

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 77 OF 2024

Avinash Nivritti Bhosale

...Applicant

Versus

Directorate of Enforcement & Anr.

...Respondents

- Mr. Aabad Ponda, Senior Counsel a/w Mr. Dhawal Mehta, Mr. Abinash Pradhan, Ms. Garima Agrawal and Mr. Yash Dedhia i/b Wadia Ghandy & Co., for Applicant.
- Mr. Hiten Venegaonkar a/w Mr. Aayush Kedia for Respondent No.1 – ED.
- Ms. Rutuja A. Ambekar, APP for Respondent No.2 – State.

CORAM: MANISH PITALE, J.

DATE : 28th AUGUST, 2024.

ORDER:

1. The applicant is accused No.27 in a case registered under the provisions of Prevention of Money Laundering Act, 2002 (PMLA) and he is seeking bail in connection with ECIR/MBZ0-1/03/2020 dated 07.03.2020 in PMLA Special Case No.452 of 2020. The applicant was arrested on 28.06.2022 and he has remained behind bars since then.

2. The case of the contesting respondent – Enforcement Directorate (ED) against the applicant, in brief, is that he was arraigned as an accused in the third supplementary prosecution complaint. Prior to that the applicant was summoned and statements were recorded on 11.05.2022, 19.05.2022 and 26.05.2022 in the office of the Central Bureau of Investigation (CBI) in

Mumbai. It is relevant to note that the applicant is also an accused in the predicate offence registered on 07.03.2020, wherein offences under the provisions of the Prevention of Corruption Act, 1988, have been registered, apart from offence of cheating under Section 420 of the Indian Penal Code (IPC). It is also significant to note that in the predicate offence, the applicant was granted bail by an order dated 07.05.2024 passed by this Court (*Coram : N.J. Jamadar, J.*) in Bail Application No.2383 of 2023.

3. It is the case of the ED in the third supplementary prosecution complaint that proceeds of crime found their way to the applicant. The background of the said allegation is that Dewan Housing Finance Limited (DHFL) received loan amount and amount towards investments totaling ₹3983 Crores starting from April, 2018, from Yes Bank. It is alleged that the said amount was disbursed periodically on an understanding that DHFL would route about ₹ 600 crores back to the promoters of the Yes Bank. As a consequence, the amount disbursed to DHFL was treated as proceeds of crime. It is further the allegation that part of the said amount went to co-accused No.25 Sanjay Chhabria (who is in judicial custody and whose bail application has been rejected by this Court). It is further alleged that the said proceeds of crime then found their way to the applicant and hence, he is liable to face prosecution under the provisions of PMLA. There are three specific transactions relied upon by the ED to claim that part of the proceeds of crime

came to the applicant.

4. The first such transaction pertains to amounts received by Nibodh Realty i.e. an entity of the applicant from Radius Group of Companies of the co-accused No.25 Sanjay Chhabria. The ED has treated ₹67.85 Crores forming part of the said amounts received by Nibodh Realty as proceeds of crime in the hands of the applicant. The second transaction pertains to sale of ABIL Dairy LLP. It is alleged that a sham agreement was shown to have been executed whereby the applicant had agreed to sell the aforesaid Dairy to co-accused No.25 Sanjay Chhabria. The consideration amount was ₹ 75 Crores. Eventually, only ₹ 50 Crores were paid to the applicant and the Dairy was never sold or handed over to co-accused No.25 Sanjay Chhabria. An amount of ₹ 25 Crores from the said amount has been treated as proceeds of crime by the ED. The third transaction pertains to amounts received by the applicant and his companies, ostensibly towards consultation charges. On the basis of statements recorded during the course of investigation by the ED, it is claimed that no such consultation was ever provided by the applicant or his companies as they were not even qualified to provide such consultation and these transactions and transfers of amounts to the applicant were adjustments and that the said amounts totaling ₹ 71.82 Crores were proceeds of crime in the hands of the applicant.

5. It is on the basis of such material that the applicant was arrested and he has remained behind bars. The application filed by the applicant for bail before the Special PMLA Court, was dismissed and hence, the applicant has approached this Court.

6. Mr. Aabad Ponda, learned senior counsel appearing for the applicant submitted that the material on record demonstrates that the allegations made by the ED cannot be supported even by the material available on record and that therefore, the applicant deserves to be enlarged on bail, as he has strong case on merits and he satisfies the stringent requirements of Section 45 of the PMLA.

7. As regards the first transaction, it was submitted that the applicant through Nibodh Realty had invested amounts into the Radius Group of Companies of co-accused No.25 Sanjay Chhabria, as per agreements executed way back in the years 2014-2015. In fact, the amounts were invested between October, 2014 and July, 2015. The said investments were to be returned along with interest @ 18% per annum, which was reasonable rate considering the market realities at that point in time. The amounts were returned by Radius Group of Companies of Sanjay Chhabria over a period of time, part of the amount being returned after the month of April, 2018, which could be the reference point when proceeds of crime were allegedly generated.

It was submitted that amounts being returned in pursuance of agreements executed way back in the year 2014-15, could not be tainted as proceeds of crime. In any case, the ED arbitrarily treated ₹ 67.85 Crores as proceeds of crime, without any basis to support the said figure. It is emphasized that this Court while granting bail in the predicate offence specifically held that charging interest @ 18% per annum could not be said to exorbitant or unusual in the money market. Therefore, the aforesaid allegation is without any substance.

8. As regards second transaction pertaining to ABIL Dairy, it was submitted that this transaction cannot be said to be a sham transaction only because the date mentioned on the Memorandum of Understanding (MoU) is 15.01.2016, while the stamp paper was purchased in March, 2016. The said date mentioned on the agreement is an obvious typographical error. In any case, even as per ED the amount of ₹ 25 Crores was paid to the applicant on 15.01.2016, more than two years before the proceeds of crime were generated. The second tranche of ₹ 25 Crores was paid on 28.02.2019, which is treated as proceeds of crime by the ED. But, since co-accused No.25 Sanjay Chhabria failed to pay the balance amount of ₹ 25 Crores, the transaction itself was called off and the amount of ₹ 50 Crores received by the applicant in respect of the sale of ABIL Dairy was adjusted against the amount payable to the applicant by the co-accused No.25 Sanjay Chhabria in respect of the

aforementioned first transaction referred to hereinabove. Reference was made to certain communications exchanged between the parties to submit that such an adjustment was even reflected in the books of account of Nibodh Realty of the applicant. This explanation, in fact, was accepted by this Court while granting bail to the applicant in the predicate offence.

9. As regards the third transaction pertaining to the consultancy provided by the applicant and his companies, it was submitted that the entire amount could be demonstrated to be received before the proceeds of crime allegedly found their way to the applicant. Reference was made to the transfer of amounts to emphasize that part of the amount was received prior to 12.04.2018 and the remaining amount was received before 06.06.2018. Much emphasis was placed on the date 06.06.2018, because as per the ED, DHFL itself received amount of ₹ 2700 Crores on 06.06.2018 and hence, the very foundation of the assertion of the ED that proceeds of crime came to the applicant in respect of consultancy charges, falls to the ground. It was submitted that emphasis placed on statements recorded by the ED can be of no consequence because those statements are self serving statements made by the so called witnesses.

10. It was further emphasized that in the present case there is no possibility of the trial being concluded within a reasonable period of time. In

the PMLA case there are 70 witnesses to be examined and in the predicate offence there are 187 witnesses to be examined. Both the matters have been clubbed under Section 44(1)(c) of the PMLA on 23.02.2023. There is no likelihood of the trial itself commencing and on this ground also the applicant deserves to be released on bail. Reliance was placed on various orders of the Supreme Court, including the latest order in the case of Manish Sisodia Vs. Vs. Central Bureau of Investigation¹.

11. On the other hand, Mr. Venegaonkar, learned counsel appearing for contesting respondent No.1 ED submitted that there is sufficient material to demonstrate that the amounts stated in the third supplementary prosecution complaint are proceeds of crime found in the hands of the applicant. Reliance was placed on the chart specified in the said third supplementary prosecution complaint showing the flow of money. It was emphasized that the statements of the witnesses recorded during the course of investigation clearly demonstrated that no consultancy was actually ever provided by the applicant and his companies, thereby indicating that the amounts were transferred as adjustments and layering. These were all cooked up and sham transactions. Specific emphasis was placed on statements of individuals recorded by the ED. It was submitted that ABIL Dairy still belongs to the applicant despite huge amount of ₹ 50 Crores being transferred by co-

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accused No.25 Sanjay Chhabria to the applicant. It was further submitted that merely because the applicant was granted bail in the predicate offence cannot inure to his benefit, for the reason that in the present case, the applicant is required to cross the stringent threshold specified under Section 45 of the PMLA.

12. It was submitted that sufficient material is available on record in respect of all the three transactions to make out a strong *prima facie* case against the applicant to the effect that amount of about ₹ 165 Crores in the hands of the applicant must be treated as proceeds of crime. It is part of the amount that was in the first place, transferred by the Yes Bank in favour of the DHFL, which was then transferred to co-accused No.25 Sanjay Chhabria and thereafter found its way in the hands of the applicant. The ingredients of offences under Section 3 and 4 of the PMLA are clearly made out against the applicant and therefore, he does not deserve to be enlarged on bail.

13. It is submitted that the two cases i.e. the case concerning predicate offence and the case under PMLA have been already clubbed on 23.02.2023 under Section 44(1)(c) of PMLA. The ED will make all efforts to complete the trial within a reasonable period of time, provided the accused persons cooperate with the proceedings. It was submitted that the applicant has not suffered incarceration for even half of the maximum sentence of 7

years that can be imposed under PMLA. Therefore, the present application deserves to be dismissed.

14. This Court has considered the rival submissions in the light of the material placed on record. In such cases where the applicant – accused is facing prosecution under the provisions of the PMLA, stringent test contemplated under Section 45 thereof, is to be satisfied by the applicant. The first limb of the said test requires the Court to reach a finding that the applicant has made out reasonable grounds to show that he is not guilty of the offences alleged and the second limb is the satisfaction of the Court that if the applicant is enlarged on bail he will not commit further offence. The Court is not required to conduct a trial at this stage and as per settled law, the Court is required to satisfy itself on broad probabilities in terms of the material placed on record. With this backdrop, the rival contentions have been considered by this Court.

15. The main allegation against the applicant is that proceeds of crime found their way into the hands of the applicant and therefore, he is liable to be held guilty for the offences under Sections 3 and 4 of the PMLA. The proceeds of crime are traced from the disbursal of amount of ₹ 3983 Crores in the form of loan and investments by Yes Bank Limited to DHFL. It is alleged that amount of ₹ 600 Crores was paid as kickbacks by DHFL to the

promoters of the Yes Bank Limited, including accused Rana Kapoor and his companies. DHFL in turn is alleged to have transferred amounts to co-accused No.25 Sanjay Chhabria and his companies. It is alleged that the said co-accused No.25 Sanjay Chhabria through his companies, in turn, transferred such amount, which was part of proceeds of crime, to the account of the applicant and his companies. The flow of money as claimed by the ED is shown as part of the third supplementary prosecution complaint wherein the applicant has been arraigned as an accused. This Court has perused the same.

16. The aforementioned three transactions form the bedrock of the case of the ED against the applicant. While the learned counsel appearing for ED has relied upon contents of the third supplementary prosecution complaint, referring to statements recorded during the course of investigation, to support its case to oppose to the present bail application, the learned senior counsel appearing for the applicant has sought to demonstrate that even if the contents of the third supplementary prosecution complaint are to be taken into consideration, *prima facie* case is made out by the applicant in his favour. This Court has considered the material on record in respect of all the three transactions and the findings are being rendered below.

17. As regards the first transaction pertaining to investment made by the applicant in the companies of co-accused No.25 Sanjay Chhabria, the

material on which the ED relies itself shows that such investment was made in the years 2014-2015. This was much prior to the alleged proceeds of crime being generated and allegedly finding their way into the account of the applicant. The said investments made by the applicant in the companies of co-accused No.25 Sanjay Chhabria were returned with agreed interest of rate of 18% per annum, over a period of time. Part of such repayment was after April, 2018, which according to the ED itself is the point in time when it could be said that proceeds of crime started trickling down to the applicant. Even within the amount that so came into the account of the applicant after April, 2018, the ED has treated ₹ 67.85 Crores as the proceeds of crime. There is substance in the contention raised on behalf of the applicant that there does not appear to be any apparent logic in identifying the proceeds of crime as ₹ 67.85 Crores.

18. Be that as it may, such amounts were being returned in pursuance of investments made in the years 2014-15 and as per mutually agreed covenants, thereby indicating that a strong *prima facie* case made out by the applicant in his favour to the effect that it could never have been contemplated in the years 2014 and 2015 that such proceeds of crime would be generated in future, which would be utilized for returning the investments. There is substance in the contention raised on behalf of the applicant that interest being charged @ 18% per annum was a commercial agreement

between the concerned parties and such rate of interest cannot be said to be either exorbitant or unusual in the money market. In fact, this Court while granting bail to the applicant in the predicate offence specifically noted that even under Section 18 of the Negotiable Instruments Act, 1881 prescribed interest is @ 18% per annum when no rate of interest is specified in a Negotiable Instrument. The applicant has also indicated that during the years 2014 to 2019, investor returns for the real estate sector were in the range of 18% to 27%. Therefore, this Court is of the opinion that the applicant has indeed made out a strong *prima facie* case in his favour, insofar as the first transaction is concerned.

19. As regards the second transaction pertaining to sale of ABIL Dairy LLP by the applicant to the co-accused No.25 Sanjay Chhabria, the ED placed much emphasis on the date of the MoU being recorded as 15.01.2016, while the stamp paper on which it was executed was purchased in March, 2016. It is claimed that this fact itself shows that the MoU is a sham document. This Court is of the opinion that even if the aspect of the date of 15.01.2016 being a typographical error may be a matter for trial, but it is an admitted position that the first tranche of payment of ₹ 25 Crores was made by co-accused No.25 Sanjay Chhabria in the year 2016, much prior to proceeds of crime being generated and finding their way to the applicant. Undoubtedly the second tranche of ₹ 25 Crores was paid on 28.02.2019, after

the alleged generation of proceeds of crime and they finding their way to the account of the applicant. The said payment was also expressly stated to be in connection with the aforesaid MoU, under which ABIL Dairy was agreed to be sold to co-accused No.25 Sanjay Chhabria.

20. The documents in the form of letters exchanged between the companies of the applicant and that of the co-accused No.25 Sanjay Chhabria *prima facie* indicate that the aforesaid total amount of ₹ 50 Crores was adjusted towards the first transaction pertaining to loan / investments and return thereof, relatable to the abovementioned first transaction between the parties. These letters dated 03.02.2021 and 09.03.2021 are placed on record in the compilation of documents, *prima facie* showing inter group adjustments made by the parties. It is relevant to note that this Court while granting bail to the applicant in the predicate offence, in this context, held that the applicant has been able to offer an explanation in that regard and that it can be said to be competing in probabilities with that of the prosecution version, indicating that the said aspect would warrant adjudication at trial. This Court finds that even regard to the second transaction, the applicant has been able to make out a strong *prima facie* case in his favour.

21. As regards the third transaction pertaining to consultancy services provided by the applicant and his companies to co-accused No.25 Sanjay

Chhabria and his companies, even according to the ED and on the basis of the material placed on record, part of such payment was made prior to April, 2018 and the remaining part was paid to the applicant and his companies prior to 06.06.2018. This Court has perused the documentary material on record and it is found that even according to the ED, DHFL itself received the alleged proceeds of crime to the extent of ₹ 2700 Crores on 06.06.2018. The amounts pertaining to consultancy charges having been transferred to the applicant by co-accused No.25 Sanjay Chhabria prior to 06.06.2018, when the proceeds of crime were yet to reach even the said co-accused person, shows that a strong *prima facie* case is indeed made out by the applicant in his favour in respect to the said third transaction.

22. In this regard, much emphasis was placed on behalf of the ED on statements recorded during the investigation under PMLA, particularly statements of Surbhi Wahi, Dayaram Kedia and Srinivasan Govindan. This Court has perused the statements. The said statements appear to be self serving statements made by the said individuals exculpating them from their role in the alleged crime and to that extent, the applicant is justified in contending that the fact that consultancy services were actually provided or not would be a matter for trial and no finding on broad probabilities can be reached against the applicant on that aspect at this stage itself. Thus, even on the third transaction pertaining to alleged proceeds of crime finding their way

into the accounts of the applicant, a strong *prima facie* case is made out in his favour of the applicant.

23. Having rendered the aforesaid findings, this Court is of the opinion that the applicant has been able to satisfy the first limb of the stringent test contemplated under Section 45 of the PMLA and insofar as the present case is concerned, there are reasonable grounds to believe that the applicant is not guilty of the offences for which he is being prosecuted. The applicant is already granted bail in the predicate offences and hence, even the second limb can be said to be satisfied.

24. Apart from this, there is substance in the contention raised on behalf of the applicant that although the applicant has remained incarcerated from June, 2022, while he can be sentenced to imprisonment for maximum sentence of 7 years under the PMLA, there is virtually no possibility of the trial being completed within a reasonable period of time. It is a matter of record that the CBI case pertaining to the predicate offence and the present case under PMLA have been clubbed under Section 44(1)(c) of the PMLA on 23.02.2023. The prosecution intends to examine 70 witnesses in the CBI case pertaining to the predicate offence and 187 witnesses are proposed to be examined in the present case under PMLA. There is remote possibility of trial even commencing and hence there is hardly any possibility of the trial being

completed within a reasonable period of time.

25. In this context, the applicant is justified in invoking his fundamental right under Article 21 of the Constitution of India for speedy trial. The law laid down in this context by the Supreme Court is absolutely clear and reliance placed on the orders of the Supreme Court, including the recent order passed in the case of **Manish Sisodia Vs. Vs. Central Bureau of Investigation** (*supra*), on behalf of the applicant is justified. On this ground also the applicant deserves to be enlarged on bail.

26. In view of the above, the application is allowed in the following terms :

- (A) The applicant shall be released on bail in connection with ECIR/MBZ0-1/03/2020 dated 07.03.2020 in PMLA Special Case No.452 of 2020, on furnishing P.R. Bond of ₹ 1,00,000/-, with one or two sureties in the like amount to the satisfaction of the trial Court;
- (B) The applicant shall report before the office of the Enforcement Directorate at 4th Floor, Kaise-I-Hind, Ballard Estate, Fort, Mumbai, on the second Monday of every alternative month between 10:00 a.m. and 12:00 noon, till conclusion of the trial.
- (C) The applicant shall surrender his passport with the Trial Court and he shall not leave the Country without prior permission of the Trial Court;
- (D) The applicant shall cooperate with the trial Court for

expeditious trial and he shall attend each and every date, unless exempted for reasons to be recorded in writing;

- (E) The applicant shall not tamper with the evidence of the prosecution. He shall not influence the informant, witnesses or any other person concerned with the case;
- (F) Upon being released on bail, the applicant shall immediately, and in any case within a week, furnish the details of his active mobile numbers and residential addresses to the Trial Court and update about the same, if there is any change.

27. Needless to say, violation of any of the aforesaid conditions would make the applicants liable to face proceedings for cancellation of bail.

28. It is also clarified that the observations made in this order are limited to the question of grant of bail to the applicant in the present application and that the trial Court shall proceed further, without being influenced by the observations made in this order.

29. The application is disposed of.

(MANISH PITALE, J.)