



2025:DHC:3389



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

Reserved on: 16th April, 2025

Pronounced on: 7th May, 2025

+ BAIL APPLN. 4240/2024 & CRL.M.(BAIL) 1932/2024

PARAMJEET THROUGH PAIROKARPetitioner

Through: Mr. N. Hariharan, Senior Advocate
with Mr. Samarth Krishan Luthra, Mr.
Manoviraj Singh, Ms. Vasudhara N.,
Mr. Aman Akhtar, Ms. Sana Singh
and Mr. Vikram Gautam, Advocates.

versus

DIRECTORATE OF ENFORCEMENTRespondent

Through: Mr. Ravi Prakash, Senior Advocate
with Mr. Ali Khan and Mr. Padmesh
Mishra, Advocates.

**CORAM:
HON'BLE MR. JUSTICE AMIT SHARMA**

JUDGMENT

AMIT SHARMA, J.

1. The present application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023, (for short, 'BNSS'), read with Section 45 of the Prevention of Money Laundering Act, 2002, (for short, 'PMLA'), has been filed seeking regular bail in CC No. 01/2024, arising out of ECIR No.:



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GNZO/09/2021, under Sections 3/4 of the PMLA, registered with Directorate of Enforcement/respondent. The said ECIR was registered in respect of predicate/scheduled offence in FIR bearing No. RCCHG2020A0021, dated 31.12.2020, under Section 120B read with Sections 406, 409, 420 of the Indian Penal Code, 1860, (for short, 'IPC'), and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988, (for short, 'PC Act'), registered with CBI, ACB, Chandigarh.

Factual Background

2. The present ECIR arises out of FIR/RC being RCCHG2020A0021 which was registered with CBI on a complaint filed by the then Chief Manager of Punjab National Bank, Hindu College Branch, Sonipat, Haryana, against M/s Sunstar Overseas Ltd. (for short, 'accused company') and its directors. As per the said FIR, accounts of 5 banks, namely, PNB, ICICI Bank, IDBI Bank and State Bank of India were declared NPAs (Non-Performing Assets). It was alleged that the accused company had availed various credit facilities from 'Consortium of 9 lender Banks'¹ and had diverted/siphoned off the said loan amount, thereby, failing to repay the said loan amounts to the banks. It was also alleged that the accused company had also violated terms and conditions of the loan agreements in respect of hypothecated goods as the said goods were disposed of without depositing sale proceeds in their Cash Credit Accounts. The case of CBI is that M/s Sunstar Overseas Ltd., accused company, through its

¹ Punjab National Bank; Corporation Bank; City Union Bank; Karur Vysya Bank; Karnataka Bank; Canara Bank; ICICI Bank; IDBI Bank; and State Bank of Patiala



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directors/promoters/employees and others, had committed fraud by siphoning and diverting funds, criminal misappropriation, criminal breach of trust, cheating, fraud etc., thereby causing wrongful loss of approximately, Rs.951.88 Crores to the consortium of 9 lender banks. It was further alleged that the accused company, after July 2017, failed to submit stock report for as undertaken by it to the consortium of lender banks and subsequently, the said loan accounts of the accused company were declared NPAs *w.e.f.* 31.03.2015 by the Statutory Auditor on 31.03.2017 which was approved by the consortium of lender banks approved a Master Restructuring Agreement Package on 07.11.2015. The allegation against the accused company was that it through its directors had sold its entire stocks, but the sale proceeds were not being deposited with the bank in the loan accounts. It was also alleged that the accused company had advanced sums received by way of the credit facilities for investment in real estate, which is non-core business activity of the accused.

3. In correspondence to the aforesaid, on an application filed by ICICI Bank Ltd. under Section 7 of the Insolvency and Bankruptcy Code, 2016, (for short, 'IBC') before the National Company Law Tribunal (for short, 'NCLT') Corporate Insolvency Resolution Process (for short, 'CIRP') proceedings were initiated against M/s Sunstar Overseas Ltd. on 20.07.2018, wherein, an Interim Resolution Professional was appointed for the accused company. NCLT *vide* order dated 12.09.2019 approved the resolution plan of the Resolution Applicant, Ajay Yadav & Co., body of individuals, through its Special Purpose Vehicle (SPV), M/s Umaiza Infracon LLP, (for short,



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‘Umaiza’) for a total amount of Rs. 196 Crores. Thus, on implementation of the same, total shareholding of the accused company was to be held by Umaiza. It is alleged that, during the course of investigation, it was revealed that Ajay Yadav & Co., held by Ajay Yadav, as well as active partner of Umaiza, was acting on the directions and advice of the ex-directors/promoters of the accused company so that they can indirectly acquire the accused company while it was undergoing CIRP.

4. In view of the aforesaid facts, investigation was undertaken by ED/respondent through which it was revealed that the accused company through its directors/promoters was indulged in generation of proceeds of crime to the tune of Rs. 539 Crores approximately. It was further revealed that groups of firms/companies² were created as fictitious debtor of the accused company for the sole purpose of generation of ‘proceeds of crime’ by diversion/siphoning off of rice stocks procured out of loan availed from the aforesaid consortium. It was further revealed that the said entities were owned and controlled by ex-directors, promoters of the accused company and were diverting ‘proceeds of crime’ to a NBFC, namely, Kalptaru Fincap Ltd., (Kalptaru), through layers of ARCs (Asset Reconstruction Companies). It had further emerged that dummy entities, *i.e.*, M/s Shivakriti Agro Ltd., Shivakriti, allegedly owned and controlled by ex-directors and promoters of the accused company, was used as mode for diversion of stocks of rice from the accused company and its fictitious debtor company (SGMV), as noted hereinabove. It was further revealed that proceeds of crime to the tune of

² M/s Star Global Multi Ventures Pvt. Ltd./SGMV and M/s. Star Rice Land Pvt. Ltd./SRLP



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Rs.1.35 Crores were possessed and diverted from SGMV to Shivakriti through a fictitious seller/buyer firm, i.e., M/s Aastha Enterprise, under the garb of sham trade transactions. It is further alleged that a sum of Rs. 146 Crores was diverted through Shivakriti during the period commencing from 24.09.2019 to 20.03.2020 under the garb of a sham instrument, i.e., Facility Agreement dated 30.09.2019 which was intended to take over the assets of the accused company. As per the case of the respondent/ED, the ex-directors/promoters of the accused company were able to regain the actual control of the accused company indirectly through Umaiza and Shivakriti whereby wrongful loss was caused to the said consortium of lender banks.

5. During the course of investigation, the present applicant along with Ajay Yadav and Rakesh Kumar Gulati was arrested in the ECIR registered with the respondent/ED on 01.07.2024 and was arrayed as accused No. 13 in the complaint filed before the learned Special Court. Learned Special Court took cognizance of the offences alleged in the complaint filed *vide* order dated 25.09.2024.

Role of the Present Applicant as Highlighted in the Complaint filed before learned Special Court

6. The role of the present applicant, as per the complaint filed by the respondent/ED before the learned Special Court, reads as under: -

“10.19 Role and conduct of Paramjeet @ Paramjeet Sharma

10.19.1 That, he is director and shareholder of M/s Shivakriti Agro Pvt. Ltd and before that he was appointed its Chief Operation Officer (COO) of in November, 2017. Later he suddenly acquired its shareholding along



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with his wife Mrs. Seema Sharma and became its director in the year 2020. He is key managerial person /controller of this company who is found to have major involvement in the diversion of proceeds of crime through sham transactions of M/s. Shivakriti Agro Pvt. Ltd with Sunstar Overseas Ltd. and other companies/firms, mentioned supra. He is one of the confidante and dummy man for Mr. Rohit Aggarwal insofar as he was IT head of M/s Sunstar Overseas Ltd. for a long duration i.e. from 2009-2017 and he was one of the highly paid employee as his last paid salary was Rs.1,50,000/- per month. As per his statement dated 18.01.2024 tendered U/s 50, he continued to provide services to M/s SOL as a consultant (sales) even after he left M/s SOL in July, 2017 and got paid at par with his last salary.

10.19.2 That it is further revealed that Paramjeet got his yes-man and friend Rohit Dogra appointed as a dummy director of M/s. Shiva Kriti Fashion Pvt. Ltd. (later renamed as Shivakrit Agro Pvt Ltd). Paramjeet then got himself appointed as Chief Operations Officer (COO) of this company in November, 2017 by authority and signatures of Rohit Dogra as director. He later on acquired its 100% shareholding and directorship and he is the current director and shareholder of M/s Shivakriti Agro Pvt. Ltd. As revealed by Paramjeet, Rohit Dogra as well as the auditor, Rakesh Kumar Gulati in their recorded statements U/s 50 of PMLA, even before becoming Director / shareholder in Shivakriti Agro, Paramjeet used to direct the then dummy Director, Rohit Dogra. It is also revealed that Paramjeet had been handling plants of M/s Sunstar Overseas at Bahalgarh, Sonapat and Amritsar through M/s Shivakriti Agro Pvt. Ltd. since Shivakriti Agro Pvt. Ltd. had Job Work Agreement with Sunstar Overseas Ltd. w.e.f. Nov, 2017 itself. It is also discovered from the statement recorded U/s 50 of Mr Sanjay Sharma, dummy director of M/s Star Global Multi Ventures Pvt Ltd. that it has no land and plants of its own so it gets job work done by M/s. Shivakriti Agro Pvt Ltd. which, on the other hand, has no plant of its own but uses plants and machinery as well as warehouses of M/s Sunstar Overseas Ltd. by instruments of Job-work Agreements followed by Facility Agreement. In other words, the business and operation of the Sunstar Overseas Ltd. is now being managed and conducted by M/s. Star Global Multi Ventures Pvt. Ltd. which sourced the part of funds, out of '*proceeds of crime*' diverted from M/s. Sunstar Overseas Ltd., to acquire M/s. Sunstar Overseas Ltd. iteslef in NCLT. Similarly, M/s Broadway Distribution Pvt Ltd., being indirectly operated and controlled by Manik Aggarwal and Rakesh Aggarwal is also getting Job Work done by M/s. Sunstar



Overseas Ltd. through M/s. Shivakriti Agro Pvt Ltd. This scheme suggests that ex-directors/promoters of Sunstar Overseas Ltd., led by Rohit Aggarwal and Manik Aggarwal, are still using plant, machinery and warehousing facilities of M/s. Sunstar Overseas Ltd. though their above related and dummy-entities and also M/s. Shivakriti Agro Pvt. Ltd., even after CIRP proceedings and selling products through them.

10.19.3 That the analysis of digital records, presented and discussed in preceding paras, revealed that M/s. Sunstar Overseas Ltd. was receiving payments on monthly basis from M/s Shivakriti Agro Put. Ltd. and M/s Broadway Distribution Pvt. Ltd. for job work done by it by virtue of Job Work Agreements. These entites are indirectly controlled & beneficially owned by ex-directors/controllers/benficial owners of Sunstar Overseas Ltd. Led by Rohit Aggarwal and Manik Aggarwal. However, M/s. Sunstar Overseas Ltd. continued to receive payments from both these entities without any agreement even after successful takeover of the company from RP in F.Y. 2020-21. Further, salaries of the employees of M/s Sunstar Overseas Ltd. were also being paid by both the above entities and that the new management have no idea regarding GST/EPF and ITR related facts/ details. All these portal were also being used by the management of M/s Shivakriti Agro and M/s Broadway Distribution.

10.19.4 That from above facts and circumstances, it therefore emerges that Paramjeet @ Paramjeet Sharma, ex-employee of M/s Sunstar Overseas Ltd. and COO/director/shareholder/controller of M/s. Shivakriti Agro Pvt. Ltd. is one of the key persons who has played a key role and facilitated the transfer of '*proceeds of crime*' through sham transactions of M/s Shivakriti Agro Pvt. Ltd. with M/s. Sunstar Overseas Ltd., Star Global Multi Ventures Pvt. Ltd. and other companies/ firms, discussed in preceding paras. He has also knowingly assisted in diversion and concealment of proceeds of crime from M/s. Purshotam Profiles Pvt. Ltd. to M/s. Umaiza Infracon LLP. Hence, he knowingly became party and actually involved in the processes and activities connected with the proceeds of crime, including its concealment, diversion, possession, acquisition, use and projecting it as untainted property and hence, he is guilty of committing the offence of money-laundering, in terms of Section 3 read with Section 70 of the PMLA, 2002 and hence, punishable U/s 4 of the said Act."



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Submissions on behalf of the Applicant

7. Learned Senior Counsel appearing on behalf of the applicant has submitted that latter was an employee of the accused company and had left the said company much prior to the initiation of CIRP proceedings against the accused company, *i.e.*, on 20.08.2017. He further submitted that the present applicant is neither named as accused in the FIR/RC registered with CBI in the predicate/scheduled offence nor in the chargesheet filed by CBI. It is pointed out that the fraud as well as the default of credit facilities availed from the consortium banks by the accused company were allegedly committed by the ex-directors and promoters of the accused company, primarily, the Aggarwal family. After leaving the accused company, the present applicant became Chief Operation Officer ('COO') of M/s Shivakriti Agro Pvt. Ltd. and later on, its director and shareholder. It is further submitted that the entire case of the respondent/ED against the present applicant is based on the statements recorded under Section 50 of the PMLA and his alleged association with Rohit Aggarwal, director/promoter/controller of the accused company, who is also alleged beneficiary of the proceeds of crime in the present case. It is further submitted that the other persons especially, Aggarwal family, who were, in fact, actively participating in the management of the affairs of the accused company have not been arrested by the respondent/ED in the present complaint case despite being named in the FIR and chargesheet filed in the predicate offence as also the present ECIR. In fact, they were chargesheeted without arrest in the predicate offence as well as the present complaint. Reliance has been placed on **Himansh @**



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Himanshu Verma v. Enforcement Directorate³, to contend that in the present case the respondent/ED has arrested the accused persons in a pick and choose manner and based on this ground alone, the present applicant is to be granted bail.

8. It is further submitted that the arrest of the present applicant by the respondent/ED in the present case was arbitrary as sufficient grounds of arrest were not provided and no offence *prima facie*, as such, has been made on the basis of the allegations made against the present applicant in the arrest memo. Attention of this Court has been drawn towards the Arrest Memo dated 01.07.2024 of the present applicant in this regard. It is submitted that there was no need for the arrest of the present applicant as he had cooperated during investigation in the present ECIR and the respondent/ED had merely arrested the present applicant only on the basis of suspicion and unsubstantiated conjectures which is contrary to the provisions of Section 19 of the PMLA. Reliance has been placed on **Prabir Purakayastha v. State NCT of Delhi**⁴ and **Arvind Kejriwal v. ED**⁵, in support of this contention. The relevant portion of **Prabir Purakayastha (supra)** judgment reads as under: -

“29. Hence, we have no hesitation in reiterating that the requirement to communicate the grounds of arrest or the grounds of detention in writing to a person arrested in connection with an offence or a person placed under preventive detention as provided under Articles 22(1) and 22(5) of the Constitution of India is sacrosanct and cannot be breached under any situation. Non-compliance of this constitutional requirement and

³ Order dated 08.07.2024 passed by Hon'ble Supreme Court in SLP (Crl.) Nos. 2438/2024

⁴ 2024 INSC 414

⁵ 2024 INSC 512



statutory mandate would lead to the custody or the detention being rendered illegal, as the case may be.

46. Now, coming to the aspect as to whether the grounds of arrest were actually conveyed to the appellant in writing before he was remanded to the custody of the investigating officer.

48. It may be reiterated at the cost of repetition that there is a significant difference in the phrase “reasons for arrest” and “grounds of arrest”. The “reasons for arrest” as indicated in the arrest memo are purely formal parameters viz. to prevent the accused person from committing any further offence; for proper investigation of the offence; to prevent the accused person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; to prevent the arrested person for making inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to the investigating officer. These reasons would commonly apply to any person arrested on charge of a crime whereas the “grounds of arrest” would be required to contain all such details in hand of the investigating officer which necessitated the arrest of the accused. Simultaneously, the grounds of arrest informed in writing must convey to the arrested accused all basic facts on which he was being arrested so as to provide him an opportunity of defending himself against custodial remand and to seek bail. Thus, the “grounds of arrest” would invariably be personal to the accused and cannot be equated with the “reasons of arrest” which are general in nature.”

9. Regarding the allegation of facilitation of the take-over of the accused company indirectly *via* Umaiza, learned Senior Counsel for the applicant has submitted that the latter had left the accused company though he was close aid of the ex-promoter of the accused company, *i.e.*, Rohit Aggarwal, however, the same in no manner incriminates the applicant in the present case without any money trail being traced to him. It is further pointed out that the Facility



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Agreement which was executed on 30.09.2019, was much prior to the present applicant being joining Shivakriti as its director and shareholder. It is further submitted that, even as per the case of the respondent/ED, the infusion of money by Shivakriti Agro to Umaiza to the tune of Rs. 146 Crores in order to take over the control of the accused company indirectly, while it was under CIRP, was also prior to the applicant joining Shivakriti Agro. It is further submitted that the chain of money as alleged in the chart relied on by the respondent/ED in the complaint filed is not supported by any evidence/material whatsoever.

10. It is further submitted that the Facility Agreement in the present case is pending adjudication before an Arbitral Tribunal and any opinion by the respondent/ED regarding the same cannot be absolute as the same can be prejudicial to the case pending before the learned Arbitral Tribunal. Also, that CIRP proceedings against the accused company has been allowed and the respondent, which is an investigating agency, cannot sit in appeal to the findings of the learned NCLT.

11. Learned Senior Counsel has further submitted that the entire case of the respondent/ED against the present applicant is based on the disclosure statements recorded under Section 50 of the PMLA of the other co-accused persons and the said statements, in absence of any corroborative evidence, cannot be relied upon in order to give a finding of *prima facie* guilt for the arrest of the applicant. It is submitted that the said statements in itself are not



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admissible in evidence. Reliance has been placed on **Sanjay Jain v. ED**⁶ and **Vijay Madanlal Choudhary & Ors. v. Union of India & Ors.**⁷, in support of this contention.

12. Learned Senior Counsel has further submitted that the twin conditions as provided in the present case are satisfied and the respondent/ED has failed to demonstrate reasonable grounds for believing that the applicant is guilty of the alleged offences or was involved in the generation, acquisition or disposing off of the proceeds of crime. It is further submitted that the applicant is not a flight risk as well as has roots in the society and had cooperated with the investigation prior to his arrest. Thus, the triple test has been satisfied.

13. Learned Senior Counsel has further submitted that it is an admitted case of the respondent/ED that the present applicant is not a beneficiary of any of the proceeds of crime and has not received any remuneration besides his salary for being a director and shareholder of Shivakriti Agro. Attention of this Court has also been drawn towards the order dated 09.07.2024 passed by Coordinate Bench of this Court in W.P.(C) 10526/2019 whereby the fraud declaration by PNB dated 31.03.2017, which led to the registration of FIR in the predicate/scheduled offence, has been set aside and it is submitted that since the existence of the predicate/scheduled offence is under doubt, thus, in view of the decision of Hon'ble Supreme Court in **V. Senthil Balaji v. The**

⁶ 2024 SCC OnLine Del 1656

⁷ 2022 SCC OnLine SC 929



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Deputy Director, Directorate of Enforcement⁸, the applicant's further incarceration would not be warranted.

14. Learned Senior Counsel has further submitted that the matter in the predicate/scheduled offence is at the stage of Section 207 of the CrPC (supply of documents) and CBI/prosecution therein has cited 98 witnesses. The complaint in the present ECIR has been filed and learned Special Court has taken cognizance of the offence alleged therein. The respondent/ED has cited 26 witnesses in the present complaint and the applicant has been in custody since 01.07.2024. It is also pointed out that the respondent/ED in their reply in para 83 had stated that insofar as the other persons who have not been arrested, investigation is ongoing and no final report has been filed in the present case by them. It is further submitted that in view of the **V. Senthil Balaji (supra)** the trial in both the predicate/schedule offence as well as the ECIR/complaint case registered with the respondent/ED has to be simultaneous, which is not likely to culminate in near future and keeping the applicant under prolonged incarceration will not serve any purpose. Reliance has also been placed on **Pankaj Kumar Tiwari & Anr. v. Enforcement Directorate**⁹, in support of this contention.

15. Learned Senior Counsel has further placed reliance on the following judgments in support of the present application: -

- i) **Prakash Industries v. Union of India**¹⁰;

⁸ 2024 SCC OnLine SC 2626; 2024 INSC 739

⁹ 2024: DHC:8280

¹⁰ 2023 SCC OnLine Del 336



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- ii) **Ramkripal Meena v. ED¹¹,**
- iii) **Prem Prakash v. Union of India through Directorate of Enforcement¹²,**
- iv) **Manish Sisodia v. ED¹³,**

Submissions on behalf of the Respondent/Directorate Of Enforcement

16. Learned Senior Counsel for the respondent/ED has submitted that the present applicant is *prima facie* guilty of commission of offence of money laundering and has not been able to satisfy the twin conditions provided under Section 45 of the PMLA. He submitted that the applicant has not been able to show that how the rigors of Section 45 of the PMLA are not applicable as the learned Special Court while rejecting the bail application filed by the applicant had recorded its satisfaction in respect of the twin conditions of Section 45. It is further submitted that the present applicant, initially as COO of the M/s Shivakriti Agro Pvt. Ltd. from November 2017, and later on, as director and shareholder was actively involved in concealment, diversion, disposing and siphoning of money through sham transactions in the accused company and its related entities/firms and projecting of the proceeds of crime as untainted property. It is further submitted that the present applicant was key managerial personnel in M/s Shivakriti Agro and through his friend, Rohit Dogra, who was merely appointed as dummy director in Shivakriti Agro, had obtained blank signed cheque books of the company in order to

¹¹ 2024 SCC OnLine SC 2276

¹² (2024) 9 SCC 787: 2024 SCC OnLine SC 2270

¹³ 2024 SCC OnLine SC 1920



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forge the financial transactions and portray the same as genuine. It is further submitted that in 2020, the applicant along with his wife, who also later on became director in the said company, acquired the entire shareholding of the Shivakriti Agro and had acted as key facilitator/*confidante* of Rohit Aggarwal, ex-director/promoter of the accused company, for the acquisition of indirect control over the accused company while it was under CIRP and prior to its winding up, in the commission of the default and non-repayment of loans taken by the accused company from the consortium of banks.

17. Learned Senior Counsel has further submitted that the present applicant was indulged in diversion of funds from Shivakriti Agro to Umaiza (SPV) which was used in NCLT to acquire the accused company. It is submitted that during investigation in the present ECIR, it was revealed that the diversion of funds were done *via* sham deals of land parcels in the name of the accused company and the funds utilised therein were never returned to either of the entities. It is further submitted that the statements of the related persons recorded under Section 50 of the PMLA revealed that the said transactions were done by the present applicant while acting in close aid with Rohit Aggarwal as well as the other accused, Ajay Yadav (arrayed as accused in present ECIR as Accused No. 12), who had also acted on the advice and instructions of said Rohit Aggarwal.

18. It is pointed out that various Job Work Agreements were executed between the accused company, its related entities and M/s Shivakriti Agro and on scrutiny of these agreements it was revealed that Shivakriti Agro had



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started purchasing paddy rice from December 2017, *i.e.*, after joining of the present applicant, for utilisation of assets of the accused company and this diversion of funds was with a view to undermine the entire legal process as well as the right of the creditors' who had advanced loans to the accused company.

19. Learned Senior Counsel for the respondent/ED has drawn attention of this Court towards the statement of the present applicant under Section 50 of the PMLA on 18.01.2014, wherein he had stated that after leaving the accused company, he continued to provide services in the said company as consultant, sales and was paid at par with his last salary. It is pointed out that the salaries of the accused company were also paid *via* Shivakriti Agro and Broadway Distribution Pvt. Ltd., as the said entities were paying the accused company for the work done by the said entities by virtue of the Job Work Agreements. It is submitted that after the present applicant had joined Shivakriti Agro as its director and shareholder, it had transferred a sum of Rs. 146 Crores during October 2019 to March 2020 to Umaiza. It is further pointed out that the entire capital and infrastructure of the accused company including its machinery and resources were used by Shivakriti Agro and its related entities through which diversion of funds was being undertaken by the accused company and its ex-directors and promoters.

20. Learned Senior Counsel for the respondent/ED has further submitted that it is not necessary, in view of the decision of Hon'ble Supreme Court in



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Pavana Dibbur v. The Directorate of Enforcement,¹⁴ that an accused in PMLA compliant or ECIR might have been shown as accused in the predicate/scheduled offence and it is sufficient if he is involved in the proceeds of crime. It is further submitted that the role of the present applicant is not at par and different from other co-accused persons in the present complaint case as well as in the predicate offence, who were not arrested. Thus, the present applicant cannot seek parity with the said persons as he was actively involved in the commission of the offences alleged as well as the portraying of proceeds of crime as untainted money.

21. Insofar as the setting aside of the fraud declaration is concerned, learned Senior Counsel has submitted that the Court is not expected to delve into the merits of the allegations or evaluate the evidence at this stage and the test applicable is whether the allegations, when taken at their face value disclose the commission of a cognizable offence. It is further submitted that the procedural irregularities in the fraud classification process do not *ipso facto* vitiate a criminal investigation unless it is shown that the FIR is malicious or lacks legal foundation altogether. It is further submitted that the FIR/RC which originates from the account being declared as 'fraud' can still operate irrespective of the said declaration being set aside. Reliance has been placed on paras 15 and 16 of the decision of a Coordinate Bench of this Court in **Rangoli International Pvt Ltd & Ors. v. Central Bureau of**

¹⁴ 2023 SCC OnLine SC 1586



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Investigation & Ors.¹⁵. The relevant portion of the said judgment reads thus:-

“15. It is settled law that at the stage of considering a plea for quashing an FIR, the Court is not expected to delve into the merits of the allegations or evaluate the evidence. The test to be applied is whether the allegations, taken at face value, disclose the commission of a cognizable offence. In this case, the allegations not only disclose cognizable offences but also highlight a pattern of conduct that requires a thorough investigation. The procedural irregularities in the fraud classification process do not ipso facto vitiate the criminal investigation unless it is shown that the FIR is malicious or lacks a legal foundation altogether. There may be an overlap in the two issues, however, both are yet separate and distinct for the purpose of the investigation in the impugned FIR/RC. The Supreme Court in the case of Indian Oil Corp.¹⁰ observed that the mere fact that a complaint relates to a commercial transaction, for which a civil remedy has been availed, is not by itself a ground to quash the criminal proceedings. The Court has to apply its mind to see whether the allegations make out a prima facie criminal offence or not. In the present case, as has been observed above, the bare perusal of the impugned FIR/RC, on a prima facie basis discloses the ingredients of cognizable offences under Section 120-B and 420 of the IPC.

16. Therefore, the impugned FIR/RC which originates from the account being declared as 'fraud', can still sustain notwithstanding the account classification being set aside. Moreover, it must be noted that the Court in W.P.(C) 590 of 2016, had set aside the order for classification purely on technical grounds and there was no adjudication regarding the merits of the case. Furthermore, the interim order dated 25th November, 2024, staying the operation of the subsequent fraud declaration issued by Respondent No. 3, does not affect the legitimacy of the FIR/RC. The criminal investigation emanating from the impugned FIR/RC pertains to allegations of fraudulent conduct, misrepresentation, and conspiracy, which require scrutiny independent of the parallel civil proceedings concerning fraud classification.”

¹⁵ 2025: DHC:415



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22. Learned Senior Counsel has further placed reliance on paras 16 and 17 of the decision of Hon'ble Supreme Court in **Union of India v. Kanhaiya Prasad**¹⁶, to contend that this Court while dealing with a bail application under PMLA cannot grant bail to an accused on the basis of absolutely extraneous and irrelevant considerations without considering the rigors of Section 45 of the PMLA and a satisfaction with regard to the twin conditions provided under Section 45 of the PMLA has to be mandatorily recorded and non-compliance of mandatory requirements of Section 45 of the PMLA renders an order unsustainable and untenable in the eyes of law. It is further submitted that the present applicant has undergone incarceration merely for 9 months and in view of the allegations made against him and the incriminatory evidence revealed during investigation, no latitude is to be granted to him and the present application is to be dismissed at this stage.

Analysis and Findings

23. Heard learned Senior Counsels for the parties and perused the record.

24. The case of the prosecution with regard to the applicant is that he was a close *confidante* of Mr. Rohit Aggarwal since the time he was IT Head in the accused company, M/s Sunstar Overseas Ltd, for long duration, *i.e.*, 2009-2017. It is alleged that the present applicant joined M/s Shivakriti Agro Ltd., in which Ajay Soni and Madhu Soni were proprietors, as COO from November 2017 and was thereafter actively involved in concealment,

¹⁶ 2025: INSC:210



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diversion, disposing and siphoning of money through sham transactions of the accused company and its related entities/firms and projecting the proceeds of crime as untainted property. It is alleged that Job Work Agreement was entered into between the M/s Sunstar Overseas Pvt. Ltd. and M/s Shivakriti Agro Ltd. permitting the latter to utilize the plants and machinery for sale, which was used for diversion of funds misappropriated by the former. The said funds were further diverted to Umaiza and same were used finally to acquire the control of the accused company by way of facility agreement with M/s Shivakriti on the condition that on failure to repay, the share of the corporate debtor, *i.e.*, M/s Sunstar Overseas Pvt. Ltd., will be acquired by M/s Shivakriti. It is on the basis of aforesaid loan, the resolution plan was passed by NCLT in favour of the aforesaid Umaiza.

25. The entire case of the prosecution is that the accused company had misappropriated the funds availed through loan from the consortium of banks, and thereafter, diverted the same into different entities and used Umaiza to acquire the control of said company again through resolution plan, which was passed by NCLT. It is, thus, alleged that the entire process of NCLT was misused and that the present applicant was the key member in the entire conspiracy.

26. The predicate offence was registered with CBI by way of FIR No. RCCHG2020A0021 on 31.12.2020 against the accused company and its directors and promoters under Section 120B read with Sections 406/409/420 of the IPC, Sections 406/409/420 of the IPC and Section 13(2) read with



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Section 13(1)(d) of the PC Act and the present ECIR was registered on 09.04.2021.

27. It is case of the applicant that the chargesheet in the predicate offence has been filed against the accused company and its directors and not against the present applicant. It was further submitted by learned Senior Counsel on behalf of the present applicant that the allegation with respect to the facility agreement between Umaiza and M/s Shivakriti Agro Ltd. being sham is unfounded as the said agreement is subject matter of arbitration which is pending adjudication before a learned Retired Judge of this Court, and therefore, imputations could not be made unless there is judicial pronouncement.

28. Reliance is placed on the judgement of Hon'ble Supreme Court in **V. Senthil Balaji** (*supra*) wherein it has been held that the existence of scheduled offence is a *sine qua non* for alleging existence of proceeds of crime. The said existence of proceeds of crime at the time of trial of offence punishable under Sections 3 of the PMLA can be proved only if the predicate/scheduled offence is established in the prosecution of said offence. It was submitted that therefore the trial in case under PMLA cannot be finally decided unless the trial of predicate/scheduled offence concludes. It has been pointed out that the chargesheet in the scheduled offence has been filed citing 98 witnesses and the case is still at the stage of Section 207 of the CrPC (for supply of documents).



29. In **V. Senthil Balaji** (*supra*), the Hon'ble Supreme Court had further observed and 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. 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.

26. There are a series of decisions of this Court starting from the decision in the case of *K.A. Najeeb*¹⁷, 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.

¹⁷ (2021) 3 SCC 713



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*², 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.”

30. In *Vijay Nair v. Directorate of Enforcement*¹⁸, it was observed and held as under: -

¹⁸ 2024 SCC OnLine SC 3597



“12. Here the accused is lodged in jail for a considerable period and there is little possibility of trial reaching finality in the near future. The liberty guaranteed under Article 21 of the Constitution does not get abrogated even for special statutes where the threshold twin bar is provided and such statutes, in our opinion, cannot carve out an exception to the principle of bail being the rule and jail being the exception. The cardinal principle of bail being the rule and jail being the exception will be entirely defeated if the petitioner is kept in custody as an under-trial for such a long duration. This is particularly glaring since in the event of conviction, the maximum sentence prescribed is only 7 years for the offence of money laundering.”

31. A Coordinate Bench of this Court in **Pankaj Kumar Tiwari & Anr.** (*supra*) has observed and held as under: -

“**34.** Moreover, as repeatedly held, Constitutional Courts can always exercise their powers to grant bail on the grounds of violation of Part III of the Constitution of India and stringent provisions for the grant of bail such as those provided in Section 45 of the PMLA do not take away the power of Constitutional Courts to do so. The right of liberty and speedy trial guaranteed under Article 21 is a sacrosanct right which needs to be protected and duly enforced even in cases where stringent provisions have been made applicable by way of special legislation. The stringent provisions would have to be interpreted with due regard to Article 21 and in case of a conflict, the stringent provisions, such as Section 45 of the PMLA in the instant case, would have to give way.

35. Thus, where it is evident that the trial is not likely to conclude in a reasonable time, Section 45 cannot be allowed to become a shackle which leads to unreasonably long detention of the accused persons. What is reasonable and unreasonable would have to be assessed in light of the maximum and minimum sentences provided for in the statute. In cases under the PMLA that, except in a few exceptional cases, the maximum sentence can be of seven years. The same has to be kept in mind while considering the period of incarceration which has been undergone.

36. In the present cases, both the applicants were arrested on 11-1-2024. They have been in custody since more than 9 months. Moreover, the trial in the predicate as well as the present complaint is yet to commence and would take



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some time to conclude. It is also pertinent to note that the main accused and other similarly placed co-accused persons have been enlarged on bail.

No evidence has been led to show that the present applicants are a flight risk. In fact, records would show that both the applicants have joined investigation on multiple occasions. There is no incident alleged by the respondent wherein the applicants have tried to tamper with evidence or influence witnesses.”

32. The role of the present applicant, as pointed out hereinabove, was that he had assisted the main beneficiary Rohit Aggarwal, who was promotor and ex-director of the accused company, M/s Sunstar Overseas Pvt. Ltd., in facilitating the diversion of proceeds of crime through various entities including M/s Shivakriti Agro, and finally, acquiring the stakes of the accused company through Umaiza while it was under CIRP. It is relevant to note that the alleged main beneficiary of the proceeds of crime, Rohit Aggarwal, has not since been arrested in the present case. Even Ajay Soni, ex-director and shareholder of M/s Shivakriti Agro, has been cited as witness.

33. Reliance was placed by learned Senior Counsel on the order dated 08.07.2024 passed by the Hon’ble Supreme Court in **Himansh @ Himanshu Verma (*supra*)**, wherein it was observed and held as under: -

“2. We are inclined to set aside the impugned judgment on the sole ground that the mastermind of the alleged offence named Bharat Bomb has never been arrested in view of the statement made on behalf of the Directorate of Enforcement. What the appellant seeks is enlargement on bail.

3. Thus, taking note of the aforesaid fact alone, we are inclined to set aside the impugned order by granting bail to the appellant subject to the conditions that may be imposed by the designated Court. We make it



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clear that it is well open to the designated Court to impose such conditions so as to enable it to proceed with the trial as it is submitted by Mr. S.V. Raju, learned Additional Solicitor General appearing for the respondent that the appellant may be a flight risk.”

34. It is matter of record that the present applicant was summoned by the respondent/ED and he had joined investigation in pursuance of the said summons from 16.01.2024 on 10 occasions, and thereafter, he was finally arrested on 01.07.2024. In view of the above, it is submitted that there was no need to arrest the present applicant especially when the main beneficiary had not been arrested, even on account of an order passed by a Court. It is further submitted that the respondent/ED did not provide reasons or beliefs as recorded under Section 19 of the PMLA to the applicant while making his arrest. Reliance is placed upon **Prabir Purkayastha (supra)**.

35. The Hon’ble Supreme Court in **Udhaw Singh v. Enforcement Directorate**¹⁹, has observed and held as under: -

“**4.** In this case, the appellant has undergone incarceration for a period of 1 year and 2 months. There are 225 witnesses cited, out of which only 1 has been examined. Therefore, the trial is not likely to be concluded within few years. Hence, a decision of this Court in the case of *V. Senthil Balaji v. Deputy Director, Directorate of Enforcement*¹ will apply. Paragraphs 27 and 29 of the said decision read thus:

“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

¹⁹ 2025 SCC OnLine SC 357



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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*³, 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.



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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.”

5. Our attention is invited to a decision of a coordinate Bench in the case of *Union of India through the Assistant Director v. Kanhaiya Prasad*². After having perused the judgment, we find that this was a case where the decisions of this Court in the case of *Union of India v. K.A. Najeeb*³ and in the case of *V. Senthil Balaji*¹ were not applicable on facts. Perhaps that is the reason why these decisions were not placed before the coordinate Bench. The respondent-accused therein was arrested on 18th September, 2023 and the High Court granted him bail on 6th May, 2024. He was in custody for less than 7 months before he was granted bail. There was no finding recorded that the trial is not likely to be concluded in a reasonable time. In the facts of the case, this Court cancelled the bail granted by the High Court. Therefore, there was no departure made from the law laid down in the case of *Union of India v. K.A. Najeeb*³ and *V. Senthil Balaji*¹.

6. The learned Solicitor General of India very fairly stated that in the facts of the case, the decision in the case of *V. Senthil Balaji*¹ may be followed. Hence, the appellant deserves to be enlarged on bail, pending trial.”

36. It is also matter of record that as per the reply (para 6) of the respondent/ED, investigation is still pending in the present case. It is also not the case of the respondent/ED that any money trail leading to the present applicant has been discovered or any property had been acquired by him from



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the alleged proceeds of crime. As noted hereinabove, the trial in the predicate/scheduled offence has not even started and is at the preliminary stage. The prosecution therein has cited 98 witnesses and the trial is not likely to be completed in a reasonable time. There are nearly 8000 documents in the predicate/scheduled offence registered with CBI and around 6000 documents in the present complaint case filed by the respondent/ED. Even as per the reply of the respondent/ED, investigation is still continuing with respect to identification and location of the remaining 'proceeds of crime' and determining the role of other persons/entities involved in the present case. The applicant is in judicial custody since 01.07.2024 and has undergone incarceration for more than 10 months. Keeping in mind the mandate of the Hon'ble Supreme Court in **V. Senthil Balaji** (*supra*), trial in the present complaint case is yet to commence and would take some time to conclude.

37. In view of the aforesaid judicial pronouncements, continued incarceration of the applicant with no possibility of trial being completed in near future, restrictions provided under Section 45 of the PMLA would not come in way of ensuring the right to personal liberty and speedy trial under Article 21 of the Constitution of India.

38. In the totality of the facts and circumstances of the present case, this Court is inclined to allow the present application. The applicant is directed to be released on bail upon his furnishing a personal bond in the sum of Rs.1,00,000/- alongwith two sureties of like amount to the satisfaction of the learned Trial Court/Link Court, further subject to the following conditions: -



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- i. The memo of parties shows that the applicant is residing W1C-053, Wellington Estate, Sector 53, Gurugram, Haryana. In case of any change of address, the applicant is directed to inform the same to the learned Trial Court/Investigating Officer.
- ii. The applicant shall not leave India without the prior permission of the learned Trial Court.
- iii. The applicant is directed to give all his mobile numbers to the Investigating Officer and keep them operational at all times.
- iv. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witness in any manner.
- v. In case it is established that the applicant tried to tamper with the evidence, the prosecution will be at liberty to apply for cancellation of his bail.

39. Needless to state that, nothing mentioned hereinabove, is an opinion on the merits of the case or pending trial before the learned Trial Court and observations made herein are only for the purposes of the present bail application.

40. The application stands allowed and disposed of along with all the pending application(s), if any.



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41. Let a copy of this judgment be communicated to the concerned Jail Superintendent.

42. Judgment be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA, J.

MAY 7, 2025/bsr/nk/ns