



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 3233 OF 2023

SADANAND GANGARAM KADAM ..APPLICANT

VS.

1] DIRECTORATE OF ENFORCEMENT

2] THE STATE OF MAHARASHTRA

..RESPONDENTS

Senior Adv. Shri Amit Desai a/w Adv. Sudeep Pasbola a/w
Adv. Shardul Singh a/w Adv. Gopalakrishna Shenoy a/w
Adv. Prerna Gandhi a/w Adv. Sayali Sawant a/w Adv. Anish
Shahapurkar for the Applicant.

Senior Adv. Shri Devang Vyas, Additional Solicitor General
a/w Adv. Ashish Chavan a/w Adv. Zishan Quazi for the
Respondent - ED

Ms. Veera Shinde, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : DECEMBER 06, 2023

JUDGMENT :

1. This is an application for bail by the applicant who is
accused No.1 in ECIR/MBZO-I/57/2022 (hereafter 'ECIR' for
short) for which Special Case No. 634 of 2023 is filed before
the Special Court designated under the Prevention of
Money-Laundering Act, 2002 (hereafter 'PMLA' for short)
against the applicant and other accused for offence under

Section 3 punishable under Section 4 of the PMLA.

The facts relevant to a decision of this application are thus:

2. On 20/06/2011, one Shri Vibhas Rajan Sathe purchased Gat No. 446 at Dapoli, Ratnagiri. Mr. Sathe made an application to the Sub-Divisional Officer on 21/07/2017 for conversion of the said land to non-agricultural ('NA' for short) use and for building permission. The NA permission and building permission was granted on 12/09/2017. Shri Sathe sold the said land to Shri Anil Parab on 19/06/2019 under a duly registered sale deed for the consideration paid by cheque/bank transfer. It is alleged that to conceal the identity of Shri Anil Parab, the sale deed was executed in 2019 though the transaction took place in 2017. All permissions were at the behest of Shri Anil Parab. Since 2017, Shri Sathe was only a front. It is alleged that the applicant was organising all this. Shri Anil Parab sold the said land to the applicant under a duly registered sale deed for consideration paid by cheque/bank transfer on 29/12/2020. This was done to avoid public attention as per

the allegation. A notice under the Maharashtra Regional and Town Planning Act (MRTP Act) was issued on 22/06/2021 to the construction made on the land which was in the nature of twin bungalows converted into a resort. Suit No. 57 of 2021 was filed before the Civil Judge, Khed where an injunction was granted.

3. The Ministry of Environment and Forests (hereafter 'MoEF' for short) filed a private complaint RCC/12/2022 before the JMFC, Dapoli under Sections 5, 7 read with 15 of the Environment (Protection) Act, 1986 (hereafter 'EP Act' for short) and Sections 420 read with 34 of the Indian Penal Code, 1860 (hereafter 'IPC' for short). Treating the above private complaint as a predicate offence, respondent registered the ECIR. The statement of the applicant was recorded by the Directorate of Enforcement (hereafter 'ED' for short) on 26/05/2022 and 27/05/2022. The JMFC, Dapoli directed the investigation by Dapoli Police Station under Section 202 of the Code of Criminal Procedure (hereafter 'Cr.P.C.' for short) on 14/09/2022. A report was filed and the matter was proceeded on 09/11/2022 before

the JMFC, Dapoli for orders on the private complaint of MoEF.

4. On 08/11/2022 at 00.02 hrs, Mrs. Rupa Dighe, block development officer, attended Dapoli Police Station and at her instance, First Information Report (hereafter 'FIR' for short) No. 177 of 2022 came to be lodged against Shri Anil Parab under Section 420 of the IPC. The FIR was registered on the basis that Shri Anil Parab applied for assessment of the structure to property tax despite the structure not being complete and also applied for electricity connection despite the construction not being complete and in this manner, he committed the offence of cheating.

5. On 09/11/2022, JMFC Dapoli issued process on the private complaint of MoEF under the provisions of the EP Act. On 07/12/2022 and 08/12/2022, statements of the applicant were again recorded by the ED. On 16/02/2023, the applicant retracted all the statements made to the ED. The applicant was arrested on 10/03/2023.

6. The Sessions Court allowed the Revision Application filed against the order issuing process on the private

complaint of MoEF. The order issuing process on the MoEF complaint is set aside on merits. The revisional Court observed that the resort was never operational and no effluents were released into the sea.

7. The scope of the FIR No. 177 of 2022 was expanded by Dapoli Police Station by arresting Circle Officer Mr. Pardule and Sub-Divisional Officer Mr. Deshpande. At this stage, Sections 467, 471 and 478 of the IPC along with the Prevention of Corruption Act, 1988 (hereafter 'P.C. Act' for short) offences were levelled against Circle Office and Sub-Divisional Officer for making a fraudulent report based on which NA and building permissions were granted. It is already indicated that the applicant was arrested on 10/03/2023. The ECIR in respect of which complaint (chargesheet) bearing Special Case No. 634 of 2023 has been filed is pending before the Special PMLA Court, Mumbai.

SUBMISSIONS OF SHRI DESAI, LEARNED SENIOR ADVOCATE

(A) It is the contention of the learned senior advocate Shri

Amit Desai that the ECIR was based on RCC No. 12 of 2022 (complaint filed by MoEF for violation of EP Act) and for offences under the IPC. However, without registering an ECIR respondent has also included the offences registered under FIR No. 177 of 2022 as predicated offences while filing the complaint before the Special Court. In the submission of Shri Desai, such a course is impermissible. According to Shri Desai, on the basis of FIR No. 177 of 2022, a separate ECIR ought to have been registered and the inclusion of the offences registered under the FIR No. 177 of 2022 as predicated offences when filing the complaint before the Special Court is illegal, contrary to the provisions of PMLA.

(B) The private complaint (RCC No. 12 of 2022) was filed by the MoEF before the JMFC, Dapoli alleging violations of (i) CRZ rules, i.e. Section 5 read with Section 15 of the EP Act, (ii) releasing effluents in sea i.e. Section 7 read with Section 15 of EP Act and (iii) offences under IPC. The JMFC directed an investigation into the offence under Section 202 of the Cr.P.C. pursuant to which a police report dated

17/10/2022 is made. The report found that no case of cheating under IPC or of any release of effluents. The JMFC by order dated 09/11/2022 issued process under the provisions of EP Act only i.e. Sections 5 and 7 read with Section 15 of the EP Act. Only Section 7 i.e. releasing effluents is Scheduled Offence under the PMLA. The complaint is deemed to have been rejected in so far as allegations of offences under the IPC were concerned. The order issuing process was quashed by the Sessions Court in revision on 14/03/2022 *inter alia* on merits by categorically holding that the resort did not discharge or emit any environmental pollutants and was never started/operationalised. As a matter of law, it is not open for the MoEF to file a new complaint or argue that the remnant of the complaint continues. Once the issuance of process on complaint made by the MoEF is quashed, the predicate offence under the EP Act as well as IPC has come to an end.

(C) As regards FIR No. 177 of 2022, the same was lodged at the instance of a lady block development officer at 00.02

hrs of 08/11/2022 i.e. one day before the date of issuance of process in RCC No. 12 of 2022 and registered in haste showing the mala fides. Originally the only allegation in the FIR was that Shri Anil Parab has misrepresented that the structure on the subject land was completed, when it was actually incomplete, sought tax assessment and paid the tax. By such actions, it was held that somehow offence of cheating under Section 420 was committed. The contents of the FIR and the portion of the private complaint of MoEF relating to the IPC offences were almost identical. Both the FIR and private complaint state about the information given by Mr. Kirit Somaiya. Both FIR and the private complaint rely on the same materials provided by Mr. Kirit Somaiya. The ECIR in the present case was not registered in relation to the said predicate offence and the same should not be part of the present investigation as the offences in relation to FIR No. 177 of 2022 were being added only post March-2023, when the Sessions Court set aside the order issuing process in the MoEF complaint. Further, there is no material to show how the allegations in the said FIR relate to the

applicant and the ECIR for which the applicant is being investigated.

(D) The applicant is only named in the chargesheet as a witness in respect of the FIR No. 177 of 2022. Even in the chargesheet, the scheduled offences of IPC i.e. Sections 420, 467, 471, and 478 are invoked essentially for the alleged forgery of Circle Officer's Report. In so far as the present applicant or Shri Anil Parab is concerned, the allegations in the MoEF complaint and FIR No. 177 of 2022 are identical/overlapping and also rely upon the same documents. The comparative chart produced demonstrates how in the MoEF complaint and FIR No. 177 of 2022 the cause of action is the same. The applicant can not be vexed or prosecuted twice for the same cause of action.

(E) The allegation of the forgery made by the respondent in the PMLA complaint against the applicant are not borne out in the chargesheet or even in the MoEF complaint. In fact, the report under Section 202 of the Cr.P.C. and the material on record in the chargesheet go contrary to the allegations in relation to the applicant. Further, the

allegations of pressure being exerted on the public officials, is also not made out, given the conversion approval of the Sai Resort being one out of 35 approvals being given by the same officials, in relation to similarly situated land in the vicinity of Sai Resort. The applicant having purchased the land and building on the said land, for a legitimate activity, it cannot be said that an offence under the PMLA is committed. There is no activity alleged against the applicant in relation to the accusations made in FIR No. 177 of 2022 from the complaint. The respondent's reliance on the Section 50 statement of Mr. Sathe for making out the case against the applicant are not relevant at all for the reasons that :-

- a. The allegation that Mr. Sathe's signature on the application for building is forged is not the allegation for invoking 467, 471 and 478 in FIR No. 177 of 2022, therefore, forgery of his signature is not the crime being prosecuted there.
- b. Mr. Sathe is not the complainant, victim or aggrieved person cited in the chargesheet. The aggrieved person cited

in the chargesheet is government which has been allegedly defrauded of tax/ property tax/ stamp duty etc.

c. With respect to the application for NA/building permission, Mr. Sathe has given following statements, (i) statement confirming his said application before the Circle officer, Burondi on 31/07/2017, (ii) statement dated 18/06/2021 before the Deputy Superintendent confirming his said application, (iii) statement dated 06/10/2022 before the Dapoli Police Station during the Section 202 investigation in respect of RCC No. 12 of 2022 and (iv) in the statement dated 15/02/2023 of Mr. Sathe which is a part of the chargesheet of FIR No. 177 of 2022, he has categorically reiterated that all the NA documents, the applications and the affidavits filed, he has voluntarily signed. In all the statements, Mr. Sathe has categorically stated that the application was made by him. However, in the statement under Section 50 of the PMLA, Mr. Sathe is stated to have said that he has not signed the application. As the issue of Mr. Sathe's signature does not invoke Sections 467, 471 and 478 fo the IPC and is not the issue at

trial there, there is nothing in the chargesheet to show who forged his signature, when, where, etc. nor was his signature sent for any analysis etc. It trite that the evidentiary value of the statement under Section 50 of the PMLA is limited to the offence under PMLA and can not be used to prove the predicate offence itself.

(F) Section 2(1)(u) of the PMLA i.e. definition of 'Proceeds of Crime', categorically specifies that the proceeds of crime so alleged should be a result of a criminal activity relatable to the scheduled offence. The scheduled offences in the present case are -

(i) Section 7 read with Section 15 of the EP Act which has been set aside by the Revision Court. Even otherwise, this offence has not been proved and it is sufficiently established that the resort has never commenced operations, much less discharge any effluents.

(ii) As regards Sections 420, 467, 471, 468 and 120-B of the IPC, no cognizance was taken in relation to the IPC offences in the MoEF complaint. Further, the allegations of forgery made in the PMLA complaint relating to the

applicant are not borne out in the material collected during the investigation in the FIR. Furthermore, the proceeds out of the alleged crime in the hands of the applicant have not been established at all. There is, therefore, no question of any layering or concealment. The Applicant has no nexus to these crimes and is in fact a 'witness' in the said FIR/chargesheet.

(G) The Respondent having failed to make out a predicate offence, has not been able to establish proceeds of crime and therefore there can be no question of an offence of money laundering. In any case, there is no allegation of the applicant being involved in any process or activity connected with the proceeds of crime. The only allegation seems to be one of concealment of ownership of the property by Shri Anil Parab, which is not borne out by the other allegations of the Respondent, i.e., pressure being put on public officials. Further, the payment for the property was directly made by Shri Parab to the owner and an agreement was entered into by him in his own name, therefore, this allegation is also not borne out. This Court

has to while considering the twin tests of Section 45(2) of PMLA consider the broad probabilities of the case, and in the present case the same lie in favour of the applicant and he is required to be granted bail. As per the allegations of the respondent in the PMLA complaint, the amounts that have been paid by the applicant for the construction of the building are about Rs. 61 Lakhs. That though the bills had been raised for a much higher amount, the same was never paid. Further, the property in question had been purchased with legitimate funds and the construction was also being done with the applicant's own legitimate funds and cannot be said to be proceeds of crime. The respondent has on one hand contended that the subject land at Gat No. 446 at Murud, Dapoli falls in CRZ -III which is a no-development zone and therefore, the construction is illegal, on the other hand, the respondent has assessed the market value of the land and the property to be Rs. 10 Crores, out of which Rs. 7 Crores approximately is allegedly the value of the alleged illegal resort. The valuation set out by the respondent is vague and bogus.

(H) The proviso to Section 45(1) provides that "a sum of less than one crore rupees" is used, clearly making out the intention of the legislature that it is the amount that was involved and not the value at the time of the consideration has to be seen. The rigours of Section 45(2) would not be applicable as the proviso to the said clause provides that the rigours of Section 45(2) would not be applicable if the proceeds of crime are less than one crore. The applicant is liable to be released on bail. The entire complaint/chargesheet of ED to the extent that it cites proceeds of crime, cites the same to be the value of land and building. There is no illegality linked to the MoEF complaint or FIR No. 177 of 2022 qua purchase of land. Only qua the construction the ED complaint links it to CRZ violations alone. CRZ violations fall within Sections 5 read with 15 of the EP Act, none of which are a scheduled offence. Therefore, proceeds of crime, if any, are not from criminal activity of scheduled offence under MoEF complaint or FIR No. 177 of 2022.

(I) The Delhi High Court in ⁰Prakash Industries Limited Vs.

Union of India and Another by relying upon the observations in *Vijay Madanlal Chaudhary vs. Union of India*¹ held that the offence created in terms of Section 3 of the PMLA is inextricably linked to the commission of the scheduled offence. The expression "derived or obtained" must be understood as being indicative of criminal activity relating to a scheduled offence "already accomplished". For initiation of action under PMLA for offences under Section 3 of the PMLA, registration of a scheduled offence is a prerequisite. It has been categorically held that in any case, it cannot and on its own motion proceed on the surmise that particular set of facts evidence the commission of a scheduled offence, investigate the same and based on that opinion initiate action under the PMLA. In the instant case, the respondent has sought to make out alleged proceeds of crime on the basis of its own investigation in the predicate offence (the same is contrary to the investigation by the appropriate authority) which is impermissible. The investigation and material relied upon by the respondent should not be considered for the purposes of the bail

1 2022 SCC Online SC 929

application.

(J) Section 19(1) of PMLA provides that an empowered officer must have material in his possession to believe that a person is guilty of the offence described in Section 3. The reasons, as to why he believes the person is guilty, must be recorded in writing. Those reasons shall be informed to the accused. Informed means furnished/supplied/served i.e. the document in writing. Absent this, the entire safeguard is rendered nugatory and there is no meaningful compliance with Article 22(1).

(K) The Arrest Memo relating to this applicant is in the format and does not provide or disclose any of the 'reasons to believe'. The Supreme Court in Pankaj Bansal v Union of India and Ors.² has held that grounds of arrest must be clearly spelt out in the Arrest Memo. The Supreme Court held that the format by itself is not adequate to fulfil compliance with Article 22(1) of the Constitution and 19(1) of the PMLA Act. The Punjab & Haryana High Court in Roop Bansal vs Union³ has held that the requirement of giving

2 2023 SCC Online SC 1244

3 CWP/23005/23

grounds for arrest as held by the Supreme Court in Pankaj Bansal (supra) is not prospective. That apart, Roop Bansal in paragraphs 25 to 30 considered the legal position that the requirement to clearly provide the grounds for arrest are mandatory. In the present case, merely the format has been given to the Applicant without any grounds disclosing reason to believe or grounds for arrest. The Respondent has been arrested on 10.03.2023 and has already spent almost 10 months in incarceration and the trial is yet to commence. The ED has already filed the special case and therefore the investigation is complete. There is therefore no purpose served in keeping the Applicant incarcerated any longer.

SUBMISSIONS OF SENIOR ADVOCATE SHRI DEVANG VYAS, LEARNED ADDITIONAL SOLICITOR GENERAL:-

(A) My attention is invited to the observations of the Special Court rejecting the bail application. It is submitted that the twin conditions for the grant of bail applicable under the PMLA are not satisfied. The PMLA investigations can proceed and lead to prosecution independently of the

predicate offence. An individual can be implicated and prosecuted for money laundering under PMLA even without direct involvement in the predicate offence. Sections 44 and 45 of the PMLA establish high thresholds for bail, indicating the severity of money laundering offences. These provisions underscore the prioritization of public interest and the integrity of the financial system over the liberty of those accused of such serious economic offences. The Supreme Court by its order dated 30/10/2023 has directed this Court to decide this matter expeditiously, ensuring all rights and contentions of parties are left open on merits to be agitated before this Court.

(B) The ECIR relates to two scheduled offences viz. complaint No. 12 of 2022 of the MoEF as well as FIR No. 177 of 2022. It is submitted that though the order issuing process in criminal complaint No. 12 of 2022 filed by MoEF has been set aside by the revisional Court, the same does not result in dismissal of the complaint No.12 of 2022. The complaint No. 12 of 2022 is still at large for consideration before the trial Court. As even the order passed by the

revisional Court is subject matter of challenge in this Court by way of Criminal Writ Petition No. 2327 of 2023 which is currently pending. Despite the revisional Court's order dated 14/03/2023 concerning the EP Act related offences, the allegations of cheating under the IPC remain active and unresolved. The complaint, to the extent that it pertains to these allegations of cheating, continues to be a live issue before the Court. It is adequate material found in the investigation substantiating the claim on the respondent which links the applicant with the alleged criminal activities of laundering and the proceeds derived therefrom. The complaint does not involve isolated or trivial offences but with a systematic and complex interplay by individuals of environmental crimes, corruption and fraudulent activities, which collectively form the foundation of the PMLA case. The complexities and the inherent risk the accusations involved pose to the public and economic order of the country are the basis for opposing bail. In so far as FIR No. 177 of 2022 is concerned, the accusations are in respect of serious charges of cheating and forgery under the IPC and

P.C. Act. These offences suggest fraudulent activities and document falsification, key elements that potentially link to money laundering activities under the PMLA. Having regard to the nature of the accusations in the PMLA complaint and the materials on record the bail application be rejected.

CONSIDERATIONS

8. I have heard the erudite submissions of the learned senior advocates. Having regard to the nature of the controversy involved, it is important to notice some of the provisions of the PMLA in the first place, which according to me are thus :

"Section 2(1)(u) - "proceeds of crime": This section defines "proceeds of crime" as any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence. This definition is crucial as it sets the scope for what is considered illegal gain in the context of money laundering.

Section 2(1)(v) - "Property": Under PMLA, 'property' means any property or assets of any description, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located.

Section 2(1)(u) - "schedule Offences": This part of the Act provides a detailed list of offenses which, if committed, would result in

the initiation of money laundering investigations. These are referred to as 'scheduled offenses' and form the basis for invoking the provisions of the PMLA.

Section 3 - Offence of Money Laundering: This section lays down that whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of the offence of money laundering.

Section 19 - Arrest: This gives the authority to the Director or any other officer not below the rank of Deputy Director authorized by the Director, to arrest any person if he has reason to believe that the person has been guilty of an offence punishable under the Act, based on the material in his possession, with a memo of reasons of arrest being provided.

Section 44 and 45 - Twin Bail Conditions: Section 44 deals with offences triable by special courts. Section 45 sets conditions for bail, stating that no person accused of an offence under this Act shall be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity to oppose the application for such release, and where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

Section 50 - Statements in Evidence: This section allows the authority to record statements during the course of the investigation. These statements, when duly signed by the person against whom proceedings are being conducted, become admissible in the trials under this Act. This is a

key distinguishing factor from S.161 CrPC statements which are inadmissible in evidence.

Section 65 - Application of CrPC: This provision states that the provisions of the Code of Criminal Procedure, 1973 (CrPC) shall apply to the proceedings before a Special Court and for this purpose, the Special Court shall be deemed to be a Court of Session and the person conducting a prosecution before a Special Court shall be deemed to be a Public Prosecutor.

Section 71 - Overriding Effect of the PMLA Act: This section declares that the provisions of the PMLA have an overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. This emphasizes the primacy of PMLA in matters of money laundering over other legal provisions."

9. Before proceeding further, it is of material significance to seek guidance from the law laid down by the Supreme Court which will help in appreciating the rival contentions. There is an depth analysis of the provisions of the PMLA in Vijay Madanlal Chaudhary vs. Union of India (supra), the relevant paragraphs of the judgment relied upon by the learned senior advocates are thus:

<u>SR. NO.</u>	<u>PARTICULARS</u>	<u>PARA NO.</u>
1	Objects and Reasons	235
2	Preamble	242 IMP 243
3	"Independent Offence"/ "Self-Contained	269, 270, 280,

<u>SR. NO.</u>	<u>PARTICULARS</u>	<u>PARA NO.</u>
	<i>Code"</i>	<u>311, 356, 359, 365, 455, 467</u>
4	Arrest	<u>322, IMP 324, 325, 326</u>
5	Burden of Proof <i>Check : Pg 375 - Whether relevant before filing of chargesheet/framing of charge ?</i>	<u>327</u>
6	Proof : Definitions	<u>335, 336 & 337 IMP 339, 341, 342, 343</u>
7	"Shall Presume/May Presume"	<u>347</u>
8	Special Court	<u>352</u>
9	Bail IMP - NIKESH TARACHAND VIS A VIS AMENDMENT OF 2018 IMP - DEFECT REMOVED BY VALIDATING THE ACT RETROSPECTIVELY. CHALLENGE TO TWIN CONDITIONS POST AMENDMENT OF 2018	<u>371</u> 377-380 386 387
10	"Quantum of punishment cannot be the basis to determine the seriousness and gravity of this offence."	<u>395</u>
11	Relevant Judgments	<u>395-397 IMP 401</u>
12	Twin Conditions vis a vis Companies Act	<u>402</u>
13	Limitations under Section 45 are in addition to limitation under the 1973	<u>404</u>

<u>SR. NO.</u>	<u>PARTICULARS</u>	<u>PARA NO.</u>
	Code	
14	TWIN CONDITIONS UPHELD	405
15	Re : Anticipatory Bail	411 & 412
16	Section : 50	422 and 431
17	Power to Issue Summons	425
18	Investigation	434
19	PMLA vis a vis Tofan Singh	446 & 447
20	<u>"There is a stark distinction between the scheme of NDPS Act dealt with in Tofan Singh and that in the provisions of the 2002 Act."</u>	449
21	Scheduled Offence	453
22	ECIR vis a vis FIR	455
23	ED Manual	461
24	Punishment under Section 4	463
25	Conclusion	467 Onwards

10. Recently, the Supreme Court in Pavana Dibbur Vs. The Directorate of Enforcement⁴ considered the question as regards a person unconnected with a predicate offence whether can be proceeded for the offence under Section 3

⁴ Criminal Appeal No. 2779 of 2023 decided on 29/11/2023

of PMLA. Their Lordships observed thus:-

"11. Section 3 of the PMLA reads thus:

"3. Offence of money-laundering.—
Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.

Explanation.—For the removal of doubts, it is hereby clarified that,—

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

- (a) concealment; or
- (b) possession; or
- (c) acquisition; or
- (d) use; or
- (e) projecting as untainted property;
- or
- (f) claiming as untainted property, in any manner whatsoever;

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

On a plain reading of Section 3, unless proceeds of crime exist, there cannot be any money laundering offence. Clause (u) of sub-section (1) of Section 2 of the PMLA defines "proceeds of crime", which reads thus:

"2. Definition (1) In this Act, unless the context otherwise requires,-

(u) "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad;

Explanation.-For the removal of doubts, it is hereby clarified that "proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relating to the scheduled offence."

12. Clause (v) of sub-section (1) of Section 2 of the PMLA defines "property" to mean any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible. To constitute any property as proceeds of crime, it must be derived or obtained directly or indirectly by any person as a result of criminal activity relating to a scheduled offence. The explanation clarifies that the proceeds of crime include property, not only derived or obtained from scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relating to the scheduled offence. Clause (u) also clarifies that even the value of any such property will also be the proceeds of crime.

Thus, the existence of "proceeds of crime" is sine qua non for the offence under Section 3 of the PMLA.

13. Clause (x) of sub-section (1) of Section 2 of the PMLA defines "schedule". Clause (y) thereof defines "scheduled offence", which reads thus:

"2. Definition (1) In this Act, unless the context otherwise requires,-

(y) "scheduled offence" means-

(i) the offences specified under Part A of the Schedule; or

(ii) the offences specified under Part B of the Schedule if the total value involved in such offences is one crore rupees or more; or

(iii) the offences specified under Part C of the Schedule."

14. The condition precedent for the existence of proceeds of crime is the existence of a scheduled offence. On this aspect, it is necessary to refer to the decision of this Court in the case of *Vijay Madanlal Choudhary*'. In paragraph 253 of the said decision, this Court held thus:

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

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

(underline supplied)

In paragraphs 269 and 270, this Court held thus:

"269. From the bare language of Section 3 of the 2002 Act, it is amply clear that the offence of money- laundering is an independent offence regarding the process or activity connected with the proceeds of crime which had been derived or obtained as a result of criminal activity relating to or in relation to a scheduled offence. The process or activity can be in any form be it one of concealment. possession. acquisition. proceeds of crime use of as much as projecting it as untainted property or claiming it to be so. Thus, Involvement in any one of such process or activity connected with the proceeds of crime would constitute offence of money- laundering.

This offence otherwise has nothing to do with the criminal activity relating to a scheduled offence = except the proceeds of crime derived or obtained as a result of that crime.

270. Needless to mention that such process or activity can be indulged in only after the property is derived or obtained as a result of criminal activity (a scheduled offence). It would be an offence of money-laundering to indulge in or to assist or being party to the process or activity connected with the proceeds of crime; and such process or activity in a given fact situation may be a continuing offence, irrespective of the date and time of commission of the scheduled offence. In other words, the criminal activity may have been committed before the same had been notified as scheduled offence for the purpose of the 2002 Act, but if a person has indulged in or continues to indulge directly or indirectly in dealing with proceeds of crime. derived or obtained from such criminal activity even after it has been notified as scheduled offence, may be liable to be prosecuted for offence of money-laundering under the 2002 Act - for continuing to possess or conceal the proceeds of crime (fully or in part) or retaining possession thereof or uses it in trenches until fully exhausted. The offence of money-laundering is not dependent on or linked to the date on which the scheduled offence or if we may say so the predicate offence has been committed. The relevant date is the date on which the person indulges in the process or activity connected with such proceeds of crime. These ingredients are intrinsic in the original provision (Section 3, as amended until 2013 and were in force till 31.7.2019); and the same has been merely explained and clarified by way of Explanation vide Finance

(No. 2) Act, 2019. Thus understood, inclusion of Clause (ii) in Explanation inserted in 2019 is of no consequence as it does not alter or enlarge the scope of Section 3 at all."

(underline supplied)

15. Coming back to Section 3 of the PMLA, on its plain reading, an offence under Section 3 can be committed after a scheduled offence is committed. For example, let us take the case of a person who is unconnected with the scheduled offence, knowingly assists the concealment of the proceeds of crime or knowingly assists the use of proceeds of crime. In that case, he can be held guilty of committing an offence under Section 3 of the PMLA. To give a concrete example, the offences under Sections 384 to 389 of the IPC relating to "extortion" are scheduled offences included in Paragraph 1 of the Schedule to the PMLA. An accused may commit a crime of extortion covered by Sections 384 to 389 of IPC and extort money. Subsequently, a person unconnected with the offence of extortion may assist the said accused in the concealment of the proceeds of extortion. In such a case, the person who assists the accused in the scheduled offence for concealing the proceeds of the crime of extortion can be guilty of the offence of money laundering. Therefore, it is not necessary that a person against whom the offence under Section 3 of the PMLA is alleged must have been shown as the accused in the scheduled offence. What is held in paragraph 270 of the decision of this Court in the case of Vijay Madanlal Choudhary' supports the above conclusion. The conditions precedent for attracting the offence under Section 3 of the PMLA are that there must be a scheduled offence and that there must be proceeds of crime in relation to the scheduled offence as defined in clause (u) of sub-section (1) of

Section 3 of the PMLA.

16. In a given case, if the prosecution for the scheduled offence ends in the acquittal of all the accused or discharge of all the accused or the proceedings of the scheduled offence are quashed in its entirety, the scheduled offence will not exist, and therefore, no one can be prosecuted for the offence punishable under Section 3 of the PMLA as there will not be any proceeds of crime. Thus, in such a case, the accused against whom the complaint under Section 3 of the PMLA is filed will benefit from the scheduled offence ending by acquittal or discharge of all the accused. Similarly, he will get the benefit of quashing the proceedings of the scheduled offence. However, an accused in the PMLA case who comes into the picture after the scheduled offence is committed by assisting in the concealment or use of proceeds of crime need not be an accused in the scheduled offence. Such an accused can still be prosecuted under PMLA so long as the scheduled offence exists. Thus, the second contention raised by the learned senior counsel appearing for the appellant on the ground that the appellant was not shown as an accused in the chargesheets filed in the scheduled offences deserves to be rejected."

11. It is thus well settled that it is not necessary that the person against whom the offence under Section 3 of the PMLA is alleged must be shown as an accused in the scheduled offence. The conditions precedent for attracting the offence under Section 3 of the PMLA are that there must be a scheduled offence and there must be proceeds of crime

in relation to the scheduled offence as defined in clause (u) of sub-section(1) of Section 3 of the PMLA. Their Lordships have further laid down that if the prosecution for the scheduled offence ends in the acquittal of all the accused or discharge of all the accused or the proceedings of the scheduled offence are quashed in its entirety, the scheduled offence will not exist and therefore, no one can be prosecuted for the offence punishable under Section 3 of the PMLA as there will not be any proceeds of crime. Thus, in such case, the accused against whom the complaint under Section 3 of the PMLA is filed will benefit from the scheduled offence ending by acquittal or discharge of all accused. Similarly, he will get the benefit of the quashing the proceedings of the scheduled offence. However, an accused in the PMLA case who comes into the picture after the scheduled offence is committed by assisting in the concealment or use of proceeds of crime need not be an accused in the scheduled offences. Such an accused can still be prosecuted so long as the scheduled offence exists.

12. So far as the procedure of arrest is concerned, the Supreme Court in Pankaj Bansal (supra) in detail analysed the constitutional and statutory mandate of Section 19(1) of the PMLA. In paragraph Nos. 21, 29 to 33 and 39, it is observed thus:

"21. This chronology of events speaks volumes and reflects rather poorly, if not negatively, on the ED's style of functioning. Being a premier investigating agency, charged with the onerous responsibility of curbing the debilitating economic offence of money laundering in our country, every action of the ED in the course of such exercise is expected to be transparent, above board and conforming to pristine standards of fair play in action. The ED, mantled with far-reaching powers under the stringent Act of 2002, is not expected to be vindictive in its conduct and must be seen to be acting with utmost probity and with the highest degree of dispassion and fairness. In the case on hand, the facts demonstrate that the ED failed to discharge its functions and exercise its powers as per these parameters.

29. The more important issue presently is as to how the ED is required to 'inform' the arrested person of the grounds for his/her arrest. Prayer (iii) in the writ petitions filed by the appellants pertained to this. Section 19 does not specify in clear terms as to how the arrested person is to be 'informed' of the grounds of arrest and this aspect has not been dealt with or delineated in Vijay Madanlal Choudhary (supra). Similarly, in V. Senthil Balaji (supra), this Court merely noted that the information of the grounds of arrest should be 'served' on the arrestee, but did not elaborate on that issue. Pertinent to note, the grounds of arrest were

furnished in writing to the arrested person in that case. Surprisingly, no consistent and uniform practice seems to be followed by the ED in this regard, as written copies of the grounds of arrest are furnished to arrested persons in certain parts of the country but in other areas, that practice is not followed and the grounds of arrest are either read out to them or allowed to be read by them.

30. In this context, reliance is placed by the ED upon the decision of a Division Bench of the Delhi High Court in *Moin Akhtar Qureshi v. Union of India*, wherein it was observed that Section 19 of the Act of 2002 uses the expression 'informed of the grounds of such arrest' and does not use the expression 'communicate the grounds of such arrest' and, therefore, the obligation cast upon the authorized officer under Section 19(1) is only to inform the arrestee of the grounds of arrest and the provision does not oblige the authority to serve the grounds for such arrest on the arrestee. Reliance is also placed by the ED on the judgment of a Division Bench of the Bombay High Court in *Chhagan Chandrakant Bhujbal v. Union of India*, which held that the grounds of arrest are to be informed to the person arrested and that would mean that they should be communicated at the earliest but there is no statutory requirement of the grounds of arrest being communicated in writing.

31. No doubt, in *Vijay Madanlal Choudhary (supra)*, this Court held that non-supply of the ECIR in a given case cannot be found fault with, as the ECIR may contain details of the material in the ED's possession and revealing the same may have a deleterious impact on the final outcome of the investigation or inquiry. Having held so, this Court affirmed that so long as the person is 'informed' of the grounds of his/her arrest, that would be

sufficient compliance with the mandate of Article 22(1) of the Constitution.

32. In this regard, we may note that Article 22(1) of the Constitution provides, *inter alia*, that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest. This being the fundamental right guaranteed to the arrested person, the mode of conveying information of the grounds of arrest must necessarily be meaningful so as to serve the intended purpose. It may be noted that Section 45 of the Act of 2002 enables the person arrested under Section 19 thereof to seek release on bail but It postulates that unless the twin conditions prescribed thereunder are satisfied, such a person would not be entitled to grant of bail. The twin conditions set out in the provision are that, firstly, the Court must be satisfied, after giving an opportunity to the public prosecutor to oppose the application for release, that there are reasonable grounds to believe that the arrested person is not guilty of the offence and, secondly, that he is not likely to commit any offence while on bail. To meet this requirement, it would be essential for the arrested person to be aware of the grounds on which the authorized officer arrested him/her under Section 19 and the basis for the officer's 'reason to believe' that he/she is guilty of an offence punishable under the Act of 2002. It is only if the arrested person has knowledge of these facts that he/she would be in a position to plead and prove before the Special Court that there are grounds to believe that he/she is not guilty of such offence, so as to avail the relief of bail. Therefore, communication of the grounds of arrest, as mandated by Article 22(1) of the Constitution and Section 19 of the Act of 2002, is meant to serve this higher purpose and must be given due importance.

33. We may also note that the language of Section 19 of the Act of 2002 puts it beyond doubt that the authorized officer has to record in writing the reasons for forming the belief that the person proposed to be arrested is guilty of an offence punishable under the Act of 2002. Section 19(2) requires the authorized officer to forward a copy of the arrest order along with the material in his possession, referred to in Section 19(1), to the Adjudicating Authority in a sealed envelope. Though it is not necessary for the arrested person to be supplied with all the material that is forwarded to the Adjudicating Authority under Section 19(2), he/she has a constitutional and statutory right to be 'informed' of the grounds of arrest, which are compulsorily recorded in writing by the authorized officer in keeping with the mandate of Section 19(1) of the Act of 2002. As already noted hereinbefore, it seems that the mode of informing this to the persons arrested is left to the option of the ED's authorized officers in different parts of the country, i.e., to either furnish such grounds of arrest in writing or to allow such grounds to be read by the arrested person or be read over and explained to such person.

39. On the above analysis, to give true meaning and purpose to the constitutional and the statutory mandate of Section 19(1) of the Act of 2002 of informing the arrested person of the grounds of arrest, we hold that it would be necessary, henceforth, that a copy of such written grounds of arrest is furnished to the arrested person as a matter of course and without exception. The decisions of the Delhi High Court in *Moin Akhtar Qureshi* (supra) and the Bombay High Court in *Chhagan Chandrakant Bhujbal* (supra), which hold to the contrary, do not lay down the correct law. In the case on hand, the admitted position is that the ED's Investigating Officer merely read out

or permitted reading of the grounds of arrest of the appellants and left it at that, which is also disputed by the appellants. As this form of communication is not found to be adequate to fulfil compliance with the mandate of Article 22(1) of the Constitution and Section 19(1) of the Act of 2002, we have no hesitation in holding that their arrest was not in keeping with the provisions of Section 19(1) of the Act of 2002. Further, as already noted supra, the clandestine conduct of the ED in proceeding against the appellants, by recording the second ECIR immediately after they secured interim protection in relation to the first ECIR, does not commend acceptance as it reeks of arbitrary exercise of power. In effect, the arrest of the appellants and, in consequence, their remand to the custody of the ED and, thereafter, to judicial custody, cannot be sustained.”

13. Turning to the next decision dealing with Section 45 of PMLA, when it comes to the question of grant or refusal of bail, the Supreme Court in Tarun Kumar Vs. Assistant Director Directorate of Enforcement⁵ in paragraph Nos. 13, 14, 15 and 17 observed thus:

“13. Keeping in view of the aforesaid legal position let us consider the submissions made by the learned counsels for the parties. It is trite that the court while considering an application seeking bail, is not required to weigh the evidence collected by the investigating agency meticulously, nonetheless, the court should keep in mind the nature of accusation, the nature of evidence collected in support thereof, the severity of the punishment prescribed for the alleged offences, the character of the accused, circumstances which

5 2023 SCC OnLine SC 1486

are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witness being tampered with, the larger interests of the public/State etc. Though, the findings| recorded by the Court while granting or refusing bail would be tentative' in nature, nonetheless the Court is expected to express prima facie opinion for granting or refusing to grant bail which would demonstrate an application of mind, particularly dealing with the economic offences.

14. The first and foremost contention raised by learned Senior Counsel Mr. Luthra would be that the appellant was not named in the FIR nor in first three prosecution/supplementary complaints and has been implicated only on the basis of the statements of witnesses recorded pursuant to the summons issued under Section 50 of the PML Act, without there being any material in support thereof.

15. In our opinion, there is hardly any merit in the said submission of Mr. Luthra. In *Rohit Tandon V. Directorate of Enforcement*, a three Judge Bench has categorically observed that the statements of witnesses/accused are admissible in evidence in view of Section 50 of the said Act and such statements may make out a formidable case about the involvement of the accused in the commission of a serious offence of money laundering. Further, as held in *Vijay Madanlal (supra)*, the offence of money laundering under Section 3 of the Act is an independent offence regarding the process or activity connected with the proceeds of crime which had been derived or obtained as a result of criminal activity relating to or in relation to a scheduled offence. The offence of money laundering is not dependent or linked to the date on which the scheduled offence or predicate offence has been committed. The relevant date is the date on which the person

indulges in the process or activity connected with the proceeds of crime. Thus, the involvement of the person in any of the criminal activities like concealment, possession, acquisition, use of proceeds of crime as much as projecting it as untainted property or claiming it to be so, would constitute the offence of money laundering under Section 3 of the Act.

17. As well settled by now, the conditions specified under Section 45 are mandatory. They need to be complied with. The Court is required to be satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and he is not likely to commit any offence while on bail. It is needless to say that as per the statutory presumption permitted under Section 24 of the Act, the Court or the Authority is entitled to presume unless the contrary is proved, that in any proceedings relating to proceeds of crime under the Act, in the case of a person charged with the offence of money laundering under Section 3, such proceeds of crime are involved in money laundering. Such conditions enumerated in Section 45 of PML Act will have to be complied with even in respect of an application for bail made under Section 439 Cr.P.C. in view of the overriding effect given to the PML Act.”

14. The Delhi High Court in Prakash Industries Limited (supra) made observations which need to be kept in mind. In paragraph No.86, it is observed that ED stands empowered under the PMLA to try offences relating to money laundering. It neither stands conferred the authority nor the jurisdiction to investigate or to enquire into an

offence other than that which stands comprised in Section 3. In paragraph No. 87 it is observed that what needs to be emphasised is that the PMLA empowers the ED to investigate Section 3 offences only. Its power to investigate and enquire stands confined to the offence of money laundering as defined in that section. However, the same cannot be read as enabling it to assume from the material that it may gather in the course of that investigation that a predicate offence stands committed. The predicate offence has to be necessarily investigated and tried by the authorities empowered by law in that regard. Then in paragraph No.88, it is observed thus:

"88. Regard must be had to the fact that initiation of action under Section 5 of the Act is premised on the competent authority having reason to believe that a person is in possession of proceeds of crime. The formation of opinion under the said provision is not related to the commission of a scheduled offence. Property, in order to be recognised even prima facie as being proceeds of crime must necessarily be preceded by "criminal activity relating to a scheduled offence". This is also evident from the use of the expressions "as a result of" and "derived or obtained" in Section 2(1)(u) of the Act. The evidence of criminal activity would be either a first information report, a complaint or a charge-sheet as envisaged under various statutes. However, in absence thereof, it would be wholly impermissible for the ED to itself

become the arbiter of whether a scheduled offence stands committed.”

15. Bearing in mind the aforementioned principles laid down, I now proceed to deal with the rival submissions.

16. The complaint filed by the MoEF is regarding violation of the EP Act and cheating. The allegations in brief pertain to the purchase of the land by Shri Anil Parab from Mr. Sathe. The allegations are that by exerting pressure building permissions are illegally obtained. Further, the construction is made in a no-development zone in violation of CRZ rules. Though the transaction between Mr. Sathe and Shri Anil Parab was of the year 2017, it is only in the year 2019 that the sale deed came to be executed. Hence, it is alleged that this is to conceal the identity by Shri Anil Parab. Shri Anil Parab later executed the sale deed in respect of the said land in favour of the present applicant. The applicant was always involved right from the inception in the transaction on behalf of Shri Anil Parab and in respect of all building permissions and other permissions. The sale in favour of the applicant by Shri Anil Parab was to protect Anil Parab as per the allegations as he was actively

associated with politics.

17. In the complaint filed by the respondent under Section 45 of the PMLA against various persons, wherein the applicant is arraigned as the accused No.1. In paragraph No.3.5 of the ECIR, it is clarified that in the instant PMLA case, there are two scheduled offences viz. complaint bearing no. 12 of 2022 dated 10/03/2022 for violations of Section 19 and Section 15 read with Section 7 of EP Act (being the schedule offence) against Shri Anil Dattatray Parab, M/s Sai Resort & others and FIR bearing No.177 of 2022 dated.08/11/2022 u/s 34, 166, 167, 188, 420, 467, 218, 471 & 120-B of IPC (Sections 420, 467, 471 being the scheduled offence) against Shri Anil Parab and others. The background of the case has been set out in detail in the complaint. After setting out the details of the investigation under the PMLA, statements recorded of various persons, details of arrests made during the course of investigations, money trail, estimation of proceeds of crime, details of provisional attachments of properties, result of investigation under the PMLA and the roles played by the accused is set

out.

18. So far as the present applicant is concerned, it is necessary to reproduce paragraph No.12.1 of the complaint pertaining to the role of the applicant. Paragraph No. 12.1 of the complaint reads thus:

"Accused Sadanand Kadam acted on behalf of Anil Parab to negotiate the purchase of agricultural land admeasuring 42 Gunta located at Gut No.446, Murud Dapoli. Ratnagiri knowing very well that the said land falls within Costal Regulation Zons-Ill which is No Development Zone and any new construction is strictly prohibited therein as per Costal Regulation Zone Notification of 2011.

Further, Sadanand Kadam in connivance with Vinod Depolkar and on the instance of Shri Anil Parsb filed an application for conversion of the said land into non agriculture for the purpose of construction of Twin Bungalow, under the forged signature of erstwhile owner Vibhas Sathe. Thereafter, Sadanand Kadam influenced and pressurized Revenue Department Authorities viz. Jayram Deshpande, the then SDO, Dapoli & Sudhir Shantaram Pardule, the then Circle officer, Dapoll, for acquiring illegal permission for conversion as well as construction over the said Agricultural Land and only after that Revenue Department authorities granted illegal permission for conversion of the said land into non-agricultural and construction therein.

Sadanand Kadam on behalf Shri Anil Parab also looked after the construction of unauthorized structure and changed the construction plan to resort viz. Sai Resort NX even though the construction plan approved by Revenue

Department was of Twin Bungalow. Further, Sadanand Kadam on behalf of Anil Parab had again used influence of Anil Parab, the then MLC and pressurized Suresh Shankar Tupe, Sarpanch & Anant Koli, Gram Sevak of Murud Gram Panchayat to assess & levy the tax immediately on the said unauthorized and illegal resort and to make entries in Gram Panchayat Form No.S, therefore, tax was levied on the incomplete structure due to pressure and influence of Shri Anil Parab used by Sadanand Kadam.

Accused Sadanand Kadam has also manipulated the balance sheets and invoices in order to show expenses made for the construction of Sai Resort NX on his account and further falsified the ledger so that to justify the construction cost and hide the actual expenses made in cash by Shri Anil Parab.

In furtherance to this, when various complaints regarding the illegal construction of Sai Resort NX transpired, Accused Sadanand Kadam helped Shri Anil Parab to shift the onus and to conceal the illegalities and irregularities vis a vis construction of the said resort within CRZ-III i.e. No Development Zone, made a make-believe arrangement with Sadanand Kadam and sold the said land to him on paper, however, the fact that there was a structure over the said land was once again not brought into light in the said sale deed.

Thus, accused Sadanand Kadam by acts of using, utilizing and projecting the said property viz. Sai Resort NX (proceeds of crime), as untainted, has indulged in money laundering activities in terms of Section 3 of PMLA, 2002 and based on the investigation conducted, he was arrested on 10.03.2022 under the provisions of Section 19 of the PML Act, 2002 for his role in money laundering activities.

Accused Sadanand Kadam, therefore, was an active participant in the generation of proceeds of crime and actually involved in the laundering of the said proceeds of crime as defined under Section 3 and is liable for punishment under Section 4 of PMLA, 2002."

19. In the complaint it is alleged that the applicant is involved in the transaction which included the purchase of land, construction, permission etc. right from the inception. The complaint then sets out the allegation as to why the applicant lent his name and became the owner of the property, which was to cover up the criminality and shift the onus as well as the consequences on himself from Shri Anil Parab. The relevant paragraphs are 13.16, 13.17 and 14.2 of the complaint.

20. In the context of the submissions of the learned senior advocate Shri Desai that the rigours of Section 45 of the PMLA will not be applicable for releasing the applicant on bail, as the applicant can not be said to be accused of money laundering a sum of more than Rs. 1 Crore, it is important to refer to paragraph No.9 of the complaint which sets out the details regarding the estimation of proceeds of crime. Paragraph No.9, being relevant is reproduced as

under:-

“Estimation of the proceeds of crime:-

9.1 Accused Sadanand Kadam and Shri Anil Parab while having complete knowledge that land admeasuring area 42.14 Gunta (over an Acre) located at Gat No.445, Marud, Tehsil Dapoli, Ratnagiri, Maharashtra falls within prohibited CR-III area which is "No Development Zone", indulged into purchase of the said land from Shri Vibhas Rajaram Sathe for construction of a twin bungalow/ resort. Further, accused Sadanand Kadam helped Shri Anil Parab to utilize his unaccounted money in cash amounting to Rs.80 Lac for purchase of the said land.

9.2 Accused Sadanand Kadam in connivance with Vinod Depolkar and on the instance of Shri Anil Parab, illegally acquired the permission for conversion of the said land into non-Agricultural and construction of Twin bungalow (Ground+ 1 Floor) and subsequently constructed a resort (Ground+ 2 Floors) inspite of having illegal permission for construction of twin bungalow. Further, in order to legitimize the said illegal resort accused Sadanand Kadam with the help of Shri Anil Parab deceived Gram Panchayat, Murud by stating that he had purchased land and structure from Shri Vibhas Sathe. Further, without completion of the construction, accused Sadanand Kadam pressurized and influenced Sarpanch & Gram Sevak of Murud Gram Panchayat and asked them to asses and levy tax on the illegal structure and transfer the title in the name of Shri Anil Parab and accordingly paid tax of Rs.46806/- in 2019. Shri Anil Parab while acquiring electricity connection through his application dated.02.03.2020, himself admitted that construction is under progress over the said land.

9.3 Throughout the construction period of Sai Resort NX, Accused Sadanand Kadam helped Shri Anil Parab, to conceal the fact that the said resort was being constructed by him. Both the said deed in r/o land located at Gut No.446, Murud, Dapoli, Ratnagiri i.e. Sale deed dated. 19.06.2019 between Shri Vibhas Sathe and Shri Anil Parab & Sale deed dated. 30.12.2020 between Shri Anil Parab and accused Sadanand Kadam does not have any mention of construction over the said land parcel. This was done purposefully to conceal the identity of the real owner of resort.

9.4 As per the definition under the Act, proceeds of crime are either the property derived or brained as a result of criminal activities relating to a scheduled offence or the value of such property or where such property is taken or held outside the country then the property equivalent in value held within the country or abroad. The term "property" also includes property of any kind used in the commission of an offence under this Act or any of the scheduled offences. Sa: Resort NX had been constructed on the said land in violation of CRZ rules as well as through forgery, misdeclaration & cheating by obtaining illegal permission in violation of CRZ-III rules, which specifically prohibits any construction in the CRZ -III. Therefore, the same is proceeds of crime in terms of Explanation to Section 2(1) (v) of the PMLA, 2002

9.5 As elaborated above, accused Sadanand Kadam in connivance with Shri Vinod Depolkar and on the instance of Shri Anil Parab entered into a criminal conspiracy to illegally obtain the permissions for construction on the said agricultural land under the forged signature of Shri Vibhas Sathe and even pressurized and used influence of Shri Anil Parab on Revenue Department authorities namely Jayram Vinsyak Deshpande, the then SDO, who had then taken

false and fabricated inspection report, panchanama and statement of Vibhas Sathe, on record and granted permission. Further, to make the whole transaction legitimate, Accused Sadanand Kadam with the help of Shri Anil Parab, deceived, pressurized, cheated & influenced the Gram Panchayat, Murud, Dapoli for assessment & levying of tax on the said resort.

9.6 Thus, in the instant case, total proceeds of crime in terms of section 2(1)(u) of PMLA, 2002, r/w explanation to Section 2 (1)(v) of the Act, 2002, is land for which illegal permission was acquired for conversion into Non-Agricultural and used in commission of schedule offence and Sai Resort NX which has been generated out of criminal activities i.e. cheating, forgery, misdeclaration.

9.7 During the search proceedings on 26.05.2022 at the premise of "Sai Resort NX" located at Gat No.446, Murud, Tehsil Dapoli, Ratnagiri, Maharashtra, valuation of the said resort was conducted by M/s L B M Valuers & Engineers in the presence of Panchas. The valuation report was submitted on 03.06.2022 by M/s L B M Valuers & Engineers and as per the valuation report value of land is Rs.2,73,91,000 and the Resort was valued at Rs.7,46,47,000/-.

9.8 Thus, in the instant case, total proceeds of crime in terms of section 2(1)(u) of PMLA, 2002, r/w explanation to Section 2 (1)(v) of the Act, 2002, is value of land i.e. Rs. 2,73,91,000 for which illegal permission was acquired for conversion into Non-Agricultural and used in commission of offence and value of resort i.e. Rs. 7,46,47,000 which has been generated out of criminal activities i.e. cheating the government authorities. Thus, total proceeds of crime in the instant case is Rs. 10,20,38,000/-".

21. I, *prima facie*, do not find any substance in the submission of the learned senior advocate Shri Desai that the accusations in the present case of money laundering involve a sum of less than Rs. 1 Crore for enabling the applicant to claim the benefit of the first proviso to section 45 of the PMLA. It is for this reason that the estimation of proceeds of crime as set out in the complaint is reproduced hereinbefore. Though learned senior advocate Shri Desai was at pains to point out that the accusations of money laundering against the applicant are for a sum of less than one crore rupees, having regard to the materials in the complaint, I am of the *prima facie* opinion that arriving at this conclusion will entail a detailed fact-finding exercise which may not be permissible at the stage of considering the bail application.

22. Let me consider the submission of learned senior advocate Shri Desai that there is no predicate offence. So far as the private complaint filed by the MoEF is concerned, the revisional Court has set aside the process issued by the trial Court. The order dated 09/11/2022 issuing process was

never challenged by the MoEF. The JMFC by order dated 09/11/2022 issued process under the provisions of EP Act i.e. Sections 5 and 7 read with Section 15 of the EP Act. In my opinion, once the process is quashed, there cannot a predicate offence only because the complaint is pending before the JMFC. To this extent, I am in agreement with the learned senior advocate for the applicant that there is no predicate offence so far as the private complaint filed by the MoEF being RCC No. 12 of 2022 is concerned. No doubt, the challenge to the order passed by the revisional Court quashing the process is pending in this Court but the order of the revisional Court has not been stayed. The applicant can not, therefore, be deprived of the fruits of the order passed by the revisional Court merely because the Writ Petition challenging the revisional Court's order is pending in this Court. It is always open for the respondent to take such steps in accordance with law in case the MoEF succeeds in the Writ Petition.

23. However, so far as FIR No. 177 of 2022 is concerned, it relates to the scheduled offence. Though, the writ petition

is pending in this Court for quashing FIR No. 177 of 2022, mere pendency of the Writ Petition is not sufficient to hold that there is no predicate offence. Furthermore, merely because the applicant is not an accused in FIR No. 177 of 2022 cannot afford protection to the applicant from a prosecution under the PMLA in the light of the observations of the Supreme Court in 'Pavana Dibbur' (supra).

24. It is not necessary that a person against whom the offence under Section 3 is alleged must have been shown as an accused in the scheduled offence. The conditions precedent for attracting the offence under Section 3 of the PMLA are that there must be proceeds of crime in relation to the scheduled offence as defined in clause (u) of subsection(1) of Section 3 of the PMLA.

25. Learned senior advocate Shri Desai submitted that the accusations in FIR No. 177 of 2022 is almost identical with those in RCC No. 12 of 2022 and hence the applicant can not be vexed twice for the same cause of action. I am afraid that this contention can not be accepted for more than one reason. FIR No. 177 of 2022 though may be in relation to

the same property but is filed at the instance of a different entity and against so many accused who are not concerned with the private complaint of MoEF. FIR No. 177 of 2022 encompasses a range of offences under the IPC including sections pertaining to cheating (Section 420), forgery (Section 467 and 471) and criminal conspiracy (Section 120-B) coupled with offences under P.C. Act (Sections 12, 13 and 14). These offences apart from financial irregularity suggesting a deliberate attempt to misuse public office for personal gain, are regarding manipulating official documents and deceiving stakeholders. The offences in FIR No. 177 of 2022 suggest fraudulent activities and document falsification, key elements that potentially link to money laundering activities under the PMLA. Having carefully perused the accusations in the private complaint of MoEF and in respect of FIR No. 177 of 2022, it is not possible for me to come to a conclusion that the accusations are identical. In any case, proceedings for quashing of FIR No. 177 of 2022 are pending in this Court. Thus, FIR No. 177 of 2022 is alive and not yet quashed.

26. Further, the PMLA case instituted by the ED specifically sets out two scheduled offences which include FIR No. 177 of 2022 dated 08/11/2022 under Section 34, 166, 167, 188, 420, 467, 218, 471, and 120-B IPC (Section 420, 467, 471 being the scheduled offence) i.e. against Shri Anil Parab and others. As seen earlier, property as per Section 2(1)(v) means any property or assets of any description whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located. The applicant has an interest in the property which is the subject matter of the FIR No. 177 of 2022. The proceeds of crime is defined as any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence. A reading of the PMLA complaint would clearly go to show the allegations are that the subject property is derived or obtained, directly or indirectly, by the applicant as a result of criminal activity relating to a scheduled offence. Further, in my opinion, *prima facie*, the applicant can be said to have

directly or indirectly attempted to indulge or knowingly assisted or is knowingly a party or actually involved in process or activity connected with proceeds of crime and projected it as untainted property.

27. Though learned senior advocate Shri Desai was at pains to rely upon Section 202 of Cr.P.C. report in the private complaint of MoEF, according to me, such a report is specific to the private complaint instituted by the MoEF. This report under Section 202 can not be the sole basis for absolving the applicant if otherwise from the material the accusations regarding offence of money laundering is made out. So far as the statements of Mr. Vibhas Sathe recorded under Section 50 of the PMLA are concerned, at this stage the same can not be discarded only on the ground that more weightage should be given to the statements recorded by the police under Section 161 of the Cr.P.C. The distinction as regards the statement made under Section 161 of Cr.P.C. with the evidentiary value of the statement made under the PMLA has to be kept in mind.

28. As regards the submission of learned senior advocate Shri Desai as to the legitimacy of the transaction in question, the same requires a detailed analysis and examination on the merits of the case. It is not possible to express any opinion as regards the legitimacy of the transactions at this stage which requires an indepth analysis.

29. The next contention of learned senior advocate Shri Desai is regarding the non-compliance of Section 19 of PMLA. A copy of the arrest memo tendered by the respondents during the hearing indicates that the grounds of arrest were explicitly read and explained to the applicant. The signature of the applicant on the memo, accompanied by the term "Dekha" (translated as "seen and read"), indicates that the applicant was made aware of and understood the reasons for the arrest. The applicant's son has also recorded a note in the arrest memo, stating that the grounds of arrest were read over and explained. From the materials on record, it is not possible for me to arrive at the conclusion that due process was not followed or that the

applicant was not duly informed about the arrest as per the requirements of law. Further, from the copy of the reason to believe and grounds of arrest served on the applicant, it appears that the same, according to me, complies with the requirement of Section 19 of PMLA.

30. Let me now deal with the submission of the learned senior advocate Shri Desai that there is no separate ECIR registered in respect of FIR No. 177 of 2022 and hence it can not be said that there is no predicate offence for the purpose of PMLA. The ECIR was registered on the basis of the MoEF complaint. No doubt, process issued under the MoEF complaint was quashed by the revisional Court. However, the complaint under Section 45 of the PMLA before the Special Court concerns the MoEF complaint as well as FIR No. 177 of 2022. Some of the offences pertaining to FIR No. 177 of 2022 are the scheduled offences. The complaint is filed on the basis of the materials which form a part of the investigation into the MoEF complaint as well as the FIR No. 177 of 2022. In my opinion, merely because a separate ECIR is not registered

on the basis of FIR No. 177 of 2022 will not render the complaint inconsequential. Paragraph Nos. 456 and 457 of the decision in Vijay Madanlal Chaudhary (supra) is a complete answer to this submission of the learned senior advocate. For ease of reference, the said paragraphs are reproduced as under:

“456. As per the procedure prescribed by the 1973 Code, the officer in-charge of a police station is under an obligation to record the information relating to the commission of a cognizable offence, in terms of Section 154 of the 1973 Code. There is no corresponding provision in the 2002 Act requiring registration of offence of money-laundering. As noticed earlier, the mechanism for proceeding against the property being proceeds of crime predicated in the 2002 Act is a sui generis procedure. No comparison can be drawn between the mechanism regarding prevention, investigation or trial in connection with the scheduled offence governed by the provisions of the 1973 Code. In the scheme of 2002 Act upon identification of existence of property being proceeds of crime, the Authority under this Act is expected to inquire into relevant aspects in relation to such property and take measures as may be necessary and specified in the 2002 Act including to attach the property for being dealt with as per the provisions of the 2002 Act. We have elaborately adverted to the procedure to be followed by the authorities for such attachment of the property being proceeds of crime and the follow-up steps of confiscation upon confirmation of the provisional attachment order by the Adjudicating Authority. For facilitating the Adjudicating Authority to confirm the

provisional attachment order and direct confiscation, the authorities under the 2002 Act (i.e., Section 48) are expected to make an inquiry and investigate. Incidentally, when sufficient credible information is gathered by the authorities during such inquiry/investigation indicative of involvement of any person in any process or activity connected with the proceeds of crime, it is open to such authorities to file a formal complaint before the Special Court naming the concerned person for offence of money-laundering under Section 3 of this Act. Considering the scheme of the 2002 Act, though the offence of money-laundering is otherwise regarded as cognizable offence (cognizance whereof can be taken only by the authorities referred to in Section 48 of this Act and not by jurisdictional police) and punishable under Section 4 of the 2002 Act, special complaint procedure is prescribed by law. This procedure overrides the procedure prescribed under 1973 Code to deal with other offences (other than money-laundering offences) in the matter of registration of offence and inquiry/investigation thereof. This special procedure must prevail in terms of Section 71 of the 2002 Act and also keeping in mind Section 65 of the same Act. In other words, the offence of money-laundering cannot be registered by the jurisdictional police who is governed by the regime under Chapter XII of the 1973 Code. The provisions of Chapter XII of the 1973 Code do not apply in all respects to deal with information derived relating to commission of money-laundering offence much less investigation thereof. The dispensation regarding prevention of money-laundering, attachment of proceeds of crime and inquiry/investigation of offence of money-laundering upto filing of the complaint in respect of offence under Section 3 of the 2002 Act is fully governed by the provisions of the 2002 Act itself. To wit, regarding survey,

searches, seizures, issuing summons, recording of statements of concerned persons and calling upon production of documents, inquiry/Investigation, arrest of persons involved in the offence of money-laundering including bail and attachment, confiscation and vesting of property being proceeds of crime. Indeed, after arrest, the manner of dealing with such offender involved in offence of money-laundering would then be governed by the provisions of the 1973 Code - as there are no inconsistent provisions in the 2002 Act in regard to production of the arrested person before the jurisdictional Magistrate within twenty-four hours and also filing of the complaint before the Special Court within the statutory period prescribed in the 1973 Code for filing of police report, if not released on bail before expiry thereof.

457. Suffice it to observe that being a special legislation providing for special mechanism regarding inquiry/investigation of offence of money-laundering, analogy cannot be drawn from the provisions of 1973 Code, in regard to registration of offence of money-laundering and more so being a complaint procedure prescribed under the 2002 Act. Further, the authorities referred to in Section 48 of the 2002 Act alone are competent to file such complaint. It is a different matter that the materials/evidence collected by the same authorities for the purpose of civil action of attachment of proceeds of crime and confiscation thereof may be used to prosecute the person involved in the process or activity connected with the proceeds of crime for offence of money-laundering. Considering the mechanism of inquiry/investigation for proceeding against the property (being proceeds of crime) under this Act by way of civil action (attachment and confiscation), there is no need to formally register an ECIR, unlike registration of an FIR by the

jurisdictional police in respect of cognizable offence under the ordinary law. There is force in the stand taken by the ED that ECIR is an internal document created by the department before initiating penal action or prosecution against the person involved with process or activity connected with proceeds of crime. Thus, ECIR is not a statutory document, nor there is any provision in 2002 Act requiring Authority referred to in Section 48 to record ECIR or to furnish copy thereof to the accused unlike Section 154 of the 1973 Code. The fact that such ECIR has not been recorded, does not come in the way of the authorities referred to in Section 48 of the 2002 Act to commence inquiry/investigation for initiating civil action of attachment of property being proceeds of crime by following prescribed procedure in that regard.”

(emphasis mine)

31. It is also necessary to deal with the submission of learned senior advcoate Shri Desai that FIR No. 177 of 2022 was registered just prior to the issuance of the process in the MoEF complaint only to frustrate the rights of the applicant in case the process is quashed. It is the submission that the act of registering FIR No. 177 of 2022 is malafide action on the part of the respondent. A reading of the MoEF complaint and the FIR No. 177 of 2022 indicates that though the property may be the same but the allegations made are in different context on the basis of the

complaint filed by the separate entities. It is not possible to render a finding of malafide at this stage.

32. I have perused the order passed by the trial Court rejecting the application for bail. I am in agreement with the opinion expressed by the trial Court.

33. No doubt this Court while considering twin test of Section 45 of the PMLA has to consider the broad probabilities of the case, however, having regard to the nature of the accusations and the materials on record, it is not possible to record a satisfaction that there are reasonable grounds for believing that the applicant is not guilty of such offence.

34. The application stands rejected and disposed of accordingly.

(M. S. KARNIK, J.)