Date of Order: 22.02.2024

IN THE COURT OF SH. SUDHANSHU KAUSHIK :
ADDITIONAL SESSIONS JUDGE-06 : NEW DELHI DISTRICT :
PATIALA HOUSE COURTS : NEW DELHI

IN THE MATTER OF :

ECIR No.23/STF/2021 (IA No.17/2024)
Directorate of Enforcement Vs. Mohan Madaan
Under Section 3 Prevention of Money Laundering Act, 2002

Present : - Sh. N.K. Matta and Sh. Manish Jain, Ld. Special Public Prosecutors for Enforcement Directorate along with Advocates Sh. Aaditya Raj Sharma, Sh. Ishaan Baisla, Sh. Sudeepto Sur and IO/Sh. Dilip Singh Shaktawat, AD (ED).

Ms. Rebecaa M.John, Sr. Counsel along with Advocates Sh. Bharat Gupta and Sh. Rohan Wadhwa for applicant/accused Mohan Madaan.

1. This is second application on behalf of applicant/accused Mohan Madaan seeking regular bail under Section 439 of CrPC read with Section 45 of The Prevention of Money Laundering Act, 2002 (*hereinafter referred to as the 'PMLA'*). The applicant is an accused in Enforcement Case Information Report (ECIR) No.23/STF/2021 registered under Sections 3 and 4 of the Prevention of Money Laundering Act by the Enforcement Directorate.

Case of Enforcement Directorate

2. The case of Enforcement Directorate is that;

(a) FIR No.0256/2021 dated 01.10.2021 was registered by Special Cell, New Delhi against Pawan Kumar, Ashish Kumar Verma (applicant herein), Manish Sharma, Vipin Batra & Ors. for the offences under Section 420 IPC followed by ECIR/23/STF/ 2021 recorded on 05.10.2021 for initiating investigation under the PMLA. It was revealed during the investigation conducted by the Enforcement Directorate that fake and forged IDs including PAN cards, Aadhar Cards and Voter ID cards were used for creating and opening shell companies and multiple bank accounts on the basis of fake and forged documents. It was found that the shell companies were used for sending funds abroad against forged import documents whereas one saving account opened with Yes Bank in the name of Ashish Verma was used for executing outward remittances in the garb of investment in foreign country under Liberalized Remittances Scheme;

(b) It has been disclosed that search and seizure of the premises of Deepak Kaushik (brother-in-law of Ashish Verma) resulted in recovery of digital devices and incriminating documents including 49 cheque books, 33 PAN Cards, 13 Aadhar Cards, 80 stamps and 29 bank cards of different entities/ individuals/CA. It was found during investigation that these accused persons were involved in opening shell entities in foreign countries for receiving funds from India. It was

revealed that passport and personal details of Indian nationals, received in exchange for substantial sum of money, were used to incorporate offshore shell entities and open fictitious bank accounts in foreign banks;

(c) The case of Enforcement Directorate proceeds further that 50 bank accounts of 19 shell entities and 01 individual account in India which used fake and forged documents for the purpose of remitting funds to the tune of Rs.270,37,60,366/- abroad were identified during investigation. It was found that number of these shell companies were created by Ashish Verma on the instructions of co-accused Vipin Batra for the purpose of illegally remitting funds abroad whereas some of these shell entities were created by his associate Praveen Kumar on the instruction of Vipin Batra and his associate. It has been stated that these entities had been receiving funds within India from various shell and active companies through RTGS/NEFT and funds routed through multiple bank accounts were sent abroad into the accounts of other countries. Investigation also revealed that Ashish Verma, Vipin Batra, Rupesh Batra and other accused persons acted in collusion with each other and conspired to remit funds and acquired foreign exchange to the tune of Rs.270,37,60,366/- from various bank accounts by presenting forged documents in the form of invoices and other related documents which amount was remitted to the accounts

of shell companies abroad in the garb of purported import of services;

(d) It has been alleged that it was learned on the basis of specific input that Pawan Thakur had also been employing a similar modus operandi for illegally sending funds abroad on the strength of forged import documents using different set of persons. These persons opened 10 shell entities and their bank accounts in Canara Bank and those bank accounts were used for the purpose of acquiring foreign exchange on forged import documents. It has been alleged that in none of these cases actual import took place and the accused persons presented forged import documents before the bank for acquiring foreign exchange and transferring it abroad. A sum of Rs.22,31,21,158/- was still found available as balance in these bank accounts.

(e) In so far as the role of the applicant is concerned, it has been alleged that the stamps of Singapore based entities namely (i) G.S.Impex PTE Ltd. Singapore; and (ii) Pinnacle Trading (SG) PTE Ltd. Singapore were seized during search proceedings at the premises of Deepak Kaushik (brother-in-law of Ashish Verma) and import/export data of M/s Krishna Overseas, proprietorship firm of the applicant was analyzed, which revealed that goods worth Rs.2.14 crore were exported by Krishna Overseas to Pinnacle Trading (SG) PTE Ltd. on

30.04.2019 and export worth Rs.2.40 crore was made on 13.07.2018 to another Singapore based entity namely M/s Orchid Star International PTE Ltd. owned by Pawan Thakur (one of the accused in the predicate FIR No. 0256/2021 dated 01.10.2021).

(f) It was further alleged that M/s Krishna Overseas was not involved in manufacturing activity and made fraudulent export worth Rs.34.27 crore, drawback of Rs.2.70 crore and IGST refund of Rs.54.36 lac. It has been alleged that applicant was carrying out the entire operation of *hawala* transfer from office bearing No.909, B9, ITL Tower, Netaji Subhash Place, Pitampura, New Delhi. It has been stated that co-accused Vipin Batra disclosed in his statement dated 22.05.2023 that he used to meet Dubai based Pawan Thakur in the said office of the applicant.

(g) It has been disclosed that statement of Shyam, an employee of the applicant, was recorded under Section 50 of the PMLA on 19.06.2023 and he disclosed that he used to handle cash operations of the applicant from the office at Pitampura. He mentioned that cash was being received on daily basis and it was distributed to other individual through hawala mode and the same was done at the instance of the applicant.

(h) It has been stated that six different entities were found involved in the activities of outward remittances done by

Ashish Kumar Verma, Vipin Batra and these entities were being operated from the office adjoining to the office of the applicant.

(i) It has been disclosed that investigation of the money trail revealed that applicant transferred certain sum of money to a company named Hummingbird Advertising Pvt. Ltd. and when he was asked to explain certain transactions, he failed to do so. It has been stated that the explanation given by the applicant that he transferred an amount of Rs.1.25 crore to Hummingbird Advertising Pvt. Ltd. as loan was not found to be reasonable. It has been stated that had this been a legitimate transaction of loan, applicant would have transfered the funds from his own account and not from the account of the company M/s Ojas Implex Pvt. Ltd. It has been alleged that transactions within the bank accounts of the applicant and those associated with these entities predominantly revolve around activities related to loans received, loans extended, loan reimbursement or loan repayments despite absence of any discernible business operations.

(j) Further, during search of another office at 612, Pearl Height-II, NSP, Pitampura, New Delhi on 27.06.2023, a stamp of Singapore based entity 'Asiatic SG PTE Ltd' was found but applicant failed to given any satisfactory response about the said stamp in the statement recorded under Section 50 of the

PMLA. It has been disclosed that statement of Mayank Aggarwal, another employee of the applicant was recorded under Section 50 of the PMLA and he disclosed that the entities were incorporated in his name at the instance of the applicant and Pawan Thakur. He also submitted certain documents at the time of recording of his statement on 28.08.2023 including the bank statement of M/s Diastone Trading FZE.

(k) It has been alleged that foreign reserve is a foreign asset controlled by Reserve Bank of India and it can be acquired only through legitimate means. It is the case of prosecution that accused persons committed the offence under Section 3 of the PMLA by acquiring the foreign exchange on the false pretense of exports and thereafter, transferred the same to various offshore shell companies and by doing so, they have committed offence punishable under Section 4 of the PMLA.

3. Arguments were heard.

Arguments on behalf of the applicant

4. Ms. Rebecaa M.John, Sr. Counsel for the applicant argued that applicant is innocent and he has been falsely implicated in the present case. She contended that the allegations leveled by the Enforcement Directorate and the evidence collected during the

investigation does not substantiate the charge under Section 3 of the PMLA. She mentioned that the gist of the offence of money laundering is that it should be established that the proceeds of crime were generated and derived from a criminal activity relating to a scheduled offence. She argued that there should be some evidence to demonstrate that the proceeds of crime were generated from the predicate offence in respect of which the FIR stands registered. She mentioned that the evidence placed on record by the Enforcement Directorate falls short of establishing that the proceeds of crime were generated from the predicate offence as mentioned in the FIR No. 256/2021 dated 01.10.2021 registered at Special Cell, New Delhi.

5. Ld. Sr. Counsel argued that in the present matter, the predicate offence in respect of which the FIR stands registered was pertaining to online fraud and cheating at the instance of Chinese entities through Indian shell entities. She mentioned that it was alleged in the FIR that the funds generated from the illegal entities were remitted outside country in the guise of imports. Counsel submitted that the Enforcement Directorate failed to identify the Chinese entities which purportedly remitted foreign exchange to Indian shell entities for carrying out the alleged anti-national activities. She mentioned that it can be seen from the complaint/charge-sheet filed by the Enforcement Directorate that

no Chinese entity has been made an accused. She contended that Enforcement Directorate has failed to establish any link or nexus between the alleged Indian shell entity and the Chinese entity, who purportedly committed the schedule offence of cheating. She mentioned that as per the definition of proceeds of crime under Section 2(1)(u) of the PMLA, the money must either be derived or obtained from the criminal activity pertaining to the predicate offence. She mentioned that the evidence placed on record does not demonstrate that foreign exchange was derived or obtained out of the scheduled offences in respect of which the FIR was registered.

6. Ld. Sr. Counsel submitted that it was alleged in the predicate offence that the money from Chinese entity entered India on the basis of forged documents and the said money constitutes the proceeds of crime. She mentioned that under the said circumstances, the Enforcement Directorate was obligated to investigate qua the said money and connect the proceeds of crime with the companies allegedly attributed to the applicant but it has failed to do so. She mentioned that the Enforcement Directorate has failed to establish any link between the proceeds of crime and the companies controlled by the applicant. She stated that the Enforcement Directorate has failed to investigate as to how the money was transferred to Indian companies through Chinese

companies.

7. Ld. Sr. Counsel further submitted that applicant has not been named as an accused in the FIR pertaining to the predicate offence. She submitted that it has been alleged that the companies controlled by the applicant exported sub-standard goods and claimed false duty drawback in respect of the fake imports. She mentioned that in case these allegations are taken to be correct, it amounts to an offence under the Customs Act, which does not form the part of the predicate offence registered under the FIR. She contended that the allegations in respect of false duty drawback and fake IGST refund were never part of the predicate offence and the Enforcement Directorate is not competent to carry out investigation on this aspect, more so, when there is no adjudication in this regard by the appropriate authority. She mentioned that Enforcement Directorate has admitted that sub-standard goods were exported by the companies controlled by the applicant but no investigation has been done on this aspect.

8. Ld. Sr. Counsel challenged the arrest of the applicant. She mentioned that the arrest of the applicant was illegal as it was made in violation of the mandate prescribed under Section 19 of the PMLA. She submitted that Section 19 of the PMLA mandates that the competent officer shall arrest the accused only after

forming reasons to believe from the material in his possession that a person is guilty of the offence under the PMLA. She submitted that the threshold of this satisfaction is much high as compared to the ordinary offences under the Indian Penal Code and other enactments. She pointed out that applicant joined investigation on 01.06.2023 pursuant to the summons received from the Enforcement Directorate and his statement was recorded under Section 50 of the PMLA. She mentioned that applicant continued to join investigation on various dates and his statements were recorded by the Enforcement Directorate but he was abruptly arrested on 12.07.2023. She contended that the fact that the investigating agency arrested the applicant without arriving at the mandatory satisfaction (as contemplated under Section 19 of the PMLA) is borne out from the contents of the first remand application. She argued that it can be seen from the remand application that Investigating Officer was not possessing sufficient material to believe that applicant is guilty of the offence under Section 3 of the PMLA.

9. Ld. Sr. Counsel contended that Investigating Officer himself mentioned in the first remand application that the offence of money laundering needs to be established and this goes on to show that he had no material to arrive at the requisite satisfaction. She mentioned that although, the Enforcement Directorate

managed to obtain first remand of the applicant for a period of 5 days but failed to collect sufficient material to demonstrate that applicant committed the offence of money laundering. She contended that during the period of custody, statements of the applicant were recorded by the investigating agency but the said statements are hit by Article 20(3) of the Indian Constitution. She mentioned that it can be seen from the second remand application dated 18.07.2023 that the Enforcement Directorate failed to collect sufficient material to demonstrate that applicant committed the offence of money laundering. Counsel mentioned that all these facts demonstrate that applicant was illegally arrested by the Enforcement Directorate and this fact should be borne in mind while disposing of the bail application.

10. Ld. Sr. Counsel argued that Enforcement Directorate started carrying out the investigation in the present matter as if it is totally new case, not connected with the predicate offence but such a course is not permissible. She contended that the Enforcement Directorate cannot assume and usurp the power of the other investigating agencies and start holding independent investigation in respect of offences which do not form part of the predicate schedule offence registered under the FIR. She mentioned that Enforcement Directorate has tried to built up a case that precious foreign exchange was sent out of country on the basis of fake

export but there is evidence to suggest the contrary. She contended that there is evidence to demonstrate that the foreign exchange was in fact brought to India rather that being remitted out of India. She mentioned that it is the case of Enforcement Directorate that analysis of import/export data of M/s Diastone Trading FZE revealed that total import of Rs. 430.70 crore was made by the said company with various Indian entities. She mentioned that in case, this version is taken to be correct, it means that foreign exchange was brought to India and not sent out of India.

11. Ld. Sr. Counsel has further submitted that Enforcement Directorate has heavily banked upon the statements of witnesses recorded under Section 50 of the PMLA. She mentioned that the veracity of these statements needs to be tested during trial. She contended that the statement of the applicant recorded after his arrest cannot be read against him while the statements of other witnesses are doubtful. She mentioned that the Enforcement Directorate has heavily relied on the statement of Mayank Aggarwal but there are apparent discrepancies in his statement. She mentioned that Mayank Aggarwal gave a statement that he collected the documents pertaining to the companies controlled by the applicant during his visit to Singapore on 12.03.2020 and handed them over to the Enforcement Directorate. Counsel has pointed out towards the bank statement of M/s Diastone Trading

FZE for the period from 05.07.2016 to 07.06.2023. She mentioned that it is not possible to conceive as to how Mayank Aggarwal managed to obtain the bank statement of M/s Diastone Trading FZE till the month of June 2023 in the month of March 2020. She contended that there are various other discrepancies in the statement of the said witness. She contended that the statements recorded under Section 50 of the PMLA cannot be treated as gospel truth and the veracity of these statements can be tested only during trial.

12. Ld. Sr. Counsel argued that, at this stage, there is no reliable evidence to demonstrate that applicant committed the offence of money laundering and he is entitled to be released on regular bail. She submitted that applicant is not involved in any other criminal offence and this fact stands recorded in the earlier order whereby the applicant was released on interim medical bail. She mentioned that applicant was released on interim bail on account of medical condition and the said bail has been subsequently extended by this court. She mentioned that while being on bail, applicant did not misuse his liberty and duly complied with the conditions imposed by the court. She argued that co-accused Ashish Kumar Verma has already been released on bail by this court and this fact should also be taken into account while considering the present applicant. She contended that as per the story of the Enforcement

Directorate, the role assigned to co-accused Ashish Kumar Verma was on a much higher footing as compared to the allegations against the applicant. She has submitted that applicant is suffering from a medical condition and he may be considered to be released on bail on medical grounds. She contented that, in case, this court arrives at a conclusion that applicant does not fall under the category of 'sick or infirm', his medical condition may still be taken into account while considering the prayer for regular bail.

13. In order to support the submissions, Ld. Sr. Counsel has relied upon the decision in the matter of *"**Vijay Madanlal Choudhary Vs. Union of India**" 2022 SCC OnLine SC 929, "**Prakash Industries Ltd. Vs. Union of India**" 2023 SCC OnLine Del 336, "**Pankaj Bansal Vs. Union of India**" 2023 SCC OnLine SC 1244, "**V. Senthil Balaji Vs. State**" 2023 SCC OnLine SC 934, "**Preeti Chandra Vs. Directorate of Enforcement**" 2023 SCC OnLine Del 3622, "**Chandra Prakash Khandelwal Vs. Directorate of Enforcement**" 2023 SCC OnLine Del 1094, "**Raman Bhuraria Vs. Directorate of Enforcement**" 2023 SCC OnLine Del 657, "**Prabhat Kumar Srivastava Vs. Serious Fraud Investigation Office**" 2021 SCC OnLine Del 1335, "**Kavi Arora Vs. State**" 2023 SCC OnLine Del 3484 and "**Aman Nath & Ors. Vs. State of Haryana & Anr.**" (1977) 4 Supreme Court Cases 137.*

Arguments on behalf of Enforcement Directorate

14. On the other hand, Sh. N.K. Matta and Sh. Manish Jain, Special Public Prosecutors (SPPs) for the Enforcement Directorate argued that the bail application is liable to be dismissed. It was argued by them that the applicant has committed the offence of money laundering by remitting the foreign exchange abroad under the garb of fake imports. Sh. Manish Jain, SPP questioned the maintainability of the bail application. He mentioned that the earlier bail application of the applicant was dismissed vide a detailed order dated 19.10.2023 and since then, there has been no change in circumstances. He argued that the arguments raised by the applicant were also raised at the time of earlier application but the same were rejected and the application was dismissed. He contended that by filing the present application and inviting orders, applicant is calling for the review of the earlier order and the same is not permissible. He conceded to the fact that the complaint/charge-sheet was filed subsequent to the previous bail application but mentioned that all the material facts were within the knowledge of the applicant. He mentioned that after the complaint was filed by the Enforcement Directorate, applicant inspected the judicial file and incorporated additional submissions of default bail in the earlier application. He contended that the additional submissions were made by the applicant that the

charge-sheet was incomplete and these submissions could not have been made without going through the contents of the charge-sheet. He has pointed towards various paras of the earlier bail order and argued that the submissions made by the applicant were considered and rejected by the court.

15. Ld. SPP argued that in so far as the involvement of the applicant in previous offences is concerned, a report was indeed placed on record that applicant had been discharged in the earlier offences but the said report was incomplete. He has pointed out that the report is not clear in respect of one of the FIRs and a fresh report should be summoned in this regard. He contended that the fact that co-accused Ashish Kumar Verma has been released on regular bail cannot be taken to be a change of circumstance for entertaining the present application. He mentioned that the role of Ashish Kumar Verma was different and the observations made in his bail order have no bearing on the present case. He argued that the observations made in the bail order of Ashish Kumar Verma regarding the proceeds of crime cannot be taken into account while disposing of the present application. He mentioned that Ld. Predecessor went through the entire evidence and documents filed along with charge-sheet and dismissed the earlier bail application. He stated that the arguments about the violation of the mandatory terms of Section 19 of the PMLA were also taken on the earlier

occasion but the same were rejected. He mentioned that the applicant has not challenged the remand orders and the same have attained finality.

16. Ld. SPP further argued that at this stage, the statement under Section 50 of the PMLA cannot be doubted. He mentioned that it has been reiterated in number of judicial pronouncements that the statements under Section 50 of the PMLA are admissible and the same can be used for setting up a formidable case about the involvement of the applicant in the commission of offence of money laundering. In order to support these submissions, Ld. SPP has placed reliance on the decision in *"**Sanjay Singh Vs Enforcement Directorate**" 2024 SCC OnLine Del 773*. He stated that applicant is casting unnecessary aspersions on the statements of Mayank Aggarwal. He mentioned that the statements of Mayank Aggarwal, read in the light of the documents supplied by him, can be taken to be a clinching evidence for establishing the offence of money laundering.

17. Ld. SPP mentioned that there is no content in the argument of the applicant that there is a disconnect between the predicate offence and the proceeds of crime. He has pointed out towards the FIR No.256/2021 of the predicate offence and mentioned that the said FIR has different limbs. He contended that one of the limbs of the

FIR contains an averment that funds have been infused in various shell entities and the same have been remitted abroad on the pretext of fake imports. He mentioned that the proceeds of crime have a direct nexus with the predicate offence and the argument of the applicant needs to be rejected. He contended that even otherwise the issue about the existence of the proceeds of crime has been determined in terms of the earlier bail order and the same cannot be re-appreciated. He has pointed out towards various paras of the complaint/charge-sheet pertaining to the specific allegations against the applicant. He mentioned that applicant has raised a frivolous argument that the proceeds of crime were not generated because no offence under the Customs Act was registered by the DRI. He submitted that according to the best of his knowledge, intimation was given to the concerned authority under Section 66 of the PMLA but he cannot say whether any further action was taken by the authority.

18. Ld. SPP mentioned that the submissions of the defence counsel that no bank accounts or other property of the applicant has been attached are misconceived. He contended that no money was found in the account of M/s Krishna Overseas and therefore, no purpose would have been served by attaching its bank account. He mentioned that various other bank accounts were attached by the Enforcement Directorate, details whereof have been given in the

complaint.

19. Sh. N.K. Matta, Ld. SPP adopted the arguments of Sh. Manish Jain. He argued that no ground is made out for releasing the applicant either on regular or medical bail. He reiterated that the submissions made by the applicant have already been dealt with in the previous order. He pointed out towards the definition of proceeds of crime under Section 2(1)(u) of the PMLA and submitted that there is evidence to show nexus between the criminal activity and the funds used by the applicant. He mentioned that the explanation under Section 2(1)(u) of the PMLA clarifies that the proceeds of crime include property not only derived or obtained from the schedule offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the schedule offence. He prayed for the dismissal of the bail application. He argued that applicant has committed a serious offence having far-reaching implications. He contended that it was found during investigation that Indian Nationals, in exchange of substantial sum of money, were made to lend their passport and personal details to incorporate offshore shell entities and open fictitious bank accounts in foreign banks. He argued that the definition of 'Money Laundering', as provided under Section 3 of the PMLA, has been couched in widest terms and it includes the activities of a person

who knowingly assists any activity connected with the proceeds of crime. He contended that the evidence collected during the investigation reveals that applicant played an active role in facilitating the remittance of foreign exchange to fake offshore entities.

20. In order to support their submissions, Ld. SPPs have relied upon the decision in the matter of *"**Directorate of Enforcement Vs. Padmanabhan Kishore**" 2022 SCC OnLine SC 1490, "**Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav**" (2005) 2 SCC 42, "**Virupakshappa Gouda Vs. State of Karnataka**" (2017) 5 SCC 406, "**Rohit Tandon Vs. Directorate of Enforcement**" (2018) 11 SCC 46, "**Satyendar Kumar Jain Vs. Directorate of Enforcement**" Bail Application No. 3705/2022, Crl. M.A. No. 25952/2022 decided by Hon'ble High Court of Delhi on 06.04.2023 and "**Sanjay Singh Vs. Directorate of Enforcement**" 2024 SCC OnLine Del 773.*

Arguments in rebuttal

21. Ld. Sr. Counsel for the applicant countered the arguments of the Enforcement Directorate about the maintainability of the present applicant. She submitted that the bail application is perfectly maintainable. She argued that the fact that the applicant is on interim medical bail does not debar him from seeking regular bail.

She submitted that even when an accused is released on interim bail, he continues to be in the custody of the court as he submitted the bail bonds in the court. She mentioned that after bail-bonds have been furnished, the requirement of law of surrendering stands satisfied. She contended that the applicant surrendered at the time furnishing of bail-bonds and therefore, the objections with respect to the maintainability deserves to be rejected. In order to support these arguments, she has placed reliance in the matter of "***Prabhat Kumar Srivastava Vs Serious Fraud Investigation Office***" *2021 SCC OnLine Del 1335* and "***Kavi Arora Vs State***" *2023 SCC OnLine Del 3484*.

22. Ld. Sr. Counsel submitted that the objection about the maintainability of the second bail application after the dismissal of the earlier bail application is misconceived. She contended that there has been change in circumstances after the dismissal of the earlier bail application and the present applicant is perfectly maintainable. She mentioned that at the time of earlier bail application, a report was submitted by the Enforcement Directorate that applicant is involved in various other offences and the said report was considered by the court while dismissing the application. She mentioned that it has come on record in a subsequent report that applicant is not involved in those offences and the said report falsifies the earlier report. Counsel submitted

that the subsequent report was considered by this court while releasing the applicant on interim bail on medical grounds and the same forms part of the judicial record. She argued that co-accused Ashish Kumar Verma has recently been released on bail by this court and this is also a new circumstance. Counsel mentioned that even otherwise, it is the basic principle of criminal jurisprudence that each day in custody furnishes a fresh ground for bail. She stated that at the time of filing of earlier bail application, the complaint/charge-sheet was not put to the court. She mentioned that the charge-sheet was filed subsequently. She submitted that the charge-sheet was voluminous and it cannot be expected that the applicant managed to go through the entire charge-sheet simply by inspecting the record. She submitted that the judgment in ***Sanjay Singh's case (supra)*** is distinguishable as in that matter, there was no disconnect between the predicate offence and the proceeds of crime. She stated that there are sufficient discrepancies in the statement of Mayank Aggarwal and his statement is doubtful. She reiterated that the veracity of the statements under Section 50 of the PMLA can be ascertained only during trial. She mentioned that the bail application is maintainable and the technical objections raised by the Enforcement Directorate are misconceived.

Analysis & Conclusion

23. I have perused the bail application, the reply filed by the Enforcement Directorate and the relevant portion of the ECIR, wherein the role of the applicant is described in detail along with the judgment relied upon by both the parties.

24. Section 45 of the PMLA prescribes twin conditions for the grant of bail and it reads as under:

> *"**45. Offences to be cognizable and non-bailable.***
>
> *(1) [Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence under this Act shall be released on bail or on his own bond unless-]*
>
> *(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and*
>
> *(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:*
>
> *Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm, or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees may be released on bail, if the Special Court so directs..."*

25. Thus, Section 45 of the PMLA prescribes the mandatory twin conditions that are required to be met before bail can be granted to

an accused, which are:

> *"a. there are reasonable grounds for believing that the accused is not guilty of the offence of money laundering, and;*
>
> *b. he is not likely to commit any offence while on bail."*

26. However, the proviso to Section 45 of the PMLA provides exceptions to the general rule i.e. the cases where the Special Court can exercise its discretion de hors the satisfaction of twin conditions. These exceptions are; accused is less than the age of 16 years; accused is a woman; accused is sick or infirm; or if the allegations of money laundering against the accused are of an amount less than one crore rupees.

27. Before proceedings further, I deem it expedient to first deal with the argument of the Enforcement Directorate about the maintainability of the present application. It has been argued on behalf of Enforcement Directorate that previous bail application of the applicant was dismissed vide order dated 19.10.2023 and in view of this, the subsequent application is not maintainable. Counsel for the applicant has countered these arguments mentioning that there has been substantial change of circumstances. She mentioned that at the time of the earlier bail application, the charge-sheet/complaint was not put to the court and the same was filed subsequently. She contended that after the

previous bail application, applicant was released on interim medical bail and the same was extended on two occasions. She submitted that co-accused Ashish Kumar Verma, who was assigned higher role by the prosecution, was admitted to bail by this court. She mentioned that in the bail order of Ashish Kumar Verma, this court appreciated that there appears to be some disconnect between the predicate offence and the proceeds of crime. She mentioned that at the time of earlier bail application, Enforcement Directorate filed an incorrect report showing previous involvement of the applicant in other cases. She stated that it was found upon verification that the applicant was not involved in those cases and a fresh report was submitted by the Enforcement Directorate.

28. The submissions made by the Ld. Sr. Counsel of the applicant finds support from record. Record shows that at the time of earlier bail application, Enforcement Directorate furnished a reply showing the involvement of the applicant in other criminal cases but when a fresh report was summoned at the time of considering the interim medical bail, it was found that applicant has either been discharged or acquitted in those cases. The said fact stands recorded in the order dated 23.12.2023 whereby the applicant was admitted on interim medical bail. It is also an admitted position that after the dismissal of the earlier bail application, applicant has

been released on interim medical bail which was extended on two occasions. In fact, on the last occasion, the interim bail was extended on 25.01.2024 after the Enforcement Directorate conceded to the medical condition of the applicant. It is also an admitted position that co-accused Ashish Kumar Verma, whose name figured in the FIR of the predicate offence, has been released on bail by this court vide order dated 15.02.2024. In view of these circumstances, I am in agreement with the arguments of the counsel of the applicant that there has been a substantial change in circumstances after the dismissal of the earlier bail application and the present application is maintainable.

29. Now, coming to the prayer made by the applicant that he may be considered to be released on regular medical bail. Ld. Sr. Counsel has submitted that applicant falls under the category of 'sick or infirm' and this is borne out from the fact that this court admitted him on interim medical bail. She has submitted that although, the condition of the applicant has improved but he has still not completely recovered. She mentioned that the age of the applicant should also be considered while disposing of the prayer for the regular medical bail. I have perused the record including the reports submitted by the Jail Superintendent and the medical documents filed by the applicant. On appreciating the record, I am of the considered view that the case of the applicant does not fall

under the exceptions to Section 45 of the PMLA.

30. On an earlier occasion, applicant was released on interim medical bail so as to ensure that he receives adequate & proper treatment and undergo the prescribed surgery. On the application filed by the applicant, report was called from the Jail Superintendent and in view of the said report, applicant was released on interim bail for a period of 20 days. The interim bail was subsequently extended on two occasions. Once, for a further period of 15 days and on the second occasion, for a period of 30 days. The initial extension was sought on the ground that the surgery of the applicant for removal of appendicular lump could not be performed and had to be rescheduled on the advise of cardiologist. Medical report was submitted along with the second application for extension of interim bail wherein it was mentioned that applicant became suddenly unresponsive and unconscious during his treatment post-surgery. It was observed that the condition of the applicant required continuous monitoring and hospitalization. The Enforcement Directorate conceded to the prayer for extension of interim bail and same was extended for further period of 30 days. Applicant has joined the present proceedings through video conferencing. It is apparent from the record that although, the medical condition of the applicant might have remained critical at one point of time but the same has improved substantially. In fact,

the counsel for the applicant has also conceded to the said fact. There is nothing on record to indicate that applicant is suffering from any serious life threatening ailment. He does not fall under the category of 'sick or infirm' as contemplated under the proviso to Section 45 of the PMLA. In view of this, no case is made out for releasing the applicant on medical grounds.

31. Now, coming to the aspect as to whether the applicant has satisfied the twin conditions prescribed under Section 45 of the PMLA. The allegations against the applicant are that he has committed an offence under Section 3 of the PMLA. It is the case of Enforcement Directorate that applicant either knowingly assisted or was actually involved in the process or activity connected with the proceeds of crime. Before proceeding to consider the rival submissions of the parties, it is necessary to briefly set-out the position of law as enunciated by the Supreme Court as regards the considerations that must inform the grant or denial of bail in matters under the PMLA. The principles have been captured in the decisions of the Supreme Court relating to PMLA and analogously worded statutory provisions.

32. It has been observed in the matter of ***"Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra & Anr."*** *2005 (5) SCC 294.*

"44. The wording of Section 21(4), in our opinion, does

not lead to the conclusion that the court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act. If such a construction is placed, the court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the applicant. Such cannot be the intention of the legislature. Section 21(4) of MCOCA, therefore, must be construed reasonably. It must be so construed that the court is able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial.

Similarly, the court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in futuro must be an offence under the Act and not any other offence. Since it is difficult to predict the future conduct of an accused, the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence.

45. It is, furthermore, trite that for the purpose of considering an application for grant of bail, although detailed reasons are not necessary to be assigned, the order granting bail must demonstrate application of mind at least in serious cases as to why the applicant has been granted or denied the privilege of bail.

46. The duty of the court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. However, while dealing with a special statute like MCOCA having regard to the provisions contained in sub-section (4) of Section 21 of

> *the Act, the court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. The findings recorded by the court while granting or refusing bail undoubtedly would be tentative in nature, which may not have any bearing on the merit of the case and the trial court would, thus, be free to decide the case on the basis of evidence adduced at the trial, without in any manner being prejudiced thereby."*

33. The above stated view-point was reiterated by the Apex Court in the matter of ***Vijay Madanlal Choudhary & Ors. Vs. Union of India & Ors.'s case (supra)*** wherein it has been observed that at the stage of the grant of bail, court is expected to consider the question from the angel as to whether the accused was possessing the requisite mens rea. The observation made by the court are as under:

> *"388... Notably, there are several other legislations where such twin conditions have been provided for. Such twin conditions in the concerned provisions have been tested from time to time and have stood the challenge of the constitutional validity thereof. The successive decisions of this Court dealing with analogous provision have stated that the Court at the stage of considering the application for grant of bail, is expected to consider the question from the angle as to whether the accused was possessed of the requisite mens rea. The Court is not required to record a positive finding that the accused had not committed an offence under the Act. The Court ought to maintain a delicate balance between a*

judgment of acquittal and conviction and an order granting bail much before commencement of trial. The duty of the Court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. Further, the Court is required to record a finding as to the possibility of the accused committing a crime which is an offence under the Act after grant of bail.

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 2022 SCC OnLine SC 929 finding of the guilt or acquittal during trial which is based on the evidence adduced during the trial. As explained by this Court in Nimmagadda Prasad, the words used in Section 45 of the 2002 Act are "reasonable grounds for believing", which means the Court has to see only if there is a genuine case against the accused and the prosecution is not required to prove the charge beyond reasonable doubt."

34. It has been observed in the matter of ***"Mohd. Muslim alias Hussain vs. State (NCT of Delhi)"*** *2023 SCC OnLine SC 352*:

"19. The conditions which courts have to be cognizant

of are that there are reasonable grounds for believing that the accused is "not guilty of such offence", and that he is not likely to commit any offence while on bail. What is meant by "not guilty" when all the evidence is not before the court ? It can only be a prima facie determination. That places the court's discretion within a very narrow margin. Given the mandate of the general law on bails (Sections 436, 437 and 439, CrPC) which classify offences based on their gravity, and instruct that certain serious crimes have to be dealt with differently while considering bail applications, the additional condition that the court should be satisfied that the accused (who is in law presumed to be innocent) is not guilty, has to be interpreted reasonably. Further the classification of offences under Special Acts (NDPS Act, etc.), which apply over and above the ordinary bail conditions required to be assessed by courts, require that the court records its satisfaction that the accused might not be guilty of the offence and that upon release, they are not likely to commit any offence. These two conditions have the effect of overshadowing other conditions. In cases where bail is sought, the court assesses the material on record such as the nature of the offence, likelihood of the accused co- operating with the investigation, not fleeing from justice : even in serious offences like murder, kidnapping, rape, etc. On the other hand, the court in these cases under such special Acts, have to address itself principally on two facts: likely guilt of the accused and the likelihood of them not committing any offence upon release. This court has generally upheld such conditions on the ground that liberty of such citizens have to - in cases when accused of offences enacted under special laws - be balanced against the public interest.

20. A plain and literal interpretation of the conditions

under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

21. The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused's guilt may be proved. The judgments of this court have, therefore, emphasized that the satisfaction which courts are expected to record, i.e., that the accused may not be guilty, is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation (as held in Union of India v. Rattan Malik). Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. Satender Kumar Antil supra). Having regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail.

22. Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not

> *concluded in time, the injustice wrecked on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not, appalling. According to the Union Home Ministry's response to Parliament, the National Crime Records Bureau had recorded that as on 31st December 2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069 lakhs in the country. Of these 122,852 were convicts; the rest 4,27,165 were undertrials."*

35. Furthermore, in its recent decision in "***Ashish Mittal vs. Serious Fraud Investigation Office"*** *2023 SCC OnLine Del 2484*, in the context of section 212(6) of the Companies Act, 2013 which contains a provision in pari materia to section 45(1)(i) and (ii) of the PMLA, it has been held as under:

> *"28. The above enunciation of the law clearly mandates that where additional conditions are stipulated in a statute for grant of bail relating to specified offences, it cannot be that the prosecution need only recite from its complaint, or simply say that it has material against the accused in respect of such offences. The prosecution must show how the material collected during investigation supports the allegations in the complaint, and most importantly, how the allegations apply against the accused. To reiterate, the opposition by the public prosecutor must be reasoned opposition, supported by valid and relevant reasons. When the public prosecutor opposes a bail plea, he would have to establish foundational facts sufficiently to dislodge the presumption of innocence, and it is only then that the onus of satisfying the stringent twin-conditions would shift onto the accused. To be clear, there is no statutory mandate for the court to depart from the presumption of*

innocence.

33. It is also important to articulate here, that though the general principle is that parity with co-accused alone is not a ground to claim bail as a matter of right; however, that principle is nuanced. The nature of an offence may be such, that the fact that other accused have been granted bail, may persuade the court to exercise its discretion in favour of another co-accused in granting bail."

36. Relying on the above said decisions of the Supreme Court of India, High Court of Delhi culled out the principles for the applications of twin-conditions for grant and denial of bail in the matter of "***Ramesh Manglani Vs. Enforcement Directorate"*** *Bail Application No. 3611/2022, decided by the High Court of Delhi* as under:

"53. Upon a conspectus of the foregoing decisions, the principles for application of the twin conditions for grant or denial of bail under PMLA may be distilled and crystallised as under:

i. That while deciding a bail plea under the PMLA, the court need not delve deep into the merits of the allegations or minutely consider or assess the evidence collected by the investigating agency;

ii. That the court is only to satisfy itself, on a prima-facie view of the matter, based on broad probabilities discernible from the material collected during investigation, whether or not there are reasonable grounds for believing that the accused is not guilty of

the offence alleged. In doing so, the court would also consider, in a similar manner, whether the accused was possessed of the requisite mens rea in relation to the offence alleged. The effort has to be to assess, again on a prima-facie basis, if there is a genuine case against the accused;

iii. That the court is also similarly to satisfy itself, whether or not the accused is likely to commit any offence under the PMLA while on bail; and since it is difficult to predict the future conduct of an accused, the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence;

iv. That the court is not required to return a positive finding that the accused has not committed an offence; and must therefore maintain a delicate balance i.e. a clear distance between a judgment of acquittal or conviction and an order granting or denying bail; and

v. That since the assessment at the stage of granting or denying bail would be tentative in nature, such assessment may not have any bearing on the merits of the case; and the trial court would be free to decide the case on the basis of evidence adduced during trial, without in any manner being influenced by the decision of the court granting or denying bail."

37. It was further held in ***Ramesh Manglani's Case (supra)*** that the twin-conditions under section 45 (1) of the PMLA are to be applied in addition to the usual and ordinary principles required to be considered for grant or denial of bail which have been

summarized in the words of the Supreme Court in ***"P. Chidambaram Vs CBI"*** *2020 13 SCC 791*:

> *"21. The jurisdiction to grant bail has to be exercised on the basis of the well-settled principles having regard to the facts and circumstances of each case. The following factors are to be taken into consideration while considering an application for bail:*
>
> *(i) the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution;*
>
> *(ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses;*
>
> *(iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence;*
>
> *(iv) character, behaviour and standing of the accused and the circumstances which are peculiar to the accused;*
>
> *(v) larger interest of the public or the State and similar other considerations."*

38. Thus, it emerges from the above legal position that twin conditions contained under Section 45 of the PMLA do not impose an absolute bar or restrain on the powers of the Special Court to grant bail to a person accused of the offence of Money Laundering and these conditions have to be reasonably construed and interpreted

and evidence of prosecution is required to be weighed or examined in broader probabilities for deciding the question of grant of bail to such an accused and it is not required to be weighed meticulously. It is trite that the court while considering an application seeking bail, is not required to weigh the evidence collected by the investigating agency meticulously, nonetheless, the court should keep in mind the nature of accusation, the nature of evidence collected in support thereof, the severity of the punishment prescribed for the alleged offences, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witness being tampered with, the larger interests of the public/ State etc.

39. Now, keeping in my mind the settled position of law as discussed above, this court proceeds to analyze whether the applicant satisfies the twin conditions of Section 45 of the PMLA. It has been vehemently argued by the Ld. Sr. Counsel for the applicant that there is no evidence to connect the applicant with the alleged proceeds of crime. It has also been argued that the material on record does not demonstrate that proceeds of crime were generated from the predicate offence in respect of which the FIR No.256/2021 was registered at PS Special Cell. Ld. Sr. Counsel has contended that the arrest was made by the arresting officer

without arriving at the mandatory satisfaction prescribed under Section 19 of the PMLA. Enforcement Directorate has countered this argument mentioning that both these grounds were taken in the earlier bail application but the same were rejected.

40. I shall first deal with the argument of the applicant that he is entitled to be released on bail as his arrest was illegal. In so far as the argument about the illegality of the arrest of the applicant and non-compliance of the mandatory requirement of Section 19 of the PMLA, it has been argued by the Enforcement Directorate that applicant did not challenge the remand order of the court and therefore, the said question has attained finality. I am in complete agreement with the said argument. Admittedly, applicant never challenged the remand order of the court either at the time of the first remand application on 13.07.2023 or at the time of the second application on 18.07.2023. Since, no challenge was laid down by the applicant to the initial remand and the subsequent remand, he cannot, at this stage, re-agitated the matter so as to question the legality of his arrest for the purpose of bail.

41. Coming to the aspect of disconnect between the predicate offence and the proceeds of crime. Section 3 of the PMLA provides the definition of 'Money Laundering'. It defines the offence of money laundering as under:

*"**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 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 tis concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.]"

42. As can be seen from the definition of 'Money Laundering', the existence of proceeds of crime is a pre-requisite and sacrosanct for committing an offence under Section 3 of the PMLA. The definition of the proceeds of crime has been provided under Section 2(1)(u) of the PMLA which is as under:

> *"proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property [or where such property is taken or held outside the country, then the property equivalent in value held within the country] [or abroad];*
>
> *[Explanation.- For the removal of doubts, it is hereby clarified that "proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence;]."*

43. It has been argued by Ld. Sr. Counsel of the applicant that the nature of the alleged predicate offence is necessary to be determined in order to determine the existence of the proceeds of crime but there is no evidence to demonstrate that the alleged proceeds of crime were derived from the predicate offence in respect of which the FIR was registered. Ld. Sr. Counsel has argued that the evidence collected by the Enforcement Directorate does not establish that the proceeds of crime were generated from

the predicate offence. Enforcement Directorate has countered this argument mentioning that Foreign Exchange Reserve of India is foreign asset held and controlled by the Reserve Bank of India. It has argued that applicant and his associates acquired the foreign exchange by illegitimate means and transferred it abroad on the false pretense of exports and by doing so, they have successfully remitted the proceeds of crime to offshore fake entities.

44. In the present matter, the proceeds of crime are alleged to have been derived from a predicate offence committed under Section 420 read with Section 120B of IPC in respect of which an FIR bearing No. 256/2021 is stated to have been registered at PS Special Cell. I have perused the allegations in the said FIR. The FIR came to be registered on the allegations that certain Indian nationals have opened dummy bank accounts in foreign banks on the basis of their Indian passports which are forged and bogus. It was stated in the FIR that as part of criminal conspiracy, the foreign bank accounts were being used by the Chinese entities for pumping Chinese funds through these bank accounts. It was alleged that funds so received in the foreign bank accounts are thereafter transferred to various Indian bank accounts. It was stated that the transfer of funds to India is based on illegal activities such as receiving funds on the pretext of forged exports and the funds received in India are being used for various anti-

national activities. The FIR goes on to describe the anti-national activities mentioning that Chinese owned companies are not allowed to obtain Non-Baking Financial Companies (NBFCs) license by Reserve Bank of India and for securing a back door entry, they have started using NBFCs license of defunct Indian companies. It was stated that Indian NBFCs were made to sign MoUs with the Chinese companies and the funds are used for providing loans through various Chinese Apps. It was further alleged that while Indian NBFCs make a small percentage of 0.20% to 0.40% from this process, their counterpart Chinese Apps are making a profit of 25% to 50%. It was alleged in the FIR that in the event of non-payment of loan, Indian citizens are extorted and the entities are also transferring the funds through crypto currency traders. It was mentioned that these entities are also controlling and managing online trading applications, online betting and gaming activities. It was alleged that these concerns are used for *transferring the money earned from these activities out of India*.

45. The FIR described the manner in which the illegally earned money is being transferred out of India. It was stated that the *proceeds of crime generated through illegal online gaming activities and loan business are being transferred out of India through the network of fake entities*. It was mentioned that it has been learnt that Ashish

Kumar Verma and Manish Sharma were contacted by Vipin Batra and then introduced to Pawan Thakur, who is stated to be a Dubai based Indian national. It was alleged that Ashish Kumar Verma has shown himself to be a Director of three inactive companies and most of these companies were used in the business of foreign exchange for carrying out money laundering activities relating to criminal activities committed by the Chinese counterpart.

46. It is a settled proposition that the existence of proceeds of crime is sacrosanct for the offence of money laundering. The term 'proceeds of crime' is not a magical term which can be taken to be established merely because the prosecution has recited the term in its complaint. There ought to be some evidence on record to demonstrate that the money has either been derived or obtained from a criminal activity in respect of which a predicate offence stands registered. It has been held in the matter of ***Vijay Madanlal Choudhary's case (supra)*** as under:

> *"253. ….. it is only such property which is derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence can be regarded as proceeds of crime. The authorities under the 2002 Act cannot resort to action against any person for money-laundering on an assumption that the property recovered by them must be proceeds of crime and that a scheduled offence has been committed, unless the same is registered with the jurisdictional police or pending inquiry by way of complaint before the competent forum.*

For, the expression "derived or obtained" is indicative of criminal activity relating to a scheduled offence already accomplished. Similarly, in the event the person named in the criminal activity relating to a scheduled offence is finally absolved by a Court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of the criminal case (scheduled offence) against him/her, there can be no action for money-laundering against such a person or person claiming through him in relation to the property linked to the stated scheduled offence. This interpretation alone can be countenanced on the basis of the provisions of the 2002 Act, in particular Section 2(1)(u) read with Section 3. Taking any other view would be rewriting of these provisions and disregarding the express language of definition clause "proceeds of crime", as it obtains as of now.

282. Be it noted that the authority of the Authorized Officer under the 2002 Act to prosecute any person for offence of money-laundering gets triggered only if there exists proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act and further it is involved in any process or activity. Not even in a case of existence of undisclosed income and irrespective of its volume, the definition of "proceeds of crime" under Section 2(1)(u) will get attracted,unless the property has been derived or obtained as a result of criminal activity relating to a scheduled offence. It is possible that in a given case after the discovery of huge volume of undisclosed property, the authorized officer may be advised to send information to the jurisdictional police (under Section 66(2)of the 2002 Act) for registration of a scheduled offence contemporaneously, including for further investigation in a pending case, if any. On receipt of such information, the jurisdictional police would be

obliged to register the case by way of FIR if it is a cognizable offence or as a non-cognizable offence (NC case), as the case may be. If the offence so reported is a scheduled offence,only in that eventuality, the property recovered by the authorized officer would partake the colour of proceeds of crime under Section 2(1)(u) of the 2002 Act,enabling him to take further action under the Act in that regard.

345. Be it noted that the legal presumption under Section 24(a)of the 2002 Act, would apply when the person is charged with the offence of money-laundering and his direct or indirect involvement in any process or activity connected with the proceeds of crime,is established. The existence of proceeds of crime is, therefore, a foundational fact, to be established by the prosecution, including the involvement of the person in any process or activity connected therewith. Once these foundational facts are established by the prosecution, the onus must then shift on the person facing charge of offence of money-laundering to rebut the legal presumption that the proceeds of crime are not involved in money-laundering,by producing evidence which is within his personal knowledge. In other words, the expression "presume" is not conclusive. It also does not follow that the legal presumption that the proceeds of crime are involved in money-laundering is to be invoked by the Authority or the Court,without providing an opportunity to the person to rebut the same by leading evidence within his personal knowledge."

47. Thus, as can be seen from above-stated paras, the existence of proceeds of crime is a foundational fact and the prosecution is duty bound to demonstrate its existence by means of cogent

evidence. In the present matter, it is the case of Enforcement Directorate that the proceeds of crime were generated and derived through online fraud and cheating at the instance of Chinese entity through Indian shell entities. It has been alleged that the Chinese entities pumped funds into India through Indian shell entities and those funds were used for committing fraud by offering loans to various customers in India through various Apps and the earnings were remitted outside the country in the guise of foreign exchange. From the material placed on record, there is nothing to indicate that the Chinese entities, which allegedly remitted funds to India through Indian shell entities for carrying out the alleged nefarious activities, were identified by the Enforcement Directorate at any point of time. This fact becomes evident from record as not even a single Chinese entity has been made an accused in the charge-sheet/complaint filed by the Enforcement Directorate. In fact, no foreign entity has been made an accused. It was set out in the FIR of the predicate offence that Chinese entities offered loans through Chinese Apps and earned huge amount of profit from Indian customers. It was alleged that in the event of non-payment of loan, Indian citizens were extorted. As observed earlier, Section 2(1)(u) of PMLA expressly states that in order to be considered as proceeds of crime, the money should either be derived or obtained from criminal activity. In case, it is alleged that the money from the Chinese entity entered India on

the basis of fake exports, there must have been some material to demonstrate that investigation was carried out on the said aspect to reveal the connection between the alleged proceeds of crime with the alleged shell company. There is no cogent evidence to establish the said link and therefore, the aspect of proceeds of crime were generated from the predicate offence becomes doubtful.

48. Enforcement Directorate has presented the line of argument that the foreign exchange obtained by these entities itself constitutes proceeds of crime. On being inquired about the actual source of funds, no cohesive reply came forward on behalf of Enforcement Directorate. However, at this stage, I do not deem it expedient to give an absolute finding on the aspect of proceeds of crime as it would prejudice the trial. It may be emphasized again even at the cost of repetition that there ought to be evidence on record to demonstrate that the proceeds of crime have either been derived or obtained from a criminal activity from a predicate offence in respect of which the FIR has been registered. It is settled preposition that the court, while dealing with the application for grant of bail, is required to weigh the evidence in order to assist the broad probabilities and it is not required to be weighed meticulously. The court is not required to weigh the evidence to find the guilt of the accused as the same would amount to

preempting the trial. It may, however, be observed that in cases where additional conditions are stipulated for the grant of bail, it cannot be taken that the prosecution need only to recite from its complaint or simply say that it has material against the accused in respect of such offences. The prosecution is duty bound to show as to how the material collected during the investigation supports the allegations against the applicant as to how the allegations apply against him. In cases where the prosecution opposes a bail plea, it would have to establish foundational facts sufficiently to dislodge the presumption of innocence and it is only then that the onus of satisfying the stringent twin conditions would shift on to the accused. Reliance in this regard can be placed on the decision in "***Ashish Mittal Vs. Serious Fraud Investigation Office"*** *WP (Crl.) 2416/2023 decided by the High Court of Delhi*. As observed earlier, at this state, I do not deem it expedient to delve deep into this issue. I refrain from giving any conclusive finding on this aspect and the same shall be considered at the appropriate stage of charge.

49. It has been submitted on behalf of the applicant that the Enforcement Directorate has presented a version that sub-standard goods were exported abroad by the companies controlled by the applicant and he fraudulently obtained duty draw back in respect of the said exports. Ld. Sr. Counsel for the applicant has submitted

that the offences allegedly committed by the applicant needs to be first adjudicated by the appropriate authority and the Enforcement Directorate cannot step into the shoes of DRI Authorities to find the guilt of the applicant. She has argued that the Enforcement Directorate stands empowered to investigate and try only the offences relating to money laundering. She has submitted that no authority has been conferred on the Enforcement Directorate to investigate or inquire into any offence other than that which stands comprised in Section 3 of the PMLA. This argument cannot be rejected outrightly.

50. It has been held in the matter of ***Prakash Industries Ltd. Vs. Union of India's case (supra)*** as under:

> *"84. It becomes pertinent to observe that the ED stands empowered under the PMLA to try offences relating to money laundering. It neither stands conferred the authority nor the jurisdiction to investigate or to enquire into an offence other than that which stands comprised in Section 3. It is in that context that the observations made by the Supreme Court in Vijay Madanlal, namely,that the authorities under the PMLA cannot resort to action against a person for money laundering on an assumption that a scheduled offence had been committed assumes significance. It would be pertinent to recall that in Vijay Madanlal, the Supreme Court in Para 253 of the report had pertinently observed that authorities under the PMLA cannot resort to action thereunder on an assumption that property constitutes proceeds of crime or that a scheduled offense had been*

committed. Apart from the above, it was further observed that a report with respect to the commission of a scheduled offence must already be registered with the jurisdictional police or pending enquiry by way of a complaint before the competent forum. The Supreme Court had pertinently observed that the expression "derived or obtained"must be understood as being indicative of criminal activity relating to a scheduled offence "already accomplished". It was further held that for initiation of action under the PMLA for offences under Section 3, the registration of a scheduled offence is a prerequisite. It had gone on to further observe that even if emergent action were warranted in terms of the Second Proviso to Section 5, it would be incorrect to assume that the provisional attachment of property could exist absent even a link with the scheduled offence. The Supreme Court had pertinently observed that even if the ED in the course of its investigation and enquiry into an offence of money laundering were to come across material which would otherwise constitute a scheduled offence, it could furnish the requisite information to the authorities otherwise authorized by law to investigate those allegations and consider whether they would constitute the commission of a predicate offence.

85.What needs to be emphasized is that the PMLA empowers the ED to investigate Section 3 offenses only. Its power to investigate and enquire stands confined to the offense of money laundering as defined in that Section. However, the same cannot be read as enabling it to assume from the material that it may gather in the course of that investigation that a predicate offense stands committed. The predicate offense has to be necessarily investigated and tried by the authorities empowered by law in that regard. As would be evident

from a perusal of the Schedule, it enlists offenses defined and created under various statutes which independently contemplate investigation and trial. The primary function to investigate and try such offenses remains and vests in authorities constituted under those independent statutes. ED cannot possibly arrogate unto itself the power to investigate or enquire into the alleged commission of those offenses. In any case, it cannot and on its own motion proceed on the surmise that a particular set of facts evidence the commission of a scheduled offense and based on that opinion initiate action under the PMLA."

51. It is the case of Enforcement Directorate that the companies controlled by the applicant carried out export of sub-standard goods and claimed fake duty drawback and IGST refund. It has been alleged that the company M/s Krishna Overseas was controlled by the applicant and it was involved in export to shell entities and it also availed fraudulent IGST refund. I find force in the submissions of the Ld. Sr. Counsel that no investigation on this aspect has been carried out by DRI authorities. The argument of the Sr. Counsel that the Enforcement Directorate cannot step into the shoes of DRI to find the guilt of the applicant in respect of alleged fudged exports is well founded.

52. It has been reiterated in various pronouncements that authorities under the PMLA are empowered only to investigate and try the offences relating to money laundering. The Enforcement

Directorate is not conferred with the authority and jurisdiction to inquiry into offences other than the one described under Section 3 of the PMLA. It has been observed in ***Vijay Madan Lal Chaudhary's case (supra)*** that possession of unaccounted property may be actionable for tax violation but it will not be regarded as proceeds of crime unless the concerned tax legislation prescribes such violation as a schedule offence in respect of which the FIR stands registered. The authorities under the PMLA cannot resort to action against any person for money laundering on the assumption that the property recovered by them must be proceeds of crime and that a schedule offence has been committed, unless the same is registered within the jurisdictional police or pending inquiry by way of complaint before the competent forum. The argument of the defence counsel that the export of sub-standard goods and claiming of fake Custom Duty drawback and IGST refund constitutes an independent offence does hold ground. Although, Ld. SPP submitted during the course of arguments that intimation about these transactions was sent to the competent authority but admittedly, till date, no FIR or complaint came to be registered in respect of these transactions.

53. It has been submitted on behalf of the applicant that in order to establish its case, Enforcement Directorate heavily relied on the statement of Mayank Aggarwal but there are material

discrepancies in his statement. I have perused the statement of Mayank Aggarwal recorded under Section 50 of the PMLA. This statement is stated to have been recorded on 28.08.2023. It is the case of Enforcement Directorate that Mayank Aggarwal made a statement to the effect that he collected the documents relating to the companies controlled by the applicant during his last visit to Singapore on 12.03.2020. Mayank Aggarwal mentioned in his statement that he collected the statement of the bank account of M/s Diastone Trading FZE during his visit to the Singapore office on 12.03.2020. He handed over a bank statement of M/s Diastone Trading FZE for the period from 06.07.2016 to 07.06.2023. No plausible explanation has come forward as to how he managed to obtain the statement of the subsequent period during his visit at the Singapore office on 12.03.2020. This fact does cast aspersions on his statement and raise doubt over his veracity.

54. I am of the considered opinion that Enforcement Directorate has failed to identify and investigate the proceeds of crime which were purportedly derived out of the predicate scheduled offences. It was mentioned that the proceeds of crime were connected to the money earned by Chinese Apps funded from Chinese money, who forged some sort of agreement with the Indian Non-Banking Financial Companies (NBFCs). The allegations in the FIR registered in respect of predicate offence pertains to cyber crimes

committed by Chinese entities but no investigation has been done on this aspect. No evidence has been placed on record to demonstrate as to how the Chinese entities operated in India and committed the schedule offence as mentioned in FIR No.256/2021 to obtain or derive the proceeds of crime. It may also be noted that no cogent evidence has been placed on record to establish the link between the applicant and Pawan Thakur. The Enforcement Directorate came up with a version that sub-standard goods were exported by the firms controlled by the applicant but no investigation on this aspect has been done by the competent authority. The evidence falls short of showing the necessary link between the predicate offence and the proceeds of crime.

55. In view of the discussion held in the aforesaid paras, the identification and existence of proceeds of crime have come under cloud. It may also be noted that a period of more than two years has lapsed and the charge-sheet has not been filed in the predicate offence. Record shows that major component of the evidence of the Enforcement Directorate is in the form of statements recorded under Section 50 of the PMLA. The applicant has pointed out discrepancies in the statement of one of the key material witnesses. It is an established preposition that at this stage, this court is not required to record a positive finding that applicant has not committed an offence punishable under the PMLA. As

observed in the judgments pronounced by the Superior Courts, at this stage, this court has to maintain a delicate balance between a judgment of acquittal & conviction and any order granting or denying bail. Since the assessment at the stage of granting or denial bail would be tentative in nature, such an assessment may not have any bearing on the merits of the case. In so far as the conduct of the applicant is concerned, it appears that he has been forthcoming with the investigating agency and about the information that he possessed and his statements were recorded under Section 50 of the PMLA on multiple occasions. On an earlier occasion, a report was filed showing the involvement of the applicant in other offences but the report was found to be incorrect. The verification report submitted by the Enforcement Directorate at the time of interim medical bail forms part of judicial record and it shows that applicant is not involved in any other similar offences. The report placed on record shows that applicant has either been discharged or acquitted in the list of cases filed by the Enforcement Directorate. The submissions that a fresh report about the involvement of the applicant should be called does not hold ground for two reasons, firstly, the report was submitted by the Enforcement Directorate itself, and secondly, in case, there is any other pending case against the applicant, the Enforcement Directorate could have furnished the details in their reply or at the time of arguments. Record indicates that applicant

was released on interim medical bail and the bail was extended on two occasions. The applicant has duly complied with the conditions imposed on him in terms of the interim bail order dated 23.12.2023. Nothing has come on record to show that the applicant has violated the terms and conditions of the interim bail. The applicant is not a flight risk. In view of these circumstances, for the purpose of grant of regular bail to the applicant, this court is satisfied that there are reasonable grounds to believe that the applicant is not guilty of the offence punishable under Section 3 of the PMLA and there is no likelihood of his committing any offence while on bail. The applicant is entitled to be released on regular bail subject to the following terms and conditions:

A) The applicant shall furnish a personal bond for a sum of Rs.20,00,000/- with one surety of the like amount to the satisfaction of this Court;

B) The applicant shall surrender his passport and shall not leave the country without prior permission of the Court;

C) The applicant shall ordinarily reside at his place of residence and keep his phone operational at all times. He shall immediately inform in case of change in the address by way of an affidavit, to the investigation officer as well as the Court;

D) The applicant shall appear and attend the Court/ Investigating Agency as and when required;

E) The applicant shall provide his mobile number to the Investigating Officer (IO) at the time of release;

F) The applicant shall not directly or indirectly communicate or visit co-accused persons or the witnesses or offer any inducement, threat or intimidate or influence any of the prosecution witnesses or tamper with the evidence of the case; and

G) The applicant shall not indulge in any criminal activity during the bail period.

56. It may be noted that nothing stated herein above shall tantamount to be an expression on the merits of the case and the findings in the present order are only on the basis of broad probabilities.

Announced in the open court
on 22nd February, 2024

(Sudhanshu Kaushik)
Addl. Sessions Judge-06
New Delhi District, Patiala House Courts,
New Delhi/22.02.2024