

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**  
**CRIMINAL BAIL APPLICATION NO.2141 OF 2023**

Humayun Suleman Merchant .. Applicant

**Versus**

Directorate of Enforcement through .. Respondents  
its Assistant Director & Anr.

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Mr.Aabad Ponda, Senior Advocate with Ms.Pushpa Ganediwala, Mr.Sajal Yadav, Mr.Harsh Ghangurde, Mr.Raj Raut, Ms.Aayushya Geruja, Mr.Viquar Rajguru, Mr.S.K.Saxena and Mr.Mahaveer Lohar i/b Mr.Anukul Seth for the Applicant.

Mr.Devang Vyas, Additional Solicitor General with Mr.Shreeram Shirsat, SPP, Ms.Tanvi Make, Mr.Shekhar Mane, Mr.Tanveer Khan and Ms.Karishma Rajesh for the Respondent/Directorate of Enforcement.

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**CORAM: BHARATI DANGRE, J.**  
**DATED : 09<sup>th</sup> FEBRUARY, 2024**

**P.C:-**

1. The Applicant, facing PMLA Case No.7 of 2019 arising out of ECIR/MBZO-1/08/2019 for the offences punishable under Section 3 read with Section 4 of the Prevention of Money-Laundering Act, 2002 (for short, **“the Act of 2002”**), seek his release on bail, on the ground of his long incarceration, he having been arrested on 22/10/2019. On the prosecution filing the Complaint, he was arraigned as Accused No.10 and on 15/01/2020, cognizance of the complaint was taken. Supplementary Prosecution Complaint No.150 of 2021

came to be filed on 02/02/2021 of which the cognizance was taken on 26/02/2021, though it is a case of the Applicant that he is not named in the subsequent complaint.

After making various unsuccessful attempts in securing bail before various Courts, which include two applications being filed before this Court and they being rejected on 16/09/2020 and 18/11/2022 respectively, this is the third application, filed by the Applicant under Section 439 of the Criminal Procedure Code (for short, “**the Cr.P.C.**”), premised on the ground of having undergone three years and nine months of incarceration and, still the trial has not yet commenced.

2. I have heard the learned senior counsel Mr.Aabad Ponda with Ms.Pushpa Ganediwala for the Applicant and the learned ASG Mr.Devang Vyas alongwith Mr.Shreeram Shirsat for the Directorate of Enforcement.

Mr.Ponda, the learned senior counsel, in support of the bail application, has laid his emphasis on Section 436-A of the Cr.P.C. and he would stressfully rely upon the decision of the Apex Court in the case of ***Vijay Madanlal Choudhary & Ors. Vs. Union of India & Ors.***<sup>1</sup>, where while expounding the scope of Section 436-A, in the backdrop of its statement of objects and reasons, it is held that Section 436-A needs to be construed as a statutory bail provision and akin to Section 167 of the Code and it would even be applicable to the cases falling under Section 3 of the 2002 Act, regarding money-laundering offences.

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<sup>1</sup> 2022 SCC OnLine SC 929

By relying upon the statutory provision, Mr.Ponda has urged that when a person, pending his trial, has undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under law, he is entitled to be released on his personal bond, with or without sureties and, since, Section 4 of the Act of 2002, under which the Applicant is charged, upon conviction would entail a punishment of rigorous imprisonment for a term which shall not be less than three years, but which may extend to seven years and is liable for fine and as on date the Applicant has undergone more than half of the sentence, he deserve the benefit under the said provision. It is the submission of Mr.Ponda that it is the constitutional obligation of the State to ensure that trials are concluded expeditiously and at least within a reasonable time and if a person is detained for a period extending up to one-half of the maximum period of imprisonment specified by law and still awaiting culmination of his trial, it is nothing short of failure of the State in upholding the constitutional rights of the citizens, though a person may face accusation under the special statute like the Act of 2002.

Apart from the aforesaid submission, Mr.Ponda has placed reliance upon an order dated 12/05/2023, passed by the Special Court designated under the PML Act, 2002 for Gr.Bombay in the case of Haroun Aleem Yusuf (Accused No.8), a co-accused who had also sought his release, by taking recourse to Section 436-A of the Cr.P.C. on having completed three years and six months of judicial custody. He has invited my attention to the observations of the learned Judge on the

aspect of the long incarceration, coupled with the fact that there is no certainty as to when ED will get the nine cases relating to the Scheduled Offences committed to the Special Court as per Section 44(1)(c) of the Act of 2002 and the trial, as contemplated therein, shall begin only thereafter.

The learned counsel want me to peruse the observations in the case of Haroun, which read thus:-

“40. The Hon’ble Supreme Court has repeatedly expressed deep concern regarding the undertrial prisoners and necessity of their expeditious trials. Recently the Hon’ble Supreme Court in **Ramchand Karunakaran Vs. Directorate of Enforcement & Anr. [Arising out of SLP (Crl.) No.6061/2020, decided on 23.09.2022]** dealt with the similar issue. This case also relates to offence of money laundering and pending in this Court itself. The Hon’ble Supreme Court held as follows,

*“We are presently concerned with the proceedings arising out of the complaint filed under the provisions of PML Act. In the instant case, the appellant was taken in custody on 19.06.2019 and has remained in custody since then. Thus, the appellant has completed more than three years of actual custody in connection with the offence in respect of PML Act.*

*7. It has been brought to our notice that accused Nos.2, 3, 4 and 7 have not yet been arrested and though the cognizance in the matter has been taken, charges are yet to be framed.*

*8. Considering the entirety of the matter and the fact that the appellant is a senior citizen, in our view, the appellant is entitled to the relief of bail.”*

In the present case also, the applicant (A8) is senior citizen.

.. . .

44. The applicant (A8) had already crossed undue incarceration for more than half the punishment provided under Sec.4 of the PML Act. He has almost crossed 3 years and 7 months incarceration without trial, when Sec.4 of the PML Act provides maximum punishment with rigorous imprisonment for a terms which may not be less than 3 years but which may extend to 7 years with fine. Admittedly, the period of 3 years and 7 months incarceration period of the applicant had gone without trial. Basically the trial of the PMLA Special Case is voluminous, peculiar and exceptional. It is not a trial of a single case. As per Sec.44(1)(c) of the PML Act, the case relating to the Scheduled Offence has to be committed to this Court, which has taken cognizance of the PMLA case as recently held by the Hon’ble Supreme Court in the case of Rana Ayub (supra). After commitment, both cases have to be tried simultaneously, but separately and not

jointly. It is also necessary to understand that, even if the PMLA Special Case is only one, there may be multiple number of cases relating to the Scheduled Offences, which have to be committed and tried simultaneously with the PMLA Special Case. There are so many cases which have been pending in this Court to show that, for a single PMLA case there are multiple cases relating to the Scheduled Offence.....In the instant case also there is one PMLA case and around 10 cases relating to the Scheduled Offences. Hence, it is not a trial of a single PMLA case, but that of 11 cases.

.. .. .

50. Another aspect requires consideration. ED while opposing this application referred punishments provided for various offences relating to the Scheduled Offences. Admittedly, till date the Court and even ED is not knowing the status thereof. ED, who is with full knowledge thereof, not making its disclosure before the Court for the reasons best known to them. The relief under Sec.436A Cr.P.C. is claimed under PMLA case. This Court is yet to be a trial court in respect of the Scheduled Offences. Admittedly, the present applicant (A8) was never produced for his remand in connection with any Scheduled Offence as enlisted in the table with the Prosecution Complaint. Till date though Sec.44(1)(c) prescribes jurisdiction to this Court for simultaneous trials, yet the Court has not acquired such jurisdiction as no case of any of the Scheduled Offences, has been committed to this Court ever since. ED being Prosecution ought to have been fair with the Court and should have accepted undue incarceration of the applicant (A8) for 3 years and 7 months, but doing something else by pointing out punishment provided for Scheduled Offence. Hence, there is absolutely no substance in the contention of ED which they have harped in their say to oppose this ground."

3. Mr.Ponda has then invited my attention to the order dated 03/07/2023, passed in the case of the present Applicant, facing trial as Accused No.10, and according to him, in utter contrast, the aforesaid aspect of the uncertainty about the trial and commitment of the Scheduled Offences to the Special Court has been completely ignored and it is held that the Applicant is not entitled to claim parity with Haroun Aleem Yusuf (Accused No.8) and as regards the non-compliance of the mandate under Section 44(1)(c) of the Act of 2002, the Special Judge has held that ED has already submitted that, once they get all information of cases relating to the Scheduled

Offences, they would submit the same and also take the necessary steps and deemed it appropriate to issue appropriate directions to the Enforcement Directorate.

4. It is the specific submission of Mr.Ponda that the two accused, similarly situated, received different treatment at the hands of the designated Special Judge under the PML Act and there exists no justification for the same. Dealing with the stand of the Enforcement Directorate for bringing the case of the Applicant within the proviso of Section 4, to the effect that the proceeds of crime generated/traced to the Applicant have been generated from commission of offences under the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, “**the NDPS Act**”) and by taking it into account, the punishment for money-laundering may extend to ten years, Mr.Ponda has urged that there is no nexus between the alleged proceed of crime and the Scheduled Offences demonstrated by the material produced by the Enforcement Directorate. It is his specific submission that only proceedings relating to the Scheduled Offences provided by the Enforcement Directorate relates to the Prosecution Complaint in an offence under Section 302, where there is no reference of any proceeds of crime having been generated and according to him, the complaint alongwith its accompanying documents, has failed to answer as to from which Scheduled Offences, the proceeds of crime were generated and if so generated, where it was invested/transferred and whether the trail of money point towards investment in the properties in dispute. According to him, there is no positive averment in the entire complaint or

the relied documents, connecting the Scheduled Offences to the proceeds of crime or with the Applicant and rather, the alleged role of the Applicant surfaces for the first time in the year 2005, after release of three properties from the attachment of SAFEMA from the the CMM Court, whereas the period of Scheduled Offences is from 1991 to 1994 is his submission. Only the “proceeds of crime” identified by the investigating agency, can be the subject matter of PMLA for attachment or any other purpose, is his submission and if during investigation, Enforcement Directorate come across certain offences leading to the alleged “proceeds of crime”, it can only be the First Informant in respect of that offence and the money so identified, shall form its basis and definitely, the complaint cannot proceed with the said proceeds, without nexus being established with the Scheduled offences.

According to Mr.Ponda, the offence created in terms of Section 3 of the Act is inextricably linked to the commission of a Scheduled Offence and, since, Section 2(1)(u) defines “proceeds of crime” to mean property derived or obtained as a result of criminal activity relating to an offence set forth and embodied in the Schedule and the principles enunciated in *Vijay Madanlal Choudhary* (supra) would lead to an inevitable conclusion, that an allegation of money laundering is premised on the commission of a criminal offence and absent the commission of criminal offence, the foundation of proceedings that may be initiated under the PMLA would undoubtedly fall.

Thus, in short, the submission of Mr.Ponda is that the case of the Applicant shall fall within the First Part of Section 4, where the punishment prescribed may extend to seven

years and hence, on having more than half of the punishment, which may fall on him, on conviction, the Applicant deserve his release on bail.

5. I have heard the learned ASG Mr.Vyas, who has assertively submitted that the Applicant is erroneously seeking invocation of Section 436-A and wrongly resorted to the first part of the Section. However, in the present case, since the Scheduled Offence in the captioned matter falls under the NDPS Act, that forms part of paragraph 2 of Part A of the Schedule annexed to the Act of 2002, the maximum limit of imprisonment shall extend upto ten years. The learned ASG has submitted that the Applicant, being an undertrial prisoner, has undergone three years and nine months of imprisonment which, by no stretch of imagination is one-half of the maximum sentence, which would be imposed under Section 4 of the Act of 2002, if convicted.

It is the submission of Mr.Vyas that the Act of 2002 was enacted, amongst others, in pursuance of international obligations, with the object of curbing the menace of serious economic offences like money-laundering producing deleterious impact on national economy and affecting the overall national interest. According to him, it is the special Act to prevent money-laundering and to provide for the confiscation of property derived from, or involved in, money-laundering and, since it is an economic offence having deep rooted conspiracies and involving huge loss of public fund, it need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the nation.

6. Mr.Vyas has taken me through the complaint, so as to reach a conclusion about the role played by the Applicant and he would submit that the Applicant has played a very crucial role in brokering illegal dealings of Iqbal Mirchi, relating to the three properties at Worli and during recording of his statement under Section 50(2) and (3) of the Act of 2002, the Applicant himself deposed that he had arranged meeting of Iqbal Mirchi in London with Joy Home Creation Pvt. Ltd. and Sublink Real Estate Pvt. Ltd. and had arranged dummy tenants in said buildings, which were found to be his close relatives. Apart from this, from the material in the complaint, he would submit that it is indicative of his active participation in the process, which was with complete intention, knowledge and understanding of his aid and assistance to Iqbal Mirchi. Apart from this, the deal between Iqbal Memon and Joy Home Creation Pvt. Ltd. was mediated by the Applicant on behalf of Iqbal Mirchi and in the deal, he has accepted huge amount, which was transferred to Iqbal Mirchi through different modes. Considering his role in generating and subsequent laundering of huge amounts of proceeds of crime, according to Mr.Vyas, he has failed to render the co-operation in the investigation and failed to provide full disclosure of the facts during the course of recording his statement.

Mr.Vyas has also relied upon the two previous orders passed by me, where on taking an overall view of the material in the complaint and the documents accompanying thereto, the application for release on bail was rejected.

7. At the outset of his argument, the learned senior counsel Mr.Ponda has made it very clear that he is pressing the application on the basis of Section 436-A as on two previous occasions, this Court on merits, had rejected his application.

Hence, I have examined his contention only premised on Section 436-A and not on the merits of the matter, as on previous two occasions, I had exhaustively dealt with the case of the Applicant on merits and have formed an opinion of his active involvement in the offence of money-laundering.

Taking into consideration the specific role attributed to him and the material in the complaint, prima facie, establishing his participation in the offence, with a clear knowledge of the same and finding it to be sufficiently supported by the material with the DRI, I have expressed my satisfaction for the pre-requisite for arrest as contemplated under Section 19 of the Act of 2002 and did not deem it fit to release him on bail on both the occasions, when the application was preferred under Section 439 of the Cr.P.C.

8. Since Mr.Ponda has premised his submission based on Section 436-A, I deem it appropriate to reproduce the same.

**“436-A. Maximum period for which an undertrial prisoner can be detained.**-Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under the law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties :

Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued

detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties :

Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

*Explanation.-* In computing the period of detention under this section for granting bail the period of detention passed due to delay in proceeding caused by the accused shall be excluded.”

9. The statement of objects and reasons in introducing the said provision w.e.f. 23/06/2006 by Act No.25 of 2005, since it is noticed that there had been instances, where the undertrial prisoners were detained in jail for period beyond the maximum period of imprisonment provided for the offence alleged against them and as a protective measure, the provision was inserted to prove that where an undertrial prisoner other than the one accused of an offence for which death has been prescribed as one of the punishments, has been under detention for a period extending to one-half of the maximum period of imprisonment, provided for the alleged offence, he should be released on his personal bond, with or without sureties.

The necessary purport of the provision being in no case, an undertrial prisoner be detained for a period extending to one-half of the maximum period of imprisonment for which he can be convicted for an alleged offence.

10. It is an undisputed position that right to speedy trial has been ingrained in Article 21 of the Constitution of India and undue delay in concluding a trial has always been frowned upon as violation of the right to life and personal liberty, as

guaranteed by Article 21, which has to be clubbed with the right guaranteed by Article 14 which also promises justness, fairness and reasonableness in procedural matters.

Section 436-A introduced in the Code is, therefore, a wholesome beneficial provisions for effectuating the right of speedy trial guaranteed by Article 21 of the Constitution and which merely specifies the outer limits within which the trial is expected to be concluded, failing which, the accused ought not to be detained further. Mr. Ponda has relied upon the relevant observations of the Apex Court revolving around the said provision in the case of ***Vijay Madanlal Choudhary*** (supra) to the following effect :-

“419. Section 436A of the 1973 Code, is a wholesome beneficial provision, which is for effectuating the right of speedy trial guaranteed by Article 21 of the Constitution and which merely specifies the outer limits within which the trial is expected to be concluded, failing which, the accused ought not to be detained further. Indeed, Section 436A of the 1973 Code also contemplates that the relief under this provision cannot be granted mechanically. It is still within the discretion of the Court, unlike the default bail under Section 167 of the 1973 Code. Under Section 436A of the 1973 Code, however, the Court is required to consider the relief on case-to-case basis. As the proviso therein itself recognises that, in a given case, the detention can be continued by the Court even longer than one-half of the period, for which, reasons are to be recorded by it in writing and also by imposing such terms and conditions so as to ensure that after release, the accused makes himself/herself available for expeditious completion of the trial.

420. However, that does not mean that the principle enunciated by this Court in *Supreme Court Legal Aid Committee Representing Undertrial Prisoners*<sup>682</sup>, to ameliorate the agony and pain of persons kept in jail for unreasonably long time, even without trial, can be whittled down on such specious plea of the State. If the Parliament/Legislature provides for stringent provision of no bail, unless the stringent conditions are fulfilled, it is the bounden duty of the State to ensure that such trials get precedence and are concluded within a reasonable time, at least before the accused undergoes detention for a period extending up to one-half of the maximum period of imprisonment specified for the concerned offence by law. [Be it noted, this provision (Section 436A of the 1973 Code) is not available to accused who is facing trial for offences punishable with death sentence].

421. In our opinion, therefore, Section 436A needs to be construed as a statutory bail provision and akin to Section 167 of the 1973 Code. Notably, learned Solicitor General has fairly accepted during the arguments and also restated in the written notes that the mandate of Section 167 of the 1973 Code would apply with full force even to cases falling under Section 3 of the 2002 Act, regarding money-laundering offences. On the same logic, we must hold that Section 436A of the 1973 Code could be invoked by accused arrested for offence punishable under the 2002 Act, being a statutory bail.

11. The learned ASG Mr.Vyas has placed reliance upon the decision in the case of ***Tarun Kumar Vs. Assistant Director, Directorate of Enforcement*** (Cri. Appeal No.--- of 2023 @ SLP (Cri) No.9431 of 2023 decided on 20/11/2023), where the aforesaid observation was referred to in the backdrop of the argument that the trial of the case is likely to take long and the Appellant ought not to be incarcerated indefinitely because the investigation is kept open with regard to the other accused.

The Apex Court, by referring to the catena of decisions, which have treated the economic offence as a class apart, has specifically observed as under :-

“22. Lastly, it may be noted that as held in catena of decisions, the economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country. Undoubtedly, economic offences have serious repercussions on the development of the country as a whole. To cite a few judgments in the regard are ***Y.S.Jagan Mohan Reddy vs. Central Bureau of Investigation, Nimmagadda Prasad Vs. Central Bureau of Investigation, Gautam Kundu vs. Directorate of Enforcement (supra), State of Bihar & Anr. vs.Amit Kumar alias Bachcha Rai***. This Court taking a serious note with regard to the economic offences had observed as back as in 1987 in case of ***State of Gujarat vs. Mohanlal Jitmalji Porwal & Anr.*** as under :-

*“5...The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to books. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design*

*with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the National Economy and National interest..."*

23. With the advancement of technology and Artificial Intelligence, the economic offences like money laundering have become a real threat to the functioning of the financial system of the country have become a great challenge for the investigating agencies to detect and comprehend the intricate nature of transactions, as also the role of the persons involved therein. Lot of minute exercise is expected to be undertaken by the Investigating Agency to see that no innocent person is wrongly booked and that no culprit escapes from the clutches of the law. When the detention of the accused is continued by the Court, the courts are also expected to conclude the trials within a reasonable time, further ensuring the right of speedy trial guaranteed by Article 21 of the Constitution."

12. The provision in form of Section 436-A, which is sought to be pressed into service for securing the release of the Applicant, by way of proviso, contemplate that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties. It is thus the discretion of the Court, whether to secure release of a person, awaiting his trial on the ground that he has undergone detention for a period extending up to one-half of the maximum period of imprisonment specified, but necessarily contemplate that the Court may at time continue the detention of an accused, despite having undergone more than one-half of the sentence and this may be justified on the ground of seriousness of an offence, the role played by the accused in such an offence and when his release on bail may prove to be harmful to the society.

The continued detention of the person, however, shall be supported by reasons to be recorded in writing and when the impugned order passed by the Special Court is perused, I find sufficient justification therein to continue his detention, by rejecting the ground of parity with co-accused Haroun Aleem Yusuf i.e. Accused No.8. The relevant observations are as under :-

“14. Careful examination of the Prosecution Complaint it appears that ED has clearly referred number of instances to indicate how the applicant (A10) was a frontman of Iqbal Mirchi and an active participant having knowledge in the process of generating, placing, layering and integrating the proceeds of crime as defined under Sec.2(1)(u) r.w. Sec.3 of the PML Act. It is the applicant (A10) who had arranged several meetings of co-accused persons with Iqbal Mirchi at various places e.g. London, Dubai etc. and also accompanied those persons for the same. ED has given long table with details of dates, persons travelled abroad alongwith the applicant (A10) for the meetings with co-accused and also with Iqbal Mirchi. Those meetings were for acquiring properties in order to project tainted monies as untainted. All this clearly indicates how the applicant (A10) had prominent role in various illegal activities of Iqbal Mirchi and how he (A10) assisted and participated the same. These other surrounding circumstances cannot be overlooked and ignored while examining the eligibility of the applicant (A10) under Sec.436A Cr.P.C. Apart from this, at the cost of repetition it has to be noted that, the Hon'ble High Court had repeatedly observed the active role of the applicant (A10) in the entire process of money laundering and rejected his bail application on merits. Certainly the role attributed to the applicant (A10) is not identical with the role of co-accused Haroun (A8) who was granted bail under Sec.436A Cr.P.C. He (A8) was given liberty by the Hon'ble High Court to file such application in this Court. On the contrary, the present applicant (A10) simply withdrew his Petition for Special Leave to Appeal (Crl.) No.12105 of 2022 without any leave and the same was dismissed by the Hon'ble Supreme Court. From the point of role attributed to the applicant (A10) and co-accused Haroun (A8) also, the applicant (A10) is not entitled to claim any parity for relief under Sec.436A Cr.P.C. Regarding non-compliance of mandate under Sec.44(1)(c) PML Act, the ED has already submitted that, once they get all information of cases relating to the Scheduled Offence they would submit the same and also take the step. Therefore, ED can be directed accordingly.

15. In view of the detailed discussion, I am of the opinion that the applicant (A10) is not entitled to bail/temporary bail on medical ground. However, alternative arrangement for his medical treatment can be directed whenever the same prevails upon. It has to be noted that none of the medical issues i.e. Cataracts, knee replacement due to arthritis and also hip bone issue, is life threatening to consider it a

genuine sickness as required under First Proviso to Sec.45(1) of the PML Act. Also as observed by the Hon'ble High Court age of the applicant would not influence this application. Similarly, the applicant (A10) is not entitled to be released on bail as required under Sec.436A Cr.P.C., even if contention of ED that, punishment provided for Scheduled Offence is for 10 years, is not legal when the application is preferred for an offence under the PML Act wherein the maximum punishment is to the extend of 7 years and the applicant (A10) is not in judicial custody in respect of any of the Predicate Offences/cases. He (A10) has claimed benefit of Sec.436A Cr.P.C. in respect of the offence under the PML Act and his judicial custody is being extended therein and not in respect of any Scheduled Offence when he was not accused therein. However, from the point of the period he (A10) has undergone in judicial custody his application is qualified under Sec.436A Cr.P.C. but he is not eligible for the relief thereunder due to the circumstances discussed above. Hence, discretion cannot be extended in his favour for granting relief under Sec.436A Cr.P.C. With this, Points No.2 is answered in the affirmative and accordingly, and whereas Point No.3 is answered in the negative."

13. As far as the co-accused Haroun is concerned, the Special Judge has specifically recorded that he had absolutely no role to play in any of the alleged criminal activities relating to the Scheduled Offences for alleged generation of proceeds of crime and except bare allegations, there is nothing to show that he had any knowledge regarding Iqbal Mirchi's source of money. Therefore, the contention of the Enforcement Directorate that he had knowledge of such criminal activities relating of the Scheduled Offences was found to be without substance.

This, however, is not the case as far as the present Applicant is concerned.

There is sufficient material indicative of the active involvement of the present Applicant in the background that various FIRs were registered against Iqbal Memon @ Iqbal Mirchi, a noted gangster and an aide of Dawood Ibrahim and others, under various provisions of the IPC, NDPS and Arms

Act. These FIRs were analyzed by the Directorate with regard to initiation of PMLA investigation and he was found to be involved in smuggling of narcotics and running extortion rackets which was evident from the cases registered against him. The FIRs registered against Iqbal Mirchi invoked Sections 120B, 302, 307 of IPC, Section 25 of the Arms Act and Sections 21 and 29 of the NDPS Act, which are Scheduled Offences as detailed in Paragraph 1, Paragraph 5 and Paragraph 2 respectively of Part A of the Schedule of the Act of 2002. It is on the basis of the said Scheduled Offences, a case for investigation into suspected money laundering has been recorded on 26/09/2019 by the Enforcement Directorate. During the investigation, it was found that through commission of the above mentioned offences and other criminal acts, including smuggling of drugs and arms, extortion racket and other illegal acts, Iqbal Mirchi has accumulated huge wealth and the proceeds so generated from the aforesaid criminal activity were layered and laundered by way of investment in many properties in various locations in State of Maharashtra, by projecting them as untainted. The assets were owned by him in his own name, in the name of his relatives and through companies controlled by him and his family members.

The investigation lead to purchase of three properties belonging to Sir Mohammad Yusuf Trust in September 1986 through one of his companies and the properties were 'Sea View', 'Marium Lodge' and 'Rabia Mansion' in Worli area of Mumbai and the allegation is, these properties are procured from funds generated out of the criminal activities relating to

the Scheduled Offences and, therefore, were proceeds of crime in terms of Section 2(1)(u) of the Act of 2002.

A detailed investigation was conducted involving the said properties and the role of the Applicant has surfaced consistently. The possession of the buildings was taken in a phased manner from 1986 to 2005 and there were various tenants in the building, when the properties were purchased from the Trust and subsequent to the purchase, Iqbal Mirchi started obtaining or creating tenancy rights in his name or in the name of his relatives in lieu of consideration and the process continued till 2005, when the original tenants of the property were entirely replaced by Iqbal Mirchi through the present Applicant in connivance with the Trust, by transferring the tenancy rights in the name of dummy tenants, who were found to be relatives/associates of the Applicant and Iqbal Mirchi. During the whole process of obtaining and creating the tenancy rights, Iqbal Mirchi appear to have passed consideration to the original tenants to obtain complete ownership with tenancy rights from the year 1986 to 2005 and the said consideration amounts are also alleged to be sourced from the criminal offences, which were committed by Iqbal Mirchi during the said period. The further dealings at the instance of the Applicant with the money involved has clearly surfaced in the complaints filed against the Applicant and I have also deliberated upon the same in the two previous orders, when the application of the Applicant was rejected, by referring to the accusations faced by him.

It is very evident that the Applicant has played a very crucial role in brokering the illegal dealings of Iqbal Mirchi in

relation to the said properties and he aided and assisted him with full knowledge by layering and laundering the proceeds of crime, which he had garnered from the offences, which include the offences under the NDPS Act.

The submission of the learned senior counsel Mr.Ponda that the Applicant has nothing to do with the Scheduled Offences is of no consequence, as the allegation faced by the accused persons in the subject complaint is about laundering of money of Iqbal Mirchi, the main accused and, since, the Applicant has received huge amount of money, as indicated in the complaints and to which I had made reference in the earlier orders, in my considered opinion, Section 436-A cannot be invoked at this stage, since the offence registered against Iqbal Mirchi involve an offence under Section 302 of the IPC as well as the offence under the NDPS Act, though the present Applicant is not an accused in any of the Scheduled Offences. The accusation faced by him alongwith the main accused Iqbal Mirchi is about layering and laundering of the money acquired by Iqbal Mirchi and its use in purchasing the three properties and, since, the genesis of this money lies in the three offences registered at the instance of Anti Narcotic Cell in the year 1992, 1993 and 1994 respectively, and, hence, in my considered opinion, no case is made out for invocation of Section 436-A, as the punishment imposed in the subject complaint would be the one falling in Part II of Section 4 i.e. maximum punishment may extend up to ten years of rigorous imprisonment. The argument that not a single Scheduled Offence under the NDPS Act is alleged to have been committed between 1986 to 1989, is ultimately a matter to be

appreciated, when the merits of the matter is considered, as it is the specific case of the Directorate of Enforcement that the money has been layered by Iqbal Mirchi into various transactions and purchase of properties and this will ultimately a matter to be determined at the end of the trial.

I, therefore, find myself in concurrence with the Special Judge in not extending parity with Accused No.8.

14. In the aforesaid circumstances, I must record that no case is made out by the Applicant for exercise of power under Section 436-A on the ground that he has undergone one-half of the maximum punishment, which would be imposed upon him under the Act of 2002, if convicted.

The application is, therefore, rejected.

( SMT. BHARATI DANGRE, J.)