

*CT. CASES 102/2023*  
*DIRECTORATE OF ENFORCEMENT*  
*VS.*  
*M/S VIVO MOBILE COMMUNICATION AND ORS.*  
*(Bail Application of accused Rajan Malik)*

**09.10.2024**

**Present:** Sh. Hemant Shah alongwith Sh. Mohit Kumar  
Gupta, Sh. Harsh Yadav & Sh. Saurabh Pal, Ld.  
Counsels for the applicant.

Sh. Manish Jain and Sh. Simon Benjamin, Ld.  
Special PPs alongwith Ld. Counsel Ms. Snehal  
Sharda.

Today, the matter is fixed for consideration/orders on the  
bail application of the applicant/accused Rajan Malik. Detailed  
arguments have already been addressed by the Ld Defence  
Counsel and Ld Special PPs for Enforcement Directorate.

**ORDER**

**1.** Vide this order, I shall decide the application filed  
u/s 439 Cr.P.C. r/w Section 45 Prevention of Money Laundering

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Act, 2002 (hereinafter referred to as 'PMLA') on behalf of the applicant Rajan Malik.

2. In the application, it is stated that the offence of Money Laundering is not made out against the applicant on the basis of the evidence on record. He satisfies the twin conditions stipulated u/s 45 PMLA. That in the entire ECIR, there is no allegation or any role ascribed to the applicant in relation to commission of the scheduled offence. He is not an accused in the FIR. There is no allegation that he was even aware of commission of the scheduled offence. He had nothing to do with the visas or the invitation letters which were issued to the various Chinese Nationals. There is not a single piece of evidence that the applicant was in any manner involved with the incorporation of Vivo, SDCs or any other related entity. There is no evidence whatsoever that there was any mens-rea on the part of the applicant for allegedly helping Vivo to commit the offence of Money Laundering by establishing and growing its business in

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India.

**2.1.** It is stated that the entire role ascribed to the applicant relates to professional services provided by him as a Chartered Accountant and have no element of presumption of any criminality. The applicant is not alleged to be involved in any manner with the scheduled offences of forgery/cheating or PoC generated therefrom. There is no evidence that the applicant was involved in any activity related to PoC generated from the scheduled offence.

**2.2.** It is stated that ED has failed to show any evidence whatsoever that the applicant indulged in, assisted, was a party to or involved in the concealment, possession, acquisition or use of the alleged PoC generated from the scheduled offence. The offence of using forged document as genuine and cheating have been committed by director/shareholder of GPICPL and other

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Chartered Accountants /certifying professionals accused in relation thereto.

**2.3.** That the alleged role of the applicant is limited to the activities of Labquest Engineering Private Limited and firms Rajan Malik & Company and KLM Associates, and these companies do not have any role in the forgery of documents or cheating. The entire case of ED is that a complex structure of companies was devised to essentially violate FDI norms, which at best is FEMA violation and is not part of scheduled offence under PMLA. There is no evidence against the applicant to show that he was involved in any conspiracy. The amount of Rs. 3.17 Crores received by Labquest was transferred by Lava and Hari Om Rai and cannot be attributed to the applicant.

**2.4.** It is stated that the email responses sent by the applicant to the queries by Alice Cheng, CFO are merely answers given as an expert in the field of foreign exchange and related

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laws. None of the queries raised by Alice Cheng are related to tax evasion or conspiracy to hide beneficial ownership. That the amount of Rs. 1.27 Crores received by his firm Rajan Malik & company and the firm of his wife KLM Associates from Labquest is the professional fees towards accounting, auditing and secretarial work conducted by the said two firms, which was provided for the period between FY 2014-15 and FY 2021-22. The said amount cannot be termed as PoC without any supporting material. The applicant had duly provided the ledger accounts and explained the fee received from the Labquest along with corresponding services, which has been ignored by the agency.

**2.5.** That the role of the applicant ended after the setting up of Labquest. The statements of Rajan Sachdeva, Sandeep Singh, Rajesh Sethi, Shilpa and Harendra Sharma recorded u/s 50 PMLA cannot be used to deny bail to him at this stage. The veracity of these statements shall be tested during trial and the

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same cannot be believed as gospel truth. The applicant in his statement u/s 50 PMLA never admitted any criminality or guilt. He only provided professional services to Labquest and was neither in control nor related to day to day affairs of Labquest.

**2.6.** It is stated that applicant is 61 year old and is a Chartered Accountant by profession. He has no previous involvement. He satisfies the twin conditions u/s 45 PMLA as well as triple test. He is entitled for bail on the ground of parity with co-accused Nitin Garg. It is prayed that the application be allowed and the applicant be released on bail.

**REPLY ON BEHALF OF ENFORCEMENT**  
**DIRECTORATE/AGENCY**

**3.** In the reply filed on behalf of ED, it is stated that it has been established during investigation that Vivo China controlled and monopolized all the operations of Vivo mobiles in

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India through Vivo India, which in turn controlled and monopolized the operations of 23 SDCs of Vivo. All these companies were controlled and operated by the Chinese management of these companies. The complex structure was set up in a fraudulent manner which was used for the purpose of laundering the funds outside India under the garb of import of goods. In this way, they have remitted Rs.70837/- Crores out of the total funds i.e. Rs.71625/- Crores accumulated by them from sale of goods during the period from January 2015 to March 2021.

**3.1.** That as per the then FDI policy prevalent in 2013-14, Government approval was required for making 100% FDI investment in single brand retail trading. Vivo India through SDCs and LabQuest was involved in the business of retail trade of Vivo brand mobile phones and accessories. The process of taking government permission as per prevalent FDI norm would have exposed the activities of Vivo India and its 23 SDCs to

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government scrutiny. So, Vivo and its SDCs mis-declared that they are in wholesale cash and carry business and brought 100% FDI in India through automatic route. For retail business, they used a dummy entity M/s LabQuest as a front.

**3.2.** That the applicant to circumvent the prevalent FDI rules, provided the set up of LabQuest, which enabled the Chinese to set up one nation wide network of companies in the garb of carrying out business of retail trade and after sale service for Vivo group companies. He opened 31 bank accounts of LabQuest across India for SDCs of Vivo India to utilize these bank accounts for carrying out the operations of mobile trading and collected funds to the tune of Rs.283.87 Crores across India. These funds were ultimately remitted to the SDCs against purchase of spare parts and products. Though these accounts were in the name of LabQuest, the employees of the SDCs used to operate the said bank accounts and maintain the books of LabQuest in their respective States. This proxy system continued



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till 2017-18. He was instrumental in assisting Ye Liao and Liu Hao, both employees of Vivo China by way of providing necessary support for establishment of Vivo group of companies. Ye Liao was the authorized signatory in one of the bank accounts of LabQuest which was utilized for the purpose of providing funds for establishment of Vivo group companies in India.

**3.3.** That the applicant was the statutory auditor of Lava International Ltd. and beneficial owner of LabQuest. He is also the proprietor of Rajan Malik & Company and associated with KLM Associates India Pvt. Ltd. He was introduced to Ye Liao, CEO and Luis, CFO of Vivo India by Hari Om Rai in 2014. Both Ye Liao and Luis came to India ostensibly for incorporation of Vivo India on visa invitation of Lava International Ltd. The applicant through LabQuest played an important role in the entire money laundering set up by providing financial support required for the purpose of securing office space, flats for chinese

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individuals and SDCs of Vivo group. The applicant through LabQuest had assisted Chinese individuals associated with Vivo China in their set up across India by providing funds for the purpose of security deposit and in acquiring / arranging office spaces for Vivo India and its SDCs across India. During investigation, it was found that employees of Lava International were authorized by LabQuest to execute lease deeds for acquiring residential accommodation for Chinese as well as office spaces for SDCs much before their incorporation. The rent agreement were executed by LabQuest at the directions of the applicant Rajan Malik. He has been continuously monitoring the process of setting up of Vivo group companies and their office space / Chinese accommodation / service centers through e-Mail communications.

**3.4.** That an amount of Rs.30.45 Lacs has been paid to M/s Rajan Malik & Company (statutory auditor of LabQuest) and Rs.95.78 Lacs to KLM Associates. The applicant is the

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beneficial owner of both these entities. During investigation, forensically extracted e-Mail dump data of Ms. Shilpa Kunwar, an employee of KLM Associates was examined and it was found that representatives of Vivo China, Vivo India, Hari Om Rai and Rajan Malik had together connived in the incorporation of Vivo companies in India without disclosing their beneficial ownership before Government authorities. The applicant was paid Rs.1,00,000/- plus 12.36% service tax as fee from the account of LabQuest. He actively assisted in acquisition of PoC to the tune of Rs.20,241/- Crores by Vivo India and PoC to the tune of Rs.346.40/- Crores by LabQuest and SDCs. He has received PoC to the tune of Rs.1.27/- Crores. It is prayed that the application be dismissed.

**ARGUMENTS ON BEHALF OF Ld. DEFENCE COUNSEL**

4. It is argued by Ld. Counsel for the applicant that applicant is neither named as an accused in the FIR nor charge-

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sheet has been filed in the predicate offence. He has already suffered pre-trial incarceration for 284 days out of the maximum punishment of seven years. He has not been interrogated even once in judicial custody. The ED has listed 542 witnesses and the complaint runs into 76,000 pages in around 18 trunks and the investigation is still continuing and the trial has yet not commenced.

**4.1.** It is argued that during investigation, no undisclosed assets- movable or immovable have been recovered by the ED. The properties, bank accounts and other assets of the applicant and his family members have not been seized or attached by the ED and as such alienation of PoC cannot be ground for denying bail. The applicant is a senior citizen suffering from degenerative changes in spine, prostrate enlargement and hypertension.

**4.2.** It is further argued that the applicant was the statutory auditor of Lava International only for the first year in

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2010 and 2011 and not thereafter. He has never been the beneficial owner of LabQuest. There is no document to suggest that applicant was either an officer, director, shareholder, key managerial personnel or that he reaped any benefits out of the profits of LabQuest. He was neither in charge nor responsible for the conduct of the business of LabQuest. His firm was a statutory auditor where he was only a partner. The firm was performing its professional duties against professional fees and had never exceeded its role. Sandeep Singh was the director at LabQuest in 2014 and is presently working with Lava. Rajan Sachdeva was inducted as Director in LabQuest in November 2014 and subsequently, in 2019 he was inducted as Director at KLM. Both these were not dummy directors as they were sufficiently educated having appropriate knowledge of taxation and accountancy.

**4.3.** It is argued that applicant was introduced to the officials of Vivo India only after its incorporation, therefore,

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there is no criminality that can be attributed to the applicant. The applicant has no association with Lava International, or the visa process or invitations thereof. There is no material which corroborates the allegation that the applicant played an important role in providing the set up and support required for the purpose of securing office space, flat for the Chinese individuals and SDCs of Vivo Group. He is nowhere connected with PoC or had knowledge about scheduled offence whatsoever. He, his firm and KLM Associates had only received the legitimate professional fees for providing necessary audit and assurance, secretarial, legal compliance and accounting services from LabQuest. The payments, if any, made by LabQuest towards the office spaces and rent were made after receiving from Lava, in which applicant had no role to play.

**4.4.** It is argued that as regards the allegations that the applicant was aware that 100% FDI based companies were not permitted to carry out single brand retail in the year 2014 and

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that to circumvent the same, set up of LabQuest was provided is concerned, it is submitted that the applicant never had any knowledge of any such structure and was never in touch with any of the foreign entities. The ED has failed to bring any material on record to even remotely suggest that the applicant was in know of Lucky Crest or any other entity except Vivo India. FDI violation is violation of FEMA which is not a scheduled offence under PMLA. The introduction of the applicant to Vivo India for any ulterior motive can be imputed upon Hari Om Rai and not the present applicant. It is argued that there is nothing on record to show that the applicant had any mensrea or guilty intention to give services for such a set up.

**4.5.** As regards the opening of 31 bank accounts of LabQuest across India for SDCs of Vivo India is concerned, it is stated that applicant was neither an introducer nor an authorized signatory to any of the bank accounts. It is argued that Sandeep Singh in his statement dated 14.07.2023 u/s 50 PMLA has stated

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that Rajan Sachdeva had taken signatures on bank account opening form of various banks from Sandeep Singh and he was the authorized signatory of all the bank accounts of LabQuest. The applicant had no role either in opening or operation of the said bank accounts. There is no e-Mail or document to suggest that the same were being opened on the instructions of the applicant. It is argued that the allegations about Rs.283 Crores is bald. The ED only talks about the credit of Rs.283 Crores and has concealed the debit of Rs.282 Crores. The applicant cannot be held responsible for any actions or inactions of LabQuest. Not even a single money has come to the account of the applicant or his family members from LabQuest except professional fees. It is further argued that the accounts are opened only after the verification of KYC and does not entail any certification from a CA. It is submitted that all transactions which were audited by Rajan Malik & company as undertaken by the LabQuest were legitimate transactions inter-alia sale and purchase of goods, payment of business expenses including reimbursement and



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payment of statutory dues.

**4.6.** It is further argued that Vivo India was incorporated in July 2014 by Nitin Garg CA, hence, the applicant cannot be fostered with any knowledge that the entities were controlled by Vivo China. All the e-mail communications concerning the applicant were with Vivo India and not Vivo China.

**4.7.** It is argued that the amount received by the applicant and KLM have been in the nature of professional services. The total payment received by both the firms included the tax paid and the cost which was reimbursed and it cannot be termed as PoC. The fees received from LabQuest is only 6.18% of the total revenue generated from professional services of both the entities attributed to the applicant for the relevant period. No document or material has been placed on record by the ED to even suggest that the applicant had any knowledge of the complex structure.

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**4.8.** It is further argued that no reliance can be placed on the statements u/s 50 PMLA relied upon by the ED against the applicant as the said statements are identical and classic case of cut-copy-paste, hence, no evidentiary value. It is further argued that the certificate u/s 65-B IEA for the e-mail dump seized by the ED from the premises pertains to some “simmtronics” pen drive and no hard disc as seized vide panchnama dated 09.10.2023. Ld. Defence Counsel in support of his arguments has relied upon following judgments:

- (a) Raman Bhuraria v. Enforcement Directorate, reported in 2023 SCC OnLine Del 657 (Para 57-60);
- (b) Paras Mal Lodha v. Directorate of Enforcement, reported in (2017) SCC OnLine Del 8676 (Para 8);
- (c) Manish Sisodia Vs. Central Bureau of Investigation 2023 SCC OnLine SC 1393;
- (d) Sanjay Chandra v. CBI, reported in (2012) 1 SCC 40 (Para 42-43);
- (e) Gurbaksh Singh Sibbia v. State of Punjab, reported in (1980) 2 SCC 565 (Para 27);

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- (f) Satender Kumar Antil v. CBI, reported on 2022 SCC OnLine 825 (Para 66-68);
- (g) Jainam Rathod v. State of Haryana & Ors., reported in 2022 SCC OnLine SC 1506 (Para 8);
- (h) Sujay U. Desai v. Serious Fraud Investigation Office, reported in 2022 SCC OnLine SC 1507;
- (i) Union of India v. K.A. Najeeb (2021) 3 Supreme Court Cases 713.

**ARGUMENTS ON BEHALF OF Ld. SPP FOR ED**

5. It is argued by ld. SPP that applicant is the beneficial owner of Labquest, Rajan Malik and Co. & KLM Associates Pvt. Ltd. This fact is evident from the statement of Rajan Sachdeva, Sandeep Singh, Kamna Malik, Shilpa Kunwar, Rajan Malik, Hari Om Ram and Harendra Sharma recorded under S. 50 PMLA. It is argued that the applicant provided the infrastructure to SDCs through Labquest, who entered into the lease deeds creating a platform for VIVO India to establish its footprints all over India.

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The 31 bank accounts were opened through Labquest which were otherwise managed by the VIVO India and its SDCs. It is argued that the applicant provided the necessary support and infrastructure for establishing the footprints of VIVO India and creating mesh of companies. During arguments, Ld. SPP for the Agency has relied upon following judgments:

1. Vijay Madanlal Choudhary & Ors. vs. Union of India & Ors., 2022 SCC OnLine SC 929;
2. Y. Balaji vs. Karthik Desari & Anr. 2023 SCC OnLine SC 645;
3. Doypack Systems Pvt Ltd v. Union of India & Ors (1988) 2 SCC 299;
4. Vijay Madanlal Choudhary & Ors. Vs. Union of India & Ors. 2022 SCC OnLine SC 929
5. Pavana Dibbur vs Directorate of Enforcement, Criminal Appeal No 2779/2023;
6. P. Rajendran vs. Directorate of Enforcement [Criminal Original Petition No. 1980 of 2022)

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**ANALYSIS AND FINDINGS**

6. I have perused the bail application, the reply filed by the Agency and the relevant portion of the ECIR, wherein the role of the present applicant is described in detail alongwith the convenience documents material as well as the judgments relied upon by both the parties. Section 45 of PMLA prescribes the mandatory twin conditions that are required to be met before bail can be granted to an accused, which are as under:

- a). there are reasonable grounds for believing that the accused is not guilty of the offence of money laundering, and
- b). he is not likely to commit any offence while on bail.

However, the proviso to Section 45 provides exceptions to the general rule i.e. the cases where Special Courts can exercise their discretion de hors the satisfaction of twin conditions.

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7. It is settled law that the Court at the stage of considering the application for grant of bail under PMLA is expected to consider the question from the angle as to whether the accused was possessed of the requisite mensrea. 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. **(In Vijay Madanlal Choudhary & others v. Union of India 2022 SCC ONLINE SC 929)**

8. It is now a settled principle of law that twin

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conditions contained under S. 45 of the PMLA do not impose an absolute bar or restrain upon powers of the Criminal Court to grant bail to a person accused of the offence of Money Laundering and these conditions have to be reasonably construed and interpreted. It is trite that “Bail is the rule and Jail is an exception”. The court while considering an application seeking bail, is not required to weigh the evidence collected by the investigating agency meticulously, nonetheless, the court should keep in mind the nature of accusation, the nature of evidence collected in support thereof, the severity of the punishment prescribed for the alleged offences, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witness being tampered with, the larger interests of the public/ State etc.

9. The case of Agency in brief is that during investigation, it has been revealed that Vivo China and others

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devised a complex scheme for setting up of Vivo Group of Companies in India in a fraudulent manner without revealing its true beneficial ownership before the Government of India. Vivo China has resorted to use of pass through entities situated in foreign jurisdictions for incorporation of multiple entities in India including Vivo India. That Vivo India and its 23 SDCs incorporated all over India were operating under a corporate veil by hiding their true beneficial owner i.e. Vivo China and mis-declared the same before Government Authorities. Vivo India and its SDCs wilfully concealed that Vivo India is beneficially owned and controlled by Vivo China. Instead, it was falsely declared that Vivo India is a subsidiary of Hong Kong based company viz Multi Accord Ltd. With this complex corporate structure, Vivo India and its SDCs acquired huge PoC which were subsequently used for expansion of Vivo footprints in the country and siphoning off the same to foreign companies which are also owned /control by Vivo China. Vivo China through its employees and accused persons has created an elaborate network



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of companies under a corporate veil controlled by Vivo India, which in turn is controlled by Vivo China and has acquired PoC of around Rs.20,000/- crores, which were siphoned off by Vivo India to overseas trading companies based in Hong Kong, Samoa and British Virgin Islands, which were predominantly under the control of Vivo China.

**10.** The specific role which has been attributed to the applicant is that he is the Beneficial Owner of Labquest; he was introduced to CEO and CFO of Vivo India- Ye Liao and Luis- who had come to India ostensibly for incorporation of Vivo India on visa invitation of Lava International; he alongwith co-accused Hari Om Rai through Labquest played an important role in the entire money laundering set-up by providing the financial support required for the purpose of securing office space, flats for the Chinese individuals and SDCs of Vivo Group; to circumvent the FDI policy/rules, he provided the set up of Labquest; he opened 31 bank accounts across India for SDCs; an amount of Rs

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30.45 lakhs have been paid to M/s Rajan Malik & Co. and Rs 95.78 lakhs have been paid to KLM Associates.

**11.** It is alleged that the applicant was the beneficial owner of Labquest. The Id Defence Counsel has vehemently argued that the applicant had never been the beneficial owner of Labquest. A beneficial owner of a company is a person who ultimately owns or controls a company, either directly or indirectly. It is not the case of the agency that the applicant is/was either the Director or shareholder in Labquest. There is no document to suggest that applicant was either an Officer, Director, Shareholder, Key Managerial Personnel of LabQuest. The allegation is that he was indirectly controlling the company. For this, the agency has relied upon the statements of Sandeep Singh, Rajan Sachdeva (Directors of Labquest for the relevant period), Harendra & other witnesses. It is well settled law that the statements recorded u/s 50 PMLA are admissible and could make out a formidable case about the involvement of the accused, but

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the veracity of these statements has to be tested at the end of the trial and not at the stage of bail. As regards the statements of other persons/witnesses is concerned, **in Sanjay Jain Vs ED BAIL APPLN. 3807/2022 decided on 07.03.24, it has been held as follows:**

*“57. Another question that assumes importance in the backdrop of the factual matrix of this case is whether the confessional statement of co-accused recorded under Section 50 of the PMLA can be used against another accused.*

*58. The proceedings under Section 50 of the PMLA may be judicial proceedings for the limited purpose mentioned therein but a confession made by an accused in his statement under Section 50 of the PMLA is not a judicial confession nor there is any provision in the PMLA like Section 15 of Terrorist and Disruptive Activities Act, 1987 or Section 18 of Maharashtra Control of Organised Crime, 1999 which specifically makes confession of a co-accused admissible against the other accused under certain eventualities. Therefore, Section 30 of the Evidence Act has to be invoked for consideration of a confession of an accused against a co-accused, abettor or conspirator charged and tried in the same case along with the accused. Section 30 of the Evidence Act reads as under:*

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*“Section 30. Consideration of proved confession affecting person making it and others jointly under trial for same offence. When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.*

*Explanation.—Offence as used in this section, includes the abetment of, or attempt to commit, the offence. (emphasis supplied)*

*59. The expression 'the court may take into consideration such confession' in Section 30 of the Evidence Act, signifies that such confession by the maker as against the co-accused himself should be treated as a piece of corroborative evidence.*

*60. It is trite that the court cannot start with the confession of the co-accused to arrive at a finding of guilt but rather after considering all other evidence placed on record and arriving at the guilt of the accused, can the court look at the statement of the co-accused to receive assurance to the conclusion of guilt.*

*61. In Surinder Kumar Khanna vs. DRI: [(2018) 8 SCC 271] the Hon<sup>ble</sup> Supreme Court tracing the law as regards the general application of a confession of a co-accused as against other accused under Section 30 of the Evidence Act, laid down*

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*that the Court cannot start with the confession of a co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence. This proposition of law has been further reiterated by the Hon<sup>ble</sup> Supreme Court in Deepak Bhai Patel vs. State: (2019) 16 SCC 547.*

*62. Thus, the confessional statement of a co-accused under Section 50 of the PMLA is not a substantive piece of evidence and can be used only for the purpose of corroboration in support of other evidence to lend assurance to the Court in arriving at a conclusion of guilt.”*

**12.** Thus, the statement of a co-accused/witnesses under Section 50 of the PMLA is not a substantive piece of evidence and can be used only for the purpose of corroboration in support of other evidence to lend assurance to the Court in arriving at a conclusion of guilt. The Ld Defence counsel during arguments has shown the pattern and manner in which these statements were recorded and highlighted that these statements are classic

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case of cut, copy and paste, where even, each word, coma and full stop is identical/same, though the statements were recorded on different dates. On careful perusal of these statements u/s 50 PMLA, it cannot be said that the applicant was the mastermind or key person to give effect to the entire operation or creating mesh of companies.

**13.** It is alleged that Labquest played important role by providing financial support required for the purpose of securing office space, flat for the Chinese individuals and SDCs of Vivo Group across India. As per record, the amount of Rs 3.17 crores was transferred in the account of Labquest by Hari Om Rai and his company Lava. No amount was transferred or given by the applicant. Most of the lease deeds were executed by employees of Lava. As discussed above, the applicant is neither Director nor shareholder nor holds any Key Managerial Position in Labquest. None of the lease deeds have been signed by the applicant. The payments, if any, made by Labquest towards the

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office spaces and rent were made after receiving money from Lava. The applicant is neither the introducer nor signatory in any of the 31 bank accounts opened by Labquest.

**14.** It is alleged that the firm of the applicant was the statutory auditor of Labquest. It is not the case of agency that the applicant in his audit report had concealed some information or given some mis-information. The IO during arguments has admitted that the Audit report is not part of the Relied upon documents.

**15.** As per the agency, the applicant was introduced to the officials of Vivo India by Hari Om Rai in 2014. Admittedly, the Visa invitation to these Chinese were given by Hari Om Rai and not the applicant. As per record, Vivo India was already incorporated in July 2014. Thus, the applicant was introduced to Vivo India only after its incorporation. Nothing as such has been brought to the notice of the court that the applicant had any

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association with Vivo India or its SDCs prior to their incorporation. Whether or not the applicant possessed the requisite mensrea or had the knowledge that the corporate structure was established to siphon off the funds out of India, is a matter of evidence.

**16.** It is alleged that an amount of Rs 30.45 lakhs have been paid to M/s Rajan Malik & Co. and Rs 95.78 lakhs have been paid to KLM Associates. For this, it is argued by Ld Defence counsel that the applicant and his firm and KLM associates had only received the legitimate professional fees for providing necessary audit and assurance; secretarial, legal compliance and accounting services from LabQuest. The agency has not produced any other document to show that any other amount/PoC was received by the applicant in his account or otherwise except the abovesaid amount. The Ld Defence Counsel has drawn attention of the court to the ledger account of the applicant that the said amount was received by his firm and the



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firm run by his wife towards professional fees for the services rendered. Whether the applicant has gone beyond his professional duty is something which is required to be seen and examined during the trial. It is not the case of the agency that the applicant in his audit report has concealed any information or given misinformation. As discussed above, the Audit report is not part of RUDs.

17. The jurisprudence regarding bail is by now very well settled that “Bail is the rule and Jail is an exception”. It has also been stated time and again that such a principle has to be followed strictly. Right to bail is also essential for the reason that it provides the accused with an opportunity of securing fair trial. The right to bail is linked to Article 21 of the Constitution of India, which confers right to live with freedom and dignity. However, while protecting the right of an individual of freedom and liberty the court also has to consider the right of the society at large as well as the prosecuting agency. This is the reason that

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the gravity of the offence is required to be taken into account. The gravity of the offence is gathered from the attendant facts and circumstances of the case. It is a settled proposition that economic offences fall within the category of “grave offences.” While dealing with the economic offence cases, the court has to be sensitive to the nature of allegation made against the accused. The offence of money laundering in itself is a very serious offence. The Court at the time of deciding a bail plea under PMLA, need not delve deep into the merits of the allegations or minutely consider or assess the evidence collected by the agency, but is only to satisfy itself, on a prima-facie view of the matter, based on broad probabilities, 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. In the recent judgment in **Senthil Balaji Vs The Deputy Director, Directorate of Enforcement, CRIMINAL APPEAL NO. 4011 of 2024**, Hon’ble Supreme Court has re-iterated that it is a well settled principle of our criminal jurisprudence that “Bail is the

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rule, and Jail is the exception.” These stringent provisions regarding the grant of bail, such as Section 45(1)(iii) of the PMLA, cannot become a tool which can be used to incarcerate the accused without trial for an unreasonably long time with an exception in a case where, considering the antecedents of the accused, there is every possibility of the accused becoming a real threat to society if enlarged on bail.

**18.** As discussed above, prima-facie, there is no allegation against the applicant that he is the Director, Shareholder or holds Key Managerial Position in Labquest. The initial money required for executing the lease deeds was given by co-accused Hari Om Rai & his company Lava, and the subsequent funds were given by Vivo India. None of the lease deeds were executed by the applicant. He is neither an introducer nor signatory in any of the 31 bank accounts. The audit report prepared by the applicant is not part of the RUDs. Whether the applicant possessed the requisite mensrea about the true

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ownership of Vivo India is a matter of evidence. The services given by the applicant (as per the emails relied upon by ED) are more in the nature of professional services. From the statements of witnesses u/s 50 PMLA, it cannot be said at this stage, that he was the main mastermind or key person in the whole operation. The applicant is a CA and nothing has been brought to the notice that he has done something which was beyond his scope of profession i.e. he indulged in some activities which are totally unconnected with the Chartered Accountancy.

**19.** In **Manish Kothari v. Directorate of Enforcement, Bail Application No. 2341/2021**, it is held thus (paragraphs 24, 25, 26):

*“ 24. This Court is conscious of the fact that Ranjit Singh Brahamjeet Singh Sharma was a judgment on Section 21 (4) MCOCA and that Mohd. Muslim @ Hussain was a judgment on Section 37 of NDPS Act but the proposition as laid down the Apex Court is squarely applicable on the facts of the present case.*

*25. It is an admitted case that the petitioner herein was a chartered accountant of Anubrata Mondal. The case of the ED is that present petitioner was instrumental in projecting the tainted money*

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*as untainted money. The apparent role of the petitioner is filing of the income tax return. It is a settled proposition that at the stage of consideration of the bail even under PMLA the court has only to see the preponderance of probability. The court at this stage is not required to record the positive finding of acquittal. Such finding can be recorded only after recording and appreciation of the evidence by the learned trial court. The case of the petitioner that Anubrata Mondal is shifting his blame on the petitioner only to save himself has to be tested during the course of the trial. Generally speaking, the professional would act on the instructions of his client. However, whether he has gone beyond his professional duty is something which is required to be seen and examined during the trial. The allegation against the present petitioner is not that he has done something which was beyond his scope of profession i.e. indulging in some activities which are totally unconnected with the chartered accountancy. The plea of the petitioner that he has acted on the basis of information and record provided to him cannot be rejected outrightly at this stage. This is required to be tested during the course of the trial.*

*26. Any further appreciation of the evidence at this stage may prejudice the case and therefore is not expected. It has repeatedly been held that stage of bail cannot convert into a mini trial. It is also pertinent to mention here that that the court has only to take a prima facie view on the basis of the material on record”.*

**20.** In view of the above discussion and after considering all facts, including incriminating material against the

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applicant which are the statements made by co-accused/witness under section 50 of PMLA; the applicant is old aged person as he is 61 years old and is suffering from various ailments; does not have a criminal record and no criminal case is pending against him except the present case; he is in custody for the last one year, this Court is satisfied that there are reasonable grounds for believing that the applicant is not guilty of the offence and that he is not likely to commit any offence while on bail. The applicant is admitted to bail on furnishing personal bond in the sum of Rs.2 lakhs with two sureties of the like amount, one surety being the close family member, subject to following terms and conditions:

1. The applicant shall surrender his passport within 3 days of his release and shall not leave the country without prior permission of the court.
  
2. The applicant shall ordinarily reside at his place of residence. He shall inform in case of change in the

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address by way of an affidavit, to the investigation officer as well as the Court.

3. The applicant shall appear and attend before the Court/Investigating Agency as and when required;

4. The applicant shall provide his mobile number to the Investigating Officer (IO) at the time of release.

5. The applicant shall not directly or indirectly communicate or visit co-accused persons or the witnesses or offer any inducement, threat or intimidate or influence any of the prosecution witnesses or tamper with the evidence of the case.

6. The applicant shall not indulge in any criminal activity during the bail period.

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Nothing stated herein above shall tantamount as an expression of opinion on the merits of the case. The copy of the order be given dasti to the ld. counsel for accused / applicant as well as Ld. Special PP and one copy of the order be sent to concerned Jail Superintendent to be served upon the accused / applicant.

**The bail application is disposed off accordingly.**

**(KIRAN GUPTA)**  
**Addl. Sessions Judge-04**  
**Patiala House Courts**  
**New Delhi/09.10.2024**