IN THE COURT OF SH. M. K. NAGPAL SPECIAL JUDGE (PC ACT), CBI-09 (MPs/MLAs CASES) ROUSE AVENUE DISTRICT COURT, NEW DELHI

1. CT Case No. 31/2022
Filing No. 728/2022
CNR No. DLCT11-000747-2022
Rajesh Joshi Vs. Directorate of Enforcement/ Enforcement Directorate (DoE/ED)

2. Bail Matter No. 56/2023
Filing No. 223/2023
CNR No. DLCT11-000223-2023
Gautam Malhotra Vs. DoE/ED

CT Case No. 31/2022
Filing No. 728/2022
CNR No. DLCT11-000747-2022
ECIR/HIU-II/14/2022
U/S 3 & 4 of the PMLA

ORDER ON APPLICATIONS FILED ON BEHALF OF THE ACCUSED RAJESH JOSHI AND GAUTAM MALHOTRA FOR GRANT OF REGULAR BAIL

06.05.2023

1. By this common order, I shall dispose of two separate bail applications dated 01.03.2023 and 13.03.2023 filed by the accused Rajesh Joshi and Gautam Malhotra respectively in the present case registered by the ED on 22.08.2022 vide ECIR bearing no. ECIR/HIU-II/14/2022 U/Ss 3/4 of the PMLA,

2002. The applications are being taken up for disposal together as many of the submissions made on these applications from both the sides are common and both the applicants are being alleged to have been involved in commission of the offence of money laundering defined by Section 3 and made punishable by Section 4 of the PMLA in respect to proceeds of crime generated through the same scheduled offences case of CBI, though in different ways and through different type of activities.

2. This case/ECIR of ED has been registered in relation to predicate offences case of the CBI registered vide FIR No. RC-0032022A0053 dated 17.08.2022 at PS CBI, ACB, Delhi for commission of the offence of criminal conspiracy punishable U/S 120B r/w 477A IPC and Section 7 of the PC Act, 1988 as well as substantive offences thereof and this ECIR was registered as offences U/S 120B IPC and Section 7 of the PC Act are scheduled offences under the PMLA. The above CBI case was registered in relation to the irregularities committed in framing and implementation of excise policy of the Government of National Capital Territory of Delhi (GNCTD) for the year 2021-22 and it was registered on the basis of a complaint dated 20.07.2022 made by the Hon'ble Lt. Governor, GNCTD and the directions of competent authority conveyed by Sh. Praveen Kumar Rai, Director, Ministry of

Home Affairs (MHA), Government of India, through his letter dated 22.07.2022 and also based on some source information. Sh. Manish Sisodia, Dy. Chief Minister as well as Excise Minister of the ruling Aam Aadmi Party (AAP) in Delhi at that time and fourteen other persons/entities were specifically named as accused in FIR of the CBI case, which also included some other public servants of the Excise Department of GNCTD and some private persons and entities.

3. As per allegations made in the predicate offences case of CBI, while the above excise policy of GNCTD was still at the stage of formulation or drafting, a criminal conspiracy was hatched between various accused persons and in furtherance of that conspiracy, some loopholes and lacunae were intentionally left or created in the policy and the same were meant to be utilized or exploited later on and huge amount of money was paid as advance kickbacks or bribe to the politicians and other public servants involved in conspiracy and against these kickbacks and bribe, certain acts were done in favour of and undue pecuniary benefits were extended to the other conspirators involved in liquor trade. It has been alleged in the said case that kickbacks of around Rs. 90-100 crores in advance were paid to some politicians of the ruling AAP in Delhi and the other public servants involved in conspiracy by some persons in liquor business from South India through the

co-accused Vijay Nair, Abhishek Boinpally and Dinesh Arora (who subsequently turned approver) and these kickbacks are found to have been returned back to them subsequently out of the profit margins of wholesalers holding L-1 licenses through different modes, like issuance of excess credit notes, bank transfers and outstanding amounts left in accounts of the companies controlled by some conspirators from South lobby. It has also been alleged that as a result of the above criminal conspiracy, a cartel was formed between three components of the said policy, i.e. liquor manufacturers, wholesalers and retailers, by violating provisions and against the spirit of said policy and all the conspirators played active roles to achieve illegal objectives of the said criminal conspiracy and it resulted in huge losses to the Government exchequer and undue pecuniary benefits to the public servants and other accused involved in the said conspiracy.

4. As on date, two chargesheets for commission of the offence of criminal conspiracy punishable U/S 120-B IPC r/w Sections 201 and 420 IPC and Sections 7, 7A, 8 & 12 of the PC Act, 1988 (as amended in 2018) and substantive offences thereof against total eleven accused persons stand already filed by the CBI before this court on 25.11.2022 and 25.04.2023 and cognizance of the alleged offences also stands taken by this court vide order dated 15.12.2022 passed in the first/main

chargesheet, though the second or supplementary chargesheet is still pending consideration. Four prosecution complaints in this case of ED also stand filed before the court on dates 26.11.2022, 06.01.2023, 06.04.2023 and 27.04.2023 against total twenty eight accused persons/entities and even cognizance of the alleged offence of money laundering stands already taken vide order dated 20.12.2022. All the accused prosecuted through these complaints stand also summoned by the court to face trial for the alleged offence, though some further investigation in both these cases is also still going on.

5. As far as the present ECIR/case is concerned, it has been alleged that investigation conducted in the case so far has revealed that advance kickback amount paid by the South liquor lobby to the politicians and other public servants in Delhi was actually around Rs. 100 crores and as a result of nexus created between the political persons, Government officers/officials and the other accused persons involved in the liquor trade because of this conspiracy, a total loss of around Rs. 2873 crores has been caused to the exchequer of GNCTD. It has been alleged that investigation conducted by the ED so far has revealed that the applicant Gautam Malhotra was a part of the cartel formed or nexus created between liquor manufacturers, wholesalers and retailers and he was also involved in payment of kickbacks or bribe to the co-accused

Vijay Nair and others, through the co-accused Amit Arora and approver Dinesh Arora, out of his profit margins as a wholesaler. Further, it is also alleged that the applicant Rajesh Joshi is a close associate of co-accused Vijay Nair and he was involved in channelization of above illegal amount of kickbacks through expenditure borne by AAP in connection with Goa Assembly elections, 2022 through his media agency/ company named M/S Chariot Media Pvt. Ltd. (in short, M/S Chariot). Thus, it has been alleged that both the applicants were actively involved in commission of the offence of money laundering, directly or indirectly, by way of different activities relating to the proceeds of crime generated through the offences of CBI case, like its concealment, possession, acquisition, use and projection or claiming it as untainted property etc.

6. The contents of applications as well as of the replies dated 14.03.2023 and 22.03.2023 thereto filed on behalf of the ED have been perused, along with record of the case. The extensive arguments advanced Dr. Menaka Guruswamy, Ld. Senior Counsel, assisted by Sh. Rajat Bhardwaj, Sh. Kanishk Raj, Sh. Utkarsh Pratap, Sh. Lavkesh Bambani, Ms. Mukta Halbe, Sh. Denson Joseph and Sh. Shivender Dwivedi Advocates, representing the accused Rajesh Joshi; Sh. Ramesh Gupta, Ld. Senior Counsel assisted by Sh. Vijay S. Bishnoi,

Ms. Pooja Bansal, Sh. Ishaan Jain and Sh. Sumit Kansal Advocates, representing the accused Gautam Malhotra and Sh. Sh. Zoheb Hossain, Ld. Special Counsel, and Sh. N. K. Matta, Ld. SPP assisted by Sh. Vivek Gurnani, Sh. Baibhav, Sh. Kavish Gairach and Sh. Kartik Sabharwal Advocates, appearing on behalf of the ED have also been heard and considered.

7. It has been vehemently argued by Dr. Menaka Guruswamy, Ld. Senior Counsel representing the applicant Rajesh Joshi that though he was not named in FIR of the scheduled offences case registered by CBI and even in the present case/ECIR registered by ED, but still he has been falsely implicated and illegally arrested in this case of ED for some political and malafide reasons and it was despite the fact that he joined investigation of both these cases for making statements or for producing documents as desired by the investigating agencies on total 17 occasions, i.e. 05 times in the present case and 12 times in the CBI case. It is the submission of Ld. Senior Counsel that once the accused disclosed all the facts and information in his knowledge and he also produced all the documents sought by the investigating officers (IOs), there was no question or ground for arresting him in the present case and hence, his arrest in this case is totally unjustified and it has to be declared as illegal and he is

required to be set at liberty and if it cannot be done for any reasons, then he is certainly entitled to be released on bail.

8. It is also the contention of Ld. Senior Counsel representing this applicant that there is no material or evidence collected by the investigating agency to justify arrest of the applicant in this case as the only evidence available for same is in the form of facts disclosed by the accused Dinesh Arora, who subsequently turned as approver and was granted pardon by this court in terms of provisions contained U/S 306 Cr.P.C. It is the submission of Ld. Senior Counsel that statements made by the above approver are not to be taken into consideration by this court in the absence of any satisfactory and corroborative material collected by the investigating agencies and thus, the accused deserves to be released on bail in this case. It is also her submission that since the approver had been an accomplice in commission of the alleged crime, the sole statement of approver cannot be made a ground to deny bail to the applicant or for his subsequent conviction in the trial to follow as it lacks corroboration on material particulars. It is further her submission that prior to acting upon statements made by the approver, the court has first to satisfy itself that he is a reliable witness. Reliance in this regard has also been placed upon by Ld. Senior Counsel upon judgments of the Hon'ble Supreme Court in cases of

Somasundaram alias Somu Vs State represented by the Dy. Commissioner of Police, (2020) 7 SCC 722, Mrinal Das and Ors. Vs State of Tripura, (2011) 9 SCC 479 and **Ravinder Singh Vs State of Haryana (1975) 3 SCC 742**.

9. It is also the contention of Ld. Senior Counsel for this applicant that even otherwise, the identity of applicant as an offender or participant in commission of the alleged offence of money laundering is seriously under doubts from different statements which have been made by the approver before the IOs of these two connected cases as in some of the statements he had named the person concerned or involved in delivery or transmission of certain cash amounts as Rajesh Sharma, whereas in some other statements the said person has been named or referred to by him either simply as Rajesh or as Rajesh Joshi. It is further her submission that even the approver in making these statements and attributing some role to the said person or applicant had been totally inconsistent and self contradictory as though at one place he states that he had met the said person/applicant personally, but at another point of time he states that he never met the said person/applicant and further, though at some point of time he stated that he collected certain amount from the said person/applicant, but on another occasion he states that he delivered the amount to said person/applicant. It has been argued that in absence of there

being any other oral or documentary evidence on record, the above contradictory statements of the approver cannot be made a ground to justify the arrest of applicant or his further detention in custody in this case and hence, he is entitled to be released on bail. It is also the submission of Ld. Senior Counsel that when the applicant was confronted with the approver during investigation, the approver went to acknowledge innocence of the applicant by stating that he never met the applicant.

10. It is also the submission of Ld. Senior Counsel that the applicant is innocent and is not connected with commission of the scheduled offences of CBI case or with the offence of money laundering in the present case as he is doing his legitimate business in the field of PR & Media and he is running a company in the name of M/S Chariot and he was implicated in this case only because he had done some advertising work for the AAP in connection with Goa Assembly elections. It is submitted that the above work was only a job work which was executed against proper purchase orders and payments made for the same and the said job work has no connection with commission of offences of these two cases.

11. It is also the contention of Ld. Senior Counsel for

applicant that nothing incriminating was recovered from possession of the applicant or at his instance though his house as well as office premises were raided and searched by the CBI as well as by the ED and the applicant had even no role to play in drafting of the excise policy of GNCTD for the year 2021-22 or in its implementation as he is not in the liquor business and has even no connection with the said business, directly or indirectly. It is, thus, also her submission that though the arrest of applicant in this case can never be justified on facts and evidence collected so far and placed before this court through the prosecution complaints filed by the ED till date, but still his constitutional right to life and liberty is required to be protected by this court by releasing him on bail at the earliest as he already stands extensively interrogated and examined during the period of his ED custody of around 11 days obtained by the IO from this court and also as he has already furnished to the IO all the information and documents pertaining to this case, which might have been in his knowledge, possession or custody.

12. It is further the submission of Ld. Senior Counsel representing this applicant that he is aged around 47 years only and has a family consisting of a wife and two children to support and he also has no previous criminal history or involvement. It is also submitted that no purpose is going to be

achieved by keeping him in custody for any further period as he is in custody in this case since the date of his arrest i.e. 08.02.2023.

13. Per contra, Ld. Special Counsel and Ld. SPP for ED have argued that allegations made against the applicant Rajesh Joshi are serious in nature as sufficient oral and documentary evidence has surfaced during the course of investigation to show that he was not only involved in transactions pertaining to transfer or transmission of advance kickback amount of atleast Rs. 30 crores from the South lobby to the co-accused Vijay Nair, through the approver Dinesh Arora, but he was also directly associated with activities connected with use or utilization of some of the above amount in connection with Goa Assembly elections. It is their submission that statement of co-accused Vijay Nair made U/S 50 of the PMLA shows that the applicant was in close association with the said co-accused and thus, he was assisting the above co-accused in channelizing the illegal funds received from the South lobby through hawala channels, in connection with expenses related to Goa Assembly elections and through his above media company M/S Chariot. It has been submitted that the part or role played by applicant in commission of the alleged offence of money laundering has been clearly stated by the approver Dinesh Arora in his statement dated 01.10.2022, wherein he

disclosed that he was instructed by the co-accused Vijay Nair to coordinate with this applicant and one Sh. Sudhir in connection with above transfer of funds to be received from the South lobby. It is stated that the co-accused Abhishek Boinpally and his cousin Sh. Lupin of the South group used to pass on the numbers of some currency notes with some contact numbers to the approver, who in turn passed on the said details to this applicant and the applicant then used to collect funds from hawala operators and confirmation of collection used to be given by him to the approver Dinesh Arora, who in turn informed the co-accused Vijay Nair about it. It is stated that the above kickback amount of around Rs. 30 crores sent by South lobby to the approver Dinesh Arora through hawala transactions during the period between June to October, 2021 was handled or transmitted through this applicant and the above Sh. Sudhir and the approver had also disclosed that on one other occasion, he himself collected an amount of Rs. 1 crore from some hawala operator in Bengali Market, New Delhi and handed it over to the present applicant at his house, as per instructions of the co-accused Vijay Nair. It is stated that the above disclosures made by the approver Dinesh Arora and co-accused Vijay Nair are also duly corroborated by some other independent evidence collected during investigation through hawala operators and even mobile number of applicant was found saved in mobile phone of approver with reference to

the co-accused Vijay Nair. It is also submitted that involvement of the applicant in above transmission of money through hawala channels is even corroborated from CDRs between him and the approver and also between the approver and the above Sh. Lupin.

14. It has further been argued by Ld. Special Counsel and Ld. SPP for ED that the applicant is owner/proprietor of the above media company and it is through this company that he is found to have been engaged in utilization of some amount, out of the above kickback amount, in connection with election campaigning of AAP in Goa. It is submitted that it has been revealed during the course of investigation by the witness Sh. Rajkumar Ganpatrao Tavishkar in his statement dated 10.12.2022 made U/S 50 of the PMLA that he had raised invoices for an amount of Rs. 5,18,228/- upon M/S Chariot and the same were raised without providing any services and without making any supplies to the said company. He also stated therein that it was done on instructions of the witness Ms. Manaswini Prabhune, who was working in connection with election campaign of AAP in Goa. Further, Ms. Manaswni Prabhune in her statement dated 23.12.2022 made U/S 50 of the PMLA is also alleged to have revealed that the above fake invoices were got prepared by her as per instructions of the co-accused Vijay Nair and then funds

against these invoices were withdrawn and distributed to the survey volunteers of AAP being managed by her. It is also alleged that investigation further revealed that M/S Chariot had even been involved in cash payments to its volunteers employed through Ms. Manaswini Prabhune in election campaigning at Goa and also to some other vendors of Goa providing outdoor hoardings and bill boarding services to the said company as bills of these vendors are found to have been raised only for part amounts and rest of the bill amounts were paid to them in cash and these cash payments by M/S Chariot to the above vendors were from the kickback amount only, which the applicant collected through hawala channels and utilized in connection with election campaign of AAP on instructions of the co-accused Vijay Nair. It is further their submission that few statements of witness Sh. Islam Qazi, an employee of M/S Grace Advertising, have also been recorded during the course of investigation under the above provision of PMLA, wherein he had disclosed about the same modus-operandi adopted by M/S Chariot in making part payments in cash, against the bills raised by their company for advertising and hoarding business being done by them for M/S Chariot. Similar statements of the witnesses Sh. Aaron Schubert De Souza, proprietor of M/S Spark Entertainment and Sh. Nithyanand Upadhyay of M/S Rahul Arts etc. are also stated to have been recorded during investigation showing the role of

applicant in utilization of some cash amounts in connection with election campaign of AAP, out of the kickback amount. It is stated that some other oral as well as digital evidence in the form of Whatsapp chats is also there to corroborate raising of above fake/false invoices and part payments in cash and statements of employees of hawala operators namely Sh. Anil Patel and Sh. Anand Vyas etc. are also stated to be there to show transmission of cash amounts to make the above payments. It is also stated that some documents corroborating these hawala transactions have also been recovered during investigation.

15. Sh. Ramesh Gupta, Ld. Senior Counsel representing the applicant Gautam Malhotra has argued that though he is conscious of the fact that regular bail applications of few other co-accused in the case stand already dismissed by this court, but it is his submission that the case of applicant stands entirely on a different footing from that of the above co-accused as the applicant in no way was connected with payment of the above advance kickback amount of Rs. 100 crores, which was allegedly paid by the South lobby in liquor business to the co-accused Vijay Nair and his other associates, through the approver Dinesh Arora and co-accused Abhishek Boinpally etc. It is his submission that though the applicant is in liquor business, but since he does not belong to South lobby, he cannot

otherwise also be held or considered to be a part of the above South lobby or payment of advance kickbacks by them.

16. It is also the contention of Ld. Senior Counsel representing this applicant that admittedly the applicant did not participate in any of the meetings allegedly held between the co-accused Vijay Nair, approver Dinesh Arora and the members of South liquor lobby in Delhi or at Hyderabad, Telangana and hence, by no stretch of imagination, he can be considered to be a part of the above criminal conspiracy, in furtherance of which the alleged offences of the connected case of CBI were committed. It has been submitted that the applicant was neither named in FIR of the said case nor even he has been arrested or chargesheeted in that case. It is also the submission of Ld. Senior Counsel that the applicant is even not found implicated in the first two prosecution complaints, which have been filed by the ED in this case before the court.

17. Further, it is also the contention of Ld. Senior Counsel that arrest of the applicant in this case has been effected in violation of the provisions of Section 41 and 41A Cr.P.C. and also the guidelines laid down by the Hon'ble Supreme Court in the case of **Arnesh Kumar Vs. State of Bihar (2014) 8 SCC 273** as the offence of money laundering of this case carries the maximum sentence of imprisonment upto 7 years only and the

arrest of applicant in this case was not at all required, since he had been joining investigation of this case as and when he was summoned to do so. It is stated that despite joining investigation of this case on seven occasions, he was illegally arrested on 07.02.2023 and he even remained in custody of ED for seven days for the purposes of investigation and hence, his further detention in this case is not required.

18. It is also a vehement contention of Ld. Senior Counsel representing this applicant that even if, for the sake of arguments, the applicant is taken as a manufacturer, wholesaler and retailer in liquor business or being connected to the companies in these fields, but still the allegations being made and evidence being pointed out by the prosecution against him can at the most show that he managed to create a cartel between the above three components of the liquor business, but by no stretch of imagination he can be held to be a part of the above conspiracy or the cartel which involved or consisted of the companies or entities belonging to the South lobby or was formed in pursuance of the above criminal conspiracy because, as has already been argued, the applicant had no connection at all with the South lobby or the payment of advance kickback amount of Rs. 100 crores by the said lobby to the co-accused Vijay Nair, public servants or other politicians of the AAP. It is also the submission of the Ld. Senior Counsel that even

otherwise, two of the manufacturing units being alleged to be owned or controlled by the applicant, namely M/S Malbros International Pvt. Ltd. (in short, M/S Malbros) and M/S Oasis Distilleries Ltd. (in short, M/S Oasis Distilleries), had no connection or link with the sale of liquor in Delhi or the excise policy of GNCTD for the year 2021-22 as none of these two manufacturing units had ever applied for a liquor license under any category in Delhi during the said year and their only manufacturing unit M/S Om Sons Marketing Pvt. Ltd. (in short, M/S Om Sons) was involved in sale of its liquor brands in Delhi. It has also been submitted that the applicant was not even a Director or shareholder of M/S Gautam Wines Pvt. Ltd. (in short, M/S Gautam Wines) when L-1 license was obtained by said company on 24.11.2021. It is also the contention of Ld. Senior Counsel that even otherwise M/S Gautam Wines was a small player as its share in liquor business in Delhi was only 1.8% approximately.

19. Further, it is also the contention of Ld. Senior Counsel representing this applicant that even though a profit of around Rs. 6.9 crores is alleged to have been earned by the wholesale entity M/S Gautam Wines allegedly belonging to the applicant, but this amount of profits is a genuine business profit of the said company and allegations of payment of a bribe or kickback amount of Rs. 2.5 crores by the applicant, out of this profit, to

the approver Dinesh Arora, through the co-accused Amit Arora, are baseless allegations as there was no logic or reason for payment of the said amount of bribe or kickbacks as M/S Gautam Wines had paid a license fee of around Rs. 4.25 crores and also incurred some operational and logistic expenses etc. in running its business and when the amount of this license fee and other expenses are deducted from the above profit amount of Rs. 6.9 crores, there was nothing left for payment of the bribe or kickbacks. It is also argued that even otherwise, there was also no occasion to pay the above bribe or kickbacks as no undue benefits were derived by or caused to any of the above companies allegedly belonging to the applicant by the co-accused Vijay Nair or the other public servants or politicians of AAP. It is also the submission of Ld. Senior Counsel that even the retail outlets falling in two retail zones owned by or allotted to M/S Nova Garments Pvt. Ltd. (in short, M/S Nova Garments), which is alleged to be retail entity of this applicant, were selling liquor brands not only of M/S Om Sons, but also of the other liquor manufacturers and hence, there was no question of forming of a cartel by the applicant or generation of any proceeds of crime by him.

20. It is also the contention of Ld. Senior Counsel for this applicant that the allegations being made by ED about the payment of an amount of Rs. 2.5 crores as kickback or bribe, out

of 12% profit margin of wholesale company M/S Gautam Wines, are totally false and concocted allegations for the reason that even the star witness of prosecution case i.e. the approver Dinesh Arora does not support the case of prosecution on this aspect. It is submitted that in his statement dated 03.10.2022 made U/S 50 of the PMLA, the approver has clearly expressed his ignorance about the above said payment allegedly made by the applicant in office of the above co-accused Amit Arora. It is also stated that the approver even in his statement made U/S 164 Cr.P.C. before the Ld. ACMM on 30.09.2022 in the CBI case had not supported the above allegations of prosecution story. It has also been submitted that even the statements of witnesses Sh. Simaran Narula or Sh. Harender Singh Narula, who were allegedly involved in delivery or collection of said amount in or from the office of co-accused Amit Arora, have not been filed or produced on record and for this an adverse inference is required to be drawn against the prosecution and it should be taken that the said witnesses are not supporting their case on this aspect. Thus, it is the contention of Ld. Senior Counsel that the evidence being alleged and pointed out on behalf of ED regarding the above transaction of payment of bribe or kickbacks by this applicant is highly contradictory and unreliable and it should not be believed for deciding the question of grant of bail to the applicant. It is also the contention of the Ld. Senior Counsel that even otherwise, the alleged payment of Rs. 2.5 crores as bribe or

kickbacks could not have been made by the applicant in the month of May, 2022, when the L-1 license of M/S Gautam Wines expired on 31.07.2022 i.e. just after two months of the alleged payment. It is further the contention of Ld. Senior Counsel that apart from the above unreliable and uncorroborated evidence about alleged payment of bribe or kickbacks of Rs. 2.5 crores by or on behalf of this applicant, there is no other oral or documentary evidence to show that the applicant had ever paid any bribe or money in any form to any of the public servants involved in this case. It is submitted that in light of the above, the applicant cannot be considered to be an accused of the offence of criminal conspiracy or any substantive offence under the PC Act committed in the scheduled offences case of CBI and hence, he cannot also be said to have committed the alleged offence of money laundering of this case by any activity relating to the said proceeds.

21. The next contention of Ld. Senior Counsel for this applicant is that besides merits of the case, the applicant is even entitled to default bail U/S 167(2) Cr.P.C. as the prosecution complaint filed qua him has been presented in haste and to scuttle or defeat his constitutional right to get bail U/S 167(2) Cr.P.C. and the investigation qua him is still going on. It has been submitted that some of the witnesses namely Sh. Ravi Raj, Sh. Santosh Kumar, Sh. Raj Kumar Sh. Pawan Bansal and Sh.

Surender Singh etc. allegedly related to role of this applicant in commission of the alleged offence are still to join investigation of the case and the ED has already filed five separate applications before this court seeking issuance of their NBWs (non bailable warrants). It is, thus, submitted that even going by the admitted case of ED, investigation qua this accused is still in progress and hence, the prosecution complaint or the third prosecution complaint (second supplementary complaint) presented qua this applicant is incomplete.

22. Per contra, it is the submission of Ld. Special Counsel and Ld. SPP for ED that though the evidence collected during investigation does not show that the applicant Gautam Malhotra had any connection or association with the above advance kickbacks of around Rs. 100 crores paid by the South liquor lobby to the co-accused Vijay Nair, Manish Sisodia or their other associates in power and further though it also does not show that the applicant played any role in formulation of the above excise policy, but sufficient oral and documentary evidence stands collected by the ED to show that the applicant lateron became a member of the above criminal conspiracy and he scummed to the pressure to pay bribe or kickbacks to the co-accused Vijay Nair, through the co-accused Amit Arora and approver Dinesh Arora. It is submitted that the co-accused Amit Arora in his statement made U/S 50 of the PMLA has clearly

revealed that an amount of Rs. 2.5 crores was delivered in his office by this applicant and his brother Gaurav Malhotra and he was informed by the approver Dinesh Arora that the said amount was paid by the applicant from his share of 6% profit, out of 12% profit margin kept for the wholesalers, and this amount was apparently paid as bribe or towards repayment or recoupment of the above advance kickbacks to the South lobby. It has further been submitted that the investigation also revealed that some cartels between the liquor manufacturers, wholesalers and retailers in Delhi were formed against the provisions and spirit of the above excise policy and in furtherance of the above criminal conspiracy hatched between various stakeholders and accused. It is argued that formation of the above cartels was permitted by the co-accused Manish Sisodia and his other associates in GNCTD by tweaking and manipulating the provisions of excise policy against payment of the above advance kickbacks of Rs. 100 crores by the South lobby to the public servants and politicians of AAP represented through the co-accused Vijay Nair and these kickbacks were to be repaid out of 12% profit margin of the wholesalers.

23. It has further been submitted by Ld. Special Counsel and Ld. SPP for ED that initially investigation revealed that one such cartel was formed between one of the biggest liquor manufacturer M/S Pernod Ricard India Pvt. Ltd. (in short, M/S

Pernod Ricard), the wholesaler M/S Indospirits, which is a group of company of the co-accused Sameer Mahandru and in which two representatives of the South lobby namely Sh. Prem Rahul Manduri and co-accused Arun Ramchandran Pillai were inducted as partners with a stake of 32.5% each, the two retail entities beneficially owned and controlled by co-accused Sameer Mahandru namely M/S Khao Gali Restaurants Pvt. Ltd. and M/S Bubbly Beverages Pvt. Ltd. and three retail zone entities namely M/S Trident Chemphar Pvt. Ltd. (in short, M/S TCL), M/S Organomixx Ecosystems (in short, M/S Organomixx) and M/S Sri Avantika Contractors Ltd. (in short, M/S Avantika) of the co-accused P. Sarath Chandra Reddy. However, lateron, it was also revealed during investigation that even the co-accused Raghav Magunta, who owned the liquor manufacturing unit named M/S Enrica Enterprises Pvt. Ltd. (in short, M/S Enrica), had managed to obtain two retail zone licences in the name of M/S Magunta Agro Farms Pvt. Ltd. (in short, M/S MAFPL), which was the proxy entity being beneficially owned or controlled by him. It is stated that the roles of other conspirators or members of cartel were kept pending for further investigation and now further investigation has revealed that even this applicant was a member of the above super cartel as he along with his family members not only owned various manufacturing units, including M/S Om Sons, M/S Malbros and M/S Oasis Distilleries, and managed to get a wholesale (L-1) licence for M/S Gautam Wines, which is a

company incorporated in his name, but he also fraudulently obtained two retail zone licences in the name of M/S Nova Garments, which is his proxy entity. It has been submitted that during investigation the applicant has been found to be a Director in all the above three manufacturing units, besides holding 26.76% shareholding in M/S Om Sons, and he further owned M/S Gautam Wines registered in his name and also beneficially owned and controlled the retail zone entity M/S Nova Garments, though the day to day work of M/S Nova Garments was being looked after by one Raj Kumar. The statements made U/S 50 of the PMLA by father of the applicant namely Sh. Deep Malhotra, the Group President Sh. C.S. Biju Vasudevan of the above companies owned by family of the applicant, Ms. Jasdeep Kaur Chadha, Sh. Sunny Marwah of M/S Mahadev Liquors, which is another L-1 company, and few employees of M/S Pernod Ricard and M/S Diageo i.e. two manufacturing companies in liquor business in Delhi and some digital evidence in the form of Whatsapp chats and e-mails etc. are being referred to substantiate the above allegations. It has also been submitted that a mini cartel between all the above companies of applicant was also formed as investigation has revealed that 48% of the total liquor sales of M/S Nova Garments were of the brands manufactured by their own unit(s). It has further been submitted that during investigation, it has also been found that findings of forensic analysis by the Tata

Consultancy Services Ltd. on the data captured by the ESCIMS portal have revealed that IP address for login into the above portal on behalf of above L-1 & L-7 companies of the applicant was found matching 30 times and this is another circumstance to show that the applicant Gautam Malhotra was controlling affairs of the above L-1 & L-7 companies, besides beneficially owning or controlling the above liquor manufacturing units with his family.

24. It is also the contention of Ld. Special Counsel and Ld. SPP for ED that another evidence of involvement of the applicant in above criminal conspiracy is the issuance of excess credit notes by another conspirator entity named M/S Brindco Sales Pvt. Ltd. (in short, M/S Brindco Sales), which was beneficially owned or controlled by the co-accused Amandeep Singh Dhall and which was granted a wholesale (L-1) licence for liqour business in Delhi. It has been submitted that just like M/S Indospirits, M/S Brindco Sales has also been found to be a member of above cartel and it was involved in payment of bribe or repayment or recoupment of advance kickbacks, out of its profit margin of 12%. It is stated that as already argued, it was agreed between the conspirators that 6% out of 12% profit margin of wholesalers shall be utilized or used towards repayment or recoupment of advance kickback amount to the South lobby or as bribe to the politicians and other public

servants. It is also argued by them that one of the agreed ways to repay or recoup the advance kickback was the issuance of excess credit notes i.e. credit notes which were not backed by the liquor manufacturers and were issued by the wholesalers in favour of the retailers and just like M/S Indospirits belonging to the co-accused Sameer Mahandru, which was found to have issued excess credit notes totalling to an amount of Rs. 4.35 crores in favour of retailers belonging to the South group, even M/S Brindco Sales has been found to have issued excess credit notes totalling for an amount of Rs. 4.90 crores approximately in favour of different retail zone entities, including the retail zone entity named M/S Nova Garments belonging to this applicant, the above three retail zone entities namely M/S TCL, M/S Organomixx and M/S Avantika of co-accused P. Sarath Chandra Reddy and M/S MAFPL which was beneficially owned or controlled by the co-accused Raghav Magunta. It has been submitted that the excess credit notes issued by M/S Brindco Sales in favour of M/S Nova Garments were to the extent of Rs. 48.9 lacs and issuance of these credit notes clearly shows that the applicant was a part of the above larger conspiracy and cartel formed in pursuance thereof and hence, his role is more or less similar to the roles of co-accused Sameer Mahandru, P. Sarath Chandra Reddy and Raghav Magunta, whose bail applications have already been dismissed by this court and therefore, the present bail application filed by this accused is also liable to be

dismissed.

25. It is further the contention of Ld. Special Counsel and Ld. SPP for ED that during investigation they been informed by the excise department that as a result of the above cartel, a profit of around Rs. 6.9 crores has been earned by the applicant, which is nothing but the proceeds of crime.

26. Besides the above factual and legal submissions made on behalf of the applicants, Ld. Senior Counsels representing them have also sought their bail on some other legal grounds and it is their vehement submission that arrest of the applicants has been effected in violation of settled legal position and also the provisions contained U/S 19 of the PMLA as the satisfaction recorded by the competent authority under the said Section before sanctioning or authorizing their arrests was not based on or supported by any valid reasons or material to justify the same. It is also their submission that even the bar and restrictions contained U/S 45 of the PMLA, 2002 have to be reasonably construed in accordance with the settled legal position and law laid down in the Constitution Bench decision of the Hon'ble Supreme Court in case of **Vijay Madanlal Choudhray Vs. Union of India, 2022 SCC OnLine SC 929** and when so construed, bail cannot be denied to the applicants in light of facts and circumstances of the case as discussed

above. Further, it is also their submission that at this stage of bail, the evidence is not required to be viewed or appreciated meticulously, but findings are required to be arrived at for the purposes of deciding the question of bail only on the basis of broader probabilities. Further, it is also the submission of Ld. Senior Counsels that uncorroborated statements of witnesses or of co-accused U/S 50 of the PMLA cannot be made a ground to deny bail to the applicants, if they satisfy the court that they have a *prima facie* case for grant of bail. Judgments in cases of **Anil Vasantrao Deshmukh Vs. State of Maharashtra, 2022 SCC OnLine Bom 3150; Directorate of Enforcement Vs. Anil Vasantrao Deshmukh, SLP (Crl.) No. 32078/2022 decided by the Hon'ble Supreme Court on 11.10.2022; Sanjay Pandey Vs. Directorate of Enforcement, 2022 SCC OnLine Del 4279; Raman Bhuraria Vs. Directorate of Enforcement, 2023 SCC OnLine Del 657 and Chandra Prakash Khandelwal Vs. Directorate of Enforcement, 2023 SCC OnLine Del 1094** have also been referred to and relied upon by them on the above aspects. Further, judgment in the case of **Vinubhai Haribhai Malviya & Ors v. State of Gujarat & Another, (2019) 17 SCC 1** has also been referred to by Ld. Senior Counsel for applicant Gautam Malhotra in support of his submission that arrest of his client during the court of further investigation without permission of this court was illegal. It has also submitted by him that after joining

investigation on seven occasions his arrest was not justified.

27. It is further the submission of Ld. Senior Counsels for applicants that the applicants even satisfy the triple test laid down by the Hon'ble Supreme Court for grant of bail as neither there are any chances of their absconding from the trial nor there are chances of even tampering with or destruction of evidence or influencing the prosecution witnesses by them. It is also their submission that merely because this case falls in the category of economic offences, bail cannot be denied to the applicants, as was held in the cases of **Sanjay Chandra Vs. CBI, (2012) 1 SCC 40 and P. Chidambaram Vs. CBI, (2020) 13 SCC 337.**

28. In reply to the above legal submissions on behalf of the applicants, it is the contention of Ld. Special Counsel and Ld. SPP for ED that since the constitutional validity of twin conditions contained U/S 45 of the PMLA has already been upheld by the Hon'ble Supreme Court in case **Vijay Madanlal Choudhary (Supra)**, the rigours of that Section are applicable in considering the question of grant of bail to the applicants and since the oral and documentary evidence collected by the investigating agency clearly shows their involvement in the above activities relating to commission of the offence of money laundering, they are not entitled to be released on bail. Further,

the judgement in case **Rohit Tandon Vs. DoE (2018) 11 SCC 46** on the above aspect and also the judgement of Hon'ble Supreme Court in the case o **State of Kerala Vs. Rajesh (2020) 12 SCC 122** upholding the rigours of similar conditions incorporated U/S 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (the NDPS Act) have also been relied upon by them in support of their above contention. It is also their submission that even if the above conditions of Section 45 of the PMLA are reasonably construed or interpreted and evidence is analysed in broader probabilities, the bail applications of both accused are liable to be dismissed because a genuine case stands made out against both the applicants on consideration of the evidence collected during investigation, as was held in the case of **Vijay Madanlal Choudhary (Supra)**. It is also their submission that the standards of appreciation of evidence applicable at the stage of bail are much lesser than those applicable at the stage of charge or at final stage.

29. It is further the contention of Ld. Special Counsel and Ld. SPP for ED that even the constitutional validity of statements U/S 50 of the PMLA stands already upheld by the Hon'ble Supreme Court in the case of **Vijay Madanlal Choudhary (Supra)** and hence, such statements of the witnesses and even of the co-accused constitute an admissible piece of evidence and therefore, the same are required to be considered as it is by the

court for deciding the question of bail and thus, the applications are liable to be dismissed simply on the basis of contents of these statements. It is also their submission that even otherwise, the contents of these statements of the witnesses and of accused found due corroboration from the digital and other documentary evidence collected during investigation and showing involvement of the applicants in commission of the alleged offence of money laundering.

30. It is further the submission of Ld. Special Counsel and Ld. SPP for ED that even if the applicants have not been named or chargesheeted in the scheduled offences case, but it does not mean that they can not been arrested or prosecuted in this case of the ED as prosecution of applicants in this case is not dependant upon their prosecution in the scheduled offences case. It is submitted that the offence of money laundering defined by Section 3 of the PMLA is a stand alone offence and observations made by the Hon'ble Supreme Court in para nos. 269 & 295 of the judgement in case of **Vijay Madanlal Choudhary (Supra)** have also been referred to in this context. Further, reliance has also been placed upon on a decision of the Hon'ble Madras High Court in case of **P. Rajendran Vs. Directorate of Enforcement, Criminal Original Petition No. 19880/2022;** a decision of the Hon'ble Bombay High Court in case of **Radha Mohan Lakhotia Vs. Directorate of Enforcement, 2010 SCC**

OnLine Bom 116 and also the decision of Hon'ble Delhi High Court in case of **J. Sekar Vs. Union of India & Ors., 2018 SCC OnLine Del 6523** on this aspect.

31. It is further the submission of Ld. Special Counsel and Ld. SPP for ED that offences of these two cases are independent of each other and the only connection or relation of the offence of money laundering of this case with the scheduled offences case of CBI is in respect to proceeds of crime generated in the scheduled offences case. It is their submission that even if the applicants were not involved in commission of substantive offences of the PC Act in the CBI case, but if evidence is there to show that they, directly or indirectly, attempted to indulge in or knowingly assisted or were a part or had been actually involved in any process or activity related with the said proceeds of crime, including its concealment, possession, acquisition or use and projecting or claiming it as untainted property, then they can be prosecuted and even held guilty for the offence of money laundering defined by Section 3 and made punishable by Section 4 of the above Act. It is further their submission that the scope of offence of money laundering defined by Section 3 of the above said Act is very wide and it takes within its sweep all types of activities related to proceeds of crime, as stated in the above Section.

32. It is also the contention of Ld. Special Counsel and Ld. SPP for ED that since Section 120B IPC, which prescribes punishment for the offence of criminal conspiracy defined U/S 120A IPC, is independently included in Schedule of the PMLA and is thus a schedule offence in its own capacity under the said Act, there is no bar or illegality in prosecuting the applicants in this case even if it is presumed or shown that they did not personally meet or bribed any public servant or committed any substantive offence under the PC Act. Judgements in the cases of **Directorate of Enforcement Vs. Padmanabhan Kishore, 2022 SCC OnLine SC 1490** and **Tahir Husaain Vs. Assistant Director, Enforcement Directorate, Crl. Rev. Petition No. 775/2022 decided on 24.11.2022** have also been referred to and relied upon by them in support of their above said submissions.

33. However, when all the oral and documentary evidence collected during the course of investigation and being pointed out by Ld. Special Counsel and Ld. SPP for ED is considered and appreciated in broader perspectives or probabilities for deciding the question of grant of bail to both these applicants, this court is of the *prima facie* view that the same is not sufficient to make this court believe that case against the applicants is genuine or that they are going to be held guilty of the offence of money laundering defined by Section 3 of the PMLA on the basis of said evidence, in the way and sense in

which the term 'guilty' or 'not guilty' has been used in Section of 45 of the PMLA dealing with grant of bail to a person accused of the offence of money laundering under the said Act. This Section lays down certain conditions which are to be satisfied before such a person or accused can be released on bail by the court, which are commonly known as twin conditions or the bar or rigours of the said Section and similar like conditions are also found incorporated in certain other enactments, like U/S 37 of the NDPS Act, Section 21(4) of the Maharashtra Control of Organised Crime Act, 1999 and Section 43(D) of the Unlawful Activities (Prevention) Act, 1967. For better appreciation of the said conditions and rigors, the provisions contained in Section 45 of the PMLA are being reproduced herein below:-

> **45. Offences to be cognizable and non-bailable.—(1) [Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence [under this Act] shall be released on bail or on his own bond unless—]**
>
> **(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and**
>
> **(ii) 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:**
>
> **Provided that a person who is under the age of sixteen years, or is a woman or is sick or infirm [or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees], may be released on bail, if the Special Court so directs:**
>
> **Provided further that the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by—**
>
> **(i) the Director; or**
>
> **(ii) any officer of the Central Government or a State**

Government authorised in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government.

[(1A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.]

(2) The limitation on granting of bail specified in [***] sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

[Explanation.—For the removal of doubts, it is clarified that the expression "Offences to be cognizable and non-bailable" shall mean and shall be deemed to have always meant that all offences under this Act shall be cognizable offences and non-bailable offences notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (2 of 1974), and accordingly the officers authorised under this Act are empowered to arrest an accused without warrant, subject to the fulfilment of conditions under section 19 and subject to the conditions enshrined under this section.]"

34. So far as the condition about issuance of notice or opportunity being given to the Public Prosecutor to oppose the bail application is concerned, it is a formal condition and is satisfied almost in all the cases. However, the twin conditions or rigors of that Section are actually found contained in clause (ii) of sub-section (1) of Section 45 of the said Act and the same provide that if bail application of an accused has been opposed by the Public Prosecutor, then such an accused shall not be released on bail by the court, unless 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.

35. Over a period of time, it has now been settled that the condition pertaining to likelihood of commission of any offence by an accused, who has been granted bail under the above clause or Section, when reasonably interpreted, means as the likelihood of commission of a similar offence by the accused and there must also be some reasonable and legitimate material placed before the court by prosecution to substantiate such likelihood or apprehension and the mere apprehension that the accused may resort to commission of an offence again will not be sufficient to meet the above condition or to oppose the bail request of accused. It is so because it is not possible to predict the future conduct of an accused and therefore, such an apprehension has to be backed by some reasonable material. Similarly, it has also now been legally settled that even the condition of existence of reasonable grounds for believing that the accused is not guilty of such an offence of money laundering has to be construed or interpreted reasonably and it does not mean that the court should apply the same standards for appreciation of evidence collected by the prosecution for deciding bail application of the accused, as are applied at the final stage of deciding guilt or innocence of the accused or

even at the stage of charge when a *prima facie* view about commission of the alleged offence by accused is formed by the court. It has been held that standards of apprehension of evidence applicable at the stage of bail are even lesser than the stage of charge and the court is only required to analyze and appreciate the evidence of prosecution in a broader sense or probabilities to find out if the prosecution has been able to make out a genuine case for involvement of the accused in commission of the alleged offence or not. These propositions of law even came to be upheld and enunciated in the above Constitution Bench decision by the Hon'ble Supreme Court in the case of **Vijay Madanlal Choudhary (Supra),** while dealing with and upholding the constitutional validity of the said conditions, in the following words:-

> **"388..... The successive decisions of this Court dealing with analogous provision have stated that the Court at the stage of considering the application for grant of bail, is expected to consider the question from the angle as to whether the accused was possessed of the requisite mens rea. The Court is not required to record a positive finding that the accused had not committed an offence under the Act. The Court ought to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. The duty of the Court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. Further, the Court is required to record a finding as to the possibility of the accused committing a crime which is an offence under the Act after grant of bail.**
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> **************
>
> **400. It is important to note that the twin conditions provided under Section 45 of the 2002 Act, though restrict the right of the accused to grant of bail, but it cannot be said**

that the conditions provided under Section 45 impose absolute restraint on the grant of bail. The discretion vests in the Court which is not arbitrary or irrational but judicial, guided by the principles of law as provided under Section 45 of the 2002 Act. While dealing with a similar provision prescribing twin conditions in MCOCA, this Court in Ranjitsing Brahmajeetsing Sharma, held as under:

> **'44. The wording of Section 21(4), in our opinion, does not lead to the conclusion that the court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act. If such a construction is placed, the court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the applicant. Such cannot be the intention of the legislature. Section 21(4) of MCOCA, therefore, must be construed reasonably. It must be so construed that the court is able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. Similarly, the Court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in futuro must be an offence under the Act and not any other offence. Since it is difficult to predict the future conduct of an accused, the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence.**
>
> **45. It is, furthermore, trite that for the purpose of considering an application for grant of bail, although detailed reasons are not necessary to be assigned, the order granting bail must demonstrate application of mind at least in serious cases as to why the applicant has been granted or denied the privilege of bail.**
>
> **46. The duty of the court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. However, while**

> **dealing with a special statute like MCOCA having regard to the provisions contained in sub-section (4)of Section 21 of the Act, the court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. The findings recorded by the court while granting or refusing bail undoubtedly would be tentative in nature, which may not have any bearing on the merit of the case and the trial court would, thus, be free to decide the case on the basis of evidence adduced at the trial, without in any manner being prejudiced thereby.'**
>
> **(emphasis supplied)**

> **401. We are in agreement with the observation made by the Court in Ranjitsing Brahmajeetsing Sharma. The Court while dealing with the application for grant of bail need not delve deep into the merits of the case and only a view of the Court based on available material on record is required. The Court will not weigh the evidence to find the guilt of the accused which is, of course, the work of Trial Court. The Court is only required to place its view based on probability on the basis of reasonable material collected during investigation and the said view will not be taken into consideration by the Trial Court in recording its finding of the guilt or acquittal during trial which is based on the evidence adduced during the trial. As explained by this Court in Nimmagadda Prasad, the words used in Section 45 of the 2002 Act are "reasonable grounds for believing" which means the Court has to see only if there is a genuine case against the accused and the prosecution is not required to prove the charge beyond reasonable doubt."**

36. The above propositions of law were also followed by the Hon'ble High Court in the case of **Raman Bhuraria (Supra)** being relied upon by Ld. Senior Counsels for applicants and the relevant observations made in this case are also being reproduced herein below:-

"44. Hence the Hon'ble Court is not required to render a finding of guilt or acquittal at this stage, nor is it required to conduct a mini trial or meticulously examine the evidence but rather is to examine whether the applicant has made out reasonable grounds for believing that he is not guilty. In Union of India vs. Rattan Mallik (2009) 2 SCC 624, while dealing with section 37 of the NDPS, which similar to the section 45 PMLA, the Hon'ble Supreme Court observed;

> **'14. We may, however, hasten to add that while considering an application for bail with reference to Section 37 of the NDPS Act, the court is not called upon to record a finding of "not guilty". At this stage, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding as to whether or not the accused has committed offence under the NDPS Act. What is to be seen is whether there is reasonable ground for believing that the accused is not guilty of the offence(s) he is charged with and further that he is not likely to commit an offence under the said Act while on bail. The satisfaction of the court about the existence of the said twin conditions is for a limited purpose and is confined to the question of releasing the accused on bail.'**

45. After Vijay Madanlal (supra) case, it is clear that this court is not to go into the conclusive guilt or innocence of the accused but base its finding on a prima facie test."

37. Thus, it emerges out from the above legal position that twin conditions contained U/S 45 of the PMLA do not impose an absolute bar or restrain upon powers of the criminal court to grant bail to a person accused of the offence of money laundering and these conditions have to be reasonably construed and interpreted and evidence of prosecution is required to be weighed or examined in broader probabilities or sense for deciding the question of grant of bail to such an

accused and it is not required to be weighed meticulously.

Role of and evidence qua the accused Rajesh Joshi

38. As already discussed, the applicant Rajesh Joshi is not in the liquor business and admittedly, he was also not a participant in any of the meetings which allegedly took place between the other co-accused or conspirators of the above criminal conspiracy, in connection with formulation of the above excise policy or implementation thereof. He was also admittedly not a part of the cartels which were allegedly formed in violation of the spirit or provisions of the above said policy nor he had any connection or stake in any of the entities which were granted or applied for any type of licenses in connection with the liquor business in Delhi. Further, he is also not alleged to be a member of the above South lobby or liquor lobby belonging to any region and hence, admittedly, he is not amongst the persons who are alleged to have paid the above kickbacks to the co-accused Manish Sisodia or his other associates in politics or holding public offices and he is also not a recipient of the said kickbacks or bribe. The allegations being made and the evidence being pointed out against this applicant can be broadly put and discussed under the following two heads:-

(I) Role in transfer/transmission of advance kickbacks :-

39. The first role which has been attributed by the prosecution to this applicant is that he being a close associate of the co-

accused Vijay Nair was involved in transmission or transfer of advance kickback amount from the South lobby to the co-accused Vijay Nair and it is alleged that he was so involved in transmission or transfer of an amount of around Rs. 30 crores, which was routed by the South lobby through the approver Dinesh Arora. It is stated that the approver Dinesh Arora in his statement dated 01.10.2022 made U/S 50 of the PMLA has disclosed that the co-accused Vijay Nair had provided him the mobile numbers of this applicant and of one Sh. Sudhir and he was told by the co-accused Vijay Nair to coordinate with these two persons for the funds transfer. He also disclosed in the above statement that during the period from July, 2021 to October, 2021, he had handled these funds and he used to get calls either from the co-accused Abhishek Boinpally or his cousin Sh. Lupin and they used to provide him a phone number and a currency number/note number on Whatsapp/Facetime call. The approver Dinesh Arora also disclosed in his above statement that he used to write down those details on a piece of paper and then gave this piece of paper to either Sh. Sudhir or the applicant Rajesh Joshi for collection of the cash from the person whose phone number was provided to him by the co-accused Abhishek Boinpally or Sh. Lupin. He also disclosed that once the funds were collected from the source, Sh. Sudhir or the applicant used to call him to confirm the collection of funds and he in turn informed the co-accused Vijay Nair in this regard.

40. Further, it is also the case of prosecution that the contact number of applicant with reference to co-accused Vijay Nair is even found to have been stored in the mobile phone of approver Dinesh Arora as 'Rajesh Nayyar'. It is stated that the word ‘Nayyar’ refers to the co-accused Vijay Nair. It is also stated that even the mobile phone of above Sh. Lupin has been found stored by approver Dinesh Arora in his mobile phone as 'A B Lupin' and ‘AB’ refers to the co-accused Abhishek Boinpally. It is the submission of Ld. Special Counsel and Ld. SPP for ED that the very fact that these mobile numbers have been found stored in mobile phone of the approver Dinesh Arora is an evidence of the fact that the same were stored to facilitate the transfer/ transmission of kickback amount through hawala channels.

41. Again, it is further the case of prosecution that the call detail records (CDRs) of the approver Dinesh Arora, applicant Rajesh Joshi and the above Sh. Lupin also show that the applicant as well as the above Sh. Lupin were in touch with the approver Dinesh Arora and it is stated that on 17.08.2021, there were two regular/normal calls between the applicant and the approver and on same date, there were also two calls between Sh. Lupin and the approver, in addition to one more call between Sh. Lupin and the approver Dinesh Arora of date 23.08.2021. It is submitted that even these calls are proof of involvement of the

applicant in transfer/transmission of above kickback amount and of exchange of details or particulars to facilitate the hawala transactions.

42. Besides the above, it is also the case of prosecution that as disclosed by the approver Dinesh Arora in his above statement dated 01.10.2022, he further handled movement of a cash amount of Rs. 1 crore approximately in September 2021 when he picked up the said cash amount from one Sanjay, a hawala trader in Bengali Market, New Delhi, on instructions of co-accused Vijay Nair, at around 8.30 am and handed over the same to the applicant Rajesh Joshi on the next date at around 1 pm.

43. Coming first to the dispute regarding identity of the applicant raised by Ld. Senior Counsel representing him, as already discussed, it is observed by the court that this dispute or question raised about identity or involvement of applicant in commission of the alleged offence is without any basis or merits. Ld. Senior Counsel for applicant may though be right in making a submission that there is some contradiction or inconsistency in different statements of the approver Dinesh Arora regarding name of the applicant, but the said inconsistency or contradiction is not found to be material or even actual as it stands explained by the approver. It has been pointed out by Ld. Senior Counsel that in his statement dated 30.09.2022 made U/S 164 Cr.P.C.

before the Ld. ACMM in the CBI case as well as in his statement dated 01.10.2022 made before the ED U/S 50 of the PMLA, the approver had though stated the name of applicant as 'Rajesh Sharma' and he also referred to him with his single name as 'Rajesh' at few places in different statements, but in his subsequent statement dated 30.12.2022 made in this case of ED, he had stated the name of applicant as Rajesh Joshi and not Rajesh Sharma. However, as already indicated, the above contradiction or inconsistency stands already explained by the approver in his statement dated 30.12.2022 itself, wherein he is found to have also stated that the surname of applicant skipped from his mind and that is why his name in his earlier statement was stated as Rajesh Sharma instead of Rajesh Joshi. He also specifically stated in this statement that the actual name of applicant is Rajesh Joshi. Further, the very fact that mobile number of applicant was found saved in mobile phone of the approver with reference to co-accused Vijay Nair is also a circumstance to rule out any doubt being raised by Ld. Senior Counsel about the identity of the applicant.

44. However, still, when all the above evidence being pointed out by Ld. Special Counsel and Ld. SPP for ED is considered in broader sense and in entirety in the light of other facts and circumstances brought on record, this court is of the *prima facie* view that merely because the approver has told about the

involvement of this applicant in transmission of some of the kickback amount from the South lobby and further simply because his mobile number was found saved in mobile phone of the approver, it is not safe to presume or infer at this stage that the applicant was so involved in transfer or transmission of the above kickback amount of Rs. 20 or 30 crores from the South lobby to the co-accused Vijay Nair. This is also because there is no other independent evidence collected by the investigating agency to substantiate or corroborate this fact and in the absence of any record of telephonic conversations between the applicant and the approver to this effect, simply the circumstance that they conversated twice on a particular day cannot also be considered incriminating enough to conclude or infer that they conversated in relation to transmission of the above kickback amount or in respect to activity related to the proceeds of crime. Again, even the above claim of approver regarding volume of the kickback amount transferred through him is vague as he was not clear if it was Rs. 20 crores or Rs. 30 crores and further, how much of it was transferred through this applicant and how much through the above Sh. Sudhir.

45. Further, the above view or opinion of the court is even supported by a material contradiction which has been pointed out by Ld. Senior Counsel representing the applicant in statements of the approver regarding another transaction of cash

transfer of Rs. 1 crore approximately in September, 2021, as per instructions of the co-accused Vijay Nair. It has been pointed out that though in his statement dated 01.10.2022 made in this case, the approver claimed that on one other occasion he collected the above cash amount from Sanjay, a hawala trader in Bengali Market, New Delhi at around 8.30am and handed it over to the applicant on next date at around 1pm, but in his subsequent statement dated 05.10.2022 made U/S 161 Cr.P.C. before the IO DSP Sh. Alok Kumar Shahi of the scheduled offences case of CBI, he went on to state that the above cash amount of Rs. 1 crore was in fact collected by him from the applicant and it was delivered to the above hawala trader. Moreover, the approver is even found to be silent over this transaction of Rs. 1 crore in his earlier statement dated 30.09.2022 made U/S 164 Cr.P.C. in the above case of CBI. Again, it has also been submitted on behalf of the applicant that when the approver Dinesh Arora was confronted with the applicant on 11.02.2023 by IO of the CBI case regarding the above transaction, he stated that he never met the applicant personally and for the first time, he was meeting with the applicant only during investigation of the said case and for the purposes of above confrontation.

46. Further, though the contact numbers of concerned hawala operators and number of currency notes etc. were allegedly being told to the approver by the co-accused Abhishek Boinpally

or Sh. Lupin through Whatsapp/Facetime calls, but admittedly these numbers used to be noted down by the approver on some paper slips and he used to forward these details to the applicant and above Sh. Sudhir. However, even these paper slips have admittedly not being recovered, either in hard or in digital form from the mobile phone of the approver or of any hawala operator. Again, no statement of even any hawala operator alleged to have been involved in these transactions has been recorded and produced before the court nor any record seized from any such hawala operator in connection with transmission of the above amount has been shown to the court. Moreover, the applicant himself has also admittedly not made any incriminating depositions in his statements made U/S 50 of the PMLA and recorded by the ED officials.

47. Hence, in the absence of there being any satisfactory corroborative material and in view of the above material contradictions and deficiencies in evidence relating to the above transactions, the statement dated 01.10.2022 made by the approver Dinesh Arora regarding the above said transactions of transfer or transmission of a part of the advance kickback amount through this applicant cannot be considered to be incriminating enough and sufficient to justify the attraction of bar and rigours contained U/S 45 of the PMLA and to justify his further detention in the case or denial of bail to him, also

keeping in view the other attending facts and circumstances.

(II) Role in channelization or expenditure of kickback amount :-

48. The next incriminating circumstance being alleged against the applicant is that he being proprietor of M/S Chariot and also a close associate of the co-accused Vijay Nair handled the advertising and other election related work of AAP in connection with Assembly elections held in Goa in the year 2022 and in relation to expenses thereof, he had channelized or utilized some cash amounts for different election related jobs done through his above media agency. It has also been alleged that he had even got issued or fabricated some fake invoices from some of the vendors of his above company as these invoices were got raised without any articles purchased by or services provided to the above company of applicant by the above said vendors.

49. As already discussed, apart from the allegations that this applicant had been involved in transmission or transfer of advance kickback amount of around Rs. 20-30 crores routed through the approver Dinesh Arora by the South lobby, it is also the case of prosecution that he was involved in channelization of a part of the kickback amount through cash payments, which were made in connection with election campaign of AAP in Goa Assembly elections, 2022. It is stated

that these cash payments were either in form of part payments made against the bills raised by different persons/vendors in name of his media company or the same were paid or distributed to the volunteers and other persons engaged in connection with the above elections.

50. Though it has been admitted on behalf of the applicant that his above media company M/S Chariot had been associated with and was engaged by the co-accused Vijay Nair for election related jobs of advertising etc. in connection with Goa Assembly elections, but it has been vehemently denied by the Ld. Senior Counsel that the applicant had utilized any amount of the alleged advance kickbacks in the said campaign and other elections related works and it is submitted by Ld. Senior Counsel that it was a job work assigned to the above company of applicant and the work was done and payments were made strictly as per the orders placed upon his above company by the AAP.

51. The first incriminating evidence in this chain as per prosecution is alleged to be the statement dated 10.12.2022 made U/S 50 of the PMLA by the witness Sh. Rajkumar Ganpatrao Tavishakar, who is stated to be the proprietor of M/S Shree Swami Samarth Eco Products, and as per this witness, different invoices totalling to an amount of Rs. 5,18,228/- were raised by his firm upon M/S Chariot and these were false or fake

invoices as no articles were purchased by M/S Chariot from their firm and even no services were provided by them against the above invoices to M/S Chariot. However, when his statement is considered broadly in light of the other oral and documentary evidence placed before this court, it is found that though invoices/bills have been raised by his above firm upon M/S Chariot and even payments might have been received from M/S Chariot against these bills in account of this firm, but the witness has not stated anything incriminating against the applicant Rajesh Joshi as he claims to have raised the above fake invoices upon M/S Chariot on being asked to do so by another witness named Ms. Manaswini Prabhune, who was already known to him. He also disclosed in his above statement that he had earlier worked with Ms. Manaswini Prabhune in some NGO and Ms. Manaswini Prabhune had sent him some sample invoices and asked him to raise similar bills/invoices in name of M/S Chariot and he did it accordingly. He also disclosed in his above statement that he did not remember the total amount received in bank account of his firm against the said bills, but some of the payments so received from M/S Chariot were transferred to the account of Ms. Manaswini Prabhune, some amount was withdrawn in cash and handed over to her and some amount was also paid to surveyors engaged in connection with the campaigning of AAP in Goa Assembly elections and it was done as per instructions of Ms. Manaswini Prabhune. Thus, this

witness did not directly come in contact with M/S Chariot or the applicant Rajesh Joshi.

52. The next incriminating evidence in this chain being relied upon by the prosecution is in the form of statement of witness Ms. Manaswini Prabhune recorded U/S 50 of the PMLA on 23.12.2022 and it is observed that even Ms. Manaswini Prabhune has not stated anything incriminating against this applicant as she states therein specifically that she never came in touch with persons of M/S Chariot and she did not even know the applicant Rajesh Joshi. On being asked, she also stated in her above statement that she was engaged by the co-accused Vijay Nair at a salary of Rs. 70,000/- pm in connection with opinion poll and other election related works of AAP in Goa and representative of the said party were in her touch and on being forwarded the above sample invoices by a representative of AAP, she got the above fake bills raised from Sh. Rajkumar Tavashikar, who was already known to her, as the payments to be made against these bills were to be utilized towards election related expenses of the party, including her salary and also the payments to be made to volunteers engaged by her. She further stated therein that whenever any payment was made to or received by her in cash towards her salary or other expenses, she used to deposit it in her account and on being asked to explain the credit entries in her account of different dates during the

period from 04.11.2020 to 02.03.2022 totalling to an amount of Rs. 14,65,400/-, she stated it to be the payments received in connection with the above election campaign and her salary. She was also asked to explain the three entries of Rs. 1,55,841/-, Rs. 31,500/- and Rs. 27,367/- dated 07.10.2020, 13.10.2020 and 21.12.2020 respectively received in her bank account from the account of M/S Chariot and she told that these payments were remitted in her account in relation to election related expenses, as conveyed to her by some representative of AAP. She also stated that the total amount which was paid to her in cash in connection with the above election campaign was around Rs.13.5 lacs, which apparently included her salary @ Rs. 70,000/- pm. Hence, even this witness never directly came in contact of the applicant Rajesh Joshi or any other person related to M/S Chariot and what relevance can be given to the above transfer of amounts in account of Ms. Manaswini Prabhune from the account of M/S Chariot will be a matter of trial only.

53. Further, though it has been observed that the credit entries in bank account of witness Ms. Manaswini Prabhune are spreading over the period from 04.11.2020 to 02.03.2022, but the above three bank transfers dated 07.10.2020, 13.10.2020 and 21.12.2020 for the amounts of Rs. 1,55,841/-, Rs. 31,500/- and Rs. 27,367/- from account of M/S Chariot in account of the witness are of the period between October, 2020 to December,

2020. Ld. Senior Counsel representing the applicant has rightly submitted that the same are of the period when formulation of above excise policy was not in sight as the discussions and meetings between the co-accused Vijay Nair and other stakeholders about the policy started only around the month of March, 2021. It has also been pointed out and observed by the court that even the alleged Whatsapp chats between the witnesses Sh. Rajkumar Ganpatrao Tavashikar and Ms. Manaswini Prabhune or the above exchange of performa invoices for preparation of fake invoices from M/S Shree Swami Samarth Eco Products in the name of M/S Chariot are of the period between October to December, 2020, i.e. prior to formulation of the above excise policy. Hence, even if the above oral and documentary evidence being pointed out by the prosecution is considered as it is, it may not be sufficient to indicate that the alleged payments made by M/S Chariot in account of the witness were out of the proceeds of crime generated through the scheduled offences case of CBI as the said proceeds were not even in existence because the scheduled offences of the CBI case were not committed by that time. Moreover, as per the approver also, the advance kickback amount of around Rs. 20-30 crores was routed through him only during the period between June to October, 2021. The observations made in para no. 406 of the case of **Vijay Madanlal Choudhary (Supra)** on this aspect, as have been

relied upon by Ld. Senior Counsel for the applicant, are being reproduced herein below:-

> **"406. It was urged that the scheduled offence in a given case may be a non-cognizable offence and yet rigors of Section 45 of the 2002 Act would result in denial of bail even to such accused. This argument is founded on clear misunderstanding of the scheme of the 2002 Act. As we have repeatedly mentioned in the earlier part of this judgment that the offence of money-laundering is one wherein a person, directly or indirectly, attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime. The fact that the proceeds of crime have been generated as a result of criminal activity relating to a scheduled offence, which incidentally happens to be a non-cognizable offence, would make no difference. The person is not prosecuted for the scheduled offence by invoking provisions of the 2002 Act, but only when he has derived or obtained property as a result of criminal activity relating to or in relation to a scheduled offence and then indulges in process or activity connected with such proceeds of crime. Suffice it to observe that the argument under consideration is completely misplaced and needs to be rejected."**

54. Further, these observations are also found to have been followed in cases **Sanjay Pandey (Supra)** and **Chitra Ramakrishna Vs. Assistant Director, Enforcement Directorate, Bail Application No. 2919/2022 decided on 09.02.2023 by the Hon'ble High Court.**

55. Again, it is observed that after making the above statement on 23.12.2022, Ms. Manaswini Prabhune had sent a retraction of her above statement through email on the official e-mail ID of this court and it was received on 29.12.2022 and vide

order dated 05.01.2023, a copy thereof is stated to have been taken on record with the observations that the evidentiary value of above statement of this witness or the grounds of retraction will be a matter of trial only. A copy of the above retraction was even e-mailed to the ED and it was stated on behalf of the ED that one more statement of this witness dated 05.01.2023 regarding the circumstances of retraction of her previous statement had also been recorded by the IO and the witness had not made any allegations of extension of threats to or exercise of coercion upon her, while recording of her earlier statement dated 23.12.2022. However, still even the veracity of her above statement dated 23.12.2022 will be a matter of trial only.

56. The next incriminating evidence against the applicant Rajesh Joshi in this chain of allegations is stated to be the statements made U/S 50 of the PMLA by the witnesses Sh. Islam Qazi, Sh. Damodar Prasad Sharma, Sh. Aaron Schubert De Souza, Sh. Prince Kumar, Sh. Anil Patel and Sh. Anand Vyas etc. and some documentary/digital evidence in the form of Whatsapp chats between mobile numbers of the witnesses Sh. Islam Qazi and Sh. Aaron Schubert De Souza. The witness Sh. Islam Qazi is an employee of M/S Grace Advertising, which is a company based in Mumbai and involved in advertising and hoarding business in Goa and this company is alleged to have provided some services to M/S Chariot in connection with Goa

Assembly elections. It is alleged that in his statements dated 12.12.2022 and 23.12.2022, the witness Sh. Islam Qazi had revealed that his boss Sh. Simon Samuel told him to start work on hoarding order of AAP at various locations in Goa and he was told by his boss that half payment for the said work will be in bill and half in cash. He claims that he prepared quotations and raised bills in connection with the said work done by them and he was coordinating with the witness Sh. Damodar Sharma of M/S Chariot for the said works and transactions. He also claimed in his above statements that against the work of around Rs. 13.70 lacs, an amount of around Rs. 6.29 lacs was received by them in cash from M/S Chariot through hawala transactions. He is also stated to have disclosed in these statements that he even suggested his friend Sh. Aaron De Souza, proprietor of M/S Spark Entertainment, to do similar work for AAP in Goa against payment in the similar mode and he further identified the screen shots of Whatsapp chats between him and the witness Sh. Aaron De Souza in this regard.

57. The witnesses Sh. Anand Vyas and Sh. Anil Patel are alleged to be hawala operators of Malad, East Mumbai and they claim to have handed over cash payments of Rs. 4.25 lacs and Rs. 2.45 lacs on dates 10.12.2021 and 26.11.2021 respectively to the witness Sh. Islam Qazi, which are stated to have been handed over to him as per details forwarded and instructions

given by their head office. They are also claimed to have handed over to the IO, some paper slips containing details of currency note numbers forwarded to them and signatures of the witness Sh. Islam Qazi taken on the said slips in token of receipt of the said amounts.

58. Further, the witnesses Sh. Damodar Prasad Sharma and Sh. Prince Kumar are both stated to be employees of M/S Chariot and they both are claimed to have stated about engagement of M/S Grace Advertising in connection with their above election work in Goa and they also stated that they had been coordinating with the witness Sh. Islam Qazi in connection with the said work, but they had even deposed that the job of settlement of rates/charges and other negotiations about mode of payment etc. was being done by their employer Rajesh Joshi, i.e. the applicant herein. The witness Sh. Aaron Schubert De Souza in his statement dated 10.12.2022 had disclosed that on reference of Sh. Islam Qazi, he had also taken up the hoarding and advertising work of AAP in Goa and on same mode of payment for the said work and he received a cash payment of around Rs. 5.5 lacs against bills raised for the said work. However, he also stated that his cash component should have been Rs. 6.80 lacs as the total cash amount received from M/S Chariot by Sh. Islam Qazi was Rs. 13.6 lacs. He further stated in his above statement that even the bills were raised at a lower

amount than the market rates.

59. However, even when the above statements made by all these witnesses are seen in a broader sense and entirety, the same can at the most suggest that some cash payments might have been made by M/S Chariot owned by the applicant in connection with the above election related work of the AAP as undertaken by it and got done through different vendors. But there is nothing on record at this stage to link these payments made by the above company of applicant with the kickback amount paid by South lobby to the co-accused Vijay Nair or his other associates. It can be observed that the alleged kickback amount is very huge i.e. around Rs. 100 crores and even a huge amount of around Rs. 20-30 crores is alleged to have been transferred through this applicant, whereas the payments which were allegedly made by him for the election related jobs are for meagre amount in lacs. Moreover, in the absence of examination or statements of the concerned hawala operators to whom the alleged cash amounts were handed over in Delhi or at any other place by or on behalf of the applicant or M/S Chariot and further in the absence of some documentary evidence available with those hawala operators in this regard, it will also be a matter of trial only if the above hawala payments received by Sh. Islam Qazi from the witnesses Sh. Anand Vyas and Sh. Anil Patel can be linked with this applicant or not.

60. Therefore, in view of the above factual position and also the legal position already discussed above, it appears to this court that even if the statements of all the above witnesses made U/S 50 of the PMLA and the other corroborative evidence collected by investigating agency till date is considered in entirety by the court and in broader sense or probability for deciding the question of grant of bail to the applicant, the same is not sufficient to make this court believe that the case being alleged by prosecution against this applicant is a genuine case or that he is going to be held guilty in this case on the basis of above evidence and hence, in considered opinion of this court, the bar and rigours contained U/S 45 of the PMLA should not be applied to this applicant.

61. As discussed above, the applicant was arrested in this case on 08.02.2023 and he is in custody since then and even prior to his arrest in the case, he is stated to have joined investigation of this case as well as of the connected case of CBI on numerous occasions and he had also produced and provided all the relevant documents and information pertaining to the case, which might have been in his possession or knowledge. He is stated to be a permanent resident of Delhi and he cannot be considered to be a flight risk as there is nothing on record to suggest or infer that he will abscond from trial or proceedings of the case. Similarly,

there is also no material on record to infer or suggest that he will tamper with evidence or documents of the case and influence the witnesses in any manner and even otherwise, these apprehensions can always be taken care of by the court by imposing reasonable conditions.

Role of and evidence qua the accused Gautam Malhotra

62. As stated above, as per allegations being made by prosecution, even this applicant was a part of the above cartel and criminal conspiracy as he through his entities is stated to have been involved at all the three stages of liquor business i.e. manufacturing, wholesale and retail. Further, he is also claimed to have played a vital role in repayment or recoupment of the above advance kickback amount or bribe, which is stated to have been paid in the form of cash amount of Rs. 2.5 crores delivered by him in the office of co-accused Amit Arora, from 6% profit margin of his wholesale entity M/S Gautam Wines and out of 12% margin kept for the wholesalers, and he is further claimed to be the beneficiary of excess credit notes to the tune of Rs. 48.9 lacs approximately issued in favour of his retail entity M/S Nova Garments by the wholesale entity M/S Brindco Sales belonging to the other co-accused Amandeep Singh Dhall. Thus, allegations being made and evidence produced qua this applicant can be broadly divided into and discussed under the following three heads:-

(I) Payment of kickback/bribe amount of Rs. 2.5 crores

63. It is the case of prosecution that this accused had paid an amount of Rs. 2.5 crores as bribe or kickbacks or towards repayment or recoupment of the advance kickback amount for the South liquor lobby and this fact was specifically stated by the co-accused Amit Arora in his statement dated 07-08.09.2022 made U/S 50 of the PMLA before the IO of this case. The above co-accused in the said statement is found to have disclosed that in the first week of May, 2022, one Sh. Simran Narula, who was known to him being a close friend of approver Dinesh Arora, had called and told him that one of his friends will leave some important stuff in his office in Gurugram and as a friend he agreed to the same. The co-accused Amit Arora also claimed in this statement that then, later on, the applicant Gautam Malhotra had brought a bag full of cash amount of Rs. 2.5 crores in his office and asked him to speak to Sh. Simran Narula and he figured that it must be the kickback money for L-1 from M/S Gautam Wines. Then he claims to have called Sh. Simran Narula, who asked him to speak to the approver Dinesh Arora about this and when he contacted the approver, the approver told him that '*ye 6 ki joining hai Deep Malhotra*'. As per the statement of co-accused Amit Arora, it was Dinesh Arora's style of saying that it was 6% kickback. The above Sh. Deep Malhotra is stated to

be father of this applicant. Co-accused Amit Arora also disclosed in his above statement that subsequently, approver Dinesh Arora got collected the said amount from his office through one Sh. Harinder Singh Narula, who was working for approver Dinesh Arora in his company named M/S K. D. Spirits.

64. This is the only evidence, which has been put-up before this court in support of the above allegation of payment of bribe or kickbacks by the applicant Gautam Malhotra. However, when the above statement of co-accused Amit Arora is considered by the court in light of the statements made by the approver Dinesh Arora to the above two investigating agencies, this court is of the view that the allegations contained therein cannot *prima facie* constitute a reasonable material and basis to apply the above twin conditions or bar of Section 45 of the PMLA in granting bail to this applicant. It is so because the approver Dinesh Arora is found to have outrightly disowned the above story of prosecution and the claim made by co-accused Amit Arora and he had expressed his total ignorance about the above transaction. The statements on this aspect made by the approver cannot be sidelined or ignored at this stage as he is a star witness of the prosecution, not only in the scheduled offences case of CBI where he turned approver, but also in the present case registered by the ED in respect to

laundering of the proceeds of crime generated out of criminal activities of the above CBI case.

65. Ld. Senior Counsel representing this applicant has made this court to travel through the contents of different statements made by the approver and it has been found that the approver actually does not support the case of prosecution on the above aspect. It is observed that in his statement dated 21.09.2022 made U/S 161 Cr.P.C. before the IO/DSP Sh. Alok Kumar Shahi of the CBI case and on being asked by the IO about the above payment of Rs. 2.5 crores made by him to the co-accused Amit Arora as 6% commission out of his 12% margin, had stated that he never contacted this applicant for paying any money as 6% out of their share of 12% profit margin. He is also found to have stated therein that if any such payment had been made by the applicant to the co-accused Amit Arora, then Amit Arora had misused his name to extort money from the applicant. Further, the contents of statement dated 30.09.2022 made U/S 164 Cr.P.C. before the Ld. ACMM, RADC, New Delhi in the CBI case have also been gone through and it is observed that even in this statement, the approver Dinesh Arora had stated that he only came to know through the ED and CBI that co-accused Amit Arora had taken Rs. 2.5 crores from the applicant Gautam Malhotra in his name and he further clarified in the said statement that he did not take any money

nor he ever met Gautam Malhotra or Amit Arora in this context. Again, it has also been pointed out that even in his subsequent statement dated 03.10.2022 made in the present case, the approver expressed his ignorance about this payment and reiterated that he was not involved in the above transaction. He is also found to have stated in this statement that he even came to know from market that the co-accused Amit Arora had taken Rs. 2 crores from one Sh. Ajay and Sh. Anil Malhotra of M/S Zeta Buildtech in his name and he confronted the co-accused Amit Arora in this regard and told him not to engage in activities like this in his name as he had no instructions from the co-accused Vijay Nair on this matter. Thus, even the star witness of prosecution case is not supporting their case regarding payment of the above amount of Rs. 2.5 crores by him to the co-accused Amit Arora in his office, as bribe or towards repayment of the advance kickback amount and out of his profit margin as a wholesaler being beneficial owner/controller of wholesale entity M/S Gautam Wines and hence, what value can be given to the uncorroborated disclosures made by the co-accused Amit Arora in his above statement will be a matter of trial only. However, the said statement of co-accused is certainly not sufficient enough to attract the bar and rigours of Section 45 of the PMLA, either individually or along with the evidence on other aspects.

66. Further, it is also necessary to mention here that no statements of the above Sh. Simran Narula and Sh. Harinder Singh Narula on the aspects of delivery and collection of the above amount have been produced before or filed on record of the court. Moreover, even the statement of approver Dinesh Arora dated 21.09.2022 made in the CBI case shows that as per instructions of co-accused Vijay Nair, he coordinated for 6% commission through credit notes only from three big players in wholesale business i.e. M/S Brindco, M/S Indospirits and M/S Mahadev Liquors and smaller L-1 licensees were not required to be contacted for the same.

(II) Formation or joining of the cartel

67. The next allegation of prosecution against this applicant is that he formed a cartel by participation in liquor business of Delhi at all three levels i.e. manufacturing, wholesale and retail and thus, he became a member of the above super cartel and criminal conspiracy with the other co-accused to achieve the objectives of the said conspiracy. The statements made U/S 50 of the PMLA by his father Sh. Deep Malhotra, Sh. C. S. Biju Vasudevan, the Group President of Malhotra Group of Industries, Sh. Ashish Roy, Sh. Manoj Roy and Sh. Mohit Gupta of M/S Pernod Ricard and Sh. Ashish Sehrawat of M/S Diageo etc. are being referred to in support of the above allegation.

68. It has been stated that Sh. Deep Malhotra and Sh. C. S. Biju Vasudevan in their statements had revealed that the family of applicant owns various manufacturing units of liquor and ethanol in the names of M/S Oasis Commercial Pvt. Ltd., M/S Oasis Overseas Exports Pvt. Ltd., M/S Oasis Ethanol Industries Pvt. Ltd., M/S Vijeta Beverages Pvt. Ltd. and the three manufacturing units already stated above i.e. M/S Om Sons, M/S Malbros and M/S Oasis Distilleries and the applicant, his father as well as his elder brother Sh. Gaurav Malhotra are directors in the above companies, along with their other family members, relatives or other persons. It has also been stated therein that the applicant holds 26.76% share in M/S Om Sons. Further, even the L-1 entity M/S Gautam Wines is stated to be in name of the applicant and the retail entity M/S Nova Garments is also alleged to be beneficially owned by the Malhotra family and being controlled by the applicant.

69. Statements of the witnesses namely Sh. Ashish Roy, Sh. Manoj Roy and Sh. Mohit Gupta are also being pointed out on behalf of the ED to show that they had been dealing with this applicant in connection with the retail business of M/S Nova Garments and even screen shots of some digital evidence in the form of Whatsapp chat between the mobile phone of some of them and the applicant and also the chat found from the mobile

phone of driver of CA of the applicant have been shown to substantiate this allegation. It has further been stated that some payment of EMD amount of M/S Nova Garments was sourced or funded by Oasis Group of companies belonging to this applicant and his family and thus, it is being alleged that besides the amount of profit of Rs. 6.9 crores earned by M/S Nova Garments, even the EMD funding amount of Rs. 20.06 crores should be treated as proceeds of crime generated because of activities of the scheduled offences case and laundered through the above acts of accused amounting to commission of an offence U/S 3 of the PMLA.

70. However, when the above statements and other evidence being referred to by Ld. Special Counsel and Ld. SPP for ED is considered by this court in a broader sense, the same may though be sufficient to show that the applicant did manage to form a cartel by his participation at all three levels of liquor business in Delhi, through the above entities, but the same cannot be taken as sufficient to make this court *prima facie* believe that it was done in pursuance of the above criminal conspiracy with the other co-accused. Though the above cartel might have been formed in violation of provisions of the above excise policy or the Excise Act of Delhi, but it appears to be a pure business cartel formed to push the sale of liquor brands of the manufacturing unit(s) of the applicant and this is even

evident from the submission being made on behalf of the ED that as a result of the above cartel that out of total sales of the retail zones owned by M/S Nova Garments belonging to this applicant, 48% sales were of the liquor brands manufactured by their own manufacturing unit(s). Thus, the above evidence does not appear to be sufficient enough to enable this court to form an opinion at this stage that the above cartel was actually formed in pursuance of any such criminal conspiracy or to achieve the objectives thereof.

71. Further, it is the admitted case of prosecution that this applicant had not played any role whatsoever in formulation of the above excise policy and he was even not a part of the South lobby paying advance kickbacks of Rs. 100 crores. Again, he is also not alleged to have paid any such advance kickbacks to the co-accused Vijay Nair, other politicians of AAP or the other public servants before or in connection with formulation of the said policy and the only allegation of payment of any money or bribe against him is in the form of payment of the above amount of Rs. 2.5 crores to the co-accused Amit Arora in the month of May 2022 i.e. when this policy had already remained in operation for a considerable time as it was implemented w.e.f. 01.11.2021. Admittedly, there is no allegation against the applicant that he met the co-accused Vijay Nair personally or even to any other politician or co-

accused for any changes in or manipulation of any clause of the said policy or he was instrumental in getting incorporated the clause pertaining to 12% profit margin for the wholesalers. As already discussed, even the evidence in form of statement of co-accused Amit Arora about payment of above amount of Rs. 2.5 crores as bribe by him is not found convincing enough at this stage.

72. Again, there are also some other facts and circumstances on record which have to be seen by this court for considering the question of release on bail of this applicant and for deciding the applicability of twin conditions of Section 45 of the PMLA qua him. During the course of arguments advanced on this bail application, it has also been submitted on behalf of the ED that even though this applicant may not have been a participant in the above criminal conspiracy from the very beginning, but in terms of provisions contained U/S 120A IPC and the law laid down on the subject from time to time, he could have always joined this conspiracy at a later stage and if he was aware of the objectives of said conspiracy at the time of joining it, then he has to be equally held liable for punishment prescribed for the said offence which can be given to the other conspirators. Though, there cannot be any doubt about this legal position and one may join a conspiracy at any point of time, while the said conspiracy is still in existence and

its objectives have not been accomplished, but certainly prior to that, he has to be aware about the objectives of said conspiracy and he should join the same with a clear intent or *mens rea* on its part to achieve it. However, it is the own case of ED that the applicant was initially not involved in any meetings or formulation of the excise policy and thus, he was neither a member of the above criminal conspiracy from the beginning nor joined it later with his free consent and he was only made to succumb to the pressure being exercised by the co-accused Vijay Nair representing the AAP party lateron, through the approver Dinesh Arora and co-accused Amit Arora, to pay 6% out of the 12% profit margin of his wholesale entity named M/S Gautam Wines. Thus, even going by the above submission, it cannot be said at this stage that the applicant became part of the above conspiracy or cartel or joined it with his free consent and while possessing the above criminal intent or *mens rea* to commit the alleged offences of the CBI case or the offence of money laundering of the present case of ED.

73. Moreover, even the statements dated 24.08.2022 made U/S 50 of the PMLA by witnesses Sh. Sunny Marwah and Ms. Jasdeep Kaur Chadha of M/S Mahadev Liquor, which is another wholesale entity in liquor business in Delhi, being referred to from both sides and the statement of approver

Dinesh Arora dated 21.09.2022 made U/S 161 Cr.P.C. in the CBI case and being referred to by Ld. Senior Counsel for the applicant go to show that the applicant and his family members were coerced and threatened to pay 6% commission out of their profits as bribe or kickbacks or otherwise their manufacturing units in Punjab will be shut down by the ruling AAP in the said State and hence, in light of the above, Ld. Senior Counsel appears to be right in making a submission that even if the applicant agreed to pay or actually paid any such amount as bribe or towards repayment of the kickbacks, it was not paid with the requisite criminal intent or *mens rea* to commit an offence, what to say of a serious offence like the offence of money laundering under the PMLA. He has also referred to the above quoted observations made in para no. 388 of judgment of the Hon'ble Supreme Court in case of **Vijay Madanlal Choudhary (Supra)** again to support his above submission regarding the requirement of existence of a criminal intent or *mens rea* for commission of the above said offence. These observations are even found followed by the Hon'ble High Court in case of **Chandra Prakash Khandelwal (Supra)** being relied upon by Ld. Senior Counsel.

(III) Issuance of excess credit notes in favour of M/S Nova Garments by M/S Brindco

74. The next allegation against this applicant is that the retail

vends belonging to the proxy entity M/S Nova Garments of the applicant were found to be a beneficiary of excess credit notes to the tune of Rs. 48.9 lacs approximately and these excess credit notes are stated to have been issued by another wholesale company named M/S Brindco, which was also allegedly a part of the above super cartel and criminal conspiracy and which belonged to the co-accused Amandeep Singh Dhall. It is alleged that investigation of this case has revealed that out of the total credit notes of around Rs. 4.9 crores issued by M/S Brindco in favour of different retail entities, including the retail entities owned by the co-accused P. Sarath Reddy and Raghav Magunta, credit notes for the above amount of Rs. 48.9 lacs are found to have been issued in favour of the above retail entity of this applicant and since these credit notes were not backed or supported by any liquor manufacturer, it is alleged that the amount of these credit notes was meant to be used or utilized towards payment of bribe or repayment or recoupment of the advance kickbacks to the South lobby. It has been stated that investigation conducted so far has also revealed that cash amounts against these credit notes were being collected from retail entities and the same were being paid as bribe or towards repayment of the kickback amount. However, even no specific or connecting evidence showing any such cash payments against the amounts of above credit notes by the above retail entity of the applicant to any

co-accused or other person towards payment of bribe or repayment of kickbacks has been produced before the court and hence, merely because some vague statements have been made by the witness Butchibabu Gorantla or by the approver Dinesh Arora that they were told about such cash payments being made by different retail entities, it cannot be inferred on the basis of these statements that even the applicant or his retail entity had made any such cash payments to the co-accused Vijay Nair or any other accused or person directly or indirectly. Hence, even this evidence of issuance of excess credit notes cannot be taken sufficient enough to attract the rigours of Section 45 of the PMLA and cannot be made a ground to deny bail to the applicant.

75. Thus, it can be seen from the above discussion that the case of prosecution even against this applicant and as based on the above oral and documentary evidence cannot be *prima facie* considered to be a genuine case in terms of law laid down in the case of **Vijay Madanlal Choudhary (Supra)** and followed in various other cases being relied upon from the side of applicant and hence, the same is not sufficient to attract the rigours and bar of Section 45 of the PMLA to deny bail to the applicant on merits.

76. Moreover, apart from the above, the applicant also

deserves to be granted default bail U/S 167(2) Cr.P.C. as though the prosecution complaint qua him and some other co-accused (i.e. third prosecution complaint or second supplementary complaint) stands already filed before this court on 06.04.2023 within the prescribed period of 60 days from the date of his arrest in the case i.e. 08.02.2023, but it is the admitted case of prosecution that some of the important witnesses qua him namely Sh. Ravi Raj, driver of CA of the applicant, Sh. Raj Kumar who was looking after the day to day affairs of M/S Nova Garments, Sh. Surender Singh and Sh. Pawan Bansal, who are stated to be dummy directors of M/S Nova Garments and one Sh. Santosh Kumar could not yet be made to join investigation of this case and they all are absconding and concealing themselves and hence, the ED has already filed separate applications seeking issuance of NBWs against them and the same are still pending consideration of this court and the said persons had also already approached this court to seek joining of investigation subject to certain directions as they are apprehending. Hence, when the statements of above persons related to this applicant are yet to be recorded and they are yet to made to join investigation of the case and to produce the information and documents in their possession, the chargesheet filed in the form of above prosecution complaint or supplementary complaint against this applicant can be taken as incomplete and the same has

apparently been filed to scuttle or defeat the right of applicant to seek default bail in terms of Section 167(2) Cr.P.C. as the prosecution cannot file piecemeal chargesheets or complaints against the said accused. Ld. Senior Counsel representing the applicant has also referred to and relied upon a Full Bench judgment of the Hon'ble Supreme Court in case of **Rakesh Kumar Paul Vs. State of Assam, MANU/SC/0993/2017** and the relevant observations made by the Hon'ble Mr. Justice Madan B. Lokur while delivering the majority judgment on this issue of indefeasible right of accused to seek statutory bail are also being reproduced herein below:-

> **"Default bail as an indefeasible right**
>
> **33. It was submitted by learned counsel for the State that the charge sheet having been filed against the petitioner on 24th January, 2017 the indefeasible right of the petitioner to be now released on 'default bail' gets extinguished and the petitioner must apply for regular bail.**
>
> **34. What is forgotten is that the indefeasible right for 'default bail' accrued to the petitioner when the period of 60 days for completing the investigation and filing a charge sheet came to an end on 3rd or 4th January, 2017 and that the indefeasible right continued till 24th January, 2017. The question is whether during this interregnum the petitioner was entitled to 'default bail' or not? Ordinarily, the answer would be "yes" but in the present case, the petitioner was not granted bail and a charge sheet was filed against him on 24 th January, 2017. Was his indefeasible right completely taken away?**
>
> **35. Our attention was drawn to the decision of the Constitution Bench in Sanjay Dutt vs. State. In paragraph 46 of the Report it was conceded by learned counsel appearing for the accused that the indefeasible right is enforceable only up to the filing of a charge sheet or challan and does not survive after the charge sheet or challan is filed in the court against him. This submission**

was not refuted by but agreed to by the learned Additional Solicitor General appearing for the State. The submission made by both the learned counsels was based on an interpretation of the decision of this Court in Hitendra Vishnu Thakur Vs. State of Maharashtra which was a case under the Terrorist and Disruptive Activities (Prevention) Act, 1987.

36. While dealing with this common stance, the Constitution Bench in Sanjay Dutt made it clear in paragraph 48 of the Report that the indefeasible right accruing to the accused is enforceable only prior to the filing of the charge sheet and it does not survive or remain enforceable thereafter, if already not availed of. In other words, the Constitution Bench took the view that the indefeasible right of 'default bail' continues till the charge sheet or challan is filed and it gets extinguished thereafter. This is clear from the conclusion stated by the Constitution Bench in paragraph 53(2)(b) of the Report. This reads as follows:

> **'(2)(b) The "indefeasible right" of the accused to be released on bail in accordance with Section 20(4)(bb) of the TADA Act read with Section 167(2) of the Code of Criminal Procedure in default of completion of the investigation and filing of the challan within the time allowed, as held in Hitendra Vishnu Thakur is a right which enures to, and is enforceable by the accused only from the time of default till the filing of the challan and it does not survive or remain enforceable on the challan being filed. If the accused applies for bail under this provision on expiry of the period of 180 days or the extended period, as the case may be, then he has to be released on bail forthwith. The accused, so released on bail may be arrested and committed to custody according to the provisions of the Code of Criminal Procedure. The right of the accused to be released on bail after filing of the challan, notwithstanding the default in filing it within the time allowed, is governed from the time of filing of the challan only by the provisions relating to the grant of bail applicable at that stage.'**

37. This Court had occasion to review the entire case law on the subject in Union of India v. Nirala Yadav. In that decision, reference was made to Uday Mohanlal Acharya v. State of

Maharashtra and the conclusions arrived at in that decision. We are concerned with conclusion No. 3 which reads as follows:

> **'(3) On the expiry of the said period of 90 days or 60 days, as the case may be, an indefeasible right accrues in favour of the accused for being released on bail on account of default by the investigating agency in the completion of the investigation within the period prescribed and the accused is entitled to be released on bail, if he is prepared to and furnishes the bail as directed by the Magistrate.'**

38. This Court also dealt with the decision rendered in Sanjay Dutt and noted that the principle laid down by the Constitution Bench is to the effect that if the charge sheet is not filed and the right for 'default bail' has ripened into the status of indefeasibility, it cannot be frustrated by the prosecution on any pretext. The accused can avail his liberty by filing an application stating that the statutory period for filing the charge sheet or challan has expired and the same has not yet been filed and therefore the indefeasible right has accrued in his or her favour and further the accused is prepared to furnish the bail bond.

39. This Court also noted that apart from the possibility of the prosecution frustrating the indefeasible right, there are occasions when even the court frustrates the indefeasible right. Reference was made to Mohamed Iqbal Madar Sheikh vs. State of Maharashtra wherein it was observed that some courts keep the application for 'default bail' pending for some days so that in the meantime a charge sheet is submitted. While such a practice both on the part of prosecution as well as some courts must be very strongly and vehemently discouraged, we reiterate that no subterfuge should be resorted to, to defeat the indefeasible right of the accused for 'default bail' during the interregnum when the statutory period for filing the charge sheet or challan expires and the submission of the charge sheet or challan in court. Procedure for obtaining default bail

40. In the present case, it was also argued by learned counsel for the State that the petitioner did not apply for 'default bail' on or after 4th January, 2017 till 24th January, 2017 on which date his indefeasible right got extinguished on the filing of the charge sheet. Strictly speaking this is correct since the petitioner applied for regular bail on 11th January, 2017 in the Gauhati High Court – he made no specific application for grant of 'default

bail'. However, the application for regular bail filed by the accused on 11th January, 2017 did advert to the statutory period for filing a charge sheet having expired and that perhaps no charge sheet had in fact being filed. In any event, this issue was argued by learned counsel for the petitioner in the High Court and it was considered but not accepted by the High Court. The High Court did not reject the submission on the ground of maintainability but on merits. Therefore it is not as if the petitioner did not make any application for default bail – such an application was definitely made (if not in writing) then at least orally before the High Court. In our opinion, in matters of personal liberty, we cannot and should not be too technical and must lean in favour of personal liberty. Consequently, whether the accused makes a written application for 'default bail' or an oral application for 'default bail' is of no consequence. The concerned court must deal with such an application by considering the statutory requirements namely, whether the statutory period for filing a charge sheet or challan has expired, whether the charge sheet or challan has been filed and whether the accused is prepared to and does furnish bail.

41. We take this view keeping in mind that in matters of personal liberty and Article 21 of the Constitution, it is not always advisable to be formalistic or technical. The history of the personal liberty jurisprudence of this Court and other constitutional courts includes petitions for a writ of habeas corpus and for other writs being entertained even on the basis of a letter addressed to the Chief Justice or the Court."

77. Further, the applicant Gautam Malhotra also cannot be considered to be a flight risk as he belongs to a family having well established liquor manufacturing business in the State of Punjab and also selling their liquor brands in other States and his father is also stated to be a senior politician in the State of Punjab. There are also no reasonable chances of destruction or tampering of any evidence or documents of the case by the applicant or of influencing of the witnesses in the event of his

release on bail and even otherwise, as already stated, these chances can be taken care of by imposing reasonable conditions.

Conclusion

78. Therefore, in light of the above factual and legal discussion, bail applications filed by both the above accused namely Rajesh Joshi and Gautam Malhotra in the present case are allowed and they both are directed to be released from custody on furnishing of a personal bond in the sum of Rupees Two Lacs (Rs.2,00,000/-) each with one surety in the like amount each subject to the satisfaction of this court. This is, however, further subject to the following conditions:-

1) that they shall not leave the country without prior permission of the court;

2) that they shall not threaten or influence the witnesses of this case and shall not even make an attempt to do so in any manner whatsoever;

3) that they shall not tamper with the evidence of this case and shall not even make an attempt to do so in any manner whatsoever; and

4) that they shall join the ongoing investigation of case and shall co-operate with the IO in case they are

required to do so, even after their release on bail in terms of this order.

79. The bail applications of both the accused stand allowed and disposed off accordingly with the above observations.

80. However, it is made clear that the observations made in this order are only for the purpose of deciding the bail applications of applicants and nothing contained in this order shall tantamount to the expression of any opinion on merits of the case.

81. Let this order be placed in the main prosecution complaint file bearing no. CT Case No. 31/2022 and both the bail applications be tagged/attached with the main file. Let e-copy of this order be given dasti to all the parties and a copy of the order be also sent to the Jail Superintendent concerned for his information, compliance and records.

Announced in open court on 06.05.2023

(M. K. NAGPAL)
Special Judge (PC Act),
CBI-09 (MPs/MLAs Cases),
RADC, New Delhi :06.05.2023