

\$~

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on : 21.03.2023

%

Judgment pronounced on: 06.04.2023

+ BAIL APPLN. 3590/2022, CRL.M.A. 25088/2022

SATYENDAR KUMAR JAIN Petitioner

Through: Mr. N. Hariharan, Sr. Adv. with Mr. Vivek Jain, Mr. Vaibhav Yadav, Mr. Rajat Jain and Mr. Prateek Bhallam
Mr. Varun Deswal, Ms. Punya Rekha Angara, Mr. Sharian Mukherji and Mr. Mohammad Pasim, Adv.

versus

DIRECTORATE OF ENFORCEMENT Respondent

Through: Mr. S. V. Raju, learned ASG,
Mr. Zoheb Hossain, Counsel for ED,
Mr. Vivek Gurnani, Mr. Siddhartha Kaushik, Mr. Anshuman Singh, Mr. Gaurav Saini, Mr. Navneet Aggarwal, Advs. and Mr. Pawan Kumar, IO.

+ BAIL APPLN. 3705/2022, CRL.M.A. 25952/2022

VAIBHAV JAIN Petitioner

Through: Dr. Sushil Kumar Gupta, Ms. Sunita Gupta, Mr. Sakshit Bhardwaj, Ms. Aakriti Goyal and Ms. Molly Sharma, Advs.

versus

DIRECTORATE OF ENFORCEMENT

..... Respondent

Through: Mr. S. V. Raju, learned ASG,
Mr. Zoheb Hossain, Counsel for ED,
Mr. Vivek Gurnani, Mr. Siddhartha
Kaushik, Mr. Anshuman Singh, Mr.
Gaurav Saini, Mr. Navneet Aggarwal,
Advs. and Mr. Pawan Kumar, IO.

+ BAIL APPLN. 3710/2022, CRL.M.A. 25986/2022

ANKUSH JAIN

..... Petitioner

Through: Dr. Sushil Kumar Gupta, Ms. Sunita
Gupta, Mr. Sakshit Bhardwaj, Ms.
Aakriti Goyal and Ms. Molly Sharma,
Advs.

versus

DIRECTORATE OF ENFORCEMENT

..... Respondent

Through: Mr. S. V. Raju, learned ASG,
Mr. Zoheb Hossain, Counsel for ED,
Mr. Vivek Gurnani, Mr. Siddhartha
Kaushik, Mr. Anshuman Singh, Mr.
Gaurav Saini, Mr. Navneet Aggarwal,
Advs. and Mr. Pawan Kumar, IO.

In ECIR/HQ/14/2017

Date of arrest:

Satyendar Kumar Jain: 30.05.2022

Ankush Jain: 30.06.2022

Vaibhav Jain: 30.06.2022

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

BAIL APPLNs. 3590, 3705 & 3710 of 2022

Page 2 of 46

INDEX

Sr.No.	Title	Page No.
A.	Preface	3-5
B.	Background Facts	5-9
C.	Submissions on behalf of Satyendar Kumar Jain	9-17
D.	Submissions on behalf of Vaibhav Jain & Ankush Jain	18-23
E.	Submissions on behalf of Directorate of Enforcement	23-35
F.	Finding and Analysis	35-46

JUDGMENT

DINESH KUMAR SHARMA, J.

(A) Preface

1. This order shall dispose of applications filed under Section 439 Cr.P.C. seeking bail by the petitioners Satyendar Kumar Jain, Vaibhav Jain and Ankush Jain for an offence punishable under Section 4 of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as the PMLA) in ED complaint bearing No.ECIR/HQ/14/2017 dated 30.08.2017 which was registered in pursuance of CBI case bearing FIR No. RC-AC-1-2017-A-0005 dated 24.08.2017.
2. The bail application filed by the petitioner Satyender Kumar Jain was rejected by the learned Special Judge (P.C. Act) (CBI) -23 (MPs/MLAs cases) vide a detailed order dated 17.11.2022 having regard to the mandatory twin conditions u/s 45 of the PMLA. The Ld. Special Judge prima facie opined that the applicant/accused Satyendar Kumar Jain was involved in concealing proceeds of crime by giving cash to Kolkata-based entry operators and thereafter, bringing the cash into the companies namely, M/s.Manglayatan Developers/Projects Pvt.Ltd.,

M/s. Akinchan Developers Pvt. Ltd. and M/s.Paryas Infosolutions Pvt. Ltd. against sale of shares to project that the income of these three companies was untainted. It was held by the Ld. Special Court, PMLA that apart from that, accused Satyendar Kumar Jain has also used the same modus operandi to convert his proceeds of crime of Rs.15,00,000/- by receiving accommodation entries from Kolkata-based entry operators in his company M/s.J.J.Ideal Estate Pvt. Ltd. It was held that the applicant/accused Satyendar Kumar Jain had knowingly done such an activity to mask tracing of the source of the ill-gotten money and accordingly such proceeds of crime were layered through Kolkata based entry operators. It was further held that as and when during the check period, cash was paid by applicant/accused Satyendar Kumar Jain to the Kolkata based entry operators, the proceeds of crime stood generated. It is pertinent to mention that in the detailed bail order passed by the learned Additional Sessions Judge, it was recorded that petitioner Satyendar Kumar Jain did not dispute that accommodation entry to the tune of Rs.4.61 Crore had been received during the check period in three companies namely, M/s.Manglayatan Projects Pvt.Ltd., M/s. Akinchan Developers Pvt.Ltd. and M/s.Paryas Infosolutions Pvt. Ltd. from Kolkata based entry operators against cash. The Ld. Special Judge has discussed in detail the statement of the witnesses recorded under Section 50 PMLA (2002).

3. Further, the Ld. Special Court, PMLA, vide separate order of the same date i.e. 17.11.2022, also rejected the bail applications of applicants/accused Vaibhav Jain and Ankush Jain, predominately on the ground that Vaibhav Jain and Ankush Jain knowingly assisted co-

accused Satyendar Kumar Jain in the concealment of proceeds of crime. It was held, inter alia, that it was prima facie established on record that cash for obtaining accommodation entries was paid by petitioners Satyendar Kumar Jain, Vaibhav Jain and Ankush Jain. Learned ASJ returned a finding that during the check period, even if the transactions were made by Vaibhav Jain and Akash Jain, the same were done by them on behalf of petitioner Satyendar Kumar Jain. It was held that the applicants/accused Vaibhav Jain and Ankush Jain projected the proceeds of the crime as untainted by claiming the proceeds of the crime to be their unaccounted income under IDS, 2016. In view thereof, Ld. Special Judge dismissed the bail applications of Vaibhav Jain and Ankush Jain.

(B) Background Facts:

4. Briefly stated facts are that CBI registered FIR No. RC-AC-1-2017-A-0005 dated 24.08.2017 under Sections 13 (2) r/w 13 (1) (e) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'P.C.Act') and under Section 109 IPC against petitioners Satyendar Kumar Jain, Ms.Poonam Jain w/o Satyendar Kumar Jain, Sh. Ajit Prasad Jain, Sh. Sunil Kumar Jain, Sh. Vaibhav Jain and Sh. Ankush Jain. CBI after investigation filed the charge sheet against the above-mentioned accused persons wherein it was alleged that the accused Satyendar Kumar Jain was found to be in possession of assets to the tune of Rs.1,47,60,497.67/- (i.e. 217.20 % of the income) disproportionate to his known source of income, which he could not

explain satisfactorily. The applicant/accused Satyendar Kumar Jain was alleged to have committed an offence under Section 13 (2) r/w 13 (1) (e) of the P.C. Act and it was further alleged by the CBI that Smt. Poonam Jain w/o Satyendar Kumar Jain and other business associates of Satyendar Kumar Jain namely Sh. Ajit Prasad Jain, Sh. Sunil Kumar Jain, Sh. Vaibhav Jain and Sh. Ankush Jain abetted Satyendar Kumar Jain in the commission of acquisition of disproportionate assets and thus committed the offence punishable under Section 109 IPC r/w 13 (1) (e) of the PC Act.

5. An investigation was initiated under the provisions of the PMLA after recording ECIR bearing ECIR/HQ/14/2017 dated 30.08.2017 as the offences under Sections 13 (2) r/w 13 (1) (e) of PC Act are 'scheduled offences' under the PMLA. It was alleged that during the check period from 14.02.2015 to 31.05.2017, four companies, M/s Akinchan Developers Pvt. Ltd., M/s Prayas Infosolution Pvt. Ltd., M/s Mangalayatan Projects Pvt. Ltd. and M/s J.J.Ideal Estate Pvt. Ltd. received accommodation entries from Kolkata based entry operators through shell companies against cash in sum of Rs.2,01,83,200/-, Rs.69,00,300/-, Rs.1,90,00,000/- and Rs.15,00,000/- respectively totaling Rs. 4,75,83,500/-. The said companies have been alleged to be beneficially owned and controlled by accused/petitioner Satyendar Kumar Jain. During this period, it has been alleged that a sum of Rs.5,32,935/- was also received on account of commission.
6. The Directorate of Enforcement filed a complaint under Sections 44 and 45 of the PMLA for the commission of offence under PMLA as defined under Section 3 read with Section 70 punishable under Section

4 of PMLA Act against Satyendar Kumar Jain, Poonam Jain w/o Satyendar Kumar Jain, Sh. Ajit Prasad Jain, Sh. Sunil Kumar Jain, Sh. Vaibhav Jain and Sh. Ankush Jain, M/s Akinchan Developers Pvt. Ltd., M/s Prayas Infosolution Pvt. Ltd., M/s Mangalayatan Projects Pvt. Ltd. and M/s J.J.Ideal Estate Pvt. Ltd. The complainant has alleged that the petitioner Satyendar Kumar Jain hatched a criminal conspiracy and conceptualized the idea of accommodation entries against cash. The petitioner to execute this idea recommended appointing his old friend Sh. Jagdish Prasad Mohta, a Chartered Accountant, as the auditor of Akinchan Developers Pvt. Ltd., Paryas Info Solution Pvt. Ltd., Metalimpex Pvt. Ltd. and Mangalayatan Projects Pvt.Ltd. It has been alleged that at the instance of the petitioner, Sh. Jagdish Prasad Mohta arranged a meeting between Satyendar Kumar Jain and Rajendra Bansal, a Kolkata based accommodation entry provider in July/August, 2010. In the said meeting the modalities of taking accommodation entries was finalised like percentage of commission, process of cash transfer and documents to be maintained etc. ED has alleged that Satyendar Kumar Jain was the conceptualizer, initiator, and supervisor for the entire operation of these accommodation entries. Allegedly, Satyendar Kumar Jain was hiding behind the 'Corporate Veil' whereas actually he was managing and controlling the companies in which these accommodation entries were received. It was alleged that the accommodation entries totaling to Rs. 4.81 Crore were received during the period 2015-16 from Kolkata based entry operators in the bank accounts of the aforesaid companies and cash totaling Rs.4,65,99,635/- was paid to them. The petitioner Satyendar Kumar Jain allegedly

received accommodation entries of Rs. 15,00,000/- in his company J.J. Ideal Estate Pvt. Ltd. during the year 2015-16 from Kolkata based entry operators by paying cash amounts of Rs. 15,00,000/- and commission of Rs. 16,800/-. Allegedly, the petitioner laundered the proceeds of crime acquired through disproportionate assets through a complex web of transactions in the companies controlled by him. It was alleged that the petitioner committed the offence of money laundering as defined under Section 3 of PMLA by actually acquiring, possessing, concealing and using the proceeds of crime to the tune of Rs.4,81,16,435/- and projecting and claiming the same as untainted. In the complaint the ED has alleged that the petitioners Vaibhav Jain and Ankush Jain are also involved in knowingly assisting Satyendar Kumar Jain by making separate and independent declarations under IDS 2016 for declaring undisclosed income of Rs. 8.26 crore for the period from 2010-11 to 2015-16 in order to protect Sh. Satyendar Kumar Jain. It is alleged that Vaibhav Jain and Ankush Jain also prepared ante dated documents with the help of Sunil Kumar Jain and Sh. Jagdish Prasad Mohta with regard to their Directorship in Akinchan Developers Pvt. Ltd., Indo Metalimpex Pvt. Ltd., Prayas Infosolution Pvt. Ltd. and Mangalayatan Projects Pvt. Ltd. by becoming Directors of aforesaid companies from back date for showing his IDS declaration as genuine. It was alleged that thus Vaibhav Jain and Ankush Jain have committed the offence of money laundering as defined under Section 3 of PMLA by being actually involved in and knowingly assisting petitioner Satyendar Kumar Jain in projecting his proceeds of crime to the tune of Rs.4,81,16,435/- as untainted in the mode and manner as aforesaid in

the complaint. Cognizance of the complaint has already been taken on 29.07.2022.

(C) Submissions on behalf of Satyender Kumar Jain

7. Petitioner Satyendar Kumar Jain has assailed the order of the learned Special Judge predominantly on the ground that the learned Special Judge misread and misapplied the provisions of PMLA by identifying proceeds of crime solely on the basis of accommodation entries. It was pleaded that petitioner Satyendar Kumar Jain has no control over the aforementioned companies. It has been submitted that the petitioner Satyendar Kumar Jain is being tried twice for the same set of acts which is contrary to Article 20 (2) of the Constitution of India and Section 300 (1) of Cr.P.C. The petitioner has stated that even an offence under Section 13 (1) (e) is not made out. It has been submitted that the learned Special Judge in the impugned order has travelled beyond the 'predicate' offence and inter alia held that shareholding is not relevant to show control over the companies. It has further been submitted that the order of the learned Special Judge is contrary to the dictum as laid down in the case of *Vijay Madanlal Choudhary & Ors vs. Union of India & Ors.*, 2022 SCC OnLine SC 929. It has been submitted that there is no apprehension of tampering with evidence or witnesses and the statements of various persons as recorded by ED makes it clear that the petitioner Satyender Kumar Jain has never given any cash to anyone in the check period. The transfer of cash by petitioner to Kolkata Companies during the check period is the main foundation of alleged case against the petitioner but there is no proof or evidence to that effect in the complaint filed by the ED.

8. Petitioner Satyendar Kumar Jain submitted that no proceeds of crime were found from the petitioner Satyendar Kumar Jain during the raids and house-search conducted on 25.08.2017, 30.05.2018 and 06.06.2022. Petitioner Satyendar Kumar Jain has stated in his bail application that none of the lands were purchased in the name of the petitioner or his family members nor had he signed any conveyance deeds of three companies during the check periods. It was submitted that during the check period no property was purchased by M/s Prayas Infosolution Pvt. Ltd. or M/s Mangalayatan Projects Pvt. Ltd. It was stated only one property was purchased during the check period by M/s Akinchan Developers Pvt. Ltd., however the same was not in the name of petitioner Satyendar Kumar Jain or his family member. It has been submitted that MOU dated 28.03.2010 has wrongly been rejected by the learned Special Judge. Petitioner Satyendar Kumar Jain has stated that he had been complying with the summons issued by various authorities from time to time. Further, the petitioner Satyendar Kumar Jain has deep roots in the society and is a second-time sitting Member of Legislative Assembly in Delhi Assembly and there is no fear of him absconding. The petitioner has placed reliance on the cases of ***P. Chidambaram v. Directorate of Enforcement*** (2020) 13 SCC 791, ***Ashok Sagar v State***, 2018 SCC OnLine Del 9548, ***Satender Kumar Antil Vs Central Bureau of Investigation and Another***, 2022 SCC OnLine SC 825, ***Sanjay Chandra v. CBI*** (2012) 1 SCC 40 to buttress his above contentions.
9. Mr. N. Hariharan, Ld. Senior Counsel for the petitioner along with Mr. Vivek Jain, Advocate has submitted that during the check period, the

petitioner Satyendar Kumar Jain had not acquired any assets and even the CBI in its charge sheet has accepted that assets purchased by the petitioner Satyendar Kumar Jain before check period were found to be the same at the end of the check period. It has been submitted that therefore, the whole DA case as set up by CBI is of notional attribution of 1/3rd of share capital in the three companies to make the petitioner liable under Section 13 (1) (e) of the Act which is totally illegal and contrary to the law. Reliance in this regard been placed on ***Rustom Cavasjee Cooper v. Union of India***, (1970) 1 SCC 248. Learned Senior Counsel submitted that it is a settled proposition that assets of the company cannot be considered as assets of the Director/shareholder. Reliance has also been placed on ***Gillette India Limited vs. Delhi Development Authority (2019)*** SCC OnLine Del 8451 in which it was inter alia held that the shares of a company are a separate asset wholly distinct from assets held by the company.

10. Mr. N. Hariharan, Ld. Senior Counsel referred to statement made by witnesses Sh.J.P.Mohta, Rajender Bansal, Jivendra Mishra, Ashish Chokhani and Manish Surekha. Ld. Senior Counsel also submitted that Vaibhav Jain and Ankush Jain in their statements under Section 50 of PMLA have also categorically stated that the amounts belonged to them and the role of the applicant was as consultant being an architect and families of Vaibhav Jain and Ankush Jain as investor as revealed from MOU dated 28.03.2010. Further, it has been submitted that the learned Special Judge has failed to appreciate that Vaibhav Jain's and Ankush Jain's families were financially sound and had different sources of income. It was submitted that the investigation is complete

in this matter and the complaint has already been filed, therefore further incarceration of the petitioner pending further proceedings and Trial is not justified in law.

11. Ld. Senior Counsel has submitted that even as per admitted documents, the petitioner Satyendar Kumar Jain and his family had never owned 1/3rd share in the three companies and it has been submitted that the petitioner retired as Director from three companies in the year 2013 and share holding was also transferred to his wife in the year 2013 itself. Ld. Senior Counsel submitted that even if as per documents of CBI and ED, the shareholding of the applicant's wife is 19.06% in M/s Akinchan Developers Pvt. Ltd., 1.50% in M/s Paryas Infosolutions Pvt. Ltd. and 10.43% in M/s Manglayatan Developers/Projects Pvt.Ltd. It has been submitted, without prejudice to the above raised contentions, that even if the said amount is assumed to be notionally attributed to the applicant, his wife's share would only come to Rs.59,32,122/- which is less than a crore and therefore the petitioner is entitled to bail under the proviso to Section 45 PMLA.
12. Ld. Senior Counsel has submitted that even as per the complaint of the ED, the shares which were bought by Kolkata based shell companies were ultimately bought back by Vaibhav Jain and Ankush Jain and therefore Satyendar Kumar Jain or his family neither received the amount which came to the companies nor received any share which were issued to Kolkata based companies. Learned senior counsel has further submitted that while CBI alleged DA of Rs.1,47,60,497.67/- but ED in its complaint quantified proceeds of crime as Rs.4,81,16,435/- which is illegal, arbitrary and not tenable in law. Learned senior

counsel submits that even as per judgment of **Vijay Madanlal Choudhary** (*supra*), the proceeds of crime can only relate to the predicate offence. Thus, if in predicate offence the DA alleged is Rs.1.47 crore, the proceeds of crime under PMLA cannot go beyond it. Ld. Senior Counsel submits that even the allegation of criminal conspiracy in the complaint filed by the ED is missing in the charge-sheet filed by the CBI in the predicate offence. Ld. Senior Counsel further submitted that the established criteria to show control of a person on a company i.e. share holding, directorship, annexure documents, authorized signatory would show that the petitioner Satyendar Kumar Jain had no control over the companies. It has been submitted that during the check period petitioner Satyendar Kumar Jain did not sign any conveyance deed. It has further been submitted that Sh. Ajit Prasad Jain, Sh. Sunil Kumar Jain, Sh. Vaibhav Jain and Sh. Ankush Jain were the key management persons in the three companies. Ld. Senior Counsel has further submitted that the assumption of proceeds of crime on the sole basis of accommodation entries is completely contrary to the concept of proceeds of crime as explained in the judgment of **Vijay Madanlal Choudhary** (*supra*). It has been submitted that the accommodation entry in itself cannot be assumed in law to be the proceeds of crime as it can be a tax violation but cannot be considered as proceeds of crime.

13. With regard to the statements made under Section 50 of PMLA, Ld. Senior Counsel relied upon the judgment of this court in **Chandra Prakash Khandelwal vs. Directorate of Enforcement**, 2023 SCC OnLine Del 1094 wherein it was inter alia held that what weight the

statements under Section 50 of PMLA would carry at the end of trial cannot be tested at the stage of bail. Ld. Senior Counsel has submitted that similarly in *Sanjay Pandey vs. Directorate of Enforcement* 2022 SCC OnLine 4279, this court held that at this stage, the court is not to determine the guilt of the accused but to only assess the matter on broad probabilities. Ld. Senior Counsel has further relied upon *Prakash Industries Ltd. & Anr. vs. Union of India* 2022 SCC OnLine 2087 wherein it was inter held that ED stands empowered under the PMLA to inquire offences relating to money laundering and it has no jurisdiction to investigate or to enquire into an offence other than that which comprised in Section 3 of the PMLA.

14. Mr. Hariharan, Ld. Senior Counsel has relied upon the statement of Mr. J.P. Mohta recorded under Section 50 of PMLA on 14.11.2019 (RUD-50 @ 2104-2170) wherein he has stated that regarding the companies jointly held by Satyendar Kumar Jain, Sunil Kumar Jain and Vaibhav Jain any one of them talked about their companies namely Akinchan Developers Pvt. Ltd., Paryas Infosolution Pvt. Ltd., Indo Metalimpex Pvt. Ltd. and Mangalayatan Projects Pvt. Ltd. and that was final for all. It was stated that the witness Jivendar Mishra has also stated that he has not personally met Satyendar Kumar Jain and had talked to him in 2010 over phone in the office of his friend Rajender Bansal.

15. Ld. Senior Counsel submitted that the order of learned Special Judge is based on assumptions and presumptions that the cash is provided by three persons i.e. Satyendar Kumar Jain, Vaibhav Jain and Ankush Jain and thus the amount received in the companies are to be divided into

three parts. Ld. Senior Counsel has submitted that learned Additional Sessions Judge has ignored the statements of Vaibhav Jain and Ankush Jain that the amounts belonged to them. It has been submitted that the offence under Section 13 (1) (e) of PC Act is time specific offence for which check period is determined. It has been submitted that only at the conclusion of the check period, the predicate offence under Section 13 (1) (e) of PC could be alleged. Reliance has been placed upon *Yogendra Kumar Jaiswal vs. State of Bihar*, (2016) 3 SCC 183.

16. It has been submitted that M/s JJ Ideal Estate Ltd purchased the shares of Manglayatan at the rate of Rs. 10 per share before the check period and sold it at the same price of Rs. 10 per share. Hence JJ Ideal Estate Ltd. in no manner profited or benefited from the selling the shares of Manglayatan. Therefore, the money received in J.J. Ideal Pvt. Ltd. was not made part of the CBI predicate offence. Hence ED cannot improve and go beyond the predicate offence.
17. It has further been stated that IDS/PCIT vide order 09.06.2017 and HC vide order dated 01.08.2019- rejected IDS on the ground that information about the benami proceedings related to Applicant were not disclosed. Ld. Senior Counsel submits that Satyendar Kumar Jain was not party to such proceedings. The basis of said rejection now goes as the Benami proceedings and PAO dated 24.05.2017 now stands quashed by HC vide order dated 10.10.2022. Moreover, as regards the criminal prosecution under Benami Act, the coordinate Bench of this Court in Writ Petition (Crl.) No.294/2021 vide order dated 26.09.2022 has continued the stay of proceedings and also ordered that benami proceedings cannot be used in other collateral proceedings. Ld. Senior

Counsel submitted that the amount of IDS rejected was added to the income of Applicant and same is challenged by him under normal procedure by filing appeal before CIT - Appeal. Hence rejection of IDS is of no consequences to applicant.

18. Ld. Senior Counsel submits that while dealing with the twin conditions under section 45 of 2002 Act the Supreme Court in ***Vijay Madanlal Choudhary and others*** (*supra*) inter alia held that it cannot be said that the conditions provided under Section 45 of 2002 Act impose absolute restraint on the grant of bail. It was stated that discretion vests in the Court which is not arbitrary or irrational but judicial, guided by the principles of law as provided under Section 45 of the 2002 Act. Reliance has also been placed on ***Ranjitsing Brahmajeetsing Sharma*** (2005) 5 SCC 294. Reliance has also been placed on ***Bineesh Kodyeri vs Directorate of Enforcement*** (2021) SCC OnLine Kar 14786, in which it was inter alia held that there is no bar for granting bail to an accused when he is accused of committing the economic offence and it depends on facts and circumstances of each case.
19. Ld. Senior Counsel has further placed reliance on ***P. Chidambaram vs. Directorate of Enforcement*** (2020) 13 SCC 79 wherein it has been inter alia held that the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. It was further inter alia held that ultimately the consideration will have to be on case-to-case basis on the facts involved therein and securing the presence of the accused to stand trial.

20. Learned senior counsel for the petitioner submitted that the alleged misconduct in the Jail highlighted by the Respondent is not germane to the issue of a grant of bail. Even otherwise, it has been stated that the power of investigation with ED under PMLA is only for investigating "proceeds of crime" as also held by the Supreme Court in **Vijay Madan Lal Chaudhary's** judgment (para 162, 175A). Reliance has also been placed on **Ms Prakash Industries Limited v. Union of India** W.P. (C) 13361/2018 to buttress the contention that the powers u/s 50 is to conduct an inquiry into the matters relevant for ascertaining the existence of proceeds of crime and the involvement of persons in the process or activity connected therewith. It has been submitted that in the present case, summons was sought to be sent for illegal purposes of conducting a fishing and roving inquiry into the prison. It has been submitted that the ED cannot by its own motion, expand those powers that are given u/s 50, PMLA, 2002 and broaden it to administer control over the Jail personnel, members of the Jail Authority or the office of the Superintendent of the Tihar prison.
21. Ld. Senior Counsel also submitted that the inquiry was conducted in haste in a biased manner by the Jail Superintendent on the complaint made by a politician belonging to an opposite political party. It has been stated that the issue of inquiry/punishment ticket issued by Tihar Prison is under consideration by the concerned Court and hence, the matter being sub-judice, cannot be considered against the petitioner at this stage.

(D) Submissions on behalf of Vaibhav Jain and Ankush Jain

22. Dr. Sushil Gupta, learned counsel for the applicants has submitted that the provisions of PMLA cannot be invoked in the present case. The CBI charge-sheeted the applicants for an offence under Section 109 IPC which is not a scheduled offence and the role of the applicants as alleged by ED in its complaint is that of an offence of abetting Satyender Jain in the commission of the offence of disproportionate assets by way of filing of declaration under IDS in 2016 and projecting the proceeds of crime of Satvender Jain as untainted.
23. Learned Counsel for the applicants submits that Section 2(1)(u) of PMLA provides for a restricted definition of 'Proceeds of Crime' by linking it to a scheduled offence. It has been submitted that the offence of disproportionate assets is period-specific and not incident-specific as held in the case of *Yogendra Kumar Jaiswal & Ors. v. State of Bihar & Ors.* (supra). He submits that case for disproportionate asset gets accomplished only after the end of the check period and it is on that day it can be said the 'Proceeds of Crime' are generated.
24. Learned counsel submitted that ED can investigate only the money laundering offence and not the scheduled offence. Therefore, the present case is beyond the scope of the investigation of ED. Reliance in this regard has been placed on the judgement of the co-ordinate Bench of this Court dated 24.01.2023 in W(C) No. 13361/2018 titled *M/S Prakash Industries Limited vs Union Of India*. Learned counsel also submitted that the learned Special Judge has committed an error by making presumptions for dividing the alleged 'Proceeds of Crime' by three in contravention of the settled law in this respect. In a

disproportionate assets case, shareholding in the Companies has got no nexus with the calculation of the disproportionate assets.

25. Learned counsel has placed reliance on *Jayadaya Poddar v. Bibi Hazra*, (1974) 1 SCC 3, *Krishn and Agnihotri v. State of Maharashtra*, 1977 I SCC 816 and *Vasant Rao Guhe vs. State of M.P* 2017 14 SCC 442 to assert that it is for the prosecution to prove by way of positive evidence that Vaibhav Jain and Ankush Jain are benami holder of Satyendar Kumar Jain.
26. Learned Counsel for the applicants also submits that the Learned Special judge has wrongly relied upon the statement of J.P. Mohta as the same is to be read as a whole. The Learned Counsel for the applicant submits that the response of JP Mohta for not being aware as to the 'source of the case' cannot be relied upon for believing that the cash sent to Kolkata-based companies was belonging to Satyender Jain. Further, the learned counsel submits that ED's case is just based on assumptions and presumptions in stating Satyender Jain is having effective control over, whereas the parameters for consideration for looking into the effective control of the Company be it the Directorship of the Company, majority shareholding in the Company, signing of financial statements, authorised signatories in respect of the bank accounts, signing of land deals during the check period, possession of documents pertaining to the land holding of the company, possession of cheque books in respect of the bank accounts of the company, issuance of cheques on behalf of the company etc. Learned counsel submits that records points to the fact that the present Applicants were having the effective control of the Company and not Satyender Kumar Jain. The

learned Counsel has submitted that even the decision-making power in respect of the allotment of shares and the price at which they had to be allotted vested with the families of the present applicants.

27. The Learned Counsel for the applicants has also submitted that the learned Special Judge has wrongly disregarded the MOU entered on 23.08.2010 between Ajit Prasad and Sunil Jain with Satyender Jain on the ground that the same was not filed before the Registrar of Companies and the auditor of the Company not being aware of it. He submits that as per the MOU, it was agreed that the first party was to have majority stake holdings in the companies and were to make investments in projects and Satyender Jain was to provide for architectural planning, designing, construction, management, and supervision of the projects on a predetermined fee of 2.5% of the cost of the project. He submits that the MOU provides the circumstance to substantiate the aspect that the investments made in the Company were made by the first party.
28. The learned Counsel for the applicants submits that the learned Special Court erred in holding that the companies were not doing any business. He submits that all these four companies were to be used for the purpose of developing projects after the land pooling policy of DDA got notified. In the present case, the learned counsel submits that the Company was engaged in the process of purchasing land for it to be developed at a later stage. He also submitted that the Company got its revenue either from share capital or from loans advanced to it or by making profits from the functions it performs.

29. Learned Counsel for the applicants submits that IDS was filed in an individual capacity by the applicants and the same is being misconstrued as having been made on behalf of the Company as its Director. He submits the statement made by Sh. J.P. Mohta in respect of antedating documents for availing IDS is not truthful. It is the case of ED that IDS was filed by the applicants to assist Satyender Jain in laundering money and this regard reliance has been placed on the order dated 21.08. 2019 passed by this Court in W.P.(C) No. 654/2017 vide which the order of Principal Commissioner, Income Tax cancelling the IDS was upheld and further reliance has been placed on the order of the Hon'ble Supreme Court where the SLP filed against this judgment dated 21.08.2019 was dismissed in limine. However, Learned counsel submits that the reliance is misplaced as:

a. these proceedings were being held in a different case ie., pertaining to cancellation of the IDS and the same cannot be relied upon in respect of the present proceedings in lieu of the provision of S.43 of the Evidence Act.

b. the Principal Commissioner, of Income Tax, heavily relied on the proceedings carried out by the Initiating Officer under Section 24 of the Benami Transaction (Prohibition) Act, 1988 while cancelling the IDS and the said proceedings carried out by the Initiating Officer have been subsequently quashed by this court in view of the law laid by the Apex Court in the case of Union of India & Anr. Vs. Ms Ganpati Dealcom Pvt. Ltd., AIR 2022 SC 4588.

c. Writ Petition filed against the cancellation of IDS was based on a violation of principles of natural justice and consequence of dismissal of the said Writ petition was that the normal income tax proceedings would go on.

30. Further, it has also been submitted that IDS was filed in 2016 and at that point in time there was no generation of proceeds of crime as the disproportionate case can only be said to have been accomplished on 31.05.2017.
31. Learned Counsel has also drawn the attention of the court to the statements of the applicants recorded on various dates to support the contention that the applicants have duly disclosed the source of cash sent by them to Kolkata-based companies. In view thereof, it has been submitted that the applicants satisfy the twin conditions of Section 45 of PMLA and therefore may be enlarged on bail. Reliance has been placed on the judgement of the Supreme Court in ***Vijay Madanlal Chaudhary*** (supra) as well as ***Ranjitsing Brahmajeetsing Sharma*** (2005) 5 SCC 294. Dr.Sushil Kumar Gupta, learned counsel has also placed reliance on statement of J.P.Mohta recorded under Section 50 of PMLA (RUD No.15) regarding shareholding patterns. The details of Directorships of each of the persons downloaded from website of Ministry of Corporate Affairs has also been filed. Learned counsel has also filed Financial Statements (Balance Sheets and Audit Reports) of Mangalayatan Projects Pvt. Ltd., Akinchan Developers Pvt. Ltd., Paryas Infosolution Pvt. Ltd. and Indo Metalimpex Pvt. Ltd. Dr.Sushil Kumar Gupta has also placed on record the statement recorded under

Section 50 of PMLA of Jagdish Prasad Mohta, Vaibhav Jain, Ankush Jain, Rajender Bansal, Jivendra Mishra, Abhishek Chokhani, Manish Sureka and Babloo Pathak.

32. Lastly, it has been submitted that the Applicants also qualify the triple test as the applicants have deep roots in society and are not a flight risk. He submits that since the Complaint has already been filed and the records are before the court, the question of tampering with them does not arise nor there is any chance of influencing the witnesses. Learned Counsel submits that the allegations made against the Applicants are not at all sustainable.

(E) Submissions on behalf of E.D.

33. Mr.S.V.Raju, learned ASG assisted by Mr.Zoheb Hossain, learned Special Counsel for ED submitted that the Ld. Special Court has taken cognizance in CBI Case No. 2572019 by an order dated 30.04.2019 and subsequently Ld. Special Court has also taken cognizance of the PMLA case by an order dated 29.07.2022 holding that there is prima facie sufficient incriminating evidence about the involvement of the accused. This in itself is sufficient to demonstrate at this stage, not only the existence of the scheduled offense but also the existence of proceeds of crime. Therefore, the accused cannot question the existence of scheduled offence in a collateral matter before this court in proceedings of bail. Even otherwise, without prejudice to the above contention, the offence of money laundering is clearly made out as the five companies in which accommodation entries from bogus shell companies based in Kolkata have come namely (i) M/s. Akinchan Developers Pvt.Ltd.,(ii) M/s Prayas Infosolution Pvt.Ltd.,

- (iii) M/s. Manglayatan Projects Pvt. Ltd., (iv) Indo Metalimpex Pvt. Ltd. & (v) M/s. J.J. Ideal Estate Pvt. Ltd. neither did any real business nor earned any income and did not have any intrinsic value.
34. Learned ASG submitted that the courts have time again opined that in cases involving cash transactions and criminal conspiracy around such cash dealings, there is rarely any direct evidence, and the prosecution is entitled to draw inferences based on circumstantial evidence and therefore, the circumstances before, during and after the occurrence of the offence have to be considered to determine the complicity of the accused. Reliance in this regard is placed on ***Ram Narain Popli vs. Central Bureau of Investigation*** (2003) 3 SCC 641.
35. In the present case, it has been submitted that it is an undisputed fact that all these companies were being directly controlled by Satyender Jain till 2013 and have received accommodation entries from the very same Kolkata-based shell companies both prior to and during the check period with the aid of the very same accommodation entry providers (Rajendra Bansal, Jivendra Mishra) facilitated by the very same Chartered Accountant Sh. JP Mohta who was admittedly also hired by Sh. Satyender Jain and introduced as the auditor of all these companies. It has been submitted that the statements recorded during the investigation including that of the co-accused Vaibhav Jain, Sh. JP Mohta, the auditor in all these companies, Sh. Babloo Pathak the employee of JP Mohta, Sh. Rajender Bansal, Sh. Jivendra Mishra, Sh. Abhishek Chokhani and Sh. Manish Surekha entry providers and the statements of the investors clearly indicate that Satyender Kumar Jain continued to have de facto control over the four companies both prior

to July 2013 and even after his ostensible formal exit from these companies.

36. Further, it has been submitted that the principle of corporate personality loses its sanctity when the shareholders are family members and companies are closely held and when the shareholders and directors themselves by their conduct and statement do not maintain the legal sanctity of distinct shareholding. In this case, it has been submitted that Sh. Satyender Jain though not the legal owner/director or shareholder in the companies on paper was in fact the beneficial owner of the said companies. Reference has been made to the statement of Mrs. Poonam Jain and statements of Mr. Pankul Aggarwal, Sh. Sunil Kumar Jain as well as Ajit Prasad Jain.
37. It has also been submitted that the Supreme Court in a catena of judgments has held that where corporate structures have been used for committing fraud or economic offences or have been used as a facade or a sham for carrying out activities otherwise prohibited by law, then the principle of lifting of corporate veil can be invoked. Reliance has been placed on *Life Insurance Corporation of India vs. Escorts Ltd.* and Ors. (1986) 1 SCC 264 and *Balwant Rai Saluja vs. Air India Ltd.* (2014) 9 SCC 407. Learned ASG also submitted that the PMLA itself recognizes the 'beneficial owner' as defined in Section 2 (fa). In view thereof, the entire amount of Rs. 4.81 Crores received in the companies has been rightly attributed to the Applicant / accused as the companies were being run as a sham to hide the illegal activities of the Applicant and the PMLA itself specifically.

38. Learned ASG submits that the source of the cash entries remained unexplained. He submits that Sh. Vaibhav Jain, in his statement given on 27.02.2018 stated that the cash for accommodation entries was being provided by Satyender Kumar Jain as well and he also stated that the idea behind accommodation was mooted by Satyender Kumar Jain for purchasing agricultural land and developing township.
39. It has also been submitted that when the details of turnover and net profit or loss of Ajit Traders and M/s Ankush Fragrance were examined and confronted to Sh. Vaibhav Jain and Sh. Ankur Jain., the Income disclosure of Rs. 8.25 crore each was found to be bogus. Learned ASG submitted that the bogus declaration is substantiated by the rejection order dated 09.06.2017 whereby the Principal Commissioner of Income Tax rendered a finding that the income of Rs. 8.26 crore + Rs. 8.26 crores sought to be declared by Sh Vaibhav Jain and Ankush Jain under Income Disclosure Scheme, was, in fact, not their own income and that it was actually belonging to Sh. Satyender Kumar Jain. It is pertinent to note that this relevant fact has attained finality as the order dated 09.06.2017 was upheld by this court as well Supreme Court.
40. Further, it has been submitted that Satyendar Jain wrote a letter to the department on 27.6.2018 requesting the income tax department to adjust the demand payable by him for the assessment year 2011-12 with the taxes paid by Vaibhav and Ankush Jain during IDS declaration of Rs. 16.50 crore and to adjust the same with his liability. This clearly shows that Sh. Satyender Jain owns up to the fact that the money deposited as tax by Vaibhav and Ankush Jain was in fact his money

paid as tax using which he seeks to discharge his debt or tax liability to the department.

41. Learned ASG submitted that the entire scheme of IDS deceleration by Sh. Vaibhav Jain and Sh. Ankur Jain was done to shield Satyender Jain and his family members and to assume the entire liability upon themselves to give it a color of tax evasion simplicity rather than the criminal activity relating to the disproportionate asset and money laundering. This can be seen from the fact that the amount of Rs. 16.50 crore received as accommodation entry admittedly had been split between Sh. Ankush Jain and Vaibhav Jain down in the middle without even acknowledging the fact that there were several other shareholders and disregarding the corporate personality of these companies. Learned ASG submitted that even in the statement dated 30.06.2022 recorded under Section 50 of PMLA Vaibhav Jain has stated that he had asked J.P. Mohta to appoint him director in the three accused companies and that Mohta advised that it can be done with backdated documents to which Vaibhav Jain consented. Learned ASG submits that this statement has never been resiled from and therefore demonstrates the fact that he is constantly trying to shield Satyendra Jain. Further, it is pertinent to note that JP Mohota in his statement also admitted to the fact that antedated documents were prepared for Vaibhav Jain and Ankush Jain.
42. Learned Counsel submits that accommodation entries were made by utilising the tainted money of the accused and therefore would fall under the meaning of 'proceeds of crime'. It has been submitted that the co-accused of the Applicant, Vaibhav Jain and Ankush Jain had

knowingly assisted the Applicant in the process of Money Laundering. The Applicant along with the co-accused used accommodation entries for facilitating the integration of tainted money into the financial system. It has further been submitted that the PMLA specifically includes property directly / indirectly obtained as a result of criminal activity relatable to the scheduled offence.

43. Learned ASG submitted that attribution of proceeds of crime to the tune of Rs. 4,81,16,435/- is in order. He submits that nobody has denied the fact that Rs 4.81 crores has been received as accommodation entry from Kolkata-based shell companies during the check period in lieu of cash of equal amount into the companies. It is the case of the prosecution that Sh. Satyender Kumar Jain earlier had shareholding and directorship in these companies and he only exited these companies on paper while he continued to have effective control and presence through his wife, family members and family-owned companies like J.J. Ideal Estate. Therefore, if such an amount is received in cash in these companies it cannot be said that the value is only notional.
44. Learned ASG has also submitted that even otherwise, this court at the stage of determining the grant of bail is not to examine the correctness of the charge sheet or FIR in the scheduled offence but only has to prima facie see whether a scheduled offence is committed, which has generated proceeds of crime.
45. It has also been submitted that J.P. Mohta in his statements recorded under Section 50 PMLA has stated that the amount for accommodation entries from the Kolkata-based companies during the check period were against cash payment made by Sh. Satvender Jain, Vaibhav Jain

and Sunil Kumar Jain and others. It has been submitted that Mr Mohta was appointed by Satyender Jain as statutory auditor of companies and therefore, was intimately involved in the affairs of these. His statements establish beyond doubt that the Applicant was involved in the transfer of Cash to Kolkata-based companies. Further, Supreme Court in the case of *Rohit Tondon v. Directorate of Enforcement* (2018) 11 SCC 46 inter alia has held that section 50 statements are an important piece of evidence which can be relied upon to reject bail.

46. Learned ASG submits that the entire schedule to the PMLA including the insertion of the Prevention of Corruption Act has been approved by the Hon'ble Supreme Court in the judgement of the *Vijay Madanlal Chaudhary v. UOI & Ors.* (*supra*) as well as *Ranjitsing Brahmajeetsing Sharma* (2005) 5 SCC 294.
47. It has been submitted that the plea of the accused that the basis of Section 13(1)(e) of PC Act being the factum of possession of disproportionate assets and the same factum of possession if taken to constitute the offence of Money Laundering would amount to double jeopardy and violation of Article 20(2) is premature. Learned ASG submits that at this stage the accused has neither been punished under PMLA nor under the PC Act and therefore this principle cannot be invoked at this stage. Reliance has been placed on *Sanjay Daksha v. Commissioner of Police*, 2012 SCC Online Del 60, *State of Bihar v Murad Ali khan* 1988 4 SCC 655 and *S.A. Venkataraman v. Union of India*, AIR 1954 SC 375.
48. Learned ASG submits that the Applicant should not be enlarged on bail as he is a very influential and powerful man. He continues to be a

sitting Minister in Govt of NCT Delhi and was also holding several portfolios such as Health & Family Welfare, Industries, Home, Power Water, Urban Development and Irrigation & flood Control, etc. He submits that the two entry operators namely, Rajinder Bansal and Jivender Mishra have expressed that Sh. Satyendar Jain being an influential politician will create a danger to them and their family and have therefore requested not to be confronted by Satyendar Jain.

49. Learned ASG submits that the latest development of CCTV footage of the prison cell of Satyender Jain also confirms the influence he exerts over the other co-accused namely Vaibhav and Ankush Jain who were found to be cleaning the prison cell of Satyender Jain and are clearly being tutored by Satyender Jain which is evident from their presence in the prison cell and there has been an exchange of documents which is wholly illegal. The special treatment extended by the prison authorities to Satyender Kumar Jain shows that the ED's apprehension throughout was correct that being a former Minister of Prisons and Health he is receiving favourable treatment from the prison officials including the prison doctors.
50. Sh.S.V.Raju, learned ASG argued that the conduct of accused Satyender Jain, even while in prison as an under trial prisoner depicts abuse of political authority and several violations of the Delhi Prisons Act, 2000 and Rules, 2018 committed at his behest. He contends that if accused Satyender Jain is granted bail, there is a high probability that he may misuse his liberty to influence, derail or hamper the investigation or threaten the witnesses. An additional affidavit dated 05.01.2023 was filed by the ED to buttress this apprehension. As per

the affidavit, intelligence was received that accused Satyender Jain had been abusing his position of being a sitting Minister and former Minister of Prisons, Delhi, to get undue favours from the Jail authorities, tutor his accomplices namely Vaibhav Jain and Ankush Jain, and of threatening jail authorities and government officials.

51. It has been submitted that E.D.'s apprehension regarding accused Satyender Jain abusing his position and the statements of witnesses namely Rajinder Bansal and Jivendra Mishra both dated 06.06.2022, has been further corroborated by the report of the Superintendent, Jail No. 7 that accused Satyender Jain threatened public servants (working as well as retired) of dire consequences upon his release.
52. Learned ASG also submits a person is liable to be released on bail under PMLA if he satisfies the twin conditions prescribed under Section 45 PMLA- (1) a finding by the court that the accused is not guilty of the offence of Money Laundering and (2) that he not likely to commit any offence while on bail. However, in the present case, the twin conditions are not being satisfied and therefore, the application for grant of bail is liable to be dismissed.
53. Mr.S.V.Raju, learned ASG being assisted by Mr.Zoheb Hossain, learned counsel on behalf of the Directorate of Enforcement, in addition to his submissions on facts has submitted that merely because the charge-sheet has been filed does not mean that there are changes in circumstances. It has been submitted that filing of charge sheet does not in any manner lessen the allegations made by the prosecution, rather it establishes that after due investigation agency has found material and placed the charge sheet for trial of the accused. Reliance

has been placed on *Veerupakshappa Gouda & Anr. vs. State of Karnataka & Anr.* (2017) 5 SCC 406. Learned ASG has also submitted that though the accused has a right to make successive applications for grant of bail, the court entertaining such subsequent bail applications has a duty to consider the reasons and grounds on which the earlier bail applications were rejected and in such cases the court also has a duty to record what are the fresh grounds which persuaded it to take a view different from the one taken in the earlier applications. Reliance has been placed upon *Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav and Anr.* (2005) 2 SCC 42. Learned ASG has submitted that while adjudicating a bail application, Section 439 Cr.P.C. is the guiding principle wherein the court takes into consideration, inter alia, the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the witnesses and obstructing the course of justice and such other grounds. Reliance has been placed upon *Sangitaben Shaleshbahi Datanta vs. State of Gujrat and Another* (2019) 14 SCC 522. Learned ASG submits that at the stage of bail the court cannot meticulously examine the evidence and cannot convert it into a mini trial. Reliance has been placed on *Sangitaben Shaleshbahi Datanta* (supra), *Charan Singh vs. State of Delhi* 2019 SCC OnLine Del 11996, *Bikramjit Singh vs. State* 2020 SCC OnLine Del 2309, *Sonu vs. State* 2019 SCC OnLine Del 11981 and *Jagjeet Singh vs. Ashish Mishra* (2022) 9 SCC 321.

54. Learned ASG further submitted that in reference to Section 37 of the NDPS Act, the Supreme Court in *Union of India vs. Rattan Mallik @ Habul* (2009) 2 SCC 624 has inter alia held that the expression “reasonable grounds” means something more than prima facie grounds and it connotes substantial probable causes for believing that the accused is not guilty of the offence he is charged with.
55. Learned ASG has submitted that in *Vijay Madanlal Choudhary and others* (supra) it was inter alia held that the process envisaged by Section 50 of the PMLA is in the nature of an inquiry against the proceeds of crime and is not “investigation” in strict sense of the term for initiating prosecution and the Authorities referred to in Section 48 of the PMLA are not police officers as such. Learned ASG has also relied upon *Rohit Tandon vs. Directorate of Enforcement (2018) 11 SCC 46* wherein it was inter alia held that the statement recorded by ED are admissible in evidence in view of Section 50 of PMLA.
56. In respect of plea taken by Mr.Satyender Kumar Jain that he was neither a stake-holder nor managing/controlling the five companies namely, Mangalayatan Projects Pvt. Ltd., Akinchan Developers Pvt. Ltd., Paryas Infosolution Pvt. Ltd. and Indo Metalimpex Pvt. Ltd. therefore, no criminality can be attributed to him and ED has proceeded against him only on the notional basis. Learned ASG has submitted that this plea has only been raised to mislead and misguide the investigating agencies and therefore in such cases veil can be lifted. Reliance has been placed upon *Delhi Development Authority vs. Skipper Construction Co. (P) Ltd. and Anr.* (1996) 4 SCC 622,.

57. Mr.Zoheb Hossain, learned counsel for Directorate of Enforcement has refuted of the plea taken by the learned counsel for Vaibhav Jain and Ankush Jain that Section 109 IPC is not part of the scheduled offence, therefore, since there is no scheduled offence against them, the proceedings under Section PMLA cannot sustain and has referred to the report of the Committee on Prevention of Corruption commonly known as Sanathanan Committee.
58. Mr.Zoheb Hossain, learned counsel has submitted that this question arose for consideration before Supreme Court in *P. Nallamal vs. State* 1999 (6) SCC 559 wherein it was inter alia held that abettors of all the different offences under Section 13(1)(e) of the PC Act should also be dealt with along with the public servant in the same trial held by the Special Judge.
59. Mr.Zoheb Hossain has further submitted that it is also settled proposition that same set of facts may give rise to different prosecution and punishment. Reliance has been placed on *Monica Bedi vs. State of Andhra Pradesh* (2011) 1 SCC 284 wherein it was inter alia held that the same facts may give rise to difference prosecutions and punishment and in such an event the protection afforded by Article 20 (2) is not available. It was further inter alia held that a person can be prosecuted and punished more than once even on substantially same facts provided the ingredients of both the offences are totally different and they did not form the same offence.
60. It is also pertinent to mention that Sh.Satyavrat Aggarwal, Nirmal Kumar Madhogaria, Mahender Pal Singh, Mr. Sanjay Aggarwal,

Jivendar Mishra also in his statement under Section 50 of PMLA stated that they acted as per instructions of Satyendar Kumar Jain.

(F) Finding and Analysis

61. Before proceeding further, it is necessary to refer to the relevant provisions of PMLA. Section 3 of the PMLA defines the offence of money laundering. There are certain key words under Section 3 which can be noted - (i) directly or indirectly (ii) attempts to indulge; or knowingly assists; or knowingly is a party; or is actually involved in any process or activity connected (proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming) it as untainted property. Thus, if we read the definition minutely, it is necessary that a person must be directly/indirectly involved and such person should be taken as involved if he is connected in any manner with the proceeds of crime including its (i) concealment, (ii) possession, (iii) acquisition (iv) use, (v) projecting and (vi) claiming. Thus handling the proceeds of crime in any manner as stated above constitutes the offence of money laundering. An explanation has been added by the Finance Act, 2019 only for the removal of doubts.
62. Section 3 (ii) of PMLA provides that 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. Bare perusal of the definition of “beneficial owner” as provided under Section 2 (1) (fa) of the Act makes it clear that it

includes a person who exercises ultimate effective control over a juridical person.

63. In the case of *Vijay Madanlal Choudhary and others vs. Union of India* (*supra*) it was inter alia held that offence of money-laundering is an independent offence regarding the process or activity connected with the proceeds of crime which had been derived or obtained as a result of criminal activity relating to or in relation to a scheduled offence. It was further held that the process or activity can be in any form — be it one of concealment, possession, acquisition, use of proceeds of crime as much as projecting it as untainted property or claiming it to be so. Therefore, involvement in any one such process or activity connected with the proceeds of crime would constitute offence of money-laundering. Thus, this offence has nothing to do with the criminal activity relating to a scheduled offence — except that the proceeds of crime derived or obtained as a result of that crime. In *Vijay Madanlal Choudhary and others* (*supra*) it was further held that the sweep of Section 5(1) of PMLA is not limited to the accused named in the criminal activity relating to a scheduled offence and it would apply to any person (not necessarily being accused in the scheduled offence), if he is involved in any process or activity connected with the proceeds of crime. Such a person besides facing the consequence of provisional attachment order may end up being named as an accused in the complaint filed by the Authorised Officer concerning the offence under Section 3 of the 2002 of PMLA. The proceeds of crime as defined under Section 3 of PMLA makes it clear that it is a very expansive definition and includes any person who either 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 its concealment, possession, acquisition or use and projecting as untainted properties or claiming untainted property in any manner. The intention of the legislature in enacting the PMLA is that money laundering poses a serious threat not only to the financial systems of countries but also to their integrity and sovereignty and, therefore, the legislature thought it fit to provide a comprehensive legislation for this purpose. Thus the courts while dealing with matters under PMLA have to take into account the object and purpose of legislation.

64. Regarding discretion to be exercised at the stage of bail, it was further inter alia held in *Vijay Madanlal Choudhary and others* (*supra*) as under :

388.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."

65. Section 50 (1) confers certain power upon the Director for the purpose of Section 13 of the PMLA as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the matters enumerated therein. Section 50 (2) confers powers upon the Director, Additional Director, Joint Director, Deputy Director or Assistant Director to summon any person whose attendance they consider necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this Act. Section 50 (3) of the PMLA provides that all such summoned persons shall be bound to attend in person or through authorised officer and shall further be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required. Section 50 (4) of PMLA provides that proceedings under sub-Section (2) and (3) shall be deemed to be a judicial proceeding with the meaning of Section 193 and Section 228 of the Indian Penal Code.
66. Section 63 of PMLA provides for punishment for false information of failure to give information or to refuse to sign any statement made by him in course of proceedings under this Act.
67. The statements made under Section 50 of PMLA have been held to be an admissible piece of evidence. The term 'admissible evidence' means that such evidence can be considered by the court at the time of appreciation of evidence. A statement recorded under Section 161 Cr.P.C. is not an admissible piece of evidence and can be used only for the limited purpose as provided under Section 162 Cr.P.C. But even in general crime cases, mostly at the stage of the bail during the stage of investigation, the court looks into the statements of the witnesses under

Section 161 Cr. P.C. to appreciate the case of the prosecution. However, statements under Section 161 Cr.P.C. are not signed statements and there is no provision in the Cr.P.C. akin to Section 50 or Section 63 of the PMLA. To some extent the statement recorded under Section 50 is akin to a statement recorded under Section 164 Cr.P.C. as a statement under Section 50 of PMLA is recorded in judicial proceeding and is a duly signed statement. Thus statements under Section 50 of PMLA carry much more weight than a statement recorded under Section 161 Cr.P.C. These are specific legislations enacted to handle specific crimes.

68. The court while determining the issue of bail cannot go into meticulous examination of the facts nor it can examine probative value of the witnesses. The twin conditions under Section 45 of the PMLA provide that bail can be granted only if (i) the Public Prosecutor has been given an opportunity to oppose the application (ii) the court is satisfied that there are reasonable grounds for believing that accused is not guilty of such offence and (iii) the accused is not likely to commit any offence while on bail. Section 45 (ii) of PMLA specifically provides that limitation on granting of bail in sub-section (i) is in addition to the limitations under the Cr.P.C. or any other law for the time being in force on grant of bail. This court is conscious of the fact that though there are limitations on the grant of bail, but it does not mean that in the cases under PMLA, the accused cannot be released on bail. In order to grant bail there has to be substantial probable cause for first believing that accused is not guilty of offence.

69. The Court in view of these twin conditions has to arrive at a conclusion that whether the facts and circumstances are sufficient in themselves to justify satisfaction that accused is not guilty of the offence. It is a settled proposition that “reasonable grounds” is something more than “prima facie”. It has been held in catena of judgments that at this stage, the court has to see the broad probabilities of the case. If the accused has been able to demonstrate that there are broad probabilities that he is not guilty of the offence under Section 3 of PMLA, then he has a right to be released on bail.
70. The ED has alleged conspiracy between Satyendar Kumar Jain and co-accused Vaibhav Jain and Ankush Jain. Generally in cases of criminal conspiracy, which are hatched in secrecy and executed in dark, it is herculean task to find the direct evidence of such offence. In particular, where there is transaction of cash, I consider that it is a near impossible to get the direct evidence. In such cases, the court has to resort back to see the past trend and attendant circumstances of the case. This is the case where the money has been round tripped through shell companies. As submitted, it is not disputed that Rs. 4.81 Crores was received in these four companies M/s Akinchan Developers Pvt. Ltd., M/s Prayas Infosolution Pvt. Ltd., M/s Mangalayatan Projects Pvt. Ltd. and M/s J.J.Ideal Estate Pvt. Ltd. It is also not disputed that these transactions have been carried out through Kolkata based entry operators. Accused Satyendar Kumar Jain in his statement under Section 50 of PMLA abandoned his responsibilities by saying that he has nothing to do with the same. Vaibhav Jain and Ankush Jain have stated that it was their money. However, the IDS filed by them has

been rejected by the income tax department and such rejection has been affirmed by the High Court and the Supreme Court. The income tax authorities in IDS proceedings have attributed such money to Satyendar Kumar Jain and this finding has been upheld till Supreme Court.

71. Mr.Rajender Bansal (RUD No.55 Vol.VII) in statement under Section 50 of PMLA made on 04.12.2017 has stated that his company provided accommodation entries to the companies owned/controlled by Satyender Kumar Jain from 2010-2011 to 2015-16 against cash. Sh. J.P.Mohta in his statement under Section 50 of PMLA dated 18.01.2018 (RUD No.50 Vol.VII) has stated that Satyender Kumar Jain informed in about June/July 2010 that he wanted to get investment/accommodation entries in his companies against cash payment. Therefore, he introduced Satyender Kumar Jain with his friend Sh.Rajender Bansal who was in the business of providing accommodation entries against cash. This meeting was attended by Sh.J.P.Mohta, Sh.Rajender Bansal, Sh.Satyender Kumar Jain, Sh. Vaibhav Jain and his employee Mr.Babloo. In the meeting it was discussed/decided that Mr. Rajender Bansal will provide accommodation entries through subscription of shares in their companies against cash payment to be made by Satyender Kumar Jain and his associates i.e. Vaibhav Jain etc.
72. In the statements recorded on 21.07.2020 and 24.07.2020, Mr.Pankul Aggarwal stated that in M/s J.J.Ideal Estate Pvt. Ltd. though he was appointed as a Director but he did nothing except signing of documents. Mr.Pankul Aggarwal in his further statement recorded on 24.07.2020 stated that M/s J.J.Ideal Estate Pvt. Ltd. was controlled by

Satyendar Kumar Jain and Ms.Poonam Jain and all the decisions were taken by Satyendar Kumar Jain and Ms.Poonam Jain and he was never informed about any business activity of the company by them.

73. Mr.Ajit Prasad Jain in his statement dated 26.09.2019 (RUD No.81 Vol.IX) under Section 50 of PMLA has stated that land purchased in Akinchan Developers Pvt. Ltd. and Indo Metalimpex Pvt. Ltd. were chosen by Satyendar Kumar Jain. Accused Vaibhav Jain in his statement recorded on 27.02.2018 stated that cash amount of totaling to 16.50 crores approx. was paid by him, Sunil Kumar Jain, Ankush Jain and Satyendar Kumar Jain for taking accommodation entries Akinchan Developers Pvt. Ltd., Paryas Infosolution Pvt. Ltd., Indo Metalimpex Pvt. Ltd. and M/s Mangalayatan Projects Pvt. Ltd. through Calcutta based entry operators. Vaibhav Jain has stated that this idea was mooted by Satyendar Kumar Jain to use it for purchasing of agricultural land and to develop township.
74. Rajender Bansal in his statement as discussed above has specified the role played by Satyendar Kumar Jain. The witnesses have stated that Satyendar Kumar Jain was the conceptualizer, initiator, fund provider and supervisor for the entire operation to procure this accommodation, share capital/premium entries. It is very relevant to note that J.P.Mohta who was an old acquaintance of Satyendar Kumar Jain was appointed as an auditor on the basis of decision of Satyendar Kumar Jain which shows that Satyendar Kumar Jain in fact was controlling the financial affairs of all these companies.
75. The simple fact is that CBI has filed the case of disproportionate assets against public servant Satyendar Kumar Jain and other persons

including the other two petitioners, the cognizance of which has already been taken. Thus, the competent court is seized of the matter regarding the disproportionate assets and present court cannot go into the question of validity of institution of such proceedings. It is also not disputed that during this period certain entries have come into the company against the payment of the cash through Kolkata based entry operators. The two facts are placed on record to show that during the check period certain disproportionate assets were amassed and those were round-tripped into the company through entry operators. There is a long association amongst the petitioners evidencing the trend of getting entries through the same operators. The court has to see the prima facie case at this stage and to see whether there are reasonable grounds to believe that accused persons have not committed an offence and they are not likely to commit such offence. In view of the matter on record, the entire amount has rightly been attributed to the petitioners. The contradictions in statements under Section 50 of PMLA cannot be examined at this stage and is a matter of trial. The petitioner Satyendar Kumar Jain is an influential person and has a potential to tamper with the evidence as indicated by his conduct during the custody. However, this court has examined the entire facts objectively in accordance with the law without being influenced by the position of the petitioner, other accused persons as well qua the witnesses but the fact remains the same that the condition under Section 439 Cr.P.C. are in addition to the twin conditions under Section 45 of PMLA. Thus, taking into account the totality of the facts, the petitioners at this stage cannot be held to have cleared the twin conditions of PMLA or the triple test.

76. The share holding patterns of M/s. Akinchan Developers Pvt.Ltd. M/s.Manglayatan Projects Pvt.Ltd. and M/s.J.J.Ideal Estate Pvt. Ltd. also shows that the petitioner Satyendar Kumar Jain or his family is controlling these companies directly or indirectly. The share pattern of these companies are quite intricate and really needs to be examined thoroughly. The testimony of Mr.Pankul Aggarwal shows the total control of Satyendar Kumar Jain on M/s.J.J.Ideal Estate Pvt. Ltd. Similarly, the testimony of Rajender Bansal, Jivendra Mishra, Ashish Chokhani and J.P.Mohta shows that Satyendar Kumar Jain is the conceptualizer, visualizer and executor of the entire operation and his being aided and abated by Vaibhav Jain and Ankush Jain. The investments were also being made by the persons at the instance of Satyendar Kumar Jain as reflected from the statements of Sh. Satyavrat Aggarwal, Nirmal Kumar Madhogaria and Mahender Pal Singh. In such cases, it is not essential whether the witnesses have personally met the accused or not.
77. The ED has emphatically stated and placed material on record to substantiate that the documents were antedated to make Vaibhav Jain and Ankush Jain as Directors in the companies for the purpose of making declaration of income belonging to Satyendar Kumar Jain. The fact that Satyendar Kumar Jain wrote a letter to income tax authorities to adjust his demand of tax against the tax deposited by Vaibhav Jain and Ankush Jain shows their close complicity. The plea of Satyendar Kumar Jain that he was not found in physical possession of any property needs to be rejected out-rightly as for the offence of money laundering the physical possession of proceeds of crime is not

necessary. Similarly, the fact that shares so acquired were transferred back to Vaibhav Jain and Ankush Jain will also make no difference as it may again be done to conceal the proceeds of crime or projected as a untainted money. The plea that the disproportionate assets was only Rs.1.47 crore and PMLA has filed the complaint for Rs.4.81 crores as proceeds of crime is not relevant as at this stage as the court has only to see whether the offence has been committed and whether the accused persons meet the twin conditions.

78. The rejection of MOU by the learned trial court cannot be faulted as it has admittedly been never presented before any authority and moreover it is a self serving document. The petitioners took a plea that the companies were doing business but even a shred of document has not even been shown to reflect any business being undertaken by them.
79. I consider that in view of the discussion made hereinabove, the broad probabilities indicate that M/s Akinchan Developer Pvt. Ltd., M/s Mangalayatan Projects Pvt. Ltd. and M/s Prayas Infosolution Pvt. Ltd. are controlled and managed by Satyendar Kumar Jain.
80. The constant changing pattern of the shareholding in the companies clearly indicates that Sh. Satyendar Kumar Jain was indirectly controlling the affairs of the companies. The evidence on record though speaks in volumes but has not been discussed or examined in detail so as to not cause prejudice to the petitioner.
81. I have gone through the order of learned Special Judge rejecting the bail applications. I do not find any illegality or perversity in such order. The order rejecting the bail applications are well-reasoned orders based on material on record. The Court has taken note of the fact that Sh.

Satyendar Kumar Jain has resigned as a Minister. However, in view of the discussion made hereinabove, I consider that petitioners have failed to meet the twin conditions as provided under Section 45 PMLA as well as the conditions as laid down under Section 439 Cr.P.C. and are thus not entitled for bail. Hence, the bail applications are rejected.

DINESH KUMAR SHARMA, J

APRIL 06, 2023

rb

