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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **RESERVED ON –01.06.2023.**
PRONOUNCED ON – 03.07. 2023.

+ **BAIL APPLN. 906/2023 & CRL.M.(BAIL) 398/2023**

ABHISHEK BOINPALLY Petitioner

Through: Mr. Vikram Chaudhari, Sr. Advocate
through v/c and Mr. Shri Singh, Mr.
Sumer Singh Boparai, Mr. Sidhant
Saraswat, Mr. Gurfateh Singh Khosa,
Mr. Varun Bhati, Mr. Prabhneer
Swaini, Mr. Suyash Goverdhan and
Ms. Srishti Khanna, Advs.

versus

DIRECTORATE OF ENFORCEMENT Respondent

Through: Mr. Zoheb Hossain, Special counsel
for ED with Mr. Vivek Gurnani, Mr.
Kartik Sabharwal and Mr. Baibhav,
Advs.

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

INDEX

S. No	Particulars	Page No
1.	Factual Matrix	2-14
2.	Submissions on behalf of Petitioner	14-20
3.	Submissions on behalf of Respondent/ED	20-24
4.	Finding and Analysis	24-44



JUDGMENT

DINESH KUMAR SHARMA,J :

A. Factual Matrix

1. The present order shall dispose of the bail application no. 906/2023 of Abhishek Boinpally titled as “Abhishek Boinpally vs Directorate of Enforcement”. The bail applications filed by petitioner Abhishek Boinpally was dismissed by the learned Special Judge, PC Act , CBI-09 vide order dated 16.02.2023.
2. Briefly the facts as stated by Enforcement Directorate are as under:
 - “5. *An FIR No. RC0032022A0053 dated 17.08.2022 was registered by CBI, ACB, New Delhi against Sh. Manish Sisodia, Deputy Chief Minister, GNCTD of Delhi and others under Section 120B r/w 477A of Indian Penal Code, 1860 and Section 7 of Prevention of Corruption Act, 1988 for irregularities in framing and implementation of the excise policy of GNCTD of Delhi for the year 2021-22.*
 6. *The FIR is registered on the direction of competent authority conveyed by Shri Praveen Kumar Rai, Director, MHA, Govt. Of India vide OM No. 14035/06/2022-Delhi-1 dated 22/07/22 for enquiry into the matter of irregularities in framing and implementation of the excise policy of GNCTD of Delhi for the year 2021-22. Vide said OM Shri Praveen Kumar Rai has also forwarded DO letter no. SLG/Conf./2022/75 dated 20/07/2022 of Shri Vinai Kumar Saxena, Hon’ble Lt. Governor, GNCTD of Delhi alleging irregularities in framing and implementation of the excise policy of GNCTD of Delhi for the year 2021-22.*



7. *The OM discloses that Shri Manish Sisodia, Deputy Chief Minister, GNCTD of Delhi, Shri Arva Gopi Krishna, the then Commissioner (Excise), GNCTD of Delhi and Shri Pankaj Bhatnagar, Assistant Commissioner (Excise), GNCTD of Delhi were instrumental in recommending and taking decisions pertaining to excise policy for the year 2021-22 without approval of competent authority with an intention to extend undue favors to the licensees post tender.*

8. *In the said FIR it has been inter-alia stated/alleged that:*

- a. *Sh. Vijay Nair, Former CEO of M/s Only Much Louder, an entertainment and event management company, Shri Manoj Rai, Ex-employee of M/s Pernod Ricard, Sh. Amandeep Dhall, Owner of M/s Brindco Spirits & Sh. Sameer Mahendru. Owner of M/s Indo Spirits are actively involved in irregularities in framing and implementation of excise policy of GNCTD of Delhi for the year 2021-22.*
- b. *Some of the L-1 Licence holders are issuing credits notes to retail vendors with an ab-initio intention to divert the funds as undue pecuniary advantage to Public Servants. In furtherance to this, they are showing false entries in their books of accounts to keep their record straight.*
- c. *Shri Amit Arora, Director of M/s Buddy Retail Pvt. Limited, 1402, Tower-15, Vipul Greens, Gurgaon. Haryana, Shri Dinesh Arora Rio Plot No.-139, III Floor. Block-A. Gujrawala Town, Phase-I. Delhi. Shri Arjun Pandey are close associates of Shri Manish Sisodia and are actively involved in managing and diverting the undue pecuniary advantage collected from Liquor Licensees to accused public servants. That Shri Sameer Mahendru, MD. M/s Indospirits has transferred an amount of one crore to account no. 10220210004647 of M/s Radha Industries maintained with UCO Bank.*



Rajendra Place, New Delhi. M/s Radha Industries is being managed by Shri Dinesh Arora. That Shri Arun Ramchandra Pillai used to collect undue pecuniary advantage from Shri Sameer Mahendru, MD. M/s Indospirit for onward transmission to accused public servant through Shri Vijay Nair. A person named Arjun Pandey has once collected huge cash amount of about Rs.2-4 crores from Shri Sameer Mahendru on behalf of Shri Vijay Nair.

- d. M/s Mahadev Liquors, a proprietorship firm was granted L-1 License. Sh. Sunny Marwah is the authorized signatory of the firm. Sh. Sunny Marwah is also director in companies/firms being managed by family of Late Sh. Ponty Chadha. That Sh. Sunny Marwah is in close contact with accused public servants and has been regularly giving undue pecuniary advantage to them.*
- 9. The predicate agency i.e., the CBI has filed a chargesheet dated 25.11.2022 with respect to their investigation done in the above-mentioned FIR no RC0032022A0053 dated 17.08.2022 in the Special Court, New Delhi. The cognizance of the same has been taken vide order dated 15.12.2022.*
- 10. The gist of the CBI chargesheet is as under:*
 - a. The CBI has filed chargesheet in respect of the subject FIR on 24.11.2022. In the chargesheet filed by CBI. 6 accused persons have been covered- Sh. Sameer Mahandru, Sh. Vijay Nair. Sh. Abhishek Boinpally. Sh Gautam Mootha, Sh Arun Pillai and Excise officials Sh Kuldeep Singh. Deputy Commissioner, Excise. Sh Narinder Singh, Asst Commissioner. Excise.*
 - b. The CBI has found that, a conspiracy was hatched by Sh Vijay Nair along with Sh Abhishek Boinpally. Sh Dinesh Arora and others to get the undue benefits by circumventing the provisions of the policy. That, Sh Dinesh Arora is a close associate of Sh Vijay Nair and he*



participated in multiple meetings took place amongst Sh Vijay Nair. Sh Abhishek Boinpally and others to discuss and plan the conspiracy. In one of these meetings that took place in Hyderabad Sh Vijay Nair told Sh Dinesh is to coordinate with Sh Abhishek Boinpally to transfer Rs. 20-30 Cr approx. to Sh Vijay Nair. That, this payment will be returned by way of getting stakes in business like Indo Spirit and extra credit notes to the retail zones managed by Sh Abhishek Boinpally from Brindco. In that meeting, it was conspired that the wholesale distribution of Pernod Ricard and Diageo would go to Indo Spirits and Brindco respectively That, after the recoupment was over, the 6% kickbacks collected from the wholesale businesses would be divided in half between Sh Vijay Nair and Sh Abhishek Boinpally.

- c. That. in pursuance to the said conspiracy, the money amounting to Rs. 20 to 30 crores was sent to Sh. Vijay Nair and his team between July to September 2021 in cash through hawala channels. Sh. Abhishek Boinpally used to call Sh. Dinesh Arora and tell him a phone number and currency note number, which he used to forward to the team of Vijay Nair and inform Shri Vijay Nair.*
- d. Sh. Vijay Nair instructed the employees of Pernod Ricard India Pvt. Ltd through messages and conversations over phone as well as in person that M/s Pernod Ricard India Pvt Ltd should not give its wholesale distributorship to M/s Brindco Sales Pvt. Limited as M/s Diageo is going to award its wholesale distributorship to M/s Brindco Sales Pvt. Limited.*
- e. That, Shri Sameer Mahandru introduced Shri Arun R. Pillai and Shri Abhishek Boinpally as potential investors in Indo Spirits who have a backing of Sh. Magunta Srinivasulu Reddy of Balaji Group and Sh Sharad Reddy of Aurobindo Pharma. In this regard, a meeting was held at hotel Taj Mansingh, Delhi on 20.09.2021 in which the*



employees of M/s Pernod Ricard India Pvt Ltd, Sh. Abhishek Boinpally, Sh. Arun R Pillai, Sh. Sameer Mahandru, Sh. Magunta Srinivasulu Reddy, Sh Sharad Reddy and others were present.

- f. When these persons applied for L1 license under the name of Indo Spirits Marketing Pvt Ltd, there were certain complaints mentioning cartelisation and EMD cross funding against Indospirits and Khao Gali and its promoter Sh Sameer Mahandru. The Excise officials issued a SCN but only partially covered the issues in the complaint with an intention of deliberately favouring the entity. That, the license of Indospirits was issued in conspiracy of Sh Vijay Nair, Sh Dinesh Arora, Sh Sameer Mahandru and the Excise officials.*
- g. That. Sh Sameer Mahandru formed a cartel through his entities Khao Gali, Indospirit Marketing Pvt Ltd. In violation of the Excise Policy 2021-22. That, the excise officials granted L1 license to Indospirits without properly processing the file and collecting the requisite documents as well as without properly addressing the complaint against M/s Indospirits in lieu of Rs 30 lakh bribe taken by Sh Narender Singh from. Sh Sameer Mahandru and on the influence exerted by Sh Vijay Nair and Sh Dinesh Arora.*
- h. That, Sh Abhishek Boinpally had threatened Sh Jagbir Sidhu of Diageo withdraw various complaints petitions filed anonymously/pseudonymously who he believed to have been filed by Sh Aman Dhall of Brindco, who was the wholesaler for Diageo else, Sh Abhishek Boinpally would blacklist Diageo from the 9 retail zones he was managing or was a part of. And that, he will get the wholesale license of his wholesale distributor M/s Brindco Sales and they will get it cancelled from the Excise Department.*
- i. That, the part of the profits accrued from Indospirits*



have been transferred to Sh Arun Pillai, which was basically a recovery of the kickback given in advance. That, part of that sum has reached Sh Abhishek Boinpally through Sh Gautam Mootha of India Ahead and Andhra Prabha Publications. This amount is now being claimed as a loan reversal from Gautam Mootha to Abhishek however there is no loan agreement between them. Part of the profits of Indo Spirits to the tune of Rs. 1.70 Cr has directly reached India Ahead and Andhra Prabha Publication. That, this money is of Rs. 1.70 Cr is repayment towards the upfront money sent by Sh. Abhishek Boinpally to Sh. Vijay Nair as Sh. Abhishek Boinpally has investment and interest in M/s Andra Prabha Publications Pvt Ltd and M/s India Ahead News.

j. Therefore, it is clearly revealed that Sh. Vijay Nair hatched a conspiracy with Sh. Dinesh Arora, Sh. Abhishek Boinpally, Sh. Arun R Pillai, Sh. Sameer Mahandru, Sh Mootha Gautam. Sh Kuldeep Singh, DC and Sh Narender Singh, AC and in pursuance of the same by using his position in the ruling party at Delhi took advance money of Rs 20-30 crores from Sh. Abhishek Boinpally through Sh. Dinesh Arora and in lieu of the same influenced the officers of M/s Pernod Ricard India Pvt Ltd as well as the officers of Excise Department of GNCT of Delhi to get the distributorship of M/s Pernod Ricard India Pvt Ltd and L1 license for M/s Indo Spirits for which the same was not entitled.

11. Since the Section 120B of the Indian Penal Code, 1860 and Section 7 of the Prevention of Corruption Act. 1988 are scheduled offences under the Prevention of Money Laundering Act (PMLA), 2002, the Directorate of Enforcement has initiated an investigation in the matter by recording an ECIR No. ECIR/HIU-II/14/2022 on 22.08.2022. The investigation under PMLA is being conducted by the Directorate for tracing out Proceeds of Crime generated and laundered due to the alleged irregularities in the formulation and implementation of



the Excise policy 2021-22. Further, ED has filed a Prosecution Complaint dated 26.11.2022 arraying Sameer Mahandru and others as accused before the Hon'ble Special Court (PMLA). The Ld. Court has taken cognizance of the same vide its order dated 20.12.2022. Thereafter, 1st Supplementary Prosecution Complaint dated 06.01.2023 has been filed against Sh. Abhishek Boinpally and others before the Hon'ble PMLA Court. During the investigation, several searches have been conducted, statements have been recorded. ED has provisionally attached properties to the tune of Rs. 76.54 crores vide PAO No. 02/2023 dated 24.01.2023. The investigation done by ED has revealed as under:

- a. PMLA investigation done so far has revealed that, the Delhi Excise Policy, 2021-22 was created by the top leaders of the AAP to continuously generate and channel illegal funds to themselves. The extent of involvement and abatement done by the leaders of the AAP of the criminal activities undertaken by the accused further substantiates their design and scheme of the scam. The policy was formed with deliberate loopholes to facilitate illegal and criminal activities.*
- b. The policy promoted cartel formations through back door, awarded exorbitant wholesale profit margin @12% and huge retail profit margin of 185% and incentivized other illegal activities on account of criminal conspiracy by the top leaders of AAP to extract kickbacks from the businesses.*
- c. As disclosed by C. Arvind, DANICS, Secretary to Manish Sisodia, in his statement dated 07.12.2022, the draft GoM report was given to him in the mid of March 2021 when Sh. C Arvind was called by Manish Sisodia to the residence of Arvind Kejriwal, CM (where Satyender Jain was also present). The conspiracy of the GoM to give wholesale business to private entities and fix 12% margin (to get 6% kickback out from the same) is clear from the*



statement of C. Arvind wherein he disclosed that there was neither any discussion in the GoM meetings about giving wholesale to private entities nor fixing 12% profit margin for them. He further stated that it was the first time that he saw these proposals in the draft GoM report (i.e. document handed over to him) and he was directed to prepare the report on the basis of the said document.

- d. Due to the policy framework, where one manufacturer could only choose one wholesaler gave the manufacturers' a very critical position to decide the profits of the wholesale businesses. Though the manufacturers seemingly were supposed to take this crucial decision on their own as per their choice, but, this investigation has revealed that Pernod Ricard (one of the Accused), one of the biggest manufacturers in the country, also a subject of the ongoing investigation, was in fact directed by and conspired with Sh Vijay Nair to give their wholesale distribution business to the accused M/s Indo Spirits (L1 wholesaler), which is a part of the Super Cartel including Sh. Abhishek Boinpally.*
- e. Sh Vijay Nair, who has orchestrated this entire scam is not an ordinary worker of the AAP but a close associate of Sh Arvind Kejriwal, the CM of Delhi and was closely interacting with the Dy CM for the Excise policy related matters. Sh Vijay Nair, as per his statement under section 50 of PMLA, 2002 functions from the camp office of Sh Arvind Kejriwal, CM, Delhi. Further, Sh Vijay Nair, since 2020, has been residing in the Govt bungalow allotted to a Cabinet Minister of Delhi Govt, Sh Kailash Gehlot, part of GoM of Excise Policy 2021-22. Sh Vijay Nair, does not have any other residence in Delhi. Irony being, Sh Gehlot lives at another private residence in Najafgarh.*
- f. Sh Vijay Nair had arranged meeting of the owner/controller of Indo Spirits Sh Sameer Mahandru, with Sh Arvind Kejriwal, CM, Delhi and when that didn't*



materialise, he arranged a video call through facetime on his phone for Sh Sameer and Sh Arvind Kejriwal, where Sh Arvind said to Sh Sameer that, Vijay is his boy and that Sh Sameer should trust him and carry on with him. These facts are relevant to mention so as to establish the abatement of his actions in relation to the Excise Policy scam, by the political leaders of the AAP.

- g. Sh Vijay Nair, is Incharge of Media and Communication for the AAP, had no role in the Delhi Govt. in fact acted as a broker/liaison/middlemen on behalf of the top leaders of the AAP for getting bribes/kickbacks from various stakeholders in the Delhi Liquor business in exchange of favourable outcomes (policy changes) in the Excise Policy of 2021-22, which was being drafted at that time. He even threatened the stakeholders who were not agreeing to his demands that he changes suitable/desired by them may not go through entirely if they do not concede to his demands.*
- h. Sh Vijay Nair, in connivance with Sh Dinesh Arora and through him with Sh Amit Arora, has also arm twisted a wholesaler to surrender the L1 license and then coerced the manufacturers surrendered through that license to choose the wholesalers of his choice and favour to direct the profit margins to his co-conspirators, so that there was complete control on the kickbacks to be extracted.*
- i. Sh Vijay Nair, on behalf of leaders of AAP has received kickbacks to the tune of Rs. 100 Cr from a group, for convenience, we may call it the South Group (as termed in the statements of various persons recorded during the investigation), whose prominent persons are Sh Magunta Srinivasulu Reddy, Sh Raghav Magunta, Sh Sarath Reddy and Ms K Kavitha. The South Group was represented by Sh Abhishek Boinpally, Sh Arun Pillai and Sh Buchi Babu. Sh Abhishek Boinpalli facilitated the transfer of Rs. 100 Cr kickback in connivance and conspiracy with Sh Vijay Nair and his associate Sh*



Dinesh Arora.

- j. Investigation of the trail of this kickback so far has revealed that part of these funds were used in the election campaign of the AAP for Goa Assembly elections 2022. Cash payments to the tune of Rs. 70 lacs were made to the volunteers who were part of the survey teams. Sh Vijay Nair himself has told certain persons involved in the campaign related work to receive the payments in cash. Advertisement/hoarding related work were directed to raise only part of the claims in the bill and receive the remaining in cash. These part cash payments were managed through Hawala Channels. Teams led by Sh Vijay Nair have directed certain firms to even issue bogus invoices.*
- k. These kickbacks were paid in advance to the AAP leaders through Vijay Nair by the South Group as a part of agreement between the South Group and the AAP leaders. Against the kickbacks paid, the south group secured uninhibited access, undue favours, attained stakes in established wholesale businesses and multiple retail zones (over and above what was allowed in the policy). In one of the ways to recover/recoup the kickbacks given by the South Group, partners of the South group were given 65% stakes in Indo Spirits in collusion with the accused Sh Sameer Mahandru. The South group controlled these stakes in Indo Spirits, through false representation, concealment of true ownership and proxies i.e. Sh Arun Pillai and Sh Prem Rahul. This partnership formation was directed by Sh Vijay Nair on the assurance of giving the wholesale business of Pernod Ricard to Indo Spirits.*
- l. The gravity and depth of this criminal conspiracy is such that to grant L1 wholesale license to Indo Spirits despite various complaints highlighting Sameer's and Indospirit Marketing Pvt Ltd's role in cartelisation, when Sameer submitted a fresh application in a different name of Indo*



Spirits, the Dy CM, Delhi, Sh Manish Sisodia himself directed the Excise Commissioner to grant the license on priority.

- m. *Pernod Ricard, is one of the accused in the instant case, which through Sh Benoy Babu and others, in conspiracy with the super cartel and Sh Vijay Nair gave their wholesale business to Indo Spirits. The Excise Policy 2021-22 required the manufacturers to register their brands at the Lowest EDP net of all discount/commission/rebate of any nature whatsoever, however, Pernod Ricard by way of conspiracy has got their price fixed without deducting the discounts/rebates they offer thus getting a much higher price fixed for their brands and thus earning a huge additional profit which was ineligible to them and should have been passed to the consumers as lower MRP. If the manufacturer had registered the brands at actually lowest EDP, the capacity of the manufacturers to give out credit notes would have been limited. However, Pernod Ricard paid Rs. 131.9 Crores credit notes to the retailers via the wholesalers, where the benefit of discounts was shifted to the retailers instead of the actual consumer at large.*
- n. *That, in order to create a device for continuous payment of kickbacks to Sh Vijay Nair, an unheard of margin of 12% was provided to the private wholesalers (L1s) contrary to the recommendations of the Expert Committee headed by Sh Ravi Dhawan, IAS and then Excise Commissioner which as detailed below, suggested for a single Govt entity as Wholesaler for Delhi. On this account, the Govt lost the revenue of 12% Rs. 581 cr. that would have accrued to it in case the Expert Committee recommendations were accepted by the Govt, which in the subject policy was assigned to the Pvt. Players, only to fill the personal coffers of the leaders of AAP. This loss to the Govt exchequer actually got illegally diverted into ostentatious profits to the wholesalers including the accused M/s Indo Spirits,*



which was used to recoup the kickbacks paid in advance by the South group.

- o. The South Group directly and indirectly controlled 9 retail zones, which included 5 retail zones of Sh Sarath Reddy (accused no). In some cases the control was via financing of the EMD (Earnest Money Deposit) for the L7 tender process. ostensible investments, relatives/dummies/proxies. Apart from the direct profits accruing from the wholesale business of Indo Spirits, modus operandi for recovering the kickback paid in advance by the South group, monies in the form of outstanding from the ostensible sales from the wholesale of Indo Spirit to Retail of the South group with an understanding that the outstanding was not to be recovered and the amount will be shown as recoverable in the books of account. Sh Sarath Reddy's controlled entities owed over Rs. 60 Cr (approx.) to Indo Spirits, which is shown as outstanding but was not meant to be recovered as part of the conspiracy.*
- p. The retail business was lucrative and the turnover was huge on daily basis. Further, the retail sales were in cash and not credit based, meaning thereby the generation of funds/recovery of the purchase cost was immediate. Thus, there was no valid reason for not repaying the outstanding towards the wholesaler either on the same day or soonest after.*
- q. Another novel method of recovery of the kickbacks was through passing of Credit Notes. Ordinarily the credit notes are passed to the person who had direct nexus with or has sold the goods, however, in this business, the manufacturers were giving credit notes to the retailers with whom they had no direct transactions with. Further, there was no apparent reason to give credit notes to businesses which are minting money with MRP being 3 times of the cost and having profit margin of 185% approx. The fact that the credit notes were an eyewash to*



transfer money illegally to pay kickbacks is evident from the fact that the ostensible reason of volume based credit notes was bogus and credit notes have been passed in an inconsistent manner considering the sale volume. For example, Pernod Ricard has not given any credit notes to M/s Adharv Enterprises (not a favoured L7) against the volume of 19,080 cases purchased in the months of Dec, 2021 Jan, 22 and Feb 22. However, Pernod Ricard has given Rs. 61.01 lakhs as credit notes to M/s Organomix Ecosystems Pvt. Ltd. (which is part of the South Group cartel) who has purchased 17,644 cases during the said 3 months.”

3. The role of the Petitioner has been discussed in detail in the complaint filed by ED and is not been discussed here for the sake of brevity.

B. Submissions on behalf of the Petitioner

4. Sh. Vikram Chaudhary, learned senior advocate along with Sh. Sumer Singh Boparai submitted that there is no proof of identification of proceeds of crime. It has been submitted that the allegations against petitioner are solely based on section 50 statement of Dinesh Arora and Arun Pillai and 3 calls between Mr. Dinesh Arora and Mr. Lupin (cousin of petitioner). It has been submitted that Arun Pillai has already retracted his statement by filing an application on 09.03.2023. It has also been submitted that the reliance on the statement of Dinesh Arora is also against the law, in view of illustration-B of Section 114 of Indian Evidence Act which provides that the approvers testimony cannot be relied upon unless corroborated in material particulars. It has further been submitted that Mr.



Dinesh Arora has not provided any evidence like transaction slips/notes/diary/entries etc. to corroborate his statement.

5. Learned senior counsel further submitted that reliance on 3 calls made between Dinesh Arora and Lupin in the absence of transcripts to alleged transfer of Rs. 30 crores is misplaced. It has been submitted that Lupin has denied meeting Dinesh Arora or even talking to him.
6. Learned senior counsel submitted that even as per the statement of Dinesh Arora upon receiving these calls he used to note down the number on a piece of paper and hand over the same to one Rajesh or Sudhir. However, no such paper has been recovered. It has been submitted that there is no evidence to show any Hawala transaction and not even a single Hawala operator has been examined or identified by ED.
7. Learned senior counsel further submitted that in one of statement Dinesh Arora identifies one Rajesh Sharma an alleged accomplice of Vijay Nair who used to assist in Hawala operations. However, after the CDR of one Rajesh Joshi was shown, Dinesh Arora conveniently stated that Rajesh Joshi was actually accomplice and he had mistakenly named Rajesh Sharma. It has been submitted that therefore the statement of Dinesh Arora lacks credibility. It is further been submitted that similar allegations of transferring money from Dinesh Arora to Vijay Nair were leveled against one Rajesh Joshi on the basis of similar statements. The trial court rejected such oral statements and granted bail to Rajesh Joshi as there was no



independent and cogent evidence against him on record. Learned senior counsel further submitted that petitioner Abhishek Boinpally and Mr. Gautam Mootha had an existing business relationship and were family friends. It has been submitted that Mr. Gautam Mootha and his companies had been receiving advances of big loans which they used to return time to time. It has been submitted that the loan/investment of Rs. 6.53 crores was advanced by the petitioner to Mr. Gautam Mootha between November 2020 to November 2021 and thus the period of loan/investment proceeds are alleged to be the generation of POC. It has further been submitted that the payment of Rs. 3.85 Crores made by Mr. Gautam Mootha to the petitioner is the partial repayment of loan/investment. The source from which the repayment was made by Mr. Gautam Mootha is irrelevant as far as the petitioner is concerned. It has been submitted in the absence of any knowledge the use of Rs. 3.85 crores to purchase shares of Zeus Networking private limited cannot be called projecting tainted money as untainted.

8. Learned senior counsel submitted that allegation of the ED regarding investment in ZNPL is also totally misconceived. It has been submitted that the CDG Broadcasting was the holding company of ZNPL. Petitioner desired to invest and purchase ZNPL and payments for purchasing ZNPL were made to CDG Broadcasting to the tune of Rs. 10 lacs and 60 lacs on 06.03.2021 and 17.03.2021. It has been submitted that after approval to appoint the petitioner as director of ZNPL was



taken on 07.07.2021 by CDG Broadcasting, the petitioner made further payments of Rs. 50 lacs and 75 lacs on 25.08.2021 and 04.10.2021 to CDG. It has been submitted that the petitioner was made a director of ZNPL on 06.10.2021 which is much prior to the implementation of the Excise Policy for generation of the alleged POC. Learned senior counsel submitted that thereafter a final payment of Rs. 3.78 Crores approximately was made by the petitioner on 11.02.2022 to CDG and its promoter Pankaj Arora to purchase the shares of ZNPL. Therefore, the purchase of shares of ZNPL etc. and connected transactions had been initiated much prior to the alleged to the POC and have no link or nexus. In respect of the allegations regarding Andhra Prabha Publication Private limited and India Ahead News private limited, learned senior counsel submitted that petitioner is neither a share holder, director in KMP or investor in IANPL or APPL. Learned senior counsel submitted that petitioner has no connections with the transactions made between the Indo Spirits and the aforesaid companies. Learned senior counsel submitted that even the learned trial court while granting the bail to the petitioner in the predicate offence *inter-alia* held that whether the petitioner was a beneficiary or had control over the companies that is IANPL and APPL benefiting from the alleged transfer is a matter of trial. Learned counsel submitted that in fact Mr. Arun Pillai in his statement under Section 50 PMLA and Mr. Gautam Mootha in the representation made to CBI have categorically stated that the



payment of Rs. 1.7 crores by Indo Spirits was for a campaign to be run by IANPL and APPL. Learned senior counsel submits that despite these statements ED attributed the payment to the petitioner without any basis

9. Learned senior counsel submitted that the allegation that the said payment of Rs. 1.7 Crore was made to secure the interest of the petitioner in the logo/IPR of IANPL and APPL is blatantly false. It was submitted that the petitioner had already purchased the logo of India ahead by making of Rs. 1.30 crore to APPL vide invoice bearing no. AP/21-22/03821A raised on 31.07.2021. Learned senior counsel submits that the allegation of conspiracy or the petitioner being a key player in the same is the matter of investigation/trial in the predicate offence and has no concerned with the PMLA case. It was submitted that the petitioner started managing the operation of the brands in Delhi on behalf of Sarath Reddy only in March after 2 out of 5 zones were surrendered by Mr. Sarath Reddy. Learned senior counsel submitted that the petitioner was only involved in the operations of the above said vends and drew no salary/monetary benefits.
10. Learned senior counsel submitted that the petitioner joined the operation of the firms after the two vends were shut, which is evident from the statement of Mrs. E. Chandan Reddy (Wife of Sarath Reddy) and Mr. Sarath Reddy. The Statement of Tanmay Vashisth (employees of Pernod Ricard) shows that the petitioner was involved in dealing with the operational issues of



the vends only. In regard to the threats to withdraw complaints against Indo Spirits Group for cartelization, learned senior counsel submitted that the allegation is solely based on the statement of Jagbir Sidhu (DIAGEO) and Aman Dhall (BRINDCO) and no independent investigation has been carried out into the same by ED and reliance is placed on the oral statement. It has further been submitted stated that neither Mr. Dhall nor Mr. Sidhu had lodged any complaint that they were being threatened by the petitioner.

11. Learned senior counsel further submitted that there is no destruction of evidence on part of the petitioner. It was submitted that the changing of phone is a matter of regular business practice and the petitioner has fully cooperated with the investigation as and when he was called. It has been submitted that the petitioner has already been admitted to bail by the learned Special Judge in the predicate offence and he is a man of clean and clear antecedents having no past history of any criminal case. It has been submitted that allegations are just based upon the inferences drawn by the IO of its own notions/ beliefs and prejudices.
12. Learned senior counsel further submitted that trial is not even likely to be commenced as in both the predicate offence and in the PMLA case the investigation are yet underway and the trial may take long time. It has also been submitted that the twin conditions would not be a part to the grant of bail to the petitioner as there is a clear violation of Article 21 of the



constitution. It has further been submitted that the petitioner has a family comprising of his old and ailing mother, his wife and a 9 year old minor son and he is the only responsible member in his family.

13. Sh. Vikram Chaudhary, learned senior counsel in support of his contentions has relied upon ***Satyender Kumar Antil vs Central Bureau of Investigation(supra)*** to buttress his point that non-compliance with Section 19 of PMLA would render the arrest and subsequent proceedings to be illegal and titling the petitioner to bail on a similar analogy.
14. Learned senior counsel has also relied upon ***Union of India vs Dhami Sharasi (1995) 4 SCC 190*** to emphasis his point that even twin conditions as postulated under Section 45(1) PMLA may not have any application if due process of law or procedure is not followed.

C. Submissions on the behalf of Respondent/ED

15. Sh. Zoheb Hossain, learned special counsel for ED submitted that the petitioner Abhishek Boinpally is a key person involved in the conspiracy of and giving bribe/kickbacks to the tune of Rs. 100 crore by the South Group to Sh. Vijay Nair and he facilitated the payment of Rs. 100 core kickback to Sh. Vijay Nair. It has been submitted that the petitioner organised payment of this amount from the South Group through Dinesh Arora.
16. Sh. Zoheb Hossain submitted that Dinesh Arora in his statement dated 01.10.2022 stated that in a meeting that took



place in June 2021 in ITC Kohinoor Hyderabad, Sh. Vijay Nair had told him to coordinate with the petitioner Abhishek Boinpally for bringing funds to the tune of Rs. 20-30 crores from Hyderabad to Delhi.

17. Sh. Zoheb Hossain submitted that this meeting has been confirmed by the hotel records which has duly been placed on the records. It has further been submitted that against this advance kickback it was also understood that once the recovery of the kickback is done, then the 6% collected will be divided between Sh. Vijay Nair and Sh. Abhishek Boinpally as this arrangement was not only for one year but also for the remaining of the five year terms of AAP in Delhi Government. Sh. Zoheb Hossain submitted that Dinesh Arora in his statement has revealed that petitioner Abhishek Boinpally used to give him a note with number and phone number for the Hawala transaction on call and thereafter Dinesh Arora used to give the same to other persons (Rajesh Joshi and Sudhir) to pick up the cash. Reliance has also been placed upon the telephone calls between Dinesh Arora and Rajesh Joshi as well as Mr. Lupin. Sh. Zoheb Hossain submitted that Lupin was introduced to Dinesh Arora by petitioner Abhishek Boinpally only.
18. Sh. Zoheb Hossain submitted that Abhishek Boinpally was working for Super Cartel alongwith his associate Sh. Arun Pillai and Butchi Babu and was representing the interest of the South Group in the Delhi Liquor business. Petitioner Abhishek



Boinpally attended a meeting in May 2021 at Gauri Apartment, New Delhi alongwith his associates. The meeting was organised by Vijay Nair to introduce them to liquor business in Delhi for them to understand market and also to find potential partnerships.

19. Sh. Zoheb Hossain submitted that it has come on the record that petitioner Abhishek Boinpally has constantly been in touch with the other players of the conspiracy that is Butchi Babu, Magunta Srinivas Reddy, Sameer Mahandru, Benoy Babu, Manoj Rai and Rajesh Mishra. It has been submitted that the South Group owned and controlled 9 out of 12 zones directly or indirectly and petitioner was working to manage the working operations of 5 out of these 9 retail zones owned and controlled by Sh. Sarath Reddy through Trident Chemphar Limited, Avantika Contractors and Organomix Eco Systems. It has been submitted that the Indo Spirit was a special purpose vehicle created to recoup the advance bribe of Rs. 100 crore given by south group and therefore Indo Spirits was made the wholesaler of one of the biggest manufacturer that is Pernod Ricard.
20. Sh. Zoheb Hossain submitted that the retail zones of Sarath Reddy were used for recoupment of the advance kickback given by South Group and one of the method to recoup the kickbacks was by way giving excess credit notes (i.e. the credit notes which have not been backed by the manufacturer) of Rs. 4.35 crore from Indo Spirits to the 5 retail zones of Sarath Reddy exclusively (no other retail zones were given excess



credit notes). It has been submitted that further huge outstanding of Rs. 60 crores of the 5 zones of Sarath Reddy was pending for payment by these 5 zones to Indo Spirits. It has been submitted that these amount of Rs. 4.35 crores and Rs. 60 crores are the proceeds of crime. It has been submitted that the recoupment of kickbacks is also money laundering.

21. Sh. Zoheb Hossain further submitted that the designated wholesaler Indo Spirits was not able to get L1 license from Delhi Excise Policy as there were some complaints against Indo Spirits group for cartelization and other violations. In this regard a writ petition was filed in the Hon'ble Supreme Court in the name of Varun Chaudhary highlighting the violation by Indo Spirits Group (Indo Spirit Marketing private limited) making the Government of NCT a respondent. Sh. Zoheb Hossain submitted that in fact the petitioner threatened Sh. Jagbir Sadhu of DIAGEO to withdraw the complaint otherwise it could adversely affect the business between DIAGEO and Brindco i.e. another wholesaler. This fact has been confirmed by Sh. Jagbir Sidhu in his statement dated 01.11.2022 as well by Aman Dhall in his statement dated 29.10.2022.
22. Sh. Zoheb Hossain further submitted that Abhishek Boinpally has not only assisted in generation of proceeds of crime but is also a beneficiary of the proceeds of crimes generated from Indo Spirit. It has been submitted that out of total profit of Rs. 192.8 crore made by Indo Spirits POC of amount of Rs. 3.85 crore has been received in the account of Abhishek Boinpally



through multiple layers. Sh. Zoheb Hossain further submitted that petitioner has not been cooperative during the investigation and remained abrasive and has also destroyed /changed/used his mobile phone for 5 times in around a year which itself shows that the accused has deliberately deleted/ destroyed evidences stored in these devices.

23. Sh. Zoheb Hossain submitted that the petitioner has tried to mislead the investigation by constantly changing his statements.

D. Finding and Analysis:

24. The offence of money laundering has been defined in section 3 of the PMLA, which reads as under:

“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.”

25. The 'proceeds of crime' has been defined under Section 2 (u) of PMLA, which reads as under:

“(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 3 [or where such property is taken or held outside the country, then the property equivalent in value held within the country] 4 [or abroad]; ...”

2. In this regard the proceeds of crime and the scope and ambit of Section



3 of PMLA has been well laid down in *Vijay Madanlal Chaudhary* (supra) wherein it has been held as under:

“263. Coming to Section 3 of the 2002 Act, the same defines the offence of money-laundering. The expression “money-laundering”, ordinarily, means the process or activity of placement, layering and finally integrating the tainted property in the formal economy of the country. However, Section 3 has a wider reach. The offence, as defined, captures every process and activity in dealing with the proceeds of crime, directly or indirectly, and not limited to the happening of the final act of integration of tainted property in the formal economy to constitute an act of money-laundering. This is amply clear from the original provision, which has been further clarified by insertion of Explanation vide Finance (No. 2) Act, 2019. Section 3, as amended, reads thus:

"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 including concealment, possession, acquisition or use and projecting or claiming] it as untainted property shall be guilty of offence of money-laundering.

Explanation. -For the removal of doubts, it is hereby clarified that,-

(i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:-

- a. concealment; or*
- b. possession; or*
- c. acquisition; or*



- d. use; or
- e. projecting as untainted property; or
- f. claiming as untainted property, in any manner whatsoever,

(ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever."

265. To put it differently, the section as it stood prior to 2019 had itself incorporated the expression "including", which is indicative of reference made to the different process or activity connected with the proceeds of crime. Thus, the principal provision (as also the Explanation) predicates that if a person is found to be directly or indirectly involved in any process or activity connected with the proceeds of crime must be held guilty of offence of money-laundering. If the interpretation set forth by the petitioners was to be accepted, it would follow that it is only upon projecting or claiming the property in question as untainted property, the offence would be complete. This would undermine the efficacy of the legislative intent behind Section 3 of the Act and also will be in disregard of the view expressed by the FATF in connection with the occurrence of the word "and" preceding the expression "projecting or claiming" therein. This Court in Pratap Singh v. State of Jharkhand, enunciated that the international treaties, covenants and conventions although may not be a part of municipal law, the same be referred to and followed by the Courts having regard to the fact that India is a party to the said treaties. This Court went on to observe that the Constitution of India and other ongoing statutes have been read consistently with the rules of international law. It is also observed that the Constitution of India and the enactments made by



Parliament must necessarily be understood in the context of the present-day scenario and having regard to the international treaties and convention as our constitution takes note of the institutions of the world community which had been created. In Apparel Export Promotion Council v. A.K. Chopra, the Court observed that domestic Courts are under an obligation to give due regard to the international conventions and norms for construing the domestic laws, more so, when there is no inconsistency between them and there is a void in domestic law. This view has been restated in Githa Hariharan as a, as also in People's Union for Civil Liberties 82, and National Legal Services Authority v. Union of India.

266. In the Core Recommendations of the FATF referred to above, the same clearly mention that the word "and" in Section 3 of the 2002 Act would not be fully in line with the Vienna and Palermo Conventions. This doubt has been ably responded and elucidated by India to the international body by referring to the jurisprudence as evolved in India to interpret the word "and" as "or" in the context of the legislative intent - to reckon any (every) process or activity connected with the proceeds of crime constituting offence of money-laundering. To buttress the stand taken by India before the FATF, reliance has been justly placed on reported decisions of this Court amongst other Sanjay Dutt, which had occasion to deal with the expression "arms and ammunition" occurring in Section 5 of the TADA Act. The Court noted that if it is to be read conjunctively because of word "and", the object of prohibiting unauthorised possession of the forbidden arms and ammunition would be easily frustrated by the simple device of one person carrying the forbidden arms and his accomplice carrying its ammunition so that neither is covered under Section 5 when any one of them carrying more would be so liable. The principle underlying this analysis by the Constitution Bench must



apply proprio vigore to the interpretation of Section 3 of the 2002 Act. To the same end, this Court in the case of Ishwar Singh Bindra v. The State of U.P.¹⁶⁵, Joint Director of Mines Safety and Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd., interpreted the word "and" in the concerned legislation (s) as word "or" to give full effect to the legislative intent.

273. On a bare reading of Section 3, we find no difficulty in encapsulating the true ambit, given the various arguments advanced. Thus, in the conspectus of things It must follow that the interpretation put forth by the respondent will further the purposes and objectives behind the 2002 Act and also adequately address the recommendations and doubts of the international body whilst keeping in mind the constitutional limits. it would, therefore, be just to sustain the argument that the amendment of way or the explanation has been brought about already present words, only to clarify the any" and including" which manifests the true meaning of the definition and clarities the mist around its true nature."

26. Section 45 of PMLA provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973, 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. It is also pertinent to mention here that Section 45 provides that the twin conditions are in addition to the limitation provided under the



Code of Criminal Procedure, 1973 or any other law for the time being in force on grant of bail.

27. It is settled proposition Section 45 PMLA do not impose an absolute restraint on the grant of bail and the court at this stage is to prima facie consider whether applying the standard of broad probabilities the material against the applicant would result in conviction. It is also a settled proposition that at this stage the Court is only required to examine the matter to find out whether the accused was possessed of the requisite mens rea. It is also no longer res integra that the court is not required to record a positive finding that the accused had not committed the offence under the Act. It is also a settled proposition that the court at this stage is not required to weigh the evidence meticulously. The court is only required to arrive at a finding on the basis of broad probabilities. It is also a settled proposition that the court is not required to hold a mini trial at this stage and is required to examine the case on the basis of broad probabilities. It is also to be kept in mind that while exercising the jurisdiction under Section 45 of PMLA, the court is required to take into consideration the limitations prescribed under Section 439 Cr.P.C.
28. In regard to the limitation under Section 439 Cr.P.C. in ***Kalyan Chandra Sarkar vs Rajesh Ranjhan*** (2004) 7 SCC 528 it has been held as under:

“The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its



discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge.

29. Before proceeding further, it is also necessary to be reminded the scope of jurisdiction to be exercised while granting bail in the economic offence. The Hon'ble Supreme Court in the case of ***Y.S. Jagan Mohan Reddy v. CBI***, (2013) 7 SCC 439 528 held as under:

“34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

35. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction



will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations.

30. In ***Nimmagadda Prasad v. CBI***, (2013) 7 SCC 466, it was *inter alia* held as under:

“25. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep-rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as a grave offence affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

31. The bare reading of Section 3 of PMLA would make it clear if a person is involved in any process or activity connected with the proceeds of crime, including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money laundering. Therefore, it is not necessary to attribute section 3 of the PMLA that the alleged person must have acquired or in possession of the proceeds of the crime. If a person has actually been involved in any process or activity connected with the proceeds of crime, it would be sufficient to prosecute him under Section 3 of PMLA. The argument that the proceeds of crime have not been received or the proceeds of crime has not been recovered and therefore section 3 of the PMLA will not come into



operation is totally fallacious and is liable to be rejected. It is necessary to keep in mind that such crimes are committed in a deep conspiracy and under the dark cover. An act may not be an offence at all if it is done in relation to any process or activity not connected with the proceeds of crime, but if such an act is done in relation to any process or activity connected with the proceeds of crime it will certainly be an offence under Section 3 of PMLA.

32. The present case is very peculiar in nature and may not have any parallel factual matrix. In brief, the allegations in the predicate offence is that the conspiracy was hatched between the political head and certain persons which included an individual allegedly representing the government with the manufacturer, liquor wholesaler and retailer. The conspiracy allegedly was hatched to introduce a new excise policy to benefit certain individuals who had given advance kickbacks to the AAP. The prominent players if we put names to the faces are Mr.Manish Sisodia, the then Deputy Chief Minister and Excise Minister, Mr.Vijay Nair purportedly Media Incharge of AAP, Sameer Mahendru. Mr.Amit Arora, Mr.Dinesh Arora, Mr.Abhishek Boinapally, Mr.Sharad Reddy, Mr.Butchi Babu, Mr.Binoy Babu and others. This court is conscious of the fact that the investigation relating to the conspiracy to frame the excise policy allegedly with malafide intention and alleged misuse of official position was the subject matter of the CBI in which the charge-sheet has already been filed by the CBI.



However, in view of the fact that allegedly the basic intention behind framing the new excise policy was to recoup the advance kickbacks and to further gain undue advantage from the excise policy, the facts are so inter-connected that the same have to be read in totality.

33. Presently, this court is considering the bail application of the abovesaid accused person Sh. Abhishek Boinapally who was arrested for the offence under Section 3 of the PMLA. For the purpose of clarity Mr. Abhishek Boinapally, was the member of the South Group and he was representing Mr. Sarad Reddy. The allegation against Sh. Abhishek Boinapally is he was representing the south group and was part of the conspiracy in framing of the new excise policy which was detrimental to the interest of the general public and was framed with an intention to grant undue advantage to certain individuals with a view to recoup the kickback and to gain further undue advantage. He was also allegedly involved in the process or activity connected to the proceeds of crime.
34. The plea raised by the defence is the ED has no material other than an inconsistent and unreliable statement of either co-accused or the public servants. The defence has raised a plea that in absence of any independent corroboration or material on record to substantiate such statements under Section 50 PMLA, the court on the basis of probability should record a finding that accused persons are not guilty of such offence. The defence, during the course of their arguments, have repeatedly stated



that the ED has cooked up the case merely on the basis of whims and fancies and there are contradictions in the testimonies of the witnesses. The defence has assailed the testimony of approver Dinesh Arora and has submitted that Dinesh Arora has made the statement under the influence of ED and to protect himself. It is also the case of the defence that the public servants who are under the direct control of Hon'ble LG, who is the complainant in the present case, have made their statements only to save their skin.

35. This court is fully conscious of the fact that personal liberty is a sacrosanct right and pre-trial detention cannot be taken as a punitive measure. However such right has to be balanced with the right of the society at large. This court is also conscious of the fact that though the statements recorded under Section 50 PMLA are admissible in evidence but their evidentiary value has to be weighed at the time of trial.
36. The present case arises out of an alleged conspiracy wherein the government framed an excise policy with a malafide intention to recoup the kickbacks received in advance from certain individuals and to further generate the ill money from the liquor trade. There are witnesses and witnesses on record to show that certain outsiders were actively participating from the stage of drafting and formulation of the policy. The reference to the statements of the witnesses have been made during the course of recording the submission of the learned defence counsels and learned counsel for ED. The statements of the witnesses clearly



indicate that some extraneous factors were working since the time of conceptualization, formulation and drafting of the excise policy. The allegation regarding generating of the emails in support of the excise policy also raises the red flag that everything was being done in a transparent and bonafide manner.

37. This court at this stage, would restrain itself to make any comment further on this as the trial is yet to take place. The option before this court is either to go into the meticulous examinations of the witnesses as being argued by the learned defence counsels or to take into account the statements recorded under Section 50 of PMLA by the ED. It is correct that the case of ED is based on the statements under Section 50 PMLA cannot be taken as gospel truth but at the same, the court has to take into account the probabilities and the legislative intent behind enacting Section 50 PMLA. The bare perusal of Section 50 makes it clear that these are deemed to be judicial proceedings. There are consequences for making a false statement or not complying to the summons under Section 50 of PMLA as provided under Section 63 of the PMLA. Thus, statements under Section 50 PMLA cannot be brushed aside. This court at this stage cannot go into the probative value of the witnesses nor can it meticulously examine those facts.
38. The involvement of the third parties in the formulating and drafting of the policy certainly points at mens rea. The jurisdiction of bail is a discretionary jurisdiction. But this



discretion has to be exercised on the settled principles in a judicial manner. The court has to bring in its judicial experience to arrive at a conclusion, which should be rational and logical. It is pertinent to mention that the accused and complainant/prosecution are entitled to know the reasons on the basis of which their bail application has been decided, but at the same time such reason should not be detailed in such a manner that it may prejudice the trial.

39. The issue to be examined is whether the petitioner has been able to fulfill the twin conditions as laid down under Section 45 of the PMLA. It is pertinent to mention here that the petitioner himself in his statement dated 17.09.2022 has admitted that he was going to run the retail zones for Sharad Chander Reddy. The petitioner has also stated that he had met Vijay Nair through Arun Pillai in or around July 2021. The petitioner has also further stated that he was running 3 retail zones of Sri Avantika, Organomixx and Trident. The petitioner in his statement dated 08.11.2022 has also admitted to have attended a meeting in May 2021 at Gauri Apartments alongwith Vijay Nair, Arun Pillai and Butchi Babu. It has been stated that the meeting was coordinated by Arun Pillai. In the statement, the petitioner has also admitted that he also attended the meeting at ITC Kohinoor alongwith Arun Pillai and Butchi Babu where discussion held regarding forming a partnership in retail zones.
40. Perusal of the statement dated 08.11.2022 would indicate that the petitioner was interacting with all the other accused persons



and was thus part of the conspiracy. In the statement dated 22.11.2022 the petitioner stated that he had lent Mr. Gautam Mootha a sum of Rs. 5.45 crore during the period 24.08.2021 to 24.11.2021. The petitioner stated that he had not made any loan agreement and it was personal understanding between us. The petitioner has also stated that Mr. Gautam Mootha returned him a sum of Rs. 3.85 crore through RTGS on or around 10.02.2022. The petitioner also stated that he did not charge any interest from Gautam Mootha. The plea taken by the petitioner that the transfer of the money of 3.85 crore by Gautam Mootha on 10.02.2022 was the return of the loan advanced to him does not appeal to the reason that a sum of Rs. 5.45 crore could be lent without any loan agreement and without any interest. Therefore, the contention of the ED that this was in fact proceed of crime seems to be more plausible.

41. It is also pertinent to refer to the statement of Dinesh Arora dated 01.10.2022 wherein he has stated that the plan of transfer of money through Hawala channel was made in hotel ITC Kohinoor, Hyderabad where Vijay Nair asked him to coordinate with petitioner Abhishek Boinpally and facilitate the transfer of bribe money from Hyderabad to Delhi. Dinesh Arora also stated in his statement under Section 50 PMLA that the petitioner Abhishek Boinpally and his cousin Lupin used to call him and give the details of the person (alongwith the currency number) from the money is to be collected in Delhi which he used to forward to Rajesh and Sudhir. Dinesh Arora



had also stated that Abhishek Boinpally represented Sarath Reddy, K Kavita and M.S.R (South Group) and met Vijay Nair many times. It also came in the statement under Section 50 PMLA of Dinesh Arora that South Group gave Rs. 100 crores to Vijay Nair for AAP as advance bribe.

42. It is pertinent to mention here that in reply to question number 2 in the statement under Section 50 of PMLA dated 01.10.2022, Dinesh Arora had stated that during the conversation's petitioner expressed his anger by saying that even after giving advance 90-100 crore to Vijay Nair (for AAP /government) their shops are not opening on time. It also came in the testimony of Dinesh Arora dated 03.10.2022 that meeting was called by Vijay Nair in February 2022 at Habitat Centre for discussing and solving the problems faced by South Group in Delhi / Retail trade which was attended by Vijay Nair, Dinesh Arora, Arun Pillai, Arjun Pandey, petitioner Abhishek Boinpally and Chandan Reddy. It is also relevant to mention here that Mohit Gupta in his statement dated 14.12.2022 had stated who was regional sales manager in Pernod Ricard stated that he used to interact with petitioner for the operation issue for three zones run by the petitioner. Similarly Tanmay Vashith another senior officer of Pernod Ricard stated that he used to interact with the petitioner and seek his help for resolving issued and streamlining things within the zones.
43. It is also relevant to mention here that Jagbir Singh Sidhu who was Director, Corporate Relation, Diageo India in his statement



under Section 50 PMLA recorded on 01.11.2022 has stated that he had met petitioner in July 2021 alongwith Sameer Mahandru and they both had come to seek Diageo's distributorship in Delhi. Sh. Sidhu stated that next time when he met the petitioner in November 2021 as Sameer had called him to discuss an anonymous complaint that had been made to the Excise Department and a writ petition that had been filed in the Supreme Court by someone. Sh. Sidhu stated that petitioner told him that he has found out that the same complaint has been made by Sh. Amandeep Dhall who was Diageo's distributor. It was further stated that later on petitioner came to Le Meridien Gurgaon, and showed him certain documents which had the CDR of Aman Dhall location and IP address from the mails to the Excise Department had originated and stated that all the analysis shows that Aman Dhall is behind the complaint against Indo Spirits. Sh. Sidhu stated that the petitioner threatened him that since his group/cartel had 9-10 zones i.e., almost 30% of Delhi retail business and would have dire consequences for Diageo's business. Sh. Sidhu stated that upon this he called Amandeep and Virenderpal Singh and enquiring the same and they both denied the allegations at that time. Sh. Sidhu stated that he advised him that in case he had done so then he should withdraw the writ petition otherwise it could adversely affect the business between Diageo and Brindco.

44. ED has also placed reliance upon certain whatsapp chats between petitioner and Mohit Gupta of Pernord Ricard. In



respect of the flow of the money, ED has placed on the record that Rs. 4 Crore 25 lacs was transferred from the Indo Spirit to Arun Ramchandran Pillai on 09.09.2022. Arun Pillai transferred Rs. 4 crore 75 lacs on 10.02.2022 to Gautam Mootha and on the same day Gautam Mootha transferred a sum of Rs. 3 crore 85 lacs to the petitioner. ED has also placed on record the records of Oberoi Hotel and ITC Kohinoor to substantiate the plea that the meetings had taken place amongst the accused persons in which the petitioner had also attended.

45. Sh. Gautam Mootha also in his statement under Section 50 PMLA on 29.12.2022 stated that he had approached the petitioner for investment in the English news channel, “India Ahead” in the year 2020 and the petitioner had agreed to do investment in October 2020. Sh. Gautam Mootha stated that, as some dispute has arisen he received money from the petitioner in his personal account. Sh. Gautam Mootha in his statement had also stated about the transaction regarding ZNPL and CDG broadcasting private limited. The case as set up by the ED is that the retail zones of Sarath Reddy were used for recoupment of advanced kickbacks given by South Group and one of the methods to recoup the kickback was by way of giving excess credit notes (i.e. the credit notes which have not been backed by manufacturer) of Rs. 4.35 crores from Indo Spirits to the 5 retail zones of Sarath Reddy exclusively.
46. It is also the case of the ED that huge outstanding amount of



Rs. 60 crores of the 5 zones of Sarath Reddy was pending for payment by these 5 zones to Indo Spirits and therefore this amount of Rs. 4.35 crore and Rs. 60 crore are nothing but POC. It is that case of the ED that the recoupment of kickbacks are also money laundering.

47. The ED's case is that the petitioner knew it fully well that these retail zones were being used as part of the conspiracy to recoup the kickbacks and ensure that these retail zones run smoothly and are capable of being used as vehicles for recouping the proceedings of crime.
48. In view of the law which has been discussed above, it is settled position that the statement recorded under Section 50 of PMLA is admissible evidence though the evidentiary value of the same is to be seen after the trial. However, at this stage, the court cannot ignore the statements under Section 50 PMLA which the statute provides to have been recorded as part of the judicial proceedings. In such cases of conspiracy, the present case is of peculiar nature where Excise policy was formed with ill-objective of illegal earning money through illegal means.
49. The petitioner as per the statement under Section 50 PMLA which have been discussed above is apparently an important player of such conspiracy and has also acted in the money laundering. The flow of money from Indo Spirits to his account on 10.02.2022 indicate his complicity in the money laundering. Thus it cannot be said at this stage that there are reasonable grounds for believing that petitioner is not guilty of such



offence.

50. Learned Special Judge *inter alia* held that he was one of the representatives of the south group in the cartelisation and he played an active role in payment of kickbacks amount as well as its recoupment. He met the co-accused Vijay Nair and others as a representative of the South lobby in connection with excise policy formulation and it was he through whom at least Rs. 20-30 crores out of the kickback amount of Rs. 100 crores are alleged to have been transmitted or transferred to Delhi from South and delivered to the co-accused Vijay Nair and his team, as per details provided by this accused and through the approver Sh. Dinesh Arora. Specific statements of approver Sh. Dinesh Arora and Sh. Arun Chandaran Pillai are there to this effect. The statement of approver further shows that Abhishek Boinpally contacted this accused and his cousin Sh. Lupin on few occasions in connection with payment delivery of the above amount of kickbacks and this is even stated to be corroborated by the call detail records of few persons. He was also the person who was handling the operations of five retail zones owned by co-accused P. Sarath Chandra Reddy through his above retail entities and there is sufficient oral and documentary evidence corroborating this fact in the form of statements of some witnesses and accused and also the Whatsapp chats between different persons.
51. Learned trial court has also *inter alia* held that he has assisted in recoupment of the kickback amount as evident from the fact



that an amount of Rs. 3.85 crores out of the recouped kickbacks was transferred in his bank account from the account of Sh. Gautham Mootha and this transfer is found to have genesis in the amount of Rs. 33 crores which was transferred to the account of Sh. Arun Ramchandaran Pillai by Sameer Mahandru, out of the profits earned by Indo Spirit. This accused is even found connected with two other transfers for the amounts of Rs. 1 crore and 70 lakhs in accounts of M/S Andhra Prabha Publications and M/S India Ahead news respectively, which entities are alleged to be associated with him and even these amounts are stated to have been transferred towards recoupment of the kickbacks. Further, besides attending the above two meetings held in connection with formulation of the excise policy in May-June, 2021 in Gauri Apartments, Near Claridges Hotel and in hotel ITC Kohinoor at Hyderabad, he even attended the meeting held in February/April, 2022 in hotel Oberoi Maidens, Delhi to sort out the recoupment issue and to expedite the recoupment process, at the instance or along with his bosses in South.

52. Learned Trial Court has meticulously examined the case on merits and has reached to a finding which is duly supported by sound reasons. I do not find any illegality in the order of learned Trial Court.
53. As discussed above, the accused person in the present case acting in furtherance of the conspiracy circumvented the policy and got framed the policy in such a manner to continuously



generate and channel illegal funds. The allegations are that deliberate loopholes were left to facilitate illegal and criminal activities. It is also pertinent to mention here that investigation has revealed that 65% stake was given to South Group in Indo-Spirits to make it a mechanism for continuous generation and channelisation of Proceeds of Crime.

54. In view of the discussion, taking into account the seriousness and gravity of the allegations and credible material on record, the bail application alongwith pending application stands dismissed.

DINESH KUMAR SHARMA, J

JULY 3, 2023/AR