



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

% *Reserved on: 14th August, 2024*
Pronounced on: 09th September, 2024

+ **BAIL APPLN. 1063/2024**

SAMEER MAHANDRUPetitioner

Through: Mr. Dhruv Gupta, Mr.
 Anubhav Garg, Mr. Indhirajith
 Parbhakaran, Ms. Yogya Singh
 & Mr. Nishesh Gupta,
 Advocates.

Versus

DIRECTORATE OF ENFORCEMENTRespondent

Through: Mr. Zoheb Hossain, Special
 Counsel, Mr. Vivek Gurnani,
 Mr. Siddarth Kaushik, Ms.
 Abhipriya Rai, Mr. Kartik
 Sabharwal, Mr. Vivek Gaurav,
 Mr. Kanishk Maurya & Mr.
 Pranjal Tripathi, Advocates
 with Mr. S.K. Sharma, IO/AD,
 ED.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present Petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 ('*Cr.P.C.*' hereinafter) read with Sections 45 and 65 of the Prevention of Money Laundering Act, 2002 ('*PMLA, 2002*' hereinafter) on behalf of **Applicant Sameer Mahandru** seeking regular Bail in ECIR/HIU-II/14/2022 dated 22.08.2022 ('*ECIR*' hereinafter)



registered under Section 3 and Section 4 PMLA, 2002.

2. ***Briefly stated***, the Applicant was arrested on 28.09.2022 and has been suffering incarceration for more than 18 months. The Central Bureau of Intelligence ('CBI') had registered an FIR No. RC0032022A0053 dated 17.08.2022 P.S. CBI, ACB under Sections 120-B read with 477-A of Indian Penal Code, 1860 ('IPC') and Section 7 of Prevention of Corruption Act, 1988 ('PC' Act).

3. Thereafter, the present ECIR was registered on 22.08.2022 and the Applicant has been illegally arrested on 28.09.2022 in total derogation of the procedure established under Section 19 PMLA. The ED had filed an incomplete prosecution complaint before the Trial Court on 26.11.2022 arraying Applicant as accused No.1.

4. The Applicant moved an Application on 22.12.2022 before the learned Trial Court, to seek Regular Bail. However, the same along with the four other accused persons who had moved separate Bail Applications, have been rejected vide common Order dated 16.02.2023.

5. The Applicant moved *second* bail Application before the learned Trial Court, in view of the various changes in the circumstances and elapse of substantial period of time, but the same was also dismissed *vide* Order dated 24.02.2024. The Applicant had sought regular bail on the following grounds:

- i. that he has been granted regular bail on 28.02.2023 in the predicate offence;
- ii. co-accused No.21 and 23 i.e. Rajesh Joshi and Gautam Malhotra have been granted regular bail on merits, by the learned Trial Court on 06.05.2023;



- iii. co-accused No.7 P. Sarath Chandra Reddy has been granted regular bail on medical grounds vide Order dated 08.05.2023;
- iv. another accused has been granted bail on 01.08.2023;
- v. accused no.18 Raghav Magunta has been granted regular bail on 10.08.2023;
- vi. co-accused no.11 Benoy Babu has been granted regular bail on 08.12.2023 by the Supreme Court in SLP (Crl.) Nos.11644-11645/2023;
- vii. that he has been admitted to interim bail on number of occasions i.e. from 28.02.2023 to 01.05.2023 by the learned Trial Court, from 12.06.2023 to 04.09.2023 by this Court and then from 05.01.2024 till 17.02.2024 by the learned Trial Court. He had not even once misused the liberty granted to him and never violated any of the conditions imposed by this Court while on interim bail;
- viii. the Apex Court in its Order dated 15.12.2023 while dismissed Special Leave Petition (SLP) (Crl.) No.14634/2023 filed by the Applicant seeking regular bail on medical grounds, clarified that the dismissal of the SLP would not have any bearing on the Application of the Applicant for regular bail as and when the same was applied;
- ix. more than 11 months have passed since the dismissal of first regular Bail Application, on 16.02.2023;
- x. the Applicant has suffered substantial period of the



custody; and

- xi. the bail is also sought on medical condition of himself and his wife.

6. *The Applicant has claimed* that he was arrested on 28.09.2022 and was mechanically remanded to custody of the ED up to 06.10.2022 which was followed by another extension of four days i.e. up to 10.10.2022. Pertinently, the Applicant had moved an Application dated 06.10.2022 seeking copy of ECIR as well as the grounds of arrest. On 10.12.2022, the ED did not seek further custody of the Applicant and he was remanded to judicial custody thereafter.

7. The Applicant has further agitated that though the investigations qua the Applicant are claimed to be complete by the ED, but the investigations are still ongoing and incomplete and piecemeal Complaints are being filed in the Court, only to somehow scuttle the right of the Applicant to default bail. It is evident from the fact that main prosecution Complaint was filed on 26.11.2022 on which cognizance was taken on 20.12.2022. *Five supplementary Complaints* have been filed between 06.01.2023 till 02.12.2023 against 26 additional accused persons.

8. It is further contended that *firstly*, the core ingredient constituting the offence of money-laundering i.e. “*proceeds of crime*” needs to be construed strictly. *Secondly*, the “*proceeds of crime*” must be derived or obtained directly or indirectly as a result of criminal activity relating to the scheduled offences. *Thirdly*, the ED cannot resort to action against any person for money-laundering on an assumption that the property recovered by them must be proceeds of crime and that a scheduled offence has been committed. *Fourthly*, the offence under Section 3 of PMLA is dependent on illegal gain



of property as a result of criminal activity relating to scheduled offences. However, in the present case, none of the aforesaid requirements have been fulfilled by the ED and the Applicant deserves to be admitted to bail.

9. The Applicant has further contended that there are no allegations or material against him to demonstrate that he was involved in framing of Excise Policy or influencing it, in any manner. No meeting of mind or any alleged conspiracy can be attributed to the Applicant. The Delhi Excise Policy 2021-22 was published on 5th Jul, 2021. It is the case of the ED itself that the alleged conspiracy with regard to the drafting and formulation of the policy was hatched between various individuals namely Shri Vijay Nair, Shri Aman Dhall, Shri Dinesh Arora, Shri Arun Ramachandran Pillai, Shri Abhishek Boinpally, Shri Butchi Babu and few others, which does not include the Applicant by way of various meetings that took place between these individuals between March 2021 till June 2021 at various locations in Delhi and Hyderabad. It is, therefore, evident that the Applicant has no role or participation in the alleged conspiracy of drafting or influencing the Delhi Excise Policy, 2021-22.

10. Delhi Excise Department at the relevant time had invited suggestions and inputs from the industry stakeholders since January 2020 and at least 14,671 suggestions were admittedly received by the Excise Department thereof. *Ms. Smita Jha* is the Managing Director of Centre for Effective Governance of Indian States (CEGIS) which is an Organization that aims to improve lives by helping State Governments to deliver better development outcomes. Applicant has explained that his email to *Jasmine Shah* was a bona fide and genuine attempt by the Applicant to provide suggestions in a transparent manner, being a stakeholder in liquor industry of Delhi. Even if



the email is taken into consideration, the Applicant being an experienced and established stakeholder in the liquor industry, his experience and knowledge of the liquor trade of Delhi spanning to more than 15 years, he had a right to send *bona fide* suggestions to the aforesaid persons. The suggestions given by the Applicant through email were his genuine attempt of providing his neutral insights, inputs and suggestions based on his experience and understanding of the liquor trade and in no way whatsoever, it can possibly be taken and held against him, the way ED has unreasonably tried to do.

11. Further, the ED in its Complaint has relied upon a purported WhatsApp forwarded message sent by the Applicant on 31.05.2021 to Sh. Manoj Rai (RUD-14) which allegedly contained the Draft Policy and the ED in an attempt to attribute the role of the Applicant in the conspiracy of formulation of Delhi Excise Policy, 2021-22. This allegation is baseless and in no way whatsoever can even remotely be used to attribute any role of the Applicant in the conspiracy for formulating the Excise Policy. The said draft of alleged Policy was in wide circulation on the said date on various WhatsApp groups of Liquor Traders and the Applicant was not the only one who had circulated the draft Excise Policy.

12. Pertinently, the co-accused No.27 Sh. Amandeep Singh Dhall owner of Brindco Sales Pvt. Ltd., admitted in his statement that the Policy Draft was forwarded to him by various people on 31.05.2021 including one Mr. Ajay Malhotra and that the alleged Policy had also been forwarded on the L31 Wholesalers/Retailers WhatsApp group by once Sh. Naresh Goyal who had in turn, forwarded it to several people including Sh. Manoj Rai, Pernod Ricard India. Furthermore, the then Hon'ble LG had already officially



approved the Excise Policy Draft on 24.05.201 and correspondingly the Delhi Excise Rules, 2021 had been amended vide *Gazette Notification dated 25.05.2021*, which was almost a week before the alleged policy draft was circulated.

13. Even if it is admitted that the Applicant was the fourth one in chronology to send the draft Policy by way of WhatsApp Group to Shri Manoj Rai, it is clearly evidenced from the screenshots affixed under Para 4.4(b) of ED Complaint, that no changes were made to the draft Policy to benefit the Applicant or any other purported entities before or after 25.05.2021. The co-accused No.11 Sh. Benoy Babu who had allegedly sent the policy document to Sh. Manoj Rai on 31.05.2023, had already been admitted to regular bail on 31.05.2023.

14. The Applicant has further asserted that there is no material to support his alleged role in facilitating recovery of Rs. 100 Cr. kickbacks in conspiracy with the *South Group* members. The Applicant was not a part of South Group and no role, as alleged, was given to him by the South Group. The ED as per its own case has stated that Ms. K. Kavitha, Shri Sarath Reddy, Shri Raghav Magunta, Shri Magunta Srinivasulu Reddy were the prominent members of South Group and few others namely Shri Arun Pillai, Shri Abhishek Boinpally and Shri Buchi Babu who were collectively called as South Group, had allegedly gotten the Delhi Excise Policy 2021-22 drafted in exchange of Rs.100 Crores kickbacks which were allegedly given by the aforesaid members of the South Group to the representatives of Delhi Government. Neither does the CBI in the predicate offence nor the ED anywhere alleges any role, involvement or participation of the Applicant in the aforesaid alleged Rs.100 crores kickback payment.



15. It is the case of the ED itself that the Applicant for the first time was approached by Shri Arun Pillai in May, 2021 way after when the policy had already been drafted and finalized by the Government, only to explore the potential investment in the business of the Applicant. Therefore, no clear role whatsoever, can be attributed to the Applicant with regard to any allegations relating to being a part of conspiracy in Policy formulation. Such allegations made by ED, are self-contradictory and absolutely meritless. The Applicant has relied on the findings of the Apex Court in the case of Manish Sisodia vs. Central Bureau of Investigation 2023 SCC OnLine SC 139, wherein it has been observed that “*the assertion in the complaint of DoE that kickback of Rs.100,00,00,000/- (Rupees One Hundred Crore) was actually paid by the liquor group is somewhat a matter of debate*”.

16. It is further claimed that ED has alleged that Applicant had given 65% stake to the alleged persons of South Group in Indo Spirits firm, with an intent of giving 6% alleged profit margin out of the total 12% profit margin to be earned by the Firm, as kickback to the alleged members of South Group. These allegations are completely unfounded and *dehors* any rationale or merit and have been made without any application of mind.

17. It is explained that these averments in its very existence, is completely flawed as the net profit of the firm was only between 3.5-4.0% during the time when the business was ongoing. As per the audited financial as on 31.03.2023, the net profit stands at just 1%. The net profit margin from the wholesale business of the Firm Indo Spirits used to be around 3.5% during the relevant time when the business was ongoing; as on 31.03.2023 it stood at just 1.0%. In such a situation, it was not even



possible for L1 to give 6% further to anyone as it itself was not earning any amount of net profit, as has been wrongly alleged by ED. The ED has unreasonably exaggerated and blown the figures out of proportion by stating in its Complaint that the Applicant has generated proceeds of crime to the tune of Rs.294.45 crores.

18. The Applicant has claimed that ED has alleged the role of the Applicant in facilitating the alleged recoupment of kickbacks to the South Group. However, the allegation that outstanding amount of Rs.60 crores from the three entities namely Trident Chemphar, Organomix Ecosystem Pvt. Ltd. and Sri Avantika Contractors Pvt. Ltd. was not intended to be recovered and was by way of recoupment of kickbacks by the South Group and also the allegation that some excess Credit Notes worth Rs.4.35 crores were illegally issued by M/s Indo Spirits to the aforesaid three companies as part of the conspiracy between the Applicant and the co-accused, is not tenable for the reasons that the credit amount and credit Notes to be given to the aforesaid three entities, was decided and coordinated by one of the partner in the said L-1 firm Indo Spirits i.e. Shri Arun Ramachandran Pillai in consultation with Pernod Ricard India Pvt. Ltd. Shri Arun Pillai used to handle the account for the aforesaid three independent entities of the Applicant because of his close relationship with them. Therefore, the decisions regarding how credit Notes were to be issued and also the responsibility of payment collection from the aforesaid three entities, was solely with Shri Arun Pillai who used to instruct the Applicant from time to time, in this regard.

19. Notwithstanding the aforesaid fact, the Indo Spirits had entered into a legitimate business transaction with the said entities and it was a normal



trade practice to offer discounts/schemes in the form of credit Notes, etc. by the manufacturers like Pernod Ricard and others, to promote the sales of their brands to the retailers, wherein the role of the wholesaler like Indo Spirits was primarily to act as an intermediary. Similarly as part of a normal practice at any given time, all the L-7Z Retailers under the said Policy, were provided with credit period ranging between 15-90 days depending upon their credit worthiness which used to be confirmed by Pernod Ricard as per their diligence. Merely, because the dues are outstanding against the three Companies, it cannot be said that there was any illegality in the same for the purposes of present ECIR. It is claimed that given regular business practice of issuing credit Notes and regular business outstanding, colour of something that they aren't, is nothing but an attempt by the ED to grasp at the straws, especially when in lieu of the L-1 business of Indo Spirits a total of approx. Rs.160+ crores of the Firm is still outstanding from the various L-7Z Retailers who have defaulted in making their payment of outstanding dues against whom various legal actions have already been initiated by the Firm.

20. The Applicant has explained that ED has made an absolutely meritless allegation against the Applicant of destroying used mobile phones four times during the time period from 26.06.2022 to 12.09.2022. It is explained that instead of 4, only 3 mobiles have been changed by the Applicant and that too because of the compulsion essentially of seizing of the mobile phones by the CBI on various dates.

21. The ED has further made an allegation that the Applicant flouted para 3.1.1 of policy by forming a cartel of manufacturing, wholesalers and retailers. He allegedly created a facade of independent Companies by



bringing dummy Shareholders/Directors to create a corporate veil. He used a web of entities, investment and proxies to form a cartel. It is explained that neither of these activities are *scheduled offences*. Admittedly, the Applicant was neither a Director nor a shareholder in any of the Companies owning retail zones, which were alleged to have formed a cartel by controlling 9 zones out of 32 zones. Indo Spirits entered into legitimate business transaction with the Companies over a period of time, which cannot be termed a cartelization.

22. M/s Indo Spirits had complied with all the eligibility conditions as laid down in 2021-22 Policy with special emphasis on Clause 3.1.2(vii). It had no common partners/shareholders or Directors with retail Licensee Khao Gali or the manufacturer i.e. Pernod Ricard and therefore, had committed no violation of the Policy.

23. Moreover, as per new Excise Policy up to 51% of common proprietorship/Directorship/Partnership was still permissible, in entities, involved in the wholesale, retail or manufacturing line. It is thus, submitted that there is no prima facie case made out against the Applicant. The *twin conditions* as contained in Section 45 of the PMLA, are also satisfied.

24. Furthermore, he has been illegally arrested in the ECIR on 28.09.2022 in total derogation of the procedure established under law. There was no adherence and there is non-compliance of the provisions of Section 19 of PMLA. He was not informed about the grounds of arrest, which is directly violative of Article 22(1) of Constitution of India for which reliance has been placed on *Pankaj Bansal vs. Union of India &Ors.* 2023 SCC OnLine SC 1244.

25. The ED has relied on certain statements of one Dinesh Arora who has



been made an approver, which is absolutely erroneous as he has been made approver belatedly on 03.10.2023 and his statements are still required to be tested in so far as their admissibility, voluntariness etc. are to be tested during trial. Moreover, his statement does not incriminate the Applicant. Further it is a settled law that approver is unworthy of credit unless corroborated in material particulars. There is no recovery of any tainted money till date and there is no evidence of commission of alleged offence. Admittedly, the basis of Award of retail licenses was through open e-tender. There is no allegation in regard to the process of tender, submission of bids and the final results, thereof.

26. It is also contended that there are material contradictions between the case as set up in ECIR and the predicate/scheduled offence. In the end, it is submitted that between the chargesheet in the predicate offence and the ECIR complaint, there are more than 400 documents running into 31,000 pages besides voluminous digital data and there are more than 200 witnesses to be examined in the chargesheet filed by CBI.

27. There are 162 cited witnesses and more than 20,000 pages of documents in the 5 prosecution complaints filed by ED aside from voluminous digital data running into lakhs of pages. The arguments on charge are yet to commence and there is no likelihood of trial commencing in the near future. The rigours of provisions like Section 45 PMLA are liable to melt down and the Applicant deserves the benefit of regular bail as there is inordinate delay which is bound to happen in the conclusion of trial.

28. Reliance has been placed on Manish Sisodia vs. Central Bureau of Investigation 2023 SCC OnLine SC 1393; Mohd. Muslim @ Hussain vs. State (NCT of Delhi) Criminal Appeal No.(s) of 2023 [Special Leave



Petition (Crl.) No(s).915 of 2023]; Raman Bhuraria vs. Directorate of Enforcement, 2023 SCC OnLine Del 657; Union of India vs. K.A. Najeeb (2021) 2 SCC 713; Satender Kumar Antil vs. Central Bureau of Investigation Misc. Appl. No.1849/2021 in SLP (Crl.) No.5191/2021; Arnesh Kumar vs. State of Bihar (2014) 8 SCC 273; Rajat Sharma vs. State, Sanghian Pandiyan vs. CBI; Court in its own Motion vs. CBI; Anil Mahajan vs. Commissioner of Customs, Sanjay Chandra vs. CBI; Gagan Dhawan vs. ED; Rohit Tandon vs. ED; Gurbaksh Singh Sibbia vs. State of Punjab [(1980) 2 SCC 565]; Gurcharan &Ors. vs. State [AIR 1978 SC 179] and Babu Singh vs. State of UP [(1978) 1 SCC 179]. .

29. The Prosecuting Agency is fallaciously alleging that the accused persons are delaying the matter and they are filing Applications including the Applicant under Section 207/208 Cr.P.C. for seeking illegible and other documents, which allegation is absolutely meritless and erroneous as availing remedies by filing Applications and that too, in a case involving thousands of document, can never be termed as *mala fide*.

30. Moreover, fundamental principles of *famous triple test* enunciated by the Supreme Court in plethora of judgments is also to be applied, sans merits of the case. The Applicant satisfied the requirements of the triple test as he is not at flight risk, has a permanent abode and is willing to face the trial and that he cannot and shall not tamper with the evidence or influence any witnesses. This is so as the entire evidence relied upon or called into play by ED Authorities is based in the domain of documentary evidence which the Applicant is incapable of either influencing the witnesses or destroying the documentary evidence. It is submitted that the pre-trial incarceration is uncalled for and also not permitted in law for which reliance



has been placed on Rajat Sharma vs. State; Sanghian Pandiyan vs. CBI; Court in its own Motion vs. CBI, Anil Mahajan vs. Commissioner of Customs, Sanjay Chandra vs. CBI, Gagan Dhawan vs. ED and Rohit Tandon vs. ED.

31. Moreover, such continued incarceration of an accused militates against fundamental postulate of ‘*presumption of innocence*’ on the part of an accused in criminal prosecution as has been held by the Apex Court in the case of Gurbaksh Singh Sibbia vs. State of Punjab [(1980) 2 SCC 565]; Gurcharan & Ors. vs. State [AIR 1978 SC 179]; and Babu Singh vs. State of UP [(1978) 2 SCC 179].

32. It is further submitted that the Applicant is also entitled to be released on regular bail on the medical grounds being in the category of sick and infirm.

33. The Applicant has sought the benefit of Proviso to Section 45 of the PMLA on the ground that he is in the category of “*sick*” and “*infirm*”. He has undergone five serious medical surgeries. On 09.03.2023, he had his gall bladder removed and Laproscopic Cholecystectomy under General Anesthesia was performed on the Applicant. He has been suffering from various medical ailments and has been taking doses of Caudal Epidural block with Selective Nerve Root Block because of persistent lower back pain and claudication.

34. As per the medical Advice, the Applicant has claimed that in the intervening night of 06.09.2023 and 07.09.2023, while the Applicant was in judicial custody, while he was trying to go to the washroom using his walker, he had a bad fall on the floor of his jail cell due to his fragile medical condition having serious impairments in his back and both his legs.



35. On 14.09.2023, on the Application before the Trial Court vide Order dated 13.09.2023, the MRI of the left knee of the Applicant was conducted by the Jail Authorities and his optimal health was ensured post-surgery along with physiotherapy was ensured.

36. Despite his medical condition, he also has to attend to his ailing wife who is suffering from “*acute calculus cholecystitis*” in her gall bladder and thus had been advised to undergo a “*Laparoscopic Cholecystectomy*” i.e. a gall bladder removal surgery and various other ailments.

37. The Applicant has also claimed that the ED had filed an incomplete Complaint in a piecemeal mane and he is entitled to “Default Bail” under Section 167(2) of the Cr.P.C.

38. Lastly, the Applicant submits that he has deep roots in the Society and has absolutely clean antecedents and has a family consisting of his wife and two minor daughters and one son, besides his old aged ailing parents. He undertakes to join the Trial and has thus, sought Bail. In the end, it is submitted that many of the co-accused have been admitted to bail and the Applicant deserves to be granted bail on parity.

39. ***The Bail is contested on behalf of the Directorate of Enforcement*** by way of its detailed Reply. The Preliminary objections have been taken in regard to the maintainability of the Bail Application.

40. It is submitted that the successive bail Applications without any change in circumstances, are being filed and the present Bail Application is liable to be rejected. It has been held in the case of *Kalyan Chandra Sarkar us Rajesh Ranjan (2005)* 2 SCC 42 that the accused has a right to make successive Applications for grant of Bail and the Court considering the subsequent Applications has a duty to consider the reasons and grounds on



which the earlier Bails have been rejected. It is also a duty to record what are the fresh ground which persuaded it to take a view different from the one taken in the earlier Applications. Reliance has also been placed on State of Maharashtra Vs. Captain Buddhikota Subha Rao, 1989 AIR 2292 and Virupakshappa Gouda v. State of Karnataka, (2017) 5 SCC 406.

41. Furthermore, the Bail Application in PMLA Cases is required to satisfy the *twin conditions* laid down under Section 45 of the PMLA. The Appellant has been accused of commission of grave economic offences and has a potential to tamper with evidence and influence the witnesses. Huge amount of proceeds of crime have been laundered and there exists a reasonable apprehension of crucial evidence being destroyed if the Accused is enlarged on Bail.

42. There is ample evidence to link the Accused to the commission of the offence of Money Laundering, and his release on Bail would adversely affect further investigation to trace remaining proceeds of crime especially in light of the nature of the case, severity of allegations and voluminous evidence on record. Certain facts are in the personal knowledge of the Applicant which the Investigation Agency is yet to unearth and there exists all likelihood of the accused tampering the evidence of the case, if released on Bail. There is also a likelihood of him evading the process of law, the possibilities of which cannot be ruled out. While personal liberty is of paramount importance, the same is not absolute but subject to reasonable restrictions, including the interest of the State and public.

43. Reference has been made to Vijay Madanlal Choudharv & Ors (supra) wherein while considering the twin conditions under Section 45 of the PMLA, the Apex Court observed that the twin conditions are valid being



reasonable on having correct 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 country.

44. *In State of Kerala v. Rajesh* (2020) 12 SCC 122 while interpreting Section 37 of PMLA, the Apex Court had observed that unless the twin conditions are satisfied, no Bail can be granted under Section 439 of the Cr.P.C. and that too without giving the opportunity to the prosecution to address arguments. Reliance has also been placed on *Rohit Tandon v. Directorate of Enforcement* (2018) 11 SCC 46.

45. While the factual matrix of the predicate offence as well as of the present matter has been explained and admitted in detail, it is contended that it is no longer *res integra* that the *twin conditions* have to be satisfied before grant of Bail.

46. It is asserted that the investigations against the Applicant are complete and the prosecution Complaint has also been filed. The IO and the ED have taken all steps to expedite the trial and has been proactive in complying with the directions of the Court. The Directorate of Enforcement as per the established law, is not required to give the list of un-relied documents to the accused persons before the stage of trial and thus, had challenged the Order of the Trial Court dated 05.01.2023 wherein it was directed to only provide the list of un-relied documents. However, despite being contrary to the settled law and without prejudice to the rights and contentions of the Directorate of Enforcement in this matter, the Agency withdrew its Petition from the High Court only to facilitate speedy trial and fulfill its commitment to the Apex Court. The list of un-relied upon



documents was promptly provided to all the accused on 27.12.2023 and the compliance has been duly recorded by the learned Trial Court.

47. It is further claimed that the Bail of Rajesh Joshi and Gautam Malhotra are not granted on merits and there is no change in circumstances which has a direct impact on the earlier bail Order passed by this Court. It is claimed that the accused has tried to mislead the court by quoting only part of the Hon'ble Supreme Court Order dated 08.12.2023 granting Bail to Mr. Benoy Babu on the peculiar facts and circumstances of his case. It is denied that the statements of the co accused and the witnesses have been recorded under Section 50 of the PMLA under force, threat and coercion. It is further asserted that the accused has failed to satisfy the *triple test* namely that of not being a flight risk and tampering with evidence or influencing witnesses.

48. In regard to the *medical ground for Bail*, it is stated that it is only on the exceptional sickness that Bail can be exercised and that too in sparing and cautious manner; any and every nature of sickness does not entitle an accused to be released on Bail. in a recent decision pertaining to interim medical bail in a PMLA case, this Court has accepted the principle that if the condition of the accused is not so serious or life threatening, he cannot be enlarged on medical bail.

49. Reliance has been placed on *Sanjay Jain vs. Enforcement Directorate* 2023 SCC OnLine Del 3519 that the proviso to Section 45 of the PMLA is *pari materia* with the proviso to Section 437 of CrPC. Reliance has also been placed on *Mahendra Manilal Shahand etc.vs.Rashmikant Mansukhai & Anr* 2009 SCC OnLine Bom 2095, *Fazal Nawaz Jung and Anr v. State of Hyderabad* 1951 SCC Online Hyd 60, *State*



v. GaladharBaral 1988 SCC OnLine Ori 281, Pawan Alias Tamatar v. Ram Prakash Pandey and Anr. (2002)9 SCC 166 and Surinder Kairam & Anr v. State (2002) SCC OnLine Del 920.

50. It is further submitted that the medical condition of the accused has already been considered by this Court in its Order dated 19.10.2023 and *vide* Order dated 03.10.2023 rejected the medical ground on which the applicant is seeking Bail, which is therefore not tenable. The condition of the wife of the accused cannot be the ground for grant of Bail for the accused and he has already been awarded Interim Bail on that ground. It is thus submitted, that the applicant is not entitled to Interim Bail.

51. Learned counsel for the applicant has argued at length and in detail and has also submitted his Written Submissions which are essentially on the same lines as the present Bail Application.

52. Learned counsel for the respondent has also agitated all the ground as stated in their Reply.

53. **Submissions heard and the record along with Written arguments, perused.**

54. The basic argument on behalf of the applicant is that there is no prima facie case against him. There is no role of the applicant in framing or implementing the Excise Policy. The applicant has detailed that various meetings were held between the South Group and the AAP from March to July, 2021 at various locations in Delhi and Hyderabad and to none of those was he a party. He has further explained that he had a copy of the Draft Excise Policy on his WhatsApp but it was only because this Draft Policy had already been formulated and had been circulated vastly amongst the Liquor vendors on the WhatsApp group essentially to seek their comments.



The applicant also had given his comments only because he had been in this business for long and had huge experience. He merely gave his comments as a stakeholder and had not been in any way influenced the Policy. He has also sought to explain that the claim that he was getting kickbacks from the profits to be earned, is also not tenable as his profit margin was only 1 percent as has been explained in detail. The applicant has further explained that though there are allegations made against him of destruction of evidence, but it is in regard to three mobile phones which he had to change because these mobile phones were seized by the CBI during the raids making it imperative for him to switch to the new mobiles.

55. Taking a *prima facie* view of the roll as defined of the applicant in the case, it can be observed that the *twin test* of guilt for the offence of money laundering or likely to commit any offence are weak.

56. Even if the case of the prosecution is accepted that there is a strong case made out, but it is pertinent to now refer to the latest judgments of the Apex Court in Manish Sisodia v. Directorate of Enforcement 2024 INSC 595, it has been observed that right of liberty guaranteed under Article 21 of the Constitution of India is a sacrosanct right which needs to be accepted even in cases where stringent provisions are incorporated in the special enactments. Similar observations have been made in the case of Javed Ghulam Nabi Sheikh v. State of Maharashtra and Anr 2023 SCC OnLine SC 1693. where the accused was being prosecuted under Unlawful Activities Prevention Act, 1967. The Court surveyed the entire law from the Judgment of Gudikanti Narasimhulu and Others v. Public Prosecutor, High Court of Andhra Pradesh 1977 INSC 232; Shri Gurbaksh Singh Sibbia and Others v. State of Punjab 1980 INSC 68; Hussainara Khatoon and Others (I) v. Home



Secretary, State of Bihar 1979 INSC 34; Union of India v. K.A. Najeeb 2021 INSC 50; and Satender Kumar Antil v. Central Bureau of Investigation and Another 2022 INSC 690, after which the Court observed that if the State or the Prosecuting Agency including the Court concerned, has no wherewithal to provide and protect the fundamental right of the accused, to have a speedy Trial as enshrined under Article 21 of the Constitution, then the State or any other Prosecuting Agency should not oppose the plea of Bail on the ground that the crime committed is of serious nature. Similar observations have been reiterated by the Apex Court while granting bail under PMLA, 2002 in Kalvakuntla Kavitha v. Directorate of Enforcement 2024 INSC 632 and Vijay Nair v. Directorate of Enforcement SLP (Crl.) No. 22137/224 dated 02.09.2024.

57. ***In the present case as well***, in the light of the observations of the Apex Court in Manish Sisodia and in the Bail Applications of the other co accused, it is now well defined that Article 21 of the Constitution shall take precedence over the *Twin Test* and if the Trial would take long, the accused shall be entitled to Bail. In all these cases, a reference has been made to the ED as well as the CBI case, there are 492 witnesses who have been named. The case involves thousands of pages of documents and over a lakh of digitized documents. If there is not even a remotest possibility of the Trial being concluded in the near future. Considering that the Applicant is in Judicial Custody since 28.09.2022 i.e. for almost two years and with a little hope of speedy completion of Trial, he would be deprived of his right to liberty under Article 21 and is therefore, entitled to grant of Bail.

58. Pertinently, an objection has been taken on behalf of the ED that the accused are indulging in tactics to delay the Trial by moving multiple



Applications but this aspect can also be considered in the case of *Manish Sisodia* (supra) wherein it has been specifically observed that though the Applications are being filed on behalf of the accused persons, the conduct of the accused cannot be termed as vexatious or intended to delay. They were merely exercising their rights of fair Trial by seeking the documents relied and un-relied by the prosecution for their defense. It cannot be said that there is any delay which is attributable to the applicant; rather it is the complexity of the matter, voluminous records and the number of witnesses which are required to be considered in the Trial, which would take a reasonable time.

59. It may also be observed that the antecedents of the Applicant, who has no previous involvement, it cannot be said that he is of flight risk or is likely to tamper with the evidence or influence the witnesses since most of the evidence is essentially documentary in nature.

60. In the totality of the circumstances, the Bail Application is allowed and Sameer Mahandru is admitted to bail, on the following terms and conditions: -

- I. The applicant is directed to be released *forthwith* on bail in connection with the ECIR No. HIU-II/14/2022 dated 22.08.2022, registered by the Directorate of Enforcement subject to furnishing a bail bond in the sum of Rs.10,00,000/-with two sureties of the like amount, to the satisfaction of the learned Trial Court.
- II. The applicant/accused shall appear before the Court as and when the matter is taken up for hearing.
- III. The applicant/accused shall provide mobile number to



the IO concerned which shall be kept in working condition at all times and he shall not change the mobile number, without prior intimate to the Investigating Officer concerned.

- IV. The applicant/accused shall not change his residential address and in case of change of the residential address, the same shall be intimated to this Court, by way of an affidavit.
- V. The applicant shall surrender his passport with the learned Special Court;
- VI. The applicant shall report to the Investigating Officer on every Monday and Thursday between 10-11 AM; and
- VII. The applicant shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses.
- VIII. The applicant/accused shall not leave the country, without permission of this Court.
- IX. The applicant shall not make any attempt to tamper with the evidence or influence the witnesses;

61. Petition along with application, if any stand disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 09, 2024/PT/VA