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

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**RESERVED ON –2nd June, 2023
PRONOUNCED ON -3rd July, 2023**

+ **BAIL APPLN. 1178/2023**

VIJAY NAIR

..... Petitioner

Through: Ms. Rebecca Memmon John, Sr. Adv.
with Mr. Samudra Sarangi, Ms. Nitya
Jain, Ms. Alisha Luthra and Mr.
Pravir Singh, Advs.

versus

DIRECTORATE OF ENFORCEMENT

..... Respondent

Through: Mr.S.V.Raju, learned ASG with Mr.
Zoheb Hossain, Special counsel for
ED with Mr. Vivek Gurnani and
Mr.Kartik Sabharwal, Advocates

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

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J U D G M E N T

DINESH KUMAR SHARMA,J :

A. FACTUAL MATRIX

CRL.M.A. 11089/2023

The present application has been moved seeking early hearing.

For the reasons stated in the application, the application is allowed.

BAIL APPLN. 1178/2023

1. The present order shall dispose of the bail application no. 1178/2023 of “Vijay Nair vs Directorate of Enforcement”.
2. The bail applications filed by petitioner Vijay Nair was dismissed by the learned Special Judge, PC Act , CBI-09 vide order dated 16.02.2023.
3. 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 LI 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 LI 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 (LIs) 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.*

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.”

4. 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

5. Ms. Rebecca John, learned senior counsel along with Mr. Samundra Sarang, learned counsel for the petitioner–Vijay Nair has submitted that the entirety of the present case pertains to allegations of irregularities in the framing of the Excise Policy in a manner which permitted formation of cartels and windfall profits for certain preferred persons who had paid kickback/bribes in exchange thereof.
6. Learned senior counsel submitted that the petitioner–Vijay Nair is India’s most renowned entrepreneurs in the music and entertainment industry. Petitioner–Vijay Nair was associated with the Aam Admi Party (AAP), during the Maharastra Elections in 2014-15 and finally joined the AAP as a full-time volunteer in 2018. Petitioner–Vijay Nair started working in the media and communications.
7. Learned senior counsel submitted that Petitioner–Vijay Nair had been playing a key role in devising the media and communications strategy in the election campaigns of the party in Delhi and Punjab. However,



the Petitioner—Vijay Nair did not hold any government position/appointment of any nature whatsoever and is only committed towards developing the media and communications strategy on relevant political issues for the party.

8. Learned senior counsel for the petitioner submitted that role of the petitioner in relation to the Excise Policy was confined to the extent of the media role out of the Excise Policy highlighting the benefits and clarifying the facts regarding the same to the public at large. It has been submitted that the petitioner had no role to play in the drafting of the Excise Policy or had any contribution in relation to the framing of the Excise Policy itself. It was submitted that initially, the petitioner was arrested in the predicate offence by the CBI on 27.09.2022 and while the petitioner was in custody, he was arrested by E.D. on 30.11.2023. The petitioner was granted bail in the predicate offence on 14.11.2022. In the original complaint filed by E.D. the petitioner was not named as an accused. However, the E.D. filed a supplementary complaint wherein the petitioner was named as an accused.
9. Learned senior counsel for the petitioner submitted that the case of the E.D. rest upon the conspiracy amongst the south group which includes individuals from Hyderabad (Arun Pillai, Abhishek Boinpally, Sharath Reddy) who were interested in joining the liquor business in Delhi.; Liquor Industry Players which includes representatives of prominent Liquor Manufacturer (Manoj Rai and Benoy Babu- Pernod Ricard) and prominent wholesale Distributors (Sameer Mahendru- Indospirits and Aman Dhall- Brindco); Public officials include members of AAP (represented by and through Vijay Nair)- who allegedly tweaked the



policy itself; and Excise Department officials- who allegedly cleared licenses/participated in the execution of the conspiracy.

10. Learned senior counsel submitted that the story of the alleged conspiracy can be broken down in terms of the following :-

- a. Vijay Nair is an influential and powerful person in the Party, who lives in a minister's official accommodation.
- b. He met members of the South Group, who were interested in joining the liquor business in Delhi, when the news of the Delhi government's changes to the excise policy broke.
- c. He held meetings with several liquor industry players and eventually, brokered a deal whereby members of the South Group would enter into a partnership with Sameer Mahendru in Indospirits LLP.
- d. The Applicant manipulated and tweaked the Excise Policy in such a way that Indospirit's business would yield exponential profits and permit formations of cartels in the liquor business.
- e. The Applicant also ensured that Indospirits would get the business of Pernod Ricard - one of the largest liquor manufacturers, which would also result in significant profits.
- f. In return, the Applicant would receive bribes worth INR 100 Crore and that from the overall profits generated from establishing these cartels - the Applicant would continue to receive a 6% cut (after recoupment of the 100 Cr bribe).

11. Learned senior counsel for the petitioner submitted that the E.D. has mainly relied upon the statement of Dinesh Arora who has turned approver. Mr. Dinesh Arora in his statement under Section 50 of



PMLA Act has stated that the petitioner-Vijay Nair received INR 90-100 Cr. of kickbacks from Abhishek Boinpally and members of the South Group and out of the said INR 90 -100 Cr, Dinesh Arora was directly involved in the transmission of kickbacks of INR 20 - 30 Cr through Hawala channels.

12. Further, Dinesh Arora in his statement has stated that when Mahadev Liquor (Jasdeep Chadha and Sunny Marwah) refused to pay 6% kickbacks, Vijay Nair got Jasdeep Chadha's factory in Punjab shutdown with the objective of coercing her to surrender license in Delhi in exchange for getting her factories reopened in Punjab.
13. It was further stated by Dinesh Arora in his statement that Vijay Nair influenced the excise department officials to resolve the license-related issues being faced by Indospirits i.e. Sameer Mahendru.
14. Learned senior counsel for the petitioner submitted that there is not even a shred of evidence produced by the E.D. that INR 100 Cr was received on behalf of Vijay Nair. It has been submitted that to the best statement of Dinesh Arora speaks of the movement of INR 20 - 30 Cr from Hyderabad to Delhi.
15. It has further been submitted that even as per the statement of Dinesh Arora that he never handled any currency. His best case is that he received calls from Abhishek Boinpally or Lupin, who gave him a phone number and currency number. These calls were neither recorded nor has Dinesh Arora been able to show any digital evidence confirming the same.
16. Learned senior counsel for the petitioner further submitted that Dinesh Arora merely goes on to further state, that he wrote down the phone



number/currency number on a piece of paper and handed it over to Rajesh Joshi or Sudhir. These pieces of paper were never recovered from either Dinesh Arora or Rajesh Joshi or Sudhir, to whom he claims to have transmitted the said paper and information.

17. Learned senior counsel for the petitioner further submitted that if Dinesh Arora only took down phone numbers or currency numbers, how could he know that INR 20 - 30 Crores were transferred to Delhi, since he does not state that the information given to him also included the amount of currency being transferred.
18. Learned senior counsel for the petitioner further submitted that Dinesh Arora made another loose statement that Abhishek *“expressed his anger by saying that even after giving INR 90-100 Cr to Vijay Nair (for AAP / Govt.), that their shops are not opening on time.”*
19. Learned senior counsel for the petitioner further submitted that statement of this nature can be corroborated by the bribe giver, or the bribe taker – all of whom are accused persons in this case. It has been submitted that Abhishek Boinpally has not corroborated Dinesh Arora’s statement with respect to any payments of bribes. It has been submitted that Rajesh Joshi and Sudhir, the so-called receivers of the bribe have also not corroborated his statement.
20. Learned senior counsel for the petitioner submitted that in fact Dinesh Arora in exchange for his freedom cooked up a story that lacks corroboration in all material particulars and cannot be relied upon.
21. It has further been submitted that even the Trial Court while granting bail to Rajesh Joshi vide order dated 06.05.2023 has raised serious doubts about the reliability of the statements made by Dinesh Arora.



22. Ms. Rebecca John, learned senior counsel submitted that in respect of the allegation of arm-twisting of Mahadev Liquor and Jasdeep Chadha, the statement of Jasdeep Chadha recorded under Section 50 of the PMLA does not corroborate Dinesh Arora's statement. It has been submitted that in fact, a perusal of the statement will lead to the conclusion that Vijay Nair never met Jasdeep Chadha and she only met Dinesh Arora who seems to have orchestrated the entire thing for his own personal benefit.
23. Ms. Rebecca John, learned senior counsel in respect of the allegation of influencing excise department officials to resolve issues faced by Indospirits submitted that the statement of C. Aravind recorded under Section 50 of the PMLA does not corroborate Dinesh Arora's statement. In fact, he is specifically asked whether Vijay Nair contacted him to resolve the Indospirits' licensing issue on which he denied to have spoken to Vijay Nair on the subject.
24. Ms. Rebecca John, learned senior counsel further submitted that the ED has conveniently resorted to shifting their stances on who is the "kingpin / sole decision maker" of the Delhi Excise Policy based on which bail application they are opposing.
25. Learned senior counsel for the petitioner submitted that the petitioner had no role at all in policy drafting, formulation, framing, or implementation. Learned senior counsel for the petitioner further submitted that even after filing the supplementary complaint on 06.01.2023 naming the petitioner as an accused, the ED has sought to interrogate further examine the applicant vide orders dated 17.03.2023 and 02.05.2023.



26. It has further been submitted that the investigation qua petitioner – Vijay Nair is still not complete and the complaints and supplementary complaints have been filed piecemeal in nature. It has been submitted that the supplementary complaint was filed only to defeat the statutory right of bail.
27. The petitioner has placed reliance on *Thwaha Fasal v. Union of India* (2021 SCCOnline SC 1000), *Vijay Agrawal Through Parokar v. Directorate of Enforcement* (2023 SCCOnline Del 3176), *Anil Vasantrao Deshmukh v. State of Maharashtra* (2022 SCC Online Bom 3150).

C. SUBMISSIONS ON BEHALF OF ENFORCEMENT DIRECTORATE

28. Sh. Zoheb Hossain, learned special counsel for the E.D. submitted that petitioner- Vijay Nair is the kingpin connected with various branches of this entire liquor scam as he enjoyed a close relationship with the top political leaders of the party and works from the Camp office located at the Delhi CM's residence in Civil Lines. It has been submitted that petitioner is residing at Bunglow No. 2 Ata-ur-Rehman Lane, New Delhi, which is the official residence of Sh. Kailash Gehlot, Minister of Road and Transport and Revenue in Delhi Government.
29. Sh. Zoheb Hossain, learned special counsel for the E.D. submitted that the petitioner-Vijay Nair was one of the main decision-makers of the New Delhi Excise Policy and for this purpose, he had met various manufacturers, stakeholders, etc. other big investors having full authority on the subject. It has been submitted that petitioner-Vijay Nair received a kickback Rs.100 Cr from the south group as an advance



kickback on behalf of AAP and in exchange facilitated them in getting stakes in different wholesale businesses such as Indo Spirits and then direct big manufacturers to them to help them recover the advance kickback paid, apart from other undue favors awarded to the South Group. The part of kickbacks received was used in the Goa election campaign of the AAP through multiple persons and entities.

30. Sh. Zoheb Hossain, learned special counsel for the E.D. submitted that the petitioner-Vijay Nair has remained active throughout the formulation of Delhi Excise Policy, and in this reference has been made to the statement made by Sh. Suresh Menon representative from Secretary General, International Spirits and Wines Association of India, (ISWAI) and Mr. Sunil Duggal, ex-employee of Pernod Ricard. Sh. Zoheb Hossain, learned special counsel for the E.D. also referred to the statement of co-accused Benoy Babu and Arun Pillai to show his role in the formulation of the Excise Policy.
31. Sh. Zoheb Hossain, learned special counsel for the E.D. submitted that the transaction of kickback was facilitated by the petitioner-Vijay Nair's middlemen/agents, namely Sh. Dinesh Arora and Sh. Abhishek Boinpally and this fact was mentioned in the statement of Dinesh Arora, dated October 1, 2022.
32. Sh. Zoheb Hossain, learned special counsel for the E.D. submitted that it has also surfaced in the investigation that petitioner- Vijay Nair used a highly discreet Signal app and directed others to communicate with him only on that Signal app.
33. Sh. Zoheb Hossain, learned special counsel for the E.D. submitted that the petitioner-Vijay Nair has played a prominent role in making



Indospirit as a wholesale distributor of PRI against kickbacks to APP leaders. It has been submitted that Indospirits in fact was a vehicle for recouping the kickbacks paid (the profit generated by the Indospirits wholesale business) by the South Group to Vijay Nair.

34. Sh. Zoheb Hossain, learned special counsel for the E.D. submitted that there is also material on the record that Vijay Nair received Rs. 1.50 Cr. (1,50,00,000/-) from M/s. Tarshame Mittal without any actual services also a fraudulent contract was drawn up to cover up this transaction as an afterthought and therefore, an irresistible conclusion is drawn that Sh. Vijay Nair has received these funds in exchange of cash paid to M/s. Tarsame Mittal.
35. Sh. Zoheb Hossain, learned special counsel for the E.D. submitted that the petitioner-Vijay Nair, and the top leaders of AAP provided undue favors to Indo Spirits, and despite complaints against him, the license was granted to him. In this regard a reference has been made to the statement of Arava Gopi Krishna dated 26.12.2022, the then Excise Commissioner and Narinder Singh, Assistant Commissioner (IMFL) Delhi Excise dated 01.11.2022.
36. It has also been submitted that the petitioner- Vijay Nair arm twisted L1 licensees who denied to pay kickbacks as demanded by him and their operations were stopped arbitrarily, they were forced to surrender their L1 License in Delhi, which was then ultimately given to Shiv associates and Diwan Spirits where Dinesh Arora and other associates of Vijay Nair were partners (on paper or otherwise). It has been submitted that the profit of Rs.8.02 Cr. made by Shiv Associates and Diwan Spirits after the business was transferred to them was illegally



accrued to them. In this regard a reference has been made to the statement of Ms. Deepa Kaur Chadha, Managing Director of Adie Broswon Group dated 23.08.2022. It has also been alleged that the petitioner-Vijay Nair had disrupted the evidence and influenced the witnesses.

37. The Directorate of Enforcement has placed reliance on ***Vijay Madanlal Choudhary & Ors. v. Union of India & Ors.*** 2022 SCC OnLine SC 929.

D. FINDING AND ANALYSIS

38. 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.”

39. 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]; ...

40. Regarding proceeds of Crime and the scope and ambit of Section 3 of PMLA, it has been 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 clarifies the mist around its true nature."

41. 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 also provides that this condition is in addition to the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973 or any other law for the time being in force on granting of bail. 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 material 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.

42. 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.”*



43. Before proceeding further, it is also necessary to remind 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:

“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.

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.”

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

“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.”

45. 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 an 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. The scope and ingredients of offence of money laundering under Section 3 of PMLA has been defined in Vijay Madanlal Chaudhary (*supra*).
46. The present case is very peculiar in nature and may not have any parallel factual matrix. In brief, the allegation in the predicate offence



was 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. Allegedly 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 liquor trader 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, this Court has to take into account these facts. The facts are so inter-connected that it can't be evaluated in isolation.

47. Presently, this court is considering the bail application of the accused person namely Mr.Vijay Nair who was arrested for the offence under Section 3 of the PMLA. The allegation against Vijay Nair is that though he did not hold any position in the government but he was representing the government and was interacting with all the stock holders including manufacturers, wholesalers and retailers. Mr.Vijay Nair was allegedly the face of the government and he received



kickbacks from the south group. The south group was allegedly brought in by him for gaining the undue advantage. The allegation against him is also that he arm-twisted the various stock holders so as to remove any impediment or obstacle in the generation of proceeds of crime. The allegation against Manish Sisodia and Vijay Nair was also that M/s Indospirit was created as a special purpose vehicle to generate the proceeds of crime.

48. 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.
49. 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, the court has to strike a balance between the interest of an individual and the interest 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. It is pertinent to mention here that learned senior counsels has argued that the ED is only basing its case only on the statements of the witnesses recorded under Section 50 of PMLA.

50. The present case arises out of an alleged conspiracy wherein the government framed an excise policy with a *mala fide* 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 indicates 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 not being done in a transparent and *bona fide* manner. Learned senior counsels have invited the attention of this court towards the contradictions in the testimony of the witnesses. However, this court is fully conscious of the fact that at the stage of bail, the court cannot appreciate the evidence meticulously. This court at this stage, would restrain itself to make any comment further on this as the trial is yet to take place.



51. 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. There statements under Section 50 PMLA cannot be brushed aside.
52. This court at this stage cannot go into the probative value of the witnesses nor can it meticulously examine those facts. 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.
53. The analysis of provisions of PMLA has already been made herein before and has thus not been repeated herein for the sake of gravity.



However, it may be reiterated that the Court at the stage of bail is required to confine itself to the settled principles as contained in Section 439 of Cr. PC and Section 45 of PMLA. It may also be stated that Section 3 of the PMLA has a wider reach and anybody who is actually involved in knowingly assisting directly or indirectly in any process or activity with the proceeds of crime including assisting in the generation of proceeds of crime would be guilty of offence of money laundering.

54. The material produced by the E.D. goes to show that Vijay Nair had actively participated in the formulation drafting and implementation of the new Excise Policy. There are Statements under Section 50 of PMLA on the record to show that the petitioner- Vijay Nair had indulged and actually involved knowingly assisted in the process or activity connected with the proceeds of crime including its acquisition, use, and projection thereof as untainted property. It is pertinent to mention here that it is not disputed that petitioner- Vijay Nair is residing in a Bungalow allotted to a senior minister of the Government of NCTD of Delhi. This fact itself shows his prominence in the government.
55. The witnesses after witnesses have stated in their statements under Section 50 of PMLA that Vijay Nair had been interacting with them regarding the new excise policy with full authority. The Court at this stage, just cannot ignore the statement of such witnesses under Section 50 of PMLA. The participation or role of Vijay Nair can be assessed from the statement of Mr. Suresh Menon representative of the Secretary General, International Spirits and Wines Association of



India, (ISWAI) dated 05.12.2022 wherein it was stated that the petitioner expressed that the foreign players are very quiet while the Indian players are approaching and have offered funding to the party in lieu of maintaining status quo. The statement of Suresh Menon clearly indicates that the intention of the petitioner- Vijay Nair was mala fide since inception and he had the full authority to conceptualize the drafting and execution of the excise policy.

56. Mr. Sunil Duggal, ex-employee of Pernod Ricard in his statement dated 02.12.2022 also stated that petitioner Vijay Nair in one of the meeting has stated that the local manufacturers have offered to pay large amounts to the AAP leaders for favorable Excise Policy but there was no input or support from ISWAI. The reference can also be made to the statement of co-accused Benoy Babu dated 13.11.2022 whereby he stated that Vijay Nair and AAP functionary is meeting industry people and he wants to meet the manufacturers/wholesalers as well.
57. Similarly, Amandeep Dhall in his statement dated 29.10.2022 who stated that on 26.03.2021, he got a call from Sh Vijay Nair, who introduced himself as heading the media relations for the Govt. of Delhi/AAP. He told that he would like to meet the leading suppliers- Indian as well as international companies on an urgent basis. It was stated that at the instance of Vijay Nair a meeting was organized at Oberoi Maidens in which the senior officers/officials of Pernod Ricard attended the meeting.
58. The reference can also be made on the statement of Arun Pillai dated 08.12.2022 wherein he specifically stated that the petitioner-Vijay Nair used to ask him about the Excise Policy and provisions of different



states. He stated that though Vijay Nair used to ask him questions about these policies but mostly he was fixed on a certain format wherein there were to be private wholesale and retail. He also stated that petitioner Vijay Nair was also working with bigger players in Delhi Liquor business such as Aman Dhall of Brindco for the formulation of the policy.

59. Sh. Dinesh Arora also in his statement dated 01.10.2022 specifically stated that the Petitioner-Vijay Nair got into an arrangement with Arun Pillai, Abhishek Boinpally, and Buchi Babu (who were the representatives of South Group led by K Kavitha, M.S. and Sarath Reddy). The south group gave Rs. 100 Cr (approx.) to Vijay Nair in advance and they were supposed to recoup this money from the 3 major wholesalers as mentioned above.
60. There are also statements on the record that how this kickback was used in Goa elections. The conspiracy in the present case as has also been stated above is peculiar in nature where the excise policy was allegedly framed with *mala fide* intention. There are serious allegations regarding tempering excise policy only with the intention to give undue benefits/favors to certain people in particular. In such type of cases, it is almost impossible to have direct evidence. The Court at the stage of granting bail has only the material collected by the investigating agency. The opinion to be formed at this stage is on the basis of such material. The Bar under Section 45 of PMLA clearly stipulates that bail can only be granted if the Court is of the opinion that the petitioner is not guilty of such offence.
61. Learned Trial Court *inter-alia* held that Vijay Nair is, alleged to be



associated with generation and laundering of total proceeds of crime amounting to around Rs. 615 crores, including the kickback amount of Rs. 100 crores, Rs.192 crores being profit of M/s Indospirit around Rs. 200 crores being profit of A-12 company and the above excess credit notes and outstanding amount etc.

62. Learned Trial Court while considering the evidence on record observed that Vijay Nair had in fact emerged as the string holder of the entire criminal conspiracy hatched by the accused persons. The Court further observed that though it is not disputed that he was the Media and Communication incharge of AAP but at the same time it was revealed during the investigation that he was actually representing the AAP and GNCTD in different meetings that took place with the stakeholders in liquor business at different places. This was done to the extent that he has also allegedly represented himself as an OSD in the Excise Department of GNCTD and no one except him officially participated in these meetings.
63. Learned Trial court further observed that the evidence also suggests that the said meetings were in fact called by the Applicant Vijay Nair. He was instrumental at the stage of formulation of the policy itself with full authority and rights. He was further involved in meetings with representatives of big manufacturers i.e. M/S Pernod Ricard and M/S Diago etc., not only at the formulation stage of policy, but even in making these companies to appoint their wholesalers as per his choice.
64. The learned Trial Court further observed that Vijay Nair further undertook the task of collection and delivery of kickback amount. Learned court further *inter alia* held that Since, the kickback amount is



stated to have been paid through hawala channels and in cash, the best possible evidence to this effect has been collected and brought on record by the investigating agency and nothing has been intentionally withheld or concealed from the court and the evidence brought on record includes some documentary evidence in the form of call detail records of the persons involved in transmission of the above kickback amount through the approver.

65. It was also observed that oral and documentary evidence suggests that he was also in frequent touch with various stakeholders of liquor business through different secured modes of communication, including the Signal App, and their use of the said modes and App was only in pursuance to their attempt of not leaving any trail of their misdeeds. Some evidence is also alleged to have been collected to show that certain amounts, though meagre, out of the above kickbacks were spent by him towards election expenses in Goa and further allegations of tampering with evidence of commission of the above offences are also there on record by destruction of his mobile phones used during the relevant period.
66. Learned Trial court rejected the contention raised by Learned Senior Counsel for accused regarding reliance upon the judgments in cases Sanjay Paridey (Supra) and M/S Prakash Industries (Supra) and the same are held not applicable qua this accused as he had a prime and lead role in commission of the scheduled offences case of CBI as per the evidence collected in the present case and was also arrested in the said case. Learned Trial Court *inter alia* held that the fact that he stands released on bail in the said of CBI is of no consequence as his bail in this case is to be decided in light of the legal and factual position in this case of the



PMLA and especially keeping in mind the admissibility of statements made U/S 50 of the PMLA by the accused and witnesses and the twin conditions U/S 45 of the said Act . The judgments in cases Navendu Babbar (Supra) and Ratul Puri (Supra) being relied upon on behalf of the applicant were also found to be of no help as no parity can be drawn between the facts of the above cases and of the present one as Navendu Babbar (Supra) was not a case under the PMLA and in the other case of Ratul Puri (Supra) the accused was not named in the scheduled offences case and even in the ED case he was prosecuted in the sixth supplementary complaint only and none of the other accused was in custody in the ED case.

67. 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 has also come on the record that accused Vijay Nair was a close associate of Chief Minister, GNCT of Delhi and Sh. Manish Sisodia, Deputy Chief Minister. The investigation has further revealed that Vijay Nair arranged a video call through face time between Chief Minister, Government of NCT of Delhi and Sameer Mahendru where Chief Minister said that Vijay Nair is his boy and they should trust him.
68. The allegations are extremely serious in nature. The alleged conspiracy has been well spun and there are *prima facie* credible materials on record. This Court also does not find any illegality or perversity in the order of learned Trial Court. Learned Special Judge has correctly gone



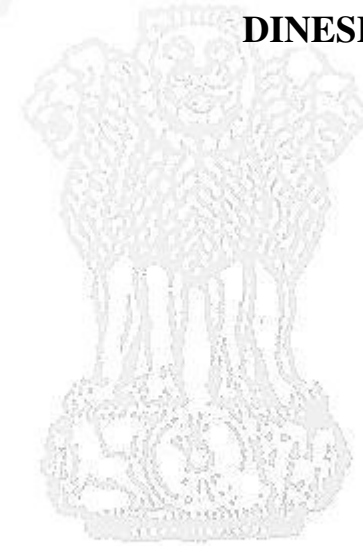
through the entire material and has given an opinion which seems to be in accordance with law. There is no reason to interfere in the bail order dated 16.02.2023.

69. I consider that in view of the seriousness and gravity of the case and the reasoned order of learned Trial Court, this Court is not able to persuade itself to form an opinion that the petitioner is not guilty of such an offence. Thus, the present bail application stands rejected.

DINESH KUMAR SHARMA, J

JULY 03, 2023

Pallavi



न्यायमेव जयते