

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

BAIL APPLICATION NO. 821 OF 2022

Girish Dayaram Chaudhari ..Applicant

v/s.

Union of India & Anr. ..Respondents

**WITH
INTERIM APPLICATION NO. 2128 OF 2022
IN
BAIL APPLICATION NO. 821 OF 2022**

Girish Dayaram Chaudhari ..Applicant

v/s.

Union of India & Anr. ..Respondents

Mr. Shirish Gupte, Sr. Counsel with Mr. Mohan Tekavde, Mrs. Swati Tekavde, Ms. Sanjana Shivkar, Mrs. Mrudula Kadam Ms. Kajol Mhatre for the Applicant.

Mr. Anil Singh, Id. ASG a/w. Mr. Aditya Thakker, Mr. Shreeram Shirsat, Mr. Ashish Chavan, Mr. Amandeep Singh Sra, Ms. Nishi Singhvi, Ms. Anna Oommen, Mr. Shekhar Mane and Ms. Darshita Rai for the Respondent ED.

Mr. S.V.Gavand, APP for the State.

**CORAM : ANUJA PRABHUDESSAI, J.
DATED : 10th APRIL, 2023.**

**PRASANNA P
SALGAONKAR P.C.**

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1. This is an application under Section 439 Cr.P.C. filed by the

aforesaid Applicant, who is facing trial in PMLA Case No 1108 of 2021, arising from ECIR/MBZO-II/10/2019, registered by Directorate of Enforcement (ED), for the offence under Section 3 r/w. Section 4 of the Prevention of Money Laundering Act, 2002 (PMLA).

2. The Respondent carried out the investigation on the basis of the FIR No.121 of 2017 lodged by one Hemant Laxman Gavande, at Bund Garden Police Station, Pune, against the Applicant and the other co-accused for offences under Section 13(1)(d), r/w. 13(2) and 15 of Prevention of Corruption Act, (hereinafter referred to as the P.C.Act) and Section 109 of the Indian Penal Code (IPC).

3. The allegations in the FIR are that the accused No.1 -Eknath Khadse misused his official position as State Revenue Minister to purchase and claim compensation in respect of the land under survey No.52/2A/2 of Village Bhosari, Taluka Haveli, District Pune. The said land which was owned by Ukani family. The State Government had acquired the said land for the purpose of development of Industrial area. Notification under Section 32(1) of MID Act was published in the official gazette dated 26.10.1972.

The said land vested in MIDC by virtue of Section 32(4) of the MID Act. The MIDC took possession, developed the land and allotted it to several allottees, who have set up various industries.

4. The Applicant and the co-accused Mandakini, the wife of the Accused No.1-Eknath Khadse, entered into an agreement for sale and subsequently purchased the said land by Deed of Sale dated 28.04.2016, at a price much below the prevailing market rate. It is alleged that the Applicant and the other co-accused entered into a criminal conspiracy to usurp the said land, and in pursuance thereof, the co-accused Eknath Khadse, the then Revenue Minister of the State of Maharashtra, misused his position as a Minister and mobilized the Revenue as well as MIDC Officials to pay compensation and/or to hand over possession to the owner of the land. On the basis of these allegations, offence came to be registered for offences under Section 13(1)(d), 13(2), and 15 of P.C. Act and under Section 109 of the IPC.

5. The Anti Corruption Bureau investigated the said crime and on 27/04/2018 filed 'C' summary in respect of the predicate offence. It is stated that the report is not accepted and further investigation has been ordered. Since Section 13 of the P.C. Act is

a scheduled offence under the PMLA, 2002, and treating the said FIR as source from which the information is received, the Respondent-Enforcement Directorate (ED) registered the aforestated ECIR dated 28.08.2019 against the Applicant and the co-accused for the offence under Section 3 r/w. Section 4 of the PMLA.

6. In the course of the investigation, statements came to be recorded under Section 50 of the PMLA, 2002. The Applicant came to be arrested on 07.07.2021 under Section 19 of the PMLA, 2002 for an offence of money laundering. It is alleged that the Applicant and the co-accused Mandakini Khadse had received Rs.2 Crores each from the account of M/s. Benchmark Buildcon Pvt. Ltd. in the guise of unsecured loan, which was utilized for purchase of the said property. It is stated that the amount of Rs.4 Crores, which was transferred into the account of the Applicant and the co-accused, was received by M/s. Benchmark Buildcon Pvt. Ltd. from five different shell companies.

7. M/s. Benchmark Buildcon Pvt. Ltd., is alleged to be a shell company engaged in business of entry accommodation. It is

alleged that out of total amount of Rs.5.35 Crores, which includes the sale consideration as well as stamp duty, the Applicant and the co-accused mobilised the cash payment of Rs.4 Crores from unknown sources and routed, placed, layered the said cash of Rs.4 Crores with the assistance of late Om Prakash Sharda through the bank account of his shell company M/s. Benchmark Buildcon Pvt. Ltd. Late Omprakash Sharda provided book entry of Rs.2 Crores each in the guise of unsecured loan to the bank account of Mr. Girish Choudhari and Mandakini Khadse from the account of M/s. Benchmark Buildcon Pvt. Ltd., whereas the co-accused Eknath Khadse mobilized cash of Rs.50 lakhs from his own account and routed to his wife's bank account. It is further alleged that the Applicant and the co-accused forged backdated loan agreement to project that this amount of Rs.4 Crores was received as loan from M/s. Benchmark Buildcon Pvt. Ltd. The laundered fund of Rs.5.53 Crores was utilized to purchase the said land and to pay the stamp duty and for registration of the land.

8. The Applicant filed an application for bail before the learned Special Judge for PMLA, which came to be dismissed vide order dated 18.02.2022. Hence, the present application. The bail is

sought mainly on the ground that there is no valid predicate offence for the reason that the Anti Corruption Bureau has filed C Summary Report. It is further stated that the ingredients of Section 3 of the PMLA, 2002 are not made out.

9. Shri Shirish Gupte, learned Senior Counsel for the Applicant submits that there is no material on record to indicate that the Applicant and the co-accused had entered into any criminal conspiracy. He further submits that Anti Corruption Bureau has filed a closure report in form of 'C' summary and hence at the time of registration of the ECIR there was no valid predicate offence. He submits that notice under Section 32(1) is null and void since it was issued without complying with the provision under Section 32(2) of the MID Act. It is submitted that the land was not acquired and this is evident from the affidavit of the Deputy Collector in Writ Petition No. 6027 of 2018, as well as from the fact that the name of the MIDC is recorded only in other rights column. He therefore contends that the purchasers were not required to obtain any NOC from the MIDC for sale of the said land.

10. Mr. Gupte, further submits that the Applicant and the co-accused had purchased the property in a distress sale by executing a

registered sale deed. Though the property has been purchased for Rs.3,75,00,000/- the Applicants have paid Rs.1,37,05,000/- towards registration fees and stamp duty on the prevailing market rate of the land. He therefore contends that no loss has been caused to the Government Exchequer. It is contended that the draft minutes recorded pursuant to the meeting held by the co-accused -Eknath Khadse were canceled by the Chief Minister after obtaining legal advice. Hence, no reliance can be placed on the said minutes.

11. Mr. Gupte, learned Sr. Counsel further submits that the Applicant had obtained loan of Rs.2 Crores from M/s. Benchmark Buildcon Pvt. Ltd., which has been duly paid by the Applicant with interest at the rate of 9 % per annum. He submits that the Applicant is not associated with M/s. Benchmark Buildcon Pvt. Ltd., except for availing the loan from the said company, which has been duly repaid. The decision of the Income Tax Tribunal and ITA No.3390/MUM/2016 clearly indicates that M/s. Benchmark Buildcon is not a fictitious Company. He submits that there is no material to show that the tainted money was converted into untainted money. He submits that the entire case is based on mistaken fact.

12. Learned Sr. Counsel Shri Gupte further submits that the Respondent has not issued notice under Section 41A of the Cr.P.C. before arresting the Applicant under Section 19 of the PMLA. He has relied upon the decision of the Delhi High Court in ***Vakamulla Chandrashekhar vs. Enforcement of Directorate and Anr. Writ Petition (CRL) 852 of 2017*** to substantiate his contention that the scheme of PMLA Act does not obviate the compliance of Sections 41 and 41A of the Cr.P.C.

13. Learned Counsel for the Applicant submits that the Respondent has failed to make out a case of dishonest intention or fraudulent transaction. The Applicant is a victim of political vendata. He has no criminal antecedents and that the bail cannot be declined solely on the ground that the Applicant is facing charge of financial irregularities or economic offence. He submits that the Applicant is in custody since long and has co-operated with investigation. The case of the Respondent is based on documentary evidence which are already seized, and hence there is no possibility of the Applicant tampering with the evidence.

14. Learned Sr. Counsel Mr. Gupte has relied upon the decision of

the Apex Court in ***Ranjitsingh Brahmajeetsingh Sharma vs. State of Maharashtra, (2005) 5 SCC 294*** to emphasize that the findings as contemplated in Section 45 of PMLA 2002 are required to be recorded only for the purpose of arriving at an objective finding only for grant of bail and for no other purpose. He submits that allegations made in the FIR as well as ECIR do not constitute offence and there is no sufficient ground to proceed against the Applicant under the provisions of PMLA, 2002. The test of twin condition having been satisfied, it is imperative to secure and safeguard the liberty of the Applicant keeping in mind the well settled principle that bail is rule and jail is an exception. He has relied on the decision of the Apex Court in ***P. Chidambaram vs. Directorate of Enforcement AIR 2020 SC 1699*** and ***Arnab Manoranjan Goswami vs. The State of Maharashtra (2021) 2 SCC 427, Satender Kumar Antil vs. Central Bureau of Investigation, (2022) SCC Online SC 825.***

15. Per contra, Shri Anil Singh, learned ASG, submits that the Applicant has not satisfied the test of twin condition under Section 45 of the PMLA , 2002. He submits that in view of the notification under Section 32(1) of the MID Act, the land vests in the

Government free of all encumbrances. He submits that the Government took possession of the property in exercise of powers under Section 32(5) of the Act, and developed and allotted the same to various allottees. He submits that several industries have come up in the said land and in such circumstances, Ukani family had no right to enter into any transaction with the Applicant herein.

16. Learned ASG further contends that the co-accused Eknath Khadse, the father-in-law of the Applicant herein, and the then Revenue Minister was well aware that the land stood vested in the Government. The Ukani family had already filed a petition claiming compensation in respect of the said property. The Applicant and the wife of the Accused No.1 had already entered into an agreement for sale and paid sale consideration to the owner, despite which on 12.04.2016, the accused No.1 Eknath Khadse held a meeting in his chamber and directed the officials to give compensation or to hand over possession of the land to the owner of the said land. These directions were only in respect of the subject property. He submits that the co-accused, by misusing his position as the Revenue Minister, entered into a criminal conspiracy to purchase the said land, which had already vested in the MIDC, and to obtain for

himself and his family a valuable thing or pecuniary advantage by corrupt or illegal means. He submits that from 20.04.2016 to 26.04.2016, Benchmark Buildcon Pvt. Ltd. received funds from shell companies which were routed to the Applicant and the co-accused Mandakini Khadse. He submits that the flow chart/material on record shows that the Applicant had arranged 4 Crores, received from unknown sources and given the same to Omprakash Sharda, Director of M/s. Benchmark Buildcon Pvt. Ltd. and obtained RTGS entries in the form of loan of 4 Crores to conceal the source of fund.

17. He submits that on 28.4.2016, the Applicant and Mandakini Khadse entered into a sale deed with Ukani family and purchased the said land for sale consideration of Rs.3,75,00,000/-. He submits that though the land was purchased for Rs.3,75,00,000/-, the Applicant has paid stamp duty on Rs.22.83 Crores, which as per the ready reckoner, was the prevailing market value of the land. He therefore submits that, the land was purchased at a price which was much below the prevailing market rate. He submits that the whole sequence of events between March and April 2017 clearly indicate that the Accused No.1 had abused his position as public servant and

acquired in the name of his family public property and obtained pecuniary advantage by corrupt or illegal means, which is an offence punishable under Section 13(1)(d) of the P.C. Act. He submits that the Special Court has not accepted the 'C' Summary Report and has ordered further investigation.

18. Learned ASG submits that the material on record reveals that the Applicant herein had mobilized funds of Rs.3.15 Crores in his name, and he had arranged cash fund of Rs.2 Crores from unknown sources and routed, placed, and layered the cash of Rs.2 Crores to the Shell company M/s. Benchmark Buildcon Pvt. Ltd. and received Rs.2 Crores from M/s. Benchmark Buildcon Pvt. Ltd. in the guise of unsecured loan. Ld. ASG further submits that the Applicant had also arranged Rs.2 Crores cash for Mrs. Mandakini Khadse to purchase the said land on the basis of forged back dated loan documents. He has relied upon the decisions in the case of ***Vijay Madanlal Choudhary vs. Union of India, (2022) SCC Online 929***, to emphasize that the offence of money laundering is grave since it has direct impact on the financial health, sovereignty and integrity of the country. He further submits that though the Court is not required to delve deep into the merits of the case, the

Court is required to record its satisfaction on the basis of material on record as to the twin condition of Section 45 of the PMLA, 2002. He submits that the satisfaction contemplated under Section 45 has to be based on reasonable grounds, which means something more than prima facie grounds. He has relied upon the decision in ***State of Gujarat vs. Sandip Omprakash Gupta 2022 SCC OnLine SC 1721***. Relying upon the decision of the Apex Court in ***Assistant Director, Enforcement Directorate vs. Dr.V.C.Mohan, 2022 SCC OnLine SC 452***, he submits that rigors of Section 42 of the PMLA are applicable even to the application under Section 438 of Cr.P.C. He further submits that the Applicant was remanded to custody by order of competent Court and hence the ground of illegal arrest is no longer available to the Applicant. Reliance is placed on the decision of ***Ankit Muttha vs. Union of India 2020 SCC Online Bom. 121*** and ***Pragyna Singh Thakur vs. State of Maharashtra (2011) 10 SCC 445***.

19. I have perused the records and considered the submissions advanced by the learned Counsels for the respective parties.

20. It is well settled that the grant of bail is the rule and refusal

and exception. In the case of **Satender Kumar Antil (supra)** the Hon'ble Supreme Court has reiterated that *"liberty is one of the most essential requirements of the modern man. It is stated to be the delicate fruit of a mature civilization. It is the very quintessence of civilized exist and the essential requirement of a modern man."* The nature of offence and the material in support thereof, possibility of the accused fleeing justice, reasonable apprehension of tampering the evidence or influencing the witnesses are the circumstances which normally weigh with the Court while exercising discretion under Section 439 of Cr.P.C.

21. In **P. Chidambaram (supra)** the Apex Court upon considering the previous decisions has reiterated that *"the basic jurisprudence relating to bail remains the same in as much as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial, however, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences, that would befall on the society in cases of financial*

irregularities, it has been held that even economic offences would fall under the category of “grave offence” and in such circumstances, while considering the application for bail, the Court will have to deal with the same, being sensitive to the nature of allegation made against the accused. One of the circumstances to consider the gravity of the offence is also the term that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard, what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature, nor does the bail jurisprudence provides so. Therefore, the underlining confusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for the grant or refusal of bail, though it may have a bearing on principle. But ultimately, the consideration will have to be on case to case basis on the facts involved therein and securing the presence of the accused to stand trial.”

22. In **Arnab Goswami (supra)** the Hon'ble Supreme Court has reiterated the principles to be followed while considering the application for bail. The Supreme Court observed that more than four decades ago, in a celebrated judgment in ***State of Rajasthan vs. Balchand (1977) 4 SCC 308*** Justice Krishna Iyer pithily reminded us that the basic rule of our criminal justice system is 'bail, not jail' and that the Courts must enforce this principle in practice.

23. In the instant case, the Applicant is alleged to have committed offence under Section 3 of the PMLA, 2002. Hence, before advertng to the facts, it would be apposite to refer to the definition of "proceeds of crime", and the "offence of money laundering", as defined under Section 2(1)(u) of PMLA 2002, and which read thus:-.

"Section 2(1)(u) "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property is taken or held outside the country, then the property equivalent in value held within the country.

"Section 3. Offence of Money laundering. Whosoever

directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of offence of money-laundering.”

24. The offence of money laundering as defined under Section 3 is punishable with maximum sentence of 7 years. In **Vijay Madanlal Choudhari** (supra) the Hon’ble Supreme Court while upholding the constitutional validity of various provisions of the PMLA, has observed that the quantum of punishment provided for the offence is not the sole factor in deciding the severity of the offence. Money laundering affects social and economic fabric of the nation and such offence, which poses a serious threat to the financial health of the country and causes adverse consequences in multiple ways needs to be viewed seriously and considered to be grave offence.

25. The language of Section 3 clearly implies that the money involved in the offence of Money laundering is necessarily the proceeds of crime, arising out of criminal activity in relation to the scheduled offence. In **Vijay Chaudhary** (supra) the Apex Court has observed that the “*proceeds of crime*” being the core of the

ingredients constituting the offence of money-laundering, that expression needs to be construed strictly. In that, all properties recovered or attached by the investigating agency in connection with the criminal activity relating to a scheduled offence under the general law cannot be regarded as proceeds of crime. There may be cases where the property involved in the commission of scheduled offence attached by the investigating agency dealing with that offence, cannot be wholly or partly regarded as proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act- so long as the whole or some portion of the property has been derived or obtained by any person “as a result of” criminal activity relating to the stated scheduled offence. To be proceeds of crime, therefore, the property must be derived or obtained, directly or indirectly, “as a result of criminal activity relating to the scheduled offence. To put it differently, the vehicle used in commission of scheduled offence may be attached as property in the concerned case (crime), it may still not be proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act. Similarly, possession of unaccounted property acquired by legal means may be actionable for tax violation and yet, will not be regarded as proceeds of crime unless the concerned tax legislation prescribes such violation as an

offence and such offence is included in the Schedule of the 2002 Act. For being regarded as proceeds of crime, the property associated with the scheduled offence must have been derived or obtained by a person “as a result of” criminal activity relating to the concerned scheduled property referred to in the scheduled offence as proceeds of crime for the purpose of 2002 Act. Dealing with proceeds of crime by way of any process or activity constitutes offence of money laundering under Section 3 of the Act.

26. The Apex Court further observed “From the bare language of Section 3 of 2002 Act, it is amply clear that the offence of money laundering is an independent offence regarding the process or activity connected with the proceeds of crime, which has been derived or obtained as a result of criminal activity relating to or in relation to a scheduled offence. The process or activity can be in any form – be it one of concealment, possession, acquisition, use or proceeds of crime as much as projecting it as untainted property or claiming it to be so. Thus involvement in any one of such cases or activity connected with the proceeds of crime would constitute offence of money laundering. This offence otherwise has nothing to do with the criminal activity relating to a scheduled offence- except

the proceeds of crime derived or obtained as a result of that crime.

27. The Hon'ble Apex Court has summarized that :

“(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.

(b) Independent of the above, we are clearly of the view that the expression “and” occurring in Section 3 has to be construed as “or”, to give full play to the said provision so as to include “every” process or activity indulged into by anyone. Projecting or claiming the property as untainted property would constitute an offence of money-laundering on its own, being an independent process or activity.

(c) The interpretation suggested by the petitioners, that only upon projecting or claiming the property in

question as untainted property that the offence of Section 3 would be complete, stands rejected.

(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”.

28. It is also relevant to note that Section 45 of PMLA, 2002 imposes statutory restriction in the matter of grant of bail. This section provides that notwithstanding anything contained in the code of criminal procedure, no person accused of an offence under this act shall be released on bail or on his own bond unless (i) the

Public Prosecutor has been given an opportunity to oppose the application for such release; and (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail. The proviso to Section 45(1) carves out an exception from the rigors of Sections 45 for persons who are sick or infirm.

29. The mandate of Section 45 also applies to the application under Section 438 of Cr.P.C. (**Dr. V.C. Mohan - supra**). In **Ranjitsingh Brahmajeetsingh Sharma (supra)** the Hon'ble Supreme Court, while interpreting the embargo under Section 21 (4) of MCOC Act, which is para materia with Section 45 of PMLA, has observed thus:-

“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 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. If such an expansive meaning is given, even likelihood of commission of an offence under Section 279 of the Indian Penal Code may debar the Court from releasing the accused on bail. A statute, it is trite, should not be interpreted in such a manner as would lead to absurdity. What would further be necessary on the part of the Court is to see the culpability of the accused and his involvement in the commission of an organised crime either directly or indirectly. The Court at the time of considering the application for grant of bail shall consider the question from the angle as to whether he was possessed of the requisite *mens rea*. Every little omission or commission, negligence or dereliction may not lead to a possibility of his having culpability in the matter which is not the *sine qua non* for attracting the provisions of MCOCA. A person in a given situation

may not do that which he ought to have done. The Court may in a situation of this nature keep in mind the broad principles of law that some acts of omission and commission on the part of a public servant may attract disciplinary proceedings but may not attract a penal provision.

30. In **Vijay Chaudhary (supra)** the Supreme Court has observed that 2002 Act is a special legislation to deal with the subject of money laundering activities having transnational impact on the financial system including sovereignty and integrity of the countries. It is observed that money laundering is not an ordinary offence. It is a separate class of offence requiring effective and stringent measures to combat the menace of money laundering. The Apex Court has enunciated the law on the aspect of the twin conditions as under.

“400. It is important to note that 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 633 Supra at Footnote No.3 prescribing twin conditions in MCOCA, this Court in Ranjitsing Brahmajeetsing

Sharma 634, held as under:

“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) 634 Supra at Footnote No.275 (also at Footnote No.53) 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) We are in agreement with the observation made by the Court in Ranjitsing Brahmajeetsing Sharma⁶³⁵. 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 weigh 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 Prasad⁶³⁶, the words ⁶³⁵ Supra at Footnote No.275 (also at Footnote No.53) ⁶³⁶ Supra at Footnote No.256 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.

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401. We are in agreement with the observation made by the Court in *Ranjitsing Brahmajeetsing Sharma*⁶³⁵. 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 weigh 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 Prasad* ⁶³⁶, the words ⁶³⁵ Supra at Footnote No.275 (also at Footnote No.53) ⁶³⁶ Supra at Footnote No.256 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.

31. In **Sandip Omprakash Gupta (supra)**, while interpreting the embargo under Section 20(4) of the Gujarat Control of Terrorism and Organized Crime Act, 2015, which is para materia to section 45 of PMLA, 2002, the Apex Court has observed that the conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds. The expression 'reasonable grounds' means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provisions requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence.

32. It is thus well settled that there is no absolute restriction on the power of the Court to grant bail for offence under Section 3 of the PMLA, 2002. The discretion vests in the Court to assess the material on record objectively and based on probability to arrive at such findings as contemplated under Section 45 of PMLA, 2002.

33. Reverting to the facts of the present case, the case of the prosecution in brief is that - (i) the co-accused Eknath Khadse, the

then Revenue Minister, committed criminal misconduct by abusing his position as a public servant and purchasing through his wife and son-in-law, a property which was acquired by and in possession of MIDC. (ii) the property was purchased at a price much below the prevailing market rate. (iii) the Applicant and the co-accused placed, routed and layered the funds of Rs.5.53 Crores received from unknown sources through various shell companies. (iv) The Applicant and co-accused in furtherance of the activity connected to the 'proceeds of crime' and projecting it as untainted, prepared a backdated forged document in respect of funds of Rs.4 Crores received from M/s. Benchmark Buildcon Pvt. Ltd. (v) the amount of 4 Crores which was projected as repaid to M/s. Benchmark Buildcon was received by the Applicant in cash.

34. In this regard, the records indicate that Ukani family were the owners of the property under Survey No.52/2A/2 of Village Bhosari, Taluka Haveli, District Pune. The Applicant and the co-accused have purchased the said land from Ukani family by Deed of Sale dated 28.04.2016. The Applicant and the co-accused had filed Writ Petition No. 6027 of 2018 wherein it is stated that they were informed by their predecessors that the possession of the land

was not taken by MIDC. Shri Gupte, ld. Sr. Counsel has also referred to the affidavit filed by the Collector in the said petition to substantiate his contention that the land was in possession of Ukani.

35. The records reveal that the State Government had initiated acquisition proceedings in respect of the land in village Bhosari, including the subject land and issued notification dated 11.11.1971 under Section 32(1) of MID Act. By virtue of Section 31(4) when a notice under sub section (1) is published in the official gazette, the land vests absolutely in the State Government, free from all encumbrances. In the Civil Suit No.2024 of 1974, filed by the original owner Rasulbhai Ukani, it was averred that the Spl. land Acquisition Officer had served a notice dated 16.11.2017 demanding possession of the land. Similarly, in the Writ Petition No. 10000 of 2015 Abbas Rasulbhai Ukani, the son of the original owner, had averred that though the land was not acquired by following due process, the Respondent had taken illegal possession and encroached upon the said land. Referring to letter dated 29.11.2010, he had averred that MIDC had no authority to take possession of the land, prepare plots and allot the same to the allottees. The grievance of Ukani was that they were not paid the compensation and that the possession of the land was taken without

following due procedure. He had therefore sought direction that the acquisition had lapsed, had sought removal of encroachment and recovery of physical possession of the land, claimed rent/damage for unauthorized use of the land and further sought to direct the Government to initiate fresh acquisition proceedings or in the alternative to allot alternative plot of land. These averments made by the original owner clearly indicate that the MIDC had already taken possession of the land, and thus negate the contention that the Ukani family was in possession of the land.

36. The records reveal that the Applicant and the co-accused Mandakini, son-in-law and the wife of the co-accused Eknath Khadse, the then Revenue Minister, had entered into an agreement dated 28.03.2016 with Ukani family to purchase the property under Survey No. 52/2A/2 for sale consideration of Rs. 50 lakhs. The Agreement for Sale reveals that the sale consideration of Rs.50 lakhs was transferred to Ukani from the account of the Applicant with ICICI Bank. The agreement indicates that the vendors had relinquished their right and had acknowledged the right of the purchaser to receive compensation in respect of the said land.

37. It is on record that on 10.04.2016, within less than fifteen days from the date of the said agreement, the co-accused Eknath Khadse, called for a meeting to discuss the issue of acquisition of land under Survey No.52/2A/2 at Village Bhosari. It was noted that the land owner was not paid compensation and that the power of attorney holder had claimed compensation as per the current market rate. The Accused No.1 observed that it was not legal to allot the land to several persons for setting up industries without completing the land acquisition process and directed that the land be returned to the owner or that compensation be paid to them as per the new Land Acquisition Act and action in that regard needs to be taken in accordance with law and as per the legal advice. The accused No.1 admits in his statement recorded under Section 50 that as a Revenue Minister he had no role in respect of acquisition of the said land. The accused No.1 has stated that he had no knowledge about any complaint filed by anyone claiming compensation in respect of the said land. He claims that as a senior most Minister several persons used to come to visit his office with their grievances.

38. No doubt, as a Revenue Minister, Accused No.1 was entrusted with powers to protect public interest, or to take any decision in

public interest, but such powers could not have been exercised to gain financial or other undue advantage for himself or his family members. In the instant case, as noted above, the wife and son-in-law of the Accused No.1 had already entered into an Agreement for Sale and paid the sale consideration in respect of the subject land to the original owners. Moreover, under the agreement, they had right to receive the compensation. In such circumstances, holding a meeting to discuss acquisition only in respect of the said land and giving directions to pay compensation to the owner and/or to return possession of the land, though the issue did not relate to his portfolio, was not prima facie to resolve public interest, but was an exercise to achieve personal gain or gain for his near and dear ones.

39. The records reveal that though in the agreement for sale dated 28/03/2016 the sale consideration was mentioned as Rs.50 Lakhs, the Applicant and the co-accused subsequently purchased the said property vide sale deed dated 28.04.2016 for sale consideration of Rs.3.75 Crores. The Applicant and the co-accused have paid stamp duty of Rs.1,78,16,600/- on the prevailing market rate of the land, which as per the ready reckoner was assessed to be Rs.22,83,63,300/-. It is thus evident that the Applicant and the co-

accused had purchased the said land much below the prevailing market rate. The defence that the land was purchased at a distress sale is a matter to be proved during the trial.

40. The records reveal that the Applicant and the co-accused Mandakini had paid Rs.3.75 Crores to the vendors, Rs.1.37 Crores towards stamp duty and registration, and Rs.41 lakhs for stamp duty of Power of Attorney. Out of the total payment of Rs.5.53 Crores, the Applicant herein had paid Rs.3.15 Crores and the co-accused Mandakini had paid Rs.2.38 Crores. The source of the income of the Applicant is stated to be as follows:- (i) Received loan of Rs.2 Crores from Benchmark Buildcon Pvt. Ltd., (ii) Received Rs.30 lakhs from Dayaram Chaudhari, (iii) Received Rs.35 lakhs from Mahalaxmi Building Material and Suppliers, (iv) Received total 47 lakhs from his two other accounts. This amount was utilized for payment to the vendors.

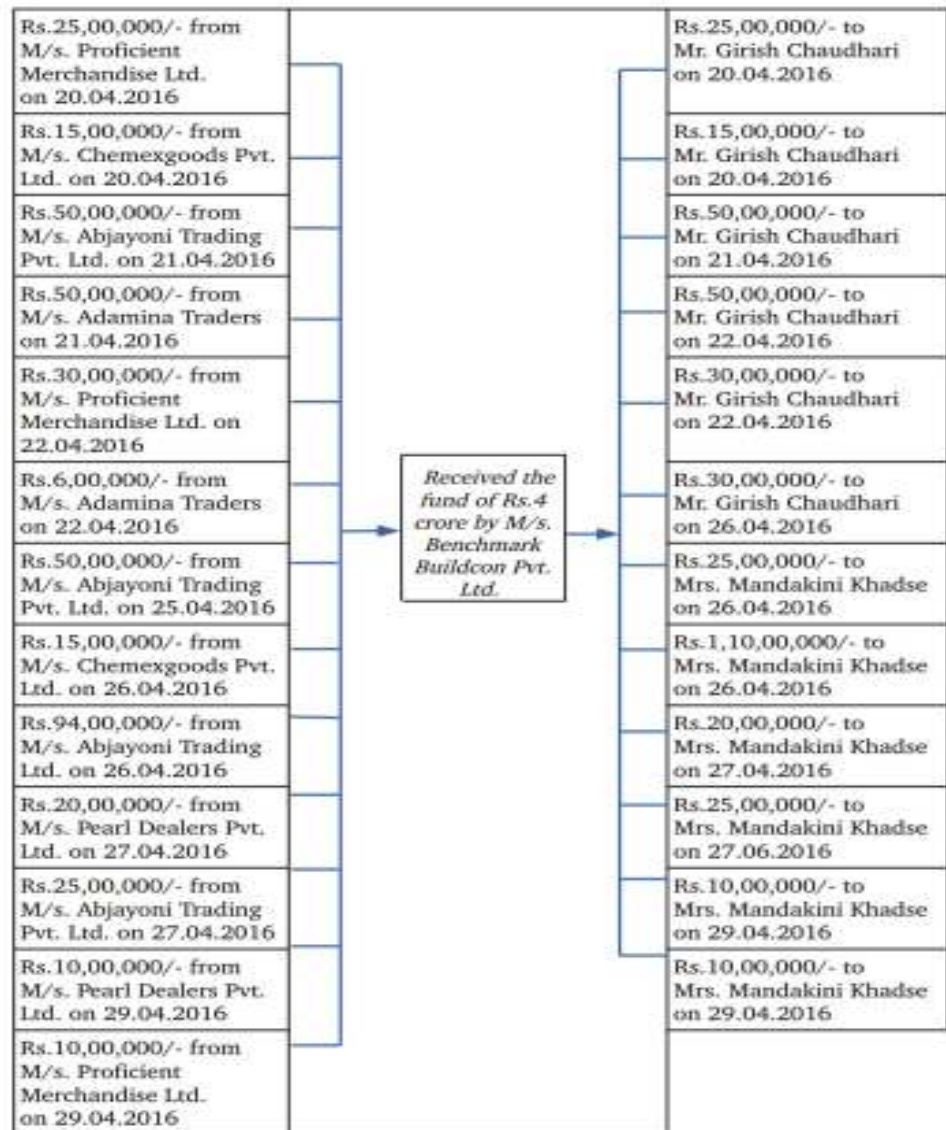
41. The co-accused Mandakini had paid an amount of Rs.2.38 Crores towards purchase of the land. The source of income of the co-accused was that she had received loan of Rs. 2 Crores from M/s. Benchmark Buildcon Pvt. Ltd. Whereas the balance amount was transferred in her account by her husband, Accused No.1-

Eknath Khadse, the then Minister.

42. It is the case of the Respondent that the Applicant had paid the money to M/s. Benchmark Buildcon Pvt. Ltd. to obtain accommodation entry, whereas, the Applicant has claimed that he had availed loan from Benchmark Buildcon Pvt. Ltd., which was repaid with interest. Undisputedly, the Applicant and the co-accused had not made any application for loan. The Applicant had not even visited the office premises of M/s. Benchmark Buildcon. The alleged loan of Rs.4 Crores was provided at an oral request of the Applicant, without any security, and on an oral assurance that he had capacity to repay the loan. The statement of the Applicant as well as the statement of the Accused No.1, who had also transferred Rs.50 lakhs in the account of co-accused Mandaniki, does not indicate that she had any independent source of income or financial capacity to repay the loan of Rs.2 Crores.

43. The records further reveal that M/s. Benchmark Buildcon Pvt. Ltd. had received Rs.4 Crores from 5 different companies, which was transferred to the account of the Applicant and the co-accused on the same date. The Directors of most of these Companies were the same.

44. The flow chart of the source of the funds received by M/s. Benchmark Buildcon and transferred to the bank account of the Applicant and the co-accused is as under :-



45. As noted above, it is the case of the Respondent that M/s. Benchmark Buildcon had received the funds of Rs.4 Crores from

the said five shell companies which was transferred to the account of the Applicant and the co-accused. It is stated that M/s. Benchmark Buildcon played crucial role in the placing, routing, and layering of Rs. 4 Crores cash through its bank account and projecting as untainted in guise of unsecured loan, which was utilized to purchase the land acquired by MIDC. In this context, the records reveal that on 11.4.2016 the Board of Directors of M/s. Benchmark Buildcon had taken a resolution to sanction loan of Rs.4 Crores to the Applicant and the co-accused. Accordingly, from 20.04.2016 to 29.4.2016, an amount of Rs.4 Crores was disbursed to the Applicant and the co-accused. Loan agreements dated 11.4.2016 were executed by the Applicant and M/s. Benchmark Buildcon in respect of the said loan. As per the loan agreement dated 11.04.2016 the loan amount was to be repaid within one year with extension of six months with prior consent. The statement of the Applicant indicates that the last installment was paid on 26/08/2020. His statement does not indicate that the period of repayment of loan was extended or that any action was taken by M/s Benchmark Buildcon for having defaulted to repay the loan amount within the time stipulated in the agreement.

46. In this regard, it would also be relevant to refer in brief to the statements of Arvind Udeshi, Devashu Upadhyaye, Manjunath Bashetty and Manjit Jhaju, the Directors of M/s. Benchmark Buildcon. Arvind Udeshi and Manjunath Bashetty had joined the company on monthly remuneration of Rs.25,000/- and Rs.15,000/- respectively, whereas Manjit Jhaju is a nephew of late Omprakash Sarda, who had bought M/s. Benchmark Buildcon in the year 2009. The statements of these witnesses recorded under Section 50 of P.M.L.A. indicate that M/s. Benchmark Buildcon was a paper company, which was not in the business of providing loan, but was actually providing accommodation entries to several clients. They claim that in the year 2016 late Omprakash Sarda had provided such book entry in the form of loan to the Applicant. They have stated that M/s. Benchmark Buildcon had provided loan of Rs.4 Crores to the Applicant and the co-accused on receiving equivalent cash amount from the Applicant before the said transaction was materialized. They claim that the loan agreement is a backdated agreement. Mr. Devashu Upadhyaye and Manjit Jhaju, the Directors of M/s. Benchmark Buildcon, who looked after the day to day business of the Company, have further stated that though it is projected that the loan amount of Rs.4 Crores has been paid through

banking channel, all the transactions were reversed and the equivalent amount of money was returned to the Applicant in cash.

47. The material on record prima facie reveals that the Applicant and the co-accused have acquired the property by means which are not legally approved, and the property acquired by criminal activity is relatable to scheduled offence. Prima facie, a case of criminal misconduct, which is a scheduled offence is made out. It is stated that the closure report has not been accepted and further investigation has been ordered. Hence, at this stage the predicate offence does not cease to exist. As regards the offence under Section 3 of the PMLA, 2002 the records prima facie reveal that the Applicant had placed, routed, layered the amount of Rs.5.53 Crores through various shell companies and that he was involved in the activity connected to the proceeds of crime and thereby committed an offence punishable under Section 4 of the PMLA, 2002.

48. Shri Gupte, learned Senior Counsel for the Applicant has made a grievance that the Applicant was not served with a notice under Section 41A of the Cr.P.C. and has thereby failed to follow the guidelines laid down by the Apex Court while effecting arrest of the Applicant. Section 41A lays down that in all cases, whether

arrest of a person is not required under the provisions of Section 41(1) of Cr.P.C., the police officer shall issue a notice as required under the said provision. In **Satender Kumar Antil** (supra) the Hon'ble Supreme Court has held that Section 41 and 41A of Cr.P.C. are facets of Article 21 of the Constitution and that non-compliance of Section 41 and 41A would entitle the Applicant for bail. It is to be noted that PMLA, 2002 is a special enactment which contemplates a distinct procedure. In **Vijay Chaudhary** (supra), the validity of Section 19 of PMLA, 2002 was challenged on the ground that the protection as provided under Section 41A of the Cr.P.C. is absent in PMLA and the same violates procedural safeguards. It was contended that such unguided use of power to investigate and prosecute any person is violative of Article 14 and 21 of the Constitution. The Hon'ble Supreme Court has held that Section 19 of the 2002 Act postulates the manner in which arrest of person involved in money laundering can be effected. It is held that Section 19 provides for inbuilt safeguards to be adhered by the authorized officers, which ensures fairness, objectivity and accountability of the authorized officer in forming opinion as recorded in writing regarding the necessity to arrest the person being involved in offence with money laundering. It is held that the

safeguards provided in the 2002 Act, and the stringent preconditions ensure that the authorized officers do not act arbitrarily. It is held that the safeguards to be adhered to by the jurisdictional police officers before effecting arrest, as stipulated in the 1973 Code are certainly not comparative. It is been observed that the power of arrest under Section 19 has been given to the high ranking officials with further conditions to ensure that there is objectivity and their own accountability in resorting to arrest of a person even before a formal complaint is filed Under Section 44(1)(b) of the 2002 Act. The Hon'ble Supreme Court, while upholding the validity of Section 19, rejected the grounds pressed into service to declare Section 19 as unconstitutional and held that such a provision has reasonable nexus with the purposes and objects sought to be achieved by the 2002 Act of Prevention of Money Laundering and Confiscation of proceeds of crime involved in money laundering, including to prosecute persons involved in the process or activity involved in the process of crime so as to ensure that the proceeds of crime are not dealt with in any manner which may result in frustrating any proceedings relating to confiscation thereof. In the instant case, it is not the case of the Applicant that the authorized officer has not adhered to the safeguards or the stringent conditions

contained in Section 19 of the PMLA, 2002, and has thus failed to demonstrate violation of Article 21 of the Constitution as to entitle him for bail.

49. Having gone through the entire records, in my considered view the Applicant has failed to meet the test of twin condition under Section 45 of PMLA. Moreover, the Applicant is a British citizen and as such the possibility of the Applicant not being available for trial cannot be ruled out. Under the circumstances and in view of discussion supra, the Application is dismissed. Interim Application is disposed of.

(ANUJA PRABHUDESSAI, J.)