

Chanpreet Singh Rayat vs Enforcement Directorate on 9 September, 2024

Author: Neena Bansal Krishna

Bench: Neena Bansal Krishna

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Reserved on: 2nd August, 2024

Pronounced on: 9th September, 2024

BAIL APPLN. 2095/2024

CHANPREET SINGH RAYAT

.....Petitioner

Through: Mr. Ramesh Gupta, Senior Advocate
with Mr. Chirag Madan, Ms. Ravleen
Sabharwal, Mr. Rahul Agarwal and
Mr. Ronit Bose, Advocates.

Versus

ENFORCEMENT DIRECTORATE

.....Respondent

Through: Mr. Zoheb Hossain, Special Counsel
with Mr. Vivek Gurnani, Mr. Kartik
Sabharwal, Ms. Abhipriya Rai and
Mr. Vivek Gaurav, Advocates for ED

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M

E N T

NEENA BANSAL KRISHNA, J.

1. The present Petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 („Cr.P.C. hereinafter) read with Section 45 and 65 of Prevention of Money Laundering Act, 2002 („PMLA, 2002 , hereinafter) seeking regular Bail in ECIR/HIU-II/14/2022, under Sections 3 and 4 of the PMLA, 2002.

2. Briefly stated, FIR No. RCo032022A0053 dated 17.08.2022 was registered for enquiry into the matter for irregularities in framing and implementation of the Excise Policy of GNCTD of Delhi for the year 2011-

3. Section 120 B IPC and Section 7 of the PC Act are scheduled offences under PMLA, 2002. The Directorate of Enforcement („ED hereinafter) initiated the investigation in the matter by recording an ECIR No. ECIR/HIU-II/14/2022 on 22.08.2022. In the interim, the CBI filed the Chargesheet in its RC on 25.11.2022 and thereafter to Supplementary Charge Sheets on 25.04.2023 and 08.07.2023 respectively. The petitioner was arrested by the CBI on 15.05.2023 and was eventually granted Bail on 22.07.2023.

4. While the petitioner was in custody in the CBI case, the ED moved an Application before the Learned Court seeking his interrogation and his statement was recorded on 12.06.2023 while he was in Judicial Custody. Thereafter, the petitioner moved an Application for surrender before the ED in

the ECIR case. Though, the Bail was granted in the CBI matter on 22.07.2023, his Application for Surrender remained pending, which was eventually disposed off by the learned Special Judge vide Order dated 24.07.2023.

5. As per the investigation conducted by the ED, the Excise Policy Scheme comprised of kickbacks/proceeds of crimes of Rs. 100 Cr. Paid to the AAP leaders in lieu of making favorable policy changes in the Delhi Excise Policy 2021-22 and further created an ecosystem for generating continuous proceeds of crime in the guise of profits to the bribe givers. The concerned AAP leaders then had channeled about 100 crore rupees through Hawala to Goa, to be used in the Election Campaign in the Assembly Elections. The AAP leaders had used various channels and persons for the transfer of these funds to Goa.

6. The allegations made against the petitioner were that he was one of the key persons who received Rs. 45 crore in cash for further transfer and use in the Election Campaign. It was also alleged that the petitioner was closely associated with the co-accused Mr. Rajesh Joshi, Mr. Vijay Nair etc. and was a cash handler on behalf of the AAP in the Goa Elections. He distributed money to the vendors, survey workers and volunteers etc. who were working for the AAP campaign in Goa Elections.

7. The Petitioner joined investigation on 12.06.2023, 08.04.2024 and 12.04.2024 and was remanded to ED custody for a period of 5 days. During his custody, he had given his Statements to the investigating agency during his investigation of 5 days. He was remanded to Judicial Custody by the Learned Special Judge on 18.04.2024.

8. The petitioner filed a Regular Bail Application on 30.05.2024 which was dismissed by the Learned Special Judge on 06.06.2024.

9. The Petitioner has sought the Bail on the ground that he has no propensity to evade the process of Law and has throughout been available during the period of investigations and has cooperated in every manner and that the investigations against him are complete and as per the statement of the ED, a final Prosecution Complaint shall be filed on or before 03.07.2024.

10. The petitioner has challenged his arrest as being contrary to law laid down in the case of Santosh v. State of Maharashtra, (2007) 9 SCC 714 and Selvi v. State of Karnataka SCC 263: (2010) 3 SCC(Cri) 1, the petitioner has asserted that his arrest is based on the Statement recorded during the investigations and that there is no other credible witness or evidence on whose instance even a prima facie guilt of the Petitioner can be established. The witnesses are admittedly Hawala Operators and the Hawala Agents who are claimed to be reliable Public Witnesses and whose statements are claimed to be credible. The petitioner has been arrested, even though there can be no credibility attached to their statements.

11. The witness Manishwani Prahune has retracted her Statements, which is reflected in the Order dated 05.01.2023 passed by the Learned Special Judge. It is submitted that the entire case of the ED is based on the Statements of witnesses who are seniors of the petitioner by virtue of their age as well in professional capacity and their statements cannot be considered reliable unless they are

tested during the trial. The petitioner has relied upon Chandra Prakash Khandelwal v. Directorate of Enforcement 2023 SCC OnLine Del 1094 in his support.

12. It is stated that while granting the Bail in the CBI case vide Order dated 22.07.2023, it has been observed by the learned Special Judge that the CBI case is weak in nature against the petitioner. He further submits that the predicate offence is weak and no schedule offence exists and it has to be taken that ipso facto the petitioner shall be acquitted for the proceedings under the PMLA. Reliance has been placed on Sanjay Pandey v. Directorate of Enforcement 2022 SCC Online Del 4279.

13. It is further submitted that the Supreme Court in Vijay Madanlal Choudhary v. Union of India 2022 SCC Online SC 929 has discussed that while granting the Bail under Section 45 PMLA the provision of PMLA would apply when a person has derived or obtained the property as a result of a scheduled offence, and then indulged in the activity connected with such property. None of the ingredients of the scheduled offences have been made out against the petitioner concomitantly there cannot be proceeds of crime having been generated as there is no criminal activity relating to the scheduled offence. Since all the ingredients of scheduled offences are not made out, there can be no sustainable allegation of alleged acquisition or retention of proceeds of crime, which under Section 2(u) of the PMLA is defined to mean proceeds arising out of scheduled offences.

14. The petitioner has claimed that only broad possibilities are required to be considered at this stage to determine the guilt of the accused.

15. It is therefore, submitted that there is no likelihood of the petitioner committing the offence of PMLA, if released on Bail.

16. The petitioner has asserted that the investigating agency has erred and employed a pick and choose method while arresting the accused persons. No pattern or formula has been followed while arresting the accused persons and the Hawala Agents and the statements of the Hawala Agents and the other accused persons have been named as credible and reliable Public Witnesses on whose testimony the petitioner has been arrested.

17. The Petitioner has referred to Ramesh Manglani vs. ED 2023 SCC OnLine Del 3234 wherein it was observed that considering all the offences wherein the gravamen of the offence is that several persons acting in concert have siphoned off and laundered money then it is manifestly arbitrary for the ED to have made selective arrests. Reliance has also been placed on Sanjay Jain v. ED bearing Bail Application No. 3807/2022.

18. It is contended that the investigating agency misled the court at the time of remission by stating that he had deposited a sum of Rs.12,00,000/- (approx) in his account from September, 2020 till February, 2023. This amount had been stated only to prejudice the Court; the investigating agency has failed to appreciate that the petitioner was working as a freelancer and on behalf of political parties such as Bhartiya Janta Party (BJP) , Indian National Congress (INC), Trinamool Congress (TMC) etc.

19. ED for the reasons best known to them, have connected him to the Aam Aadmi Party stating that he has received a salary from this party but has failed to consider that even if their averments are taken to be true on the face value, no political party pays salary to the volunteers and further there is nothing to show that the petitioner has any sort of membership, primary or secondary, with the Aam Aadmi Party (AAP).

20. While denying the petitioner Bail, the learned Special Judge failed to take into consideration the statement of Mr. Deepak Singhal recorded under Section 50 of the PMLA, 2002 dated 05.04.2024 wherein he stated that he knows the petitioner and met him in Goa in 2021 at some of the AAP candidate's campaign sabha and he was introduced as a freelancer for BJP and TMC. Thereafter, he has remained in touch with him over the phone to get the feedback.

21. The Learned Special Judge also did not consider the statement of Mr. N.D. Gupta in toto where he specifically stated that if an individual person made any expenditure in regard to the expense incurred by him on behalf of the AAP, they would directly have made payment to such volunteer, freelancer, employees of M/s Chariot Productions Media Pvt. Ltd./vendors after due verification of the Bills/Vouchers and were endorsed by the State Prabhari and further verification by the Secretary Office. He further explained why AAP made payment of Rs. 2,20,340/- to the petitioner which was for the campaigning expenditure. Likewise, the other amounts have been transferred to him for the expenditure incurred in the Goa Assembly Elections.

22. It is asserted that the instant ECIR is nothing but gross abuse of the process of law and the petitioner has been implicated in a false and concocted story, though no case is made out against him and the arrest in the instant matter is absolutely illegal. In the absence of any substantive Penal Provisions mentioned in the FIR, the liberty of the petitioner should not be sacrificed. Further, proceeds of crime are sine qua non for commission of offence of money laundering. No incriminating evidence has been produced by the ED to establish the involvement of the petitioner in any activity of layering and/or integration of any proceeds of crime. There is no evidence to demonstrate that the petitioner had prior knowledge of the facts that the money in his possession is tainted money or part of proceeds of crime. Reliance has been placed on *Ranjit Singh Brahmaeet Sing Sharma v. State of Maharashtra* (2008) 5 SCC 294.

23. The petitioner does not have any criminal antecedents and no case except the predicate offence is pending against him. Also, the petitioner is a permanent resident of the address furnished and he enjoys high esteem in the society and is entitled to Bail. Reliance has been placed on *R. Vasudevan vs. CBI* in Bail Application No. 2381/2009. It is also asserted that the Bail is the rule and jail is an exception.

24. The Directorate of Enforcement in its detailed reply has explained that it filed the Prosecution Complaint dated 26.11.2022 against Mr. Sameer Mahendru and others before the Special Court, PMLA. Thereafter, 5 other Supplementary Charge Sheets against various accused persons have been filed. The 6th Supplementary Prosecution Complaint (SPC) was filed on 10.05.2024 against the petitioner and other accused. It is asserted that there are twin conditions as laid in the Section 45 PMLA as well as the triple test doctrine, which has to be satisfied by the petitioner, to be entitled to

Bail for which reliance has been placed on Vijay Madan Lal Vs. Union of India 2022 SCC Online SC 929 wherein it was observed that the discretion vests in the Court under Section 45 PMLA is not arbitrary or irrational but judicial, guided by the principles of law as provided under Section 45 of the PMLA, 2002.

25. It is submitted that cognizance on the complaint dated 26.11.2022 has been taken by the Special Court on 20.12.2022. The fact of taking cognizance prima facie established that the offence of money laundering has taken place. It is claimed that the petitioner has suppressed that the Production Warrant dated 29.05.2024 in the sixth Supplementary Charge Sheet had been issued against him, which again establishes that a case has been made out against him as has been observed by the Apex Court in the case of Manharibhai Muljibhai Kakdia & Anr Vs. Shaileshbhai Mohanbhai Patal & Ors. 2012 10 SCC 517.

26. Reliance is also placed on Tarun Kumar Vs. Enforcement Directorate 2023 SCC OnLine SC 1486 and Gautam Kundu vs. Directorate of Enforcement, (2015) 16 SCC 1.

27. It is further contended that the satisfactions contemplated under Section 45 PMLA regarding the accused being guilty, has to be based upon reasonable grounds which means something more than the prima facie grounds, for which reliance has been placed on Collector of Customs, New Delhi Vs. Ahmadaliev Nodira (2004) 3 SCC 549.

28. The respondent has further contended that the seriousness of the offence is sufficient to reject the Bail, even if the Trial is likely to take time, for which reliance has been placed on State of Bihar & Anr. Vs. Amit Kumar (2017) 13 SCC 751, Religare Finvest Ltd. Vs. State of Delhi & Anr. 2023 INSC 819 and Sunil Dahiya Vs. State Govt Of NCT of Delhi 2016 SCC Online Del 5566. The mere fact that he was in Jail for a long time would not per se be termed illegal and such detention in Jail of under trial prisoners is not violative of Article 21 of the Constitution of India and has been held in the case of Pramod Kumar Saxena v. Union of India (2008) 9 SCC 685.

29. The petitioner has further stated that economic offences constitute a class apart and need to be visited with a different approach in the matter of Bail, for which reliance has been placed on Y.S. Jagan Mohan Reddy vs CBI (2013) 7 SCC 439, State of Gujarat v. Mohanlal Jitmalji Porwal and Anr. (1987) 2 SCC 364, Serious Fraud Investigation Office v. Nittin Johari (2019) 9 SCC 165, Nimmagadda Prasad vs. Central Bureau of Investigation (2013) 7 SCC 466, State of Bihar v. Amit Kumar (2017) 13 SCC 751.

30. It is thus, contended that the economic offences are committed with cool calculation and deliberate design by the economic offenders, who with an eye on personal profit regardless of the consequences to the community, ruin the economy of the State and are often not brought to book.

31. The respondent has next contended that the Statements recorded under Section 50 PMLA are valid and admissible and can be relied upon at the stage of remand or even to reject the Bail. Reliance has been placed on Vijay Madanlal Choudhary (supra), Tarun Kumar v. Directorate of Enforcement, SLP (Crl.) No. 9431 of 2023. Rohit Tandon Vs. Directorate of Enforcement, (2018) 11

SCC 46, Judgment of this Hon'ble High Court in Bail Appln. 3590/2022 in case titled as Satyendar Kumar Jain Vs. Directorate of Enforcement and Amanatullah Khan vs. Directorate of Enforcement in Bail Appl. 795/2024.

32. It is submitted that the Bail Application of the co accused persons have been rejected, reflecting the gravity of the allegations.

33. The other legal submissions made on behalf of the ED is that the language used under Section 19 PMLA, 2002 is "reason to believe" and not "evidence in possession". This distinction has been noted by the Apex Court in CBI v. V. Vijay Sai Reddy, (2013) 7 SCC 452 wherein it was observed that the Court dealing with the grant of Bail can only satisfy itself as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of its charge. It is not expected at this stage to have the evidence establishing the guilt of the accused beyond reasonable doubt. Reliance has been placed on Nimmagadda Prasad v. CBI, (2013) 7 SCC 466; (2013) 3 SCC (Cri) 575:

2013 SCC OnLine SC 454 and Salim Khan vs. Sanjai Singh (2002) 9 SCC

34. In regard to the role of the petitioner, it has been explained that he is the key person involved in the transfer and use of the proceeds of crime generated out of the Excise Policy Scam. The petitioner was closely associated with the co accused persons and suspects such as Mr. Vijay Nair, Mr. Rajesh Joshi and others and is a cash handler on behalf of the Aam Aadmi Party in the Goa Elections and had received approximately Rs.45 crores in cash through Hawala Operators and then distributed that to the vendors, survey workers, volunteers etc. working for the AAP campaign in Goa.

35. The Ld. Counsel has made elaborate reference to the statements of various witnesses and the Hawala Operators. Mr. Sagar Patel, in his statement dated 14.08.2023 recorded under Section 50 of the PMLA, 2002 revealed that he had delivered an amount of Rs. 17,38,14,500/- to the petitioner in Goa.

36. Likewise, Rajiv Ashok Mondkar, associate of the petitioner working in the AAP campaign in Goa dated 01.09.2023, has recorded his statement which reveals that about 10 to 12 times in the month of November and December, 2021, the petitioner directed him to collect the boxes/parcels containing cash money from Mr. Sagar Patel, an Angadiya in Goa. He also revealed that on certain occasions, he was also asked by the petitioner to deposit cash in the bank account and then transfer it to the petitioner through different channels.

37. Further investigations have revealed the cash was deposited in the account of Naeem Isaq Sheikh and then was transferred to the petitioner through different channels.

38. As per the IT records, the statement of Sagar Patel, Rajiv Ashok Mondkar had collected Rs. 27,00,00,000/- in about 16 different occasions from him in the period of June 2021 to December 2021. The Statement of Chandan Kumar Tripathi, Ashok Kumar Chandu Lal, Hasmukhbhai Patek, Thakor Jagat Singh, Vishal Bharatbhai Patel and various Angadiyas have been recorded under

Section 50 of the PMLA which reveals the details of the Hawala Transactions from Delhi to Goa and delivery of all the various amounts. The respondent has asserted that the various money trails show the kickbacks and use of the proceeds of crime, by the various accused persons.

39. Mr. Sumit Savara, the associate of the petitioner in his statement has revealed that he had lived with the petitioner in his rented flat in Goa and was working for M/s WIZPK Communications and PR Ltd.

40. The petitioner was an employee of M/s Chariot Productions Media Pvt. Ltd since 2020 and later he joined the AAP campaign. He was working as a freelancer from May-June 2021 till March 2022. However, the statement of Rajesh Joshi reveals that the petitioner was working with M/s Chariot Productions Media Pvt. Ltd. He has also received a salary of Rs. 55,000/- in February-March, 2021 from M/s WIZPK Communications and PR Ltd. who were engaged in Department of Information and Publicity of GNCTD for PR work. He also received funds from the OML of Vijay Nair. There are multiple transactions undertaken by the petitioner and AAP directly through their banking channels. Mr. N.D. Gupta has revealed that these payments were made to the petitioner and various functionaries of the AAP during the Goa Election campaign. The petitioner had calls with numerous party functionaries of the Aam Aadmi Party during the campaign. He directly made these bookings for the Stay for AAP leaders and for an event of AAP directly at the Grand Hyatt, Bambolim, Goa in November, 2021 and made the payments from his accounts. He has not been able to explain the reasons for these payments. Moreover, he was never reimbursed by the Aam Aadmi Party for this amount, which shows that this was reimbursed by the AAP from the cash amount of 45 crores which he collected and distributed on behalf of AAP.

41. The National Treasurer of the AAP, Mr. N.D. Gupta had given the details of the expenditure made by AAP in the Goa Elections which reveals that the payment made by the petitioner at Grand Hyatt, Bambolim is an out of the book transaction. When asked to explain these cash transactions, he stated that he did odd jobs in Goa and that is how he got the cash but he was unable to give the details of these odd jobs or even the names of the employers despite several opportunities being provided to him. The detailed evidence thus, established a deep relationship of the petitioner with all the major accused /conspirators in the Delhi Liquor Scam.

42. It can therefore be safely inferred that the petitioner was aware of these funds being proceeds of crime.

43. To corroborate the role of the petitioner in the usage and transfer of the proceeds of crime, the statements of Mr. Amit Mahadev, Mr. Anand Kashimath Desai, Mr. Anil Kumar Chaudhary, Mr. Deepak Gurushankar Tripathi, Ms. Pooja Thakur, Ms. Manawini Prabhune, Mr. Viraj Balchandra Kamat and Mr. Satya Vijay Nayak, have been relied upon. It is further claimed that the petitioner has given false evidence referring to the recording of his statements under Section 50, PMLA, 2002. He even tried to conceal various information from ED which reflects his guilt in the offence of money laundering. Blatant denial of factual material without substantiated facts, also lead to drawing of adverse inference against the petitioner.

44. On merits, all the averments made by the petitioner in his Bail Application has been denied. It is claimed that the Statements recorded under Section 50 of the PMLA, 2002 are admissible and can make out a formidable case about involvement of an accused in the offence of money laundering. It is thus, contended that the petitioner is not entitled to Bail and the Application is vehemently opposed.

45. Learned senior counsel on behalf of the applicant has addressed detailed arguments wherein it was stated that the petitioner has been arrested by the CBI in the predicate offence on 15.05.2023 and admitted to bail on 22.07.2023. It has been argued that while the petitioner was in judicial custody in the CBI case, he himself moved an Application for his surrender in the ED matter, though before that application could be allowed he got released on bail in the CBI case.

46. He was subsequently arrested in the ED matter on 12.04.2024. Since even prior and thereafter, he has cooperated fully in the investigations and has throughout been available and willing to participate in the investigations. It is claimed that the arrest of the petitioner was contrary to law and merely because his statements were not to the liking of the Investigating Officers, they termed it as non-cooperation. Little regard was given to the rights against self - incrimination protected under Article 22 of the Constitution of India. Reliance has been placed on Selvi (Supra) which has been reiterated in Santosh (Supra) wherein it was observed that Article 20(3) enjoys an "exalted status" and is a vital safeguard against coercive methods of investigation.

47. Ld. Senior Advocate has pointed out that the petitioner has joined and cooperated during the investigations. He has been named as an accused in the 6th Supplementary Prosecution Complaint and arrested on 12.04.2024. The 7th Supplementary complaint has also been filed. It is asserted that the petitioner has been implicated falsely and his fundamental right of liberty which is at stake may be considered while deciding the present bail application.

48. Learned Senior Advocate has highlighted that the arrest has been made purely on the basis of the statements recorded during the investigations under Section 50 of the PMLA; most of whom are the Angadiyas or co-accused persons, and some have already retracted their statements. Such statements have the weakest evidentiary value. Furthermore, reliance has been placed on Chandra Prakash Khandelwal vs. Directorate of Enforcement, 2023 SCC Online Del 1094 wherein it was observed that the statements recorded under Section 50 PMLA can be looked into only during trial and not at the stage of bail.

49. There is no evidence aside from the statements against the petitioner. Pertinently, he was not named as an accused in the main Prosecution Complaint or in the 5 Supplementary Prosecution Complaints and it was only in the 6th Supplementary Prosecution Complaint filed by the ED that he has been implicated as an accused.

50. A flowchart has been presented on behalf of the petitioner showing the levels of implication of the various accused persons in this crime. At the first level is the South Group with Abhishek Boinpally (A-13) being at the helm of the affairs. He had been in contact with three accused Dinesh Arora, Vijay Nair (A-6 Approver), Gautam Mootha and Ashok Kaushik (PS to K.Kavitha) who were

at the second level. At the third level are Rajesh Joshi, Damodar (A-21/A-35), Arvind Singh (A-34) and Aashish Mathur. Then there are accused persons at other levels. The name of the plaintiff appears at the 7th level with the allegations against him being that he was given Rs. 45 crores through Hawala channels for organizing the events and taking care of all the campaign expenditure in the Goa Elections. It is claimed that his name comes in the 6th Supplementary Prosecution Complaint and in the earlier prosecution complaints against other accused persons, he was not even found involved in the crime in any manner. There is nothing on record to show that these alleged 45 lakhs were a part of the proceeds of crime.

51. Furthermore, Section 3 of PMLA, 2002 requires the requisite mens rea which in the case of the petitioner, is in essence, knowledge. There is not an iota in any of the Complaints to show that the petitioner, whose name is at the seventh tier of the accused persons, ever was aware of this amount being part of the alleged proceeds of crime i of about Rs.100 crores that had been received by the first tier accused persons. It is asserted that there is no trail of money to show that the money which came in the hands of the petitioner was from the Rs.100 crores which have been termed as proceeds of crime.

52. Furthermore, the investigating agency has found Rs.12 lakhs approximately deposited in his account, which again is being termed as part of the proceeds of crime ignoring the fact that this is the amount which has been earned by the petitioner over a period of time by doing freelance work and odd jobs to earn his livelihood. There is nothing to term the Rs.12 lakhs found in his account, as part of the proceeds of crime.

53. Ld. Senior Advocate has argued on behalf of the petitioner that he was working as a freelancer and had worked with various political parties like BJP, TMC etc, however, he has been randomly and selectively shown associated only with AAP without there being any basis. It has been claimed by the ED that he had arranged for various events with great emphasis on the amount being paid to Hotel Grand Hyatt in the sum of Rs.3,20,287/- for the stay and the conference of the members of AAP during the Goa campaign. The petitioner was in the business of freelancing and the work done for organizing the events for AAP in Goa campaign was only part of his job. His past and present business conduct has not been appreciated while leveling the allegations of him being a money handler on behalf of the main accused persons.

54. There is no cogent evidence whatsoever to establish that the money of about 45 crores as alleged by the ED, were proceeds of crime or that he was in any manner a part of the entire crime syndicate.

55. It has been argued that Section 3 PMLA may not require a mens rea in the sense of intent but definitely there has to be knowledge attributable to the petitioner that the money in his hand was proceeds of crime which he placed, layered and integrated. There is no prima facie case made out against the petitioner. Moreover, the antecedent and his present conduct also does not lead to any inference that he is likely to commit offence if admitted to bail.

56. In Vijay Madanlal (Supra) the Apex Court has explicitly provided that what is required to be seen is a prima facie case and not to look into the test of guilt. The delicate balance between the judgment

of acquittal and conviction and an Order granting bail before commencement of trial, needs to be maintained. The Court cannot meticulously examine the evidence and cannot hold a mini trial at this stage. The Court is only required to examine the case on the basis of broad probability. Similar have been the observations made by the Apex Court in *Ranjit Singh Brahmjeet Singh* (supra).

57. In the end, the learned Senior Advocate has pointed out that while granting bail to the petitioner in the CBI case, it had been observed that the case against him is extremely weak. In *Sanjay Pandey vs. Directorate of Enforcement*, 2022 SCC Online Del 4279 it was observed that where the predicate offence is weak in nature, the scheduled offence is not found to exist it has to be taken that the accused has ipso facto shown that he shall be acquitted at the proceedings under PMLA.

58. It is further argued that most of the accused persons in the present ED case have either not been arrested and the complaints have been filed in the Court without arrest or have been admitted to bail. Moreover, with the number of accused and the prosecution witnesses on which the reliance has been placed by ED, the trial is going to take a long time for conclusion which is a pertinent factor to be considered in deciding the bail application.

59. Learned counsel on behalf of the ED have submitted that it is a case of serious gravity and the petitioner was the main money handler and there is enough evidence on record to show that he spent huge amount to organize the events in the Goa Assembly Election for AAP party. There is overwhelming evidence leading to the inference of the guilt of the petitioner. There are statements of the co-accused as well of the Angadiyas/Hawala Operators which clearly clinches the role of the petitioner in this entire scam. He has played an important role in layering of Rs.45 crores which have been received by him through Hawala Operators out of the Rs.100 crores proceeds of crime. At this stage, the statements of various witnesses/accused under Section 50 PMLA cannot be discarded and their evidentiary value is the subject matter of trial.

60. Learned advocate for ED has further argued that economic offences which is sought to be addressed by PMLA, has serious implications on the economy and stability of any nation. Therefore, the stringent twin conditions have been introduced in Section 45 of PMLA which have to be satisfied before the petitioner can claim bail. In addition, the triple test for bail as envisaged under the provisions of Cr.P.C, also has to be met.

61. In the light of the evidence which has been collected by the ED, it cannot be said that there is no complicity of the petitioner in the commission of crime. Moreover, while handling the money which was part of proceeds of crime, he had the requisite knowledge and therefore, the offence committed by him fall squarely under Section 3 PMLA. The credibility of the witnesses relied upon by the prosecution cannot be considered at this stage for which reliance has been placed on *Satish Jaggi vs. State of Chhatisgarh*, (2007) 11 SCC 195. Moreover, the Legislature has used the words reasonable ground for believing instead of evidence for the purpose of granting bail. The various statements of the witnesses recorded under Section 50 gives reasonable ground to believe the commission of the offence by the petitioner and they are not required to be minutely considered to give a finding of whether it would be sustainable as credible evidence during the trial.

62. Even the statements recorded under Section 161 Cr.P.C., are admissible for the purpose of consideration of bail for which reliance has been placed on *Salim Khan vs. Sanjai Singh and Another*, (2002) 9 SCC

63. To put in a nutshell, according to the respondent, the petitioner has been actively involved in layering of illegal proceeds of crime. The evidence against the petitioner is the various hawala transactions which have been established and corroborated by the statements of various hawala operators/Angadias in their statements recorded under Section 50 of the PMLA, 2002. There are various CDRs corroborating the statements of the witnesses that the proceeds of crime were received by the petitioner and were utilised in the Goa Assembly Election Campaign. The petitioner's active involvement in the field work is sufficiently established that he was in touch with Vijay Nair and Shri Arvind Kejriwal and paid bills for various activities, including the programme held at Grand Hyatt Hotel, Bambolim, Goa. There are also cash deposits in petitioner's bank account. The petitioner has been unable to explain the entries in his account and have tried to mislead the respondent during the investigations under Section 24 of PMLA, 2002. There is a presumption against the petitioner and the burden is on him to rebut the presumption. The most pertinent piece of evidence is that there has been no reimbursement of the expenditure incurred by the petitioner. No justification has been given by the petitioner from where he has received the money.

64. To counter the arguments on behalf of the petitioner that while granting bail in CBI case it was held to be a weak case against the petitioner, it has been argued that the PMLA case and the predicate offence are two independent offences and the merits of one case does not impact the facts of the other case. The predicate offence is relevant only for the purpose of determining proceeds of crime. Once it is proved in the PMLA case that the money which was in the hand of the petitioner was proceeds of crime and he has done layering it has to be tested on its own merit. Reference has been made to *Dr. Manik Bhattacharya vs. Ramesh Malik and Ors*, 2022 SCC Online SC 1465 and *Vijay Madanlal (Supra)*.

65. The counsel for respondent has placed reliance on *Pavana Dibbur v. the Directorate of Enforcement CRL. Appeal No. 2779 of 2023* and reiterated that offence of money laundering is an independent offence and it is not necessary that an accused of the offence of money laundering shall also be accused of the predicate offence. It was further submitted that the investigation in the schedule/predicate offence is an irrelevant consideration for the purpose of bail under Section 45 of the PMLA, 2002. Reliance for this proposition was placed on *Directorate of Enforcement v. Aditya Tripathi*, (2023) SCC OnLine SC 619.

66. It was further argued by Ld. Counsel for ED that taking cognizance of offence implies the application of the judicial mind on the facts of the case to establish that prima-facie offence has been committed. Reliance is placed on *Manharibhai Mohanbhai Patel & Anr. v. Shaileshbhai Mohanbhai Patel & Ors.* (2012) 10 SCC 517.

67. The Ld. Counsel for the ED vehemently submitted that at the stage of bail, the court must confine itself to the existence of material against the accused and not as to whether those materials

are credible or not. Reliance is placed on Gurcharan Singh & Ors. V. State (Delhi Administration), 1978 SCC (Cri) 41 ; Nimmagadda Prasad v. CBI (2013) 7 SCC 466; Ranjitsing Brahmajeetsingh Sharma v. State of Maharashtra (2005) 5 SCC 294;. Puran v. Rambilas and Anr. (2001) 6 SCC 338; Lokesh Singh v. State of Uttar Pradesh and Anr. (2008) 16 SCC 753; Chaman Lal v. State of Uttar Pradesh and Anr. (2004) 7 SCC 525; State of Maharashtra v. Sitaram Popat Vetral and Anr. (2004) 7 SCC 521; and Dilawar Balu Kurane v. State of Maharashtra (2002) 2 SCC 135.

68. In the end learned counsel has placed reliance on Religare Finvest Ltd vs. State of NCT of Delhi & Anr, Crl.M.C.796/2021 and State of Bihar and Another vs. Amit Kumar alias Bachcha Rai, (2017) 13 SCC 751 to argue that the plea of delay in trial, is not relevant for the purpose of considering the bail especially in economic offences.

69. Lastly, it has been argued that merely because some of the accused have been admitted to bail and the Complaints against many were filed without arrest, does not create any inherent right in the petitioner to seek bail. Rather the fact that many have not been arrested or have been admitted to bail, reflects the impartiality of the ED which has made the arrest only in those cases where it was imperative.

70. Ld. Counsel for ED emphasized that Section 3 of the PMLA, 2002 has a wide reach and covers any direct or indirect attempt to indulge or knowingly assist or being knowingly party or being actually involved in "any process or activity" connected with the proceeds of crime reliance was placed on Vijay Madanlal Choudhary (supra).

71. The learned counsel for ED has thus, opposed the bail.

72. Submissions heard and record as well as written arguments perused.

73. Learned counsel on behalf of the Directorate of Enforcement has vehemently contended that before considering the delay component in the conclusion of the trial, the petitioner has to first satisfy the twin test as laid in Section 45 of PMLA, 2002. He cannot be granted bail unless it is shown that he is not guilty of the alleged offences and that he will not commit the same if released on bail.

74. It may be observed in the context of Section 45 of PMLA, 2002 that the prosecution has filed one main Prosecution Complaint on 26.11.2022 and thereafter, five Supplementary Prosecution Complaints in none of which the petitioner had been cited as an accused. It is the 6th Supplementary Prosecution Complaint in which the petitioner has been arrayed as an accused. The petitioner has filed a flowchart in the bail Application wherein it has explained how the conspiracy started at the first level and trickled down to the seventh level where the petitioner has featured.

75. The allegations are that Rs.100 Crores were generated from the predicate offence by the main accused persons, which had trickled down through the Hawala Operators/Angadiyas, to the petitioner.

76. At this stage, the only allegation is that the petitioner received Rs.45 Crores, which were part of the proceeds of the crime and had been placed, layered, and integrated by him in the expenditure incurred in the various events organized during the Goa Campaign for AAP Party. The statement of the Angadiyas and others persons, are required to be proved through cogent evidence during the trial that this particular Rs.45 Crores, which is being utilized by the petitioner, were in fact the part of the proceeds of crime and this fact was within the knowledge of the petitioner.

77. It has already been observed at the time of grant of bail to the petitioner in the predicate offence registered by CBI that the case against him is extremely weak. It has been held in the case of Sanjay Pandey (supra) that where the involvement of the petitioner in the predicate offence itself is weak, it may be observed that his guilt in the present case is also weak.

78. The petitioner has sought to explain Rs.12 lakhs, which were recovered from his account by stating that he had been doing odd jobs and working and this Rs.12 lakhs were part of his earnings. Furthermore, it has been explained by him that he was a freelancer working for the political parties like BJP, TMC etc., in the past. Looking at his nature of work of a free lancer for various political parties which he has been doing in the past, merely because he spent certain amount the source of which is not certain, for the campaigning events in the election of Goa, it cannot be said that there is a strong case against the petitioner.

79. Further, considering at the nature of his business, it also cannot be said that there is likelihood of his committing the same offence if he is admitted to bail.

80. The twin conditions as provided in Section 45 of the PMLA, 2002 are primarily satisfied. Even if it is held that these conditions are not met by the petitioner, the jurisprudence for grant of bail is that the petitioner cannot be deprived of his constitutional right of personal liberty enshrined under Article 21 especially when there is a prospect of long incarceration without the conclusion of the trial.

81. It is admitted that the petitioner has been behind bars since 18.04.2024, there are around 69,000 pages of documents involved in both CBI and ED matters. Moreover, there are 493 witnesses, who have to be examined on behalf of the prosecution. In the same case, the other accused persons, namely, Manish Sisodia, K.Kavitha, and Vijay Nair have already been admitted to bail in similar circumstances.

82. In the case of Manish Sisodia v. Directorate of Enforcement 2024 INSC 595 the Hon ble Supreme Court observed that prolonged incarceration before being pronounced guilty of an offence should not be permitted to become punishment without trial. It was further observed that fundamental right of liberty provided under Article 21 of the Constitution is superior to statutory restrictions and reiterated the principle that "bail is the rule and refusal is an exception". The same has been reiterated by the Apex Court in Kalvakuntla Kavitha v. Directorate of Enforcement 2024 INSC 632.

83. Insofar as the role of the petitioner in the present case is concerned, he stands on a better footing than the other co-accused, who have been recently granted bail.

84. The Apex Court in *Manish Sisodia (supra)* reiterated observation in *Gudikanti Narasimhulu v. Public Prosecutor, High Court of A.P. (1978) 1 SCC 240* that the objective to keep a person in judicial custody pending trial or disposal of an appeal is to secure their attendance at trial.

85. In the present case, the petitioner is having deep roots in the society. There is no possibility of him fleeing away from the country and not being available for facing trial. Regardless, conditions can be imposed to ensure the petitioner's attendance to face the trial.

86. As noted in *Manish Sisodia (supra)* there is no possibility of tampering of evidence by the petitioner if the petitioner is granted bail as the case is primarily dependent on documentary evidence which is already seized by the prosecution. Similarly, the apprehension regarding influencing witnesses and that of being a flight risk can be diffused by imposing stringent conditions while granting bail. Therefore, the conditions of triple test are duly satisfied by the petitioner.

87. Considering the above, the petitioner Chanpreet Singh Rayat is admitted to bail, on the following terms and conditions: -

I. The petitioner is directed to be released forthwith on bail in connection with the ECIR No. HIU-II/14/2022 dated 22.08.2022, registered by the Directorate of Enforcement subject to furnishing a bail bond in the sum of Rs.5,00,000/-

with one surety of the like amount; to the satisfaction of the learned Special Judge/Trial Court.

II. The petitioner/accused shall appear before the Court as and when the matter is taken up for hearing.

III. The petitioner/accused shall provide mobile number to the IO concerned which shall be kept in working condition at all times and he shall not change the mobile number, without prior intimation to the Investigating Officer concerned.

IV. The petitioner/accused shall not change his residential address and in case of change of the residential address, the same shall be intimated to this Court, by way of affidavit.

V. The petitioner shall surrender his passport with the learned Special Court;

VI. The petitioner shall report to the Investigating Officer on every Monday and Thursday between 10-11 AM; and VII. The petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses. VIII. The petitioner/accused shall not leave the country, without permission of this Court.

IX. The petitioner shall not make any attempt to tamper with the evidence or influence the witnesses;

88. Any observation in this judgement is without prejudice to the trial.

89. The petition along with applications, if any, shall stand disposed of.

90. The copy of this Order be communicated to the concerned Jail Superintendent as well as to the learned Trial Court.

(NEENA BANSAL KRISHNA) JUDGE SEPTEMBER 09, 2024/rk/PT/RS