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

Reserved on : 11.05.2023

Pronounced on : 14.06.2023

+ **BAIL APPLN. 3494/2022, CRL.M.A. 24331/2022, CRL.M. (Bail) 183/2023**

PREETI CHANDRA

..... Petitioner

Through: Mr. Siddharth Aggarwal, Sr. Adv. with
Mr. Adit S. Pujari, Mr. Chaitanya
Sundriyal, Mr. Maitreya Subramaniam,
Mr. Harsh Yadav, Advs.

versus

DIRECTORATE OF ENFORCEMENT

..... Respondent

Through: Mr. Zoheb Hossain, Adv. with Mr. Arun
Khatri, SPP, Mr. Siddharth Kaushik, Mr.
Vivek Gurnani, Mr. Kalp Saraiya, Advs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

JUDGMENT

: **JASMEET SINGH, J**

1. This is an application seeking grant of bail in complaint case No. 122/2022 arising out of ECIR/04/DLZO-II/2018 pending before learned ASJ-06, Special Judge (PMLA), Patiala House Court.
2. The applicant is the wife of Sanjay Chandra who was the Director of M/s Unitech Group. The applicant is a 49 year old lady and has two children. The applicant is a fashion designer by profession and a philanthropist.
3. The Applicant in the present case was the director of M/s Prakausali



Investments (India) Pvt. Ltd. (hereinafter “Prakausali”) and M/s Mayfair Investments Pvt. Ltd. (hereinafter “Mayfair”).

4. The applicant is in custody since 04.10.2021.

FACTUAL MATRIX

5. Between 2006 to 2022, 74 FIRs were registered by Delhi Police (EOW, Saket, Mandir Marg, Crime Branch Police Stations) and CBI, against Promoters of Unitech Group i.e. Ramesh Chandra, Ajay Chandra, and Sanjay Chandra and their associates under section 34, 201, 406, 409, 120B, 420, etc. of Indian Penal Code, 1860 (hereinafter “IPC”) and under section 7, 7(A), 8,9,10,12 & 13 of Prevention of Corruption Act, 1988 (hereinafter “PC Act”). Most of the said FIRs were recorded based on complaints made by homebuyers who were cheated by the accused persons. The Chandra’s promised the homebuyers that they will get their dream home and investors would get handsome return on their investment. Induced by this promise the homebuyers and investors invested huge amounts in the Unitech group. These amounts were misutilised and laundered. On the basis of numerous FIRs, an investigation was taken up to trace proceeds of crime and to investigate possible money laundering under Prevention of Money Laundering Act, 2002 (hereinafter “PMLA”) by Delhi Zonal Office-II, ED on 06.06.2018 vide ECIR/04/DLZO-II/2018.

6. It is alleged amongst others that the proceeds of crime (hereinafter “POC”) during years 2007-08 to 2011-12 were to the tune of Rs. 380.08 Crores and were generated by diverting funds from home-buyers from the accounts of Unitech Limited or its associate company. The same were transferred to Carnoustie Management Pvt. Ltd. (hereinafter “Carnoustie”). Between 01.02.2011 to 11.02.2011, out of Rs. 380.08 crores, Carnoustie (from SBI account no. 30279430078) extended Rs. 107.40 Crores to Prakausali, through



its holding company, Mayfair, as Inter Corporate Deposit (ICD). It was alleged that Ms. Preeti Chandra i.e., the applicant was the Director of Prakausali and Mayfair and that she was present at the time of passing the resolution and authorized to conduct the transaction relating to POC of Rs. 107.40 Crores from Mayfair to Prakausali.

7. In addition, POC of Rs. 43.70 crores from 3 subsidiaries namely (i) Unitech Realty Projects Ltd. (hereinafter “Unitech Realty”), (ii) Unitech Infracon Ltd. (hereinafter “Unitech Infracon”), (iii) Shatiniketan Properties Ltd. (hereinafter “Shatiniketan”) were transferred to M/s Unibild Engineering and Construction Company Pvt. Ltd.(hereinafter “Unibild”). Further, in February 2011, these amounts were laundered to the account of Prakausali.

8. The Applicant is also accused of incorporating, overseeing and managing a benami organization called Trikar Group alongside her husband, Mr. Sanjay Chandra. The funds obtained from illegal activities, which were kept in foreign accounts of Trikar Group in locations such as Cayman Islands, Singapore, and Mauritius, were illegally transferred to the tune of Rs. 401.07 crores to the accounts of Indian companies associated with Trikar Group. This occurred between the years 2015 and 2018, while the Applicant resided in the UAE and managed the operations of Trikar Group, as revealed by the statement of Mr. Indrajit Zaveri and Pandora Papers leak.

ARGUMENTS

9. The submissions raised by Mr. Siddharth Aggarwal, learned senior counsel appearing for the applicant is that the applicant is not an accused in any of the FIRs or in the chargesheet which is the fountain head of the predicate offence.

10. He states that the predicate offence in the FIR is that Unitech took loans and homebuyer funds for various projects and did not use those funds for the



said projects but misappropriated the same. He further states that prior to the arrest, the applicant has joined investigation on 4 occasions and her statements have been recorded. Post arrest, the applicant has been investigated on 9 occasions.

11. Mr. Aggarwal states that two imperative assumptions prevail in the present case:

- i. The first assumption is that in law one assumes that a person having/dealing with financial transactions cannot know at the outset that the funds involved in the financial transaction are proceeds of crime.
- ii. The second assumption which he says is relevant is that the applicant's knowledge that the person is an accused of a predicate offence and that the applicant is the wife of that accused does not lead to an automatic inference that the money given by that accused are proceeds of crime.

12. Mr. Aggarwal, learned senior counsel has made the following arguments:

- A. He states that the twin conditions of section 45 PMLA are not applicable to the Applicant as she is a woman and falls within the proviso to section 45(1) PMLA which appears to further the constitutional mandate of Article 15(3) of the Constitution. He states that Article 15(3) enables framing of laws for the benefit of women and children. He submits that respondent's sub-classification of women under the proviso to section 45(1) is arbitrary and against the constitutional spirit.
- B. He places reliance on the judgment of this Court viz., ***Devki Nandan Garg v. Directorate of Enforcement*** 2022 SCC Online Del 3086(2022:DHC:4121) to contend that the proviso to section 45(1) has been incorporated as a relaxation for persons below sixteen years of age; a woman; or one who is sick or infirm. Reliance is also placed on the judgment of this Court in ***Kewal Krishan Kumar v. Enforcement***



Directorate BAIL APPLN. 3575/2022 dated 17.03.2023 (2023:DHC:1925) reiterating the above argument.

- C. Mr. Aggarwal thereafter states that in the present case, the allegation against the applicant is that the applicant was a beneficiary (directly or indirectly) in the affairs of Unitech Limited and has acquired proceeds of crime to the tune of Rs. 151.12 crores. He states that section 3 of PMLA requires *mens rea* in order to commit the offence under the said statute as it uses the word 'knowingly' twice. He places reliance on the judgment of *Vijay Madanlal Chaudhary v. Union of India* 2022 SCC Online SC 929.
- D. He also states the Applicant could not have any *mens rea* in the present case. The ED has not demonstrated how the Applicant had personal knowledge about the alleged funds being tainted and how such funds were part of funds siphoned off in the 74 FIRs relating to scheduled offence.
- E. He argues that the applicant, like other women in the Chandra family, was made the director in companies in view of the mandate under Company law as the men of the house had exhausted their directorships. The Unitech group came into being in 1972 while the Applicant joined the family only in 1996.
- F. The Applicant was never a director of Unitech Ltd. or Carnoustie. The Applicant was a director in Mayfair for 3 months in the year 2010 only to meet the statutory quorum but was never a shareholder there. He also states that the Applicant was a director in Prakausali from 16.06.2010 to 23.04.2013, a company which was incorporated in 1981 even before the Applicant became part of the Chandra family.
- G. The break-up of 151.12 crores is explainable as under:

***Rs. 107.4 Crores***

- H. Regarding the allegation of 107.4 crores between 01.02.2011 to 11.02.2011 alleged to be received in the Applicant's company Prakausali through its holding company Mayfair, he states that Prakausali was never the Applicant's company. Prakausali had multiple directors and shareholders, apart from the Applicant, including Pushpa Chandra (mother-in-law of the Applicant, who signed various documents of the Company). There were other directors in Prakausali such as Sanjay Chandra, Rekha Bawa, Sunil Keswani, Seema Manga and Pushpa Chandra, thus, it is wrong to allege that Prakausali is Applicant's company.
- I. The Applicant was never a bank signatory in Prakausali. In fact, for the relevant years when the Applicant was a director, the balance sheets, annual returns, board returns were signed by Pushpa Chandra, the Applicant's mother in law.
- J. He states the Applicant like other female members of the family was only made a nominee director in Prakausali from 16.06.2010 to 23.04.2013 in view of the MCA regulations. No funds came to the personal account of the Applicant from Prakausali.
- K. On 25.01.2011, Mayfair passed a resolution, allowing the transaction of transfer of Rs. 107.4 crores from Mayfair to Prakausali. As far as Mayfair is concerned, he states that the Applicant was only a paper director for 3 months from 16.06.2010 to 28.09.2010. The Applicant was not a director of the said company when the resolution was passed and the same has not even been signed by the Applicant. In fact, it was Rajiv Virmani who signed the document. The Applicant was out of the country with her husband during the said time period. The Applicant's passport shows her departure from India on 24.01.2011 and return on 31.01.2011.



- L. He submits that none of the other persons who are shown to be present at the said meeting have been named as an accused in the ECIR, and hence, the respondents are following a pick and choose policy against the applicant.
- M. Additionally, there is no material to show that the board meeting of 25.01.2011 was not a physical meeting or that the resolution was passed by circulation.
- N. He states that the Applicant, who holds directorships in downstream, entities cannot be presumed to have requisite *mens rea* to commit the offence of money laundering and be denied bail. He places reliance on the judgment of this coordinate bench viz., **Chandra Prakash Khandelwal v. Directorate of Enforcement** 2023 SCC Online Del 1094 where it was observed:

“34. Considering the submission of the petitioner, viz. the petitioner's claim he did not have knowledge if the funds of M/s. PACL were tainted in any manner on account of an order dated 28.11.2003 of Rajasthan High Court in PACL India Ltd. v. Union of India as also an order dated 26.02.2013 in SEBI v. PACL India Ltd. in CA 6753-54/2004 wherein, the Hon'ble Supreme Court refused to classify M/s. PACL as CIS but had only directed the SEBI on 22.08.2014 to look into its affairs and that there was no embargo for 18 years upon M/s. PACL on its operation. Admittedly the petitioner was a downstream investor of funds hence his submission he did not knowingly became a party to money laundering cannot be brushed aside lightly. Even otherwise he allegedly was a nominee non-executive director since 11.09.2012 in M/s. DDPL and M/s. Unicorn and prior to 11.09.2012 had nothing to do with these companies; further substantial amount received in the companies of petitioner was returned in the manner alleged above and even Gurmeet Singh's



statement would show the petitioner represented the 25 companies were not associated with M/s. PACL. What weight the statements under Section 50 of PMLA would carry at the end of trial cannot be tested at the stage of bail, more importantly when the intermediary companies were never made an accused in the present ECIR. The ultimate effect of their non-inclusion would be seen at the conclusion of trial. Further considering the order dated 03.09.2020 wherein all remaining co-accused in this ECIR were admitted to bail, this Court has every reason to say the petitioner has passed the test of broad probabilities. Admittedly twin conditions of Section 45 (supra) does not put an absolute restraint on grant of bail or require a positive finding qua guilt.”(emphasis supplied)

Rs. 43.70 Crores

- O. Regarding the allegation of Rs. 43.70 crores where the POC from transferred from Unitech Realty, Unitech Infracon, Shatiniketan to Unibild and then further transferred to Prakausali where the Applicant was a director, the learned counsel for the Applicant states that the Applicant had no association whatsoever with Unibild, Unitech Realty, Unitech Infracon or Shantiniketan.
- P. He states that Unibild belongs to one Mr. Praveen Gurnani and the Applicant has no relation or connection with the said person or said company, nor has Mr Gurnani attributed any role to the Applicant.
- Q. The amount of Rs. 43.7 crores being transferred to Prakausali has no meaning as, reiterating the earlier argument of the learned counsel, he states that Prakausali is not the Applicant's company as various other members of the Chandra family were responsible for the signing the transactions in Prakausali.

***Rs. 7 Crores***

- R. Regarding the allegation of Rs. 7 crores which was POC that was transferred from Unitech Limited to Prakausali through Millennium Constructions Pvt. Ltd (hereinafter “Millennium”) and transfer of Rs. 34.70 lakhs which was transferred from Prakausali to Motif Inc which was the Applicant’s company in April 2008, the learned senior counsel states that the Applicant was never a director or authorised signatory either in Unitech Ltd. or Millennium.
- S. He further states that the Applicant was not a director of Prakausali on 02.04.2008 and had nothing to do with the said company at that point in time.
- T. The amount of Rs. 34.7 lakhs was returned from Motif to Prakausali in 2008-09 vide cheque numbers 429230, 000746, 005773, 005768.

Rs. 2.5 lakhs

- U. Regarding the amount of Rs. 2.5 lakhs in Applicant’s personal bank account between September 2013 to May 2015, learned counsel states that the said transaction is the design fee paid to the Applicant.

Rs. 38 lakhs

- V. Regarding the allegation of Rs 38 lakhs between July 2014 to March 2015 which was transferred into the Applicant’s bank account from Bengal Universal Consultant Pvt. Ltd. (hereinafter “Bengal Universal”) as rent, the learned senior counsel submits that the Applicant is and was never associated with Bengal Universal. She was not a director or shareholder in the said company.
- W. He states that the ED has not even urged in the complaint that the amounts received by Bengal Universal are conclusively proceeds of crime.



- X. He submits the amounts received from Axis Bank as tenants was collected by M/s Unitech Ltd. as original owner on behalf of the new owners of the property. The rent was reflected in IT returns of the Applicant. Even the proceeds upon the sale of the property were not received by the Applicant.
- Y. He states that the property was purchased by Mr Ajay Chandra with a loan financed by ICICI Bank, 50% share each for his wife Mrs Upma Chandra, and the Applicant (sister-in-law). Mr. Ajay Chandra was looking after the affairs of the Company and a PoA in this regard was also executed in favour of Mr. Ajay Chandra to take all decisions.

Rs. 84,00,000

- Z. Regarding the allegation of Rs. 84,00,000/- being used to purchase Lamborghini car for the Applicant pursuant to outward remittance of USD 2,00,000/- on 10.05.2007, learned counsel states the said car was purchased from funds of Mr. Sanjay Chandra and was used by him. Even the sale proceeds of the said car have not been received by the Applicant. Moreover, there cannot be any POC from such time as no allegations of predicate offence were made homebuyers from that time period.

TRIKAR GROUP

- AA. The allegation against the Applicant is that she incorporated and was managing and controlling a benami group with the name Trikar Group with her husband, Mr Sanjay Chandra. POC stashed in foreign accounts of Trikar Group (through Cayman Islands, Singapore and Mauritius) were laundered to the tune of Rs. 401.07 crores into the accounts of the Indian companies of Trikar Group, during years 2015 to 2018 when the Applicant was putting up in UAE and managing affairs of Trikar Group



as is highlighted by Mr. Indrajit Zaveri, Pandora Papers leak and Indian Express, a newspaper. Mr. Indrajit Zaveri has confirmed in his statement that on the saying and direction of the Applicant, he had signed papers pertaining to companies where he was a dummy director.

- BB. As regards laundering in the Trikar Group is concerned, he states that the ED has not linked any transactions to the Applicant as Trikar Group was being managed by Ajay Chandra and Sanjay Chandra. Furthermore, the ED's reliance on a newspaper clipping to allege money laundering in Trikar Group is inadmissible in law under the Indian Evidence Act.
- CC. He submits that the Applicant is stated to be associated with entities named MNM International and Trikar General Trading. The alleged transactions relating to such entities date back to 2014-15 when the Company was being managed by a person named Mr Anuj Malik, who has been cited as a witness by the ED despite role attributable to him.
- DD. He submits that Mr Anuj Malik in his section 50 PMLA statement has said that the entire shareholding of the said company was transferred to the Applicant only in 2017.
- EE. He states that a perusal of statements of all independent witnesses including Govind Sharda, Anuj Malik, and Pranav Kumar, would demonstrate that the Trikar Group was being managed by Mr. Sanjay Chandra and Mr. Ajay Chandra and not the Applicant.
- FF. At the time of hearing of the subject bail application on 07.03.2023, the learned Counsel for the ED handed over a document from Mr. Anuj Malik. In rejoinder, the learned senior counsel states that such document is not part of the underlying complaints, or even a part of the Reply filed by the ED in the present case. The Applicant cannot be expected to meet a shifting goal-post as a Section 45 PMLA threshold, at the time of bail, when such documents are neither part of the Complaint(s) nor part of the



Reply filed by the ED. In any event, even such statement does not attribute to the Applicant the control of the alleged entities in question.

Triple Test

GG. Learned senior counsel for the Applicant states that the Applicant is not a flight risk. She has flown overseas from India and back more than 30 times since obtaining the Dominican Republic passport in April 2016. When the Applicant was intercepted on 10.03.2021 at the Delhi Airport, she was travelling with a return ticket and had undertaken travel in January and February of 2021 with no attempt to flee. Reliance is placed on the judgment of ***Anil Mahajan vs Commissioner Of Customs & Anr*** 2000 SCC OnLine Del 119 wherein it was observed:

“14. The legal position emerging from the above discussion can be summarised as follows:

.....

(o) Law does not authorise or permit any discrimination between a foreign National and an Indian National in the matter of granting bail. What is permissible is that, considering the facts and circumstances of each case, the Court can impose different conditions which are necessary to ensure that the accused will be available for facing trial. It cannot be said that an accused will not be granted bail because he is a foreign national.”

HH. He states the Applicant will not tamper with the evidence in the present case as all documents relating to the Applicant are already in the custody of ED. The Applicant duly cooperated with the investigating agency by providing documents/ appearing before the ED on 10.03.2021, 19.04.2021, 03.08.2021, and on 04.10.2021.

II. There is no evidence of any attempt to contact/influence witnesses. The Applicant is not an accused in the FIR relating to Tihar incidents and she



was not even in India for a large period of time during which alleged Tihar incidents occurred. Such FIR was registered after an inquiry by the Commissioner of Police, aided by senior police officers, which began on 27.08.2021 and concluded on 26.09.2021 (under directions of the Supreme Court vide Order dated 26.08.2021).

JJ. He submits that a perusal of the FIR would demonstrate that the investigating agency has found Ramesh Chandra, Ajay Chandra, Sanjay Chandra, Lakhbir and Ravinder responsible for the alleged incidents at Tihar. The Applicant had no role in the alleged misdemeanour at Tihar jail.

KK. He states that the extracts of WhatsApp messages, which are between two alleged office runners, do not disclose any incriminating contents and if placed on record would indicate normal conversation between a husband and wife.

LL. He states the Applicant, like all other persons (including well-known advocates whose names have been mentioned in the WhatsApp chats) was of that bona fide belief that her messages were being handed over to her husband legally. In fact, the jail manual itself permits handing over of reading material/ papers to a person who is incarcerated.

MM. Statement of the Applicant was last recorded in September 2022 and the investigation is being carried out in a piecemeal manner. The trial has not commenced and there are thousands of witnesses to be examined.

NN. He submits the gravity of the offence in the present case ought to be considered in terms of the period of sentence prescribed. In the case of ***P Chidambaram vs Directorate of Enforcement*** reported at (2020) 13 SCC 791, the Hon'ble Supreme Court has held that the gravity of an offence ought to be read in terms of the period of punishment prescribed. This view has been reiterated once again by the Hon'ble Supreme Court in the case of ***Satender Kumar Antil vs Central Bureau of Investigation***



&Anr, reported at (2022) SC OnLine 825. In the present case, the Applicant is alleged to have committed offence under Section 3 and 4 of the PMLA which is punishable up to a maximum of seven years.

OO. He states the Applicant satisfies the requirements of triple test as upheld by the Hon'ble Supreme Court in the case of *P. Chidambaram vs Directorate of Enforcement* reported at (2020) 13 SCC 791 in the following manner:

a) Flight Risk: The Applicant voluntarily returned to India while being fully aware of the ongoing investigation and being regularly summoned by the ED for the purpose of recording her statements. The Applicant is in the process of acquiring citizenship and passport of India and adhere to the applicable laws and regulations, and therefore also submitting herself to the jurisdiction of the Hon'ble Courts, and investigating agencies in India. Most importantly, the Ld. Special Judge while dismissing the bail application has otherwise held that the Applicant cannot be considered as a flight risk.

b) Tampering with Evidence: The Respondent has already filed a complaint and a supplementary complaint in the present case. Documentary evidence as well, has been either seized or already brought on record along with complaints. There is no possibility of tampering with the evidence, and the Applicant also undertakes not to indulge in the same.

c) Influencing witnesses: The investigating agency has already recorded statements of various witnesses and the same have also been brought on record. Most importantly, the Applicant has not been in touch much less be associated with such witnesses who were involved in management of Unitech and its associated entities. As such there is no possibility of the Applicant influencing any witness.



13. Mr. Hossain, learned SPP for the ED has made the following submissions:

- A. He states that the proviso to section 45 cannot be attracted in the present case only on account of the Applicant being a woman. He has drawn my attention to the judgment passed a coordinate bench of this court in ***Mrs Shivani Rajiv Saxena v. Directorate of Enforcement & Anr.*** vide order dated 15.09.2017 in Bail Appln.1518/2017 (2017:DHC:5507) wherein bail was denied to the accused, who was a woman, as the court observed that the application of discretion described in proviso to section 45(1) should consider the unique circumstances surrounding specific groups of individuals, rather than being applied universally as a standard rule that all those categories of people in the said proviso must be granted bail.
- B. Mr Hossain, learned counsel further draws an analogy with 437(1) CrPC and also the judgment of ***Meenu Dewan v. State*** in Bail Appln. No.736/2008 (2009:DHC:56) wherein it was held that there is no absolute or unconditional rule that bail should be granted if the accused is woman, but the nature and gravity of the offence and heinousness of such offence also has to be considered and the same varies from circumstance to circumstance.
- C. He states that the Applicant is not a household lady. She is running multiple companies and is a well-educated woman. Even before getting married, she was running businesses and it is in this context that proviso to section 45(1) PMLA has to be seen.
- D. Relying on the judgment of ***Vijay Madanlal (supra)***, he states that the Applicant being a well-educated woman had the requisite *mens rea* to commit the offence under section 3 PMLA.



- E. He states, without prejudice to the above submission, even if proviso to section 45(1) is considered, on broad probabilities, it is clear case that the applicant is guilty offences under money laundering.
- F. He states that roughly Rs. 7000 crores were siphoned off out of which Rs. 1742 crores have been diverted out of India.

Acquisition and handling of POC

- G. Mr. Hossain states that the Applicant was actively involved in the acquisition and handling of POC. Rs. 380.08 Crores was generated as POC from funds of home-buyers by Unitech and said POC was transferred to Carnoustie. The Applicant was the director in Prakausali where between 01.02.2011 to 11.02.2011, out of the Rs. 380.08 Crores, Carnoustie (from SBI account no. 30279430078) extended Rs.107.40 Crores to Prakausali (through its holding company, Mayfair) as Inter Corporate Deposit (ICD).
- H. He states that on 25.01.2011, Mayfair passed a resolution allowing the transaction of transfer of Rs. 107.4 crores from Mayfair to Prakausali and the board resolution shows the Applicant's participation in the said board resolution for transfer of POC from Mayfair to Prakausali.
- I. He submits that the Applicant was involved in laundering Rs. 43.70 crores also. The POC from 3 subsidiaries was transferred from Unitech Realty, Unitech Infracon, Shatiniketan to Unibild Engineering. In February 2011, from Unibild, these POC of Rs. 43.70 Crores were laundered to the accounts of Prakausali (Rs. 27 Crores on 01.02.2011 & Rs. 16.70 Crores on 10.02.2021) where the Applicant was a director.
- J. He states that the an analysis of the seized records reveals that during the period of July 2014 to March 2015, Rs. 38 lakhs were credited to the Applicant's personal account no. 00441930000074 held with HDFC Bank from Bengal Universal (subsidiary of Unitech Ltd.). This amount



was received by the Applicant as rent (50%) from the property at Unit No. 002, 003 and 004, 1865 Randanga Main Road, Kolkata. The Applicant informed that the property was provided to her by Ajay Chandra but did not give the source of funds required to purchase the said property. As Ajay Chandra had no other source of funds apart the POC from Unitech Ltd., there is high likelihood that the property was acquired from the diverted funds of homebuyers.

- K. He states that during the period September 2013 to May 2015, Proceeds of Crime of Rs. 2.50 Lacs were diverted from Unitech Limited's account No.0442320000320 (homebuyer's project account held with HDFC bank) to Preeti Chandra's personal account No. 00441930000074 held with HDFC Bank. She did not disclose the nature, purpose and utilization of these POC of Rs. 2.50 Lacs.
- L. He states that on 02.04.2008, Proceeds of Crime of Rs. 7 Crores were laundered from Unitech Limited's account No. 0390201005452 (homebuyer's project account held with Canara Bank) to Prakausali through the accounts of M/s Millennium Constructions Pvt. Ltd. (Account No. 0390256001649 maintained at Canara Bank).
- M. During similar time frame from February 2008 to June 2008, an amount of Rs. 34.70 Lacs was transferred from Prakausali bank account to Preeti Chandra's account MOTIF held with HSBC bank. The Applicant did not disclose the nature of these POC.
- N. He states that examination of data received from HDFC bank revealed that on 10th May 2007, the Applicant made a request for outward remittance of USD 2,00,000 from her HDFC Bank account No. 00441930000074 USA for purchase of a car. On 10.05.2007, a total of Rs 1.20 Crores were transferred out of this account.
- O. He states that majority of source of funds in the accounts of Chandra Family (including the Applicant) are POC diverted from Unitech. As the



accused did not disclose the source of funds for purchase of Lamborghini car in 2007, there is high likelihood that its source is proceeds of crime. He states it is clear from a narration of the above that the Applicant knowingly and willingly acquired and possessed the Proceeds of Crime of Rs . 151.12 Crores and utilized the same for her personal purposes.

TRIKAR

- P. He states that investigation has revealed that the Applicant along with her husband Sanjay Chandra incorporated, controlled and managed a benami group under the name and style of Trikar Group which managed companies in Cayman Islands, Singapore, Mauritius and India.
- Q. He states that Indrajit Zaveri (a family friend of the Applicant and a benami /dummy director of Trikar Group in Dubai) in his statement u/s 50 of PMLA, 2002 on 23.03.2021 has deposed that the Applicant and her husband Sanjay Chandra frequently visited Dubai and discussed things related to their benami entity Trikar Group. Indrajit Zaveri in his statement has said that the Applicant called him and made him sign documents (2-3 times) relating to companies in which he was being made a dummy director. The statement of Mr. Zaveri is reproduced below:

“Initially, I met her socially but once I became dummy/benami director in Sanjay Chandra’s company I also had professional and financial dealings with her.

In this regard, I want to say that Smt. Preeti Chandra directed me to sign documents (2-3times). These documents were pertaining to companies in which I was made a dummy/benami director. The



name of these companies were Trikar, Redwood, etc... I don't remember her phone number from where she made calls to me.

Smt. Preeti Chandra called me on my phone number +971506441378 and directed me to sign the documents of aforementioned companies 2-3 times. I don't remember her phone number from where she made calls to me. "

- R. He states POC stashed in foreign accounts of Trikar Group (through Cayman Island, Singapore and Mauritius) were laundered (to the tune of Rs. 401.07 crores) into the accounts of the Indian companies of Trikar Group during years 2015 to 2018 when the Applicant was putting up in UAE and managing affairs of Trikar Group as is highlighted by Indrajit Zaveri and Pandora Papers leak. He states the revelation of Indrajit Zaveri has further been corroborated by the independent investigation done by International Consortium of Investigative Journalists (ICIJ) in Pandora Papers. In the said expose, the Applicant has been found to be the beneficial owner of Trikar Group based in Tax heavens. The gist of the same published by The Indian Express on 10.10.2021.
- S. He states that Chandra's of Unitech Group were forced to divert funds of Trikar group from abroad to India because during 2015 – 16 the group was under great financial crunch, homebuyers were lodging complaints, no bank/ financial institution or vendor was supporting them and there was buzz (within and outside India) that Unitech group would collapse if immediate finances were not brought into its accounts. In such circumstances they had to divert their ill -gotten money stashed abroad (Trikar Group) to India for the benefit of Unitech Ltd.

**Non disclosure of information**

- T. He states the Applicant deliberately did not disclose the critical information required for unearthing of the Proceeds of Crime and recovery of the same. On 13.04.2021 the applicant was asked to provide the details of her all entities/bank accounts/properties etc. in India as well as abroad. However, in her response on 19.04.2021, she informed that she had served in six entities when the investigation revealed that she was director/beneficial owner etc of more than 14 entities.
- U. Applicant admitted that the bank accounts of the offshore entities were managed by her husband Sanjay Chandra. However, she did not provide the documentary evidences for the same. The Applicant stated that her two children have acquired citizenship of USA and maintain two bank accounts there but she refused to give bank account statements regarding the same. She also did not provide documents related to offshore entities. He states there are many instances where the applicant has not cooperated in the investigation and wasted time of investigating agency.
- V. During the Applicant's interrogation in judicial custody, it was further revealed that the she had 3 more properties in Dubai that she previously had failed to disclose. It is also pertinent to mention herein that she has also failed to disclose the source of the money used to purchase the said properties. The said properties have already been attached vide provisional attachment order dated 25.08.2022.

Triple Test

- W. Furthermore, the Applicant does not fulfil the Triple Test as she is found to be involved in illegal activities pertaining to destruction of evidence and helping inmates Ramesh Chandra and Sanjay Chandra.



- X. The Applicant had assisted her husband in influencing a witness namely Sh. Indrajit Zaveri. Considering the antecedents of the accused, it is submitted that if the accused is released on bail at this crucial juncture, the witnesses will be more prone to manipulation by her and adversely impact the investigation.
- Y. He states the Applicant was examined u/s 50 of PMLA on 10.03.2021 and it was revealed that applicant had acquired citizenship of Dominican Republic on 11.04.2016. He states that India does not have an extradition treaty with Dominican Republic and this is a tax heaven as well as a safe place of hiding for most global fugitive economic offenders.

ANALYSIS

14. I have heard learned counsel for the parties.
15. The relevant portion of Section 45 of PMLA reads as under:

“45. Offences to be cognizable and non-bailable.—(1) [Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence 2[under this Act] shall be released on bail or on his own bond unless—]

(i) the Public Prosecutor has been given a 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: Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm, 3[or is



accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees] may be released on bail, if the Special Court so directs: ...”

16. The first question that arises for my consideration is whether the Proviso to Section 45(1) of the PMLA will be applicable to the applicant being a woman.

Applicability of Section 45 PMLA

17. The genesis of Proviso to Section 45(1) of the PMLA which grants relaxation, to a woman or person under the age of sixteen years or sick or infirm person, is traceable from Article 15(3) of the Constitution of India.

18. Article 15(3) of the Constitution of India reads as under:-

“Article 15 – Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

...

(3) Nothing in this article shall prevent the State from making any special provision for women and children.”

19. Based upon Article 15(3), the State has carved out an exception for ‘woman’ from the rigours of twin condition of Section 45 of the PMLA.

20. PMLA does not define a ‘woman’. It is neither the intention of the Constitution of India nor the intention of PMLA to classify women on the basis of their education and occupation, social standing, exposure to society, etc.

21. It is also settled principle of interpretation that while interpreting a statute and/or a Section, the Courts are not to substitute or add or subtract words from the Section. The same would be amounting to supplanting the intention of the Legislature.



22. The Apex Court in ***P. Ramachandra Rao v. State of Karnataka*** (2002) 4 SCC 578 observed as under:

“25. The primary function of the judiciary is to interpret the law. It may lay down principles, guidelines and exhibit creativity in the field left open and unoccupied by legislation. Patrick Devlin in The Judge (1979) refers to the role of the Judge as law-maker and states that there is no doubt that historically, Judges did make law, at least in the sense of formulating it. Even now when they are against innovation, they have never formally abrogated their powers; their attitude is: “We could if we would but we think it better not.” But as a matter of history, did the English Judges of the golden age make law? They decided cases which worked up into principles. The Judges, as Lord Wright once put it in an unexpectedly picturesque phrase, proceeded “from case to case, like the ancient Mediterranean mariners, hugging the coast from point to point and avoiding the dangers of the open sea of system and science”. The golden age Judges were not rationalisers and, except in the devising of procedures, they were not innovators. They did not design a new machine capable of speeding ahead; they struggled with the aid of fictions and bits of procedural string to keep the machine on the road.

...

27. Prescribing periods of limitation at the end of which the trial court would be obliged to terminate the proceedings and necessarily acquit or discharge the accused, and further, making such directions applicable to all the cases in the present and for the future amounts to legislation, which, in our opinion, cannot be done by judicial directives and within the arena of the judicial law-making power



available to constitutional courts, howsoever liberally we may interpret Articles 32, 21, 141 and 142 of the Constitution. The dividing line is fine but perceptible. Courts can declare the law, they can interpret the law, they can remove obvious lacunae and fill the gaps but they cannot entrench upon in the field of legislation properly meant for the legislature. Binding directions can be issued for enforcing the law and appropriate directions may issue, including laying down of time-limits or chalking out a calendar for proceedings to follow, to redeem the injustice done or for taking care of rights violated, in a given case or set of cases, depending on facts brought to the notice of the court. This is permissible for the judiciary to do. But it may not, like the legislature, enact a provision akin to or on the lines of Chapter XXXVI of the Code of Criminal Procedure, 1973.”

23. I am of the view that beneficial legislation in favour of a class of persons, which is reflective of constitutional spirit, should not be considered narrowly, and must be given a liberal interpretation.

24. Thus, to argue what kind of woman is entitled to fall within the proviso to section 45(1) PMLA by creating an ad-hoc illusionary sub-classification of educated women, business women, women belonging to high social strata, within the broader classification of “woman”, as sought to be done by the respondent, is misconceived.

25. There is no intelligible differentia in classifying women based on their education, occupation or social stature. Classifying women bereft of any intelligible differentia would be an anathema to the fundamental right to equality under Article 14 of the Constitution. Thus, the respondents’ reliance on the judgment of **Shivani Rajiv Saxena** (*supra*) is misplaced.



26. The said judgment is also distinguishable as the Coordinate Bench in ***Shivani Rajiv Saxena (supra)*** had based its judgment on the triple test and consequently denied bail to the applicant therein. What had weighed with the coordinate bench in ***Shivani Rajiv Saxena (supra)***, was that the accused person/ applicant therein was a resident of Dubai for the last 25 years. Her husband was still residing in Dubai and had not participated in the investigation. The same is not the case here.

27. In addition, in ***Shivani Rajiv Saxena (supra)***, the applicant therein sought bail on account of sickness and for medical attention. The learned single judge held that the sickness of the applicant therein was not serious and she only needed physiotherapy. The single judge observed that she was being provided physiotherapy in jail. The reference of the applicant therein being a woman was only in passing.

28. Once the word ‘woman’ has been used in the Proviso to Section 45(1) of PMLA, the Court is not to further sub-classify women into different categories and apply the twin condition of Section 45 to some category of women and to exclude some category of women from the twin condition of Section 45. Doing the same would be not only be violative of Article 14 of the Constitution but also be a great injustice to the intention of the Legislature.

29. I also rely upon a judgment of a coordinate bench in ***Komal Chadha v. SFIO 2022 SCC OnLine Del 4543*** dated 21.12.2022 (2022/DHC/005738) wherein the learned single judge after noticing ***Shivani Rajiv Saxena (supra)*** held:

“30.6. Most importantly, the proviso to section 212(6) of the Companies Act cannot be treated as nugatory or dead letter. By way of the proviso, the Legislature has specifically carved-out an exception to the otherwise strict provision for bail, to say that though the twin conditions in section 212(6)(i) and (ii) of the



Companies Act must otherwise be satisfied before a person is released on bail, those conditions would not apply inter-alia to a woman. In view of the proviso, it would be anathema to the legislative intent to not grant the benefit of the relaxation to a woman accused;”

The learned single judge in **Komal Chadha (supra)** was dealing with section 212(6) of the Companies Act, 2013 which is *pari materia* to section 45(1) PMLA.

30. In **Devki Nandan (supra)** this Court has already held that the proviso to section 45(1) PMLA is an exception and once a person comes within the exception, the twin condition of Section 45 PMLA will not be applicable to such person. The relevant paragraphs of **Devki Nandan (supra)** read as under:

“33. A bare perusal of the Statement of Objects and Reasons of the PMLA goes to show that inclusion of the above conditions for grant of bail as a proviso to Section 45(1) of the PMLA elucidates the legislature's intent to incorporate relaxations for persons below sixteen years of age; a woman; or one who is sick or infirm.”

...

35. Thus, the proviso to Section 45(1) of PMLA carves out an exception from the rigours of Section 45 for persons who are sick or infirm. Once a person falls within the proviso of Section 45(1), he need not satisfy the twin conditions under section 45(1) as elucidated in the dicta of Gautam Kundu (supra).”

31. This court has observed in **Kewal Krishan Kumar (supra)** that the legislature has carved out the proviso to section 45(1) as a lenient provision for



persons below sixteen years of age, women or persons who are sick or infirm.
The relevant paras read as under:

“18. The relevant clauses of the Finance Bill introduced on 1st February, 2018 for amending Section 45 of the PMLA reads as under:-

“Clauses 204 and 205 of the Bill seeks to amend certain provisions of the Prevention of Money laundering Act, 2002, which include the following, namely:-

-x-x-x-x-

(v) to amend section 45 of the Act relating to offences to be cognizable and non-bailable and to amend sub-section (1) of section 45 to substitute the words “punishable for a term of imprisonment of more than three years under Part A of the Schedule” by the words “under this Act” so as to take a step further towards delinking the Scheduled offence and money laundering offence. Further, it seeks to amend the proviso in subsection (1) by inserting the words “or is accused either on his own or along with other co-accused of money laundering a sum of less than Rupees one crore”, after the words “sick or infirm” to allow the Court to apply lenient bail provisions in case of money laundering offence is not grave in nature.”

19. The 2018 Finance Bill gives an insight into the bail provisions stating that the inclusion of “sixteen years; woman; sick or infirm” along with the addition of “or is accused either on his own or along with other co-accused of money laundering a sum of less than Rupees one crore” is a lenient bail provision encapsulated in PMLA.”



32. For the aforesaid reasons, I am of the view that once an accused is a woman, the Proviso to Section 45(1) kicks in and the applicant would fall within the proviso.

33. However, this does not mean that the applicant will not be required to satisfy the triple test for grant of bail.

Bail in predicate offence

34. Even on merits, the applicant has a good *prima facie* case. The allegations against the applicant are of money laundering and siphoning off funds belonging to homebuyers of Unitech Group.

35. As already stated, *mens rea* is an important ingredient in the offence of money laundering. The intention is of paramount importance.

36. Section 3 PMLA reads as under:

“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 ¹[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.

²[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.]”

37. **Vijay Madanlal Chaudhary** (*supra*) clarifies the issue as under:

“388. There is no challenge to the provision on the ground of legislative competence. The question, therefore, is : whether such classification of offenders involved in the offence of money-laundering is reasonable? Considering the concern expressed by the international community regarding the money-laundering activities world over and the transnational impact thereof, coupled with the fact that the presumption that the Parliament understands and reacts to the needs of its own people as per the exigency and experience gained in the implementation of the law, the same must stand the test of fairness, reasonableness and having nexus with the purposes and objects sought to be achieved by the 2002 Act. Notably, there are several other legislations where such twin conditions have been provided for. Such twin conditions in the concerned provisions have been tested from time to time and have stood the challenge of the constitutional validity thereof. **The**



successive decisions of this Court dealing with analogous provision have stated that the Court at the stage of considering the application for grant of bail, is expected to consider the question from the angle as to whether the accused was possessed of the requisite mens rea. The Court is not required to record a positive finding that the accused had not committed an offence under the Act. The Court ought to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. The duty of the Court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. Further, the Court is required to record a finding as to the possibility of the accused committing a crime which is an offence under the Act after grant of bail.” (emphasis supplied)

38. The fact whether the applicant knew that she was dealing with proceeds of crime and whether the same was tainted money, can only be ascertained after evidence has been led.

39. The Applicant is not named in the ECIR dated 06.06.2018 and ECIR dated 31.08.2021. Nothing has been placed on record to show that the applicant was involved in day-to-day affairs of Mayfair, Prakausali and other Unitech companies and/or subsidiaries and was responsible for taking key managerial decisions, except the fact that the applicant was a director in Prakausali from 16.06.2010 to 23.04.2013.

40. To state today that the applicant being the wife of Mr. Sanjay Chandra and is a director in Prakausali and Mayfair, therefore she must have and/or has had knowledge that the funds in Prakausali and Mayfair were proceeds of crime is misplaced and the same can only be ascertained once evidence has been led.



41. I find merit in the submission advanced by learned counsel for the applicant that the applicant's knowledge of the person who is accused of a predicate offence and that the applicant is the wife of the main accused does not lead to an automatic inference that the money in her hands are proceeds of crime.

42. In order to prove *mens rea*, the respondent/prosecuting agency is required to show something more than merely an allegation. In the present case, though the prosecuting agency has tried to substantiate the allegations by showing transfer of POC as well as section 50 PMLA statements, but what persuades me is that the Applicant has provided a *prima facie* reasonable, satisfactory explanation for each of the allegations. Whether the *prima facie* satisfactory explanation crystallises into substantial defence leading to an acquittal or is merely an eye-wash or a sham can only be determined after evidence.

43. The explanations furnished by the Applicant seem reasonable to me to believe that *prima facie* the Applicant is not guilty of the offence of money laundering are as under:

44. Regarding the allegation of laundering Rs.107.4 crores, the applicant was a nominee director in Prakausali from 16.06.2010 to 23.04.2013, like other female members of the Chandra family. Further, the said company was incorporated in 1981, way before the Applicant got married in the Chandra family.

45. In addition, the mother-in-law of the Applicant namely Ms. Pushpa Chandra who was also a director in Prakausali 16.06.2010 to 23.04.2013, has signed the balance sheets and accounts has not been named as an accused in the ECIR.

46. The Supreme Court in *State of M.P. v. Sheetla Sahai*, (2009) 8 SCC 617 observed as under:



“49. It is also interesting to notice that the prosecution had proceeded against the officials in a pick-and-choose manner. We may notice the following statements made in the counter-affidavit which had not been denied or disputed to show that not only those accused who were in office for a very short time but also those who had retired long back before the file was moved for the purpose of obtaining clearance for payment of additional amount from the Government viz. M.N. Nadkarni who worked as Chief Engineer till 24-3-1987 and S.W. Mohogaonkar, Superintending Engineer who worked till 19-6-1989 have been made accused but, on the other hand, those who were one way or the other connected with the decision viz. Shri J.R. Malhotra and Mr R.D. Nanhoria have not been proceeded at all. We fail to understand on what basis such a discrimination was made.”

47. The Applicant ceased to be a director in Mayfair on 28.09.2010 and the board resolution allowing the transaction of funds between Mayfair and Prakausali is dated 25.01.2011. Hence, the signature of the Applicant, if any, on the board resolution of Mayfair dated 25.01.2011 is meaningless. Whether the resolution dated 25.01.2011 was signed by the Applicant or not can only be ascertained once evidence has been led.

48. Additionally, the applicant was only a paper director in Mayfair for 3 months. She was not in India when the resolution was passed on 25.01.2011 and had no knowledge of the said resolution. Her passport also indicates that the Applicant was out of India when the said resolution was passed.

49. At this stage, the fact that the Applicant was not a director of Mayfair at the time of passing the board resolution, was not present in India when the resolution was passed, and was only a director for 3 months *prima facie* makes



out a case that the Applicant did not actively participate in the deliberation and making of the said resolution dated 25.01.2011.

50. Regarding the allegation of laundering Rs. 43.7 crores from three Unitech subsidiaries to Unibild and then to Prakausali, nothing has been brought on record to show the Applicant's association with Unibild in any capacity or with the three subsidiary companies i.e., Unitech Realty, Unitech Infracon or Shantiniketan.

51. Unibild belongs to an individual named Mr. Praveen Gurnani and the respondent has failed to establish any connection or link between the applicant and Mr. Gurnani. *Prima facie*, no case is made out against the applicant regarding the allegation of laundering Rs. 43.7 crores.

52. As regards Prakausali is concerned, I have already observed that there is nothing to show that Applicant was holding key managerial position and was involved in day-to-day affairs of the said company.

53. Regarding the allegation of laundering Rs. 7 crores, the applicant was not a director in Unitech Ltd. or Millenium therefore, the allegation of laundering Rs. 7 crores is *prima facie* not made out.

54. In addition, the allegation of laundering of Rs.7 crores in Prakausali is of the year 2008 when the Applicant was not a director of Prakausali.

55. The amount of Rs. 34.7 lakhs, alleged POC has been returned by the Applicant's company Motif to Prakausli in 2008-09 via cheque numbers 429230, 000746, 005773, 005768 thereby, negating the allegation of laundering Rs. 34.7 lakhs.

56. As regards the amount of Rs. 2.5 lakhs in Applicant's personal bank account, the same is stated to be her fee as a fashioner designer.

57. Regarding allegation of laundering Rs. 38 lakhs, the Applicant has never been associated with Bengal Universal. She neither held a position as a director nor possessed shares in the company. The amounts received from Axis Bank were paid as rent by the tenants to M/s Unitech Ltd., the original property



owner, on behalf of the new owners. These rental payments were duly reported in the Applicant's income tax returns. It was Mr. Ajay Chandra who purchased the property with a loan funded by ICICI Bank, with a 50% ownership share for his wife, Mrs. Upma Chandra, and 50% for the Applicant (who is the sister-in-law). Mr. Ajay Chandra was responsible for managing the company's affairs, and PoA was also granted to him, authorizing him to make decisions on behalf of the Applicant. Hence, whether the applicant had the requisite *mens rea* that she was dealing with POC can only be ascertained after evidence has been led.

58. Since it was Ajay Chandra who was dealing with this property and had a Power of Attorney in his name, *prima facie* lends credence to the fact that the Applicant was not involved in laundering POC.

TRIKAR GROUP

59. As regards the allegation of money laundering from the Trikar group is concerned, the alleged activities date back to 2014-15 when an individual named Mr Anuj Malik was handling the trading in Trikar group. Mr Malik has been cited as a witness by the ED. Though the entire shareholding was transferred to the Applicant in 2017, the same was being handled by Ajay Chandra and Sanjay Chandra.

60. There is nothing on record to establish the applicant's link/connection with MNM International and Trikar General Trading. Additionally, the respondents reliance on a newspaper to further their argument is inadmissible.

61. The allegation of money laundering from Trikar Group is based on a) Pandora Papers leak and b) statement of Mr. Indrajit Zaveri.

62. The statement of Mr. Zaveri has to be compared with statement of other independent witnesses namely, Govind Sharda, Anuj Malik, and Pranav Kumar.



63. The statement of Anuj Malik clearly shows that Trikar was the brainchild of Sanjay Chandra. The Applicant only came into the picture in 2017 when the shareholding was transferred to the Applicant that too, on the instructions of Sanjay Chandra. The relevant extract of Mr Anuj Malik's statement via email dated 21.01.2022 is reproduced below:

*“3. HAVE YOU SERVED AS
DIRECTOR/SHAREHOLDER/PROPRIETOR/BENEFICIAL
OWNER/TRUSTEE ETC IF YES, GIVE DETAILS OF ENTITIES?”*

Yes. The details are as under:

a. U

i. Redwood International Limited (Holding co. in Jebel Ali Free Zone)

Established around end of 2014/ early 201 on the instructions of Mr. Sanjay Chandra who had initially made me a 100% shareholder. My shareholding was reduced to 50% in mid-2016 and was entirely transferred to Indrajit Zaveri under the instructions of Mr. Sanjay Chandra in April 2017.

ii. Ul Consultants DMCC (Dubai)

Established around early 2014 on the instructions of Mr. Sanjay Chandra who had initially made me a 100% shareholder. My shareholding was entirely transferred to Milko Sinko - a UAE based entity under the instructions of Mr. Sanjay Chandra in April 2017.

iii. MNM International FZE (RAK)(new name :PC Global FZE)



Established around mid 2015 on the instructions of Mr. Sanjay Chandra who had initially made me a 100% shareholder. My shareholding was entirely transferred to Preeti Chandra under the the instructions of Mr. Sanjay Chandra in April 2017.

.....

6. WHAT IS TRIKAR ? & WHO COINED THIS NAME TRIKAR?

7. WHAT IS THE RELATIONSHIP OF THE WORD TRIKAR WITH THE CHILDREN OF SANJAY & PREETI CHANDRA

Formed in 2015, TRIKAR group was the brainchild of Mr. Sanjay Chandra. In his own words to me, TRIKAR name was coined by joining the first three letters of the names of his daughter TRISHA and son KARAN.

.....

12. KEY PERSONS IN TRIKAR GROUP AND THEIR ROLES(FORMAL AS WELL AS INFORMAL) IN THE GROUP

Apart from Mr. Sanjay Chandra; Pranav Kumar and Manoj Popli (former CFO Unitech Ltd) in Gurgaon were the persons I used to get instructions from. Towards 2016-2017, instructions were also coming from Indrajit Zaveri and Milko Sinko.”

64. The relevant extract of the statement of Mr. Pranav Kumar dated 06.01.2022 is reproduced below:

“Q. No 4 Please give details of your interactions with the Unitech group or its promoter’s i.e. Chandra’s.



.....

Sanjay Chandra was actively involved in the operations of Trikar group post substantial Investment had come in the Indian entities. He was regularly updated on the operations and compliances of the group companies. Sanjay also instructed me to shift all the necessary documents related to Trikar land owning companies from Unitech office in to Trikar office, including all the compliance and secretarial records. My team members Shilpi and Dhananjay picked up the same from the concerned department at UL office on my advice. Sanjay used to call me and shilpi to regularly meet at the Unitech office to discuss the details of funds received from Singapore and Financial statements of the Trikar group companies.

.....

Q no 9 Please give details of key persons & their role In Trikar group of companies at the time of your association with this group.

Ans. Details of key persons in Trikar group are as under:

Anuj Malik - Ultimate beneficial owner and shareholder till mid 2017

Indrajit Zaveri - Beneficial owner

Misha (alias Milko) Sinko- Beneficial Owner

Manoj Popli - Managing Director; Fund raising and overall strategy

Govind Sharda- Director and CFO

Pranav Kumar (Myself)-fund raising and overall operations

Vineet Mathur - Commercial and leasing head

SuniiKher-Civil Head

R Ravi - Commercial Accounts

Smita - Architect



Priya Kapoor (Sister of preeti Chandra) - Marketing
Shilpi varshney—Company secretary ;
Dhananiav Sharma- Accounts”

65. The extract of Mr Indrajit Zaveri's dated 23.03.2021 statement is reproduced below:

“Q.3 Is your statement 22-3-21, in answer No.12 you have stated that you have first met Mr. Sanjay Chandra and his wife Preeti Chandra at a social gathering in 2012 in Dubai at a social gathering. What happened thereafter, please describe in detail.

Ans.3 In 2012, I met Sanjay and Preeti Chandra at a social gathering. We became good friends thereafter. We spent some time together with our children too. Our friendship grew and in 2016, he asked me to become a Director in his company called Trikar Asset Management Ltd. in Cayman Islands.

He had offered to pay me a Director's salary of DHS 25,000 P/month. This carried on for a few months and then the payment of the salary completely stopped. I then requested Sanjay Chandra to remove me from all his company's Directorship.

During the years of 2015-2019, I was a Director/ share holder in his various overseas companies. During this time, Sanjay Chandra also introduced me to Mr. Milko Sinko, a Swiss National in Dubai who he had hired to run his various overseas companies. After this, Mr. Milko Sinko and I were Joint Directors in most of his companies.

.....

Q.5 What do you know about business/ profession of Preeti Chandra.



Ans.5. As far as I know, Preeti Chandra has a jewellery and fashion relation outlet in Dubai by the name of “Preeti Chandra Jewels & Fashion”. I think she opened this store in Dubai between 2017-2018.

Q.6. Do you know about her relation with Unitech Group of Companies and its overseas subsidiaries?

Ans. 6 I know that Sanjay Chandra had discussed the ease of transferring funds from a jewellery company to anywhere in the world. After this in 2017-2018, they opened “Preeti Chandra Jewels and Fashion”. I had overheard a conversation between Sanjay and Preeti Chandra regarding some transfer of funds from her jewellery company to some at Sanjay Chandra’s Overseas companies.

Q.7 Can you explain what Sanjay and Preeti Chandra were discussing about transfer of funds to Sanjay Chandra’s overseas companies?

Ans. 7. I had heard Preeti and Sanjay Chandra discuss the transferring of funds from her jewellery company to some of Sanjay Chandra’s overseas companies. I am not sure which company the funds were transferred to but they had discussed the transfer while I was present.

Now I am tired, I request you to kindly allow me to continue my statement on 24-3-21. I have tendered voluntarily without threat, pressure and duress in my full consciousness. It is true to the best of my knowledge.

23-03-21

Indrajit Zaveri

I have seen all prayers.”



66. The statements of Indrajit Zaveri, Pranav Kumar and Anuj Malik need to be reconciled and confronted with each other. The common thread of all the statements are that Trikar Group was being managed by Sanjay Chandra and not the Applicant.

67. The above statements can only be analysed once the parties enter the witness box.

68. Additionally, the fact that weighs with me is that Indrajit Zaveri was also involved in the affairs of Trikar as a dummy director. Whether he was a dummy director or active director and signed board resolutions at his own instance or at the instance of applicant are questions of trial.

69. What is unexplainable is that even though there are board resolutions of Trikar signed by Mr Indrajit Zaveri, he has not been made an accused.

70. A coordinate bench of this court in ***Chandra Prakash Khandelwal (supra)*** has held that weightage given to section 50 statement is to be analysed at the final stage and not at the stage of grant of bail. Hence, *prima facie* not much reliance can be placed on section 50 statements in view of inconsistency in the statements of Indrajit Zaveri, Anuj Malik and Pranav Kumar.

Triple Test – Flight Risk

71. A lot of stress has been laid by the learned counsel of the respondent stating that the Applicant is a flight risk. He has brought to my notice the order of the Hon'ble Supreme Court dated 25.03.2022, wherein the Applicant sought interim bail on account of attending the last rites and cremation ceremony of her deceased maternal grandmother. However, the same was denied by the Hon'ble Supreme Court as the applicant was considered a flight risk and only one day custody parole was granted to the Applicant. The learned counsel further states that the Applicant has a citizenship of Dominican Republic, a country which does not have an extradition treaty with India, thereby,



rendering credence to the argument that the Applicant will flee the country if granted bail.

72. In response to the above argument, the learned senior counsel for the Applicant states that the Applicant took the citizenship of Dominican Republic in 2016 and has travelled more than 30 times in and out of India on the Dominican Republic Passport. Furthermore, Applicant's passport has been deposited with the ED since 28.03.2022. He states that had the Applicant intended to flee, she would have done so earlier when she had the occasion.

73. As regards denial of Applicant's interim bail to attend the last rites of her grandmother is concerned, the learned senior counsel has brought to my attention the subsequent order passed by the Hon'ble Supreme Court dated 10.08.2022 where the court permitted the Applicant to approach the Sessions Court for seeking regular bail once the conclusion of interrogation by the Sessions Court. The relevant paragraphs of the order dated 10.08.2022 read as under:

"1. On 8 August 2022, the Additional Sessions Judge-06 at Patiala House Courts has allowed the application of the Directorate of Enforcement for interrogation of the applicant (Preeti Chandra) in Tihar Jail on three occasions within a period of forty days. The Court is apprised by the counsel appearing on behalf of the Directorate of Enforcement that the interrogation has commenced today. The days of the further interrogation would be determined after the conclusion of the interrogation today.

2 The application is for permitting the applicant to approach the Sessions Court, Patiala House to seek regular bail as per law in ECIR/04/DLZO-II/2018. The applicant is granted permission to move the Sessions Court, Patiala House, New Delhi (PMLA Court)



for the purpose of seeking regular bail in the above mentioned ECIR, after the interrogation which has been granted by the Sessions Court is concluded. It is clarified that any such application for bail shall be considered on its own merits. This order shall not be construed to be any direction to the Sessions Court in regard to the manner in which the application should be decided or considered.” (emphasis supplied)

74. Once the Hon’ble Supreme Court has granted liberty to the applicant to move appropriate bail application before the appropriate Court, the appropriate Court has to adjudicate the application on its own merits and the reliance of the respondent on an earlier order prior to the order of 10.08.2022 passed by the Hon’ble Supreme Court may not be of much relevance. In addition, the respondents have interrogated the Applicant on numerous occasions and lastly on 15.09.2022. Thereafter the respondents have not felt the need to interrogate the Applicant for a period of more than 7-8 months.

75. The order of 10.08.2022 passed by the Hon’ble Supreme Court assuages the concern of the Applicant being a flight risk. Additionally, the Sessions court on 07.11.2022 has stated that the Applicant is not a flight risk. Regarding the applicant being a citizen of another country i.e., Dominican Republic, which does not have an extradition treaty with India, the learned senior counsel for the Applicant states that the Applicant is willing to renounce the citizenship of Dominican Republic as a bail condition and is already in the process of taking Indian citizenship.

Triple Test – Influencing Witnesses and Tampering with Evidence

76. The learned counsel for the respondent vehemently contends that the Applicant does not satisfy the triple test as she has already attempted to influence witnesses and tamper with the evidence. He has produced WhatsApp



chats pertaining to illegal liaison of information pertaining to the criminal proceedings or otherwise between the members and associates of the Chandra family. He states that the chats show that the applicant was in constant touch with Sanjay Chandra through illegal means with the help of Mr. Lakhbir Sharma and Mr. Ravinder Kumar. He states the said activities were undertaken to tutor the applicant and show her involvement in influencing the investigation thereby, not satisfying the triple test.

77. The learned senior counsel for the Applicant opposed the said allegation and stated that the extracts of WhatsApp messages, which are between two alleged office runners, only show normal conversation between a husband and wife.

78. A perusal of the chats show that the messages are with regard to settling of a counter affidavit, exchanging greetings, details of bank accounts asked for by the court, filling of bail bonds and so on and so forth.

79. It cannot be lost sight that the applicant is the wife of Mr. Sanjay Chandra who is in Police custody. The applicant is allowed meetings and regular jail visits. All these messages could very well have been put by her to Mr. Sanjay Chandra during these jail visits. There is nothing incriminating in the messages except the fact that Mr. Sanjay Chandra should not and could not have a telephone while in jail, for which, an FIR has already been registered.

80. There are no messages which have been brought to my notice which show handling of money, monetary transactions, business decisions, siphoning off funds etc. Furthermore, as regarding tampering with evidence is concerned, it is already stated that all the documents are in the custody of the ED and therefore, the allegation of the Applicant tampering with the evidence or influencing the witnesses is not made out.

81. Today, the Applicant is in custody from 04.10.2021, charges are yet to be framed, and the trial is to commence.



82. The twin conditions of Section 45 of the PMLA will not be applicable to the applicant. The applicant has to satisfy the triple test which can be taken care of by imposing stringent conditions. The applicant has already been investigated for more than 13 occasions and has been in custody for more than 20 months.

83. For the aforesaid reasons, the application is allowed and the applicant is granted bail subject to the following terms and conditions:

- a) The applicant shall furnish a personal bond with a surety in the sum of Rs. 1,00,000 to the satisfaction of the Trial Court;
- b) The applicant shall give up her citizenship of Dominican Republic within a period of 1 week from the date of release and documentary proof of the same be placed before the learned Trial Court;
- c) The applicant shall not leave the country during the bail period and surrender her Dominican Republic passport at the time of release before the Trial Court;
- d) The applicant shall join the investigation as and when called by the I.O. concerned;
- e) The applicant shall appear before the Court as and when the matter is taken up for hearing;
- f) The applicant shall provide her mobile number to the Investigating Officer (IO) concerned at the time of release, which shall be kept in working condition at all times. The applicant shall not switch off, or change the same without prior intimation to the IO concerned, during the period of bail;
- g) In case she changes her address, she will inform the IO concerned and this Court also;
- h) The applicant shall not indulge in any criminal activity during the bail period;



- i) The applicant shall not communicate with or intimidate or influence any of the prosecution witnesses or tamper with the evidence of the case.

84. The observations hereinabove are only for the purposes of deciding the present bail application and shall not affect the merits of the case.

85. The application is allowed and disposed of in the aforesaid terms.

86. The documents handed over in Court are taken on record.

JASMEET SINGH, J

JUNE 14th, 2023/jv

[Click here to check corrigendum, if any](#)