IN THE DESIGNATED SPECIAL COURT UNDER THE PML ACT TRYING THE CASE RELATING TO THE SCHEDULED OFFENCE CITY SESSIONS COURT, MUMBAI

ORDER BELOW EXH.133
(BAIL APPLICATION)
IN
CBI SPL. CASE NO.1233 OF 2021

Rana Raj Kapoor,
Age 66 years, ... **Applicant (A1)**

Versus

Central Bureau of Investigation,
C-35/A, G-Block, Bandra Kurla Complex,
Bandra (East), Mumbai – 98 ... **Prosecution**

Appearance:
Mr. Aabad Ponda, Ld. Sr. Counsel @ Mr. Rahul Agarwal, Ms. Siya Choudhary, Ms. Jasmin Purani, Mr. Sajid Sayed and Ms. Shruti Adde, Ld. Adv. for the applicant (A1) i/b Agarwal and Dhanuka Legal Advocates.
Mr. P. B.K Gaikwad, Ld. Spl. P.P.

CORAM : M. G. DESHPANDE,
DESIGNATED SPECIAL COURT
UNDER THE PML ACT, 2002.
(C.R.N.16)

DATE : April 19, 2024

ORDER

1. Applicant-accused No.1, Rana Kapoor, has filed this bail application under Sec.439 Cr.P.C. on various grounds, including merits, parity, prolonged incarceration without trial, and the completion of the investigation, rendering further custody unnecessary. He contends that no prima facie case has been established against him and that he was

unjustly implicated in the FIR and chargesheet through baseless allegations. Additionally, he asserts that granting bail poses no risk of evidence tampering or flight. Considering the applicant's age of 66 and his ongoing medical issues, he contends these as further grounds for bail. He maintains that Sec.13 of the Prevention of Corruption Act does not apply to individuals in private banking companies and that the alleged loans were disbursed following standard banking procedures, with no under-valuation as alleged. The applicant emphasizes his lengthy incarceration exceeding of 2 years 7 months, with no trial commencement in sight, due to simultaneous trials, including PMLA Special Case No. 452 of 2020, mandated under Sec.44(1)(c) of the PML Act. He underscores his role as a father to an unmarried daughter, emphasizing the need to be with his family for their well-being. Despite previous instances of being bailed out in numerous cases, this is the last case that has led to his incarceration. He expresses doubt regarding the trial's commencement and conclusion, particularly as mandated under Sec.44(1)(c) of the PML Act. Moreover, he questions the legality of his arrest, stating that he was never formally arrested. Based on these grounds, he prays for the application to be granted.

2. The Central Bureau of Investigation (CBI) submitted their say at Exh.133A, refuting the allegations and grounds presented in the application. They specifically highlighted the facts of the case and alleged misuse of bank funds at the behest of the applicant (A1), emphasizing the seriousness of the offense. While the contentions of both the applicant and the CBI will be discussed in detail later, in summary, the CBI asserts that this is not a suitable case for granting bail. Therefore, it is contended that the application should be rejected.

3. CBI also filed Exh.133B and Exh.133C in addition to their say Exh.133A claiming those being reply of CBI on various issues raised in the application.

4. Heard Ld. Sr. Counsel Mr. Aabad Ponda for the applicant (A1) and Ld. SPP Mr. P.K.B Gaikwad in number of long sessions. The applicant (A1) and also CBI filed their written submissions in addition to their oral arguments. I have carefully read the same. Following points arise for my determination. I am recording following findings thereon for the reasons discussed below :-

	POINTS	FINDINGS
1.	Is there any likelihood of beginning and conclusion of the trial in near future, as mandated under Sec.44(1)(c) of the PML Act?	No.
2.	Whether the applicant (A1) has made out a strong prima-facie case satisfying triple test (tripod test) coupled with alleged gravity of the offence for granting bail?	Yes
3.	What Order ?	As per final order.

REASONS

BOTH POINTS.

CASE OF THE PROSECUTION

5. CBI, Anti-Corruption Branch, Mumbai registered FIR RC BA 1/2020/A0004 on 12.03.2020 against the applicant Rana Kapoor (A1), then MD and CEO of Yes Bank Ltd., Gautam Thapar (A2), Avantha Reality Ltd (A3), Mrs. Bindu Rana Kapoor (A4), M/s. Bliss Abode Pvt. Ltd. (A5) and unknown others, under Ss.120B, 420 IPC and Ss. 7, 11

and 12 of the Prevention of Corruption Act (for short the PC Act). **It is pertinent to note that while filing chargesheet alongwith Final Report under Sec.173 Cr.P.C. the CBI had dropped and added some offences and finally kept the charges under Ss. 11, 12 and 13(2) r.w. 13(1)(d) of PC Act and under Ss.120B and 420 of the IPC.** So, now the chargesheet is only under these offences. Main allegation in the case of the Prosecution is that, during March, 2016 to January, 2018 the applicant (A1) was MD and CEO of Yes Bank entered into and hatched criminal conspiracy with Gautam Thapar, Promoter of the Avantha Group of Companies, abused his official position at YBL to incorrectly grant loans to AG entities and to acquire a property mortgaged by YBL for inadequate consideration. It is alleged that by the end of 2015 AG's financial position was deteriorating resulting in overall increase in group level debt. In March, 2016 AG was already enjoyed credit facilities amounting to Rs.2563 Cr. with YBL and was financially stressed. The said group (AG) had a cumulative outstanding of Rs.1712.1 Cr. to YBL at that time. In the meantime YBL's Corporate Banking Team received verbal communication from the applicant (A1) that AG was looking to raise short term finance against its properties. The applicant (A1) allegedly advised them (Banking Team) to meet AG Officials for discussion. After the discussion Amit Dhawan (Head of Corporate Banking, North YBL) sent a Joint Update Mail reporting on the discussion and providing details of all available properties those could be taken over by YBL as security for a proposed loan. Though AG was under financial stress, one of its entities, accused No.3 Avantha Reality Ltd ("ARL") was granted a loan of Rs.400 Cr. by YBL on **29.03.2016** and the said loan was used only to repay existing loans of another AG company, Avantha Holdings Ltd. ("AHL") with ICICI Bank and DCB Bank. The applicant (A1) had allegedly given in-principle

approval for this loan in response to Amit Dhawan's mail as referred above and later, as Chairman and final approving authority of YBL's Management Credit Committee, formally approved the loan on 29.03.2016. The said loan of Rs.400 Cr. was granted as "Lease Discounting Facility" against a Lease Rental Agreement for ARL's property at 40, Amrita Shergill Marg, New Delhi. The said agreement was non-genuine because :

i It was signed only on 22.03.2016 (i.e. one week prior to the sanction of the loan).

ii It reflected Rs.5.4 Cr. as monthly rent, whereas the property was being leased for Rs.50 Lakhs only prior to the agreement.

iii It was never honoured i.e. no rent was received pursuant to the Agreement.

6. It is further alleged that, the loan was granted also against mortgage of the property which was valued at **Rs.500** Cr. in YBL's "Credit Appraisal Memorandum". The value of the property had also previously been appraised by ICICI Bank on **08.05.2014** and **04.08.2015** at Rs.550.92 Cr. Cushman and Wakefield (Reality Firm) had valued the property at **Rs.476.08 Cr. in its Valuation Report of November, 2016 – January, 2017**. On 12.11.2016 while ARL's loan account was still stranded, the applicant (A1) allegedly instructed other YBL Officers to pursue AG for monetization of their non-core assets, including the property. YBL, through the applicant, wrote to Gautam Thaphar (A2) to monetize assets to repay AG's outstanding to YBL.

7. It is further alleged that in the first week of April, 2017, M/s InterGlobe Enterprises Ltd. through its associate entity M/s Acquire Services Pvt. Ltd., sent an offer to ARL to purchase the property at a price of Rs.375 Cr. ARL approached YBL for issuance of "No Objection Certificate" because the property was mortgaged to it against the loan of Rs.400 Cr and cross-collateralized against other AG's loan of Rs.815 Cr. On 28.07.2017, YBL granted the NOC subject to the condition that ARL would deposit Rs.408 Cr. in the loan account. However, InterGlobe without any reason withdrew is offer on 29.08.2017. Immediately on 31.08.2017 accused No.5 Bliss Abode Pvt. Ltd. ("BAPL") submitted an offer to ARL to buy the property at a price of Rs.378 Cr. YBL Granted NOC to ARL on the condition that Rs.374 Cr. be credited into ARL's loan account. Subsequently, on 15.09.2017 the property was sold to BAPL.

8. It is further alleged that, in fact it was the applicant (A1) who had sent the offer of Rs.378 Cr. through BAPL, in an entity in which his wife was interested, because he was aware of the price offered by InterGlobe. Furthermore, while he had approved the issuance of NOC to InterGlobe, he deliberately abstained from giving approval to the NOC issued for sale of the property to BAPL. Such conduct was a violation of YBL's Code of Conduct, Para III which provides that, "...conflict of interest may also arise when key personnel or member of his or her or their family, received improper personal benefit as result of his or her position with the company, whether received from that company or a third party. The duty of the key personnel to the bank demands that they avoid any disclose actual and apparent conflict of interest…".

9. The accused No.1 failed to disclose that there was a conflict of interest with YBL about a property being purchased by BAPL where his wife was Director. It is further alleged that ARL deposited the sale proceeds of the property with YBL, but the proceeds were not fully utilized towards closing the loan and were instead distributed amongst other AG companies' loan accounts, so that they did not become NPA. Only Rs.53.50 Crore was utilized for ARL's loan account, resulting in the loan becoming NPA in October, 2019 with a total outstanding of Rs.137.9 Cr. Immediately after acquiring the property, BAPL obtained loans amounting to Rs.285 Cr. by mortgaging to it to IndiaBulls Housing Finance Ltd. (IBHFL). The valuation report prepared by IBHFL on 22.09.2017 reflected the value of the property as Rs.562 Cr. apart from the loan of Rs.400 Cr. to ARL in March, 2016, YBL granted three loans to AG companies that were not utilized for the purpose for which those were given and were instead utilized for "Evergreening":

i Loan of Rs. 230 Cr. to AHL in July 2016 to purchase a power plant was actually used for liquidation of BGPPL and Ballarpur Industries Ltd. (BILT) loans with YBL.

ii Loan of Rs.85 Cr. to Solaris Chemtech Industries Pvt. Ltd (Solaris) in July 2016 as "working capital" was used to liquidate BILT's loan with YBL.

iii Loan of INR 530 Cr. to Solaris in March, 2017 for providing security deposit to Avantha Power & Infrastructure Ltd. for setting up a power plant was instead used for settling loan outstanding of Solaris.

10. It is further alleged that after the purchase of the property as well, YBL granted a loan of Rs.514.27 Cr. to another AG company i.e. Oyster Build Well Pvt. Ltd. The loan was ostensibly for extending a security deposit to Jhabua Power and Investment Ltd. for an operations

and maintenance contract. However, the disbursed amount was used for settlement of loans of AG Companies with other lenders. OBPPL was a non-operational entity, and this loan account was declared NPA by YBL on 30.10.2019. In this way, the case against the applicant (A1) from the allegations in the chargesheet is summarized as follows,

i The loan of Rs.400 Cr. was granted to ARL by the applicant alone, who was solely responsible for decision making at YBL.

ii The price at which BAPL purchased the property was highly undervalued and accordingly the applicant was benefited of the differential between the purchase price (Rs.378 Cr.) and the actual market value (Rs.500 / 550/ 476.8 / 562 Cr.)

iii The applicant was somehow obligated to disclose his/his wife's interest in BAPL and his interest in the transaction with ARL, and that he failed to do so.

iv Certain loans were granted to AG companies (before and after the purchase of the property by BAPL) that were not utilized for stated purposes.

11. Referring to these facts CBI in their say (Exh.133A) contended that the applicant (A1) is involved in a serious offence and contended to reject the application. On the other hand, the applicant (A1) claimed bail on following grounds,

i No further investigation is pending. Hence, no useful purpose would serve by extending judicial custody of the applicant (A1).

ii The applicant (A1) extended his full cooperation to CBI during investigation.

iii When the applicant(A1) was in ED custody he voluntarily wrote to CBI for allowing him to participate in this investigation, but without allowing him to do so CBI arbitrarily sought his custodial interrogation over one year later.

iv On 14.08.2021 the applicant (A1) was remanded to the custody without arrest.

v Bail should not be denied as a punitive measure, as there is no reasonable likelihood of trial culminating in near future.

vi He (A1) has already undergone pretrial incarceration for over 22 months.

vii The applicant (A1) has deep roots in the society and has been a permanent resident of Mumbai for the last 3 decades.

viii His (A1) spouse and unmarried daughter also live in Mumbai and dependent on him.

ix Since 22 months no charges have been framed against the applicant in the instant case nor there is any likelihood of beginning trial in near future.

x The applicant (A1) is entitled to parity with co-accused. He (A1) stands on the same footing as Gautam Thapar (A2).

xi He (A1) alone was not a person who processed and sanctioned the loan, but there is a MCC who scans the loan proposals. Also, there is a separate department for the valuation of the properties proposed for mortgage. None of those Officers of the YBL and MCC is made accused, expect the applicant (A1). For this ground the applicant referred names of various Directors, Presidents of YBL, who actually dealt with the loan proposal and loan sanctioning process.

xii There was absolutely no undervaluation of the properties in question and the contention of CBI as such is false.

These are the main grounds for claiming bail.

12. After carefully examining the application, written submissions, and the chargesheet along with the voluminous relied upon documents, it is essential to note certain facts. Rana Kapoor (A1) was initially arrested on **08.03.2020** and subsequently became embroiled in numerous other cases, resulting in several prosecutions against him and his status as an undertrial prisoner. As of now, his total period of incarceration across all cases, including the present one, amounts to **almost 4 years**. It is significant to note that apart from the present case, he was granted bail in all other cases pending against him in Mumbai, Delhi, etc. In this specific case, he was not arrested during the investigation. Instead, the CBI Special Court rejected the

Investigating Officer's request to arrest him (A1). However, he was remanded in police custody (CBI) after the CBI Officer's plea for his formal arrest was dismissed. Consequently, since 14.08.2021, the applicant (A1) has been in custody regarding the present case. Additionally, when the CBI requested his production warrant under Sec.267 Cr.P.C., he was already in judicial custody for a significant period in relation to ECIR/MBZO-I/03/2020 dt. 07.03.2020. Thus, the total duration of the applicant's (A1) incarceration across various cases, including this one, amounts to **4 years**. The list of various cases against the applicant (A1) is as follows:

Sr. No.	Case	Title	Date of Arrest of present Applicant/Accused	Bail Status
1.	RC 219-2020-E-0004/CBI/EO-I/Delhi dated 07.03.2020	CBI v. DHFL & Ors. (Case No. 830/2021, 965/2021)	Not arrested, in JC since 06.10.2021	Bail granted by Order dated 29 August 2023 by the Ld. Special Judge
2.	ECIR/MBZO-I/03/2020 dated 07.03.2020	ED v. Rana Kapoor & Ors. (Spl. Case No. 452/2020 & 579/2020)	Arrested on 08.03.2020	Bail granted by Order dated 21 December 2023
3.	ECIR/MBZO-I/04/2020 dated 20.03.2020	ED v. Rana Kapoor and Ors. (Spl. Case No. 1636/2021)	Not arrested	Bail granted by Trial Court on 16.02.2022
4.	ECIR/MBZO/01/39/2020 dated 19.10.2020	ED v. Rakesh Kumar Wadhawan & Ors. (Spl. Case No. 404/2021)	Arrested on 27.01.2021	Bail Granted by Order dated 01.04.2023 by the Ld. Special Court
5.	RC 2232021 A0005 dated 02.06.2021	CBI v. M/s OBPL & Ors (CBI case No. 51 of 2022)	Not Arrested	Bail granted by the Ld. Trial Court on 23.02.2023
6.	ECIR/11/HIU/2021 dated 15.06.2021	ED v. Gautam Thapar & Ors. (Spl. Case No. DLCT11 No. 365/2021)	Not arrested, in JC since 20.01.2022	Bail rejected by Trial Court on 20.01.2022 Granted bail by Delhi HC on 25th November, 2022
7.	ECIR/MBZO-I/38/2020 dated 21.09.2020	ED v. Ajay Ajit Peter Kerkar & Ors. (Case No. 1090/2020)	Not arrested	bail granted by Trial Court on 06.03.2021

13. The above table clearly indicates that in all other pending cases against the applicant (A1), all the courts concerned have released him or granted bail. Therefore, this is the only case in which the applicant (A1) is in jail and now seeking bail. This is a crucial aspect concerning the manner in which the trial of this case must commence, particularly in accordance with the mandate under Sec.44(1)(c) of the PML Act. The right to a speedy trial is a fundamental right of an undertrial prisoner, and no undertrial prisoner should be detained without trial for an indefinite period, leading to undue incarceration. The Hon'ble Supreme Court has consistently directed Trial Courts on this aspect and expressed deep concern about it. I am noting this aspect in the context of the detailed discussion that will follow regarding the peculiarities in the trial of a case under the Prevention of Money Laundering Act, 2002, specifically as mandated under Sec.44(1)(c) thereof, which prohibits a separate trial of this **CBI Special Case No.1233/2021** without considering **PMLA Case No.1636/2021**. This particular provision and mandate under Sec.44(1)(c) of the PML Act itself determines the duration of the trial, the likelihood of its commencement, and its conclusion to justify the detention rather than incarceration of the applicant. While this aspect will be detailed later in the discussion, its reference is inevitable at the beginning of this order. Consequently, this is the only case among several others mentioned earlier where the applicant (A1) has been an undertrial prisoner for over **2 years and 7 months, totaling 31 months**. Despite significant efforts, there is still no likelihood of the trial commencing.

14. It is the specific contention of the applicant (A1) that while he was in judicial custody regarding ECIR/MBZO-I/03/2020, he sent an application dated 30.05.2020 to the CBI, expressing his willingness to

participate in the CBI investigation related to this case. However, it is a fact that the CBI did not respond to him. Meanwhile, he filed ABA No.656/2020, which was rejected by the then CBI Special Court vide an Order dt. 07.09.2020. He specifically contends that despite being in Taloja Jail for over a year, the CBI did not summon him for investigation. Instead, on 26.07.2021 and 07.08.2021, the CBI submitted applications for his production and custodial interrogation. Consequently, he was brought before the then CBI Special Court (C.R.No.47) with a request for his formal arrest, and the Remand Application No.68 of 2021 was also filed. However, the CBI Special Court (C.R.No.47), by an order dt. 14.08.2021, ruled that police custody remand could be granted without directly arresting the applicant (A1) by the CBI. Subsequently, the applicant (A1) was remanded in police custody until 21.08.2021 for the instant offense. Given this background, the applicant contends that he was never formally arrested, thus asserting his entitlement to release on bail. I have carefully examined this contention.

15. It should be noted that on 14.08.2021, the then CBI Special Court (C.R.No.47) granted police custody remand of the applicant (A1) by rejecting the CBI's request for his formal arrest. It is significant to note that the applicant (A1) challenged this order dt.14.08.2021 passed by the CBI Special Court (C.R.No.48) vide Writ Petition No.3923 of 2021, seeking to quash or set aside the order and declare his remand in CBI custody and subsequent proceedings as illegal, non-est, and void-ab-initio. Importantly, on 22.06.2022, the Hon'ble High Court dismissed the said writ petition, and subsequently, the applicant (A1) appealed against this dismissal before the Hon'ble Supreme Court in SLP (Crl.) Diary No.14263/2023, but withdrew the same on 16.05.2023. This

indicates conclusively that the order dated 14.08.2021 passed in Remand Application 868/2021 by the then CBI Court has become absolute and attained finality. Consequently, the applicant (A1) cannot assert that the Ld. SPP made submissions before the Hon'ble High Court that the CBI would adhere to the legal requirements for arresting him. Similarly, once the order dated 14.08.2021 has reached finality, the applicant (A1) cannot reassert arguments such as (i) he was never arrested, (ii) there was no formal arrest, (iii) this is a non-arrest chargesheet, (iv) no arrest memo, etc., as contended in submissions Exh.133B1 to the additional grounds raised by the CBI via Exh.133B. Consequently, the applicant (A1) cannot cite these grounds for bail, arguing that he was never arrested in relation to this CBI crime/case.

EXTRAORDINARY EXCEPTIONAL VOLUME OF TRIAL AS PER THE MANDATE OF SEC.44(1)(C) OF THE PML ACT AND LIKELIHOOD OF BEGINNING AND CONCLUSION OF THE TRIAL IN NEAR FUTURE.

16. Before delving into the discussion of the merits of this application, another crucial aspect that requires consideration is the exceptional volume of this trial. This case cannot be tried independently like any other CBI Special Case because it pertains to the Predicate Offence as per **PARAGRAPH 8 TO THE SCHEDULE**, as defined in Sec.2(y) of the PML Act. The mandate under Sec.44(1)(c) of the PML Act prohibits the independent trial of cases related to the Predicate Offence. For this purpose, reference to Sec.44(1)(c) of the PML Act is indispensable, hence it is reproduced below:

> "**Section 44. Offences triable by Special Courts** – (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 –
> (a) **an offence punishable under Section 4 and any scheduled offence connected to the offence under that section**

shall be triable by the Special Court constituted for the area in which the offence has been committed.

(b) ....

(c) if the court which has taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the complaint of the offence of money-laundering under sub-clause *(b)*, it shall, on an application by the authority authorised to file a complaint under this Act, commit the case relating to the scheduled offence to the Special Court and the Special Court shall, on receipt of such case proceed to deal with it from the stage at which it is committed."

At the initial stage, although it was incumbent upon the Enforcement Directorate (ED), this Court observed that the ED was completely unaware of the exceptional provision regarding the trial of a Predicate Offence prescribed under the PML Act. When the Court noted the inaction on the part of the ED, resulting in significant injustice, particularly to undertrial prisoners in PMLA Special Cases, bold directions were issued to make the ED aware of their legal obligations and their unique role in initiating proceedings under Sec.44(1)(c) of the PML Act. Prior to my specific directions, the ED had not initiated any proceedings for the commitment of cases relating to the Scheduled Offence as mandated under Sec.44(1)(c) of the PML Act. The current CBI Special Case 1233/2021 being related to a Scheduled Offence in respect of PMLA Special Case No.1636/2021, it is imperative for the ED to promptly initiate proceedings as per Sec.44(1)(c) seeking the commitment of the instant case to the Court which has taken cognizance of PMLA Special Case No.1636/2021. Without the ED initiating any proceedings under Sec.44(1)(c), the trial of this case simultaneously with the trial of PMLA Special Case No.1636/2021 could not have commenced in the true legal spirit. Noticing the inaction and passivity on the part of the ED in initiating proceedings under Sec.44(1)(c), this Court repeatedly directed the ED in many other

matters to acknowledge their legal obligation for the commitment of cases relating to the Scheduled Offence. In the present case as well, the ED was initially very passive and did not take a single step since the CBI Special Court took cognizance of the Scheduled Offence. The following table will elaborate on the real circumstances of the transaction, which have prevented the trial of the present applicant (A1) from commencing even after the CBI Special Court took cognizance.

Date	Details
14.08.2021	Rana Kapoor (A1) was remanded in police custody by the CBI Court.
08.10.2021	CBI filed chargesheet against the applicant (A1) and until 23.11.2023 when ED filed application, there was no progress in trial of CBI Special Case.
23.11.2022	For the first time ED filed application under Sec.44(1)(c) PML Act for the commitment of this case to this Special Court Designated under the PML Act and had taken cognizance of PMLA Special Case No.1636/2021.
18.04.2023	The CBI Special Court passed Order on ED's application dt.23.11.2022 and committed CBI Special Case No.1233/2021 to this Court.
29.04.2023	The CBI Special Case No.1233/2021 R & P finally received for the first time by the PMLA Designated Special Court.

17. The above table clearly indicates how the applicant (A1) remained without a trial despite the Court dealing with his CBI Special Case No.1233/2021 having taken cognizance, and he being an undertrial prisoner. The trial of the case relating to the Scheduled Offence must always accompany the trial of the PMLA Special Case as mandated under Sec.44(1)(c) of the PML Act. Sec.44(1)(c) imposes a legal obligation on the ED to take prompt action, particularly when the accused person(s) is/are undertrial prisoner(s), so that such a monumental trial could commence at the earliest without subjecting the accused to judicial custody and turning it into undue incarceration.

18. The true essence and mandate of Sec.44(1)(c) of the PML Act entail the **"simultaneous trial"** of cases relating to the Scheduled Offence and the case under the PML Act. Therefore, the trial of a PMLA case is inherently unique and exceptionally voluminous. Sec.44(1)(c) of the PML Act stipulates that, "if the court which has taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the complaint of the offence of money-laundering under sub-clause (b), it shall, **on an application by the authority authorized to file a complaint under this Act, commit the case relating to the scheduled offence to the Special Court and the Special Court shall, on receipt of such case, proceed to deal with it from the stage at which it is committed.**" This language itself underscores the simultaneous trial of the PMLA case and a case relating to the Predicate Offence. Unless the case relating to the Predicate Offence is committed to the Designated PMLA Court, the trial of this PMLA case cannot commence.

19. Recently, the Hon'ble Supreme Court, in the case of **Rana Ayyub Vs. Directorate of Enforcement [Writ Petition (Criminal) No.12 of 2023, decided on 07.02.2023]**, clearly articulated in paragraphs 24 to 26 as follows:

> "24. After mapping out/laying down such a general but fundamental rule, the Act then proceeds to deal with a more complicated situation in Section 44(1)(c). The question as to what happens if the Court which has taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the offence of money-laundering, is what is sought to be answered by clause (c) of sub-section (1) of Section 44. If the Court which has taken cognizance of the scheduled offence is different from the Special Court which has taken cognizance of the offence of money-laundering, then the authority authorised to file a complaint under PMLA should make an application to the Court which has taken cognizance of the scheduled offence. On the application so

> filed, the Court which has taken cognizance of the scheduled offence, should commit the case relating to the scheduled offence to the Special Court which has taken cognizance of the complaint of money-laundering.
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> **25. Therefore, it is clear that the trial of the scheduled offence should take place in the Special Court which has taken cognizance of the offence of money-laundering. In other words,the trial of the scheduled offence, insofar as the question of territorial jurisdiction is concerned, should follow the trial of the offence of money-laundering and not vice versa.**
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> **26. Since the Act contemplates the trial of the scheduled offence and the trial of the offence of money-laundering to take place only before the Special Court constituted under Section 43(1), a doubt is prone to arise as to whether all the offences are to be tried together. This doubt is sought to be removed by Explanation(i) to Section 44(1). Explanation (i) clarifies that the trial of both sets of offences by the same Court shall not be construed as joint trial."**

Sec.44(1)(c) of the PML Act mandates that, "if the court which has taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the complaint of the offence of money-laundering under sub-clause (b), **it shall, on an application by the authority authorized to file a complaint under this Act, commit the case relating to the scheduled offence to the Special Court and the Special Court shall, on receipt of such case, proceed to deal with it from the stage at which it is committed.**" This language itself underscores the simultaneous trial of the PMLA case and a case relating to the Predicate Offence. Unless the case relating to the Predicate Offence is committed to the Designated PMLA Court, the trial of this PMLA case cannot commence.

20. Subsequently, once again, the Hon'ble Supreme Court, in the case of **KA Rauf Sherif Vs. Directorate of Enforcement & Ors. [Transfer Application (Criminal) No.89 of 2023, decided on 10.04.2023]** the Hon'ble Supreme Court laid down in paragraphs 7 and 8 as follows,

> "7. In Rana Ayyub (supra), two questions arose for consideration and they were as follows :
>
> "16. …(i) whether the trial of the offence of money-laundering should follow the trial of the scheduled/predicate offence or vice versa; and (ii) whether the Court of the Special Judge, Anti-Corruption, CBI Court No. 1, Ghaziabad, can be said to have exercised extra-territorial jurisdiction, even though the offence alleged, was not committed within the jurisdiction of the said Court."
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> 8. While dealing with the question No.1, in Rana Ayyub, this Court considered the interplay between Sections 43 and 44 of PMLA on the one hand and the provisions of Sections 177 to 184 of the Code on the other hand and held in paragraph 36 as follows:
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> "Once this combined scheme is understood, it will be clear that **in view of the specific mandate of clauses (a) and (c) of subsection (1) of Section 44, it is the Special Court constituted under the PMLA that would have jurisdiction to try even the scheduled offence**. Even if the scheduled offence is taken cognizance of by any other Court, that Court shall commit the same, on an application by the concerned authority, to the Special Court which has taken cognizance of the offence of money-laundering. This answers the first question posed before us."

21. It is evident that a trial of the PMLA Special Case encompasses concurrent proceedings of both PMLA Special Case No.1636/2021 and CBI Special Case No.1233/2021. The court must hear and subsequently frame charges simultaneously to commence the trial, following the clearance of discharge applications. I elaborate on this aspect because the applicant (A1) underwent judicial custody without trial while the CBI Special Case was pending in C.R.No.53.

Even after the transfer of CBI Special Case No.1233/2021 to this Court, as mandated under Sec.44(1)(c) of the PML Act, the situation akin to that in the CBI Special Court (C.R.No.53) persisted in this Court, primarily due to **Explanation (ii) to Sec.44(1)** of the PML Act, which permits the ED to conduct "**Further Investigation"**.

CAN THE CHARGE BE FRAMED IN ACCORDANCE WITH THE TRUE SPIRIT OF SEC.44(1) (c) OF THE PML ACT?

22. Section 44 of the PML Act begins with a "Non-obstante" clause and outlines a comprehensive procedure for the trial of PMLA cases. The use of "shall" in Sec.44(1)(c) of the PML Act signifies a mandate for the "simultaneous trial" of cases related to Scheduled Offenses and a case under the Prevention of Money Laundering Act. The Designated Special Court under the PML Act is obligated to continue the trial of the Scheduled Offense case **from the stage it was pending at the time of its commitment**. In the instant case, the charge was not framed by the CBI Special Court while it was pending before it. Hence, this Court must proceed with the trial from the stage it was committed. It is pertinent to mention a peculiar provision under Explanation (ii) to Sec.44(1) of the PML Act, which grants the ED the authority to conduct "further investigation" even after the filing of initial Prosecution Complaint(s).

23. Based on the provision for further investigation outlined in Explanation (ii) to Sec.44 of the PML Act, it is essential to reference what has been alleged and claimed by the ED in their Prosecution Complaint, specifically in paragraph **13.4 on page 7**1, which reads as

follows:

> "13.4. Investigation is complete qua the properties mentioned in the present complaint as well as transactions mentioned therein, against the abovementioned accused persons. **However, investigation is still in progress in respect of other transactions/persons/entities. The complainant craves leave of this Hon'ble Court for conducting further investigation and as and when investigation is complete in other aspects, to file supplementary complaint(s) in due course".**

This clause in the ED's Prosecution Complaint itself clarifies that the investigation of PMLA Special Case No.1636/2021 is still ongoing and has not concluded. It is a well-established legal principle that "Unless investigation ends, trial cannot begin." Until the ED informs the Court definitively that their investigation is complete, simultaneous trials of the instant case with PMLA Special Case No.1636/2021 cannot commence as envisaged under Sec.44(1)(c) of the PML Act. The trial cannot commence until the charge is framed. The Hon'ble Supreme Court, in **Vinubhai Haribhai Malaviya and others Vs. State of Gujarat and another [(2019)17 SCC 1]**, laid down the ratio that unless the investigation is conclusively over, the Court cannot frame charges, even in cases related to the Scheduled Offense, while keeping the PMLA Special Case No.1636/2021 pending in isolation. With "further investigation" of PMLA Special Case No.1636/2021 ongoing or underway, as per clause 13.4 on page 71 of the Prosecution Complaint, the Court cannot frame charges.

24. The Hon'ble Delhi High Court directly addressed this aspect in **Raman Bhuraria Vs. Directorate of Enforcement [Bail Appln. 4330/2021 & Crl. M.(Bail) 1514/2021, delivered on 08.02.2023]**, specifically stating in paragraph 6 under the topic **"II. Delay in filing**

chargesheet; Investigation still continuing" as follows:

> "In my opinion, there can be no arguments on framing charges or initiation of a trial because the investigation is still ongoing. **Without a completion of investigation, no charges can be framed nor the trial can begin. In the light of this, the court cannot let the applicant undergo long period of detention. If this court allows the continuing pre-trial incarceration, the same will amount to deprivation of personal liberty as well as travesty of justice as the same is equivalent to punishment without trial**".

Hence, it is evident that unless the ED withdraws clause **13.4 on page 71 in the Prosecution Complain**t, charges cannot be framed in both cases: the instant CBI Special Case, where the applicant is an undertrial prisoner, and PMLA Special Case No.1636/2021, especially when the "further investigation" by the ED is still ongoing. There is no specified outer limit for "further investigation" provided under Explanation (ii) to Sec.44(1) of the PML Act. Consequently, the "Trial" as envisaged and mandated under Sec.44(1)(c) cannot commence with its true spirit.

25. The provisions of discharge under Sec. 227 and Sec. 241 grant the accused the right to claim discharge. Even after the investigation has concluded, the charge cannot be framed immediately by bypassing the accused's right to claim discharge. This provision for discharge cannot be circumvented, as recently held by the Hon'ble Bombay High Court in **Kiran Prakash Kulkarni Vs. State of Maharashtra and Anr. (Criminal Revision Application No.61 of 2023, decided on 27.03.2023)**, as follows:

> **"4. Result of exercise of power by the Special Court is that the opportunity of accused to satisfy the Court about the lack of sufficient material to frame charge is taken away. It appears that the contentions raised on behalf of the**

accused that there is no material to frame charge/ground to proceed against the applicant has not been adjudicated upon by the Special Court. Therefore, the order of rejection of discharge application and framing of charges against the applicant needs to be quashed and set aside".

26. I am discussing this aspect in detail because the court must estimate the probable time for commencing and concluding the simultaneous trials of these two cases, as mandated under Sec.44(1)(c) of the PML Act, particularly since the applicant (A1) is the sole undertrial prisoner in CBI Special Case No.1233/2021. It is pertinent to note that in PMLA Special Case No.1636/2021, all accused persons are either on bail or released under Sec.88 Cr.P.C. Therefore, the applicant (A1) herein is the only undertrial prisoner in this CBI Special Case. To analyze and estimate the duration of the commencement and conclusion of trials in these two cases, it is necessary to consider the following details.

CBI SPECIAL CASE NO.1233/2021

Sr. No.	Number of accused persons	Number of witnesses proposed to be examined	Number of documents (volumes, if any)
	05	49	7897 pages in huge volumes.

PMLA SPECIAL CASE NO.1636/2021

Sr. No.	Number of accused persons	Number of witnesses proposed to be examined	Number of documents (volumes, if any)
	10	14	1264 pages in huge volumes.

27. Experience shows that the provision for discharge is strategically utilized by accused persons, as all accused seldom file discharge applications at once. Additionally, each accused is represented by a separate independent lawyer who files such applications sequentially. If there are number of accused in a case, everyone files discharge applications one after another. The court cannot bypass the provision for discharge and immediately frame charges, especially when the ED's “further investigation” is ongoing. Once the court addresses the backlog of pending applications and prepares to frame charges, accused persons submit discharge applications one after the other. This fight reaches even to the Hon’ble Supreme Court. In this case, it is anticipated that a total of 15 discharge applications will be filed in both the CBI and PMLA cases. Since each accused is represented by an independent lawyer, they will file these applications sequentially, rather than simultaneously for hearing and decision. Therefore, it is expected that the probable time required to complete the discharge stage will be approximately 1-2 years.

28. Similarly, after framing charges and conducting simultaneous trials as per Sec.44(1), approximately 65 witnesses in both cases would need to be examined, which would likely take another minimum of 2-3 years even if the trials are conducted on a day-to-day basis. It should be noted that in none of the PMLA cases pending in this Court has the ED filed Purshis informing that their investigation is complete and the Court may begin the trial. The charges against the present applicant (A1) include sections 120B, 420 IPC, and sections 11, 12, 13(2), and 13(1)(d) of the PC Act. The Hon’ble Delhi High Court's discussion on why cases under the Prevention of Corruption Act take a long time and cannot be disposed of expeditiously can be found in

Prem Chand Meena & Ors Vs. CBI (2010 SCC OnLine Del 3222) in paragraph 25, as follows:

> "25. It is well known fact that trials of corruption cases are not permitted to proceed further easily and a trial of corruption case takes anything upto 20 years in completion. One major reason for this state of affairs is that the moment charge is framed, every trial lands into High Court and order on charge is invariably assailed by the litigants and the High Court having flooded itself with such revision petitions, would take any number of years in deciding the revision petitions on charge and the trials would remain stayed...".

Corruption cases, particularly those initiated at the instance of the CBI and pending in various courts of Maharashtra, are not exceptions to what has been observed by the Hon'ble Delhi High Court. In summary, considering all these aspects and in view of the law laid down by the Hon'ble Delhi High Court in **Raman Bhuraria Vs. Directorate of Enforcement (supra)**, when "further investigation" is ongoing, charges cannot be framed. If charges cannot be framed, there is no likelihood of beginning the trial. No one, including the ED, is certain as to when they would finally conclude their "further investigation" as per Explanation (ii) to Sec.44(1) of the PML Act, ultimately making it uncertain as to when charges in these cases can be framed. This uncertainty extends to when the trial would begin and conclude. It is pertinent to note that this applicant (A1) was already released under Sec.88 Cr.P.C. in PMLA Special Case No.1636/2021 even though the gravity and magnitude of the PMLA offense is far greater compared to the charges leveled against the applicant under the PC Act and IPC. This aspect cannot be overlooked.

29. The applicant (A1) has been behind bars **for more than 2**

years and 7 months, specifically in this case, **totaling 31 months**. In total, he has spent **4 years and 1 month** in judicial custody for various other cases since his appearance before the Court under Sec.267 Cr.P.C. on 08.03.2020 and subsequent remand in police custody. It is worth noting that in all other cases, except this one, he was released. This case stands out as the only instance where the applicant (A1) is in judicial custody and is now seeking bail, as there is no trial yet.

30. The Hon'ble Supreme Court consistently upholds the basic principles and fundamental rights of undertrial prisoners, emphasizing that criminal trials of undertrial prisoners must be concluded as expeditiously as possible. In light of the uncertainty surrounding the framing of charges, particularly as per Sec.44(1)(c) read with Explanation (ii) to Sec.44(1) of the PML Act, a serious question arises:

i Can the applicant (A1), who has already spent **2 years and 7 months in this case and a total of 4 years and 1 month** in judicial custody for various other cases, be allowed to languish in jail for an uncertain period, which cannot be ascertained or estimated by anyone?

ii Is it justifiable to deny the fundamental right of the applicant (A1) to be tried as expeditiously as possible by merely pointing to the provisions under Sec.436A Cr.P.C. and asserting that his case does not fall within its purview?

31. In **Union of India Vs K. A. Najeeb [(2021)3 SCC 713]**, the Hon'ble Supreme Court has laid down as follows :

> "15. This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In Supreme Court Legal Aid Committee

(Representing Undertrial Prisoners) v. Union of India [Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India, (1994) 6 SCC 731, para 15 : 1995 SCC (Cri) 39], it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, the courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail."

In the instant case, the applicant (A1) has endured incarceration for 2 years and 7 months (31 months), and in total, he has spent 4 years and 1 month in custody for other cases. Wherein there was no trial. This significant period of time itself warrants his release on bail, especially when a timely trial in the instant case, as discussed above, is not feasible.

32. In the **Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) Vs. Union of India [(1994)6 SCC 771]** the Hon'ble Supreme Court laid down as follows :

"Undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, Courts are tasked with deciding whether an individual ought to be released pending trial or not. **Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, Courts would ordinarily be obligated to enlarge them on bail**".

This Court is well aware that to grant benefit under

Sec.436A Cr.P.C., the accused must have undergone half of the maximum punishment due to undue incarceration. As discussed earlier, the proposed length of the trial, from beginning to conclusion, is uncertain, particularly unless the ED clarifies that their further investigation is complete, simultaneous trials of these two cases cannot commence in accordance with the true spirit and mandate of Sec.44(1)(c) of the PML Act.

33. It is also evident that there is no likelihood of commencing and concluding these trials within 3 to 4 years. It should be noted that when an accused is convicted for various offenses, the sentence is preferably imposed concurrently. In rare cases, the Court may impose consecutive sentences. Therefore, the total period of 4 years and 1 month undergone by the applicant (A1) cannot be disregarded. Furthermore, the period of 2 years and 7 months (31 months) he has already undergone without trial in both the CBI Special Case and the PMLA Special Case cannot be overlooked. It is also important to note that the mandate under Sec.44(1)(c) requires only that the Court dealing with the case related to the Scheduled Offense should have taken cognizance thereof. Similarly, the Court dealing with the PMLA Special Case should have taken cognizance of the Prosecution Complaint. Once these two factors are met, there is no bar for the ED to immediately apply to the Court dealing with the case of the Scheduled Offense for its immediate commitment to the PMLA Special Court, which has taken cognizance of the PMLA Prosecution Complaint. A careful reading of Sec.44(1)(c) also makes it clear that once cognizance is taken by the Court dealing with the case related to the Predicate Offense, the ED can promptly file such an application for commitment. As simultaneous trials of both cases are mandated by Sec.44(1)(c), even

subsequent chargesheets in the case(s) related to the Scheduled Offense can be filed in the Court that has taken cognizance of the PMLA Special Case, as the Designated Special Court under the PML Act is the **"Court of Trial"** for both cases, including the instant case.

34. It is necessary to note that the then CBI Special Court remanded the applicant (A1) in police custody on 14.08.2021. The CBI filed the chargesheet on 08.10.2021, and the Court promptly took cognizance by issuing process on 12.10.2021. There was absolutely no impediment or reason for the ED to make an application under Sec.44(1)(c) before the then CBI Court, but for the first time, such an application was made after 23.11.2022, which was then pending. Subsequently, on 18.04.2023, the CBI Court issued the Order of commitment, and finally, the said R & P was received by this Court on 29.04.2023. Thus, the judicial custody of the accused was continued for such a long period through no fault of his own. Given the length and uncertainty of the present trial as discussed above, there is no certainty that both trials would progress and conclude simultaneously and at the earliest within a year or two. Generally, accused persons charged under the Prevention of Corruption Act for the same offenses for which the present applicant is also charged, are granted bail immediately. This aspect cannot be ignored. Therefore, this alone is sufficient to grant bail to the accused.

35. While giving dictation of this order, a recent dictum from the Hon'ble High Court has been received, which extensively discusses the approximate period for concluding the trial of a PMLA case and the case related to the Scheduled Offense. Although this dictum pertains to the eligibility of the accused for bail under Sec.436A Cr.P.C., the detailed

observations made by the Hon'ble High Court regarding the triability of the PMLA Special Case and the case related to the Scheduled Offense serve as a guiding star for estimating the approximate probable period for concluding this trial. In the said case of **Sarang Wadhawan Vs. Directorate of Enforcement & Anr. (Criminal Bail Application No.3377 of 2023, decided on 05.04.2024)**, the Hon'ble High Court has specifically laid down as follows:

> 40. Now, the question is when the trial of PMLA offences in this case will be started. A 'draft charge' is already filed on behalf of the E.D. It is true that yet the Special Court has not proceeded further after framing of charge, that is to say, hearing the Prosecution and hearing the respective Accused persons. If there are discharge Applications, the Special Court is required to decide them. There are in all 38 Accused persons. **One does not know when this pre-charge formalities will be completed. It is true that all these complaints consist of thousands of pages and there will be number of witnesses. So, the trial will be going to take its own time. The issue is, whether the Applicants can be detained in jail just because the allegations are serious in nature ? The answer is 'No'.**
>
> 41. Because it is not certain when the trial will start and it will be over. Furthermore, even if trial of both the cases will start simultaneously, still the judgement in PMLA case will not be pronounced till the time, the judgement in trial involving 'scheduled offence' will be pronounced. I have taken this view on the basis of interpretation given by various High Courts and Supreme Court in case of Vijay Madanlal Choudhary's case (supra).

Even though this authority pertains to Sec.436A Cr.P.C., the cases therein involve both the Scheduled Offense and the offense under the PML Act. The Hon'ble High Court has specifically noted the scope of trial for such cases under Sec.44(1)(c) of the PML Act. The same situation applies here in the instant case.

ON MERITS

36. It is significant to note that the applicant (A1) was previously granted release in PMLA Special Case No. 1636/2021, where stringent twin conditions are prescribed by the Statute. Thus, the gravity and magnitude of the offense in that case surpass those of the present one. In numerous instances, accused persons secure bail for offenses related to Scheduled Offenses, yet fail to do so in PMLA Special Cases due to the stringent twin conditions outlined in Section 45(1) of the PML Act. Consequently, despite having been granted release under a comparatively stringent statute like PMLA, the applicant (A1) remains incarcerated in relation to this case. Furthermore, he (A1) has been granted release in all other cases pending in Mumbai, Delhi, etc."

37. In light of the guidelines laid down by the Hon'ble Supreme Court in various referenced authorities, it is imperative to delve into the merits of the applicant's (A1) case. The primary allegation against the applicant is that "The loan of Rs.400 Cr. was wrongly sanctioned to ARL in March 2016 only at the behest of the applicant, who was the Final Approving Authority as Chairman of YBL's Management Credit Committee". These allegations have been meticulously examined along with a thorough review of the entire chargesheet of the CBI Special Case and voluminous Prosecution Complaint in PMLA Special Case No. 1636/2021, where similar accusations are leveled against the applicant and his associates. Although it's recognized that the prosecutions of the CBI Special Case and the PMLA Special Case stand on different footings with varying penal consequences, it cannot be overlooked that the modus operandi alleged for loan sanctioning and property valuation in both cases is

identical. The criminal activity involved in the Scheduled Offense case forms the basis for determining the proceeds of crime under Section 2(i)(u) of the PML Act, thus making it a critical component in the offense of money laundering.

38. A careful examination reveals a common thread linking individuals involved in the criminal activity and the generation of proceeds of crime. Moreover, it's evident from both the CBI Chargesheet and PMLA Prosecution Complaints that the alleged activities were not solely the actions of the applicant (A1) but involved numerous associates and subordinates who played pivotal roles in facilitating these transactions. While the Enforcement Directorate has appropriately included these individuals as accused persons in their Prosecution Complaints, the CBI has failed to do so, raising concerns about their selective targeting of the applicant. Furthermore, the reliance on statements from accused persons in the PMLA Special Case to oppose this bail application underscores the equal culpability of these individuals, yet they have been released while the applicant remains incarcerated. This discrepancy is exacerbated by the portrayal of the applicant as the sole perpetrator of the alleged offenses, disregarding the collaborative nature of the activities in question. Hence, it is essential to consider these nuances while evaluating the first allegation against the applicant.

CREDIT POLICY – APRIL, 2015

39. The “CREDIT POLICY – April, 2015” stands as a pivotal document relied upon by the Prosecution, particularly Paragraph 6 which outlines a specific Credit Appraisal System. It mandates the Management Credit Committee (MCC) to thoroughly discuss proposals,

with approval contingent upon consensus among members. Notably, every MCC member possesses a Veto power, ensuring a collective decision-making process. Despite serving as the Chairman of one such committee, the applicant (A1) did not exert undue influence over loan approvals. The Credit Policy explicitly denies any single member the authority to unilaterally approve loans, as the MCC operates with a minimum quorum and mandates unanimous consent for approval. Interestingly, while the Enforcement Directorate rightfully includes MCC members as accused parties, the CBI's omission of these individuals raises significant questions. The absence of justification from the CBI and Ld. SPP Mr. P.K.B Gaikwad regarding the discrepancy is glaring. The chargesheet itself depicts the applicant (A1) as the sole actor in loan processing, disregarding the collaborative nature of MCC decisions. Moreover, the Credit Policy establishes independent Risk Control Units responsible for overseeing risk parameters and ensuring policy compliance. These units conduct meticulous reviews and play a pivotal role in the loan approval process. Notably, there is no indication that the loan proposals bypassed these units, as evidenced by documents provided by the applicant (A1). The Credit Policy also delineates business segments and financial products, emphasizing adherence to lending norms described in Annexure – II. Despite this, the Prosecution fails to demonstrate any circumvention of these norms, instead focusing solely on implicating accused No.1.

40. Clause (6) of the Credit Policy delineates the Credit Appraisal System, with Clause 6.1 outlining the General Principles governing it. It's crucial to highlight that Clause 6.1 underscores the meticulous scrutiny undertaken by the bank for each loan proposal. Specifically, Clause 6.1(i) emphasizes that credit proposals originating

from the Relationship Manager (RM) undergo rigorous appraisal, irrespective of the credit facility or business segment involved. Notably, there's no indication that the applicant (A1) functioned as the Relationship Manager as per this clause. Furthermore, Clause (b) of 6.1(i) imposes a legal obligation on the RM to conduct thorough due diligence and analyze various aspects of the applicant's business/project, industry conditions, past track record, and other critical factors. It's noteworthy that the ED holds every individual involved in these operations and scrutinies accountable, as evidenced by their arraignment as accused persons. However, the CBI overlooks this aspect, despite it being exposed by the ED in their Prosecution Complaint. Apart from accused No.1, all officials handling these loan proposals are accused in the ED's Prosecution Complaints. Strikingly, the CBI fails to arraign any of them as accused persons, despite their significant roles outlined in the Credit Policy. Individuals such as Parag G. Gorakshakar, Sanjay Palve, Ashish Agarwal, Amit Kumar, and Punit Malik, who were involved in these loan proposals as per the Yes Bank's Credit Policy, are accused in ED’s Prosecution Complaint, yet not in the CBI case. However, their statements are utilized by the CBI to single out accused No.1, highlighting a glaring discrepancy in the investigation.

41. The other clauses within Clause 6 delineate the detailed procedures followed by Yes Bank in handling each loan proposal. Clause 6.1(d) underscores the significance of recommendations made by the Relationship Manager (RM) and how they influence the consideration of loan proposals. Specifically, Clause 6.1(d)(ii) emphasizes that proposals undergo thorough examination by Sanctioning Authorities as outlined in Sec.8.2. The assessment of Credit Requirement is then re-evaluated, taking into account the Risk Rating of the borrower and the

Credit Facilities, and sanctioned accordingly. It's important to delve into these details because the CBI chargesheet portrays the applicant (A1) as the sole person acting as the RM, dealing alone with all units referenced in the Credit Policy of Yes Bank. This depiction implies that individuals like Parag G. Gorakshakar, Sanjay Palve, Ashish Agarwal, Amit Kumar, and Punit Malik had no involvement in the process, which contradicts the elaborate procedures outlined in the Credit Policy.

42. Another aspect that warrants consideration pertains to the Management Credit Committee (MCC) established in Yes Bank in accordance with the Credit Policy. The MCC comprises 22 persons, listed as follows :

i	MD & CEO – Chairman.
ii	Chief Risk Officer – Vice-Chairman.
iii	Deputy Chief Risk Officer (Dy. CRO)
iii	Senior Group President – Retail & Business Banking.
iv	Chief Executive Officer – IFSC, Banking Unit.
v	President & Above – Corporate & Institutional Banking.
vi	President & Above – Commercial Business Banking
vii	President & Above – Business Banking
viii	President & Above – Retail Banking
ix	President & Above – Corporate Finance.
x	Group President – Financial Markets
xi	President & Above – Government / Multinational Corporates Relationship Management.
xii	Group President & CRO – Retail and Business Banking.
xiii	President & Above – BB & RB Risk Management.
xiv	Country Head – C & IB Risk Management
xvi	Country Head – CBB Risk Management
xvii	Country Head – BB Risk Management
xviii	Country Head – RB Risk Management

xix	Country Head – Portfolio Risk Management
xx	Country Head – Corporate Finance Risk Management
xxi	Group President – Transaction Banking Group
xxii	President & Above – International Banking
xxiii	President & Above – Indian Financial Institutions.
xxiv	President & Above – Development Banking.

The Credit Policy itself outlines the procedure for every loan proposal to pass through various departments and officials mentioned earlier. The first allegation in the chargesheet asserts that the Rs. 400 crore loan to ARL in March 2016 was improperly sanctioned solely at the insistence of the applicant (A1), who held the position of "Final Approving Authority" as Chairman of YBL's MCC. However, this allegation lacks support from the Credit Policy and the roles assigned by the ED to several other officials involved in handling these loan proposals. The Credit Policy, along with the structure of the MCC mentioned earlier, clearly indicates that at the relevant time, YBL operated under a robust governance structure overseen by a Board of Directors with various sub-committees. No single individual was solely responsible for YBL's functions, and the applicant (A1), as MD and CEO, reported to the Board of Directors.

43. It's noteworthy that the applicant (A1) was supported by several highly qualified senior management professionals, including MBAs, Chartered Accountants, and others. The structure of the MCC itself underscores that each member possesses the right to express their independent opinions regarding loan proposals. Furthermore, any member of the MCC who perceives or notices any activity detrimental to Yes Bank's policy has the right to raise objections and exercise their Veto power on any loan proposal. According to YBL's Credit Policy, MCC is

mandated to discuss proposals that must be approved through consensus, with a minimum quorum of five Board-approved members required at any credit committee meeting. Each MCC member has the authority to exercise their Veto right if their stance opposes that of other members. Thorough scrutiny of each proposal by the Relationship Manager, as mandated in the Credit Policy, is a prerequisite for presenting proposals before the MCC. The Credit Policy clearly indicates that YBL maintained a large, dedicated Risk Management Department headed by the Chief Risk Officer, along with regular interactions and explanations provided to the Board.

44. Undoubtedly, the loan to ARL was initiated based on loan applications and underwent thorough processes checked and verified by multiple responsible team members at YBL. A meticulous examination of all statements recorded under Sec.161 Cr.P.C conspicuously reveals that not a single witness stated that the regular credit appraisal process was either waived or not applied to this loan, a significant observation. The statement of Amit Dhawan (PW11), Head of Corporate Banking in New Delhi, indicates that he originated the loan proposal based on his discussions with AG officials, with no indication that the applicant attended these discussions at any point. The loan to ARL underwent full appraisal, recommendation, and approval by approximately 11 senior-level YBL officials, who found the loan and its terms to be suitable before it reached the MCC. The Credit Approval Memorandum – Fresh, bears the signatures of all 12 responsible members of the MCC and YBL officers, acknowledging the approval. Notably, recommending officers Yogesh Manocha and Prasoon Chauhan are not accused in this CBI case. Despite this, not a single member of the MCC or any of the 10-11 signatories objected or exercised their Veto right, instead, they all

signed as acknowledgment, holding each of them responsible for the approval memorandum. It is evident that the loan was sanctioned unanimously by all 10 members of the MCC on 29.03.2016, indicating that the applicant alone was not solely responsible for the MCC's decision. The provisions outlined in the Credit Policy, along with the intention and objectives reflected in it, further indicate that YBL aimed to securitize its existing loan due to AG's deteriorating financial position, supported by the statements of witnesses.

45. It is pertinent to note that Yes Bank itself sent a letter dated September 15, 2017, to Avantha Realty Ltd. as follows :

> a YBL confirms that it has received amounts mentioned in YBL's captioned NOC in ARL current account no.000382000002041 maintained with YBL.
>
> b YBL's authorized representative has delivered original title deeds and documents of the property to ARL as detailed in Annexure – I.
>
> c YBL further confirms that it has no claim on the said Property and will execute all the relevant documents required for releasing the charge over the said Property including before the Registrar of Companies.

This clearly indicates that the loan of Rs. 400 crore has been fully repaid from the sale of secured property, along with AG resources, and a No Dues Certificate was issued by YBL.

46. In the aforementioned context, it's notable why CBI has deliberately refrained from conducting investigations similar to those carried out by the ED under the PML Act. In the Prosecution Complaint of PMLA Special Case No. 1636/2021, the ED has meticulously described the roles of individual accused parties. It's significant to mention that high-ranking officers and members of the MCC, including

Parag G. Gorakshakar, Sanjay Palve, Ashish Agarwal, Amit Kumar, and Punit Malik, were directly involved in handling this loan. ED has clearly attributed specific roles to each of them. For instance, Parag G. Gorakshakar, accused No.4 in PMLA Special Case No. 1636/2021, held the position of Chief Credit Officer (Risk Management) at Yes Bank. In paragraph 10.4 of the aforementioned Prosecution Complaint, ED describes his role as follows:

a Parag G. Gorakshakar was the Chief Credit Officer and also on the Board of MCC which had approved the loan of @ Rs.400 Cr. to M/s Avantha Realty Ltd.

b It was the responsibility of Risk Management Committee to evaluate the loan proposals received from business team and to highlight its objections in case there was any deficiency in the proposal.

c **However, in the instant case Parag G. Gorakshakar failed to discharge his responsibilities.**

d In March, 2016 the said loan of Rs.400 Cr. was sanctioned to Avantha Reality Ltd. despite knowing the fact that Yes Bank was already having huge exposure of @ Rs.2000 Cr. against AG and the AG was under big stress.

e He (Parag Gorakshakar) had also approved the proposal with regard to sale of 40, Amrita Shergill Marg Bungalow having minimum value of Rs.685 Cr. already mortgaged with Yes Bank, to M/s Bliss Abode Pvt. Ltd. at a much lower price of Rs.378 Cr only.

f Mr. Parag G. Gorakshakar though being head of the Risk Management Team and also **being a member of CMM in Yes Bank, didn't raise any objection in this regard** and did not use due diligence to verify the fair market value of the property at the relevant time and allowed illegal sale of the said property already mortgaged with Yes Bank, at a much lower price of Rs.378 Cr.

g He (Parag) was fully aware that lease agreement of Rs.65 Cr. made in between group companies of Avantha, on the basis of which loan was sanctioned was exorbitantly high in comparison to earlier lease agreements for the same property.

h **He (Parag) was aware that neither the rent nor the loan would be paid by these companies.** This had been intentionally done to deceive the bank, therefore this was never meant to be a fair deal.

i He (Parag) actively participated the crime.

This clearly indicates that CBI has not even arraigned other

persons like Parag Gorakshakar who are actually involved but projected the applicant (A1) as if he has done everything.

47. Regarding Sanjay Palve, ED attributed him a role in paragraph 10.5 of their Prosecution Complaint in PMLA Special Case No.1636/2021, but CBI rather arraigning them in the equal capacity to that of the applicant (A1) as an accused, recorded their statements as witnesses, which speaks volumes. ED has referred role of **Sanjay Palve** as follows,

a Sanjay Palve was the Group President in Yes Bank and he was the Business Head of Infrastructure Banking Group and Corporate Banking in Yes Bank.

b He (Sanjay) was looking after the business of infrastructure banking group, corporate finance, agri-lending, real estate etc.

c He (Sanjay) was also there on the Board of Management of Credit Committee (MCC) which had approved the loan of @ Rs.400 Cr. to M/s Avantha Realty Ltd.

d He (Sanjay) was knowing how AG was under big stress at the relevant time.

e **He (Sanjay) had also approved the proposal with regard to sale of 40, Amrita Shergill Marg Bungalow having minimum value of Rs.685 Cr. already mortgaged with Yes Bank, to M/s Bliss at a much lower price of Rs.378 Cr.**

f **He (Sanjay) though being head of the business team and also being a member of MCC in Yes Bank didn't raise any objection in this regard and also not used due diligence to verify the fair market value of the property at the relevant time and allowed illegal sale thereof.**

g He (Sanjay) was fully aware that the lease agreement of Rs.65 Cr. made in between group companies of Avantha, on the basis of which loan was sanctioned, was exorbitantly high in comparison to earlier lease agreements for the same property.

h **He (Sanjay) was aware that neither the rent nor the loan would be paid by those companies.**

i He (Sanjay) had done this intentionally to deceive the Yes Bank.

j He (Sanjay) actively participated the crime.

This clearly indicates that CBI has not even arraigned other persons like Sanjay Palve who are actually involved but projected the

applicant (A1) as if he has done everything.

48. Similarly, the role attributed by ED to **Ashish Agarwal, Senior Group President in Risk Management Department of Yes Bank** is also necessary to note. Because the same relates to the same loan transaction which is subject matter of CBI case. It is as follows,

a His (Ashish's) role was to vet the credit proposals, to validate the credit rating, **to identify risk involved in the transaction** and suggest additional terms and conditions if any.

b He (Ashish) was part of the MCC which had approved the loan of @ Rs.400 Cr. to ARL.

c **He (Ashish) being of the Risk Management Department of Yes Bank, failed to discharge his responsibility.**

d **He (Ashish) being senior most member of the Risk Management Team and a member of CMM in YBL didn't raise any objection.**

e He (Ashish) didn't use due diligence to verify the fair market value of the property at the relevant time and allowed illegal sale of already mortgaged property at much lower price at Rs.378 Cr.

This clearly indicates that CBI has not even arraigned other persons like Ashish Agarwal who are actually involved but projected the applicant (A1) as if he has done everything.

49. Similarly, the role attributed by ED to **Amit Kumar, who was the Group President in Corporate Banking of Yes Bank** is also necessary to note. Because the same relates to the same loan transaction which is subject matter of CBI case. It is as follows,

a His (Amit's) role was to manage business development in Yes Bank.

b **He (Amit) was looking after the large corporate clients of the bank by providing them credit facilities / other banking products etc.**

c **Avantha Group was handled by the Corporate Banking Team headed by him (Amit).**

d **He (Amit) was also a part of MCC which had approved the loan of @**

Rs.400 Cr. to ARL.

e In March, 2016 the said loan of Rs.400 Cr. was sanctioned to Avantha Reality Ltd. despite knowing the fact that Yes Bank was already having huge exposure of @ Rs.2000 Cr. against Avantha Group and that the Avantha Group was under big stress.

f **He (Amit) was aware that neither the rent nor the loan would be paid by these companies, yet, intentionally did as such to deceive the Yes Bank.**

This clearly indicates that CBI has not even arraigned other persons like Amit Kumar, who are actually involved but projected the applicant (A1) as if he has done everything.

50. Similarly, the role attributed by ED to **Punit Malik, who was the Senior Group President having charge of Regional Director North of Yes Bank** is also necessary to note. Because the same relates to the same loan transaction which is subject matter of CBI case. It is as follows,

a His (Punit's) role in Yes Bank was to manage relationship, business development and product management in Health Care, Hotels, Real Estate and Education.

b He (Punit) was heading to Real Estate Team of Yes Bank and had verified the Lease Rental Discounting (LRD) Agreement dt.22.03.2016 signed between ARL and BGPPL, as per which ARL was to receive from BGPPL annual rent of @ Rs.65 Cr. for renting out its 40, Amrita Shergill Bungalow to BGPPL.

c The said LRD Agreement was found to be a sham agreement created only to show a regular income in ARL's account for the purpose of smooth sanctioning of Rs.400 Cr. loan.

d The said agreement was prepared just a few days before sanctioning the loan of Rs.400 Cr to ARL and he (Punit) agreed that prior to the LRD Agreement between ARL and BGPPL for Rs.65 Cr. rent per year, the earlier rent agreement for the same property was between ARL and M/s. Ballarpur Industries (BILT) for the rent of Rs.10.20 Cr. per year.

e He (Punit) verified the LRD documents.

This clearly indicates that CBI has not even arraigned other

persons like Punit Malik, who are actually involved but projected the applicant (A1) as if he has done everything.

51. The ED's prosecution consistently focuses on criminal activity related to the Scheduled Offence. The current CBI case pertains to criminal activity associated with the Scheduled Offence, forming the basis of the ECIR and ED's case. Despite significant criminal activities involving the aforementioned individuals, officials, and MCC members, the CBI opted to designate them as witnesses rather than making them accused parties. Moreover, the CBI specifically sought custody remand of the applicant (A1) alone, without arresting him but simply producing him under Sec. 267 Cr.P.C. by transferring him from another crime. All of these actions speak volumes. It's evident that due to such transfer and production of the applicant under Sec. 267 Cr.P.C., and subsequently remanding him in CBI custody and then in judicial custody by the then CBI Court, the applicant (A1) has been behind bars for approximately 31 months, which is a matter of serious concern.

52. The manner in which the CBI attempted to place sole culpability on the applicant (A1) based on statements made by individuals who should have been co-accused, such as Gorakshakar, Palve, Agarwal, and Punit Kumar, is glaringly evident from the case facts and the Credit Policy of YBL. Prima facie, this suggests that the applicant (A1) alone was not in a position to exert influence. Similarly, the fact that other officials of YBL, including Gorakshakar, Palve, Agarwal, and Punit Kumar, who actively participated in sanctioning the loan to AG, have not been charged as accused but have been made witnesses in the present matter indicates that no culpability is attributed to them, a crucial factor to consider. It is worth reiterating that various senior-level officials of YBL, in accordance with the Credit Policy,

conducted robust and exhaustive scrutiny of the proposal and concluded that the loan and its terms were suitable, thus recommending and approving it. These high-level officers, who are not accused, have been made witnesses by the CBI, and their statements under Sec.161 Cr.P.C. are now being relied upon to resist the current application. Prima facie, this suggests that these individuals, who are essentially accused persons, have not been intentionally charged by the CBI but have instead been rescued from being accused by being made witnesses. These individuals are as follows:

	Name	**Designation**
i	Yogesh Manocha	GeVP-CB
ii	Prasoon Chauhan	Executive Director - CFUB
iii	Parag Gorkshakar **(PW14)**	Group President & CCO - CF
iv	Saurabh Jaiman	GeVP and Country Head Risk
v	Ramesh Sharma **(PW11)**	Sr. President - CB
vi	Rajiv Anand	Sr. President & MD, RBH - CFUIB
vii	Rajesh Sureka	President & RBL - CN
viii	Ashish Agarwal **(PW13)**	Sr. Gr. President & Chief Risk Officer
ix	Sanjay Palve **(PW22)**	Sr. Gr. President & Sr. MD – CF
x	Amit Kumar **(PW8)**	Gr. President & CH- CB
xi	Punit Malik	Gr. President and MD – CFUIB
xii	Rana Kapoor	MD & CEO

It is significant to note that none of these YBL officers objected to or dissented from the loan despite having Veto power. The statements of the witnesses under Sec.161 Cr.P.C. relied upon by the CBI must be viewed from this perspective. The unanimous signatures of 10 YBL high-level officers/MCC members on the Credit Approval Memorandum approving this loan cannot be disregarded simply because "witnesses may lie, but documents never do." This Credit

Approval Memorandum, signed by 10 official signatories of Yes Bank after the recommendation of Yogesh Manocha and Prasoon Chauhan, presents a legal obstacle to the reliance on statements under Sec.161 Cr.P.C. by all the witnesses, even at the bail stage. One cannot both approve and disapprove, as done by Gorakshakar, Palve, Agarwal, Punit Kumar, etc. This further suggests that it was a unanimous decision of YBL from the lowest level up to the highest, including the applicant (A1). The silent consent given by these individuals for the loan approval speaks volumes. Any typical loan proposal in any bank undergoes detailed scrutiny and scanning according to the bank's norms (in this case, the Credit Policy of YBL). When the loan amount is substantial, it involves the coordination of different departments and the individuals mentioned above who are in charge and responsible. The Credit Approval Memorandum signed by 12 YBL persons is prima facie evidence of consensus among the MCC members in granting the loan. This also prima facie indicates that even if the applicant gave final approval, it was based on the clearances provided by the aforementioned individuals.

53. It should be noted that banks typically adopt a de-risking and de-bulking policy, which involves scrutinizing existing loan exposure (de-risking) and reducing loan exposure (de-bulking) to protect the bank's interests. The statements of witnesses and the documents relied upon by the CBI clearly demonstrate the following:

a Yes Bank Officials, including the applicant (A1), were knowing that it was business prudence and commonsense to pursue de-risking and de-bulking of Yes Bank’s exposure to AG entities given its gradually deteriorating financial position.

b The applicant (A1) had repeatedly conveyed senior officials of Yes

Bank to pursue this mutual agreed strategy by meeting AG Officials and discussing what additional securities the group could offer to better secure loans.

c The applicant did not, as portrayed in the CBI Chargesheet, advise them to wantonly increase Yes Bank's exposure to the group at the same time. Statements of all witnesses reflect that even the applicant was acting in the interest and benefit of Yes Bank and this fact is evident from the statement of Ramesh Sharma (PW11), Sr. President of YBL.

d Like Ramesh Sharma (PW11) even Ashish Agarwal (PW13) – Chief Risk Officer, Parag Gorakshakar (PW14) – Group President, Credit Risk Management, Amit Agarwal (PW8) – Sr. Vice President and Associate Relationship Manager for AG at YBL and Sanjay Palve (PW22) – Sr. Group President, YBL in Corporate Finance Business.

e These facts are also prima-facie corroborated by the statements of Surendra Kumar Khandelwal (PW7), Director of ARL, AG Group, Bhithalingam Hariharan (PW9) – Finance Director in AG Group – Accused No.10 in PMLA Special Case No.1636/2021, Anandkumar Nevaskar – Executive Vice President of YBL.

f The bank statements related to this loan account indicate that YBL had earned over Rs.90 Cr. from ARL as a result of this loan transaction, by way of interest income and loan fees during March, 2016 to September, 2017.

g The entire sale proceeds obtained by ARL from the ASM property in September, 2017 were deposited with YBL to fully repay its outstanding liabilities in the loan account, as well as other liability of Avantha Group and this fact is evident from the **No Dues Certificate dt.15.09.2017**.

In the aforementioned context, it cannot be overlooked that the loan in question was repaid with interest, and a No Dues Certificate was issued by Yes Bank on September 15, 2017, as previously mentioned. It is noteworthy that a confidential letter dated May 27, 2021, sent by Yes Bank to the Head of Branch, AC – V, Central Bureau of Investigation, New Delhi, communicated to the CBI that, "Considering that the underlying property i.e. 40, Amrita Shergill Marg Property was sold by the Bank and funds recovered along with Group Funding Support, were sufficient to repay the entire outstanding of ARL as on September 2017, fraud amount was considered as 'Nil'." This letter itself

indicates that Yes Bank did not sustain such a significant loss as alleged in the CBI chargesheet. Additionally, the statement of Amit Agarwalla (PW8), Senior Vice President and Associate Relationship Manager of YBL for AG, indicates that the entire sale proceeds along with the balance of Rs. 33.82 Cr. submitted by the group earlier were sufficient to close the entire Rs. 408 Cr. loan to Avantha Realty. Even Parag Gorakshakar (PW14), accused No.5 in PMLA Special Case No. 1636/2021, in his statement recorded by the CBI under Sec.161 Cr.P.C., stated that, "At the time of sanction of Term Loan of Rs. 400 Cr., no Avantha Group company's account was classified as NPA by YBL". Therefore, it is clear that the applicant has already endured 31 months of incarceration without trial. I have already noted above how the volume and compass of the trial of the PMLA case is extraordinary in view of the mandate of Sec.44(1)(c) of the PML Act. This case, even if chargesheeted by the CBI, yet being that of a Scheduled Offence, has no exception and must be tried simultaneously with PMLA Special Case No. 1636/2021. In the aforementioned premises, I hold that there is no substance in the first allegation made against the applicant, that the loan of INR 400 Cr. was wrongly sanctioned to ARL in March 2016 solely at the behest of the applicant (A1) who was the final approving authority as Chairman of YBL's Management Credit Committee.

54. The next allegation made by the CBI is that "The price at which BAPL purchased 40, Amrita Shergil Marg property (ASM) was undervalued." The contention of the CBI is that the price at which BAPL purchased the property was significantly undervalued, and consequently, the applicant (A1) (through BAPL) benefited from the differential between the purchase price (Rs.378 Cr.) and various actual market values, i.e., Rs.500/550/476.8/565 Cr. The varied prices relied

upon by the CBI are as follows:

a. Rs.476.8 Cr. (based on Cushman and Wakefield's valuation report – November, 2016 / January, 2017).
b. Rs.500 Cr. (as per YBL's "Credit Appraisal Memorandum" of March, 2016).
c. Rs.550 Cr. (based on ICICI's valuation reports of 2014 and 2015).
d. Rs.562 Cr. (based on IBHFL's valuation report of September, 2017).

I carefully examined these contentions.

It is relevant to note that market conditions are constantly fluctuating, impacting the value of immovable properties. An argument presented by Senior Counsel Mr. Aabad Ponda holds substance, as it is a matter of public record that on 08.11.2016, the Government of India abruptly announced the demonetization of prevalent currency notes in denominations of Rs.500 and Rs.1000. Mr. Aabad Ponda further argued that this demonetization led to a sharp decline in property prices on a pan-India basis over the next several financial years. This fact is acknowledged and reported by the Government of India in its Economic Survey for the Financial Year 2016-2017.

55. Upon careful examination of the valuation reports dated 08.05.2014 and 04.08.2015, it is prima facie evident that: (a) They have been prepared by the same individual valuer, and (b) They are verbatim reproductions. It is not justified for two separate valuations conducted by an expert more than one year apart to be identical. Generally, it is improbable that the market value of a property remains unchanged over a 15-month period. Regarding this aspect, the CBI has recorded the statement of Punit Tyagi (PW19), Director of Adroit Technical Services Pvt. Ltd., as an individual valuer. A careful perusal of

his statement prima-facie indicates that the CBI did not ask him to clarify how, in his expert opinion, the market value of the property did not fluctuate even after a gap of 15 months.

56. The next Credit Appraisal Memorandum dated 29.03.2016 indicates the value of the property as Rs.500 Cr. However, this memorandum does not reference any underlying valuation report or provide any other material basis for estimating the market value of the property at Rs.500 Cr. Additionally, the CBI has not produced any valuation report around March 2016 to substantiate the estimated market value of Rs.500 Cr.

57. The subsequent Valuation Report dated 03.11.2016 and 30.01.2017, conducted by Cushman and Wakefield, indicated a value of Rs.476 Cr. After careful examination, it prima-facie appears that ARL appointed Cushman and Wakefield after the loan was sanctioned and utilized in March 2016. Their initial report on 03.11.2016 estimated the property's market value at Rs.357.5 Cr. and distressed value at Rs.286 Cr. based on the Sales Comparable Method. This valuation was completed six days prior to the commencement of demonetization on 09.11.2016, which, according to Ld. Sr. Counsel Mr. Aabad Ponda, suggests that the valuation should be on the higher side. In January 2017, Cushman and Wakefield revised the land valuation to Rs.416.8 Cr. upwards, based on a recent sale of a comparable property, with an additional value of Rs.60 Cr. estimated solely upon ARL's self-certification of a renovation expense. However, it is noted that this addendum report specified a 15-20% reduction in value based on the weak current market sentiment, existing supply, and limited number of buyers in the micro market, indicating that the estimated market value

at that time was around Rs.381.44 Cr. to Rs.405 Cr.

58. Ld. Sr. Counsel Mr. Aabad Ponda argued that this caveat or rider requires critical consideration in the context of the impact of demonetization on the property price after November 2016. CBI relied on the statement dated 07.10.2020 of Gaurav Choudhary, Assistant Vice President at Cushman and Wakefield (PW43 recorded under Sec.161 Cr.P.C.). However, he stated that according to the Valuation Report dated 03.11.2016, the property at 40, Amrita Shergil Marg was valued at Rs.357.50 Cr. with a distress value of Rs.282 Cr. As per the Circle Rate, the value of the property was calculated at Rs.387.80 Cr. He further added that an addendum was submitted to Avantha Realty Ltd. on 30.01.2017, as per the client's request to consider the impact of a recently published transaction in the subject micro-market. According to media reports, one of the comparable properties, 28, Prithviraj Road, New Delhi, was sold for a total value of Rs.435 Cr. The land portion was valued at approximately Rs.431.6 Cr. or Rs.7,32,799/ per square yard. Accordingly, the market value of the 40, ASM property was calculated as Rs.416.8 Cr. for the land component as of 30.01.2017, with an additional Rs.60 Cr. towards renovation and replacement costs, resulting in a total value of Rs.476.8 Cr. (as of 30.01.2017). His statement clearly indicates that the alleged purchase of the property was for a price of Rs.378 Cr., close or almost equal to the lower end of the range estimated by Cushman and Wakefield in its second report, justifying it in view of the established weak market conditions. Therefore, prima-facie, this report does not speak against the applicant. Additionally, despite the addendum issued by Cushman and Wakefield in January 2016, the record indicates that the property was assessed by YBL officials as carrying a value of only Rs.356 Cr. as of January 2017.

59. The next valuation report dated 22.09.2017, amounting to Rs.562 Cr., is from IBHFL. Careful perusal of the said report prima-facie indicates that it was prepared as an internal document of IBHFL without any involvement of BAPL or the applicant (A1). It is based on the Sales Comparable Method and identifies the average of two transactions to serve as valuation criteria for the Valuer's Opinion: (i) Sale in December 2016, which was carried out at a price of Rs.7.82 Lakh per square yard = Rs.9.42 Lakhs approx. per square meter, and (ii) Sale in September 2017, which was carried out at a price of Rs.5.97 Lakh per square yard = Rs.7.19 Lakh approx. per square meter. Ld. Sr. Counsel Mr. Aabad Ponda vehemently argued that it was significantly the weak market scenario resulting from demonetization. Hence, according to him, it is completely unjustified for a sale that occurred in December 2016 to serve as comparable to a sale occurring 9 months later in September 2017. He further submitted that only the second transaction, considered as valuation criteria (sale occurred in September 2017), can serve as a relevant benchmark. On the other hand, Ld. SPP Mr. P. K.B Gaikwad supported the contention raised by CBI in its chargesheet.

60. The property had an area of around 5988 square yards = 5.006 square meters. Applying the benchmark value derived from the comparable sale transaction of September 2017, the value of the property would be approximately Rs.360 Cr., which is significantly less than the purchase price of Rs.378 Cr. This indicates that the property was purchased at a higher value of Rs.7.55 Lac per square meter. This aspect prima-facie does not support the case of CBI and the argument of Ld. SPP Mr. P.K.B Gaikwad. It is pertinent to note that the Income Tax Department had approved the sale of the property at the

valuation finalized by ARL with BAPL and even prior thereto at a lesser value of Rs.375 Cr. in April 2017, when the sale was under finalization between ARL and InterGlobe for five months between April to August 2017.

61. It's also essential to note that Sub-Registrar Circle – VII, New Delhi scrutinized the sale value and issued no objection at the time of execution of the sale deed while imposing stamp duty and registration charges. Ld. Sr. Counsel Mr. Aabad Ponda has rightly placed his reliance on this correspondence. In the aforementioned context, in my opinion, the various valuation reports relied upon by the CBI and the interpretation thereof made by both the CBI and accused No.1 are matters of appreciating evidence under Sec.3 of the Indian Evidence Act at the time of trial. Furthermore, such reports being an expert's opinion and the relevance thereof as per Sec.45 of the Indian Evidence Act are matters which have to be dealt with in the trial only. At this juncture, in my opinion it's a mixed question of law and fact and cannot be straightforwardly accepted as alleged by the CBI in the chargesheet. Additionally, I am of the opinion that both the allegations made in the chargesheet by the CBI and the justifications provided by the applicant above are plausible. It's a settled principle that the view favorable to the accused has to be accepted, and in that light, the contention raised by the accused No.1 is also justified. Even if what has been alleged by the CBI in their chargesheet is accepted as true, the applicant (A1) alone has already undergone incarceration for over 31 months for the same without trial. It's worth reiterating that there is no likelihood of beginning the trial in view of my detailed discussion made earlier regarding the triability of this case as mandated under Sec.44(1)(c) of the PML Act.

62. Another question raised by CBI revolves around the offer given by InterGlobe. InterGlobe is the parent company of Indigo Airlines. Mr. Rahul Bhatia is its Promoter. He (Mr. Rahul Bhatia) made an offer to ARL to purchase the property in April, 2017 at Rs.375 Cr. This offer made by him was slightly lower than the subsequent offer of Rs.378 Cr. made by BAPL in September, 2017. The letters dt.12.04.2017 and 19.06.2017 are evident of this fact. In the FIR it is alleged that this offer was made in conspiracy with other accused persons. However, no such allegations has been levelled by the CBI in their chargesheet. Even it is not a case of CBI that InterGlobe was one of the conspirator hatched conspiracy with the applicant (A1). Nor the CBI arraigned InterGlobe or their Promoter / MD Mr. Rahul Bhatia as accused in this case. Careful perusal of the whole CBI chargesheet clearly indicates that CBI has not even recorded the statement of any one from InterGlobe. Even if much has been stated by CBI in their say to this application, yet the chargesheet does not depict any allegation that the offer made by InterGlobe was not reflective of the actual market value of the property or the said offer made by InterGlobe was sham and was unworthy of reliance. Apart from this, CBI could not point out that any entity had come forward with a higher offer than Rs. 375 Cr. Prima-facie the chargesheet itself indicates that the offer for Rs.378 Cr. made by BAPL is more than that of InterGlobe. When CBI has specifically contended the purchase of this property being undervalued, significantly did not arraign any one from InterGlobe being Conspirator in the said deal. Huge documents filed with the chargesheet by the CBI and reliance was placed on it, not a single person from InterGlobe has been examined by the CBI nor even recorded his statement under Sec.161 Cr.P.C. Hence, there is no

significance of the date-wise sequence of events pointed out and argued by Ld. SPP Mr. P.K.B Gaikwad and Ld. Sr. Counsel Mr. Aabad Ponda has rightly pointed out this aspect in their written submissions.

63. Another significant aspect regarding this issue requires consideration. The attempt to call for offers for the sale of this property was not made by keeping the public at large in the dark. Ld. Sr. Counsel Mr. Aabad Ponda specifically pointed out copies of Public Notices inviting offers from the public at large, through newspaper publications. He has also submitted these copies along with his written arguments. A careful perusal thereof clearly indicates that a public notice was given inviting people/entities interested in participating the said transaction. These public notices were published in **Times of India** and **Navbharat Times dt. 21.06.2017**. These two newspapers are reputed and have wide circulation all over India. It was not an attempt by the party who issued such public notices to undertake formalities clandestinely to achieve a malafide goal. The newspapers chosen for these public notices carry a reputation of having wide circulation throughout India and as such are not fake newspapers. All this prima-facie indicates that even the applicant has a good case on merits, and there is no substance in the allegations made by the CBI on this issue.

64. The next allegation made by the CBI is that the applicant (A1) was obligated to disclose his or his wife's interest in BAPL and in the transaction with ARL, and it is alleged that the applicant failed to do so. Paragraph 16 of the chargesheet contains such allegations, stating that the applicant (A1) did not disclose that his wife, Mrs. Bindu, is a Director of BAPL, thereby breaching the Code of Conduct applicable for the Managing Director of Yes Bank. Reference is made to Paragraph III

of the Code of Conduct. On the other hand, it is the specific contention of the applicant (A1) that he had made every disclosure. Furthermore, the MCC members were well aware of the fact that Mrs. Bindu is his (A1's) wife, yet they never raised a finger of objection when the applicant (A1) made disclosure of this fact. I carefully examined this controversy.

65. Shivanand Shettigar (PW4), in his statement under Sec.161 Cr.P.C., clearly referred to Form MBP-1, Notice of interest by the Directorate submitted by the applicant (A1) to the Board of Directors of Yes Bank. The said Form lists the companies in which he and his relatives are directors or members. In his statement, Shivanand (PW4) further detailed the information in numerous tables submitted by the applicant, wherein the name of his wife, Mrs. Bindu Kapoor, is clearly mentioned along with the list of companies linked with her. This disclosure was made to YBL Management, and every member of MCC and the Board of Directors was well aware of it. Furthermore, in his statement, Shivanand (PW4) clearly mentioned that the applicant (A1) had provided the list of companies in which he and his relatives are directors and members. Additionally, members of MCC and anyone involved in the scrutiny process could have halted further processing by exercising their power of veto, or raised objections during the process. However, nothing as such occurred, indicating that even the MCC and Board of Directors had no objections to the said disclosure. What does this mean? Admittedly, the members of MCC (Parag Gorakshakar, Sanjay Palve, Punit Malik etc.) have not been made accused by the CBI, and I have discussed this aspect at length. If these individuals, who are not accused, are now stating something different under Sec.161 Cr.P.C., it is self-demonstrative for the reason thereof.

66. Additionally, Amit Agarwal (PW8), Senior Vice President and Associate Relationship Manager for AG at YBL, stated in his statement under Sec.161 Cr.P.C. that he was involved in selling main properties of Avantha Group, including the 40, ASM property, as the proceeds would be used for the payment of Yes Bank's new and old loans. He further mentioned that when he researched Bliss Abode, the company of relatives of the applicant (A1), he concluded that the deal was directly with the company and Rana Kapoor (A1) was not directly involved as an interested party, thus there was no need for further due diligence in that deal. All this prima facie indicates that the applicant (A1) has a strong case on merits during trial.

67. CBI has emphasized Sec. 188 of the Companies Act. A careful reading of Sec. 188 indicates that it applies only when a company enters into any contract or arrangement with a related party. However, in the instant case, BAPL and not ARL was the related party to the applicant (A1). YBL had not, at any point, entered into the contract or arrangement with BAPL for the purpose of the property sale transaction.

68. Moreover, this transaction underwent scrutiny at YBL through their Robust Scrutiny Process at multiple levels after 15.09.2017. Ld. Sr. Counsel Mr. Aabad Ponda drew my attention to the findings recorded in an Internal Memo dt. 08.08.2018 by the Group President Credit Administration Department along with Mr. Ramesh Sharma, Sr. President and Head of Corporate Banking, which they further circulated to Mr. Amit Shah, Sr. President of Corporate Communication and Risk Management. This fact prima facie indicates

that everyone at Yes Bank was aware of the proposed deal. An email from Varun Sood to Swati Singh (MCC) dated 20.11.2011 also indicates that high-ranking senior management functionaries at YBL, in their independent assessment, confirmed their satisfaction that there was no procedural impropriety on the part of the applicant (A1). Therefore, all this evidence prima-facie indicates that the applicant (A1) not only made the disclosure regarding his wife's role but also that the MCC and the high-ranking officials of Yes Bank were satisfied with the deal. This prima facie indicates that the applicant (A1) has a strong case on merits in the trial, and this issue cannot be a clog in granting bail to him.

69. The next allegation made by the CBI is that **"Certain loans granted to the AG companies (before and after the purchase of the property by BAPL) were not utilized for specified purposes"**. I have already noted above that the Credit Policy of Yes Bank itself indicates how a Robust System is established by them to scrutinize each and every loan proposal. Like several other loans, these alleged loans had also undergone through such robust scrutiny, and none of the members of MCC or any high-ranking officers raised an objection nor exercised their veto power. On the contrary, many individuals accused in PMLA Spl. Case No.1636/2021, whom CBI has not arraigned as accused, had dealt with each and every loan proposal and also examined the purposes for which those were sanctioned and further utilized. It is a fact on record that the entire sale proceeds obtained by ARL from the property in September 2017 were deposited with YBL to fully repay its outstanding liability in the loan account and also other liabilities of the Avantha Group, headed by Gautam Thapar (A2). A No Dues Certificate dated 15.09.2017 is evident of this aspect.

70. Ld. Sr. Counsel Mr. Aabad Ponda, relying on his written submissions, rightly pointed out that the allegations raised by the CBI in its reply to this Bail Application are not even part of the chargesheet. I have compared those allegations which are highlighted in the written argument and found substance in the said argument of Ld. Sr. Counsel Mr. Aabad Ponda. I have already discussed in detail how CBI has singled out the applicant (A1) for detention in judicial custody, despite attributing glaring roles to various others in YBL. While appreciating the same transactions, CBI has not made any of them accused. However, Ld. SPP Mr. P.K.B Gaikwad vehemently argued that parity cannot be the sole basis for granting bail. For that, Ld. SPP Mr. P.K.B Gaikwad placed his reliance on Neeru Yadav Vs. State of Utar Pradesh and Anr. [2015 Cr.L.J. 4862 (SC)]. The ratio thereof is that the bail cannot be granted on the sole ground of parity. I agree with this argument and am also bound by the law laid down by the Hon'ble Supreme Court. Yet, I have clearly noted above how the applicant (A1) has a strong case on merits at the trial, entitling him to bail. This itself is sufficient to indicate that the Court is not granting the bail solely on the ground of parity but also considering the merits of the case. Ld. SPP Mr. P.K.B Gaikwad argued that this is an Economic Offence wherein bail cannot be granted as the offence is serious, and in such cases, "Jail is rule and bail is exception". I carefully examined this argument. This argument must be tested against the law laid down by the Hon'ble Supreme Court in the case of **Sanjay Chandra Vs. CBI (2012) 1 SCC 40 and P. Chidambaram Vs. Directorate of Enforcement (2019) SCC OnLine 1549**. Initially, in Sanjay Chandra (supra), the Hon'ble Supreme Court laid down as follows:

> "40. The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and

> circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the court, whether before or after conviction, to assure that he will submit to the jurisdiction of the court and be in attendance thereon whenever his presence is required.
>
> 46. We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardise the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge-sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to ally the apprehension expressed by CBI."

In the instant case, the chargesheet has been filed. There are certain provisions under Sec.44(1)(c) of the PML Act for commencing simultaneous trials of both cases, i.e. the current CBI Spl. Case No.1233/2021 and PMLA Spl. Case No.1636/2021. I have already extensively discussed this aspect, and reiterating it would be repetitive. Additionally, the Hon'ble High Court has already acknowledged the possibility of trial in the bail application of similarly situated co-accused **Gautam Thapar (A2),** who is the wholesome authority of the Avantha Group. Way back he (A2) could secure bail from the Hon'ble High Court in the case of **Gautam Thapar Vs. Central Bureau of Investigation, Mumbai and Anr. (Bail Application No.51 of 2022 decided on 25.03.2022)**, wherein the Hon'ble High Court has clearly laid down as follows:

> In the instant case, as noted above, the FIR was registered on 12/03/2020. The Applicant has reported to the Investigating Officer as and when called and co-operated throughout in the Investigation. Upon completion of the investigation, charge sheet has been filed on 08/10/2021. **The Investigating Officer did not find it necessary to arrest the accused during the course of investigation. Hence, in terms of the clarification given by the Hon'ble Supreme Court, it is not necessary to detain the Applicant in custody**

pending trial, particularly considering the fact that the trial is not likely to conclude in near future, in view of large pendency of cases".

71. Gautam Thapar (A2), a co-accused in the current case, shares a similar situation with the applicant (A1), and the Hon'ble High Court has granted him bail, taking note of the potential trial of the case in the future. As I have already mentioned, even if the trial of this case is conducted simultaneously with PMLA Spl. Case No.1636/2021, as mandated by Sec.44(1)(c) of the PML Act, on a day-to-day basis, its conclusion within 3-4 years is unlikely. The observations and legal precedent established by the Hon'ble High Court regarding Gautam Thapar and the triability of this case, even without considering the mandate of Sec.44(1)(c), serve as legal precedent and guidance for this case. CBI cannot take a stance contrary to it unless it has challenged the said order before the Hon'ble Supreme Court and got it set aside. Therefore, all arguments advanced by Ld. SPP Mr. P.K.B Gaikwad have no rebuttal in the authorities he has cited, particularly regarding the likelihood of the proposed trial of this case as per the mandate of Sec.44(1)(c) of the PML Act.

72. Ld. SPP Mr. P.K.B Gaikwad based on his written argument placed his reliance on (i) Y.S. Jagan Mohan Reddy Vs. Central Bureau of Investigation, [2013 Cr.L.J. 2734 (SC)]; (ii) Central Bureau of Investigation Vs. V. Vijay Sai Reddy [2013 Cr.L.J. 3016 (SC)], (iii) Nimmgadda Prasad Vs. Central Bureau of Investigation [2013 Cr.L.J. 3449 (SC)], (iv) Himanshu Chandravadan Desai and Ors. Vs. State of Gujarat [2006 Cr.L.J. 136(SC)], (v) Manish Sisodia Vs. Central Bureau of Investigation [AIR OnLine 2023 (SC) 870]. I carefully studied these authorities. The ratio therein is that bail in case of Economic Offences requires different approach.

73. The Ld. SPP Mr. P.K.B Gaikwad further placed his reliance on (i) Prasanta Kumar Sarkar Vs. Ashis Chatterjee and Anr [2011 Cr.L.J. 302 (SC)], (ii) Masroor Vs. State of U.P. and Anr. [AIR 2009 SC (Supp) 2832], (iii) The State Vs. Captain Jagjit Singh (AIR 1962 SC 253) and (iv) Saumya Chaurasia Vs. Directorate of Enforcement (AIR 2024 SC 387). I have carefully studied the facts involved in each case and law laid down by the Hon'ble Supreme Court on the basis thereof. The ratio laid down in these authorities as per the Index filed by the Ld. SPP Mr. P.K.B Gaikwad is that various factors to be considered for dealing with bail applications.

74. Ld. SPP Mr. P.K.B Gaikwad further placed his reliance on (i) Gokul Singh Vs. State of M.P. (non-applicant) (1999 Cr.L.J. 3455), (ii) Mahesh Kumar Bhawsinghka Vs. State of Delhi, (2000 AIR SCW 1903 SC) and (iii) Kalyan Chandra Sarkar Vs. Rajesh Ranjan alias Pappu Yadav (2004 AIR SC 1581 SC). The ratio laid down in these authorities as per the Index filed by the Ld. SPP Mr. P.K.B Gaikwad lays down considerations of the bail on the ground of delay in trial and incarceration in jail. I have already discussed in detail the likelihood of beginning and conclusion of trial in near future and how the Hon'ble High Court has anticipated the same long long ago while granting bail to Gautam Thapar (A2) of Avantha Group. Ld. SPP Mr. P.K.B Gaikwad could not point how the case of applicant is exception for what has been laid down by the Hon'ble High Court in Gautam Thapar (supra).

75. With great respect, it has to be noted that in none of the above authorities the issue regarding peculiarity of exceptional long

trial contemplated under Sec.44(1)(c) of the PML Act is the principle point for consideration. I have already noted above this aspect in detail. In none of the above authorities there is a discussion on simultaneous triability of both cases i.e. the case related to the Scheduled Offence and the PMLA special case, was in issue. On the contrary even without referring this issue under Sec.44(1)(c) of the PML Act the Hon'ble Bombay High Court while dealing with the bail application of similarly situated Gautam Thapar clearly anticipated that there is no possibility of trial of this case in future, which is basically the law applicable for this case including CBI who has not challenged the same to the Hon'ble Supreme Court and got it set aside.

76. Even the CBI and Ld. SPP Mr. P.K.B Gaikwad cannot consistently argue that this is an economic offense, and bail cannot be granted as a rule, with "jail is rule and bail is exception" as the guiding principle. This assertion is undermined by the fact that CBI has not implicated MCC members such as Parag G. Gorakshakar, Sanjay Palve, Ashish Agarwal, Amit Kumar, and Punit Malik, despite the ED attributing specific roles to each of them equal to that of the applicant (A1). It is significant to note that even the ED has not arrested those individuals, which carries significant weight. Additionally, despite being aware of this, the ED did not arrest the applicant (A1) in PMLA Spl. Case No.1636/2021, merely releasing him under Sec.88 Cr.P.C. Even if Ld. SPP Mr. P.K.B Gaikwad's argument is accepted at face value—that being an economic offense, bail cannot be granted, he fails to justify why this standard was not applied to Parag G. Gorakshakar, Sanjay Palve, Ashish Agarwal, Amit Kumar, and Punit Malik, by arraigning them as accused persons? In light of this context, it is necessary to rely on the law laid down by the Hon'ble Supreme Court in the case of **P.**

Chidambaram Vs. Directorate of Enforcement, [(CRIMINAL APPEAL NO.1831/2019, (Arising out of S.L.P.(Criminal) No.10493 of 2019, decided on 04.12.2019], wherein the Hon'ble Supreme Court unequivocally laid down that there is no prohibition on granting bail in economic offenses by further laying down the following precedent.

> Thus from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of "grave offence" and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. **Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provides so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case to case basis on the facts involved therein and securing the presence of the accused to stand trial**".

This authority, along with the observations made by the Hon'ble Bombay High Court regarding co-accused Gautam Thapar (A2)

while estimating the proposed period of trial, provides precedence over all the arguments advanced by Ld. SPP Mr. P.K.B Gaikwad.

77. Apart from this, another reason justifying the grant of bail in the instant case is the ratio laid down in **Sanjay Chandra Vs. Central Bureau of Investigation (2011 SCC OnLine SC 1502)** wherein the Hon'ble Supreme Court in paragraph 26 referred observations made in **Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav and Anr,** as follows,

> **"18.... Under the criminal laws of this country, a person accused of offences which are non-bailable is liable to be detained in custody during the pendency of trial unless he is enlarged on bail in accordance with law. Such detention cannot be questioned as being violative of Article 21 of the Constitution, since the same is authorised by law. But even persons accused of non-bailable offences are entitled to bail if the court concerned comes to the conclusion that the prosecution has failed to establish a prima facie case against him and/or if the court is satisfied by reasons to be recorded that in spite of the existence of prima facie case, there is need to release such [accused] on bail, where fact situations require it to do so."**

Ld. SPP Mr. P.K.B Gaikwad has also placed reliance on this authority. The ratio lays down two principles for the grant of bail – firstly, if there is no prima facie case, and secondly, even if there is a prima facie case, if there is no reasonable apprehension of tampering with the witnesses or evidence, or absconding from the trial, the accused are entitled to bail pending trial. Therefore, even if there is a prima facie case, the applicant (A1) is entitled to bail. It is significant to note that the applicant (A1) has deep roots in the society and Mumbai. He has a family comprising an unmarried daughter and a wife who are dependent on him. He is no longer associated with Yes Bank Ltd. and has no access to its records for an apprehension of tampering with. CBI

chargesheet clearly indicates that the investigation is over. Everything is documented alongwith chargesheet. Therefore, there is no reasonable apprehension of tampering with the record, evidence and witnesses. He has been behind bars for about 4 years in connection with various other cases, including this one. Therefore, after his release, there is no question of threatening or pressurizing prosecution witnesses or tampering with the evidence of the prosecution. Additionally, considering the responsibility towards his unmarried daughter and wife, there is no likelihood that he would leave India and thus pose a flight risk. With the imposition of certain conditions on him, even this apprehension can be safeguarded.

78. Experience shows that whenever the Court grants bail to accused individuals involved in alleged economic offenses, investigating agencies such as CBI, EOW, ED etc. often react strongly by making hue and cry, as if the Court lacks discretionary powers or the authority to grant bail in cases investigated by such agencies (CBI, ED, EOW, etc.). A similar reaction may occur in response to this order as well. Recently, in his **"Inaugural Address, All India District Judges Conference, Kachchh, dt. 02 March 2024"**, The Hon'ble Lordship The Hon'ble Chief Justice of India has expressed deep concern for such situations. The video/reel of the said speech is available on YouTube through **'Law Wire,'** wherein The Hon'ble Lordship The Hon'ble Chief Justice of India articulated his concerns in the following words:

> **"But the reason why the Higher Judiciary is getting flooded with bail applications, is because of the reluctance of the grassroots to grant bail. And why are Judges at the grassroots reluctant to grant bail? Not because they don't have the ability. Not because the Judges at the grassroots don't understand the crime. They probably understand the crime better than many of the Higher Court Judges, because they know what crime is at the**

> grassroots in the Districts. But there is a sense of fear that if I grant bail, will somebody target me tomorrow on the ground that I granted bail in a heinous case. This sense of fear nobody talks about, but which we must confront. Because unless we do that, we are going to render out District Courts toothless and our Higher Courts dysfunctional.

The text version thereof, which is also available on the Internet, reads as follows,

> "There is also a rising apprehension that district courts are increasingly reluctant to entertain matters concerning personal liberty. The longstanding principle that "bail is the rule, jail is the exception" seems to be losing ground, as evidenced by the growing number of cases reaching High Courts and the Supreme Court as appeals against the rejection of bail by trial courts. This trend warrants a thorough reevaluation. I want to hear from our district judges why this trend is emerging across the country".

If this Court ignores the true essence and spirit of these spiritual profound words, it would amount to deceitfulness, dishonesty and charlatanry. This Court cannot be an example for the lamentable state of affairs expressed by The Hon'ble Lordship The Hon'ble Chief Justice of India. Nor can it ignore the sincere apprehensions expressed by The Hon'ble Lordship The Hon'ble Chief Justice of India.

79. The classic and sole criterion for bail rests on the presumption of innocence, which can only be upheld by granting bail while imposing conditions on the accused. This principle is encapsulated in the famous "Triple Test (Tripod Test)" laid down by the Hon'ble Supreme Court. Ld. SPP Mr. P.K.B Gaikwad fails to satisfy regarding the commencement and conclusion of simultaneous trials for this CBI Special case and PMLA Special Case No. 1636/2021. Moreover, he cannot justify why the 66-year-old applicant (A1), who suffers from multiple health issues as outlined in the bail application, should remain incarcerated indefinitely. Additionally, there is no justification as to why

the applicant, who has already spent over 4 years in custody for numerous other cases including this one, should be detained further, especially when he has been granted bail in all other cases except this one.

80. Following serious questions are before the Court which Ld. SPP Mr. P.K.B Gaikwad could not satisfy or justify for supporting his argument by continuing the incarceration of the applicant (A1) for uncertain period :

i How there can be different yardsticks and parameters for equally situated Gautam Thapar (A2) of Avantha and Rana Kapoor (A1)?

ii How there can be a different applicability of the same law for equally situated of Gautam Thapar (A2) of Avantha Group and the applicant (A1)?

iii How an anticipation of a likelihood of prolonged trial benefits equally situated Gautam Thapar (A2) alone, but the same cannot be a parameter for equally situated Rana Kapoor (A1) who has already undergone long incarceration of 2 years and 7 months?

iv How an anticipation of likelihood of a prolonged trial can be a merit for equally situated Gautam Thapar (A2) for his release on bail long long ago by the Hon'ble High Court, but the same cannot be a matter of merit to Rana Kapoor (A1) who is really sufferer undue incarceration for a long period of 2 years and 7 months?

v Release of co-accused Gautam Thapar (A2) of Avantha Group long long ago in anticipation of prolonged trial can be a merit, but how it cannot be a merit for equally situated person like Rana Kapoor (A1), who is in fact incarcerated for long period of 31 months without trial and as such a real sufferer?

Ld. SPP Mr. P.K.B Gaikwad has no answer to any of these question. On the contrary, in a peculiar set of facts of this case, there cannot be any impediment of Sec.436A Cr.P.C. On the contrary the undue incarceration of the applicant (A1), due to the clog of

Explanation (ii) to Sec.44(1) of the PML Act and inability of the Court to frame charge in view of law laid down by the Hon'ble Delhi High Court **Raman Bhuraria (supra)** such detention of the applicant (A1) in judicial custody amounts pre-trial conviction.

81. It is pertinent to note that in the CBI FIR, Sec.13(2) of the PC Act was not charged. However, while filing the chargesheet, CBI added the same. The applicability of Sec.13 PC Act in the instant case is doubtful. It is necessary to note that in **Central Bureau of Investigation, Bank Securities and Fraud Cell Vs. Ramesh Gelli and Ors (2016)3 SCC 788**, the Hon'ble Supreme Court has held that, only the offences under Ss. 7 to 12 PC Act applicable to Officers/Managing Director of a private banking company governed by the Banking Regulation Act. It is necessary to note that vide Order dt.02.05.2016 in Criminal Appeal No.1077-1081 of 2013 (2016 SCC OnLine SC 1641) the Hon'ble Supreme Court laid down clarification in CBI Vs. Ramesh Gelli (supra) to remove reference to the offence under Sec.13 PC Act. Therefore, the applicability of Sec.13 PC Act against the applicant (A1) is doubtful. Incarceration of the applicant (A1) has to be juxtaposed in view of the clarification given by the Hon'ble Supreme Court.

82. In such circumstances, continued detention of the applicant (A1) would amount to pre-trial conviction. Considering the applicability of Sec.13(2) PC Act being doubtful and the fact that Sec.11 PC Act prescribes a punishment of up to 5 years, while Sec.420 IPC prescribes a punishment of up to 7 years along with a fine, in my opinion further incarceration of the applicant without trial would indeed amount to pre-trial conviction. The gravity of the offence is to be assessed based on the potential length of the sentence for the alleged offences, and the

applicant (A1) satisfies this additional criterion required for Economic Offences. When Ld. SPP Mr. Gaikwad is harping on gravity of offence, one should understand the reality that in the present scenario by keeping the applicant incarcerated, we cannot convict him nor can we acquit him and the most important is that we cannot frame charge and begin the trial due to the clog of Explanation (ii) to Sec.44(1) of the PML Act. The whole point of bail is that until we convict or acquit the accused on the gravity of the offence, bail has to be given rather than keeping him unduly incarcerated for uncertain period.

83. It cannot be ignored that even if the offence of money-laundering is serious from the point of gravity and graver than the instant CBI offence, the ED has not even arrested the applicant (A1) for the said offence. In light of the foregoing, I hold that the applicant (A1) has made out a strong prima-facie case for granting bail. With this, Point No.1 is answered in the negative and Point No.2 in the affirmative and the following order is issued :-

ORDER

1. Bail Application (Exh.133) is allowed.

2 Applicant Rana Kapoor (A1) be released on bail **IN THE PRESENT CASE ONLY** i.e. in respect of CBI Special Cases No.1233 of 2021, on his executing PR bond of Rs.2,00,000/- with one or more sureties in the like amount, **IF NOT REQUIRED IN ANY OTHER CRIMES/ECIRs/CASES.**

3. Applicant Rana Kapoor (A1) is permitted to furnish provisional cash security of Rs.2,00,000/- for a period of two months, with PR bond as directed above.

4. Applicant Rana Kapoor (A1) shall undertake not to leave India and travel abroad, without prior permission of the Court.

5. The applicant (A1) shall not enter Nepal without prior permission of the Court and submit such undertaking accordingly.

6. Applicant Rana Kapoor (A1) shall undertake to remain present before the Court every time during the course of trial, unless exempted.

7. Applicant Rana Kapoor (A1) shall not directly or indirectly make any attempt to contact or influence the prosecution witnesses and also shall not tamper with the prosecution evidence.

8. Applicant Rana Kapoor (A1) shall provide CBI, address of his residence with proof thereof and his contact numbers as well as contact numbers of his close relatives, who can be contacted and able to provide all details of the applicant (A1), whenever required.

9. Applicant Rana Kapoor (A1) shall not indulge in any activity which is detrimental to the case and interest of CBI and shall not deal with Crime Proceeds in any manner.

10. Dictated and pronounced in the open Court.

MADHAV GOPAL DESHPANDE
Digitally signed by MADHAV GOPAL DESHPANDE
Date: 2024.04.20 17:42:35 +0530

DISTRICT COURTS MAHARASHTRA

Dt.: 19.04.2024

(M.G. Deshpande)
Designated Special Court,
under the PML Act, trying case of the
Scheduled Offence, Gr. Mumbai

Signed & CIS on : 20.04.2024

"CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER"	
20.04.2024 at UPLOAD DATE AND TIME	(KISHOR PRAKASH SHERWADE) NAME OF STENOGRAPHER

Name of the Judge	HHJ M. G. DESHPANDE (COURT ROOM NO.16)
Date of pronouncement of judgment/order	19.04.2024
Judgment/order signed by P.O. on	20.04.2024
Judgment/order uploaded on	20.04.2024