Andreza

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 91 OF 2022
IN
CRMINAL APPLICATION (BAIL) NO. 30 OF 2022
WITH
CRMINAL APPLICATION (BAIL) NO. 30 OF 2022

Hardeep Singh (Presently Lodged in Central Jail) Thr, Next Best Friend Nikhil Arora ... Applicant

Versus

Assistant Director, Directorate of Enforcement ...Respondent

Mr. D. Lawande, Advocate *with Mr. Ashish Kuncoliencar and Mr. J. Mathew, Advocate for the Applicant-Applicant No.2.*

Mr. Purshottam Karpe, Special Public Prosecutor *for the Respondent.*

A N D

CRIMINAL MISC. APPLICATION NO. 92 OF 2022
IN
CRMINAL APPLICATION (BAIL) NO. 29 OF 2022
WITH
CRMINAL APPLICATION (BAIL) NO. 29 OF 2022

Ankur Khanna, (Presently Lodged in Central Jail) Thr, Next Best Friend Nikhil Arora ... Applicant

Versus

Assistant Director, Directorate of Enforcement ...Respondent

Mr. Parag Rao, Advocate *with Mr. A. Parrikar and Mr. Navin Kumar, Advocate for the Applicant-Applicant No.1.*

Mr. Purshottam Karpe, Special Public Prosecutor *for the Respondent.*

CORAM : B. P. COLABAWALLA, J
RESERVED ON : 3rd JANUARY 2023
PRONOUNCED ON : 9th JANUARY 2023

ORDER:

1. Criminal Application (Bail) No. 30 of 2022 is filed by the Applicant-*Hardeep Singh* seeking regular bail, and who hereinafter is referred to as **"Applicant *No.2*"**. He has also filed Criminal Misc. Application No. 91 of 2022 seeking to be released on interim bail in view of certain subsequent developments more particularly set out in the Criminal Misc. Application.

2. Criminal Application (Bail) No. 29 of 2022 is filed by the Applicant-*Ankur @ Rahul Khanna* also seeking regular bail, and who is hereinafter referred to as **"*Applicant No.1*"**. Applicant No. 1 has also filed Criminal Misc. Application No. 92 of 2022 seeking interim bail in view of certain subsequent events/developments.

3. Since the facts in both the cases are identical, all the above matters are disposed of by this common judgment and order.

4. The above bail applications, namely Criminal Application (Bail) Nos. 30 of 2022 and 29 of 2022, have been moved by Applicant No.2 and Applicant No.1 respectively, under Sections 437 and 439 of the Code of Criminal Procedure, 1973, (for short the "**Cr.P.C.**"), seeking regular bail in the matter titled as *Ankur @ Rahul Khanna and anr. vs. Assistant Director, Directorate of Enforcement; PMLA 1/2022 in ECIR No. 3 of 2022*, registered by the Respondent under Section 3 read with Section 4 of the Prevention of Money Laundering Act, 2002, (for short "**PMLA, 2002**").

5. The brief facts of the case are this: An FIR bearing No. 10 of 2022 was registered under Sections 420, 408, 120-B read with Section 34 of the Indian Penal Code, 1860 (for short the **"IPC"**), Sections 3 and 4 of the Goa Daman and Diu Public Gambling Act, 1976 (for short the **"Goa Gambling Act"**) and Section 66D of the Information Technology Act, 2000, against three persons namely *Mr. Shashank Siddharth, Mr. Rajnesh Kumar and Mr. Anup Palod (*hereinafter collectively referred to as ***"the Accused in the FIR")***. It is not in dispute that Applicant Nos. 1 and 2 are not the Accused in the aforesaid FIR No. 10 of 2022.

6. On the basis of the aforesaid FIR, an Enforcement Case Information Report (**"ECIR"**) bearing No.ECIR/PJZO/03/2022 dated 28th January 2022, was recorded by the Panaji Zonal Office of the Respondent under the provisions of the PMLA, 2002. This was done because FIR No. 10 of 2022 contained offences punishable under Section 120-B and 420 of the IPC, which are scheduled offences as per Paragraph 1 of Part A of the Schedule appended to the PMLA, 2002. It is not in dispute that in this ECIR, Applicant Nos.1 & 2 were not named. Thereafter, statements of all the three Accused persons in FIR No. 10 of 2022 (*Mr. Shashank Siddharth, Mr. Rajnesh Kumar and Mr. Anup Palod*), were recorded under Sections 50(2) and 50(3) of the PMLA, 2002. This was done after their release from jail on bail. Vide the aforesaid statement, the said three persons informed that they are involved in online poker games on Apps like PP Poker, Pokerr2, etc., as a player, or as an agent on behalf of various club managers, and their subsequent union head, namely, *Mr. Ankur @ Rahul Khanna* (Applicant No.1 herein) and *Mr. Hardeep Singh* (Applicant No.2 herein), both of whom are residents of Kolkata.

7. Thereafter, the statement of one Mr. Ramesh Rao Thotapalli, who used to run a club named "Resurge", (under the union of *Mr. Ankur @ Rahul Khanna and Mr. Hardeep Singh*), was also recorded under Sections 50(2) and 50(3) of the PMLA, 2002.

Subsequently, his mobile phone and laptop were also impounded under Section 50(5) of the PMLA, 2002. The data extracted from the impounded mobile phone and the laptop revealed that (i) *Mr. Hardeep Singh* and *Mr. Ankur @ Rahul Khanna* were operating 2-3 Unions on the PP Poker online gaming App; (ii) under each Union, around 25 to 30 clubs are being operated by different individuals including one by Mr. Ramesh Rao Thotapalli; and (iii) through these clubs, individual players are invited through Whatsapp/Telegram chats for placing illegal bets through various Poker gaming Apps. This data apparently revealed that commissions were generated @ 5 % by the said club on each table running in the said clubs. The settlement of the commission and the betting amount was done mainly through hawala operators in cash or through crypto currency with each individual player and the Union Head, by their respective club managers.

8. Be that as it may, during the course of the investigation, the Respondent conducted a search on the premises of Applicant Nos. 1 and 2 situated in the State of West Bengal, on 6th April 2022. It is the case of Applicant Nos. 1 and 2 that they fully co-operated with the Investigating Agency. However, on the very next day, namely on 7th April 2022, Applicant Nos. 1 and 2 were arrested by the Respondent and since then they are in custody.

9. Mr. Parag Rao as well as Mr. Lawande, the learned advocates appearing for Applicant Nos. 1 and 2 respectively, submitted that after the arrest of Applicant Nos.1 and 2, the Respondent's Complaint (Prosecution Complaint) was filed before the Special Court for PMLA cases under the Prevention of Money Laundering Act (PMLA), 2002 at Mapusa, on 3rd June 2022 and was registered as PMLA No.01/2022 on 9th June 2022. Mr. Parag Rao as well as Mr. Lawande submitted that Applicant Nos.1 & 2 had earlier filed a bail application which was rejected by this Court vide its order dated 22nd June 2022, with the observations that the investigation is in progress and the provisions of the PMLA, 2022, and more particularly Section 3 thereof, are stand-alone provisions. Be that as it may, on 24th June 2022, the Respondent filed an application before the Special Court, Mapusa, (in PMLA/01/2022), seeking to attach the crypto wallets of Applicant No. 1 and Applicant No. 2 under Sections 8 (5), and 65 of the PMLA 2002, read with Sections 451 and 452 of the Cr.P.C. On 22nd July 2022, the Respondent through the Deputy Director also passed a freezing order under Section 17(1) of PMLA, 2002 and attached the crypto accounts of Applicant Nos. 1 and 2.

10. Thereafter, Applicant Nos. 1 and 2 filed a joint bail application before the Special Court, Mapusa in PMLA No.01/2022 on the ground of changed circumstances. This application was lodged on

2nd September 2022. After hearing the parties, the aforesaid application was rejected by the Special Court, Mapusa in PMLA No.01/2022, vide its order dated 21st October 2022. It is thereafter that the present Criminal Application (Bail) Nos. 29 of 2022 and 30 of 2022 are filed in this Court by Applicant Nos.1 & 2, on 21st November 2022.

11. While the above Bail Applications were pending, on 23rd December 2022, the Goa Police Crime Branch, filed a chargesheet in respect of FIR No. 10 of 2022. In the said chargesheet, offences under Sections 408, 420, 120-B read with Section 34 of the IPC and Section 66D of the Information Technology Act, 2000, were dropped against the Accused in the FIR, namely, *Mr. Shashank Siddharth, Mr. Rajnesh Kumar and Mr. Anup Palod.* I must mention here that Section 420 and Section 120-B of the IPC are scheduled offences as set out in the PMLA, 2002. Considering that as on date there are no scheduled offences lodged with the jurisdictional Police Station either against the Accused in the FIR or Applicant Nos. 1 & 2 herein, Applicant No.2 and Applicant No.1 filed the above Criminal Misc. Application Nos. 91 of 2022 and 92 of 2022 respectively, seeking interim bail on the ground that there is no scheduled offence in existence with the jurisdictional Police Station and hence the question of continuing their incarceration under the provisions of the PMLA, 2002 cannot continue.

12. On these facts, I have heard Mr. Lawande, the learned Advocate appearing on behalf of Applicant No. 2, Mr. Parag Rao, learned Advocate appearing on behalf of Applicant No. 1 and Mr. Karpe, the Special Public Prosecutor for the Respondent. They have all agreed that I should hear and dispose of Criminal Application (Bail) No.29 of 2022 & Criminal Application (Bail) No.30 of 2022 [the Applications for regular bail]. I have accordingly heard the parties.

13. Mr. Lawande and Mr. Rao, both submitted that the entire case of the Respondent against Applicant Nos.1 & 2 is admittedly based upon the alleged scheduled offences enlisted in FIR No. 10 of 2022 dated 22nd January 2022 registered at Porvorim Police Station, Goa. The scheduled offences were Section 420 and Section 120-B of the IPC. They submitted that in the present case, though the FIR charged the Accused persons therein [*Mr. Shashank Siddharth, Mr. Rajnesh Kumar and Mr. Anup Palod*] under Sections 408, 420, 120-B read with Section 34 of the IPC, Sections 3 and 4 of the Goa Gambling Act, and Section 66D of the Information Technology Act, 2000, when the chargesheet was filed on 23 December 2022, the Investigating Officer only retained Sections 3 and 4 of the Goa Gambling Act and all other sections under the IPC as well as the Information Technology Act, 2000 were dropped. Mr. Lawande as well as Mr. Rao submitted that

neither Applicant No.1 nor Applicant No.2 are named as Accused in the aforesaid FIR and neither have they been named as Accused in the chargesheet filed alleging violation of Sections 3 and 4 of the Goa Gambling Act. They submitted that the Investigating Officer has dropped the charges of the scheduled offences even against the three persons who were arrayed as Accused at the time of registration of the FIR [*Mr. Shashank Siddharth, Mr. Rajnesh Kumar and Mr. Anup Palod*] and hence, as on date, there is no crime which would constitute a scheduled offence against any of the Accused persons including Applicant Nos. 1 and 2 herein. They submitted that the chargesheet has been filed only alleging violation of Sections 3 and 4 of the Goa Gambling Act, and that too only against *Mr. Shashank Siddharth, Mr. Rajnesh Kumar and Mr. Anup Palod*. Considering that now it is a matter of record, that there is no scheduled offence against any of the Accused persons including Applicant Nos. 1 and 2 herein, the existence of any offence under Section 3 of the PMLA, 2002 [and on the basis of which the ECIR was filed by the Respondent (the prosecution complaint)], cannot survive and/or be prosecuted against Applicant Nos. 1 and 2. Mr. Lawande and Mr. Rao both submitted that Section 3 of the PMLA, 2002 is not a stand-alone provision. In other words, the offence of money-laundering (under section 3 of the PMLA, 2002) cannot stand when the scheduled offences upon which it is based, is not in existence anymore. In support of these propositions, both the

learned Counsel relied upon a recent decision of the Supreme Court in the case of **Vijay Madanlal Choudhary & Ors. vs. Union of India & Ors. [2022 SCC OnLine SC 929].** In these facts, they both submitted that Applicant Nos. 1 and 2 be immediately released on bail as their incarceration is wholly illegal.

14. On the other hand, Mr. Karpe, the learned Special Public Prosecutor, submitted that the reliance placed by Mr. Lawande as well as Mr. Rao, on the decision of the Supreme Court in the case of **Vijay Madanlal Choudhary & Ors. (supra),** is wholly misplaced. Relying upon Paragraph 33 of the said judgment, Mr. Karpe submitted that the Supreme Court has clearly opined that 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. Mr. Karpe submitted that what is important is that there should be an order [with respect to the scheduled offence] passed by the court of competent jurisdiction absolving the Accused. According to Mr. Karpe, in the facts of the present case, there is no order passed by a court of competent jurisdiction but only a chargesheet has been filed

by the police dropping the scheduled offences. If this be the case, Mr. Karpe submitted that the judgment of the Supreme Court in the case of **Vijay Madanlal Choudhary & Ors. (supra)**, would have no application. Mr. Karpe submitted that this is the only proper interpretation that can be put on the decision of the Hon'ble Supreme Court for the simple reason that it is very possible that the Court whilst hearing arguments on the chargesheet filed before it, could reinstate Sections 420 and 120-B of the IPC against the Accused persons in the said FIR and which, in turn, would entitle the Respondent to prosecute Applicant Nos. 1 and 2 under Sections 3 and 4 of PMLA, 2002. To put it differently, Mr. Karpe submitted that a mere filing of the chargesheet by the police is not conclusive proof with respect to the absence of a scheduled offence. It is the Magistrate, who upon perusal of the chargesheet and documents relied upon, including the First Information Report, will come to the conclusion whether the scheduled offence does indeed exists or further investigation on the part of the police is required or otherwise. Mr. Karpe therefore submitted that the present case does not squarely fall within the tenets of the decision of the Supreme Court in the case of **Vijay Madanlal Choudhary & Ors. (supra)** and hence the question of granting bail to Applicant Nos. 1 and 2 herein on the aforesaid ground is wholly misconceived. Mr. Karpe submitted that if he is correct in his argument, then, bail can be granted to Applicant Nos. 1 and 2 only as

per the provisions of Section 45 of the PMLA, 2002. He submitted that Section 45 lays down stringent conditions before granting bail. He submitted that Section 45 clearly stipulates that notwithstanding anything contained in the Cr.P.C., no person Accused of an offence under the PMLA, 2002, shall be released on bail or on his own bond unless *(a)* the Public Prosecutor is given an opportunity to oppose the application for such release; and *(b)* 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. Mr. Karpe submitted that therefore not only the Court has to come to a reasonable belief that no offence of money-laundering is committed but also that the Accused is not likely to commit any offence while on bail. Mr. Karpe submitted that during the entire course of the investigation, Applicant Nos. 1 and 2 denied the existence of the crypto account (the proceeds of crime) registered with M/s. Binance Crypto Exchange in their name, despite they being confronted with the user ID and KYC details. Mr. Karpe submitted that these facts, along with other facts, would *prima facie* disclose the grave probability of the Accused tampering with crucial evidence and influencing witnesses in the present case of money-laundering. In these circumstances, Applicant Nos. 1 and 2 ought not to be enlarged on bail, was the submission of Mr. Karpe.

Consequently, he submitted that all the above applications ought to be dismissed.

15. I have heard the learned Counsel for the parties at some length. I have also perused the papers and proceedings in the above applications. The undisputed facts in the present case are this: On 22nd January 2022, FIR No.10/2022 was registered against *Mr. Shashank Siddharth, Mr. Rajnesh Kumar and Mr. Anup Palod* under Sections 408, 420, 120-B read with Section 34 of the IPC along with Sections 3 and 4 of the Goa Gambling Act and Section 66D of the Information Technology Act, 2000. Based on this FIR, ECIR/PJZO/03/2022 was recorded against the said *Mr. Shashank Sidharth, Mr. Rajnesh Kumar and Mr. Anup Palod*. On the basis of the statement of these three gentlemen along with some others, searches were conducted at the residential premises of *Mr. Ankur @ Rahul Khanna* (Applicant No.1) and *Mr. Hardeep Singh* (Applicant No. 2) on 6 April 2022. The next day, the said Applicant Nos. 1 and 2 were arrested by the Respondent and have been incarcerated since then. The other undisputed fact is that now a chargesheet is filed by the Goa Police, Crime Branch, in respect of FIR No.10/2022, wherein the offences under Sections 408, 420 and 120-B read with Section 34 of the IPC and Section 66D of the Information Technology Act, 2000, have been dropped. The chargesheet now only alleges offences under Sections 3 and 4 of Goa

Gambling Act. In other words, as on today, there are no scheduled offences against any of the Accused including Applicant Nos. 1 and 2. This being the undisputed factual position, I will now examine certain provisions of the PMLA, 2002.

16. Section 3 of the Act deals with the offence of money-laundering and 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 processes or activities connected with proceeds of crime, namely—
>
> (*a*) concealment; or
>
> (*b*) possession; or
>
> (*c*) acquisition; or
>
> (*d*) use; or
>
> (*e*) projecting as untainted property; or
>
> (*f*) claiming as untainted property,
>
> in any manner whatsoever;
>
> (*ii*) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.**"**

(Emphasis supplied)

17. What Section 3 stipulates, in a nutshell, is that whoever 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 or claiming it as untainted property, shall be guilty of the offence of money-laundering. The explanation to the said section clarifies that a person shall be guilty of the 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 processes or activities [connected with the proceeds of crime] as more particularly enumerated in the Explanation.

18. Since a person is guilty of the offence of money-laundering when he/she inter alia 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, it would be apposite to refer to the definition of *"proceeds of crime"* as set out in Section 2(1)(u), which reads thus:-

> **"2. Definitions**.—(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 **relatable to the scheduled offence**;**"**

(Emphasis supplied)

19. From this definition it clear that when any property, either directly or indirectly, is derived or obtained as a result of any criminal activity relatable to a scheduled offence, it would be *"proceeds of crime"*. Therefore, for there to be any *"proceeds of crime"*, the property must be derived or obtained as a result of any criminal activity relatable to a scheduled offence. If any property is obtained or derived as a result of any criminal activity, but which is not relatable to a scheduled offence, then the same cannot be termed as the *"proceeds of crime"*.

20. Since a scheduled offence is a core ingredient for there to be *"proceeds of crime",* it would appropriate to also examine the definition of the words *"scheduled offence"* set out in Section 2(1)(y) of the PMLA, 2002 and reads as under:-

> **"2. Definitions**.—(1) In this Act, unless the context otherwise requires,—
>
> …….
>
> …….
>
> (*y*) "scheduled offence" means—
>
> (*i*) the offences specified under Part A of the Schedule; or
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> (*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.**"**

21. For completeness, I must also refer to Section 4 which sets out the punishment for the offence of money-laundering and stipulates that whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years, but which may extend to seven years and shall also be liable to a fine. The proviso to Section 4 mandates that where the proceeds of crime involved in money-laundering relate to any offence specified under paragraph 2 of Part A of the Schedule, the provisions of this section shall have effect as if for the words "which may extend to seven years", the words "which may extend to ten years" had been substituted.

22. When one reads Section 3 of the PMLA, 2002 [offence of money-laundering] together with the definition of the words *"proceeds of crime"* [Section 2(1)(u)] and *"scheduled offence"* [Section 2(1)(y)], it

is clear that for charging a person with the offence of money-laundering, there has to firstly be a scheduled offence. When any property is derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence, then such property would be the *"proceeds of crime"*. When a person 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, he is guilty of the offence of money-laundering. Therefore, the sine qua non for Section 3 of the PMLA, 2002 to apply would be the commission of a scheduled offence. If there is no scheduled offence, then Section 3 cannot be pressed into service. This, according to me, is the clear position in law when one reads Sections 2(1)(u), 2(1)(y) and Section 3 of the PMLA, 2002.

23. In the view that I take, I am supported by the decision of the Hon'ble Supreme Court in the case of **Vijay Madanlal Choudhary & Ors.** (supra). The relevant portion of this decision reads thus :

> **"250.** The other relevant definition is "proceeds of crime" in Section 2(1)(u) of the 2002 Act. This definition is common to all actions under the Act, namely, attachment, adjudication and confiscation being civil in nature as well as prosecution or criminal action. The original provision prior to amendment vide Finance Act, 2015 and Finance (No. 2) Act, 2019, took within its sweep any property (mentioned in Section 2(1)(v) of the Act) derived or obtained, directly or indirectly, by any person "as a result of" criminal activity "relating to" a scheduled offence (mentioned in Section 2(1)(y) read with Schedule

to the Act) or the value of any such property. Vide Finance Act, 2015, it further included such property (being proceeds of crime) which is taken or held outside the country, then the property equivalent in value held within the country and by further amendment vide Act 13 of 2018, it also added property which is abroad. By further amendment vide Finance (No. 2) Act, 2019, Explanation has been added which is obviously a clarificatory amendment. That is evident from the plain language of the inserted Explanation itself. The fact that it also includes any property which may, directly or indirectly, be derived as a result of any criminal activity relatable to scheduled offence does not transcend beyond the original provision. In that, the word "relating to" (associated with/has to do with) used in the main provision is a present participle of word "relate" and the word "relatable" is only an adjective. The thrust of the original provision itself is to indicate that any property is derived or obtained, directly or indirectly, as a result of criminal activity concerning the scheduled offence, the same be regarded as proceeds of crime. In other words, property in whatever form mentioned in Section 2(1)(v), is or can be linked to criminal activity relating to or relatable to scheduled offence, must be regarded as proceeds of crime for the purpose of the 2002 Act. It must follow that the Explanation inserted in 2019 is merely clarificatory and restatement of the position emerging from the principal provision [i.e., Section 2(1)(u)].

251. The "proceeds of crime" being the core of the ingredients constituting the offence of money-laundering, that expression needs to be construed strictly. In that, all properties recovered or attached by the investigating agency in connection with the criminal activity relating to a scheduled offence under the general law cannot be regarded as proceeds of crime. There may be cases where the property involved in the commission of scheduled offence attached by the investigating agency dealing with that offence, cannot be wholly or partly regarded as proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act — so long as the whole or some portion of the property has been derived or obtained by any person "as a result of" criminal activity relating to the stated scheduled offence. To be proceeds of crime, therefore, the property must be derived or obtained, directly or indirectly, "as a result of" criminal activity relating to a scheduled offence. To put it differently, the vehicle used in commission of scheduled offence may be attached as property in the concerned case (crime), it may still not be proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act. Similarly, possession of unaccounted property acquired by legal means may be actionable for tax violation and yet, will not be regarded as proceeds of crime unless the concerned tax legislation prescribes such violation as an offence and such offence is included

in the Schedule of the 2002 Act. For being regarded as proceeds of crime, the property associated with the scheduled offence must have been derived or obtained by a person "as a result of" criminal activity relating to the concerned scheduled offence. This distinction must be borne in mind while reckoning any property referred to in the scheduled offence as proceeds of crime for the purpose of the 2002 Act. Dealing with proceeds of crime by way of any process or activity constitutes offence of money-laundering under Section 3 of the Act.

252. Be it noted that the definition clause includes any property derived or obtained "indirectly" as well. This would include property derived or obtained from the sale proceeds or in a given case in lieu of or in exchange of the "property" which had been directly derived or obtained as a result of criminal activity relating to a scheduled offence. In the context of Explanation added in 2019 to the definition of expression "proceeds of crime", it would inevitably include other property which may not have been derived or obtained as a result of any criminal activity relatable to the scheduled offence. As noticed from the definition, it essentially refers to "any property" including abroad derived or obtained directly or indirectly. The Explanation added in 2019 in no way travels beyond that intent of tracking and reaching upto the property derived or obtained directly or indirectly as a result of criminal activity relating to a scheduled offence. Therefore, the Explanation is in the nature of clarification and not to increase the width of the main definition "proceeds of crime". The definition of "property" also contains Explanation which is for the removal of doubts and to clarify that the term property includes property of any kind used in the commission of an offence under the 2002 Act or any of the scheduled offences. In the earlier part of this judgment, we have already noted that every crime property need not be termed as proceeds of crime but the converse may be true. Additionally, some other property is purchased or derived from the proceeds of crime even such subsequently acquired property must be regarded as tainted property and actionable under the Act. For, it would become property for the purpose of taking action under the 2002 Act which is being used in the commission of offence of money-laundering. Such purposive interpretation would be necessary to uphold the purposes and objects for enactment of 2002 Act.

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.

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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, use of proceeds of crime 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.

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281. The next question is : whether the offence under Section 3 is a standalone offence? Indeed, it is dependent on the wrongful and illegal gain of property as a result of criminal activity relating to a scheduled offence. Nevertheless, it is concerning the process or activity connected with such property, which constitutes offence of money-laundering. The property must qualify the definition of "proceeds of crime" under Section 2(1)(u) of the 2002 Act. As observed earlier, all or whole of the crime property linked to scheduled offence need not be regarded as proceeds of crime, but all properties qualifying the definition of "proceeds of crime" under Section 2(1)(u) will necessarily be crime properties. Indeed, in the event of acquittal of the person concerned or being absolved from

allegation of criminal activity relating to scheduled offence, and if it is established in the court of law that the crime property in the concerned case has been rightfully owned and possessed by him, such a property by no stretch of imagination can be termed as crime property and *ex-consequenti* proceeds of crime within the meaning of Section 2(1)(u) as it stands today. On the other hand, in the trial in connection with the scheduled offence, the Court would be obliged to direct return of such property as belonging to him. It would be then paradoxical to still regard such property as proceeds of crime despite such adjudication by a Court of competent jurisdiction. It is well within the jurisdiction of the concerned Court trying the scheduled offence to pronounce on that matter.

282. Be it noted that the authority of the Authorised Officer under the 2002 Act to prosecute any person for offence of money-laundering gets triggered only if there exists proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act and further it is involved in any process or activity. Not even in a case of existence of undisclosed income and irrespective of its volume, the definition of "proceeds of crime" under Section 2(1)(u) will get attracted, unless the property has been derived or obtained as a result of criminal activity relating to a scheduled offence. It is possible that in a given case after the discovery of huge volume of undisclosed property, the authorised officer may be advised to send information to the jurisdictional police (under Section 66(2) of the 2002 Act) for registration of a scheduled offence contemporaneously, including for further investigation in a pending case, if any. On receipt of such information, the jurisdictional police would be obliged to register the case by way of FIR if it is a cognizable offence or as a non-cognizable offence (NC case), as the case may be. If the offence so reported is a scheduled offence, only in that eventuality, the property recovered by the authorised officer would partake the colour of proceeds of crime under Section 2(1)(u) of the 2002 Act, enabling him to take further action under the Act in that regard.

283. Even though, the 2002 Act is a complete Code in itself, it is only in respect of matters connected with offence of money-laundering, and for that, existence of proceeds of crime within the meaning of Section 2(1)(u) of the Act is quintessential. Absent existence of proceeds of crime, as aforesaid, the authorities under the 2002 Act cannot step in or initiate any prosecution.

284. In other words, the Authority under the 2002 Act, is to prosecute a person for offence of money-laundering only if it has reason to believe, which is required to be recorded in writing that the person is in possession of "proceeds of crime". Only if that belief is further supported by tangible and credible evidence indicative of

> involvement of the person concerned in any process or activity connected with the proceeds of crime, action under the Act can be taken forward for attachment and confiscation of proceeds of crime and until vesting thereof in the Central Government, such process initiated would be a standalone process.**"**
>
> (Emphasis supplied)

24. As mentioned earlier, in the facts of the present case, as of now, the scheduled offences against the Accused in FIR No. 10/2022 have admittedly been dropped in the chargesheet filed by the Goa Police Crime Branch before the JMFC 'F' Court at Mapusa, Goa and the matter is registered as Criminal Case No.AOA/572/2022/F. If there is no scheduled offence, there is no question of any generation of any *"proceeds of crime"*, and consequently, there can be no offence of money-laundering. In these circumstances, I am satisfied that Applicant Nos. 1 and 2 have made out a case for grant of bail.

25. Before parting, I must take note of a decision of another Single Judge of this Court (*M. S. Karnik, J.*), in the case of **Amit Balasaheb Chandole vs. Union of India and Marath Sashidharan vs. Directorate of Enforcement & Anr. [Bail Application No. 1546 of 2021 and Bail Application No. 2890 of 2021 decided on 12th December 2022]**. The facts in this case were very similar to the facts before me. In this case also a FIR came

to be registered on 28th October 2020 which charged the Accused of a scheduled offence. On the basis of the said FIR, for the purpose of investigating the offence of money-laundering, an ECIR came to be recorded by the Enforcement Directorate on 31st October 2020. Pursuant thereto, the Applicants/Accused therein were arrested and remanded to judicial custody. The Enforcement Directorate thereafter completed the investigation, and a complaint was filed in connection with the said ECIR before the said Sessions Court, Mumbai on 19 December 2020 which came to be registered as Special Case No.1124 of 2020. The Special Judge rejected the bail application preferred by the Applicants/Accused and the same was also rejected by this Court. Challenging the order passed by this Court refusing bail, the Applicants/Accused approached the Supreme Court by filing a SLP, that was pending. In the interregnum, a C-Summary Report was filed and therefore an argument was canvassed on behalf of the Applicants that in light of the decision of the Supreme Court in the case of **Vijay Madanlal Choudhary & Ors. (supra)**, the Applicants were entitled to bail. This was vehemently opposed by the Enforcement Directorate *inter alia* on the ground that though the C-Summary Report was accepted on 14 September 2022, the Enforcement Directorate proposed to challenge the same, and in the interregnum, the Applicants could not be enlarged on bail. This Court negated the said contention. After relying upon the decision of the Supreme Court

in **Vijay Madanlal Choudhary & Ors. (supra)**, this Court held as under:-

> **"**12. Learned Counsel Shri Venegaonkar emphasized that it is only in the context of there being an order of discharge, acquittal or because of quashing of the criminal case (scheduled offence) that the decision in **Vijay Madanlal Choudhary and ors.** (supra) can be made applicable. According to him, this is a case where C-Summary report has been accepted by the Metropolitan Magistrate which the ED proposes to challenge and therefore not covered by the decision in **Vijay Madanlal Choudhary and ors.** (supra). He further submits that the limitation of 90 days for filing the Revision is not yet over and therefore the trial Court is justified in refusing the applications for grant of interim bail to the applicants.
>
> 13. The C-Summary has been accepted by the Metropolitan Magistrate. The ED case before the Special Judge (PMLA) is pending. I do not want to comment on the merits of the contentions so far as continuance of the PMLA case is concerned, for that is a matter to be decided in the first instance by the Special Court. I am considering the present applications strictly from the point of view as to whether, in the light of a C-Summary being accepted, the applicants could be released on interim bail. I also must bear in mind that against the order rejecting bail on merits by this Court, prior to the decision in **Vijay Madanlal Choudhary and ors.** (supra), the applicant-Marath's challenge to the order refusing him bail by this Court is pending before the Supreme Court.
>
> 14. When the question of a liberty of an individual is involved, it is not really possible for me to completely ignore the acceptance of the C-Summary report which virtually has the effect of bringing to an end the proceedings registered with Yellow Gate Police Station pursuant to the filing of the FIR dated 28/10/2020. The proceedings in the PMLA case before the Special Judge will obviously be taken to the logical conclusion in accordance with law. The Supreme Court has in clear terms in **Vijay Madanlal Choudhary and ors.** (supra) observed that the offence under Section 3 of the PMLA is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence. Their Lordships held that if the person is finally

> discharged/acquitted of the scheduled offence or the criminal case against him is quashed by the Court of competent jurisdiction, there can be no offence of money-laundering against him or any one claiming such property being the property linked to stated scheduled offence through him. In my humble opinion, the effect of accepting the C-Summary report, *prima facie*, is similar to the one as mentioned by the Supreme Court in respect of those cases where the person is finally discharged/acquitted of the scheduled offence or the criminal case against him is quashed by the Court of competent jurisdiction."
>
> (Emphasis supplied)

26. This decision squarely answers the argument of Mr. Karpe that because there is no order of a court of competent jurisdiction absolving Applicant Nos. 1 and 2 of the scheduled offences, the judgment of Supreme Court in the case of **Vijay Madanlal Choudhary & Ors. (supra)** is not applicable. This Court correctly held that when the question of liberty of an individual is involved, it is not really possible to completely ignore the acceptance of the C-Summary Report which has the effect of bringing to an end the proceedings registered with the Yellow Gate Police Station pursuant to the filing of the FIR dated 28.10.2020. Even in the facts of the present case, when the question of liberty of an individual is involved, it is not possible for me to ignore the fact that the chargesheet filed in the present case, as of now, does not relate to any scheduled offence which would give rise to *"proceeds of crime"*, which in turn, would make out an offence of money-laundering under Section 3 of the PMLA, 2002.

27. In these circumstances, the following order is passed:

ORDER

(i) Criminal Application (Bail) No. 29 of 2022 and Criminal Application (Bail) No. 30 of 2022, seeking regular bail, are allowed.

(ii) Applicant No.1 - *Mr. Ankur @ Rahul Khanna* and Applicant No.2 - *Mr. Hardeep Singh*, are released on bail in the sum of Rs.1,00,000/- each with one or more sureties of the like amount to the satisfaction of the Special Judge (PMLA), Mapusa.

(iii) Applicant Nos. 1 and 2 are permitted to furnish cash bail surety in the sum of Rs.1,00,000/- each for a period of four weeks in lieu of surety.

(iv) Applicant Nos. 1 and 2 shall report to the Enforcement Directorate once in a fortnight on the 1st and 15th day of every month between 10.00 a.m. and 11.00 a.m.

(v) Applicant Nos. 1 and 2 shall not leave the jurisdiction of Goa without the express permission of the Special Judge (PMLA), Mapusa.

(vi) Applicant Nos. 1 and 2 shall surrender their passports with the Special Judge (PMLA), Mapusa, if not already surrendered.

(vii) Applicant Nos. 1 and 2 shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing the facts to Court or to any Police Officer. Applicant Nos. 1 and 2 shall not tamper with evidence or the proceeds of crime.

(viii) Applicant Nos. 1 and 2 shall not indulge in any activities similar to the activities on the basis of which Applicant Nos. 1 and 2 stand prosecuted in the offence of money-laundering.

(ix) Applicant Nos. 1 and 2 shall attend the proceedings before the Special Judge (PMLA), Mapusa, without any default unless exempted.

(x) Applicant Nos. 1 and 2 shall not try to establish communication with the Co-Accused or any other person involved directly or indirectly in similar activities, through any mode of communication.

(xi) Applicant Nos. 1 and 2 shall co-operate with the expeditious disposal of the trial and in case the

delay is caused on account of any act or conduct of the Applicant Nos. 1 and 2, the bail shall be liable to be cancelled.

(xii) On being released on bail, Applicant Nos. 1 and 2 shall furnish their contact number and residential address to the Investigating Officer and shall keep him updated, if there is any change.

(xiii) In the event Applicant Nos. 1 and 2 violate any of the aforesaid conditions, the relief of bail granted to them by this Court shall be liable to be cancelled.

(xiv) After release of Applicant Nos. 1 and 2 on bail, they shall file an undertaking within two weeks before the PMLA Court in Case No.PMLA/01/2022 stating therein that they will strictly abide by the aforesaid conditions.

28. It is made clear that this order granting regular bail to Applicant Nos. 1 and 2 shall be subject to any order passed by the JMFC 'F' Court at Mapusa, Goa, after hearing arguments at the time of framing of charges. In other words, after hearing arguments, if a charge/s is framed by the JMFC 'F' Court at Mapusa, Goa, in relation to any scheduled offence, then, the Enforcement Directorate, at their own discretion, shall be free to re-arrest Applicant Nos. 1 and 2. I say

this for the simple reason because regular bail has been granted to Applicant Nos. 1 and 2 only on the ground, that as on today, there is no scheduled offence against any of the Accused, including Applicant Nos. 1 and 2. I must clarify that this is not a mandate or a direction to the Enforcement Directorate to re-arrest Applicant Nos. 1 and 2 if a scheduled offence is reinstated by the JMFC 'F' Court, Mapusa, Goa. The arrest shall be entirely at the discretion of the Enforcement Directorate. If Applicant Nos. 1 and 2 are re-arrested, they shall be entitled to apply for bail, which shall be decided on its own merits and in accordance with law.

29. It is needless to state that all observations made herein are prima facie in nature for the limited purpose of considering the requests of Applicant Nos.1 & 2 for release on bail and shall not be construed as an opinion on the merits of the contention of the parties.

30. Criminal Application (Bail) No.29 of 2022 & Criminal Application (Bail) No.30 of 2022 are disposed of in the aforesaid terms. Considering that the above Criminal Applications (Bail) are disposed of by this Order, nothing survives in Criminal Misc. Application Nos.91 and 92 of 2022 and the same are disposed of accordingly.

31. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned including the police and/or the jail authorities will act on production by fax or email of a digitally signed copy of this order.

B. P. COLABAWALLA, J