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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 1546 OF 2021

AMIT BALASAHEB CHANDOLE

..APPLICANT

VS.

UNION OF INDIA THROUGH THE
ASSISTANT DIRECTOR, DIRECTORATE
OF ENFORCEMENT AND ANR.

..RESPONDENTS

**WITH
BAIL APPLICATION NO.2890 OF 2022**

MARATH SASHIDHARAN

..APPLICANT

VS.

DIRECTORATE OF ENFORCEMENT
AND ANR.

..RESPONDENTS

Mr. Amit Desai, Senior Advocate a/w Mr. Kushal Mor, Mr. Dhiren Shah, Mr. Gopal Krishna Iyyer, Mr. Kunal Bilaney, Ms. Mamta Harwani and Ms. Riddhi Dhamecha i/b. Mr. Dhiren Shah for applicant in BA/2890/2022.

Mr. Rajiv Chavan, Senior Advocate a/w Ms. Priyanka Dubey a/w Ms. Megha Gupta a/w Aamrin Malik i/b. Hedgehog and Fox LLP for applicant in BA/1546/2021.

Mr. H. S. Venegaonkar a/w Mr. Aayush Kedia a/w Mr. Kamar Ali Sheikh, Mr. Bharat Mirchandani for respondent No.1-ED.

Ms. A. A. Takalkar, APP for State.

CORAM : M. S. KARNIK, J.

**HEARD ON : DECEMBER 06, 2022.
PRONOUNCED ON : DECEMBER 12, 2022.**

ORDER :

- 1.** Heard learned counsel for the parties.
- 2.** These bail applications are decided by a common order. The bail applicant in Criminal Bail Application No. 2890 of 2022 is by a 71 years old senior citizen, a permanent resident of Mumbai since 1978. The applicant has served in the Indian Navy for over 10 years. The applicant was arrested on 17/12/2020 in connection with ECIR/MBZO-I/40/2020 registered by the Directorate of Enforcement (hereafter "ED", for short) for the offences punishable under Sections 3 and 4 of Prevention of Money Laundering Act, 2002 (hereafter "PMLA", for short). The subject ECIR came to be registered on the basis of the scheduled offences punishable under Sections 402, 406, 465, 467, 468, 471 and 120-B of the Indian Penal Code, 1860 (hereafter "IPC", for short) registered vide MECR No.3 of 2020 of Yellow Gate Police Station, Mumbai, which was thereafter transferred to Economic Offences Wing, Mumbai (hereafter "EOW", for short) and registered as MECR No.5 of 2020. The EOW, after conducting a thorough investigation

in relation to the said FIR, has filed a C-Summary report before the Metropolitan Magistrate's 47th Court at Esplanade. The Magistrate vide his order dated 14/09/2022 accepted the same. The first informant (Ramesh Iyer) filed an affidavit of no objection for the acceptance of C-Summary report.

3. It is the contention of learned Senior Advocates for the applicants that as on date there is no predicate offence whatsoever and since the scheduled offence does not exist anymore, the PMLA case itself is not maintainable against the applicant. The applicants therefore filed the present applications for bail. It is pertinent to note that before the Special Judge (PMLA) the applicants filed Exhibit 45 and 47 applications for interim bail post the acceptance of C-Summary report.

4. The facts of the case are briefly stated hereafter.

The FIR came to be registered at the instance of one Ramesh Iyer. On the basis of the said FIR dated 28/10/2020, the ECIR came to be recorded by the ED on 31/10/2022 for the purposes of investigating the offence of

money laundering. The applicant (Marath) was arrested on 11/12/2020 whereupon he was remanded to judicial custody.

5. The ED completed the investigation and the complaint was filed in connection with the instant ECIR before the Special Judge (PMLA) at Sessions Court, Mumbai on 19/12/2020 which came to be registered as Special Case No.1124 of 2020. The Special Judge rejected the bail application preferred by the applicant by an order dated 21/01/2021. This Court rejected the bail application of the applicant on 23/02/2022. Challenging the order dated 23/02/2022 of this Court refusing bail to the applicant, the applicant has filed SLP (Criminal) No.2831 of 2022 seeking to be released on bail. The SLP was preferred on merits and is pending before the Supreme Court.

6. Now that the C-Summary was accepted, Exhibits 45 and 47 were filed for interim bail before the Special Judge (PMLA). Learned Senior Advocates submitted that the Supreme Court on 27/07/2022, passed a detailed judgment in the case of **Vijay Madanlal Choudhary and ors. vs.**

Union of India and ors.¹ in Special Leave Petition (Criminal) No. 4634 of 2014, wherein the Supreme Court *inter alia* held that if a person is finally absolved by a Court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of the criminal case pertaining to a scheduled offence registered against him/her, there can be no action for money-laundering against such a person.

7. In the present case, the complainant, Mr. Ramesh Iyer was the Managing Director of Topsgroup. Topsgroup entered into a contract with MMRDA for supply of security guards in the year 2014. The applicant was working as a Zonal Director for West Zone. The complainant alleged that though the Topsgroup under the contract was to supply the specified number of security guards, however with a view to defraud MMRDA, less number of guards were supplied. Topsgroup claimed excess payment even in respect of the guards who were not deployed. The applicant -Marath and other accused being responsible officers are alleged to be beneficiaries of the transaction. So far as the applicant-Amit

1 2022 SCC OnLine SC 929

Balasaheb Chandole in Criminal Bail Application No.1546 of 2021 is concerned, he was the one who facilitated the contract between the Topsgroup and MMRDA and it is alleged that he was also a beneficiary of the proceeds of crime. The applicant-Amit was arrested on 25/11/2020. The ED registered the ECIR on 31/10/2020. The Bail Application filed by Amit came to be rejected by the trial Court. The present application is filed for bail in April 2021. However, subsequent facts are brought on record that a C-Summary was filed by the Yellow Gate Police Station on 27/12/2021. Application for interim bail of Amit and Marath at Exhibit 45 and 47 is decided by a common order. Though Amit's is a regular application for bail, I have considered the grant of interim bail to Amit on parity as a substantive challenge is laid by Marath in the connected application. Learned Senior Advocate appearing for Amit Chandole is justified in submitting that these subsequent events be taken into consideration as the question of liberty of the individual is involved. He submits that this is a substantive application for bail and in that a prayer is being made for grant of

interim bail. He further submits that specific averments to this effect are made in the bail application preferred by Mr. Marath Sashidharan in this regard and the same would apply in full vigor to the applicant's case as well. It is the contention of learned Senior Advocates that there were some disputes between the complainant and the promoters of Topsgroup. Complaints came to be filed against Mr. Ramesh Iyer. As a counterblast, Mr. Ramesh Iyer filed the FIR on the basis of which the ED case was registered. As the misunderstandings were sorted out, the complainant gave his no objection to the acceptance of the C-Summary report. Even the MMRDA has no grievance regarding the supply of the security guards. MMRDA has not made a complaint that Topsgroup committed breach of the contract or defrauded MMRDA.

8. Shri Venegaonkar vehemently opposed the applications. According to him, merely because a C-Summary report is filed and accepted by the Magistrate does not take away the seriousness of the offence as independent proceedings are registered and as charge-

sheet is already filed in the PMLA case. The applicants will have to satisfy the provisions of Section 45 of the PMLA. The bail application of the Applicant-Marath has been rejected on merits by this Court. In any case, the challenge to the order dated 23/02/2022 refusing bail in the PMLA case is pending before the Supreme Court on merits. According to him, this Court therefore should not interfere with the trial Courts order. He further submits that though the C-Summary is accepted on 14/09/2022, the ED proposes to challenge the C-Summary report in Revision. The period of 90 days for filing the Revision is not yet over and therefore, even the application made by the applicants for bail is not tenable till the period of 90 days is over. He further submitted that the main PMLA case is still pending and the interpretation placed by learned Senior Advocate on the decision of the Supreme Court in **Vijay Madanlal Choudhary and ors.** (supra) is on an erroneous premise.

9. I have heard learned counsel for the parties. The ED registered the ECIR dated 31/10/2020 on the basis of the FIR dated 28/10/2020 which was lodged at the instance of

the complainant Mr. Ramesh Iyer, who had approached the Metropolitan Magistrate's Court under Section 156(3) of Code of Criminal Procedure, 1973. Pursuant to the arrest of the applicant-Marath by the ED on 07/12/2020, a detailed investigation was carried out by the ED and the charge-sheet came to be filed. The Yellow Gate Police Station filed the C-Summary report in respect of the FIR lodged against the applicant. The complainant gave his no objection and ultimately the C-Summary was accepted on 14/09/2022 by the Metropolitan Magistrate.

10. At this juncture, I may refer to the pertinent observations of the Supreme Court in **Vijay Madanlal Choudhary and ors.** (supra) decided on 27/07/2022.

Paragraph 33 reads thus :-

"33. Tersely put, it is only such property which is derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence can be regarded as proceeds of crime. The authorities under the 2002 Act cannot resort to action against any person for money-laundering on an assumption that the property recovered by them must be proceeds of crime and that a scheduled offence has been committed, unless the same is registered with the jurisdictional police or pending inquiry by way of complaint before the competent forum. For, the expression "derived or obtained" is indicative of

criminal activity relating to a scheduled offence already accomplished. Similarly, in the event the person named in the criminal activity relating to a scheduled offence is finally absolved by a Court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of the criminal case (scheduled offence) against him/her, there can be no action for money-laundering against such a person or person claiming through him in relation to the property linked to the stated scheduled offence. This interpretation alone can be countenanced on the basis of the provisions of the 2002 Act, in particular Section 2(1)(u) read with Section 3. Taking any other view would be rewriting of these provisions and disregarding the express language of definition clause "proceeds of crime", as it obtains as of now."

11. I will then refer to the conclusion of Their Lordships in paragraph 187, the relevant portion from the context of the present application being paragraph v(a) and (d) which reads thus :-

"(v) (a) Section 3 of the 2002 Act has a wider reach and captures every process and activity, direct or indirect, in dealing with the proceeds of crime and is not limited to the happening of the final act of integration of tainted property in the formal economy. The Explanation inserted to Section 3 by way of amendment of 2019 does not expand the purport of Section 3 but is only clarificatory in nature. It clarifies the word "and" preceding the expression projecting or claiming as "or"; and being a clarificatory amendment, it would make no difference even if it is introduced by way of Finance Act or otherwise.

(d) The offence under Section 3 of the 2002 Act is dependent on illegal gain of property as a result of

criminal activity relating to a scheduled offence. It is concerning the process or activity connected with such property, which constitutes the offence of money- laundering. The Authorities under the 2002 Act cannot prosecute any person on notional basis or on the assumption that a scheduled offence has been committed, unless it is so registered with the jurisdictional police and/or pending enquiry/trial including by way of criminal complaint before the competent forum. If the person is finally discharged/acquitted of the scheduled offence or the criminal case against him is quashed by the Court of competent jurisdiction, there can be no offence of money-laundering against him or any one claiming such property being the property linked to stated scheduled offence through him."

12. Learned Counsel Shri Venegaonkar emphasized that it is only in the context of there being an order of discharge, acquittal or because of quashing of the criminal case (scheduled offence) that the decision in **Vijay Madanlal Choudhary and ors.** (supra) can be made applicable. According to him, this is a case where C-Summary report has been accepted by the Metropolitan Magistrate which the ED proposes to challenge and therefore not covered by the decision in **Vijay Madanlal Choudhary and ors.** (supra). He further submits that the limitation of 90 days for filing the Revision is not yet over and therefore the trial Court is justified in refusing the applications for grant of interim bail

to the applicants.

13. The C-Summary has been accepted by the Metropolitan Magistrate. The ED case before the Special Judge (PMLA) is pending. I do not want to comment on the merits of the contentions so far as continuance of the PMLA case is concerned, for that is a matter to be decided in the first instance by the Special Court. I am considering the present applications strictly from the point of view as to whether, in the light of a C-Summary being accepted, the applicants could be released on interim bail. I also must bear in mind that against the order rejecting bail on merits by this Court, prior to the decision in **Vijay Madanlal Choudhary and ors.** (supra), the applicant-Marath's challenge to the order refusing him bail by this Court is pending before the Supreme Court.

14. When the question of a liberty of an individual is involved, it is not really possible for me to completely ignore the acceptance of the C-Summary report which virtually has the effect of bringing to an end the proceedings registered with Yellow Gate Police Station pursuant to the filing of the

FIR dated 28/10/2020. The proceedings in the PMLA case before the Special Judge will obviously be taken to the logical conclusion in accordance with law. The Supreme Court has in clear terms in **Vijay Madanlal Choudhary and ors.** (supra) observed that the offence under Section 3 of the PMLA is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence. Their Lordships held that if the person is finally discharged/acquitted of the scheduled offence or the criminal case against him is quashed by the Court of competent jurisdiction, there can be no offence of money-laundering against him or any one claiming such property being the property linked to stated scheduled offence through him. In my humble opinion, the effect of accepting the C-Summary report, *prima facie*, is similar to the one as mentioned by the Supreme Court in respect of those cases where the person is finally discharged/acquitted of the scheduled offence or the criminal case against him is quashed by the Court of competent jurisdiction.

15. It is pertinent to note that in the present case, the

complainant at whose instance the proceedings were initiated submitted his no objection to the acceptance of the C-Summary report. The MMRDA which is alleged to have suffered losses has not filed any complaint of breach of contract or that they are defrauded. Of course, these are matters to be taken into consideration by the Special Court trying the PMLA case and my observations therefore, may be construed as *prima facie* in nature for the purpose of considering the request for releasing the applicants on interim bail. Once the C-Summary report has been filed and accepted by the Court of competent jurisdiction, in view of the observations of the Supreme Court in **Vijay Madanlal Choudhary and ors.** (supra), *prima facie*, there can be no offence of money laundering against the applicants. I do not find any force in the submission of Mr. Venegaonkar that till the period of 90 days for filing the Revision challenging the order of the Metropolitan Magistrate accepting the C-Summary report is over, the application for bail is not tenable. The question is of liberty of an individual which is valuable. The period of 90 days for filing the Revision

challenging the acceptance of the C-Summary report cannot be read to mean as an automatic stay to the order accepting C-Summary report. The Revision is but a statutory remedy provided by law to challenge the impugned order (acceptance of C-Summary). The limitation prescribed for filing the Revision cannot be construed as a stay to the order of the Metropolitan Magistrate. I do not want to enter into the debate raised by learned Senior Advocates that the ED is not even an aggrieved party, for these are matters best left to the competent Court to decide as and when the Revision, if any, is filed by the ED. Factually, the ED has not filed the Revision against the acceptance of C-Summary report. In my opinion, the trial Court was not justified in observing 'that as a judicial discipline the Court has to wait till the end of 90 days to invoke his jurisdiction for entertaining the prayer for interim bail on the ground that the order dated 14/09/2022 accepting the C-Summary report is neither absolute nor final'. According to me, the finality to the order dated 14/09/2022 is not dependent on the period of limitation

provided for filing a Revision challenging the impugned order.

16. The applicants are in custody for more than 2 years. The maximum punishment for the offence under Section 4 is 7 years imprisonment. The applicant-Marath is 71 years of age and a retired officer of the Indian Navy who has roots in the society. The applicant-Amit is an entrepreneur. There are no criminal antecedents reported against the applicants. In my opinion, subject to the challenge, if any, to the order of C-Summary and subject to further orders that may be passed thereon, the prayer of the applicants for grant of interim bail needs to be considered. Pursuant to the filing of the C-Summary report and in the light of the observations made in **Vijay Madanlal Choudhary and ors.** (supra), the applicants are well justified in filing the applications for interim release of both the applicants on bail, Exhibit 45 and Exhibit 47 before the trial Court which deserves to be allowed.

17. As observed earlier, the order dated 21/09/2022 by the trial Court is a common order passed in respect of the

applicants-Marath and Amit Chandole. The Bail Application No.1546 of 2021 is filed by Amit prior to the decision in **Vijay Madanlal Choudhary and ors.** (supra). The bail application filed by Marath is post the decision of **Vijay Madanlal Choudhary and ors.** (supra). However, the applicants had filed applications Exhibit 45 and Exhibit 47 for interim bail before the trial Court. On parity, even the applicant-Amit deserves to be released on interim bail. It is made clear that the observations made by me are limited to releasing the applicants on interim bail for the reasons mentioned hereinbefore and should not influence the Special Judge (PMLA) while deciding any other applications or the main matter on merits. Having regard to the facts of the present case, on filing of a C-Summary report in the EOW case, in the light of the observations quoted above in **Vijay Madanlal Choudhary and ors.** (supra), the rigours of Section 45 of the PMLA will not apply. The charge-sheet has been filed. The investigation is complete.

18. Hence, the following order :-

ORDER

- (i) The Exhibit 45 and Exhibit 47 filed before the Special Judge (PMLA) are allowed.
- (ii) The applicants-Amit Balasaheb Chandole and Marath Sashidharan be released on interim bail in the sum of Rs.1,00,000/- each with one or more sureties of the like amount.
- (iii) The applicants are permitted to furnish cash bail surety in the sum of Rs.1,00,000/- each for a period of 4 weeks in lieu of surety.
- (iv) The applicants shall report to the ED once in a fortnight on the 1st and 15th day of every month between 10.00 a.m. and 11.00 a.m.
- (v) The applicants shall not leave the jurisdiction of Greater Mumbai without express permission of the Special Judge (PMLA).
- (vi) The applicants shall surrender their passports with the Special Judge (PMLA), if not already surrendered.
- (vii) The applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer. The Applicants should not tamper with evidence.

(viii) The applicants shall attend the proceedings before the Special Judge (PMLA) without any default unless exempted.

(ix) This order granting interim bail is subject to any orders that may be passed by the superior Court in challenge to the acceptance of C-Summary report dated 14/09/2022.

(x) On being released on bail, the applicants shall furnish their contact number and residential address to the Investigating Officer and shall keep him updated, if there is any change.

(xi) It is again clarified that all the observations made are *prima facie* in nature for limited purpose of considering the request of the applicants for release on interim bail and shall not be construed as an opinion on the merits of the contentions of the parties. Further, the order granting interim bail is subject to the orders passed in challenge, if any, to the acceptance of the C-Summary report.

19. The applications are disposed of.

(M. S. KARNIK, J.)