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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

RESERVED ON –11th May.2023

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PRONOUNCED ON – 29th May,2023

+ BAIL APPLN. 1762/2022, CRL.M.(BAIL) 182/2023, CRL.M.A. 11556/2022 & CRL.M.A. 10022/2023

VIJAY AGRAWAL THROUGH PAROKAR Petitioner

Through: Mr.Sidharth Aggarwal, Sr.Adv. with
Mr.Arjun Dewan, Mr.Shahryar Khan
and Ms.Arshiya Ghosh, Advocates

versus

DIRECTORATE OF ENFORCEMENT Respondent

Through: Mr.Zoheb Hossain, Spl. Counsel for
ED with Mr.Vivek Gurnani and
Mr.Baibav, Advocates

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA,J:

1. Briefly stated, the case of the directorate of enforcement is that Naresh Jain along with his brother Bimal Jain and other accomplices hatched a criminal conspiracy to cause loss to the exchequer and banks by indulging in illegal foreign exchange transactions on the basis of



forged/ fabricated documents. It was alleged that for the furtherance of conspiracy, documents like identity proof, birth and education certificate, voter ID, PAN Card and signatures were Forged/fabricated to incorporate entities, operating bank accounts, facilitating bogus/over-invoiced/ under-invoiced import and export transactions and rotation of the funds through web of shell companies to cause undue benefit to the parties involved and loss to the exchequer and banks. It has been alleged the Naresh Jain also facilitated parking of funds abroad by Indian nationals through his international Hawala transaction structure created in India and in various other jurisdictions. Investigation revealed that Naresh Jain incorporated and operated 450 Indian entities and 104 foreign entities. These entities were incorporated by using original identity proofs and documents of dummy shareholders and directors as well as by fabricating identity proofs and documents of these shareholders and directors. During the search 14 digital keys for operation of foreign bank accounts and other incriminating documents and data were seized from the secret office of Naresh Jain at 361, Vardhman Grand Plaza, Sector-3, Rohini, Delhi. It has been alleged that Naresh Jain and his accomplices were operating around 337 accounts in foreign banks in Dubai, Hongkong and Singapore in respect of 104 shell firms/ companies. The ED has alleged that during the investigation conducted so far, out of 450 shell companies, 603 bank accounts of 311 companies have been examined and it has been gathered that Naresh Jain and his accomplices (including the present petitioner) rotated funds approximately to the tune of Rs. 96,000 Crores for providing accommodation entries of



approximately Rs. 18,679 Crores to 973 beneficiaries. It is pertinent to mention here that the ED has stated that the bail applications of Naresh Jain and Bimal Jain were dismissed by this court and SLP filed by Bimal Kumar Jain before Hon'ble Supreme court has also been dismissed.

2. During the course of further investigation, the role of the present petitioner has been found as under:
 1. Shri Vijay Agarwal, the present Applicant, an Indore based real estate developer had also been actively involved in the entire scheme of Money Laundering, being involved in different processes of the same at different stages.
 2. Shri Vijay Agarwal in lieu of development of land parcels held by M/s Graphic Buildcon into a residential project by the name of Empire Wildflower, by acquiring shares of Graphic Buildcon worth around Rs. 18 Crores from Naresh Jain/ Bimal Jain at throwaway prices and by availing loans and advances from unknown entities had actively participated in the scheme of Money Laundering including the placement, layering and integration of the proceeds of crime into the financial system.
 3. Sh. Vijay Agarwal, a real estate developer based at Indore had been instrumental in the placement, concealment, use and layering of the POC generated by Shri Naresh Jain and his associates. The alleged role played by Shri Vijay Agarwal in the entire scheme of laundering of money by Sh. Naresh Jain is as follows:-

(i.) MOU entered into by Shri Vijay Agarwal with Bimal Jain and allotment of 50% shares of Graphic Buildcon (belonging



to Naresh Jain) to Shri. Vijay Agarwal at throwaway prices without any agreement and also without any valuation of shares:- The acquisition of shares of Graphic Buildcon by Naresh Jain / Bimal Jain was followed by Shri Vijay Agarwal entering into an MOU in 2012 for the development of lands held by Graphic and Arrow with Bimal Jain / Naresh Jain and in furtherance of the said understanding, Shri Vijay Agarwal was allotted 50% shares of Graphic for a mere payment of Rs. 5 Lakhs. The share allotment had been carried out without any valuation of shares and without entering into any agreement between the parties. As the 100% shareholding of Graphic had been acquired at a price of Rs. 36 Crores, the value of 50% of the shares was around Rs. 18 Crores and therefore the shares had been acquired by Shri Agarwal at a Windfall gain of Rs. 17.95 Crores. Further since the shares of Graphic had been acquired by Jayna Infra / Naresh Jain out of Proceeds of Crime, **the windfall gain of Rs. 17.95 Crores by Sh. Vijay Agarwal was nothing but an indirect transfer / acquisition of Proceeds of Crime.**

(ii.)Receipt of Substantial funds in the form of loans/ advances from companies/entities managed & controlled by Sh. Naresh Jain-

1. Sh.Vijay Agarwal had received huge sums of money amounting to around Rs. 41,35,71,231/- out of which around Rs. 19,71,26,301- was outstanding from companies /entities whose promoters / directors were not even known to Sh. Agarwal. The



said amount of Rs. 19,71,26,530/- remained outstanding as on the date of filing of the Supplementary Prosecution Complaint on 12.05.2022. The said loans had been advanced by the companies to Sh. Agarwal without entering into any kind of a loan agreement.

2. Further among the many advances of money, an amount of Rs. 5,90,45,503 had been received by Shri Agarwal as advance against a purported sale of land by his company M/s. Malwa Real Estate Developing Company to M/s. Swaraj Overseas, an entity controlled by Naresh Jain. The sale deed for the said sale was never intended to be executed and was meant to be cancelled at later date. Similar instances have also been noted in the past as well.
3. A further loan / advance had been received by his entity M/s. AVM housing from Moksha Enterprises, another Naresh Jain company and as per Agarwal the same had been arranged by Vikas Singh (a representative of Naresh Jain) and he did not know anyone in the firm advancing the loan.
4. Sh. Agarwal had also received a loan in his entity M/s. RC Warehousing from M/s. Inventors Impex Trade Pvt. Ltd., M/s. Raga Trexim Pvt. Ltd. and M/s. Newlook Commosales Pvt. Ltd., again without any agreement and none of the directors / promoters of the said entities were known to Shri Agarwal.
5. Sh. Agarwal had also in his statements admitted that the funds so received had been used to repay the outstanding loans of his companies.



6. In addition to the above, a list of entities forwarded to Shri Agarwal by Vikas Singh on whatsapp had been recovered during investigation which is a list of shell entities all controlled and managed by Naresh Jain & his associates and the said entities had been used for providing proceeds of Crime generated / laundered by Naresh Jain to Vijay Agarwal.
7. Most of the above entities forwarding the proceeds of crime to Shri. Agarwal were shell entities. The said fact is borne out of improper addresses submitted by Swaraj Overseas and Moksha Enterprises both of which had advanced amounts of Rs 4.62 Crores and Rs. 5.90 crores respectively to RC Warehousing, which were virtually non-existent, mentioned by these companies statutory forms / returns and the audit reports.
8. Sh. Ajay Sharma, the auditor of Swaraj Overseas & Moksha Enterprises for F.Y. 2020-21 in his statement dated 28.04.2022 had stated that he had never met any person, Director or promoter from Swaraj overseas but had only been contacted through whatsapp or email by one Mr. Alok. The payments for the Audit and IT filing were all paid in cash through peon etc. Sh. Ajay Sharma had carried out Tax Audit and IT of 12 firms of Naresh Jain including the above mentioned firms.
9. Sh. Vaibhav Saxena, auditor of Swaraj Overseas for the F.Y. 2017-18 2018-19 & 2019-20 also stated on similar lines as Sh. Ajay Sharma. In his statement dated 29.04.2022, Sh. Saxena stated that he had been come in contact with one Harish Agarwal in Dec /Jan 17-18 in the Income Tax dept office. Thereafter he



was contacted by Harish Agarwal only through whatsapp or mail, documents handed over through peon etc. and that he never met any director / promoter of any of the companies.

10. It is therefore the clear that shell entities managed and controlled by Naresh Jain had been used to transfer / route proceeds of crime to entities of Vijay Agarwal in the form of loans. Since Sh. Agarwal had received loans / advances without knowing any of the partners/ directors / promoters of the said companies and without executing any agreement, it is clear that he has been an active participant in the entire scheme of Laundering of proceeds of crime.
3. Mr. Zoheb Hossain has further submitted that the conduct of the petitioner has also not remained clean during the investigation and he deliberately suppressed certain facts including opening of new bank account.
4. It was found that there has been deliberate suppression of newly opened bank accounts by the accused. The process of Money Laundering and the routing of Money had been infact continuing even during the course of investigation. After the arrest of Naresh Jain, Graphic Buildcon had opened new bank accounts, in which the sale proceeds from the sale of plots in Empire Wildfire project was being deposited.
5. Mr. Zoheb Hossain submits that Sh. Agarwal, during the course of interrogation, on being asked to provide bank account details of the companies where he was a director, had deliberately omitted to provide



the details of three Bank accounts, namely Bank account no. 531201010035732 and 531201010035718 held with Union Bank of India and account number 0699002100039863 held with the Punjab National Bank.

6. The Ld. Counsel for ED states that the account opening forms of the said accounts had established that Sh. Vijay Agarwal was one of the authorized signatories and therefore had deliberately suppressed the said information from the Directorate. The total credit lying in Union Bank account no. 531201010035732 was around 9.39 crores, having been received from the sale of plots of Project Wildfire, Indore. Furthermore, it is submitted that the proceeds of crime in the aforesaid bank accounts had been diverted immediately after receipt of sale proceeds. The above conduct thus shows concealment on the part of the petitioner accused and that he is likely to commit the offence if released on bail.

7. Mr. Zoheb Hossain has placed reliance upon *Vijay Madanlal Choudhary & Ors. vs. Union of India & Ors.* 2022 SCC OnLine SCC 929 and submitted that the role played by the petitioner in the offence of money laundering, makes out a prima facie case and hence he does not meet the twin conditions as imposed under Section 45 of the PMLA. Mr. Zoheb Hossain has further placed reliance upon *Tahir Hussain vs. Directorate of Enforcement* 2022/DHC/005093 and submitted that the "proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property



which may directly or indirectly be derived or obtained as a result of any criminal activity related to the scheduled offence. Learned counsel submits such property also falls within the ambit of proceeds of crime and comes within the purview of Section 3 of the PMLA, 2002. Learned counsel also submitted that in order to admit the accused on bail in PMLA Act, it is necessary to meet the twin conditions as prescribed under Section 45 i.e. (i) that there are reasonable grounds for believing that he is not guilty of the offence of money laundering, and (ii) is unlikely to commit any offence while on bail. Mr. Zoheb Hossain has further submitted that the mandatory rigour of the twin condition has to be satisfied before grant of bail. It has been submitted that the investigation in the instant case has revealed the role of the petitioner in the commission of the offence of money laundering and on the basis of the evidence and material in possession with the department against the said petitioner, it can be safely concluded that petitioner is involved in the offence of money laundering. Mr. Zoheb Hossain has further submitted that at this stage Court is not required to render a finding of guilt, nor is it required to conduct a mini trial or meticulously examine the evidence. The court is only required to examine whether the petitioner has made out reasonable grounds for believing that he is not guilty. Reliance has been placed upon *Union of India vs. Rattan Mallik* (2009) 2 SCC 624. Mr. Zoheb Hossain has further submitted that in view of the vast material against the petitioner, such a satisfaction cannot be recorded in the facts of this case.



8. Petitioner has sought the bail on the ground that the case of the department has no substance. It has been submitted that the petitioner is neither named as an accused in the FIR in the predicate offence nor was ever summoned during investigation nor charge-sheeted in the predicate offence. Learned Counsel for the Petitioner has stated that the petitioner was not even named in the ECIR bearing no.ECIR/05/HIU/2018. It has been submitted that the petitioner was falsely arrested on 14.03.2022 and after five days of police custody was sent to judicial custody. It has been submitted that after being sent to judicial custody, the petitioner has not been asked even once by investigating agency to join the investigation nor the investigating agency has questioned or interrogated the petitioner ever since. It has further been submitted that prior to his arrest a search was conducted on 1 September 2021 at the premises belonging to the petitioner and during search no incriminating material was recovered. Learned Counsel for the Petitioner has submitted that the Petitioner has been named as an accused in the Supplementary Prosecution Complaint which has already been filed before the court. It has further been submitted that the ECIR was registered in the year 2018. Learned counsel for the petitioner has submitted that as per the case of the Enforcement Directorate broadly three allegations have been made against the petitioner which are as follows:

- (i) The Petitioner was issued fresh equity of 50,000 shares in M/s Graphic Buildcon Pvt. Ltd, for a total consideration of Rs 5,00,000/- (Rupees Five Lakh only), which as per the understanding of the investigating agency, should be worth an



amount of Rs. 18,00,00,000/- (Rupees Eighteen crore only), and basis such understanding the investigating agency has alleged that the Petitioner is in possession of proceeds of crime to the tune of Rs. 17,95,00,000 (Rupees Seventeen Crores Ninety-Five Lakh only).

(ii) The Petitioner had received around Rs. 41,35,71,231/- (Rupees Forty-One Crore Thirty-Five Lakh Seventy One Thousand Two Hundred Thirty One Crore] from entities controlled by Co-Accused Mr. Naresh Jain and these monies were proceeds of crime [@ Page No. 401-409]. Out of which 19 + crores are still outstanding.

(iii) Money Laundering done by the Petitioner through his entity R.C. Warehousing.

9. Mr.Sidharth Aggarwal, learned senior counsel for the petitioner has submitted that admittedly petitioner has not been made an accused in the predicate offence. It has further been submitted that the petitioner is a renowned real estate developer and carries out its business activities in the State of Madhya Pradesh under the name and style "Empire". It has been submitted that Petitioner has successfully completed and delivered various projects in Indore such as Modi Tower Commercial Multistorey building, G.G. Tower, Empire Residency, Empire Estate, Empire Victoria Park, Empire Metro, Empire Victory, Empire Logipark.

10. It has further been submitted that the petitioner had no prior association



with the co-accused in any manner. Learned senior counsel submits that there is no material on record to show that the petitioner had knowledge of the source of money by which the co-accused had purchased the land or otherwise and in absence of any such material, it cannot be said that the Applicant was aware about the alleged tainted nature of money. Mr. Sidharth Aggarwal, learned senior counsel for the petitioner has submitted that even the Hon'ble Supreme court in **Vijay Madanlal Choudhary** (supra) has inter alia held that the court at the stage of considering the application of bail, is expected to consider the question from the angle as to whether the accused was possessed of the requisite *mens rea*. Learned senior counsel submitted at this stage the court is not required to record a positive finding that the accused had committed an offence under the Act. It has been submitted that at this stage the court cannot weigh the evidence meticulously and examine the case on the basis of broad probabilities. Mr. Sidharth Aggarwal, learned senior counsel has submitted that in regard to the first allegation of the Enforcement Directorate regarding holding of share, the fact of the matter is that M/s Graphic Buildcon Pvt. Ltd and M/s Arrow Buildtech (land owning Companies) had purchased various pieces of land situated at village MundlaNayta from 2005 to 2013. The petitioner was approached sometime in 2012 by M/s Graphic Buildcon Pvt. Ltd and M/s Arrow Buildtech Pvt. Ltd., for developing a residential colony over the land already owned by the aforesaid companies at village MundlaNayta.

11. It was submitted that the petitioner agreed to develop a residential cum



commercial colony over the land already acquired by the aforesaid Companies. The Applicant had paid a sum of Rs. 21,00,000 (Twenty-one Lakh Rupees only) to the said companies on 04 February 2012 as a security deposit for carrying out the development work at its cost through his own Company from his own bank accounts. Mr.Sidharth Aggarwal, learned senior counsel has submitted that the payment of Rs. 21,00,000 (Twenty-one Lakh Rupees only) by the petitioner has not been disputed by the department in the Original Prosecution Complaint dated 28 October 2020 filed by the department.

12. It has further been submitted that subsequently an MoU dated 19 March 2015 was executed between the parties thereto which contained the final terms governing the development agreement. As per MoU, the petitioner was to incur the entire expenditure for developing the entire 56.768 acres of land and carving out plots out of them by laying down roads/ sewage lines, water lines, electricity lines etc. and the petitioner was given the right over the sale proceeds of 50% of the total plots. In terms of the said MoU, the Applicant was given 50 % equity as a security at par value i.e., Rs. 5,00,000/- (Rupees Five Lakh). It was emphasized that these shares were given as security as duly recorded in clause 13 of the said MoU.
13. Learned senior counsel has further submitted that immediately upon sale of said 50 % plots and realization of sale proceeds of aforesaid plots, the petitioner was to resign from the directorship of the said companies and was also to return the shareholding of the said



companies and these facts have been recorded in contemporaneous document i.e., MoU dated 19.03.2015 and at that time there was no FIR or ECIR even against the co-accused. Learned senior counsel has submitted that clause 13 of the MoU was also noted and accepted in the Arbitral award dated 17 July 2021 passed by the Ld. Sole Arbitrator in an arbitration proceeding instituted by the petitioner / his entities on account of the obstruction created for sale of plots by the two Companies. Mr.Sidharth Aggarwal, learned senior counsel has submitted that the estimated cost of the project was approximately Rs. 36,00,00,000/- (Thirty Six Crores) and the petitioner and his entities has till date spent about a total of Rs. 42,00,00,000/- Forty Two Crores Rupees (approximately) out of which about Rs. 34 Crores have been paid from sale of land and Rs. 8 Crores have been made by the petitioner / his associates.

14. It has been submitted that the petitioner had developed the said project, moreover, it is the own case of the Respondent in the Provisional Attachment order that 18,233 sq. mts land has already been sold to buyers and the remaining area of the project, i.e., 2,09,917 sq.mts has been attached. Mr.Sidharth Aggarwal, learned senior counsel has submitted that the petitioner has not withdrawn any money from the sale of land and has put in all the money for the development of project. He has further submitted that the allegation that the Petitioner is in receipt of proceeds of crime is untenable in view of the MoU dated 19.03.2015, which categorically records that the shares were given as security. Mr.Sidharth Aggarwal, learned senior counsel



submitted that it was merely a commercial transaction and the department cannot question the commercial wisdom of the parties to the agreement.

15. In respect of the second allegation of taking loans, learned senior counsel submitted that it is own case of the Respondent in the Supplementary Prosecution Complaint that out of Rs. 41,35,71,231 [Rupees Forty OneCrore Thirty Five Lakh Seventy One Thousand Two Hundred and Thirty One Rupees only] an amount of Rs. 19,71,26,530/- [Rupees Nineteen Crores Seventy-One Lakh Twenty-Six Thousand Five Hundred and Thirty Rupees] remains outstanding and thus, evidently, going as per the prosecution's own case an amount of Rs. 21,64,44.701/- [Rupees Twenty-One Crore Sixty-Four Lakhs Forty-Four Thousand Seven Hundred One only] has already been paid been paid besides the interest to the tune of almost Rs.1 crore. Mr.Sidharth Aggarwal, learned senior counsel has submitted that by no stretch of imagination can it be said that the Applicant has committed an offence under Section 3 of PMLA by availing loans. It is further submitted that the petitioner has repaid money and paid interest which is clearly inconsistent with conduct of a person who allegedly in conspiracy with co-accused has committed offence of money laundering.
16. In respect of the third allegation that the money laundering was done by the petitioner through his entity M/s RC Warehousing, learned senior counsel submitted that the applicant joined as Director only in 2015 in M/s R.C.Warehousing. It has been submitted that the agreement to sale of lands were entered into during Financial Year 2012-2013 between Mr. Saket Kumar and Glints Global Infrastructure



Ltd., (later renamed as Jayna Infrastructure), and the other between Mr. Ajay Singh Chouhan and Glints Global Infrastructure Ltd., for a total value of Rs. 3.5 crores and 5.5 crores respectively, which makes it evident that the Applicant had no role in the agreement to sale executed between Mr. Saket Kumar and Jayna Infrastructure.

17. Learned senior counsel has submitted that it has further been alleged that during Financial Year 2012-2013, Mr. Saket Kumar and Mr. Ajay Singh Chauhan had forwarded unsecured loans worth Rs. 1,80,00,000/- and Rs. 3,05,00,000/- to RC Warehousing. Learned senior counsel has submitted that at that time the petitioner was not holding any position in RC Warehousing. Learned senior counsel has submitted that amount of Rs. 1.5 crores to Mr. Saket Kumar and Rs. 2.75 crores Mr. Ajay Singh were duly paid back to them by RC Warehousing, on account of the outstanding loan and the petitioner does not have any information as to the fact that the same amount has been transferred by these individuals to Jayna Infrastructure Ltd. on the same date. It has further been submitted that statements of Mr. Ajay Singh Chauhan and Mr. Saket Kumar relied upon by the department are recorded before the Income Tax authorities and not before the ED and thus cannot be used by the department. Learned senior counsel further submitted that the petitioner has duly paid interest on the unsecured loan of Jayna Infrastructure amounting to Rs. 7,81,00,000/- which has been outstanding since year 2016-17. Mr. Sidharth Aggarwal, learned senior counsel has submitted that the petitioner is also seeking bail on medical grounds. Learned senior counsel has submitted that being sick or infirm, the petitioner is entitled to be admitted to bail in view of



proviso to Section 45 of the PMLA. Learned senior counsel has submitted that the health of the petitioner has been continuously deteriorating whilst in custody from 14.03.2022. It has further been submitted that the petitioner is patient of LBA/HTN/DM2 and suffering from various medical conditions such as Radiculopathy with HTN ,post covid shortness of breath, low oxygen saturation, lower back ache and also numbness of lower limbs and has been having difficulty in doing basic daily activities. It has been submitted that the petitioner was referred to DDU Hospital on 14 July, 2022 with complaint of history of falling in bathroom with frothing from mouth and he was managed with injectable and referred to DDU Hospital in emergency. At DDU Hospital, the petitioner was examined by Senior Resident medicine at RML Hospital and was advised to review in Neurology and Medicines OPD. Learned senior counsel has submitted that on 26 July 2022 the petitioner was referred to GB Pant Cardiology and Neurology department. The neurologist at GB Pant Hospital advised the petitioner to avoid weight lifting/ bending forward and further directed the petitioner for neurosurgery evaluation and also suggested for MRI of the petitioner. It has further been submitted that the petitioner requires urgent care on account of his deteriorating health which is evident from the fact that knee joint power and ankle joint power has reduced to 2/5 of Right side on 22 September 2022 which was 5/5 on 14 July 2022. It has been submitted that the petitioner requires neurosurgery evaluation and is likely to be operated upon. It is further submitted that the numbness of limbs is a precursor to possible paralysis and thus requires urgent medical attention in view of his condition. Learned senior



counsel further submitted that the petitioner meets the 'triple test' and deserves to be released on bail. It has been submitted that the petitioner cannot be said to be a flight risk as he duly cooperated with the investigation and thus, there cannot be any basis of any apprehension regarding the petitioner being a flight risk. It was submitted that there was no allegation that the petitioner tried to flee or avoid process at any point of time. It has further been submitted petitioner is a well renowned builder and has deep roots in the society. Furthermore, the evidence has already been collected by the investigating agency and filed before the Special Court and thus, there is no possibility of tampering of evidence. Furthermore, statements of witnesses have been recorded and there is no allegation that during the investigation the Petitioner directly or indirectly attempted to influence any witness. There is no material placed by the investigating agency against the Petitioner to that effect. Learned senior counsel has submitted that the petitioner satisfies the parameters of Section 439 Cr.P.C. and the twin condition of Section 45 PMLA.

18. Learned Counsel for the Petitioner has also filed a brief written note on medical condition on 11.05.2023 wherein it has been stated that the petitioner's condition has not improved and he has been under regular treatment and has already undergone two procedures. It was stated that the petitioner may also need to undergo further procedures and/or surgery as and when advised. It was further stated that the petitioner is unable to discharge his daily activities without assistance of other family members and he is advised to attend regular and highly specific physiotherapy which is not available in jail premises.



19. Mr.Sidharth Aggarwal, learned senior counsel has submitted that while considering the case of the accused under the proviso of Section 45 of PMLA on grounds of sickness or infirmity, it is not necessary to fulfil the twin conditions of section 45 PMLA. In this regard reliance has been placed upon *Lalit Goel vs. Directorate of Enforcement*, Cr.M.7039/2022 dated 08.04.2022, Punjab and Haryana High Court. Learned senior counsel has submitted that SLPD.9985/2022 filed against this order was dismissed by the supreme court vide order dated 11.04.2022.
20. Mr.Zoheb Hossain, learned counsel for ED has submitted that the petitioner was granted interim bail in view of the impeding medical condition. However, there is no latest document nor any Medical record that has been filed to show that the petitioner is still sick or infirm. Mr.Hossain has submitted that the in any case even to admit the petitioner to bail on the ground of sickness, he has to meet the twin conditions as provided under Section 45 PMLA. Mr.Hossain has also submitted that the medical condition as stated by learned senior counsel can be treated at the Jail hospital. Learned counsel has further submitted that even during the custody, the petitioner can be referred to the specialized hospitals and even to AIIMS. Mr. Zoheb Hossain has also invited the attention to the statement of the petitioner recorded under Section 50 of PMLA on 07.12.2020 and 18.03.2022, wherein he stated that it had become necessary for the Petitioner to have his control over M/s Graphic Buildcon and Arrow Buildtech and therefore Sh.Bimal Jain had committed to transfer 50% shares to him.



Mr.Hossain has also placed on record a copy of the WhatsApp chat between the petitioner and Vikas Singh.

21. Mr.Zoheb Hossain has submitted that petitioner due to the above stated reasons, is not entitled to be admitted to bail.

FINDING & ANALYSIS

22. The jurisprudence regarding bail is by now very well settled that rule has always been bail and its exception jail. It has also been stated time and again that such a principle has to be followed strictly. Right to bail is also essential for the reason that it provides the accused with an opportunity of securing fair trial. The right to bail is linked to Article 21 of the Constitution of India, which confers right to live with freedom and dignity. However, while protecting the right of an individual of freedom and liberty the court also has to consider the right of the society at large as well as the prosecuting agency. This is the reason that the gravity of the offence is required to be taken into account. The gravity of the offence is gathered from the attendant facts and circumstances of the case. It is a settled proposition that economic offences fall within the category of 'grave offences.' While dealing with the economic offence cases, the court has to be sensitive to the nature of allegation made against the accused. Such economic offences normally involve the public exchequer and money of the honest tax payer. The offence of money laundering in itself is a very serious offence. The money laundering not only is a threat to the financial health of the country but it may also adversely impact its integrity and



sovereignty. Moreover, the act of money laundering can even lead to the collapse of the economic system.

23. First and foremost, in cases like present one, where the petitioner before the court has been found involved in a case of huge money laundering, the challenge before the court is that whether the case of the petitioner is to be seen in isolation or the court is required to take a wholesome view. The court considers that there cannot be any water-tight formula for the same. As in the cases of conspiracy, the case of the prosecution has to be seen as a whole. The role of an accused is to be seen along with the role of other accused persons. However, at the same time, the court cannot allow itself to be overawed by the role of other accused persons if there is no connection between the acts committed by the main accused person and the act of an accused like present petitioner whose complicity has been found later on during the investigation. The offence of money laundering can be seen as a running-goods train where the bogey keeps on adding. The question to be determined is whether the bogey which is attached knew the culpability of the bogey which had already been there. The core question is that whether the person whose role has been found later knew that the money which he has been dealing with is a proceed of crime. The court understands that this is very difficult for the department to find direct evidence regarding this. But at the same time, despite the twin conditions, the court cannot return any finding merely on the basis of inferences and presumptions.

24. The law regarding proceeds of crime has lucidly been explained by the Supreme Court in *Vijay Madanlal Choudhary* (supra), in para 250 to



253 of which, it has been inter alia held as under:

"250. The other relevant definition is "proceeds of crime" in Section 2(1) (W) of the 2002. Act. This definition is common to all actions under the Act, namely, attachment, adjudication and confiscation being civil in nature as well as prosecution or criminal action. The original provision prior to amendment vide Finance Act, 2015 and Finance (No.2) Act, 2019, took within its sweep any property (mentioned in Section 2(1)(v) of the Act) derived or obtained, directly or indirectly, by any person "as a result of" criminal activity "relating to" a scheduled offence (mentioned in Section 201) (y) read with Schedule to the Act) or the value of any such property. Vide Finance Act, 2015, it further included such property (being proceeds of crime) which is taken or held outside the country, then the property equivalent in value held within the country and by further amendment vide Act 13 of 2018, it also added property which is abroad. By further amendment vide Finance (No.2) Act, 2019, Explanation has been added which is obviously a clarificatory amendment. That is evident from the plain language of the inserted Explanation itself. The fact that it also includes any property which may, directly or indirectly, be derived as a result of any criminal activity relating to scheduled offence does not transcend beyond the original provision. In that, the word "relating to" (associated with/has to do with) used in the main provision is a present participle of word "relate" and the word "relatable" is only an adjective. The thrust of the original provision itself is to indicate that any property is derived or obtained, directly or indirectly, as a result of criminal activity concerning the scheduled offence, the same be regarded as proceeds of crime. In other words, property in whatever form mentioned in Section 2(1)(v), is or can be linked to criminal activity relating to or relatable to scheduled offence, must be regarded as proceeds of crime for the purpose of the 2002 Act. It must follow that the Explanation inserted in 2019 is merely clarificatory and restatement of the position emerging from the principal provision [i.e., Section 2(1) (w)]."

251. The "proceeds of crime" being the core of the ingredients constituting the offence of money-laundering, that expression needs



to be construed strictly. In that, all properties recovered or attached by the investigating agency in connection with the criminal activity relating to a scheduled offence under the general law cannot be regarded as proceeds of crime. There may be cases where the property involved in the commission of scheduled offence attached by the investigating agency dealing with that offence, cannot be wholly or partly regarded as proceeds of crime within the meaning of Section 2(1)(w) of the 2002 Act - so long as the whole or some portion of the property has been derived or obtained by any person "as a result of" criminal activity relating to the stated scheduled offence. To be proceeds of crime, therefore, the property must be derived or obtained, directly or indirectly, "as a result of" criminal activity relating to a scheduled offence. To put it differently, the vehicle used in commission of scheduled offence may be attached as property in the concerned case (crime), it may still not be proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act. Similarly, possession of unaccounted property acquired by legal means may be actionable for tax violation and yet, will not be regarded as proceeds of crime unless the concerned tax legislation prescribes such violation as an offence and such offence is included in the Schedule of the 2002 Act. For being regarded as proceeds of crime, the property associated with the scheduled offence must have been derived or obtained by a person "as a result of" criminal activity relating to the concerned scheduled offence. This distinction must be borne in mind while reckoning any property referred to in the scheduled offence as proceeds of crime for the purpose of the 2002 Act. Dealing with proceeds of crime by way of any process or activity constitutes offence of money-laundering under Section 3 of the Act.

252. Be it noted that the definition clause includes any property derived or obtained "indirectly" as well. This would include property derived or obtained from the sale proceeds or in a given case in lieu of or in exchange of the "property" which had been directly derived or obtained as a result of criminal activity relating to a scheduled offence. In the context of Explanation added in 2019 to the definition of expression "proceeds of crime", it would inevitably include other property which may not have been derived or obtained as a result of any criminal activity relatable to the scheduled offence. As noticed



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

253. Tersely put, it is only such property which is derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence can be regarded as proceeds of crime. The authorities under the 2002 Act cannot resort to action against any person for money-laundering on an assumption that the property recovered by them must be proceeds of crime and that a scheduled offence has been committed, unless the same is registered with the jurisdictional police or pending inquiry by way of complaint before the competent forum. For, the expression "derived or obtained" is indicative of criminal activity relating to a scheduled offence already accomplished. Similarly, in the event the person named in the criminal activity relating to a scheduled offence is finally absolved by a Court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of the criminal case (scheduled offence) against him/her, there can be no action for money-laundering against such a person or person claiming through him in relation to the property linked to the stated scheduled offence. This interpretation alone can be countenanced on the basis of the



provisions of the 2002 Act, in particular Section 2(1)(u) read with Section 3. Taking any other view would be rewriting of these provisions and disregarding the express language of definition clause "proceeds of crime", as it obtains as of now."

25. The bare perusal of these paragraphs would indicate that any property which is derived or obtained directly or indirectly as a result of criminal activity concerning the scheduled offence, is regarded as proceeds of crime. If any property which can be linked to criminal activity relating to or relatable to the scheduled offence, it has to be regarded as proceeds of crime. However, It has also been stated that all properties recovered or attached by the investigating agency in connection with the criminal activity relating to a scheduled offence under the general law cannot be regarded as proceeds of crime. The property which has been derived must be directly or indirectly related to the criminal activity relating to the concerned scheduled offence. It is not necessary that the property must have been directly acquired or derived, if the property has been derived in lieu of or in exchange of the 'property' which had been directly derived or obtained as a result of criminal activity relating to a scheduled offence, such property would also fall within the definition of 'proceeds of crime.' It has also been inter alia held in *Vijay Madanlal Choudhary* (supra) that even at the stage of bail, the court is expected to consider the question from the angle as to whether the accused possessed the requisite mens rea. In the present case, if we sum up the case of the department, it is that the petitioner acquired 50% shares of the company belonging to main accused persons at a price of Rs.5lakh, the actual valuation of which



was Rs.18 crores and therefore, the petitioner was in receipt of proceeds of crime in the sum of Rs.17,95,00,000/- (Rs. Seventeen crores Ninety-FiveLakhs). Secondly, the petitioner had acquired certain loans from the shell companies of the co-accused persons which again allegedly amount to indulging knowingly in any process or activity connected with the proceeds of crime. The third allegation is that the proceeds of crime was laundered through M/s R.C.Warehousing. The case of the defence is that the land was acquired from 2005 to 2013. The petitioner came into the picture only later on for the purpose of development of the land. It has not been disputed that the petitioner is a builder. It is not the case of the department that the petitioner from nowhere came into the deal or that the petitioner was not in the business of developing the colony. . The department has not disputed that the petitioner has been in this business and has developed many projects. The plea of the petitioner is that the shares were taken only to secure his interest. The MoU for the same states:

13. *That the developer wants security for his carrying out development and marketing work as such it has been decided that developer will be inducted as a director in the land owner companies and will also and 50% share holder at nominal value and will continue as director/ shareholder till his share of plots are sold and immediately thereafter developer will resign as a director and will also transfer his shares in landowner companies to any person so nominated by landowner companies and all formalities in this regard will be completed by end of ensuing month.*
26. It is also the case of the petitioner that he has till date not received any money rather, has given a security of Rs.21 lakhs. The petitioner has also stated that around 42 crores have been spent in the project. The



case of the defence that this 50% shares had to go back to the company from where it had come. In regard to the obtaining of loans the case of the defence is that these were merely loan transactions and there is nothing on record to suggest that the petitioner knew that the money was proceeds of crime or tainted money. Similarly, in regard to the RC Warehousing, the petitioner stated that when the so-called tainted money came, he was not holding any position.

27. It is a settled proposition that at the stage of bail, the court is only required to see a prima facie case and is not required to look into the test of guilt. The court is required to maintain a delicate balance between the judgment of acquittal and conviction and an order granting bail before commencement of trial. It is also a settled proposition that 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 probabilities.
28. The department has opposed the bail on the ground that if the petitioner is released on bail, he may tamper with the prosecution evidence. However, it is matter of record that the entire evidence in the present case is in form of the documentary evidence and thus complaint has already been filed. The petitioner also cannot be stated to be at flight risk. He has roots in the society and even this ground has not been considered by the department.
29. It is pertinent to mention here that in *Vijay Madanlal Choudhary* (Supra) it has been *inter alia* held that the Court is at the stage of considering the application for the grant of bail is expected to consider the question from the angle as to whether the accused possessed the



requisite *mens rea*. It was further held that the Court is not required to record a positive finding that the accused have not committed an offence under the Act.

30. The jurisprudence of the bail positively lays down that a liberty of a person should not ordinarily be interfered with unless there exist cogent grounds. Despite, the twin conditions, it is not necessary that at the stage of bail, the Court has to come to the conclusion that the petitioner is not guilty for such an offence. The Court is at the stage of has to examine the case on the scale of broad probabilities. The Court at this stage is required to record an objective finding on the basis of material available on record and no other purpose.

31. In *Ranjit Singh Brahamjeet Singh Sharma v. State of Maharashtra* (2005) 1 SCR 876, it has *inter alia* held as under:

“38. 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 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.”

32. This Court is conscious of the fact that **Ranjit Singh Brahamjeet Singh Sharma** was a judgment on Section 21 (4) MCOCA but the proposition as laid down the Apex Court is squarely applicable on the facts of the present case.
33. It is an admitted case that the petitioner was not an accused in the predicate offence. The petitioner's name also did not appear in the ECIR and in the first complaint filed by the E.D the name or role of the accused was not mentioned. It may again be reiterated even at the cost of the brevity that even as per the **Vijay Madanlal Choudhary (Supra)** though, the twin conditions provided under Section 45 of 2002 Act, restrict the right of accused to grant of bail but cannot be said that the conditions provided under Section 45 impose absolute restraint on the grant of bail. It is a settled proposition that the discretion vested in the Court has to be exercised in accordance with the law and has to be guided by the principles of law.
34. In **Sanjay Pandey v. Directorate of Enforcement** 2022 SCC OnLine Delhi 4279, a bail was granted on the principles of broad probabilities.
35. In the present case, the petitioner is stated to be renowned developer and his plea that he did not know that he is dealing with the tainted money cannot be brushed aside mechanically. If the liberty of an individual is concerned, the Court cannot proceed merely on the basis



of assumptions and presumptions. The evidentiary value of the statement recorded under Section 50 of PMLA has to be tested at the end of the trial and not at the stage of bail. The twin conditions of Section 45 do not put an absolute restraint on the grant of bail or require a positive finding qua guilt.

36. A bare perusal of the Section 2 (u) of the Prevention of Money Laundering Act, 2005 which provides for the definition of “proceeds of crime” indicates that it is the property derived or obtained, directly or indirectly which relates to criminal activity relating to a scheduled offence. Similarly in order to be punished under Section 3 of PMLA, It is necessary that person dealing with the “Proceed of crime” must have some knowledge that it is tainted money. Though, the direct evidence in this regard may not be possible and the Court is also conscious of the fact that at this stage, the evidence cannot meticulously be examined for this purpose. At the same time, for the purpose that evidence cannot be meticulously examined at this stage, the Court cannot merely proceed on the basis of assumption. There has to be some substantial link between the money received and criminal activity relating to scheduled offence which can be attributed to the petitioner.
37. I consider therefore on the basis of discussions made herein above, there is a broad probability. Besides this, the serious medical conditions of the petitioner as stated herein has not improved and he has been under regular treatment and has already undergone two procedures. The applicant has also been stated to undergo further procedures and/or surgeries as and when advised. It has been stated that the petitioner is suffering from numbness of limbs which is a precursor



to possible paralysis which requires urgent medical attention. Thus, taking into account the facts and circumstances, the petitioner is admitted to bail on furnishing a personal bond in the sum of Rs.25,00,000/- (Rupees Twenty-Five lakhs) with two sureties of the like amount to the satisfaction of the trial court, subject to the following conditions:

- (i) The petitioner shall surrender his passport before the learned Trial Court and shall not leave the country without prior permission of the learned trial court.
- (ii) The petitioner shall ordinarily reside at his place of residence and keep his phone operational at all times. He shall immediately inform in case of change in the address by way of an affidavit, to the investigation officer.
- (iii) The petitioner shall appear before the investigation officer as and when directed by investigation officer.
- (iv) The petitioner shall appear and attend before the Court as and when the matter is taken up for hearing;
- (v) The petitioner shall provide his mobile number to the Investigating Officer (IO) concerned at the time of release, which shall be kept in working condition at all times. The petitioner shall not switch off, or change the same without prior intimation to the IO concerned, during the period of bail;
- (vi) The petitioner shall not directly or indirectly communicate or visit co-accused persons or acquitted persons or the witnesses or offer any inducement, threat or intimidate or influence any of the prosecution witnesses or tamper with the evidence of the case.



(vii) The petitioner shall not indulge in any criminal activity during the bail period;

38. However, this order shall not be relied upon by the co accused persons as having being passed in view of peculiar facts and circumstances of the case.

39. In view of the above, the present bail application along with pending applications stands disposed of.

40. Copy be sent to the concerned Jail Superintendent.

DINESH KUMAR SHARMA, J

MAY 29, 2023

Pallavi

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