

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

Bail Appln. No. 10 of 2025

Shri Sanasam Jacky Singh, aged about 35 years S/o Late Sanasam Kulla Singh, a resident of Babu Bazar, Kiyam Siphai, Thoubal District, Manipur-795138.

..... Applicant/s

- Versus -

Directorate of Enforcement, Government of India, Imphal Sub-Zonal Office, Sangakpham, Chingmeirong, near Police Outpost Imphal, Manipur-795001.

.....Respondent/s

B E F O R E

HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the Applicant	::	Mr. Nageswar Rao, Sr. Adv. with Mr. M. Brojendro, Advocate.
For the Respondents	::	Mr. S. Suresh, Advocate.
Date of Hearing	::	03.09.2025
Date of Order	::	23.12.2025

ORDER (CAV)

[1] Heard Mr. Nageswara Rao, learned senior counsel assisted by Mr. M. Brojendro, learned counsel for the petitioner and Mr. S. Suresh, learned counsel appearing on behalf of Directorate of Enforcement (ED).

[2] The petitioner who is in custody with respect to ECR No. IMSZO05/2022 registered by Directorate of Enforcement (ED), Government of Manipur under Section 483 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 seeking regular bail in the above referred case.

[3] The petitioner is the Chief Managing Director of Lamjingba Group of Companies. The company is alleged to have been operating an

authorized and unregulated deposits scheme by collecting huge amount of deposit money to the tune of Rs. 600 crores from 15,000 investors/depositors from the State of Manipur with a promise of exorbitant rate of returns and hereby alleged to have been cheated the investors by causing loss to them to the tune of Rs. 600 crores. Money investors/depositors have opened accounts with Lamjingba Finance by depositing funds mostly in cash and by misleading the investors that the investments are safe and guarantee high amounts of interest. Initial interest was paid, however, the company closed in the 1st quarter of 2020 without returning promised funds to the investors. It is also alleged that the Lamjingba Finance is currently operating its business in the name of investors Association known as AMLIA (All Manipur Lamjingba Investor Association) where Mr. Mutum Robindro Singh and Inaoton Laiphrakpam are said to have been the leaders of the said association. Based on the allegations, the Manipur Police registered 7 (seven) FIRs viz. FIR No. 152(6)2022, FIR No. 153(6)2022, FIR No. 154(6)2022, FIR No. 155(6)2022, 156(6)2022, 157(6)2022 and 158(6)2022 all dated 18.06.2025. It is further alleged that Lamjingba Finance was operating a Ponzi Scheme that promised gullible investors an exorbitant return in a very short period at the rate of Rs. 3.5% for the 2 year plan, 2% monthly simple interest rate for 6 months' plan, 1 year plan monthly interest rate of Rs. 2.5%, 3 year plans with a monthly interest rate of 3% and 4 year plans with a monthly interest rate of 3.5% and thereby collected a huge amount of deposit to the tune of Rs. 600 crores from 15000 investors/depositors with a promise of exorbitant rate of returns.

[4] Lamjingba Group of Companies was not registered as a Non-Banking Financial Companies (NBFC) under Section 45-IA of RBI Act and engaged in the illegal collection of money from the general public with a promise of high rate of returns. The group also illegally indulged in giving loan to public/borrower against the security of property (Loan Against Property) at a very high rate of interest i.e. 3 to 3.5% per month (i.e. 36% to 42% per annum) and the group is functioning like a Bank or NBFC without

any valid registration and license. Mr. Sanasam Jacky Singh is alleged to have criminal conspiracy with other co-accused and signed a fictitious MoU in New Delhi wherein the petitioner transferred most of the assets of the Lamjingba Group to AMLIA Group and disguised the proceeds of crime to mislead the investigation. The petitioner is further alleged to have committed the offence of Money Laundering under Section 3 of the Prevention of Money Laundering Act (PMLA). It is stated that the investigation in the predicate offence is not completed and final report after investigation has not been filed. However, the trial in PMLA case in Special Court PMLA is in progress. It is submitted that the petitioner is in custody since 21.01.2023.

[5] Vide common order dated 19.04.2023 in Cril.Misc.(B) Case Nos. 15 of 2023 (FIR No. 152 (6) 2022 (IPS), 16 of 2023 (FIR No. 153 (6) 2022 (IPS), 27 of 2023 (FIR No. 154 (6) 2022 (IPS), 14 of 2023 (FIR No. 155 (6) 2022 (IPS), 28 of 2023 (FIR No. 156 (6) 2022 (IPS), 29 of 2023 (FIR No. 157 (6) 2022 (IPS), 26 of 2023 (FIR No. 158 (6) 2022 (IPS) and 20 of 2023 (FIR No. 249 (9) 2022 (IPS) passed by the Chief Judicial Magistrate, Imphal West, the petitioner was released on bail under Section 437 Cr.P.C. read with Section 167 Cr.P.C., as there was no progress in the investigation on a bond of Rs. 2 lakhs along with one surety. The relevant paras 11 & 12 are reproduced below:

“11. Be that as it may, considering the given circumstances, I do not find sufficient ground as to why the accused should not be released. The submission of the prosecution does not hold enough weight to justify the further suspension of the accused Freedom and Liberty by continuing his judicial custody more particularly where the investigation shows no progress over the last 60 odd days. Thus, upon the accused being ready to furnish sufficient surety and bonds, I am of the considered opinion that it would be just and in interest of justice to release the accused person on bail upon him furnishing a PR bond of Rs. 2 lakhs along with 1 (one) surety who shall be a government employee for each bail petition of the like amount and the accused person is subject to the following conditions that:

- (i) That, the accused shall surrender his passport to the custody of this Court,*
- (ii) That, the accused person shall not tamper with any evidence(s),*

- (iii) *That, the accused shall not contact or intimidate any witnesses,*
- (iv) *That, the accused person shall not commit similar offences*
- (v) *That, the accused shall not leave the State of Manipur without permission of this Court,*
- (vi) *That, the accused person shall cooperate with investigation,*
- (vii) *That, the accused shall appear to this Court as and when directed.*

Out of the said PR bond of Rs.2 lakhs each, Rs.50,000/- each in respect of the accused person i.e. Rs.4,00,000/- in total be furnished in the form of cash to the Nazir of the District & Sessions Judge, Imphal West.

12. In the backdrop of the aforesaid reasons, all the bail petitions as mentioned in Para No. 1 stands allowed and disposed of subject to the terms and conditions mentioned in Para No. 11. The observation and findings above shall not have any bearing on the merits of investigation or facts as investigation continues.

Announced in Open Court.

Thus disposed of.”

In other words, the petitioner has been released on default bail in all the 9 (nine) FIRs registered against him, as the investigation could not be completed within the stipulated time.

[6] It is already noted that the ED also registered another case and trial has initiated as Special Trial (PMLA) Case No. 2 of 2023 with reference to ECIR No. IMSZO05/2022 U/S 4 & 5 PMLA Act, 2022. Vide order dated 20.10.2023 passed by the Ld. Special Judge (PMLA), Imphal East in Cril.Misc. (B) Case No. 89 of 2023 [Ref: Special Trial (PMLA) Case No. 2 of 2023] ECIR No. IMSZO05/2022 U/S 4 & 5 PMLA Act, 2022, the bail application of the petitioner was rejected, as twin conditions imposed under Section 45 of PMLA could not be satisfied. Vide another order dated 27.12.2023 in Cril.Misc. (B) Case No. 118 of 2023 [Ref: Special Trial (PMLA) Case No. 2 of 2023] ECIR No. IMSZO05/2022 U/S 4 & 5 PMLA Act, 2022, the Ld. Special Judge (PMLA), Imphal East also rejected the second appeal filed by the petitioner, as there was no changed circumstances after dismissal of the first bail application and the twin conditions of section 45 of

PMLA were not satisfied. In the circumstances, the petitioner is still in custody.

[7] Mr. Nageswara Rao, learned senior counsel for the petitioner, submits that in all the FIRs registered by the Manipur Police, chargesheets have not been submitted as the investigation is still ongoing. However, in the case registered by ED, the petitioner is facing trial and out of 21 (twenty one) witnesses cited, 5 (five) witnesses have been examined and 16 (sixteen) more to be examined and it may take one or two more years to complete the proceeding before the Special Court. The petitioner has been granted bail in all the FIRs but he is in custody in the ED case. The punishment provided under Section 3 & 4 of PMLA is minimum 3 years and maximum 7 years of imprisonment. As on date, the petitioner is in custody more than half of the minimum sentence and about to reach half of the maximum punishment in custody as an under trial prisoner (UTP).

[8] Learned senior counsel for the petitioner refers to the decision of the Hon'ble Supreme Court in the case of **Vijay Madanlal Choudhary v. Union of India** reported (2023) 12 SCC 1 and **V. Senthil Balaji v. The Deputy Director, Directorate of Enforcement: 2024 INSC 739: 2024 SCC OnlineSC 2626**, where it was held that when a person is acquitted or discharged in the predicate offence, the charge under PMLA Act will no longer survive. It is submitted that in the present case, chargesheets have not been filed in the predicate offences and the continuation of the proceedings under PMLA Act is not proper and the petitioner cannot be convicted in the PLMA case, unless is has already been convicted under the scheduled/predicate offences. It is submitted that the ongoing trial under PMLA Act will be a nullity until and unless the petitioner has been convicted under the predicate offence under IPC and other related normal penal offence. The trial under PMLA Act defines upon the outcome of the normal FIR case registered against the petitioner and as such, half of the petitioner in PMLA offence is not justifiable.

[9] Mr. Nageswara Rao, learned senior counsel for the petitioner, has also pointed out that the provisions of Section 45 of PMLA Act will not attracted in the present case where there is long incarceration as held by the Hon'ble Supreme Court in the case of **Manish Sisodia v. Directorate of Enforcement** reported as (2024) 12 SCC 660 and **Senthil Balaji v. The Deputy Director, Directorate of Enforcement** reported as 2024 SCC Online SC 2626 where it was held that where there is an inordinate delay in the trial and there is no likelihood of expeditious completion of trial, the applicant deserves to be released on bail. In the case of **Nikesh Tarachand Shah** reported as (2018) 11 SCC 1, it was held that the onus under Section 45 of the PMLA Act will not fall upon the accused. It is submitted that the petitioner may be released on bail on such conditions as imposed by this Court and no fruitful purpose will be served by keeping in custody when investigation under predicate offence are not completed and he has already released on default bail in the 8 FIRs registered against him.

[10] Mr. S. Suresh, learned counsel for the ED, submits that the petitioner is main accused and the Chief of Lamjingba Group of Companies which is not registered as Non-Banking Financial Companies but doing the business of lending loan and deposit from the general public at the high rate of interest from 3% to 3.3% per month (i.e. 36% to 42% per annum) in the process after collected approximately Rs. 586 crores from 15,000 depositors and investors with a promise of giving exceptional higher returns in his voluntary statement made on 28.01.2023 and recorded under Section 50 of PMLA Act, the petitioner admitted that unaccounted huge transactions were related to funds which he collected from the general public under his deposit scheme and the Lamjingba Group transferred all the assets of one of self-style group under the name of AMLIA vide MoU dated 21.04.2022 to the tune of more than Rs. 252 crore which is nothing but direct proceeds of crimes in terms of Section 2(1)(u) of PMLA Act, 2002 and the petitioner was taken into custody on 21.03.2023. Two movable and seven immovable properties with a value of almost Rs. 2 crores were already attached as proceeds of crime in terms of Section 2(1)(u) of PMLA Act and the Court

took cognizance on 20.03.2023 and framed charge on 30.03.2024 and there is good progress in the trial. Mr. S. Suresh, learned counsel for the ED, submits that the petitioner is involved in inducing large number of gullible and innocent investors to deposit under the Lamjingba Finance of Companies which was Ponzi scheme with a promise of high rate of return and defrauded the investors and misappropriate amount to the tune of Rs. 298 crores by transferring to AMLIA and the petitioner has definite and major role in the commission of offence of money laundering

[11] Mr. S. Suresh, learned counsel for ED, draws the attention of this Court to Section 45 of PMLA Act for which the twin conditions have to be satisfied before releasing the accused in bail. He refers to the case of **Tarun Kumar v. Assistant Director Directorate of Enforcement** reported in **(2023) 14 SCR 813**. Learned counsel refers to the decision of **Saumya Chaurasia v. Directorate of Enforcement** reported in **(2024) 6 SCC 401** with respect to twin conditions of grant of bail under section 45 of PMLA Act. Reference is also made to the **Union of India through the Assistant Director v. Kanhaiya Prasad** reported in **(2025) 2 SCR 544** where it is held that offence of money laundering is not an ordinary offence and Court should not grant bail by passing cryptic orders without considering the seriousness of the crime and rigorous of Section 45 of the Act.

[12] Learned counsel for the ED has further pointed out that under Section 24 of PMLA Act, the burden of proof lies on the accused until contrary is proved. He further refers to the decision of **Gautam Kundu v. Directorate of Enforcement (Prevention of Money Laundering Act)** reported as **(2015) 16 SCC 1** to the effect that the provisions of Section 45 of PMLA are pointing on the High Court while considering the bail application under Section 439 of Cr.P.C. On merit, it is stated that the petitioner is involved in collection of huge amount of money to the tune of Rs. 600 crores from the innocent investors on the promise of high returns and after initial payment of interest, they stopped the payment of interest and transfer the proceed to another company i.e. AMLIA. The whole collection, deposit and

lending of money is done without any license from RBI or from any competent authority and it is a clear case of money laundering by the petitioner from innocent investors.

[13] Mr. S. Suresh, learned counsel for the ED, has negated the submission of Mr. Nageswara Rao, learned senior counsel for the petitioner that continuing custody of the petitioner under ED offence is not maintainable by stating that the bar is in the conviction and there is no bar of continuation of the trial under the PMLA Act by ED, notwithstanding non-completion of the investigation in the scheduled offence/predicate offence, i.e., pending FIR lodged against the petitioner. It is submitted that the bail application may be rejected.

[14] This Court has minutely examined the materials on record, the submissions at bar and the relevant case law in this regard.

[15] The short question involved in the present bail application are:

I. When the investigation under the scheduled offences is not completed and the accused having been released on default bail in the cases registered under scheduled offences, is the accused entitled to bail in the offences under the Prevention of Money Laundering Act, 2002 for which the trial is in progress and the accused is in custody for almost half the period of the maximum sentence prescribed under PMLA offences?

II. Whether in case of long incarceration and non-completion of investigation in the scheduled offences, the rigor of twin test under Section 45 of PMLA is toned downed or not?

[16] In the present case, it is an admitted fact that the petitioner has been released on default bail under Section 167 CrPC in the scheduled offences registered under IPC due to non-completion of the investigation in the eight FIRs being 152(6)2022 Imphal PS; 153(6)2022 Imphal PS; 154(6)2022 Imphal PS; 155(6)2022 Imphal PS; 156(6)2022 Imphal PS;

157(6)2022 Imphal PS; 158(6)2022 Imphal PS & 249(6)2022 Imphal PS. However, his two earlier bail applications in the case registered by ED under Sections 3/4 of PMLA, 2002 have already been rejected by learned Special Court on the ground of inability of the petitioner to overcome the strict twin test under Section 45 of the Act. The 'twin test' is: (i) the public prosecutor must be given an opportunity to oppose bail in case registered under PMLA, and (ii) the court should satisfy that there is reasonable ground of the accused not guilty of the offence and he is unlikely to repeat the offence during on bail. Sometimes, the second condition is bifurcated into two part and it is also called as 'triple test'. The prosecution under PMLA cannot proceed or survive, if the accused is discharged or acquitted in trial under the scheduled offences. In the present case, the proceeding under PMLA is in active progress, while the eight FIRs under the scheduled offences are still in investigation and the accused is on default bail. He is in custody in the ED case registered under PMLA. Even if the trial under PMLA concludes within a reasonable time, there can be no conviction unless the petitioner is convicted in any of the eight FIRs registered against him. The petitioner is still in custody since 21.01.2023 only in the ED case. In this factual matrix, this Court has to consider the present bail application.

[17] Before proceeding further, it will fruitful to refer some of the decisions of Hon'ble Supreme Court with regard to twin test and long incarceration. In the case of **Vijay Madanlal Choudhary v. Union of India, (2023) 12 SCC 1**, Hon'ble Supreme Court has considered the beneficial legislation in terms of insertion of Section 436-A CrPC (by the Act 25 of 2005) enabling the courts to release under trial prisoners on bail, if they have undergone up to half of the maximum punishment prescribed for the offence. It has been held that the provisions of Section 436-A CrPC is in the nature of default bail provisions under Section 167 CrPC and this benefits will extend to special penal law such as offence under Section 4 of PMLA as a statutory bail. Relevant para are reproduced below for ready reference:

317. There is, however, an exception carved out to the strict compliance of the twin conditions in the form of Section 436-A of the

1973 Code, which has come into being on 23-6-2006 vide Act 25 of 2005. This, being the subsequent law enacted by Parliament, must prevail. Section 436-A of the 1973 Code reads as under:

[436-A. Maximum period for which an undertrial prisoner can be detained.—Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of ²⁶⁷ the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:

Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:

Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

Explanation.—In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded.]”

318. *In the Statement of Objects and Reasons, it was stated thus:*

“There had been instances, where undertrial prisoners were detained in jail for periods beyond the maximum period of imprisonment provided for the alleged offence. As remedial measure Section 436-A has been inserted to provide that where an undertrial prisoner other than the one accused of an offence for which death has been prescribed as one of the punishments, has been under detention for a period extending to one-half of the maximum period of imprisonment provided for the alleged offence, he should be released on his personal bond, with or without sureties. It has also been provided that in no case will an undertrial prisoner be detained beyond the maximum period of imprisonment for which he can be convicted for the alleged offence.”

319. *In Hussainara Khaton v. State of Bihar⁴²¹, this Court stated that the right to speedy trial is one of the facets of Article 21 and recognised the right to speedy trial as a fundamental right. This dictum has been consistently followed by this Court in several cases. Parliament in its wisdom inserted Section 436-A under the 1973*

Code recognising the deteriorating state of undertrial prisoners so as to provide them with a remedy in case of unjustified detention.

320. In *Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India*⁴²², the Court, relying on *Hussainara Khatoon*⁴²¹, directed the release of prisoners charged under the Narcotic Drugs and Psychotropic Substances Act after completion of one-half of the maximum term prescribed under the Act. The Court issued such direction after taking into account the non obstante provision of Section 37 of the NDPS Act, which imposed the rigours of twin conditions for release on bail. It was observed : (*Supreme Court Legal Aid Committee Representing Undertrial Prisoners case*⁴²², SCC pp. 747-48, para 15)

“15. ... We are conscious of the statutory provision finding place in Section 37 of the Act prescribing the conditions which have to be satisfied before a person accused of an offence under the Act can be released. Indeed we have adverted to this section in the earlier part of the judgment. We have also kept in mind the interpretation placed on a similar provision in ²⁶⁸ Section 20 of the TADA Act by the Constitution Bench in *Kartar Singh v. State of Punjab*¹²³. Despite this provision, we have directed as above mainly at the call of Article 21 as the right to speedy trial may even require in some cases quashing of a criminal proceeding altogether, as held by a Constitution Bench of this Court in *Abdul Rehman Antulay v. R.S. Nayak*⁴²³, release on bail, which can be taken to be embedded in the right of speedy trial, may, in some cases be the demand of Article 21. As we have not felt inclined to accept the extreme submission of quashing the proceedings and setting free the accused whose trials have been delayed beyond reasonable time for reasons already alluded to, we have felt that deprivation of the personal liberty without ensuring speedy trial would also not be in consonance with the right guaranteed by Article 21. Of course, some amount of deprivation of personal liberty cannot be avoided in such cases; but if the period of deprivation pending trial becomes unduly long, the fairness assured by Article 21 would receive a jolt. It is because of this that we have felt that after the accused persons have suffered imprisonment which is half of the maximum punishment provided for the offence, any further deprivation of personal liberty would be violative of the fundamental right visualised by Article 21, which has to be telescoped with the right guaranteed by Article 14 which also promises justness, fairness and reasonableness in procedural matters.”

321. The Union of India also recognised the right to speedy trial and access to justice as fundamental right in their written submissions and, thus, submitted that in a limited situation right of bail can be granted in case of violation of Article 21 of the Constitution. Further,

it is to be noted that Section 436-A of the 1973 Code was inserted after the enactment of the 2002 Act. Thus, it would not be appropriate to deny the relief of Section 436-A of the 1973 Code which is a wholesome provision beneficial to a person accused under the 2002 Act. However, Section 436-A of the 1973 Code, does not provide for an absolute right of bail as in the case of default bail under Section 167 of the 1973 Code. For, in the fact situation of a case, the court may still deny the relief owing to ground, such as where the trial was delayed at the instance of the accused himself.

322. *Be that as it may, in our opinion, this provision is comparable with the statutory bail provision or, so to say, the default bail, to be granted in terms of Section 167 of the 1973 Code consequent to failure of the investigating agency to file the charge-sheet within the statutory period and, in the context of the 2002 Act, complaint within the specified period after arrest of the person concerned. In the case of Section 167 of the 1973 Code, an indefeasible right is triggered in favour of the accused the moment the investigating agency commits default in filing the charge-sheet/complaint within the statutory period. The provision in the form of Section 436-A of the 1973 Code, as has now come into being is in recognition of the constitutional right of the accused regarding speedy trial under Article 21 of the Constitution. For, it is a sanguine hope of every accused, who is in custody in particular, that he/she should be tried expeditiously — so as to uphold the tenets of speedy justice. If the trial cannot proceed even after the accused has undergone one-half of the maximum period of imprisonment provided by law, there is no reason to deny him this lesser relief of considering his prayer for release on bail or bond, as the case may be, with appropriate conditions, including to secure his/her presence during the trial.*

323. *The learned Solicitor General was at pains to persuade us that this view would impact the objectives of the 2002 Act and is in the nature of superimposition of Section 436-A of the 1973 Code over Section 45 of the 2002 Act. He has also expressed concern that the same logic may be invoked in respect of other serious offences, including terrorist offences which would be counterproductive. So be it. We are not impressed by this submission. For, it is the constitutional obligation of the State to ensure that trials are concluded expeditiously and at least within a reasonable time where strict bail provisions apply. If a person is detained for a period extending up to one-half of the maximum period of imprisonment specified by law and is still facing trial, it is nothing short of failure of the State in upholding the constitutional rights of the citizens, including person accused of an offence.*

324. *Section 436-A of the 1973 Code, is a wholesome beneficial provision, which is for effectuating the right of speedy trial guaranteed by Article 21 of the Constitution and which merely*

specifies the outer limits within which the trial is expected to be concluded, failing which, the accused ought not to be detained further. Indeed, Section 436-A of the 1973 Code also contemplates that the relief under this provision cannot be granted mechanically. It is still within the discretion of the court, unlike the default bail under Section 167 of the 1973 Code. Under Section 436-A of the 1973 Code, however, the court is required to consider the relief on case-to-case basis. As the proviso therein itself recognises that, in a given case, the detention can be continued by the court even longer than one-half of the period, for which, reasons are to be recorded by it in writing and also by imposing such terms and conditions so as to ensure that after release, the accused makes himself/herself available for expeditious completion of the trial.

325. However, that does not mean that the principle enunciated by this Court in Supreme Court Legal Aid Committee Representing Undertrial Prisoners⁴²², to ameliorate the agony and pain of persons kept in jail for unreasonably long time, even without trial, can be whittled down on such specious plea of the State. If Parliament/legislature provides for stringent provision of no bail, unless the stringent conditions are fulfilled, it is the bounden duty of the State to ensure that such trials get precedence and are concluded within a reasonable time, at least before the accused undergoes detention for a period extending up to one-half of the maximum period of imprisonment specified for the offence concerned by law. [Be it noted, this provision (Section 436-A of the 1973 Code) is not available to the accused who is facing trial for the offences punishable with death sentence.]

326. In our opinion, therefore, Section 436-A needs to be construed as a statutory bail provision and akin to Section 167 of the 1973 Code. Notably, the learned Solicitor General has fairly accepted during the arguments and also restated in the written notes that the mandate of Section 167 of the 1973 Code would apply with full force even to cases falling under Section 3 of the 2002 Act, regarding money laundering offences. On the same logic, we must hold that Section 436-A of the 1973 Code could be invoked by the accused arrested for the offence punishable under the 2002 Act, being a statutory bail.

[18] In the case of **V. Senthil Balaji v. The Deputy Directorate of Enforcement: 2024 INSC 739: 2024 SCC Online SC 2626**, Hon'ble Supreme Court held that the existence of scheduled offence is sine quo non for the existence of the proceeds of crime. The trial under PMLA cannot be decided unless the trial in the scheduled offences concludes. In case of delay

in trial, the accused is entitled to bail, notwithstanding the strict rigor of the provision of Section 45 of PMLA. The relevant para are reproduced below:

21. Hence, the existence of a scheduled offence is *sine qua non* for alleging the existence of proceeds of crime. A property derived or obtained, directly or indirectly, by a person as a result of the criminal activity relating to a scheduled offence constitutes proceeds of crime. The existence of proceeds of crime at the time of the trial of the offence under Section 3 of PMLA can be proved only if the scheduled offence is established in the prosecution of the scheduled offence. Therefore, even if the trial of the case under the PMLA proceeds, it cannot be finally decided unless the trial of scheduled offences concludes. In the facts of the case, there is no possibility of the trial of the scheduled offences commencing in the near future. Therefore, we see no possibility of both trials concluding within a few years.

24. There are a few penal statutes that make a departure from the provisions of Sections 437, 438, and 439 of the Criminal Procedure Code, 1973. A higher threshold is provided in these statutes for the grant of bail. By way of illustration, we may refer to Section 45(1)(ii) of PMLA, proviso to Section 43D(5) of the Unlawful Activities (Prevention) Act, 1967 and Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'NDPS Act'). The provisions regarding bail in some of such statutes start with a nonobstante clause for overriding the provisions of Sections 437 to 439 of the CrPC. The legislature has done so to secure the object of making the penal provisions in such enactments. For example, the PMLA provides for Section 45(1)(ii) as money laundering poses a serious threat not only to the country's financial system but also to its integrity and sovereignty.

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*², 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*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.

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

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

[19] In the case of **Manish Sisodia v. Enforcement Directorate: (2024) 12 SCC 660**, Hon'ble Supreme Court held the rigors of Section 45 of PMLA will not be applicable in case of long incarceration in the custody. Right to bail, in case delay in investigation and trial coupled with incarceration for a long period, should be read into Section 439 CrPC and Section 45 of PMLA. With respect to the plea of tampering with the evidence, it has been observed that there would not be such situation as the documentary evidences are in the custody of the prosecution and influencing of witnesses can be addressed by imposing stringent conditions. Relevant para are reproduced below:

34. Insofar as the contention of the learned ASG that since the conditions as provided under Section 45 of the PMLA are not satisfied, the appellant is not entitled to grant of bail is concerned, it will be apposite to refer to the first order⁴ of this Court. No doubt that this Court in its first order⁴ in para 28, after recapitulating in para 27 as to what was stated in the charge-sheet filed by CBI against the appellant, observed that, in view of the aforesaid discussion, the Court was not inclined to accept the prayer for grant of bail at that

stage. However, certain paragraphs of the said order cannot be read in isolation from the other paragraphs. The order will have to be read in its entirety. In para 36 of the said order, this Court observed that the right to bail in cases of delay, coupled with incarceration for a long period, depending on the nature of the allegations, should be read into Section 439 CrPC and Section 45 of the PMLA. The Court held that the constitutional mandate is the higher law, and it is the basic right of the person charged of an offence and not convicted that he be ensured and given a speedy trial. It further observed that when the trial is not proceeding for reasons not attributable to the accused, the court, unless there are good reasons, would be guided to exercise the power to grant bail. The Court specifically observed that this would be true where the trial would take years. It could thus clearly be seen that this Court, in the first round of litigation between the parties, has specifically observed that in case of delay coupled with incarceration for a long period and depending on the nature of the allegations, the right to bail will have to be read into Section 45 of PMLA.

42. The learned Special Judge and the learned Single Judge of the High Court have considered the applications on merits as well as on the grounds of delay and denial of right to speedy trial. We see no error in the judgments and orders of the learned Special Judge as well as the High Court in considering the merits of the matter. In view of the observations made by this Court in the first order⁴, they were entitled to consider the same. However, the question that arises is as to whether the trial court and the High Court have correctly considered the observations made by this Court with regard to right to speedy trial and prolonged period of incarceration. The courts below have rejected the claim of the appellant applying the triple test as contemplated under Section 45 of the PMLA. In our view, this is in ignorance of the observations made by this Court in para 34 of the first order⁴ wherein this Court specifically observed that right to bail in cases of delay coupled with incarceration for a long period should be read into Section 439 CrPC and Section 45 of the PMLA.

43. The trial court, in its order, has held that the appellant individually and along with different accused persons have been filing one or the other applications/making oral submissions frequently. It further observed that some of them were frivolous. It was observed that this was apparently done as a concerted effort for accomplishing the shared purpose of causing delay in the matter. The trial court therefore rejected the contention of the appellant that he had not contributed to delay in proceedings or that the case has been proceeding at a snail's pace. However, in the very subsequent paragraph i.e. para 80, the court observed that, in order to avoid any delay and considering the time being taken by the counsel for the accused in inspecting the "un-relied upon documents", it had vide order dated 18-4-2024 put a query to the prosecution if the entire

“un-relied upon documents” can be provided to the accused persons in a digitised form. It further recorded that ED accepted the suggestion that it would expedite the proceedings. However, some time was sought to consider the same. A perusal of the compliance report filed by the Assistant Director of ED dated 7-5-2024 which could be found at p. 757 of the paper book would reveal that the Cyber Lab has informed that it would take 70-80 days to prepare one copy (cloning) of the data contained in the said un-relied digital devices.

47. We find that, on account of a long period of incarceration running for around 17 months and the trial even not having been commenced, the appellant has been deprived of his right to speedy trial.

52. The Court in Javed Gulam Nabi Shaikh case²⁴ further observed that, over a period of time, the trial courts and the High Courts have forgotten a very well-settled principle of law that bail is not to be withheld as a punishment. From our experience, we can say that it appears that the trial courts and the High Courts attempt to play safe in matters of grant of bail. The principle that bail is a rule and refusal is an exception is, at times, followed in breach. On account of non-grant of bail even in straightforward open-and-shut cases, this Court is flooded with huge number of bail petitions thereby adding to the huge pendency. It is high time that the trial courts and the High Courts should recognise the principle that “bail is rule and jail is exception”.

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

54. As observed by this Court in Gudikanti Narasimhulu²⁵, the objective to keep a person in judicial custody pending trial or disposal of an appeal is to secure the attendance of the prisoner at trial.

55. In the present case, the appellant is having deep roots in the society. There is no possibility of him fleeing away from the country and not being available for facing the trial. In any case, conditions can be imposed to address the concern of the State.

56. Insofar as the apprehension given by the learned ASG regarding the possibility of tampering the evidence is concerned, it is to be

noted that the case largely depends on documentary evidence which is already seized by the prosecution. As such, there is no possibility of tampering with the evidence. Insofar as the concern with regard to influencing the witnesses is concerned, the said concern can be addressed by imposing stringent conditions upon the appellant.

[20] From the above cited case law, it is the settled principle of law that the prosecution under PMLA for proceeds of crime and money laundering shall be maintainable, only if the accused is convicted in a trial under the scheduled offences. If the accused is discharged or acquitted from the scheduled offences, the prosecution under PMLA will become a dead proceeding. Section 45 of the Act imposes stringent conditions for granting bail and generally bail may be granted, if the accused is unlikely not guilty of the offences and will not repeat the offence while on bail. The prosecution should be given an opportunity of opposing the bail application. However, in case of delay in trial and long incarceration, the strict rigors of Section 45 of PMLA will be diluted. It is also the settled law that the provisions of Section 436-A of CrPC will be applicable in a trial under PMLA also and this provision does not mean that an accused has to be in custody for a particular period before availing this benefit. It will be pertinent to re-emphasize the basic principle in criminal jurisprudence that '.....the prolonged incarceration before being pronounced guilty of an offence should not be permitted to become punishment without trial (kindly see: Manish Sisodia, supra)'.

[21] In the present case, the petitioner is on default in all eight FIRs under the scheduled offences of Sections 120-B/403/406/420/34 IPC. The investigations are not completed. The maximum sentence under these offences is 7 years imprisonment. He is also facing trial in a proceeding under Sections 3/4 of PMLA and the trial is in active progress, having examined 5 of the 21 witnesses cited by ED. The punishment for the offence under PMLA is 3 to 7 years of imprisonment. The petitioner is in custody under PMLA trial as his two bail applications have been rejected by learned Special Court on the ground of unable to surpass the twin test of Section 45. Even if the trial under PMLA is completed within a reasonable time, there cannot be a conclusion or conviction, unless he is convicted in the trial under

scheduled offences. If bail application is rejected in PMLA trial and the investigations in the scheduled offences/FIRs are not completed within a short period, the petitioner is likely to be in custody till completion of maximum 7 years imprisonment under Section 4 of the PMLA. He is completing 3 years in custody on 20.01.2026. In the circumstances and as held in the above cited cases of V. Senthil Balaji (supra) and Manish Sisodia (supra), the strict rigors of Section 45 of PMLA will be diluted and the petitioner will be entitled to release on bail on such strict conditions to prevent in influencing the trial and investigation.

[22] In view of the settled law of bail in trial under PMLA and considering the long incarceration and delay in the investigation and trial of the scheduled offences, this Court is inclined to release the petitioner on bail in the ED case registered under PMLA on furnishing a personal bail bond of Rs.25,00,000/- (rupees twenty-five lakh) with two sureties (both gazetted officers) of like amount each, to the satisfaction of learned Special Judge (PMLA), Imphal East with the following conditions:

- (i) The petitioner shall appear before the Special Court on each date fixed for the trial and on such day as directed.
- (ii) The petitioner, in addition, shall appear before the Investigating Officer of ED on 1st and 15th of every month, till discharged by the I.O.
- (iii) The petitioner shall not try to influence any person acquainted with the facts of the present case and shall not tamper with the material documents.
- (iv) The petitioner shall not leave the State of Manipur without leave of the Special Court.
- (v) The petitioner shall surrender his passport to the custody of the Special Court, if not done earlier.
- (vi) If any of the above conditions is violated, the ED will be at liberty to approach this Court for cancellation of the bail.

[23] In terms of the above directions, the bail application is allowed and disposed of. Interim order, if any, merges with final order. Send a copy of this order to the court of Learned Special Judge (PMLA), Imphal East for information.

JUDGE

FR/NFR

Kh. Joshua Maring