

THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-57948-2024 (O&M)
Date of decision: 31.01.2025

Sikandar Singh

...Petitioner

Versus

Directorate of Enforcement

....Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Vikram Chaudhri, Sr. Advocate (**through V.C**) with
Mr. Jatin Sehgal, Advocate (**through V.C**),
Mr. Raymon Singh, Advocate (**through V.C**) and
Ms. Hargun Sandhu, Advocate for the petitioner.

Mr. Zoheb Hossain, Special Counsel (**through V.C**) with
Mr. Lokesh Narang, Senior Panel Counsel,
Ms. Subhleen Dhariwal, Advocate,
Mr. Suradshish Vats, Advocate for the respondent.

MAHABIR SINGH SINDHU, J.

Present **Second** petition has been filed, under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (*for short*, “**BNSS**”), read with 167(2) of the Code of Criminal Procedure, 1973 (*for short*, “**Cr.P.C.**”) with a prayer to forthwith release the petitioner on bail/default bail in ECIR/GNZO/20/2021, dated 16.11.2021, registered at Gurugram Zonal Office, Directorate of Enforcement (*for short*, “**E.D.**”), under Sections 3 & 4 of Prevention of Money Laundering Act, 2002 (*for short*, “**PMLA**”).

2. BRIEF FACTS:-

2.1 M/s Mahira Homes Pvt. Ltd is the holding company of various other associate companies, including M/s Sai Aaina Farms Pvt. Ltd. (*for short*, “**SAFPL**”), M/s Czar Buildwell Pvt. Ltd. (Presently Mahira Buildwell Pvt. Ltd.) (*for short* “**M/s Czar**”) and M/s Mahira Buildtech Pvt. Ltd. (*for short* “**M/s**”



Mahira Buildtech”), which are dealing with construction projects in Sectors 68, 103 & 104; respectively, at Gurugram.

2.2 On 17.05.2016, the SAFPL applied for an affordable Housing Project under *Pradhan Mantri Awas Yojana*-Urban for construction of 1500 Flats in the land measuring 9.96875 acres, situated in revenue estate of Village Badshahpur, Sector 68, Gurugram.

2.3 On the basis of above request, the Director General, Town & Country Planning, Haryana, (for short, “DGTCP”) issued a Letter of Intent (LOI) vide Memo. No.LC-3298-JE(VA)2017/27074 dated 27.10.2017 in favour of SAFPL. In order to comply with the terms & conditions of the aforesaid LOI, the SAFPL furnished two Bank Guarantees issued by IDBI Bank i.e.

- (i) LC No.3298 B.G No.1401381BGF00103 for an amount of Rs.2,63,23,892/- towards External Development Charges (EDC); and
- (ii) LC No.3298 B.G No.1401381BGF00104 for an amount of Rs.1,24,61,000/- in lieu of Internal Development Work (IDW)

2.4 Thereafter, vide memo dated 22.12.2017, the Director, Town and Country Planning, Haryana (for short, “D.T.C.P”) granted License No.106 of 2017 for construction of 1500 flats in favour of SAFPL, in Sector 68, Gurugram. Also transpires that SAFPL obtained requisite license on 02.02.2018 from Haryana Real Estate Regulatory Authority (HRERA) under the provisions of the Real Estate (Regulation and Development) Act, 2016 (for short, “Act of 2016”). On the basis of above permission/license granted by D.T.C.P/HRERA, the SAFPL collected booking amount from 1500 prospective home buyers to the tune of Rs.363 crores.

2.5 One Neeraj Chaudhary, Additional Director of M/s D.S. Estates & Construction Pvt. Ltd.(in one of the companies of petitioner), filed two separate



complaints (Nos.COMI/486/2020 & COMI/487/2020) before learned Chief Judicial Magistrate, Gurugram (for short “CJM”), under Section 200 of the Cr.P.C read with Section 156(3) thereof, for registration of FIRs against SAFPL; present petitioner, as well as other co-accused.

2.6 Learned CJM, vide order dated 07.01.2021, directed SHO, Police Station Sushant Lok, Gurugram, for registration of FIRs. In pursuance of the order dated 07.01.2021, FIR Nos.10 & 11 dated 14.01.2021 were registered against SAFPL and other co-accused, including present petitioner, under Sections 120-B, 406, 420, 467, 468 & 471 of the Indian Penal Code, 1860 (for short, “IPC”) at Police Station, Sushant Lok, District Gurugram.

2.7 It was alleged in the above FIRs that SAFPL furnished fake bank guarantee(s) in favour of D.T.C.P while obtaining License No.106 and apart that, they cheated complainant-Neeraj Chaudhary.

2.8 The contents of above FIRs were scrutinized by the E.D. and it was found that offences under Sections 120-B, 420, 467 & 471 IPC are falling within the definition of “*scheduled offence*” as envisaged under Section 2(y) of the PMLA and covered under Part-A of the Schedule thereof. As a result of the above, ECIR No.GNZO/20/2021 was recorded by the E.D. on 16.11.2021 against SAFPL as well as other co-accused, including present petitioner.

2.9 On 09.02.2024, both the above complaints filed by Neeraj Chaudhary were dismissed as withdrawn before the Court of CJM, Gurugram while treating FIR Nos. 10 & 11 dated 14.01.2021 (*supra*) as nullity.

2.10 Subsequently, four more FIRs were registered against the petitioner as well as other co-accused and which are as under:-

FIR No.	Police Station	Offences	Remarks
0175 dt.18.05.2022	Rajendra Park, Gurugram	Sections 120-B, 201, 420, 467, 468, & 471 IPC	Final report No.1 was submitted on



			08.06.2023 and Supplementary Report No.1-B was submitted on 17.01.2024
0151 dt.31.05.2023	Rajendra Park, Gurugram	Sections 420, 467, 468, & 471 IPC	Under investigation
0152 dt. 01.06.2023	Rajendra Park, Gurugram	Sections 420, 467, 468, & 471 IPC	Under investigation
0151 dt. 05.07.2023	Sushant Lok, Gurugram	Sections 120-B, 420, 467, 468, & 471 IPC	Under investigation

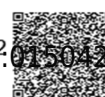
2.11 On 30.04.2024, E.D. issued an arrest order against petitioner under Section 19 of PMLA and he challenged the same before this Court vide CRM-M-22478-2024; but could not succeed as it was dismissed on 27.08.2024. The above order was challenged before Hon’ble the Supreme Court in SLP (Crl.) No. 12541-2024, which was ordered to be listed with SLP (Crl.) Nos. 6100-6101-2024. However, vide order dated 17.09.2024, petitioner was granted liberty by Hon’ble the Supreme Court to apply for bail.

In view of the above, petitioner approached this Court seeking bail/default bail while filing CRM-M-53650-2024; but vide order dated 06.11.2024, he was relegated to avail the remedy before learned Special Court in accordance with law. Consequently, petitioner approached learned Special Court, but his bail application was declined vide order dated 11.11.2024; hence present petition.

CONTENTIONS:

3. **ON BEHALF OF PETITIONER:-**

3.1 Learned Senior counsel contends that from December 2021 to October 2023, petitioner was summoned and in pursuance thereof, he appeared before E.D. on almost 37 occasions.



3.2 Further contends that despite petitioner's full co-operation, E.D. with *mala fide* intention obtained open ended warrants against him as well as co-accused i.e. father and brother.

3.3 Again contends that out of total 1500 flats, almost 1000 were constructed and construction of 800 flats is completed up to 95%; whereas 200 flats have been completed up to 75-80%.

Specifically contended that no flat buyer has raised any complaint against the petitioner regarding flats in question up till now.

3.4 Vehemently contended that initially, E.D. relied upon 2 FIRs i.e. FIR Nos. 10 & 11 (*supra*), on the basis of which, present ECIR was registered. Thereafter, several rounds of litigation took place challenging the orders passed by CJM under Section 156(3) Cr.P.C. and ultimately, this Court, vide order dated 16.01.2024, set aside the order of CJM and matter was remanded back for fresh consideration. Ultimately, on 09.02.2024, *de facto* complainant i.e. Neeraj Choudhary chose not to pursue both the above complaints and consequently, the same were withdrawn before the Court of CJM, Gurugram.

3.5 Again contended that out of alleged "proceeds of crime", provisional attachment of various properties/bank accounts amounting to Rs. 36 Crore (approximately) have already been effected and an application for confirmation of the same is pending before the adjudicating authority; therefore, the said proposal is still at premature stage.

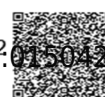
3.6 Further contended that after registration of present ECIR, four more FIRs were registered against the petitioner; however, report under Section 173 Cr.P.C has been filed only in FIR No.175 dated 18.05.2022 and in the remaining 03 FIRs, investigation is going on. Still further contended that pre-trial detention is not favoured by the law; rather bail is the rule and jail is an exception.



3.7 Again contended that petitioner is in custody since 30.04.2024; complaint under Section 44 of the PMLA was filed before learned Special Court on 27.06.2024; cognizance has already been taken on 05.12.2024; but charges are yet to be considered. Also contended that there are more than 32 prosecution witnesses and almost 152 documents which are running into 4000 pages; thus, there is no likelihood of trial being concluded in near future. Thus, further incarceration of the petitioner would not serve any purpose.

3.8 In support of the above contentions, learned Senior counsel has relied upon the following judicial pronouncements:-

- (i) ***Ramkripal Meena Versus Directorate of Enforcement, 2024 SCC Online SC 2276;***
- (ii) ***Manish Sisodia Versus Directorate of Enforcement, 2024 SCC Online 1920;***
- (iii) ***Bhagwan Bhagat Versus Directorate of Enforcement, Crl. Appeal No.3392 of 2024;***
- (iv) ***Kalvakuntla Kavita Versus Directorate of Enforcement, 2024 SC Onlilne SC 2269;***
- (v) ***Prem Prakash Versus Union of India through Directorate of Enforcement, (2024) 9 SCC 787;***
- (vi) ***Vijay Nair Versus Directorate of Enforcement, 2024 SCC Online SC 3597;***
- (vii) ***Balwinder Singh Versus State of Punjab and another, SLP(Crl.) No.8523 of 2024;***
- (viii) ***Arvind Kejriwal Versus Central Bureau of Investigation, 2024 SCC Online SC 2550;***
- (ix) ***V. Senthil Balaji Versus the Deputy Director, Directorate of Enforcement, 2024 SCC Online SC 2626;***
- (x) ***Sunil Dammani Versus Directorate of Enforcement, Crl. Appeal No.4108 of 2024;***
- (xi) ***Laxmi Kant Tiwari Versus Directorate of Enforcement, Crl. Appeal No.4142 of 2024;***
- (xii) ***Pankaj Kumar Tiwari Versus Directorate of Enforcement, 2024 SCC Online 7387;***



(xiii) Vaibhav Jain Versus Directorate of Enforcement, 2024 SCC Online Del 7478;

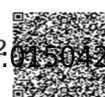
(xiv) Jaswant Singh Versus Directorate of Enforcement, CRM-M-47578 of 2024 (Pb. & Hr.).

4. ON BEHALF OF THE RESPONDENT:-

4.1 On the other hand, learned counsel for E.D., while opposing the prayer, submits that on the date of his arrest, i.e. 30.04.2024, petitioner tried to flee from the custody of E.D. officials on the pretext of urinating when they were *en route* from Dehradun to Gurugram Zonal Office. Even while remaining in custody for 06 months, on 01.10.2024, petitioner was being medically examined at PGIMS, Rohtak, but he was seen freely going out of the hospital premises; roaming in Fortuner car in and out; using mobile phones, without following the rules of Prisoners under custody; talking to various persons, which clearly indicate that he has no respect for the rule of law. In this regard, FIR No.271 dated 14.11.2024 has already been registered against the petitioner and others at Police Station PGIMS, Rohtak.

4.2 Again submitted that against co-accused, namely, Dharam Singh Chhoker and Vikas Chhoker, who happens to be father and brother of petitioner, respectively, open ended non-bailable warrants have already been issued by learned Special Court; thus, it can safely be inferred that in case petitioner is allowed the concession of bail, he shall misuse the concession and may evade the process of law.

4.3 Yet again submitted that petitioner being the Director/Promoter/Major Share-holder of M/s Mahira Homes Pvt. Ltd. (which is the parent company of SAFPL, M/s Czar, M/s Mahira Buildwell) duped approximately 1500 home buyers to the tune of about Rs.363 Crore. Also submitted that petitioner has usurped the hard-earned money of poor people, who



cannot afford their own roof; invested in these projects, which were shown to be under Pradhan Mantri Awas Yojna- Urban.

4.4 Further submitted that in case the petitioner is released on bail, there is every likelihood that he will misuse the concession and hamper the fair trial. Lastly submitted that in economic offences, bail is not the rule; rather it is an exception; thus the prayer of petitioner for grant of bail pending trial warrants dismissal.

4.5 In support of his submissions, learned counsel for respondent has relied upon various judicial pronouncements and which are as under:-

- (i) ***PGI of Medical Education & Research Versus Raj Kumar (2001) 2 SCC 54;***
- (ii) ***State of Bihar and another Versus Amit Kumar, (2017) 13 SCC 751;***
- (iii) ***Religare Finvest Limited Versus State of NCT of Delhi and another, Crl. MC-796 of 2021 (Delhi);***
- (iv) ***Vijay Madanlal Choudhary and others Versus Union of India and others, 2022 SCC Online SC 929;***
- (v) ***Manish Sisodia Versus Central Bureau of Investigation, SLP(Crl.) No.8167 of 2023;***
- (vi) ***Tarun Kumar Versus Enforcement Directorate, 2023 SCC Online SC 1486;***
- (vii) ***Ramkripal Meena's case (supra);***
- (viii) ***Manish Sisodia's case (supra).***

5. Heard learned counsel for the parties and perused the paper-book.

6. Before proceeding further, it is necessary to mention here that against the order dated 27.08.2024 passed by this Court in CRM-M-22478 of 2024, petitioner approached Hon'ble the Supreme Court by way of SLP (Crl.) No. 12541/2024, in which, the following order was passed on 17.09.2024:-

"Issue notice.

To be taken up with SLP (Crl.) Nos.6100-6101/2024.



Notice will be served by all modes, including dasti.

We, however, clarify that it will be open to the petitioner, Sikandar Singh, to apply for bail and the same shall be considered and examined in accordance with law.”

In view of the aforesaid order, petitioner filed an application on 18.10.2024 for seeking bail before learned Special Court. Simultaneously, during the pendency of above bail application, petitioner approached this Court for the same relief and resultantly, vide order dated 06.11.2024, he was relegated to pursue the remedy before learned Special Court in accordance with law.

7. The bail application of petitioner was declined by learned Special Court, Gurugram vide order dated 11.11.2024.

8. Precisely, the allegations against petitioner are that companies in which he was a Director/Promoter/Major Share-holder, furnished forged & fabricated bank guarantees as well as cheated 1500 prospective home buyers, thereby collecting money to the tune of about Rs.363 Crore. Also alleged that petitioner failed to complete the project(s) as per time schedule and did not deliver the flats as per agreed terms & conditions; thus, he misappropriated the funds and cheated the home buyers. Allegations are also levelled that petitioner siphoned off the money for other intended purposes and which, according to E.D., shall be treated as “proceeds of crime”.

9. Although it was contended on behalf of petitioner that investigation against him is still going on, but, the E.D. has claimed that after completion of investigation, complaint under Section 44 of the PMLA was filed on 27.06.2024. At the same time, it was submitted on behalf of the E.D. that in case some new material is discovered during ongoing investigation against the remaining co-accused, then a supplementary complaint would be filed against the petitioner under Section 44(1)(d)(ii) of the PMLA.



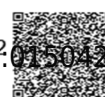
10. There is no quarrel that petitioner was arrested on 30.04.2024; thus, he is in custody for the last 09 months; except from taking cognizance, there is no other progress of the trial and the charges are yet to be considered by learned Special Court. There are 32 prosecution witnesses cited by the E.D in their complaint and as such, it would be very difficult to say that trial is likely to be completed in the near future; rather there seems to be “no possibility” that trial would be concluded in a reasonable time.

11. Although, learned counsel for the E.D. vehemently opposed the prayer of the petitioner on the premise that there is a specific bar for bail under Section 45 of PMLA, but such a plea would not disentitle him from seeking bail in the present case due to the following reasons:-

- (i) Till date, out of total 1500 home buyers, none has raised any complaint against the petitioner;
- (ii) It would not be out of place to mention here that in case of delay in completion of project(s) by any Promoter/Director and/or non-delivery of possession to the home buyers within stipulated period as per the Agreement, there is specific remedy for claiming interest, penalty and/or compensation etc. under Section 31 of the Real Estate (Regulation & Development) Act, 2016, but there is nothing on record to suggest that such a course has been followed by any aggrieved person;
- (iii) Construction of 1000 flats is at the advanced stage and actual position as stated by learned Senior Counsel, on instructions, would be as under:-

800 flats : Completed up to 95%

200 flats : Completed up to 75-80%



It is noteworthy that there was no denial by respondent-E.D to the above factual position.

- (iv) As already noticed, petitioner is in custody for the last 09 months; he has not been charged by learned Special Court till date; there are 32 prosecution witnesses; E.D is relying upon 152 incriminating documents which are stated to be running into more than 4000 pages and as such, there is no likelihood that trial shall be finalized in near future.

Above all, it is not the stand of E.D. that trial is being delayed at the instance of petitioner, in any way.

- (v) Hon'ble the Supreme Court in ***Ramkripal Meena's case (supra)***, while dealing with the twin conditions of PMLA, *inter alia*, observed as under:-

“Taking into consideration the period spent in custody and there being no likelihood of conclusion of trial within a short span, coupled with the fact that petitioner is already on bail in the predicate offence, and keeping in view the peculiar facts and circumstances of this case, it seems to us that the rigors of Section 45 of the Act can be suitably relaxed to afford conditional liberty to the petitioner.

Ordered accordingly.”

- (vi) Still further, Hon'ble the Supreme Court in Paragraph No. 25 of ***V. Senthil Balaji's case (supra)*** while granting bail under PMLA, *inter alia*, observed as under:-

“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.”

12. Thus, in such a scenario; particularly, in view of the mandate of Article 21, the interdict stipulated under Section 45 of the PMLA would not be a bar for granting bail to the petitioner, at this stage.

13. Although, learned counsel for E.D. emphatically opposed the prayer on the ground that this Court while examining the arrest order of the petitioner, dismissed CRM-M-22478-2024 vide order dated 27.08.2024 and opined that “*prima facie the offence of money laundering is clearly made out against the petitioner*”. However, the above submission is not helpful to the E.D for the simple reason that this Court while passing the above order clarified in the penultimate paragraph, as under:-

“The above observations be not construed as an expression of opinion on merits of the complaint pending before learned Special Court; rather confined only to decide the present petition.”

Thus, the above argument raised by E.D is also rejected.

14. So far as the plea of learned counsel for E.D. with regard to past conduct of petitioner is concerned viz., during investigation, he tried to flee while being taken in custody from Dehradun to Gurugram; when petitioner was hospitalised being in custody, he was seen roaming around in a private vehicle, would also not be the basis to deny him regular bail, in these circumstances.



15. *A fortiori*, it is noteworthy that both the complaints i.e. COMI-486-2020 and COMI-487-2020 filed by Neeraj Chaudhary, which were the basis for registration of FIR Nos.10 & 11 dated 14.01.2021 as well as consequent ECIR, were dismissed as withdrawn on 09.02.2024 before the Court of CJM, Gurugram. Also discernible that out of the subsequent 04 FIRs registered against petitioner as well as other co-accused, only in one FIR i.e. FIR No. 175 dated 18.05.2022, report under Section 173 Cr.P.C has been submitted before the Court of competent jurisdiction and in remaining 03 FIRs i.e. FIR No.151 dated 31.05.2023, FIR No.152 dated 01.06.2023 of Police Station Rajendra Park, Gurugram and FIR No.151 dated 05.07.2023 of Police Station Sushant Lok Gurugram, investigation is still going on.

16. **DISCUSSION ON JUDICIAL PRONOUNCEMENTS:-**

16.1 Although, learned counsel for E.D. tried to convince the Court while citing various judicial pronouncements, but the same are distinguishable and which are discussed here-as-under:-

- 1) ***P.G.I. of Medical Education's case (supra)***, it was held by Hon'ble the Supreme Court that judgments passed in peculiar facts and circumstances cannot be treated as a binding precedent. There is no quarrel with this proposition of law.
- 2) ***In Amit Kumar's case (ibid)***, the facts revealed that poor intellectual students occupied first ten places in the merit list of the Bihar Intermediate Examination through fraudulent practices by the students and management of Vishnu Rai College. Therefore, it was held that socio-economic offences have deep rooted conspiracies affecting the moral fibre of the society and causing irreparable harm, needs to be considered seriously. In the present case, there is no socio-economic offence involved; hence distinguishable.
- 3) ***In Religare Finvest's case (supra)***, the bail was cancelled by Delhi High Court keeping in view the gravity of the offence as the scam involved amount of Rs.2400 crores. No dictum of law was laid down by the Court.



- 4) ***Vijay Madanlal's case (supra)***, Hon'ble the Supreme Court has observed that economic offences stand on a graver footing as they not only involve an individual victim, but harm the society as a whole. There is no quarrel with this proposition of law.
- 5) ***In Manish Sisodia Vs. CBI's case and Manish Sisodia Vs. E.D.'s case (ibid)***, it was observed that delay in trial shall not *ipso facto* result in grant of bail to the accused. The Court will have to examine the facts and circumstances of each case. The dictum of law is very much acknowledged by this Court.
- 6) ***Tarun Kumar case (supra)***, it was held that the economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country. Undoubtedly, economic offences have serious repercussions on the development of the country as a whole. There is no quarrel with the proposition.
- 7) ***Ramkripal Meena's case (supra)*** was decided on merits, without laying down any dictum of law.

17. CONCLUSION:-

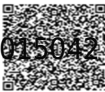
17.1 In view of the facts & circumstances discussed here-in-above, this Court is of the considered opinion that further incarceration of the petitioner shall not serve any useful purpose; rather it would amount to punishing him, before guilt is proved.

17.2 Consequently, there is no option, except to allow the petition.

17.3 Ordered accordingly.

17.4 Resultantly, petitioner is ordered to be released on bail in this case on his furnishing bail-bonds and surety bonds to the satisfaction of learned Special Court/Duty Magistrate concerned.

18. It is clarified that in case there is any misuse of concession on the part of petitioner, the respondent-E.D. shall be at liberty to move an application for recalling of this order.



19. Further clarified that deliberate non-appearance of the petitioner before learned Special Court shall be construed as misuse of the concession.

20. Again clarified that above observations be not construed as an expression of opinion on merits of the complaint pending before learned Special Court in any manner; rather confined only to decide the present bail application.

Pending criminal misc. application(s), if any, shall also stand disposed off.

31.01.2025
SN

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable: Yes/No