IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1581 OF 2017

Anil Babulal Chokhara .. Applicant

Vs.

Directorate of Enforcement,
Mumbai & Anr. .. Respondents

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Mr.Vikram Chaudhari a/w. Mr.Pankaj Jain i/b. M/s.P.D. Jain & Co., Advocate for the Applicant.
Mr.H.S. Venegaonkar, Advocate for Respondent No.1.
Mr.Arfan Sait, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATED : AUGUST 4, 2017.

P.C. :

This is an application for bail under Section 439 of Cr.P.C. seeking enlargement of the applicant on regular bail in ECIR/MBZO-II/05/16, registered by Enforcement Directorate, Mumbai for an offence punishable under Section 3 read with Section 4 of Prevention of Money Laundering Act, 2002 (hereinafter referred to as "PML Act", for short).

2 The brief facts of the prosecution case are as follows:

(a) FIR bearing No.365 of 2015 was filed with D.B. Marg Police Station, Mumbai on 24th December, 2015 for offences punishable under Section 420, 465, 467, 468 and 471 read with Section 120-B of the Indian Penal Code (hereinafter referred to as “IPC”, for short). In the First Information Report, it was alleged that the bank account holder of IndusInd Bank, Mumbai namely M/s.Yogeshwar Diamonds Pvt.Ltd., M/s. Charbhuja Diamonds Pvt. Ltd. and M/s.Kanika Gems Pvt.Ltd. were having Bank Account with ING Vysya Bank, Opera House Bank, Fort Mumbai by submitting forged bills of entry in respect of import of diamonds. They impelled to the IndusInd Bank to remit the Indian currency to the tune of Rs.304,35,77,609/- illegally to abroad in the form of import advance and post import remittances, payment, manipulated as well as bills of entry having identical details of the original bills of entry were submitted to the Bank and remittance have been effected on the basis of such manipulated bills of entry. Signatures of the Customs Officer and the CHA were forged on the fake bills of entry. Original bills of entry obtained from Customs revealed that the documents were fictitious. Remittance were made in the form of import advance. However, repeated reminders by the bank, the accused companies were not furnished the requisite import documents to the concerned bank, even after expiry of prescribed limit.

(b) Based on FIR registered with D.B. Marg police Station, the Enforcement Directorate registered ECIR/MBZO-II/05/16 on 11th May, 2016 under the provisions of Prevention of Money Laundering Act, 2002. Summons were issued to the applicant on 23rd August, 2016 and statements were recorded on 24th August, 2016 and 26th August, 2016. In the statement it is stated by him that he came in contact with Vijay Kothari who had asked him to come to Mumbai and assist him in his diamond business. Accordingly, in February 2008 he came to Mumbai and started assisting Mr.Kothari in his diamond business.

(c) Vijay Kothari opened the firm namely namely M/s. Keshav Impex wherein the applicant was made proprietor. Vijay Kothari also opened a private limited company namely M/s. Kanika Gems Private Limited in which he was made one of the director. M/s.Keshav Impex was doing sales and purchase of diamonds in local market and M/s.Kanika Gems Private Limited were involved in import of diamonds from Hong-Kong and Dubai. In the statement, the applicant has stated that the company was having account with ING Vyas Bank, IndusInd Bank, Bank of India, ICICI Bank and Yes Bank. It was further stated that brother of the applicant was also made one of the director of M/s. Charbhuja Diamonds Limited and M/s. Yogeshwar Diamonds Pvt. Ltd.

(d) Based on the investigation it was established that amount was remitted to Hong-Kong based company/consignor by way of illegal bills of entry having same invoices number and invoices were manipulated along with other import documents by furnishing forged remittance.

(e) The scrutiny of the bank statement of IndusInd Bank in respect of M/s.Kanika Gems Pvt. Ltd, revealed that the said company had account with IndusInd Bank, Mumbai and that the applicant and others accused were the Directors of M/s. Kanika Gems Pvt.Ltd. From the said bank account, during the investigation it revealed that an amount of Rs.60,80,30,398/- had been remitted in the guise of import advance to Hong-Kong based exporters. However, despite repeated reminders by the Bank, M/s. Kanika Gems Pvt. Ltd. did not submit the requisite import documents to the bank to establish that the import has taken place against the said advance import remitted to overseas exporter. The amount was also remitted towards direct import by using forged bills of entry and bogus invoices to Hong-Kong based exporters. Funds were maintained and received from the associate company namely M/s.Aadishwar Diamonds Pvt. Ltd., Kanika Gems Pvt.Ltd., M/s.Shree Charbhuja Diamonds Pvt.Ltd. and M/s.Yogeshwar Diamonds Pvt. Ltd. M/s.Keshav

Impex is the proprietorship firm of the applicant. It was also alleged that applicant had purchased residential flat at Borivali which was not revealed by him and he did not disclose that his wife has bank account at ICICI Bank. Scrutiny of bank account shows that huge amounts have been transferred. It is alleged that the applicant is incharge in sales and purchase of the property, bank balance etc., which are acquired as proceeds of crime. Properties of the wife of the applicant were also identified viz. Flat No.406 at Pushpa Niketan Co-operative Housing society, Bhyander, Flat No.304 purchased vide agreement dated 10th February, 2014 for Rs.28,00,000/- and sold by agreement dated 27th June, 2016. Flat No.6-203 at Datta Pawda, Boriwali which was sold subsequently to M/s.Mangal Bullion Pvt.Ltd. He did not clarify the sources of funds acquired for purchase of property in the name of his wife. The applicant sold two premises in his wife's name against which he has not given any clarification. Money was diverted out of criminal activities related to scheduled offences. The applicant is actively involved and associated in dealing with the amounts of proceeds of crime which was laundered and siphoned off. The applicant was arrested on 20th April, 2017.

3 Learned senior advocate Shri Choudhari submitted that the applicant has never had any concern with any of companies viz. M/s. Shree Charbhuja Diamonds Pvt.Ltd., M/s.Yogeshwar Diamonds Pvt. Ltd. and M/s.Kanika Gems Pvt. Ltd. The same were managed and controlled by Vijay Choudhari and his associate Sanjay Jain and Sanjay Tiwari. The company has their account in various banks. He submitted that in the year 2015, EOW was investigating FIR No.93 of 2015 with regard to dubious imports of the aforesaid companies. The petitioner was also interrogated in the said FIR as well as by the customs department, Mumbai. He fully co-operated with the investigation. Applicant learnt about fake and forged bills of entry being prepared by the co-accused and also learnt about remittance of crores of rupees hence, the applicant forwarded detailed complaint dated 18th September, 2016, seeking registration of case against the persons under Sections 420, 406, 120 -B and 34 of IPC. The applicant was arrested on 19th May, 2015 for the

offence punishable under Section 135(1)(A) of Customs Act. He was released on bail by order dated 14th June, 2015. Since no action was taken against the actual culprits, the applicant gave his representation dated 15th August, 2016 to the Enforcement Directorate and gave details about the acts and omissions committed by Vijay Kothari and his associates. In reply to the representation of the applicant, he received a call from the Enforcement Directorates asking him to visit the office on 23rd August, 2016. The applicant appeared before the officer. He was interrogated. Surprisingly on the same day, he was handed over summons for appearing on 24th August, 2016. The applicant then visited the office of Enforcement Directorate on 24th August, 2016 and provided the list of the persons who are involved in the Hawala Racket which was carried out by Vijay Kohtari and his associates. It is submitted that the applicant had appeared before the E.D. Office, Mumbai on several occasions and provided the information. The applicant appeared on 26th August, 2016, 28th August, 2016, 31st August, 2016, 1st September, 2016, 17th October, 2016, 26th October, 2016 and various other subsequent dates upto 15th March, 2017. During the attendance, the applicant was abused, threatened and humiliated. His statements were recorded on 20th February, 2017 and 21st February, 2017.

Statement of the applicant was also recorded by Additional Director on 15th March, 2017 as he had made a written complaint to him about the conduct of the officers of the Enforcement Directorate. It is further submitted that the petitioner had preferred a Writ Petition No.1607 of 2017, seeking free, fair and impartial investigation. The petition was duly served upon the Enforcement Directorate and the same was listed on 24th April, 2017. However, the applicant was picked up from his residence on 20th April, 2017. Applicant's wife forwarded a representation on 21st April, 2017 that the applicant was detained beyond 24 hours without producing him before the Court. The petitioner was than shown arrested and he was produced before the Court for remand. Petition preferred by the petitioner was disposed off on accepting the statement that the investigation is in progress and the same would be completed expeditiously. It is submitted that the applicant is a whistle blower and has attended the office of E.D. more than 35 times and provided all the documents regarding fraud committed by the co-accused, however, no action was taken by the Directorate against them.

4 It is submitted that the applicant had appeared before the authority in response to the summons issued on several

occasion. His statements were recorded and he rendered full co-operation and assistance. It was not clear as to what necessitated as a trigger point to arrest the applicant. It is submitted that the arrest was contrary to Section 19 of the PML Act. It is submitted that Section 19 requires the prerequisite before arrest such as (a) Authorized Officer has material in his possession; (b) Reason to believe to be recorded in writing; (c) Reason to believe that any person is guilty of money laundering.

5 It is submitted that according to parameters of Section 19 of the Act, the exercise of power of arrest shall only if case falls in an exceptional category. In the present case no reason is given which satisfied the authorities warranting the arrest of the applicant.

6 Learned counsel for the applicant further submitted that the bar under Section 45(1) of PML Act shall not be applicable to offences which were falling under Part B earlier and pursuant to the 2013 amendment included in Part–A. He relied upon the decision in the case of ***Gorav Kathuria Vs. Union of India***[1] . In the said decision, it was observed that the bar under

1 2013 SCC Online Punjab & Hariyana 3428

Section 45(1) of the PML Act shall not be applicable for the offence punishable under part-B and in pursuant to the amendment of 2013 included in part – A. It is submitted that the said judgment was challenged before the Apex Court vide criminal Appeal No.737 of 2016 which was rejected by the Supreme Court vide order dated 2nd August, 2016.

7 Learned counsel for the applicant further submitted that the judgment of the High Court of Punjab and Hariyana stated hereinabove, has merged into the decision of the Hon'ble Supreme Court dated 12th August, 2016. It is further submitted that the doctrine of Merger would apply in this case. To support his arguments, he also relied upon the decision of the ***V.M. Salgaocar & Bros. (P) Ltd. Vs. CIT***[2]. It is also submitted that in the light of the observations in the said decision, the doctrine of merger will have to be applied in the case of ***Gorav Kathuria (Supra)*** on account of dismissal of Appeal by the Supreme Court. It is further submitted that even assuming that Section 45 is applicable, the Court has to be satisfied that there are reasonable ground for believing that the accused is not guilty of such offence and he is not likely to commit any offence while on bail. It is

2 (2000) 5 SCC 373

submitted that the offence enunciated under Section 3 of the said Act is punishable with maximum imprisonment of seven years and the minimum imprisonment of three years. Learned counsel relied upon the decision of this Court delivered in Criminal Bail Application No.174 of 2017. In the said decision, it was observed that the principles of Cr.P.C. are not inconsistent with the provisions of PML Act except section 45(2) of the latter Act. It is further observed that Hon'ble Apex Court has observed that it is not expected at this stage of bail that the guilt of the accused has to be established beyond reasonable doubt through evidence. “Reasonable” specified as contemplated under Section 45(2) would be construed as a similar offence contemplated under the same statue and not in another offence under the general statue or other statues. It is further submitted that the complaint has been filed by the Enforcement Directorate in the present case which apparently shows that the investigation is competed. The kingpin involved in this case is not arrested, no efforts were made to arrest main accused and on the contrary the complaint was filed against them. The conduct of the investigating machinery shows bias against the applicant. It is, therefore, submitted that the case for bail is made out by the applicant.

8 Learned counsel for the Enforcement Directorate opposed the application for bail. He submitted that there is enormous evidence against the applicant showing his involvement in the crime. He was the director of company involved in remittance by using false documents. It is further submitted that during the course of investigation conducted under PML Act, the accounts of M/s.Keshav Impex were scrutinized and it was revealed that the said firm is proprietary of the applicant who is also director of M/s.Kanika Gems Pvt. Ltd. It is also revealed that funds have been transferred from the associated company namely M/s. Kanika Gems Pvt. Ltd., M/s.Shree Charbhuja Diamonds Pvt. Ltd. and M/s.Yogeshwar Diamonds Pvt. Ltd. It is further revealed that huge funds were transferred to the account of the applicant and his wife. The applicant and his wife having an account with Axis Bank as well as other banks. Scrutiny of the account of the bank revealed that the amount was transferred to M/s.Keshav Impex to the tune of Rs.5,75,000/-, Rs.2,00,000/- and Rs.16,40,000/- on 16th January, 2014, 5th February, 2014 and 1st January, 2015, respectively. The applicant is director of M/s.Kanika Gems Pvt. Ltd. The applicant had generated funds and managed bank account with intention of laundering funds and he had played a major role in the scheduled

offence. The applicant had also purchased properties.

9 Learned counsel further submitted that on account of rigor of Section 45(1) of the PML Act, bail should not be granted to the applicant. There is substantive evidence against the applicant and there are reasonable ground for believing that the applicant is guilty of the offence. He submitted that as per Section 24 of the Act, in any proceedings relating to proceeds of crime, in the case of persons charged with offence of money laundering under Section 3, the Authority or the Court shall, unless contrary proved, presume that such proceeds of crime are involved in the money laundering. It is submitted that the arguments advanced by the counsel for the applicant on the basis of the observations in ***Gorav Kathuria (Supra)*** case are misconceived. It is submitted that the object of act has to be looked into. It is not necessary to go to intent if the language of the statute is very clear. It is submitted that the embargo under Section 45 of the Act is very clear and do not require any interpretation. He relied upon the decision of the Hon'ble Supreme Court in the case of ***Union of India Vs. Elphistone Spinning & Weaving Co.Ltd.***[3], in support of his submission. In

3 2001(1) Cr.L.J. 239

the said decision, it was observed that while examining a particular statue for finding out the legislative intent, it is the attitude of judges in arriving at a solution by striking a balance between the letter and spirit of the suit without acknowledging that they have in any way supplement the statue would be the proper criteria. The duty of judges is to expound and not to legislate is a fundamental rule. Learned counsel for the respondents submitted that in the decision of ***Goutam Kundu Vs. Enforcement Directorate decided by the Supreme Court*** vide Criminal Appeal No.1706 of 2015 which has been observed that before dealing with the application for bail, it is to be considered whether the provisions of Section 45 of PML Act are binding on the High Court while considering the application for bail under Section 439. PML Act is a special statue for dealing with the money laundering. Section 5 of the Cr.P.C. lay down that the provisions will not effect any special statue or any local law. The provision of special statute will prevail over general provisions of Cr.P.C. Section 45 of PML Act starts with non-obstantive clause stating that it would have overriding effect on the provisions of Cr.P.C. in case of conflict. The conditions specified to Section 45 are mandatory and needs to be complied with. It is, therefore, submitted that the rigor under Section 45 are applicable in the present case which would act as an restriction for grant of bail. He relied upon the decision of this Court in the case of ***Chhagan Bhujbal Vs. Union of India passed in Criminal*** passed in Writ Petition No.3931 of 2016. It is submitted that this Court has considered the interpretation of Section 45 of PML Act. It is further submitted that as per Section 24 of the Act, in case of a person charged with the offence under Section 3, the authority or the Court shall unless the contrary is roved presume, that such proceedings of crime are involved in money laundering.

10 I have perused the documents on record. The applicant was appointed as a Director of Kanika Gems Private Limited. In his statement recorded on 24th August, 2016 by the Assistant Director Enforcement Directorate, the applicant has stated that he came in contact with Vijay Kothari who is from his native place and he told the applicant that he was in business of diamonds in Mumbai and invited him to join him in his business at Mumbai. He came to Mumbai in February 2008 and assisted Mr.Kothari in his business activities. Subsequently, Mr.Kothari opened the firm namely M/s.Keshav Impexs wherein the applicant was proprietor. He also opened a private limited company

namely M/s.Kanika Gems Private Limited in which the applicant made director along with one Anil Toshnival. The applicant furnished all the details of the transactions executed by M/s.Keshav Impex as well as M/s.Kanika Gems Private Limited. He also furnished details of the Bank account of the said concerns. He further stated that he was not directly concerned with M/s.Yogeshwar Diamonds Pvt.Ltd. and M/s. Shree Charbhuja Diamonds Pvt. Ltd. and he was not aware about he current status of the said companies. He also furnished details of Vijay Kothari and has assisting activities of Hawala committed by Shri Kothari. It is also stated that he is the kingpin behind all the three companies and that apart from the said companies he is running several other companies which import diamonds to facilitate his Hawala operation. The applicant also furnished details of business of associates of Shri. Kothari and the source of the funds received by the companies. The applicant had also furnished details about the assets/properties held by him in his name and the name of the family members. It was stated by him that he has two flats in Pushpa Niketan viz. Flat No.406 at Bhyender which was purchased in the year 2011 for Rs.25,00,000/- by obtaining home loan of Rs.21,60,000/- from Karnataka Bank and the second flat at Shatrujay Co-operative Housing Society, Bhyander viz. Flat

No.304 which is also in the name of the wife and purchased in the year 2013-14 for Rs.25,00,000/- by obtaining home loan of Rs.21,20,000/- from Karnataka Bank Limited at Navi Mumbai branch. He also furnished details of the bank account maintained by him and his wife. All the requisite details called for by the Enforcement Directorate were provided by the applicant in the question answer form in the aforesaid statement. The statements of the applicant was also recorded on 6th March, 2017. In the said statement, he has explained the transactions made with M/s.Keshav Impex, wherein he was proprietor. He was stated that amount of Rs.12,42,000/- was received from Keshav Impex was utilized for payment of M/s.Aakar Creation Pvt.Ltd. for purchase of flat in the name of the applicant's wife at Borivali and that he had booked the said flat in the year 2014 for total consideration of Rs.1.05 crores for which the agreement was executed in October 2016. He also furnished all the details of payment made to M/s.Aakar Creation Private Limited. In the said statement, it is also reflected that the applicant was asked to explain the transactions with M/s.Palak Impex and other companies and the nature of the said transactions. It was stated that the said transactions were made for purchase of the flat at Borivali. It was also stated by him that Flat No.203 situated at Borivali in

Mahindra and Mahindra Co-operative Housing Society was sold by him and the details of the payment received were also disclosed. The Enforcement Directorate had relied upon the contents of the complaint filed before the Special Court designated for PML Act. The said complaint was filed against the applicant and others including Shri Vijay Kothari for the offence under Section 45 of PML Act for commission of offence under Section 3 and punishable under Section 4 of PML Act. It is pertinent to note that in paragraph no.6.11 of the complaint, it is stated that Shri. Vijay Kothari is the proprietor of M/s.Kanika Gems and director of various other companies. He has diverted huge funds and managed bank accounts with intent to laundering of funds with dubious companies, he has remitted huge funds to Hong-Kong based bogus company. He floated various fictitious companies for routing of funds with the help of other co-accused. On search, he could not be found at his premises and despite summons, he avoided the same and never appeared before the investigating officer and he is absconding. It is further stated that during the statement of the applicant and Sanjay Jain, it has appeared that Shri Kothari is the mastermind behind the entire criminal act of money laundering. It is established that Shri Vijay Kothari is the kingpin and mastermind in the entire money laundering and fraudulent laundering of the foreign exchange to the Hong Kong based company by submitting forged bills of entries and other import documents to the bank, huge funds have been transferred from companies of Kothari to the accused companies. He has indulged in criminal activities of diverting proceeds of crime by conspiracy, forgery of documents and fraudulent transactions creating fictitious companies by carrying out criminal activities relating to scheduled offences. He, has therefore, committed offence of money laundering under Section 3 of PML Act. From the aforesaid averments reflected in the complaint, it appears that the statement of the applicant was accepted by the investigating machinery and it is also established that Shri Kothari is kingpin and it is also accepted that he is mastermind in the entire crime. As far as the present applicant is concerned, it is stated in the complaint that the applicant is involved in the money laundering offence relating to M/s.Kanika Gems and M/s.Keshav Impex which were created to divert and park Hawala money. He was involved in acquisition and possession of the property, bank balance etc., which are acquired out of the proceeds of crime. It is not alleged that the applicant is involved in submitting forged bills of entry or any other import documents or fraudulent remittance of the foreign exchange to the Hong Kong based company. There is no cogent evidence to establish that he had a knowledge that the amount deposited in the account of the company of which he was proprietor or director were proceeds of crime. It is pertinent to note that accused no.1 has not been arrested. However, the complaint is being filed before the Special Court with the prayer that process be issued against the accused to proceed in accordance with law.

11 It is the matter of record that a detailed complaint dated 18th September, 2016 was submitted by the applicant to the Senior Inspector of Police D.B. Marg Police Station, Mumbai seeking registration of a case against the real culprits for the offences punishable under Sections 420 and 406 read with 34 and 120-B of the IPC. The applicant's statement was recorded by police on 8th October, 2016. He also forwarded a representation dated 15th August, 2016 to the Enforcement Directorate and details of the acts of omission and commission by Vijay Kothari and his other associates. The applicant was called by the respondents on 23rd August, 2016. He complied the directions and had visited the respondents repeatedly and furnished all the information. His statements were also recorded. The applicant, thereafter, visited E.D. Office on 24th August, 2016,

furnished requisite details showing involvement of accused. Thereafter, he repeatedly appeared before E.D. till about 14th March, 2017. It is the case of applicant that he was detained from 6th March, 2017 at 11:00 a.m. to 7th March, 2017 till 6:30 p.m. He was abused and manhandled and assaulted. complaints/E-mails forwarded on 7th March, 2017 of applicant regarding harassment by officers of E.D. on 15th March, 2017 applicant gave written complaint. He also forwarded a comprehensive representation to the Enforcement Directorate on 2nd April, 2017 for taking action against the concerned officers for ill-treating him. The applicant had also filed criminal writ petition No.1407 of 2017, seeking fair and impartial investigation. The said petition was heard on 24th April, 2017. The petitioner was, however, arrested on 20th April, 2017 from his residence.

12 Section 19 of PML Act requires the following pre requisite before effecting arrest:

> *(a) Authorized officer has material in his possession, reason to believe must be recorded in writing;*
>
> *(b) Reason to believe that any person is guilty of money laundering.*

The parameters contemplated under Section 19 of PML Act are required to be followed before exercising power to arrest.

13 Section 24 of the Act relates to burden of proof. As per the said provision, in any proceeding relating to proceeds of crime under the Act, in the case of a person charged with the offence of money laundering under Section 3, the authority or Court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money-laundering and in the case of any other person the authority or Court, may presume that such proceeds of crime are involved in money laundering. The counsel for the applicant had relied upon the decision of Gujarat High Court in the case of ***Jafer Hasanfacta and Ors. Vs. Deputy Directo***r delivered in Criminal Revision Application No.926 of 2016 on 16th February, 2017. In the said decision, it was observed that, the Section shows legislative intent of attachment and confiscation of proceeds of crime by presuming involvement of proceeds of crime in money laundering irrespective of whether the person concerned is or is not charged with the offence of money laundering. Thus, there shall be a legal

presumption in any proceeding relating to proceeds of crime under PML Act, that such proceeds of crime are involved in money laundering. There is no legal presumption under Section 24 of the Act that the concerned property is "proceeds of crime", the present accused has the knowledge that the property is proceeds of crime and the person involved in or is guilty of money laundering merely for possessing or having any concern with proceeds of crime. It is further observed that Section 24 indicate that even a person in possession or connected with any proceeds of crime may or may not be charged with the offence of money laundering. Whether a person shall be charged with money laundering or not shall thus depend only upon satisfying the requirement of Section 3 of PML Act. The interpretation made by the Gujarat High Court, as stated above appears to me to be sound and well reasoned.

14 The applicant is in custody from 20th April, 2017. The complaint has been already filed in the Court. No case for further detention is made out. Punishment contemplated under Section 4 of the Act is punishable with rigorous imprisonment of the term which shall not be less than three years but it may extend to seven years and shall also be liable to fine. It was, however,

contended by the respondents that by virtue of Section 45 of the PML Act, the Court has to record reasonable ground for believe that the accused is not guilty of such offence and that he is not likely to commit any offence in the event of being enlarged on bail. It is, therefore, contended that Section 45 contains an embargo on the powers of the Court to grant bail. Section 45 reads as follows:

> *"45. Offences to be cognizable and non-bailable.—*
> *(1) 1[Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule shall be released on bail or on his own bond unless—]*
>
> *(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and*
> *(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:*

Provided that a person who is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the special court so directs:

Provided further that the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by—

(i) the Director; or

(ii) any officer of the Central Government or State Government authorised in writing in this behalf by the Central Government by a general or a special order made in this behalf by that Government.

[(1A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.]

(2) The limitation on granting of bail specified in sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law

> *for the time being in force on granting of bail."*

This Court had considered the similar aspect while dealing with criminal bail application no.174 of 2017. Vide order dated 28th February, 2017, the applicant therein was granted bail. Reference was made to another decision of this Court in the case of ***Ashok Zhende Vs. State of Maharashtra*** (Criminal Bail Application No.1817 of 2014). In the said earlier decision, this Court had considered that what is required by the Court is that there are reasonable ground for believing that the accused is not guilty of such offence and is not likely to commit any offence while on bail. "Reasonable" would mean on par sensible. The Court has considered that the offence punishable under the PLM Act is an ancillary offence. Proviso (II) to Section 45 of the PML Act, 2002 does not denude the Court of discretionary powers under Section 439 of Cr.P.C. The said proviso contemplate abundant caution while granting bail in economic cases. It would caused to prosecution or defence. The Court had placed reliance on the judgment of the Apex Court in the case of ***Ranjeet Singh Sharma Vs. State of Maharashtra & Ors***.[4]. The condition

4 AIR 2005 SC 2277

precedent under Section 21(4) of MCOC is para-material to Sub-Section 45 of PML Act. The principle offence therein was under IPC. This Court in the aforesaid decision delivered in criminal Bail Application No.174 of 2017 has also referred to Section 26 of the General Clauses Act, 1897. In paragraph 14 of the said decision, it was observed that the language of Section 45 of PML Act which connotes sentence to be imposed upon the accused. The Court, therefore, observed that Section 45 of the PML Act would not be embargo to consider the application for bail. The Court also dealt with the decision in the case of ***Goutam Kundu (Supra),*** which is referred to hereinabove. The said decision is also relied upon by the respondents in the present case. In paragraph 15 of the said decision in aforesaid application this Court observed that there is no dispute that Section 45 begins with a non-obstante clause and has an overridding effect. At the same time, provision of Criminal Procedure Code are not in consistent with the provisions of PML Act except Sub-clause (ii) of Section 45 of PML Act. In the present case, the applicant is in custody since 20th April, 2017. He had co-operated with the investigation. The complaint has been filed before the Special Court. The prosecution had admitted that the kingpin and mastermind is Vijay Kothari. Apparently, the explanation tendered by the applicant during the course of investigation that Shri Kothari is involved in money laundering and is main person has been accepted by the investigating machinery. The role of fabricating documents or remitting the funds abroad has not been attributed to the applicant. Inferences are drawn against the applicant attributing the knowledge about the money being tainted. There is no cogent evidence in that regard. The applicant has categorically stated that the companies were controlled by Vijay Kothari which is substantiated by evidence. Shri Kothari and other involved in the transactions are not arrested. The applicant was a whistle blower who lodged the complaint against Shri Kothari and others. He had visited the office of respondents on several occasions and after lodging complaint against the officers and filling a writ petition for fair investigation, the applicant was arrested. These aspects would certainly bring the case of the applicant to formulate the requirement of Section 45 of PML Act in the light of the principle enunciated in the decision of ***Ranjit Singh Sharma (Supra)*** and which were considered by this Court in Criminal Bail Application No.174 of 2017 and Criminal Bail Application No.1817 of 2014.

15 In the case of ***Ranjitsingh Sharma (Supra)*** in paragraph Nos.45 to 49, 55 and 57, it is observed as follows:

"45 The Act is deterrent in nature. It provides for deterrent punishment. It envisages three to ten years of imprisonment and may extend to life imprisonment. Death penalty can also be imposed if somebody commits a murder. Similarly, fines ranging between three to ten lakhs can be imposed.

46 Presumption of innocence is a human right. [See Narendra Singh and Another Vs. State of M.P., (2004) 10 SCC 699, para 31] Article 21 in view of its expansive meaning not only protects life and liberty but also envisages a fair procedure. Liberty of a person should not ordinarily be interfered with unless there exist cogent grounds therefor. Sub-Section (4) of Section 21 must be interpreted keeping in view the aforementioned salutary principles. Giving an opportunity to the public prosecutor to oppose an application for release of an accused appears to be reasonable restriction but Clause (b) of Sub-section (4) of Section 21 must be given a proper meaning.

47 Does this statute require that before a person is released on bail, the court, albeit prima facie, must come to the conclusion that he is not guilty of such offence? Is it necessary for the Court to record such a finding? Would there be *any machinery available to the Court to ascertain that once the accused is enlarged on bail, he would not commit any offence whatsoever?*

48 Such findings are required to be recorded only for the purpose of arriving at an objective finding on the basis of materials on records only for grant of bail and for no other purpose .

49 We are furthermore of the opinion that the restrictions on the power of the Court to grant bail should not be pushed too far. If the Court, having regard to the materials brought on record, is satisfied that in all probability he may not be ultimately convicted, an order granting bail may be passed. The satisfaction of the Court as regards his likelihood of not committing an offence while on bail must be construed to mean an offence under the Act and not any offence whatsoever be it a minor or major offence. If such an expansive meaning is given, even likelihood of commission of an offence under Section 279 of the Indian Penal Code may debar the Court from releasing the accused on bail. A statute, it is trite, should not be interpreted in such a manner as would lead to absurdity. What would further be necessary *on the part of the Court is to see the culpability of the accused and his involvement in the commission of an organised crime either directly or indirectly. The Court at the time of considering the application for grant of bail shall consider the question from the angle as to whether he was possessed of the requisite mens rea. Every little omission or commission, negligence or dereliction may not lead to a possibility of his having culpability in the matter which is not the sine qua non for attracting the provisions of MCOCA. A person in a given situation may not do that which he ought to have done. The Court may in a situation of this nature keep in mind the broad principles of law that some acts of omission and commission on the part of a public servant may attract disciplinary proceedings but may not attract a penal provision.*

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55 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. 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 future 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.*

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> *57 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."*

16 In the light of the principles enunciated the aforesaid decision of Supreme Court wherein rigors of Section 21(4) of MCOC Act were under consideration which is *pari materia* with Section 45(1) of PML Act, and considering the facts of the present case and the observations made hereinabove grounds for grant of bail are made out. The reasonable satisfaction

contemplated under Section 45(1) has to be construed on the basis of aforesaid principles.

17 Since I am inclined to grant bail on the basis of aforesaid observations, I do not wish to adjudicate on the issue raised by applicant on the basis of decision of ***Gorav Kathuria (Supra),*** that bar under Section 45(1) of PML Act shall not be applicable to offences originally falling under Part – B and in pursuant to 2013 Amendment. The said issue is kept open.

18 The observations herein are restricted to an application under Section 439 of Cr.P.C. and the same shall not be taken into consideration for purpose of quashing the proceedings, discharge application or at the time of trial.

19 Hence, I pass the following Order:

:: O R D E R ::

(i) The applicant is directed to be released on the bail in connection with ECIR/MBZO11/05/2016 registered by Directorate of Enforcement, Mumbai on furnishing P. R. Bond in the sum of

Rs.1 lakh (Rupees One Lakh only.) with one or more sureties in the like amount;

(ii) The applicant is directed to report to Enforcement Directorate, Mumbai once in a month on the first Saturday of the month between 11.00 am to 1.00 pm till further orders;

(iii) The applicant shall not leave country without the permission of the Court;

(iv) The applicant is permitted to furnish cash security in the sum of Rs.1 lakh for a period of four weeks in lieu of sureties;

(v) Bail Application stands disposed of.

(**PRAKASH D. NAIK, J.)**