

SC Highlights Need to Balance Trial Delays and Bail Rights Under PMLA Sec 45

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- Bail is the rule, and jail is the exception principle
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Why in News?

The Supreme Court granted bail to former Delhi Deputy Chief Minister Manish Sisodia.

While granting the bail, the apex court emphasized that the delay in trial and a long period of pre-trial incarceration is a ground to bypass the stringent bail conditions in money laundering cases. The Court stated that under these circumstances, the right to bail should be considered as part of Section 45 of the PMLA.

Bail is the rule, and jail is the exception principle

- **About**
 - The 'bail is the rule, and jail is the exception' principle was first used in the 1977 landmark judgment of the **'State of Rajasthan vs Balchand alias Baliya' case**.
 - The ruling underscored that bail should be denied only in circumstances where there is a risk of the accused fleeing from justice, obstructing justice, repeating offenses, or intimidating witnesses.
 - This concept has been cited in numerous cases since, reinforcing its importance in upholding personal liberty.
- **SC invoking this principle from time to time**
 - The Supreme Court has consistently reiterated this principle in various judgments.
 - In 2011, the court granted bail to five accused in the 2G spectrum case, while underscoring that bail is the rule.
 - Similarly, in 2019, the court granted bail to P Chidambaram in the INX Media case, despite the seriousness of economic offenses, affirming that the fundamental jurisprudence of bail remained unchanged.
 - In November 2020, the Supreme Court extended interim bail to journalist Arnab Goswami, highlighting the critical nature of personal liberty and the principle of bail as the norm.

- CJI DY Chandrachud, in his address at the All India District Judges Conference in March 2024, voiced concerns about the declining adherence to this principle in lower courts.
- He emphasized the need for judges to prioritize personal liberty and adhere to the established legal standard.

Section 45 of the PMLA

- Section 45 of the **Prevention of Money Laundering Act (PMLA)** speaks about the conditions set for bail.
- It states that no accused person shall be granted bail unless:
 - the Public Prosecutor has been given an opportunity to oppose the application for such release; and
 - where the Public Prosecutor opposes the application, the Court is satisfied that:
 - there are reasonable grounds for believing that he is not guilty of such offence and
 - that he is not likely to commit any offence while on bail.
- Basically, this section prescribes a rather high bar for granting bail. The negative language in the provision itself shows that bail is not the rule but the exception under PMLA.

Twin test of bail under Section 45 of PMLA

- The twin conditions of bail under Section 45 of the PMLA pose stringent thresholds for an accused.
 - For one, the person has to prove in court that he or she is prima facie innocent of the offence.
 - Secondly, the accused should be able to convince the judge he would not commit any offence while on bail.
- The burden of proof is entirely on the incarcerated accused, who would be often handicapped to fight the might of the state.
- The twin conditions make it almost impossible for an accused to get bail under the PMLA.
- **Before the 2019 amendments of PMLA**, if someone was accused of a crime related to money laundering, the law automatically assumed they were guilty of the original crime (called the “scheduled offence”).
- The accused had to prove they were not involved in that crime to get bail.

Key highlights of the judgement

- **Delay in trial and prolonged imprisonment are valid grounds for granting bail**
 - The SC emphasized that delay in trial and prolonged imprisonment are valid grounds for granting bail, even in cases under stringent laws like the PMLA.
- **Right to speedy trial is the higher law**
 - The bench held that a constitutional mandate to ensure speedy trial is the higher law, compared to the statutory provisions that fetter the grant of bail.
 - Right to speedy trial is a sacrosanct right... Bail cannot be opposed saying that the crime is serious. In matters of liberty, every day counts.
- **Trial courts and the High Courts attempt to play safe in matters of grant of bail**
 - The apex court said that it appears that the trial courts and the High Courts attempt to play safe in matters of grant of bail.

- This reminder from the Supreme Court, in cases involving the Enforcement Directorate under the PMLA, will impact other cases as well.
 - Even if the case's merits aren't in their favor, accused individuals may seek bail due to delays in the trial.
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Q.1. What is Bail?

Bail is a legal process allowing a person accused of a crime to be temporarily released from custody, typically by paying a set amount of money or providing a surety. It ensures the accused returns for trial while balancing the presumption of innocence with the need to protect public safety.

Q.2. What is Prevention of Money Laundering Act (PMLA)?

The Prevention of Money Laundering Act (PMLA) aims to prevent money laundering and confiscate the proceeds of crime. It mandates reporting and record-keeping requirements for financial institutions, establishes enforcement mechanisms, and promotes cooperation between agencies to combat financial crimes and ensure transparency.

Source: [SC bail to Sisodia: Why Bench said trial delay, bail right must be read into PMLA Sec 45](#) | [Times of India](#) | [Indian Express](#) | [Live Mint](#) | [Indian Kanoon](#)

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