IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cr. MP (M) No.1887 of 2026
Date of Decision: 30.10.2026

Rohit ...Petitioner

Versus

Sate of Himachal Pradesh …Respondent

Coram:
The Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting?[1]

For the Petitioner: Mr. Yashveer Singh Rathore, Advocate.

For the Respondent: Mr. Rajan Kahol, Additional Advocate General with Mr. Ravi Chauhan & Mr. Anish Banshtu, Deputy Advocates General.

Sandeep Sharma, J. (Oral)

Bail petitioner namely Rohit, who is behind bars since 23.06.2025, has approached this Court in the instant proceedings filed under Section 483 of Bharatiya Nagrik Suraksha Sanhita (hereinafter '***BNSS***') for grant of regular bail in case FIR No.105 of 2025, dated 23.06.2025, under Sections 20 and 29 of ND & PS Act, registered at Police Station Palampur, District Kangra, Himachal Pradesh.

2. Pursuant to directions passed by this Court, respondent-State has filed status report, perusal thereof reveals that on 23.06.2025 at 9:50 p.m., police, which had laid naka near Dera Sacha Sauda gate, Nagri, intercepted/stopped car bearing registration No. HP-01M-5132 (Swift Dzire), for checking. Since

[1] Whether reporters of the local papers may be allowed to see the judgment?

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after having seen police party, driver of the vehicle as well as bail petitioner got perplexed, police deemed it necessary to cause personal search of the occupants of the car as well as of the vehicle and allegedly, in the presence of independent witnesses, recovered 2.040 kilograms of charas from two packets kept below the conductor seat. Since no plausible explanation ever came to be rendered on record qua possession of aforesaid commercial quantity of contraband, police, after having completed necessary formalities, lodged FIR detailed hereinabove, arrested the bail-petitioner and co-accused Onkar Singh and since then, they are behind bars.

3. Since challan stands filed in the competent Court of law and nothing remains to be recovered from the bail-petitioner, petitioner has approached this Court in the instant proceedings for grant of regular bail.

4. Mr. Yashveer Singh Rathore, learned counsel for the bail petitioner, states that petitioner has been falsely implicated because commercial quantity of contraband was not recovered from his conscious possession, rather same was being transported by co-accused Onkar Singh, who had actually hired his vehicle to travel from Dharmer to Dharamshala. While making this Court peruse status report, Mr. Rathore states that co-accused Onkar Singh categorically disclosed to the police that on 22.06.2025 at

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3:00 p.m., he had gone to the house of Lata Devi, wife of Sohan Singh, for collecting 2 kg charas for a sum of Rs. 40,000/-, which was to be paid after sale of the charas. Mr. Rathore states that aforesaid co-accused Onkar Singh disclosed to the police that he, after having collected charas from Lata Devi, had telephonically called present bail petitioner, who was having taxi bearing registration No. HP-01M-5132. Mr. Rathore states that petitioner, being a taxi driver, could not be expected to search the belongings of the passenger, who had hired his taxi and in no circumstance, he can be connected with the contraband, which was being transported by the co-accused. Mr. Rathore states that bail petitioner is behind bars for more than one year and four months, but till date, prosecution has been able to examine only five witnesses out of 14 and as such, petitioner is entitled to be enlarged on bail on the ground of delay in conclusion of trial.

5. To the contrary, Mr. Rajan Kahol, learned Additional Advocate General, while fairly admitting factum with regard to filing of the challan in the competent court of law, contends that though nothing remains to be recovered from the bail petitioner, but keeping in view the gravity of offence alleged to have been committed by him, he does not deserve any leniency. Mr. Kahol states that there is overwhelming evidence adduced on record suggestive of the fact that bail petitioner is a drug peddler, who,

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even prior to registration of case at hand, had been indulging in the illegal trade of narcotics along with co-accused Onkar Singh. To substantiate his aforesaid plea, Mr. Kahol, learned Additional Advocate General, referred to the statements given to the police by the present bail petitioner as well as co-accused Onkar Singh, wherein they allegedly admitted that in past also, they had been indulging in these activities. Mr. Kahol states that since rigours of Section 37 of ND & PS Act are attracted in the case at hand, coupled with the fact that no convincing evidence has been adduced on record that petitioner has been falsely implicated, bail petition filed on behalf of petitioner deserves outright rejection. He states that otherwise also, in the event of petitioner being enlarged on bail, he may not only flee from justice, but may again indulge in these activities and as such, his prayer for grant of bail may be rejected outrightly.

6. Having heard learned counsel for the parties and perused material available on record, this Court finds that on the date of alleged incident, commercial quantity of contraband came to be recovered from the car bearing No. HP-01M-5132, which at the relevant time was being driven by the present bail petitioner. It is also not in dispute that aforesaid car is a taxi. Though commercial quantity of contraband came to be recovered from the car detailed hereinabove, but question, which needs to be

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determined in the case at hand, is “whether present bail petitioner, being a taxi driver, had any knowledge with regard to transportation of contraband by the co-accused Onkar Singh in his car or not? As per own case of prosecution, co-accused Onkar Singh disclosed to the police that on 22.06.2025 at 3:00 PM, one Smt. Lata Devi, wife of Sohan Singh, called him to the house of Ram Lok for delivery of 2 kg charas in lieu of Rs. 40,000/- and aforesaid co-accused, after having collected aforesaid quantity of contraband, telephonically called present bail petitioner to bring his taxi. It is apparent from the status report that present bail petitioner was never present at the time of delivery of contraband, if any, by Smt. Lata Devi to co-accused Onkar Singh, rather he subsequently came to be called by the co-accused Onkar Singh with his taxi. Since aforesaid co-accused Onkar Singh has categorically admitted factum with regard to his having procured charas from person named hereinabove, coupled with the fact that bail petitioner had no knowledge with regard to charas, if any, possessed by co-accused Onkar Singh, this Court is persuaded to agree with learned counsel for the petitioner that petitioner, being a taxi driver, could not be expected to have checked the belongings, if any, of the co-accused, who had hired taxi from Dharmer to Dharamshala.

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7. Though at this stage, Mr. Rajan Kahol, learned Additional Advocate General, attempted to make reference to the statement given by the petitioner to the police, wherein he has admitted that in past, he has been also supplying charas along with co-accused Onkar, but same may not be sufficient to conclude guilt, if any, of the petitioner. Moreover, confessional statement, if any, made by bail petitioner before the police cannot be used against him until same is corroborated by other evidence. Since in the case at hand, co-accused himself has admitted factum of his having procured charas from Lata Devi and at the time of such delivery, present bail petitioner was not present, it would be too premature to conclude that bail petitioner had prior knowledge with regard to deal, if any, *inter se* Lata and present bail petitioner for sale of contraband. Moreover, there is no record of financial transaction, if any, *inter se* present bail petitioner, Lata, and co-accused Onkar. Though Mr. Rajan Kahol, learned Additional Advocate General, while referring to status report, argued that co-accused Onkar Singh concocted false story with regard to his having purchased contraband from Lata and contraband was actually procured by both the accused, including bail petitioner, but such plea of him cannot be accepted at this stage, especially when co-accused Onkar Singh himself admitted factum of his having

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gone to the house of Lata Devi and thereafter calling present bail petitioner, who owns taxi, as detailed hereinabove.

8. No doubt, on account of recovery of commercial quantity of contraband, rigours of Section 37 of the ND& PS Act are attracted in the present case, but bare perusal of Section 37 of the ND& PS Act nowhere suggests that courts are completely estopped from considering bail in cases involving commercial quantity, rather as per aforesaid provision of law, court, after having afforded opportunity of being heard to Public Prosecutor, can proceed to grant bail in cases involving commercial quantity if it is satisfied that person seeking bail has been falsely implicated and in the event of his being enlarged on bail, he will not indulge in these activities again.

9. Admittedly, in the instant case, at this stage, there is no prima facie evidence suggestive of the fact that bail petitioner had any kind of role in purchase of contraband or he had any knowledge with regard to transportation of same by co-accused Onkar in his car. Similarly, there is nothing on record to suggest that in past, bail petitioner had been indulging in these activities and as such, it cannot be inferred that in the event of his being enlarged on bail, he may indulge in these activities again. Since for the reasons detailed above, twin conditions as provided in Section 37 of the ND& PS Act appear to have been satisfied by the

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petitioner, this Court sees no impediment in considering the prayer made on behalf of the petitioner for grant of bail.

10. In similar facts and circumstances, Hon'ble Apex Court in case titled ***Jagrit Upadhyay v. State of Madhya Pradesh***, SLP (Crl.) No. 779 of 2026, decided on 27.02.2026, proceeded to enlarge the petitioner, who also claimed that he, being driver of the vehicle, had no knowledge with regard to possession/ transportation of contraband by the co-accused. Relevant paras of the aforesaid judgment are extracted hereinbelow:-

> *"Learned counsel for the appellant submits that the appellant herein was the driver of the vehicle from which Onrex cough syrup was seized; that he had nothing to do with the said substance; that the owner of the vehicle had been granted the relief of bail; however, the appellant has been denied the similar relief; that the appellant has been in jail since 01.08.2023 and the trial would inevitably be delayed. In the circumstances, the appellant may also be granted the relief of bail on the principle of parity.*
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> *Per contra, learned standing counsel for the*

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respondent-State with reference to the counter affidavit contended that there is no merit in this appeal; that as many as 464 bottles of onrex cough syrup were seized from the vehicle which was being driven by the appellant herein. Hence, the appeal may be dismissed.

Considering the facts on record, in our view, the case for bail is made out.

We, therefore, allow this appeal and direct as under:
"The appellant shall be produced before the concerned Trial Court as early as possible and the Trial Court shall release him on bail, subject to such conditions as it may deem appropriate to impose to ensure his presence in the proceedings arising out of FIR bearing No. 0287/2023 mentioned above."
It is directed that the appellant shall extend complete cooperation in the trial of the instant case.

11. Similarly, Hon'ble Apex Court in case titled ***SK. Rabban v. State of West Bengal***, Special Leave to Appeal (Crl.) No. 5965 of 2026, decided on 27.04.2026, held that mere presence of appellant in the house of accused may not be sufficient to prove the guilt, rather prosecution in that case is required to prove active connivance of him with other accused either in procuring, selling or distributing the contraband, which can only be decided by the trial court on the basis of evidence led on record by prosecution. Relevant paras of the aforesaid judgment are extracted hereinbelow:-

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> *"4. On an information received that certain persons have stored Ganja in the premises of Accused No.1 (A1), a search was conducted on 18.06.2026 in the house of A1 and Ganja of 20.900 kgs was found alongwith cash of Rs.1,33,100/-, the appellant herein was also present at the spot. The persons who are supplying the Ganja, namely, Biki Singh and Shubham, who had traveled in a four wheeler, were also intercepted and recovered 13 kgs of Ganja from them and same being less than commercial quantity, they have been released on bail.*
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> *5. Having regard to the fact that mere presence of the appellant herein in the house of A1, he has been apprehended, as to whether he was in active connivance with the other accused persons either in procuring, selling or distributing the contraband, is an issue which will have to be examined by the trial court after considering the evidence that would be tendered by the prosecution. Hence, his continued incarceration, particularly, when chargesheet has been filed, would not be warranted.*

12. In another case titled ***Ghanshyam Saini v. State of Haryana***, SLP (Crl.) No. 12939 of 2025, decided on 01.12.2025, Hon'ble Apex Court, having taken note of the fact that appellant was the driver of the car in which one of the accused, Ramesh, was traveling and from whose possession the narcotic substance/ chitta was recovered, proceeded to grant bail. Relevant paras of the aforesaid judgment are extracted hereinbelow:-

> *"Learned counsel for the appellant submitted that although there may be about six accused connected to the FIR, one*

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of the accused, namely, Vinod @ Chaini has been released on bail by the High Court vide order dated 21.11.2025 on the premise that nothing had been recovered from his possession and therefore there was no material to connect the said Vinod @ Chaini with the alleged offence except disclosure statement suffered by the co-accused. Learned counsel for the appellant submitted that the appellant herein is in the very same position inasmuch as it is recorded that there has been no recovery from the person of the appellant; what is there to connect the appellant with the other accused is the fact that he was the driver of the car in which one of the accused Dinesh was traveling and from whose person the narcotic substance chitta (heroine) was recovered; that there is absolutely no other connection between the appellant herein and the other accused as per the material on record. In the circumstances, this Court may consider the case of the appellant as he has already spent more than a year since 23.4.2024 in jail and grant relief by setting aside the impugned order.

Per contra, learned counsel A.A.G. appearing for the respondent-State vehemently submitted that the High Court was justified in declining to grant bail to the appellant herein; that merely because one of the accused namely Vinod @ Chaini has been granted bail vide order dated 21.11.2025, the same cannot be relied upon by the appellant herein to seek a similar relief. It was contended that the appellant was driving the car from which the narcotic substance was recovered from Dinesh who was travelling in the very same car; that is sufficient nexus between the appellant and Dinesh as well as the other

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accused. He therefore submitted that the appeal may be dismissed.

Considering the facts on record, in our view, the case for regular bail is made out.

We, therefore, allow this appeal and direct as under:

> *"The appellant Ghan Shyam Saini shall be produced before the concerned Trial Court as early as possible and the Trial Court shall release him on bail, subject to such conditions as it may deem appropriate to impose to ensure his presence in the proceedings arising out of FIR No. 114 of 2024 mentioned above."*

It is directed that the appellant shall extend complete cooperation in the trial of the instant case. The appellant shall not misuse his liberty in any manner. Any infraction of the conditions shall entail cancellation of bail granted to the appellant."

13. Leave everything aside, this Court finds that bail petitioner is behind bars for almost one year and four months, but till date, prosecution has been able to examine only five witnesses out of 14 prosecution witnesses, meaning thereby, considerable time is likely to be consumed in conclusion of trial. If during aforesaid period, petitioner is left to incarcerate in jail for indefinite period, it would not only amount to pre-trial conviction, but would also violate Article 21 of the Constitution of India.

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14. By now, it is well settled that speedy trial is fundamental right of the accused and one cannot be made to suffer indefinitely for delay in trial and as such, this Court sees no reason to keep the bail petitioner behind the bars for indefinite period during trial. Hon'ble Apex Court in case titled ***Umarmia Alias Mamumia v. State of Gujarat*, (2017) 2 SCC 731**, has held delay in criminal trial to be in violation of right guaranteed to an accused under Article 21 of the Constitution of India. Relevant para of the afore judgment reads as under:-

> *"11. This Court has consistently recognized the right of the accused for a speedy trial. Delay in criminal trial has been held to be in violation of the right guaranteed to an accused under Article 21 of the Constitution of India. (See: Supreme Court Legal Aid Committee v. Union of India, (1994) 6 SCC 731; Shaheen Welfare Assn. v. Union of India, (1996) 2 SCC 616) Accused, even in cases under TADA, have been released on bail on the ground that they have been in jail for a long period of time and there was no likelihood of the completion of the trial at the earliest. (See: Paramjit Singh v. State (NCT of Delhi), (1999) 9 SCC 252 and Babba v. State of Maharashtra, (2005) 11 SCC 569).*

15. The Hon'ble Apex Court in case titled ***Javed Gulam Nabi Shaikh Vs. State of Maharashtra and Another***, passed in Criminal Appeal No.2787 of 2024, decided on 03.07.2024, having taken note of its various judgments passed in the past, proceeded to conclude that if the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused

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to have a speedy trial as enshrined under Article 21 of the Constitution, then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Most importantly, in the afore judgment, Hon'ble Apex Court has held that Article 21 of the Constitution applies irrespective of the nature of the crime. Relevant paras of the afore judgment read as under:

> *"15. The requirement of law as being envisaged under Section 19 of the National Investigation Agency Act, 2008 (hereinafter being referred to as "the 2008 Act") mandates that the trial under the Act of any offence by a Special Court shall be held on day-to-day basis on all working days and have precedence over the trial of any other case and Special Courts are to be designated for such an offence by the Central Government in consultation with the Chief Justice of the High Court as contemplated under Section 11 of the 2008.*
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> *16. A three-Judge Bench of this Court in **Union of India v. K.A. Najeeb** reported in (2021) 3 SCC 713] had an occasion to consider the long incarceration and at the same time the effect of Section 43-D(5) of the UAP Act and observed as under : (SCC p. 722, para 17)*
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> *"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 safe-guard 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."*
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> *17. In the recent decision, **Satender Kumar Antil v. Central Bureau of Investigation** reported in (2022) 10 SCC 51, prolonged*

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incarceration and inordinate delay engaged the attention of the court, which considered the correct approach towards bail, with respect to several enactments, including Section 37 NDPS Act. The court expressed the opinion that Section 436A (which requires inter alia the accused to be enlarged on bail if the trial is not concluded within specified periods) of the Criminal Procedure Code, 1973would apply:

"We do not wish to deal with individual enactments as each special Act has got an objective behind it, followed by the rigour imposed. The general principle governing delay would apply to these categories also. To make it clear, the provision contained in Section 436-A of the Code would apply to the Special Acts also in the absence of any specific provision. For example, the rigour as provided under Section 37 of the NDPS Act would not come in the way in such a case as we are dealing with the liberty of a person. We do feel that more the rigour, the quicker the adjudication ought to be. After all, in these types of cases number of witnesses would be very less and there may not be any justification for prolonging the trial. Perhaps there is a need to comply with the directions of this Court to expedite the process and also a stricter compliance of Section 309 of the Code."

18. Criminals are not born out but made. The human potential in everyone is good and so, never write off any criminal as beyond redemption. This humanist fundamental is often missed when dealing with delinquents, juvenile and adult. Indeed, every saint has a past and every sinner a future. When a crime is committed, a variety of factors is responsible for making the offender commit the crime. Those factors may be social and economic, maybe, the result of value erosion or parental neglect; may be, because of the stress of circumstances, or the manifestation of temptations in a milieu of affluence contrasted with indigence or other privations.

19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.

20 We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an

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accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be.

21 We are convinced that the manner in which the prosecuting agency as well as the Court have proceeded, the right of the accused to have a speedy trial could be said to have been infringed thereby violating Article 21 of the Constitution."

16. Hon'ble Apex Court in **Manish Sisodia v. Enforcement Directorate, 2024 SCC OnLine SC 1920,** while placing reliance upon its earlier judgments rendered in number of cases, especially ***Javed Gulam Nabi Shaikh*** (supra), again reiterated that right to speedy trial is a fundamental right of an accused and infraction thereof amounts to violation of Arctile 21 of the Constitution of India. Relevant paras of the judgment passed in ***Manish Sisodia*** case read as under:

"50. As observed by this Court, the right to speedy trial and the right to liberty are sacrosanct rights. On denial of these rights, the trial court as well as the High Court ought to have given due weightage to this factor.

51. Recently, this Court had an occasion to consider an application for bail in the case of Javed Gulam Nabi Shaikh v. State of Maharashtra wherein the accused was prosecuted under the provisions of the Unlawful Activities (Prevention) Act, 1967. This Court surveyed the entire law right from the judgment of this Court in the cases of Gudikanti Narasimhulu v. Public Prosecutor, High Court of Andhra Pradesh, Shri Gurbaksh Singh Sibbia v. State of Punjab, Hussainara Khatoon (I) v. Home Secretary, State of Bihar, Union of India v. K.A. Najeeb and Satender Kumar Antil v. Central Bureau of Investigation. The Court observed thus:

"19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as

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enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime."

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

"10. In the aforesaid context, we may remind the trial courts and the High Courts of what came to be observed by this Court in Gudikanti Narasimhulu v. Public Prosecutor, High Court reported in (1978) 1 SCC 240. We quote:

"What is often forgotten, and therefore warrants reminder, is the object to keep a person in judicial custody pending trial or disposal of an appeal. Lord Russel, C.J., said [R v. Rose, (1898) 18 Cox]:

"I observe that in this case bail was refused for the prisoner. It cannot be too strongly impressed on the, magistracy of the country that bail is not to be withheld as a punishment, but that the requirements as to bail are merely to secure the attendance of the prisoner at trial."

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

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

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digitized documents. It is thus clear that there is not even the remotest possibility of the trial being concluded in the near future. In our view, keeping the appellant behind the bars for an unlimited period of time in the hope of speedy completion of trial would deprive his fundamental right to liberty under Article 21 of the Constitution. As observed time and again, the prolonged incarceration before being pronounced guilty of an offence should not be permitted to become punishment without trial."

17. Reliance is also placed upon judgment passed by the Hon'ble Apex Court in **Jalaluddin Khan v. Union of India, 2024 SCC OnLine SC 1945**, wherein Hon'ble Apex Court while dealing with a case registered under Sections 13, 18, 18A, and 20 of Unlawful Activities (Prevention) Act, 1967, enlarged the accused on bail on the ground of inordinate delay in conclusion of trial. Relevant para of the afore judgment is reproduced herein below:

"21. Before we part with the Judgment, we must mention here that the Special Court and the High Court did not consider the material in the charge sheet objectively. Perhaps the focus was more on the activities of PFI, and therefore, the appellant's case could not be properly appreciated. When a case is made out for a grant of bail, the Courts should not have any hesitation in granting bail. The allegations of the prosecution may be very serious. But, the duty of the Courts is to consider the case for grant of bail in accordance with the law. "Bail is the rule and jail is an exception" is a settled law. Even in a case like the present case where there are stringent conditions for the grant of bail in the relevant statutes, the same rule holds good with only modification that the bail can be granted if the conditions in the statute are satisfied. The rule also means that once a case is made out for the grant of bail, the Court cannot decline to grant bail. If the Courts start denying bail in deserving cases, it will be

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a violation of the rights guaranteed under Article 21 of our Constitution."

18. Reliance is also placed upon latest judgment dated 28.8.2024, passed in **Prem Prakash v. Union of India through The Directorate of Enforcement**, (Petition for Special Leave to Appeal (Crl.) No. 5416 of 2024), wherein having taken note of the inordinate delay in conclusion of trial, Hon'ble Apex Court proceeded to enlarge the accused on bail. Relevant para of the aforesaid judgment reads as under:

*"12. Independently and as has been emphatically reiterated in **Manish Sisodia (II) (supra)** relying on **Ramkripal Meena Vs Directorate of Enforcement** (SLP (Crl.) No. 3205 of 2024 dated 30.07.2024) and **Javed Gulam Nabi Shaikh Vs. State of Maharashtra and Another**, 2024 SCC online 1693, 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 of PMLA can be suitably relaxed to afford conditional liberty. Further, **Manish Sisodia (II) (supra)** reiterated the holding in **Javed Gulam Nabi Sheikh (Supra)**, 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. In fact, **Manish Sisodia (II) (Supra)** reiterated the holding in **Manish Sisodia (I) Vs. Directorate of Enforcement** (judgment dated 30.10.2023 in Criminal Appeal No. 3352 of 2023) where it was held as under:-*

"28. Detention or jail before being pronounced guilty of an offence should not become punishment without trial. If the trial gets protracted despite assurances of the prosecution, and it is clear that case will not be decided within a foreseeable time, the

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prayer for bail may be meritorious. While the prosecution may pertain to an economic offence, yet it may not be proper to equate these cases with those punishable with death, imprisonment for life, ten years or more like offences under the Narcotic Drugs and Psychotropic Substances Act, 1985, murder, cases of rape, dacoity, kidnaping for ransom, mass violence, etc. Neither is this a case where 100/1000s of depositors have been defrauded. The allegations have to be established and proven. The right to bail in cases of delay, coupled with incarceration for a long period, depending on the nature of the allegations, should be read into Section 439 of the Code and Section 45 of the PML Act. The reason is that the constitutional mandate is the higher law, and it is the basic right of the person charged of an offence and not convicted, that he be ensured and given a speedy trial. When the trial is not proceeding for reasons not attributable to the accused, the court, unless there are good reasons, may well be guided to exercise the power to grant bail. This would be truer where the trial would take years."

*It is in this background that Section 45 of PMLA needs to be understood and applied. Article 21 being a higher constitutional right, statutory provisions should align themselve*s to the said higher constitutional edict."

19. In the aforesaid judgment, Hon'ble Apex Court having taken note of all judgments passed in recent times, categorically held that bail is rule and jail is an exception. If all the judgments taken note herein above are read in conjunction, Hon'ble Apex Court has categorically held that court while considering prayer for grant of bail may not be impressed with the arguments advanced by the prosecution that charge against the person seeking bail is serious, but in case, Court finds that on account of inordinate delay

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in conclusion of trial, fundamental right of speedy trial is being violated, it should proceed to grant bail. No doubt, in the case at hand, charge against the petitioner is serious, but there is no denial to the fact that bail petitioner is languishing in jail for more than two years without being held guilty.

20. Needless to say, object of the bail is to secure the attendance of the accused in the trial and the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial. Otherwise, bail is not to be withheld as a punishment. Otherwise also, normal rule is of bail and not jail. Court has to keep in mind nature of accusations, nature of evidence in support thereof, severity of the punishment which conviction will entail, character of the accused, circumstances which are peculiar to the accused involved in that crime.

21. Hon'ble Apex Court in Criminal Appeal No. 227/2018, **Dataram Singh vs. State of Uttar Pradesh & Anr** decided on 6.2.2018 has held that freedom of an individual cannot be curtailed for indefinite period, especially when his/her guilt is yet to be proved. It has been further held by the Hon'ble Apex Court in the aforesaid judgment that a person is believed to be innocent until found guilty.

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22. Hon'ble Apex Court in **Sanjay Chandra versus Central Bureau of Investigation (2012)1 Supreme Court Cases 49** has held that gravity alone cannot be a decisive ground to deny bail, rather competing factors are required to be balanced by the court while exercising its discretion. It has been repeatedly held by the Hon'ble Apex Court that object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative.

23. In **Manoranjana Sinh alias Gupta versus CBI, (2017) 5 SCC 218**, Hon'ble Apex Court has held that the object of the bail is to secure the attendance of the accused in the trial and the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial. Otherwise also, normal rule is of bail and not jail. Apart from above, Court has to keep in mind nature of accusations, nature of evidence in support thereof, severity of the punishment, which conviction will entail, character of the accused, circumstances which are peculiar to the accused involved in that crime.

24. The Apex Court in **Prasanta Kumar Sarkar versus Ashis Chatterjee and another (2010) 14 SCC 496**, has laid down various principles to be kept in mind, while deciding petition for bail

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viz. prima facie case, nature and gravity of accusation, punishment involved, apprehension of repetition of offence and witnesses being influenced.

25. In view of the aforesaid discussion as well as law laid down by the Hon'ble Apex Court, bail-petitioner has carved out a case for grant of bail, accordingly, the petition is allowed and the bail-petitioner is ordered to be enlarged on bail in aforesaid FIR, subject to his furnishing personal bond in the sum of Rs.5,00,000/- with two local sureties in the like amount to the satisfaction of concerned Chief Judicial Magistrate/trial Court, with following conditions:

(a) He shall make himself available for the purpose of interrogation, if so required and regularly attend the trial Court on each and every date of hearing and if prevented by any reason to do so, seek exemption from appearance by filing appropriate application;

(b) He shall not tamper with the prosecution evidence nor hamper the investigation of the case in any manner whatsoever;

(c) He shall not make any inducement, threat or promises to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or the Police Officer; and

(d) He shall not leave the territory of India without the prior permission of the Court.

(e) ***He shall surrender his passport, if any, before the investigating agency.***

26. It is clarified that if the petitioner misuses the liberty or violates any of the conditions imposed upon him, the investigating agency shall be free to move this Court for cancellation of the bail.

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27. Any observations made hereinabove shall not be construed to be a reflection on the merits of the case and shall remain confined to the disposal of this application alone. The petition stands accordingly disposed of.

28. A downloaded copy of this order shall be accepted by the learned trial Court, while accepting the bail bonds from the petitioner and in case, said court intends to ascertain the veracity of the downloaded copy of order presented to it, same may be ascertained from the official website of this Court.

(Sandeep Sharma)
Judge

October 30, 2026
(**sunil**)

High Court of H.P.

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