



2025:DHC:3390



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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. 4821/2024

RAKESH KUMAR GULATI

.....Petitioner

Through: Mr. Tanveer Ahmed Mir, Senior
Advocate with Mr. Yash Datt and Mr.
Chandrashekhar Anand, Advocates.

versus

DIRECTORATE OF ENFORCEMENT

.....Respondent

Through: Mr. Manish Jain, SPP with Ms.
Sougata Ganguly and Ms. Deepa,
Advocates for ED.

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.: 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 directors/promoters/employees and others, had committed fraud by siphoning

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



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, M/s Umaiza Infracon LLP, ('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 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

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



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 Paramjeet Sharma was arrested in the ECIR registered with the respondent/ED on 01.07.2024 and was arrayed as accused No. 11 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: -

“10.20 Role and Conduct of Rakesh Kumar Gulati

10.20.1 That he was the Chartered Accountant /Auditor of M/s. Sunstar Overseas Ltd. and almost all its related entities and has been looking after their audit and statutory compliances. His e-mail id is found registered with many Sunstar Group companies/ firms. He was also looking after audit and accounts of M/s. Shivakriti Agro Pvt. Ltd. and M/s. Star Global Multi Ventures Pvt. Ltd. which have major role in this



case, as per material evidences presented and discussed in preceding paras. In his capacity of chartered accountant and auditor of all said companies, he had hold of books of accounts and other financial records/documents of the M/s. Sunstar Overseas Ltd, its related companies/firms and also of M/s Shivakriti Agro Pvt. Ltd.

10.20.2 That the investigation revealed that Rakesh Kumar Gulati has acted beyond his professional capacity of being a CA and auditor of aforesaid entities found involved in the money-laundering and he knowingly assisted and knowingly indulged himself in the generation, acquisition, concealment, diversion and finally, projecting the '*proceeds of crime*' involved in the case as untainted property.

10.20.3 That to verify and ascertain above facts, his very good friend-Mr. Ajay Soni, ex-director and shareholder of M/s Shivakriti Agro Pvt. Ltd. (SAPL) in his recorded statement discussed supra, wherein he inter alia stated and accepted that on the directions/ instructions/ requests of Mr. Rakesh Kumar Gulati, he handed over his company- M/s Shivakriti Agro Pvt. Ltd. for operational purposes to Rohit Aggarwal, who was director and controller of M/s Sunstar Overseas Ltd.. Thereafter, ex-directors of M/s. Sunstar Overseas Ltd. appointed new employees in M/s. Shivakriti Agro Pvt. Ltd. from a pool of ex-employees of M/s. Sunstar Overseas Ltd. By this, they assumed control of M/s. Shivakriti Agro Pvt Ltd. and commenced business operations but in the name of Ajay Soni, as he was still director and shareholder. Ajay Soni further revealed that he also signed many documents, such as agreements and board resolutions, as per the instructions of Rakesh Kumar Gulati, without questioning their contents. Ajay Soni further revealed that he had no knowledge of any transactions involving M/s. Shiva Kriti Fashion Pvt Ltd. (later renamed as Shivakriti Agro Pvt. Ltd.) as he signed all the documents presented to him by Rakesh Kumar Gulati believing in good faith and without questioning him about their contents. He also revealed that Rakesh Kumar Gulati and Rohit Aggrawal conspired together with regard to investments received in M/s Shivakriti Agro Pvt. Ltd. from overseas investors, transactions made to M/s Umaiza Infracon LLP for Facility Agreement done with the said entity and export advances received from overseas buyers- Jashan Trading LLC and Meenaraj Trading LLC during his tenure as director and shareholder. It therefore emerges that it was Rakesh Kumar Gulati who was acting as the face of Ajay Soni, the then Director of M/s Shivakriti Agro Pvt. Ltd., and the same had been accepted by them in their above referred statements tendered U/s 50 of PMLA.



10.20.4 That besides above, the seized digital records, specifically e-mail of Rakesh Kumar Gulati with e-mail id: rkgulati@rakeshgulati.com, it is found that Ajay Soni had sent an e-mail dated 19.07.2022 to Ajay Yadav, Rakesh Gulati and other wherein he categorically mentioned the name of his friend Rakesh Kumar Gulati as official deal maker /agent who actually got him involved in frauds and scams by Rohit Aggarwal and other directors of Sunstar Overseas Ltd. He further stated that they are continuing very smartly and bluntly in business using his company with benami directors despite the blanket ban by various banks and all the investigating agencies of Govt of India on Rohit Aggarwal and other directors of Sunstar.

Further, screen-shot of E-mail dated 03.01.2022 made by Mr. Ajay Soni to M/s Zephyrus and Eternity Legal reveals that:

“We have resigned upon getting to know the actual promoters are indulged in various illegal business practices and the past records of all of them are so very suspicious. Every investigation department of Govt of India are investigating their The matter with Umaiza Infracon too seems to be another scam by them

We are also assessing possible actions, we can take towards Shiva Kriti Agro P Ltd., its promoters and associates M/s, Rakesh Gulati and associates, who attempted to entangle us to help them by giving our company Shiva Kriti Fashion Pvt Ltd., basis false informations.”

10.20.5 That, investigation revealed that Mr. Ajay Soni and his wife Mrs. Madhu Soni transferred 100% shareholding of their company- M/s Shivakriti Agro Pvt. Ltd. to Mr. Paramjeet and his wife Mrs. Seema Sharma on the instructions of Rakesh Kumar Gulati, who was the common auditor & CA for M/s Sunstar Overseas Ltd. as well as M/s Shivakriti Agro Pvt. Ltd. That some of above facts were also admitted by Rakesh Kumar Gulati in his Statement dated 16-17.01.2024 tendered on oath U/s 17 and testified on 01.07.2024 Us 50 of the PMLA, 2002.

10.20.6 That to further verify the facts disclosed supra, statement dated 27.05.2024 of Mr Navin Kanjwani, M/s. Kalptaru Fincap Ltd. recorded U/s 50 of the PMLA revealed that Rakesh Kumar Gulati arranged the meeting of Rohit Aggarwal with the authorized representatives of M/s. Kalptaru Fincap Ltd, to facilitate major siphoning-of /diversion of the



funds of Rs.40 Crore which is nothing but the "proceeds of crime" from M/s. Star Global Multi Ventures Pvt. Ltd., an erstwhile related entity of Sunstar Overseas Ltd., to M/s. Umaiza Infracon LLP which was used for acquisition of Sunstar Overseas Ltd. in NCLT. That furthermore, Vijay Inder Bhatia of Compact Capital Ltd. also stated in his statement that Rakesh Kumar Gulati gave him contact no. of Ajay Yadav and asked him to divert the funds to Umaiza Infracon LLP and Rakesh Kumar Gulati arranged Rs.1 Crore to Compact Capital Ltd from Star Global Multi Ventures Pvt. Ltd.

10.20.7 That therefore, it would constitute that he consiously acted beyond his professional limits to facilitate and mediate at every important stage of money-laundering activities and processes connected to proceeds of crime involved in money laundering. He used his relationship and connections with Ajay Soni, NBFCs, etc. to execute the conspiracy hatched by ex-directors/promoters /beneficial owners of M/s. Sunstar Overseas Ltd. and as a result of his conscious involvement in this whole conspiracy, ex-directors/promoters succeeded in regaining the indirect but actual control of assets and properties of M/s Sunstar Overseas Ltd. by way of him arranging network of sham and dummy entities and in appropriating sham transactions in the books of accounts of accused entities for which he was auditor and CA.

10.20.8 That from the above facts and circumstances, it thus emerges that Rakesh Kumar Gulati knowingly assisted and actually involved himself in the processes and activities connected with the said proceeds of crime, including its generation, acquisition, possession, concealment, use and projecting it as untainted property and hence, he is guilty of committing the offence of money-laundering in terms of provisions of Section 5 of the PIMLA. 2002 and hence, liable for punishment U/s 4 of the PMLA.”

Submissions on behalf of the Applicant

7. Learned Senior Counsel appearing on behalf of the applicant has submitted that latter is Chartered Accountant and running his own partnership firm and is an external statutory auditor of the accused company which is



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owned and promoted by Aggarwal family and its directors. He submitted that the present applicant has not been arrayed as an accused in the predicate/scheduled offence and has been arrested in the present ECIR by the respondent/ED without any evidence. It is pointed out that the present applicant was neither named in the FIR in the predicate/scheduled offence nor kept in column No. 12 of the final report filed by CBI in the predicate/scheduled offence and was only cited as prosecution witness. It is further submitted that the present applicant, being an external auditor of the accused company, was neither involved in managing day-to-day affairs of the said company nor was holding any key managerial personnel position in the said company. It is further submitted that the persons 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. Reliance has been placed on **Himansh @ Himanshu Verma v. Enforcement Directorate**³, 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. Learned Senior Counsel for the applicant has further submitted that the latter was accountant and auditor of the accused company and Shivakriti and the respondent/ED has arrayed him as accused in the present ECIR merely on the said basis without ascribing any specific role. It is further submitted that being an external auditor the applicant never had control over the financial records of the aforesaid companies and he was only providing professional services in respect of nothing incriminatory has surfaced during investigation

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



undertaken in present ECIR as well as predicate offence. It is further submitted that he was known to the director of Shivakriti, Paramjeet, as the latter was an erstwhile employee in the accused company. It is further pointed out that the applicant had ceased to be the statutory auditor of the accused company as well as Star Global Multiventures Private Limited in 2017. Attention of this Court has been drawn towards the ADT forms in this regard. Reliance has been placed on *para 26* of the judgment passed by a Coordinate Bench of this Court in **Manish Kothari v. Director of Enforcement**⁴, to contend that in similar circumstances wherein, the applicant was arrayed as an accused as an external auditor by the respondent/ED in the said case, bail was granted.

9. It is further submitted that the allegations of the respondent/ED that the email id of the applicant was found associated with many Sunstar Group of Companies, is without any cogent evidence and even otherwise, he was statutory auditor of the said companies and it is in normal course of business to a company to have the email id of their auditors and the same in no manner incriminates the applicant. Insofar as the allegations of acting beyond his professional limits, it is submitted that Resolution Professional for the accused company had, in his statement under Section 50 of the PMLA, stated that he knew the present applicant only in his capacity as an external auditor and had only met him once. It is further submitted that Ajay Yadav had himself stated that the present applicant had no involvement in the CIRP proceedings or any activity related to the same and was also not involved in arranging funds for Umaiza.

⁴ 2023 SCC OnLine Del 5921



10. Learned Senior Counsel has submitted that the whole case of the respondent/ED against the applicant is based on the statement under Section 50 of the PMLA of Ajay Soni, who had alleged that the applicant was running Shivakriti. It is submitted that it has not been alleged by the said Ajay Soni that he was made to sign on blank papers at the instance of the applicant and it is the respondent/ED which had twisted the statement of Ajay Soni in order to foist a narrative against the applicant. It is further submitted that Ajay Soni had attended various meetings, board resolutions which, in fact, shows that he was actively involved in taking of various key decisions of Shivakriti. Attention of this Court was drawn towards the Statement of Paramjeet, recorded under Section 50 of the PMLA, wherein, in respect of question that who used to take decisions in Shivakriti, he had stated that it was Ajay Soni, who used to manage affairs of Shivakriti. It is also submitted that neither respondent/ED nor Ajay Soni has ever produced any document whereby it can be concluded that the present applicant was discharging any role relating to the internal affairs of Shivakriti.

11. It is the case of the respondent/ED, the present applicant was involved in aiding and assisting Rohit Aggarwal to facilitate funds for Umaiza so that it could acquire the accused company indirectly during CIRP. Learned Senior Counsel has submitted that the said allegation is based on the statement of Navin Kanjwani and the same is in contradiction with his own statement as well as to that of Navin Gupta, who was the director of Kalpataru. It is pointed out that Navin Kanjwani is not associated with M/s Kalpataru in any capacity and any statement made by him in respect of the affairs of the said



entity is completely hearsay. It is further submitted that Navin Gupta, who was director and shareholder of Kalpataru had, in his statement under Section 50 of the PMLA, stated that he had neither met nor ever heard of the present applicant. It is further submitted that the case of the respondent/ED that the applicant had given Vijay Inder Bhatia contact information of Ajay Yadav and asked him to divert funds to Umaiza is false and contradictory as the applicant had not known any such person by the said name prior to November 2019. Moreover, other allegations based on the statement of Vijay Inder Bhatia are also self-contradictory and no proof of the applicant ever meeting him has been provided by the respondent/ED.

12. 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 fees for being a statutory auditor of the accused company. 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 Deputy Director, Directorate of Enforcement**⁵, the applicant's further incarceration would not be warranted. 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

⁵ 2024 SCC OnLine SC 2626; 2024 INSC 739



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 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 further submitted that in view of the **V. Senthil Balaji** (*supra*) the trial in both the predicate/scheduled 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**⁶, in support of this contention.

Submissions on behalf of the Respondent/Directorate Of Enforcement

14. Learned SPP for 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

⁶2024:DHC:8280



of the PMLA. It is further submitted that the present applicant, while acting as Chartered Accountant/Auditor of the accused company and its other related entities, was looking after their financial accounts and audits by making statutory compliances and has played a vital role in siphoning off more than Rs. 539 Crores whereby the accused company had defaulted in repayment of the loan/credit facilities availed from the consortium of 9 lender banks. He further submitted that, during the investigation in the present ECIR, it has come on record that the present applicant was looking after the audit and accounts of M/s Shivakriti Agro Pvt. Ltd. and M/s Star Global Multi Ventures Pvt. Ltd., which were fictitious debt firms/companies created solely for the purpose of diversion of stocks, and has played an essential role by assisting the ex-directors/promoters of the accused company in the siphoning/disposing of the money taken from the consortium. It is the case of the respondent/ED that the present applicant was knowingly indulged and had assisted in generation, acquisition, concealment, diversion and projecting of the proceeds of crime as tainted money in the present case. It is further submitted that the present applicant was a person who was possessed with knowledge and skills and by misusing the same, diversion of money was facilitated. He has by acting in such manner exceeded his professional capacity.

15. He further submitted that, as per the statement of Mr. Ajay Soni, ex-director and shareholder of M/s Shivakriti Agro Pvt. Ltd., it was revealed that he while acting under the instruction/directions of the present applicant had handed over to one Rohit Aggarwal, who was director of the accused company, for operational purposes and he had also signed many documents, as per instructions of the present applicant, however, he had no knowledge of

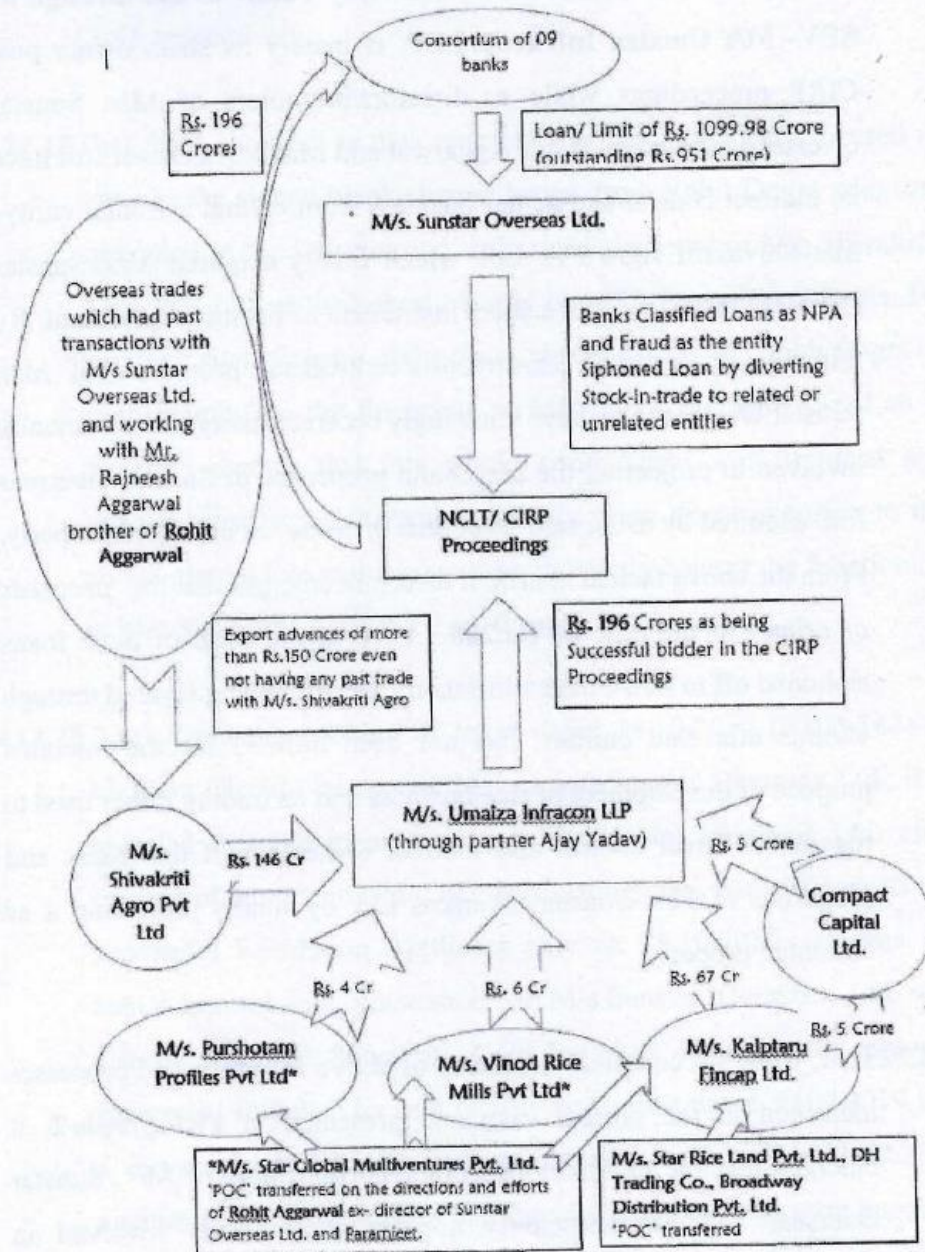


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any transactions involving M/s Shivakriti Agro. It is further submitted that the present applicant has thus acted beyond his professional limits to facilitate and mediate in the process of money-laundering and disposing of the tainted money. Learned SPP for ED has drawn attention of this Court towards the Facility Agreement dated 30.09.2019 and has submitted that the present applicant had signed the said agreement as one of its witnesses and further that the emails exchanged with the key accused persons during the said period shows that he was actively involved in the commission of offences alleged against him.

16. It is further submitted that the present applicant had arranged the meeting of Rohit Aggarwal with the authorised representatives of Kalptaru to facilitate major siphoning of the funds of Rs. 40 Crores, a part of proceeds of crime from the loan defaults committed by the accused company, and the same were subsequently utilised in Umaiza for acquisition of the accused company whilst it was undergoing CIRP. Attention of this Court has been drawn towards a chart in the complaint filed by the respondent/ED depicting/showing completed trajectory of activities and processes identified in the money-laundering of bank loans by the accused company as well as its related entities. The said chart is reproduced hereinunder: -



Pictograph-2: Complete trajectory of activities and processes identified in the money-laundering of bank loans by Sunstar Overseas Ltd. and others





Thus, it is submitted that the present applicant is *prima facie* guilty of the commission of the offences alleged against him in the present complaint.

17. It is further submitted that the present applicant has undergone incarceration merely 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

18. Heard learned Senior Counsel for the applicant as well as learned SPP for the respondent/ED and perused the record.

19. The main allegation with respect to the applicant is that he was a Chartered Accountant of the accused company and its related entities and was the main person behind the entire conspiracy. It is the case of the prosecution that the present applicant was guiding main beneficiary Rohit Aggarwal in diverting the funds to various companies in order to finally acquire the accused company through the process of NCLT. It is submitted that the present applicant, who was supposed to be a chartered accountant has betrayed his professional commitments by indulging in practice which vitiated the legal process of NCLT.

20. It is the case of the applicant that he was only an external statutory auditor of the accused company and its related entities and was never



involved in day-to-day affairs of the accused company or its related entities and subsidiary companies. Thus, as external statutory auditor, he cannot be considered to be key managerial personnel of the company as per Section 2(51) of the Companies Act, 2013. It was argued that there is no evidence to show that the present applicant had any influence in internal affairs of the accused company or its related entities. It is submitted that the respondent/ED has placed reliance on the statements of certain witnesses recorded under Section 50 of the PMLA Act to implicate the applicant in the present case.

21. Learned Senior Counsel appearing on behalf of the applicant has drawn the attention of this Court towards statement of certain witnesses recorded under Section 50 of the PMLA namely, Gyan Chand Narang and Ajay Yadav to demonstrate that the aforesaid allegations of the respondent/ED Directorate had no foundational basis.

22. On the contrary, it was argued on behalf of the applicant, that documentary evidence shows that Ajay Soni was responsible for all the functions of the M/s Shivakriti Agro Pvt. Ltd.

23. It was further argued that, in fact, CBI has relied upon applicant's audit report which pointed out certain discrepancies in the finances. The applicant had seized to be an external statutory auditor of accused company as well as Star Global Multiventures Pvt. Ltd. in 2017, *i.e.*, prior to the alleged money laundering activities.



24. It is a matter of record that applicant has neither been shown to be beneficiary of any proceeds of crime nor any provisional attachment of property belonging to the applicant has been done by the respondent/ED. It has also been vehemently argued that the alleged main beneficiaries of the proceeds of crime, *i.e.*, ex-promoters/directors of the accused company and its related entities, were chargesheeted without arrest in the predicate/scheduled offence as well as the present complaint case.

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 the 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, being an external statutory auditor of the accused company and its related entities, was the key member in the entire conspiracy. Reliance has also been placed on **Manish Kothari** (*supra*), to contend that a Coordinate Bench of this Court had granted bail to the applicant therein on similar facts as the said applicant was also arrayed as accused as an external auditor. The relevant portion of the said judgment reads as under: -

“26. It is an admitted case that the petitioner herein was a chartered accountant of Anubrata Mondal. The case of the ED is that present petitioner was instrumental in projecting the tainted money as untainted money. The apparent role of the petitioner is filing of the income tax return. It is a settled proposition that at the stage of consideration of the bail even under PMLA the court has only to see the preponderance of probability. The court at this stage is not required to record the positive



finding of acquittal. Such finding can be recorded only after recording and appreciation of the evidence by the learned trial court. The case of the petitioner that Anubrata Mondal is shifting his blame on the petitioner only to save himself has to be tested during the course of the trial. Generally speaking, the professional would act on the instructions of his client. However, whether he has gone beyond his professional duty is something which is required to be seen and examined during the trial. The allegation against the present petitioner is not that he has done something which was beyond his scope of profession i.e. indulging in some activities which are totally unconnected with the chartered accountancy. The plea of the petitioner that he has acted on the basis of information and record provided to him cannot be rejected outrightly at this stage. This is required to be tested during the course of the trial.”

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 Section 13(1)(d) of the PC Act and the present ECIR was registered on 09.04.2021. It is case of the applicant that the chargesheet in the predicate offence has been filed against the accused company and its ex-directors/promoters and not against the present applicant.

27. Reliance is placed on the judgment 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 in view of the fact that 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 and the case is still at the stage of Section 207 of the CrPC (for supply of documents). It is pointed out that the respondent/ED has still not preferred any application before learned Special Court, Panchkula in the chargesheet filed with respect to the predicate/scheduled offence to get the same transferred before the PMLA Court in Delhi. It is also submitted that 98 witnesses have been cited by the CBI in the predicate/scheduled offence and 26 witnesses have been cited by the respondent/ED in the present complaint case. It is also pointed out there are nearly 8000 documents in the predicate offence and approximately, 6000 documents in the present complaint case.

28. 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*⁷, which hold that such stringent provisions for the grant of bail do not take away the power of Constitutional Courts

⁷ (2021) 3 SCC 713



to grant bail on the grounds of violation of Part III of the Constitution of India. We have already referred to paragraph 17 of the said decision, which lays down that the rigours of such provisions will melt down where there is no likelihood of trial being completed in a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. One of the reasons is that if, because of such provisions, incarceration of an undertrial accused is continued for an unreasonably long time, the provisions may be exposed to the vice of being violative of Article 21 of the Constitution of India.

27. Under the Statutes like PMLA, the minimum sentence is three years, and the maximum is seven years. The minimum sentence is higher when the scheduled offence is under the NDPS Act. When the trial of the complaint under PMLA is likely to prolong beyond reasonable limits, the Constitutional Courts will have to consider exercising their powers to grant bail. The reason is that Section 45(1)(ii) does not confer power on the State to detain an accused for an unreasonably long time, especially when there is no possibility of trial concluding within a reasonable time. What a reasonable time is will depend on the provisions under which the accused is being tried and other factors. One of the most relevant factor is the duration of the minimum and maximum sentence for the offence. Another important consideration is the higher threshold or stringent conditions which a statute provides for the grant of bail. Even an outer limit provided by the relevant law for the completion of the trial, if any, is also a factor to be considered. The extraordinary powers, as held in the case of *K.A. 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.”

29. In **Vijay Nair v. Directorate of Enforcement**⁸, it was observed and held as under: -

“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.”

30. 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

⁸ 2024 SCC OnLine SC 3597



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 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.”

31. The role of the present applicant, as pointed out hereinabove, was that he being a Chartered Accountant and external statutory auditor of the accused company, M/s Sunstar Overseas Pvt. Ltd., as well as M/s Shivakriti Agro and related entities, had advised and facilitated 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 in his professional capacity. 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.



32. 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 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.”

33. 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 in January 2024 and on 24.06.2024, and thereafter, he was finally arrested on 01.07.2024.

34. The Hon'ble Supreme Court in **Udhaw Singh v. Enforcement Directorate**⁹, 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:

⁹ 2025 SCC OnLine SC 357



“27. Under the Statutes like PMLA, the minimum sentence is three years, and the maximum is seven years. The minimum sentence is higher when the scheduled offence is under the NDPS Act. When the trial of the complaint under PMLA is likely to prolong beyond reasonable limits, the Constitutional Courts will have to consider exercising their powers to grant bail. The reason is that Section 45(1)(ii) does not confer power on the State to detain an accused for an unreasonably long time, especially when there is no possibility of trial concluding within a reasonable time. What a reasonable time is will depend on the provisions under which the accused is being tried and other factors. One of the most relevant factor is the duration of the minimum and maximum sentence for the offence. Another important consideration is the higher threshold or stringent conditions which a statute provides for the grant of bail. Even an outer limit provided by the relevant law for the completion of the trial, if any, is also a factor to be considered. The extraordinary powers, as held in the case of *K.A. Najeeb*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.

XXXX

XXXX

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.”



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35. It is also matter of record that as per the reply (para 9) 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 the alleged proceeds of crime. As noted hereinabove, the trial in the predicate/scheduled offence has not been 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.

36. 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.

37. 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



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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: -

- i. The memo of parties shows that the applicant is residing E-4/21B, Top Floor, Model Town-II, New Delhi-110009. 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.

38. 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.



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

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

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

AMIT SHARMA, J.

MAY 07, 2025/bsr/nk/ns