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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Judgment reserved on : 10.11.2023*

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Judgment pronounced on: 29.11.2023

+ BAIL APPLN. 1814/2023

AVTAR SINGH KOCCHAR @ DOLLY Petitioner

Through: Mr. Vikas Pahwa, Sr. Adv. with Mr. Shamshuddin, Mr. Mrinal Bharti, Mr. Anup Kumar Pandey, Ms. Sanskriti Gupta, Mr. Shishir Pandey, Mr. Garvit, Ms. Sanjana Srivastava, Advs.

versus

ENFORCEMENT DIRECTORATE Respondent

Through: Mr. Zoheb Hossain, Spl. Counsel for ED with Mr. Vivek Gumani, Mr. Kartik Sabharwal, Mr. Vivek Gaurav, Advs.

CORAM:**HON'BLE MR. JUSTICE DINESH KUMAR SHARMA**

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J U D G M E N T



DINESH KUMAR SHARMA, J.

FACTUAL MATRIX

1. The present bail application has been moved under Section 439 Cr.P.C. read with Sections 45 and 65 of the Prevention of Money Laundering Act, 2002 on behalf of the petitioner seeking bail in ECIR No. ECIR/DLZO-II/54/2021 Zone Delhi zone II dated 08.08.2021.
2. The facts in brief as stated by the Directorate of Enforcement (ED) are as under:
 - i. That Special Cell / Delhi Police registered FIR no. 208/2021 dated 07.08.2021, u/s 170, 384, 386, 388,9, 420, 506, 120B IPC and 66D of Information Technology Act, 2000 against unknown persons, upon the complaint of one Smt. Aditi Shivender Singh. The said complaint pertains to the extortion of money to the tune of Rs. 200 Crores. Since the FIR no. 208/2021 contained sections provided under the scheduled offences of part A of PMLA, ED (Delhi Zone Office -II) recorded ECIR no. ECIR/ DLZO -II/ 54/ 2021 on 08.08.2021 to investigate the offence of money laundering. The prelude to the present ECIR relates to the investigation pertaining to another ECIR/ DLZO -II/05/2019 related to Religare Finvest Ltd. During the investigation of the said ECIR, it was noticed that AD Singh made some financial transactions with Aditi Shivender Singh. Based on this, Aditi Shivender Singh was summoned on 17.06.2021 in case ECIR/ DLZO-II/ 05/ 2019 and her statement u/ s 50 PMLA was recorded and she also tendered her iPhone



having IMEI No. 354858096914919. The said phone was sent for forensic analysis to the Directorate of Forensic Science, Gandhi Nagar. The analysis of the call data record (CDR) of the her iPhone- X IMEI no. above-mentioned mobile showed multiple calls from the numbers belonging to Union Government Officers and Ministries of the Govt, of India including Home Minister Office as well as PMO etc., were made. These numbers (for the purposes of reference) are 01123386974, 01123383674, 01123438113, 01123013040, 23012613, 01123017256, 01123500000, 01123092548, 23014844, 23013485 and 01123094686. 01123094686, Since these phone numbers pertained to the Union Government, CDRs of these numbers were called and verified. The analysis of the CDR and these numbers showed that the calls on the number of Aditi Singh were not made from the above mentioned numbers. This means that even though the above mentioned numbers were figuring in the CDRs of Aditi Singh but the outgoing calls from these numbers to Aditi Singh were not found in their respective CDRs.

- ii. That upon further investigation, it was revealed that these were the spoofed calls made through some application which enable the caller to hide his real number and choose the number that the caller intends to reflect on the screen of the recipient . Further investigation of call log retrieval showed certain telegram calls saved as "111LD" on various dates. During investigation, screenshot of a message exchanged between



111LD and Aditi Singh was found, which was a conversation between Aditi Singh and one Abhinav. The number associated with 111LD was +16692594162. Thereafter, during investigation, Aditi Singh was confronted with phone data and other evidences on which she revealed that she was receiving calls from various Government offices including Law Ministry. It was further revealed that one person Anup Kumar, Union Law Secretary had called her and expressed his intention to resolve the issues related to her husband and family. The caller also revealed to Aditi Singh that he is calling on the instructions of top government authorities and after this, a junior named Abhinav would call her and take the matter forward. Aditi Singh further stated that she was directed to download telegram and Abhinav called her on telegram app. After few calls, Anup Kumar stated that she needed to contribute towards party funds and further that Abhinav intimated that they are willing to accept money anywhere in the world stating that party 'BJP' takes funds in bonds / foreign contribution . Thereafter, the first payment was made in Hongkong and due to confusion in the amount to be delivered ; rest of the amount was delivered in India in cash . The cash in Hongkong was collected by the representative of Abhinav . Aditi Singh also stated that demands kept on growing and she had to liquidate all her assets. The cash was generated through jewellers and hawala operators and was delivered in various parts in Delhi.



- iii. That it was also informed by Aditi Singh that she was instructed by Abhinav to buy a small basic phone on which Anoop Kumar could call as the mobile phone has already been tendered in the ED and Anoop Kumar would speak to her from official landlines. Aditi Singh informed that she was using mobile number 9821942777 and the same was put on surveillance for further investigation.
- iv. Investigation also revealed that it was only Abhinav who could make calls to Aditi and Aditi could only message him. It was also found that sister and brother of Aditi Singh were also in touch with the said Abhinav. The sister Arundhati Singh deleted her telegram and as a result Abhinav was forced to call Arundhati on whatsapp. Through technical analysis, the IP address of the calls was traced and the numbers which accessed the IP address were analysed. From analysis, it was found that the caller was calling from 9311910260. The CDR of the number used by caller was investigated and it perfectly matched with the call made to Aditi Singh on 24.07.2021 from 23017580 at 2:05 PM. In one of the calls, caller identified himself as Ajay Bhalla, Home Secretary.
- v. That thereafter, with the help of technical analysis, location of the caller was found near Rohini area and recharge details were accordingly taken out. The CDR also revealed that the phone had travelled to Chennai and also the cell tower location was around Appollo Hospital. As the caller had south Indian accent and based on the conversation regarding his family and events



in the past including death of his father and the fact that he knew alot about the jail and location of mobile around the jail, investigation was conducted. Further, investigation revealed that the events described by Abhinav matched with the facts recorded in the bail / parole application of Sukash Chandra Shekhar which led to the belief that he was involved. Thereafter, Aditi Singh gave complaint of extortion thus, Delhi Police registered the . FIR and consequent ECIR.

- vi. After the investigation by the ED, first prosecution complaint was filed on 04.12. 2021 before the Ld. ASJ, Patiala House Court. In the prosecution complaint, ED has relied upon on 192 documents which include statements u/ s 50 of PMLA, Bank account statements, confrontation statements and other documents related to the proceeds of crime . In the first prosecution complaint, eight individuals were arrayed as accused persons including the present applicant. After this, three more supplementary prosecution complaint, were filed and the total number of accused persons are eleven. Further, Delhi police has also filed chargesheet in the FIR no. 208/ 2021, Special Cell and also invoked MCOCA i.e . Maharashtra Control of Organized Crime Act. The present accused is also chargesheeted under MCOCA being part of the organized crime syndicate.
- vii. The investigation revealed that Sukesh Chandra Shekhar procured mobile phone and contacted Ms. Aditi Singh in the month of June, 2020 by impersonating the Law Secretary,



Union of India and brain washed her and made her believe that Government will support her in all family and business issues and also that she is under constant surveillance and if she will not follow the protocols set by the Government then danger lies upon her, husband and children. In order to convince Aditi Singh, Sukesh Chandra Shekhar spoofed government numbers. Once the complainant Aditi Singh was convinced, extortion started and the money was delivered in India and abroad.

- viii. The money which was delivered by complainant Aditi Singh was picked by Deepak Ramnani (accused no.3) who was known to Sukesh Chandra Shekhar prior to the extortion, and the money was transferred within India and abroad through hawala channels. It is relevant to point out that Deepak Ramnani was involved in the hawala business and the name of Deepak Ramnani also came up in another ED case related to the owners of Unitech Group i.e., Sanjay Chandra and Ajay Chandra. In fact, Sukesh Chandra Shekhar admitted that Deepak Ramnani was introduced to him Sanjay Chandra.
- ix. The modus operandi was that demand was made by Sukesh Chandra Shekhar and a token number was given to Aditi Singh who would then pass it to the person delivering the cash. Once the place and time was fixed, Deepak Ramnani or Pardeep Ramdani would reach the place and takes the delivery in lieu of the token and once the cash was delivered, Aditi Singh got confirmation that the cash had been received. In the same way,



money was transferred to offshore locations using various companies.

- x. Since role of accused Deepak Ramnani surfaced as the persons responsible for picking the extorted money and thereafter, sending the proceeds of crime to various locations within India and abroad, accused Deepak Ramnani was arrested by ED on 05.10. 2021 and 14 days custody remand was given by the concerned court. During the custody, accused Deepak Ramnani admitted that he collected POC on the instruction of Sukesh Chandra Shekhar on various occasions from different locations in Delhi. He also admitted that he had delivered part of the said cash amount to accused Avtar Singh Kochar @ Dolly (Accused no.5) for further hawala transactions. The complicity of Deepak Ramnani in the crime is evident from the fact that he was fully aware that Sukesh Chandra Shekhar is in jail and despite that he undertook these transactions. The fact that money was sent to Avtar Sinah Kochar by Deepak Ramnani is also substantiated through the CDR of Deepak Ramnani's number 9311074841. It was also admitted by accused Deepak Ramnani that he had sent US dollar 83,000 into the bank account of G.J Walker in USA (sister of Jacqueline Fernandez) on the instructions of Sukesh Chandra Shekhar through accused Avtar Singh Kochar. It was also admitted by Deepak Ramnani that he had received Rs. 12 -15 Crores in India from Dubai through Avtar Singh Kochar on the instruction of Sukesh Chandra Shekhar. Further, a telegram number



+16692594162 was found in the contact list of accused Deepak Ramnani and the names of accused Leena and her mother were found mentioned in his phones which shows knowledge of Sukesh's family and their connection. It is also important to point out that other accused Pradeep Ramdani (brother of Deepak Ramnani) also admitted that he has collected money on the instruction of accused Deepak Ramnani from where various locations i. e. Green Park, Jor Bagh, Sagar Apartment, Tilak Marg from Aditi Singh, Manoj Mangla and Abhishek Singh and thereafter, delivered the cash as per the instruction of his brother.

- xi. Since the role of Avtar Singh Kochar surfaced, accused Avtar Singh Kochar was arrested on 12.10. 2021 and remanded to custody for 9 days. During his custody, accused Avtar Singh Kochar also admitted the fact that he has sent money via hawala during the period of Aug, 2020 to Aug, 2021 for Deepak Ramnani . It is relevant to point out that accused Avtar Singh Kochar is a well known hawala operator in the northern India and a key person in this case, responsible for disbursement of POC within India and outside India through hawala channels. It was also admitted by accused Avtar Singh Kochar that he knew accused Deepak Ramnani for the past 10-15 years through Raj Kumar (maternal uncle of Deepak Ramnani) . He also admitted that during the period, Aug, 2020 to Aug, 2021, accused Avtar Singh Kochar did hawala transactions to the tune of Rs. 50 Crores on the instructions of;



accused Deepak Ramnani. Out of these 50 Crores, around 6 - 7 Crores was sent within India and rest 43 - 44 Crores was sent abroad mainly Dubai.

- xii. During ED custody, Avtar Singh Kochhar admitted the facts with respect to sending money via Hawala during the period of August 2020 to August 2021 for Deepak Ramnani on various occasions. But he did not disclose the complete truth about the amount he received from Deepak Ramnani for hawala. Moreover, he did not disclose complete truth about doing hawala abroad during the period of August 2020 to August 2021 for Deepak Ramnani . Actually, he was the key person who was doing disbursement of proceeds of crime within India and outside India through his hawala channels and he is a well-known hawala operator in Northern India. He fled and remained underground till his arrest. Further in his statement recorded under Section 50 of PMLA,2002 on 13 / 10/ 2021, he stated that he procured one whatsapp number (he did not recollect the number) from Dubai to make calls to Deepak Ramnani mobile number 9810078900 and that due to fear, he destroyed that number after registering of a Police case against him.
3. The applicant/accused had preferred a bail application which was dismissed vide order dated 04.05.2023 by Ld. Trial Court, wherein the Ld. ASJ observe that the accused cannot claim absolute bail when the twin conditions of section 45 of PMLA are not satisfied. Moreover, as per the complaint applicant/accused was absconding and was avoiding



the judicial process. Therefore, the bail application of the applicant/accused was dismissed.

SUBMISSION ON BEHALF OF THE PETITIONER

4. Mr. Vikas Pahwa, learned senior counsel for the petitioner has submitted that the learned trial court has dismissed the bail application without any basis and the petitioner has been wrongly and maliciously dragged into criminal proceedings. Learned senior counsel has further submitted that the petitioner has been in custody for the last two years whereas punishment provided under Section 4 of the PMLA ranges from 3 to 7 years. It has further been submitted that the case is at an initial stage and the trial may take a long time. Learned senior counsel also submitted that the petitioner is around 69 years of age with multiple ailments and therefore taking into account the period of custody, the petitioner is entitled to be admitted to bail. Reliance has been placed upon *Sanjay Agarwal v. Directorate of Enforcement* 2022 SCC OnLine SC 1748, *Krishna Mohan Tripathi v. State through Enforcement Directorate* 2021 SCC OnLine SC 597, *Sharad T. Kabra v. Union of India* (2018) 14 SCC 493 *Chandra Prakash Khandelwal v. Directorate of Enforcement* 2023 SCC OnLine Del 1094.
5. Learned Senior counsel has further submitted that ED has failed to establish any link or nexus of the Petitioner to the main predicate offence of extortion of money or the main accused persons and therefore knowledge cannot be attributed to the petitioner. It has further been submitted that the petitioner has neither committed an offence of money laundering under section 3 punishable under section 4 of PMLA,



nor has derived or obtained directly or indirectly any “proceeds of crime” from a criminal activity relating to a scheduled offence. Learned senior counsel for the petitioner has submitted that the petitioner has no nexus or link whatsoever with accused No.1 nor with the alleged “*proceeds of crime*’. Learned senior counsel for the petitioner has further submitted that even in the prosecution complaint there is no material/evidence from which any *mens rea* can be attributed in connection with the scheduled offence or any proceeds of crime. It has further been submitted that in the absence of any legally admissible evidence and merely on the basis of hypothetical assumptions/notions, the petitioner cannot be kept in custody. Learned senior counsel has submitted that the allegations against the Petitioner are baseless, imaginary and devoid of any merit. Learned senior counsel for the petitioner has invited the attention of the court to the statement under Section 50 recorded on 12.10.2021 and 16.10.2021, wherein there is no material to link the accused with the main accused or the predicate offence. Learned senior counsel has submitted that even in his statement under Section 50 of PMLA dated 13.10.2021, the petitioner has stated that he came to know of accused no.1 only after his arrest. Learned senior counsel submitted that merely on the basis of allegations, *mens rea* cannot be attributed to the petitioner.

6. Learned senior counsel has further submitted that the petitioner was neither named in the main FIR nor linked to the extortion racket being run by the main accused person. Learned senior counsel has also submitted that the entire case of the ED is based on three types of disclosure statements i.e. disclosure statement of petitioner, co-accused



and employees of the petitioner. Learned senior counsel has further submitted that it is a settled law that the veracity of the statement under Section 50 of PMLA can be tested at the stage of trial. Learned senior counsel for the petitioner has also submitted that in view of the judgment *Vijay Madanlal Choudhary v. Union of India* 2022 SCC OnLine SC 929, if the statement under Section 50 of PMLA has been recorded after the arrest, the applicability of Section 25 of the Evidence Act has to be considered on case to case basis being the rule of evidence. In regard to the evidentiary value of the statement under Section 50 of PMLA reliance has been placed upon *Chandra Prakash Khandelwal v. Directorate of Enforcement* 2023 SCC OnLine Del 1094.

7. Learned senior counsel has further submitted that even in the statement of Deepak Ramnani recorded on 17.10.2021, no knowledge can be attributed to the petitioner. Similarly, it has been stated that the statements of Narendra @ Sonu, Rishi, Ramesh Kumar and Rohit which are simply copied cannot be termed as true and voluntary disclosure. Learned senior counsel has also submitted that investigation qua the Petitioner is complete and there is no occasion for him to tamper with the evidence or influence the witnesses. It has further been submitted that as per Respondent, investigation is still in progress and therefore conclusion of trial shall take considerable time. In respect of the long incarceration and period of custody, learned senior counsel has also relied upon *Union of India v. K.A. Najeeb* (2021) 3 SCC 713 and *State of Kerala v. Raneef* (2011) 1 SCC 784.



8. Learned senior counsel for the petitioner has also submitted that Petitioner is not at all a “flight risk” and there is no probability of tampering with the evidence or influencing/ intimidating the witnesses. Reliance has been placed upon *P. Chidambaram v. Directorate of Enforcement* (2020) 13 SCC 791.
9. Learned senior counsel has submitted that at this stage, the court is not required to make a roving enquiry or to record a positive finding that the petitioner has not committed an offence under the Act. Learned senior counsel has submitted that the court is only required to evaluate on the broad probabilities. Reliance has been placed upon *Vijay Madanlal Choudhary (supra) and Sanjay Pandey v. Directorate of Enforcement* 2022 SCC OnLine Del 4279. Learned counsel has further submitted that the petitioner is aged about 69 years old, a COVID survivor who has been suffering from several geriatric illnesses and his health is deteriorating fast. Learned senior counsel has further submitted that the petitioner has no criminal antecedents and therefore petitioner is entitled to bail.

SUBMISSION ON BEHALF OF ED

10. Mr. Zoheb Hossain, Learned counsel for ED has submitted that during the course of the investigation, the following evidence has appeared against the petitioner:
- a) That the Applicant Sh Avtar Singh Kochhar admitted that Deepak Ramnani had been persuading him to transfer hefty amounts during August 2020. He admitted that he had transferred around



- 6- 7 crores in India and the rest 43 - 44 crores were transferred internationally mainly to Dubai. (RUD 44 Page 7 & 8).
- b) That Sh. Deepak Ramnani (A -3) admitted that when he used to collect cash from Aditi Singh, he either went and gave the cash personally to Avtar Singh Kochhar or sometimes it used to be picked up from his place (RUD 42 page 60).
- c) That Sh. Deepak Ramnani (A - 3) admitted that he transferred USD 83,000 to Ms. Geraldine J. Walker, sister of A - 10 Ms. Jacqueline Fernandez on the instructions of Sukesh Chandrashekhar through Avtar Singh Kochhar. (RUD 42 page 61) and the same find support from the transaction dated 11.03.2021 as contained in Bank account statement of Ms. Geraldine J. Walker (at Page 33 of the Supp . PC & RUD 258 at Page no. 9) . This fact further gets corroborated by the evidence that a sum of Rs. 2,50,32,516.00/ - in cash was collected by Deepak Ramnani @ Rohit on 10.03.2021 at Sagar Apartment (RUD 175 at Page 12) . This fact has also been admitted by the Applicant/ accused (RUD 44 at Page 8).
- d) That Sh. Deepak Ramnani (A - 3) admitted that the transactions that were done outside India i. e ., to Dubai on the instructions of Sukesh Chandrashekhar were done with the help of Avtar Singh Kochhar (RUD 42 page 72).
- e) That the prosecution witnesses namely, Narendra @ Sonu (Witness No . 48) , Paramjeet Singh (witness no. 49) , Rishi @ Harish (Witness no.50), Ramesh Kumar (Witness No . 51) admitted that they worked for Avtar Singh Kochhar and on his



directions had given and taken money to different parties in order to facilitate Hawala Transactions. They admitted having known Deepak Ramnani through Avtar Singh Kochhar as they used to give and take the said amounts in cash either at Deepak 's residence in Model Town or at any place that Deepak Ramnani would tell them to come to. They admitted that the transactions with Deepak Ramnani amounted to Rs. 7 crores in total as there was a dealing of around 30 – 40 every time.

f) That prosecution witness Sh. Paramjeet Singh s/ o Kulwant Singh (witness no . 49) who is one of the office boys/cash carriers of A-S has admitted that he knew Deepak Ramnani as he came to the office of Avtar Singh Kochhar at Karol Bagh in order to give or take the amount in cash. He also admitted that he had gone to Deepak Ramnani ' s house in Model Town for 2 - 3 times. He used to give approximately 40 - 50 lacs every time. (RUD 91 at Page 2 & 3) That it is most respectfully submitted that the evidences collected during the course of investigation prima facie makes out an offence of Money Laundering under Section 3 and punishable under Section 4 of the PMLA, 2002 against the applicant/ accused no. 5 Sh. Avtar Singh Kochar in the instant case.

11. Learned counsel has submitted that the evidence collected during the course of investigation, prima facie makes out an offence of money laundering under Sections 3 & 4 of PMLA. Learned Counsel has further been submitted that the accused was arrested on 12.10.2021 but after his arrest the petitioner did not disclose the complete truth about



the amount he received from Deepak Ramnani for hawala nor did he disclose the complete truth about doing hawala abroad during the period of August 2020 to August 2021 for Deepak Ramnani. Learned counsel for the ED has submitted that the gist of the statement given by the accused Avtar Singh Kochhar is as under:

- a) Avtar Singh Kochhar admitted that he was doing hawala on commission basis and used to send money within and outside India.
- b) He admitted knowing Deepak Ramnani since last 10 - 15 years through Rajkumar who is maternal uncle of Deepak Ramnani. Deepak Ramnani approached him for hawala transactions. From August - 2020 onwards the quantum of cash given by Deepak Ramnani for hawala transactions increased substantially.
- c) He stated that during the period August- 2020 to August- 2021 he did hawala transaction of Rs . 50 Crore to the best of his memory on the instruction of Deepak Ramnani. Out of these Rs. 50 crore, he has sent an amount of Rs. 6- 7 crore in India and around Rs.43-44 crore was sent abroad through hawala to mainly Dubai. He stated that money was sent by Deepak Ramnani to Pune (Rs.1.5 Crore), Mumbai (Rs.1Crore) Hyderabad (Rs.2 Crore), and Chennai (Rs . 2 Crore) through various angariyas (entry operators) of Kucha Mahajani of Chandani Chowk, New Delhi within India . On being asked about the hawala transaction abroad, Avtar Singh Kochhar @ Dolly stated that he sent around Rs. 3 crore to Hong Kong through a company named M/ s Evernice International Trading Limited for Deepak Ramnani. He



further stated that he sent around Rs. 70 lacs to USA and around Rs . 40 Crore to Dubai through his hawala channels.

- d) It was further stated that his 3 - 4 office boys who were working for him used to go to collect the cash from Deepak Ramnani's house located at Model Town, New Delhi or several times Deepak Ramnani himself handed over money to his office boys namely Pappu, Ramesh, Harish, Rohit, Sonu either at nearby location of his office situated in Karol Bagh, New Delhi or any other predetermined location. He further stated the name of angarias whom he has transferred the money for further transactions, was namely Lalu, Tiwari, Govind, PTI Ji, Ravi, Patel On - line and all are located in Kucha Mahajani, Chandani Chowk
- e) It was further stated that his 3 - 4 office boys who were working for him used to go to collect the cash from Deepak Ramnani's house located at Model Town, New Delhi or several times Deepak Ramnani himself handed over money to his office boys namely Pappu, Ramesh, Harish, Rohit, Sonu either at nearby location of his office situated in Karol Bagh, New Delhi or any other predetermined location. He further stated the name of angarias whom he has transferred the money for further transactions, was namely Lalu, Tiwari, Govind, PTI Ji, Ravi, Patel On - line and all are located in Kucha Mahajani, Chandani Chowk.



- f) He also stated that he sent money to Dubai to Rajkumar, Shetty, Ashok Patel, Rajiv Khurana, and Pankaj, who are hawala operators in Dubai for further transactions.
- g) Statements of Narender alias Sonu, Ramesh Kumar, Rohit, Paramjit Singh were recorded who confirmed the fact that they picked cash from the house of Deepak Ramanani from his residence as well as the location near his office and this cash was handed over for onward hawala and at times have also handed in cash received through Hawala transactions.
12. Learned counsel has submitted that the accused has been involved in the commission of the offence of money laundering which is an economic threat to national interest and with a deep conspiracy with the other accused persons. It has further been submitted that the accused did not cooperate with the investigation. Learned counsel has further been submitted that an offence under Section 3 of PMLA in the event of a direct or indirect attempt to indulge or knowingly assist or being knowingly party or being actually involved in "any process or activity" connected with the proceeds of crime and includes within its sweep the concealment, possession, acquisition, use, or projecting it as untainted property or claiming it to be as untainted property. It has further been submitted that Section 3 of the 2002 Act has a wider reach and captures every process and activity, direct or indirect, in dealing with the proceeds of crime and is not limited to the happening of the final act of integration of tainted property in the formal economy. Reliance has been placed upon *Vijay Madanlal Chaudhary & Ors. v. Union of India & Ors. SCC OnLine SC 929*. It has further been submitted that



the present case involves the laundering of a large amount of money and generating proceeds of crime therefrom. The Hon'ble Supreme Court, in its latest landmark judgment in the case of *Vijay Madanlal Chaudhary (supra)* observed that it is common to experience world over that money - laundering can be a threat to the good functioning of a financial system. However, it is also the most suitable mode for the criminals to deal in such money. It is the means of livelihood of drug dealers, terrorists, white-collar criminals and so on. Tainted money breeds discontent in any society and in turn leads to more crime and civil unrest. It has further been submitted Economic offences have deep-rooted conspiracies and is a grave offence and has to be dealt with strictly. Learned counsel has submitted that therefore the present application is liable to be dismissed.

13. In support of the contentions, learned counsel has relied upon *Vijay Madanlal Choudhary & Ors. vs. Union of India & Ors.* 2022 SCC OnLine SC 929, *Y Balaji vs. Karthik Desari and Anr* 2023 SCC OnLine SC 645, *Anoop Bartaria & Etc vs. Dy. Director Enforcement Directorate & 67-87 Anr.* SLP (Crl) No. 2397-2398 of 2019, **ED vs. M Gopal Reddy** SLP(Crl) 8260/2021, *Union of India vs. Varinder Singh* (2018) 15 SCC 248, *Union of India vs. Rattan Mallik* (2009) 2 SCC 624, *Satyendar Kumar Jain V. Directorate of Enforcement* BAIL APPLN. 3590/2022, *Rohit Tandon vs. Directorate of Enforcement* (2018) 11 SCC 46, **Radha Mohan Lakhotia vs. Directorate of Enforcement** 2010 SCC OnLine Bom 1116, *Dr. Manik Bhattacharaya vs. Ramesh Malik & Ors.* (2022) SCC OnLine SC 1465.



FINDING AND CONCLUSION

14. This court in *Sateyendra Kumar Jain vs. Directorate of Enforcement* Bail application no.3590/2022 and other connected cases while discussing the scope of Section 3 of PMLA inter alia held as under:

61. Before proceeding further, it is necessary to refer to the relevant provisions of PMLA. Section 3 of the PMLA defines the offence of money laundering. There are certain key words under Section 3 which can be noted - (i) directly or indirectly (ii) attempts to indulge; or knowingly assists; or knowingly is a party; or is actually involved in any process or activity connected (proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming) it as untainted property. Thus, if we read the definition minutely, it is necessary that a person must be directly/indirectly involved and such person should be taken as involved if he is connected in any manner with the proceeds of crime including its (i) concealment, (ii) possession, (iii) acquisition (iv) use, (v) projecting and (vi) claiming. Thus handling the proceeds of crime in any manner as stated above constitutes the offence of money laundering. An explanation has been added by the Finance Act, 2019 only for the removal of doubts.

62. Section 3 (ii) of PMLA provides that the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever. Bare perusal of the definition of “beneficial owner” as provided under Section 2 (1) (fa) of the Act makes it clear that it includes a person who exercises ultimate effective control over a juridical person.

*63. In the case of **Vijay Madanlal Choudhary and others vs. Union of India** (supra) it was inter alia held that 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. It was further held that the process or activity can be in any form — be it one of concealment, possession, acquisition, use of proceeds of crime as much as projecting it as untainted property or claiming it to be so. Therefore, involvement in any one such process or activity connected with the proceeds of crime would constitute offence of money-laundering. Thus, this offence has nothing to do with the criminal activity relating to a scheduled offence — except that the proceeds of crime derived or obtained as a result of that crime. In **Vijay Madanlal Choudhary and others** (supra) it was further held that the sweep of Section 5(1) of PMLA is not limited to the accused named in the criminal activity relating to a scheduled offence and it would apply to any person (not necessarily being accused in the scheduled offence), if he is involved in any process or activity connected with the proceeds of crime. Such a person besides facing the consequence of provisional attachment order may end up being named as an accused in the complaint filed by the Authorised Officer concerning the offence under Section 3 of the 2002 of PMLA. The proceeds of crime as defined under Section 3 of PMLA makes it clear that it is a very expansive definition and includes any person who either 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 as untainted properties or claiming untainted property in any manner. The intention of the legislature in enacting the PMLA is that money laundering poses a serious threat not only to the financial systems of countries but also to their integrity and sovereignty and, therefore, the legislature thought it fit to provide a comprehensive legislation for this purpose. Thus the courts while dealing with matters under PMLA have to take into account the object and purpose of legislation.”*



15. In regard to the discretion to be exercised at the stage of bail, it was inter alia held in ***Vijay Madanlal Chaudhary (supra) as under:***

388.Such twin conditions in the concerned provisions have been tested from time to time and have stood the challenge of the constitutional validity thereof. The successive decisions of this Court dealing with analogous provision have stated that the Court at the stage of considering the application for grant of bail, is expected to consider the question from the angle as to whether the accused was possessed of the requisite mens rea. The Court is not required to record a positive finding that the accused had not committed an offence under the Act. The Court ought to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. The duty of the Court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. Further, the Court is required to record a finding as to the possibility of the accused committing a crime which is an offence under the Act after grant of bail.”

16. It is a settled proposition that the court at the time of considering the bail cannot go into the meticulous examination. It was inter alia held in ***Vijay Madanlal Chaudhary (supra)***

68. The court while determining the issue of bail cannot go into meticulous examination of the facts nor it can examine probative value of the witnesses. The twin conditions under Section 45 of the PMLA provide that bail can be granted only if (i) the Public Prosecutor has been given an opportunity to oppose the application (ii) the court is satisfied that there are reasonable grounds for believing that accused is not guilty of such offence and (iii) the accused is not likely to commit any offence while on bail. Section 45 (ii) of PMLA specifically provides that limitation on granting of bail in sub-section (i) is in addition to the limitations under the Cr.P.C. or any other law for the time being in force on grant of bail. This court is conscious of the fact that though there are limitations on the



grant of bail, but it does not mean that in the cases under PMLA, the accused cannot be released on bail. In order to grant bail there has to be substantial probable cause for first believing that accused is not guilty of offence.

17. While discussing about making a balance between statutory emargo and period of incarceration, the Hon'ble Supreme Court in ***Union of India vs. K.A. Najeeb*** in **Criminal Appeal No. 98 of 2021** *inter alia* held as under:

18. It is thus clear to us that the presence of statutory restrictions like Section 43-D (5) of UAPA per-se does not oust the ability of Constitutional Courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a Statue as well as the powers exercisable under Constitutional Jurisdiction can be well harmonised. Whereas at commencement of proceedings, Courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43D (5) of UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

19. Adverting to the case at hand, we are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent's prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the appellant's right to lead evidence of its choice and establish the charges beyond any doubt and simultaneously the respondent's rights guaranteed under Part III of our Constitution have been well protected.



18. It is pertinent to mention here that the petitioner who is around 69 years of age and has a medical history is in custody for last more than two years. It has been submitted that the case is still at the initial stage and the trial may take a long time. It is necessary to take into account that the detention during trial cannot be taken as punitive detention. The rule is bail and not jail. Recently, in ***Manish Sisodia vs. Central Bureau Of Investigation & Anr. in Criminal Appeal a/o. of SLP (Crl.) No. 8167 of 2023*** the Hon'ble Supreme Court has held as under:

26. However, we are also concerned about the prolonged period of incarceration suffered by the appellant – Manish Sisodia. In P. Chidambaram v. Directorate of Enforcement, the appellant therein was granted bail after being kept in custody for around 49 days, relying on the Constitution Bench in Shri Gurbaksh Singh Sibbia and Others v. State of Punjab, and Sanjay Chandra v. Central Bureau of Investigation, that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case. Ultimately, the consideration has to be made on a case to case basis, on the facts. The primary object is to secure the presence of the accused to stand trial. The argument that the appellant therein was a flight risk or that there was a possibility of tampering with the evidence or influencing the witnesses, was rejected by the Court. Again, in Satender Kumar Antil v. Central Bureau of Investigation and Another, this Court referred to Surinder Singh Alias Shingara Singh v. State of Punjab and Kashmira Singh v. State of Punjab, to emphasise that the right to speedy trial is a fundamental right within the broad scope of Article 21 of the Constitution. In Vijay Madanlal Choudhary (supra), this Court while highlighting the evil of economic offences like money laundering, and its adverse impact on the society and citizens, observed that arrest infringes the fundamental right to life.

This Court referred to Section 19 of the PML Act, for the in-



built safeguards to be adhered to by the authorised officers to ensure fairness, objectivity and accountability. Vijay Madanlal Choudhary (supra), also held that Section 436A of the Code can apply to offences under the PML Act, as it effectuates the right to speedy trial, a facet of the right to life, except for a valid ground such as where the trial is delayed at the instance of the accused himself. In our opinion, Section 436A should not be construed as a mandate that an accused should not be granted bail under the PML Act till he has suffered incarceration for the specified period. This Court, in Arnab Manoranjan Goswami v. State of Maharashtra and Others, held that while ensuring proper enforcement of criminal law on one hand, the court must be conscious that liberty across human eras is as tenacious as tenacious can be.

19. It is also pertinent to mention that even in the complaint that the Respondent has filed Prosecution Compliant on 04.12.2021 under section 44 r/w section 45 of PMLA in ECIR/DLZO-II/54/2021 before the learned Special Judge (PMLA), Patiala House Courts, New Delhi wherein the Petitioner has been arrayed as accused No.5. The alleged role attributed to the Petitioner in the Prosecution Complaint as per petitioner is that of a Hawala operator and not that of beneficiary of the alleged proceeds of crime and the same is reproduced below:

*“Avtar Singh Kochar is a **Hawala operator known to Deepak Ramnani who was approached by him to transfer the cash which is proceeds of crime of this case to various place for intended beneficiaries in India and abroad. Thus, he has knowingly aided in laundering the proceeds of crime by transferring it within and outside India through informal channels to obscure the source and thus aided in projecting the same as untainted and thereby has committed the offence of money laundering under section 3 of PMLA, 2002 punishable under section 4 of the said Act.**”*



20. It is necessary to mention that even in the reply to the bail application filed by the ED and perusal of the statement recorded under Section 50 of PMLA, the evidence against the petitioner is of his dealing with Deepak Ramnani. Whether the petitioner was acting as an agent of the main accused or was in any way indulging or knowingly assisting or knowingly party in “any process or activity” connected with the proceeds of crime is to be proved during the trial. The factum of knowledge regarding dealing in “proceeds of crime” and ‘*mens rea*’ in the present peculiar facts and circumstances is to be proved during the trial.
21. Though the allegations against the accused are very serious in nature, however, the court at this stage would restrain itself from making any detailed discussion about the merit of the case as it may prejudice the parties. In order to deny the bail to the petitioner, there has to be more than mere allegations.
22. Learned senior counsel for the petitioner has submitted that there has to be a pre-requisite relation between the commission of the scheduled offence under PMLA and the subsequent offence of money laundering. It has further been submitted that there has to be material on record that the accused “knowingly” dealt with the proceeds of crime.

It is also necessary to mention that merely because the accused has not given the statement which suits the case of the prosecution, it cannot be said that the accused did not cooperate with the investigation. The evidentiary value of the statement recorded after the arrest has also to be seen in the light of Section 25 of the Evidence Act. It is a settled proposition that Section 45 of PMLA does not put an absolute restrain



on the grant of bail or require a positive finding qua guilt. The court is only is required to see the probable cause for believing that accused is not guilty of offence.

23. Furthermore, though the allegations against the petitioner are grave and serious, however, the court has to take into account the wholesome view of the case. The prosecution/ED has repeatedly said that the petitioner is a known Hawala Operator. Be that as it may, but here the court has to see the role of the petitioner only in respect of the case in hand. If the petitioner is a Hawala Operator, the State is at liberty to initiate any action against him in accordance with the law. However, in order to keep the petitioner in custody in the present case, the court is required to consider his role in this case only. Merely because the petitioner has been alleged to be a Hawala Operator, the bail cannot be denied to him. The court is required to keep itself confined to the facts of the present case. It is also pertinent to mention that heinous the offence alleged, harsher the onus on the prosecution to prove.
24. It is also a settled proposition that even in the economic offence case, it is not a rule that the bail should be denied in every case. It is a also settled proposition that merely levelling the allegation of 'flight risk' is not sufficient to deny the bail in the absence of any substantive material. The court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities.
25. I consider that here is the case where the petitioner is 69 years of age with several ailments and is in custody for the last more than 2 years. If the case of the petitioner is seen on broad probabilities, he seems to be



entitled to be admitted to bail. The offence alleged against the accused is punishable with imprisonment for a term which shall not be less than three years and may extend to seven years and shall also be liable to fine. The case of the petitioner does not fall under Paragraph 2 of para 2 A of the Schedule. Consider that taking into account the totality of the facts and circumstances of the case, the petitioner is admitted to court bail subject to the following conditions:

- a) The Applicant shall furnish a personal bail bond in the sum of Rs.5,00,000/- with two sureties of the like amount subject to the satisfaction of the learned Trial Court/CMM/Duty MM.
- b) the Applicant shall appear before the court every fortnight as fixed by the concerned court personally or through VC and, as and when directed by the court during inquiry and trial (such appearance shall be independent of the date fixed by the Court).
- c) The Applicant shall under no circumstances leave NCR without prior permission of the Court concerned;
- d) the applicant shall not leave India without prior permission of the Court concerned;
- e) the Applicant shall not directly or indirectly make any inducement, threat, or promise to any person acquainted with the facts of the case;
- f) the Applicant shall provide his mobile number(s) to the concerned officer of E.D; and
- g) In case of a change of residential address and/or mobile number, the Petitioner shall intimate the same to the Investigating Officer/ Court concerned by way of an affidavit.
- h) the accused shall appear before I.O./competent officer on every



Monday, Wednesday and Friday either personally or through Video conferencing between 11 A.M to 1 P.M. The learned trial court may exempt the petitioner on the sufficient cause being shown from such appearance before the court and the E.D.

26. In view of the above, the present application stands disposed of.

DINESH KUMAR SHARMA, J

NOVEMBER 29, 2023

rb/sj/ak