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Premium

SC bail to Sisodia: Why Bench said trial delay, bail right must be read into PMLA Sec 45

“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,” the Court said in a 38-page order.

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AAP leader Manish Sisodia outside Tihar jail after the Supreme Court granted him bail on Friday. (Image: Abhinav Saha)

Underlining that 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 Supreme Court Friday granted bail to former Delhi Deputy Chief Minister Manish Sisodia.

“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,” the Court said in a 38-page order.

Section 45 of the Prevention of Money Laundering Act, 2005 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 and both trial and constitutional courts are required to apply a ‘triple test’ to grant bail.

These three conditions are: (i) that there are “reasonable grounds for believing that (the accused) is not guilty of such offence”; (ii) that “he is not likely to commit any

offence while on bail”; and (iii) that the accused is not a flight risk.

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EXPRESS OPINION



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In Sisodia’s case, Additional Solicitor General SV Raju had argued that the Supreme Court’s rejection of bail in the earlier round of litigation in October 2023 meant that there was a judicial agreement on a “prima facie” case against Sisodia which disqualified him from being granted bail again.

However, without dealing with that argument on merits, the bench comprising Justices B R Gavai and K V Viswanathan said that delay in trial must be read into Section 45 since it is “clear that there is not even the remotest possibility of the trial being concluded in the near future.”

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.

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“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 bench said.

“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,” it said.

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EXPRESS OPINION



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Such a reminder from the top court, in ED cases where the PMLA turns the adage its head, will have ramifications in other cases. If not on merits of the case, the accused will seek bail on the grounds of delay in trial.

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