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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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RESERVED ON - 02.06.2023
PRONOUNCED ON - 03.07. 2023

+ BAIL APPLN. 1478/2023

MANISH SISODIA

..... Petitioner

Through: Mr. Mohit Mathur, Sr. Adv. &
Mr. Dayan Krishnan, Sr. Adv. with
Mr. Vivek Jain, Mr. Mohd.
Irshad, Mr. Mohit Siwach, Mr. Karan
Sharma, Mr. Rishikesh Kumar, Mr.
Aditya Raj, Mr. Harsh Gautam,
Mr. Abhinav Jain, Mr. Rajat Jain,
Mr. Mayank Sharma and Mr. Rishabh
Sharma, Advocates.

versus

DIRECTORATE OF ENFORCEMENT

..... Respondent

Through: Mr. S. V. Raju, ASG with Mr. Zoheb
Hossain, Special counsel for ED and
Mr. Vivek Gumani, Mr. Ankit Bhatia,
Mr. Bhaibhav, Mr. Harsh Paul Singh
and Mr. Kartik Sabarwal, Advs.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

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J U D G M E N T

DINESH KUMAR SHARMA,J :

A. FACTUAL MATRIX

1. The present judgment shall dispose of the bail application no. 1478/2023 of Sh. Manish Sisodia. The bail application of Manish Sisodia was dismissed by the learned Special Judge vide order dated 28.04.2023.
2. The bail applications filed by petitioner Benoy Babu was dismissed by the learned Special Judge, PC Act , CBI-09 vide order dated 16.02.2023.
3. Briefly the facts as stated by Enforcement Directorate are as under:
 - “5. *An FIR No. RC0032022A0053 dated 17.08.2022 was registered by CBI, ACB, New Delhi against Sh. Manish Sisodia, Deputy Chief Minister, GNCTD of Delhi and others under Section 120B r/w 477A of Indian Penal Code, 1860 and Section 7 of Prevention of Corruption Act, 1988 for irregularities in framing and implementation of the excise policy of GNCTD of Delhi for the year 2021-22.*
 6. *The FIR is registered on the direction of competent authority conveyed by Shri Praveen Kumar Rai, Director, MHA, Govt. Of India vide OM No. 14035/06/2022-Delhi-1 dated 22/07/22 for enquiry into the matter of irregularities in framing and implementation of the excise policy of GNCTD of Delhi for the year 2021-22. Vide said OM Shri Praveen Kumar Rai has also*



forwarded DO letter no. SLG/Conf./2022/75 dated 20/07/2022 of Shri Vinai Kumar Saxena, Hon'ble Lt. Governor, GNCTD of Delhi alleging irregularities in framing and implementation of the excise policy of GNCTD of Delhi for the year 2021-22.

7. *The OM discloses that Shri Manish Sisodia, Deputy Chief Minister, GNCTD of Delhi, Shri Arva Gopi Krishna, the then Commissioner (Excise), GNCTD of Delhi and Shri Pankaj Bhatnagar, Assistant Commissioner (Excise), GNCTD of Delhi were instrumental in recommending and taking decisions pertaining to excise policy for the year 2021-22 without approval of competent authority with an intention to extend undue favors to the licensees post tender.*
8. *In the said FIR it has been inter-alia stated/alleged that:*
 - a. *Sh. Vijay Nair, Former CEO of M/s Only Much Louder, an entertainment and event management company, Shri Manoj Rai, Ex-employee of M/s Pernod Ricard, Sh. Amandeep Dhall, Owner of M/s Brindco Spirits & Sh. Sameer Mahendru. Owner of M/s Indo Spirits are actively involved in irregularities in framing and implementation of excise policy of GNCTD of Delhi for the year 2021-22.*
 - b. *Some of the L-1 Licence holders are issuing credits notes to retail vendors with an ab-initio intention to divert the funds as undue pecuniary advantage to Public Servants. In furtherance to this, they are showing false entries in their books of accounts to keep their record straight.*
 - c. *Shri Amit Arora, Director of M/s Buddy Retail Pvt. Limited,*



1402, Tower-15, Vipul Greens, Gurgaon. Haryana, Shri Dinesh Arora R/o Plot No.-139, III Floor. Block-A. Gujrawala Town, Phase-I. Delhi. Shri Arjun Pandey are close associates of Shri Manish Sisodia and are actively involved in managing and diverting the undue pecuniary advantage collected from Liquor Licensees to accused public servants. That Shri Sameer Mahendru, MD. M/s Indospirits has transferred an amount of one crore to account no. 10220210004647 of M/s Radha Industries maintained with UCO Bank. Rajendra Place, New Delhi. M/s Radha Industries is being managed by Shri Dinesh Arora. That Shri Arun Ramchandra Pillai used to collect undue pecuniary advantage from Shri Sameer Mahendru, MD. M/s Indospirit for onward transmission to accused public servant through Shri Vijay Nair. A person named Arjun Pandey has once collected huge cash amount of about Rs.2-4 crores from Shri Sameer Mahendru on behalf of Shri Vijay Nair.

- d. M/s Mahadev Liquors, a proprietorship firm was granted L-1 License. Sh. Sunny Marwah is the authorized signatory of the firm. Sh. Sunny Marwah is also director in companies/firms being managed by family of Late Sh. Ponty Chadha. That Sh. Sunny Marwah is in close contact with accused public servants and has been regularly giving undue pecuniary advantage to them.



9. *The predicate agency i.e., the CBI has filed a chargesheet dated 25.11.2022 with respect to their investigation done in the above-mentioned FIR no RC0032022A0053 dated 17.08.2022 in the Special Court, New Delhi. The cognizance of the same has been taken vide order dated 15.12.2022.*
10. *The gist of the CBI chargesheet is as under:*
 - a. *The CBI has filed chargesheet in respect of the subject FIR on 24.11.2022. In the chargesheet filed by CBI. 6 accused persons have been covered- Sh. Sameer Mahandru, Sh. Vijay Nair. Sh. Abhishek Boinpally. Sh Gautam Mootha, Sh Arun Pillai and Excise officials Sh Kuldeep Singh. Deputy Commissioner, Excise. Sh Narinder Singh, Asst Commissioner. Excise.*
 - b. *The CBI has found that, a conspiracy was hatched by Sh Vijay Nair along with Sh Abhishek Boinpally. Sh Dinesh Arora and others to get the undue benefits by circumventing the provisions of the policy. That, Sh Dinesh Arora is a close associate of Sh Vijay Nair and he participated in multiple meetings took place amongst Sh Vijay Nair. Sh Abhishek Boinpally and others to discuss and plan the conspiracy. In one of these meetings that took place in Hyderabad Sh Vijay Nair told Sh Dinesh is to coordinate with Sh Abhishek Boinpally to transfer Rs. 20-30 Cr approx. to Sh Vijay Nair. That, this payment will be returned by way of getting stakes in business like Indo Spirit and extra credit notes to the retail zones managed by Sh Abhishek Boinpally*



from Brindco. In that meeting, it was conspired that the wholesale distribution of Pernod Ricard and Diageo would go to Indo Spirits and Brindco respectively. That, after the recoupment was over, the 6% kickbacks collected from the wholesale businesses would be divided in half between Sh Vijay Nair and Sh Abhishek Boinpally.

- c. That, in pursuance to the said conspiracy, the money amounting to Rs. 20 to 30 crores was sent to Sh. Vijay Nair and his team between July to September 2021 in cash through hawala channels. Sh. Abhishek Boinpally used to call Sh. Dinesh Arora and tell him a phone number and currency note number, which he used to forward to the team of Vijay Nair and inform Shri Vijay Nair.*
- d. Sh. Vijay Nair instructed the employees of Pernod Ricard India Pvt. Ltd through messages and conversations over phone as well as in person that M/s Pernod Ricard India Pvt Ltd should not give its wholesale distributorship to M/s Brindco Sales Pvt. Limited as M/s Diageo is going to award its wholesale distributorship to M/s Brindco Sales Pvt. Limited.*
- e. That, Shri Sameer Mahandru introduced Shri Arun R. Pillai and Shri Abhishek Boinpally as potential investors in Indo Spirits who have a backing of Sh. Magunta Srinivasulu Reddy of Balaji Group and Sh Sharad Reddy of Aurobindo Pharma. In this regard, a meeting was held at hotel Taj Mansingh, Delhi on 20.09.2021 in which the employees of*



M/s Pernod Ricard India Pvt Ltd, Sh. Abhishek Boinpally, Sh. Arun R Pillai, Sh. Sameer Mahandru, Sh. Magunta Srinivasulu Reddy, Sh Sharad Reddy and others were present.

- f. When these persons applied for L1 license under the name of Indo Spirits Marketing Pvt Ltd, there were certain complaints mentioning cartelisation and EMD cross funding against Indospirits and Khao Gali and its promoter Sh Sameer Mahandru. The Excise officials issued a SCN but only partially covered the issues in the complaint with an intention of deliberately favouring the entity. That, the license of Indospirits was issued in conspiracy of Sh Vijay Nair, Sh Dinesh Arora, Sh Sameer Mahandru and the Excise officials.*
- g. That. Sh Sameer Mahandru formed a cartel through his entities Khao Gali, Indospirit Marketing Pvt Ltd. In violation of the Excise Policy 2021-22. That, the excise officials granted L1 license to Indospirits without properly processing the file and collecting the requisite documents as well as without properly addressing the complaint against M/s Indospirits in lieu of Rs 30 lakh bribe taken by Sh Narender Singh from. Sh Sameer Mahandru and on the influence exerted by Sh Vijay Nair and Sh Dinesh Arora.*
- h. That, Sh Abhishek Boinpally had threatened Sh Jagbir Sidhu of Diageo withdraw various complaints petitions filed anonymously/pseudonymously who he believed to have been*



filed by Sh Aman Dhall of Brindco, who was the wholesaler for Diageo else, Sh Abhishek Boinpally would blacklist Diageo from the 9 retail zones he was managing or was a part of. And that, he will get the wholesale license of his wholesale distributor M/s Brindco Sales and they will get it cancelled from the Excise Department.

- i. That, the part of the profits accrued from Indospirits have been transferred to Sh Arun Pillai, which was basically a recovery of the kickback given in advance. That, part of that sum has reached Sh Abhishek Boinpally through Sh Gautam Mootha of India Ahead and Andhra Prabha Publications. This amount is now being claimed as a loan reversal from Gautam Mootha to Abhishek however there is no loan agreement between them. Part of the profits of Indo Spirits to the tune of Rs. 1.70 Cr has directly reached India Ahead and Andhra Prabha Publication. That, this money is of Rs. 1.70 Cr is repayment towards the upfront money sent by Sh. Abhishek Boinpally to Sh. Vijay Nair as Sh. Abhishek Boinpally has investment and interest in M/s Andra Prabha Publications Pvt Ltd and M/s India Ahead News.*
- j. Therefore, it is clearly revealed that Sh. Vijay Nair hatched a conspiracy with Sh. Dinesh Arora, Sh. Abhishek Boinpally, Sh. Arun R Pillai, Sh. Sameer Mahandru, Sh Mootha Gautam. Sh Kuldeep Singh, DC and Sh Narender Singh, AC and in pursuance of the same by using his position in the ruling party at Delhi took advance money of*



Rs 20-30 crores from Sh. Abhishek Boinpally through Sh. Dinesh Arora and in lieu of the same influenced the officers of M/s Pernod Ricard India Pvt Ltd as well as the officers of Excise Department of GNCT of Delhi to get the distributorship of M/s Pernod Ricard India Pvt Ltd and LI license for M/s Indo Spirits for which the same was not entitled.

- 11. Since the Section 120B of the Indian Penal Code, 1860 and Section 7 of the Prevention of Corruption Act, 1988 are scheduled offences under the Prevention of Money Laundering Act (PMLA), 2002, the Directorate of Enforcement has initiated an investigation in the matter by recording an ECIR No. ECIR/HIU-II/14/2022 on 22.08.2022. The investigation under PMLA is being conducted by the Directorate for tracing out Proceeds of Crime generated and laundered due to the alleged irregularities in the formulation and implementation of the Excise policy 2021-22. Further, ED has filed a Prosecution Complaint dated 26.11.2022 arraying Sameer Mahandru and others as accused before the Hon'ble Special Court (PMLA). The Ld. Court has taken cognizance of the same vide its order dated 20.12.2022. Thereafter, 1st Supplementary Prosecution Complaint dated 06.01.2023 has been filed against Sh. Abhishek Boinpally and others before the Hon'ble PMLA Court. During the investigation, several searches have been conducted, statements have been recorded. ED has provisionally attached properties to the tune of Rs. 76.54*



crores vide PAO No. 02/2023 dated 24.01.2023. The investigation done by ED has revealed as under:

- a. PMLA investigation done so far has revealed that, the Delhi Excise Policy, 2021-22 was created by the top leaders of the AAP to continuously generate and channel illegal funds to themselves. The extent of involvement and abatement done by the leaders of the AAP of the criminal activities undertaken by the accused further substantiates their design and scheme of the scam. The policy was formed with deliberate loopholes to facilitate illegal and criminal activities.*
- b. The policy promoted cartel formations through back door, awarded exorbitant wholesale profit margin @12% and huge retail profit margin of 185% and incentivized other illegal activities on account of criminal conspiracy by the top leaders of AAP to extract kickbacks from the businesses.*
- c. As disclosed by C. Arvind, DANICS, Secretary to Manish Sisodia, in his statement dated 07.12.2022, the draft GoM report was given to him in the mid of March 2021 when Sh. C Arvind was called by Manish Sisodia to the residence of Arvind Kejriwal, CM (where Satyender Jain was also present). The conspiracy of the GoM to give wholesale business to private entities and fix 12% margin (to get 6% kickback out from the same) is clear from the statement of C. Arvind wherein he disclosed that there was neither any discussion in the GoM meetings about giving wholesale to private entities nor fixing 12% profit margin for them. He further stated that it was the*



first time that he saw these proposals in the draft GoM report (i.e. document handed over to him) and he was directed to prepare the report on the basis of the said document.

- d. Due to the policy framework, where one manufacturer could only choose one wholesaler gave the manufacturers' a very critical position to decide the profits of the wholesale businesses. Though the manufacturers seemingly were supposed to take this crucial decision on their own as per their choice, but, this investigation has revealed that Pernod Ricard (one of the Accused), one of the biggest manufacturers in the country, also a subject of the ongoing investigation, was in fact directed by and conspired with Sh Vijay Nair to give their wholesale distribution business to the accused M/s Indo Spirits (L1 wholesaler), which is a part of the Super Cartel including Sh. Abhishek Boinpally.*
- e. Sh Vijay Nair, who has orchestrated this entire scam is not an ordinary worker of the AAP but a close associate of Sh Arvind Kejriwal, the CM of Delhi and was closely interacting with the Dy CM for the Excise policy related matters. Sh Vijay Nair, as per his statement under section 50 of PMLA, 2002 functions from the camp office of Sh Arvind Kejriwal, CM, Delhi. Further, Sh Vijay Nair, since 2020, has been residing in the Govt bungalow allotted to a Cabinet Minister of Delhi Govt, Sh Kailash Gehlot, part of GoM of Excise Policy 2021-22. Sh Vijay Nair, does not have any other residence in Delhi. Irony being, Sh Gehlot lives at another private residence in*



Najafgarh.

- f. Sh Vijay Nair had arranged meeting of the owner/controller of Indo Spirits Sh Sameer Mahandru, with Sh Arvind Kejriwal, CM, Delhi and when that didn't materialise, he arranged a video call through facetime on his phone for Sh Sameer and Sh Arvind Kejriwal, where Sh Arvind said to Sh Sameer that, Vijay is his boy and that Sh Sameer should trust him and carry on with him. These facts are relevant to mention so as to establish the abatement of his actions in relation to the Excise Policy scam, by the political leaders of the AAP.*
- g. Sh Vijay Nair, is Incharge of Media and Communication for the AAP, had no role in the Delhi Govt. in fact acted as a broker/liaison/middlemen on behalf of the top leaders of the AAP for getting bribes/kickbacks from various stakeholders in the Delhi Liquor business in exchange of favourable outcomes (policy changes) in the Excise Policy of 2021-22, which was being drafted at that time. He even threatened the stakeholders who were not agreeing to his demands that he changes suitable/desired by them may not go through entirely if they do not concede to his demands.*
- h. Sh Vijay Nair, in connivance with Sh Dinesh Arora and through him with Sh Amit Arora, has also arm twisted a wholesaler to surrender the L1 license and then coerced the manufacturers surrendered through that license to choose the wholesalers of his choice and favour to direct the profit margins to his co-conspirators, so that there was complete control on the*



kickbacks to be extracted.

- i. Sh Vijay Nair, on behalf of leaders of AAP has received kickbacks to the tune of Rs. 100 Cr from a group, for convenience, we may call it the South Group (as termed in the statements of various persons recorded during the investigation), whose prominent persons are Sh Magunta Srinivasulu Reddy, Sh Raghav Magunta, Sh Sarath Reddy and Ms K Kavitha. The South Group was represented by Sh Abhishek Boinpally, Sh Arun Pillai and Sh Buchi Babu. Sh Abhishek Boinpalli facilitated the transfer of Rs. 100 Cr kickback in connivance and conspiracy with Sh Vijay Nair and his associate Sh Dinesh Arora.*
- j. Investigation of the trail of this kickback so far has revealed that part of these funds were used in the election campaign of the AAP for Goa Assembly elections 2022. Cash payments to the tune of Rs. 70 lacs were made to the volunteers who were part of the survey teams. Sh Vijay Nair himself has told certain persons involved in the campaign related work to receive the payments in cash. Advertisement/hoarding related work were directed to raise only part of the claims in the bill and receive the remaining in cash. These part cash payments were managed through Hawala Channels. Teams led by Sh Vijay Nair have directed certain firms to even issue bogus invoices.*
- k. These kickbacks were paid in advance to the AAP leaders through Vijay Nair by the South Group as a part of agreement between the South Group and the AAP leaders. Against the*



kickbacks paid, the south group secured uninhibited access, undue favours, attained stakes in established wholesale businesses and multiple retail zones (over and above what was allowed in the policy). In one of the ways to recover/recoup the kickbacks given by the South Group, partners of the South group were given 65% stakes in Indo Spirits in collusion with the accused Sh Sameer Mahandru. The South group controlled these stakes in Indo Spirits, through false representation, concealment of true ownership and proxies i.e. Sh Arun Pillai and Sh Prem Rahul. This partnership formation was directed by Sh Vijay Nair on the assurance of giving the wholesale business of Pernod Ricard to Indo Spirits.

- l. The gravity and depth of this criminal conspiracy is such that to grant L1 wholesale license to Indo Spirits despite various complaints highlighting Sameer's and Indospirit Marketing Pvt Ltd's role in cartelisation, when Sameer submitted a fresh application in a different name of Indo Spirits, the Dy CM, Delhi, Sh Manish Sisodia himself directed the Excise Commissioner to grant the license on priority.*
- m. Pernod Ricard, is one of the accused in the instant case, which through Sh Benoy Babu and others, in conspiracy with the super cartel and Sh Vijay Nair gave their wholesale business to Indo Spirits. The Excise Policy 2021-22 required the manufacturers to register their brands at the Lowest EDP net of all discount/commission/rebate of any nature whatsoever, however, Pernod Ricard by way of conspiracy has got their*

price fixed without deducting the discounts/rebates they offer thus getting a much higher price fixed for their brands and thus earning a huge additional profit which was ineligible to them and should have been passed to the consumers as lower MRP. If the manufacturer had registered the brands at actually lowest EDP, the capacity of the manufacturers to give out credit notes would have been limited. However, Pernod Ricard paid Rs. 131.9 Crores credit notes to the retailers via the wholesalers, where the benefit of discounts was shifted to the retailers instead of the actual consumer at large.

n. That, in order to create a device for continuous payment of kickbacks to Sh Vijay Nair, an unheard of margin of 12% was provided to the private wholesalers (LIs) contrary to the recommendations of the Expert Committee headed by Sh Ravi Dhawan, IAS and then Excise Commissioner which as detailed below, suggested for a single Govt entity as Wholesaler for Delhi. On this account, the Govt lost the revenue of 12% Rs. 581 cr. that would have accrued to it in case the Expert Committee recommendations were accepted by the Govt, which in the subject policy was assigned to the Pvt. Players, only to fill the personal coffers of the leaders of AAP. This loss to the Govt exchequer actually got illegally diverted into ostentatious profits to the wholesalers including the accused M/s Indo Spirits, which was used to recoup the kickbacks paid in advance by the South group.

o. The South Group directly and indirectly controlled 9 retail



zones, which included 5 retail zones of Sh Sarath Reddy (accused no). In some cases the control was via financing of the EMD (Earnest Money Deposit) for the L7 tender process. ostensible investments, relatives/dummies/proxies. Apart from the direct profits accruing from the wholesale business of Indo Spirits, modus operandi for recovering the kickback paid in advance by the South group, monies in the form of outstanding from the ostensible sales from the wholesale of Indo Spirit to Retail of the South group with an understanding that the outstanding was not to be recovered and the amount will be shown as recoverable in the books of account. Sh Sarath Reddy's controlled entities owed over Rs. 60 Cr (approx.) to Indo Spirits, which is shown as outstanding but was not meant to be recovered as part of the conspiracy.

- p. The retail business was lucrative and the turnover was huge on daily basis. Further, the retail sales were in cash and not credit based, meaning thereby the generation of funds/recovery of the purchase cost was immediate. Thus, there was no valid reason for not repaying the outstanding towards the wholesaler either on the same day or soonest after.
- q. Another novel method of recovery of the kickbacks was through passing of Credit Notes. Ordinarily the credit notes are passed to the person who had direct nexus with or has sold the goods, however, in this business, the manufacturers were giving credit notes to the retailers with whom they had no direct transactions with. Further, there was no apparent reason to give credit notes



to businesses which are minting money with MRP being 3 times of the cost and having profit margin of 185% approx. The fact that the credit notes were an eyewash to transfer money illegally to pay kickbacks is evident from the fact that the ostensible reason of volume based credit notes was bogus and credit notes have been passed in an inconsistent manner considering the sale volume. For example, Pernod Ricard has not given any credit notes to M/s Adharv Enterprises (not a favoured L7) against the volume of 19,080 cases purchased in the months of Dec, 2021 Jan, 22 and Feb 22. However, Pernod Ricard has given Rs. 61.01 lakhs as credit notes to M/s Organomix Ecosystems Pvt. Ltd. (which is part of the South Group cartel) who has purchased 17,644 cases during the said 3 months.”

B. SUBMISSIONS ON BEHALF OF THE PETITIONER

4. Mr. Mohit Mathur and Mr. Dayan Krishnan, learned senior advocates with Mr. Vivek Jain, learned counsel appearing on behalf of the Applicant Mr. Manish Sisodia has advanced lengthy arguments assailing the order of learned Special Judge and emphasizing that in fact there is no material on record to even have an inference that Applicant Manish Sisodia has committed an offence under the Prevention of Money Laundering Act, 2002 (hereafter after referred to as “PMLA”). Learned senior counsels have submitted that the allegation of demand of bribe by the Applicant Manish Sisodia from Amit Arora is completely baseless and unsubstantiated. It has been submitted that there are major and material discrepancies regarding the



alleged meeting between the Applicant Manish Sisodia and Amit Arora. The discrepancy in the statement of Dinesh Arora in respect of the amount has also been highlighted. It has been submitted that even Dinesh Arora in his statement stated that money was received through Mr. Vijay Nair and not from Manish Sisodia. It has been submitted that in any case the insertion of the NOC clause was required since the operations of IGI Airport are under the purview of the Delhi International Airport Ltd. and not the Delhi Government. It has been submitted that in this regard there is also a discrepancy in the statement of Amit Arora recorded on 07.09.2022 and 06.04.2023.

5. It has further been submitted that the case as set up by the ED does not disclose any offence under Section 3 of the PMLA against the Applicant herein. It has been submitted that the offence of money laundering under Section 3 PMLA is totally independent in terms of *actus reus* and *mens rea* from the Scheduled Offence. Learned senior counsels have submitted that there is no material on record to show that the Applicant directly or indirectly attempted to indulge, or knowingly assisted or knowingly was a party to a process of activity connected with the proceeds of crime. In this regard, reliance has also been placed upon ***Vijay Madanlal Chaudhary vs. Union of India*** 2022 SCC OnLine SC 929. It has been submitted that ED 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. Learned senior counsels submitted that the offence of money laundering is an independent offence and only involvement in concealment, possession, acquisition,



or use of proceeds of a crime connected with the proceeds of crime would constitute the offence of money laundering. Learned senior counsels have submitted that the investigation done by the ED is also in violation of the judgment of this court in *Prakash Industries Ltd. v. Union of India & Anr.*, 2023 SCC OnLine Del 336. It has been submitted that in this case it was inter alia held that the PMLA empowers the ED to investigate Section 3 offense only and its power to investigate and enquire stands confined to the offense of money laundering as defined in the Section. It has also been submitted that even for the offence under Section 120B IPC there must be material to show that the Applicant was involved in the conspiracy to deal in the alleged proceeds of crime. Learned senior counsels have submitted that the allegations made by the ED are absolutely vague and there are no reasonable grounds to believe that the Applicant would be found guilty of the offence of money laundering.

6. Learned senior counsels have submitted that at this stage the reliance on the statement under Section 50 PMLA cannot be placed in absence of any material corroboration. It has been submitted that though the statement recorded under Section 50 PMLA are admissible in nature but in the present case the statements given to the ED are hearsay evidence and suffers from material contradictions. Learned senior counsels have submitted that in the absence of corroboration with material evidence, an accused cannot even be held guilty solely based on the statement under Section 50 PMLA even at the conclusion of trial. Reliance has been placed upon *A. Tajudeen v. Union of India*, (2015) 4 SCC 435. Learned senior counsels have submitted that as



there is no material on record to corroborate the statement record under Section 50 PMLA, there is no possibility of holding the Applicant guilty and therefore the Applicant is entitled to be admitted to bail. Learned senior counsels have placed reliance upon *Anil Vasantrao Deshmukh vs. State of Maharashtra*, 2022 SCC OnLine Bom 3150 wherein the statements under Section 50 PMLA were disregarded on account of lacking the element of certainty as to the source, time and place. In this case, the doubt was also raised as to the evidentiary value of the statement of approver. Learned senior counsels have submitted that even this court in *Chandra Prakash Khandelwal v. Directorate of Enforcement*, 2023 SCC OnLine Del 1094 inter alia held that the evidentiary value of statement under Section 50 PMLA could be weighed at the end of the trial. It has been submitted that therefore, the court should not place undue reliance on the statement under Section 50 PMLA as the same is to be tested at the stage of trial. Learned senior counsels have submitted that accepting the statement under Section 50 PMLA at this stage would amount to accepting the version of ED as the gospel truth.

7. Learned senior counsels have submitted that the statements of various public servants namely C.Arvind Kumar, Rahul Singh, Sanjay Goel and Arva Gopi Krishna are self-serving statements without any corroboration. It has been submitted that the ED has relied primarily on the statement of the abovesaid and other public servants to substantiate the allegations that the Applicant formulated the Excise Policy contrary to expert opinion/mala fide as well as other allegations such as the grant of license to M/s Indo-Spirit. It has been submitted



that these statements were recorded in 2022-23 whereas the events in question took place in 2021 and the same are contradictory to the official record. Learned senior counsels have submitted that it has to be taken into account that why these public servants did not make any statement or flagged the issue at the relevant time. It has also been submitted that the Government of NCT of Delhi does not enjoy any control over the public servants and these public servants are wholly within the control of the Hon'ble LG, who is the complainant in the present case. It has been submitted that as these officers were admittedly involved in the drafting and framing of this policy and the fact that they are now distancing themselves from the same need to be treated with grave suspicion. Learned senior counsels have submitted that even the roles of these public officials are quite doubtful.

8. Learned senior counsels during the course of submissions invited the attention of the court to the improvement/contradiction made in the statement of C.Arvind recorded on 07.12.2022 and 13.03.2023. The attention has also been invited to the contradictions in the statement of C.Arvind given to different agencies i.e. CBI and Directorate of Enforcement. Learned senior counsels have submitted that in view of the contradiction in the statements of C.Arvind, his statement is liable to be rejected out rightly.
9. Learned senior counsels have submitted that the statements of approver and co-accused under Section 50 of PMLA are not corroborated in material particulars with independent material and therefore, cannot be used to deny the bail. It has been submitted that the confessional statements of co-accused persons cannot be relied upon against other

accused persons in the absence of corroboration as to the material particulars. Reference has been made to *Surinder Kumar Khanna v. Directorate of Revenue Intelligence*, (2018)8SCC 271 wherein the Apex Court after discussing its earlier judgments in *Kashmira Singh v.State of M.P*, AIR 1952 SC 159 and *Haricharan Kurmi v. State of Bihar*, AIR 1964 SC 1184 inter alia held that in the absence of any substantive evidence, it would be inappropriate to base the conviction of the appellant purely on the statements of co-accused.

10. Learned senior counsels have submitted that ED has heavily relied upon the statement of the approver Dinesh Arora to show that he was involved in the transfer of kickbacks in cash from the "South Group" to the Aam Aadmi Party (AAP). It has been submitted that even as per the statement of Dinesh Arora no wrongdoing can be attributed to the Applicant. Attention has also been invited to the contradiction in the statement of Dinesh Arora, in the statement dated 01.10.2022 and the statement recorded under Section 164 Cr.P.C., a day prior. Learned senior counsels have submitted that transfer of address at the behest of Amit Arora was approved by Rahul Singh, the then excise commissioner and the Applicant only approved the same in a routine way.
11. It has been submitted that even Dinesh Arora nowhere stated that Applicant Manish Sisodia was involved in or was aware of any of the alleged "kickbacks" or meetings relating to the same. Learned senior counsel have submitted that only on 06.04.2023, for the first time, Mr. Dinesh Arora stated that Applicant Manish Sisodia had directed him to meet Mr. Vijay Nair in relation to work of the Excise Policy. It has



been submitted that the statements made by Dinesh Arora at various stages suffers from material contradictions. Learned senior counsels have submitted that similarly the statements of Arun Pillai and G. Butchi Babu are equally unreliable and are hearsay insofar as they relate to the role of the Applicant Manish Sisodia. It has been submitted that the statements of these witnesses cannot be read against the Applicant Manish Sisodia. It has further been submitted that as per the knowledge of the Applicant Arun Pillai has already retracted his statement. In any case, there are no material to support the statement made by Arun Pillai.

12. Similarly, it has been submitted that Mr. Butchi Babu has made a vague remark that there was a political understanding between the Applicant, the CM of Delhi and Ms. K. Kavitha. Learned senior counsels have further submitted that the allegation relating to the merits of the framing of the excise policy are also baseless and in any case beyond the jurisdiction of the ED as it relates to the predicate offence. It has been submitted that the only relevant aspect to be investigated by the ED is the role of the applicant (if any) in any process or activity dealing with the alleged kickbacks being the proceeds of crime. It has further been submitted that the excise policy of the Government of NCT of Delhi is the collective responsibility of the Cabinet and the same was implemented after the same was drafted by Excise Department and approved by the planning, finance, and law department and was also duly approved by the Hon'ble LG of NCT of Delhi.
13. It has further been submitted that the inputs from various Departments were taken and a collective decision was taken on the basis of the



material on record. It has also been submitted that the few modifications recommended by Hon'ble LG were also duly accepted. Learned senior counsels have further submitted that the excise policy was framed in a transparent manner and it went through several independent checks and balances. It has been submitted that the ED has only selectively highlighted certain aspects of the policy-making process, while omitting key portions of the same. It has been submitted that the excise policy was duly examined by the Group of Ministers and thereafter the excise department submitted a draft cabinet note prepared in terms of the GoM Report to the finance department.

14. The draft cabinet note was circulated for approval from the Planning, Finance and Law Departments. The recommendations were received from all the above three departments and thereafter it was duly approved by the Cabinet on 16.04.2021. The policy was placed before Hon'ble LG for his suggestions under proviso to Article 239 A.A.(4) though this was not a requirement under law since Excise was a transferred subject. It has been submitted that Hon'ble LG after detailed examination returned the file with certain suggestions on 19.05.2021 including suggestions on the 'related party' which was duly incorporated. It has been submitted that thereafter after thorough scrutiny by several departments the Excise Policy was notified on 17.11.2021.
15. Learned senior counsels have further submitted that the wrongdoing has been attributed against the applicant but the role of the Planning, Law and Finance departments as well as Hon'ble LG has not been examined by the ED. Learned senior counsels have further submitted



that the allegation of the ED that the new policy was framed to derive benefits which were not available under the Old Policy is without any basis. It has been submitted that the government was kept outside the business of liquor being in tune of contemporary economic standards of disinvestment. It has further been submitted that in fact in the new policy margin was kept at 12%. It has also been submitted that there were also valid policy considerations supporting the increase of profit margin from 5% to 12%.

16. Learned senior counsels have submitted that the license fee for the wholesalers was increased from Rs.5 lakhs to Rs.5 crores and further recovery of the charges incurred for local transport separately was done away with. It has further been submitted that wholesalers were required to maintain testing laboratories to adhere to the global best standards of testing. It has been submitted that Zone-Wise Auctions & Limitation of Number of Manufacturers were also policy decisions taken on rational and well-thought-out reasons like equitable distribution etc.
17. Learned senior counsels have submitted that in fact policy has been challenged by persons allegedly in conspiracy to frame the policy, reference has been made to the WP(C) 11319/2021 titled as ***Khao Gali Restaurants Pvt. Ltd. v. Commissioner, Excise, GNCTD and others*** and WP(C) 10189/2022 titled as ***Buddy (T-1D) Retail Pvt. Ltd. vs. GNCTD &Anr.*** It has been submitted that the fact that the alleged conspirators themselves challenged the policy completely belies the case of the ED. Learned senior counsels have further submitted that ED has made mountain out of the mole regarding alleged inconsistency between the draft dated 15.03.2021 and 18.03.2021. Learned senior



counsels have submitted that the Applicant though denied the authenticity and veracity of the said documents alleged to have been recovered from the computer system in the office and conference room. It has also been submitted that the same were seized without following the procedure for the seizure of an electronic document. It has further been submitted that even in the alleged document dated 15.03.2021, no cap of 5% of profit margin has been imposed. It has been submitted that in fact Clause 6 shows that 5% is only the minimum percentage with a further stipulation that there will be no cap on the distributor margin. It has been submitted that therefore even as per the document dated 15.03.2021 distributors could have made a profit of 12%. It has further been submitted that in fact, the alleged document dated 19.03.2021 limits the profit margin to 12% only.

18. It has also been submitted that the allegation of ED that the policy was found in the phones of certain persons of the 'South Group' is also vague and in any case, it does not show any involvement of the Applicant. Learned senior counsels have submitted that the basic understanding of the ED of the old policy is erroneous. It has also been submitted that even the Ravi Dhawan Committee report had observed that the Old Policy had huge incentives to cheat and indulge in the selling of Non- Duty paid Liquor. It has also been submitted that in the old policy the wholesaler, manufacturer and retailer were the same entity therefore it led to Brand Pushing. It has also been submitted that in the new policy the illegal activity of cartelization, sale of non-duty paid liquor and huge profit margins were plugged by firstly, delinking wholesalers, manufactures and retailers and secondly by capping the



profit margins at 12%. It has been submitted that rather in the new policy, the process was streamlined.

19. Learned senior counsels have further submitted that in any case, it was not obligatory to accept the Ravi Dhawan Committee report though certain recommendations of the committee report were duly accepted. It has been submitted that merely because the expert committee report was not accepted wrongdoing cannot be attributed to the Applicant. Learned senior counsels have submitted that opinions of the two former CJIs and former Attorney General were in fact obtained by retailers who were enjoying licenses under the old policies and wanted to retain their businesses where profit margin could go up to 70%. It has been submitted that in any case these opinions cannot be held binding upon the government.
20. Learned senior counsels have submitted that framing of the excise policy 2021-22 was transparent and was duly vetted by several departments viz. Finance, Planning and Law under the authority of Hon'ble LG of NCT of Delhi. It has been submitted that the changes in the policy were purely on the basis of valid policy considerations. Learned senior counsels have further submitted that the allegations of the ED that Vijay Nair is the "Representative of the Applicant" is not supported by any material except the statement record under Section 50 of PMLA. Learned senior counsels have further submitted that the statement in this regard of approver Dinesh Arora and co-accused Mr.Arun Pillai and Mr.Butchi Babu are vague and does not carry any weight.



21. It has been submitted that there is no material on record to show that Applicant Manish Sisodia was involved in or had any knowledge of any alleged kickback being paid through any person. Learned senior counsels have further submitted that allegation relating to grant of license to M/s Indo Spirits is based solely on self-serving and unreliable statements under section 50 of PMLA. It has been submitted that this allegation stems out of the statement under Section 50 of PMLA of Mr. C. Arvind, Mr. Arava Gopi Krishnan and the then Asst. Commissioner, Excise and Mr. Dinesh Arora. Learned senior counsels have further submitted that even if their statements are taken into consideration there is no material on record to show that the Applicant Manish Sisodia asked any of these persons to do anything in violation of any rule of law.
22. It has been submitted that in fact bureaucrats had made these statements to defuse their own role in the allegation. It has further been submitted that the allegation that Applicant was involved in the decision of Pernod Recard to choose M/s Indo Spirits as their distributor is based on speculative statement under 50 of PMLA. It has been submitted that this assertion of ED is only based on an interpretation by Manoj Rai of message sent by Vijay Nair to co-accused Mr. Benoy Babu. Learned senior counsels have submitted that the allegations against Manish Sisodia that the e-mails were planted have no connection with the offence under PMLA.
23. It has further been submitted that in fact the excise policy 2021-22 led to an increase in the revenue which is apparent on the record. Learned senior counsels have submitted that the allegations of proceeds of



crime of Rs.622 crores as alleged by the ED is baseless, erroneous and futile and are not supported by any evidentiary document to show that any such transaction has ever taken place and no recovery of alleged amount has been made. It has been submitted that the amount alleged to be given by Amit Arora is denied by Dinesh Arora. Moreover, the mode of the transaction was also contradicted by Amit Arora on his own statements making him them completely sham statements.

24. It has further been submitted that the alleged kickbacks of 100 Crores from the so-called "South Group" was never proved and no recovery has been effected. It has further been submitted that the existence of 'South Group' is merely a cooked story of the ED. It has further been submitted that the allegations of bribe given to Sh. Aman Dhall through excess Credit Notes is merely an allegation made on hearsay evidence without any substantial proof.
25. It has further been submitted that allegations in relation to the execution of an alleged MOU between the Applicant and associates of Amit Arora is baseless. It has been submitted that the MOU is unsigned, without any signature of Vivek Tyagi. It has been submitted that the said MOU relates to the earlier policy and the said alleged understanding remained implemented and has no connection or link with the Applicant. Learned senior counsels have further submitted that in this regard there are material contradictions in the statement of Amit Arora dated 27.03.2023.
26. Learned senior counsels have further submitted that the Applicant fulfills the triple test. The allegations of the ED regarding frequent change of phone and destruction is baseless. It has been submitted that



there is nothing on record that the phones in question contain some material piece of evidence. It has been submitted that the Applicant being in a high position could not have left his own mobile phone lying around and must destroy them when he ceases to use them. Learned senior counsel further submitted that allegation of the ED regarding the destruction of the cabinet file dated 28.01.2021 is also based on the statement of certain public servants and is not supported by any independent evidence.

27. It has further been submitted that as per the record, the Applicant had directed the then excise commissioner on 02.02.2021 to bring the summary of the public opinions and the committee report before the cabinet. It has further been submitted that suddenly the then excise commissioner Mr.Rahul Singh was transferred by Hon'ble LG on 03.02.2021 and Expert Committee was presented by the next excise commissioner Mr.Sanjay Goel on 05.02.2021.
28. It has further been submitted in the remand application preferred by the ED or in its reply there is no allegation that the Applicant may influence the witnesses. It has been submitted that the witnesses in this case against the Applicant are primarily the civil servants over whom the Applicant exercises no control especially now since he has resigned from his official post. It has further been submitted the Applicant is not a flight risk in view of the position held by him.
29. Learned senior counsels have submitted that voice recording of one Mahender Chaudhary placed by the ED has no concern with the Applicant. It has further been submitted that the trial may take a long time and there would have no purpose by keeping the applicant in



custody. Reliance has been placed upon *Sanjay Agarwal v. Directorate of Enforcement*, 2022 SCC OnLine SC 1748, *Ramchand Karunakaran v. ED*, Order dt. 23.09.2022 in CrI. A. No. 1650 of 2022, *Sajay U Desai v. SFIO*, 2022 SCC OnLine SC 1507, *Jainam Rathod v. State of Haryana*, 2022 SCC OnLine SC 1522, *Raman Bhuraria v. Directorate of Enforcement*, 2023 SCC OnLine Del 657 and *CBI v. Kuldeep Singh & Ors*, Order dt. 28.02.2023.

30. Learned senior counsels have submitted this court is required to examine the allegations against the Applicant on the scale of broad probabilities. It has been submitted that the ED has not placed any convincing material on record to show that the Applicant had any knowledge of the conspiracy to commit acts specifically punishable under Section 3 of PMLA. And therefore *mens rea* is hopelessly absent in this case. It has further been submitted that there is no material on the record to show that the Applicant has been involved in the alleged money paid at any point of time. In addition to this the bail has also been sought on the ground the medical condition of the wife of the Applicant is serious as she suffers from an incurable neuro-degenerative disorder namely Multiple Sclerosis.
31. Learned senior counsels have submitted that the settled position of law is that at the stage of bail, the court is expected to consider the question from the angle as to whether the Applicant was possessed of the requisite mens rea. Learned senior counsels have submitted that the court is not required to record a positive finding that the accused had not committed an offence under the PMLA. Learned senior counsels have submitted that in *Vijay Madanlal Chaudhary (supra)* it was inter



alia held that the court ought to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before the 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. Learned senior counsels have submitted that despite the twin conditions, it cannot be said that the conditions provided under Section 45 of PMLA impose absolute restraint on the ground of bail.

C. SUBMISSIONS ON BEHALF OF THE RESPONDENT/ED

32. Mr.S.V.Raju, learned ASG and Mr.Zoheb Hossain, learned special counsel for the ED have submitted that the petitioner Manish Sisodia is one of the key conspirators in formulating, conceptualizing and implementing the various processes and activities in dealing with the proceeds of crime including creating an entire eco-system for generating, concealing, projecting as untainted, possessing and using the proceeds of crime. It has been submitted that the entire excise policy as finalised was itself a tool to project the proceeds of crime as untainted. Mr.Hossain has submitted that 6% out of 12% which was purportedly shown as wholesaler's profit was meant to be recoup as the advance kickbacks paid. Learned ASG submitted that the plea that the petitioner was not in possession of POC and therefore Section 3 of PMLA is not attributed is fallacious as the expression 'possession' includes constructive possession. It has been submitted that the person although may not be in actual possession but if exercises dominion or control over a thing either directly or through another person or persons, it amounts to 'Possession'. Reliance has been placed upon



Mohan Lal v. State of Rajasthan, 2015 (6) SCC 222. Learned counsel has submitted that role of petitioner clearly emerges in the formulation and implementation of the excise policy in a manner, which would allow astronomical illegal gains to various private entities involved in the liquor cartel which was done in return of kickbacks received by various AAP leaders.

33. Learned ASG submitted that Manish Sisodia was not only the head of the Group of Ministers but he was also the excise minister and played a key role in modifying the terms of the liquor policy in a manner which would benefit the cartel members. It has been submitted that deviation from expert committee report was made to enable and create an eco-system, which would benefit the cartel members in lieu of the receipt of kickbacks by AAP leaders. It has been submitted that instead of individual runs private vends with the lottery system, the applicant preferred the auction of retail vends as per limited entity model. It has been submitted that the model preferred by the petitioner permitted one entity to have two zones, which would in effect, give them control over 27 shops in each zone. It has been submitted that this itself led to the cartelization as well as a concentration of retail vends in the hand of few entities.
34. Learned ASG further submitted that the wholesale business which involves procurement of liquor from manufacturer were given to private players and the margin was also increased to 12%. It has been submitted that had the wholesale business remained with the government as suggested by the expert committee, the 12% margin amounting to 581 Crores would have come to the kitty of the



government. Learned ASG submitted that the statement of Sanjay Goel dated 11.4.2023 and statement of C Arvind dated 13.03.2023 clearly indicates that there was no discussion in the GoM regarding the increase of margin from 5% to 12%. It has further been submitted that even the petitioner in his statement dated 07.03.2023 was unable to provide any rational explanation for increasing the profit margin from 5% to 12%.

35. Mr.S.V.Raju, learned ASG also invited the attention of the court to the statement of Mr. Arava Gopi Krishna in his statement dated 13.04.2023 wherein he has stated that neither the petitioner nor any other member of the GoM had asked the Excise Department about the calculation behind the 5% margin being allowed to the wholesaler when the license fee was 5 lakhs. Similarly, reference has been made to statement of Sh. Sanjay Goel, the then Excise Commissioner dated 17.02.2023.
36. Mr.S.V. Raju, learned ASG submitted that in fact the increase of profit margin to 12% was done with a malafide intention of granting huge benefits to private wholesaler in collusion with south group. It has been submitted that the file recovered from the computer system installed in the office of Manish Sisodia which was last modified on 15.3.2021 at 11:27 AM contained a minimum profit margin of 5% in favour of L1 license holder whereas in the document last modified on 19.03.2021, the profit margin was increased to 12%. It has been submitted that between 15.03.2021 and 19.03.2021, there was no meeting of GOM.
37. Learned ASG submitted that in fact this profit margin was increased in collusion with the South Group, to grant significant benefits for



wholesalers. It has further been submitted that the members/representatives of the South Group were staying at Oberoi Hotel in New Delhi from 14.03.2021 to 17.03.2021. It has further been submitted that certain parts of the GOM report were found in the phone belonging to co-accused Butchi Babu (representative of South group) on 20.03.2021 even before the same was submitted to the Cabinet.

38. Learned ASG has also referred to the chat dated 06.03.2021 and 20.03.2021 recovered from the phone of Butchi Babu which refers to the assertion that the south group was actively interfering in the formulation of the policy. Learned ASG has further submitted that statement of Mr.Zakir Khan dated 28.03.2023, statement of Kartikeya Azad dated 24.03.2023, statement of Vanshika dated 21.03.2023, Statement of C.Arvind dated 21.03.2023 and statement of Alok dated 14.03.2023 affirms that Mr.Manish Sisodia procured the emails in support of the new excise policy.
39. Learned ASG has further submitted that Mr.Vijay Nair who was representing Aam Aadmi Party's side in the entire liquor scam and was managing the conspiracy of kickbacks, undue favours, arm twisting etc. received Rs. 100 Cr from the south group as an advance Kickback on behalf of AAP and in exchange facilitated them in getting stakes in different wholesale businesses such as Indo Spirits and then directed big manufacturer to them to help them recover the advance kickbacks paid, apart from other undue favour awarded to the South Group. Learned ASG submitted that Vijay Nair acquired this PoC of Rs. 100 Cr as kickbacks on behalf of the top leaders of the AAP and then used the part of this PoC in the Goa election campaign of the AAP through



multiple persons and entities. It has further been submitted that all of this was done on behalf of Mr. Manish Sisodia.

40. Mr.S.V.Raju, learned ASG has further submitted that the petitioner Manish Sisodia provided undue favours to Indo Spirits, which was designed as a vehicle for the recoupment of kickbacks to the South Group. It has been submitted that Mr. Manish Sisodia expedited the process of issuing the L1 license for Indospirits. In this regard, the reference has been made to the statement of Arava Gopi Krishna, the then Excise Commissioner dated 26.12.2022. The reference has also been made to the statement of Narinder Singh, Assistant Commissioner (IMFL), Delhi Excise in his statement dated 01.11.2022.
41. Learned ASG submitted that Dinesh Arora in his statement dated 01.10.2022 has revealed that the meeting took place at ITC Kohinoor for discussion on how to transfer Kickbacks, wherein Sh Vijay Nair, asked Dinesh Arora to coordinate with Sh. Abhishek Boinapally to get some funds, Approx Rs. 20-30 Cr from Hyderabad to Delhi. Mr.Zoheb Hossain has invited the attention of the court to the call detail records of Dinesh Arora in this regard. It has been submitted that infact profit margin was increased to 12% as out of 12%, 6% profit was earmarked as kickback which was to be given back to the AAP. In this regard reference has been made to the statement of Dinesh Arora dated 1.10.2022.
42. Learned ASG submitted that the kickbacks received from the south group were used in Goa Elections by AAP and in this regard the reference has been made to statements of Islam Qazi, Aaron Schubert De Souza and Manaswani Prabhune. Mr.Zoheb Hossain has further

submitted that it is also necessary to look at the conduct of the petitioner Manish Sisodia regarding the destruction of evidence to derail the investigation. It has been submitted that the petitioner changed his phone on 22.07.2022 on the day when Media covered the complaint made by Hon'ble LG to CBI. It has been submitted that the petitioner Manish Sisodia did not provide any detail of the phone which he used before 22.07.2022. It has further been submitted that the petitioner destroyed the old draft cabinet note so that no evidence is left behind. In this regard, reference has been made to the statement of Pravesh Ranjan Jha, Additional Secretary, General Administration Department, Delhi Government. Reference has also been made to the statement of Mahender Chaudhary for derailing the investigation. Learned ASG submitted that thus the petitioner is not entitled to be admitted to bail.

D. FINDING AND ANALYSIS:

43. The offence of money laundering has been defined in section 3 of the PMLA, which reads 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 and projecting it as untainted property shall be guilty of offence of money-laundering.

44. The 'proceeds of crime' has been defined under Section 2 (u) of PMLA, which reads as under:

(u) "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 3 [or where such property is taken or held outside the country, then



the property equivalent in value held within the country] 4 [or abroad]; ...

45. Regarding ‘proceeds of crime’ and the scope and ambit of Section 3 of PMLA has been laid down in **Vijay Madanlal Chaudhary** (*supra*). In **Vijay Madanlal Chaudhary** (*supra*) it has been held as under:

“263. Coming to Section 3 of the 2002 Act, the same defines the offence of money-laundering. The expression "money-laundering", ordinarily, means the process or activity of placement, layering and finally integrating the tainted property in the formal economy of the country. However, Section 3 has a wider reach. The offence, as defined, captures every process and activity in dealing with the proceeds of crime, directly or indirectly, and not limited to the happening of the final act of integration of tainted property in the formal economy to constitute an act of money-laundering. This is amply clear from the original provision, which has been further clarified by insertion of Explanation vide Finance (No. 2) Act, 2019. Section 3, as amended, reads thus:

"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 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.]"

265. To put it differently, the section as it stood prior to 2019 had itself incorporated the expression "including", which is indicative of reference made to the different process or activity connected with the proceeds of crime. Thus, the principal provision (as also the Explanation) predicates that if a person is found to be directly or indirectly involved in any process or activity connected with the proceeds of crime must be held guilty of offence of money-laundering. If the interpretation set forth by the petitioners was to be accepted, it would follow that it is only upon projecting or claiming the property in question as untainted property, the offence would be complete. This would undermine the efficacy of the legislative intent behind Section 3 of the Act and also will be in disregard of the view expressed by the FATF in connection with the occurrence of the word "and" preceding the expression "projecting or claiming" therein. This Court in *Pratap Singh v. State of Jharkhand*, enunciated that the international treaties, covenants and conventions although may not be a part of municipal law, the same be referred to and followed by the Courts having regard to the fact that India is a party to the said treaties. This Court went on to observe that the Constitution of India and other ongoing statutes have been read consistently with the rules of international law. It is also observed that the Constitution of India and the enactments made by Parliament must necessarily be understood in the context of the present-day scenario and having regard to the international treaties and convention as our

constitution takes note of the institutions of the world community which had been created. In Apparel Export Promotion Council v. A.K. Chopra, the Court observed that domestic Courts are under an obligation to give due regard to the international conventions and norms for construing the domestic laws, more so, when there is no inconsistency between them and there is a void in domestic law. This view has been restated in Githa Hariharan, as also in People's Union for Civil Liberties, and National Legal Services Authority v. Union of India.

273. On a bare reading of Section 3, we find no difficulty in encapsulating the true ambit, given the various arguments advanced. Thus, in the conspectus of things it must follow that the interpretation put forth by the respondent will further the purposes and objectives behind the 2002 Act and also adequately address the recommendations and doubts of the international body whilst keeping in mind the constitutional limits. It would, therefore, be just to sustain the argument that the amendment by way of the Explanation has been brought about already only to clarify the already present words "any" and "including" which manifests the true meaning of the definition and clarifies the mist around its true nature."

46. Section 45 of PMLA provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973, 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. It is also pertinent to mention here that Section 45 (ii) is an addition to the limitation under the Code of Criminal Procedure, 1973 or any other law

for the time being in force on granting of bail. It is settled proposition Section 45 PMLA do not impose an absolute restraint on the grant of bail and the court at this stage is to prima facie consider whether applying the standard of broad probabilities the material against the applicant would result in conviction. It is also a settled proposition that at this stage the Court is only required to examine the matter to find out whether the accused was possessed of the requisite mens rea. It is also no longer res integra that the court is not required to record a positive finding that the accused had not committed the offence under the Act. It is also a settled proposition that the court at this stage is not required to weigh the evidence meticulously. The court is only required to arrive at a finding on the basis of broad probabilities. It is also a settled proposition that the court is not required to hold a mini trial at this stage and is required to examine the case on the basis of broad probabilities. It is also to be kept in mind that while exercising the jurisdiction under Section 45 of PMLA, the court is required to take into consideration the limitations prescribed under Section 439 Cr.P.C.

47. In regard to the limitation under Section 439 Cr.P.C. in ***Kalyan Chandra Sarkar vs Rajesh Ranjhan*** (2004) 7 SCC 528 it has been held as under:

The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail

was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

- (a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.*
- (b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.*
- (c) Prima facie satisfaction of the court in support of the charge.*

48. Before proceeding further, it is also necessary to remind the scope of jurisdiction to be exercised while granting bail in the economic offence. The Hon'ble Supreme Court in the case of ***Y.S. Jagan Mohan Reddy v. CBI***, (2013) 7 SCC 439 528 held as under:

34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

35. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, 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 witnesses being tampered with, the larger interests of the public/State and other similar considerations.



49. Similarly The Hon'ble Supreme Court in the case *Nimmagadda Prasad v. CBI*, (2013) 7 SCC 466

25. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep-rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as a grave offence affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

50. The bare reading of Section 3 of PMLA would make it clear if a person is 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 offence of money laundering. Therefore, it is not necessary to attribute section 3 of the PMLA that the alleged person must have acquired or in possession of the proceeds of the crime. If a person has actually been involved in any process or activity connected with the proceeds of crime, it would be sufficient to prosecute him under Section 3 of PMLA. The argument that the proceeds of crime have not been received or the proceeds of crime has not been recovered and therefore section 3 of the PMLA will not come into operation is totally fallacious and is liable to be rejected. It is necessary to keep in mind that such crimes are committed in a deep conspiracy and under the dark cover. An act may not be an offence at all if it is done in relation to any process or activity not connected with the proceeds of crime, but if such a act is done in relation to any process or activity connected with the proceeds of crime it will certainly be an offence under Section 3 of

PMLA. The scope and ingredients of offence of money laundering under Section 3 of PMLA has been defined in *Vijay Madanlal Chaudhary (supra)*.

51. The present case is very peculiar in nature and may not have any parallel factual matrix. In brief, the initial allegation in the predicate offence was that the conspiracy was hatched between the political head and certain persons which included an individual allegedly representing the government with the manufacturer, liquor wholesaler and retailer. The conspiracy allegedly was hatched to introduce a new excise policy to benefit certain individuals who had given advance kickbacks to the AAP. Allegedly the prominent players if we put names to the faces are Mr.Manish Sisodia, the then Deputy Chief Minister and Excise Minister, Mr.Vijay Nair, purportedly Media Incharge of AAP, Sameer Mahendru. Mr.Amit Arora, Mr.Dinesh Arora, Mr.Abhishek Boinapally, Mr.Sharad Reddy, Mr.Butchi Babu, Mr.Binoy Babu (liquor traders) and others.
52. This court is conscious of the fact that the investigation relating to the conspiracy to frame the excise policy allegedly with malafide intention and alleged misuse of official position was the subject matter of the CBI in which the charge-sheet has already been filed by the CBI. However, the facts are so inter-linked that the same cannot be appreciated in isolation. In view of the fact that allegedly the basic intention behind framing the new excise policy was to recoup the advance kickbacks and to further gain undue advantage from the excise policy, the Enforcement Directorate (ED) also initiated the inquiry.



53. Presently, this court is considering the bail application of the abovesaid accused persons namely Mr. Manish Sisodia, who was arrested for the offence under Section 3 of the PMLA. The allegations against the petitioner Manish Sisodia is he being the Deputy Chief Minister and Excise Minister formulated the excise policy in such a manner that undue advantage goes to the manufacturer, wholesaler and retailer so as to recoup the advance kickbacks and to further gain undue advantage from the profit so earned by virtue of the provision in the new excise policy. The allegation against the petitioner Manish Sisodia is also that he received illegal gratification from Amit Arora for putting an NOC clause for granting benefits to Amit Arora. The allegation against Manish Sisodia is also that M/s Indospirit was created as a special purpose vehicle to generate the proceeds of crime.
54. The plea raised by the defence is the ED has no material other than an inconsistent and unreliable statement of either co-accused or the public servants. The defence has raised a plea that in absence of any independent corroboration or material on record to substantiate such statements under Section 50 PMLA, the court on the basis of probability should record a finding that accused persons are not guilty of such offence. The defence, during the course of their arguments, have repeatedly stated that the ED has cooked up the case merely on the basis of whims and fancies and there are contradictions in the testimonies of the witnesses. The defence has assailed the testimony of approver Dinesh Arora and has submitted that Dinesh Arora has made the statement under the influence of ED and to protect himself. It is also the case of the defence that the public servants who are under the



direct control of Hon'ble LG, who is the complainant in the present case, have made their statements only to save their skin.

55. This court is fully conscious of the fact that personal liberty is a sacrosanct right and pre-trial detention cannot be taken as a punitive measure. However, the court has to strike a balance between the interest of an individual and the interest of the society at large. This court is also conscious of the fact that though the statements recorded under Section 50 PMLA are admissible in evidence but their evidentiary value has to be weighed at the time of trial. It is pertinent to mention here that Mr.Mohit Mathur and Mr.Dayan Krishnan, learned senior counsels for Mr.Manish Sisodia have argued that the ED is only basing its case only on the statements of the witnesses recorded under Section 50 of PMLA.
56. The present case arises out of an alleged conspiracy wherein the government framed an excise policy with a malafide intention to recoup the kickbacks received in advance from certain individuals and to further generate the ill money from the liquor trade. There are witnesses and witnesses on record to show that certain outsiders were actively participating from the stage of drafting and formulation of the policy. The reference to the statements of the witnesses have been made during the course of recording the submission of the learned defence counsels and learned counsel for ED. The statements of the witnesses clearly indicates that some extraneous factors were working since the time of conceptualization, formulation and drafting of the excise policy. The allegation regarding generating of the emails in



support of the excise policy also raises the red flag that everything was not being done in a transparent and bonafide manner.

57. Learned senior counsels have invited the attention of this court towards the contradictions in the testimony of the witnesses. However, this court is fully conscious of the fact that at the stage of bail, the court cannot appreciate the evidence meticulously. This court at this stage, would restrain itself to make any comment further on this as the trial is yet to take place. The option before this court is either to go into the meticulous examinations of the witnesses as being argued by the learned defence counsels or to take into account the statements recorded under Section 50 of PMLA by the ED. It is correct that the case of ED is based on the statements under Section 50 PMLA cannot be taken as gospel truth but at the same, the court has to take into account the probabilities and the legislative intent behind enacting Section 50 PMLA. The statements under Section 50 PMLA are not akin to Section 161 Cr.P.C. The bare perusal of Section 50 makes it clear that these are deemed to be judicial proceedings. There are consequences for making a false statement or not complying to the summons under Section 50 of PMLA as provided under Section 63 of the PMLA.

58. This court at this stage cannot go into the probative value of the witnesses nor can it meticulously examine those facts. The involvement of the third parties in the formulating and drafting of the policy certainly points at *mens rea*. The jurisdiction of bail is a discretionary jurisdiction. But this discretion has to be exercised on the settled principles in a judicial manner. The court has to bring in its judicial

experience to arrive at a conclusion, which should be rational and logical. It is pertinent to mention that the accused and complainant/prosecution are entitled to know the reasons on the basis of which their bail application has been decided, but at the same time such reason should not be detailed in such a manner that it may prejudice the trial.

59. The facts of the present case, as stated above, are unique in nature. Here are the serious allegations where it has been alleged that deputy Chief Minister/Excise Minister framed the excise policy at the instance of some outsiders, who were going to be beneficiaries of the same. The functioning of the government is such that generally it is done in a discrete manner. The outside public has no means to have any access while policies are framed. The policies are framed under the supervision of the political heads by the senior bureaucrats. The senior bureaucrats in the present case are saying that no discussion took place on the material points like the increase of margin from 5% to 12%. It has also come on the record that in the draft dated 15.03.2021, the profit margin was 5% and in the draft dated 19.03.2021, the profit margin was increased from 5% to 12% and no deliberation had taken place between 15.03.2021 and 19.03.2021. It has also come on the record that even before this report was submitted to the cabinet, the same was in possession of the liquor traders. In such a case, it is not only difficult but seems to be impossible to get any direct evidence. The proceeds of crime are hardly transferred through legal means. Though in the present case, in one instance, the money has moved from Indo spirit to Mr. Abhishek Boinpally through two intermediaries. The



plea taken by Abhishek Boinpally that he had lent around 5.45 crores to Mr.Gautam Murtha without any loan agreement or without any interest is not plausible.

60. In the present case allegedly the excise policy was framed as a special purpose vehicle to generate the proceeds of crime and with the same motive, M/s Indo spirit was also constituted for regular generation of proceeds of crime. There may not be any recovery of the proceeds of crime. However, if the excise policy has been framed for the purpose of generation of proceeds of crime or M/s Indo Spirits has been constituted in a manner to continuously generate the proceeds of crime then all the stakeholders who instrumental in framing, drafting and formulating of excise policy are covered under Section 3 of PMLA as their acts and conducts amount to involvement in any process of activity connected with the proceeds of crime.
61. The bail application of Applicant Manish Sisodia was rejected by the Learned Special Judge vide a detailed order dated 28.04.2023. While rejecting the said bail application the learned trial court observed that considering the evidence placed on record it can clearly be inferred that the applicant herein was connected with the generation of proceeds of crime of around 100 Crores in the form of 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. He ensured 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 favorable clauses therein for the benefit of conspirators.

62. Learned trial court *inter alia* held that the evidence clearly suggests that tweaking and manipulation of the excise policy by the applicant and owing to the cartel which was permitted to be formed and by limiting the participation of wholesalers, lead to creation of the POC. M/s Indospirits also earned huge profits to the tune of Rs.192 crores and this again was a result of the applicant ensuring the grant of L1 License and dealership of M/s Pernod Ricard to M/s Indospirits. Learned trial court held that it is safe to say that *mens res* to commit the offence of money laundering on the part of the Applicant can be inferred from the evidence placed on record.
63. In regard to the scheduled offences are concerned learned trial court *inter alia* held that the scheduled offences case of CBI was registered for the offence U/S 120B r/w 477A IPC and Section 7 of the PC Act and substantive offences thereof and chargesheets in the said case have been filed for offences u/S 120-B 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.
64. Learned Special Judge rejected the contention of learned counsel for 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. Learned Special Judge observed that direct



evidence in such conspiracy is possible only in rare cases because of the fact that such conspiracies are hatched behind closed doors. Therefore, evidence in such cases can only be inferred from the facts and circumstances of that particular case.

65. Learned Special Judge *inter alia* held that though it is true that bail cannot be denied to the Applicant merely because of the fact that this case falls in the category of economic offences but it has to be seen that the offence alleged against the Applicant is a serious economic offence of money laundering wherein he worked not in his individual capacity but in the capacity of a public servant holding the charge of an Excise Ministry as well as being the Dy. Chief Minister of the GNCTD. Moreover, Huge POC in crores are alleged to have been generated through different activities covered under section 3 PMLA 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.
66. Learned trial court further *inter alia* held that the maximum term of imprisonment being seven years is not a ground to enlarge the Applicant on bail as this factor is required to be considered in totality with the other factors while deciding the grant or refusal of bail. In the present case, the 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.



67. Learned court further observed that it had dismissed the bail application of the Applicant in the scheduled offences case of CBI vide its order dated 31.03.2023 wherein the court was of 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. Learned trial court observed that 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.
68. Learned trial Court took into consideration the statements made by responsible officers of the excise department which 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.
69. Learned Trial Court further has relied on the evidence which shows that some part of the kickbacks 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.

70. Learned Special Judge inter alia held that it is now well-settled that though the Hon'ble Supreme Court in the case of *Vijay Madanlal Chaudhary (supra)* held that conditions under section 45 PMLA are to be construed reasonably and not arbitrarily for deciding the question of bail, but 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. Learned trial court also opined that the alleged medical illness of wife of the applicant is also not a ground to enlarge him on bail in this case.
71. The allegations are that deliberate loopholes were left to facilitate illegal and criminal activities. It is also pertinent to mention here that investigation has revealed that 65% stake was given to South Group in Indo-Spirits to make it a mechanism for continuous generation and channelisation of Proceeds of Crime. In furtherance of the conspiracy, the investigation also revealed that Pernod Ricard by way of conspiracy got EDP (Ex-distillery price) fixed without deducting the discount/rebates they offer and thus got the price fixed at much higher price for their brands and earned huge additional profit which was ineligible to them and should have been passed to the consumers as



lower MRP. The investigation has also revealed that if the PRI had registered the brands at actual lowest EDP, the capacity of the manufacturer to give out credit notes would have been limited. Pernod Ricard issued credit notes of 131.9 crore to retailers which actually should have been passed to the consumers.

72. If we sum up the case of the Directorate of Enforcement, allegations and the material on record indicate that profit margin was increased from 5% to 12% without having any discussion taken place in the GoM as indicated by the statement of Sanjay Goel, (the then Excise Commissioner) dated 17.02.2023, statement of C.Arvind, DANICS (the then Secretary to Manish Sisodia) dated 13.03.2023, statement of Arava Gopi Krishna (the then Excise Commissioner) dated 13.04.2023. The ED has also alleged that even the petitioner Manish Sisodia in his statement dated 07.03.2023 could not give any plausible reason for increase of the margin from 5% to 12%.
73. The allegations are also that the draft GoM report was handed over by the petitioner Manish Sisodia to C.Arvind at C.M's House on 18.03.2021 wherein the margin was increased from 5% to 12% as compared to the earlier document dated 15.03.2021.
74. The ED has also referred to the statement of Butchi Babu dated 23.02.2023 showing interference of the South Group in framing of the excise policy. The allegations are also that e-mails were got planted by petitioner Manish Sisodia to show that there was public support to the recommendation of GoM. The ED has also submitted that there was role of the petitioner in conspiracy to allow illegal benefits in lieu of kickbacks of Rs.100 Crores and this regard they have relied upon the



statement of Dinesh Arora dated 01.10.2023, statement of Arun Pillai dated 11.11.2022, statements of Butchi Babu dated 23.02.2023, 28.02.2023 and statement of Arun Pillai dated 16.02.2023.

75. It has also been submitted that co-accused Vijay Nair was representing Manish Sisodia. In this regard reference has been made to the statement of Arun Pillai dated 06.03.2022, statement of Butchi Babu dated 23.02.2023, statement of Dinesh Arora dated 06.04.2023, statements of Manoj Rai dated 03.12.2022 and 31.12.2022 and statement of Amit Arora dated 07.09.2022.
76. It has also been alleged that the petitioner Manish Sisodia got M/s Indo Spirit formed as a special purpose vehicle for recoupment of the kickbacks. In this regard reliance has been placed upon the statement of Narinder Singh dated 01.11.2022, statement of Dinesh Arora dated 01.10.2022, statement of C.Arvind dated 23.12.2023, statement of Arava Gopi Krishna, dated 26.12.2022, statement of Manoj Rai dated 31.12.2022, statement of Sameer Mahandru dated 12.11.2022, statement of Butchi Babu dated 23.02.2023 and statement of Arun Pillai dated 20.11.2022. It has also been alleged that part of POC was also used in the Goa elections.
77. The ED has also submitted that the draft note which did not suit the agenda of the petitioner and the co-accused was got changed as reflected from the statement of Rahul Singh (the then Excise Commissioner) dated 15.02.2023, statement of Sanjay Goel, (the then Excise Commissioner) dated 17.02.2023, statement of C.Arvind dated 21.03.2023, statement of Praveen Kumar Gupta, Additional Chief Secretary, GAD & AR dated 02.05.2023 and Pravesh Ranjan Jha,



Additional Secretary, General Administration Department dated 01.05.2023. The ED has also alleged that the petitioner had also destructed the evidence to derail the investigation. Thus, the gravity of the allegations against the petitioner are very serious in nature and in view of the peculiar facts, this matter has to be visited with a different approach as a deep rooted conspiracy involving huge loss of public funds has been alleged.

78. This court has also gone through the order of the learned Special Judge dated 28.04.2023 and do not find infirmity or illegality in the said order. Learned Special Judge has passed a reasoned order on the basis of material available on record. This court has also rejected the bail application of the accused i.e. Bail Application No.1097/2023 titled as *Manish Sisodia vs. CBI* vide order dated 30.05.2023. This court *inter alia* was of the view that in view of the high political positions held by the accused and his position in the party in power in Delhi possibility of influence the witnesses cannot be ruled. The twin conditions under Section 45 of PMLA are in addition to the triple test. This Court is of the considered view that the petitioner has not only been able to pass the twin conditions as provided under Section 45 of PMLA, but he has also not been able to cross the triple test. I consider, in view of the discussion made hereinabove, the petitioner is not entitled to bail.
79. The petition is accordingly dismissed.

DINESH KUMAR SHARMA, J

JULY 03, 2023

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