IN THE COURT OF SH. M. K. NAGPAL
SPECIAL JUDGE (PC ACT), CBI-09 (MPs/MLAs CASES)
ROUSE AVENUE DISTRICT COURT, NEW DELHI

1. **CT Case No. 31/2022**
   Filing No. 728/2022
   CNR No. DLCT11-000747-2022
   Sameer Mahandru Vs. Directorate of Enforcement/ Enforcement Directorate (DoE/ED)

2. **Bail Matter No. 278/2022**
   Filing No. 751/2022
   CNR No. DLCT11-000770-2022
   P. Sarath Chandra Reddy Vs. DoE/ED

3. **Bail Matter No. 281/2022**
   Filing No. 758/2022
   CNR No. DLCT11-000777-2022
   Vijay Nair Vs. DoE/ED

4. **Bail Matter No. 282/2022**
   Filing No. 760/2022
   CNR No. DLCT11-000779-2022
   Abhishek Boinpally Vs. DoE/ED

5. **Bail Matter No. 284/2022**
   Filing No. 766/2022
   CNR No. DLCT11-000786-2022
   Benoy Babu Vs. DoE/ED

CT Case No. 31/2022
Filing No. 728/2022
CNR No. DLCT11-000747-2022
ECIR/HIU-II/14/2022
U/S 3 & 4 of the PMLA

ORDER ON BAIL APPLICATIONS FILED U/Ss 437/439 CR.P.C R/W SECTION 65 OF THE PMLA, 2002 ON BEHALF OF ACCUSED SAMEER MAHANDRU, P. SARATH CHANDRA REDDY, VIJAY NAIR, ABHISHEK BOINPALLY & BENOY BABU

16.02.2023

1. By this common order, I shall dispose of separate bail applications filed by the above five accused persons in the present case registered by the ED on 22.08.2022 vide ECIR bearing no. ECIR/HIU-II/14/2022 U/Ss 3/4 of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as the PMLA). The applications are being taken up for disposal together as many of the submissions made on these applications from both the sides are common and all the five applicants are alleged to be part of the same criminal conspiracy, in furtherance of which the proceeds of crime in the scheduled offences case are alleged to have been generated and they all are also alleged to be involved in the offence of money laundering defined by Section 3 of the PMLA and made punishable by Section 4 of the said Act.

2. The present case/ECIR has been registered by the ED in relation to predicate offences case of the CBI registered vide FIR no. RC-0032022A0053 on 17.08.2022 at PS CBI, ACB, Delhi for commission of the offence of criminal conspiracy punishable U/S 120B r/w Section 477A IPC, Section 7 of the PC Act, 1988 and substantive offences thereof and this ECIR was registered as offences U/S 120B IPC and Section 7 of the PC Act are scheduled offences under the PMLA.

3. The above CBI case has been registered in relation to the irregularities committed in framing and implementation of excise policy of the Government of National Capital Territory of Delhi

(GNCTD) for the year 2021-22 and it was registered on the basis of a complaint dated 20.07.2022 made by the Hon'ble Lt. Governor, GNCTD and the directions of competent authority conveyed by Sh. Praveen Kumar Rai, Director, Ministry of Home Affairs (MHA), Government of India, through his letter dated 22.07.2022 and also based on some source information. Sh. Manish Sisodia, Dy. Chief Minister as well as Excise Minister of the ruling Aam Aadmi Party (AAP) in Delhi and fourteen other persons/entities were specifically named as accused in FIR of the CBI case, which also included some other public servants of the Excise Department of GNCTD and the applicants Vijay Nair and Sameer Mahandru. However, the other three applicants P. Sarath Chandra Reddy, Abhishek Boinpally and Benoy Babu were not named as accused in the said FIR.

4. A chargesheet for commission of the offence of criminal conspiracy punishable U/S 120B IPC r/w Sections 7, 7A and 8 of the PC Act and also the substantive offences thereof against the applicants Vijay Nair, Abhishek Boinpally, Sameer Mahandru and four other accused persons namely Kuldeep Singh, Narender Singh, Arun Ramchandran Pillai and Gautham Mootha stands already filed by the CBI before this court on 25.11.2022 and vide order dated 15.12.2022, this court had also taken cognizance of the alleged offences and had directed summoning of the above said accused persons for facing trial for the said offences, though some further investigation to trace out the roles of other accused and the complete trail of money involved was still pending. Accused Kuldeep Singh and Narender Singh chargesheeted in the

said case are officers of the Excise department of GNCTD and only the applicants Vijay Nair and Abhishek Boinpally were arrested in the said case by CBI and chargesheet against the other accused persons was filed without arrest. Even the above two applicants arrested in the said case were granted regular bail by this court vide order dated 14.11.2022, though the said order of this court is under challenge before the Hon'ble High Court in Crl. M.C. No. 6214/2022 filed by the CBI.

5. As far as the present case/ECIR registered by the ED is concerned, even in this case, a prosecution complaint U/S 44 r/w Section 45 of the PMLA was initially filed before this court on 26.11.2022 against the applicant Sameer Mahandru and four other entities allegedly related to or owned or controlled by him and cognizance of the offence of money laundering alleged to have been committed in this ECIR stands also taken by this court in terms of the order dated 20.12.2022 and summons to all the five persons/entities made accused in the case were directed to be issued, while awaiting outcome of some further investigation which was stated to be pending and also while awaiting filing of the prosecution complaints/supplementary complaints against the other accused persons arrested in the case.

6. It is necessary to mention here that apart from the five applicants herein, one other accused namely Amit Arora was also arrested in this case/ECIR by the ED and he too was running in judicial custody pending filing of a formal prosecution compliant against him, like the applicants P. Sarath Chandra Reddy, Vijay

Nair, Abhishek Boinpally and Benoy Babu, when these bail applications were filed.

7. Subsequently, a supplementary prosecution complaint against twelve other accused persons, including the remaining four applicants and the co-accused Amit Arora, had also been filed by the ED before this court on 06.01.2023 and vide order dated 02.02.2023, this court had directed for summoning of all the accused being prosecuted through this supplementary complaint for their appearance before the court as sufficient grounds were found to be there for proceeding further in the matter against them.

8. As per the predicate offences case of CBI, while the above excise policy of GNCTD was still at the stage of formulation or drafting, a criminal conspiracy was hatched between various accused persons and in furtherance of that criminal conspiracy, some loopholes were intentionally left or created in the policy and the same were meant to be utilized or exploited later on and huge amounts of money were paid as kickbacks in advance to the public servants involved in commission of alleged offences and against these kickbacks, certain undue pecuniary benefits were caused to the conspirators involved in liquor trade. It has been alleged in the said case that kickbacks of around Rs. 20-30 crores in advance were paid to accused Vijay Nair, Sh. Manish Sisodia and some other persons belonging to the ruling AAP in Delhi and the other public servants involved in conspiracy by some persons in liquor business from South India and these kickbacks are

found to have been returned back to them subsequently out of the profit margins of wholesalers holding L-1 licenses and also through the credit notes issued by the L-1 licensees to the retail zone licensees (L-7Z) related to the South liquor lobby. It has also been alleged that as a result of the above criminal conspiracy, a cartel was formed between three components of the said policy, i.e. liquor manufacturers, wholesalers and retailers, by violating provisions and against the spirit of said policy, and all the conspirators played active roles to achieve the illegal objectives of the said criminal conspiracy and it resulted in huge losses to the Government exchequer and undue pecuniary benefits to the public servants and other accused involved in the said conspiracy.

9. As far as the present ECIR/case is concerned, it has been alleged that investigation conducted in the case so far has revealed that advance kickbacks of around Rs. 100 crores were paid to the public servants involved in this conspiracy and as a result of the nexus created because of this conspiracy between the political persons, Government officers/officials and the other accused persons involved in the liquor trade, a total loss of around Rs. 2873 crores has been caused to the exchequer of GNCTD. It has also been specifically alleged that investigation conducted by the ED has further revealed that all the five applicants herein had played key roles in commission of the offence of money laundering as they all were actively involved, directly or indirectly, in the process or activities relating to the above proceeds of crime or its concealment, possession,

acquisition, use and projection or claiming it to be untainted property etc.

10. I have heard and thoughtfully considered the extensive arguments advanced on these bail applications from both the sides. The case record, including the written submissions filed on behalf of all the applicants, except the applicant Vijay Nair, has also been perused.

11. Sh. Siddharth Aggarwal, Ld. Senior Counsel, assisted by Sh. Dhruv Gupta, Sh. Alok Sangwan and Sh. Rishabh Goyal, Advocates, representing the accused Sameer Mahandru has argued that the allegations being made by prosecution against his client about being a member of the above criminal conspiracy or cartel formed between manufacturers, wholesalers and retail vendors of liquor are absolutely false and concocted allegations and he was never involved in the process of formulation of the above excise policy. It is also his contention that the applicant was not involved in any manner in generation of alleged proceeds of crime of the scheduled offences case of CBI. It is also his contention that the applicant is not in any manner connected with the concealment, possession, acquisition or use and projecting etc. of the said proceeds of crime and therefore, he has not committed the alleged offence of money laundering defined by Section 3 of the PMLA.

12. While referring to allegations made in chargesheet filed in the CBI case, Ld. Senior Counsel has also argued that the

applicant Sameer Mahandru has not even been specifically alleged to have been present in or attended the meetings that took place in May-June, 2021 in Gauri Apartments, near Claridges Hotel, New Delhi and in ITC Kohinoor Hotel at Hyderabad, which were allegedly attended by the accused/approver Dinesh Arora of the CBI case and co-accused Vijay Nair, Abhishek Boinpally, Sh. Arun Ramchandran Pillai etc. It is his submission that formulation of the excise policy started somewhere in September, 2021 and the policy was finalized and uploaded on the official website of Excise Department of GNCTD on 05.07.2021 and since as per allegations made in the above case of CBI, the applicant had not attended any of the meetings held between the other co-accused or other members of the alleged criminal conspiracy during the said period, it is clear that he was not instrumental in framing of the above excise policy or in keeping the alleged loopholes therein for the benefit of or to be exploited by the conspirators later on.

13. Further, it is also the contention of Ld. Senior Counsel representing this applicant that as per allegations made in the above scheduled offences case of CBI, the kickback amount paid in advance at the behest of liquor lobby from South to the politicians or other public servants in Delhi was Rs. 20-30 crores only and it was paid through the co-accused Vijay Nair and approver Dinesh Arora and it came from the other co-accused Abhishek Boinpally and thus, the applicant was even not involved in transfer or transmission of this amount and he had no role to play in payment of the above kickbacks. It is further his

submission that in view of the above fact, the allegations of repayment or recouping of the above kickbacks being made against the applicant are also false and fabricated allegations. It is also his submission that though in the present case of ED, the above kickback amount of Rs. 20-30 crores transmitted by the South liquor lobby to the politicians of AAP and other public servants in Delhi through the approver Dinesh Arora and co-accused Vijay Nair has been alleged to be around Rs.100 crores, but again, there is no document or other substantive material on record to show the transmission or payment of this amount and only few statements of the accused persons, approver Dinesh Arora and witnesses to this effect have been manufactured by the ED and the same cannot be considered to be incriminating enough against the applicant Sameer Mahandru so as to disentitle him to the relief of bail as these statements are not supported by any substantive evidence. It is his submission that the statement of approver without any corroboration from independent sources is not worthy of acceptance and hence, cannot be considered for any purposes.

14. It has also been vehemently argued by Ld. Senior Counsel that the allegations being made by prosecution against this applicant regarding his being a key partner and conspirator in formulation of a cartel between the above three components of excise policy are totally false and fabricated as his alleged manufacturing unit in the name of M/S Indo Spirits Beverages Pvt. Ltd. (hereinafter referred to as M/S Indo Spirits Beverages) has nothing to do with the above excise policy or liquor business

in Delhi. It is the submission of Ld. Senior Counsel that though the applicant Sameer Mahandru had 35% partnership in wholesale business of M/S Indo Spirits through his other entity named as M/S Indospirit Distribution Ltd., but he has no connection with or control over the affairs of retail zone entities named M/S Khao Gali Restaurants Pvt. Ltd. (hereinafter referred to as M/S Khao Gali) and M/S Bubbly Beverages Pvt. Ltd. (hereinafter referred to as M/S Bubbly Beverages) as there was no commonality of directors and shareholders of these companies and all these companies were separate legal entities. Hence, it has been argued that the allegations of prosecution that the applicant was even controlling the retail vend zones of these two entities are totally false.

15. It is also submitted that some proceedings initiated by the Income Tax Department by way of notices served to the applicant for these entities being his *benami* properties are already under challenge before the Hon'ble High Court. It is also his contention that even if the above retail zone entities were owned or controlled by his in-laws family, there is no illegality in it in terms of the above excise policy as the above entities cannot be termed as sister concerns or related entities of any company of the applicant because the above excise policy only provided that majority ownership (51% or more) of a proprietorship concern, partnership or a company should not lie with the same person in all the entities and the entities should not have a holding-subsidiary relationship or are not subsidiaries of the some holding company. It is also his submission that there is no

admissible evidence on record to show or infer that wholesale business of M/S Pernod Ricard was given to M/S Indo Spirits due to influence of the co-accused Vijay Nair or in furtherance of the alleged criminal conspiracy because the applicant was already doing business with M/S Pernod Ricard since long.

16. It has further been argued by Ld. Senior Counsel representing this applicant that the books of account of M/S Indo Spirits will show that against an investment of around Rs. 15 crores in the wholesale business, the applicant Sameer Mahandru had got a net profit of around Rs. 16-17 crores only and this profit is not unusual keeping in view the duration of above excise policy and the other characteristics of the liquor business and this meager amount of profit is also a relevant factor to rule out any criminal conspiracy allegedly hatched between the other co-accused and the applicant for deriving any illegal or undue benefits by exploiting provisions of the said policy.

17. It has further been strongly argued by Ld. Senior Counsel representing this applicant that the ED had falsely projected a figure of Rs. 2873 crores as losses to the exchequer of GNCTD and while referring to the amounts shown under different heads of these losses in the prosecution complaint filed by ED against the applicant and some other co-accused, he has submitted that the ED had included in these losses even the amounts which were or could not be paid to the government under orders of the Hon'ble High Court passed in different petitions filed by the licensees under the said policy, due to non operation of certain

retail zone vends, surrender of licenses, waivers of license fee given due to Covid, refund of license fee or security amount etc. and in respect to non-payment of which, the applicant had no hand or role to play.

18. It is also the contention of Ld. Senior Counsel that partnership in the name of M/S Indo Spirits was formed or entered into for the purposes of needs and necessities of the business of firm and it was not violative of any provision of the excise policy. It is also his submission that 12% margin fixed by the Delhi Government for the wholesalers was not excessive or exorbitant in any manner as it included all expenses, like license fee, warehousing & logistics charges and expenses of sales, marketing, collection, debts & investment in excise duty etc., and thus, this 12% margin had to cover all the operational costs of the wholesale license. It is further argued that even otherwise, the applicant had no role to play in fixing the said profit margin or formulation of the policy, as already submitted, because he being a stakeholder in the liquor business had only expressed and given his views regarding formulation and implementation of the policy and he was never in a position to force or make the government to consider or adopt his views or suggestions. Reference on this aspect has also been made to one e-mail appearing on page no. 615 of the relied upon documents (RUD) of the prosecution, which the applicant had sent to some officials of a government commission responsible for good governance of the States in India and it is submitted that through this mail, the applicant only forwarded his views and suggestions about the

draft policy with an intent to enhance the government revenue. It has also been submitted that even the allegations made by prosecution regarding the applicant being in possession of a copy of the said policy prior to its formulation for any illegal purposes are wrong because the applicant had only received this policy on his mobile on a social platform and he further forwarded it to some other persons and there was nothing wrong or criminal in the same as they all were stakeholders in the liquor business and were interested in and awaiting the finalization of policy. Moreover, the policy stood already approved by the Hon'ble Lt. Governor by the time it is alleged to have been shared by the accused persons on above social website.

19. Further, while referring to the allegations being made by prosecution regarding furnishing of a corporate guarantee of Rs. 100 crores by M/S Pernod Ricard for a bank loan given to the applicant and utilization of this loan amount for the application fee and earnest money deposit (EMD) of the two retail zone entities namely M/S Khao Gali and M/S Bubbly Beverages, it has also been submitted that the above loan amount was being paid by the applicant and only around Rs. 37 crores were due in the said loan account from him at the time of registration of the scheduled offences case. It is the contention of the Ld. Senior Counsel that, as already argued, these entities were not owned or controlled by the applicant and even otherwise, such corporate guarantees were given by M/S Pernod Ricard for the other retail zone entities too and the same were as per normal business practice.

20. It has further been submitted that even the above credit notes for an amount of Rs. 4.35 crores issued by M/S Indo Spirits in favour of the retail vend licensees allegedly related to the South group were as per the normal business practices and these credit notes were also subsequently withdrawn or reverted when the liquor manufacturer did not approve the same. It has also been argued that there was nothing unusual even in the outstanding amount of around Rs. 60 crores shown in accounts of the company of applicant towards the said retail zone licensees as there was a practice of giving credit for a period of 60 days in their business and this amount by all means and calculations was meant to be recovered from the retail vend licensees and the alleged contrary statements of the employees of applicant or other witnesses have been forcibly extracted by the ED from them merely to falsely implicate the applicant in the present case. It is also submitted that different amounts were due even from the other retail zone companies and in fact, a total amount of around Rs. 160 crores was outstanding from various retail zone license holders to M/S Indo Spirits. Some contradictions have also been pointed out in respect to the alleged profit margin of M/S Indo Spirits as per investigation conducted in the CBI case and the ED case and it is the submission of Ld. Senior Counsel that these agencies have alleged the entire profit margin of the company to be the proceeds of crime, even without taking any pains to identify if any such proceeds of crime actually existed or not or the extent thereof. It is also the contention of Ld. Senior Counsel that allegations being made by prosecution regarding

payment of bribe of Rs. 1 crore by the applicant to M/S Radha Industries are false allegations and the above amount was in fact a loan given by the applicant to the said company. It is submitted that this allegation is even not substantiated from the statement given by approver. It is further the submission of Ld. Senior Counsel that investigation on that aspect, as well as on some other aspects, is still kept pending by the ED and in light of the above, even the prosecution complaint filed by ED against the applicant and his alleged entities cannot be considered to have been filed on conclusion of investigation and the applicant is also entitled to statutory bail in terms of provisions contained U/S 167(2) Cr.P.C.

21. Further, with regard to the allegations of tampering with evidence and change of mobile phones frequently being levelled against the applicant, it is the submission of Ld. Senior Counsel that out of four mobile phones shown to have been used by the applicant, his two phones stand already seized by the investigating agency, i.e. one each by the CBI and ED, and the change of phones, thus, became a necessity on one out of three such occasions. It is also his submission that even for the remaining two occasions, no criminality can be inferred therefrom as it is a normal practice to change the mobile phones in the business world due to various factors and thus, there is nothing to suggest that the applicant changed his mobiles to conceal or destroy some incriminating material or evidence.

22. On personal aspects, it is the submission of Ld. Senior

Counsel that the applicant is an IIM graduate from Bengaluru and first generation entrepreneur and he has established himself well in the business of liquor and has earned a good name. It is submitted that in view of the facts and circumstances as highlighted above, the applicant can be granted bail even despite the bar and restrictions contained U/S 45 of the PMLA and he also satisfies all the other established parameters and guidelines for grant of bail, like the gravity of offence and sentence etc. and he further satisfies the triple test laid down in the case of **P. Chidambaram Vs. Directorate of Enforcement, (2020) 13 SCC 791**. It is also submitted that he is in custody in this case since the date of his arrest i.e. on 28.09.2022 and thus, a period of around three and half months has already passed and his further detention in custody is not required for the reason that a prosecution complaint against him stands already filed before this court after a full fledged investigation.

23. It has also been argued by Sh. Dhruv Gupta, Ld. Counsel representing this applicant that the entire case of prosecution regarding fixation of high profit margin of 12% for the wholesalers or raising of profit margin of wholesalers from 5% to 12% in comparison to the previous excise regime or financial year is a myth as actual profit margin, which could accrue to a wholesaler under the above policy, was hardly from 3% to 4% and even this profit margin of 3% to 4% was subject to payment of taxes under the relevant laws on the profit income earned by a wholesaler. It is also submitted by him that the alleged profit margin of 12% calculated on landed price of liquor was actually

10.7% when calculated with reference to the wholesale price (WSP) of the liquor and after excluding the expenses on account of license fee, lodging, transportation, marketing, salaries of staff and other expenses relating to hiring of manpower etc., the actual profit stood reduced to 3% to 4% only, which in any manner cannot be considered excessive or exorbitant. It is also his submission that the case set up by ED is entirely contrary to the scheduled offences case of CBI as though in this case the applicant is alleged to have generated proceeds of crime of around Rs. 192.8 crores on account of profits only, whereas according to the CBI case the net profits earned by the applicant were just around Rs. 30 crores.

24. While referring to certain facts and figures, it has been also contended by the Ld. Counsel representing this applicant that the case of prosecution to the effect that the Group of Ministers (GoM) permitted private participation in liquor business against recommendations of the Expert Committee is totally false as even the Expert Committee recommended for limited participation of private players in certain fields of IMFL (Indian Made Foreign Liquor) business, besides recommending complete participation of private players in sale as well as supply of foreign and country made liquor. It is, thus, also argued by him that falsehood of above claim of 12% profits having been kept or increased in furtherance of any such alleged criminal conspiracy can be seen from recommendations of the Expert Committee itself and also from working of the previous policies. It has further been argued that private participation in the liquor

business has been permitted by some other neighbouring States too, like the State of Punjab and Haryana, and it is also submitted that even where the excise business has been kept to be implemented by the State Government itself, the profit margins of the States have also been kept high, as it is in the State of Kerala where the profit margin of the State Government is around 16%.

25. It has also been argued by Ld. Counsel for the applicant that falsehood of allegations being made by prosecution regarding the applicant being a key conspirator and main player in formulation of the above excise policy can be seen from the fact that the said policy stood approved by the Hon'ble Lt. Governor of Delhi on 24.05.2021 and no allegations in the scheduled offences case of CBI, which is the basis of present case, have been made that prior to this date, the applicant had attended any meeting with the other co-accused in connection with formulation of the said policy. Related to this, it is also the submission of Ld. Counsel that once the said policy stood already approved by the Hon'ble Lt. Governor on 24.05.2021, its alleged circulation by the applicant on any social media platform on 31.05.2021 cannot amount to an offence. It is also his submission that had the applicant been involved in formulation of the said policy, he would have never permitted insertion of a non cartelization clause in the policy preventing the three components of the policy i.e. manufacturers, wholesalers and retailers to enter the field of business of others, when he himself was a manufacturer of liquor and intended to get a wholesale license

and was also related to or controlling the retail vend entities, as has been alleged by the prosecution.

26. It has further been argued by Ld. Counsel representing this applicant that it was entirely within rights of the Delhi Government to have framed the above excise policy and to allow the private persons to play their roles in sale of liquor and it being an economic policy is not subject to any judicial scrutiny of the courts. Thus, it has been argued that it was well within the competency of the Council of Ministers of the GNCTD to have adopted or implemented the said policy and it cannot be questioned before this court merely because some false and baseless allegations are being made or levelled by the investigating agencies against this policy for some malafide reasons to question the wisdom or competency of the Government to frame the said policy.

27. Thus, on the basis of above facts and circumstances, it has been strongly argued by Ld. Counsels representing this applicant that even despite the bar and rigors contained U/S 45 of the PMLA, it is a fit case where the applicant is entitled to be released on bail because the provisions of Section 45 of the PMLA are to be reasonably construed by this court and the restrictions contained therein cannot be applied blind foldedly and blankly, when no case for commission of the alleged offence of money laundering has been made out against the applicant from the allegations levelled by the prosecution. It is also his submission that in view of observations made by the Hon’ble

Supreme Court in its judgment dated 27.07.2022 in SLP (Crl.) No. 4634/2014 etc. in case **Vijay Madanlal Choudhary & Ors. Vs. Union of India & Ors.,** even though provisions of the PMLA get attracted with commission of the offence of criminal conspiracy U/S 120B IPC, but some reasonable connection is still required to be there between the allegations for the offence of money laundering in the PMLA case and the allegations of generation of proceeds of crime in the scheduled offences case, which does not exist in the present case.

28. Besides the above judgments, judgments in the cases of **P. Chidambaram Vs. CBI, Criminal Appeal no. 1603/2019 decided by the Hon'ble Supreme Court on 22.10.2019; Amarendra Dhari Singh Vs. Directorate of Enforcement, Bail Application No. 2293/2021 & Crl. M.A. No. 9959/2021 decided by the Hon'ble Delhi High Court on 05.08.2021**; **Devki Nandan Garg Vs. Directorate of Enforcement, Bail Application No. 540/2022 decided by the Hon'ble Delhi High Court on 26.09.2022**; **Anand Subramanian Vs. Central Bureau of Investigation, Bail Application No. 1698/2022 decided by the Hon'ble Delhi High Court on 28.09.2022**; **Anil Vasantro Deshmukh Vs. State of Maharashtra, Bail Application No. 1021/2022 decided by the Hon'ble High Court of Bombay on 04.10.2022**; **Hotel and Restaurant Assocn. and Ors. Vs. Star India Pvt. Ltd. & Ors., (2006) 13 SCC 753** and **Sanjay Pandey Vs. Directorate of Enforcement, Bail Application No. 2409/2022 & Crl. M. (Bail) 957/2022 decided by the Hon'ble High Court on 08.12.2022** have also

been relied upon by Ld. Senior Counsel and Ld. Counsel representing this applicant in support of their above contentions.

29. Sh. Zoheb Hossain, Ld. Special Counsel and Sh. N. K. Matta, Ld. Special Public Prosecutor, assisted by Sh. Vivek Gurnani, Sh. Sidharth Kaushik and Sh. Kavish Advocates, appearing for the ED have strongly opposed the request for bail to the applicant Sameer Mahandru on ground that he was one of the main conspirators and a key player in formulation of the above excise policy and its exploitation later on as he was involved in formulation of the policy right from the drafting stage and he was also the person who had floated and violated the provisions and objectives of the said policy by formulation of a super cartel between the manufacturers, wholesalers and retailers. It has been submitted that though the applicant himself was in the manufacturing business of liquor through his entity named M/S Indo Spirits Beverages, but still he procured a wholesale license in the name of his other entity M/S Indo Spirits from M/S Pernod Ricard and he was also the financial beneficiary or controller of the two retail vend entities named M/S Khao Gali and M/S Bubbly Beverages through the family of his in-laws and others. It has been submitted that he was holding 35% partnership in M/S Indo Spirits through his entity M/S Indospirit Distribution Ltd. and it was only in pursuance of the above criminal conspiracy that he offered 32.5% partnership in M/S Indo Spirits to Sh. Arun Ramchandran Pillai and also 32.5% partnership to one Sh. Prem Rahul Manduri and Sh. Prem Rahul Manduri was not even known to the applicant prior to the date of

formation of the said partnership. It is submitted that giving 65% partnership of M/S Indo Spirits to these two persons was only in consequence of the above criminal conspiracy and a way out to repay or recoup the advance kickbacks of Rs. 100 crores paid by the South group to the co-accused Vijay Nair and other politicians and public servants in Delhi, through the co-accused Abhishek Boinpally, as Sh. Arun Ramchandran Pillai, co-accused Abhishek Boinpally and above Sh. Prem Rahul Manduri were representatives of the said South group.

30. Further, it is also the contention of the Ld. Special Counsel and Ld. SPP for ED that against the meagre investment of Rs. 15 crores, the applicant had earned huge profits of around Rs. 192 crores in his above firm M/S Indo Spirits and same is nothing but proceeds of crime and it has also been argued that the applicant and the other entities belonging to him were directly related to generation and laundering of proceeds of crime amounting to around Rs. 295 crores in total. It has also been submitted that out of the above profits earned by M/S Indo Spirits, an amount of Rs. 150 crores had been transferred to M/S Khao Gali, Rs. 17 crores were transferred to M/S Indospirit Distribution Ltd. and Rs. 33 crores were transferred in account of Sh. Arun Ramchandran Pillai, who was representing the South group, and another amount of Rs. 1 crore was transferred from the account of another entity belonging to the applicant to the account of M/S Radha Industries under the garb of loan transaction.

31. Further, it has also been argued on behalf of ED that

besides the above, an amount of Rs. 60 crores was shown as due and outstanding towards M/S Indo Spirits from the five retail vend zones related to the South group and owned by companies namely M/S Trident Chemphar Pvt. Ltd. (hereinafter referred to as M/S TCL), M/S Organomixx Ecosystems (hereinafter referred to as M/S Organomixx) and M/S Sri Avantika Contractors (hereinafter referred to as M/S Avantika) and sufficient evidence has been collected during the course of investigation of this case to show that this outstanding amount was not meant to be actually recovered and it was also a device to repay the advance kickbacks to the South group. It has further been argued on behalf of ED that the excess credit notes of Rs. 4.35 crores issued by M/S Indo Spirits in favour of the five retail zone entities of these companies were also towards repayment of kickbacks to the South group as these credit notes were issued by the above company of applicant without even obtaining any approval from the manufacturer M/S Pernod Ricard. It has also been argued that the subsequent reversal of some of these credit notes in account of these companies was nothing but an attempt to conceal and cover the true nature of the transactions and it was done only when the excise policy of the Delhi Government had already come under clouds and some media reports to this effect were there.

32. It has further been argued by Ld. Special Counsel and Ld. SPP for ED that providing of a corporate guarantee by M/S Pernod Ricard to the extent of Rs. 100 crores for the two entities of the applicant namely M/S Khao Gali and M/S Bubbly

Beverages was another indication of the above cartel formed in violation of the excise policy and in furtherance of the criminal conspiracy hatched between the accused persons as the amounts of loan taken against the said corporate guarantees were utilized for payment of the application fees and EMDs of the retail vend entities belonging to the applicant and it was done to ensure monopoly for sale of liquor brands of M/S Pernod Ricard and for ensuring that the above retail zone entities contain a stock of at least 35% of the brands of M/S Pernod Ricard in their retail vends.

33. It has further been argued on behalf of ED that the manner in which the wholesale license of liquor by M/S Pernod Ricard was granted to the applicant's firm M/S Indo Spirits, at the instance and on directions of the co-accused Vijay Nair, is again a circumstance to show the existence of above criminal conspiracy and to ensure the repayment of advance kickbacks through this applicant to the South group and the applicant was even involved in payment of advance kickbacks of Rs. 100 crores. Further, it has also been argued that he in collusion with some other persons/accused also resorted to cross funding of EMDs and got control of some other retail zones too as a part of the process of cartelization and there is documentary evidence to show that 9 out of 32 retail zones were brought under the above super cartel. Thus, it has been alleged that the applicant was actually involved in all the activities connected with the offence of money laundering in the form of its use, acquisition, possession, concealment and projecting or claiming the same as untainted

property and therefore, he is guilty of the offence of money laundering defined by Section 3 of the PMLA and made punishable by Section 4 of the said Act.

34. Further, it has also been vehemently argued on behalf of the ED that the applicant had destroyed or attempted to destroy the evidence showing his involvement in commission of the alleged offences by way of change of mobile phones as he had changed or destroyed his mobile phones on four occasions during the relevant period. It has further been alleged that he was in possession of the draft policy even prior to the date on which it was made public and thus, he was very much involved in the process of formulation of the above policy and in keeping loopholes and lacunae in policy to be exploited later on by him and other members of the conspiracy and super cartel. It has also been argued that the applicant was very much instrumental in keeping the profit margin of wholesalers as high as at 12% and it was done only to ensure repayment of the advance kickbacks therefrom to the South lobby as around 6% of this profit margin was meant to be repaid or recouped back to the South lobby or group. It has further been submitted that as a result of the above criminal conspiracy and super cartel formed between the accused persons and because of the role played by the applicant, a huge loss of around Rs. 2873 crores has been caused to the government exchequer and thus, keeping in view the above facts and circumstances and the twin conditions contained U/S 45 of the PMLA, the applicant is not entitled to bail in the present case. It has also been submitted that the statements made by the

accused and witnesses U/S 50 of the PMLA are very much admissible and the same as substantiated by the statement of approver Dinesh Arora and the other evidence collected during the course of investigation of case also clearly spell out the vital and key role played by the applicant in commission of the alleged offences.

35. Sh. Kapil Sibal, Sh. Sudhir Nandrajog and Sh. Sidhartha Luthara, Ld. Senior Counsels, assisted by Sh. Mayank Jain, Sh. Parmatma Singh, Sh. Madhur Jain, Sh. Navlendu Kumar and Ms. Swastika Kumari, Advocates, representing the applicant P. Sarath Chandra Reddy have argued that the provisions contained U/S 19 of the PMLA have been misused and abused by the ED by illegally arresting the applicant in this case, even though there was no evidence to show existence of any such criminal conspiracy or involvement of the applicant therein as the applicant had nothing to do with commission of the alleged offences of the predicate case or of the present case. It has been submitted that the applicant is only concerned with two retail zone licenses (L-7Z licenses) granted to his company named M/S TCL and he has no connection with the other two companies namely M/S Organomixx and M/S Avantika or the three other retail zone licenses granted to these two companies. It has also been submitted that though these two other companies were given some interest bearing loans by M/S TCL and these loans as well as the payments of interest thereon, including the TDS deductions, were duly reflected in account books of the said companies, but this fact alone cannot be a circumstance to infer

or conclude that these two entities were proxy entities owned or controlled by the applicant as all these three entities are independent legal entities with their separate and different managements and the same were also being assessed separately for the tax and other purposes.

36. Further, it has also been vehemently argued by Ld. Senior Counsels representing this applicant that there is no commonality of directors or shareholders of these three companies and the applicant had never held any interest in the above other two companies named M/S Organomixx and M/S Avantika nor he had ever managed or controlled the affairs thereof. It is also their submission that even if, for the sake of arguments, it is presumed that the applicant had any relation with these two other companies, there was no violation of any rule or provision of the above excise policy as Clause 4.1.2 of the said policy only provided that majority ownership (51% or more) of a proprietorship concern, partnership or a company should not lie with the same person in all the entities and the entities should not have a holding-subsidiary relationship or are not subsidiaries of the same holding company. It has also been argued by Ld. Senior Counsels that the above, at most, can amount to a violation of provisions of the excise policy and it cannot in any way amount to an offence either under the PC Act, 1988 or under the PMLA. It has also been argued by them that even if it is presumed, for the sake of arguments, that the applicant was related to the above five retail zone vends operated by all these three companies and any such alleged cartel was formed, the same at the most can

amount to a violation of provisions of the excise policy or of the Delhi Excise Act, 2009 and it cannot, in any way amount to an offence under the PC Act or under the PMLA.

37. Further, it has also been strongly argued by Ld. Senior Counsels that since the applicant had no connection with the above two entities named M/S Organomixx and M/S Avantika, hence, out of the credit notes issued for a total sum of Rs. 4.63 crores in favour of the retail vends of above three companies, the applicant can only be connected with the credit notes of Rs. 3 crores, which were related to M/S TCL. It is further their submission that even out of these credit notes of Rs. 3 crores, the credit notes for a sum of Rs. 2 crores issued in favour of this company on 16.03.2022 by M/S Indo Spirits were reversed in ledger issued to M/S TCL on 07.04.2022 and it was much prior to registration of the present case and the same were reversed as M/S TCL was informed that the liquor manufacturer did not consent for the same. It is also their submission that even the remaining credit notes of Rs. 1 crore issued to the company on 12.05.2022 and 21.06.2022 were to be reversed subsequently as the company was informed by M/S Indo Spirits in first week of September, 2022, through a debit note dated 27.08.2022, that the manufacturer refused for the same. It has been submitted that issuance and return of the credit notes could not be reflected in accounts of M/S TCL only for the reasons as stated in para no. 26 of the application. It is further their submission that the issuance of credit notes was as per the normal business practice and as a part of the promotional scheme and such notes were issued to

their company and other retailers even by the other vendors. In light of the above, it has been argued that these credit notes cannot be termed as proceeds of crime as has been alleged by the ED. It is also submitted that the above credit notes were in fact part of the business promotion scheme.

38. Further, regarding the amount of Rs. 60 crores shown as outstanding from M/S TCL towards M/S Indo Spirits, it is also the contention of Ld. Senior Counsels that this figure is completely incorrect and wrong as only an amount of Rs. 21.56 crores was attributable to M/S TCL and the same could not be paid to M/S Indo Spirits due to abrupt closure of zonal vends of M/S TCL on account of heavy losses and the company was still legally working out its options regarding payment of this outstanding amount. It has been submitted that in terms of two retail zone licenses granted to M/S TCL, it was entitled to open total 54 liquor vends in the said two zones, i.e. 27 vends in each zone, but the company could only open 35 vends because of the fact that either the necessary permissions by the local bodies in non-conforming wards were not granted to the company or there were some other issues with regard to these remaining vends. It has also been submitted that because of the above factors, the company had actually suffered huge losses of around Rs. 138 crores during the period of operation of said policy w.e.f. 17.11.2021 to 31.03.2022 and though operation of the policy was extended for a period of two months each on two occasions by the Delhi Government, but because of the heavy and huge losses incurred by the company, the company decided not to get

extension of their license for one of the above two retail zones beyond 31.03.2022. It has further been submitted that the company was forced to file many representations to the Delhi Government and also various Writ Petitions before the Hon'ble High Court because of non redressal of its grievances by the Delhi Government in relation to operation of the above two retail zone licensees and the very facts that the company suffered huge losses of around Rs. 138 crores and it was also forced to initiate legal action against the Excise Department or Delhi Government through the above petitions on many occasions are strong circumstances to rule out the alleged criminal conspiracy or the applicant being a member thereof and rather, these facts go to show that no favours were extended by the Excise Department or the Delhi Government to the company of the applicant for running operations of the above two retail zone licenses. Moreover, it is also the contention of the Ld. Senior Counsels that as per normal business practice, there is always a time limit for clearing the outstanding liability and no criminality should be inferred therefrom.

39. It has also been argued by Ld. Senior Counsels that even the fact that bids of Rs. 282 crores and Rs. 276 crores given by M/S TCL for the above two retail zone licenses were much higher than the reserved bid price of Rs. 221 crores each for these retail zone licenses is another circumstance to negate the existence of any such criminal conspiracy and thus, no undue gains were obtained by and no undue favours were extended or caused to the applicant or his company by the Excise Department

or the Delhi Government during operation of the above said licenses. It is also submitted that the applicant had no relation whatsoever with the co-accused Sameer Mahandru or M/S Indo Spirits, except business relations as stated above, and the applicant had also no interest in any entity having wholesale license of liquor and he is also not a registered manufacturer of the liquor.

40. It has further been vehemently argued by Ld. Senior Counsels that the ED or CBI had failed to collect any reasonable evidence till date to show the existence of any such criminal conspiracy for payment of the alleged advance kickbacks by the liquor lobby from South to the co-accused Vijay Nair or any other politician of AAP as neither the source of alleged kickbacks has been traced out nor its destination could be found and such serious allegations cannot be said to have been substantiated through the alleged statements of accused and witnesses recorded U/S 50 of the PMLA, when there is no other evidence to corroborate the same. It is also submitted by them that the alleged statements made by the witnesses and the accused U/S 50 of the PMLA cannot be read against the applicant as no offence U/S 3 of the said Act has been committed by him and it is further their submission that the alleged statements of the applicant recorded by the ED after his arrest in this case are hit by Article 20 (3) of the Constitution.

41. It has also been submitted that the alleged South group or South lobby is nothing but a vague and unidentifiable group of

persons and thus, the source of payment of alleged kickbacks can never be identified and in the absence of identification of the bribe givers and bribe takers, no offence under the PC Act or the PMLA can be said to have been committed by any of the applicants. It is also their submission that a bribe giver is not an offender under the PC Act. Further, it has also been argued by Ld. Senior Counsels that the applicant had no association whatsoever with the co-accused Vijay Nair and he had only met him in some meetings in connection with his participation in the Delhi liquor business and no criminality can be inferred merely therefrom.

42. It has further been submitted by Ld. Senior Counsels representing the applicant that the applicant is not even named as an accused in the scheduled offences case of CBI and nothing incriminating was also recovered from him by the ED during the course of searches carried out at his premises. It is also their submission that the applicant had joined investigation of the case as and when he was summoned by the ED and he also cooperated in investigation in all respects and his statement U/S 50 of the PMLA stands already recorded and he is in custody in this case since the date of his arrest i.e. 10.11.2022 and hence, his further detention in the case is not required. It is also argued that the applicant has clean antecedents and deep roots in society, he is ready to abide by all the conditions that may be imposed by this court for grant of bail and the evidence in case is mostly documentary in nature and thus, there are no chances of destruction thereof by the applicant. It has further been argued

that the co-accused Vijay Nair and Abhishek Boinpally were granted bail by this court in the scheduled offences case of CBI vide order dated 14.11.2022.

43. It is also the contention of Ld. Senior Counsels that in view of the above facts and also since there is no evidence of generation of any proceeds of crime in the scheduled offences case, the twin conditions laid down U/S 45 of the PMLA will not be applicable in case of the applicant and the applicant is also not directly or indirectly connected with any activity or process related to the alleged proceeds or its concealment, acquisition or possession etc. It is also argued that the allegations of destruction of evidence being levelled against the applicant by change of mobile phones are very vague and baseless allegations. It is further argued that the applicant satisfies the triple test laid down by the Hon'ble Supreme Court in the case of **P. Chidambaram (Supra)** and he further meets all the other legal conditions and requirements laid down from time to time by the Hon'ble Supreme Court and Hon'ble High Courts in different matters and hence, he is entitled to be released on bail in the present case.

44. Apart from above, judgments in the cases of **Maheshwari Fish Seed Farm Vs. T. N. Electricity Board & Anr., (2004) 4 SCC 705; Ranjitsing Brahmajeetsing Sharma Vs. State of Maharashtra & Anr., (2005) 5 SCC 294 [followed in para 131 of Vijay Madanlal Choudhary (Supra)]; Vijendra Rana Vs. CBI, Bail Application No. 636/2010 decided by the Hon’ble High Court of Delhi on 11.05.2012; Santosh Vs. State of**

Maharashtra, (2017) 9 SCC 714; Ashok Sagar Vs. State (NCT Of Delhi), 2018 SCC OnLine Del 9548; Amarendra Dhari Singh (Supra); Anil Vasantrao Deshmukh (Supra); Karti P. Chidambaram Vs. The Directorate of Enforcement, order dated 25.08.2022 passed by the Hon'ble Supreme Court in R. P. (Crl.) No. 219/2022 in T. C. (Crl.) No. 4/2018; Sanjay Pandey (Supra) and Vijay Madanlal Choudhary (Supra) have also been relied upon by Ld. Senior Counsels representing this applicant in support of their above contentions.

45. Opposing the bail plea of applicant P. Sarath Chandra Reddy, Sh. S. V. Raju, Ld. Additional Solicitor General of India (Ld. ASG), assisted by Sh. Zoheb Hossain, Ld. Special Counsel and Sh. N. K. Matta, Ld. Special Public Prosecutor, appearing for the ED has argued that the applicant is one of the kingpins and major beneficiary of the above criminal conspiracy and excise policy scam. It is argued that sufficient evidence has been collected by the ED during the course of investigation to show the existence of a well hatched criminal conspiracy involving the accused persons who have been prosecuted through the two prosecution complaints filed before this court till date and also some politicians and other public servants and persons and it was only in pursuance of the said criminal conspiracy that the major recommendations given by the Expert Committee on formulation of the excise policy were brushed aside by the GoM of the ruling AAP to give undue favours to the South group in liquor business at the cost of government exchequer as huge losses of around Rs. 2873 crores were caused to the Delhi Government. It is submitted

that intentionally some loopholes and lacunae were kept and created in the said policy to be exploited later on and it was done as the above politicians and public servants had received huge kickbacks of around Rs. 100 crores from the South group in advance and the said kickbacks were to be repaid to them by violation and exploitation of provisions of the said policy and permitting formation of a cartel between the liquor manufacturers, wholesalers and retailers.

46. It has also been vehemently argued by Ld. ASG that the applicant was effectively controlling the five retail zones of liquor vends through his company named M/S TCL and two other proxy entities namely M/S Organomixx and M/S Avantika in violation of the said policy, which barred any person or entity from controlling more than two retail vend zones. It is submitted that some of his own employees, co-accused and other witnesses during their statements made U/S 50 of the PMLA have disclosed that he was handling operations or matters pertaining to five retail vend zones related to these three companies. It has also been submitted that even the approver Dinesh Arora in his statement has disclosed that the applicant was a key partner in the biggest cartel formed between the liquor manufacturer, its wholesaler and retail zone licensees in furtherance of the above said conspiracy as in pursuance thereof, M/S Pernod Ricard, which is one of the largest manufacturer of liquor in this country, was made to appoint M/S Indo Spirits owned by the co-accused Sameer Mahandru as its wholesale distributor of liquor and the manner in which the five retail zone licenses of the above three

companies controlled by this applicant and the wholesale license of M/S Indo Spirits owned by the co-accused Sameer Mahandru and others have been operated and accounts of the companies owned or controlled by or related to these two applicants have been managed is a clear cut manifestation of the above criminal conspiracy and also of repayment of the advance kickbacks paid by the liquor lobby of South to the politicians and other public servants in Delhi and the said repayment was being made from the profit margin of 12% kept for the wholesaler as a part of the said conspiracy. It has also been submitted that the applicant P. Sarath Chandra Reddy was an important member of the above liquor lobby of South and this cartel formed between the accused persons also included four other retail vend zones controlled by the other participants of the said conspiracy and the cartel was, thus, effectively controlling 9 retail zones and about 30% of the Delhi liquor market.

47. It has also been vehemently argued by Ld. ASG that the above kickbacks of around Rs.100 crores paid to the politicians and other public servants in Delhi were paid at the instance of liquor lobby of South, which included the applicant P. Sarath Chandra Reddy, and the same were paid through the approver Dinesh Arora and co-accused Vijay Nair-via-hawala channels and repayment or recouping thereof was being ensured through different modes, which included issuance of credit notes by the wholesaler M/s Indo Spirits to the retail vend zones controlled by this lobby. It has been alleged that investigation conducted so far in the case has revealed that excess credit notes of worth Rs. 4.35

crores to the above three companies/entities controlled by the applicant P. Sarath Chandra Reddy were issued by M/S Indo Spirits out of the high profit margin of 12% kept for L-1 licensee of the said excise policy, in furtherance of above criminal conspiracy, and these credit notes were not approved by the liquor manufacturer. It has further been argued that during investigation of the case, it has also been found that an amount of around Rs. 60 crores was outstanding or due from the retail vends of the above three entities controlled by this applicant towards M/S Indo Spirits and statements made by some of the employees of M/S Indo Spirits show that they were under instructions from the co-accused Sameer Mahandru for not pursuing or following-up for payment of this outstanding amount. It has been argued that issuance of excess credit notes of around Rs. 4.35 crores in favour of the retail vends of above three entities and the above outstanding amount of around Rs. 60 crores in accounts of the retail vends of these three companies of the applicant were unusual in the business world and it was a clear indication of existence of the above criminal conspiracy and it was being done only in pursuance thereof to pay back the advance kickback amount to the South group.

48. Further, it has also been alleged and argued by Ld. ASG that during the course of searches conducted in investigation of this case, it has been found that even some attempts were made by employees of the retail groups owned or controlled by this applicant to destroy the evidence showing his relation with or control over these three entities and also destroying some

incriminating data about the existence of above said cartel by way of shifting of the servers located in offices of these companies. Further, a Whatsapp message is also found to have been sent by a partner of M/S Indo Spirits to the co-accused Benoy Babu showing that the applicant P. Sarath Chandra Reddy owned or controlled the five retail vend zones of the above three companies as the applicant Benoy Babu was asked through this message to suggest the name of some person for the post of Chief Executive Officer of the five retail vend zones of these three entities. Again, some other Whatsapp chats and statements of the approver, co-accused and witnesses have also been referred to by Ld. ASG to show the connection of applicant with the above three entities and five retail vend zones owned by these entities and also that 9 retail zones were a part of the above super cartel and were being controlled by the South group.

49. It has further been submitted by Ld. ASG that since the applicant P. Sarath Chandra Reddy was found actually involved in activities connected with the generation, acquisition, possession and use etc. of the proceeds of crime of the above scheduled offences case, he has rightly been arrested in this case on 10.11.2022 as per provisions contained U/S 19 of the PMLA and he is also not entitled to be released on bail in view of the oral and documentary evidence collected during investigation and showing his clear involvement in the case and also because of the twin conditions contained U/S 45 of the PMLA. It is further his submission that the statements made U/S 50 of the PMLA by the accused persons as well as by the witnesses and

even the statements made by approver or other witnesses U/S 164 Cr.P.C. stand on much better footing than the statements recorded U/S 161 Cr.P.C. in cases investigated by the police and at the stage of bail, the same have to be considered and believed as it is and the statements made U/S 50 of the PMLA are even admissible in evidence against the accused during the course of trial.

50. It is further argued by Ld. ASG that the Ld. Senior Counsels representing the applicant are not right in making a submission that the allegations made against the applicant at the most can amount to a violation of the above excise policy or an offence under the Delhi Excise Act as the evidence collected so far clearly shows that the applicant was very much related to generation of the proceeds of crime and he was even involved in laundering the same and hence, he can be *prima facie* said to be guilty of an offence U/S 3 of the PMLA, in terms of provisions contained U/S 19 of the said Act, which has been made punishable by Section 4 of the said Act. Thus, it has been strongly argued by him that keeping in view the role played by applicant and his involvement in commission of alleged offence and further in view of the bar and restrictions contained U/S 45 of the PMLA, the applicant is not entitled to be released on bail in the present case.

51. Ms. Rebecca Mammen John, Ld. Senior Counsel, assisted by Sh. Samudra Sarangi, Ms. Alisha Luthra, Ms. Nitya Jain and Sh. Pravir Singh, Advocates, representing the applicant Vijay

Nair has also vehemently argued that even her client has been falsely and wrongly implicated as an accused in this case and projected as one of the main conspirators and players of the above criminal conspiracy, whereas he had nothing to do with the said conspiracy or the formulation and implementation of the above said excise policy and payment of the alleged advance kickbacks of Rs. 20-30 corers as per the CBI case and Rs. 100 crores as per the present case registered by ED. It has also been submitted that even the allegations made against the applicant regarding extending threats or arm twisting of some other persons to help the conspirators are false and concocted allegations.

52. It has been strongly argued by Ld. Senior Counsel representing this applicant that there is no admissible evidence collected by ED to show payment of the alleged amount of kickbacks by the above liquor lobby of South to the present applicant or through him to any politician of the ruling AAP as the alleged statements of witnesses or of the approver have been extracted by the CBI and ED under threats and the pressure to implicate them in these cases if they do not support the prosecution story or on an assurance to protect them in case they fall in tune with the above said agencies. It has been submitted that the allegations of ED are for payment of a huge amount of around Rs.100 crores as kickbacks through hawala channels should not be accepted by this court in the absence of some concrete or substantive evidence to show the transfer of such amount or payment thereof. It is also argued that even the

statement made by the approver Dinesh Arora regarding transfer or transmission of an amount of around Rs.20-30 crores to the applicant through him is very vague as the details regarding the transactions or channels of payment mentioned therein could not be verified during the course of investigation conducted so far by any of the two investigating agencies. Thus, it has been submitted that except the oral statements of the witnesses taken or given under suspicious circumstances, there is noting on record to *prima facie* substantiate the above allegations.

53. Further, it has also been specifically argued by Ld. Senior Counsel representing this applicant that he was not even in a position to influence the formulation of liquor policy of the Delhi Government for the simple reason that he was not an office bearer of the said party nor he was representing the party in any official capacity and his role was only confined to establishing the media and communications narrative in relation to benefits of the policy on behalf of party so that the political aspects relevant to the party stood resonated with the public at large. It has been submitted that in the above capacity of handling media affairs of the party, the applicant might have met with different stakeholders in the liquor business to take their views and suggestions in respect to the draft liquor policy and to convey it to the concerned authorities with an intent to help in generation of more revenue from the liquor business, but the formulation of policy as such was not his job or within his powers or authority as it was to be done by the Delhi Government. It is also her submission that the contents of para no. 8.3 of the reply filed by

ED to this bail application of the applicant also make it clear that the applicant had no authority to formulate the said policy as he only suggested the co-accused Benoy Babu of M/S Pernod Ricard to write letters to the offices of the Lt. Governor and Chief Minister in support of the policy and endorsing the same and he further told another manufacturer to spread a positive feedback of the policy through their PR agency. Thus, the role of applicant was at most confined to taking views of different stakeholders and public and to apprise the Government about it and he had no authority to formulate the policy or for insertion of any clauses therein for the benefits of members of the alleged conspiracy. It has, thus, been argued that the very foundation of prosecution case that the above clause of keeping 12% profit margin for L-1 wholesalers in the policy, with an intent to repay 6% thereof against the above advance kickbacks, was inserted or kept in the policy at his instance no more survives and it is a false and fabricated allegation made to implicant the applicant and other persons of the ruling AAP in the present case with some vested political interests.

54. Further, it has also been argued by Ld. Senior Counsel representing this applicant that, admittedly, the applicant had no shareholding or interest in any of the entities granted any type of license under the above policy nor any amount from any person or source had been received or transferred in his account. It has also been submitted that generation of proceeds of crime is a *sine qua non* for commission of the offence of money laundering and there is no evidence on record to show the generation of proceeds

of crime in the CBI case and hence, no offence of money laundering can be said to have been committed by this applicant or even by the other applicants in the present case registered by ED. It is also the contention of Ld. Senior Counsel that the applicant can be granted bail even in the present case despite the twin conditions of Section 45 of the PMLA, in view of the facts and circumstances as discussed above.

55. It has also been vehemently argued by Ld. Senior Counsel that though the applicant was arrested in the scheduled offences case of CBI on 27.09.2022, even despite the fact that he returned back from London, U.K., to join investigation and also cooperated in investigation of the said case, he was granted regular bail by this court vide order dated 14.11.2022. It is also her submission that to prevent the release of applicant from custody in the said case, the IO of this case had arrested the applicant hurriedly on 13.11.2022 in Tihar Jail itself and this arrest was illegally effected as the applicant was even made to join investigation of this case prior to that and he disclosed whatsoever was in his knowledge and relevant to the present case. It is also submitted that the applicant is in custody in this case since 13.11.2022 and hence, his further detention in the case is not required as investigation qua him stands already completed.

56. Regarding the allegation of destruction of evidence about commission of alleged offences by way of frequent change of mobile phones, it has also been submitted by Ld. Senior Counsel

that the applicant had already surrendered his one mobile phone in the CBI case and out of the other four mobile phones, which he is alleged to have possessed during the relevant time, one was purchased by him only when he returned back from London to join investigation of the CBI case and the remaining mobile phones had to be changed due to work related necessities and not because of any *malafide* intents and purposes.

57. It has further been submitted by Ld. Senior Counsel that the applicant is a young man of around 38 years of age and one of India's most renowned entrepreneurs in the field of music and entertainment industry and he has been falsely implicated in this case only because he got influenced by and associated with the AAP and helped the party in its media and communication strategy during the elections held in Delhi, Goa and Punjab. It has also been submitted that the applicant has deep roots in society and he will be available to face trial in the present case as there are no chances of his absconding and even influencing of the witnesses and thus, he satisfies all the conditions for grant of bail.

58. In support of her above arguments, Ld. Senior Counsel representing this applicant has relied upon judgments in the cases of **Ranjitsing Brahmajeetsing Sharma (Supra); P. Chidambaram Vs. Directorate of Enforcement (Supra**); **Directorate of Enforcement Vs. Ratul Puri, 2020 SCC OnLine Del 97**; **Navendu Babbar Vs. State of NCT of Delhi, Bail Application No. 913/2020 decided by the Hon'ble High**

Court on 18.06.2020; **Vijay Madanlal Choudhary (Supra)**; **Anil Vasantro Deshmukh Vs. State of Maharashtra (Supra)**; **Directorate of Enforcement Vs. Anil Vasantro Deshmukh, SLP (Criminal) No. 32078/2022 decided by the Hon'ble Supreme Court on 11.10.2022; Sanjay Pandey Vs. Directorate of Enforcement (Supra); and Vivek Narayan Sharma Vs. Union of India, Writ Petition (Civil) No. 906/2016 decided by the Hon'ble Supreme Court on 02.01.2023 and M/S Prakash Industries Ltd. Vs. Union of India & Anr. & Prakash Thermal Power Ltd. Vs. Union of India & Anr., W.P. (C) 13361/2018 & W.P. (C) 4962/2019 decided by the Hon'ble High Court on 24.01.2023.**

59. Per Contra, Ld. Special Counsel and Ld. SPP representing the ED have both argued that the applicant Vijay Nair is also not entitled to bail as the allegations made against him are very serious and he was one of the main conspirators in the above excise policy scam. It is stated that his role started right from the stage when the policy was still being formulated and he being the media head and in-charge of communication affairs of the AAP had been participating in different meetings held with the other co-accused/persons of the South group and in liquor business to ensure that huge advance kickbacks of around Rs. 100 crores were paid by the South group to the politicians of AAP and other public servants in Delhi and further to ensure its repayment to the South group in a planned manner. It is argued that he is the person who was instrumental in keeping the above loopholes in the excise policy and the same were meant to be exploited later

on, in furtherance of the above criminal conspiracy hatched between the applicant and the other co-accused for payment of a huge amount of kickbacks to cause undue advantages and benefits to different stakeholders in the liquor business at the cost of government exchequer. As also argued earlier, a huge loss of around Rs. 2873 crores is alleged to have been caused to the government exchequer as a result of the above criminal conspiracy.

60. Further, it is also the submission of Ld. Special Counsel and Ld. SPP representing the ED that this applicant played a vital role in formation of a biggest cartel between the liquor manufacturer M/S Pernod Ricard, its wholesaler M/S Indo Spirits and the retail zone entities having nine retail licenses (L-7Z) i.e. the entity named M/S Khao Gali belonging to the co-accused Sameer Mahandru having two retail zone licenses, three entities of the co-accused P. Sarath Chandra Reddy in names M/S TCL, M/S Organomixx & M/S Avantika having five retail zone licenses and two other retail zone licenses belonging to another group. It is submitted that this cartel defeated the very purpose of the new excise policy, which was aimed to rule out monopoly or cartel between different components of the policy and to allow responsible players in liquor industry to carry out a trade without proxy entities and to ensure accountability on their part in terms of revenue enhancement. It has been argued that there are admissible statements of the co-accused and other witnesses made U/S 50 of the PMLA to show the vital part played by the applicant not only in payment of the advance kickbacks and its

recouping or repayment, but also to ensure that all the stakeholders acted in pursuance of the said policy and played their respective roles to achieve the illegal objectives of the above said criminal conspiracy and these statements are further corroborated by some Whatsapp chats between this applicant and the other co-accused, amongst the other co-accused and also the other documentary evidence collected from some hotels, where different meetings between the applicant and other conspirators were held in connection with formulation of the said policy. It has also been submitted that the applicant participated in the said meetings on behalf of the AAP and he was holding a responsible position in the said party, which can be seen from the fact that he was residing in the official residence/bungalow alloted to a senior Minister of the ruling AAP and this Minister was also one of members of the group which was given the task of framing the said policy. It has further been submitted that some oral evidence is also there to the effect that the applicant had once represented him as OSD (Officer on Special Duty) to the Delhi Excise Department and the above evidence also shows that he was regularly in touch with every stakeholder of the liquor policy on behalf of the government and was very much involved in the above said conspiracy and also in achieving the objectives thereof by all means and resorts.

61. It has also been specifically argued by Ld. Special Counsel and Ld. SPP representing the ED that this applicant is the person to whom the above huge advance kickbacks were transferred or paid by the co-accused Abhishek Boinpally representing the

South group, through the co-accused/approver Dinesh Arora, for its further payment to the senior politicians and other public servants and though some evidence has surfaced during the course of investigation to show that some of the above amount has been utilized by the applicant towards election expenses of the above party in other States, but due to non-cooperation of the applicant the ultimate destination of the above kickbacks has yet not been traced out. It has been submitted that it was only at the instance of this applicant that the officers of the Excise Department of Delhi Government had pursued the application for grant of wholesale license (L-1) of M/S Indo Spirits belonging to the co-accused Sameer Mahandru in a very hasty manner, while overlooking the complaint already filed and litigation already initiated to show cartelization between different components of the excise policy, and he is also the person who was instrumental in ensuring that M/S Pernod Ricard gave its wholesale license to M/S Indo Spirits only. Further, he is also alleged to have got surrendered the wholesale (L-1) license of some other person/ entity and further, one distillery is also alleged to have been shut down as a result of some arm twisting done by this accused to achieve the illegal objectives of the above criminal conspiracy.

62. Further, it is also the submission of Ld. Special Counsel and Ld. SPP representing the ED that even this applicant is involved or suspected to be involved in destruction of digital evidence during the relevant period as it is stated that he had changed his mobile phone seven times in the last around one year. He is also alleged to have been using some social media

platforms during his conversations with the other co-accused about the above policy and criminal conspiracy, in a way to prevent disclosure or detection of their above communications and this *modus-operandi* was adopted by them to achieve objectives of the said criminal conspiracy and specific evidence to this effect has also surfaced during the course of investigation conducted so far. Thus, it has been argued that since this applicant was involved not only in generation of proceeds of crime, but had also played a very important role in the process of laundering of the said proceeds and being connected with every stage of the process of laundering of proceeds of crime and the activities connected therewith, directly or indirectly, he is not entitled to be released on bail in this case in view of the specific bar and restrictions contained U/S 45 of the PMLA as there are no reasonable grounds or material available before this court to arrive at a conclusion that he is not going to be held guilty for the offence of money laundering and also that he is not likely to commit any offence while on bail.

63. Sh. Shri Singh, Ld. Counsel for the applicant Abhishek Boinpally, assisted by Sh. Yogesh Raavi, Sh. M. F. Philip and Sh. Gurfateh Singh Khosa, Advocates, has argued that this applicant is not named as an accused in the scheduled offences case of CBI and though he was arrested in the said case on 09.10.2022, but he was directed to be released on bail by this court vide order dated 14.11.2022. It is also his submission that before the applicant could furnish bail bonds in terms of the above bail order, he was arrested in this case by the ED on 13.11.2022 in Tihar Jail with

malafide intents and it was despite the fact that he joined investigation in the CBI case on various occasions and he was even made to join investigation in the present case of ED on few occasions and had always been co-operative in investigation. It is also his submission that arrest of the applicant has been effected in the present case against the established legal norms and guidelines as there was no evidence to show involvement of the applicant in commission of the alleged offence of money laundering in the present case and it is further his submission that there is no evidence even to justify his further detention in custody.

64. It is also argued by Ld. Counsel representing this applicant that the applicant is aged around 36 years only and he is an established businessman from Hyderabad having clean antecedents and deep roots in society and he was not at all involved in formulation of the above excise policy nor he is beneficiary of the alleged proceeds of crime. It is argued that the allegations made against him by prosecution regarding his being one of the main conspirators and players of the above criminal conspiracy and also a key person in formulation of the biggest cartel of South group in violation of the above excise policy are totally false and concocted allegations as the applicant was not representing any such group for participation in the liquor business in Delhi. It has been submitted that rather, being a businessman, the applicant himself was initially interested to participate in the liquor business in Delhi and it is for this purpose, he had even attended some meetings with different

stakeholders in the said business, but ultimately he did not participate in the said business in any of the forms. It is, thus, argued that the allegations being levelled against him regarding his representing the South group or controlling the operations of five retail zones of companies named M/S TCL, M/S Organomixx Ecosystems and M/S Sri Avantika Contractors alleged to be owned by or related to the co-accused P. Sarath Chandra Reddy are totally false and baseless allegations.

65. It has also been vehemently argued by Ld. Counsel representing this applicant that the allegations being made by prosecution regarding the applicant's role in payment of alleged advance kickbacks to the tune of Rs. 100 crores or atleast Rs. 20-30 crores by the South liquor lobby to the co-accused Vijay Nair or to any other person are also totally false allegations made without any basis and there is no evidence at all collected by the investigating agency to substantiate the said allegations, except the statements of approver Sh. Dinesh Arora and some other witnesses and even these statements being vague, unspecific and uncorroborated by any satisfactory piece of evidence are not liable to be considered against the applicant or any other co-accused. It has been argued that though the allegations made by prosecution are for payment of a huge amount of kickbacks through the co-accused Vijay Nair or the other persons to some politicians of the AAP, but it is strange that investigating agency has neither been able to trace out the involvement of any such politician of the above party in payment or acceptance of the above kickbacks nor the source or destination of the said amount

has been traced out by any substantive evidence as even the co-accused Vijay Nair in his statement has denied receipt of any such amount as kickbacks.

66. Further, it has also been vehemently argued by Ld. Counsel representing this applicant that though an amount of Rs. 3.85 crores is shown to have been transferred in bank account of the applicant on 10.02.2022 from the account of one Sh. Gautham Mootha, but there is no acceptable evidence on record to show that the said amount was a part of proceeds of crime of the above scheduled offences case of CBI and in fact, the said amount was remitted or credited in account of the applicant towards repayment of some loan which the applicant had earlier advanced to the above Sh. Gautham Mootha. It is the contention of Ld. Counsel that during the period from 10.11.2020 to 01.11.2021, an amount of Rs. 6.53 crores in total was remitted from the account of this applicant to the account of Sh. Gautham Mootha and payment of this amount is duly reflected in their bank accounts for the said period and hence, by no stretch of imagination, the above amount of Rs. 3.85 crores credited in account of the applicant can be termed as proceeds of crime or a part thereof. It has also been submitted that an amount of Rs. 2.68 corers was still due towards the applicant from Sh. Gautham Mootha. It is also the submission of Ld. Counsel that the applicant had no concern with the amounts of Rs. 1 crore and Rs. 70 lakhs transferred in bank accounts of M/S Andhra Prabha Publications and M/S India Ahead news respectively by the co-accused Sameer Mahandru from the account of his firm M/S

Indo Spirits as the applicant was only a purchaser of logo of M/S India Ahead news and was in no way connected with business activities or management of the said company or its parent company namely M/S Andhra Prabha Publications.

67. It is further the submission of Ld. Counsel representing this applicant that that on 10.02.2022 itself an amount of Rs. 3.70 crores was transferred from bank account of the applicant towards purchase of equity shares of M/S Zeus Networking Pvt. Ltd., which is stated to be 100% subsidiary company of M/S CDG Broadcast Pvt. Ltd., in terms of registered sale deed already executed to this effect and further an amount of Rs. 2 crores was still to be paid by the applicant towards the said purchase of shares. It has been submitted that the applicant had family relations with Sh. Gautham Mootha since the year 2012 and since the applicant was interested in media business of Sh. Gautham Mootha, he became ready and willing to extend financial aid to Sh. Gautham Mootha to make some inroads into the media business in Telangana. It is, thus, the submission of Ld. Counsel that the allegations being levelled against the applicant by prosecution that he was connected, directly or indirectly, with proceed of crime of Rs. 100 crores paid as kickbacks, Rs. 3.85 crores remitted in his bank account and Rs. 1.70 crores transferred by M/S Indo Spirits to M/S Andhra Prabha Publications and M/S India Ahead news are totally false and fabricated allegations. On this aspect, it is also his submission that even otherwise, if any explanation is required to be furnished or any liability is there on the part of applicant to explain the

above bank transactions in his account, it is only under the taxation laws and towards the authorities specified therein and by any implication, it cannot be covered by or made subject of investigation under the PMLA.

68. It is, thus, also the submission of Ld. Counsel representing this applicant that despite the bar and twin conditions contained U/S 45 of the PMLA, the applicant deserves to be released on bail as he is in custody in this case since the date of his arrest i.e. 13.11.2022 and investigation qua him stands already completed and a prosecution complaint qua him stands already filed by the ED before this court on 06.01.2023.

69. In support of his above arguments, Ld. Counsel representing this applicant has relied upon judgments in the cases of **Ravinder Singh Vs. State of Haryana, Crl. Appeal No. 156/ 1974 decided by the Hon'ble Supreme Court on 07.02.1975; State of Maharashtra Vs. Nainmal Punjaji Shah, (1969) 3 SCC 904 ; Prahlad Singh Bhati Vs. NCT, Delhi & Anr., (2001) 4 SCC 280; Court in its Own Motion Vs. CBI, 109 (2003) DLT 494; Mrinal Das & Ors. Vs. The State of Tripura, Crl. Appeal No. 1994/2009 decided by the Hon'ble Supreme Court on 05.09.2011; Sanjay Chandra Vs. CBI, (2012) 1 SCC 40; Manoranjana Sinh Vs. CBI, (2017) 5 SCC 218; P. Chidambaram Vs. Directorate of Enforcement (Supra); P. Chidambaram Vs. Enforcement Directorate, Crl. Appeal No. 1831/2019, arising out of SLP (Crl.) No. 10493/2019 decided by the Hon'ble Supreme Court on 04.12.2019; Navendu**

Babbar (Supra); Upendra Rai Vs. Central Bureau of Investigation & Ors., MANU/DE/0905/2022 decided on 13.05.2021; Satender Kumar Antil Vs. CBI (2022) SCC OnLine SC 825; Anil Vasantrao Deshmukh Vs. State of Maharashtra (Supra) and Vijay Madanlal Choudhary & Ors. (Supra).

70. Opposing the bail plea of this accused/applicant Abhishek Boinpally, Ld. Special Counsel and Ld. SPP appearing for the ED have strongly argued that even he is one of the key persons involved in above criminal conspiracy and formation of the biggest cartel of South group, which included the liquor manufacturer M/S Pernod Ricard, the wholesaler M/S Indo Spirits belonging to the co-accused Sameer Mahandru and nine retail zones license holders, out of which five retail zone licenses are alleged to have been owned and controlled by the co-accused P. Sarath Chandra Reddy and two by the co-accused Sameer Mahandru, as has already been discussed. It has been submitted that the above cartel was guilty of violating the provisions and the very objectives of framing of excise policy for Delhi for the year 2021-22 as it created a monopoly against the fair market practice and the members of cartel indulged in grabbing huge market access through illegal means, after concealment of effective ownership of the entities involved in this cartel.

71. It is also the contention of Ld. Special Counsel and Ld. SPP that this applicant was one of the main persons representing the South group, which generated huge kickbacks of Rs. 100

crores to be paid in advance to the politicians of AAP and other public servants in Delhi, through the co-accused Vijay Nair, and it was with an understanding that the said kickbacks will be subsequently repaid to the South group from 12% margin kept for the wholesaler M/S Indo Spirits and others. It is also their submission that in terms of the above criminal conspiracy and as per the understanding arrived at between the conspirators/accused persons, 6% margin of the wholesalers was to be utilized towards recouping and repayment of the above kickbacks. It is submitted that the effective participation of this applicant in the above criminal conspiracy can be seen from the oral as well as documentary evidence collected during the course of investigation conducted by the ED so far as it clearly shows that he had been present in all the meetings which took place between the co-accused Vijay Nair representing the AAP and Delhi Government and the other co-accused, in connection with formulation of the said policy and achieving the illegal objectives of the above said criminal conspiracy.

72. Further, it is also their submission that the accused had even played a key role in transmission of the above advance amount of kickbacks from the South group to the politicians of AAP through the co-accused Vijay Nair because as per the statement made by approver Sh. Dinesh Arora and some other witnesses, at least an amount of Rs. 20-30 crores was routed or transmitted through the personal involvement of this applicant through the hawala channels. Thus, it is the submission of Ld. Special Counsel and Ld. SPP that without the involvement of this

applicant the above criminal conspiracy for commission of scheduled offences of the CBI case and generation of proceeds of crime of the said case and also the process or activities of laundering of the said proceeds made punishable by the PMLA could not have been completed. It has been alleged specifically that he was even instrumental in ensuring the recouping or repayment of the above kickbacks in a laundered form being a representative of the South group in liquor business.

73. It has further been vehemently argued by Ld. Special Counsel and Ld. SPP for the ED that the involvement of applicant can also be seen from the fact that a huge amount of Rs. 3.85 crores was transferred in his bank account from the account of one Sh. Gautham Mootha and it was part of the amount which originated from the bank account of co-accused M/S Indo Spirits and it was sent by the co-accused Sameer Mahandru controlling affairs of the said entity. It is stated that this amount was sent as a part of the process of recouping of the above advance kickbacks and the submission being made on behalf of the applicant that it was a repayment of loan to him is not correct as no loan agreement has been produced by the applicant before the investigating agency to show that the said amount was transferred in his bank account towards repayment of some loan advanced by him to the above Sh. Gautham Mootha. Rather, the close proximity of the above transaction with some other bank transactions between Sh. Gautham Mootha and Sh. Arun Ramchandran Pillai and also between Sh. Arun Ramchandran Pillai and M/s Indo Spirits is being referred to in

support of the above submission made on behalf of the ED that it was actually a part of proceeds of crime generated in the scheduled offences case and being recouped through the above bank transactions to give it a legitimate colour.

74. Further, it is also a submission of Ld. Special Counsel and Ld. SPP that besides the above amount of Rs. 3.85 crores, amounts of Rs. 1 crore and Rs. 70 lakhs respectively transferred in bank accounts of M/S Andhra Prabha Publications and M/S India Ahead news were also a part of proceeds of crime being laundered by the accused persons as even these companies were related to the applicant because he was purchaser of the logo of M/S India Ahead news, which was a subsidiary company of M/S Andhra Prabha Publications. It is further their submission that this applicant was also running operations of five retail zones owned or controlled by the co-accused P. Sarath Chandra Reddy through his entities named M/S TCL, M/S Organomixx and M/S Avantika and there is sufficient oral as well as documentary evidence on record to this effect. It has also been submitted that evidence is further there to show that he was in coordination with the co-accused Vijay Nair for recouping of the advance kickbacks and he was even instrumental in extending threats to some business owners in Delhi liquor market because of his connection and access to the co-accused Vijay Nair and his proximity to various politically connected persons. It has further been specifically submitted by them that along with him, the above Sh. Arun Ramchandran Pillai and Sh. Prem Rahul Manduri were also a part of the South group and they all represented the

benami investments of such group and orchestrated the whole scheme of forming of a cartel between manufacturers, wholesalers and retailers to control more than 30% of the liquor business in Delhi.

75. Thus, it has been vehemently argued that keeping in view the stringent provisions contained U/S 45 of the PMLA and the role played by applicant in generation, concealment, possession, acquisition and use etc. of the proceeds of crime and projecting or claiming it to be untainted property, his bail application is required to be dismissed.

76. Sh. Sidharth Luthra, Ld. Senior Counsel assisted by Sh. Madhav Khurana, Sh. Vignaraj Pasayat, Sh. Samarth Krishan Luthra and Sh. Anmol Kheta Advocates, representing the applicant Benoy Babu, has argued that even his client has been falsely implicated in this case by the ED, though he played no role in formulation of the excise policy and further despite the fact that he was made a witness by the CBI in above scheduled offences case. It is also his submission that statement of the applicant U/S 161 Cr.P.C. was recorded by the CBI in the scheduled offences case and even his statement U/S 164 Cr.P.C. was got recorded on 09.11.2022 in that case i.e. only one day prior to his arrest by the ED in this case. It is strongly argued by Ld. Senior Counsel that since the applicant is not an accused in the scheduled offences case and further since he is not connected with generation of proceeds of crime of the said case, no offence under the PMLA can be said to have been committed by him and

thus, he is entitled to be released on bail in this case simply on the above said ground. Judgment of the Hon'ble High Court of Punjab & Haryana dated 19.05.2022 in case titled as **Dilip Lalwani Vs. CBI & Anr., CRM. M. No. 50475/2021 (O&M)** and also the judgment dated 05.02.2019 of the Hon'ble Delhi High Court in case **Pradeep Koneru Vs. Central Bureau of Investigation & Ors., W.P. (Crl.) No. 384/2019** have been relied upon by Ld. Senior Counsel in support of his above submission.

77. Further, while quoting the provisions contained U/S 3 & 4 of the PMLA and Sections 7, 7A & 8 of the PC Act, 1988, it is also the contention of Ld. Senior Counsel that no offence of money laundering can be said to have been committed by the applicant as for this, a nexus or connection must exist between the applicant and the proceeds of crime of the scheduled offences case, whereas the said nexus or link is not established in the present case. It is the submission of Ld. Senior Counsel that the proceeds of crime must necessarily have its genesis or roots in the scheduled offences case and further, the same should be reasonably linked or connected with the accused and every property in the hands of or related to the accused cannot be termed as proceeds of crime. It is further the submission of Ld. Senior Counsel that the scheduled offences case of CBI has been registered U/Ss 120B r/w 477A IPC and Section 7 of the PC Act and admittedly, Section 477A IPC is not included in any part of the Schedule of PMLA and though the other Sections or offences are scheduled offences as per the PMLA, but even no offence under any of the above Sections of the IPC or PC Act can be said

to have been committed by the applicant as the applicant neither himself was a public servant nor he had extended any undue advantage to a public servant within the meaning of Section 7 of the PC Act and further, there is also no evidence at all on record to hold him a member of any criminal conspiracy for commission of any of the scheduled offences.

78. It has also been vehemently argued by Ld. Senior Counsel that the applicant had not played any role and had not done any wrong doing in respect to formulation of the excise policy or implementation thereof and no proceeds of crime had accrued either to the applicant or even to M/S Pernod Ricard, for whom the applicant was working. It is submitted that the only role played by applicant in relation to the said excise policy was that he had submitted recommendations on behalf of M/S Pernod Ricard in respect to the said policy to the Expert Committee as M/S Pernod Ricard was a stake holder in the liquor business and its recommendations or views were required to be given in connection with formulation of the policy. It is also submitted that the prime recommendations of the applicant in relation to the policy were that the wholesale segment of liquor trade be handled by the Government run Corporations and private retail vends be operated through lottery system and both these recommendations were not finally accepted by the Delhi Government and were not made a part of the policy and thus, it cannot be said that the applicant or M/S Pernod Ricard had influenced the formulation of excise policy. It is also the submission of Ld. Senior Counsel that no criminality can be

attached to or inferred from the fact that the applicant happened to attend few meetings of the stake holders in liquor business and officials of the Delhi Government, as was also observed by this court while granting bail to the co-accused Vijay Nair and Abhishek Boinpally in the scheduled offences case. It is also argued that similarly, there was nothing wrong if he was in touch with the co-accused Vijay Nair in connection with formulation of the policy and he had already given his explanation in respect to the same, which was even accepted by the CBI and that is why he was made a witness in the scheduled offences case. It is further submitted that since the policy stood already approved by the Hon'ble Lt. Governor on 24.05.2021, there was nothing wrong if the applicant received or was in possession of the above policy in e-form and even otherwise, the applicant was only a recipient of the said policy on Whatsapp from one Sh. Aman Dhall.

79. It is also submitted that the applicant ceased to deal with the Delhi region business of M/S Pernod Ricard on the day i.e. 09.11.2021 when L-1 license by the said company was granted to M/S Indo Spirits and he had only signed the document in this regard as a power of attorney. It has been submitted that on the above date and even during the period of implementation of the said policy w.e.f. 17.11.2021, the applicant was working as Commercial Head for International Brands and Key Accounts. It has also been submitted that the allegation being made by the ED with regard to generation of proceeds of crime of around Rs. 50 crores by increase in market share of M/S Pernod Ricard, as a

result of the alleged cartelization and during the period of implementation of the said policy, are totally frivolous and baseless allegations as there was no such rise in market share of the company and the same were only market projections. It is further his submission that even otherwise, the increase in market share of the company, if any, can only be termed as genuine profits of the company from the liquor business and the same can never be called as proceeds of crime. It is also submitted that the alleged profits of company cannot be attributed to the applicant.

80. It has further been strongly argued by Ld. Senior Counsel representing this applicant that even if, for the sake of arguments, it is presumed that any such cartelization between M/S Pernod Ricard, M/S Indo Spirits and the retail zone licensees allegedly controlled by the South group or others was formed, no scheduled offence under the PMLA can be said to have been committed by its formulation and the same, at the most, can amount to a violation of the terms of excise policy or of provisions of the Competition Act, 2002. It is also the submission of Ld. Senior Counsel that there was nothing wrong in extension or providing of corporate guarantees to five retail vend entities by M/S Pernod Ricard and these five entities were not arbitrarily selected by the applicant and rather, whosoever approached the company for financial help in relation to the retail zone business was provided help in the form of corporate guarantee as a business policy of the company and not by the applicant in his personal capacity. It has been argued that the ED has maliciously not disclosed the fact that a major portion of the loans availed by

these five persons/entities stood paid to the bank.

81. While referring to the alleged losses of around Rs. 2631 crores and Rs. 2873 crores respectively caused to the exchequer of GNCTD as per allegations made in remand applications of the applicant and the prosecution complaints filed subsequently against the applicant and other co-accused, it is also the submission of Ld. Senior Counsel that none of the losses mentioned under different heads by the ED as a part of the above total losses can be attributed to or said to have been caused by the applicant as all these losses were caused due to different reasons like the orders passed by the Hon'ble High Court in various petitions, refund of license fees and losses due to Covid etc. and moreover, the same cannot be even termed as losses actually caused to the Government.

82. Further, it is also the contention of Ld. Senior Counsel representing this applicant that in view of the facts stated above, the applicant satisfies the twin conditions laid down U/S 45 of the PMLA for grant of bail as when the said conditions are reasonably construed or interpreted, these make it clear that the applicant has not committed any offence falling under the Schedule of the PMLA and he has been falsely and frivolously implicated in the present case and there is no evidence or material placed before this court by the ED to show that there are reasonable grounds for believing that the applicant is guilty of the alleged offence of money laundering and that he may commit such offence again. Judgment of the Hon'ble Supreme Court in

the case of **Ranjitsing Brahmajeetsing Sharma (Supra)** given with reference to interpretation of similar conditions appearing in Section 21 (4) of MCOCA has also been referred to by Ld. Senior Counsel in support of the submission as to how the above twin conditions contained U/S 45 of the PMLA are to be construed or interpreted. It is also the submission of Ld. Senior Counsel that even the arrest of applicant in this case was against the spirit and in violation of the provisions contained U/S 19 of the PMLA and the applicant deserves bail solely on this ground too. It is further submitted by Ld. Senior Counsel that the applicant even satisfies the triple test for grant of bail as laid down by the Hon'ble Supreme Court in the case of **P. Chidambaram (Supra)** as he is neither a flight risk nor there are any chances that he can tamper with evidence or influence witnesses of the case. It has further been submitted that the applicant joined investigation in the CBI case on nine occasions and he even joined investigation in this case of ED on eleven occasions prior to his arrest and he had been cooperative in investigations throughout and simply because the applicant did not confess to have committed an offence, no inference of non-cooperation can be drawn therefrom as laid down by the Hon'ble Supreme Court in the case of **Santosh (Supra)**. It has also been submitted that the applicant is sole bread earner of his family consisting of his wife and two minor daughters and prolonged incarceration of the applicant would jeopardize the life of all family members and the applicant is ready and willing to abide by all the conditions that may be imposed by this court for releasing him on regular or interim bail pending trial of the case.

83. Apart from the above, reliance has also been placed upon by Ld. Senior Counsel representing the said applicant upon the judgments in cases **Vijay Madanlal Choudhary & Ors. (Supra); Harish Fabianai & Ors. Vs. Enforcement Directorate & Ors., 2022 SCC OnLine Del 3121; Siddh Naraian Sharma Vs. Assistant Director, Directorate of Enforcement, Lucknow Zonal Office, 2022 SCC OnLine All 681; Sanjay Pandey (Supra); Anil Vasantrao Deshmukh (Supra); Siddique Kappan Vs. Directorate of Enforcement thru. Assistant Director Lucknow, Criminal Miscellaneous Bail Application No. 13642/2022 decided on 23.12.2022 by the Hon'ble Allahabad High Court; Rajbhushan Omprakash Dixit Vs. Union of India & Anr., 2018 SCC OnLine Del 7281; Bineesh Kodiyeri Vs. Directorate of Enforcement, Writ Petition No. 13261/2020 decided on 16.03.2021 by the Hon'ble High Court of Karnataka at Bengaluru; Sanjay Chandra (Supra); Subramanian Swamy Vs. A. Raja, (2012) 1 SCC 257; R. Vasudevan Vs. CBI, New Delhi, 2010 SCC OnLine Del 130; Mahesh Kumar & Ors. Vs. Central Bureau of Investigation, 2013 (138) DRJ 288; Sunder Singh Bhati Vs. State, 2022 SCC OnLine Del 134; Central Bureau of Investigation Vs. K. Narayana Rao, (2012) 9 SCC 512; State through Central Bureau of Investigation Vs. Dr. Anup Kumar Srivastava, (2017) 15 SCC 560; State by S.P. through the SPE CBI Vs. Uttamchand Bohra, 2021 SCC OnLine SC 1208; Firoz Khan Vs. State (NCT of Delhi), 2020 SCC OnLine Del 1694; Paras Mal Lodha Vs. Assistant Director,**

Directorate of Enforcement, 2017 SCC OnLine Del 8676; Jitender Pal Singh @ J. P. Singh Vs. CBI (State), 2010 SCC OnLine Del 2217; Prakash Industries Ltd. & Anr. Vs. Directorate of Enforcement, 2022 SCC OnLine Del 2087; Maheshwari Fish Seed Farm (Supra) and **Emta Coal Ltd. & Ors. Vs. The Dy. Director Directorate of Enforcement, W.P. (C) 3821/2022 passed on 10.01.2023 by the Hon'ble Delhi High Court.**

84. Per contra, Ld. Special Counsel and Ld. SPP appearing for the ED have opposed the grant of bail to applicant Benoy Babu by submitting that it is not at all necessary that a person should be an accused in the scheduled offences case before he can be made an accused or arrested under the PMLA as the scheduled offences as well as the offence of money laundering are though inter-linked or inter-connected, but the same operate in different spheres and investigation in both these cases is conducted independently. It is their submission that even if a person is not connected with generation of proceeds of crime in the scheduled offences case, but still he can be guilty of laundering of the said proceeds if such person is in any manner connected with any of the activities mentioned in Section 3 of the PMLA. It has been submitted that Section 3 of the PMLA defining the offence of money laundering is of very wide connotation and takes within its sweep, any person who directly or indirectly attempts to indulge or knowingly assists or is a party or is actually involved in any process or activity connected with proceeds of crime, including its concealment, possession, acquisition, use and

projection or claiming it to be untainted property etc.

85. Further, it is also their submission that even this applicant was a key member of the above cartel as without him it would not have been possible for the conspirators of above criminal conspiracy to achieve the objective of cartelization and monopoly. It has been submitted that the idea of furnishing of corporate guarantees by M/S Pernod Ricard was the brain child of this applicant and it was done to ensure that the retail vend entities keep at least 35% stock of the liquor brands manufactured by the above said company and also with a motive to control about 30% of the Delhi liquor market. It is also submitted that sufficient oral evidence in the form of statements of witnesses U/S 50 of the PMLA is there to this effect. Again, he is also alleged to be the person who had signed the requisite document for grant of wholesale license of liquor by M/S Pernod Ricard in the name of M/S Indo Spirits owned by the co-accused Sameer Mahandru at the instance of co-accused Vijay Nair and specific evidence to this effect is stated to have been collected by the ED during the course of investigation and it clearly shows that it was done as per the objectives of above criminal conspiracy and as a device for recouping or repayment of the advance kickbacks paid by the South group.

86. It has, thus, been argued by Ld. Special Counsel and Ld. SPP for the ED that furnishing of corporate guarantees for a total amount of Rs. 200 crores by M/S Pernod Ricard for loan advances to different retail zone entities was in fact an

investment done for the creation of a cartel and to ensure monopoly in sale of liquor brands of said company. It has also been submitted that investigation conducted so far suggests that such type of corporate guarantees were never given by the company prior to this and the manner in which these corporate guarantees were extended or furnished, even without obtaining any collateral securities or the exercise of due diligence, is a clear manifestation to the effect that it was done only in pursuance of the above criminal conspiracy and to achieve its objectives and not for any general business purposes. It has also been submitted that eight retail entities for whom these corporate guarantees have been furnished were selected arbitrarily by the applicant, and even without there being any formal requests from these companies or requisitioning any documents from these retail entities.

87. It has also been argued by Ld. Special Counsel and Ld. SPP on behalf of the ED, in opposition to the grant of bail to this applicant, that he was in possession of confidential documents of the excise department or of the draft excise policy even before it was officially released by the said department and the very fact that this applicant as well as the other co-accused were possessing it even much prior to its finalization is again a strong circumstance to show existence of the said conspiracy hatched between them for generation as well as laundering of the proceeds of crime thereof. It has also been submitted that as a result of the activities of this applicant, M/S Pernod Ricard gained a substantial increase from 15% to 35% in the share

market and its profits also shown a huge increase of around 485% and all these was nothing, but the proceeds of crime generated through the activities of scheduled offences and laundered by the accused persons, including the applicant. This profit of the company, stated to be around Rs. 163.5 crores, is also alleged to be the losses of government exchequer.

88. Further, it is also the contention of Ld. Special Counsel and Ld. SPP appearing on behalf of ED that even this accused was instrumental in destruction of digital evidence before his apprehension in this case. It has also been argued that he was instrumental in manufacturing at least 4000 fake e-mails, which were sent to the government in support of the said policy and he also furnished a false affidavit about the prices quoted by his company to be the lowest EDP (Ex Distillery Price) though the same were not so as earlier he bidded some other lowest EDP and then got it removed. Thus, it has been argued on behalf of ED that the accused was involved at each and every stage of concealment, possession, acquisition, use and projection or claiming etc. of the proceeds of crime to be untainted property and hence, he is not entitled to the grant of bail in view of the stringent conditions contained U/S 45 of the PMLA as ED is the only agency to investigate the allegations and cases related to laundering of proceeds of crime of the offences included in Schedule of the said Act.

89. Apart from the above arguments advanced in opposition to the bail applications filed by the accused persons, it has also been

vehemently argued by Ld. ASG, assisted by Ld. Special Counsel and Ld. SPP, appearing for the ED that the controversy created by striking down of the twin conditions contained U/S 45 of the PMLA as unconstitutional vide judgment of Hon’ble Supreme Court in the case of **Nikesh Tarachand Shah V. Union of India & Anr., Writ Petition (Crl.) No. 67/2017** now stands settled as it has been held by the Full Bench of Hon'ble Supreme Court in case of **Vijay Madanlal Chaudhary (Supra)** that the defects pointed out in the case of **Nikesh Tarachand Shah (Supra)** now stand removed and cured by the Amendment Act, 2018 and hence, it has been held in the said case by their Lordships that the twin conditions are very much applicable in case of grant of bail to an accused for the offence of money laundering, whether the accused is seeking his regular bail or anticipatory bail under the said act. It is also his contention that Section 45 of the PMLA starts with a *non obstante clause* and hence, the said Section in its application is akin to Section 37 of the NDPS Act and unless both the above conditions laid down U/S 45 of the PMLA are satisfied, bail cannot be granted to any of the above accused persons. Judgment of the Hon’ble Supreme Court in case **State of Kerala Vs. Rajesh, (2020) 12 SCC 122 under the NDPS Act** has also been referred to and relied upon in support of the above submission. Even the judgment of Hon’ble Supreme Court in case of **Rohit Tandon Vs. Directorate of Enforcement, (2018) 11 SCC 46** regarding the sweep and applicability of the twin conditions contained U/S 45 of the PMLA has been relied upon on this issue.

90. Further, it is also vehemently argued on behalf of the ED that economic offences constitute a class apart and needs to be visited with a different mind set and approach in matters of grant of bail and such economic offences having deep rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy and financial health of the country and hence, the period spent by the accused persons in custody till date is immaterial. It is, thus, their submission that none of the accused deserves bail in the present case in view the nature of case and also the allegations made therein as the offence of money laundering alleged to have been committed by them is a serious economic offence affecting the country and people at large. Judgments of the Hon'ble Supreme Court in cases **Y. S. Jagan Mohan Reddy Vs. CBI, (2013) 7 SCC 439**; **Nimmagadda Prasad Vs. CBI, (2013) 7 SCC 466**; **State of Bihar Vs. Amit Kumar, (2017) 13 SCC 751** and **P. Chidambaram Vs. Directorate of Enforcement, (2019) 9 SCC 24**.

91. Reliance has also been placed on behalf of the ED upon the judgments in cases of **Salim Khan Vs. Sanjai Singh & Anr., (2002) 9 Supreme Court Cases 670; Radha Mohan Lakhotia, Indian National and Citizen Vs. Deputy Director, PMLA, Directorate of Enforcement, Ministry of Finance, Department of Revenue, 2010 SCC OnLine Bom 1116**; **Tulsi Ram Etc. Vs. State of Uttar Pradesh, 1963 Supp (1) SCR 382**; **Vijay Madanlal Choudhary (Supra); Tahir Hussain Vs. The Assistant Director Enforcement Directorate, Crl. Rev. P.**

775/2022 decided by the Hon'ble Delhi High Court on 24.11.2022; **Directorate of Enforcement Vs. Padmanabhan Kishore, 2022 SCC OnLine SC 1490**; **Sudhir Shantilal Mehta Vs. CBI, (2009) 8 SCC 1**; **State of Kerala Vs. P. Sugathan and Anr., (2000) 8 SCC 203**;**Yogesh alias Sachin Jagdish Joshi Vs. State of Maharashtra, (2008) 10 SCC 394**; **Ahsan Ahmad Mirza & Others Vs. Enforcement Directorate, W (C) NO.2780/2019 CM No. 5528/2019 decided on 15.10.2019**; **Bimal Kumar Jain & Naresh Jain Vs. Directorate of Enforcement, Bail Application No.112/2021 decided by the Hon'ble Delhi High Court dated 22.07.2021**; **Gautam Thapar Vs. Directorate of Enforcement, Bail Application No. 4185/ 2021 decided by the Hon'ble Delhi High Court on 02.03.2022**; **Christian Michel James Vs. Directorate of Enforcement, Bail Application No. 2566/2022 decided by the Hon'ble Delhi High Court on 11.03.2022**; **Sajjan Kumar Vs. Directorate of Enforcement, Bail Application No. 926/2022 decided by the Hon'ble High Court of Delhi on 13.06.2022**; **Raj Singh Gehlot Vs. Directorate of Enforcement, Bail Application No. 4295/2021 decided by the Hon'ble High Court of Delhi on 02.03.2022**; **Deputy Director, Directorate of Enforcement Vs. Axis Bank & Ors., (2019) SCC OnLine Del 7854**; **Ram Narayan Popli Vs. Central Bureau of Investigation, (2003) 3 SCC 641**; **M/s Doypack Systems Pvt. Ltd. Vs. Union of India & Ors**, **(1988) 2 SCC 299**; **Rohit Tandon (Supra)**; **Virbhadra Singh & Anr. Vs. Enforcement Directorate & Anr., 2017 SCC OnLine Del 8930**; **Ryan John Michael Thorpe Vs. The State of Maharashtra, Crl. Writ Petition Nos. 2611 and 2612 of**

2021 decided on 07.08.2021 by the Hon'ble High Court of Bombay and **P. Rajendran Vs. The Assistant Director, Directorate of Enforcement, Government of India, Crl. Original Petition No. 19880/2022 decided on 14.09.2022**.

92. As far as the argument advanced by the Ld. Defence Counsels regarding competency of the Delhi Government to frame an economic policy is concerned, there is no doubt that the Delhi Government was well within its competency and rights to entirely privatize the liquor business or to frame a policy permitting the entry of private players therein to a given extent and also to frame terms and conditions governing it and such a policy of the Government should not have been subject of the judicial review. However, once the allegations of bribe or abuse and misuse of the public office of Government functionaries are there, the investigating agencies as well as the courts are well within its powers to take up such allegations and to test the legality of such a policy in light of allegations of corruption levelled in respect to formulation or implementation of the said policy.

93. When the above excise policy of the GNCTD is tested and viewed in light of the allegations being levelled by the prosecution, it emerges out that the policy was formulated giving a complete go by to the major recommendations of the Expert Committee constituted to assist in formulation of the policy and even the exercise of taking public opinion in the matter was an eye-wash. The investigations conducted in scheduled offences

case of CBI as well as in this case of ED show that the Expert Committee was constituted by the Government on 04.09.2020 and the report of Committee was given on 13.10.2020 and on 31.12.2020, the same was put in public domain for inviting comments in respect to the recommendations made by the Committee. The comments of the public as well as the recommendations given by the Expert Committee are stated to have been considered by the Council of Ministers on 05.02.2021 and a GoM consisting of three senior Ministers of the Delhi Government was then given the task of considering the same and to give their own recommendations. The report given by GoM on date 22.03.2021 was placed before the Council of Ministers on the same day and it was directed to be implemented. However, strangely enough, another meeting of GoM is alleged to have been called on 05.04.2021 and in this meeting, the term 'sister concerns/related entities' was defined by them and the final excise policy was then uploaded on official website of the Delhi Government on 05.07.2021 i.e. after a gap of around three months therefrom. During this period, no endeavor was made by the Government to seek public opinion again nor any transparency was adopted in the matter of non-acceptance of the public opinion or the recommendations given by the Expert Committee.

94. The term 'sister concerns/related entities' defined in the above meeting of GoM was as under:-

> **"For this purpose, sister concerns/related entities shall mean that the entities should not have common proprietor or partners or directors. Majority ownership (51% or more) of the**

proprietorship or partnership or company should not lie with the same person in all the entities. The entities should not have a holding-subsidiary relationship or are not subsidiaries of the same holding company.”

95. The main objectives of the above excise policy finalized by the Government, inter-alia, were not to allow the formation of any monopoly or cartel; to allow responsible players in liquor industry to carry out a trade transparently without any proxy model; to ensure more accountability on the part of licensees in terms of revenue enhancement, besides keeping in check the emergence of monopolies and cartels and promotion of consumers choice in brands etc. One of the salient features of the said policy was that three major components of the field of liquor business i.e. manufacturers, wholesalers and retailers were not to enter into the business domain of others i.e. a wholesale license holder was not to be a manufacturer of any kind of liquor or retailer thereof, a manufacturer was not to be a wholesaler or retailer and a retailer was also prohibited from having any interest in the wholesale or manufacturing business, either directly or indirectly.

96. However, it has been revealed during investigation that because of the above definition of term 'sister concerns/related entities' adopted by the GoM in their above meeting dated 05.04.2021, the Government intentionally permitted the formation of a cartel and monopoly against the spirit and in violation of the excise policy and it was done against payment of huge kickbacks of around Rs. 100 crores paid in advance by some persons in liquor business from South India to the senior

politicians of the ruling party in Delhi and other public servants of the Government, as the above definition of the term 'sister concerns/related entities' was entirely in contrast and against the definition of similar terms as defined under various Statutes, like Section 2(76) of the Companies Act, 2013, Section 40A (2)(b) of the Income Tax Act, 1995 and Explanation to Section 15 of the CGST Act, 2017 etc. It has been alleged and observed that though as per the above definition of 'sister concerns/related entities' adopted by the GoM, any person or entity could be considered to be a sister concern or related entity of the other only when they were having a common proprietor or partner or director or majority ownership of a proprietorship or partnership or company lied with the same person in the said entity or if they were having a holding-subsidiary relationship or they were subsidiaries of the same holding company. However, as per definition of the terms 'related party' or 'related person' as contained in the above Statues, there is no such condition of holding of majority ownership or a holding-subsidiary relationship etc. and a person or entity can be considered or held to be related to the other if they are having any direct or indirect relation or connection with the other in any of the given ways and they can be termed as related party or entity even if any of their proprietors or partners or directors is having any kind of relation or interest with the other entity or its proprietor or partner or director etc. in any form and even through their relatives.

97. It has been alleged that because of the above definition of

'sister concerns/related entities' adopted by the GoM in the final policy, cartels between the liquor manufacturers, wholesalers and retailers were intentionally permitted to be formed and one such super cartel revealed to have been formed during investigation conducted so far was between one of the leading manufacturers of liquor namely M/S Pernod Ricard (A-12), its wholesaler firm M/S Indo Spirits (A-4) belonging to Sameer Mahandru (A-1) and the retail zone entity namely M/S Khao Gali (A-2) also stated to be owned by A-1, three retail zone entities namely M/S TCL (A-8), M/S Avantiaka (A-9) and M/S Organomixx (A-10) claimed to be controlled or beneficially owned by accused P. Sarath Chandra Reddy (A-7) and another retail zone entity named M/S Magunta Agro Farms Pvt. Ltd. (hereinafter M/S Magunta Agro) owned by one Sh. Raghav Magunta, whose role in commission of alleged offence is still under investigation. It has been found that A-12 company appointed A-4 firm as its wholesaler (L-1 licensee) for liquor business in Delhi and A-2, A-8 and A-9 were able to get two retail zone licenses (L-7Z) each, A-10 got one retail zone license and M/S Magunta Agro also got two retail zone licenses. Thus, this cartel is alleged to have consisted of A-12 being liquor manufacturer, A-4 being the wholesaler controlled by A-1, A-2 being retailer also controlled by A-1, A-8, A-9 & A-10 being the retailers controlled by A-7 and M/S Magunta Agro of Sh. Raghav Magunta also being a retailer. In all, 9 out of the total 32 retail zone licenses containing 27 liquor vends in each zone granted to the above entities of the accused persons are alleged to be a part of the above super cartel and some evidence to this effect through the Whatsapp chats between A-1 and one Sh. Manoj Rai of A-12

M/S Pernod Ricard had surfaced during the course of investigation of case, besides the other oral and documentary evidence.

98. As also stated above, no liquor manufacturer was to enter in wholesale or retail business, but the investigation has revealed that A-1 was the beneficial owner of some liquor manufacturing units for alcoholic beverages under the name of M/S Indospirit Beverages, he was also able to secure a wholesale license (L-1) for sale of liquor brands of A-12 company in name of his firm M/S Indo Spirits/A-4 and he even entered the retail business through his entity M/S Khao Gali/A-2. It has been revealed during investigation that A-1 was related to or controlling affairs of two retail entities, namely M/S Khao Gali/A-2 and M/S Bubbly Beverages (A-3), which went to apply for retail zone licenses. It has been found that A-4 firm was having three partners and another company of A-1 namely M/S Indospirit Distribution Ltd. (A-5) was having 35% interest in A-4 firm and 32.5% interest each in this entity was given by A-1 to Sh. Arun Ramchandran Pillai and Sh. Prem Rahul Manduri. A-1 held 59.21% shares in A-5 company and his wife Ms. Geetika is stated to be having 38.36% share holding in the said company. One of the Directors namely Sh. Shyam Kapur of A-2 company holding around 90% shares, through another entity, is stated to be the father-in-law of A-1 and even the other director namely Sh. Tarun Kalra is stated to be maternal uncle of wife of A-1 and thus, the investigation revealed that they were only dummy directors and the company was infact being controlled by A-1 only. It has also

been found during investigation that though A-2 company was incorporated in the year 1994, but it conducted no business till 2021 when it applied for the retail zone licenses under the above said policy. Even the company named M/S Bubbly Beverages/A-3 was being controlled by A-1 through Sh. Nitin Kapoor, a dummy director and shareholder in the said company, without any actual investment. Sh. Nitin Kapoor was also holding operations of A-2 company at the instance of A-1. Statements U/S 50 of the PMLA made to this effect by Sh. Nitin Kapoor, Sh. Tarun Kalra and even by A-1 prior to his arrest clearly demonstrate the same. Besides this, it has also come on record during investigation that A-2 company & A-4 firm were functioning from the same building and as per forensic analysis of the digital data seized and retrieved during investigation conducted by M/S TATA Consultancy Services Ltd., on 5933 number of times the IP address used in communications of these two entities was the same.

99. Investigation has further revealed that A-1 Sameer Mahandru had arranged a corporate guarantee of Rs. 100 crores for the above two retail entities belonging to him from A-12 M/S Pernod Ricard and the amount of loans advanced to A-1 was utilized for deposit of license fees and EMDs of the above retail entities. Besides this, evidence of cross funding between the above retail entities of A-1 and of Sh. Raghav Magunta has also surfaced as the investigation conducted so far has revealed that an amount of Rs. 15 crores as loan was advanced by M/S Zainab Trading, an entity controlled by Sh. Raghav Magunta, towards

deposit of EMD by A-2 M/S Khao Gali and even an amount of Rs. 25 crores as loan was provided by A-1 through his another entity M/S Bubbly Beverages/A-3 to M/S Magunta Agro of Sh. Raghav Magunta. Apart from this, the ED has also been able to find out an e-mail dated 25.08.2021 from the e-mail dump of one Sh. Hemant Ladia, Chief Financial Officer of A-5 M/S Indospirit Distribution Ltd. showing that at some stage there had been an attempt to form a partnership agreement between the retail zone entities owned by A-1 and those owned by Sh. Raghav Magunta and his father Sh. Magunta Srinivasulu Reddy and though it did not materialize, but somehow, later on, a cartel between the two retail zone entities owned by A-1 and the entity owned by above Sh. Raghav Magunta was formed.

100. As already discussed, in addition to that, 5 retail zone licenses owned by above three entities namely M/S TCL/A-8, M/S Avantika/A-9 and M/S Organomixx/A-10 belonging to A-7 P. Sarath Chandra Reddy were also a part of the above cartel. Evidence in the form of statements made by the approver Sh. Dinesh Arora, some of the other accused prior to their arrest and witnesses namely Sh. Arun Ramchandran Pillai, Sh. Ashish Roy, Sh. Chandan Reddy, Sh. T. Raj Kumar, Sh. Tanmay Vashisth, Sh. Mohit Gupta, Sh. Butchibabu and Sh. Manoj Rai etc. clearly show that A-7 was controlling the affairs of five retail zone licenses owned by his above three entities through A-13 Abhishek Boinpally and Sh. Chandan Reddy and their statements to this effect are also found to be corroborated by some Whatsapp chats between A-1 and Sh. Manoj Rai, Sh. Arun Ramchandran

Pillai and A-11 Benoy Babu and others and further digital evidence to this effect is also found to have been collected during the course of investigation. It has also surfaced during investigation that though Sh. Chandan Reddy was an employee of A-8 M/S TCL, which company was directly being controlled by A-7, but he was even controlling the affairs of other two proxy entities of A-7, i.e. A-9 & A-10, and further, the daily cash collection of these five entities was also being brought at the same place. Again, some oral evidence is also alleged to be there in the form of statements of Sh. Bhushan Belgavi, Sh. Manoj Kumar and Sh. Chandan Reddy to the effect that A-8 M/S TCL and A-9 M/S Avantika were located in the same building and when the said building premises were subjected to search operation by the ED in early morning of 16.09.2022 i.e. after the above excise policy was abruptly brought to an end by the Government, the IT officials of these companies were under instructions from A-7 to shift these servers and to destroy the evidence contained therein showing inter-relation of these two entities. Some evidence of telephonic conversations between some of these witnesses during the previous night is also alleged to be there to this effect. Though, a submission of forcible extraction of such statements from some of these witnesses has been made during the course of arguments, but none of these witnesses till date had retracted from their statements made U/S 50 of the PMLA before the investigating agency, which have got evidentiary value and can be very much considered by this court against the accused. Though, a retraction of the statement U/S 50 of the PMLA on behalf of A-1 has also come on record, but it has

been made after a considerable time from the statement.

101. Though, it is the contention of all the Ld. Defence Counsels representing these accused that the above oral and documentary evidence shows that the cartel formed between the accused persons only amounted to a violation of the excise policy and the same was not an offence as, at the most, it could have resulted in cancellation for their licenses, but these contentions of Ld. Defence Counsels are of no help to the case of accused persons as formation of the cartel has to be viewed in light of the allegations and evidence for payment of advance kickbacks by the South liquor lobby to the politicians and other public servants in Delhi. Further, though, as per the statements made by the approver Sh. Dinesh Arora in the CBI case and also as per his statements made in this case, as well as the statement of witness Sh. Arun Ramchandran Pillai etc., the amount of above kickbacks may be around Rs.100 crores, but the approver Sh. Dinesh Arora in his statement has specifically claimed that kickbacks of around Rs. 20-30 crores were paid or routed through him. As already discussed, this kickback amount is stated to have originated from the South lobby allegedly consisting of A-7 P. Sarath Chandra Reddy, Sh. Magunta Srinivasulu Reddy, Sh. Raghav Magunta and Ms. K. Kavitha and the approver as well as Sh. Arun Ramchandran Pillai have both claimed that it was arranged and routed through A-13 Abhishek Boinpally and it was paid to A-6 Vijay Nair and was supposed to be passed on further by him to the senior politicians of AAP and other public servants as A-6 was represented the AAP and Delhi Government

during the course of various meetings that took place between different stakeholders in excise business.

102. Further, the investigation has also revealed that A-6 was residing in the official accommodation alloted in the name of a senior Minister of AAP, who was even a member of the above GoM constituted for formulation of excise policy, and the said politician was residing at some other place. It has also come on record that A-6 had even represented himself to be an OSD of Excise Department of GNCTD during one such meeting. Even the approver Sh. Dinesh Arora had disclosed himself to be having very close relations with Sh. Manish Sisodia, the Excise as well as the Deputy Chief Minister of GNCTD at the relevant time, and he as well as A-6 were given the task of ensuring the payment of above kickbacks and securing interests of the bribe givers. Further, the approver has also revealed during his statements as to how in different installments the kickback amount of Rs. 20-30 crores through him was routed and received from A-13 through hawala channels and it was collected or delivered to the team members of A-6. Again, the approver as well as the other witnesses and some of the accused have also deposed about meetings held during the months of May and June, 2021 in Gauri Apartments, Near Claridges Hotel, Delhi and at hotel ITC Kohinoor, Hyderabad, which were attended by different stakeholders, including the approver Sh. Dinesh Arora, A-6 Vijay Nair, A-13 Abhishek Boinpally, Sh. Arjun Pandey, Sh. Butchibabu etc. The planning of delivery of Rs. 20-30 crores through the approver is stated to have been made in the above

meeting held at Hyderabad and the approver was asked to coordinate with A-13 Abhishek Boinpally and his cousin Sh. Lupin about the same. Apart from this, the approver has also disclosed that he was even involved in some further monetary transactions for A-6, including cash collection of Rs.1 crore approx. from a hawala trader at his instance.

103. As already discussed, the above kickback amount was to be paid back to South liquor lobby and to ensure its repayment, a provision for keeping high margin of profits for wholesalers, i.e. 12% profit margin, was made in the said policy. Though, this margin of profit would not have otherwise been excessive or objectionable, but the manner in which the business of companies or entities involved in alleged transactions of liquor has been conducted is a clear manifestation of the fact that this high rate of profit margin was kept only in furtherance of the above said criminal conspiracy hatched between the accused for commission of scheduled offences of the main case. This repayment or recouping of the kickbacks is reflected to have been made through different modes and channels i.e. bank transfers, issuance of credit notes by wholesaler to retailers and the supplies made by wholesaler to retailers on credit and without any intention of recovering the price thereof.

104. Before discussing the above *modus-operandi* of repayment or recouping of the kickbacks, as reflected from the evidence collected during investigation, it is first necessary to say a few words about very constitution of A-4 firm M/S Indo Spirits and

grant of wholesale license (L-1) to it by the manufacturer A-12 M/S Pernod Ricard. It has come on record that wholesale license for sale of liquor of A-12 was granted to A-4 only at the instance of A-6 Vijay Nair and it was done only to achieve the objective of above criminal conspiracy for forming a cartel and to ensure repayment of kickbacks in a secured manner. Again, it has also come on record that L-1 license with Excise Department of GNCTD was originally not applied in the name of A-4 firm and it was applied in the name of another group company of A-1 Sameer Mahandru, i.e. in the name of M/S Indospirit Marketing Pvt. Ltd. (hereinafter referred to as M/S IMPL), and while the said application was still being processed for grant of the license, some complaint was received in the Excise Department revealing formation of the above cartel and even a petition before the Hon'ble High Court to this effect came to be filed. Even show cause notices to the above applicant were issued by the Excise Department to explain the above allegations, but at the instance of A-6 Vijay Nair and also on payment of some alleged bribe amount to the officers of Excise Department, the said application was permitted to be withdrawn and a fresh application for grant of L-1 license in the name of A-4 firm was taken and it was processed and accepted on the same day, while sidelining all the objections raised in the complaint and to defeat the purpose of litigation. Besides the oral evidence, some documentary evidence in the form of call detail and cell location records of some of the accused are also stated to be there on the above aspect.

105. Further, though, composition of ownership of M/S IMPL

as per the application was that A-5 M/S Indospirit Distribution Ltd. held 35% of its ownership, Sh. Butchibabu & Sh. Arun Ramchandran Pillai held 16.25% each and Sh. Prem Rahul Manduri held 32.5% of the ownership, but it has been alleged that as per the shareholder certificate submitted along with the application, A-5 company of A-1 held 99.38% shares in M/S IMPL. It is clear from the above that A-1 had permitted his owner's stake to be taken away by the other shareholders in M/S IMPL without any effective investments from them. In case of constitution of A-4 firm, the above Sh. Butchibabu was dropped and ownership of the remaining partners in this firm was kept as 35% for A-5 company and 32.5% each for Sh. Arun Ramchandran Pillai and Sh. Prem Rahul Manduri.

106. Again, investigation conducted so far has revealed that the above Sh. Prem Rahul Manduri was not even known to A-1 and n Sh. Arun Ramchandran Pillai had also met him only few months before and they both were made dummy partners in A-4 firm M/S Indo Spirits simply as a device to secure repayment of kickbacks to the South lobby in a laundered form, out of the profits earned by the said firm, as they both represented the interests of South lobby. It has been revealed during investigation that out of the profit amount of around Rs. 192 crores earned by A-4 firm, Rs. 33 crores were transferred by A-1 in account of Sh. Arun Ramchandran Pillai. Further, it has also come on record during investigation that out of the above amount of profits of A-4 firm, a huge amount of Rs. 150 crores was transferred to the account of retail entity of A-1 namely M/S Khao Gali/A-2 and

Rs. 17 crores to the account of A-5 company. As per allegations made by the prosecution, A-1 is connected with generation or laundering of proceeds of crime totaling to around Rs. 291 crores, including the above profit margin of A-4 firm, credit notes amount of Rs. 4.35 crores, outstanding dues of Rs. 60 crores etc.

107. Again, within few days of transfer of the above amount of Rs. 33 crores in bank account of Sh. Arun Ramchandran Pillai by A-1, an amount of Rs. 3.85 crores was transferred in account of A-13 Abhishek Boinpally through the account of Sh. Gautham Mootha and this, as per allegations, has also been done towards repayment of kickbacks as even A-13 was a representative of the South lobby. Another amounts of Rs.1 crore and Rs. 70 lakhs are also found to have been transferred from the account of A-4 firm to the accounts of M/S Andhra Prabha Publications and M/S India Ahead news respectively, which companies are alleged to be associated with A-13 and the statements being made on behalf of this accused to justify the above bank transfers are not found convincing enough in light of the oral and documentary evidence produced before this court at this stage of considering the question of grant of bail to the said accused as well as the other co-accused.

108. Further, the investigation conducted into the case is also stated to have been revealed that credit notes for an amount of around Rs. 4.35 crores were issued by the wholesale licensee i.e. A-4 firm in favour of three retail zone entities namely A-8 M/S TCL, A-9 M/S Avantika and A-10 M/S Organomixx belonging to

A-7 P. Sarath Chandra Reddy and these credit notes were apparently issued by A-4 firm on its own and without their being any approval or authentication thereof from the manufacturer A-12 M/S Pernod Ricard. Even some of the employees of A-1 namely Sh. Rajat Sharma and Sh. Hemant Ladia etc. are found to have specifically deposed so during the statements made before the IO. In the given scenario, as reflected by the oral and documentary evidence collected by the investigating agency, the above credit notes also appear to be a device to repay the kickback amount to the South lobby. Though, it has been argued that A-7 P. Sarath Chandra Reddy had nothing to do with A-9 & A-10 companies and he was only concerned with A-8 company and the credit notes of around Rs. 3 crores issued by this company, but this submission cannot be accepted in view of the discussion already held and the oral and documentary evidence brought before this court showing that he was controlling affairs of all these three retail companies and of the five retail zone licenses granted to the said companies through A-13 and Sh. Chandan Reddy. Even reversal of these credit notes in accounts of the companies is found to have been done only when the matter was brought to limelight by the press and the political opponents of the Delhi Government and hence, it is of no use or help to the accused.

109. As also discussed above, investigation further revealed that an amount of around Rs. 60 crores was shown as outstanding in account of A-4 firm from the above retail zone entities of A-7 and again, statements of above employees of A-1 as well as of

some other witnesses are there to the effect that the said outstanding amount was not meant to be recovered from these companies and thus, it also appears to have been left outstanding for repayment of the kickbacks.

110. Thus, regarding the allegations and role played by A-1 Sameer Mahandru, it can be said in view of the above discussion and material placed before the court that he was the center or base point around which the above criminal conspiracy evolved and he played the most vital role in formation of the cartel and in ensuring repayment of the kickback amount. Though, he may not be specifically shown to have been present in few initial meetings held between the co-accused Vijay Nair, Abhishek Boinpally and Sh. Arun Ramchandran Pillai and Sh. Gautham Mootha etc., but the investigation reveals that he was very much in touch with co-accused Vijay Nair and others even at the formulation stage of policy. His role can be seen from the fact that despite being a manufacturer of liquor, he entered in wholesale and retail business and managed to get L-1 and L-7Z licenses in the name of his A-4 firm and other proxy entity i.e. A-2 M/S Khao Gali. The evidence also shows that he was aware about the payment of above kickbacks and he ensured repayment thereof to the South lobby by giving place to two representatives of the South lobby as partners in A-2 firm with a high share holding of 65% in total i.e. 32.5% each, which was almost double to the amount of his own share holding in the said firm through his entity named M/S Indospirit Distribution/A-5. He further secured the recoupment of kickbacks amount to the South lobby

from the account of his above firm with issuance of excess credit notes of Rs. 4.35 crores to the retail entities made accused as A-8 M/S TCL, A-9 M/S Avantika and A-10 M/S Organomixx, which belong to A-7 P. Sarath Chandra Reddy, and also by not insisting the payment of outstanding amount of Rs. 60 crores due from the said companies. He was even involved in transfer of an amount of around Rs. 33 crores in account of Sh. Arun Ramchandran Pillai under the above scheme of recoupment. He also played an important role in rolling over the two retail zones of Sh. Raghav Magunta in the above cartel by resorting to cross funding of the application and EMD amounts of his retail entities and the retail entity of Sh. Raghav Magunta. He is also alleged to have been involved in few other dubious bank transactions from the account of his above wholesale firm and out of the huge profit amount of Rs. 192 crores earned by the said firm against meagre investment.

111. The judgment in case **Anand Subramanian (Supra)** being relied upon by Ld. Senior Counsel representing the accused is not of any help to the case of accused as the prosecution complaint filed in the matter cannot be considered to a piece meal complaint and investigation qua this accused, as well as the other accused persons chargesheeted through the two prosecution complaints filed by ED, stands completed. Even the judgments in cases **Devki Nandan Garg (Supra)** and **Sanjay Pandey (Supra)** being relied upon by the Ld. Senior Counsel are not applicable as neither the accused is having any serious medical issues or grounds for grant of bail in a PMLA case nor it

can be said that he was not involved in commission of scheduled offences of the CBI case as he already stands chargesheeted in the said case, though without arrest. The judgment in case **Vivek Narayan Sharma (Supra)** is also not applicable because, as already discussed, the economic or excise policy of the GNCTD is already in question and doubts because of allegations of corruption and even the judgment in case **Hotel & Restaurants Assocn. (Supra)** has got no applicability to the facts and circumstances of the case. The judgment in case **Amarendra Dhari Singh (Supra)** being relied upon on behalf of the accused has also got no applicability as it was given at a time when Section 45 of the PMLA was lying struck down constitutionally, whereas after the judgment in case **Vijay Madanlal Choudhary (Supra)** the twin conditions contained under the said Section stand re-introduced and re-enforced in light of the subsequent Amendment Act, 2018.

112. Regarding the role of A-7 P. Sarath Chandra Reddy, as already discussed, the evidence collected so far also clearly reveals his active involvement not only in payment of the above kickback amount of around Rs. 100 crores, but also in ensuring repayment or recouping thereof being a part of the said cartel. He managed to get five retail zone licenses (L-7Z) as a member of the said cartel, though no person or entity was allowed to have more than two retail licenses. Again, though two of these five retail zone licenses were allotted to his entity M/S TCL (A-8), but the other three other licenses were secured by him through his proxy entities i.e. M/S Avantika (A-9), M/S Organomixx (A-

10) and sufficient documentary and oral evidence is there to the effect that he was controlling the affairs of and was the ultimate beneficiary of these entities, as discussed above. Further, it has also come on record that he had met the co-accused Vijay Nair and others during the formulation stage of the policy and even after he got the above licenses. It has also come against him that he was the beneficiary of above credit notes for an amount of Rs. 4.35 crores issued by A-4 firm to his above retail entities and further of the amount of Rs. 60 crores left unrecovered from his above retail entities in account of A-4 firm.

113. Thus, as seen from the above, he has been alleged to be one of the main components of the South liquor lobby, along with others namely Ms. K. Kavitha, Sh. Magunta Srinivasulu Reddy and Sh. Raghav Magunta etc. which had given the kickbacks of Rs. 100 crores to the co-accused Vijay Nair for the leaders of AAP and other public servants and it was at their instance only that the above provision of 12% profit margin was got incorporated in the policy and their representatives namely Sh. Arun Ramchandran Pillai and Sh. Prem Rahul Manduri were given partnership stakes of 32.5% each in A-4 firm. Investigation also revealed that Sh. Prem Rahul Manduri even got no share in profits of the firm, despite having 32.5% stake therein. It was also at the instance of this accused that a meeting in February/ April, 2022 in Oberoi Maidens, Delhi took place between the accused Vijay Nair, Ms. K. Kavitha and Sh. Dinesh Arora etc. to discuss the difficulties in recouping of the advance kickbacks and the ways to recoup it faster and securely. Thus, even if the

accounts of his above entities ultimately show some losses in the retail liquor business, as has been argued by Ld. Senior Counsels representing him, it cannot be made a ground to ignore the specific oral and documentary evidence which has been brought on record to show his involvement in commission of the alleged offence of money laundering. As per allegations made by the prosecution, besides the proceeds of crime of around Rs. 100 crores generated by the South liquor lobby of which he was a prime member and further besides the above amounts of Rs. 4.35 crores and Rs. 60 crores of the credit notes and outstanding relating to his retail entities, he was also associated with generation and laundering of proceeds of crime of Rs. 146.9 crores and Rs. 199.2 crores transferred by him in accounts of his proxy entities namely M/S Avantika/A-9 and M/S Organomixx/ A-10 and the excess cash collection amount of Rs. 41.13 crores by his retail entities.

114. The judgments in cases **Ashok Sagar (Supra)** and **Vijendra Rana (Supra)** being relied upon by Ld. Senior Counsels for this accused have got no applicability in present case as the same have not been given in cases under the PMLA or with reference to interpretation of stringent conditions like those contained U/S 45 of the above Act. The judgment in case **Santosh (Supra)** is also found not applicable and even the judgment in case **Sanjay Pandey (Supra)** being relied upon on behalf of this accused also is not attracted as from the facts and circumstances brought before this court, the applicant very much appears to be a part of the conspiracy for generation of proceeds

of crime of the scheduled offences case and also connected with the process of laundering of the said proceeds.

115. Coming to the allegations and role played by A-6 Vijay Nair, it has been observed from the evidence placed before this court by the ED that he had in fact emerged as the *sutradhar* (string holder) of the entire criminal conspiracy that came into existence between various accused persons, some of whom are even yet to be identified, in connection with formulation and implementation of the above excise policy. Though, he was only the Media and Communication Incharge of the AAP, but it has been revealed during investigation of this case that he was actually representing the AAP and GNCTD in different meetings that took place with the stakeholders in liquor business at different places. His participation in the meetings in this capacity is to be viewed in light of the facts that he was residing in the official accommodation allotted to a senior Minister of the AAP and once he is even alleged to have represented himself as an OSD in the Excise Department of GNCTD and further that none from the Government or AAP officially participated in these meetings. As discussed above, he had attended the meetings that took place in Gauri Apartments, near Claridges Hotel, New Delhi in May-June, 2021, which besides him, was attended by accused Abhishek Boinpally, Sh. Arjun Pandey, Sh. Aman Dhall, Sh. Arun Ramchandran Pillai, Sh. Butchibabu, Sh. Sikander and Sh. Virat Mann of M/S ADS Spirtis etc. and also another meeting in ITC Kohinoor Hotel at Hyderabad, which was attended by accused Abhishek Boinpally, Sh. Arun Ramchandran Pillai, Sh.

Butchibabu, Sh. Arjun Pandey and Sh. Virat Mann etc. in connection with formulation of the policy to suit the requirements of private players from South and besides these, he also attended some other meetings with some of these persons. The evidence also suggests that the said meetings, infact, were called by him only for the above said purpose. It was in the above said meeting which took place at Hyderabad that the modalities of payments of kickbacks and its recouping and repayment were discussed and chalked out. The statements of approver Sh. Dinesh Arora, Sh. Arun Ramchandran Pillai and even the statements of some other witnesses and the accused made prior to their arrest corroborate this fact. He was instrumental at the stage of formulation of the policy itself with full authority and rights and this is evident from the Whatsapp chats between the witnesses Sh. Sunil Duggal and Sh. Manoj Rai, Sh. Sanjeet Randhawa and Sh. Suresh Menon of the ISWAI (International Spirits & Wines Association of India) and also between accused Vijay Nair and Benoy Babu etc., besides the statements made by some witnesses to the effect that he was even demanding money for a favourable policy suitable to the private players. He was further involved in meetings with representatives of big manufacturers i.e. M/S Pernod Ricard and M/S Diago etc., not only at the formulation stage of policy, but even in making these companies to appoint their wholesalers as per his choice.

116. Again, as also discussed above, he was the person to whom the alleged kickback amount of Rs. 100 crores was transferred or delivered by the South liquor lobby and there is a

specific statement made by the approver that he delivered at least an amount of Rs. 20-30 crores, out of the above amount of Rs. 100 crores, and this amount was delivered in installments either to the said accused or to the other members of his team. The approver has also stated that it was only at the instance of this accused Vijay Nair (A-6) that he had taken the above task of collection and delivery of kickback amount. Since, the kickback amount is stated to have been paid through hawala channels and in cash, the best possible evidence to this effect has been collected and brought on record by the investigating agency and nothing has been intentionally withheld or concealed from the court and the evidence brought on record includes some documentary evidence in the form of call detail records of the persons involved in transmission of the above kickback amount through the approver.

117. Further, this accused is also alleged to have played an important role in the entire scheme of repayment and recouping of the above kickback amount and it was only at his instance, A-4 M/S Indo Spirits came into existence with two partners representing the South liquor lobby and that too, without there being any substantial amounts of investments from them. It was again at his instance only that this firm was given the L-1 license by the Excise Department and the repayment of kickbacks through the above modes was also devised in meetings and talks held with this accused only. His role in handling the entire affairs in the above conspiracy and the scheme of payment and recoupment of the kickback amount is also evident from the fact

that even in February/April, 2022, he had attended a meeting with approver Sh. Dinesh Arora, Sh. Arun Ramchandran Pillai and Ms. K. Kavitha etc. from the South group to discuss and ensure timely recoupment of the kickback amount. Some documentary evidence in support of the above meetings is also stated to have been collected by the investigating agency. His role has also surfaced in forcing another wholesaler (L-1) licensee in Delhi namely M/S Mahadev Liquor to surrender its license by getting their manufacturing unit shut down in Punjab, where also his party i.e. AAP was in rule as the above licensee was not allegedly paying the kickbacks as demanded by him.

118. Further, as per the oral and documentary evidence collected by the investigating agency, he was also in frequent touch with various stakeholders of liquor business through different secured modes of communication, including the Signal App, and their use of the said modes and App was only in pursuance to their attempt of not leaving any trail of their misdeeds. Some evidence is also alleged to have been collected to show that certain amounts, though meagre, out of the above kickbacks were spent by him towards election expenses in Goa and further allegations of tampering with evidence of commission of the above offences are also there on record by destruction of his mobile phones used during the relevant period.

119. He is, thus, alleged to be associated with generation and laundering of total proceeds of crime amounting to around Rs. 615 crores, including the kickback amount of Rs. 100 crores, Rs.

192 crores being profit of A-4 firm, around Rs. 200 crores being profit of A-12 company and the above excess credit notes and outstanding amount etc.

120. Ld. Senior Counsel representing this accused has also wrongly placed reliance upon the judgments in cases **Sanjay Pandey (Supra)** and **M/S Prakash Industries (Supra)** and the same are held not applicable qua this accused as he had a prime and lead role in commission of the scheduled offences case of CBI as per the evidence collected in the present case and was also arrested in the said case. The fact that he stands released on bail in the said of CBI is of no consequence as his bail in this case is to be decided in light of the legal and factual position in this case of the PMLA and especially keeping in mind the admissibility of statements made U/S 50 of the PMLA by the accused and witnesses and the twin conditions U/S 45 of the said Act. The judgments in cases **Navendu Babbar (Supra)** and **Ratul Puri (Supra)** being relied upon on behalf of the applicant are also of no help as no parity can be drawn between the facts of the above cases and of the present one as **Navendu Babbar (Supra)** was not a case under the PMLA and in the other case of **Ratul Puri (Supra)** the accused was not named in the scheduled offences case and even in the ED case he was prosecuted in the sixth supplementary complaint only and none of the other accused was in custody in the ED case.

121. Now, coming to the role of A-13 Abhishek Boinpally, it has been brought on record that he was one of the representatives

of the South group in the above cartel and he played active role in payment of the kickback amount as well as its recoupment. He met the co-accused Vijay Nair and others as a representative of the South lobby in connection with excise policy formulation and it was he through whom at least Rs. 20–30 crores out of the kickback amount of Rs. 100 crores are alleged to have been transmitted or transferred to Delhi from South and delivered to the co-accused Vijay Nair and his team, as per details provided by this accused and through the approver Sh. Dinesh Arora. Specific statements of approver Sh. Dinesh Arora and Sh. Arun Chandaran Pillai are there to this effect. The statement of approver further shows that he contacted this accused and his cousin Sh. Lupin on few occasions in connection with payment/ delivery of the above amount of kickbacks and this is even stated to be corroborated by the call detail records of few persons. He was also the person who was handling the operations of five retail zones owned by co-accused P. Sarath Chandra Reddy (A-7) through his above retail entities and there is sufficient oral and documentary evidence corroborating this fact in the form of statements of some witnesses and accused and also the Whatsapp chats between different persons.

122. Further, his assistance in recoupment of the kickback amount is also evident from the fact that an amount of Rs. 3.85 crores out of the recouped kickbacks was transferred in his bank account from the account of Sh. Gautham Mootha and this transfer is found to have genesis in the amount of Rs. 33 crores which was transferred to the account of Sh. Arun Ramchandaran

Pillai by A-1 Sameer Mahandru, out of the profits earned by A-4 firm. This accused is even found connected with two other transfers for the amounts of Rs. 1 crore and 70 lakhs in accounts of M/S Andhra Prabha Publications and M/S India Ahead news respectively, which entities are alleged to be associated with him and even these amounts are stated to have been transferred towards recoupment of the kickbacks. Further, besides attending the above two meetings held in connection with formulation of the excise policy in May-June, 2021 in Gauri Apartments, Near Claridges Hotel and in hotel ITC Kohinoor at Hyderabad, he even attended the meeting held in February/April, 2022 in hotel Oberoi Maidens, Delhi to sort out the recoupment issue and to expedite the recoupment process, at the instance or along with his bosses in South. The judgment in case **Navendu Babbar (Supra)** is even held not applicable to the case of this applicant for the reasons already discussed above.

123. Now, coming to the part played by A-11 Benoy Babu, it is observed from the oral and documentary evidence that he was the brain child behind the decision taken by A-12 M/S Pernod Ricard for furnishing of corporate guarantees of Rs. 200 crores for the loans availed by other members of the cartel from HSBC bank and this was considered to be an investment to take control of the retail liquor business and to achieve highest market share in sale of liquor brands by the company and thus, to ensure that the retail vends which were part of the above cartel kept at least 30% stock of the liquor brands owned by this company. The above corporate guarantees of Rs. 200 crores are found to have been given by him

even without any formal requests in this regard and also without adherence to the due diligence process as it has surfaced during the course of investigation that the decision to give these guarantees was taken by the company even prior to receipt of the due diligence reports. Again, no collateral security was taken by the company for furnishing of these guarantees and even no document or agreement with the beneficiaries of the said guarantees was executed. He is also alleged to have over looked certain key issues raised by the HSBC bank in furnishing the said corporate guarantees and it is further the case of prosecution that prior to this, A-12 M/S Pernod Ricard had never furnished such type of corporate guarantees in the liquor business and the same were furnished in the present case at the instance of this accused only as without it, the above super cartel in violation of the excise policy could never have been formed and the repayment or recoupment of the kickback amount could never have been secured.

124. Further, by his above and other acts, he is also alleged to have been actively involved in formulation of the said cartel between the manufacturer A-12 M/S Pernod Ricard, the wholesaler A-4 M/S Indo Spirits and the nine retail zone licenses owned by the above retail entities of the co-accused Sameer Mahandru, P. Sarath Chandra Reddy and the above Sh. Raghav Magunta. He has also been alleged to be the person, who in furtherance of the above conspiracy had appointed A-4 firm as their wholesaler even though by that time the approval of the company to this effect was not received or communicated to him

and it was done by him at the instance of co-accused Vijay Nair and to assist in repayment and recoupment of the kickback amount. It is also alleged that it was done by him despite being aware that the owner of A-4 M/S Indo Spirits namely Sameer Mahandru (A-1) was the actual beneficiary and controller of the retail entities A-2 M/S Khao Gali and A-3 M/S Bubbly Beverages bidding for L-7Z licenses. He is also shown to have been present in the dinner hosted at Taj Man Singh Hotel, New Delhi to celebrate the success of the above cartel, after grant of the licenses.

125. Again, though it has been submitted that he was not dealing with the Delhi region for liquor business at the relevant time of appointment of A-4 firm as wholesaler of the A-12 company, because he ceased to be Regional Head of Delhi in December, 2020 and took over as General Manager, International Brands and Key Accounts from January, 2021, but still it is an admitted fact that he signed the relevant document pertaining to grant of wholesale license of A-4 firm, though in the capacity of an attorney, and further that the investigation conducted into the case also shows that he was the person who led A-12 company in all the operations performed in respect to the appointment of wholesaler, furnishing of corporate guarantees and other activities in the liquor business under the above excise policy. Hence, even if he was not a Director or major shareholder in A-12 company, as has been argued, in terms of provisions contained U/S 70 (2) of the PMLA he is equally liable for the offence of money laundering committed in the present case, apart from the

company itself or any of its Directors, Secretaries or other Managers connected with commission of the said offence, directly or indirectly.

126. Further, likewise, the other co-accused, even he came into possession of the draft policy before its official publication and is alleged to have been instrumental in tampering with the evidence by way of destruction of his mobile phones. Some documentary evidence in the form of call detail records and Whatsapp chats etc. is also alleged to have surfaced, besides the other evidence, to show his involvement in commission of the alleged offence of money laundering as a member of the said cartel. Since he was working for A-12 manufacturing company, besides being associated with the amounts of profit earned and the corporate guarantees furnished by the said company, he is further being associated with some other amounts of proceeds of crime and the total proceeds being attributed to him are stated to be around Rs. 563 crores.

127. As far as the submission made by Ld. Senior Counsel representing this accused regarding his being a witness in the CBI case and the judgments in cases **Dilip Lalwani (Supra), Harish Fabianai (Supra)** and **Siddh Naraian Sharma (Supra) etc.** being relied upon in support of the said submission are concerned, the same are not helpful to the case of accused as the propositions of law laid down in the cases of **Padmanabhan Kishore (Supra)** and **Tahir Hussain (Supra)** being relied upon on behalf of the ED and the peculiar facts and circumstances of

the present case clearly establish the application of provisions of Sections 3 & 4 of the PMLA to the case of applicant and his connection with the activities of generation and laundering of the proceeds of crime. The judgment in case of **Sanjay Pandey (Supra)** is also not applicable for the said reasons and even the judgment in case **Siddique Kappan (Supra)** is found to be not applicable.

128. Now, coming to the contentions of all the Ld. Defence Counsels regarding grant of bail in economic offence cases and the satisfaction of condition of triple test and other principles and parameters governing the grant of bail in criminal cases, it is true that now as per the settled legal position bail cannot be denied to an accused simply on the ground that it is an economic offence case, if the accused otherwise satisfies the other conditions laid down from time to time by the Hon'ble Supreme Court as well as by the different Hon'ble High Courts, as has been held in the cases of **P. Chidambaram (Supra), Sanjay Chandra (Supra), Navendu Babbar (Supra)** and **Firoz Khan (Supra) etc.** However, in light of the judgments in cases **P. Chidambaram Vs. Directorate of Enforcement (2019) 9 SCC 24**, **Y. S. Jagan Mohan Reddy (Supra), Nimmagadda Prasad (Supra)** and **State of Bihar Vs. Amit Kumar (Supra)** etc. being relied upon on behalf of ED, the fact that an accused is involved in a case of economic offence cannot be totally ignored as the economic offences have been held to be constituting a class apart as the same tend to destroy the economic fabric of the nation. Further, the above fact assumes more importance when the accused is

found to be involved in a case of money laundering made punishable by the PMLA as this Act imposes certain restrictions on powers of the court to release an accused on bail in such a case and the accused cannot be so released on bail or set at liberty, unless the conditions contained U/S 45 of the said Act are satisfied. The prime condition contained in the said Section is that he will not be so released, where the Public Prosecutor has opposed his bail on being given an opportunity to do so, unless the court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence.

129. In the case of **Vijay Mandlal Choudhary (Supra)** being referred to and relied upon from both the sides, the Full Bench of the Hon'ble Supreme Court has upheld the constitutional validity of said conditions contained in Section 45 of the above Act, which deals with a special class of cases relating to economic offences, while making the following observations:-

> **"134. As aforementioned, similar twin conditions have been provided in several other special legislations validity whereof has been upheld by this Court being reasonable and having nexus with the purposes and objects sought to be achieved by the concerned special legislations. Besides the special legislation, even the provisions in the general law, such as 1973 Code stipulate compliance of preconditions before releasing the accused on bail. The grant of bail, even though regarded as an important right of the accused, is not a mechanical order to be passed by the Courts. The prayer for grant of bail even in respect of general offences, have to be considered on the basis of objective discernible judicial parameters as delineated by this Court from time to time, on case-to-case basis.**
>
> **135. We are conscious of the fact that in paragraph 53 of the Nikesh Tarachand Shah, the Court noted that it had struck down Section 45 of the 2002 as a whole. However, in**

paragraph 54, the declaration is only in respect of further (two) conditions for release on bail as contained in Section 45(1), being unconstitutional as the same violated Articles 14 and 21 of the Constitution. Be that as it may, nothing would remain in that observation or for that matter, the declaration as the defect in the provision [Section 45(1)], as existed then, and noticed by this Court has been cured by the Parliament by enacting amendment Act 13 of 2018 which has come into force with effect from 19.4.2018. We, therefore, confined ourselves to the challenge to the twin conditions in the provision, as it stands to this date post amendment of 2018 and which, on analysis of the decisions referred to above dealing with concerned enactments having similar twin conditions as valid, we must reject the challenge. Instead, we hold that the provision in the form of Section 45 of the 2002 Act, as applicable post amendment of 2018, is reasonable and has direct nexus with the purposes and objects sought to be achieved by the 2002 Act to combat the menace of money-laundering having transnational consequences including impacting the financial systems and sovereignty and integrity of the countries."

130. Ld. Defence Counsels representing most of the accused have also referred to the judgments in cases of **Ranjitsing Brahmajeetsing Sharma (Supra)** and **Anil Vasantro Deshmukh (Supra)** in support of their argument that the said conditions and Section do not absolutely bar the release of an accused on bail in a case under the PMLA and bail still can be granted to an accused under the said Act if upon reasonable construction of provisions contained under the said Section, the court comes to a satisfaction that there are reasonable grounds to believe that he is not guilty of such an offence and that he is not likely to commit such an offence while on bail. However, though the propositions of law laid down in above cases being relied upon by Ld. Defence Counsels are not disputed, but in considered opinion of this court, the material which has been

placed before this court by the prosecution against all the above accused makes this court to arrive at a conclusion that even if the above conditions are reasonably construed, still the court is not able to reach at the satisfaction required by the above Section to the effect that there are no reasonable grounds for believing that the applicants herein are not guilty of the offence of money laundering defined by Section 3 of the said Act.

131. Section 3 of the PMLA, which defines the offence of money laundering, has been drafted/clothed in a very wide form and it takes within its sweep all processes or activities which are connected with acquisition, possession, concealment or use etc. of the proceeds of crime by an accused, whether directly or indirectly. For easy reference, the provisions contained under the above said Section are being reproduced herein below:-

> **"3. Offence of money-laundering.—Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.**
>
> **Explanation.- For the removal of doubts, it is hereby clarified that,-**
>
> **(i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:-**
>
> **(a) concealment; or**
> **(b) possession; or**
> **(c) acquisition; or**
> **(d) use; or**
> **(e) projecting as untainted property; or**
> **(f) claiming as untainted property,**
>
> **in any manner whatsoever;**

> **(ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.”**

Thus, as is clear from the above, this Section makes it an offence if any person directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property. It is also clear from the above discussion that though the offence of money laundering as contained under this Section takes it colour from the scheduled offences case and it is also inter-linked to that, but it is not at all necessary for involvement of a person in a case under the PMLA that such a person should also be an accused in the scheduled offences case and it is so because this offence in that context has been considered and held to be a stand alone and independent offence. The only requirement for applicability of Section 3 of the PMLA is commission of a predicate offence and generation of proceeds of crime out of such offence and it is not at all necessary or required that only the persons who are accused or involved in the scheduled offences case can be made accused for the offence of money laundering under the PMLA.

132. Ld. Special Counsel and Ld. SPP for the ED have also rightly referred to and relied upon the judgment of the Hon'ble Bombay High Court in the case **Radha Mohan Lakhotia**

(Supra). Though, this judgment is found to have been given with regard to applicability of provisions of Section 5 of the PMLA dealing with attachment of property involved in money laundering, but their Lordships have also made certain relevant observations with regard to the scope and interpretation of Section 3 of the said Act, which defines the offence of money laundering. Some of these relevant observations are being reproduced herein below:-

> **"13.......... We are conscious of the fact that penal provisions should be strictly construed. At the same time, we cannot overlook the language of section 5 as applicable at the relevant time. In our opinion, clause (a) refers to "any person"- whether he has been charged of having committed a scheduled offence "or otherwise". The only requirement is that that person should be in possession of any proceeds of crime. The governing factor is possession of any proceeds of crime by a person. Taking any other view may defeat the legislative intent. In as much as, a person who has been charged of having committed a scheduled offence can successfully defeat the object of the enactment of attachment and confiscation of the proceeds of crime by transferring it to some other person who is not so involved with him in commission of stated scheduled offence. In our opinion, on fair reading of section 5 (1) read with section 8 of the Act, it postulates two categories of persons against whom action of attachment of property can be proceeded with. The first category is any person who is in possession of any proceeds of crime. A person falling in this category need not be a person, charged of having committed a scheduled offence. The second category is of a person who has been charged of having committed a scheduled offence. Besides, being charged of having committed a scheduled offence, that person is found to be in possession of any proceeds of crime. In either case, it is open to take recourse to section 5 of the Act if the specified Authority has reason to believe and reason for such belief is recorded in writing that the proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime. …..............................The same deal with the offence of money-laundering and punishment for money-laundering respectively. Both these provisions, even on strict construction, plainly indicate that the person to be proceeded for this offence need not necessarily be charged of having committed**

a scheduled offence. For, the expression used is "whosoever". The offence of money-laundering under section 3 of the Act of 2002 is an independent offence. It is committed if "any person" directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property."

Hence, in view of above, the argument advanced on behalf of accused P. Sarath Chandra Reddy and Benoy Babu that they are not accused in the scheduled offences case of CBI is without any merits.

133. It has also been argued on behalf of the accused that FIR in the scheduled offences case of CBI was registered for commission of offences U/S 120B/477A IPC and Section 7 of the PC Act and Section 7 of the PC Act is not attracted in respect to the accused persons as none of them is a public servant and Section 7 of the PC Act comes into picture only when a public servant obtains or accepts etc. some undue advantage from any other person for the purposes and under circumstances mentioned in the said Section. Further, it is also their contention that Section 477A IPC dealing with offence of falsification of accounts is not a scheduled offence under the PMLA and hence, all the accused are entitled to be released on bail in the present case. The chargesheet in the said case of CBI is now found to have been filed U/Ss 120B r/w 477A IPC and Sections 7, 7A & 8 of the PC Act.

134. However, the above submissions of Ld. Defence Counsels are also found not sustainable. As stated above, Section 7 of the

PC Act is attracted when any public servant obtains, accepts or attempts to obtain or accept any kind of undue advantage or bribe in connection with performance of his duties. Section 7A of the said Act makes punishable an act of acceptance or obtaining etc. of any undue advantage or bribe by a person from another for the purposes of inducement of a public servant, by corrupt or illegal means, to influence or make him to do or abstain from doing any acts stated in the said Section and Section 8 of the said Act also makes punishable certain acts relating to bribing of a public servant. However, it cannot be ignored that these Sections of the PC Act have been invoked in the present case with reference to Section 120B IPC, which makes punishable a criminal conspiracy defined by Section 120A of the said Code. A criminal conspiracy is defined U/S 120A IPC as an agreement between two or more persons to do or cause to be done an illegal act or an act which is not illegal by illegal means and as per proviso attached to the said Section, an agreement to commit an offence shall by itself amount to a criminal conspiracy and it will not at all be necessary that any overt act is done by any of the conspirators in pursuance of the said agreement. Thus, an agreement to commit an offence is *per-se* made punishable by Section 120B IPC, irrespective of any overt act to be committed by any of the conspirators. In this regard, the judgments in cases of **Sudhir Shantilal Mehta (Supra), P. Sugathan & Anr. (Supra), Yogesh @ Sachin Jagdish Joshi (Supra) and Ashan Ahmad Mirza & Ors. (Supra) etc.** are also found have been relied upon on behalf of the ED.

135. Since in the present case, the allegations in the scheduled offences case were that a criminal conspiracy was hatched between the accused persons and various others to pay advance kickbacks to the politicians of AAP and other public servants in Delhi for keeping certain loopholes and lacunae in the above excise policy to favour some stakeholders or conspirators in the liquor business and to repay or recoup the said kickbacks to the said stakeholders from South in a planned and organized manner, through different modes and channels, all the applicants herein can or could have been prosecuted in the scheduled offences case even if none of them happens to be a public servant as they all are alleged to have been a part of the said conspiracy. Thus, when they can be prosecuted in the scheduled offences case with the help of Section 120B IPC, it becomes immaterial as to whether or not anybody from them happens to be a public servant or not or has committed any of the offences under the PC Act in his own individual capacity. Moreover, as far as the accused Vijay Nair is concerned, the provisions of Section 7A of the PC Act are also independently attracted qua him because as per the allegations made in the present case, he had obtained or accepted the above kickback amount to induce the public servants, by corrupt or illegal means etc., to do or omit from doing certain acts by the public servants connected with discharge of their official duties, in a manner so as to favour the South liquor lobby and other members of the above criminal conspiracy.

136. Moreover, Section 120B IPC is also one of the offences included in Schedule of the PMLA in its individual capacity and

hence, even irrespective of commission of any offence under the provisions or applicability of the PC Act, one can be prosecuted or made an accused for commission of the offence of money-laundering defined by Section 3 and made punishable by Section 4 of the PMLA, if Section 120B IPC is there in the scheduled offences case and no other offence charged or attracted in the said case falls in the category of scheduled offences. Since in this case the conspiracy which is alleged to have been hatched between the accused and other persons was to bribe the Dy. Chief Minister & Excise Minister of GNCTD and other politicians and public servants holding public offices, the provisions of Section 3 & 4 of the PMLA get attracted in the present case of ED, even in the absence of applicability of any of the other scheduled offences in the CBI case, as the above conspiracy between accused was to commit a crime or offence and it was *per-se* punishable U/S 120B IPC, irrespective of any overt act to be done or performed by any of members of the said conspiracy. To this effect, Ld. Special Counsel and Ld. SPP for ED have rightly relied upon judgment of the Hon'ble High Court in the case of **Tahir Hussain (Supra)** and the relevant observations made by her Lordship therein are being reproduced as under:-

> **'53. Thus, the contention of the petitioner that what the petitioner was allegedly involved in, can at the most be considered to be a GST violation and that a GST violation may be punishable under the enactment dealing with GST violation and under the Income Tax Act, 1961 but that the same would not amount to the commission of any scheduled offence in terms of the Scheduled Part A & B in terms of Section 2(x) of the PMLA, 2002 and thus, no offence described under Section 3 of the PMLA, 2002 punishable under Section 4 thereof, can be held to have been prima facie committed,- cannot be accepted.**

54. The verdict of the Hon'ble Supreme Court in Vijay Madanlal Choudhary &Ors. (supra) vide paragraph 269 thereof, categorically lays down that the offence of money laundering in terms of Section 3 of the PMLA, 2002 is an independent offence regarding the process or activity connected with the proceeds of crime which have been derived or obtained as a result of criminal activity relating to or in relation to a scheduled offence and the process or activity can be in any form- be it one of concealment , possession, acquisition, use of proceeds of crime, in as much as projecting it as untainted money or claiming it to be so and thus, involvement in any one of such process or activity connected with the proceeds of crime would constitute the offence of money laundering and this offence otherwise has nothing to do with the criminal activity relating to a scheduled offence- except the proceeds of crime derived or obtained as a result of that crime.

55. Section 3 of the PMLA, 2002 provides as follows:-

> **"3. Offence of money-laundering.--Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of offence of money-laundering.**

56. Vide paragraph 270 of the verdict of the Hon‟ble Supreme Court in Vijay Madanlal Choudhary &Ors. (supra), it had been observed to the effect:-

> **"270. Needless to mention that such process or activity can be indulged in only after the property is derived or obtained as a result of criminal activity (a scheduled offence). It would be an offence of money-laundering to indulge in or to assist or being party to the process or activity connected with the proceeds of crime; and such process or activity in a given fact situation may be a continuing offence, irrespective of the date and time of commission of the scheduled offence. In other words, the criminal activity may have been committed before the same had been notified as scheduled offence for the purpose of the 2002 Act, but if a person has indulged in or continues to indulge directly or indirectly in dealing with proceeds of crime, derived or obtained from such criminal activity even after it has been notified as scheduled offence, may be liable to be prosecuted for offence of money-laundering under the 2002 Act -- for continuing to possess or conceal the proceeds of crime or retaining possession thereof or uses it in trenches until fully**

exhausted. The offence of money-laundering is not dependent on or linked to the date on which the scheduled offence or if we may say so the predicate offence has been committed. The relevant date is the date on which the person indulges in the process or activity connected with such proceeds of crime. These ingredients are intrinsic in the original provision (Section 3, as amended until 2013 and were in force till 31.7.2019); and the same has been merely explained and clarified by way of Explanation vide Finance (No. 2) Act, 2019. Thus understood, inclusion of Clause (ii) in Explanation inserted in 2019 is of no consequence as it does not alter or enlarge the scope of Section 3 at all."

57. The observations in paragraph 271 of the said verdict read to the effect:-

"271. As mentioned earlier, the rudimentary understanding of 'money-laundering' is that there are three generally accepted stages to money-laundering, they are:

(a) Placement : which is to move the funds from direct association of the crime.

(b) Layering : which is disguising the trail to foil pursuit.

(c) Integration : which is making the money available to the criminal from what seem to be legitimate sources. (emphasis supplied)"

58. Thus, the alleged commission of a conspiracy even for the purpose of GST violation in order to avail cash i.e. money through the process of the criminal conspiracy for use of the said proceeds i.e. the commission of the crime to commit riots in the North- Eastern part of Delhi between 23/25.02.2020 and to cause unrest, falls prima facie within the ambit of commission of a scheduled offence, in as much as, the offence for commission of a criminal conspiracy is a standalone offence and a scheduled offence in terms of Section 2(y) of the PMLA, 2002. The three accepted stages of money laundering as set forth in paragraph 271 of the verdict in Vijay Madanlal Choudhary & Ors. (supra) are clearly brought forth in the instant case.'

The above propositions also appropriately answer the submission of Ld. Defence Counsels to the effect that the liability of accused persons out of the alleged acts is only under the Taxation or Excise Laws and not under the PMLA.

137. Further, a reference in this regard can also be made to judgment of the Hon'ble Supreme Court in the case of **Padmanabhan Kishore (Supra)**, being relied upon on behalf of the ED, wherein the amount of bride in hand or possession of the bribe giver was considered to be tainted money and proceeds of crime for the purposes of the offence of money laundering under the PMLA even before the said amount was actually paid by the bribe giver to the public servant involved in the said case as their Lordships were of the view that if the said amount was brought by the bribe giver with an intent to handover the same as bribe to the public servant, then it was certainly a proceed of crime and Section 3 of the PMLA got attracted. The relevant observations made by their Lordships in the above said case are as under:-

> **"16. It is true that so long as the amount is in the hands of a bribe giver, and till it does not get impressed with the requisite intent and is actually handed over as a bribe, it would definitely be untainted money. If the money is handed over without such intent, it would be a mere entrustment. If it is thereafter appropriated by the public servant, the offence would be of misappropriation or species thereof but certainly not of bribe. The crucial part therefore is the requisite intent to hand over the amount as bribe and normally such intent must necessarily be antecedent or prior to the moment the amount is handed over. Thus, the requisite intent would always be at the core before the amount is handed over. Such intent having been entertained well before the amount is actually handed over, the person concerned would certainly be involved in the process or activity connected with "proceeds of crime" including inter alia, the aspects of possession or acquisition thereof. By handing over money with the intent of giving bribe, such person will be assisting or will knowingly be a party to an activity connected with the proceeds of crime. Without such active participation on part of the person concerned, the money would not assume the character of being proceeds of crime. The relevant expressions from Section 3 of the PML Act are thus wide enough to cover the role played by such person."**

138. Though, it is also the contention of Ld. Defence Counsels that there is no evidence on record to show any meeting of minds or conspiracy hatched between the accused persons to pay the kickbacks and to recoup it, but this submission is unacceptable in light of the oral and documentary evidence which has been brought on record by the ED against the accused persons and enough evidence is there to infer the existence of such a criminal conspiracy between the accused. The judgments in cases of **K. Narayana Rao (Supra), Dr. Anup Kumar Srivastava (Supra) and Uttamchand Bohra (Supra)** being relied upon by Ld. Counsel for accused Benoy Babu are of no help to the case of accused persons as the facts and circumstances brought on record do not show it to be a case of suspicion or doubt only and rather, a reasonable and legitimate inference about existence of the above criminal conspiracy between the accused can be drawn therefrom by this court.

139. Further, though it has also been argued by Ld. Counsels for the accused that mere statements of accused and witnesses made U/S 50 of the PMLA cannot be relied upon to deny bail to the accused persons, but as already discussed, the statements U/S 50 of the said Act have been held to be admissible under the law and also to be having evidentiary value and even in the case of **Vijay Madanlal Choudhary (Supra)**, the constitutional validity of the said statements has been reiterated and affirmed, while holding that the same cannot be equated with statements U/S 67 of the NDPS Act, which in cases investigated by the police are recorded

by the police officers and thus, are hit by provisions contained U/Ss 24 to 26 of the Indian Evidence Act and the law laid down in the case of **Tofan Singh Vs. State of Tamil Nadu, 2020 SCC OnLine SC 882.** Ld. Special Counsel and Ld. SPP for ED in this context have also referred to the observations made by the Full Bench of the Hon'ble Supreme Court in case of **Rohit Tandon (Supra)** in support of their submission that such statements of witnesses and accused, which may not be hit by Article 20 (3) of the Constitution, have to be considered by this court as it is for the purposes of disposal of the bail pleas of the accused. The said observations are being reproduced as under:-

> **“31. …..... The prosecution is relying on statements of 26 witnesses/accused already recorded, out of which 7 were considered by the Delhi High Court. These statements are admissible in evidence, in view of Section 50 of the Act of 2002. The same makes out a formidable case about the involvement of the appellant in commission of a serious offence of money-laundering. It is, therefore, not possible for us to record satisfaction that there are reasonable grounds for believing that the appellant is not guilty of such offence.”**

140. Hence, in view of the above submission made on behalf of ED and the observations made in case of **Rohit Tandon (Supra)**, the statements of witnesses made U/S 50 of the PMLA and even the statements of accused made prior to their arrest have to be seen and considered by this court for deciding the question of grant of bail, even if it may not be subsequently feasible to base a conviction simply on the basis of such statements. Moreover, in the instant case, apart from the above statements of accused and witnesses, some documentary evidence in the form of and including Whatsapp chats, cell locations, record of bank transactions relating to transfer etc. of proceeds of crime, hotel

meetings held between the accused at different places and some digital data and other records of the entities belonging to the accused persons is also there on record to substantiate the contents of these statements to a considerable extent. Besides the above, the statement of approver Sh. Dinesh Arora in the scheduled offences case is another piece of incriminating evidence throwing light upon the entire *modus-operandi* adopted by the accused persons for commission of the said offence and even this statement of the approver to some extent tends to corroborate the other oral and documentary evidence which has been collected and placed on record by the investigating agency. The judgments in cases of **Mrinal Das & Ors. (Supra)** and **Ravinder Singh (Supra)** being relied upon on behalf of accused Abhishek Boinpally on this issue are found to be not of any help to the case of accused persons. Therefore, even this contention of Ld. Defence Counsels is not found legally tenable.

141. Further, though this court observes that the individual proceeds of crime being attributed to the accused persons have been shown by the ED on a much higher side and even the amount of losses allegedly suffered by the Government exchequer is alleged to be highly exaggerated and a major part thereof may not be attributable to the conduct of accused persons, but the same cannot be made a ground to enlarge the applicants on bail in this case under the PMLA where serious allegations are found to have been levelled against them of being part of a criminal conspiracy to bribe the public servants in politics or otherwise and holding different offices and positions in Delhi for

causing undue advantages or favours to certain persons in liquor lobby against the payment of huge kickbacks in advance.

142. Moreover, after going through the rival contentions advanced from both the sides and the material placed on record, this court is also of the view that the accused persons do not even satisfy the triple test as laid down in the case of **P. Chidambaram Vs. Directorate of Enforcement (Supra)** being relied upon by Ld. Defence Counsels because though it can be seen from their personal and family history given on record that none of them is a flight risk and further even though the apprehensions being expressed by prosecution regarding the influencing of witnesses by them may not be true and can otherwise also be taken care of by imposing some conditions, but keeping in view their conduct as reflected on record it will not be possible for this court to hold that they will make no attempt to tamper with the evidence of this case in case they are permanently released on bail as serious allegations of tampering with evidence by way of destruction or change of their mobile phones various times have already been made by the ED against them and further even the specific allegations of destruction of digital data have also been levelled against the accused P. Sarath Chandra Reddy.

143. As already discussed, the provisions of Section 167 (2) Cr.P.C. are also found to have been referred to, along with the provisions of Section 439 Cr.P.C., during the course of arguments advanced on behalf of accused Sameer Mahandru for his bail and

submissions to this effect were also made even by some of the other counsels that the above prosecution complaints filed by the ED cannot be said to have been filed on conclusion of investigation as investigation on various material aspects has yet been kept pending. It has, thus, been argued that the above prosecution complaints can only be termed as piecemeal complaints or chargesheets and hence, the accused even deserves to be released on bail under the provisions of Section 167(2) Cr.P.C., besides on merits of the case.

144. However, in considered opinion of this court, the oral and documentary evidence which has already been discussed above and further which has been placed on record along with the two prosecution complaints filed before this court by the ED till date, nowhere warrants such an inference to be drawn therefrom and thus, the prosecution complaints filed against the accused persons by the ED cannot be held to be piecemeal complaints or chargesheets as the investigation qua all of them stands already completed and even specific submissions to this effect are found made in the said complaints, though some further investigation regarding role of other persons involved in commission of alleged offences and to trace out the complete trail of ill-gotten money is still kept pending.

145. Though, apart from the judgments discussed above, some other judgments in support of the rival submissions advanced from both the sides have also been relied upon, but the same are not found to be applicable in view of the above discussion and

the peculiar facts and circumstances of the case.

146. Thus, keeping in view the totality of facts and circumstances and the above discussion, this court is of the considered opinion that none of the applicants/accused deserves to be released on bail in this case at this stage of proceedings as the allegations made against them are quite serious and relate to commission of an economic offence of money-laundering defined by Section 3 and made punishable by Section 4 of the PMLA. Hence, their bail applications are being dismissed.

147. A copy of this order be given dasti to all the parties. However, it is made clear that nothing contained herein shall tantamount to the expression of any opinion on merits of the case.

Announced in open court
on 16.02.2023

(M. K. NAGPAL)
Special Judge (PC Act),
CBI-09 (MPs/MLAs Cases),
RADC, New Delhi :16.02.2023