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

Bail Matter No. 62/2023
Filing No. 248/2023
CNR No. DLCT11-000248-2023
ECIR/HIU-II/14/2022
U/S 3 & 4 of the PMLA

Manish Sisodia
Vs.
Directorate of Enforcement/Enforcement Directorate (DoE/ED)

ORDER ON APPLICATION OF ACCUSED MANISH SISODIA FOR GRANT OF REGULAR BAIL

28.04.2023

1. By this order, I shall dispose of the application dated 20.03.2023 filed U/S 437 Cr.P.C. r/w Sections 45 & 65 of the PMLA, 2002 for grant of regular bail to the accused Manish Sisodia in the present case registered by the ED on 22.08.2022 vide No. ECIR/HIU-II/14/2022 for commission of the offence of money laundering, as defined by Section 3 of the PMLA, 2002 and made punishable by Section 4 of the said Act.

2. The applicant was arrested in this case on 09.03.2023 and was produced before the court on 10.03.2023 and he was

remanded to ED custody till 22.03.2023 for the purposes of investigation and since 22.03.2023, he is now confined in judicial custody in Tihar Jail.

3. This case/ECIR of ED has been registered in relation to the predicate offences case of 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 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. The applicant 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.

4. As on date, two chargesheets for commission of the offence of criminal conspiracy punishable U/S 120B r/w 201 & 420 IPC and Sections 7, 7A, 8 and 12 of the PC Act and also the substantive offences thereof against total eleven accused persons stand already filed by the CBI before this court on dates 25.11.2022 and 25.04.2023 and cognizance of the said 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 as it has been filed after the arguments on this bail application stood concluded. Three prosecution complaints in this case of ED also stand filed before the court on dates 26.11.2022, 06.01.2023 and 06.04.2023 against total twenty five accused persons/entities and even cognizance of the alleged offence of money laundering stands already taken vide order dated 20.12.2022 of the court, though some further investigation in both the cases is still going on. Total seventeen accused persons prosecuted through the two initial complaints filed by the ED stand also summoned by the court to face trial for the alleged offence, but the third complaint i.e. second supplementary complaint is still pending consideration of the court.

5. 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.

6. 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 also been alleged that investigation conducted by the ED so far has revealed that the applicant Manish Sisodia was not only the architect and a key member of the above criminal conspiracy of the scheduled offences case, but he had also played an active role in commission of the offence of money laundering as he had been actively involved, directly or indirectly, in the process or activities relating to the proceeds

of crime generated through the offences of CBI case or its concealment, possession, acquisition, use and projection or claiming it as untainted property etc.

7. The contents of application as well as of the reply dated 25.03.2023 and additional reply dated 12.04.2023 thereto filed on behalf of the ED have been perused, along with record of the case. The extensive arguments advanced by Sh. Dayan Krishnan, Ld. Senior Counsel, along with Sh. Vivek Jain, Advocate, assisted by Sh. Rishikesh Kumar, Sh. Mohd, Irshad, Sh. Karan Sharma, Sh. Mohit Siwach, Sh. Abhinav Jain, Sh. Rajat Jain, Sh. Mohit Bhardwaj, Sh. Kumud Ranjan Mishra, Sh. Rohit Kaliyar, Sh. Rishabh Sharma, Sh. Ravinder Pratap Singh and Ms. Sheenu Priya Advocates for the applicant and Sh. Zoheb Hossain, Ld. Spl. Counsel and Sh. N. K. Matta, Ld. SPP for ED, assisted by Sh. Gaurav Saini, ALA, 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. The written submissions filed from both sides have further been gone through.

8. Sh. Vivek Jain, Ld. Counsel representing the applicant has argued that even though validity of twin conditions contained U/S 45 of the PMLA has been upheld by the Hon'ble Supreme Court in the Constitution Bench decision in case of

Vijay Madanlal Choudhray Vs. Union of India, 2022 SCC OnLine SC 929, but still, as has been observed in para nos. 388 and 400 of the said judgment, this court is required to consider the question of grant of bail to the applicant from the angle as to whether he possessed of the requisite *mens rea* for commission of the alleged offence or not. He also submits that the court is even not required to record a positive finding at the stage of bail that the accused has not committed the said offence because at this stage, the evidence is not required to be weighed meticulously and only findings are required to be arrived at on the basis of broader probabilities. It is also his contention that the above twin conditions of Section 45 of the PMLA do not impose an absolute bar or restraint on powers of the court to grant bail to such an accused because it was held by the Hon'ble Supreme Court in the above said case that these conditions have to be reasonably construed for deciding the question of grant of bail to an accused under the PMLA. Judgments in the cases of **Anil Vasantrao Deshmukh Vs. State of Maharashtra, 2022 SCC OnLine Bom 3150, Sanjay Pandey Vs. Directorate of Enforcement, 2022 SCC OnLine Del 4279, Raman Bhuraria Vs. Directorate of Enforcement, 2023 SCC OnLine Delhi 657 and Chandra Prakash Khandelwal Vs. Directorate of Enforcement, 2023 SCC OnLine Del 1094** have also been referred to and relied upon by Ld. Counsel with a submission that the above findings of

the Hon'ble Supreme Court in case of **Vijay Madanlal Choudhary (Supra)** have even been applied in these cases while granting bail to the concerned accused.

9. Further, while referring to the time limits of scheduled offences case of CBI and of this case, it is also the contention of Ld. Counsel for applicant that though these cases were registered long back on 17.08.2022 and 22.08.2022 respectively, but the applicant was made to join investigation of this case for the first time only on 07.03.2023, while he was confined in judicial custody of the CBI case after having being arrested on 26.02.2023. It is further his contention that the second occasion on which the applicant was made to join investigation of this case from jail was on 09.03.2023 and on the same day, he was also arrested in this case by the IO and prior to that, during the period of nearly 7 months, even no notice for joining of investigation was given to or served upon the applicant and the very fact that a need for making him to join investigation of this case was not felt by the IO for such a long time is sufficient to show that he was not connected with commission of the alleged offence of this case. It is also the submission of Ld. Counsel that the applicant was arrested in this case only a day before hearing on his bail application in the scheduled offences case of CBI and it was with an apprehension that he may be granted bail and be released from

custody in the said case.

10. It is further the contention of Ld. Counsel for applicant that no offence U/S 3 of the PMLA is made out against the applicant as all the allegations being levelled against him by the ED, at the most, can project him as a member of the criminal conspiracy in furtherance of which the offences of CBI case have been committed and these allegations do not show him to have been involved in the alleged offence of money laundering, as defined by Section 3 of the said Act. It is the submission of Ld. Counsel that for involvement of applicant in this case, it is necessary that he was knowingly involved in any process or activity connected with proceeds of crime, including its concealment, possession, acquisition, use and projecting or claiming it as untainted property, whereas the evidence collected by ED so far nowhere shows that the applicant was knowingly so involved in any of such activities. While referring to the observations made by the Hon'ble Supreme Court in para no. 269 of the case of **Vijay Madanlal Choudhary (Supra)**, it is also the contention of Ld. Counsel that the offence of money laundering defined by Section 3 of the PMLA is an independent offence from the scheduled offences committed under the other Acts and scope and ambit of such offences are entirely different and even if some evidence is there to show involvement of the applicant in

commission of scheduled offences of the CBI case, he does not *ipso facto* become an accused in this case of ED and there cannot also be overlapping of allegations and investigations in these two cases. It is submitted that the allegations being made against the applicant clearly show that the same set of witnesses and evidence is being referred to and relied upon against the applicant in both these cases, which is not permissible under the law.

11. The next contention of Ld. Counsel for applicant is that even if the statements made U/S 50 of the PMLA by the witnesses and co-accused are held admissible in evidence against the applicant, it does not mean that bail can be refused to the applicant simply on the basis of said statements as except these statements, there is no other evidence on record against the applicant to substantiate the allegations contained in these statements. It is also submitted that the statements of co-accused constitute a weak piece of evidence and should not be considered and relied upon in absence of support from any independent evidence. Judgment in case **Surinder Kumar Khanna Vs. Intelligence Officer, Directorate of Revenue Intelligence, (2018) 8 SCC 271** is also relied upon in this context. It is also his submission that even statements of some of these witnesses and co-accused are in the nature of hearsay evidence and hence, the same cannot be considered and made a

ground for denying bail to the applicant. Judgments in the cases of **Mohd. Hussain Vs. State (Govt. of NCT of Delhi), (2012) 2 SCC 584** and **A. Tajudeen Vs. Union of India, (2015) 4 SCC 435** have also been relied upon by the Ld. Counsel in support of his submission that even otherwise, the acid test for liability of such statements of witnesses should be the test of cross examination, which the witnesses have yet to undergo. Again, certain observations made in the cases of **Anil Vasantrao Deshmukh (Supra), Chandra Prakash Khandelwal (Supra), Raman Bhuraria (Supra) and Rohit Tandon Vs. Directorate of Enforcement, (2018) 11 SCC 46** have also been referred to and relied upon by Ld. Counsel for applicant in support of his submission that such statements of official witnesses in the absence of any admissible or acceptable evidence to show involvement of applicant in the alleged offence of money laundering cannot be made a ground to deny bail to him as these bureaucrats did not raise their concerns with the competent authorities at the relevant time and they choose to make some allegations against the applicant only when they stood transferred from Delhi. It is further his submission that the statements of such bureaucrats are self serving statements and keeping in view the role played by them, they should also have been implicated as accused in this case by the ED and not cited as witnesses.

12. The next contention of Ld. Counsel for applicant is that though the prosecution is heavily relying upon the statements of approver Sh. Dinesh Arora made in the CBI case and also upon his statements made U/S 50 of the PMLA in this case, but even the contents thereof fail to make out any case of involvement of applicant in the present case as the approver had not made any claims in his above statements regarding the connection of applicant with any of the activities relating to possession, acquisition or use etc. of the proceeds of crime generated through the scheduled offences case. It is his submission that at the most the statements of approver show the role of applicant in relation to his genuine political activities and though the approver claimed in his statement that the applicant facilitated the transfer of some license in name of M/S Indospirits, but his above act has no connection with the alleged proceeds of crime generated by the said firm. It is also submitted by Ld. Counsel that even otherwise, it further came on record through the statement made U/S 164 Cr.P.C. by the approver that the above transfer of license was approved as per law by the then Commissioner, Excise Sh. Rahul Singh. It is further his submission that all these allegations are not relevant in the present case of ED even though they may have some relevancy in the CBI case. It is also submitted that even the statements made by the co-accused Arun Ramchandran Pillai (accused in both the cases) and Butchibabu Gorantla (accused

in CBI case, but a witness in this case) are equally unreliable and the same also cannot be made basis to implicate the applicant in present case or to connect him with the alleged offence of money laundering. It is further his submission that even otherwise, these statements are not admissible in evidence as the same do not find any corroboration from any other independent evidence and are also vague in nature and moreover, the applicant had come to know that the co-accused Arun Ramchandran Pillai had even retracted his alleged statement.

13. It is further the contention of Ld. Counsel that the act of framing of above excise policy of the GNCTD was the collective act or responsibility of the Cabinet and it is beyond the competence as well as jurisdiction of this court to entertain a challenge to the said competency and wisdom of the Cabinet in framing of the policy. It is also his submission that all the allegations being levelled by prosecution about intentionally keeping some loopholes or lacunae in the policy with some ulterior motives and designs are baseless allegations and the same are not corroborated by any reasonable evidence as the policy was framed in a transparent manner and it had gone through several independent checks and balances before it came to be finalised and was made public. While referring to the different processes and dates relevant in respect to

formulation of the said policy and the documents filed along with this bail application, it is also the contention of Ld. Counsel that the policy was duly approved by the Planning, Finance as well as Law Department of the GNCTD and it even got approval of the Hon'ble Lt. Governor before it came to be notified. It is stated that even some modifications suggested by the Hon'ble Lt. Governor were duly incorporated in the policy before it was made public and brought in force and the clause of 12% profit margins for the wholesalers in policy was duly approved by the Hon'ble Lt. Governor. Further, it is also the contention of Ld. Counsel that increase of profit margins from 5% to 12% was supported by valid reasons, deliberations and consideration. It is also submitted that even the modification suggested by the Hon'ble Lt. Governor regarding extension of application of the amended definition of term 'related party' was accepted and followed. It is further the contention of Ld. Counsel that the policy even stood through the tests and scrutiny in some petitions filed by different stakeholders before the Hon'ble High Court in connection with application or interpretation of provisions thereof.

14. The next contention of Ld. Counsel for applicant is that the report or recommendations of the Expert Committee led by Sh. Ravi Dhawan, the then Excise Commissioner of GNCTD, in relation to formulation of the said policy was/were never

binding upon the Group of Ministers (GoM) or the GNCTD and hence, no offence even of the scheduled offences case can be said to have been committed by the applicant in not agreeing to or in not accepting certain recommendations of the said committee. It is also his submission that even non-inclusion of opinions allegedly given by some legal experts in the report of GoM was not an act of criminality on the part of applicant as these legal opinions were obtained by some private retailers for some vested interests and reasons and the same were not necessarily required to be included in the GoM report and were not binding upon the GoM or the GNCTD. It is submitted that even if some criminality is attributed to the applicant for non-inclusion of the above legal opinions or non-consideration or acceptance of recommendations of the Expert Committee, then it is not the subject matter of investigation of the present case as these allegations are not at all relevant with reference to the offence of money laundering defined by Section 3 of the PMLA and at the most, these can be subject matter of the scheduled offences case.

15. It is further the contention of Ld. Counsel that the allegations being made by prosecution that co-accused Vijay Nair was a representative of this applicant or that Vijay Nair received the above kickback amount of Rs.100 crores from the South liquor lobby on behalf of this applicant are totally false

and baseless allegations as there is no evidence at all on record to suggest this fact. It is also his submission that even the alleged statements of co-accused Arun Ramchandran Pillai and witness Butchibabu Gorantla to this effect are not corroborated by any satisfactory piece of evidence and the same are very vague and uncertain and the statements of approver Dinesh Arora also fail to show that the co-accused Vijay Nair participated in the said meetings or took part therein or he accepted the alleged kickback amount on behalf of this applicant.

16. It is also the submission of Ld. Counsel for applicant that even the allegation of prosecution relating to grant of wholesale license to M/S Indospirits by the excise office of GNCTD at the instance of this applicant is a false and baseless allegation as the statements allegedly made by the witnesses Sh. C. Arvind, the then Secretary to the applicant, Sh. Arava Gopi Krishna, the then Assistant Excise Commissioner and the approver Dinesh Arora etc. are self serving and unreliable statements and the same are not corroborated by any independent material. It is also his submission that even otherwise, these statements can only show that the applicant asked these persons not to do anything in violation of any rule or law or to process the application of M/S Indospirits as per law. It is further the contention of Ld. Counsel that even the

allegations being made by prosecution regarding the role played by applicant in appointment of M/S Indospirits as a wholesale distributor for the liquor brands of M/S Pernod Ricard are totally baseless allegations and the applicant has nothing to do with the same and the alleged statements of witnesses or of some co-accused to this effect are also false and unsubstantiated statements and these are not admissible in evidence.

17. The next contention of Ld. Counsel for applicant is that the applicant fully satisfies the triple test as laid down by the Hon'ble Supreme Court in the well known case of **P. Chidambaram Vs. CBI, (2020) 13 SCC 337** and there are also no genuine or reasonable chances of his absconding from trial or tampering with or destruction of evidence or of influencing the witnesses, as is being alleged by the prosecution, because there is no evidence or material to substantiate such apprehensions. It is further the submission of Ld. Counsel that only vague apprehensions to this effect being expressed by prosecution would not meet the strict standards laid down to this effect, as was also held in the case of **Sanjay Chandra Vs. CBI, (2012) 1 SCC 40**. It is also his submission that even the allegation of destruction or tampering with the file of excise office regarding the Cabinet Note prepared in connection with formulation of the said policy is false and

except some inadmissible statements of witnesses to this effect, there is no other admissible evidence on record in the form of any dispatchment or movement register etc. of the said file to substantiate this allegation. It is further his submission that the applicant is not at all connected with the alleged voice recording found from the mobile phone of one Mahender Chaudhary for derailing of investigation of this ED case.

18. It is also the contention of Ld. Counsel for applicant that there is no likelihood of conclusion or even of commencement of trial of this case in near future because of the ongoing investigation and multiplicity of accused persons and hence, on this sole ground too, the applicant is entitled to be released on bail keeping in view the fact that he is in custody in this case since the date of his arrest i.e. 09.03.2023 and his further detention in case is also not at all required. Judgments in the cases of **Sanjay Agarwal Vs. Directorate of Enforcement, 2022 SCC OnLine SC 1748; Ramchand Karunakaran Vs. ED, Order dated 23.09.2022 in Crl. A. No. 1650/2022; Sujay U Desai Vs. SFIO, 2022 SCC OnLine SC 1507; Jainam Rathod Vs. State of Haryana, 2022 SCC OnLine SC 1522; Raman Bhuraria (Supra) and order dated 28.02.2023** of this court granting bail to some of the accused in the connected case of CBI titled as **CBI Vs. Kuldeep Singh** have also been referred to and relied upon by Ld. Counsel in

support of this submission.

19. Besides the above legal and factual submissions, it has also been submitted by Ld. Counsel for applicant that the applicant is a prominent political personality and he was not only the Dy. Chief Minister and Excise Minister of the GNCTD at the relevant time, but he was also holding charge of 17-18 other portfolios, including the Finance portfolio, and thus, his detention in custody for a longer period is not even otherwise in social or public interests. It has further been submitted that the applicant has deep roots in society and he is a resident of Delhi and thus, his chances of absconding from proceedings or trial of this case are not there. The medical condition of wife of the applicant has also been pleaded as an additional ground for grant of bail to him as it has been submitted that his wife is suffering from multiple scleorsis, which is a neuro-degenerative disorder, for the last around 22 years and she requires care, love and affection of the applicant.

20. Per contra, it is the contention of Ld. Spl. Counsel and Ld. SPP representing the ED that even though the scope and ambit of investigations of the scheduled offences case of CBI and of this case are entirely different and the offence of money laundering is independent of the scheduled offences alleged to have been committed by the applicant in the CBI case, but still

the applicant is not entitled to be released on bail in this case because the evidence collected during investigation of the case so far clearly shows his active involvement in commission of the offence of money laundering. It is also their submission that the offence of money laundering defined by Section 3 of the PMLA is of very wide reach and it takes in its sweep all the processes or activities which are connected with proceeds of crime, including its concealment, possession, acquisition, use and projection or claiming it as untainted property and sufficient evidence stands collected during the course of investigation conducted by the ED to show and establish the said connection of applicant with the proceeds of crime of the above scheduled offences case of CBI. It is also submitted by them that the offence of money laundering has otherwise nothing to do with criminal activities of the scheduled offences, except its relation to proceeds of crime derived or obtained as a result of that crime, as has also been held by the Hon'ble Supreme Court in para no. 269 of the judgment in case of **Vijay Madanlal Choudary (Supra)**. It is, thus, their submission that the investigation conducted by ED qua the applicant in this case is not investigation of predicate offences of CBI case as it relates to proceeds of crime generated through the said case and laundered through the activities of the present case. Judgments 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** have also been referred to and relied upon by them in support of their above said submissions and also the submission that since the offence U/S 120B IPC is an independent scheduled offence under the PMLA, the applicant has been rightly made an accused and arrested in this case as he was a part of the above criminal conspiracy and cartel resulting in generation or acquisition etc. of proceeds of crime of the above connected case of CBI. Apart from the judgment in case **Vijay Madanlal Choudhary (Supra)**, judgments/orders in cases of **P. Rajendran Vs. The Assistant Director, Directorate of Enforcement, Government of India, Crl. Original Petition No. 19880/2022 decided on 14.09.2022; J. Sekar Vs. Union of India & Ors., 2018 SCC OnLine Del 6523; Radha Mohan Lakhotia, Indian National and Citizen Vs. Deputy Director, PMLA, Directorate of Enforcement, Ministry of Finance, Department of Revenue, 2010 SCC OnLine Bom 1116 and Dr. Manik Bhattacharaya Vs. Ramesh Malik & Ors., 2022 SCC OnLine SC 1465** have also been referred to and relied upon in the given context. Further, judgment in case **M/s Doypack Systems Pvt. Ltd. Vs. Union of India & Ors.**, **(1988) 2 SCC 299** is also referred in support of the submission about wide ambit and scope of the words used in Section 3 of

the PMLA.

21. Regarding the twin conditions for grant of bail as contained U/S 45 of the PMLA, it is the contention of Ld. Spl. Counsel and Ld. SPP for ED that constitutional validity of the said conditions and Section has already been upheld by the Hon'ble Supreme Court in the case of **Vijay Madanlal Choudhary (Supra)** and hence, keeping in mind the rigors of these two conditions and the oral and documentary evidence collected by the investigating agency against this applicant, the applicant is not entitled to be released on bail in this case even if the said conditions are reasonably construed or interpreted by the court. Judgments in cases of **The Directorate of Enforcement Vs. M. Gopal Reddy & Anr., Crl. Appeal No. 534/2023 (SLP (Crl.) No. 8260/2021) decided by the Hon'ble Supreme Court vide judgment dated 24.02.2023; Union of India Vs. Varinder Singh @ Raja & Another, (2018) 15 SCC 248; Union of India Vs. Rattan Malik, (2009) 2 SCC 624** and various other judgments/orders of the Hon'ble Delhi High Court passed in different matters, as filed in the volume of judgments, on the issue of scope and applicability of provisions of Section 45 of the PMLA have also been referred to and relied upon on behalf of the ED.

22. It is also the submission of Ld. Spl. Counsel and Ld.

SPP for the ED that the evidence placed on record is sufficient to show that the applicant was architect of the above criminal conspiracy for commission of scheduled offences and as a result of said conspiracy, multiple activities were done by different conspirators resulting in generation or acquisition of proceeds of crime and of its concealment, possession, use and projection etc. and hence, involvement of applicant in these activities is clearly manifested and thus, prosecution has been able to show a genuine case of his involvement in the offence of money laundering and therefore, his bail application is liable to be dismissed. It is also their submission that even on appreciation of the evidence collected by ED in a broader sense or probability, the requirement of proving of a genuine case against the applicant stands satisfied as it was clearly held by the Hon'ble Supreme Court in the above said case of **Vijay Madanlal Choudhary (Supra)** that at the stage of bail, the standards of appreciation of evidence which are required to be applied should not be the standards applicable at the stage of charge or final appreciation of evidence and the words 'not guilty of such offence' used in Section 45 of the PMLA are only to be interpreted as meaning that the prosecution has been able to make out a genuine or reasonable case showing involvement of applicant in commission of the above offence of money laundering.

23. Further, highlighting the role of applicant from the statements recorded and other evidence collected during investigation, it is also the submission of Ld. Spl. Counsel and Ld. SPP for ED that the involvement of applicant in the above conspiracy has to be inferred from facts and circumstances of the case as reflected through the evidence collected so far and judgment in case of **State Vs. Nalini, (1999) 5 SCC 253** has been referred to in support of the submission that statements of co-conspirators made during the existence of conspiracy are admissible piece of evidence. It is also their submission that evidence on record clearly shows that the applicant was behind incorporation of the provision of 12% profit margin for the wholesalers, by raising it from 5% as recommended by the Expert Committee, and also for handing over the entire wholesale liquor business to private entities against the said recommendations as the Expert Committee had suggested a government control over the wholesale liquor business. It is further their submission that the GoM led by this applicant even ignored the comments or suggestions received from five legal luminaries, which were made a part of the draft cabinet note prepared by Sh. Rahul Singh, the then Excise Commissioner, and he managed to get prepared another draft note from the successor of Sh. Rahul Singh by certain manipulations and exercise of his influence, with the intents to achieve the objectives of the above criminal conspiracy. It has

been submitted that even file of the draft cabinet note prepared by Sh. Rahul Singh had gone missing under suspicious circumstances and the same has either been concealed or destroyed by or on instructions of the applicant so as to prevent the investigating agencies from exposing the role played by applicant and his other political colleagues and further to keep them away from a substantial piece of evidence. It is submitted that this tampering or destruction of an important piece of evidence is further a reflection on conduct of the applicant that he may even resort to similar acts and techniques resulting into destruction of evidence and influencing of the witnesses in case he is released on bail in this case.

24. It has also been submitted by them in opposition to the request for bail of applicant that the entire exercise of obtaining of public opinion on the draft policy or of the alleged checks and balances in processing policy through different stages was nothing but an eye wash to achieve the hidden agenda or objectives of the said conspiracy, as well as of the cartel which was permitted to be formed in pursuance thereof, to cause illegal benefits to the conspirators or members of the said cartel.

25. The next contention of Ld. Spl. Counsel and Ld. SPP for the ED is that some digital and other evidence has also been

collected by the investigating agency and placed on record to show as to how the GoM report was prepared or got prepared by the applicant from his Secretary and it is also clear from the said evidence that insertion of the clause pertaining to 12% profit margin for wholesalers in the GoM report was not backed by any discussions held in GoM or any data obtained from or provided by the excise department. It is further their submission that two different printouts of the GoM report have been recovered from the computers under control of the applicant and though in one report the profit margin of wholesalers is found stated as 5%, but in the other it has been stated as 12% and it was the applicant only who got the said document modified or amended without any discussions in or approval of the GoM. It is also submitted that the applicant had even been instrumental in amendment of definition of 'related party' in the draft policy, so as to ensure formation of a cartel between different stakeholders in liquor business to achieve objectives of the said conspiracy and repayment of the kickback amount to the South lobby. It is also stated that even the important clause pertaining to eligibility of wholesalers to apply for L-1 license was found to have been changed in this second GoM report from Rs. 100 crores per year to Rs. 500 crores per year. The above changes are alleged to have been intentionally made in the final GoM report with some ulterior motives on part of the applicant and other conspirators and to

benefit the South lobby and other stakeholders in liquor business. Some oral and documentary evidence is also stated to be there to show that e-copy of the above report before finalisation was shared with members of the South lobby.

26. It is also the contention of Ld. Spl. Counsel and Ld. SPP for ED that to ensure achievement of objectives of the above criminal conspiracy, 6% out of the above 12% profit margin of wholesalers was to be returned back to the South lobby through different modes or was to be paid as bribe to the politicians and other public servants in Delhi and sufficient oral and documentary evidence has also surfaced on record during the course of investigation to show the repayment of kickbacks or bribe as per objectives of the said conspiracy. It has been alleged that even the profit margin for retailers was intentionally kept on a higher side and the same was 185% and multiple retail vends in a single zone were also permitted to achieve objectives of the conspiracy.

27. The next contention of Ld. Spl. Counsel and Ld. SPP for ED is that the applicant had played a major role even in getting L-1 license by M/S Indospirits for liquor brands of M/S Pernod Ricard and it was done to ensure the repayment of kickback amount of Rs. 100 crores to the South lobby as the statements made by approver Dinesh Arora, Sh. C. Arvind, Secretary of

the applicant and some excise officials and other witnesses clearly show that the applicant through the co-accused Vijay Nair had ensured that the said license was granted to M/S Indospirits only, which is alleged to be the multi purpose vehicle for ensuring repayment of the kickbacks. Further, specific allegations of destruction of some other vital evidence have also been levelled against the applicant by Ld. Spl. Counsel and Ld. SPP by submitting that during the relevant period starting from formulation of the said policy till joining of investigation by him, the applicant produced only two mobile phones before the IO of this case, besides his one phone seized by the CBI, and he did not produce his other mobile phones used during the said period and it was done only to withhold relevant and incriminating evidence from the investigating agencies and to conceal his involvement in commission of the alleged offences. It has also been submitted that the applicant had even been found to be using the phones purchased in names of some other persons and he also used SIM cards subscribed by others to conceal his identity and involvement in commission of the alleged offences. It is submitted that since the applicant did not hand over all his mobile handsets to the investigating agencies, an inference is required to be drawn by this court that he is guilty of destruction of vital digital evidence which could have otherwise been found from the said phones.

28. It is further the contention of Ld. Spl. Counsel and Ld. SPP for ED that the applicant was directly associated with processes and activities connected with proceeds of crime of at least Rs. 292 crores approx. as besides the kickback amount of Rs. 100 crores received by the co-accused Vijay Nair on his behalf, he was also directly responsible for generation of proceeds of crime of around Rs. 192 crores in the form of profit margin of the wholesale entity M/S Indospirits as this firm was granted L-1 license and it came into existence only as a result of the acts and influence of this applicant and thus, he had played a vital role in generation, possession, concealment and projection and use etc. of the above said proceeds as untainted money. It is also their submission that even the alleged medical condition of wife of applicant is not a ground to enlarge him on bail in this serious case for the offence of money laundering.

29. It is also the contention of Ld. Spl. Counsel and Ld. SPP for ED that the statements U/S 50 of the PMLA as made by witnesses and even the accused prior to their arrest are very much admissible in evidence and have to be seen by this court for deciding the present bail application as the constitutional validity of such statements stands already upheld by the Hon'ble Supreme Court in case of **Vijay Madanlal**

Choudhary (Supra). It is also their submission that such statements stand on much better footing than the statements made U/S 161 Cr.P.C. or other related provisions. Judgment in case **Rohit Tandon Vs. Directorate of Enforcement (2018) 11 SCC 46** is also relied upon regarding evidentiary value of such statements and further, the judgment in case **Salim Khan Vs. Sanjai Singh & Anr. (2002) 9 SCC 670** is also being relied upon in support of the submission that even statements U/S 161 Cr.P.C. of witnesses are required to be considered for deciding the question of bail.

30. While rebutting the arguments advanced on behalf of ED, Sh. Dayan Krishnan, Ld. Senior Counsel for applicant has reiterated and reaffirmed most of the submissions made by Sh. Vivek Jain, Ld. Counsel representing the applicant and in addition thereto, he has also argued that in view of the protection against double jeopardy as guaranteed by Article 20 (2) of the Constitution of India and as contained U/S 26 of the General Clauses Act, 1897, the applicant cannot be prosecuted or punished twice for the same offence or for the two offences based on same set of facts and evidence. It is also his submission that in view of the above protection, further detention of applicant in custody in the present case is also not warranted as once he cannot be prosecuted and punished in this case because of his arrest and detention in the scheduled

offences case of CBI, there is no purpose behind keeping him in custody in this case of ED for any further duration.

31. It is also the submission of Ld. Senior Counsel that jurisdiction of the ED to register a case or ECIR for the offence U/S 3 of the PMLA arises only after the purpose of commission of scheduled offences is achieved or accomplished and prior to that, the present case/ECIR should not have been registered. He also referred to some observations made in para no. 253 of the Hon'ble Supreme Court decision in case of **Vijay Madanlal Choudhary (Supra)** in this context. It is also his submission that the applicant had even no knowledge of generation of any proceeds of crime out of the offences of CBI case. Further, while referring to the observations made in para no. 269 of the above said judgment, which have even been referred to on behalf of the ED, it is also the contention of Ld. Senior Counsel that evidence on record is not sufficient to show any connection of the applicant with the kind of activities mentioned in Section 3 of the PMLA and hence, the rigors of Section 45 of the said Act cannot be applied in the present case and bail cannot be denied to the applicant. Some observations made in para nos. 85 & 86 by the Hon'ble High Court in case of **M/S Prakash Industries Ltd. Vs. Union of India & Anr., W.P. (C) 13361/2018 decided by the Hon'ble High Court on 24.01.2023** have also been referred to in support of this

submission. It is further the contention of Ld. Senior Counsel that even judgments in the cases of **Padmanabhan Kishore (Supra), Tahir Husaain (Supra)** and **Mohan Lal (Supra)** being relied upon on behalf of the ED are not applicable in the present case.

32. It is also the submission of Ld. Senior Counsel for applicant that there was no cap on profit margins for wholesalers in the Expert Committee report and 5% stated as profit margin in the said report was the minimum and hence, enhancement of profit margins from 5% to 12% cannot said to be excessive, when out of this profit certain expenses were also to be borne by the wholesalers. It is further his submission that the applicant being head of the GoM and also the Excise Minister and Dy. Chief Minister of GNCTD had a right to differ from the recommendations made by the Expert Committee and no criminality should be attached to it as it was well within the official prerogative and competence of applicant, as well as the GNCTD, to accept, differ from or to discard the said report. It is also his submission that insertion of above clauses in the GoM report was duly backed by detailed deliberations and discussions in meetings of the GoM and moreover, since it was a policy matter, it cannot be subject matter of investigations by police or other agencies or of the judicial scrutiny and even if the same has been done, it should

come under the purview of scheduled offences case of CBI only.

33. Further, it is also the submission of Ld. Senior Counsel that besides satisfying the triple test, the applicant even meets all the other guidelines and criteria laid down from time to time by the Hon'ble Supreme Court as well as by the Hon'ble High Courts of different States. It is further his submission that even the allegations of destruction of evidence being levelled against the applicant by prosecution by way of destroying or not producing some of his mobile phones are vague and false allegations as the prosecution has first to show that the applicant was or had been in possession or use of the said mobile phones. It is also his submission that even otherwise, any inference about the same from the above facts cannot be drawn by this court at this stage of bail and the same can be drawn at the stage of trial only, if the prosecution brings on record some satisfactory evidence to show the existence of such mobile phones or possession of the applicant over these mobile phones.

34. It is also the submission of Ld. Senior Counsel that even the allegations being levelled by prosecution against applicant about destruction of evidence in the form of some file containing the cabinet note are false allegations and these

allegations have been made just to prejudice the mind of this court and merely the self satisfying statements made by some of the official witnesses to this effect should not be believed as there is no documentary evidence on record to substantiate the said statements.

35. As stated above, the applicant herein is an accused not only in this case of ED, but also in the scheduled offences case of CBI and he has been arrested by both the investigating agencies. Even his bail application in the CBI case stands already dismissed by this court vide a detailed order dated 31.03.2023, which clearly depicts and describes the vital role played by him in above criminal conspiracy and the cartel, which was intentionally permitted to be formed in pursuance of the said conspiracy and for achieving the objectives thereof. The bail applications of five other co-accused in this case namely Sameer Mahandru, P. Sarath Chandra Reddy, Vijay Nair, Abhishek Boinpally and Benoy Babu were also earlier dismissed by the court vide order dated 16.02.2023 and even bail application of one more co-accused namely Raghav Magunta has recently been dismissed on 20.04.2023.

36. The main objective of said conspiracy was to receive bribe or advance kickbacks from the South lobby or other stakeholders in liquor business for extending some undue

favours to them and to ensure payment of 6% out of the above 12% profit margin kept for wholesalers, either towards repayment or recoupment of the advance kickback amount of Rs. 100 crores paid by the South lobby or as bribe to the politicians and other public servants in Delhi. The relevant observations made by this court in its above order about the nature of allegations made, the evidence collected against the applicant and his role etc. are being reproduced herein below:-

> **"30. Coming to facts of the present case and the role played by applicant, it has already been discussed that the applicant was not only the Deputy Chief Minister of GNCTD at the relevant time, but he was also the Excise Minister and further, headed the GoM constituted by the Council of Ministers, GNCTD in connection with finalization of the said policy. Investigation conducted into the case so far has revealed that the Expert Committee headed by the then Excise Commissioner Sh. Ravi Dhawan for formulation of the new excise policy of Govt. for the year 2021-22 was constituted by the Delhi Govt. on 04.09.2020 and it gave its report on 13.10.2020. The major recommendations made by the Expert Committee are stated to have been for a Govt. corporation owned wholesale model and allotment of maximum two shops per person through lottery system. However, it has been observed from the statements of witnesses recorded and documentary evidence collected during the course of investigation that the said recommendations of the Expert Committee were not as per likings of the present applicant and his other colleagues, who were bent upon to frame a particular kind of excise policy leaving entire liquor trade in hands of private players for some monetary benefits and political reasons. Hence, it is being alleged by the CBI that the said Excise Commissioner was got transferred by the applicant on 29.10.2020 and in his place Sh. Rahul Singh was made the new Excise Commissioner and after sleeping over the report of the Expert Committee for around 2½ months, the same was put in public domain on 31.12.2020 by the new Commissioner, as per directions of the applicant, to invite comments and suggestions to the same and it remained in public domain till 21.01.2021.**

31. It has also emerged during the course of investigation that on 21.01.2021 itself, the applicant had called Sh. Rahul Singh at his residence in the evening and on being shown the file containing comments/suggestions received from the public and stakeholders in liquor trade, he handed over a printed draft note to Sh. Rahul Singh and directed him to prepare a Cabinet Note exactly on the same lines, while further informing Sh. Rahul Singh that a GoM headed by him was to be constituted vide Cabinet meeting proposed to be held on 28.01.2021 and the said GoM will give certain directions to the Excise department in connection with restructuring of the excise policy and Delhi will be divided into several zones and auction will be held for the retail zones. The applicant also expressed his displeasure to the Expert Committee report and directed Sh. Rahul Singh to prepare the above note to be presented before the Cabinet on 28.01.2021 with the comments received from the stakeholders/public. Though Sh. Rahul Singh expressed his reservations on modifying the Expert Committee report on such large scale, by the applicant told him that he need not worry as directions for such restructuring will come from the GoM. Further, a soft copy of the above draft note is also found to have been sent by an official from the office of applicant on mobile phone of Sh. Rahul Singh.

32. Investigation conducted by the CBI further reveals that Sh. Rahul Singh had then got prepared a Cabinet Note through his subordinates by forwarding the soft copy of said note to the then Assistant Commissioner (Policy) and it was prepared by the then dealing assistant, in name of the then Additional Secretary, Chief Minister Office and GAD, having additional charge of the Finance Department in absence of the regular Secretary (Finance), and soft copies of the said note as well as notings received on his mobile phone were approved by Sh. Rahul Singh on 28.01.2021, as he was on leave on that day due to hospitalization of his wife. Thereafter, the file containing hard copies of the note as well as notings was brought to Sh. Rahul Singh by the dealing hand in hospital, after it was approved by the then Deputy Commissioner, Excise, and after signing it, Sh. Rahul Singh had marked the said file to the present applicant, through the then Additional Chief Secretary looking after work of their department. The said file was then physically taken by the dealing assistant as well as by the then Assistant Commissioner (Excise) to the camp Office of Chief Minister and it was handed over to the then Additional Secretary, Chief Minister Office and GAD, who in turn further handed it over to the present

applicant, as a Cabinet meeting was scheduled to be held there in the second half of 28.01.2021, though no matter of excise was formally fixed in agenda of the said meeting circulated on 27.01.2021.

33. Since as per instructions conveyed by Sh. Rahul Singh, not only the comments received from general public/stakeholders were incorporated in the said Cabinet Note by the officials of Excise department, but they had also incorporated and annexed therewith certain comments received from three legal luminaries, which they are stated to have given on requests of some local liquor retailers. As the above Cabinet Note got prepared by Sh. Rahul Singh was not as per the format delivered to him by the applicant or liking of the Cabinet, the same was not considered by the Cabinet and investigation further reveals that even the fate of said file of Excise department handed over to the applicant is not known as it was neither returned back to above officials of the department waiting outside at end of the meeting nor sent back to the Excise office lateron and it is alleged by CBI that the same has been destroyed by the applicant as it did not suit their intents and designs. Apart from the statements of all above witnesses concerned with preparation of the note and handing over of the file, digital evidence in the form of exchange of documents and informations through their mobile phones has also been collected by the investigating agency in support of above allegations.

34. Investigation has also revealed that the applicant got annoyed with Sh. Rahul Singh as he did not get prepared the Cabinet Note as per the draft handed over to him by the applicant and further as he got incorporated the opinion of legal experts also in the said note, along with Expert Committee report and the comments/feedback of public/stakeholders. Sh. Rahul Singh in his statement has even claimed that in the evening of 28.01.2021, he was telephonically scolded and threatened by the applicant to be removed from the post of Excise Commissioner and he was even got removed from the said post subsequently on 02.02.2021 and in his place, Sh. Sanjay Goel joined as the new Excise Commissioner.

35. It is also the case of prosecution that the applicant then got prepared a fresh Cabinet Note with the help of Sh. Sanjay Goel and though the said note contained the Expert Committee recommendations as well as the comments/feedback received from the public/stakeholders, but as per instructions of the

applicant, opinions given by the legal experts were not incorporated in or forwarded with the said report and this note was ultimately put up before the Cabinet on 05.02.2021 with a pre-conceived notion to bring about changes in the retail and wholesale models of the excise policy in total variance to the model, which was suggested by the Expert Committee. The decision to constitute GoM is also stated to have been taken by the Cabinet in this meeting, though GoM actually came to be constituted on 09.02.2021.

36. It has also been alleged by CBI that though few meetings of the GoM were held in the month of February, 2021 and various types of records and data were sought from the Excise department and considered by the GoM, but no record of such discussions or considerations of the GoM meetings has been maintained and the GoM acted in a disguised manner as no minutes of meetings of the GoM were being prepared. It is alleged that there was a lull period thereafter and no further meetings of the GoM were held till 22.03.2021.

37. It is also the case of prosecution that during this period, the co-accused Vijay Nair was very active and he was acting as per instructions of this applicant and his other colleagues and he was constantly in touch with different stakeholders in liquor business, to help them in getting prepared a favourable excise policy, and he had demanded a huge illegal gratification in advance for the said purpose. It is stated that certain Whatsapp chats and other records collected during the course of investigation have revealed that some persons, who were part of the South liquor lobby, had planned 2-3 visits to Delhi for tweaking and freezing of the excise policy and they had stayed in Hotel Oberoi during the period from 14.03.2021 to 17.03.2021 and even the co-accused Vijay Nair had met them on 16.03.2021 and they had used the business centre of the hotel for taking print out of some document(s), which allegedly consisted of 36 pages and is being claimed to be the draft of GoM report.

38. It is also being alleged that a draft of the GoM report dated 15.03.2021 has been recovered from computer of the applicant in which there were provisions for 5% profit margin for wholesalers and eligibility criteria of turnover of Rs.100 crores only, but another draft of the GoM Report dated 18.03.2021 is also stated to have been recovered from the computer kept in conference hall of

the office of applicant and it has been observed that the above two provisions in this draft are entirely different from the earlier draft dated 15.03.2021, as instead of profit margin of 5% for the wholesalers, this draft GoM report recovered from the computer kept in conference hall of the office of applicant contains a provision for 12% profit margin and even the eligibility criteria for wholesalers in this draft is found enhanced to Rs. 500 crores from Rs. 100 crores. Again, specific oral and documentary evidence is also alleged to have been collected during the course of investigation to show that on 18.03.2021, a hard copy of the GoM report was given by the applicant to his Secretary for typing it on the computer kept in conference hall of his office and the said typing was completed during the night of 18/19.03.2021 and recovered copy of GoM report from this computer shows that the file thereof was finally amended at 10.28pm on 19.03.2021. It is the case of prosecution that the above provisions were inserted in the GoM report at the instance of this applicant and his other colleagues in Govt. and these were inserted in the said document, without there being any discussions or deliberations on these provisions in the meetings of GoM and the oral as well as documentary evidence collected so far also *prima facie* corroborates this allegation. It is being alleged that this was done only because the co-accused Vijay Nair had managed to receive advance kickbacks of around Rs. 90-100 crores from the South liquor lobby for getting these favourable provisions inserted in the GoM report and the excise policy ultimately to be prepared on its basis and for formation of monopoly and cartel between different stakeholders in liquor business in Delhi to ensure repayment of kickbacks to the South lobby.

39. Further, the investigation conducted so far also suggests that no documents or data existed in the Excise department about and even no inputs were provided by them to the applicant or to the GoM for incorporation of the above two clauses relating to 12% profit margin for the wholesalers and the eligibility condition or criteria of annual turnover of Rs. 500 crores and there are specific statements made by the then Excise Commissioner as well as some other witnesses to this effect. This is equally true with regard to clauses incorporated in the GoM as well as the excise policy for division of Delhi in 32 retail zones and there being 27 vends in each zone and rather, the statement made by the then Excise Commissioner suggests that he had expressed his reservations to the applicant about the clause for providing 27

retail vends in a single retail zone. Again, no study or deliberations are also found to have been conducted about the provision for providing of rebates on MRPs of different liquor brands by the retailers and all the above facts coupled with the exchange of provisions of draft GoM reports dated 15.03.2021 and 18.03.2021 through Whatsapp by different co-accused, which ultimately were found incorporated in the final GoM report dated 22.03.2021, are alleged to be clear indications of existence of the above criminal conspiracy hatched between the applicant and other co-accused for favouring the South lobby against payment of advance kickbacks of around Rs. 90-100 crores paid by the said lobby and also the vital role played by the applicant in achieving objectives of the said conspiracy.

40. Apart from the above, there are also clear and specific allegations made by prosecution against this applicant that it was only at his instance that the L-1 licence of liquor brands of M/S Pernod Ricard was granted to the firm M/S Indospirits belonging to the co-accused Sameer Mahandru, in which two representatives of the South lobby namely the co-accused Arun Ramchandran Pillai and Sh. Prem Rahul Manduri were inducted as partners of 32.5% stake each. Admittedly, the above L-1 licence was initially applied by another company belonging to the above co-accused Sameer Mahandru and named M/S Indospirits Marketing Pvt. Ltd. and some complaint was filed with the Excise department alleging the formation of a cartel in the liquor business. There are specific statements made by the then Excise Commissioner and other witnesses to the effect that the present applicant had telephonically called the Excise Commissioner personally, as well as through his Secretary, and influenced him to grant L-1 licence to M/S Indospirits, in whose name the said licence was applied afresh to counter the said complaint and also some other litigation on the issue pending before the Hon'ble High Court.

41. Again, there is sufficient oral and documentary evidence collected by the investigating agency to show that this applicant was also instrumental in getting surrendered the L-1 licence of M/S Mahadev Liquors by extending threats through the approver Sh. Dinesh Arora and the co-accused Amit Arora and by forcing closure of certain manufacturing units of the said licensee and some other persons related to owners thereof by exercising influence upon the Excise department of Punjab, where also AAP was ruling, and this was done as the said licensee was not acceding

to the demands for payment of bribe equivalent to 6% of their profit margin, out of 12% profit margin kept for them under the above said excise policy.

42. Further, specific allegations are also there against the applicant as to how in one of the meetings of GoM dated 05.04.2021, they changed the definition of term 'Related Party' on their own by going against the definitions of similar terms appearing in some other Statutes and this was also done apparently to achieve the objectives of said criminal conspiracy and for permitting the formation of cartels between different stakeholders in liquor business to ensure repayment of advance kickbacks and payment of bribe to the public servants.

43. Apart from all the above, there are also serious allegations made against the applicant that he tampered with evidence of this case by destroying some of his mobile phones, which were containing vital informations and documents in the form of digital evidence in respect to the above policy formulation and conspiracy entered into between the accused persons. It has been alleged that during the relevant period commencing from the date when this matter was referred to CBI by the Hon'ble Lt. Governor for inquiry and registration of a criminal case and till the date he was made to join investigation of the case, he possessed and used four different mobile handsets, out of which he had produced only one handset before the IO and has, thus, withheld three other handsets and the CBI has serious apprehensions that the same have been destroyed by him with a clear intent to cause destruction of the digital evidence contained therein about existence of the said conspiracy as well as the participation of various accused, including him, in the said conspiracy.

44. Thus, it is clear from the above discussion that the applicant had played the most important and vital role in the above criminal conspiracy and he had been deeply involved in formulation as well as implementation of the said policy to ensure achievement of objectives of the said conspiracy. The payment of advance kickbacks of around Rs. 90-100 crores was meant for him and his other colleagues in the GNCTD and Rs. 20-30 crores out of the above are found to have been routed through the co-accused Vijay Nair, Abhishek Boinpally and approver Dinesh Arora and in turn, certain provisions of the excise policy were permitted to be tweaked and manipulated by the applicant to protect and preserve

the interests of South liquor lobby and to ensure repayment of the kickbacks to the said lobby. The evidence collected so far clearly shows that the applicant through the co-accused Vijay Nair was in contact with the South lobby and formulation of a favourable policy for them was being ensured at every cost and a cartel was permitted to be formed to achieve monopoly in sale of certain liquor brands of favoured manufacturers and it was permitted to be done against very objectives of the policy. Thus, as per allegations made by prosecution and the evidence collected in support thereof so far, the applicant can *prima facie* be held to be architect of the said criminal conspiracy."

37. Thus, it emerges out from above that the applicant herein was not only an architect of above criminal conspiracy, but also the brain behind insertion of clauses of 12% profit margin for wholesalers and of enhancement of eligibility criteria for wholesalers from Rs. 100 crores to Rs. 500 crores. Further, it also appears that he was responsible for keeping profit margin for retailers on a higher side i.e.185%. It also emerges out from the above that all this was done without any discussions and due deliberations in the meetings of GoM and even the concerned department of excise was not taken into confidence before doing it and no records, report or data etc. was gathered or called from the said department before introducing the above clauses in the GoM report, which ultimately came to be incorporated in excise policy of the government for the above said year.

38. It further emerges out from the above that even definition of the term 'related party' was changed in a meeting

of the GoM, which is alleged to have been called on 05.04.2021 i.e. after the report given by the GoM on 22.03.2021 was placed before the Council of Ministers on same day and it was directed to be implemented, and this definition adopted in the above said meeting of GoM dated 05.04.2021 was quite at variance and in contrast to the similar definitions of the terms 'sister concern' or 'related entities' appearing in some other Statutes like The Companies Act, 2013, The Income Tax Act, 1995 and The CGST Act, 2017 etc. It has been alleged that this was done only to permit formulation of cartel and monopoly between different stakeholders in liquor business, in violation of provisions of the said policy and to achieve the objectives of above conspiracy.

39. It further emerges out from the above that this applicant was responsible for changing the GoM report unilaterally to suit the requirements of South lobby as the draft GoM report is also alleged to have been shared with members of the South lobby staying in Oberoi Hotel, New Delhi during the relevant period and another GoM report containing the above favourable clauses was got prepared by the applicant as per wishes and desires of the members of said lobby. Some specific evidence to this effect in the form of statements of witnesses Sh. C. Arvind, Secretary to the applicant, Sh. Rahul

Singh, the then Excise Commissioner and his successors namely Sh. Sanjay Goel and Sh. Arava Gopi Krishna etc., some digital evidence regarding amendment/modification of the above GoM report from the computer under control of the applicant and also the evidence about a bill of Oberoi Hotel and some Whatsapp chats between the witnesses Butchibabu Gorantla and some other persons is stated to be there on record to this effect.

40. Further, the role played by applicant in grant of L-1 license to the alleged multi purpose vehicle or firm in the name of M/S Indospirits, in pursuance of above conspiracy for formation of the cartel, is also clear from the above allegations and observations of the court made in the scheduled offences case and it has been submitted on behalf of the ED that the said firm was able to earn huge profits of around Rs. 192 crores during the short duration of around 8-9 months of operation of the said policy against nominal investments by partners thereof. It is stated that the same had happened only due to the acts committed by this applicant as he was instrumental in issuance of L-1 license by influencing the officials of excise office, directly or through the co-accused Vijay Nair, and thus the above profits earned by the said firm as a result of the above cartel and conspiracy are nothing, but proceeds of crime generated because of activities of this applicant. It is also

visible from the above that the applicant through the co-accused Vijay Nair had even played an important role in giving distributorship of its liquor brands by M/S Pernod Ricard to M/S Indospirits and besides the other evidence, the statements of co-accused Benoy Babu and witness Sh. Manoj Rai etc. are also being referred to and relied upon in this context.

41. Again, there are specific statements made by the co-accused Arun Ramchandran Pillai, Amit Arora, approver Dinesh Arora and the witness Butchibabu Gorantla etc. to the effect that the co-accused Vijay Nair was participating in the meetings held with representatives of the South lobby in connection with formulation of the above excise policy at the behest of this applicant only and it has, thus, been rightly claimed on behalf of the ED that *prima facie* even the above kickback amount of Rs. 100 crores was paid to co-accused Vijay Nair by the South lobby for this applicant only as well as his other colleagues in the GNCTD as the co-accused Vijay Nair represented them in the said meetings and during formulation of the policy. Further, the statements of approver Dinesh Arora dated 01.10.2022 and 30.12.2022, CDR analysis of his mobile number and that of the mobile numbers of co-accused Rajesh Joshi and one Lupin, who is cousin of co-accused Abhishek Boinpally, and some other digital evidence found from the phone of one Sh. Mahender Chaudhary, who is

claimed to be a close associate of co-accused Vijay Nair, are also being referred to and relied upon on behalf of the ED to show that the advance kickbacks of at least Rs. 20-30 crores, out of the above Rs. 100 crores, were transferred to the co-accused Vijay Nair *via* hawala channels by members of the South lobby through the approver Dinesh Arora only.

42. As discussed above, the bail application of this accused in the above connected case of CBI was earlier dismissed almost on the similar set of facts and evidence brought on record and this evidence consisted of the statements of approver Dinesh Arora made U/S 161, 164 and 306 Cr.P.C., the statements made by the other witnesses U/S 161 Cr.P.C. and even by some of the co-accused under that provision and prior to their arrest in the said case. This oral evidence was besides the digital or other documentary evidence collected by CBI in the said case. However, as far as this case of ED is concerned, all such oral evidence in the form of statements made by the above witnesses and co-accused is in the shape of their statements made U/S 50 of the PMLA, apart from some statements of approver made under different provisions of Cr.P.C. in the CBI case and being relied upon in this case also, and there is no doubt that the statements made U/S 50 of the PMLA stand on a much higher footing than the unsigned statements of the witnesses made to or before the police

officers U/S 161 Cr.P.C. as the said statements U/S 161 Cr.P.C. have only limited use as per provisions of Section 162 of the said Code and the same can be used only for the purposes of corroboration or contradiction in the manner stated in the said Section itself. However, still such statements made U/S 161 Cr.P.C. of the witnesses are taken into consideration by the court for deciding the question of grant of bail to a person accused of commission of any offence under the IPC or other penal enactments not containing any such special provisions for recording of statements of such witnesses i.e. like Section 50 of the PMLA. Judgment in case of **Salim Khan (Supra)** and various other judgments of the Hon'ble Supreme Court and different Hon'ble High Courts lay down the above proposition of law and as far as the special enactment of PMLA is concerned, it has also been consistently held that such statements of the witnesses, and even of accused made prior to their arrest, as made U/S 50 of the said Act are admissible in evidence and the same constitute an important piece of evidence during the trial. It is so because such statements are recorded by the ED officials who are not police officers and even the statements of accused recorded under the above provision by them prior to their arrest are not hit by provisions contained U/Ss 24 to 26 of the Indian Evidence Act, though after their arrest the same may be hit by Article 20(3) of the Constitution. Hence, there is no doubt that the

statements made U/S 50 of the PMLA by the above witnesses and even by the above co-accused prior to their arrest can be seen by this court for the purposes of deciding the present bail application. Moreover, as already discussed, such statements do find sufficient corroboration from the digital and other documentary evidence collected during the course of investigation.

43. Even during the course of arguments on bail applications of the above five co-accused Sameer Mahandru etc., similar objections regarding admissibility of such statements were raised by Ld. Senior Counsels/Counsels representing them and on the basis of observations made by the Hon'ble Supreme Court in the case of **Vijay Madanlal Choudhary (Supra)** holding constitutional validity of these statements *vis-a-vis* the provisions contained under Article 20(3) and 21 of the Constitution of India, the said contentions of Ld. Counsels were rejected by this court vide its above order dated 16.02.2023 with the following observations:-

> **'139. Further, though it has also been argued by Ld. Counsels for the accused that mere statements of accused and witnesses made U/S 50 of the PMLA cannot be relied upon to deny bail to the accused persons, but as already discussed, the statements U/S 50 of the said Act have been held to be admissible under the law and also to be having evidentiary value and even in the case of Vijay Madanlal Choudhary (Supra), the constitutional validity of the said statements has been reiterated and affirmed, while holding that the same cannot be equated with statements U/S 67 of**

the NDPS Act, which in cases investigated by the police are recorded by the police officers and thus, are hit by provisions contained U/Ss 24 to 26 of the Indian Evidence Act and the law laid down in the case of Tofan Singh Vs. State of Tamil Nadu, 2020 SCC OnLine SC 882. Ld. Special Counsel and Ld. SPP for ED in this context have also referred to the observations made by the Full Bench of the Hon'ble Supreme Court in case of Rohit Tandon (Supra) in support of their submission that such statements of witnesses and accused, which may not be hit by Article 20 (3) of the Constitution, have to be considered by this court as it is for the purposes of disposal of the bail pleas of the accused. The said observations are being reproduced as under:-

> **"31. …..... The prosecution is relying on statements of 26 witnesses/accused already recorded, out of which 7 were considered by the Delhi High Court. These statements are admissible in evidence, in view of Section 50 of the Act of 2002. The same makes out a formidable case about the involvement of the appellant in commission of a serious offence of money-laundering. It is, therefore, not possible for us to record satisfaction that there are reasonable grounds for believing that the appellant is not guilty of such offence."**

140. Hence, in view of the above submission made on behalf of ED and the observations made in case of Rohit Tandon (Supra), the statements of witnesses made U/S 50 of the PMLA and even the statements of accused made prior to their arrest have to be seen and considered by this court for deciding the question of grant of bail, even if it may not be subsequently feasible to base a conviction simply on the basis of such statements. Moreover, in the instant case, apart from the above statements of accused and witnesses, some documentary evidence in the form of and including Whatsapp chats, cell locations, record of bank transactions relating to transfer etc. of proceeds of crime, hotel meetings held between the accused at different places and some digital data and other records of the entities belonging to the accused persons is also there on record to substantiate the contents of these statements to a considerable extent. Besides the above, the statement of approver Sh. Dinesh

Arora in the scheduled offences case is another piece of incriminating evidence throwing light upon the entire *modus-operandi* adopted by the accused persons for commission of the said offence and even this statement of the approver to some extent tends to corroborate the other oral and documentary evidence which has been collected and placed on record by the investigating agency. The judgments in cases of Mrinal Das & Ors. (Supra) and Ravinder Singh (Supra) being relied upon on behalf of accused Abhishek Boinpally on this issue are found to be not of any help to the case of accused persons. Therefore, even this contention of Ld. Defence Counsels is not found legally tenable.'

44. Again, while dismissing the bail application of another co-accused Raghav Magunta vide its order dated 20.04.2023 also, this court had again reiterated the above observations while dealing with similar submissions made by Ld. Senior Counsel representing the said accused and some further observations were also made on this issue and the propositions of law laid down by the Hon'ble High Court in its recent common judgment dated 06.04.2023 passed in bail applications of co-accused Satyendar Kumar Jain etc. in another case of ED were also quoted. The said observations of this court as made in the above order dated 20.04.2023 are also being reproduced herein below :-

"49. Coming to the arguments of Ld. Senior Counsel regarding admissibility of the statements made U/S 50 of the PMLA by the witnesses as well as the co-accused, it is now settled that the statements made U/S 50 of the PMLA are not to be equated with statements made U/S 37 of the NDPS Act (Narcotic Drugs and Psychotropic Substances Act, 1985) or Section 161 of the Cr.P.C., which may or are made before the police officers, as such statements made U/S 50 of the PMLA are admissible in

evidence and have also been consistently held to be so. While, dismissing the bail applications of the other five co-accused vide its previous order dated 16.02.2023 also, this court had dealt with a similar submission made on behalf of the said accused and rejected it in view of law laid down by the Constitution Bench of the Hon'ble Supreme Court in the case of Vijay Madanlal Choudhary (Supra) with the following observations :-

> **'139. …...**
>
> **140. …..'**

50. Thus, the above observations of the court are also equally applicable qua the role of applicant herein and besides the above statements of the witnesses and co-accused made U/S 50 of the PMLA and that of the approver Dinesh Arora under different provisions, there is some other documentary evidence in nature of bank transactions and digital evidence in the form of Whatsapp chats etc. to substantiate the contents thereof. This is besides the other facts and circumstances suggesting a clear inference of his being a part of the above cartel and conspiracy.

51. Again, while disposing of the Bail Application Nos. 3590/ 2022, 3705/2022 & 3710/2022 filed by accused Satyendar Kumar Jain and others in some other case of ED registered vide case No. ECIR/HQ/14/2017, the Hon'ble High Court vide its recent common order dated 06.04.2023 had also made the following observations with regard to admissibility of the statements U/S 50 of the PMLA:-

> **'67. The statements made under Section 50 of PMLA have been held to be an admissible piece of evidence. The term "admissible evidence" means that such evidence can be considered by the court at the time of appreciation of evidence. A statement recorded under Section 161 Cr.P.C. is not an admissible piece of evidence and can be used only for the limited purpose as provided under Section 162 Cr.P.C. But even in general crime cases, mostly at the stage of the bail during the stage of investigation, the court looks into the statements of the witnesses under Section 161 Cr. P.C. to appreciate the case of the prosecution. However, statements under Section 161 Cr.P.C. are not signed statements and there is no provision in the Cr.P.C. akin to Section 50 or Section 63 of the PMLA. To some extent the statement recorded under Section 50 is akin to a**

> **statement recorded under Section 164 Cr.P.C. as a statement under Section 50 of PMLA is recorded in judicial proceeding and is a duly signed statement. Thus statements under Section 50 of PMLA carry much more weight than a statement recorded under Section 161 Cr.P.C. These are specific legislations enacted to handle specific crimes.' ”**

45. Thus, it is clear from the above that this court can very well consider the contents of above statements of witnesses and accused made U/S 50 of the PMLA for deciding the question of bail of the present applicant and the same are also found sufficiently corroborated by the digital and other documentary evidence recovered during the course of investigation. Again, though the statements made by some of the co-accused namely Arun Ramchandran Pillai and Sameer Mahandru regarding role played by the applicant in the above conspiracy and in relation to the offence of money laundering stand already retracted, but it has been observed that the retractions of their earlier statements have come on record after a considerable time and the effect thereof, if any, upon the incriminating disclosures made by them in their earlier statements will be a matter of trial only. The evidence placed on record clearly shows the vital and important role played by the applicant in formulation of the above criminal conspiracy and formation of cartel for commission of scheduled offences of the CBI case.

46. Now, this court has to consider the submissions being made by Ld. Senior Counsel as to whether or not the applicant can be made an accused and prosecuted in both these cases on the basis of same sets of witnesses and evidence. It is the contention of Ld. Senior Counsel representing the applicant that this is not permissible in view of the protection against double jeopardy as guaranteed by Article 20(2) of the Constitution of India and Section 26 of the General Clauses Act. However, the contention of Ld. Spl. Counsel and Ld. SPP appearing on behalf of ED is that since the ingredients of alleged offences in both cases are different, there is no bar to prosecution of the applicant in both these cases and the protection available to applicant in terms of Article 20(2) of the Constitution and Section 26 of the General Clauses Act is not available in the given facts and circumstances. It is also their submission that, even otherwise, the question of applicability of the said protection will come at the final stage of conviction and punishment only and not at this initial stage of bail and further even investigation qua him is still pending.

47. Article 20(2) of the Constitution of India provides that no person shall be 'prosecuted and punished' for the same offence more than once and Section 26 of the General Clauses Act lays down that where an act or omission constitutes an offence under two or more enactments, then the offender shall

be liable to be 'prosecuted and punished' under either or any of these enactments, but shall not be liable to be punished twice for the same offence. Thus, it is very much clear from the language used in both the above provisions that the bar in terms thereof becomes applicable only when a person is being ‘prosecuted and punished’ twice for the same offence or for an act or commission constituting an offence under two or more different enactments. Therefore, Ld. Spl. Counsel and Ld. SPP appearing for ED are right in making a submission that the question of applicability of the above bar should not come into picture at this preliminary stage, when investigation qua the applicant is still in progress and only the question of his bail is being considered.

48. Further, the court is also in agreement with the submission being advanced on behalf of ED that an accused can be prosecuted on similar facts in two different cases and for two different offences if the ingredients of the offences of these two cases, as disclosed by the facts and circumstances alleged against him, are different and the said facts and circumstances constitute not only the offences which have been alleged in the scheduled offences case, but also the offence of money laundering alleged under the PMLA. In this regard, they have also referred to and relied upon the observations made by the Hon’ble Supreme Court in the case

of **Monica Bedi Vs. State of Andhra Pradesh (2011) 1 SCC 284**, wherein their Lordships had made the following observations :-

> **'Double Jeopardy**
> **21. Now we shall take up the first contention of Shri Tulsi as to whether the appellant's guaranteed fundamental right under Article 20 (2) has been infringed? Article 20 (2) of the Constitution provides that no person shall be prosecuted and punished for the same offence more than once.**
>
> **22. Article 20 (2) embodies a protection against a second trial and conviction for the same offence. The fundamental right guaranteed is the manifestation of a long struggle by the mankind for human rights. A similar guarantee is to be found in almost all civilised societies governed by rule of law. The well known maxim nemo delset bis vexari pro eadem causa embodies the well established common law rule that no one should be put on peril twice for the same offence. BLACKSTONE referred to this universal maxim of the common law of England that no man is to be brought into jeopardy of his life more than once for the same offence.**
>
> **23. The fundamental right guaranteed under Article 20(2) has its roots in common law maxim nemo debet bis vexari - a man shall not be brought into danger for one and the same offence more than once. If a person is charged again for the same offence, he can plead, as a complete defence, his former conviction, or as it is technically expressed, take the plea of autrefois convict. This in essence is the common law principle. The corresponding provision in the American Constitution is enshrined in that part of the Fifth Amendment which declares that no person shall be subject for the same offence to be twice put in jeopardy of life or limb. The principle has been recognised in the existing law in India and is enacted in Section 26 of the General Clauses Act, 1897 and Section 300 of the Criminal Procedure Code, 1973. This was the inspiration and background for incorporating sub-clause(2) into Article 20 of the Constitution. But the ambit and content of the guaranteed fundamental right are much narrower than those of the common law in England or the doctrine of "double jeopardy"**

in the American Constitution.

24. In Maqbool Hussain v. The State of Bombay 1953 SCR 730, this Court explained the scope of the right guaranteed under Article 20(2) and as to what is incorporated in it as : (AIR p.328, para 11)

> **"11...within its scope the plea of 'autrefois convict' as known to the British jurisprudence or the plea of double jeopardy as [it] known to the American Constitution but circumscribed it by providing that there should be not only a prosecution but also a punishment in the first instance in order to operate as a bar to a second prosecution and punishment for the same offence."**

That in order for the protection of Article 20(2) to be invoked by a person there must have been a prosecution and as well as punishment in respect of the same offence before a court of law of competent jurisdiction or a tribunal, required by law to decide the matters in controversy judicially on evidence. That the proceedings contemplated therein are in the nature of criminal proceedings before a court of law or a judicial tribunal and the prosecution in this context would mean an initiation or starting of the proceedings of a criminal nature in accordance with the procedure prescribed in the statute which creates the offence and regulates the procedure."

25. This principle is reiterated in S. A. Venkataraman v. The Union of Inida & Anr. AIR 1954 SC 375, wherein this Court observed that : (SCR p.1154)

> **"5. ...the words 'prosecuted or punished' are to be taken not distributively so as to mean prosecuted or punished. Both the factors must co-exist in order that the operation of the clause may be attracted."**

26. What is the meaning of expression used in Article 20 (2) "for the same offence"? What is prohibited under Article 20(2) is, the second prosecution and conviction must be for the same offence. If the offences are distinct, there is no question of the rule as to double jeopardy being applicable. In Leo Roy Frey v. Supdt. District Jail, AIR 1958 SC 119, petitioners therein were found guilty under Section 167 (8) of the Sea Customs Act and the goods recovered from their possession were confiscated and heavy personal penalties imposed on them by the authority. Complaints thereafter were lodged by the authorities before the

Additional District Magistrate under Section 120-B of the Indian Penal Code read with provisions of the Foreign Exchange Regulations Act, 1947 and the Sea Customs Act. The petitioners approached the Supreme Court for quashing of the proceedings pending against them in the court of Magistrate inter alia contending that in view of the provisions of Article 20(2) of the Constitution they could not be prosecuted and punished twice over for the same offence and the proceedings pending before the Magistrate violated the protection afforded by Article 20(2) of the Constitution. This Court rejected the contention and held that criminal conspiracy is an offence under Section 120-B of the Indian Penal Code but not so under the Sea Customs Act, and the petitioners were not and could not be charged with it before the Collector of Customs. It is an offence separate from the crime which it may have for its object and is complete even before the crime is attempted or completed, and even when attempted or completed; it forms no ingredients of such crime. They are, therefore, quite separate offences. The Court relied on the view expressed by the United States, Supreme Court in United States vs. Rabinowich 59 L Ed. 1211.

27. In the State of Bombay v. S. L. Apte AIR 1961 SC 578, this Court laid down the law stating that (AIR p.583, para 15) if

> **"the offences were distinct there is no question of the rule as to double jeopardy as embodied in Article 20(2) of the Constitution being applicable."**

It was the case where the accused were sought to be punished for the offence under Section 105, Insurance Act, after their trial and conviction for the offence under Section 409, Penal Code, 1860, this Court held that they were not sought to be punished for the same offence twice but for two distinct offences constituted or made up of different ingredients and therefore the bar of Article 20(2) of the Constitution or Section 26 of the General Clause Act, 1897, was not applicable. This Court made it clear that : (S.L. Apte case, AIR p.583, para 16)

> **"16. ...the emphasis is not on the facts alleged in the two complaints but rather on the ingredients which constitute the offences with which a person is charged."**

28. The ratio of the case is apparent from the following: (S.L. Apte case, AIR p.581, para 13)

> **"13. To operate as a bar the second prosecution and the consequential punishment thereunder, must be for `the same offence'. The crucial requirement therefore for attracting the Article is that the offences are the same, i.e., they should be identical. If, however, the two offences are distinct, then notwithstanding that the allegations of fact in the two complaints might be substantially similar, the benefit of the ban cannot be invoked. It is, therefore, necessary to analyse and compare not the allegations in the two complaints but the ingredients of the two offences and see whether their identity is made out."**

That the test is to ascertain whether two offences are the same and not the identity of the allegations but the identity of the ingredients of the offences.

29. It is thus clear that the same facts may give rise to different prosecutions and punishment and in such an event the protection afforded by Article 20(2) is not available. It is settled law that a person can be prosecuted and punished more than once even on substantially same facts provided the ingredients of both the offences are totally different and they did not form the same offence.'

49. Since the import of protection granted by Section 26 of the General Clauses Act, 1897 is similar to the protection guaranteed by Article 20(2) of the Constitution, the above observations made by the Hon'ble Supreme Court are equally applicable for the same also.

50. Again, though Ld. Senior Counsel for applicant is right in making a submission that if a person is an accused in the scheduled offences case of CBI he does not *ipso facto* become an accused in the case of ED and it is also equally true that simply because a person is not an accused in the scheduled

offences case of CBI or any other agency, he cannot be prosecuted or chargesheeted in the case of ED or that he cannot be prosecuted in both the cases. It is so because the facts and circumstances of these two cases are to be considered and appreciated separately to find out the involvement of such an accused in commission of the alleged offences of both these cases and if it is found that besides being involved in the offences of the scheduled offences case or otherwise, he has been or also been directly or indirectly connected with any of the activities in relation to the proceeds of crime of the connected case, as have been mentioned in Section 3 of the PMLA, then besides or irrespective of his prosecution in the scheduled offences case, he can or also be prosecuted by the ED for the offence of money laundering. It is so because the scope and ambit of the offence of money laundering defined by Section 3 of the PMLA and that of the scheduled offences case have been held to be entirely different and though Section 3 of the PMLA takes its colour from the offences of the main case or the scheduled offences case, but it is otherwise independent of the said case and the only connection between these two cases is that the offence of money laundering relates to any process or activity, which is connected with proceeds of crime derived or obtained as a result of scheduled offences case, of the type or in the form of concealment, possession, acquisition or use and projecting or claiming etc. of the said proceeds as

untainted property. Some observations made by this court on this aspect in its previous order dated 20.04.2023 dismissing the bail application of co-accused Raghav Magunta are also being reproduced herein below, which in turn are based and also contain a reference to the observations made in para 269 of judgment of the Hon'ble Supreme Court in case **Vijay Madanlal Choudhary (Supra)** being relied upon from both the sides :-

> **"29. As far as the contention of Ld. Senior Counsel regarding non-prosecution of applicant in the predicate offences case so far is concerned, it is now well settled that the scope of investigation in a PMLA case is entirely different from the cases registered under other statutes and the prosecution of an accused in a case under the PMLA is not at all dependent upon his prosecution in the scheduled offences case registered under the other statutes and it is totally independent thereof and all that is required for prosecution of a person for the offence of money laundering is that he should be directly or indirectly connected with any of the activities related to proceeds of crime, as found stated in Section 3 of the PMLA. It is so because Section 3 of the said Act has been drafted/clothed in a very wide form and it takes within its sweep all the processes or activities which are connected with acquisition, possession, concealment or use etc. of the proceeds of crime by an accused, whether directly or indirectly. For easy reference, the provisions contained under the above said Section are being reproduced herein below:-**
>
> > **"3. Offence of money-laundering.—Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.**
> >
> > **Explanation.- For the removal of doubts, it is hereby clarified that,-**

(i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:-

(a) concealment; or

(b) possession; or

(c) acquisition; or

(d) use; or

(e) projecting as untainted property; or

(f) claiming as untainted property,

in any manner whatsoever;

(ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever."

Thus, as is clear from the above, this Section makes it an offence if any 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 proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property. It is also clear from the above that though the offence of money laundering as contained under this Section takes it colour from the scheduled offences case and it is also inter-linked to that, but it is not at all necessary for involvement of a person in a case under the PMLA that such a person should also be an accused in the scheduled offences case and it is so because this offence in that context has been considered and held to be a stand alone and independent offence. The only requirement for applicability of Section 3 of the PMLA is commission of a predicate offence and generation of proceeds of crime out of such offence and it is not at all necessary or required that only the persons who are accused or involved in the scheduled offences case can be made accused for the offence

of money laundering under the PMLA. Further, it is also not required at all that such person should actually get benefited by the process or activity connected with acquisition etc. of proceeds of crime generated in the scheduled offences case.

30. In the case of Vijay Madanlal Choudhary (Supra) being referred to from both sides, the Hon'ble Supreme Court, while considering the scope and applicability of Section 3 of the PMLA with reference to the scheduled offences case, has made the following observations:-

> **"269. From the bare language of Section 3 of the 2002 Act, it is amply clear that the offence of money-laundering is an independent offence regarding the process or activity connected with the proceeds of crime which had been derived or obtained as a result of criminal activity relating to or in relation to a scheduled offence. The process or activity can be in any form — be it one of concealment, possession, acquisition, use of proceeds of crime as much as projecting it as untainted property or claiming it to be so. Thus, involvement in any one of such process or activity connected with the proceeds of crime would constitute offence of money-laundering. This offence otherwise has nothing to do with the criminal activity relating to a scheduled offence — except the proceeds of crime derived or obtained as a result of that crime.**
>
> **270. Needless to mention that such process or activity can be indulged in only after the property is derived or obtained as a result of criminal activity (a scheduled offence). It would be an offence of money-laundering to indulge in or to assist or being party to the process or activity connected with the proceeds of crime; and such process or activity in a given fact situation may be a continuing offence, irrespective of the date and time of commission of the scheduled offence. In other words, the criminal activity may have been committed before the same had been notified as scheduled offence for the purpose of the 2002 Act, but if a person has indulged in or continues to indulge directly or indirectly in dealing with**

proceeds of crime, derived or obtained from such criminal activity even after it has been notified as scheduled offence, may be liable to be prosecuted for offence of money-laundering under the 2002 Act — for continuing to possess or conceal the proceeds of crime (fully or in part) or retaining possession thereof or uses it in trenches until fully exhausted. The offence of money-laundering is not dependent on or linked to the date on which the scheduled offence or if we may say so the predicate offence has been committed. The relevant date is the date on which the person indulges in the process or activity connected with such proceeds of crime. These ingredients are intrinsic in the original provision (Section 3, as amended until 2013 and were in force till 31.7.2019); and the same has been merely explained and clarified by way of Explanation vide Finance (No.2) Act, 2019. Thus understood, inclusion of Clause (ii) in Explanation inserted in 2019 is of no consequence as it does not alter or enlarge the scope of Section 3 at all.

271. As mentioned earlier, the rudimentary understanding of 'money-laundering' is that there are three generally accepted stages to money-laundering, they are:

(a) Placement: which is to move the funds from direct association of the crime.
(b) Layering: which is disguising the trail to foil pursuit.
(c) Integration: which is making the money available to the criminal from what seem to be legitimate sources."

31. The above propositions of law are even found to have been followed by the Hon'ble Madras High Court in the case of P. Rajendran (Supra) being relied upon on behalf of the ED and while dismissing a petition filed U/S 482 Cr.P.C. by an accused for quashing of the attachment proceedings initiated under the PMLA on ground of his non-implication as an accused in the scheduled offences case of CBI registered U/S 120B r/w Sections 420, 468 and 471 IPC & Section 13 of the PC Act, their Lordships had made the

following observations:-

> **“10. At the first blush, this argument did appear convincing. However, the fallacy in the aforesaid submission was highlighted by Mr. N. Ramesh, learned Special Public Prosecutor [ED], who brought to our notice that paragraph Nos.253 and 467(d) of the judgment of the Supreme Court in Vijay Madanlal's case [supra] deal with only the cases of persons named as accused in the predicate offence against whom the prosecution in the predicate offence is quashed or he is discharged/acquitted. This benefit cannot be extended to a person, who has not been arrayed as an accused in the predicate offence because the offence under the PMLA is a stand alone offence and is different and distinct from the predicate offence.**
>
> **11. Learned Special Public Prosecutor submitted that for generating"proceeds of crime", a "scheduled offence" must have been committed, after the commission of the scheduled offence and generation of proceeds of crime, different persons can join the main accused either as abettors or conspirators for committing the offence of money laundering by helping him in laundering the proceeds of crime; such persons may not be involved in the original criminal activity that had resulted in the generation of "proceeds of crime", therefore, just because they were not prosecuted for the predicate offence,their prosecution for money laundering cannot be said to be illegal. There appears to be much force in the aforesaid submission, especially, in the light of paragraph 271 of the judgment in Vijay Madanlal's case [supra], which is extracted below:**
>
>> **'271. As mentioned earlier, the rudimentary understanding of ‘money-laundering’ is that there are three generally accepted stages to money-laundering, they are:(a) Placement : which is to move the funds from direct association of the crime.(b) Layering : which is disguising the trail to foil pursuit.(c) Integration : which is making the money available to the criminal from what seem to be legitimate sources'."**

51. Thus, it is clear from the above that if an accused is found connected with any of the activities relating to proceeds of crime as are found stated in Section 3 of the PMLA, then he can also be made accused and prosecuted under the said Act irrespective of his prosecution in the scheduled offences case. Further, his prosecution under the PMLA is not barred on the same facts and circumstances making him an accused in the scheduled offences case, if his connection with such activities as stated in Section 3 of the PMLA is *prima facie* established.

52. Now, coming back to the present case, it clearly emerges out from the evidence placed before the court that the applicant herein was connected with generation of proceeds of crime of around Rs. 100 crores in the form of advance kickbacks, which were paid by the South lobby to the co-accused Vijay Nair, through the co-accused Abhishek Boinpally, who had been participating in the above said meetings held with different conspirators and stakeholders in liquor business and the said amount was received by him on behalf of this applicant and his other political colleagues for extending undue pecuniary benefits to the conspirators and members of the cartel, which was permitted to be formed by manipulation of some provisions of the excise policy and by insertion of some favourable clauses therein for the benefit of conspirators. Hence, the contention of Ld. Counsels representing the

applicant that his alleged acts of tweaking or manipulating the said policy can, at the most, constitute the offence of criminal conspiracy of the scheduled offences case only is not legally tenable as the said acts of the accused are also related to or connected with, directly or indirectly, generation of proceeds of crime to the tune of around Rs. 100 crores, which were paid to the co-accused Vijay Nair representing this applicant and his other colleagues by the South lobby in the form of advance kickbacks and which were meant to be repaid later on to the said lobby, out of the profit margin of 12% kept for the wholesalers. The evidence clearly suggests that it happened only as a result of tweaking and manipulation of the said policy by the applicant and because of the cartel which was permitted to be formed in violation of provisions thereof by amending definition of the term 'related party' and by limiting the participation of wholesalers in liquor business by increasing the eligibility criteria from Rs. 100 crores to Rs. 500 crores. Further, even the huge profits of around Rs. 192 crores earned by M/S Indospirits as a result of the said cartel and the influence exercised by the applicant in ensuring the grant of L-1 license and dealership of M/S Pernod Ricard to M/S Indospirits can be related to or connected with the acts performed by this applicant, directly or indirectly. The observations in paras 85 & 86 as made in case of **Prakash Industries (Supra)** and also the observations as made in para

no. 253 of the Hon'ble Supreme Court judgment in case of **Vijay Madanlal Choudhary (Supra)** being relied upon on behalf of the applicant are found to have been made in a different context. Even the *mens rea* to commit the offence of money laundering on part of the applicant can be legitimately seen or inferred from the above evidence.

53. Moreover, as already discussed, the above scheduled offences case of CBI was though registered for the offence U/S 120B r/w 477A IPC and Section 7 of the PC Act and substantive offences thereof, but chargesheets in the said case have been filed for offences U/S 120B r/w 201 & 420 IPC and Sections 7, 7A, 8 and 12 of the PC Act and also the substantive offences thereof. The above offences under the PC Act are the scheduled offences under the PMLA and even the offence of criminal conspiracy made punishable by Section 120B IPC is found independently included in schedule of the PMLA and is, thus, a scheduled offence.

54. Section 120B IPC prescribes punishment for the offence of criminal conspiracy defined by Section 120A IPC and the criminal conspiracy is when two or more persons agree to do or cause to be done an illegal act or an act which is not illegal by illegal means. Thus, the agreement between two or more persons to commit an illegal act or offence is *perse* punishable

U/S 120B IPC and no overt or further act is required to be done by any of them in pursuance of the said agreement or conspiracy. Hence, the purpose of the above criminal conspiracy hatched between different accused in the main or scheduled offences case of CBI stood accomplished as soon as the members thereof had entered into the said conspiracy or there was a meeting of minds between them to commit the alleged substantive offences of the said case. Since this conspiracy was to commit the offences under the PC Act, besides the other offences, it has nothing to do with achievement or accomplishment of the purpose of commission of the said offences, in pursuance of the said conspiracy, and Section 3 of the PMLA will come into picture the moment that criminal conspiracy comes into operation by way of meeting of minds between two or more conspirators for commission of the said offences. Further, it is also not at all necessary for applicability of Section 3 of the PMLA that the scheduled offences should have been actually committed by conspirators of the said conspiracy or any of them as Section 120B IPC is independently found included in schedule of the PMLA. The observations made by this court in its previous order dated 16.02.2023 dismissing the bail applications of above five co-accused Sameer Mahandru etc., in light of the propositions of law laid down by the Hon’ble Supreme Court in the case of **Padmanabhan Kishore (Supra)** and by the Hon’ble High

Court in case of **Tahir Husaain (Supra)** which are even being relied upon on behalf of the ED qua this applicant, are also being reproduced herein below :-

> **'"136. Moreover, Section 120B IPC is also one of the offences included in Schedule of the PMLA in its individual capacity and hence, even irrespective of commission of any offence under the provisions or applicability of the PC Act, one can be prosecuted or made an accused for commission of the offence of money-laundering defined by Section 3 and made punishable by Section 4 of the PMLA, if Section 120B IPC is there in the scheduled offences case and no other offence charged or attracted in the said case falls in the category of scheduled offences. Since in this case the conspiracy which is alleged to have been hatched between the accused and other persons was to bribe the Dy. Chief Minister & Excise Minister of GNCTD and other politicians and public servants holding public offices, the provisions of Section 3 & 4 of the PMLA get attracted in the present case of ED, even in the absence of applicability of any of the other scheduled offences in the CBI case, as the above conspiracy between accused was to commit a crime or offence and it was *per-se* punishable U/S 120B IPC, irrespective of any overt act to be done or performed by any of members of the said conspiracy. To this effect, Ld. Special Counsel and Ld. SPP for ED have rightly relied upon judgment of the Hon'ble High Court in the case of Tahir Hussain (Supra) and the relevant observations made by her Lordship therein are being reproduced as under:-**
>
> **"53. Thus, the contention of the petitioner that what the petitioner was allegedly involved in, can at the most be considered to be a GST violation and that a GST violation may be punishable under the enactment dealing with GST violation and under the Income Tax Act, 1961 but that the same would not amount to the commission of any scheduled offence in terms of the Scheduled Part A & B in terms of Section 2(x) of the PMLA, 2002 and thus, no offence described under Section 3 of the PMLA, 2002 punishable under Section 4 thereof, can be held to have been prima facie committed,- cannot be accepted.**

54. The verdict of the Hon'ble Supreme Court in Vijay Madanlal Choudhary &Ors. (supra) vide paragraph 269 thereof, categorically lays down that the offence of money laundering in terms of Section 3 of the PMLA, 2002 is an independent offence regarding the process or activity connected with the proceeds of crime which have been derived or obtained as a result of criminal activity relating to or in relation to a scheduled offence and the process or activity can be in any form- be it one of concealment , possession, acquisition, use of proceeds of crime, in as much as projecting it as untainted money or claiming it to be so and thus, involvement in any one of such process or activity connected with the proceeds of crime would constitute the offence of money laundering and this offence otherwise has nothing to do with the criminal activity relating to a scheduled offence- except the proceeds of crime derived or obtained as a result of that crime.

55. Section 3 of the PMLA, 2002 provides as follows:-

> **'3. Offence of money-laundering.--Whosoever 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 and projecting it as untainted property shall be guilty of offence of money-laundering.'**

56. Vide paragraph 270 of the verdict of the Hon‟ble Supreme Court in Vijay Madanlal Choudhary &Ors. (supra), it had been observed to the effect:-

> **'270. Needless to mention that such process or activity can be indulged in only after the property is derived or obtained as a result of criminal activity (a scheduled offence). It would be an offence of money-laundering to indulge in or to assist or being party to the process or activity connected with the proceeds of crime; and such process or activity in a given fact situation may be a continuing offence, irrespective of the date and time of commission of the scheduled offence. In other words, the criminal activity may have been committed before the same had been notified as scheduled offence for the**

purpose of the 2002 Act, but if a person has indulged in or continues to indulge directly or indirectly in dealing with proceeds of crime, derived or obtained from such criminal activity even after it has been notified as scheduled offence, may be liable to be prosecuted for offence of money-laundering under the 2002 Act -- for continuing to possess or conceal the proceeds of crime or retaining possession thereof or uses it in trenches until fully exhausted. The offence of money-laundering is not dependent on or linked to the date on which the scheduled offence or if we may say so the predicate offence has been committed. The relevant date is the date on which the person indulges in the process or activity connected with such proceeds of crime. These ingredients are intrinsic in the original provision (Section 3, as amended until 2013 and were in force till 31.7.2019); and the same has been merely explained and clarified by way of Explanation vide Finance (No. 2) Act, 2019. Thus understood, inclusion of Clause (ii) in Explanation inserted in 2019 is of no consequence as it does not alter or enlarge the scope of Section 3 at all.'

57. The observations in paragraph 271 of the said verdict read to the effect:-

'271. As mentioned earlier, the rudimentary understanding of 'money-laundering' is that there are three generally accepted stages to money-laundering, they are:

(a) Placement : which is to move the funds from direct association of the crime.

(b) Layering : which is disguising the trail to foil pursuit.

(c) Integration : which is making the money available to the criminal from what seem to be legitimate sources. (emphasis supplied)'

58. Thus, the alleged commission of a conspiracy even for the purpose of GST violation in order to avail cash i.e. money through the process of the criminal conspiracy for use of the said proceeds i.e. the commission of the crime to commit riots in the North- Eastern part of Delhi between 23/25.02.2020 and to cause unrest, falls prima facie within the ambit of commission of a scheduled offence, in as

much as, the offence for commission of a criminal conspiracy is a standalone offence and a scheduled offence in terms of Section 2(y) of the PMLA, 2002. The three accepted stages of money laundering as set forth in paragraph 271 of the verdict in Vijay Madanlal Choudhary & Ors. (supra) are clearly brought forth in the instant case."

The above propositions also appropriately answer the submission of Ld. Defence Counsels to the effect that the liability of accused persons out of the alleged acts is only under the Taxation or Excise Laws and not under the PMLA.

137. Further, a reference in this regard can also be made to judgment of the Hon'ble Supreme Court in the case of Padmanabhan Kishore (Supra), being relied upon on behalf of the ED, wherein the amount of bride in hand or possession of the bribe giver was considered to be tainted money and proceeds of crime for the purposes of the offence of money laundering under the PMLA even before the said amount was actually paid by the bribe giver to the public servant involved in the said case as their Lordships were of the view that if the said amount was brought by the bribe giver with an intent to handover the same as bribe to the public servant, then it was certainly a proceed of crime and Section 3 of the PMLA got attracted. The relevant observations made by their Lordships in the above said case are as under:-

"16. It is true that so long as the amount is in the hands of a bribe giver, and till it does not get impressed with the requisite intent and is actually handed over as a bribe, it would definitely be untainted money. If the money is handed over without such intent, it would be a mere entrustment. If it is thereafter appropriated by the public servant, the offence would be of misappropriation or species thereof but certainly not of bribe. The crucial part therefore is the requisite intent to hand over the amount as bribe and normally such intent must necessarily be antecedent or prior to the moment the amount is handed over. Thus, the requisite intent would always be at the core before the amount is handed over. Such intent

having been entertained well before the amount is actually handed over, the person concerned would certainly be involved in the process or activity connected with "proceeds of crime" including inter alia, the aspects of possession or acquisition thereof. By handing over money with the intent of giving bribe, such person will be assisting or will knowingly be a party to an activity connected with the proceeds of crime. Without such active participation on part of the person concerned, the money would not assume the character of being proceeds of crime. The relevant expressions from Section 3 of the PML Act are thus wide enough to cover the role played by such person."

138. Though, it is also the contention of Ld. Defence Counsels that there is no evidence on record to show any meeting of minds or conspiracy hatched between the accused persons to pay the kickbacks and to recoup it, but this submission is unacceptable in light of the oral and documentary evidence which has been brought on record by the ED against the accused persons and enough evidence is there to infer the existence of such a criminal conspiracy between the accused. The judgments in cases of K. Narayana Rao (Supra), Dr. Anup Kumar Srivastava (Supra) and Uttamchand Bohra (Supra) being relied upon by Ld. Counsel for accused Benoy Babu are of no help to the case of accused persons as the facts and circumstances brought on record do not show it to be a case of suspicion or doubt only and rather, a reasonable and legitimate inference about existence of the above criminal conspiracy between the accused can be drawn therefrom by this court."'

55. The above propositions also answer the submissions being made on behalf of the applicant that there is no direct or satisfactory evidence on record to show the existence of any such criminal conspiracy or involvement of the accused therein as direct evidence by such conspiracy is possible only in rare cases because of the fact that such conspiracies are not hatched

in public view or open and rather, the same are hatched in privacy or behind closed doors. Thus, it is very difficult to find out or collect any direct evidence showing the existence of such conspiracies and the same has only to be inferred from the facts and circumstances of that particular case.

56. Now, coming to submission made on behalf of the applicant regarding legislative competence of the GNCTD and of the applicant to frame the said policy and the lack of powers of investigating agencies or courts to review or scrutinize the same, it is observed that though ordinarily the courts and investigating agencies should not interfere in or encroach upon the power of legislature to frame such policies, but once the serious allegations of corruption are levelled in framing of such a policy or implementation thereof, then it is certainly within the powers, prerogative and competence of the courts as well as of the investigating agencies to investigate and scrutinize such allegations being levelled in respect to the said policy. Hence, there is nothing wrong in registration of these two cases by the two investigating agencies in relation to the above policy or in undertaking investigations and initiating prosecutions against the persons who are found to have been involved in commission of certain offences in respect to the said policy.

57. Again, though it is true that bail cannot be denied to the applicant simply because of the fact that this case falls in the category of economic offences as was held in cases of **P. Chidambaram (Supra)** and **Sanjay Chandra (Supra)** being relied upon on behalf of the applicant, but it is also equally true that this is only one of the important factors to be taken into consideration by this court, along with various other factors governing the grant or refusal of bail to an accused in such a case. It can be seen that the offence alleged against the applicant is a serious economic offence of money laundering and the applicant herein has not been accused of commission of the said offence in his individual capacity, but he has been alleged to have committed it in his official capacity of a public servant holding the charge or portfolio of Excise Ministry as well as being the Dy. Chief Minister of the GNCTD. Again, the allegations made in the case are found to be serious from another angle too as huge proceeds of crime in crores are alleged to have been generated or processed through different activities defined or covered by Section 3 of the above said Act and a major portion of the liquor trade in Delhi was permitted to be compromised by way of permitting formulation of cartels in the said trade. Again, simply because the maximum term of imprisonment prescribed for the above offence is seven years, it is also not a ground to enlarge the applicant on bail as even this is one of the various factors governing the grant or refusal

of bail and all these factors are required to be considered in totality by the court to arrive at a conclusion for granting bail to the accused or otherwise. As already discussed, seriousness or gravity of the offence and its nature or category, the capacity of applicant in which it has been committed, the manner of its commission and also certain other factors like impact of the offence as well as the possible impact of release of applicant on society etc. are the factors which go against the applicant and force this court to decide against his release on bail in the present case.

58. Further, though Ld. Defence Counsels are right in making a submission that the rigors and conditions contained U/S 45 of the PMLA do not impose or create an absolute bar or restriction on powers of this court to grant bail to the applicant, but still such conditions cannot be ignored or bypassed as the constitutional validity thereof stands already upheld by the Hon'ble Supreme Court in the above Constitution Bench decision in case of **Vijay Madanlal Choudhary (Supra)**, though it has further been held and laid down by the Hon’ble Supreme Court in the said case that such conditions are to be construed reasonably and not arbitrarily for deciding the question of bail. It is also now well settled that different standards and yardsticks are to be applied for appreciation of evidence at the stages of bail, charge and final

appreciation for deciding the guilt or acquittal of the accused and evidence is not required to be scrutinized or appreciated meticulously, but findings are required to be arrived in broader probabilities for deciding the question of bail and if a genuine case against the accused is made out from the evidence placed before the court, then bail should not be granted to him in a case under the above said Act. Some observations made by this court on this point, while rejecting the bail application of co-accused Raghav Magunta vide its order dated 20.04.2023 and referring to the propositions enunciated in para 401 of judgment of the Hon'ble Supreme Court in case of **Vijay Madanlal Choudhary (Supra)**, are also being reproduced herein below :-

> **"53. As far as the submission of Ld. Senior Counsel regarding reasonable construction of provisions of Section 45 of the PMLA is concerned, there is no doubt that the conditions and rigors contained under the said Section are to be construed reasonably, but it does not mean that bail has to be necessarily granted to an accused if the court is of the view that evidence placed before it is not sufficient to form basis for framing of charges against him or for holding him guilty for the offence of money laundering. It is so because different standards and yardsticks are required to be applied or adopted at the stages of deciding bail application of such an accused and at the stages of charges and final appreciation of the evidence adduced during the course of trial. Hence, simply because this Section provides that such an accused shall not be released on bail by the court unless the court is satisfied, inter-alia, that there are reasonable grounds for believing that he is not 'guilty' of such offence, it does not mean that the standards of appreciation of evidence and material collected by investigation agency as are applicable at the final stage for arriving at a finding about**

‘guilt’ or ‘acquittal’ of the accused are also to be applied or made applicable at the stage of bail. It is so because it could never have been the intention of legislature to apply the same standards governing the above three different stages of proceedings as in view of the settled propositions of law, no detailed discussion or appreciation of such evidence or material collected is required to be made by the court and even detailed reasons are not required to be given by the court for grant or dismissal of the bail application and the same are required to be given only to show or demonstrate the application of mind on part of the court in considering the bail plea of accused.

54. In the above Constitution Bench decision of the Hon’ble Supreme Court in case of Vijay Madanlal Choudhary (Supra) also, this issue was specifically considered by their Lordships and they were of the view that for deciding the bail application of such an accused in light of conditions contained U/S 45 of the PMLA, the court has only to see if there is a genuine case against the accused or not and the prosecution at this stage is not required to prove the charge beyond reasonable doubts. The relevant observations made by their Lordships on this issue in the above said case are also being reproduced herein:-

> **'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 Prasad636, 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.'"**

59. Further, as already discussed, this court had earlier dismissed the bail application of applicant in the scheduled offences case of CBI vide its order dated 31.03.2023 and though this court was in agreement with submissions advanced on behalf of the applicant that he was not a flight risk, but this court was of the *prima facie* view that the possibility of destruction of or tampering with the evidence by him could not be ruled out, in view of the specific allegations levelled against him of such destruction or tampering by way of not producing his three out of four mobile phones before the IO as the same were expected to contain some vital piece of evidence regarding commission of the alleged offences and his involvement therein. Similar apprehensions have also been expressed in the present case on behalf of the ED and it has been submitted that during the one year period of liquor scam, the applicant had used fourteen mobile phones having different IMEI numbers and four different SIM numbers in these mobile phones. It has been submitted that during the course of investigations, only one mobile phone of the applicant was seized by CBI and he was able to produce two other mobile phones for the purposes of investigation. However, the remaining eleven mobile phones used by him were not produced or could not be recovered and this shows that the

applicant had either concealed or destroyed these mobile phones to prevent the investigating agencies from recovering vital informations or documents as might have been contained in these mobile phones. It has also been submitted that even the mobile phone which was being used by the applicant for a period of around eight months prior to 22.07.2022, i.e. the date on which the complaint made by the Hon'ble Lt. Governor to CBI got coverage in the media, was not produced or recovered during the investigation. Hence, it is the submission of Ld. Spl. Counsel and Ld. SPP for ED that the applicant intentionally withheld, tampered with or destroyed vital digital evidence, which was contained or could have been recovered from the above mobile phones. Again, allegations are also there that to prevent the investigating agencies from exposing the above conspiracy and cartel, the applicant even used the mobile phones purchased and SIMs subscribed by some other persons, not stated to be from his family or in his relations. The specific details of all the above IMEI numbers and SIM numbers and the allegations in respect to the same are found stated in para nos. 13.1.1 to 13.1.5 of reply filed by the ED to this bail application.

60. Further, it was also observed in the above order dated 31.03.2023 of this court that even the chances of influencing of some prime witnesses of case by the applicant could not be ruled out and this apprehension by prosecution in the present

case has also been expressed and the possibility thereof cannot be ruled out.

61. Again, specific statements made by the responsible officers/officials of the excise department are also there on record to show that the file of cabinet note got prepared by the then Excise Commissioner Sh. Rahul Singh and sent for consideration of the GoM, along with the feedback given by public and the opinions given by some legal luminaries against total privatization of the liquor sector or business and for going with the earlier model of policy, was never returned back to the said office and the same had gone missing, which has also been alleged to be an attempt on part of the applicant to conceal or destroy an important piece of evidence. The alleged medical illness of wife of the applicant is also not a ground to enlarge him on bail in this case.

62. Further, some evidence is also alleged to have surfaced during investigation to show that some part of the above kickback or bribe amount received from South lobby was spent or utilized in connection with election campaign of the AAP in Goa and some cash payments through hawala channels are alleged to have been sent to Goa for bearing the said expenses and even some fake invoices are alleged to have been created as a cover up for the cash amounts transferred through hawala channels. It is stated that the above cash transfers were made as

per instructions of the co-accused Vijay Nair, who was the representative of applicant and the AAP and also the Media Incharge of AAP and looking after the work related to said elections and he also roped in a company named M/S Chariot Productions Media Pvt. Ltd. owned by the co-accused Rajesh Joshi to do the election related advertising work and other jobs for the party during said elections.

63. Thus, in view of the above background, serious nature of allegations made and role played by the applicant in above criminal conspiracy, his connection with the activities relating to generation or acquisition and use etc. of the above proceeds of crime within the meaning of Section 3 of the PMLA and the oral and documentary evidence collected in support of the same and as placed for perusal of the court, this court is of the considered opinion that even if the rigors and restrictions contained U/S 45 of the PMLA are viewed and construed reasonably, the prosecution has still been able to show a genuine and *prima facie* case for involvement of the applicant in commission of the alleged offence of money laundering. Hence, this court is not inclined to grant bail to the applicant in this case of economic offences having serious repercussions upon the general public and society at large as the evidence collected during investigation speaks volumes of his involvement in commission of the said offence. Therefore, the

present bail application of accused Manish Sisodia is being dismissed.

64. It is also being mentioned here that yesterday evening, the third supplementary prosecution complaint against some other co-accused has also been filed by the ED, which was taken by this court today and has been fixed for consideration/orders on 01.05.2023. Further, it is also stated here that besides, the above judgments quoted in the order, some further judgments were also referred to and relied upon from both the sides, but the same were either not found applicable in the given context or their specific discussion has not been felt necessary in view of the legal position stated in this order.

65. However, nothing contained in this order shall tantamount to expression of opinion on merits of the case. E-copy of this order be given dasti to Ld. Counsel for the applicant as well as to Ld. Spl. Counsel/SPP for the ED through Whatsapp/e-mail.

Announced in open court
on 28.04.2023

(M. K. NAGPAL)
Special Judge (PC Act),
CBI-09 (MPs/MLAs Cases),
RADC, New Delhi : 28.04.2023