observed that having regard to the fact that the period of "6-8 months" fixed by this Court by order dated 30th October 2023 had not yet come to an end, disposed of the said petition with liberty to revive his prayer afresh after filing of the final complaint/charge-sheet.

13. Accordingly, after filing of the final complaint/charge-sheet, the appellant has approached this Court by way of the present appeals. This Court, vide order dated 16th July 2024 had issued notice. In response thereto, counter affidavit has been filed on behalf of the ED as well as the CBI opposing the present appeals.

SUBMISSIONS:

14. We have extensively heard Dr. Abhishek Manu Singhvi, learned Senior Counsel appearing on behalf of the appellant and Shri Suryaprakash V. Raju, learned Additional Solicitor General (ASG) appearing on behalf of the respondents.

15. A preliminary objection has been raised on behalf of the learned ASG that the appellant cannot be permitted to file second set of SLPs to challenge the order of the High Court dated 21st May 2024 when the earlier SLPs arising out of the same order were disposed of. He submitted that the liberty granted by this Court vide order dated 4th June 2024 has to be construed as a liberty to apply to the trial court afresh. It is submitted that, only after the appellant approaches the trial court and in the event he does not succeed before the trial court, thereafter he approaches the High Court and in the event he also does not succeed before the High Court, then only he would be entitled to approach this Court. He therefore submitted that the present appeals deserve to be rejected thereby relegating the appellant to approach the trial court afresh. To buttress his submission, Shri Raju relied on the judgment of this Court in the case of ***Kunhayammed and Others v. State of Kerala and Others***[1].

16. The said preliminary objection has been opposed by Dr. Singhvi, learned Senior Counsel appearing on behalf of the appellant contending that this Court had specifically, vide its

[1] **(2000) 6 SCC 359 : 2000 INSC 339**

first order dated 30th October 2023, granted liberty to the appellant to move a fresh application for bail in case the trial does not conclude within next 6-8 months and also in case the trial is protracted and proceeds at a snail's pace in next three months. He submitted that, admittedly, the trial has not been concluded within a period of 6-8 months from the date of the first order of this Court. He further submitted that the record would show that the trial was protracted and proceeded at a snail's pace in the period of three months after the first order of this Court was passed. He submitted that the second order of this Court clearly reserves the right of the appellant to revive the request afresh after filing of the final complaint/charge-sheet as assured by the learned Solicitor General. Dr. Singhvi therefore prays for rejection of the preliminary objection.

17. On merits, Dr. Singhvi submitted that this Court, vide its first order dated 30th October 2023, has given various findings in favour of the appellant. It is submitted that, a perusal of the same would clearly reveal that at number of places, this Court has given findings which would show that the respondents have not been in a position to make out a

prima facie case. Dr. Singhvi further submitted that a perusal of the record would reveal that even the investigation in the case is not complete. He therefore submitted that unless the investigation is complete, the trial cannot proceed. He submitted that three more supplementary complaints have been filed on 10th May 2024, 17th May 2024 and 20th June 2024 in the ED matter and as on 27th July 2024, there were 40 persons who have been arrayed as accused in the proceedings with more than 8 complaints. He further submitted that, in the ED matter, the ED has cited 224 witnesses and produced 32,000 pages of documents. He further submitted that, in the CBI matter, the CBI has cited 269 witnesses and produced around 37,000 pages of documents. It is therefore submitted that in all there are 493 witnesses, excluding the ones in the 4th Supplementary Charge-sheet filed by the CBI, who will have to be examined and that in total the documents are running into around 69,000 pages.

18. Dr. Singhvi submitted that the ED has deliberately concealed the documents it acquired during investigation by putting documents exculpating the accused persons in the

category of "un-relied upon documents". It is submitted that, as such, it was necessary for the appellant to inspect such "un-relied upon documents". He further submitted that there was an inordinate delay on the part of the ED and the CBI in producing the list of "un-relied upon documents".

19. Dr. Singhvi submitted that, taking into consideration the voluminous number of witnesses and documents, there is no possibility of the trial seeing the light of the day and therefore the appeals filed by the appellant deserve to be allowed.

20. Shri Raju vehemently opposed the present appeals. He submitted that this Court, in its first order, after enumerating various factors on merits of the matter in paragraph 25 has held that the Court was not inclined to accept the prayer for grant of bail. It is therefore submitted that the appeals of the present appellant on merits were specifically rejected.

21. Shri Raju further submitted that, though the Court granted liberty to file a fresh application in the circumstances enumerated in paragraph 29, it was held that the same would be considered by the trial court on merits without

being influenced by the dismissal of the earlier bail applications including the said first order. It is therefore submitted that the trial court as well as the High Court were required to take into consideration the merits of the matter. However, the present appellant opposed the consideration of the application on merits and insisted on consideration of the application only on the ground of delay in trial. It is therefore submitted that both the courts have rightly considered the merits of the matter and after considering the merits, found that the appellant was not entitled to grant of bail. He submitted that no interference would be warranted.

22. Shri Raju submitted that the trial court and the High Court have specifically come to a finding that the appellant has delayed the pre-charge proceedings by taking recourse to the provisions of Section 207 of Criminal Procedure Code, 1973 (for short, 'Cr.P.C.'). He submitted that more than hundred applications have been filed out of which many are under Section 207 Cr.P.C. These applications have been filed only for the purpose of delaying the trial. It is submitted that though in view of the law laid down by this Court in the

case of ***P. Ponnusamy v. State of Tamil Nadu***[2]**,** such applications could have been filed only after framing of the charges, the same have been intentionally filed at a pre-charge stage of the trial, so as to delay the framing of the charges. He submitted that though the appellant is entitled to file an application for discharge, the same has not been filed only in order to protract the trial. He submitted that the totality of the circumstances would reveal that it is the appellant who has been protracting the trial. It is submitted that as the appellant himself is responsible for protracting the trial, he cannot be permitted to take the benefit of the same.

23. The learned ASG submitted that unless the triple conditions as stipulated under Section 45 of the PMLA are satisfied, no person accused of an offence shall be released on bail. It is submitted that, in the present case, this Court itself by the first order has found that the appellant was not entitled for bail on merits and as such, the second condition stipulated under Section 45 of the PMLA that there are

[2] **2022 SCC OnLine SC 1543 : 2022 INSC 1175**

reasonable grounds for believing that he is not guilty of such offence, would not be satisfied in the present case.

24. The learned ASG further submitted that the appellant is a very influential person having occupied the office of Deputy Chief Minister of Delhi when the crime was committed. He submitted that if the appellant is released on bail, there is every possibility of him influencing the witnesses or tampering with the evidence.

25. Dr. Singhvi, in rejoinder, has submitted that the contention that the trial is being delayed due to the applications being filed by the appellant under Section 207 Cr.P.C. is totally incorrect. He submitted that the said applications were required to be filed since the prosecution had not placed on record the documents exculpating the accused persons by placing the same in the category of "un-relied upon documents". He submitted that in order to avail the right of a fair trial and in adherence to the principles of natural justice as encapsulated in Section 207 Cr.P.C., the appellant was forced to file such applications. However, each of these applications were vehemently opposed by the prosecution. It is submitted that the said material ought to

have been placed on record by the prosecution themselves, however, for the reasons best known to the prosecution, they have not done so. He submitted that the appellant has filed only 14 applications in ED case and 13 applications in CBI case and that all these applications have been allowed by the learned trial judge. He lastly submitted that even as per the prosecution, if the entire "un-relied upon documents" are to be supplied in digital form, it will take a long time. To support his submission, Dr. Singhvi places reliance on the compliance report dated 7th May 2024 filed by the Assistant Director of ED which would fortify this position.

CONSIDERATION OF PRELIMINARY OBJECTION:

26. We will first deal with the preliminary objection of the learned ASG with regard to the filing of the second set of appeals before this Court challenging the order of the High Court dated 21st May 2024 i.e., on the point of maintainability.

27. Undisputedly, the appellant had earlier challenged the same order dated 21st May 2024 vide SLP (Criminal) Nos. 7795 and 7799 of 2024. On doing so, a Division Bench of this Court passed the order dated 4th June 2024. It will be

apposite to refer to the observations made by this Court in the said order, which read thus:

> "Though, elaborate arguments have been made, we do not propose to go into the said arguments or dwell upon it and then record our reasons for the simple reason that Co-ordinate Bench while dismissing the appeals vide order dated 30.10.2023, as noticed hereinabove has granted liberty to the appellant, i.e., the petitioner herein to move a fresh application for bail by placing reliance on the assurance given on behalf of the prosecution that they would conclude the trial by taking appropriate steps within next 6-8 months and as such the liberty was extended to the petitioner herein to move a fresh application in case of change in circumstances, or in case the trial is protracted and proceeds at a snail's pace in next three months. It was also observed that if such an application is filed in the aforesaid circumstances, the same would be considered by the trial court on merits without being influenced by the dismissal of the earlier bail application including the judgment of this Court.
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> Shri Tushar Mehta, learned Solicitor General on instructions would submit that the investigation would be concluded and final complaint/charge sheet would be filed expeditiously and at any rate on or before 03.07.2024 and immediately thereafter, the trial court will be free to proceed with trial. In the light of the said submissions made and having regard to the fact that the period of "6-8 months" fixed by this Court by Order dated 30.10.2023 having not come to an end, it would suffice to dispose of these petitions with liberty to the petitioner to revive his prayer afresh after filing of the final complaint/Charge-sheet as assured by learned Solicitor General. Needless to state that in the event of such an application being filed, the same would be considered on its own merits as

already observed by this Court vide paragraph 29 (supra). Contentions of both parties kept open.

Accordingly, these petitions stand disposed of. All pending applications consigned to record."

28. Before considering the submissions of the learned ASG with regard to maintainability of the present appeals on account of the second order of this Court, it will be apposite to refer to certain observations made by this Court in its first order, which read thus:

"**26.** However, we are also concerned about the prolonged period of incarceration suffered by the appellant – Manish Sisodia. In ***P. Chidambaram v. Directorate of Enforcement*** (2020) 13 SCC 791, the appellant therein was granted bail after being kept in custody for around 49 days [***P. Chidambaram v. Central Bureau of Investigation*** (2020) 13 SCC 337], relying on the Constitution Bench in ***Shri Gurbaksh Singh Sibbia and Others v. State of Punjab*** (1980) 2 SCC 565, and ***Sanjay Chandra v. Central Bureau of Investigation*** (2012) 1 SCC 40, that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case. Ultimately, the consideration has to be made on a case to case basis, on the facts. The primary object is to secure the presence of the accused to stand trial. The argument that the appellant therein was a flight risk or that there was a possibility of tampering with the evidence or influencing the witnesses, was rejected by the Court. Again, in ***Satender Kumar Antil v. Central Bureau of Investigation and Another*** (2022) 10 SCC 51, this Court referred to ***Surinder Singh Alias Shingara Singh v. State of Punjab*** (2005) 7 SCC 387 and ***Kashmira Singh v. State of Punjab*** (1977) 4 SCC

291, to emphasise that the right to speedy trial is a fundamental right within the broad scope of Article 21 of the Constitution. In ***Vijay Madanlal Choudhary*** (supra), this Court while highlighting the evil of economic offences like money laundering, and its adverse impact on the society and citizens, observed that arrest infringes the fundamental right to life. This Court referred to Section 19 of the PML Act, for the in-built safeguards to be adhered to by the authorised officers to ensure fairness, objectivity and accountability. [See also ***Pankaj Bansal v. Union of India and Ors.*** 2023 SCC OnLine SC 1244] ***Vijay Madanlal Choudhary*** (supra), also held that Section 436A of the Code can apply to offences under the PML Act, as it effectuates the right to speedy trial, a facet of the right to life, except for a valid ground such as where the trial is delayed at the instance of the accused himself. In our opinion, Section 436A should not be construed as a mandate that an accused should not be granted bail under the PML Act till he has suffered incarceration for the specified period. This Court, in ***Arnab Manoranjan Goswami v. State of Maharashtra and Others*** (2021) 2 SCC 427, held that while ensuring proper enforcement of criminal law on one hand, the court must be conscious that liberty across human eras is as tenacious as tenacious can be.

27. The appellant – Manish Sisodia has argued that given the number of witnesses, 294 in the prosecution filed by the CBI and 162 in the prosecution filed by the DoE, and the documents 31,000 pages and 25,000 pages respectively, the fact that the CBI has filed multiple charge sheets, the arguments of charge have not commenced. The trial court has allowed application of the accused for furnishing of additional documents, which order has been challenged by the prosecution under Section 482 of the Code before the High Court. It was stated at the Bar, on behalf of the prosecution that the said petition under Section 482 will be withdrawn. It was also stated at the Bar, by the

prosecution that the trial would be concluded within next six to eight months.

28. Detention or jail before being pronounced guilty of an offence should not become punishment without trial. If the trial gets protracted despite assurances of the prosecution, and it is clear that case will not be decided within a foreseeable time, the prayer for bail may be meritorious. While the prosecution may pertain to an economic offence, yet it may not be proper to equate these cases with those punishable with death, imprisonment for life, ten years or more like offences under the Narcotic Drugs and Psychotropic Substances Act, 1985, murder, cases of rape, dacoity, kidnaping for ransom, mass violence, etc. Neither is this a case where 100/1000s of depositors have been defrauded. The allegations have to be established and proven. The right to bail in cases of delay, coupled with incarceration for a long period, depending on the nature of the allegations, should be read into Section 439 of the Code and Section 45 of the PML Act. The reason is that the constitutional mandate is the higher law, and it is the basic right of the person charged of an offence and not convicted, that he be ensured and given a speedy trial. When the trial is not proceeding for reasons not attributable to the accused, the court, unless there are good reasons, may well be guided to exercise the power to grant bail. This would be truer where the trial would take years.

29. In view of the assurance given at the Bar on behalf of the prosecution that they shall conclude the trial by taking appropriate steps within next six to eight months, we give liberty to the appellant – Manish Sisodia to move a fresh application for bail in case of change in circumstances, or in case the trial is protracted and proceeds at a snail's pace in next three months. If any application for bail is filed in the above circumstances, the same would be considered by the trial court on merits without being influenced by the dismissal of the earlier bail

application, including the present judgment. Observations made above, re.: right to speedy trial, will, however, be taken into consideration. The appellant – Manish Sisodia may also file an application for interim bail in case of ill health and medical emergency due to illness of his wife. Such application would be also examined on its own merits."

29. A perusal of the aforesaid would reveal that this Court was concerned about the prolonged period of incarceration suffered by the appellant. After considering various earlier pronouncements, this Court emphasised that the right to speedy trial is a fundamental right within the broad scope of Article 21 of the Constitution. Relying on ***Vijay Madanlal Choudhary and Others v. Union of India and Others***[3], this Court observed that Section 436A Cr.P.C. should not be construed as a mandate that an accused should not be granted bail under the PMLA till he has suffered incarceration for the specified period. This Court recorded the assurance given by the prosecution that they shall conclude the trial by taking appropriate steps within next 6-8 months. This Court, after recording the said submissions, granted liberty to the appellant to move a fresh application for bail in case of change in circumstances or in case the trial

[3] **(2022) SCC OnLine SC 929 : 2022 INSC 756**

was protracted and proceeded at a snail's pace in next three months. This Court observed that if any application was filed, the same would be considered by the trial court on merits without being influenced by the dismissal of the earlier bail applications including its own judgment. It further observed that the observations made regarding the right to speedy trial will be taken into consideration.

30. Since the trial proceeded at a snail's pace in the period after three months of the first order of this Court, the appellant filed the second application for bail before the trial court. The same came to be rejected by the trial court on 30th April 2024. It can thus be seen that it took a period of almost three months for the trial court to decide the said application. By the time the appellant approached the High Court, a period of more than six months had elapsed from the date on which the first order of this Court was passed. The same also came to be rejected on 21st May 2024.

31. When the appellant approached this Court in the second round and when the second order was passed by this Court on 4th June 2024, a period of 7 months and 4 days had elapsed from the date of the first order of this Court.

However, this Court took into consideration the statement of the learned Solicitor General that the investigation would be concluded and final complaint/charge-sheet would be filed expeditiously and at any rate on or before 3rd July 2024 and thereafter, the trial court would be free to proceed with the trial. It, after observing that "having regard to the fact that the period of 6-8 months fixed by this Court in its first order having not come to an end", disposed of the petitions with liberty to the appellant to revive his prayer afresh after filing of the final complaint/charge-sheet.

32. It could thus be seen that this Court had granted liberty to the appellant to revive his prayer after filing of the charge-sheet. Now, relegating the appellant to again approach the trial court and thereafter the High Court and only thereafter this Court, in our view, would be making him play a game of "Snake and Ladder". The trial court and the High Court have already taken a view and in our view relegating the appellant again to the trial court and the High Court would be an empty formality. In a matter pertaining to the life and liberty of a citizen which is one of the most sacrosanct rights

guaranteed by the Constitution, a citizen cannot be made to run from pillar to post.

33. A careful reading of the second order of this Court dated 4th June 2024 would show that this Court recorded that they did not propose to go into the arguments or dwell upon it in view of the liberty granted in the first order of this Court. Thereafter, this Court noticed the assurance of the learned Solicitor General that the investigation would be concluded and final complaint/charge-sheet would be filed at any rate on or before 3rd July 2024. This Court further observed in its second order that since the period of 6-8 months fixed by it in its first order had not come to an end, it was inclined to dispose of this petition with liberty to the appellant to revive his prayer. It will be a travesty of justice to construe that the carefully couched order preserving the right of the appellant to revive his prayer for grant of special leave against the High Court order, to mean that he should be relegated all the way down to the trial court. The memorable adage, that procedure is a hand maiden and not a mistress of justice rings loudly in our ears.

34. In this respect, we may also gainfully refer to one of the recent pronouncements by a bench of this Court to which one of us (B.R. Gavai, J.) was a member in the case of ***Prabir Purkayastha v. State (NCT of Delhi)***[4], which reads thus:

> "**21.** The Right to Life and Personal Liberty is the most sacrosanct fundamental right guaranteed under Articles 20, 21 and 22 of the Constitution of India. Any attempt to encroach upon this fundamental right has been frowned upon by this Court in a catena of decisions. In this regard, we may refer to following observations made by this Court in the case of *Roy V.D.* v. *State of Kerala*[3]:—
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> > **"7.** The life and liberty of an individual is so sacrosanct that it cannot be allowed to be interfered with except under the authority of law. It is a principle which has been recognised and applied in all civilised countries. In our Constitution Article 21 guarantees protection of life and personal liberty not only to citizens of India but also to aliens.""

35. In our view, the liberty reserved by this Court vide its second order, to revive the request of the appellant will have to be construed as a liberty given by this Court to revive his prayer afresh after filing of the final complaint/charge-sheet. Undisputedly, the present appeals have been filed after the final complaint/charge-sheet has been filed by the

[4] **2024 SCC OnLine SC 934 : 2024 INSC 414**

respondents. In that view of the matter, we are not inclined to entertain the preliminary objection and the same is rejected.

CONSIDERATION AS TO WHETHER THE APPELLANT IS ENTITLED FOR BAIL:

36. Having rejected the preliminary objection, we will proceed to consider as to whether in the facts and circumstances of the present case, the appellant is entitled to grant of bail or not.

37. Insofar as the contention of the learned ASG that since the conditions as provided under Section 45 of the PMLA are not satisfied, the appellant is not entitled to grant of bail is concerned, it will be apposite to refer to the first order of this Court. No doubt that this Court in its first order in paragraph 25, after recapitulating in paragraph 24 as to what was stated in the charge-sheet filed by the CBI against the appellant, observed that, in view of the aforesaid discussion, the Court was not inclined to accept the prayer for grant of bail at that stage. However, certain paragraphs of the said order cannot be read in isolation from the other paragraphs. The order will have to be read in its entirety. 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.

38. A Division Bench of this Court in the case of ***Ramkripal Meena v. Directorate of Enforcement***[5] was considering an application of the petitioner therein who was

[5] **SLP(Crl.) No. 3205 of 2024 dated 30.07.2024**

to receive a bribe of rupees five crore and from whom, an amount of Rs.46,00,000/- was already recovered. In the said case, the petitioner was arrested on 26th January 2022 in connection with FIR No. 402/2021 registered against him for the offences punishable under Sections 406, 420, 120B of IPC and Section 4/6 of the Rajasthan Public Examination (Prevention of Unfair Means) Act, 1992. He was released on bail by this Court vide order dated 18th January 2023. Thereafter, the petitioner was arrested by the ED on 21st June 2023. The Court observed thus:

> "**7.** Adverting to the prayer for grant of bail in the instant case, it is pointed out by learned counsel for ED that the complaint case is at the stage of framing of charges and 24 witnesses are proposed to be examined. The conclusion of proceedings, thus, will take some reasonable time. The petitioner has already been in custody for more than a year. Taking into consideration the period spent in custody and there being no likelihood of conclusion of trial within a short span, coupled with the fact that the petitioner is already on bail in the predicate offence, and keeping in view the peculiar facts and circumstances of this case, it seems to us that the rigours of Section 45 of the Act can be suitably relaxed to afford conditional liberty to the petitioner. Ordered accordingly."

39. In the light of the specific observations of this Court in paragraph 28 of the first order, we are not inclined to accept

the submission of the learned ASG that the provisions of Section 45 of the PMLA would come in the way of consideration of the application of the appellant for grant of bail.

40. From the first order of this Court, it would be clear that an assurance was given at the Bar on behalf of the prosecution that they shall conclude the trial by taking appropriate steps within next 6-8 months. In view of the said statement, this Court did not consider the application of the appellant for bail at that stage, however, granted liberty to the appellant to move a fresh application for bail in case of change in circumstances, or in case the trial is protracted and proceeded at a snail's pace in next three months. Though, this Court observed that if any application for bail was filed on the grounds mentioned in paragraph 29, the same would be considered by the trial court without being influenced by the dismissal of the earlier bail applications including the present judgment, however, it clarified that the observations made by the Court with regard to right to speedy trial would be taken into consideration. The liberty was also granted to the appellant to file an application for

interim bail in case of ill-health and medical emergency due to illness of his wife.

41. A perusal of the impugned judgment and order would reveal that though the learned Single Judge of the High Court has dismissed the applications for bail on merits, on medical grounds, it has permitted the appellant to visit his residence to meet his wife in custody once every week.

42. It could thus clearly be seen that this Court expected the trial to be concluded within a period of 6-8 months. The liberty was reserved to approach afresh if the trial did not conclude within the period of 6-8 months. The liberty was also granted in case the trial proceeded at a snail's pace in next three months.

43. A perusal of the material placed on record would clearly reveal that far from the trial being concluded within a period of 6-8 months, it is even yet to commence. Though in the first order of this Court, liberty was reserved to move afresh for bail if the trial proceeded at a snail's pace within a period of three months from the date of the said order, the commencement of the trial is yet to see the light of the day. In these circumstances, in view of the first order of this

Court, the appellant was entitled to renew his request. When the appellant renewed his request, the learned Special Judge (trial court) as well as the High Court was required to consider the said applications in the light of the observations made by this Court in paragraphs 28 and 29 of the first order. In paragraph 29 of the first order, this Court specifically observed that though the observations on the aspect of merit were not binding, the observations of right to speedy trial were required to be taken into consideration.

44. The learned Special Judge and the learned Single Judge of the High Court have considered the applications on merits as well as on the grounds of delay and denial of right to speedy trial. We see no error in the judgments and orders of the learned Special Judge as well as the High Court in considering the merits of the matter. In view of the observations made by this Court in the first order, they were entitled to consider the same. However, the question that arises is as to whether the trial court and the High Court have correctly considered the observations made by this Court with regard to right to speedy trial and prolonged period of incarceration. The courts below have rejected the

claim of the appellant applying the triple test as contemplated under Section 45 of the PMLA. In our view, this is in ignorance of the observations made by this Court in paragraph 28 of the first order wherein this Court specifically observed that right to bail in cases of delay coupled with incarceration for a long period should be read into Section 439 Cr.P.C. and Section 45 of the PMLA.

45. The trial court, in its order, has held that the appellant individually and along with different accused persons have been filing one or the other applications/making oral submissions frequently. It further observed that some of them were frivolous. It was observed that this was apparently done as a concerted effort for accomplishing the shared purpose of causing delay in the matter. The trial court therefore rejected the contention of the appellant that he had not contributed to delay in proceedings or that the case has been proceeding at a snail's pace. However, in the very subsequent paragraph i.e., paragraph 80, the court observed that, in order to avoid any delay and considering the time being taken by the counsel for the accused in inspecting the "un-relied upon documents", it had vide order dated 18th

April 2024 put a query to the prosecution if the entire "un-relied upon documents" can be provided to the accused persons in a digitized form. It further recorded that the ED accepted the suggestion that it would expedite the proceedings. However, some time was sought to consider the same. A perusal of the compliance report filed by the Assistant Director of ED dated 7th May 2024 which could be found at page 757 of the paperbook, would reveal that the Cyber Lab has informed that it would take 70-80 days to prepare one copy (cloning) of the data contained in the said unrelied digital devices.

46. It could further be seen that, though it has been submitted on behalf of the ED that hundreds of applications have been filed for supply of "un-relied upon documents", the record would not substantiate the said position. Though various applications have been filed by different accused persons, insofar as the present appellant is concerned, he has filed only 13 applications in the CBI matter and 14 in the ED matter. It would reveal that some of the applications are for seeking permission to meet his wife or permission to file vakalatnama, to put signature on the documents, seeking

permission to sign a cheque etc. Most of the applications are for supply of missing documents and legible copies under Section 207/208 Cr.P.C. Some of the applications are for inspection of the "un-relied upon documents". It is pertinent to note that all these applications have been allowed by the learned trial court. It is further pertinent to note that some of these orders were also challenged before the High Court wherein stay was granted. However, a statement was made on behalf of the prosecution before this Court when the first order was passed that the said petitions filed under Section 482 Cr.P.C would be withdrawn. The said statement is recorded in paragraph 27 of the first order of this Court. We may state that, when we specifically asked the learned ASG to point out any order wherein the learned trial judge found any of the applications of the appellant to be frivolous, not a single order could be pointed out.

47. In that view of the matter, we find that the finding of the learned trial judge that it is the appellant who is responsible for delaying the trial is not supported by the record. The learned Single Judge of the High Court endorses the finding of the trial court on the ground that the accused persons

have taken three months' time from 19th October 2023 to 19th January 2024 for inspection of "un-relied upon documents" despite repeated directions from the learned trial court to conclude the same expeditiously. It is to be noted that there are around 69,000 pages of documents involved in both the CBI and the ED matters. Taking into consideration the huge magnitude of the documents involved, it cannot be stated that the accused is not entitled to take a reasonable time for inspection of the said documents. In order to avail the right to fair trial, the accused cannot be denied the right to have inspection of the documents including the "un-relied upon documents".

48. It is further to be noted that a perusal of the second order of this Court would itself reveal that this Court recorded the submissions of the learned Solicitor General, which were made on instructions, that the investigation would be concluded and final complaint/charge-sheet would be filed expeditiously and at any rate on or before 3rd July 2024. Accordingly, 8th charge-sheet has been filed on 28th June 2024 by the ED. It could thus be seen that, even according to the respondents, the investigation was to be

concluded on or before 3rd July 2024. In that view of the matter, we find that the contention raised by the learned ASG is self-contradictory. If the investigation itself was to conclude on or before 3rd July 2024, the question is how could the trial have commenced prior to that? If the investigation itself was to conclude after a period of 8 months from the date of the first order of this Court, there was no question of the trial being concluded within a period of 6-8 months from the date of the first order of this Court. We find that both the High Court and the trial court have failed to take this into consideration.

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.

51. Recently, this Court had an occasion to consider an application for bail in the case of ***Javed Gulam Nabi Shaikh***

v. State of Maharashtra and Another[6] 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 the cases of ***Gudikanti Narasimhulu and Others v. Public Prosecutor, High Court of Andhra Pradesh***[7]***, Shri Gurbaksh Singh Sibbia and Others v. State of Punjab***[8]***, Hussainara Khatoon and Others (I) v. Home Secretary, State of Bihar***[9]***, Union of India v. K.A. Najeeb***[10] ***and Satender Kumar Antil v. Central Bureau of Investigation and Another***[11]**.** The Court observed thus:

> "**19.** 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."

52. The Court also reproduced the observations made in ***Gudikanti Narasimhulu*** (supra), which read thus:

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[6] **2024 SCC OnLine SC 1693**
[7] **(1978) 1 SCC 240 : 1977 INSC 232**
[8] **(1980) 2 SCC 565 : 1980 INSC 68**
[9] **(1980) 1 SCC 81 : 1979 INSC 34**
[10] **(2021) 3 SCC 713 : 2021 INSC 50**
[11] **(2022) 10 SCC 51 : 2022 INSC 690**

"**10.** 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. *Public Prosecutor*, High Court reported in (1978) 1 SCC 240. We quote:

> *"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]:*
>
> > *"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.""*

53. The Court 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 straight forward 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 recognize the principle that "bail is rule and jail is exception".

54. In the present case, in the ED matter as well as the CBI matter, 493 witnesses have been named. The case involves thousands of pages of documents and over a lakh pages of digitized 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 the 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.

55. As observed by this Court in the case of ***Gudikanti Narasimhulu*** (supra), 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.

56. 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.

57. 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.

CONCLUSION:

58. In the result, we pass the following order:

(i) The appeals are allowed;

(ii) The impugned judgment and order dated 21st May 2024 passed by the High Court of Delhi in Bail Application Nos. 1557 and 1559 of 2024 is quashed and set aside;

(iii) The appellant is directed to be released on bail in connection with ED Case No. HIU-II/14/2022

registered against the appellant by the ED and FIR No. RC0032022A0053 of 2022 registered against the appellant by the CBI on furnishing bail bonds for a sum of Rs.10,00,000/- with two sureties of the like amount;

(iv) The appellant shall surrender his passport with the Special Court;

(v) The appellant shall report to the Investigating Officer on every Monday and Thursday between 10-11 AM; and

(vi) The appellant shall not make any attempt either to influence the witnesses or to tamper with the evidence.

59. Pending application(s), if any, shall stand disposed of in the above terms.

.....J.
(B.R. GAVAI)

.....J.
(K.V. VISWANATHAN)

NEW DELHI;
AUGUST 09, 2024.