Deepak Virendra Kochhar vs Directorate Of Enforcement And Anr on 25 March, 2021

Author: Prakash D. Naik

Bench: Prakash D. Naik

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.1322 OF 2020

Deepak Virendra Kochhar
Age:59 Yrs. R/o.: Flat No.45,
CCI Chambers, Dinshaw Wachha
Road, Churchgate, Mumbai-400020. .. Applicant

Vs.

1. Directorate of Enforcement
Through Assistant Director,
Headquarter Investigation unit,
New Delhi.
2. The State Of Maharashtra .. Respondents

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Mr. Amit Desai, Senior Advocate i/b Mr. Dadhichi Mhaispurkar and
Mr. H.K. Sudhakara, Advocate for Applicant.
Mr. S.V. Raju, ASG, i/by Shri. H.S. Venegavkar, Special Public Pr
for Respondent No.1/UOI.
Mr. Sudhir Kumar Sharma, Asst. Directorate of Enforcement.
Mrs. M.R. Tidke, A.P.P. for the Respondent No.2/State.

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signed by Raju
Raju D. D. Gaikwad
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CORAM : PRAKASH D. NAIK, J.

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DATE OF RESERVATION : 12th FEBRUARY, 2021
DATE OF PRONOUNCEMENT : 25th MARCH, 2021

ORDER:

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1. This is an application for bail in connection with ECIR/02/HIU/2019 registered by Enforcement of Directorate, Mumbai for offence punishable under Section 3 read with Section 4 of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as "PMLA" for short).

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2. First Information Report was registered by CBI, BS & FC, New Delhi on 22nd January 2019 bearing No.RCBD1/2019/E/0001 under Section 120-B and 420 of Indian Penal Code (for short "IPC") and Sections 7 and 13(2) read with Section 13(1) (d) of Prevention of Corruption Act, 1988. FIR was registered against the following accused for causing loss to ICICI Bank by sanctioning loans to Videocon Group of Companies in contravention of the Rules and Policies of ICICI Bank.

(i) M/s. Videocon International Electronic limited (VIEL) (ii) M/s.

Videocon Industries Limited (VIL) (iii) Mr. V. N. Dhoot, M.D. Videocon Group (iv) Ms. Chanda Kochhar then M.D. & CEO of ICICI Bank. (v) Mr. Deepak Kochhar M.D. of M/s. NuPower Renewables Limited (NRL) which is now known as M/s. NuPower Renewables Pvt. Ltd (NRPL) (vii) M/s. Supreme Energy Pvt. Ltd. (SEPL). It was alleged that during June-2009 to October-2011, ICICI Bank had sanctioned 6 high value loans to various Videocon Group of Companies. On 26th August 2009, Rupee Term Loan (RTL) of 300 Crores was sanctioned to M/s. Videocon International Electronics Ltd and others (hereinafter referred to as "VIEL"). In contravention of Rules and Policy by Sanctioning Committee. Ms. Chanda Kochhar was one of the member of the Sanctioning Committee.

Ethape 3 16-BA.1322.2020 She conspired with others to cheat ICICI Bank and abusing her official position sanctioned loan in favour of M/s. VIEL. On 07th September 2009, loan was disbursed to M/s. VIEL. On 08th September 2009, Rs. 64 Crores were transferred by Mr. V. N. Dhoot to M/s. NRL managed by Deepak Kochhar (Applicant)-husband of Ms. Chanda Kochhar from M/s. Videocon Industries Limited (VIL) through his company, M/s. SEPL. Ms. Chanda Kochhar got illegal gratification through husband. M/s. NuPower Renewables Pvt. Ltd (NRPL) was incorporated on 24th December 2008 and Mr. Deepak Kochhar, Mr. V. N. Dhoot and Saurabh Dhoot were 1st Directors of the Company. Mr. V. N. Dhoot and Mr. Saurabh Dhoot had resigned from the Directorship of the Company with effect from 15th January 2009. Before resigning from Directorship, Mr. V. N. Dhoot allotted 19,97,500 warrants to Mr. Deepak Kochhar @ Rs.10 per warrant on an initial payment of Re.1/- per warrant. On 5th June 2009, shares of M/s. NRPL held by Mr. V. N. Dhoot and Deepak Kochhar group (Pacific Capital Services Pvt. Ltd.) were transferred to M/s. Supreme Energy Pvt. Ltd (SEPL), which became 95% shareholder of M/s. NRL. SEPL was incorporated on 3rd July 2008. Mr. V.N. Dhoot and Mr. Vasant Kakade were first Directors of the Company. Mr. Dhoot resigned from the Ethape 4 16-BA.1322.2020 directorship of M/s. SEPL on 15th January 2009 and transferred control of the Company to Mr. Deepak Kochhar by transferring shares to Pinnacle Energy Trust (PET) managed by Deepak Kochhar. Sanctioning Committee of ICICI Bank sanctioned loan to Videocon Group of Companies, namely, M/s. Millennium Appliances India Ltd. (MAIL), M/s. Sky Appliances Ltd. (SAL), M/s. Techno Electronics Ltd (TEL), M/s. Applicomp India Ltd. (AIL), M/s. Videocon Industries Ltd. (VIL) etc. Loans sanctioned to M/s. SAL, M/s. TEL and M/s. AIL were for enabling them to repay the unsecured loan availed by these companies from M/s. VIL. Loan was sanctioned to M/s. VIL for refinancing the existing loan of the Company. These loans were sanctioned in violation of credit policy of the Bank during the relevant period. On 1st May 2009, Ms. Chanda Kochhar took over the charge of ICICI Bank as Managing

Director and Chief Executing Officer (MD & CEO). The credit limits to the above companies were sanctioned after she took over the charge of the bank of the Company as MD and CEO. These loans were sanctioned by different Sanctioning Committees. Ms. Chanda Kochhar was one of the Committee Member which sanctioned RTL of Rs. 300 Crore. The outcome of Preliminary Inquiry reveals the commission of offence under Section Ethape 5 16-BA.1322.2020 120-B read with Section 420 of IPC and read with Section 7 & 13(2) read with Section 13 (1) (d) of Prevention of Corruption Act, 1988 by M/s. VIEL, M/s. VIL, its Directors Mr. V. N. Dhoot, MD of Videocon Group, Ms. Chanda Kochhar, the then M.D. & CEO of ICICI Bank, Mr. Deepak Kochhar (Applicant), M.D. of M/s. NuPower Renewables Ltd (NRL), M/s. SEPL and others.

3. On the basis of the aforesaid FIR, respondent No.1 recorded ECIR/02/HIU/2019 on 31st January 2019 against same accused. It was alleged that FIR has been registered by CBI New Delhi in respect of criminal conspiracy, cheating, misconduct by public servant. The alleged offences were committed during the period from 2009 to 2012. In the FIR it is alleged that, during the period from June-2009 to October-2011, ICICI Bank sanctioned 6 high value loan to Videocon Group of Companies. On 26th August 2009, Rupee Term Loan (RTL) of Rs. 300 Crores was sanctioned by the Sanctioning Committee to M/s VIEL in contravention of rules and policy of the Bank. Loan was disbursed to VIEL on 7th September 2009. On 8th September 2009, Mr. V. N. Dhoot transferred amount of Rs. 64 Crores to M/s. NuPower Renewables Ltd (NRL) from VIL through his Company, SEPL. Mr. Deepak Kochhar Ethape 6 16-BA.1322.2020 (applicant) was managing NRL. Thus, Ms. Chanda Kochhar got illegal gratification/undue benefit through her husband from VIL/Mr. V. N. Dhoot. The Sanctioning Committees of ICICI Bank had also sanctioned loan to Videocon Group Companies for the purpose of repaying the unsecured loan availed by Companies from M/s. VIL. It is alleged in FIR that, loans were sanctioned in violation of credit policy of the Bank. These loans turned NPA. It is alleged in FIR that, SEPL was transferred to PET managed by Mr. Deepak Kochhar. Various financial transactions connected with loans availed by Videocon Group of companies have resulted in wrongful loss to ICICI Bank. The various financial transactions conducted are punishable under Sections 120-B and 420 of IPC and Section 7 and 13(2) read with Section 13 (1) (d) of Prevention of Corruption Act, 1988. These are scheduled offences under paragraph Nos.1 and 8 respectively of part A of the Schedule under Section 2 (1) (y) of Prevention of Money Laundering Act, 2002. The case under PMLA was recorded to look into offence of Money Laundering as defined under Section 3 of PMLA and punishable under Section 4 of the said Act.

4. During investigation, Provisional Attachment Order No.01/2020 dated 10.01.2020 was issued by respondent attaching Ethape 7 16-BA.1322.2020 various properties alleging that Rs.64 Crores received by NRL and flat at 45, CCI Chambers were involved in money laundering. The proceeds of crime in the form of ownership of said flat was transferred by Mr. V. N. Dhoot/M/s. Videocon Group to Ms. Chanda Kochhar which is utilized by them. The ownership is still with QTAPL and complete shareholding of QTAPL is with Quality Advisors Trust. Provisional Attachment Order dated 10.01.2020 was issued in respect of movable and immovable properties. Original complaint dated 3rd February 2020 was filed on 4th February 2020 before authority. The Schedule of properties was as follows;

(i) Flat No.45, CCI Chambers, Churchagate
(ii) Cash of Rs.10.5 lakh seized during search from premises of M/s.

Pacific Capital Services Pvt. Ltd. on 1st March 2019.

(iii) Assets of projects of M/s. NuPower Renewables Pvt. Ltd. and its subsidiaries viz Wind Farm Projects, movable assets, immovable assets.

5. According to applicant, he had extended co-operation with Enforcement Directorate. He was issued summons and in pursuant to that, he appeared before the Respondents from March 2019 till his arrest. He appeared on 2nd March 2019 at Mumbai and on 13th May 2019 to 17th May 2019 at Delhi. On 28th June 2019, 18th July 2019, 19th Ethape 8 16-BA.1322.2020 July 2019, 14th October 2019, 19th July 2020 and 7th September 2020 over the period of 18 months, the applicant submitted voluminous documents/information vide letters, e-mails dated 14th March 2019, 23rd April 2019, 13th May 2019, 29th May 2019, 8th June 2019, 28th June 2019, 10th October 2019, 14th October 2019, 14th January 2020, 18th January 2020, 28th January 2020, 29th January 2020, 6th February 2020, 17th July 2020, 19th July 2020 and 7th September 2020.

6. Statement of applicant and others were recorded under Section 50 of PML Act.

7. Applicant was arrested on 07.09.2020. Applicant was remanded to custody on 8th September 2020. His custody was obtained on 31st October 2020 till 11th November 2020. In the application dated 31st October 2020 filed by the respondent No.1 for extension of remand, it was stated that the investigation in the case of Money Laundering is still continuing and is in process of additional evidences, examination of voluminous records and recording of statements of persons related to the case.

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8. On 6th November 2020, Adjudicating Authority under PMLA had pronounced its order and dismissed the original complaint filed in accordance with Sections 8. The respondent No.1 challenged the order by preferring appeal under Section 26 of the Act.

9. The applicant preferred an application for bail before the Special Court under PMLA. The said application was rejected by order dated 1st December 2020. The Enforcement Directorate had opposed the application on the ground that the applicant is involved in commission of economic offence and burden is on applicant under Section 24 of PMLA to show that he is not guilty and that the applicant has failed to release the said burden. In view of twin conditions under Section 45 (1) of PMLA, which has been amended after the decision of Apex Court applicant is not entitled for bail. The learned Judge relied upon the decision of this Court in Bail Application No.286 of 2018 (Sameer Bhujbal Vs. Assistant Director, Directorate of Enforcement) wherein it was held that amendment to Section 45 does not revive the conditions under Section 45 of the Act. The respondent had contended that relatives of applicant are witnesses in the matter and further investigation in respect of other aspects is in progress. The Court Ethape 10 16-BA.1322.2020 observed that the fact that some of the witnesses are close relatives of applicant, in itself appears sufficient for accepting the apprehension expressed by respondent that the applicant may tamper with the prosecution evidence, if released on bail by influencing witnesses.

10. Mr. Amit Desai learned Senior Advocate has put forth several submissions, which can be summarized as under:-

(i) The alleged transactions are of the years 2009 to 2012. FIR was registered by CBI on 22nd January 2019. ECIR was registered on 31st January 2019. Summons was issued to the applicant on several occasions. He had appeared before the Directorate of Enforcement repeatedly. He was interrogated on several occasions, information sought from him was provided by the applicant. Voluminous documents in support of his explanation were tendered before respondents. Inspite of co-operation, the applicant was arrested on 7th September 2020. Further detention of the applicant is not necessary.

(ii) The wife of the applicant was interrogated and her

statement was recorded. Mr. V. N. Dhoot was interrogated and his statement was recorded. On 12th February 2021, accused Ms. Chanda Kochhar had appeared before the Special Court. She has been released on bail on executing PR Bond in the sum of Rs.5 lacs.

(iii) The apprehension of the respondents is that the applicant may tamper with the evidence is without any basis. The applicant is permanent resident of Mumbai and there are no chances of his absconding.

(iv) Complaint in accordance with Section 8 of the PML Act was filed. Adjudicating Authority has declined to confirm the provisional attachment. Original complaint has been dismissed.

The observations of the Adjudicating Authority make it clear that the amount of Rs.64 Crores or the subject flat are not proceeds of crime.

(v) The loan of Rs.300 Crores which was disbursed to Videocon Group of Companies has been repaid to ICICI Bank in 2012. There is no explanation initiating action under PMLA belatedly.

(vi) The offence under Section 3 of PML Act is punishable with

imprisonment upto 7 years. The applicant need not be kept in custody under the pretext of further investigation for indefinite period.

(vii) The Adjudicating Authority has observed that the disbursement of 300 Crores was in line with credit policy and practice of bank. Loan of Rs.300 Crores given to VIEL in 2009 has been repaid to ICICI Bank and there is no question of loss to ICICI Bank. Loan amount of VIL was never declared NPA. The amount of Rs.64 Crores and flat are not proceeds of crime.

(viii) The statements of witnesses recorded by the respondents makes it clear that the transaction is genuine and the offence under Section 3 read with Section 4 of PMLA Act is not attracted.

(iv) Twin conditions stipulated under Section 45 (1) (ii) of the PML Act, does not exist. The Apex Court has set aside the twin conditions on the ground that it is unconstitutional. Amendment to section 45 does not revive the conditions.

(x) The applicant is seeking bail. The Court has to strike balance
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between the liberty and the offence alleged against the accused. There is an order of Adjudicating Authority which exonerate the applicant/accused. Although it is under challenge in appeal, there is no impediment in granting bail. The Court need not have rigid approach in granting bail. Assuming that, the embargo in view of twin conditions to grant bail is existing, the Court need not go to extent the giving finding that accused is not guilty of offence. The word reasonable ground has to be considered in proper perspective.

(xi) Primary borrower has not been arrested. Investigation proceeded without his custody.

(xii) No charge-sheet is filed by CBI in respect of Schedule offences.

(xiii) The applicant satisfies the triple test for releasing him on bail. There is no real and genuine apprehension of tampering and influencing the witnesses.

(xiv) The applicant has past medical history. He is suffering from various ailments and was infected with Covide-19 while in custody.

(xv) The flat in question belongs to applicant. He is in possession
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of flat since long.

(xvi) Videocon has been taking loan from ICICI bank since several

years.

(xvii) Economic offences are not classified for determination of grant of bail and the same is determined on the basis of length of punishment.

(xviii) Trial is not likely to conclude in near future. Further detention of applicant is not warranted.

(xix) The Adjudicating Authority has given finding that there is no material to connect act of illegal gratification and allegation that, Mr. V. N. Dhoot transferred Rs.64 Crores to NRL as undue benefit.
(xx) Statements recorded under Section 50 of PML Act are to be tested during trial. There is no tangible evidence against applicant to connect him with offence under Section 3 of Act.

11. Learned Additional Solicitor General Mr. S. V. Raju opposed application for bail. He submits as follows: -

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(a) There is voluminous evidence against the applicant. The offence is of serious nature. The applicant is involved in economic offence. Investigation is still in progress.

(b) The Enforcement Directorate has initiated investigation under the PML Act to investigate the offence of Money Laundering on the basis of FIR registered by CBI. The FIR and the ECIR would indicate that during 2009 to 2011 ICICI Bank had sanctioned 6 high value loan to Videocon Group Companies. RTL of Rs. 300 Crores was sanctioned to VIEL. The wife of the applicant was one of the members of Sanctioning Committee. Amount of Rs. 64 Crores was transferred to NRPL managed by applicant. Ms. Chanda Kochhar got illegal gratification and undue benefit through applicant from VIL for sanctioning RTL of Rs. 300 Crores to VIEL.

(c) Mr. Deepak Kochhar (Applicant), Mr. V.N. Dhoot and Mr. Saurabh Dhoot were the first Directors of NRPL. Warrants were allotted to applicant by Mr. Dhoot. Sanctioning Committee of ICICI Bank sanctioned loan to other Videocon Group Companies. Rs. 64 Crores were transferred by Mr. Dhoot to NRPL a Company beneficially owned, controlled and managed by applicant. There Ethape 16 16-BA.1322.2020 was conflict of interest on the part of Ms. Chanda Kochhar, she was chairperson of Sanctioning Committee of ICICI Bank. She is the wife of Applicant.

(d) The diversion of funds to NRPL was part of well devised scheme for the benefit of applicant.

(e) The applicant was a decision maker in NRPL. The applicant is director of NRPL since its incorporation. He is authorized signatory in the bank account of NRPL. On 29th December 2008

under the chairmanship of the accused, it was decided to issue 19,97,500 warrants of NRPL @ Rs. 10 per warrant to the accused. On 7th January 2009, NRPL issued 19,97,500 warrants to the accused. These warrants were latter issued to the accused for an initial payment of Re.1 per warrant i.e. Rs.20 lakh only were paid by the accused for these 19,97,500 warrant of NRPL. The applicant was holding 50% shareholding in NRPL through SEPL. Within a week of issuance of these warrants to the accused, Mr. Dhoot has resigned from the directorship of NRPL as well as SEPL.

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(f) Mr. Dhoot in his statements recorded under Section 50 of

PMLA stated that all the affairs/operations of NRPL were handled, controlled and managed by the applicant and he was holding shares on papers. He was not exercising any control or decision making in NRPL.

(g) Learned counsel relied upon the statement of Sunil Bhuta, Chief Financial Officer of NRPL, statement of Aniruddha Shreekant Godbole, Engagement Director for Audit of NRPL, and submitted that Mr. V. N. Dhoot transferred his shareholding to Mahesh Pungalia and thereafter Mr. Pungalia became director and shareholder of NRPL. Hence, Dhoot was holding 95% shareholding of NRPL. Mr. Dhoot and Pungalia did not participate in decision making or other aspect of NRPL. The applicant was charged with governance of NRPL and controlling its affairs. Thus, as a part of plan and design it was ensured that the applicant remains beneficial owner and controller of NRPL where proceeds of crime were received in the Company of the applicant from Videocon Group which was laundered by the accused and Company beneficially owned by him.

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(h) On 6th September 1995, Board of CFL authorized its

Directors, applicant and brother of the applicant to negotiate and hold 5 fully paid shares of CCI Chamber Premises for consideration of Rs.5.25 lacs to purchase of property on behalf of company in their individual names in view of the inability and unwillingness of the society to recognize any corporate entity as members thereof and to transfer the shares. The applicant and Rajiv Kochhar entered into the agreement for sale with owner of the property (flat) located at 45, CCI Chambers, CCI Club Churchgate for purchase price of Rs. 5,25,00,000/-. Earnest money of Rs. 75 lacs was paid by cheque dated 7th September 1995. Vide Deed of Conveyance dated 19th February 1996, CFL purchased flat from Bilquis Begum. The remaining amount of Rs.4.5 Crore was paid by CFL (pre-merger). Vide cheque drawn from account of CFL. The applicant submitted letter dated 4th March 2004 to CCI Chambers Society which reveal that CFL was owner of the flat and share certificates for the flat were held in the name of the applicant and Rajiv Kochhar.

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(i) The applicant had indulged in pressuring and influencing the witness and even ensuring that he submits false evidence/information before the Respondents. After considering the safety and security of witness, the respondent Directorate does not find appropriate to reveal the details about the witness. The respondent has submitted evidence in sealed envelope to the Court.

(j) The order passed by Adjudicating Authority is contrary to material on record. The said order has been challenged before the Appellate Authority. The status quo order has been passed in the said appeal.

(k) Section 45 has been amended and the twin conditions stand revived. No case for grant of bail to the applicant is made out.

(l) 64 Crore (proceeds of crime) transferred by Mr. Dhoot/Videocon Group to NRPL, a company beneficially owned, controlled and managed by applicant.

(m) The chart reproduced in reply depicts flow of proceeds of crime amounting to Rs.64 Crore transferred by Videocon Group/Mr. V.N. Dhoot to NRPL from Loan funds amounting to Rs.283.45 Crore (Out of loan of Rs.300 Crore sanctioned on 26.08.2009) received by VIEL from ICICI Bank and utilization of proceeds of crime by NRPL.

(n) Mr. V. N. Dhoot stated that, applicant was insisting for money.

His wife told Mr. Dhoot to take care of him.

(o) Reliance is placed on Inspection Report dated 28.05.2019 of NRPL prepared by Ministry of Corporate Affairs which shows that applicant is decision maker in NRPL.

(p) Since 1996-97 Ms. Chanda Kochhar and her family has been residing in flat at CCI Chambers. Consent terms were agreed upon between VIL, applicant and Company CFL, whereby ownership of flat was agreed to be transferred by CFL to VIL.

(q) Applicant has played role in money laundering. The applicant created structure with Mr. V. N. Dhoot to layer the transfer of proceeds of crime. He has committed offence of money Ethape 21 16-BA.1322.2020 laundering.

(r) The special Court has considered all aspects and by reasoned order rejected the application for bail.

(s) Economic offences are to be viewed seriously. The Court has to keep in mind nature of accusations, nature of evidence and severity of punishment.

(t) As per Section 24 of PML Act, in any proceeding relating to proceeds of crime, unless contrary is proved, it would be presumed that such proceeds of crime are involved in money- laundering.

(u) Learned Additional Solicitor General has relied upon the reply filed by Respondent No.1 opposing the application for bail.

12. Mr. Desai, Learned Counsel for applicant submitted in rejoinder that, submissions of respondents are contrary to record. Statement of Mr. Dhoot is contrary to what is asserted by respondents. The twin condition does not stand revived. The question of handing over sealed envelope allegedly with regards to tampering evidence does not arise. The applicant had appeared before respondent on several Ethape 22 16-BA.1322.2020 occasions before his arrest. He is in custody from date of his arrest, since last six months. When the applicant was produced for remand after arrest, allegations of tampering evidence were not made in the remand applications. The investigation proceeded. At this stage handing over sealed envelope, without affording opportunity to peruse the contents is violative of Article 21 of Constitution of India.

13. The ECIR was registered on 31st January 2019 and the investigation had commenced. The applicant had appeared before the respondents on several occasions pursuant to receipt of summons. Although, investigation proceeded in January 2019, the respondents felt it necessary to arrest the applicant on 7th September 2020 after period of 18 months. Statements of witnesses were recorded. Documents were collected. While opposing the application for bail before the Special Court, one of the grounds urged by the respondent is that the investigation is still in progress. The transactions were of the year 2009. FIR was registered in 2019 and the arrest was made in September 2020. While rejecting application for bail the learned Special Judge observed that the applicant is likely to tamper with the evidence and that the investigation is still in progress. The applicant is in custody from 7th Ethape 23 16-BA.1322.2020 September 2020, under the pretext of investigation accused cannot be detained for indefinite period.

14. As per Section 5 of PML Act, where the Director of any other officer not below the rank of Deputy Director authorized by the Director for the purpose of this Section, has reason to believe (the reason for such belief to be recorded in writing) on the basis of material in his possession of any proceeds of Crime and (b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this chapter, he may, be order in writing provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order or in such manner as may be prescribed. The Director or any other officer not below the rank of Deputy Director shall immediately after attachment forward copy of order with material to the Adjudicating Authority. The Director or any officer who provisionally attaches any property shall within a period of thirty

days from attachment file a complaint stating facts of such attachment before the Adjudicating Authority.

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15. Section 8 of PML Act relates to adjudication. On receipt of complaint under Section 5 of the Act, if the Adjudicating Authority has reason to believe that any person has committed offence under Section 3 or in possession of proceeds of Crime, he may serve notice of not less than 30 days on such person calling upon him to indicate source of income, earning or assets out of which he has acquired the property attached under Section 5 (1) or seized under Section 17 or 18, the evidence on which he relies and to show cause why properties should not be declared as property involved in money-laundering.

16. On the basis of material, Provisional Attachment Order No.1/2020 dated 10.01.2020 was issued in respect to movable and immovable properties. In accordance with Section 5 (5) of PML Act, complaint was filed before Adjudicating Authority, vide order dated 06.11.2020. The complaint under Section 5 (5) was dismissed by Adjudicating Authority.

17. The order of Adjudicating Authority was challenged by preferring appeal under Section 26 of PML Act. Interim order was passed by Appellate Authority on 03.12.2020. The order records that, learned counsel representing respondents before the Authority made Ethape 25 16-BA.1322.2020 statement that, the respondents therein could not part with properties involved in the appeal till next date of hearing. The Appellate Authority directed that; all parties to maintain status quo with respect to properties involved in appeal till the next date of hearing. During this period neither parties to change the nature and character of the properties involved in appeal and respondents are prohibited to create any third party right or dispose of the properties involved in the appeal in any manner and that no encumbrance shall be created by respondents in respect of properties involved in appeal till next date of hearing. On the question that, respondents would take advantage of impugned order if it is not stayed, it was observed that, Appellate Tribunal cannot prohibit any party to submit in any other proceedings on facts, law or on orders. Since the legality and propriety or impugned order is under challenge before appellate Tribunal, unless it is decided, the conclusions arrived at by the Adjudicating Authority in the impugned order will not attain finality. Appeal is continuation of proceedings of Authority below. There is nothing in impugned order to be given effect to since statues quo order is passed.

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18. During the Adjudication, the applicant and the other defendants filed reply. Ms. Chanda Kochhar contended that she was never Director, shareholder or responsible to any companies. She is not a trustee, beneficiary of any Trust including Quality Advisors Trust. She had not claimed ownership in properties under attachment. No proceeds of crime have been received by her. No evidence to support allegation of payment of bribe or commission of any scheduled offence. Allegation of illegal gratifications is baseless. ICICI Bank has a robust committee based collective decision-making process for corporate credit approvals wherein no individual can independently

approve/sanction corporate credit proposals. The bank has laid down credit policy approved by board of Directors. Various departments are involved in due diligence process for credit approval. Multilayer credit approval authorization framework. The Board of Directors of ICICI Bank in press release dated 28.03.2018 has mentioned that no individual employee whatever may be his/her position has ability to influence the credit decision at the Bank. Videocon group has been client of ICICI Bank as early as 1985. The Bank has extended several loans/credit facility to Videocon group and the relationship between the bank and Videocon Ethape 27 16-BA.1322.2020 group has been long standing. In the context of loans to 6 Videocon group it was submitted that, she was one of the Committee Member which sanctioned 2 loans out of 6 loans. The facilities were sanctioned in ordinary course of business. Loans were repaid to ICICI Bank. In her various statement's recorded under PMLA, she has explained on various allegations against her. Applicant replied that, he had not influenced any decision making by his spouse Chanda Kochhar. The Provisional Attachment Order does not satisfy requirement of second proviso of Section 5 (1) PMLA. It cannot be presumed that CBI after having recorded FIR based on allegations of commission of cognizable offences has found any prima facie substance in them, sufficient to file any charge-sheet against accused. No such charge-sheet is field. No cogent evidence of commission of scheduled offence. Investment of 64 Crores by Videocon group in its own group company NRL was neither an offence nor was the said amount any proceeds of crime. Videocon group owned 95% of NRL at the time when their equity investments of Rs.64 Crore was made into NRL on 08.09.2009. Flat No.45 is not proceeds of crime. He is title holder and owner of flat since 1996. The transaction regarding Credential Finance Ltd., Quality Appliances Pvt. Ltd. and Ethape 28 16-BA.1322.2020 Quality Advisors Trust are wholly in consequential so far as title to said flat.

19. The Adjudicating Authority has observed that amount of Rs. 64 Crores invested by Videocon Group of Companies M/s. Supreme Energy Pvt. Ltd. in M/s. NuPower Renewables Pvt. Ltd. on 8th September 2009 can hardly be said to be any reciprocal arrangement in respect of the alleged disbursement of Rs. 300 Crores by ICICI Bank to M/s. VIEL quid pro quo may essentially require that the reciprocal benefit conferred should be completed out of dimension of the parties allegedly offering such reciprocal benefit. In the background and the reality herein documented by the defendant, it cannot be accepted that the alleged reciprocal benefit i.e. amount of Rs.64 Crores did not remain in the hands of Mr. Dhoot and his Group of Companies. The allegations were that the amount of Rs. 64 Crores invested by SEPL, a Videocon Group of Company again in another Videocon Group of Company, NRPL was a reciprocal benefit for the alleged transaction of loan. The investment of Videocon in NRL was in the nature of equity where the return would be gathered by capital appreciation on the basis of growth of the Company and valuation of its assets. The conclusion of Ethape 29 16-BA.1322.2020 Adjudicating Authority was that it has emerged from the fact that sum of Rs. 300 Crores is lying with Credit Policy and earlier practice of ICICI Bank. It is also emerged from the fact that loan of Rs. 300 Crores given to VIEL in 2009 has been repaid to the ICICI Bank and there is no question of loss to ICICI Bank. The loan amount was never declared NPA. The business decision and transaction of investment of 64 Crores in M/s. NRL managed by the Mr. Deepak Kochhar (applicant), Mr. V. N. Dhoot from M/s. SEPL is not linked in any way with the FIR filed by CBI with the fact of sanctioning RTL of Rs. 300 Crores by ICICI Committee wherein Ms. Chanda Kochhar was one of the member. On the other hand, defendants therein had revealed the facts concerning the said investment and discharged the burden cast upon them in terms of Section

8(1) of PMLA. The FIR failed to justify any investigation having been done before alleging the wrongful loss in respect of RTL of Rs. 300 Crores from ICICI Bank to M/s. VIEL.

20. The Adjudicating Authority in concluding paragraphs in the order dated 06.11.2020 has observed that the preliminary inquiry in the matter was commenced on 08.12.2017 by the CBI, on the allegation that ICICI Bank sanctioned Credit Facilities to M/s. Trend Electronics Ltd, Ethape 30 16-BA.1322.2020 M/s. Century compliance Ltd., KAIL Ltd., Value Industries Ltd. and M/s. EVANS Fraser and Company India Ltd. belonging to Videocon group promoted by Mr. V.N. Dhoot. The allegations were the officials of ICICI Bank sanctioned Credit Facilities to these companies in violation of Banking Regulation Act RBI, guidelines and credit policies of the bank. It was also alleged as a part of quid pro quo Mr. Dhoot made investment of Rs.64 Crores in M/s. NuPower Renewables Ltd. (NRL) through M/s. Supreme Energy Pvt. Ltd. (SEPL) and also transferred M/s. SEPL to Pinnacle Energy Trust managed by Deepak Kochhar (Applicant) through Circuitous Route between 2010-2012. The basic premises for allegation was substantially altered and it is alleged that during June-2009 to October-2011, ICICI had Sanctioned 6 high value loans to various Videocon group companies. On 26.08.2009, RTL of Rs.300 Crores was sanctioned to M/s. VIEL in contravention of rules and policy by Sanctioning Committee. Ms. Chanda Kochhar was one of the member of Sanctioning Committee, who in criminal conspiracy to cheat ICICI Bank and in pursuance of criminal conspiracy. On 26.08.2009, dishonestly by using her official position sanctioned this loan in favour of VIEL. It is further revealed that on 07.09.2009, loan of Rs.300 Crores was Ethape 31 16-BA.1322.2020 disbursed to VIEL. Thus, the companies in respect of which investigation had commenced has no reference in the FIR. The amount alleged earlier of Rs.3250 Crore is not referred. It is alleged that on 08.09.2009, Mr. V.N. Dhoot transferred the amount of Rs.64 Crores to NRL managed by Deepak Kochhar, husband of Ms. Chanda Kochhar from M/s. Videocon Industries Ltd. through his company SEPL. This was a major capital received by NRL to acquire its first power plant. The illegal gratification was given by VIL/Mr. V.N. Dhoot for sanctioning RTL of Rs.300 Crores to VIL. The FIR in substance is for RTL of Rs.300 Crores sanctioned to M/s. Videocon International Electronics Ltd (VIEL). Ms. Chanda Kochhar in her reply that the said sum of Rs.300 Crores was lying with Credit Policy and earlier practice of ICICI Bank. It is also emerged from the facts pointed out by Ms. Chanda Kochhar in her reply that loan of Rs.300 Crores given to VIEL in 2009 has been repaid to ICICI Bank and it is further pointed out that there is no question of any loss being cost to ICICI Bank with respect to this loan. The said loan account of VIEL was never declared NPA. Business decision and the transactions of investment of Rs.64 Crores in M/s. NRL managed by Deepak Kochhar (applicant), Mr. V. N. Dhoot from M/s. SEPL is not linked in any manner Ethape 32 16-BA.1322.2020 with the FIR filed by CBI with sanctioning of RTL of Rs.300 Crores by ICICI Committee wherein Ms. Chanda Kochhar was one of the member. On the other hand, the other defendant in the said proceedings have revealed fact concerning the investment and discharged the burden cast upon them in terms Section 8 (1) of PMLA. The FIR fails to justify any investigation having been done before alleging the wrongful loss in respect of RTL of Rs.300 Crores from ICICI Bank to M/s. VIEL. The said RTL loan account of Rs.300 Crores is shown by Ms. Chanda Kochhar to be not declared NPA. Even as per the FIR on 26.04.2012, the existing outstanding of six accounts were adjusted in RTL of Rs.1730 Crore sanctioned under re-finance of domestic debt. The account of M/s. VIL and its group companies were declared NPA with effect from 30.06.2017. The FIR alleges no other illegal gratification, undue benefit other than for

sanctioning RTL of Rs.300 Crores to M/s. VIL, corresponding to which it is duly established by the defendants with the investment made by Mr. V. N. Dhoot of Rs.64 Crores to M/s. NRL through SEPL was a genuine business investment contemplated much ahead in time of sanction of the loan. The Senior Officials namely Sandeep Bakshi, K. Ramkumar, Sanjoy Chatterjee, N.S. Kannan, Ms. Zarin Ethape 33 16-BA.1322.2020 Daruwala, Rashi Sabharwal, K.V. Kamath and Homi Khusrokhan though known and identified were neither interrogated for the alleged scheduled offences by CBI nor interrogation if any, reveal by CBI or the Enforcement Directorate. The FIR alleges that M/s. NRL was being managed by Mr. Deepak Kochhar (applicant) it does not allege that M/s. NRL was owned by him. The Deputy Director issued Provisional Attachment Order invoking the second proviso of Section 5 (1) without forming justifiable reasonable belief as statutorily required. The Deputy Director has not placed any intelligence on record as claimed. The possibility of trial taking long time cannot justify apprehension that the assets are being concealed or transferred. The revelation of modus would not lead to frittering of proceeds of crime during the pendency of further investigation, as is nature of assets concerned and absence of attempt, cannot justify the invocation of emergency provision of second proviso of PMLA. For the reason discussed the flat No.45, CCI Chambers held in the name of Deepak Kochhar (applicant) is not involved in money laundering. Cash of Rs.10.5 Crores seized on 01.03.2019 by Enforcement Directorate from the premises of M/s. Pacific Capital Services Pvt. Ltd. (PCSPL) is duly claimed and explained by Deepak Ethape 34 16-BA.1322.2020 Kochhar (Applicant) and he having discharge the burden in terms of Section 8 (1), the said cash of Rs.10.5 Crores is also not involved in money laundering. The provisional attached assets of M/s. NuPower Renewable Pvt. Ltd and its subsidiaries are not involved in money laundering. The Provisional Attachment order dated 10.01.2020 is not confirmed and the original complaint is rejected.

21. Statement of the applicant was recorded under Section 50 of PMLA on 01.03.2019. He stated that he was associated with Mr. V.N. Dhoot and Videocon during 1991 and 1992. This association continued when he floated his family company called Credential Finance. In August 1996 his company merged with Bloomfield Builders and continuation company. The name was changed to Credential Finance. Videocon was single largest shareholder. Property at 45, CCI Chambers was transferred from Bilquis Jehan Begum to applicant and his brother Rajiv Kochhar vide conveyance Deed in 1996. He has been residing at this property since 1996 as owner and he never conveyed the property to anyone. Mahesh Chandra Punglia was Director in NuPower Renewables Pvt. Ltd. since January 2009, 9990 shares of SEPL transferred to him by Mr. V.N. Dhoot were purchased from Mr. Punglia by Pinnacle Energy. In Ethape 35 16-BA.1322.2020 February 2009 he gave proposal to Mr. Punglia for investment in NuPower Renewables. 9990 shares of M/s. Supreme Energy were owned by Mr. V.N. Dhoot who transferred the same to Mr. Punglia in 2010. Mr. Punglia owned 9990 shares of SEPL out of 10,000 shares purchased with liability of Rs.64 Crores plus 60% redemption premium. In September 2012, Mr. Punglia mentioned that, Videocon group felt that as a promoter he could fetch best value of NuPower Renewables shares and therefore Videocon group desired redemption option from him to receive back Rs.64 Crores plus 60% of which they would not have got otherwise since Videocon group through their investment it. M/s. Supreme Energy had invested in fully convertible debentures of M/s. NuPower Renewables which has compulsorily to be converted into equity as per the terms of conversion, therefore, he purchased 9990 shares through his family trust from Mr. Punglia. The role of Mr. Punglia was that he was Director of NuPower

Renewables. He was attending Board Meetings. In February 1996, Bilquis Begum transferred the flat to applicant and Rajiv Kochhar vide transfer Deed dated February 1996 and the share certificate for said flat was transferred in the name of applicant and Rajiv Kochhar. These shares were of CCI Chambers Ethape 36 16-BA.1322.2020 society. The Flat is in his name since April 1996. His brother's name was dropped in 2009. The flat was purchased out of funds of Credential Finance a company promoted by applicant and his mother. Purchase price was paid out of earnings of the company. Since the purchase price was paid out of Kochhar's family retained earnings in Credential Finance Ltd.(pre-merger). The said property has remained in books of corporate entities. The merged company (post-merger) went into financial crises and exposed to litigation. Further statement of applicant was recorded on 02.03.2019. He provided details of corporate entities in whose books the apartment was mentioned. Applicant bought the apartment for Rs.5.25 Crores in February 1996. Since Credential Finance Limited pre- merger was a closely held company with family members as the shareholders, therefore, as per consent, family company paid the funds to the seller and the apartment was conveyed by the seller in the name of applicant and his brother in 1996. Apartment remained in books of CFL pre-merger this asset continued to remain in books of CFL post- merger entity. CFL desired to avail loan from SBI Home Finance Ltd. Corporate loan of Rs.4.7 Crore was availed by CFL post-merger against mortgage of apartment with corporate guarantee of VIEL. Since loan Ethape 37 16-BA.1322.2020 accrued to the benefit of CFL post-merger and Videocon and its associated being the principle shareholders, Mr. Dhoot assured that apartment would be protected and took steps like giving corporate guarantee to SBI Home Finance to retain the apartment with original owners. There was default by CFL in repaying loan due to financial crises and suit was filed by SBI Home Finance. VIEL paid the dues against corporate guarantee and stepped into shows of SBI Home Finance as plaintiff. The apartment was conveyed to nominee QTAPL in 2009 as per consent terms. Shares of QTAPL sold to applicant's family trust. The applicant became Director of QTAPL in 2009. The applicant was residing in the apartment even during 2009 to 2016-17 while it was reflected in books of QTAPL, being the original owner and occupant. Thereafter applicant statement was recorded on 13.05.2019 and 17.05.2019. He again stated that since CFL made payment, flat was appearing in balance sheet of CFL. Consideration for flat was paid out of earnings in CFL pre-merger.

22. Statement of Mr. V.N. Dhoot was recorded under the provision of PMLA on 01.03.2019. He stated that he came in contact Ethape 38 16-BA.1322.2020 with applicant in the year 1991. M/s. Credential was the Company of applicant. In 1992-1993, he had invested amount of Rs.15 Crores in M/s. Credential. He stated that the payment Rs.64 Crores has no bearing with the receipt of Rs. 300 Crores as loan from ICICI Bank in VIEL. Rs.64 Crores were given from other sources. Subsequent statement was recorded on 02.03.2019. Mr. V.N. Dhoot was again asked to explain why he handed over his flat at CCI Chambers, Churchgate, Mumbai to Kocchar family. He stated that flat was purchased by the applicant and his family from their own funds around 1994-95. In 1994- 96 one of his Company i.e. Blue Mines Ltd. merged with M/s. Credential Finance Limited owned by Kochhar family and Videocon group acquired controlling stake in the Company. Applicant was Managing Director of M/s. Credential Finance Limited. M/s. CFL obtained loan from SBI Home Finance Ltd. and applicant on his personal guarantee, mortgaged property for availing loan. Subsequently, M/s. CFL incurred losses and the Company was liquidated in the year 1998. The flat was purchased by one of Group Company M/s. Quality Techno Advisors Pvt. Ltd. (QTPAL) and since Mr. Dhoot had

given personal guarantee for the said property, the same continued in the name of applicant in society Ethape 39 16-BA.1322.2020 registration. It is utilized by the applicant and family. He also explained how and why M/s. Supreme Energy Pvt. Ltd. provided Rs.64 Crores to NuPower Renewables Pvt. Ltd., a Company promoted by the applicant on 08.09.2019. He stated that on 07.09.2009 M/s. VIEL was disbursed loan of Rs.283.45 Crore. Out of the said amount, Rs.50 Crore was transferred by VIEL to SBI account of VIL. Out of the loan amount of Rs.35 Crore was transferred by VIEL to Central Bank account of VIL. The amount of 50 Crore transferred in SBI account was latter transferred to Federal Bank account of VIL on 08.09.2019, Rs.35 Crore transferred to account of Central Bank, Rs.20 Crore was transferred to bank account of Federal Bank of VIL. The said Federal Bank received Rs.80 Crore from other source, Rs.138 Crore was transferred from Federal Bank account of VIL on 08.09.2009. Finally, out of account of VIL Rs.64 Crore was transferred to out of his group company i.e. M/s. Supreme Energy Pvt. Ltd. on 08.09.2009 in account with Federal Bank. The said amount was transferred by VIL to Supreme Energy Pvt. Ltd. as business advance. On the same day amount of Rs.64 Crore was transferred from M/s. Supreme Energy Pvt. Ltd. to M/s. NuPower Renewables Pvt. Ltd. as investment in Fully Convertible Debenture (FCD). He further stated that, the said Ethape 40 16-BA.1322.2020 amount was transferred by Videocon to Supreme as business advance. In 2009, applicant and his team met him with proposal to make investment in his company i.e. NRPL. They gave presentation. Therefore, he decided to invest in the said company. For the said investment M/s. VIL assigned receivable of Rs.64 Crore from SEPL to IRCL. IRCL assigned its receivable to SEPL. Mr. Dhoot and applicant jointly decided to transfer shareholding to M/s. Supreme Energy Pvt. Ltd. since SEPL was proposing to invest Rs.64 Crores in NEPL. They jointly decided that entire ownership of NEPL be transferred to SEPL.

23. Further statement of Mr. V.N. Dhoot was recorded under Section 50 of PMLA on 20.06.2019, 02.12.2019 and 03.12.2019. He stated that, among Videocon group companies, namely SEPL, IRCL, RAPL/RCPL and VIL, no documents were there, as a matter of policy. The transactions between all these companies were carried out as normal business transactions. Therefore, no documents were created among these companies for transfer of Rs. 64 Crores to NRL from VIL through SEPL and latter authorizing IRCL and RCPL to receive back the funds from NRL. Oral agreement was made with Mr. Deepak Kochhar (applicant) for investment of Rs.64 Crores in NRL. He stated that SEPL, Ethape 41 16-BA.1322.2020 IRCL, RAPL/RCPL and VIL were promoted by him. The transactions among these companies were authorized by him. SEPL was company of Mr. Deepak Kochhar post 29.09.2012. Mr. Dhoot was holding 95% of NRL (through SEPL) on paper and not controlling decision making in NRL. NRPL/NRL was controlled by Mr. Deepak Kochhar. Thereafter his statements were recorded on 21.07.2020 and 22.07.2020. He further stated that he transferred funds to NRL. Rs. 64 Crores was transferred out of loan funds to NRL through SEPL. In January 2009, Mr. Deepak Kochhar met him to seeking funds which he wanted to invest in Renewables Energy Sector. In March 2009, he met Ms. Chanda Kochhar she told him that Mr. Deepak Kochhar is planning for a project in Wind Energy. The project is good. By Deed of transfer dated 04.08.2009 between M/s. Credential Finance Ltd and M/s. Quality Appliances Pvt. Ltd., the flat was transferred from CFL to QAPL. Document shows that Mr. Deepak Kochhar has paid Rs.4.53 lakh of QAPL/QTAPL in January 2013 for obtaining 1% shareholding in the said flat. In the statement dated 12.09.2020, he stated that, I had diverted the loan funds obtained from ICICI Bank and gave money

to company of M/s. NRPL. The proposal was initiated by Mr. Deepak Kochhar. He was about to start Ethape 42 16-BA.1322.2020 Wind Power Business. In January-February 2009, Mr. Deepak Kochhar approached him for financing his project. He was not interested. He was interested in telecom business and invested heavily in telecom sector. They made 3100 Crores investment for acquisition of telecom assets. They were in desperate need of money and looking for finances. Though Kochhar's proposal was of no interest to him, it was more important to get loan from ICICI Bank because of he being husband of Ms. Chanda Kochhar. Mr. Deepak Kochhar was insisting for money for his project and insisted that he should meet his wife. In August 2009 he met Ms.Chanda Kochhar, when she asked him to take care of her husband's interest by putting money in wind project of her husband. He agreed since his loan proposal was before Chanda Kochhar. She was M.D. of ICICI Bank. She was in position to influence CRISIL. Structure for assigning of Rs.64 Crores were created at the insistence of Mr. Deepak Kochhar. The terms and conditions were prepared by lawyers of Deepak Kochhar.

24. It is pertinent to note that, the aforesaid allegations were reflected for the first time in statement dated 12.09.2020. In the previous statement no overt act was attributed to applicant and Ms. Ethape 43 16-BA.1322.2020 Chanda Kochhar. In the previous statement Mr. Dhoot had supported transactions. The statement dated 12.09.2020 is recorded after arrest of applicant. Thereafter statement of Mr. V.N. Dhoot was recorded on 17.10.2020. He reiterated his version in statement dated 12.09.2020.

25. The statement of Akash Singhal was recorded under Section 50 of PMLA on 27.11.2019. He stated that he had never met Ms. Chanda Kochhar for seeking loans which are matter of investigation. He met her in the year 2014, when she was in meeting with other officers. SEPL was incorporated in 2008. Mr. V.N. Dhoot and Vasant Kakde were first directors. He resigned from SEPL on 15.01.2009. He transferred his share of Supreme Energy Pvt. Ltd. to Mahesh Chandra Punglia, he was pre-occupied with urgent activities within the group. It was Videocon Telecommunications Ltd. which was keeping him busy. Mahesh Punglia sold entire holding in Supreme Energy Pvt. Ltd. to Pinnacle Trust of Mr. Deepak Kochhar. Mr. Dhoot and Pungalia transferred the control of SEPl to applicant by selling/transferring his shares to Pinnacle Energy Trust. These shares were sold to Pinnacle Energy Trust at fair market value. VIL was engaged in business of Consumer Electronics & Home Appliances. To diversify its activities, VIL identified power generation Ethape 44 16-BA.1322.2020 and trading and dealing in various mineral including coal required for Electricity of Power Generation. He also explained why he decided to invest in M/s. NuPower Renewals Ltd. He stated that VIL invested Rs.64 Crores in FCD's of NuPower Renewables Ltd. through SEPL against investment of Rs.64 Crores NuPower Renewables through SEPL, Real Cleantech was allotted optionally convertible debentures. The said debentures are convertible, at the option of debenture holder, on completion terms of 10 years during the date of issue of debentures or any other date (which date can be earlier date prior to completion of the term) mutually agreed between SEPL and debenture holder. He also stated that loan outstanding from VIEL in the books of VIL as on 6th September 2009 was Rs. 740.16 Crores. Out of which, Rs.283.45 Crores was repaid by VIEL on 7th September 2009. Loan of Rs.300 Crores was sanctioned to VIEL by ICICI Bank on 29th August 2009. Amount of Rs.16.55 Crores deducted by ICICI Bank while disbursing loan. The net disbursed amount of Rs.283.45 was utilized towards repayment of un- secured loan given by

Videocon Industries Limited to Videocon International Electronics Limited amount of Rs. 283.45 Crore. The Director of VIEL at the time of applying for loan of Rs.300 Crores were Ethape 45 16-BA.1322.2020 Mr. V.N. Dhoot, Mr. S.P. Dhoot and Pradipkumar Dhoot. VIEL was subsidiary of VIL. He provided details of flow of money from VIEL to VIL by stating that ICICI deducted amount of Rs.16.55 Crores while disbursing the loan. The net amount was utilized towards repayment of unsecured loan given by VIEL to VIL. On questioning whether there were favourable terms by ICICI Bank, he stated that the increase in net exposure between 2009-2018 is just USD53.87 million. ICICI Bank or Mrs. Chanda Kochhar or any other official have not favoured Videocon group in any manner in any of its dealings. Rather they have been tough/harsh while charging up front fees/charges and high rate of interest.

26. Statement of Ms. Chanda Kochhar was recorded on 03.03.2019 under Section 50 of PMLA. She stated that she had joined ICICI Bank in 1984. She is not involved in business activity of her husband. She is residing at Flat No.45, CCI Chamber, Charchgate, Mumbai since 1996. Her husband is owner of the flat. Statement of Sunil Bhuta was recorded on 25.10.2019 and 27.11.2019. He submitted chart showing change in shareholding and Directorship of NRPL. He submitted details of subsidiaries of NRPL. Statement of Anirudha Ethape 46 16-BA.1322.2020 Godbole was recorded on 29.11.2019. He was Engagement Director in respect of Audit of NRL. Rs.64 Crores were received by NRL on 08.09.2009 from SEPL as recorded in Audit statements of NRL for the period of 24.12.2008 to 31.10.2010. The inflow of Rs.64 Crores in NRL from SEPL was disclosed under unsecured loans. Mr. V.N. Dhoot was 50% shareholder of NRPL (earlier known as NRL). Shareholding of Mr. V.N. Dhoot in SEPL was 99.99% statement of Ms. Neelam Advani was recorded on 13.06.2019 and 21.06.2019. She is sister-in-law of Ms. Chanda Kochhar. She stated that she made investment in M/s. Pacific Services Pvt. Ltd. She attended board meeting of CFL once. Small investment was made by her in CFL through personal savings. Statements of Mr. Lokesh Saliyan were recorded on 31.07.2020 and 25.08.2020. He was working in ICICI Bank as, Deputy Manager. He submitted documents. He explained the procedure for sanctioning loan. Business group can present urgent proposals before Sanctioning Committee. The control committee was not called while sanctioning loan of Videocon. He also gave details about process followed for sanction. Normal process was not followed. Statement of Malu Ethape 47 16-BA.1322.2020 Sudhakar is recorded on 16.10.2020. He stated about conflict of interest of Ms. Chanda Kochhar.

27. From the tenor of the statements, it is apparent that statements were recorded in detail in the form of interrogation. Statements of Mr. V. N. Dhoot, applicant and Ms. Chanda Kochhar are in the nature of explanation to the charges levelled against them. The statements of applicant and co-accused are not in the nature of admission of guilt. The statements of some of the witnesses corroborates versions of applicant.

28. Provisional Attachment order was issued on 10.01.2020 in respect to properties on the ground that, applicant and others were in possession of proceeds of crime and such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating proceedings relating to confiscation of proceeds of crime. The schedule of property under attachment is Flat No.45, CCI Chambers, Churchgate, Mumbai. The respondent in the impugned proceedings has alleged that the aforesaid flat is acquired by family trust of applicant from Videocon

group. The Adjudicating Authority has concluded that Flat No.45, CCI Chambers held in the name of Deepak Kochhar is not Ethape 48 16-BA.1322.2020 involved in money laundering. It is further held that sum of Rs.300 Crores was in line with Credit Policy and loan has been repaid and no loss is caused to Bank. The transaction of Rs.64 Crores is not linked in any way with FIR filed by CBI with fact of sanctioning RTL of Rs.300 Crores by ICICI committee. The defendants have discharged the burden in terms of Section 8 (1) of PMLA.

29. It is pertinent to note that the investigation in ECIR has been conducted without subjecting other accused to custody. The applicant has been subjected to detention since last six months. The apprehension of the respondent is that he may abscond and he is likely to tamper with the evidence. It is relevant to note that for since last six months, he is in custody. The case of respondent No.1 is Ms. Chanda Kochhar was instrumental in sanctioning loan by using her position in ICICI Bank to Videocon and benefit is accrued through applicant by diversion of Rs.64 Crores and flat at CCI Chambers. Ms. Chanda Kochhar and Mr. V.N. Dhoot were not subjected to custody. Thus, the borrower of loan was not arrested during investigation. By order dated 12.02.2021 Ms. Chanda Kochhar has been granted bail on conditions. Mr. V. N. Dhoot suo motu appeared before trial Court on 12.03.2021. He was taken into custody Ethape 49 16-BA.1322.2020 and granted bail on the same day. It was contended on his behalf that, Court has taken cognizance of complaint on 30.01.2021. During the course of investigation accused was available for investigation. He was never arrested under Section 19 of PMLA and therefore, he is entitled for bail. The respondents had objected grant of bail on the ground that, accused might abscond and influence witnesses. Further investigation is in progress. He has played major role in money laundering in the offence. He has diverted funds and loan amount is not used for intended purpose. Accused is influential person. Complaint speaks volume about role of the accused. The accused had also submitted that, he was not arrested during investigation. Twin conditions under section 45 are struck down by Supreme Court. Health condition is not good. He is suffering from many aliments. It was also argued that accused has attended Enforcement Directorate office 31 times and co-operated with investigation and submitted documents. Hence, even if further investigation is going on, his presence can be secured before Enforcement Directorate for investigation purpose. In such circumstances keeping the applicant need not be kept in custody. The trial Court concluded that, considering the fact that Enforcement Ethape 50 16-BA.1322.2020 Directorate had not arrested the accused under Section 19 of PMLA and the accused is 70-year-old having ailments, he can be released on bail. Hence by order dated 12.03.2021, accused No.3 Mr. V.N. Dhoot was granted bail. While denying bail to the applicant vide order dated 01.12.2020, it was observed that, charge against applicant is serious in nature. Enforcement Directorate has contended that relatives of applicant are witnesses and further investigation is in progress. The applicant may tamper with prosecution evidence. There are allegations of siphoning money. It is pertinent to note that, loan was obtained by accused No.3. Amount of Rs.64 Crores was allegedly diverted by accused No.3.

30 During the course of investigation the respondents had submitted that the applicant had tampered evidence. Sealed envelope was tendered in Court. Although the material was supplied in sealed envelope, it was contended that it relates to tampering evidence. The learned counsel for applicant had strongly opposed the act of handing over sealed envelope. It is submitted that the alleged material do not relate to investigation of case. The applicant is in custody from 07.09.2020.

After the arrest applicant was produced before the Court Ethape 51 16-BA.1322.2020 for remand and at that point of time, it was not alleged in remand application that applicant has committed such act. I have perused the contents of sealed envelope. It is relevant to note that applicant is in custody from 07.09.2020. The Supreme Court in the case of P.Chidambaram Vs. DRI 2019 SCC OnLine SC 1549. The Hon'ble Supreme Court while dealing with an application for bail had observed that, the question as to whether the Court could look into the documents while considering application for bail had arose for consideration. It was held that, it would be open for Court to receive material/documents collected during investigation and peruse the same to satisfy its conscience that investigation is proceeding on right lines and for the purpose of considering grant of bail etc. At the same time the Court has disapproved the manner in which the High Court had quoted the note produced by respondents. It was further observed that while the learned Judge is empowered to look at the material produced in a sealed cover to satisfy his judicial conscience, the Court ought not to have recorded finding based on material produced in a sealed cover. It was further observed that though it is held that it would be open for the Court to peruse the documents, it would be against the concept of fair Ethape 52 16-BA.1322.2020 trial if in every case prosecution presents documents in sealed cover and finding on the same are recorded as if the offence is committed and the same is treated of having bearing grant or denial of bail. Hence, I refrain from making observation on contents of sealed envelope.

31. The question urged by both sides is whether, in view of amendment to Section 45 of PMLA, the twin conditions stipulated therein stands revived post decision of Hon'ble Supreme Court in the case of Nikesh Tarachand Shah Vs. Union of India (2018) 11 SCC 1.

32. The amendment to Section 45 has come into effect 19th April 2018. Prior to said amendment Section 45 was as follows: -

> "Notwithstanding anything contained in the Cr.P.C., 1973 (a) every offence punishable under section shall be cognizable (b) no person accused of an offence punishable for term of imprisonment of more than three years under part A of schedule shall be released on bail or on his own bond unless-
>
> (i) The Public Prosecutor has been given an opportunity to oppose the application for such release; and
>
> (ii) 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 Ethape 53 16-BA.1322.2020 not likely to commit any offence while on bail:
>
> "Provided that a person, who, is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs."
>
> "Provided further that the Special Court shall not take cognizance of any offence punishable under Section 4 except upon a complaint in writing made by-
>
> (i) The Director; or

(ii) Any officer of the Central Government or State of Maharashtra

authorities order in writing in this behalf by that Government."

(1-A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or not any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorized by the Central Government by a general or special order, and subject to such contentions as may be prescribed.

(2) The limitations on granting of bail as specified in sub-Section 1 are in addition to the limitation under the Code of Criminal Procedure, 1973 or any other law for the time being in force, on granting bail.

33. The Hon'ble Apex Court in the case of Nikesh Tarachand Shah (supra) had set aside the twin conditions on the ground that the Ethape 54 16-BA.1322.2020 said provisions are unconstitutional as it violates article 14 and 21 of the constitution of India.

34. Learned Additional Solicitor General has submitted that the Apex Court had set aside the twin conditions for the reasons stated therein. It is submitted that the Apex Court felt that the twin conditions that need to be satisfied under Section 45 are that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail. The expression "such offence" would be relatable only to offence under Part A of the Schedule. Thus, in an application made for bail, where the offence of money laundering is involved, if Section 45 is to be applied, the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of the offence under Part A of the Schedule, which is not the offence of money laundering, but which is completely a different offence. It is submitted that, in this context, the Apex Court felt that the provisions are arbitrary and unconstitutional. Learned ASG further submitted that the amendment has introduced the words "under this Act" which would mean the twin conditions are applicable only for the offence under this Act as mentioned in the Schedule. It is submitted that Ethape 55 16-BA.1322.2020 on account of introduction of words 'under this Act' and by deleting the provision, no person accused of an offence punishable for term of imprisonment of three years under Part A of Schedule shall be released on bail or on his own bond being deleted, the twin conditions shall stand automatically revived. He relied upon decision of Apex Court in the case of Molar Mal Vs. Kay Iron Works Pvt. Ltd (2000) 4 SCC 281. The Apex Court observed that where the constitutional validity of a provision is not under challenge, the Court will have to proceed on the basis that the provision is intra vires and interpret the same as such. Learned ASG submitted that this Court is dealing with bail and cannot decide constitutional validity of amendment. He relied upon the decision in the case of Nagaland Gone Vs. State of Nagaland 2010 7 SCC 643. The Apex Court has observed that there is always a presumption in favour of constitutionality of enactment that the burden is upon the person who attacks it. Learned ASG also relied upon the decision in the case of Municipal Committee Amritsar & Anr. Vs. State of Punjab & Ors. 1969 1 SCC 475. In the said case, the Court considered whether the expression 'cattle fair' incorporated under the Punjab Cattle Fairs (Regulation) Act is unconstitutional. The Act provided for vesting Ethape 56 16-BA.1322.2020 exclusively, the right to hold a cattle fair at any place in the State of Punjab, declared it unlawful for

any person or local authority to hold, control, or regulate a cattle fair at any place in the state and required local authorities in whose jurisdiction the fair is to be held, to deposit a prescribed amount to cover initial expenses. The High Court held the Act ultra-vires on the ground of vague and ambiguous provisions. The Act was amended and expression defined as 'a gathering of more than 25 persons for the purpose of general sale or purchase of goods'. It was contended that since the Act was struck down it should have been re- enacted and that Act violated Articles 19 (1) (b), (d), (f), (g) and 6, 31 (2) of the Constitution of India. It was held that law may be declared invalid in India if the legislature has no power to enact the law or that it violates any of the fundamental rights guaranteed by constitution or is inconsistent with any constitutional provision, but not on the ground that it is vague because the test of American "due process" clause cannot be applied in India to statutes. A law which vests in the state a monopoly to carry on a trade or business to the extent that it has direct relation to the creation of the monopoly is not open to challenge on the ground of violation of Article 19 (1) (g). Learned ASG then relied upon Ethape 57 16-BA.1322.2020 the decision in the case of Devi Das Gopal Krishnan Vs. State of Punjab & Ors. 1967 3 SCR 557. In the said decision, the argument was that Section 5 of the East Punjab General Sales Tax Act, 1948 was held to be void on the ground that it conferred essentially legislative power on the provincial Government and therefore, the said section was stillborn and that, as the said section was the charging section, the entire Act was void, with the result Act 19 of 1952 which amended Section 5 with retrospective effect could not breathe a new life into the said Act. Void act was not non-est and, therefore, could not be brought into force by amending Act. The Court observed that the first question, therefore is whether Section 5 of the East Punjab General Sales Tax Act, 1948, as it originally stood was void and the second question is, if the said section was void, whether the amendment could give life to it. The Apex Court held that under Section 5 of the Act as it originally stood, an uncontrolled power was conferred on the provincial Government to levy every year on the taxable turnover of a dealer a tax at such rates as the said Government might direct under the section legislature practically effaced itself in the matter of fixation of rates and it did not give any guidance under that section or any other provisions of the Act. It was Ethape 58 16-BA.1322.2020 then argued that even if the act was valid, Section 5 was non-est, that amending Act purported to amend the earlier Section 5 which was not in existence. It was held that as the Act applies to sales or purchases of different commodities it had become necessary to give some discretion to Government in fixing rate. It is pertinent to note that in this decision, the original Act was held valid.

Learned ASG then relied upon the judgment in the case of Radheshyam Kejriwal Vs. State of West Bengal (2011) 3 SCC 581. In the said decision, it was held that in case of exoneration on merits in adjudication proceedings where the allegation is found to be not sustainable at all and the person concerned is innocent, criminal prosecution on the same set of facts and circumstances can not be allowed to continue. The Court interpreted Sections 50, 51 and 56 Foreign Exchange Regulation Act, 1973 it was observed that proceeding cannot be set aside on the ground that the Adjudicating Authority had exonerated the accused. Learned ASG submitted that the Delhi High Court in the case of Upendra Rai Vs. Enforcement Directorate (2019) SCC OnLine Del 9086 had observed that the amendment to Section 45 does not revive the twin conditions. The said decision has been Ethape 59 16-BA.1322.2020 challenged before the Apex Court and till further orders, the impugned order has been stayed by the Supreme Court. Learned ASG submitted that in the case of Mohammad Arif Vs. State of Orissa, the Orissa High Court at Cuttack has held that the amendment would revive the twin

conditions under the PML Act.

35. Learned Counsel for the applicant submitted that the question of resurrection or revival of the twin conditions to Section 45 does not arise. He submitted that this Court in the case of Sameer Bhujbal Vs. Assistant Director, Directorate of Enforcement vide order dated 6th June 2018 passed in Bail Application No.286 of 2018 has observed that the Supreme Court in the case of Nikesh Shah has held that Section 45 was struck down as a whole. Section 45 (1) of the PMLA insofar as it imposes two conditions for release on bail, to be unconstitutional as it violates Articles 14 and 21 of the Constitution of India. After effecting amendment to Section 45 (1), the words "under this Act" are added to Section 1 of Section 45 of PMLA however held that twin conditions has not been revived and resurrected by the amending Act. It is submitted that even notification dated 29th March 2018, amending Section 45 (1) which came into effect on 09th April 2018 is Ethape 60 16-BA.1322.2020 silent about its retrospective applicability. The original Section 45 (1) is neither revived nor resurrected by the amendment Act and as of today rigor of two further conditions under original Section 45 (1) (ii) of PMLA for releasing the accused on bail does not exist. The decision in the case of Sameer Bhujbal is also under challenge before Apex Court. There is no stay to the said order. Mr. Desai further submitted that in recent decision, the High Court of Manipur at Imphal has held in the case of Okram Ibobi Singh Vs. The Directorate Enforcement, 2020 SCC OnLine Mani 365, that it can be easily deciphered, on comparative reading of Section 45 (1) of the Act, pre-amendment and post- amendment, that Clause (ii) of sub- Section (1) remained as it stood before amendment. The issue which arises for consideration is as to whether the Hon'ble Supreme Court's decision in case of Nikesh Tarachand Shah (supra) can be said to have lost its significance because of the aforesaid amendment in Section 45(1) of the PML Act. The Court after considering submission of both sides and the law laid down in case of Nikesh Shah, and also referring to several decisions has held that the Supreme Court has taken into consideration the illustrations while arriving at a conclusion that the twin conditions is unconstitutional. It Ethape 61 16-BA.1322.2020 was observed that the Hon'ble Supreme Court has clearly held that indiscriminate application of the provisions of Section 45 will certainly violate Article 21 of the Constitution of India. In the background, it is to be seen as to whether the amendment introduced in Section 45 of the Act shall amount to reframing the entire Section 45 and thereby reviving and resurrecting the requirement of twin-conditions under sub-Section (1) of Section 45 of the PML Act for grant of bail. In view of clear language used in paragraph 46 of the Supreme Court's decision in case of Nikesh Tarachand Shah (supra), the Court has no hesitation in reaching a definite conclusion that the amendment in sub-Section (1) of Section 45 of the PML Act introduced after the Supreme Court's decision in case of Nikesh Tarachand Shah (supra) does not have the effect of reviving the twin-conditions for grant of bail, which have been declared ultra vires Articles 14 and 21 of the Constitution of India. Mr. Desai submitted that the Supreme Court in the case of Nikesh Tarachand Shah (supra) has considered various aspects. Mr. Desai submitted that, it is not only because of the reason, as contended by learned ASG, the Apex Court had struck down the twin conditions. The Court has given several illustrations and has come to the conclusion that the twin conditions are Ethape 62 16-BA.1322.2020 ultra vires the Constitution. Mr. Desai has relied upon the decision in the case of State of Karnataka & Ors. Vs. The Karnataka Pawn Brokers Association & Ors. (Civil Appeal No. 5793 of 2008 with 2874-2878 of 2018 decided on 15th March 2018). In the said decision the Apex Court has observed that the Legislature has the power to enact validating laws including the power

to amend laws with retrospective effect and thereby removing causes of invalidity i.e. by removing the error/mistake committed in the earlier legislation. It cannot be overturn or set aside the judgment, that too retrospectively by introducing a new provision. What the Legislature can do is to amend the provisions of statute to remove the basis of the judgment. The judicial pronouncement is always binding unless the very fundamentals on which it is based are altered and the decision could not have been given in the altered circumstances. Mr. Desai then relied upon the decision in the case of Dr.Vinod Bhandari Vs. Assistant Director, Directorate of Enforcement decided by High Court of Madhya Pradesh. The Court has taken a view that the original Section 45 has neither revived nor resurrected by the amending Act. It is submitted that, as of today there is no rigour of said two further conditions under Section 45 (1) (ii) of the PML Act for releasing Ethape 63 16-BA.1322.2020 the accused on bail under the said Act.

36. According to respondents post amendment Section 45 reads as follows:- -

> "Offences to be cognizable and non-bailable.-(1) [Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), No person accused of an offence [under this Act] shall be released on bail or on his own bond unless-]
>
> (i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and
>
> (ii) 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:
>
> Provided that a person who is under the age of sixteen years or is a woman or is sick or infirm [or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees], may be released on bail, if the special court so directs:
>
> Provided further that the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by-
>
> (i) the Director; or
> (ii) any officer of the Central Government or State Government
>
> authorised in writing in this behalf by the Central Government by a general or a special order made in this behalf by that Government.
>
> [(1A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.] (2) The limitation on granting of bail specified in [***] sub-section

91) is in addition to the limitations under the code of Criminal Ethape 64 16-BA.1322.2020 Procedure, 1973 (2 of 1974) or nay other law for the time being in force on granting of bail.

37. The question of the constitutional validity of Section 45 of PMLA was dealt with by Apex Court before amendment in the case of Nikesh Tarachand Shah (supra). The grounds of challenge were that, Section 45 of the Act, when it imposes two further conditions before grant of bail is manifestly arbitrary, discriminatory and violative of petitioner's fundamental rights under Article 14 read with Article 21 of the Constitution. The Apex Court enumerated illustrations while examining validity of twin conditions. The first would be cases where the charge would only be of money laundering and nothing else, as would be the case where the scheduled offence in Part A has already been tried and persons charged under the scheduled offence have or have not been enlarged on bail under the Code of Criminal Procedure and thereafter convicted or acquitted. The proceeds of crime from such scheduled offence may will be discovered much later in the hands of Mr. X, who now becomes charged with the crime of money laundering under the 2002 Act. The predicate or scheduled offences has already been tried and the accused persons convicted/acquitted in this illustration and Mr. X now apprise for bail to the Special Court/High Court. The Ethape 65 16-BA.1322.2020 Special Court/ High Court, in this illustration, would grant him bail under Section 439 of Criminal Procedure Code and thus can enlarge X on bail with or without conditions under Section 439. Mr. X would not have to satisfy the twin conditions mentioned in Section 45 of 2002 Act in order to be enlarged on bail, pending trial for an offence under 2002 Act. The second illustration would be of Mr. X being charged with an offence under 2002 Act together with predicate offence contained in Part B of the Schedule. Both these offences would be trial together. In this case, again the Special Court/High Court can enlarge Mr. 'X' on bail, with or without conditions, under Section 439 of Code of Criminal Procedure, as Section 45 of 2002 Act would not apply. In a third illustration, Mr. X can be charged under the 2002 Act together with a predicate offence contained in Part A of the Schedule in which the term for imprisonment would be 3 years or less than 3 years (this would apply only post amendment Act 2012 when predicate offences of 3 years and less than 3 years contained in Part B were lifted into Part A). In this illustration again, Mr. X would be liable to be enlarged on bail under Section 439 of the Code of Criminal Procedure by Special Court/High Court, with or without conditions, as Section 45 of the 2002 Act would have no Ethape 66 16-BA.1322.2020 application. The fourth illustration would be an illustration in which Mr. X is prosecuted for an offence under the 2002 Act and an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule. In this illustration, the Special Court/High Court would enlarge Mr. X on bail only if the conditions specified in Section 45(1) are satisfied and not otherwise. In the fourth illustration, Section 45 would apply in a joint trial of offences under the Act and under Part A of the Schedule because the only thing that is to be seen for the purpose of granting bail, under this Section, is the alleged occurrence of a Part A scheduled offence, which has imprisonment for over three years. The likelihood of Mr. X being enlarged on bail in the first three illustrations is far greater than in this fourth illustration, dependent only upon the circumstance, that Mr. X is being prosecuted for a Schedule A offence which has imprisonment for over three years, a circumstance which has no nexus with the grant of bail for the offence of money laundering. The mere circumstance that the offence of money laundering is being tried with Schedule A offence without more cannot naturally lead to the grant or denial of bail by applying Section 45 (1) for the offence of

money laundering and the predicate offence. Paragraphs 34, 42 and 46 of Ethape 67 16-BA.1322.2020 Judgment of Nikesh Shah case reads as follow: -

> "34. Again, it is quite possible that the person prosecuted for the scheduled offence is different from the person prosecuted for the offence under the 2002 Act. Mr. X may be a person who is liable to be prosecuted for an offence, which is contained in Part A of the Schedule. In perpetrating this offence under Part A of the Schedule, Mr. X may have been paid a certain amount of money. This money is ultimately traced to Mr. Y, who is charged with the same offence under Part A of the Schedule and is also charged with possession of the proceeds of crime, which he now projects as being untainted. Mr. X applies for bail to the Special Court/High Court. Despite the fact that Mr. X is not involved in the money laundering offence, but only in the scheduled offence, by virtue of the fact that the two sets of offences are being tried together, Mr. X would be denied bail because the money laundering offence is being tried along with the scheduled offence, for which Mr. Y alone is being prosecuted. This illustration would show that a person who may have nothing to do with the offence of money laundering may yet be denied bail, because of the twin conditions that have to be satisfied under Section 45(1) of the 2002 Act. Also, Mr. A may well be prosecuted for an offence which falls within Part A of the Schedule, but which does not involve money laundering. Such offences would be liable to be tried under the Code of Criminal Procedure, and despite the fact that it may be the very same Part A scheduled offence given in the illustration above, the fact that no prosecution for money laundering along with the said offence is launched, would enable Mr. A to get bail without the rigorous conditions contained in Section 45 of the 2002 Act. All these examples show that manifestly arbitrary, discriminatory and unjust results would arise on the application or non application of Section 45, and would directly violate Articles 14 and 21, inasmuch as the procedure for bail would become harsh, burdensome, wrongful and discriminatory depending upon whether a person is being tried for an offence which also happens to be an offence under Part A of the Schedule, or an offence under Part A of the Schedule together with an offence under the 2002 Act. Obviously, the grant of bail would depend upon a circumstance which has nothing to do with the offence of money laundering. On this ground alone, Section 45 would have to be Ethape 68 16-BA.1322.2020 struck down as being manifestly arbitrary and providing a procedure which is not fair or just and would, thus, violate both Articles 14 and 21 of the Constitution.
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> 42. Another conundrum that arises is that, unlike the Terrorist and Disruptive Activities (Prevention) Act, 1987, there is no provision in the 2002 Act which excludes grant of anticipatory bail. Anticipatory bail can be granted in circumstances set out in Siddharam Satlingappa Mhetre v. State of Maharashtra (see paras 109, 112 and 117). Thus, anticipatory bail may be granted to a person who is prosecuted for the offence of money laundering together with an offence under Part A of the Schedule, which may last throughout the trial. Obviously for grant of such bail, Section 45 does not need to be satisfied, as only a person arrested under Section 19 of the Act can only

> be released on bail after satisfying the conditions of Section 45. But insofar as pre-arrest bail is concerned, Section 45 does not apply on its own terms. This, again, would lead to an extremely anomalous situation. If pre-arrest bail is granted to Mr. X, which enures throughout the trial, for an offence under Part A of the Schedule and Section 4 of the 2002 Act, such person will be out on bail without his having satisfied the twin conditions of Section 45. However, if in an identical situation, Mr. Y is prosecuted for the same offences, but happens to be arrested, and then applies for bail, the twin conditions of Section 45 will have first to be met. This again leads to an extremely anomalous situation showing that Section 45 leads to manifestly arbitrary and unjust results and would, therefore, violate Articles 14 and 21 of the Constitution.

46. We must not forget that Section 45 is a drastic provision which turns on its head the presumption of innocence which is fundamental to a person accused of any offence. Before application of a section which makes drastic inroads into the fundamental right of personal liberty guaranteed by Article 21 of the Constitution of India, we must be doubly sure that such provision furthers a compelling State interest for tackling serious crime. Absent any such compelling State interest, the indiscriminate application of the provisions of Section 45 will certainly violate Article 21 of the Constitution. Provisions akin to Section 45 have only been upheld on the ground that there is a compelling State interest in tackling crimes of an Ethape 69 16-BA.1322.2020 extremely heinous nature."

In the paragraph 48 the Court referred to similar provision under MCOC Act and the observation of Supreme Court in the case of Ranjitsing Sharma Vs. State of Maharashtra (2005) 5 SCC 294 about nature of restriction on power of Court to grant bail and conclusion to be arrived in accordance with Section 21 (4) of MCOC Act. In paragraph 54 the Court held that, regard being had to the above, Section 45 (1) of PMLA 2002 in so far as it imposes two further conditions for release on bail to be unconstitutional as it violates Article 14 and 21 of the Constitution of India.

38. The question is the provision which was held constitutional by Apex Court in the case of Nikesh Shah (supra) stands revived in view of Amendment as stated above to Section 45 of the Act. This Court in the case of Sameer Bhujbal (supra) has turned down the submission of respondents therein that Government has brought an amendment to Finance Act, 2018 which has come into effect from 19.04.2018 to Section 45 (1) of PMLA thereby inserting words "under this Act" in Section 45 (1) of the Act. In view of amendment, the original sub-

Ethape 70 16-BA.1322.2020 Section (ii) of Section 45 (1) which imposes the said twin conditions automatically stands revived and the said condition therefore remain on statute book. The original Section 45 (1) (ii) has to be inferred and treated as it still exists on the statute book and holds the field even as of today for deciding application for bail by an accused under PMLA. It was further argued that by inserting words "under this Act", the Judgment delivered by Supreme Court in Nikesh Shah (supra) has become in effective. The Court held that the Apex Court in Nikesh Shah (supra) has declared Section 45 (1) of PMLA in so far as it imposes two further conditions for release on bail to be unconstitutional as it violates Articles 14 and 21 of Constitution of India. After effecting amendment to Section 45 (1) of PMLA. The words "under this Act" are added to sub- Section (1) of

Section 45 of PMLA. However, the original Section 45 (1)

(ii) has not been revived or resurrected by Amending Act. Even notification dated 29.03.2018 amending Section 45 (1) of PMLA which came into effect from 19.04.2018 is silent about its retrospective applicability. Hence, contention of respondent cannot be accepted. The Original sub-Section 45 (1) (ii) has neither revived nor resurrected by amending Act and therefore there is no rigour of twin conditions. This Ethape 71 16-BA.1322.2020 decision is still in the field. Although it is contended that, the decision has been challenged before Apex Court, it has not been set aside nor there is stay on the decision.

39. The Madhya Pradesh High Court in the case of Dr. Vinod Bhandari Vs. Asst. Director (supra) has dealt with similar issue. The respondents had contended that, in view of amendment to Section 45 (1) of PMLA by inserting words "under this Act" in Section 45 (1), the original sub-Section (ii) of Section 45 (1) which imposes twin conditions automatically stands revived and the said conditions remained on statute book. In view of Amendment, the original Section 45 (1) (ii) has to be inferred and treated as it still exists on the statute book and hold the field even as of today for deciding the application for bail by an accused under PMLA and the Judgment of Apex Court has become in effective. The Madhya Pradesh High Court held that, the Supreme Court held that the Supreme Court in the case of Nikesh Tarachand Shah (supra) has in unequivocal terms held that, we declare that Section 45 (1) of PMLA in so far as it imposes two further conditions for release on bail to be unconstitutional as it violates Articles 14 and 21 of the Constitution of India. After effecting amendment to Section 45 (1) of the Ethape 72 16-BA.1322.2020 PMLA, the words "under this Act" are added to sub-Section (1) of Section 45 of the Act. However, the original Section 45 (1) (ii) has not been revived or resurrected by Amending Act. The notification dated 29.03.2018 is silent about its retrospective applicability. The original sub-Section 45 (1) (ii) has neither revived nor resurrected by Amending Act and there is no rigour of twin conditions. High Court of Delhi in the case of Upendra Rai Vs. Directorate of Enforcement (supra) has also considered similar issue. Similar argument was advanced by respondents. The Court referred to decisions of this Court and Madhya Pradesh High Court, referred to hereinabove. The Court held that there is no reason to disagree with the two views expressed. Learned counsel for respondents had contended that the decision in the case of Upendra Rai has been challenged before the Apex Court and the order has been stayed. The order dated 03.06.2020 passed in the said case indicate that, Notice was issued and until further orders, the operation of impugned order passed by High Court of Delhi is stayed if the respondent has not already been released on bail. It is not clear whether the respondent therein was released on bail before passing the said order. From the order it appears that operation of order was stayed Ethape 73 16-BA.1322.2020 if accused is not released on bail. The High Court of Manipur at Imphal in the case of Okram Singh Vs. Directorate of Enforcement (supra) considered similar argument of prosecution. The contention of respondents was not accepted. The respondents in support of submissions had relied on Supreme Court decision in the case of P. Chidambaram Vs. Directorate of Enforcement (2018) 11 SCC 46. It was submitted that, Amendment has been introduced with effect from 19.04.2018 after taking note of the decision of the Hon'ble Supreme Court in the case of Nikesh Shah (supra) and the defects which were pointed out in the Judgment, have thus been rectified i.e. in place of the term punishable for a term of imprisonment of more than three years of Part A of the Schedule, "under This Act" has been substituted and twin conditions become referable and relatable

to the offence under PML Act. The High Court considered the observations in the case of Nikesh Tarachand Shah, the illustrations enumerated in the said decision. It was held that, there is no force in the submission of respondent that a different view has been taken in case of P. Chidambaram (supra) by the Hon'ble Supreme Court than the view taken in the case of Nikesh Tarachand Shah on the question of constitutional validity of sub-Section Ethape 74 16-BA.1322.2020 (1) of Section 45 of PMLA. There is no discussion in this regard in P. Chidambaram (supra). In view of clear language used in paragraph 46 of the Hon'ble Supreme Court decision in case of Nikesh Tarachand Shah (supra), Court has no hesitation in reaching a definite conclusion that amendment in sub-Section (1) of Section 45 of PMLA introduced after the Supreme Court decision in case of Nikesh Tarachand Shah does not have effect of reviving twin conditions for grant of bail, which have been declared ultra vires Article 14 and 21 of Constitution of India.

40. I do not find any reason to differ from the view expressed by this Court in the case of Sameer Bhujbal (supra), Madhaya Pradesh High Court in the case of Dr. Vinod Bhandari (supra), Delhi High Court in the case of Upendra Rai (supra) and High Court of Manipur in the case of Okram Singh (supra).

41. The respondents have relied on the decision of High Court of Orissa in the case of Mohammed Arif, it is contended that the Court had considered twin conditions under Section 45 of the Act. It was held that reliance placed on Nikesh Tarachand Shah Vs. Union of India (supra) is untenable in view of the fact that Section 45 has been amended whereby the original expression "imprisonment for a term of more than Ethape 75 16-BA.1322.2020 tree years under Part A of the Schedule (Pre-Amendment) now stands substituted by expression" no person accused of an offence under this Act shall be released on bail or on his own bond. Similar sentiment has been echoed by Apex Court in P. Chidambaram Vs. Directorate of Enforcement. It is submitted that, the said decision was challenged before Apex Court. The order dated 24.11.2020 passed by Hon'ble Supreme Court in the appeal mentions that, petitioners counsel prayed for withdrawal of petition with liberty to file fresh petition before Supreme Court after six months. Accordingly, the Special leave petition is dismissed as withdrawn with liberty aforesaid. Thus, there was no adjudication on merits before Apex Court. In P. Chidambaram's case (supra) referred above, the petitioner was seeking anticipatory bail. The Court had decided case on merits and not dealt with issue relating to effect of amendment to Section 45 (1) of PMLA and whether the twin conditions stands revived.

42. In the case of Nikesh Tarachand Shah (supra) as stated above the Hon'ble Supreme Court has declared Clause (ii) of sub-Section 1 of Section 45 of PML Act ultra vires Articles 14 and 21 of the Constitution. Sub-Section 2 the said decision the amendment referred Ethape 76 16-BA.1322.2020 to hereinabove was carried out. Clause (ii) of sub-Section 1 of Section 45 of PML Act places two conditions for release of a person accused of an offence under the Act, on bail, if a Public Prosecutor opposes the bail application, namely the Court is satisfied that there are reasonable grounds for believing that accused is not guilty of such offence and that he is not likely to commit any offence while on bail. The question is whether substitution of the words "under this Act" in place of words punishable for term of imprisonment of more than three years under Part A of the Schedule in Section 45 of the Act, has impact of meeting with reasonings discussed by the Supreme Court in the case of Nikesh Tarachand Shah for declaring clause (ii) of sub-Section 1 of Section 45 of the Act ultra

vires. The statutory history of Section 45 of the PMLA has been discussed in Nikesh Tarachand Shah (supra). The Supreme Court has given illustrations to explain the effect of twin conditions imposed for grant of bail, if the person was accused of offence punishable for terms of imprisonment of more than three years under Part A of the Schedule. The Supreme Court noticed anomalies in prescribing condition under Section 45 of the Act with reference to scheduled offences. The Supreme Court held that Section 45 of the PMLA is a Ethape 77 16-BA.1322.2020 drastic provision which makes drastic inroads into the fundamental right of personal liberty guaranteed by Article 21 of the Constitution of India. Indiscriminate application of the provision of Section 45 will violate Article 21 of the Constitution. In view of the conclusion of the Apex Court in the case of Nikesh Tarachand Shah (supra) it cannot be accepted that amendment in sub-Section 1 of Section 45 of PMLA introduced after the Supreme Court decision have the effect of reviving the twin conditions for grant of bail, which have been declared ultra vires Articles 14 and 21 of the Constitution of India. The Supreme Court in the decision of Nikesh Shah (supra) had declared that Section 45 (1) of the PML Act so far as it imposed two further conditions for release on bail to be unconstitutional. It is pertinent to note that after effecting amendment of Section 45 (1) of the PMLA, the words "under this Act"

> are added to sub-Section 1 of Section 45 of the Act and some part of old provision is deleted. However, the original Section 45 (1) (ii) has not been revived or resurrected by the amending Act. The notification dated 29.03.2018 amending under Section 45 (1) of PMLA which came into effect from 19.04.2018 is silent about its retrospective effect. The original sub-Section 45 (1) (ii) is neither revived nor resurrected by the Ethape 78 16-BA.1322.2020 amending Act. Learned ASG has relied upon several decisions and contended that there is always presumption of constitutionality/constitutional validity of statute. The burden of proof is upon the person who attacks it. It was also contended that it is permissible to grant the provision, even after the provision is set aside by the Court to rectify the discrepancies. It was also contended that this Court cannot decide issue relating to constitutional validity of the amendment. There cannot be debate about the submissions on law as evident from the judgment relied upon by the learned ASG. This Court is certainly not dealing with the constitutional validity of the amendment.
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> However, on plain reading of amendment it cannot be interpreted that the twin conditions which were stuck down by the Apex Court being unconstitutional would stand revive.
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> 43. Learned counsel Mr. Desai further submitted that even assuming that the twin conditions are applicable, the restrictions on the power of the Court to grant bail should not be pushed too far. If the Court, having regard to the material brought on record, is satisfied that in all probability he may not be ultimately convicted bail can be granted.
>
> Learned counsel relied upon the decision of this Court in the case of Ethape 79 16-BA.1322.2020 Anil Babulal Chakhara Vs. Directorate of Enforcement, Mumbai & Anr. delivered in Bail Application No.1581 of 2017 on 04.08.2017. In the said decision

it was observed that Section 45 of PMLA is pari materia to Section 21 (4) of the MCOC Act. Reference was made to the decision of Apex Court in the case of Ranjitsing Sharma (supra). This Court considered the principle enunciated in the said decision for granting bail while interpreting the embargo under Section 21 (4) of MCOC Act.

44. In the case of Ranjitsing Sharma (supra), the Apex Court in paragraphs No. 45, 46, 47, 48, 49, 55, 57 has observed as follows:-

"45 The Act is deterrent in nature. It provides for deterrent punishment.

It envisages three to ten years of imprisonment and may extend to life imprisonment. Death penalty can also be imposed if somebody commits a murder. Similarly, fines ranging between three to ten lakhs can be imposed.

46 Presumption of innocence is a human right. [See Narendra Singh and Another Vs. State of M.P., (2004) 10 SCC 699, para 31] Article 21 in view of its expansive meaning not only protects life and liberty but also envisages a fair procedure. Liberty of a person should not ordinarily be interfered with unless there exist cogent grounds therefor. Sub-Section (4) of Section 21 must be interpreted keeping in view the aforementioned salutary principles. Giving an opportunity Ethape 80 16-BA.1322.2020 to the public prosecutor to oppose an application for release of an accused appears to be reasonable restriction but Clause (b) of Sub- section (4) of Section 21 must be given a proper meaning.

47 Does this statute require that before a person is released on bail, the court, albeit prima facie, must come to the conclusion that he is not guilty of such offence? Is it necessary for the Court to record such a finding? Would there be any machinery available to the Court to ascertain that once the accused is enlarged on bail, he would not commit any offence whatsoever?

48 Such findings are required to be recorded only for the purpose of arriving at an objective finding on the basis of materials on records only for grant of bail and for no other purpose.

49 We are furthermore of the opinion that the restrictions on the power of the Court to grant bail should not be pushed too far. If the Court, having regard to the materials brought on record, is satisfied that in all probability he may not be ultimately convicted, an order granting bail may be passed. The satisfaction of the Court as regards his likelihood of not committing an offence while on bail must be construed to mean an offence under the Act and not any offence whatsoever be it a minor or major offence. If such an expansive meaning is given, even likelihood of commission of an offence under Section 279 of the Indian Penal Code may debar the Court from releasing the accused on bail. A statute, it is trite, should not be interpreted in such a

manner as would lead to absurdity. What would further be necessary on the part of the Court is to see the culpability of the accused and his involvement in the commission of Ethape 81 16-BA.1322.2020 an organised crime either directly or indirectly. The Court at the time of considering the application for grant of bail shall consider the question from the angle as to whether he was possessed of the requisite mens rea. Every little omission or commission, negligence or dereliction may not lead to a possibility of his having culpability in the matter which is not the sine qua non for attracting the provisions of MCOCA. A person in a given situation may not do that which he ought to have done. The Court may in a situation of this nature keep in mind the broad principles of law that some acts of omission and commission on the part of a public servant may attract disciplinary proceedings but may not attract a penal provision.

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55 The wording of Section 21(4), in our opinion, does not lead to the conclusion that the Court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act. If such a construction is placed, the court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the applicant. Such cannot be the intention of the Legislature. Section 21(4) of MCOCA, therefore, must be construed reasonably. It must be so construed that the Court is able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. Similarly, the Court will be required to record a finding as to Ethape 82 16-BA.1322.2020 the possibility of his committing a crime after grant of bail. However, such an offence in future must be an offence under the Act and not any other offence. Since it is difficult to predict the future conduct of an accused, the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence.

56 ....

57 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. However, while dealing with a

> special statute like MCOCA having regard to the provisions contained in Sub-section (4) of Section 21 of the Act, the Court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. The findings recorded by the Court while granting or refusing bail undoubtedly would be tentative in nature, which may not have any bearing on the merit of the case and the trial court would, thus, be free to decide the case on the basis of evidence adduced at the trial, without in any manner being prejudiced thereby."

45. Learned ASG has adverted to Section 24 of PMLA which relates to burden of proof. It is submitted that in the case of a person charged with the offence of money laundering under Section 3, the Court shall, unless contrary is proved, presume that such proceeds of crime are involved in money laundering. It is submitted that the burden is on the Ethape 83 16-BA.1322.2020 applicant/accused to prove contrary. Reliance is placed on the decision of the Supreme Court in the case of Union of India Vs. Hasan Ali Khan & Anr. decided on 30th September 2011 vide Criminal Appeal No. 1881 of 2011 arising out of SLP (CRL) No.6114 of 2011. In the said decision it was observed that burden of proof that the monies were not the proceeds of crime and were not, therefore, tainted shifted to accused under Section 24 of the PML Act, 2002. The Apex Court referred to Section 24 of the Act. It is pertinent to note that Section 24 of PMLA has been substituted by Act of 2013 with effect from 15.02.2013. In pursuant to that Section 24 reads as follows:-

> "24. Burden of Proof.- In any proceeding relating to proceeds of crime under this Act,-
>
> (a) in the case of a person charged with the offence of money-laundering under section 3, the Authority or Court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money laundering; and
>
> (b) in the case of any other person the Authority or Court, may presume that such proceeds of crime are involved in money-laundering."

Prior to amendment Section 24 was as follows:-

> "24. Burden of Proof.- When a person is accused of having committed the offence under Section 3, the burden of proving that proceeds of crime are untainted property shall be on the accused." The Hon'ble Apex Court Ethape 84 16-BA.1322.2020 in the case of Hasan Ali (supra) had dealt with Section 24 prior to amendment. It is relevant to note that post amendment, Section 24 refers to person charged with the offence of money laundering under Section 3. On perusal of amended Section 24, it can be seen that in the case of person charged with the offence of money laundering, the authority or the Court shall presume that such proceeds of crime are involved in money laundering unless contrary is proved. It is apparent that the stage of rebutting the presumption would be during the trial. In the case of Upendra Rai Vs. Enforcement

Directorate (supra). The Delhi High Court in paragraph No.25 has observed as follows:-

"25 a bare perusal of Section 24 reveals that in the case of a person charged with the offence of money laundering, the authority or the Court shall presume that such proceeds of crime are involved in money laundering unless the contrary is proved. The stage of raising the presumption or for the accused to rebut the said presumption would be during the course of trial. Even if assuming that at the stage of bail this Court is required to consider that the accused is prima facie required to rebut the presumption, the same would not have to be beyond reasonable doubt but on the basis of broad probabilities."

46. From the statements recorded during the investigation, it is apparent that the applicant, co-accused Ms. Chanda Kochhar and Mr. V. N. Dhoot have tendered explanation to the questions put to them on the Ethape 85 16-BA.1322.2020 basis of charges attributed to them. The contention of applicant is that Videocon Group owned 95% of NRL (through their Company SEPL), when the investment of Rs.64 Crores was made in NRL on 08.09.2009. The date of investment was a result of sequence of complete due diligence events. Investment amount of Rs.64 Crores was used by NRL for purchase of 33.15 MW of wind power assets from the Shriram Group. Videocon group continues to own the investment of Rs.64 Crores by virtue of the optionally convertible debenture issued by SEPL to RCPL. In 2006-08 the applicant spent time in gaining insights into the upcoming Renewable Energy sector, including interacting with several owners and manufactures of wind power assets. According to applicant Videocon group was simultaneously diversifying and entering into power business from 2007-2010. On 03.07.2008 Videocon group incorporated Supreme Energy Pvt. Ltd. with an object to enter into electric power and energy segment. In December 2008, NRL was incorporated with Mr. V.N. Dhoot, Saurabh Dhoot and applicant as Directors. The said company had since grown many folds. NRL along with its subsidiaries has set up Wind Power Assets of 180 MW in four different States of India. In January 2009, applicant was allotted Ethape 86 16-BA.1322.2020 19,97,500 share warrants which were subject to achievement substantial milestones and were cancelable if the milestones were not achieved. Hence, the allotment of warrants in January 2009 had no impact on the equity shareholding of the company till March 2012, as the warrants were exercised in March 2012. From June 2009 to 2012, Videocon group through their company SEPL was 95% owner of NRL which is evident from the table relied upon by respondents. The warrants were allotted at Rs.10 per warrant, but since they were subject to cancellation if milestones were not achieved, Re.1 per warrant were paid on exercise of warrants in 2012. In January and February 2009, the business plan was finalized for NRL. The applicant arranged Rs.7 Crores by way of debenture application money which was used for paying advance to Shriram group for 33.15 MW Wind Power Assets. On 25.02.2009 business plan submitted to Videocon group. On 20.03.2009 decision to invest of Rs.64 Crores in NRL was conveyed by Videocon vide SEPL's letter dated 20.03.2009. SEPL purchased shares of NRL making Mr. V.N. Dhoot through SEPL 95% shareholders of NRL. The amount of Rs.64 Crores received by NRL was duly paid towards the cost for acquiring 33.15 MW Wind Power Assets from Shriram group. NRL Ethape 87 16-BA.1322.2020 Commissioned Greenfield Wind Power capacity of 9 MW at Tamil Nadu. Against the investment of Rs.64 Crores, SEPL allotted optionally convertible debenture of

Rs.64 Crores to RAPL subsequent to the assignment of Rs.64 Crores from VIL to IRCL to RAPL (Videocon group companies) by Mr. V.N. Dhoot as stated in his statements.

47. The case of the applicant is that flat No.45 CCI chambers is not proceeds of crime. He is the title holder and the owner of the flat since 1996. The said flat has never moved out of of his name till date. Transactions regarding Credential Finance Ltd., Quality Appliances Pvt. Ltd., Quality Advisors Trust relied upon by the respondents are inconsequential so far as applicant title to the flat. Agreement for sale was executed between Bilquis Jehan Begum as seller and applicant and his brother Rajiv Kochhar as purchasers for Rs.5.25 Crores on 07.09.1995 and part consideration of Rs.75 lacs was paid on 07.09.1995. On 28.11.1995 certificate under Section 269 UL of Income Tax Act,1961 was obtained by applicant and his brother as the transferees of the flat. On 19.02.1996, transfer Deed was executed and balance consideration of Rs.4.50 Crores was paid. Various documents required by Housing Society signed between Bilquis Begum and purchasers were transferred Ethape 88 16-BA.1322.2020 of rights, title and interest in the flat to the names of applicant and his brother. Share Certificate pertaining to flat along with right, title and interest in the flat was transferred by society in the names of applicant and his brother. Applicant has been residing in the flat along with his family. In 18.03.1992 the applicant incorporated Credential Finance Ltd. the company had several clients who had deploying their surplus funds through CFL. In August 1996, the company was merged with Bloom Field Builders and Construction Company Ltd. with applicant holding 0.54 % of shares in the post-merger company. The merged entity, of which Videocon had become principal shareholders raised loan from SBI Home Finance for business purpose wherein Videocon corporate guarantee was the primary security for the loan. The applicant gave his flat of collateral security with assurance that his title to the flat would remain protected. Due to defaults by Credential Finance Ltd., SBI Home Finance file a suit against CFL, VIL, applicant and Rajiv Kochhar. VIL in discharge of corporate guarantee arrived at settlement of SBI Home Finance Ltd, and deed of assignment was entered between them. In view of repayment of loan to SBI, question of collateral security furnished by applicant came to an end and the original title deeds were Ethape 89 16-BA.1322.2020 written to the applicant. For disposal of suit, applicant was asked to sign consent terms. Transfer deed was entered into between CFL and Quality Appliances Pvt. Ltd. without CFL having any title to the flat and without the applicant being party by way of abundant precaution. The applicant signed the document with Quality Appliances Pvt. Ltd. The shares of QTAPL were purchased by trust of which applicant was Managing Trustee. CFL or QAPL did not have enforceable right, title and interest in the flat.

48. According to the applicant Videocon has been client of ICICI Bank since long. The ICICI Bank has committed collective decision making process for sanction and disbursement of loans. Multiple officers from departments are involved in due diligence process of loans, after which loans are approved. Various loans have been sanctioend to Videocon. No loans to Videocon were sanctioned independently by Ms. Chanda Kochhar. Rs.300 Crores loan have been duly repaid.

49. From the statements and the documents on record. It is apparent that the applicant had tendered explanation to the respondent No.1. The statement of Ms. Chanda Kochhar and several statements of Mr. V. N. Dhoot were recorded. It is pertinent to note that statements of Ethape 90 16-BA.1322.2020 Mr. V.N. Dhoot were recorded on 01.03.2019, 02.03.2019, 20.06.2019,

02.12.2019, 03.12.2019, 21.07.2020 and 12.09.2020. On perusal of the statements which are referred to hereinabove, it can be seen that from inception Mr. Dhoot had supported the transactions. However, at the latter stage, in the statement dated 12.09.2020 he had attributed motive to the applicant and his wife. Statements of applicant were recorded on 01.03.2019, 02.03.2019, 03.03.2019, 13.05.2019 and 17.05.2019. Several other statements of witnesses were also recorded. The statement of Mr. Lokesh Salian who was earlier working with ICICI Bank were recorded on 31.07.2020 and 25.08.2020. He has referred to the procedure adopted while sanctioning loan and had pointed out the alleged discrepancies while sanctioning loan. It is pertinent to note that until this statement was recorded, none had pointed out alleged anomalies while sanctioning loan. The most relevant aspects which is required to be considered, is entire loan was repaid to ICICI Bank and no loss of cause to the bank. The loan was repaid before registration of the FIR by CBI and initiation of the proceedings under the PMLA Act. The statements will have to be tested in evidence during trial.

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50. Mr. Desai has relied upon the decision of the High Court in the case of Sanjay Chandra Vs. CBI (2012) 1 SCC 40 wherein it was observed that the grant or refusal to grant bail lies within the discretion of the Court. The grant or denial is regulated, to large extent, by the facts and circumstances of each particular case. At the same time, right to bail is not to be denied merely because of sentiments of community against the accused. The primary purposes of bail in a criminal case is to relieve the accused of imprisonment. Mr. Desai submitted that the applicant is in custody for substantial period of time. Further detention is not necessary. He also relied upon the decision in the case of Dataram Singh Vs. State of Uttar Pradesh and another 2018 3 SCC page 22 in the said case it was observed that grant or refusal of bail is entirely the discretion of the Court and it must be exercised in a judicious manner and humane way. Reliance is also place on the decision in the case of Bhagirath Singh Vs. State of Gujarat AIR 84 SC 372 and Sushila Aggarwal and others Vs. State (NCT Delhi) & Anr. 2020 5 SCC page 1. He also relied upon on the decision of the Supreme Court in the case of P. Chidambaram Vs. Enforcement Directorate 2019 SCC OnLine 1549 and submitted that the Court is required to consider that the Ethape 92 16-BA.1322.2020 accused is not flight risk, there is no possibility of tampering the evidence or influencing/ intimidating the witnesses. Learned counsel for the respondent relied upon the order passed by this Court in the case of Rana Kapur Vs. Directorate of Enforcement & Anr. dated 25th January 2021 in Criminal Bail Application No.4999 of 2020. It was contended that economic offences are to be viewed seriously. It was submitted that the economic offences constitute the class apart and need to be visited with different approach in the matter of bail. The economic offence deep root conspiracy and involved huge loss to public fund need to be viewed seriously, concerning his grave offence affecting the economy of the country as a whole.

51. It is pertinent to note that, the applicant is in custody from 07.09.2020. The Adjudicating Authority had dismissed the original complaint under Section 5 (5) of the PMLA. The appeal is pending, the order is under challenge before the Appellate Tribunal and there is an order of status quo. The applicant was arrested after the period of about 18 months pursuant to registration of ECIR. Ms. Chanda Kochhar and Mr. V. N. Dhoot has been granted bail by Special Court under

PMLA. The entire loan amount was repaid to ICICI bank. The applicant is in custody Ethape 93 16-BA.1322.2020 for more than 6 months. The transactions in question were for the period of 2009. The entire loan of ICICI Bank was repaid in 2012. Prior to arrest, applicant had appeared before respondent No.1 on several occasions. His statements were recorded and documents were tendered. The arrest was effected 18 months pursuant to the registration of ECIR. No charge-sheet is filed in CBI case. Videocon group has been taking loan from ICICI Bank for several years. The trial is not likely to commence and conclude immediately. The debatable issues are to be adjudicated during trial. The question of tampering evidence does not arise. The applicant is permanent resident of Mumbai. The question of absconding does not arise. Considering the circumstances, further detention of the applicant is not necessary. Hence, case for grant of bail is made out.

ORDER

(i) Bail Application No.1322 of 2020 is allowed.

(ii) Applicant is directed to be released on bail in connection with ECIR/02/HIU/2019 registered by Enforcement of Directorate, Mumbai, on executing PR bond in the sum of Rs.3,00,000/- (three lacs) with one or more sureties in the like amount;

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(iii) The applicant shall report to the Enforcement Directorate once in month on first Saturday of the month between 11:00 a.m. to 01:00 p.m. till further order;

(iv) The applicant shall not tamper with the evidence;

(v) The applicant shall inform his latest place of residence and landline/mobile phone contact numbers as well as E-mail address immediately after being released and/or any charge thereof from time to time be informed to the Court and to the Investigation Officer/ED;

(vi) The applicant shall surrender his passport to the Enforcement Directorate immediately;

(vii) The applicant shall not leave India without prior permission of trial Court;

(viii) The applicant shall attend the trial Court on the date of hearing regularly unless exempted by Court;

(ix) The applicant is permitted to furnish provisional cash bail in the sum of Rs.3,00,000/- (three lacs) for a period of two weeks in lieu of sureties;

(x) Application stands disposed of.

(PRAKASH D. NAIK, J.)