

2. Following facts in brief are necessary to be stated to

understand controversy involved in this application. By the orders of this Court dated 18th December, 2014 passed in PIL Nos. 23/2014 and 119/2012, SIT consisting of Director, Enforcement Directorate and Anti Corruption Bureau, Mumbai was constituted to inquire into the alleged malpractices in awarding of contract for construction of “Maharashtra Sadan” in Delhi and Kalina Library at Kalina campus, Mumbai University to M/s. K. S. Chamankar Enterprises and India Bulls Pvt. Ltd. respectively. Allegations against Applicant were of misusing his post as Minister of Public Works Department, in the Maharashtra Government.

3. During the course of inquiry, two FIRs, viz. (i) FIR No. 32/2015 dated 8.6.2015 for the offences punishable under Section 420, 471, 120B read with 34 of I.P.C and Section 13(1)(A), 13(1)(D), 13(2) of Prevention of Corruption Act; and (ii) FIR No. 35/2015 dated 11.6.2015 for the offences punishable under Section 420, 120B, 109, 465, 468, 471 read with 34 of I.P.C. and Section 13(1)(C), 13(1)(D) and 13(1) of Prevention of Corruption Act are registered, by ACB. In both these FIRs, charge-sheet is filed on 8.6.2015 and 16.10.2016 respectively, and Applicant is on bail in both these crimes.

4. ECIR Nos. 7/2015 and 8/2015 were registered by the Enforcement Directorate corresponding to FIR No. 35/2015 and 32/2015, out of which common prosecution complaint bearing No. 2/2016 punishable under section 3 read with section 4 of Act of 2002 is filed before the Special Court at Mumbai out of which present application arise.

5. This is the first application for bail on merits. Earlier application filed by accused for grant of bail on medical grounds was rejected by this Court by order dated 16.6.2016. Apart from this applicant had filed Writ Petition No. 2744/2016 challenging certain provisions of PMLA, the same was allowed to be withdrawn with liberty, and had thus filed habeas corpus petition challenging his detention, which is dismissed by this Court on 14.12.2016, against which Applicant preferred Special Leave to Appeal (Criminal) No. 2780 of 2018 wherein by the orders of the Hon'ble Apex Court dated 13/4/2018, this application for bail under Section 439 Cr.P.C filed on 24th January, 2018 is directed to be dealt with expeditiously. Accordingly, this application, on being assigned by Hon'ble the Acting Chief Justice by its order dated 23rd April, 2018 is heard.

6. Mr. Vikram Chaudhari, Learned senior counsel appearing for Applicant submitted that since Applicant's arrest on 14.3.2016 he is in judicial custody, and at no point of time, he was Director or shareholder or in any manner concerned with companies alleged to have laundered the proceeds of crime. It is contended that in FIR No. 35/2015, 77 witnesses are sighted to be examined, having 17 accused; while in FIR No. 32/2015, 104 witnesses are sighted to be examined, having 7 accused; and in ECIR Nos 7 and 8 out of which PMLA Case No.2/2016 is filed, 48 witnesses are sighted to be examined, having 52 accused involved therein. Apart from above, in FIR No. 69/2015 though Applicant is not an accused, number of witnesses sighted there are 279 with five accused involved therein. In the circumstances, it is further submitted that charge-sheets in above crimes are running into 57,102 pages, and has thus contended that trial in all these offences would take considerable time and has specifically pointed out that all the co-accused in this crime are on bail except Applicant and co-accused No. 2.

7. Learned counsel for Applicant relying upon judgment in the case of ***Nikesh Tarachand Shah Vs. Union of India & Anr.***¹

¹ 2017 SCC OnLine SC 1355 : AIR 2017 SC 5500

submitted that twin limitation contained in Section 45 (1) of the Act of 2002 is held to be unconstitutional as it violates Articles 14 and 21 of the Constitution of India. and has also tendered at bar compilation of cases wherein bail is granted to different accused involved in the complaint under the Act of 2002 after striking the limitations under Section 45(1) of said Act.

8. It is therefore, submitted that in view of subsequent development application is thus required to be considered within the parameters of Section 439 of Cr.P.C., on the settled principles for grant of bail, as has been enumerated by the Apex Court in the case of *Sanjay Chandra Vs. C.B.I., with Vinod Goenka Vs. C.B.I.*², and has contended that learned Special PMLA Court has however failed to appreciate the ratio laid down therein and for no reason gave much weight to the fact of alleged threats by co-accused, whose application for grant of pardon is pending before Special Court, without considering the fact that complaint made by such co-accused not even alleges threats having been extended by Applicant, and to substantiate such submissions has tendered at bar copy of complaint contending that it does not even remotely indicate that Applicant has directly or

² 2011 AIR SCW 6838

indirectly threatened co-accused, and has thus submitted that after the pronouncement in the case of *Nikesh Shah (referred supra)*, application deserves to be considered independently and has submitted that after non application of Section 45 as aforesaid, when the law laid down in the case of *Sanjay Chandra (referred supra)* is considered, Applicant is entitled for bail by imposing suitable conditions, more particularly when Applicant is on bail in scheduled offences as such prosecution has not opposed for grant of bail, which orders as such had attained finality.

9. It is thus submitted that as Applicant is on bail in scheduled offence under The Prevention of Corruption Act where sentence prescribed is upto 10 years, he be released on bail as the offences under the said Act of 2002 maximum sentence prescribed is upto 7 years and as trial would take considerable time and as applicant is already in custody since more than two years and two months, applicant be granted bail by imposing suitable conditions. Another ground putforth for grant of bail is that Applicant had thoroughly cooperated investigation and since he is in judicial custody, he is never interrogated on a single occasion. It is also case of Applicant that as

per the complaint entire accusations are based upon documentary evidence and banking transactions, and as such, there is least possibility of Applicant's erasing such evidence by his influence as apprehended by prosecution.

10. One of the points also canvassed is of Applicant's making himself available to the Enforcement Directorate immediately after his return from U. S. on being served with first summons on 14.3.2016, significantly when accused No. 2 was arrested on 1.2.2016 and has thus, submitted that there is no reason to presume that Applicant if released on bail would abscond and has thus, contended that for the grounds mentioned hereinabove, application be allowed as Applicant, even otherwise is 71 years old and is in fragile health.

11. Prosecution has opposed application by filing affidavit-in-reply, wherein in paragraph 4, there is mention of rejection of earlier application of Applicant on medical grounds by this Court, and filing of writ petitions etc, as stated earlier. Major part of the affidavit-in-reply refers to placing on record facts of the case and submission that the fund transfers from M/s Prime Builders & Developers, partners of

M/s. K. S. Chamankar Enterprises to the entities controlled by Bhujbals are nothing but financial accommodation to the applicant and his family members as a quid pro quo for sanctioning and awarding the Chamankars the Maharashtra Sadan / RTO project. Applicant occupying the high office of a Cabinet Minister in the then Govt. of Maharashtra is the prime mover in award of the work to M/s. K. S. Chamankar Enterprises leading to generation of proceeds of crime. The huge cash generation was only possible due to applicant occupying a very high position in the Government. These proceeds of crime generated through criminal activities of applicant have been further laundered through companies of co-accused Shri Sameer Bhujbal and Shri Pankaj Bhujbal as well as through other Bhujbal controlled companies in which the employees of Maharashtra Education Trust were dummy Directors. The money trail established so far has led of web of companies, some on paper and some of them being non existent. The Accused/Applicant has played a very crucial role in generation and subsequent laundering of huge amounts of money and is guilty of the offence of money laundering as define under Section 3 and punishable under Section 4 of said Act of 2002.

12. Shri Anil Singh, Learned Additional Solicitor General referred to the objects, reasons and the purpose for which Act of 2002 was brought on the Statute Book and has mainly submitted that statement of witnesses viz., Sunil Naik, Chartered Accountant, Suresh Jajodia, Hiranand Jha, Sanjiv Jain, financial consultant gist of which is referred in the reply establish that applicant had converted cash procured by him by various illegal modes in companies which infact were never in existence and as such all the transactions are bogus and thus submitted that before considering this application for bail under the provisions of section 439 of Cr.P.C. applicant has to cross barriers of section 24 of the said Act of 2002 and has submitted that unless the applicant satisfactorily rebuts burden as per allegations in the complaint he cannot be considered for grant of bail and for the purpose of this application referred to law laid down in the case of ***Union of India vs. Hassan Ali Khan and Another***³ and in the case of ***Y. S. Jagan Mohan Reddy Vs. Central Bureau of Investigation***⁴

13. In reply learned Senior counsel contended that case of ***Hassan Ali Khan (referred supra)*** is required to be considered on

³ (2011) 10 Supreme Court Cases 235

⁴ 2013(7) SCC 439

different footing than other cases under the Act of 2002. Learned counsel for applicant in response to submission of prosecution to consider provisions of section 24 of the Act of 2002 prior to considering application under section 439 has pointed out relevant observations of the Hon'ble Apex Court in the case of ***Nikesh Tarachand Shah (referred supra)*** and has therefore submitted that said provisions cannot be attracted at this stage, but can be considered only at the time of trial after prosecution establish its case beyond reasonable doubt. It is also submitted that even according to the case of prosecution, applicant was never director of any of the firms while other co-accused who in fact are directors are all released on bail except co-accused No.3.

14. Learned Senior Counsel with regards to submission on the point of section 24 of the Act of 2002 referred to judgment in Criminal Bail Application No.17000/2014 of Gujrat High Court at Ahmedabad in the case of ***(Afroz Mohmad Hasanfatta vs. Deputy Director & Anr.)*** and contended that in this Judgment Hon'ble Gujrat High Court after considering the law in the case of ***Hassan Ali Khan (referred supra)*** along with the provisions of section 24 of the Act and

has rejected the application which order was assailed to the Hon'ble Apex Court in Special Leave Petition No.9528/2015 where in view of Judgment in case of ***Nikesh Tarachand Shah (supra)*** petitioners were ordered to be released on bail on imposing conditions by Trial Court.

15. Learned senior counsel for applicant with reference to submission of learned Additional Solicitor General with reference to law in the case ***Y. S. Jagan Mohan Reddy (referred supra)*** submitted that in that case application was rejected as there was possibility of appellant at that stage to hamper with the investigation and has submitted that in the present application on completion of investigation charge-sheet is filed against applicant along with complaint as stated earlier.

16. On the point of prosecution apprehension of applicants tampering with the evidence, learned counsel for applicant referred to the judgment in the case of ***Laloo Prasad @ Laloo Prasad Yadav vs. State of Jharkhand***⁵ with ***Jagannath Mishra vs. CBI*** to urge that submissions advanced by learned Additional Solicitor General on the applicant were similar that applicant being powerful would tamper

⁵ (2002) 9 Supreme Court Cases 372

with the evidence and threaten the witnesses and cause impediment in the progress of trial, which submission were duly considered and applicants were released on interim bail for 6 months which order admittedly was subsequently confirmed and in the facts as aforesaid prayed that application be allowed by imposing stringent conditions.

17. Perusal of affidavit in reply would reveal that during the course of investigation as many as 24 companies were formed by the Bhujbal group and alleged to be controlled directly or indirectly by Bhujbal as referred in paragraph No.7.1 in the reply of which co-accused were its directors as per further reply in paragraph No.7.2. It is alleged that M/s. Parvesh Constructions and M/s. Armstrong Energy Private Limited controlled by Bhujbal had collected huge funds as share premium from various fictitious entities and that share price of these companies purchased by investing entities remained at Rs.9,900/- per share though from the documents it is revealed that the entities concerned had acquired these shares for financial year 2007-2011. Share price remained unchanged for 4-5 years. Thus, it is case of prosecution that funds transferred from various firms controlled by

Bhujbal are nothing but financial accommodation by applicant and his family members as during that period applicant was occupying high office in the cabinet minister for the Government of Maharashtra and huge cash generation was possible due to applicants occupying very high position. Thus proceeds of crime generated through criminal activities of applicant were further laundered through other Bhujbal controlled companies in which there are other dummy directors. Though it is case of prosecution that applicant has played a very crucial role in generating and subsequent laundering of huge amount of money under the provision of said Act as defined in section 3 punishable under section 4 of the Act, on considering the statements of Sunil Naik, Chartered Accountant prima facie implicate co-accused for his illegal activity of which applicant is stated to have knowledge. Similar are the statements of Mr.Suresh Jajodia, Mr.Hiranand Jha and Mr.Sanjiv Jain, financial consultant.

18. It is thus, alleged that this is how the cash flow was converted into various modes by floating various companies on paper, and which as such never existed, nor their directors existed and therefore unless applicants successfully cross the barriers of Section

24 of the said Act of 2002 he is not entitled for bail.

19. Perusal of facts involved in the case of ***Hasan Khan (referred supra)*** would reveal that Income Tax Department assessed total income of Respondent No. 1 for Assessment year 2001-2002, 2006-2007, 2007-2008 at Rs.11,04,12,68,85,303/-. During investigation, Director of Enforcement also obtained document, said to have been signed by Respondent No. 1 on 29.6.2003, which was notarised by one Nicolas Ronald Smith, Notary Public of London on 30.6.2003, and the case attracted the provisions of Para 1 of Part A of the Schedule to the PML Act, since the money acquired by Shri Hassan Ali Khan, besides being the proceeds of crime, is also connected with transactions involving the international arms dealer, Adnan Khashoggi. Having considered aforesaid facts Apex Court in paragraph 34 of its judgment observed thus:

“34. Having carefully considered the submissions made on behalf of the respective parties and the normous amounts of money which Respondent No. 1 had been handling through his various bank accounts and the contents of note signed by Respondent No. 1 and notarised in London, this case has to be treated a little differently from other cases of similar nature. It is true that at present there is only a nebulous link between the huge sums of money handled by Respondent No. 1 and any arms deal or intended

arms deals, there is no attempt on the part of Respondent No. 1 to disclose the source of the large sums of money handled by him. There is no denying the fact that allegations have been made that the said monies were the proceeds of crime and by depositing the same in his bank accounts, Respondent 1 had attempted to project the same as untainted money. The said allegations may not ultimately be established, but having been made, the burden of proof that the said monies were not the proceeds of crime and were not, therefore, tainted shifted to Respondent 1 under Section 24 of the PML Act, 2002.”

20. Considering the facts as aforesaid, as respondent No. 1 therein was found handling enormous amount of money through his various bank accounts and the contents of the note signed by respondent No. 1 therein, having notorised in London, were facts, which were considered to be treated little differently from other cases of similar nature. Moreover, respondent No. 1 therein had procured three different passports in his name, particularly after his original passport was directed to be deposited, which was also one of the significant aspect of the case, and therefore, considering the peculiarities of the case as aforesaid, the Hon'ble Apex Court cancelled bail granted to respondent No. 1.

21. In the light of above facts it is necessary to reproduce

some of the paragraphs in the case of **Nikesh Tarachand Shah** (*supra*), which read thus:

42. However, the learned Attorney General has argued before us that we must uphold Section 45 as it is part of a complete code under the 2002 Act. According to him, Section 45, when read with Sections 3 and 4, would necessarily lead to the conclusion that the source of the proceeds of crime, being the scheduled offence, and the money laundering offence, would have to be tried together, and the nexus that is provided is because the source of money laundering being as important as money laundering itself, conditions Under Section 45 would have to be applied. We are afraid that, for all the reasons given by us earlier in this judgment, we are unable to agree. The learned Attorney General asked us to read down Section 45 in that when the Court is satisfied that there are reasonable grounds for believing that a person is not guilty of an offence, it only meant that the Court must prima facie come to such a conclusion. Secondly, the fact that he is not likely to commit "any offence" while on bail would only be restricted to any offence of a like nature. Again, we are afraid that merely reading down the two conditions would not get rid of the vice of manifest arbitrariness and discrimination, as has been pointed out by us hereinabove. Also, we cannot agree with the learned Attorney General that Section 45 imposes two conditions which are akin to conditions that are specified for grant of ordinary bail. For this purpose, he referred us to **Amarmani Tripathi** (*supra*) at para 18, in which it was stated that, for grant of bail, the Court has to see whether there is prima facie or reasonable ground to believe that the Accused has committed the offence, and the likelihood of that offence being repeated has also be seen. It is obvious that the twin conditions set down in Section 45 are a much higher threshold bar than any of the conditions laid down in paragraph 18 of the aforesaid judgment. In fact, the presumption of innocence, which is attached to any person being prosecuted of an offence, is inverted by the conditions specified in Section 45, whereas

for grant of ordinary bail the presumption of innocence attaches, after which the various factors set out in paragraph 18 of the judgment are to be looked at. Under Section [45](#), the Court must be satisfied that there are reasonable grounds to believe that the person is not guilty of such offence and that he is not likely to commit any offence while on bail.”

“46. We must not forget that Section [45](#) is a drastic provision which turns on its head the presumption of innocence which is fundamental to a person Accused of any offence. Before application of a Section which makes drastic inroads into the fundamental right of personal liberty guaranteed by Article [21](#) of the Constitution of India, we must be doubly sure that such provision furthers a compelling State interest for tackling serious crime. Absent any such compelling State interest, the indiscriminate application of the provisions of Section [45](#) will certainly violate Article [21](#) of the Constitution. Provisions akin to Section [45](#) have only been upheld on the ground that there is a compelling State interest in tackling crimes of an extremely heinous nature.”

“51. The learned Attorney General relied heavily on Section [24](#) of the 2002 Act to show that the burden of proof in any proceeding relating to proceeds of crime is upon the person charged with the offence of money laundering, and in the case of any other person i.e. a person not charged with such offence, the Court may presume that such proceeds are involved in money laundering. Section [45](#) of the Act only speaks of the scheduled offence in Part A of the Schedule, whereas Section [24](#) speaks of the offence of money laundering, and raises a presumption against the person prosecuted for the crime of money laundering. This presumption has no application to the scheduled offence mentioned in Section [45](#), and cannot, therefore, advance the case of the Union of India.”

“57. Regard being had to the above, we declare Section [45\(1\)](#) of the Prevention of Money Laundering Act, 2002, insofar as it imposes two further conditions for release on bail, to be unconstitutional as it violates Articles [14](#) and [21](#) of the Constitution of India. All the matters before us in which

bail has been denied, because of the presence of the twin conditions contained in Section 45, will now go back to the respective Courts which denied bail. All such orders are set aside, and the cases remanded to the respective Courts to be heard on merits, without application of the twin conditions contained in Section 45 of the 2002 Act. Considering that persons are languishing in jail and that personal liberty is involved, all these matters are to be taken up at the earliest by the respective Courts for fresh decision. The writ petitions and the appeals are disposed of accordingly.”

22. Learned senior counsel for Applicant in support of his application has referred to common order of High Court at New Delhi, passed in Bail Application Nos. 1113/2017, 244/2017 after the Hon'ble Supreme Court by its order dated 23rd November, 2017 in bunch of writ petitions and criminal appeals declared two further conditions imposed for release on bail in Section 45(1) of the PML Act to be unconstitutional, violative of Articles 14 and 21 of the Constitution of India and remanded back the matter to respective Court which denied the bail, to be heard on merits without application of twin conditions mentioned in Section 45, wherein law in case of **Y.S. Jagan Mohan Reddy (referred supra)**, is referred in para 14 of the judgment, and the applications were allowed by imposing conditions as the applicants were in custody for more than 10 months and finding that trial would take sometime and even otherwise the nature of evidence

primarily was in the form of documentary evidence.

23. After considering the provisions of Section 24 of the Act of 2002 as aforesaid, and the pronouncement of the Hon'ble Apex Court holding Section 45(1) to be unconstitutional, present application is therefore required to be considered with the parameter of Section 439 Cr. P. C. with the ratio laid down in the case of *Sanjay Chandra (referred supra)* that:

- “(i) Ordinarily, persons accused of any offence at the stage of trial, should be enlarged on bail;
- (ii) The object of bail is primarily to secure the attendance of the accused at the trial;
- (iii) Grant of bail is the rule and refusal is the exception. Presumption of innocence is sacrosanct and, therefore, bail at the stage of trial is imperative to enable accused to look after his own case and establish his innocence.”

In paragraphs 14 and 38 of the above cited judgment, it is laid down that the primary test at the stage of bail is to secure attendance of accused.

24. With reference to provisions of Section 24 of the Act of 2002 and submissions advanced by learned Additional Solicitor General, it is necessary to refer to the above cited judgment in the case

of *Nikesh Tarachand Shah (supra)* wherein by applying principles of American Jurisprudence in Para No. 14 and subsequently in Para No. 37, it is laid down that the primary test at the stage of bail is to secure the appearance of accused and submission to the jurisdiction and judgment of the Court and for that purpose inquiry is limited to as to whether recognizance or bond would suffice.

25. In that view of the matter, when there is no bar of twin limitation contained in Section 45(1), the persons would be liable to be enlarged on bail under Section 439 Cr.P.C. with or without conditions. It is necessary to note that in this judgment, the Hon'ble Supreme Court had disagreed with the submissions that the conditions stipulated under Section 45 were akin to conditions required for grant of ordinary bail. In paragraph 36, it is clearly held that for grant of ordinary bail, presumption of innocence attaches. One of the primary reasons for holding the twin limitations contained in Section 45(1) of said Act to be unconstitutional, the Hon'ble Supreme Court clearly held that "it is a drastic provision which turns at its head that the presumption of innocences which is fundamental to a person accused of any offence".

26. In view of above stated legal pronouncement when Applicant's case is considered for grant of bail within the parameters of Section 439 of Cr.P.C as set out in the case of ***Sanjay Chandra (referred supra)***, it is necessary to state that it is no doubt, true that nature of the charge may be relevant, but at the same time, the punishment to which the party may be liable, if convicted, also bears upon the issue. Therefore, in determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration. The grant or refusal to grant bail lies within the discretion of the Court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purpose of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the Court, whether before or after conviction, to assure that he will submit to the jurisdiction of the Court and be in attendance thereon whenever his presence is required.

27. Similar to the facts involved in the present application, one of the aspects, which was duly considered in the case of ***Sanjay Chandra (referred supra)***, is that there were seventeen accused persons. Statement of the witnesses runs to several hundred pages and the documents on which reliance is placed by the prosecution, is voluminous. The trial may take considerable time and it looks that the appellants, who are in jail, have to remain in jail longer than the period of detention, had they been convicted. It is not in the interest of justice that accused should be in jail for an indefinite period. No doubt, the offence alleged against the appellants is a serious one in terms of alleged huge loss to the State Exchequer, that, by itself, should not deter from enlarging the appellants on bail when there is no serious contention that the accused, if released on bail, would interfere with the trial or tamper with evidence. There is no good reason to detain the accused in custody, that too, after the completion of investigation and filing of the charge-sheet.

28. Similarly, in the case of ***Sanjay Chandra (referred supra)*** law laid down in the case of ***Gurucharan Singh Vs. State***

(Delhi Admn.)⁶ is referred wherein the Apex Court while considering scope of Section 437(1) and 439 Cr.P.C. had noted in para 24 of its judgment and observed thus:

“the nature and gravity of the circumstance in which the offence is committed; the position and status of the accused with reference to the victim and the witnesses; the likelihood, of the accused fleeing from justice; of repeating the offence; of jeopardizing his own life being faced with a grim prospect of possible conviction in the case; of tampering with witnesses; the history of the case as well as of its investigation and other relevant grounds which, in view of so many valuable factors, cannot be exhaustively set out”.

29. Decision in the case of ***State of Kerala Vs. Raneef***⁷ is further referred wherein in paragraph 15, it is observed thus:

“15. In deciding bail applications an important factor which should certainly be taken into consideration by the court is the delay in concluding the trial. Often this takes several years, and if the accused is denied bail but is ultimately acquitted, who will restore so many years of his life spent in custody? Is Article 21 of the Constitution, which is the most basic of all the fundamental rights in our Constitution, not violated in such a case? Of course this is not the only factor, but it is certainly one of the important factors in deciding whether to grant bail.”

In the above stated case, accused has spent in jail around 66 days and also on considering the health of accused therein, he was released on bail.

6 [(1978) 1 SCC 118]

7 [(2011) 1 SCC 784]

30. In the case of *Sanjay Chandra (referred supra)*, Apex

Court in paragraph 28 has further observed that thus:

“28. We are conscious of the fact that the accused are charged with economic offence of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardize the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge-sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to allay the apprehension expressed by CBI.”

31. In the background of legal pronouncement as aforesaid, and facts in the application following points need to be stated which falls in favour of the Applicant.

- (i) When accused No. 2 was arrested on 1st February, 2016, Applicant was in U.S.A. on a preplanned tour, despite arrest of co-accused Samir Bhujbal, he returned to India and made himself available to the Enforcement Directorate on the first summons dated 14th March, 2016, on which date, he was taken into custody. This fact itself requires consideration that there is no reason to presume that Applicant would

abscond or flee from justice, if released on bail. Moreover, as the case of prosecution is based on the statement of witnesses under Section 50 of the Act, and on documents from various banks accounts, there is least possibility of Applicant's tampering with the same.

- (ii) Another aspect for consideration in favour of Applicant is that his age as of today is 71 years, and since he is remanded to judicial custody, at no point he was required for interrogation. As such, there appears no purpose in keeping Applicant behind bar pending trials, wherein all the cases when considered together, 594 witnesses are cited and the charge-sheet is running in 57,102 pages;
- (iii) Another factor which goes in favour of Applicant is that out of 81 accused persons involved in FIR Nos. 35/2015, 32/2015, 69/2015 and ECIR Nos. 7 and 8 in PMLA Case No. 2/2016 out of which present application arises, except for Applicant and co-accused Samir Bhujbal, all are released on bail.

iv) In fact, prosecution has not opposed application for bail of Applicant in C. R. Nos. 35/2015 and 32/2015, in which maximum sentence of imprisonment is upto 10 years as can be seen from the impugned order, which fact even otherwise is not disputed by the prosecution and admittedly applicant is not an accused in FIR No.69/2015. It is necessary to consider that trial of all scheduled offences in question in PMLA case is required to be tried together and would take considerable time to conclude and in that eventuality, Applicant cannot be kept in custody for an indefinite period to deny his right to defend himself in accordance with law.

32. It is also necessary to note that the complaint under PMLA case is an offshoot of the schedule offence from which alleged proceeds of crime has been derived and allegedly projected as untainted. The Applicant is on bail in the said scheduled offences and maximum punishment in PMLA offence is 7 years.

33. In that view of the matter Applicant is entitled for bail. In the result, application is liable to be allowed as per order below:

Applicant shall be released on bail in Special PMLA Case No. 2 of 2016 pending before the Special PMLA Court, Mumbai, on his executing PR bond in the sum of Rs.5,00,000/- with one surety in the like amount to the satisfaction of the Special Judge, PMLA Court, Mumbai, on the following conditions:

- (a) Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him to disclose such facts to the Court or to any other authority;
- (b) Applicant shall mark his presence with Respondent No. 1 as and when required till commencement of trials;
- (c) Applicant shall remain present before the Special PMLA Court, Mumbai on the fixed dates without fail;
- (c) Applicant shall submit his residential address alongwith proof of his staying there to Respondent No. 1, and in the event of change of address, shall update the same;
- (d) Applicant shall surrender his passport with the

- investigating agency, if not already surrendered;
- (e) Applicant shall not leave jurisdiction of Mumbai city, without obtaining prior permission from the said Court;
 - (f) Needless to state that Respondents shall be at liberty to take recourse as available under law, if applicant violates any of the conditions imposed, as aforesaid;
 - (g) Application is disposed of as allowed in above terms.

Sd/-

[P. N. DESHMUKH, J.]

34. Later on. On the application of learned counsel for Applicant, and on instructions since not opposed by learned counsel for Respondent No. 1, Applicant is directed to be released on his furnishing cash bail in the sum of Rs. 5,00,000/- and shall furnish bail on before 14th May, 2018.

Sd/-

[P. N. DESHMUKH, J.]

Vinayak Halemath