

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.4449 OF 2021

Sanjeev Suryakant Palande

...Applicant

vs.

Union of India and Others

...Respondents

VISHAL
SUBHASH
PAREKAR

Digitally signed by
VISHAL SUBHASH
PAREKAR
Date: 2022.12.20
22:01:04 +0530

Mr. Shekhar Jagtap a/w. Ms. Sairuchita Chowdhary and Ms. Rhea Francis, for the Applicant.

Mr. Anil Singh, ASG a/w. Mr. Aditya Thakkar, Mr. Shreeram Shirsat, Mr. Ashish Chavan, Mr. Shekhar Mane, Ms. Nishi Singhvi, Mr. Anna Oommen, Ms. Smita Thakkar, Mr. Amandeep Singh and Mr. Pranav Thakur, for Respondent – ED.

CORAM :

N. J. JAMADAR, J.

RESERVED ON :

NOVEMBER 21, 2022

PRONOUNCED ON :

DECEMBER 20, 2022

ORDER

1. The applicant/accused No. 2 who is arraigned in case No. 1089 of 2021, arising out of ECIR No. MBZO-I/66/2021 at the instance of Directorate of Enforcement (ED) for the offence punishable under section 4 read with 3 of the Prevention of Money Laundering Act, 2002 (PMLA), has preferred this application to enlarge him on bail.

2. The applicant joined the State service as a Deputy Collector, on 5th November, 1998. Over the period of time, the applicant has

worked on various posts. On 7th January, 2020 the applicant came to be appointed as a Private Secretary of Mr. Anil Deshmukh, the then Home Minister and a co-accused.

3. In the month of February/March, 2021, certain events unfolded which resulted in the arrest of Mr. Sachin Waze, the then API attached to Crime Investigation Unit of Crime Branch, Mumbai Police and the transfer of Mr. Param Bir Singh, the then Commissioner of Police, Mumbai from the said post. In the wake of the controversy, in a letter dated 20th March, 2021 addressed by Mr. Param Bir Singh to the then Chief Minister of Maharashtra certain allegations were made against Mr. Anil Deshmukh.

4. Eventually pursuant to an order passed by a Division Bench of this Court on 5th April, 2021, post preliminary inquiry, the Central Bureau of Investigation (CBI) registered First Information Report bearing No. RC 2232021A0003 dated 21st April, 2021 at AC-V, CBI, New Delhi against Mr. Anil Deshmukh and unknown others, with the allegations that the preliminary inquiry prima facie revealed that cognizable offence was made out wherein Mr. Anil Deshmukh and unknown others obtained undue advantage for improper and dishonest performance of their public duty; Mr. Anil Deshmukh and

others allegedly exercised undue influence over the transfer and posting of the police officials/officers and thereby exercised undue influence over the performance of the official duties by the officials.

5. On the strength of the above F.I.R. and treating it as a source from which the information was received, and the offence alleged therein as a predicate offence, E.D. registered the above ECIR against the applicant and others for the offence punishable under section 4 read with 3 of PMLA.

6. On 23rd August, 2021 the respondent No. 2/ED filed prosecution complaint against the applicant and 13 others including Mr. Sachin Waze (accused No. 1). It was inter alia alleged qua the applicant that the applicant in the capacity of the Private Secretary to the then Home Minister was instrumental in passing on the instructions of the Home Minister to Mr. Sachin Waze. The applicant arranged meetings, monitored the collection of money from the Orchestra Bar owners, analyzed and assisted in the work of collection of tainted money through the police officials. The applicant was also allegedly involved in collection of money with regard to transfer and posting of the police officials. The applicant was allegedly an active participant in the generation of proceeds of

crime and was also actively involved in laundering of the proceeds of crime.

7. On 25th June, 2021 a search was conducted at the residence of the applicant and, eventually, the applicant came to be arrested on the night intervening 25th and 26th June, 2021. In the meanwhile, the learned Special Judge took cognizance of the offence. The learned Special Judge by an order dated 7th December, 2021 was persuaded to reject the applicant's prayer for bail. Hence, this application.

8. The applicant asserts, inter alia, that the arrest of the applicant was wholly illegal and unwarranted. No prima facie case for the offence punishable under section 4 of the PMLA has been made out. Apart from the bare words of Mr. Sachin Waze, the co-accused, there is not an iota of material to connect the applicant with the alleged offence. Even the statement of Mr. Sachin Waze, in the context of the alleged role of the applicant in the transfer and posting, is mere hearsay. In the circumstances, the applicant deserves to be enlarged on bail.

9. An affidavit in reply is filed on behalf of the respondent No. 2 -

ED contesting the prayer for bail. The reply adverts to the role of the applicant as borne out by the statements of the witnesses recorded under section 50 of PMLA, especially that of Mr. Sachin Waze, the co-accused No. 1, Mr. Sanjay Patil, the then ACP, Social Service Branch, Mr. Raju Bhujbal, the then DCP, Social Service Branch and Mr. Sitaram Kunte, the then Chief Secretary, State of Maharashtra.

10. In substance, the respondent No. 2 alleges that, at the instance of and in pursuance of the criminal conspiracy with, the then Home Minister the applicant indulged in laundering of the proceeds of crime generated by extorting money from Orchestra Bar owners and transfer/ posting of the police officials/officers. According to the respondent No. 2, since the interdict contained in section 45(1) PMLA comes into operation, the applicant does not deserve to be enlarged on bail.

11. I have heard Mr. Shekhar Jagtap, learned counsel for the applicant, and Mr. Anil Singh, learned ASG for respondent No. 2-ED, at some length.

12. The learned counsel have taken me through the prosecution

complaint, supplementary prosecution complaint and first information report registered against Mr. Anil Deshmukh and others by CBI, the statements of witnesses recorded by ED under section 50 of PMLA, the statements of witnesses recorded by CBI in the predicate offence and the statements of witnesses recorded under section 164 of Code of Criminal Procedure in C.R. No. 71 of 2021.

13. Mr. Jagtap, the learned counsel for the applicant would urge that the applicant was not named as a co-accused in the first information report registered by CBI against Mr. Anil Deshmukh, and till the date of registration of ECIR, there was no predicate offence qua the applicant. Resultantly, the arrest of the applicant on 26th June, 2021, was wholly illegal and, on this count alone, the applicant is entitled to be released on bail.

14. Mr. Jagtap further submitted that even if the case of respondent No. 2 (ED) is taken at par, no offence can be said to have been prima facie made out against the applicant. Taking the Court through the statements of Sachin Waze (accused No. 1), Mr. Sanjay Patil and Mr. Raju Bhujbal, recorded by ED under section 50 of the PMLA, Mr. Jagtap would urge that those statements singularly lack

incriminating tendency. Furthermore, if the statements of these witnesses are considered in the light of the statements recorded in other proceedings, the inherent improbability of the prosecution version becomes writ large.

15. Mr. Jagtap laid emphasis on the fact that this Court in Bail Application No. 1021 of 2022 was persuaded to release Mr. Anil Deshmukh on bail. The case of the applicant, against whom there is no allegation of receiving, layering or projecting the proceeds of crime, stands on a much better footing and, therefore, the applicant deserves to be released on bail, urged Mr. Jagtap.

16. Per contra, Mr. Anil Singh, learned ASG, submitted that in SLP (Cri) Diary No(s.) No. 32078 of 2022 while dismissing the SLP against the aforesaid order granting bail to Mr. Anil Deshmukh, the Supreme Court, in its order dated 11th October, 2022, clarified that the observations made by this Court while releasing Mr. Anil Deshmukh on bail shall not affect the merits of the trial or be pressed in any other collateral proceedings. Therefore, according to Mr. Anil Singh, the applicant can not draw any mileage from the aforesaid order and the observations therein in support of the instant application. Secondly, Mr. Anil Singh strenuously submitted

that since the applicant came to be remanded to custody by judicial orders, at this stage, the Court would not be justified in delving into the legality of the arrest of the applicant, sought to be pressed into service by Mr. Jagtap.

17. On the merits of the application, Mr. Anil Singh would urge that there is overwhelming material to demonstrate that the applicant was involved in generation of the proceeds of the crime and also laundering thereof. It was urged with a degree of vehemence that two sets of allegations against the applicant are firmly made out. First, the statements of Mr. Sachin Waze, Mr. Sanjay Patil and Mr. Raju Bhujbal indicate that the applicant was instrumental in supervising and monitoring extortion of money from Orchestra Bar owners. Second, the statements of Mr. Sachin Waze, Sitaram Kunte and Mr. Ravi Vhatkar spell out the role played by the applicant in transfer and posting of police officials/officers. These factors coupled with the money trail qua Mr. Anil Deshmukh, according to Mr. Singh, establish the complicity of the applicant.

18. It was further submitted that it is not the requirement of law that there should be direct involvement of an accused in the collection of money. Inviting the attention of the Court to the wide

ambit of definition of “money laundering”, Mr. Singh would urge that the submission on behalf of the applicant that there is no direct allegation of acquisition or possession of proceeds of crime does not merit acceptance. To this end, Mr. Singh placed a strong reliance on the judgment of the Supreme Court Vijay Madanlal Choudhary and Others vs. Union of India and Others¹.

19. Mr. Singh would further urge that the mandate of section 45 must be satisfied by the accused who is charged with the offence of money laundering before he is released on bail. At this juncture, according to Mr. Singh, the Court would not be justified in delving deep into the merits of the case, much less hold a mini-trial. To bolster up this submission a strong reliance was placed on the judgments of the Supreme Court in the cases of Vijay Choudhary (supra) and National Investigating Agency vs. Zahoor Ahmad Shah Watali².

20. There can be no quarrel with the proposition that at the stage of consideration of entitlement for bail, a detail examination of the material/evidence and elaborate documentation of merits of the case are not warranted. Nonetheless, the Court is required to

1 2022 SCC OnLine SC 929

2 2019 (5) SCC 1

ascribe reasons for granting or refusal to grant bail. This requirement of giving reasons assumes more significance when there are statutory restrictions in the matter of grant of bail like section 45 of PMLA.

21. Section 45 contains an interdict against grant of bail to a person accused of an offence under PMLA, unless the Public Prosecutor has been given an opportunity to oppose the application and the Court is satisfied that there are reasonable grounds for believing that such person is not guilty of such offence and that, if released on bail, he is not likely to commit any offence, while on bail. Sub-Section (2) of Section 45 further provides that the limitation on granting bail under sub-section (1) is in addition to the limitation under the Code or any other law for the time being in force for granting of bail. The aforesaid restrictions, however, do not imply that there is an absolute bar against grant of bail.

22. A useful reference in this context can be made to a three Judge Bench judgment of the Supreme Court in the case of **Ranjitsingh Brahmajeetsing Sharma V/s. State of Maharashtra**³ wherein the contours of the power of the Court to grant bail in the face of the interdict contained in Section 21(4) of the Maharashtra

3 (2005) 5 SCC 294

Control of Organized Crime Act, 1999 arose for consideration. The interdict against the grant of bail under Section 21(4) of the MCOC Act, 1999 is *pari materia* the bar contained in Section 45(1) of the PMLA. In Ranjitsingh Sharma (supra) the Supreme Court illuminatingly postulated the approach to be adopted in arriving at the satisfaction as to whether the accused is “not guilty of such offence” and that the accused is “not likely to commit any offence while on bail”. They read as under :

“35. 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.

36. 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 ?

37. 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 .

38. 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.

.....

44. 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 futuro 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.

45. It is, furthermore, trite that for the purpose of considering an application for grant of bail, although detailed reasons are not necessary to be assigned, the order granting bail must demonstrate application of mind at least in serious cases as to why the applicant has been granted or denied the privilege of bail.

46. 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.”

(emphasis supplied)

23. The aforesaid pronouncement was followed with approval by the Supreme Court in the case of **Vijay Choudhary (supra)**, wherein the law on the aspect of the twin conditions under Section 45 of the PMLA was enunciated as under :

“400. It is important to note that the twin conditions provided under Section 45 of the 2002 Act, though restrict the right of the accused to grant of bail, but it cannot be said that the conditions provided under Section 45 impose absolute restraint on the grant of bail. The discretion vests in the Court which is not arbitrary or irrational but judicial, guided by the principles of law as provided under Section 45 of the 2002 Act. While dealing with a similar provision prescribing twin conditions in MCOCA, this Court in Ranjitsingh Sharma (supra) held as under :

44.....

45.....

46..... (extracted above).

401. We are in agreement with the observations made by the Court in Ranjitsing Sharma (supra). The Court while dealing with the application for grant of bail need not delve deep into the merits of the case and only a view of the Court based on available material on record is required. The Court will not weight the evidence to find the guilt of the accused which is, of course, the work of trial Court. The Court is only required to place its view based on probability on the basis of reasonable material collected during investigation and the said view will not be taken into

consideration by the Trial Court in recording its finding of the guilt or acquittal during trial which is based on the evidence adduced during the trial. As explained by this Court in Nimmagadda Prasad⁴, the words used in Section 45 of the 2002 Act are “reasonable grounds for believing” which means the Court has to see only if there is a genuine case against the accused and the prosecution is not required to prove the charge beyond reasonable doubt.”
(emphasis supplied)

24. The aforesaid pronouncements, thus, indicate that the statutory restrictions in the matter of grant of bail are required to be considered reasonably. A finding that the accused is not guilty of the offence and that he is not likely to commit an offence if released on bail, are required to be recorded only for the purpose of arriving at an objective finding on the strength of the material on record to assess the entitlement for bail only. If the Court having regard to the material brought on record is satisfied that, in all probability, the accused may not be ultimately convicted, an order granting bail may be passed. Conversely, it is not peremptory that the Court must arrive at a positive finding that the Applicant has not committed an offence under the Act. Likewise, the satisfaction that the accused is not likely to commit an offence while on bail is qua the offence of the kind with which the accused is charged and not any other offence.

4 (2013) 7 SCC 466

25. In the light of the aforesaid exposition of law, re-adverting to the facts of the case, it has to be seen whether the aforesaid twin test can be said to have been satisfied in the case at hand. Of necessity, the allegations against the applicant and the nature of evidence and material in respect of those allegations are required to be evaluated with a view to arrive at a tentative finding of existence or otherwise of reasonable grounds for believing that the applicant is not guilty of the offence and the reasonable prospect of the applicant not likely to commit an identical offence in the event of his release on bail.

26. As noted above, the allegations against the applicant are in two parts. First, the applicant was instrumental in passing on instructions of Mr. Anil Deshmukh to Sachin Waze with regard to extortion of money from Orchestra Bar owners, and supervising and monitoring the collection of money. Second, the applicant had also a role in the transfer and posting of police officers/ officials, and indulged in the laundering of money generated thereby.

27. On the first count, the prosecution primarily banked upon the statements of Sachin Waze, Sanjay Patil, Raju Bhujbal, Mahesh Shetty and Rameshwar Yadav and other Bar owners.

28. Mr. Sachin Waze, in his first statement recorded on 19th June, 2021 stated that in the month of October, 2020 Mr. Anil Deshmukh had asked him to collect Rs. 3 lakh from each of the Bar and Restaurants in the presence of one Mr. Karunakar Shetty, who had given him a list of 1750 Bars and Restaurants. On the instruction of Mr. Anil Deshmukh, Mr. Sachin Waze claimed to have held meetings with the Orchestra Bar owners in his office. In one such meeting, held on 16th December, 2020, Mr. Sanjay Patil, ACP was also present. Mr. Sachin Waze claimed to have collected approximately a sum of Rs. 4.70 Crores during the months of December, 2020 to February, 2021 and handed over the same to Mr. Kundan Shinde, the then Personal Assistant of Mr. Anil Deshmukh and another co-accused, on the instructions of Mr. Anil Deshmukh.

29. With regard to the role of supervising and monitoring the said exercise attributed to the applicant, the statement of Mr. Sachin Waze recorded on 11th July, 2021 was pressed into service. Mr. Sachin Waze asserted that he used to get calls from the applicant or Mr. Kundan Shinde to attend the meetings at the office or residence of Mr. Anil Deshmukh. On 24th February, 2021, after a meeting at the residence of Mr. Anil Deshmukh about Legislative Assembly Business was over, Mr. Anil Deshmukh asked Mr. Kundan Shinde

and the applicant to discuss about the collection of demanded money from 1750 Bars and Restaurants across Mumbai to achieve the target. Thereafter, Mr. Waze, the applicant and Mr. Kundan Shinde discussed about the possibility of increasing the collection as desired by Mr. Anil Deshmukh.

30. The prosecution seeks to draw support to the statement of Mr. Sachin Waze from the statements of Mr. Sanjay Patil and Raju Bhujbal. Mr. Sanjay Patil in his statement recorded on 22nd June, 2021 refers to a meeting which Mr. Sachin Waze had with Orchestra Bar owners including the fact that Sachin Waze informed him that he was collecting money from Orchestra Bar owners across Mumbai in lieu of letting them run the Bars beyond the prescribed hours and without restriction as to the number of performance artists. In the month of March, 2021 also, according to Mr. Sanjay Patil, Mr. Sachin Waze had apprised him that Mr. Anil Deshmukh had asked him to collect Rs. 3 lakhs each from 1750 Bars and Restaurants across Mumbai. Mr. Sanjay Patil refers to a conversation which he and Mr. Raju Bhujbal had with the applicant on 4th March, 2021 at the official residence of Mr. Anil Deshmukh. He states that the applicant asked them as to whether collection of Rs. 3 lakhs each from 1750 Bars and Restaurants across Mumbai was being made.

To which, he claimed to have replied that, the figure of 1750 Bars and Restaurants was incorrect and no such amount was being collected. Thereupon, the applicant replied that he knew they were not doing any such collection and he had also known the person who was collecting the said amount. The statement of Mr. Raju Bhujbal proceeds on the same line.

31. It would be contextually relevant to note Mr. Param Bir Singh, the then Commissioner of Police has also stated that Mr. Sachin Waze had informed him about the expectation of Mr. Anil Deshmukh of collection of Rs. 100 Crore including Rs. 40-50 Crore from the Restaurants and Bar owners and that he had advised Mr. Waze not to succumb to pressure and indulge in such illegal activities. The role attributed to the applicant also finds mention in the Whatsapp conversation which Mr. Param Bir Singh had with Mr. Sanjay Patil.

32. Mr. Anil Singh, learned ASG submitted that in the Whatsapp conversation, Mr. Sanjay Patil stated that the applicant had told him that there was instruction to collect Rs. 3 lakh per establishment from 1750 establishments in Mumbai.

33. At this stage, without delving into the aspect of further explanation furnished by Mr. Sanjay Patil regarding the Whatsapp conversation, it would be imperative to note that the reference in the Whatsapp conversation prima facie appears to be to the conversation which the applicant had with Mr. Sanjay Patil and Mr. Raju Bhujbal, on 4th March, 2021.

34. I find it rather difficult to accede to the submission of Mr. Anil Singh that the statements of Mr. Sanjay Patil and Mr. Raju Bhujbal sustain an inference, prima facie, that the applicant had asked Mr. Sanjay patil and Mr. Raju Bhujbal to collect a sum of Rs. 3 lakhs per month from 1750 Bars and Restaurants in the said meeting dated 4th March, 2021. Those statements, at best, indicate that the applicant had inquired with Mr. Sanjay Patil as to whether the said amount was being collected from Bars and Restaurants. The statements of Mr. Sanjay patil and Mr. Raju Bhujbal, even if taken at par, do not bear the weight of accusation that the applicant was instrumental in either directing the police officers to extort money from the Orchestra Bar owners or supervising and monitoring the said exercise.

35. As regards the statement of Mr. Sachin Waze, it is pertinent

to note, Mr. Sachin Waze does not attribute any role to the applicant in the first meeting wherein Mr. Anil Deshmukh allegedly instructed him to collect money from the Orchestra Bar owners and Restaurants. The applicant came in the frame in the meeting dated 24th February, 2021 which Mr. Sachin Waze allegedly had with Mr. Anil Deshmukh.

36. I deem it appropriate to evaluate this aspect along with the material on the second count of the accusation, as it turns on the credibility of Mr. Sachin Waze.

37. In support of the allegation that the applicant was a privy to the exercise of undue influence by Mr. Anil Deshmukh over the transfer and posting of police officials/ officers and thereby obtained undue advantage, the prosecution principally relies on the statements of Mr. Sitaram Kunte, the the Additional Chief Secretary, Mr. Param Bir Singh, the then Commissioner of Police and Member, Police Establishment Board, and the statements of the applicant as well as Mr. Ravi Vhatkar, the then OSD to Mr. Anil Deshmukh recorded under section 50 of PMLA.

38. Mr. Stitaram Kunte stated Mr. Anil Deshmukh used to hand

over an unofficial list containing suggestions in respect of certain police officials /posts with regard to transfer and posting. At times, on the directions of Mr. Anil Deshmukh, the applicant used to hand over such list to him. Thereupon, Mr. Sitaram Kunte used to orally convey those suggestions to other members of Police Establishment Board(PEB). Post discussion, suggestions were considered and accepted unanimously by PEB.

39. Mr. Param Bir Singh asserted that the list of police officials to be transferred was prepared in the office of Mr. Anil Deshmukh and handed over to Mr. Sitaram Kunte, the proceedings of the Committee were a mere formality and the members of PEB, despite having reservations, had to agree and sign the recommendations.

40. Mr. Ravi Vhatkar stated that Mr. Anil Deshmukh used to have meetings and discussions with another Cabinet colleague and finalize the names of the police officers to be posted at the given places. Mr. Vhatkar and the applicant used to be a part of such discussions or meetings. He was looking after the preparation of the lists of police officers up to the rank of Inspector and below and the applicant used to prepare the list of the officers of the rank of Dy.S.P./ACP and above. It would be contextually relevant to note

that the applicant in his statement recorded under section 50 of PMLA also stated that a list for recommending the transfer of police officials was made by Mr. Anil Deshmukh in consultation with another Cabinet colleague.

41. Mr. Anil Singh, learned ASG, strenuously submitted that the aforesaid statements, indicate that the applicant was very much involved in the transfer and posting of the police officers/ officials, as the preparation of unofficial lists for transfer and posting has been stated to by all.

42. The pivotal question that comes to the fore is whether any element of criminality is prima facie discernible in the aforesaid exercise qua the applicant ?

43. To this end, the prosecution primarily relies on the statements of Mr. Sachin Waze. In the statement dated 19th June, 2021, Mr. Sachin Waze stated that after 3-4 days of the posting orders being reversed in the month of July, 2020, he learned that a sum of Rs. 40 Crore had been collected from the police officers and out of that Rs. 20 Crores was given to Mr. Anil Deshmukh through the applicant.

44. In the statement, recorded on 21st June, 2021. Mr. Sachin Waze stated that as per his knowledge, the applicant and another officer, used to handle the dealings in connection with transfer and posting of the police officials for Mr. Anil Deshmukh and another Cabinet colleague, respectively. Mr. Sachin Waze stated that he came across the said information from his other colleague but he did not wish to name them.

45. Mr. Param Bir Singh in his statement recorded on 3rd December, 2021 also referred to the aforesaid incident of transfer and posting of DCPs in the month of July, 2020 and asserted that he had heard that huge consideration was paid to Mr. Anil Deshmukh through some intermediaries for favourable transfer and posting. Mr. Parm Bir Singh also states about the presence of the applicant and Mr. Ravi Vhatkar in the meetings which were held regarding transfer and posting of the police officers/ officials.

46. The situation which thus emerges is that the allegation of generation of proceeds of crime qua the applicant as well is sought to be sustained on the basis of statements of Mr. Sachin Waze and Mr. Param Bir Singh. Evidently, both the witnesses claimed to have “learned” or “heard” that money changed hands. These statements

ex-facie are not sturdy enough to bear the weight of the allegations of generation of proceeds of crime out of alleged predicate offence of exercise of undue influence over transfer and posting of police officers/ officials. These statements ex-facie lack element of certainty as to the source, time and place. They prima facie appear to be hearsay. What exacerbates the situation is the statement of Mr. Sachin Waze that he had known the sources but did not wish to name them.

47. At best, the material on record would indicate that the applicant was present in the meetings which Mr. Anil Deshmukh allegedly had with another Cabinet colleague and/or with the members of the PEB and, at times, delivered unofficial lists to Mr. Sitaram Kunte. This material, taken at its face value, is not sufficient to rope in the applicant for the offence of money laundering. The capacity in which the applicant rendered the services at the office of Mr. Anil Deshmukh cannot be lost sight of. Inviting officers for the meetings, organizing the meetings and even attending the meetings are parts of the usual functions which a Private Secretary is expected to perform. No element of criminality can be attributed either for organizing the meeting or forwarding the lists at the instance of Mr. Anil Deshmukh.

48. Mr. Jagtap endeavoured to impress upon the Court that the material on record throws a serious doubt as to the identity of the person for whom Mr. Sachin Waze allegedly collected the amount from the Orchestra Bar owners. Attention of the Court was invited to the statements of the Bar owners Mr. Jaya Pujari, Mr. Uday Shetty and Mr. Mahesh Shetty recorded under section 164 of the Code before the learned Magistrate in the predicate CBI case. In the said statements, these witnesses stated that though they never asked Mr. Sachin Waze who was “No. 1”, for whom the amount was being collected, the Commissioner of Police was considered to be the “No. 1” in the police hierarchy.

49. In addition, Mr. Jagap, laid a strong emphasis on the statement of Mr. Sanjay Patil, recorded under section 164 of the Code in C.R. No. 71 of 2021 wherein Mr. Sanjay Patil stated that upon being inquired as to who was ‘No. 1’ for whom the money was being collected, Mr. Sachin Waze had replied that the said person was the then Commissioner of Police.

50. Mr. Anil Singh, learned ASG, joined the issue by canvassing a submission that it is only in one of the statements, Mr. Sanjay Patil has referred to the then Commissioner of Police as “No. 1”. The

other statements of Mr. Sanjay Patil are consistent as regard the person for whom Mr. Sachin Waze collected the amount from the Orchestra Bar and Restaurant owners. It was further submitted that the statements of Bar owners as to who was “No.1”, do not command credence.

51. The statements of Bar owners may not be of determinative significance. However, I am not persuaded to agree with the submission that the statement of Mr. Sanjay Patil is of no significance. In addition to aforesaid statement under section 164 of the Code, Mr. Sanjay Patil, in his statement before CBI in the predicate offence under section 161 of the Code, stated that Mr. Sachin Waze told him that the then Commissioner of Police was “No. 1” for whom the money was being collected. These statements of Mr. Sanjay Patil are required to be appreciated in the light of the official position Mr. Sanjay Patil then held. Being in-charge of the Social Service Branch, the presence of Mr. Sanjay Patil in the meetings which Mr. Sachin Waze had with the Bar owners can not be questioned. When Mr. Sanjay Patil learnt about the alleged collection of money from the Bar owners, it was but natural for him to inquire with Mr. Sachin Waze as to why and for whom the money was being allegedly collected. The disclosure at that point of time by

Mr. Sachin Waze, which runs counter to the prosecution version, therefore, can not be brushed aside lightly.

52. Since Mr. Sachin Waze is a co-accused, the question of reliability of Mr. Sachin Waze to sustain the charge against the applicant would crop up for consideration. The character in which the statements are made by Mr. Sachin Waze and the credibility of the accusation qua the applicant herein, in my considered view, bear upon the exercise of discretion while considering the prayer for bail as well. Though I am not inclined to embark upon an inquiry into the alleged inconsistent statements made by Mr. Sachin Waze before Justice Chandiwal Commission of Inquiry where Mr. Sachin Waze conceded that the applicant had never made any demand of, or communication for, money to him for any reason and disowned the prosecution version, yet it would be extremely unsafe to place reliance on the statements of Mr. Sachin Waze. The credentials of Mr. Sachin Wasze as borne out by the material on record also assume significance. In short, the prosecution version, which heavily draws upon the statements of Mr. Sachin Waze to rope in the applicant, appears fragile.

53. For the foregoing reasons, I am impelled to hold that there are

reasonable grounds for believing that the applicant is not guilty of the offence of money laundering.

54. Satisfaction as regards the second condition does not present much difficulty. The applicant allegedly committed the offence in his capacity as the Private Secretary of the then Home Minister. Since the said position no longer obtains, in the absence of any antecedents to the credit of the applicant, it can be legitimately inferred that the applicant is not likely to commit an identical offence if released on bail.

55. Moreover, the fact that Mr. Anil Deshmukh, at whose behest, the offences were allegedly committed, has been ordered to be released on bail, a *fortiori* renders the claim of the applicant for bail worthy of consideration.

56. The applicant being a public servant appears to have roots in society. The applicant does not pose a flight risk. Apprehension on the part of the prosecution of tampering with evidence and threatening the witnesses can be taken care of by imposing appropriate conditions. Resultantly, the application deserves to be allowed.

Hence, the following order.

ORDER

- (i) The Application stands allowed.
- (ii) The Applicant – Sanjeev Suryakant Palande be released on bail on furnishing a P.R. bond in the sum of Rs.1 Lakh and one or two sureties in the like amount to the satisfaction of the learned Judge, PMLA, Mumbai.
- (iii) The Applicant shall report at the Office of the Enforcement Directorate on every Monday in between 10.00 a.m. to 12.00 noon for a period of two months from the date of his release. Thereafter, the Applicant shall report to the said office on every alternate Monday from 10.00 a.m. to 12.00 noon for next four months.
- (iv) The Applicant shall attend each and every date of the proceedings before the PMLA Court, Mumbai.
- (v) The Applicant shall remain within the jurisdiction of the PMLA Court i.e. Greater Mumbai till the trial is concluded and shall not leave the area without prior permission of the PMLA Court.
- (vi) The Applicant shall surrender his passport before the PMLA Court, if not already surrendered.
- (vii) The Applicant shall not, either himself, or through any other person, tamper with the prosecution evidence and give threats or

inducement to any of the prosecution witnesses.

(viii) The Applicant shall not indulge in any activities similar to the activities on the basis of which the Applicant stands prosecuted.

(ix) The Applicant shall not try to establish communication with the co-accused or any other person involved directly or indirectly in similar activities, through any mode of communication.

(x) The Applicant shall co-operate with the expeditious disposal of the trial and in case the delay is caused on account of any act or conduct of the Applicant, the bail shall be liable to be cancelled.

(xi) In the event the Applicant violates any of the aforesaid conditions, the relief of bail granted by this Court shall be liable to be cancelled.

(xii) After release of the Applicant on bail, he shall file an undertaking within two weeks before the PMLA Court stating therein that he will strictly abide by the aforesaid conditions.

(xiii) By way of abundant caution, it is clarified that the observations made in the order are limited to the consideration of the question of grant of bail and they shall not be construed as an expression of opinion which bears on the merits of the matter in this case as well as the prosecution for the predicate offences.

(N. J. JAMADAR, J.)

56. At this stage the learned counsel for respondent No. 2- ED seeks stay to the execution and operation of this order.

57. Since the order passed by this Court in Bail Application No. 1021 of 2022 has not been interfered with by the Supreme Court, the prayer for stay does not seem justifiable and, therefore, the oral application for stay stands rejected.

(N. J. JAMADAR, J.)