

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

**ECIR/HIU-II/14/2022**

**U/S 3 & 4 of the PMLA**

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

**10.03.2023**

Present: Sh. Zoheb Hossain, Ld. Special Counsel, Sh. N. K. Matta, Ld. SPP and Sh. Gaurav Saini, ALA along with Sh. Kavish Garach, Sh. Sidharth Kaushik, Sh. Vivek Gurnani, Sh. Mohd. Faizan Khan and Sh. Baibhav Advocates for DoE/ED.  
Sh. Robin Gupta, DD, Ms. Bhanupriya Meena, DD, Sh. Jogender, AD/IO, Sh. Vinit, AD and Sh. Roshan, AEO of DoE/ED.

Accused Manish Sisodia produced from Central Jail No. 1, Tihar, New Delhi in compliance of his production warrant issued by this court in the morning.

Mr. Dayan Krishnan, Mr. Mohit Mathur, Mr. Siddharth Aggarwal, Ld. Senior Counsels, assisted by Mr. Vivek Jain, Mr. Rishikesh Kumar, Mr. Mohd. Irshad, Mr. Karan Sharma, Mr. Mohit Siwach, Mr. Harsh Gautam, Mr. Rajneesh Bhaskar, Mr. Mayank Sharma, Mr. Deepal Goel, Mr. Rishabh Sharma, Mr. Abhinav Jain, Mr. Mohit Bhardwaj, and Ms. Divita Dutta, Ld. Counsels for the applicant/accused.



accused has been arrested in this case by the IO yesterday at 6.20 pm in the Jail, after his interrogation in terms of the order dated 07.03.2023 of this court, which permitted the IO to visit the said Jail and to examine and interrogate the accused on three occasions during a period of fifteen days from the date of said order as his interrogation in the present case was felt necessary. The accused was confined in the said jail as on his arrest in the scheduled offences case registered by the CBI vide FIR No.RC0032022A0053 dated 17.08.2022 U/S 120B r/w 477A IPC and Section 7 of the PC Act, 1988 and on expiry of his CBI custody in that case, he was remanded to judicial custody vide order dated 07.03.2023 passed in the said case.

2. An application U/S 167 Cr.P.C. r/w Section 65 of the PMLA, 2002 has been moved by the IO seeking ED custody of the accused for a period of ten days and copy thereof has been supplied to Ld. Senior Counsels for the accused. Extensive arguments addressed on the application from both the sides for around two hours have been considered. The ED file produced by IO has also been perused.

3. The present case/ECIR has been registered by the ED on 22.08.2022 for commission of the offence of money laundering defined by Section 3 of the PMLA, 2002 and made punishable by Section 4 of the said Act and it has been registered in relation to the above scheduled offences case of CBI.



4. The above CBI case was registered against some public servants, including the accused Manish Sisodia, the then Dy. Chief Minister and Excise Minister, some officers of the excise department of GNCTD as well as the other named and unnamed accused persons on allegations of commission of various irregularities in framing and implementation of the excise policy of GNCTD for the year 2021-22. A chargesheet against seven accused persons, including two officers of the excise department of GNCTD, stands already filed by the CBI in the said case and even two prosecution complaints against various individuals and other accused/entities stand filed before this court in the present ECIR registered by the ED.

5. As per allegations made in the CBI case, some loopholes and lacunae were intentionally left in above excise policy of the Govt. against receipt of advance kickbacks in crores from a liquor lobby of some persons from South and these lacunae and loopholes were meant and permitted to be exploited later on for the benefit of South lobby and other persons involved in commission of the alleged offences. It has been alleged that all this was done in pursuance of a criminal conspiracy hatched between various persons/accused and a cartel between the liquor manufacturers, wholesalers and retailers was permitted to be formed in pursuance to the said conspiracy and to achieve the objectives thereof and it was done in apparent violation of



provisions of the policy itself and against payment of advance kickbacks. As per investigation conducted by the ED so far, the advance kickback amount paid by the South lobby to the co-accused Vijay Nair, who is claimed to be a representative of the accused Manish Sisodia and other AAP leaders, was around Rs. 100 crores and the kickback amount was being repaid to the South lobby from 6% share, out of 12% profit margin of the wholesalers. Further, it is alleged that the cartel was made to control 30% of the Delhi liquor market.

6. Sh. Dayan Krishnan, Ld. Senior Counsel for accused has vehemently opposed the request for ED custody of accused on ground that he cannot be remanded to ED custody as the very arrest of accused has been effected in violation of provisions contained in Section 19 of the PMLA, 2002 as on the basis of allegations made and facts stated in this lengthy remand application, it cannot be said that the same furnish any reasons for belief to the IO to record that the accused is going to be held guilty of an offence punishable under the said Act. It is also his contention that the power to arrest as conferred upon the IO by this Section has been misused because as held in para 325 of judgment of the Hon'ble Supreme Court in case **Vijay Madanlal Choudhary & Ors. Vs. Union of India & Ors., 2022 SCC Online SC 929**, the safeguards provided in this Section are stringent and of highest standard and it is also the duty of this court to check the same and further to ensure that the said power



is not misused. He has further referred to the observations made by Hon'ble Supreme Court in para 283 of the above judgment in support of his contention that the proceeds of crime should first exist to justify the registration of a case by ED under the PMLA, 2002 or to remand an accused to custody under the said Act, which do not exist in the above case of CBI as all the allegations made against accused relate to the stage of formulation of the excise policy.

7. It is also the vehement contention of Ld. Senior Counsel that the policy making being an executive function is entirely a subject matter of legislative competence and it cannot be questioned or brought under scrutiny in courts and the allegations being made against the accused by ED that he got incorporated some favourable clauses in excise policy for the benefit of alleged South lobby are hence, beyond judicial scrutiny and the same cannot be questioned in this court and it is, thus, his submission that no case U/S 3 of the PMLA is made out against the accused for this reason also.

8. It is further the contention of Sh. Dayan Krishnan, Ld. Senior Counsel for accused that the oral evidence in form of statements made by the approver Sh. Dinesh Arora in the CBI or this case and even the statements made by other witness in these cases cannot be made a ground for arrest of the accused as the same fail to directly link the accused with payment of advance



kickbacks or the alleged criminal conspiracy and commission of any offence in pursuance thereof. It is also his submission that none of the witnesses has stated on record that even a single penny out of above kickbacks was paid to this accused and hence, he has been arrested in both these cases falsely and for some other reasons and his arrest in this case has been made just a day before his bail application in the CBI case was scheduled for hearing. It is also his submission that prior to his arrest in CBI case, the accused was never called to join investigation of the ED case and it is only when he was sent to JC in the CBI case that the IO of this case visited jail and recorded some statements of the accused on 07.03.2023 and 09.03.2023 and then effected his arrest, without there being any reasonable material or ground to justify the same.

9. It is further the vehement contention of Ld. Senior Counsel that the alleged proceeds of crime of around Rs. 292 crores being attributed to accused are total imaginary as no such proceeds of crime were ever generated due to any activity of the accused, directly or indirectly, and nor he is connected or concerned with concealment, possession, acquisition or use etc of any such proceeds of crime. It is also his submission that even the remand application dose not meet out the requirements of Section 19 of PMLA, 2002.

10. Sh. Mohit Mathur, Ld. Senior Counsel representing the



accused has supplemented Sh. Dayan Krishnan, Ld. Senior Counsel while questioning the powers of ED to seek ED custody of the accused and it is his vehement submission that since the ED officers are not police officers, they are not entitled to ED custody of the accused as no specific provision to this effect is contained in Section 19 of the PMLA, 2002 or any other Section of the said Act. He has also referred to the judgment of Hon'ble Supreme Court in case **Directorate of Enforcement Vs. Deepak Mahajan & Anr. (1994) 3 SCC 440** and of Hon'ble Chhattisgarh High Court in case **Paritosh Kumar Singh @ Diwakar Chaudhary Vs. State of Chhattisgarh & Ors., W.P. (Crl.) No.469/2021** decided on 01.10.2021 in support of his above submission. It is also argued that PMLA is a complete Code in itself and there is no specific provision in the said Act for ED remand of the accused. It is also his submission that even otherwise ED or police remand cannot be taken as a right and no ground exists in the present case to remand the accused to ED custody. Further, while referring to the propositions of law laid down by the Hon'ble Supreme Court and Hon'ble High Courts in different cases laying down parameters and guidelines for grant of bail in criminal matters, it is also his contention that there is no ground for remanding the accused to judicial custody and rather, he deserves to be released on bail as the offence of money laundering made punishable U/S 4 of the PMLA, 2002 carries a punishment upto seven years only.



11. Sh. Siddharth Aggarwal, Ld. Senior Counsel has further supplemented the submissions of two other Ld. Senior Counsels for accused while arguing that even if the alleged statement of approver and other witnesses are taken into consideration, admittedly, no kickback amount was paid to accused and rather, the statement dated 30.09.2022 made U/S 164 of Cr.P.C. by the approver in CBI case shows that he refused to talk with accused in relation to excise matters. It is also his submission that since no copy of grounds of arrest of accused has been supplied to him, in view of his right to get it in terms of judgment of the Hon'ble High Court in case **Rajbhushan Omprakash Dixit Vs. Union of India & Anr. 2018 SCC Online DL 7281**, the very arrest of accused is illegal and hence, he cannot be remanded to any kind of custody. He has also referred to the order of Hon'ble Supreme Court dated 15.03.2018 in **SLP (Crl.), Diary No. 9365/2018** preferred against the above judgment, vide which the said **W.P. (Crl.) No. 363/2018** reported as **2018 SCC Online DL 7281** stands transferred back to the Hon'ble High Court for deciding it afresh, in view of the conflicting views of various High Courts on the issue of supply of copy of grounds of arrest. He has also referred to some observation made in para 472 of the judgment in case **Vijay Madanlal Choudhary (Supra)** in support of his submission about transfer of above W.P. (Crl.) back to the Hon'ble High Court.

12. As discussed above, and as also alleged in this remand





application, the accused was not only the Deputy CM of Govt. of NCT of Delhi at the relevant time, but he was also the Excise Minister and hence, directly responsible for framing as well as implementation of the above excise policy. He was also one of the Ministers included in Group of Ministers (GOM) entrusted with the task of formulation of excise policy as well as implementation thereof. However, specific evidence has come on record during the course of investigation conducted so far that the accused had got incorporated certain material clauses in excise policy, which were even not discussed in the meeting of GOM, and these clauses were allegedly got inserted by him for benefit of the South liquor lobby and in pursuance of the criminal conspiracy, of which he was a key member. It has been specifically alleged, and also found disclosed by the approver and other witnesses, that a huge amount of advance kickbacks of around Rs. 100 Crores was paid by the South lobby through hawala channels and this amount is stated to have been paid to the co-accused Vijay Nair, who allegedly was representing this accused and the other AAP leaders, and out of the above total amount, an amount of around Rs. 20-30 crores was transferred through the approver and one other co-accused Abhishek Boinpally. It has further been revealed during the investigation conducted so far that this accused has also played a vital role in creating a cartel, which was formed between the liquor manufacturers, wholesalers and retailers, and he was also instrumental in grant of wholesale licence (L-1) in favour of firm



M/s Indo Spirits belonging to the co-accused Sameer Mahandru and there are specific statements on record made by some of the witnesses showing his role to this effect.

13. Further, specific allegations are also there against this accused of destruction of some digital evidence as it is stated that out of 14 mobile phones used by him during the relevant period of around 1 year prior to highlighting of all these allegations in the media, the accused destroyed 12 mobile phones and made available for investigation only 2 mobile phones. It is further alleged that even some of these phones and SIMS were purchased or subscribed in the names of others to avoid detection of crime. It is also alleged that the above firm of co-accused Sameer Mahandru was made wholesale distributor for the liquor brands of liquor manufacturer M/S Pernod Ricard only at the instance of this accused, through his representative/co-accused Vijay Nair, and thus, apart from the kickback amount of Rs. 100 crores generated as proceeds of crime, it is also alleged that even the amount of around Rs. 192 crores earned as profits by M/s Indo Spirit was a proceed of crime generated by this accused, directly or indirectly. Thus, as per allegations made in this remand application, the accused was instrumental at every stage of formulation as well as implementation of the excise policy and he appears to be connected not only with generation of proceeds of crime, but also its repayment or re-coupment.



14. There is nothing to suggest from the case file produced by IO that arrest of the accused has been effected in violation of provision of Section 19 of the PMLA or that the same was otherwise illegal as the IO is found to have not only recorded the reasons for his belief about accused's being guilty of the offence of money laundering under Section 3 of the PMLA, but the said grounds are also found to have been informed to the accused as per the mandate contained in said Section. The question whether or not the accused is entitled to a copy of the document containing grounds of his arrest will be decided separately after hearing the detailed submissions of both parties on the application, which has been moved separately for this purpose on behalf of the accused, and prima facie, the provisions of Section 19 of the said Act are found to have been complied in substance.

15. Coming to power of the ED officers to seek ED custody of the accused, it is observed that though Section 19 of the PMLA do not confer any specific power in this regard, but this power has to be inferred with the help of provisions contained in Section 65 of the PMLA, 2002 and Section 167 of CrPC as Section 65 of the PMLA provides that the provisions of CrPC shall apply, in so far as they are not inconsistent with the provisions of this Act, to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under this Act. The power to seek remand is essentially a part of



the power of arrest and to conduct investigation in respect to commission of the alleged offence of money laundering and this power has necessarily to be inferred with the help of above Section as Section 65 of the PMLA, 2002 does not prohibit remand of an accused under the said act to ED custody. The judgments in the cases of **Deepak Mahajan (Supra) and Paritosh Kumar Singh @ Diwakar Choudhary (Supra)** being relied upon by Ld. Senior counsels for the accused have not been given with reference to the provisions contained in PMLA, whereas Ld. SPPs for ED are found to have rightly relied upon judgments in case **Ashok Munilal Jain & Ors. Vs. Assistant Director, Directorate of Enforcement, (2018) 16 Supreme Court Cases 158, Yogesh Mittal vs. Enforcement Directorate, 2017 SCC OnLine Del 10364 and Assistant Director vs. Hassan Ali Khan, (2011) 12 Supreme Court Cases 684** in support of their submission that the ED remand of an accused can be granted by this Court and it has been granted in thousands of cases so far and without any adverse observations or orders of any of the higher Courts.

16. Thus, in view of the above background, this Court is, prima facie, convinced that the arrest of accused in this case is justified and ED has also powers to seek custody of the accused for his further examination and interrogation. It has been specific submitted in the application that custodial interrogation of the accused is must as during the course of his examination



conducted so far, he had been totally evasive and non-cooperative and he did not disclose the true facts and rather, he came up with answers which have been found entirely in contrast and contradiction to the oral and documentary evidence collected so far. He is also required to be confronted with the oral and documentary evidence collected so far and showing his involvement in this case.

17. Therefore, in view of the above, the accused Manish Sisodia is being remanded to the custody of ED for a period of 7 days i.e. till **17.03.2023** for the purposes of his detailed and extensive interrogation and confrontations and he shall be produced before this court at **2 pm** on that day. However, it is directed that his interrogation shall be conducted at some place having CCTV coverage in accordance with the guidelines laid down by the Hon'ble Supreme Court in case of **Paramvir Singh Saini Vs. Baljit Singh & Ors., SLP CrI. No. 3543/2020 decided on 02.12.2020** and also in accordance with all the other applicable rules, directions and guidelines on the subject and the said CCTV footage shall be preserved. Accused shall be medically examined once in every 48 hours during the above period and in terms of provisions contained in Section 41D Cr.P.C., the accused shall also be permitted to meet his Advocates namely Mr. Mohd. Irshad and Mr. Vivek Jain for half an hour daily between 6pm to 7pm during the said period of his ED custody in a manner that the ED officials are not able to hear



their conversations. The accused is also being permitted to meet one or two members of his family every day for a duration of 15 minutes during the above said hour, if he desires.

18. Further, as requested, the accused is also permitted to carry with him his spectacles, the holy book - Shrimad Bhagwat Geeta, a diary and pen during his ED custody. Accused is also being permitted to carry the medicines as prescribed in his MLC dated 27.02.2023 prepared by the doctors of Safdarjung Hospital, New Delhi in the CBI case and a copy thereof is directed to be provided to the IO of this case.

19. At this stage, one other application seeking supply of ground of arrest has been moved. Copy of the same be supplied to ED. Put up this application on **17.03.2023** for reply/arguments.

20. The application moved by IO seeking ED custody of accused stands disposed off accordingly. As prayed, an e-copy of this order be given to the parties dasti through Whatsapp/e-mail.



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**(M. K. NAGPAL)**  
**Special Judge (PC Act),**  
**CBI-09 (MPs/MLAs Cases),**  
**RADC, New Delhi :10.03.2023**

**M K. NAGPAL**  
Special Judge (PC Act) (CBI-09)  
(MPs / MLAs Cases)  
Rouse Avenue District Court  
New Delhi