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

Judgment reserved on:26.11.2024
Judgment pronounced on: 04.12.2024

\+ **BAIL APPLN. 1859/2024**

PARVEZ AHMED .....Petitioner

Through: Mr. Adit S. Pujari, Mr. A. Nowfal, Mr. Shaurya Mittal, Ms. Mantika Vohra, Mr. Arif Hussain, Advs.

versus

DIRECTORATE OF ENFORCEMENT .....Respondent

Through: Mr. Zoheb Hossain, Special Counsel for ED with Mr. Vivek Gurnani, Panel Counsel for ED, Mr. Kartik Sabhdarwal, Mr. Pranjal Tripathi, Mr. Kanishk Maurya, Mr. Azeeq Mushtaque, Advs.

\+ **BAIL APPLN. 2001/2024**

ABDUL MUQEET .....Petitioner

Through: Mr. Satyakam, Mr. Talha Abdul Rahman, Mr. Sudhanshuy Tewari, Mr. Arif Hussain, Advs.

versus

DIRECTORATE OF ENFORCEMENT .....Respondent

Through: Mr. Zoheb Hossain, Special Counsel for ED with Mr. Vivek Gurnani, Panel Counsel for ED, Mr. Kartik Sabhdarwal, Mr. Pranjal Tripathi, Mr. Kanishk Maurya, Mr. Azeeq Mushtaque, Advs.

\+ **BAIL APPLN. 2012/2024**

MOHD ILYAS .....Petitioner

Through: Mr. Shadan Farasat, Sr. Adv. with Mr. A. Nowfal, Mr. Harshit Anand, Mr. Aman Naqvi, Ms. Niharika, Advs.

versus

DIRECTORATE OF ENFORCEMENT .....Respondent

Through: Mr. Zoheb Hossain, Special Counsel for ED

with Mr. Vivek Gurnani, Panel Counsel for ED, Mr. Kartik Sabhdarwal, Mr. Pranjal Tripathi, Mr. Kanishk Maurya, Mr. Azeeq Mushtaque, Advs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

: JASMEET SINGH,J

1. These are the petitions filed under Section 439 read with Section 482 of the Code of Criminal Procedure, 1973 (*"CrPC"*) on behalf of the petitioners seeking regular bail in ECIR/STF/17/2022 dated 21.09.2022 for the commission of offence under sections 3 and 4 read with section 70 of the Prevention of Money Laundering Act, 2002 (***"PMLA"***).

BRIEF FACTS

2. The said ECIR /STF/17/2022 dated 21.09.2022 is premised on RC-14/2022/NIA/DLI dated 13.04.2022 filed by the National Investigation Agency (***"NIA"***) under section 120-B of Indian Penal Code (***"IPC"***), Sections 17, 18, 18B, 20, 22B, 38 and 39 of Unlawful Activities (Prevention) Act, 1967 (*"UAPA"*) as the said offences are the scheduled offences under Part A of the Scheduled under section 2(1)(y) of PMLA.

3. All the petitioners herein were arrested on 22.09.2022 under the said ECIR. After the completion of investigation, the Directorate of Enforcement (***"ED"***) filed a Complaint before the concerned Court on

19.11.2022 against the petitioners herein.

4. As per the Complaint filed by the ED, the specific role of the petitioners are described as under:-

Role of Parvez Ahmed

- It is stated that he was the president of Delhi state unit of Popular Front of India (***"PFI"***) for the term 2018-2020 and was actively involved in anti CAA-NRC protests held in Delhi. The anti-CAA protests in Delhi resulted in Delhi riots of February, 2020 in which he, along with other PFI members, was arrested. Parvez Ahmed admitted that in his capacity as the President of PFI Delhi, he followed up the collection of donations. He also revealed that receipts were issued to individual contributors who donated funds to PFI.

- His statement under section 50 of PMLA was recorded wherein he, *inter alia*, stated that he was responsible for PFI's public relations in Delhi and after collection of donations, the amount was deposited in headquarters office and donation receipts were taken which were then sent to the donors and this process was done under the supervision of the District President. The funds were collected by visiting houses of individuals but at that time no donation receipts were issued to the donors. The accounts department handed over only the filled donation slips to the District Presidents and one copy of the said slips remained in the booklet. He further stated that the local units wrote the name of the donor along with address on a piece of paper and handed over the same to the District President.

Role of Mohd Ilyas

- It is stated that he was the General Secretary of Delhi state unit of PFI since November, 2018 and actively participated in the anti-CAA protests in Delhi which resulted in Delhi Riots. In his statement recorded under section 50 of PMLA, he stated that collection of funds was mainly done in the form of donations by Delhi units of PFI. Further, the cash which was collected was deposited by him in PFI's Shaheen Bagh office with either the manager Kamal or accountant Jaseer.
- In another statement recorded under section 50 of PMLA on 22.09.2022, he, *inter alia*, stated that his main work was public relations, whenever there was any protest or public gathering it was his duty to contact Police and get their approval and was also responsible for spreading awareness about PFI. He further stated that PFI did not receive any donations from abroad and most of PFI's donations were through bank transfers and whatever small cash donations were there would be donated in PFI's national headquarters office and thereafter the account section prepared the donation receipts which he handed over to the donors.

Role of Abdul Muqeet

- It is stated that he was the office secretary of Delhi State Unit of the organization since 2017. During the investigation, it was revealed that bogus donation slips were issued in the name of residents of Mullah Colony, Gharoli for PFI by Abdul Muqeet along with his associates. It was also revealed that donations made for a sum of Rs. 50-100 were incorrectly reflected as

donations to the tune of Rs. 2000 – Rs. 4000. Further, Abdul Muqeet was actively involved in the collection of donations in his locality, i.e. Mullah Colony, Gharoli, Delhi-96.

- His statement under section 50 of PMLA was recorded wherein he *inter alia*, stated that he joined PFI after meeting Parvez Ahmed and was made office secretary of PFI Delhi. Further as office secretary, his responsibility was to open and close PFI's office and to attend any PFI related person who came to the office. He used to attend office every day for 3-4 hours and it was his responsibility to collect Zakat in Mulla Colony and nearby areas and after collecting Zakat if anybody used to ask him for donation receipts, he would talk to Mohd Ilyas and arranged for receipts.

5. The petitioners were also members of the political front of PFI – Social Democratic Party of India (***"SDPI"***) - and were actively involved in SDPI's activities. SDPI gave ticket to Mohd Ilyas for contesting Delhi Assembly elections, 2020 from Karawal Nagar and for this purpose, Rs. 2.5 lakhs was given by SDPI to Mohd Ilyas.

6. During the investigation, it was revealed that more than Rs. 60 Crores have been deposited in the bank accounts of PFI since 2009 and an amount of Rs. 32.03 Crores was deposited in cash. Several booklets in respect of cash donations for the period March 2020 were recovered and seized from the national headquarter office of PFI. Scrutiny of the said booklets reveals that complete details of a large number of donors were not mentioned and hence it was not possible to identify them and also the genuineness of the so-called donations. In a large part of the

cases, the identity of the so-called donor and the authenticity of the purported cash donations could not be established. It therefore, appeared that complete details of the so-called donors were deliberately concealed as they did not exist in reality.

7. It is also stated in the Complaint that all the petitioners were actively involved and instrumental in the fund raising activities of PFI as part of the larger criminal conspiracy to raise and use such funds in PFI's various unlawful activities in India. PFI conducted anti-CAA protests across India and the petitioners actively participated in such protests. Further, all the petitioners were an integral part of this conspiracy and they played a key role in creating and managing the facade of bogus cash donations by way of which proceeds of crime were concealed, possessed and projected as untainted money. The petitioners were the key persons who were responsible for raising and collecting funds and depositing the same at the National office of PFI at Shaheen Bagh, New Delhi.

8. The Complaint in conclusion stated that a criminal conspiracy was hatched by the office bearers of PFI by which suspicious funds from within the country and abroad have been raised by the PFI. These funds have been raised as a part of the scheduled offence of criminal conspiracy. The funds so raised and collected by PFI are thus nothing but proceeds of crime which they have layered, placed and integrated through their numerous bank accounts as well as those of their members/sympathizers.

9. Parvez Ahmed admitted to have looked after the collection of funds in Delhi. Mohd Ilyas looked after the collection of funds in the trans-

Yamuna region of Delhi. Abdul Muqeet stated that they (persons associated with PFI) used to go to mosques in nearby areas to collect donations from the namaazis and thereafter they issued a receipt for the total amount collected to the concerned Imam of the mosque and deposited the collection with Parvez Ahmed.

10. Investigation has revealed that such fund collection exercise was a sham and was falsely projected to be received from PFI sympathizers and was further revealed that these transactions were bogus. Hence, cash from suspicious sources was nothing but proceeds of crime generated out of criminal conspiracy to disturb communal harmony, incite violence through riots and other unlawful activities for spreading terror across India. Thus, by concealing, possessing and acquiring proceeds of crime raised in India and abroad as part of criminal conspiracy and by thereafter projecting such funds as untainted money (by preparing bogus cash donations slip/receipts), the petitioners have been directly involved been knowingly a party to the various processes and activities connected with the proceeds of crime and thus committed the offence of money laundering as defined under Section 3 of PMLA.

SUBMISSIONS ON BEHALF OF THE PETITIONERS

On behalf of the petitioner i.e. Mohd Ilyas

11. Mr Farasat, learned senior counsel appeared for the petitioner i.e. Mohd Ilyas and has advanced his submissions as under:-

A. No offence under PMLA has been made out.

12. He submits that the Complaint does not make out any PMLA offence against the petitioner. The petitioner is accused of receiving Rs. 2.5

lakhs from the SDPI, the PFI's political wing, to contest Delhi Assembly Elections, 2020. He argues that there is nothing on record to prove that this money was a 'proceeds of crime'; in fact, the complaint does not even allege that the said money was given to SDPI by PFI, for members and activities for alleged predicate offences.

13. Learned senior counsel argues that the Complaint further alleges that an amount of Rs. 1.02 lakhs was deposited in the petitioner's bank account in Cochin, the source or reason has not been explained by the petitioner. Nevertheless, there is nothing in Complaint which indicate that such amount was received by the petitioner on account of any PFI-related activity, let alone be 'proceeds of crime', this allegation is nothing but an accusation against the petitioner made by the ED without any substantive evidence that the said amount was obtained as a result of a scheduled offence.

14. He further points out from the Complaint that there are no specific transactions either directly or indirectly which link the petitioner to any money trail allegedly collected or concealed for and on behalf of PFI. He further states that statements which are prejudicial in nature have been made by the ED and the same cannot be a substitute to satisfy the ingredients of the alleged offence despite howsoever strong or damaging they may be. Statements made under Section 50 of the PMLA are not admissible and further they are not corroborated by any evidence.

15. Learned senior counsel argues that PMLA offence is a separate offence whose existence is dependent upon the presence of the predicate offence, in the present case ED has tried to describe the

funds obtained as a part of alleged predicate offence as 'proceeds of crime' in the complaint. In ***P. Chidambaram vs. Directorate of Enforcement (2019) 9 SCC 24***, the Hon'ble Supreme Court has held that a scheduled/predicate offence is a *sine qua non* for the offence of money-laundering which would generate the money which is being laundered. At its highest, this allegation links the petitioner to generation of 'proceeds of crime' which is not a crime under the PMLA.

16. He further argues that the phrase 'proceeds of crime' needs to be construed strictly as it is the core ingredient constituting the offence of money laundering. For being regarded as proceeds of crime, the property associated with the scheduled offence must have been derived or obtained by a person 'as a result of' criminal activity relating to the concerned scheduled offence. Hence, as per the complaint filed by the ED against the petitioner, no offence of money laundering under section 3 of PMLA is made out against the petitioner.

B. <u>Right to Liberty has been violated on account of Long Incarceration and Delay in Trial.</u>

17. Learned senior counsel further submits that the petitioner has been in custody for more than 2 years 2 months and maximum punishment for an offence under section 4 of PMLA is 7 years. Trial is yet to begin as the charges have not been framed against the petitioner. Even if the trial commences, it is unlikely to conclude in the near future as there are 185 prosecution witnesses cited in the Complaint and Supplementary Complaints, 456 relied upon documents and digital

evidence running into lakhs of pages which are required to be examined. Hence, the trial will take considerable period of time to conclude. Reliance is placed on the following judgments:-

1) ***Manish Sisodia (II) v. Enforcement Directorate, 2024 SCC OnLine SC 1920***
2) ***Kalvakuntla Kavitha v. Enforcement Directorate, 2024 SCC OnLine SC 2269.***
3) ***Prem Prakash v. Enforcement Directorate, (2024) 9 SCC 787.***
4) ***V. Senthil Balaji v. Enforcement Directorate, 2024 SCC OnLine SC 2626.***
5) ***Vijay Nair vs. Directorate of Enforcement, Special Leave Petition (Criminal) Diary No(s). 22137/2024.***
6) ***Modh. Enamul Haque vs. Directorate of Enforcement Criminal Appeal No. 3984/2024.***

On behalf of the petitioner i.e. Abdul Muqeet

18. Mr Satyakam, learned counsel appeared for the petitioner i.e. Abdul Muqeet and submits that the allegations are vague, contradictory and do not disclose any criminality. As the petitioner is not charge sheeted in the predicate offence, it is difficult to comprehend that how he could be involved in generation, concealment, use and projection of proceeds of crime.

19. Learned counsel further states that the primary evidence against the petitioner is his own statements recorded under section 50 of PMLA which do not implicate the petitioner. The said statements have weak probative value. His own statement cannot be the starting point of

evidence. Confessions require corroborative material to verify the contents and mere admissibility does not mean proof of facts. The statements of the petitioner are imported from different ECIR where the petitioner is not an accused. Reliance is placed on ***Prem Prakash (supra)***.

20. He further submits that to constitute an offence under section 3 of PMLA, there must be a predicate offence which should lead to generation of a money or money trail which is absent. Hence the rigors of section 45 of PMLA are not applicable. Even taking all the allegations in the Complaint as correct, even then the money generation precedes the crime, i.e. Delhi riots.

21. Lastly, Mr Satyakam adopts the argument of Mr Farasat, learned senior counsel on the point of delay in trial and long incarceration which violates the Article 21 of Constitution of India.

On behalf of the petitioner i.e. Parvez Ahmed

22. Mr Pujari, learned counsel appears for the petitioner i.e. Parvez Ahmed and submits that the allegation in the Complaint is that the petitioner facilitated in the collection of funds for the purpose of committing a crime and the funds so collected are therefore proceeds of crime. He states that 'proceeds of crime' must be derived or obtained as a result of any criminal activity, not merely for an offence intended to be committed.

23. The ED's stand in the Complaint is totally against the established legal principles of money laundering. By asserting that the collection of funds for the purpose of committing a crime constitutes 'proceeds of crime', the ED totally has failed to appreciate the settled law related

to the proceeds of crime. Proceeds only become 'proceeds of crime' after they are generated as a direct result of a criminal offence. It is incorrect for the ED to presume that funds collected to commit a crime are proceeds of crime.

24. He states that ED presupposes that the money was collected with criminal intent and the same were used for illegal activities without any evidence to support the same. The petitioner is not charged under UAPA and is not even an accused in the predicate offence. Hence there is no question of funds being collected for illegal activities. If the ED's stands is true then the petitioner would have been charged under Section 17 of UAPA.

25. Lastly, the petitioner adopts the argument of Mr Farasat, learned senior counsel on the point of delay in trial and long incarceration which violates the Article 21 of Constitution of India.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

26. Refuting the above submissions made by the respective learned counsels, Mr Hossain, learned Special Counsel submits that the offence of money laundering commenced pursuant to criminal conspiracy of raising and utilizing funds by PFI and its related organizations for various terrorist activities, including involvement in terror funding and unlawful activities aimed at disrupting communal harmony, as was revealed in the NIA FIR No. RC/14/2022/NIA/DLI dated 13.04.2022. With an intent to curb the nefarious activities of the organization, the Ministry of Home Affairs *vide* notification dated 27.09.2022 has banned PFI and its affiliates and declared it as an "unlawful association".

27. He further submits that the funds raised by PFI were deposited in their 27 bank accounts in cash all over India. Funds were also deposited in the accounts of its sympathizers/other individuals wherefrom the funds were transferred into various bank accounts of PFI in order to make the same look like genuine banking transfers. Total credits exceeding Rs. 60 crores were identified as proceeds of crime, with over half i.e. Rs. 32.03 crores comprising of substantial cash deposits.

28. The same became evident when the statements of cash donors were recorded under section 50 of PMLA wherein these individuals categorically denied any association with PFI and stated that they had never made any cash donations to PFI. In additions some witnesses also confirmed that cash was transferred into their bank accounts and same were immediately transferred to PFI bank accounts.

29. With regard to the role of Parvez Ahmed, learned special counsel argues that Parvez Ahmed was president of Delhi state unit of PFI from 2018-2020. He was responsible for overseeing PFI affairs *inter-alia* of Delhi state, including the collection of funds on behalf of PFI. As a result, he is guilty under section 70 of PMLA. My attention is drawn to the Memorandum of Association (*"MOA"*) and Constitution of PFI to show that all important decisions regarding the affairs of PFI including operating the bank accounts were to be taken by the State President. He further submits that an individual only becomes a President when he is actively participating in the institution or based upon their performance over a number of years. Parvez Ahmed was involved in collection of donations for PFI and looked after the bank account. The total funds collected by Parvez Ahmed while being the

President of PFI Delhi State during the period Jan 2018 – Dec 2020, amounted to Rs. 2.14 crore.

30. With regard to the role of Mohd Ilyas, Mr Hossain submits that till his arrest, he was the General Secretary of Delhi State Unit of PFI since November 2018. He was in charge of managing PFI operations in Trans-Yamuna Area of Delhi state, including the collection of funds on behalf of PFI for these areas. As a result, he is guilty under section 70 of PMLA. My attention is drawn to MOA and Constitution of PFI to show that the General Secretary had an important role in decision making including collections of funds. Mohd. Ilyas tried to legitimise bogus donations as legitimate and the incomplete details on receipts was intentional so that the identity of the donors could not be verified. Even though he claimed that most of the donations were in the month of Ramzan, the record shows that the dates were outside the period of Ramzan.

31. With regard to the role of Abdul Muqeet, Mr Hossain submits that he was the Office Secretary of Delhi State Unit of PFI since November 2018 to till his arrest. He was entrusted with the task of collecting donations in cash in Mulla Colony.

32. All these funds were used for funding terrorist activities including the payments made to terrorist and who would further promote terrorism.

33. Lastly, learned SPP submits that while relying on ***Manish Sisodia (I) v. CBI, 2023 SCC OnLine SC 1393***, the Court cannot ignore the nature of allegations and grant bail to the accused persons only on the ground of long incarceration and delay in trial. In the present case, the accusations against the petitioners are serious in nature *inter alia*,

allegations of terrorist activities. Hence, these allegations cannot be ignored while considering bail.

ANALYSIS AND FINDING

34. Heard the rival submissions advanced by the learned counsels for the parties and perused the material available on record.

35. PMLA legislation was brought in to prevent and control the issue of money laundering, to seize the proceeds of crime, and to punish the perpetrators. Now what exactly is money laundering, to put in simple words, an act of dealing with illegal money or assets i.e. money obtained or derived as result of criminal act relating to scheduled offence. The said act is an offence under section 3 of PMLA which reads as under:-

> *"3. Offence of money-laundering.-- Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of offence of money laundering."*

36. The core ingredient to commit money laundering offence is 'proceeds of crime' which is defined under section 2(1)(u) of PMLA which reads as under:-

> *"(u) "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property;"*

37. The Hon'ble Supreme Court in ***Vijay Madanlal Choudhary v. Union of India, (2023) 12 SCC 1*** has extensively interpreted 'proceeds of crime'. Relevant paras are extracted below:-

"106. *The "proceeds of crime" being the core of the ingredients constituting the offence of money laundering, that expression needs to be construed strictly. In that, all properties recovered or attached by the investigating agency in connection with the criminal activity relating to a scheduled offence under the general law cannot be regarded as proceeds of crime. There may be cases where the property involved in the commission of scheduled offence attached by the investigating agency dealing with that offence, cannot be wholly or partly regarded as proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act — so long as the whole or some portion of the property has been derived or obtained by any person "as a result of" criminal activity relating to the stated scheduled offence. To be proceeds of crime, therefore, the property must be derived or obtained, directly or indirectly, "as a result of" criminal activity relating to a scheduled offence. To put it differently, the vehicle used in commission of scheduled offence may be attached as property in the case (crime) concerned, it may still not be proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act. Similarly, possession of unaccounted property acquired by legal means may be actionable for tax violation and yet, will not be regarded as proceeds of crime unless the tax legislation concerned prescribes such violation as an offence and such offence is included in the Schedule to the 2002 Act. For being regarded as proceeds of crime, the property associated with the scheduled offence must have been derived or obtained by a person "as a result of" criminal activity relating to the scheduled offence concerned. This distinction must be borne in mind while reckoning any property referred to in the scheduled offence as proceeds of crime for the purpose of the 2002 Act. Dealing with*

proceeds of crime by way of any process or activity constitutes offence of money laundering under Section 3 PMLA.

107. *…….*

108. *In the earlier part of this judgment, we have already noted that every crime property need not be termed as proceeds of crime but the converse may be true. Additionally, some other property if purchased or derived from the proceeds of crime even such subsequently acquired property must be regarded as tainted property and actionable under the Act. For, it would become property for the purpose of taking action under the 2002 Act which is being used in the commission of offence of money laundering. Such purposive interpretation would be necessary to uphold the purposes and objects for enactment of the 2002 Act.*

109. *Tersely put, it is only such property which is derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence that can be regarded as proceeds of crime. The authorities under the 2002 Act cannot resort to action against any person for money laundering on an assumption that the property recovered by them must be proceeds of crime and that a scheduled offence has been committed, unless the same is registered with the jurisdictional police or pending inquiry by way of complaint before the competent forum. For, the expression "derived or obtained" is indicative of criminal activity relating to a scheduled offence already accomplished. Similarly, in the event the person named in the criminal activity relating to a scheduled offence is finally absolved by a court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of the criminal case (scheduled offence) against him/her, there can be no*

action for money laundering against such a person or person claiming through him in relation to the property linked to the stated scheduled offence. This interpretation alone can be countenanced on the basis of the provisions of the 2002 Act, in particular Section 2(1)(u) read with Section 3. Taking any other view would be rewriting of these provisions and disregarding the express language of the definition clause "proceeds of crime", as it obtains as of now."

(Emphasis added)

38. The Hon'ble Supreme Court has very categorically laid down the distinction with respect to 'proceeds of crime'. The above paras hold that any property derived or obtained directly or indirectly 'as a result of criminal activity' which is a scheduled offence under the PMLA is proceeds of crime. In other words, any property obtained following the commission of the scheduled offence or from the proceeds of the scheduled offence will be the proceeds of crime. Further, it is also appropriate to refer to the judgment of ***Pavana Dibbur v. Enforcement Directorate, 2023 SCC OnLine SC 1586*** wherein it was observed that for proceeds of crime, the existence of the scheduled offence is a condition precedent. To invoke section 3 of PMLA, it is not necessary that the accused persons must have been shown as accused in the scheduled offences and the proceeds of crime must be from the scheduled offence. Relevant paras are extracted below:-

"15. *The condition precedent for the existence of proceeds of crime is the existence of a scheduled offence. ……*

16.

17. *Coming back to Section 3 of the PMLA, on its plain reading, an offence under Section 3 can be committed after*

a scheduled offence is committed. For example, let us take the case of a person who is unconnected with the scheduled offence, knowingly assists the concealment of the proceeds of crime or knowingly assists the use of proceeds of crime. In that case, he can be held guilty of committing an offence under Section 3 of the PMLA. To give a concrete example, the offences under Sections 384 to 389 of the IPC relating to "extortion" are scheduled offences included in Paragraph 1 of the Schedule to the PMLA. An accused may commit a crime of extortion covered by Sections 384 to 389 of IPC and extort money. Subsequently, a person unconnected with the offence of extortion may assist the said accused in the concealment of the proceeds of extortion. In such a case, the person who assists the accused in the scheduled offence for concealing the proceeds of the crime of extortion can be guilty of the offence of money laundering. Therefore, it is not necessary that a person against whom the offence under Section 3 of the PMLA is alleged must have been shown as the accused in the scheduled offence. What is held in paragraph 270 of the decision of this Court in the case of Vijay Madanlal Choudhary supports the above conclusion. The conditions precedent for attracting the offence under Section 3 of the PMLA are that there must be a scheduled offence and that there must be proceeds of crime in relation to the scheduled offence as defined in clause (u) of sub-section (1) of Section 3 of the PMLA."

39. In the present case, ED has alleged that all the petitioners are members/office bearers of the banned organisation i.e. PFI. The role of the petitioners are that they have collected funds for and on behalf of the organization from unknown sources, thereafter they provided fake receipts/showed the collections as legitimate donations to utilize

those funds to commit terrorist activities (scheduled offences). Hence, the funds so collected by the petitioners are the proceeds of crime.

40. In order to invoke the provisions of section 3 of PMLA, there must be proceeds of crime as discussed above and these proceeds must be a result of a criminal activity. The case set up by the ED that the funds which the petitioners were generating were used for committing a scheduled offence, hence proceeds of crime, is not the scheme of PMLA. The offence committed by the collection of funds may be an offence under any law including a scheduled offence but cannot be termed as a proceeds of crime to invoke section 3 of PMLA.

41. On perusing the Complaint, there is no evidence to show that any scheduled offence has been committed, it is stated that the petitioners participated in the anti-CAA protests in Delhi which culminated in Delhi Riots. Learned counsels for the petitioners have rightly pointed out that in the present case i.e. collection of funds precedes the crime i.e. Delhi Riots. The proceeds of crime has to be generated as a result of criminal activity (scheduled offence). The collection of funds in an illegal way to commit a scheduled offence in future is not an offence of money laundering under PMLA. The funds so collected are not proceeds of crime and can be proceeds of crime only when they were generated as a result of scheduled offence. The case set up by the ED is putting the cart before the horse.

42. Even assuming for the sake of argument that the petitioners have generated proceeds of crime, even then, *prima facie*, the petitioners do not have dominion and control over the said alleged proceeds of crime. Admitted case of the ED is that the petitioners collected the

funds and deposited the same with the accountant or PFI's account. The Hon'ble Supreme Court in ***Manish Sisodia (I) (supra)*** has dealt with the same and observed as under:-

> *"13. Fourthly, the contention of the DoE that generation of proceeds of crime is itself 'possession' or 'use' of the 'proceeds of crime', prima facie, appears to be unclear and not free from doubt in view of the ratio in Vijay Madanlal Choudhary (supra). Further, the DoE's contention that 'generation' amounts to possession and the expression 'possession' includes constructive possession, for which reliance is placed upon Mohan Lal v. State of Rajasthan, is not assured.*
>
> ***14.*** *……. It is submitted that Vijay Madanlal Choudhry (supra) has held that PML Act is an independent and distinct Act which deals with offences relating to only proceeds of crime, and not with the crime itself which generates the proceeds of the crime. In particular, paragraph 406 in Vijay Madanlal Choudhary (supra) states:*
>
> > *"406…The fact that the proceeds of crime have been generated as a result of criminal activity relating to a scheduled offence, which incidentally happens to be a non-cognisable offence, would make no difference. The person is not prosecuted for the scheduled offence by invoking provisions of the 2002 Act, but only when he has derived or obtained property as a result of criminal activity relating to or in relation to a scheduled offence and the indulges in process or activity connected with such proceeds of crime…"*
>
> ***15.*** *Paragraph 407 similarly states:*
>
> > *"407…the offence under this Act in terms of Section 3 is specific to involvement in any process or activity connected with the proceeds of crime which is*

generated as a result of criminal activity related to the scheduled offence…"

16. *In Mohan Lal (supra), the expression 'possession', it is held, consists of two elements. First, it refers to corpus of physical control and second it refers to the animus or intent which has reference to exercise of self-control. In the context of narcotics laws, a person is said to possess control over the substance when he knows the substance is immediately accessible and exercises dominion or control over the substance. The power and dominion over the substance is, therefore, fundamental. The stand of the DoE as to the constructive possession, will be satisfied only if the dominion and control criteria is satisfied. If the proceeds of crime are in dominion and control of a third person, and not in the dominion and control of the person charged under Section 3, the accused is not in possession of the proceeds of the crime. It would be a different matter, when an accused, though not in possession, is charged for use, concealment or acquisition of the proceeds of the crime, or projects or claims the proceeds of crime as untainted property. The involvement of an accused may be direct or indirect. Prima facie, there is lack of clarity, as specific allegation on the involvement of the appellant - Manish Sisodia, direct or indirect, in the transfer of Rs. 45,00,00,000 (rupees forty five crores only) to AAP for the Goa elections is missing.*

(Emphasis added)

43. In the present case, the role of the petitioners is that they collected funds and deposited the same to the accountant or PFI's account. Hence, in this scenario, *prima facie*, the dominion and control over the generation of alleged proceeds of crime is not of the petitioners herein.

44. At this juncture, I am also conscious that for deciding bail in PMLA, the accused person has to cross the hurdle of twin conditions laid

down in section 45 of PMLA which read as under:-

> *"45. Offences to be cognizable and non-bailable.-- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule shall be released on bail or on his own bond unless—*
>
> *(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and*
>
> *(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:"*

45. For the reasons noted above, I am of the view that in the present case, the twin conditions of section 45 have been met. The Special Counsel for ED has been given an opportunity to oppose the bail applications. *Prima facie*, I am of the view that the offence of money laundering is not made out against the petitioners herein.

Delay in trial and long incarceration.

46. The petitioners have undergone substantial period of incarceration i.e. more than 2 years 2 months and there is no likelihood that the trial will be concluded in the near future.

47. Our Constitution under Article 21 guarantees that no person shall be deprived of his life or personal liberty except according to procedure established by law. Personal liberty of under trial prisoner is a fundamental right which flows from the said article. Unless the accused is convicted, the accused is entitled to the presumption of

innocence and a fair procedure and trial. Our Courts have adopted the principle i.e. Bail is the rule and Jail is an exception. Liberty of an accused is paramount and should be curtailed only by a procedure established by law which should be both fair and reasonable. The offences in the special statutes like Narcotic Drugs and Psychotropic Substances Act, 1985, UAPA and PMLA imposes additional stringent conditions for grant of bail which are to be tested on the facts and circumstances of each case but these stringent conditions do not take away the fundamental rights guaranteed under Article 21.

48. The Hon'ble Supreme Court in ***Union of India v. K.A. Najeeb, (2021) 3 SCC 713*** upholding the Constitutional rights of the accused despite the rigors of section 43-D(5) of UAPA, observed as under:-

> *"17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial."*

49. In ***Manish Sisodia (II) (supra),*** the Hon'ble Supreme Court while noting that the accused therein has undergone approx. 17 months, observed as under:-

> ***"53.*** *The Court further observed that, over a period of time, the trial courts and the High Courts have forgotten a very well-settled principle of law that bail is not to be withheld as a punishment. From our experience, we can say that it appears that the trial courts and the High Courts attempt to play safe in matters of grant of bail. The principle that bail is a rule and refusal is an exception is, at times, followed in breach. On account of non-grant of bail even in straight forward open and shut cases, this Court is flooded with huge number of bail petitions thereby adding to the huge pendency. It is high time that the trial courts and the High Courts should recognize the principle that "bail is rule and jail is exception"."*

50. Recently, in ***V. Senthil Balaji (supra),*** again the Hon'ble Supreme Court while noting that the accused therein has undergone 15 months and considering both the aforesaid judgments, observed as under:-

> *25. Considering the gravity of the offences in such statutes, expeditious disposal of trials for the crimes under these statutes is contemplated. Moreover, such statutes contain provisions laying down higher threshold for the grant of bail. The expeditious disposal of the trial is also warranted considering the higher threshold set for the grant of bail. Hence, the requirement of expeditious disposal of cases must be read into these statutes. Inordinate delay in the conclusion of the trial and the higher threshold for the grant of bail cannot go together. <u>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</u>*

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

27. Under the Statutes like PMLA, the minimum sentence is three years, and the maximum is seven years. The minimum sentence is higher when the scheduled offence is under the NDPS Act. When the trial of the complaint under PMLA is likely to prolong beyond reasonable limits, the Constitutional Courts will have to consider exercising their powers to grant bail. The reason is that Section 45(1)(ii) does not confer power on the State to detain an accused for an unreasonably long time, especially when there is no possibility of trial concluding within a reasonable time. What a reasonable time is will depend on the provisions under which the accused is being tried and other factors. One of the most relevant factor is the duration of the minimum and maximum sentence for the offence. Another important consideration is the higher threshold or stringent

conditions which a statute provides for the grant of bail. Even an outer limit provided by the relevant law for the completion of the trial, if any, is also a factor to be considered. The extraordinary powers, as held in the case of K.A. Najeeb, can only be exercised by the Constitutional Courts. The Judges of the Constitutional Courts have vast experience. Based on the facts on record, if the Judges conclude that there is no possibility of a trial concluding in a reasonable time, the power of granting bail can always be exercised by the Constitutional Courts on the grounds of violation of Part III of the Constitution of India notwithstanding the statutory provisions. The Constitutional Courts can always exercise its jurisdiction under Article 32 or Article 226, as the case may be. The Constitutional Courts have to bear in mind while dealing with the cases under the PMLA that, except in a few exceptional cases, the maximum sentence can be of seven years. The Constitutional Courts cannot allow provisions like Section 45(1)(ii) to become instruments in the hands of the ED to continue incarceration for a long time when there is no possibility of a trial of the scheduled offence and the PMLA offence concluding within a reasonable time. If the Constitutional Courts do not exercise their jurisdiction in such cases, the rights of the undertrials under Article 21 of the Constitution of India will be defeated. In a given case, if an undue delay in the disposal of the trial of scheduled offences or disposal of trial under the PMLA can be substantially attributed to the accused, the Constitutional Courts can always decline to exercise jurisdiction to issue prerogative writs. An exception will also be in a case where, considering the antecedents of the accused, there is every possibility of the accused becoming a real threat to society if enlarged on bail. The jurisdiction to issue prerogative

writs is always discretionary."

51. Further, the Hon'ble Supreme Court in ***Prem Prakash (supra)***observed as under:-

> ***"13.*** *Independently and as has been emphatically reiterated in Manish Sisodia [Manish Sisodia v. Enforcement Directorate, (2024) 12 SCC 660 : 2024 SCC OnLine SC 1920] relying on Ramkripal Meena v. Enforcement Directorate [Ramkripal Meena v. Enforcement Directorate, (2024) 12 SCC 684 : 2024 SCC OnLine SC 2276] and Javed Gulam Nabi Shaikh v. State of Maharashtra [Javed Gulam Nabi Shaikh v. State of Maharashtra, (2024) 9 SCC 813] , where the accused has already been in custody for a considerable number of months and there being no likelihood of conclusion of trial within a short span, the rigours of Section 45 PMLA can be suitably relaxed to afford conditional liberty. Further, Manish Sisodia [Manish Sisodia v. Enforcement Directorate, (2024) 12 SCC 660 : 2024 SCC OnLine SC 1920] reiterated the holding in Javed Gulam Nabi Sheikh [Javed Gulam Nabi Shaikh v. State of Maharashtra, (2024) 9 SCC 813] , that keeping persons behind the bars for unlimited periods of time in the hope of speedy completion of trial would deprive the fundamental right of persons under Article 21 of the Constitution of India and that prolonged incarceration before being pronounced guilty ought not to be permitted to become the punishment without trial."*

52. The common thread in all the above judgments is that the Constitutional Courts are vested with powers to protect the fundamental rights of the accused guaranteed under Article 21 of Constitution of India. Further, these Courts have to be vigilant in

protecting the said rights. Special statutes have stringent conditions for grant of bail but they should not become means to detain the accused without there being any possibility of concluding the trial, expeditiously. Merely charging an accused person under the provisions of these special statutes should not become a punishment in itself which violates Article 21. A perusal of the aforesaid judgment also shows that Article 21 prevails over the stringent conditions of section 45 of PMLA and in case the accused has been incarcerated for a reasonably long period of time without there being any reasonable chance of concluding trial, Article 21 will take primacy.

53. In the present case, it is stated that the matter is at the stage of 207/208 proceedings for supply of documents and thereafter charges are yet to be framed. As per the Complaint and Supplementary Complaints filed by the ED, it is stated by the learned counsels for the petitioners that there are total 185 prosecution witnesses which are proposed to be examined and the trial is to be conducted jointly with all co-accused persons, there are 456 relied upon documents and digital evidence running into lakhs of pages. The same factual position is not disputed by the learned counsel for the ED.

54. In addition on the merits as noted above and from the judgments cited, it is evident that there is no hard and fast formula as to what is the minimum period which is to be considered as substantial period undergone but keeping in view the timelines of the Hon'ble Supreme Court and the trial will take considerable time to conclude, the petitioners i.e. Parvez Ahmed, Mohd Ilyas and Abdul Muqeet are directed to be released on bail subject to the following terms and

conditions:-

a) The petitioners shall furnish a personal bond in the sum of Rs 50,000 (Rupees fifty thousand only) each with 1 surety in the like amount, to the satisfaction of the concerned trial court;

b) The petitioners shall not leave the country without the permission of the concerned court and if the petitioners have a passport, they shall surrender the same to the concerned trial court;

c) The petitioners shall furnish to the IO concerned their cell phone numbers on which the petitioners may be contacted at any time and shall ensure that the number is kept active and switched on at all times;

d) The petitioners will furnish their permanent address to the concerned IO and in case they changes their address, they will inform the IO concerned;

e) The petitioners shall not indulge in any act or omission that is unlawful, illegal or that would prejudice the proceedings in pending cases, if any;

f) The petitioners shall join investigation as and when directed by the concerned IO and will appear in Court as and when required;

g) The petitioners shall not communicate with, or come into contact with any of the prosecution witnesses, or tamper with the evidence of the case.

55. All the observations made herein above are only for the purpose of

deciding these bail applications and will have no effect on the merits of the case pending.

56. The petitions along with pending applications, if any, are disposed of.

JASMEET SINGH, J

(DECEMBER 04, 2024)/MSQ