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

Date of decision: 30th May, 2023

+ BAIL APPLN. 3611/2022

RAMESH MANGLANI

..... Petitioner

Through: Mr. Siddharth Aggarwal, Senior Advocate with Mr. Arjun Dewan, Ms. Sowjhanya Shankaran and Mr. Akash Arora, Advocates.

versus

DIRECTORATE OF ENFORCEMENT

..... Respondent

Through: Mr. Zoheb Hossain, Special Counsel with Mr. Vivek Gumani and Mr. Baibhav, Advocates

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI J.

Introduction

By way of the present petition under section 439 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for short) read with section 45 of the Prevention of Money Laundering Act, 2002 ('PMLA' for short), the petitioner seeks regular bail in proceedings arising from ECIR No. DLZO-II/35/2020/721 dated 24.09.2020 registered by the Enforcement Directorate ('ED' for short) under Sections 3 and 4 of the PMLA.

2. The matter arises from FIR No. 1/2020 dated 01.01.2020 registered at P.S. Economic Offences Wing ('EOW' for short), in respect of the predicate offences alleged under sections 409, 467, 468, 471, 477A and 120B of the Indian Penal Code, 1860 ('IPC' for short). The FIR



was registered on the complaint of one Mr. Vinod Rajagopalan in his capacity as the Authorised Signatory of M/s. Malav Holdings Private Limited ('MHL' for short), alleging that the accused persons had siphoned-off an amount of Rs.18.88 crores from one M/s. Ligare Aviation Limited ('Ligare Aviation' for short) in 2014-15 on the basis of fake/fictitious invoices.

3. The complainant company is stated to be aggrieved since it is an indirect shareholder in Ligare Aviation, in that the complainant company statedly holds 50% shares in RHC Holding Pvt. Ltd., which in turn holds a 30% stake in Ligare Aviation. Further, RHC Holding Pvt. Ltd. also holds 67.27% in RHC Finance Pvt. Ltd., which in turn holds the rest 70% in Ligare Aviation.
4. The petitioner, who is admittedly a resident of Dubai, arrived in India on 02.04.2022, when he was intimated by the immigration authorities about a look-out-circular issued against him. The petitioner was summonsed by the ED on 05.04.2022 to join investigation. He joined investigation on 07.04.2022. The petitioner was subsequently arrested by the investigating agency on 03.08.2022 from his residence in Mumbai.
5. The petitioner had previously filed a petition seeking bail before the learned trial court, which came to be dismissed on 31.08.2022. Thereafter, the petitioner filed a petition bearing Bail Application No. 2658/2022 before this court, which was withdrawn by the petitioner *vide* order dated 13.10.2022 with liberty to file for the same relief before the learned ASJ, Patiala House Courts, New Delhi since the respondent had filed the prosecution complaint before that court on



01.10.2022. A second bail application filed before the learned ASJ was also dismissed on 26.11.2022.

Brief Facts

6. A brief conspectus of the facts and allegations leading-up to the filing of the present bail petition is as follows :
 - 6.1. As per the FIR, the accused persons hatched a conspiracy “*to cheat the complainant company*” by siphoning-off funds from the bank accounts of Ligare Aviation, causing a loss to the tune of Rs.18.88 crores to the complainant company.
 - 6.2. The FIR was registered against 16 individuals and companies, *inter-alia* against one Sanjay Godhwani (former Managing Director of Ligare Aviation) and his close associate Sunil Godhwani, and a company by name M/s. Phoenix International FZC (‘Phoenix FZC’ for short), with which company, the petitioner is alleged to be connected.
 - 6.3. The petitioner however, was not named as an accused in the FIR.
 - 6.4. Sections 467, 471 and 120B IPC mentioned in the FIR are offences under Part-A of the Schedule to the PMLA; and accordingly, ECIR bearing No. ECIR/DLZO-II/35/2020/721 was registered on 24.09.2020, which culminated in the filing of prosecution complaint dated 01.10.2022.
 - 6.5. The petitioner was also not named as an accused in the ECIR; but stands accused in the prosecution complaint as Accused No. 5.



- 6.6. The allegation against the petitioner in the present case is in relation to his role in Phoenix FZC, which company was incorporated on 08.04.2013 with three Directors and Shareholders, viz. Rajesh Bhatia, Kunal Desai and Sandeepkumar Vipinchandra Maniar having 25%, 50% and 25% equity shareholding respectively. The substratum of the allegation is that the petitioner exercised ultimate control over Phoenix FZC, in which company his wife, Darshana Manglani, was appointed as the General Manager. It is further the allegation that subsequently, Darshana Manglani became the owner of Phoenix FZC, whereupon the company became M/s. Phoenix International FZE ('Phoenix FZE' for short).
- 6.7. Shorn of unnecessary detail, based on its investigation, the ED has alleged the following against Phoenix FZC; and it is alleged in the prosecution complaint that since the petitioner exercised ultimate control over Phoenix FZC, he is implicated in the offending transactions that are subject matter of the complaint:

“21.6 Phoenix International FZC: It is established that M/s Phoenix International FZC had assisted and conduit for laundering USD 1.3 million. It transferred USD 1.3 million to Eximius Business Middle East FZC which ultimately vested with Sanjay Godhwani and Sandeep Bhatt. It siphoned off money to the tune of Rs.1.85 million USD which was derived out of the criminal activities relating to scheduled offence and assisted in projecting it as untainted on the strength of fictitious invoices knowingly fully well that they neither had the capability nor did they supply such product/services. Therefore, M/s Phoenix International is involved in assisting and utilization of proceeds of crime generated out of criminal activity and its projection as untainted property, thereby has committed the offence of money laundering as defined under



*Section 3 of the PMLA,2002 and the accused **Phoenix International** is liable to be prosecuted and punished under Section 4 read with Section 70 of the act and attached property, if any, involved in the money laundering are liable to be confiscated in terms of Section 8(5) of the PMLA,2002.”*

(emphasis in original)

The Allegedly Offending Transactions

7. The allegations against the petitioner in the prosecution complaint are founded on certain allegedly offending transactions, which may be summarised as follows :
 - 7.1. On 04.12.2014 an amount of USD 954,751.79 was received by Phoenix FZC from one M/s. Metal and Steel Solutions FZC. The money was received against an invoice bearing No. PHX/001/2014-15 dated 03.12.2014 raised towards “*Supply of Spares and Equipment for HS – 125*” for the amount of USD 960,000.00.
 - 7.2. On 24/25.12.2014, an amount of USD 599,995.00 was received by Phoenix FZC from Ligare Aviation against an Invoice bearing No. Phoenix/001/2014 dated 22.12.2014 towards “*slot co-ordination and Easy II kit procurement for Falcon 7X Easy 2 Registration No. VT-RGX*” for the amount of USD 600,000.00.
 - 7.3. On 13.01.2015, an amount of USD 299,995.00 was received by Phoenix FZC from one M/s. Eximius Business Aviation Pvt. Ltd., against which no invoice has been recovered.
 - 7.4. Subsequently, a sum of USD 1,300,000.00 was transferred by Phoenix FZC to M/s. Eximius Business Middle East FZC in the following three tranches:



- i. On 11.01.2015, an amount of USD 300,000.00 was transferred, against which no invoice has been recovered;
- ii. On 14.01.2015, an amount of USD 500,000.00 was transferred against an invoice dated 12.01.2015 for USD 500,000.00 towards “*Management Fees For Consultancy Services Provided*”; and
- iii. On 19.01.2015, USD 500,000.00 was transferred against an invoice dated 14.01.2015 for USD 500,000.00 towards “*Management Fees For Consultancy Services Provided*”

7.5. The allegedly offending transactions are summarised in a table at page 84 of the prosecution complaint, which reads as follows:

| <i>Date of transaction</i> | <i>Amount</i> | <i>Bank account details of remitter</i> | <i>Bank account details of beneficiary</i> |
|----------------------------|----------------|--|---|
| 24.12.2014 | USD 599,995 | Ligare Aviation Limited Account no. 13458640000054, HDFC Bank, India | Phoenix International FZC Account no. 019100017356, Mashreq Bank, Dubai, UAE |
| 04.12.2014 | USD 954,751 | Metal & steel Solution FZC Account no. 1102565580901 Bank name – Emirates NBD Bank PJSC, United Arab Emirates | Phoenix International FZC Account no. 019100017356, Mashreq Bank, Dubai, UAE |
| 13.01.2015 | USD 299,995 | Eximius Business Aviation Pvt Ltd Account no. 16652560000463, HDFC Bank, India | Phoenix International FZC Account no. 019100017356, Mashreq Bank, Dubai, UAE |



| | | | |
|------------|----------------|---|---|
| 11.01.2015 | USD 300,000 | Phoenix International FZC Account no. 019100017356, Mashreq Bank, Dubai, UAE | Eximius Business Middle East FZC AE5202600010249561661 02 Bank name – Emirates NBD Bank PJSC, Beniyas Street, Deira (SWIFT EBILAEAD) |
| 14.01.2015 | USD 500,000 | | |
| 19.01.2015 | USD 500,000 | | |

Role Ascribed to the Petitioner

8. The role ascribed to the petitioner in the prosecution complaint is extracted below :

“21.1. Ramesh Manglani:

- *Investigation so far has established that the accused Ramesh Manglani has complete control over Phoenix International FZC and was handling all the financial transactions and banking transactions as Power of Attorney. He was instrumental in executing the fraudulent transactions by way of fake and false invoices and submitting the same to banks.*
- *Various transactions have taken place in the bank account of Phoenix International FZC against services of repair and maintenance and supply of materials/equipment/spares for any aircraft which is not in line with the business activity of Phoenix International FZC which he knowingly entered into despite being completely aware that he was neither a vendor nor equipped and entitled to carry such services. **Thus, he actively assisted and knowingly aided in being a partner in siphoning off money from Ligare Group of companies.***
- *He feigned ignorance of the transactions and deliberately tried to cover the identity of the individuals involved and thus delayed the investigation and **concealed the nature of transactions carried out by Sanjay Godhwani and his close associates.***
- *Further, it has been established that Ramesh Manglani not only received proceeds of crime generated by Sanjay Godhwani and his*



*close associates out of criminal activities into his company's bank account but also allowed his company's bank accounts to be used for money laundering activities by Sanjay Godhwani and his close associates. Therefore, **Ramesh Manglani has knowingly assisted in acquisition, possession, concealment, use of Proceeds of Crime and projected the proceeds of crime as untainted thereby, Ramesh Manglani has committed the offence of money laundering under section of PMLA, 2002 punishable under section 4 of the said Act.***"

(emphasis supplied)

9. The court has heard Mr. Siddharth Aggarwal, learned senior counsel appearing for the petitioner and Mr. Zoheb Hossain, learned counsel for the ED at length.

Submissions on behalf of the Petitioner

10. The main thrust of the petitioner's submission is that the petitioner exercised no control over the affairs of Phoenix FZC; and that he was neither an employee, nor did he hold any key position in the management of the company. Moreover, it is contended that the petitioner had no knowledge as regards the nature of the transactions and was only functioning as an 'Authorised Signatory' to operate the bank account of Phoenix FZC, and was acting on instructions received from Sahil Mehta and Sohan Mehta, who were his family friends.
11. To substantiate this submission, attention has been drawn to the structure of Phoenix FZC, which was incorporated in the UAE on 08.04.2013 as a Free Zone Company (FZC) by Sahil Mehta and Sohan Mehta, who are the owners of the Sovika Group along with three *de-jure* directors and shareholders, viz. Rajesh Bhatia, Kunal



Desai and Sandeepkumar Vipinchandra Maniar, who (latter) are stated to have had prior connection with Sahil Mehta/Sovika Group. It is argued, that Sahil Mehta closely managed the affairs of Phoenix FZC.

12. It is further submitted that the petitioner's wife was appointed as the General Manager of Phoenix FZC at the time of establishing the company, since a 'resident' of the UAE is required for purposes of setting-up a company in that country. The petitioner was only appointed as the Authorised Signatory for managing the banking operations of Phoenix FZC as he was residing in the UAE. However, it is argued that the petitioner was never involved in the affairs of Phoenix FZC, other than executing banking transactions through its bank account on instructions of the persons mentioned above.
13. It is also submitted that the petitioner's wife was not the owner of the company - Phoenix FZC - at the time when the allegedly offending transactions took place, and she only became the owner on 17.02.2015, whereupon the company became Phoenix FZE.
14. It is further pointed-out that it is not the ED's case that the petitioner was in possession of any 'proceeds of crime'. The offending transactions took place between December 2014 and January 2015; and the petitioner was only involved to the limited extent of executing banking transactions through the company's bank account, acting as its Authorised Signatory.
15. With respect to the first allegedly offending transaction whereby an amount of USD 599,995.00 was paid by Ligare Aviation to Phoenix FZC, which transaction was made on the basis of a statedly false Invoice bearing No. Phoenix/001/2014 dated 22.12.2014, the



petitioner submits that the said invoice was never issued by the petitioner but by Sahil Mehta.

16. In support of the above, attention is drawn to the petitioner's statements dated 07.04.2022 and 19.05.2022 recorded by the ED under section 50 of the PMLA, in which the petitioner has frankly stated that the said invoice was false. It is submitted that in fact, the ED only came to know that the invoice was bogus and false by reason of statement dated 07.04.2022 made by the petitioner before the investigating agency. Furthermore, attention is drawn to Sahil Mehta's statement dated 28.06.2022, wherein he has clearly said that the invoice in question was prepared by Sandeep Bhatt and Sanjay Godhwani and the invoice was sent by him to the petitioner under instructions of the aforementioned two persons. More importantly, Sahil Mehta has also admitted that *his signature*, as appearing on the invoice, was forged by Sanjay Godhwani or Sandeep Bhatt. It is thus the submission, that evidently, the petitioner was not the person who prepared the said bogus invoice; and that Sahil Mehta was the person who was managing the transactions of Phoenix FZC.
17. Additionally, the petitioner buttresses the aforesaid submission by placing on record orders dated 10.11.2022 and 14.11.2022 made by the learned ASJ, wherein the court records that when it queried the I.O. as to who signed the questioned invoices, the I.O. stated that "*he does not know the name of who signed the invoices*".
18. Apropos the second allegedly offending transaction stated to have been carried-out on the basis of Invoice No. PHX/001/2014-15 dated 03.12.2014, pursuant to which the amount of USD 954,751.79 was transferred from M/s. Metal and Steel Solutions FZC to Phoenix FZC,



it is submitted that this invoice was also issued on instructions of Sahil Mehta and that the petitioner was not involved in issuing the same.

19. In this regard, attention is drawn to e-mail dated 01.12.2014, by which Sahil Mehta had asked one Iqlaque Khan to get M/s. Metal and Steel Solutions FZC to transfer USD 300,000.00 to one M/s. Tumas Group Finance Company Limited and USD 960,000.00 to Phoenix FZC on an urgent basis. Attention is further drawn to statements dated 15.06.2022, 16.06.2022 and 13.09.2022 made by Sunil Mangelal Aggarwal (who was a director of M/s. Metal and Steel Solutions FZC), wherein he has unequivocally confirmed that he transferred the sum of USD 960,000.00 to Phoenix FZC on instructions of Iqlaque Khan and against an invoice received from him; which was the invoice earlier received from Sahil Mehta. It is argued that this shows that the petitioner had no role to play in the issuance of that invoice. Moreover, it is submitted, that the said transaction was a local transaction within the UAE, as both the entities involved are based in Dubai. Also, it is contended that the transaction has no relevance to the amounts received by Phoenix FZC from Ligare Aviation, since it is between M/s. Metal and Steel Solutions and Phoenix FZC.
20. It is also pointed-out that in statement dated 12.09.2022 made by Sanjay Godhwani, he categorically states that Sandeep Bhatt was the person co-ordinating the transactions between Ligare Aviation, M/s. Metal and Steel Solution FZC and Phoenix FZC.
21. The third allegedly offending transaction is the receipt of USD 300,000.00 by Phoenix FZC from M/s. Exemius Business Aviation Ltd. and payment of USD 1,300,000.00 by Phoenix FZC in three



tranches of USD 300,000.00, USD 500,000.00 and USD 500,000.00 to M/s. Exemius Business Middle East FZC. It is submitted that all these transactions were done by the petitioner on instructions of Sahil Mehta. To support this submission, the petitioner has placed reliance on e-mails dated 09.01.2015, 14.01.2015 and 16.01.2105 sent by Sahil Mehta to the petitioner, from which it is seen that Sahil Mehta had instructed the petitioner to carry-out the abovementioned outward transactions.

22. Pertinently, is submitted that no invoice has been recovered for the inward transaction of USD 300,000.00 from M/s. Eximius Business Aviation Ltd.
23. It is also pointed-out that in reply to e-mail dated 09.01.2015 received from Sahil Mehta, instructing the petitioner to transfer the sum of USD 300,000.00, the petitioner had queried Sahil Mehta as to the purpose of the transfer, to which query however, the petitioner *did not receive a response*; and yet, *the petitioner went ahead and made the transaction in any case*. The submission is that this clearly shows that the petitioner was acting merely as an Authorised Signatory for Phoenix FZC and had no personal interest, in or control over, the transactions.
24. Furthermore, by e-mail dated 22.01.2015 sent by Sahil Mehta, he asked the petitioner to send the bank account statement of Phoenix FZC for the last 03 months, indicating the transactions made and approximate balance available in the bank account, which again shows that it was Sahil Mehta and not the petitioner who exercised control over Phoenix FZC.



25. Attention is also drawn to statements dated 09.08.2022, 15.09.2022 and 21.09.2022 made by Sahil Mehta stating that the above transactions were effectuated at the behest of Sandeep Bhatt and Sanjay Godhwani who had sought to transfer the amounts first to a local company in the UAE *viz.* Phoenix FZC; and once funds were received by Phoenix FZC, he further instructed the petitioner to make outward transfers; again upon instructions of the same persons *viz.* Sandeep Bhatt and Sanjay Godhwani.
26. Senior counsel submits that even before the questioned transactions were carried-out by the petitioner on instructions of other persons, ever since the institution of Phoenix FZC, from November 2013 till November 2014, regular instructions were issued to the petitioner *inter-alia* by the erstwhile directors and by Sahil Mehta to make transfers to various third parties on the basis of invoices shared by them.
27. Importantly, it is pointed-out that as per statements dated 04.08.2022 and 21.09.2022 made by Sahil Mehta, he has clearly stated that he had no knowledge as regards the real intentions and motives behind the incriminating transactions; and therefore, knowledge of the true nature of the transactions cannot possibly be imputed to the petitioner.
28. It is submitted that Sahil Mehta's statements dated 28.06.2022 and 27.06.2022 bear-out the fact that the co-accused persons did not even know who the petitioner was, since in those statements Sahil Mehta admits that the petitioner was never in contact with Ligare Aviation and all communications were always facilitated through him *i.e.* through Sahil Mehta.



29. It is urged that the petitioner did not issue any of the invoices, and the petitioner had neither any knowledge nor control over the inward remittances, until the amounts were actually received.
30. To make good their submission that if *mens rea* is not established by the prosecuting agency, the petitioner ought to be released on bail, learned senior counsel has drawn the attention of this court to the para 388 of the seminal decision of the Supreme Court in ***Vijay Madanlal Choudhary & Ors. vs. Union of India and Ors.***¹, which has been extracted below.
31. Senior counsel has also placed reliance on the recent judgment of the Supreme Court in ***Mohd. Muslim alias Hussain vs. State (NCT of Delhi)***², to elaborate the role of the court at the time of considering a bail petition when ‘twin-conditions’ under a special statute apply. It is argued that the court must not interpret the twin-conditions in a way that would altogether exclude the option of granting bail. It is submitted that this court is required to view the material on record in a “*broad manner*” and “*...reasonably see whether the accused’s guilt may be proved.*”
32. It is vehemently argued by senior counsel for the petitioner that other similarly placed persons who were involved in similar transactions have not even been made accused, and in any case have not been arrested by the ED. For instance, the owner of M/s. Metal and Steel Solutions, Sunil Mangelal Aggarwal, has not been made an accused but has only been cited as a witness, though M/s. Metal and Steel

¹ 2022 SCC OnLine SC 929

² 2023 SCC OnLine SC 352



Solutions had received USD 1,300,000.00 from Ligare Aviation against an invoice that has been found not to be genuine by the investigating agency. Furthermore, Sunil Mangelal Aggarwal has admitted in his statement that services mentioned in the invoice were not provided and that he actually helped in discounting LC/transferring money for a commission. Even Sahil Mehta, who was the only point-of-contact between the petitioner and other accused persons has not been named as an accused but has instead been cited only as a witness.

33. On the conduct of the ED not arresting similarly placed persons, or others involved with the offence, senior counsel has drawn the attention of this court to the judgment of the Supreme Court in *State of Madhya Pradesh vs. Sheetla Sahai and Ors.*³ to submit that the investigating agency cannot arbitrarily choose persons against whom it wishes to proceed. It is stated that such exercise of power amounts to the investigating agency arrogating to itself the court's powers under sections 306 and 307 CrPC. Attention has specifically been drawn to the following observations in this judgment :

“49. It is also interesting to notice that the prosecution had proceeded against the officials in a pick-and-choose manner. We may notice the following statements made in the counter-affidavit which had not been denied or disputed to show that not only those accused who were in office for a very short time but also those who had retired long back before the file was moved for the purpose of obtaining clearance for payment of additional amount from the Government viz. M.N. Nadkarni who worked as Chief Engineer till 24-3-1987 and S.W. Mohogaonkar, Superintending Engineer who worked till 19-6-1989 have been made accused but, on the other

³ (2009) 8 SCC 617



hand, those who were one way or the other connected with the decision viz. Shri J.R. Malhotra and Mr R.D. Nanhoria have not been proceeded at all. We fail to understand on what basis such a discrimination was made.

“50. In Soma Chakravarty [(2007) 5 SCC 403 : (2007) 2 SCC (Cri) 514], whereupon strong reliance has been placed by Mr Tulsi, this Court opined: (SCC p. 411, para 23)

“23. In a case of this nature, the learned Special Judge also should have considered the question having regard to the ‘doctrine of parity’ in mind. An accused similarly situated has not been proceeded against only because, the departmental proceedings ended in his favour. Whether an accused before him although stands on a similar footing despite he having not been departmentally proceeded against or had not been completely exonerated also required to be considered. If exoneration in a departmental proceeding is the basis for not framing a charge against an accused person who is said to be similarly situated, the question which requires a further consideration was as to whether the applicant before it was similarly situated or not and/or whether the exonerated officer in the departmental proceeding also faced same charges including the charge of being a party to the larger conspiracy.”

(emphasis supplied)

34. Senior counsel has also relied upon the judgments of Co-ordinate Benches of this court in ***Dr. Bindu Rana vs. Serious Fraud Investigation Office***⁴ and ***Chandra Prakash Khandelwal vs. Directorate of Enforcement***⁵ to point-out that the non-arrest of similarly placed co-accused persons has weighed with the court which granted bail to the petitioner in those cases.

⁴ 2023 SCC OnLine Del 276

⁵ 2023 SCC OnLine Del 1094



Submissions on behalf of the ED

35. Opposing grant of bail, Mr. Zoheb Hossain, learned counsel appearing for the respondent/Enforcement Directorate argues, first and foremost, that the present petition, being one that arises from scheduled offences under the PMLA, is required to be considered by this court strictly in terms of the twin-conditions contained in section 45 of that statute. Attention in this behalf is drawn to judgments of the Supreme Court in *Vijay Madanlal* (supra), *The Directorate of Enforcement vs. M Gopal Reddy and Anr.*⁶, *Union of India vs. Varinder Singh alias Raja and Anr.*⁷, *Union of India vs. Rattan Mallik*⁸, as also judgments of this Court in *Bimal Kumar Jain and Anr. vs. Directorate of Enforcement*⁹, *Gautam Thapar vs. Directorate of Enforcement*¹⁰, *Christian Michel James vs. Directorate of Enforcement*¹¹, *Sajjan Kumar vs. Directorate of Enforcement*¹² and *Raj Singh Gehlot vs. Directorate of Enforcement*¹³.
36. In particular, Mr. Hossain relies on *Vijay Madanlal*¹⁴ (supra) to argue that the scope of section 3 of the PMLA is wide and far-reaching such that “... every process and activity in dealing with the proceeds of crime, directly or indirectly, and not limited to the happening of the final act of integration of tainted property in formal economy ...”

⁶ 2022 SCC OnLine SC 1862

⁷ (2018) 15 SCC 248

⁸ (2009) 2 SCC 624

⁹ 2021 SCC OnLine Del 3847

¹⁰ 2022 SCC OnLine Del 642

¹¹ 2022 SCC OnLine Del 731

¹² 2022 SCC OnLine Del 1769

¹³ 2022 SCC OnLine Del 643

¹⁴ 2022 SCC OnLine SC 929 (para 263)



would constitute the act of money laundering. It is thus submitted that there are reasonable grounds to believe that the petitioner is guilty of the offence under section 3 for the reasons stated hereunder.

37. It is argued that though Phoenix FZC was incorporated in the UAE with Rajesh Bhatia, Kunal Desai and Sandeepkumar Vipinchandra Maniar as its Directors and Shareholders, the petitioner was given the mandate to run banking operations of Phoenix FZC; and his wife, Darshana Manglani, was the General Manager of the company. It is submitted that thereby, the petitioner exercised ultimate control over the company Phoenix FZC and is a 'beneficial owner' in terms of Section 2 (fa) of the PMLA.
38. The ED submits that the offending transaction of USD 600,000.00 took place on the basis of a fake invoice dated 22.12.2014 raised by Phoenix FZC allegedly for aircraft maintenance services but investigation has revealed that there existed no formal agreement between Ligare Aviation and Phoenix FZC for providing any services for which the invoice was raised. In fact, it is pointed-out that Ligare Aviation already had an agreement in place with one Dassault Aviation for all scheduled and unscheduled maintenance relating to the aircraft.
39. Furthermore, as per the log-book maintained for this aircraft, there is no reference to Phoenix FZC having provided any services for its repair and maintenance. Moreover, even Ligare Aviation's software, Flypal, wherein the company would keep track of all their invoices had no record of any invoice having been raised by Phoenix FZC upon Ligare Aviation. It is thus submitted that no services or goods



were supplied by Phoenix FZC to Ligare Aviation against Invoice dated 22.12.2014 for USD 600,000.00.

40. Similarly, the ED argues that no services or goods were supplied by Phoenix FZC to M/s. Metal & Steel Solution FZC against Invoice No. Phoenix/001/2014-15 dated 03.12.2014 for USD 960,000.00.
41. It is further alleged that there exists no invoice and no goods or services were provided by Phoenix FZC against the payment of USD 299,995.00 made to it by M/s. Eximius Business Aviation Ltd. Moreover, Phoenix FZC has made payments of USD 1,300,000.00 to Eximius Business Middle East FZC against two invoices of USD 500,000.00 each, while no invoice has been issued for the transaction of USD 300,000.00. It is argued that these transactions have been carried-out by the petitioner, as is evident from the e-mails exchanged between the petitioner and other third parties. These amounts have been routed from Ligare Aviation to M/s. Eximius Business Middle East FZC (incorporated by Sanjay Godhwani and Sandeep Bhatt) *via* M/s. Phoenix FZC; and the petitioner's role in effectuating these transactions falls within the wide definition of the offence of money laundering under section 3 of the PMLA.
42. In fact, the ED argues, that Sahil Mehta was a mere messenger looped in to relay information from Sanjay Godhwani and Sandeep Bhatt to the petitioner.
43. It is the ED's submission that since the petitioner was given the mandate to manage the bank account of Phoenix FZC, he was involved in the day-to-day operations of the company, and was aware that money was being transferred to third parties (companies) for the benefit of co-accused Sanjay Godhwani and Sandeep Bhatt.



44. Furthermore, counsel argues that to test whether the accused was possessed of the requisite *mens rea* for commission of the offence under section 3 of the PMLA, the court may consider the following bundle of facts of the present case, which establish *mens rea*:
- 44.1. The petitioner is not an employee of Phoenix FZC. There exists no Board Resolution appointing him as an Authorized Signatory of Phoenix FZC or to authorize the payments made from, or received by him, into the bank account that company;
- 44.2. Since the inception of Phoenix FZC on 08.04.2013, Darshana Manglani has been the ‘Person-in-Charge’ of the company being its ‘General Manager’;
- 44.3. The petitioner’s close involvement with Phoenix FZC is evident from the fact that on 19.12.2014 he was made the power of attorney holder on behalf of the three directors to transfer shares in Phoenix FZC to his wife, Darshana Manglani. Counsel has drawn attention to a letter dated 02.09.2013 issued by the three erstwhile directors of the company to Fujairah Free Zone Authority in this behalf;
- 44.4. It is evident from the e-mail exchanges between the petitioner and Sahil Mehta that he was not a mere ‘Yes-Man’ to Sahil Mehta but was in fact in the know of the nature of the transactions that he was being instructed to make. For instance, in relation to an e-mail dated 09.04.2022 sent by Sahil Mehta instructing him to transfer money, the petitioner enquired about the purpose of the said transaction.
- 44.5. In any case, the ED argues, the fact that the petitioner was taking instructions from Sahil Mehta, who is an alien to the



company, is in itself an inexplicable circumstance which indicates that the petitioner ought to have known of the nature of transactions.

- 44.6. It is also submitted that the petitioner's role in Phoenix FZC is also evident from his statement dated 19.05.2023 made under section 50 of the PMLA, wherein he accepts that he helped his wife, Darshana Manglani in "...*Opening a company in the name of Phoenix International FZC in which she was 100% shareholder...*". Attention in this behalf is also drawn to the statement dated 07.04.2022 made by Darshana Manglani, who has also made a statement to the same effect.
45. Insofar as the question of why other persons have either not been made accused or have not been arrested, it is submitted that it is the 'right' of the prosecution to decide who it prosecutes. It can decline to array a person as accused and instead examine them as a witness for the prosecution. The considerations to make a person an accused are at the discretion of the investigating agency; and the non-arrest or non-prosecution of others cannot form the basis for grant of regular bail to an arrested accused.
46. In this behalf, counsel also argues that clause (ii) of the Explanation to section 44 of the PMLA is a provision enabling further investigation against any accused, whether named in the complaint or not. The investigating agency relies on *Vijay Madanlal*¹⁵ (supra) and *Tahir Hussain vs. Assistant Directorate of Enforcement*¹⁶ to submit that a

¹⁵ 2022 SCC OnLine SC 929 (para 398)

¹⁶ 2022 SCC OnLine Del 4038 (para 62)



‘complaint’ is deemed to include any subsequent ‘complaint’ in respect of which further investigation may be conducted. It is thus argued, that it is the prerogative of the investigating agency to file an additional complaint against any person who may not have been made an ‘accused’ in the ‘complaint’ previously filed.

47. The ED also seeks to draw attention to the petitioner’s conduct, alleging that the petitioner has attempted to mislead and derail the investigation *firstly*, by not cooperating and making false medical excuses so as not to be available for investigation; *secondly*, by feigning ignorance as regards Phoenix FZC and its affairs; and *thirdly*, by asking his son to delete e-mails concerning transactions with Phoenix FZC from his e-mail ID ramesh1994@yahoo.com and forwarding the same to another e-mail ID mainjhukekanahi@gmail.com. It is submitted that this shows the petitioner’s guilty mind and also that the petitioner is likely to tamper with the evidence if granted bail.

Rejoinder Submissions on behalf of the Petitioner

48. In rejoinder to the submissions, the petitioner has offered the following responses :
- 48.1. As regards the allegation that the petitioner was taking instructions from Sahil Mehta who was an ‘alien’ to Phoenix FZC, the petitioner submits that this is factually incorrect and misleading. The petitioner has placed on record several e-mails exchanged in relation to the allegedly offending transactions to show that the *de jure* owners of the company were involved in the transactions; and moreover, there are several e-mails even



in the ‘relied upon documents’ on which at least one of the *de jure* owners was marked/copied.

- 48.2. It is contended that the petitioner cannot be termed as the ‘beneficial owner’ under the PMLA, since all documents and correspondence only show that the petitioner was simply taking instructions in relation to *operating the bank account* of the company; and at no point was the petitioner involved in running the affairs of the company. Additionally, it is submitted that the ED’s argument that the petitioner is the ‘beneficial owner’ *but* at the same time was taking instructions from an ‘alien’ to the company, are mutually contradictory. If the petitioner were to be the beneficial owner, then he would not have been receiving instructions from someone outside the company.
- 48.3. On the submission that Phoenix FZC was only a conduit for money laundering, it is submitted that this submission is false and that the company regularly carried-out several other business activities as is evident from the various documents, including company correspondence, which show that business activities were being carried-on by Phoenix FZC with several third parties including Nexus India, Nexus Saudi, RAK Airport, Casamia UAE, Jet Aviation Dubai LLC etc.
49. To show the lack of *mens rea*, it is reiterated that the petitioner did not ‘knowingly’ assist in any activity connected with the alleged proceeds of crime. It is argued that the investigating agency has failed to show any correspondence to establish that the co-accused persons even knew the petitioner. It is pointed-out that admittedly, the petitioner



was not in direct contact with any of the co-accused and the instructions were issued only through Sahil Mehta. Moreover, it is submitted that the petitioner had no obligation to verify whether any services were extended by the company in consideration of the payments being received. Such obligation is not imposed by any law and the petitioner was only processing payments as directed.

Discussion and Conclusions

50. In the prosecution complaint, the allegation against the petitioner is under section 3 of the PMLA, which provision is reproduced below for ease of reference:

3. Offence of money-laundering.—*Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.*

Explanation.—*For the removal of doubts, it is hereby clarified that,—*

(i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely—

(a) concealment; or

(b) possession; or

(c) acquisition; or

(d) use; or

(e) projecting as untainted property; or

(f) claiming as untainted property,

in any manner whatsoever;



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

51. It cannot be gainsaid that the offence comprised in section 3 of the PMLA is a grave and serious economic offence, and has been couched in the widest of terms. However, before proceeding to consider the rival submissions of the parties, it is necessary to briefly set-out the position of law as enunciated by the Supreme Court as regards the considerations that must inform the grant or denial of bail in matters under the PMLA. The principles have been succinctly captured in the below-noted three decisions of the Supreme Court relating to PMLA and analogously worded statutory provisions, the relevant portions whereof have been extracted :

51.1. ***Ranjitsing Brahmajetsing Sharma vs. State of Maharashtra and Anr.***¹⁷

“44. The wording of Section 21(4), in our opinion, does not lead to the conclusion that the court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act. If such a construction is placed, the court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the applicant. Such cannot be the intention of the legislature. Section 21(4) of MCOCA, therefore, must be construed reasonably. It must be so construed that the court is able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial.

¹⁷ (2005) 5 SCC 294



Similarly, the court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in futuro must be an offence under the Act and not any other offence. Since it is difficult to predict the future conduct of an accused, the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence.

“45. It is, furthermore, trite that for the purpose of considering an application for grant of bail, although detailed reasons are not necessary to be assigned, the order granting bail must demonstrate application of mind at least in serious cases as to why the applicant has been granted or denied the privilege of bail.

“46. **The duty of the court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities.** However, while dealing with a special statute like MCOCA having regard to the provisions contained in sub-section (4) of Section 21 of the Act, **the court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. The findings recorded by the court while granting or refusing bail undoubtedly would be tentative in nature, which may not have any bearing on the merit of the case and the trial court would, thus, be free to decide the case on the basis of evidence adduced at the trial, without in any manner being prejudiced thereby.**”

(emphasis supplied)



51.2. *Vijay Madanlal Choudhary and Ors. vs. Union of India and Ors.*¹⁸

“388. ... Notably, there are several other legislations where such twin conditions have been provided for. Such twin conditions in the concerned provisions have been tested from time to time and have stood the challenge of the constitutional validity thereof. The successive decisions of this Court dealing with analogous provision have stated that the Court at the stage of considering the application for grant of bail, is expected to consider the question from the angle as to whether the accused was possessed of the requisite mens rea. The Court is not required to record a positive finding that the accused had not committed an offence under the Act. The Court ought to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. The duty of the Court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. Further, the Court is required to record a finding as to the possibility of the accused committing a crime which is an offence under the Act after grant of bail.

* * * * *

“401. We are in agreement with the observation made by the Court in *Ranjitsing Brahmajeetsing Sharma*. The Court while dealing with the application for grant of bail need not delve deep into the merits of the case and only a view of the Court based on available material on record is required. The Court will not weigh the evidence to find the guilt of the accused which is, of course, the work of Trial Court. The Court is only required to place its view based on probability on the basis of reasonable material collected during investigation and the said view will not be taken into consideration by the Trial Court in recording its

¹⁸ 2022 SCC OnLine SC 929



finding of the guilt or acquittal during trial which is based on the evidence adduced during the trial. As explained by this Court in *Nimmagadda Prasad*, the words used in Section 45 of the 2002 Act are “reasonable grounds for believing” which means **the Court has to see only if there is a genuine case against the accused** and the prosecution is not required to prove the charge beyond reasonable doubt.”

(emphasis supplied)

51.3. *Mohd. Muslim alias Hussain vs. State (NCT of Delhi)*¹⁹

“19. The conditions which courts have to be cognizant of are that there are reasonable grounds for believing that the accused is “not guilty of such offence” and that he is not likely to commit any offence while on bail. **What is meant by “not guilty” when all the evidence is not before the court ? It can only be a prima facie determination.** That places the court's discretion within a very narrow margin. Given the mandate of the general law on bails (Sections 436, 437 and 439, CrPC) which classify offences based on their gravity, and instruct that certain serious crimes have to be dealt with differently while considering bail applications, the additional condition that the court should be satisfied that the accused (who is in law presumed to be innocent) is not guilty, has to be interpreted reasonably. Further the classification of offences under Special Acts (NDPS Act, etc.), which apply over and above the ordinary bail conditions required to be assessed by courts, require that the court records its satisfaction that the accused **might not be guilty** of the offence and that upon release, they are not likely to commit any offence. These two conditions have the effect of overshadowing other conditions. In cases where bail is sought, the court assesses the material on record such as the nature of the offence, likelihood of the accused cooperating with the investigation, not fleeing from justice : even in serious offences like murder, kidnapping, rape, etc.

¹⁹ 2023 SCC OnLine SC 352



On the other hand, the court in these cases under such special Acts, have to address itself principally on two facts: likely guilt of the accused and the likelihood of them not committing any offence upon release. This court has generally upheld such conditions on the ground that liberty of such citizens have to - in cases when accused of offences enacted under special laws - be balanced against the public interest.

“20. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

“21. The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused's guilt may be proved. The judgments of this court have, therefore, emphasized that the satisfaction which courts are expected to record, i.e., that the accused may not be guilty, is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation (as held in Union of India v. Rattan Malik). Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. Satender Kumar Antil supra). Having regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail.



“22. Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not, appalling. According to the Union Home Ministry's response to Parliament, the National Crime Records Bureau had recorded that as on 31st December 2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069 lakhs in the country. Of these 122,852 were convicts; the rest 4,27,165 were undertrials.”

(emphasis supplied)

52. Furthermore, in its recent decision in *Ashish Mittal vs. Serious Fraud Investigation Office*²⁰, in the context of section 212(6) of the Companies Act, 2013 which contains a provision in *pari materia* to section 45(1)(i) and (ii) of the PMLA, this court has held as under :

*“28. The above enunciation of the law clearly mandates that where additional conditions are stipulated in a statute for grant of bail relating to specified offences, it cannot be that the prosecution need only recite from its complaint, or simply say that it has material against the accused in respect of such offences. The prosecution must show **how** the material collected during investigation supports the allegations in the complaint, and most importantly, how the allegations **apply** against the accused. To reiterate, the opposition by the public prosecutor must be reasoned opposition, supported by valid and relevant reasons. When the public prosecutor opposes a bail plea, he would have to establish foundational facts sufficiently to dislodge the presumption of innocence, and it is only then that the onus of satisfying the stringent twin-conditions would shift onto the accused. To be clear, there is no statutory mandate for the court to depart from the presumption of innocence.*

* * * * *

²⁰ 2023 SCC OnLine Del 2484



“33. It is also important to articulate here, that though the general principle is that parity with co-accused alone is not a ground to claim bail as a matter of right; however, that principle is nuanced. The nature of an offence may be such, that the fact that other accused have been granted bail, may persuade the court to exercise its discretion in favour of another co-accused in granting bail.”

(emphasis supplied)

53. Upon a conspectus of the foregoing decisions, the principles for application of the twin conditions for grant or denial of bail under PMLA may be distilled and crystallised as under :
- i. That while deciding a bail plea under the PMLA, the court *need not delve deep into the merits*²¹ of the allegations or minutely consider or assess the evidence collected by the investigating agency;
 - ii. That the court is only to satisfy itself, on a *prima-facie* view of the matter, based on *broad probabilities*²² discernible from the material collected during investigation, whether or not there are reasonable grounds for believing that the accused is *not guilty* of the offence alleged. In doing so, the court would also consider, in a similar manner, *whether the accused was possessed of the requisite mens rea*²³ in relation to the offence alleged. The effort has to be to assess, again on a *prima-facie* basis, *if there is a genuine case against the accused*²⁴;

²¹ 2022 SCC OnLine SC 929 (para 388)

²² (2005) 5 SCC 294 (para 46);
2022 SCC OnLine SC 929 (para 388)

²³ 2022 SCC OnLine SC 929 (para 388)

²⁴ 2022 SCC OnLine SC 929 (para 401)



- iii. That the court is also similarly to satisfy itself, whether or not the accused is likely to commit any offence *under the PMLA* while on bail; and *since it is difficult to predict the future conduct of an accused, the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence*²⁵;
 - iv. That the court is *not required to return a positive finding*²⁶ that the accused has not committed an offence; and must therefore *maintain a delicate balance*²⁷ i.e. a clear distance between a judgment of acquittal or conviction and an order granting or denying bail; and
 - v. That since the assessment at the stage of granting or denying bail would be tentative in nature, such assessment *may not have any bearing on the merits of the case*²⁸; and the trial court would be free to decide the case on the basis of evidence adduced during trial, without in any manner being influenced by the decision of the court granting or denying bail.
54. Needless to add, that the twin-conditions under section 45 (1) of the PMLA are to be applied *in addition to* the usual and ordinary principles required to be considered for grant or denial of bail²⁹. These

²⁵ (2005) 5 SCC 294 (para 44)

²⁶ 2022 SCC OnLine SC 929 (para 388)

²⁷ 2022 SCC OnLine SC 929 (para 388)

²⁸ (2005) 5 SCC 294 (para 46)

²⁹ cf. section 45 (2) PMLA



may very briefly be summarised in the words of the Supreme Court in *P. Chidambaram vs. CBI*³⁰:

“21. The jurisdiction to grant bail has to be exercised on the basis of the well-settled principles having regard to the facts and circumstances of each case. The following factors are to be taken into consideration while considering an application for bail:

- (i) the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution;*
- (ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses;*
- (iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence;*
- (iv) character, behaviour and standing of the accused and the circumstances which are peculiar to the accused;*
- (v) larger interest of the public or the State and similar other considerations.*

55. Upon a conspectus of the submissions made and based on the material on record, *prima-facie* the following inferences may be drawn on broad probabilities :

55.1. The allegedly offending transactions have been made through a corporate entity called Phoenix FZC, which was in the business of providing aviation related services. From 08.04.2013 to 17.02.2015 Phoenix FZC had three directors and shareholders, viz. Rajesh Bhatia, Kunal Desai and Sandeepkumar Vipinchandra Maniar. The petitioner was neither a director nor a shareholder in the company. In fact, from the record it appears that the three shareholders of Phoenix FZC were employees of

³⁰ (2020) 13 SCC 337



Sahil Mehta or were otherwise associated with him. As such, Sahil Mehta was not an ‘alien’ to Phoenix FZC.

- 55.2. The petitioner was a resident of Dubai, UAE; and, it is common ground, that the petitioner was appointed as the Authorised Signatory to operate the bank account of Phoenix FZC. No document evidencing his appointment as such is on record. However, neither the petitioner nor the ED dispute that he was so appointed.
- 55.3. On or about 17.02.2015, the three directors/shareholders of Phoenix FZC resigned from their positions and transferred their shares in the company to the petitioner’s wife, Darshana Manglani, who became the owner of the company, which now came to be known as Phoenix International FZE. To effectuate the transfer of shareholding of Phoenix FZC to Darshana Manglani, the petitioner was appointed as a power of attorney holder *vide* Power of Attorney dated 19.12.2014 by the three directors. After the company changed from Phoenix International FZC to Phoenix International FZE and Darshana Manglani became its owner, *no offending transaction has been alleged.*
- 55.4. The allegedly offending transactions *were all conducted* during the period when the three aforementioned persons were directors/shareholders of Phoenix FZC. Of these transactions, 03 were inward remittances, and there were 03 outward remittances to the same company. These transactions are summarised in a table appearing at page 84 of the prosecution complaint, as extracted hereinbefore.



- 55.5. As is seen from the table, the 03 inward remittances happened on 04.12.2014, 24.12.2014 and 13.01.2015. Since for an inward remittance, no action is required on the part of the beneficiary/recipient company, the petitioner had no role to play in such transactions, even though he was the Authorised Signatory for the bank account of the company at that time. It is noteworthy that at the stage the inward remittances were received into Phoenix FZC, the petitioner was neither director/shareholder nor did he have any financial interest in the affairs of the company. Same was the position at the time when outward remittances were made from the company.
- 55.6. It is seen from the record that the petitioner was not involved in issuance of the invoice against which the inward remittance of USD 599,995.00 was received by Phoenix FZC, since when shown invoice dated 22.12.2014, in his statement dated 28.07.2022 Sahil Mehta categorically states that “...it is a copy of my signature and which has been signed by either Sanjay Godhwani or Sandeep Bhat.” It is clear therefore that it was not the petitioner who had signed the invoice. Furthermore, in his statement dated 21.09.2022, Sahil Mehta also states that the above transaction was facilitated on instructions from Sanjay Godhwani and Sandeep Bhatt.
- 55.7. As regards the transaction of USD 954,751.79, as can be seen from e-mail dated 01.12.2014 sent by Sahil Mehta to Iqlaque Khan, the former issued the direction to effectuate the transfer. Furthermore, the invoice for USD 960,000.00 can be traced back to one Mahesh Bisht (of Sovika Group) who had shared it



with Iqlaque Khan. These communications go to show that the petitioner was nowhere involved in the issuance of these invoices and can in no way be made accountable for the remittances received pursuant thereto in the bank account of Phoenix FZC.

- 55.8. Furthermore, as has been pointed-out, the learned ASJ recorded in order dated 14.11.2022 that when he questioned the I.O. as to whose signatures appeared on invoice dated 03.12.2014 (for USD 960,000.00) and invoice dated 22.12.2014 (for USD 600,000.00), the I.O. responded to say that he was unaware as to who had signed the invoices.
- 55.9. As regards the third inward remittance, admittedly, no invoice has been recovered; and therefore, the said transaction cannot be traced back to the petitioner at least at this stage.
- 55.10. It is only in relation to the 01 set of transactions involving outward remittance of money from Phoenix FZC, that the petitioner was required to 'conduct' the transaction as Authorised Signatory for the bank account of the company. The outward remittances were made on 11.01.2015, 14.01.2015 and 19.01.2015. In this behalf, instructions were received by the petitioner from Sahil Mehta by e-mail instructing the petitioner to conduct a specific remittance. E-mails dated 09.01.2015, 14.01.2015 and 16.01.2015 for the three remittances respectively, are cited in evidence thereof. It is seen that each of these e-mails was sent to the petitioner from the e-mail address of Sahil Mehta.



55.11. The essence of the allegation made by the ED is that at the time that the petitioner undertook the transactions as Authorised Signatory for the bank account of the company, he knew that the transactions were bogus, in that the money was being remitted-out of the company without any genuine services having been provided by Eximius Business Middle East FZC to Phoenix FZC. On the other hand, the petitioner contends that he was neither a director, nor a shareholder, nor did he have any financial interest in the company; and as such he had no reason or business to enquire as to whether any services had been rendered by Eximius Business Middle East FZC to Phoenix FZC towards which money was being remitted to it by the company. In one instance however, when he was instructed to remit USD 300,000.00 out of Phoenix FZC, *vide* e-mail dated 09.01.2015 the petitioner did inquire from Sahil Mehta as to the reason for the remittance; to which enquiry however, he received no response. The petitioner made the transaction nevertheless. Yet again, this would indicate, at least *prima-facie*, that the petitioner had no financial interest in the transaction that he was performing on instructions of Sahil Mehta; and therefore, it was not his business to insist that he be told what the transaction was for.

55.12. The petitioner accepts that he received a small commission, on an *ad-hoc* basis, from Sahil Mehta or his father Sohan Mehta for the transactions he conducted as Authorised Signatory of the company, which however, had no correlation to any particular



transaction. In his statement dated 09.08.2022 recorded under section 50 of the PMLA, the petitioner in fact has said this :

“I was not getting paid any fixed income or commission on transactions I was being paid on ad hoc basis by Mr Sohan Mehta like once in 2/3 months or more in cash (withdrawal from Phoenix International FZC or through transfer from Phoenix International FZC in my personal account in Mashreq Bank as per the directions of Mr Sohan Mehta or sometimes on the instructions of Mr Sahil Mehta.”

There is no allegation that the petitioner received anything over-and above such *ad-hoc* commission.

55.13. Also, if the basis of the allegation is that the petitioner had a financial interest in the transactions *since* he received *ad-hoc* commission for them, such allegation would be counter-intuitive inasmuch as if the petitioner was connected with the transactions themselves *i.e.* the money belonged to the petitioner, then it is unlikely that he would be given a commission for undertaking such transactions.

55.14. It is also noteworthy, that the ED itself says that Phoenix FZC undertook *several other transactions* during the period under consideration, of which only the aforesaid sets of transactions have been alleged to be offending. Therefore, it is not as if Phoenix FZC was a vehicle solely for undertaking the allegedly offending transactions.

55.15. Furthermore, it is seen that after a point, *once the allegedly offending transactions had been completed*, the three original directors/shareholders of Phoenix FZC transferred their shareholding to the petitioner’s wife and *simply stepped-out of*



the company. It may be noted that nothing has been shown to the court to indicate the reason for the erstwhile directors leaving the company. Yet again, *if the petitioner had knowledge* that the transactions conducted through Phoenix FZC were unlawful or even suspect, it is counter-intuitive that he would facilitate the transfer of shareholding in that very company *to his own wife*, thereby converting the company to Phoenix FZE and putting his wife in a legally controversial position.

56. Insofar as the ED not having arrested similarly placed co-accused persons; and not even having arraigned some other persons evidently connected with the offending transactions as accused in the prosecution complaint, though these aspects would not be dispositive of a bail plea one way or the other, they are also not wholly irrelevant and the ‘doctrine of parity’ is not immaterial³¹. As held by this court in *Ashish Mittal* (supra) considering the nature of the offence, where the gravamen of the offence is that several persons acting in concert have siphoned-off and ‘laundered’ monies, it is manifestly arbitrary for the ED to have made selective arrests and arraignments. It has also been brought to the notice of this court that Sanjay Godhwani, who may be viewed as one of the main accused in this case, has been granted bail by the learned trial court *vide* order dated 09.05.2023 in Bail Application No. 688/2023 “... *on merits as well as on medical grounds...*”. This circumstance must also weigh in favour of the petitioner being granted bail, considering that his role in the allegedly

³¹ (2009) 8 SCC 617 (para 50)



offending transactions is evidently far more peripheral than that of co-accused, Sanjay Godhwani.

57. Lastly, insofar as the allegation of the ED as regards the petitioner's conduct is concerned, it would appear that the petitioner has been forthcoming with the investigating agency about information that he did possess about the affairs of Phoenix FZC, as is seen from his statements recorded under section 50 of the PMLA. As regards the ED's submission that the petitioner asked his son to delete e-mails concerning transactions of Phoenix FZC from his e-mail ID ramesh1994@yahoo.com and forwarded the same to another e-mail ID mainjhukekanahi@gmail.com, it is observed that such e-mails have subsequently been recovered by the investigating agency and the investigation has not suffered on that count. The prosecution complaint having now been filed, there is no demonstrable risk as to evidence tampering.
58. In the circumstances, for the purpose of grant of regular bail to the petitioner, this court is satisfied that there are reasonable grounds to believe that the petitioner is 'not guilty' of the offence under section 3 of the PMLA. Further, considering that the prosecution complaint has been filed before the learned trial court; that the petitioner has materially co-operated in the investigation; and in view of the nature of the alleged role played by the petitioner in the allegedly offending transactions, this court is also satisfied that the petitioner is not likely to commit any offence under PMLA while on bail.
59. The usual and ordinary considerations as referred to *inter-alia* in *P. Chidambaram* (supra), beyond what may be purely theoretical



apprehensions in this case, can be adequately addressed by imposing appropriately stringent conditions for grant of bail.

60. Having regard to the above, this court is of the view that the petitioner deserves to be granted relief; and is hereby admitted to *regular bail* pending trial, subject to the following conditions:

60.1. The petitioner shall furnish a personal bond in the sum of Rs.25,00,000/- (Rs. Twenty-five lacs Only) with 01 surety in the like amount from a family member, to the satisfaction of the learned trial court;

60.2. The petitioner shall furnish to the Investigating Officer/S.H.O. a cell-phone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;

60.3. The petitioner shall surrender his passport(s) to the learned trial court and shall not travel out of India without prior permission of the learned trial court;

60.4. The petitioner shall *ordinarily* reside at his place of residence in Mumbai, India as per records; and shall inform the Investigating Officer in writing at least 07 days in advance if he proposes to change his place of ordinary residence;

60.5. The petitioner shall co-operate in any further investigation or proceedings by the Investigating Officer, as and when required;

60.6. In addition to the above conditions, it is specifically directed that the petitioner shall also not, whether directly or indirectly, contact or visit or have any transaction with any of the officials/employees of the banks, financial institutions,



- companies, entities etc., who are concerned with the prosecution complaint in this case, whether in India or abroad;
- 60.7. The Investigating Officer is further directed to issue a request to the Bureau of Immigration, Ministry of Home Affairs of the Government of India or other appropriate authority to forthwith open a 'Look-out-Circular' in the petitioner's name, to prevent the petitioner from leaving the country, without the permission of the learned trial court;
- 60.8. The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of case. The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial.
61. The petition is disposed-of in the above terms.
62. Pending applications, if any, also stand disposed of.
63. A copy of this order be communicated to the learned jail superintendent *forthwith*.

ANUP JAIRAM BHAMBHANI J

MAY 30, 2023/ak/ds/uj