IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.653 OF 2024

Wasim Siddiqui Bawla ... Applicant
versus
Directorate of Enforcement and Anr. ... Respondents

WITH
INTERIM APPLICATION NO.1111 OF 2024

Mr. Vikram Chaudhari, Senior Advocate with Mr. Raktim Gogoi, Mr. Shivam Pal, Ms. Neha Ahuja, Mr. Amit Ahuja, for Applicant.
Mr. Ashish Chavan, Special PP, for Respondent No.1.
Mrs. Ranjana D. Humane, APP for State.

CORAM: N.J.JAMADAR, J.
RESERVED ON : 30 APRIL 2024
PRONOUNCED ON : 17 MAY 2024

ORDER :

1. The applicant who is arraigned in PMLA Special Case No.1281 of 2023 arising out of C.R.No.ECIR/MBZO-II/32/2022 for the offence of money laundering, as defined under Section 3, and punishable under Section 4 of the Prevention of Money Laundering Act, 2002 (PMLA), has preferred this application to enlarge him on bail.

2. The background facts necessary for determination of this application can be summerized as under :

2.1 On 27 May 2019, Director of Revenue Intelligence (DRI) intercepted five trucks carrying 60 MT Indonesian betel nuts by evading payment of customs duty thereon. It transpired that though the purported consignee was M/s. Kheboto Traders, the applicant was the real consignee. A search was carried out at the godown of M/s. Pooja Pigments, a firm of the applicant, and 72.15 MT of similar betel nuts were seized.

2.2 On 21 May 2020, DRI issued a show cause notice to various entities, including the applicant. In the meanwhile, a Criminal Public Interest Litigation No.5 of 2016 was filed before the Nagpur Bench of this Court and by an order dated 25 February 2021, a Division Bench of this Court directed CBI to register the offences into the allegations of smuggling of illegally imported betel nuts.

2.3 Pursuant to the aforesaid directions, CBI/ACB, Nagpur, registered FIR on 5 March 2021 for the offences punishable under Sections 420, 467, 468, 471, 120B of the Indian Penal Code and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988, alleging, inter alia, that unscrupulous traders in connivance with various public servants were indulging in smuggling of substandard betel nuts / areca nuts of Indonesian origin by claiming falsely the same to be originating from the SAPTA-SAARC Preferential Trading Agreement based Member Countries by using fake certificates of origin, bogus and undervalued bills/invoices and forged clearance certificates and, thus, causing evasion of customs duty to the tune of Rs.15,000 Crores annually.

2.4 On 30 September 2022, Directorate of Enforcement (ED) registered

ECIR considering the offences in the aforesaid CBI FIR as predicate offences. On 1 December 2022, ED carried out searches at the residences of the applicant and his brother in law – Ikram Haji Haroon Jada, Accused No.4. From the residence of accused No.4, cash amount of Rs.16,50,000/- came to be recovered.

2.5 ED investigation further revealed that Abdul Hannan Ali (A2) is the proprietor of M/s. F M Food Processing and Agro Based Industries, Golaghat, Assam. (M/s. F. M. Food). Abdul Hannan Ali (A2) is a habitual offender dealing in smuggling of betel nuts from Myanmar to India via Indo Myanmar Border. The smuggled betel nuts were adulterated to resemble betel nuts of Indian origin. Abdul Hannan Ali (A2) has created various fictitious entities / firms in the name of his associates such as Kuhoje K. Achumi (A3) for transportation of the smuggled betel nuts from Assam to various places in India, majorly to Nagpur. Abdul Hannan Ali (A2) had smuggled the betel nuts into India without payment of customs duty and thereby caused loss to the Government to the tune of Rs.113.40 Crores. The accused No.2 used bank accounts opened in the names of fictitious entitles and his associates for layering the said proceeds of crime which were ultimately transferred to the bank account of M/s. F M Food.

2.5 Qua the applicant, it is alleged that the applicant is a proprietor of M/s. Green Traders. Despite having complete knowledge that the betel nuts were of foreign origin and smuggled without payment of customs duty to the Government, he procured the same from Abdul Hannan Ali (A2). The applicant had generated proceeds of crime to the tune of Rs.11.70 Crores from the said act of procuring the smuggled betel nuts. The applicant transferred the said proceeds of crime to the accused No.2 through intermediate fictitious entities. M/s. Kheboto Traders of Kuhoje K. Achumi (A3) was one of such fictitious entity. Investigation revealed that the applicant was the actual consignee of the adulterated and smuggled betel nuts and not M/s. Kheboto Traders. The applicant had kept the proceeds of crime i.e. 16.50 Lakhs at the house of accused No.2. The applicant, thus, directly indulged in the process or activity connected with proceeds of crime to the tune of Rs.11.70 Crores.

2.6 The applicant made an endeavour to use part of the proceeds of crime to obtain the documents relating to the investigation through the contractual staff of ED. The applicant is, thus, involved in generation, acquisition, layering, use and concealment of the proceeds of crime.

2.7 The applicant came to be arrested on 26 June 2023 by invoking the powers under Section 19 of the PMLA. The learned Special Judge, PMLA was persuaded to reject the application by an order dated 3 February 2024.

3. I have heard Mr. Vikram Chaudhari, learned Senior Advocate for the Applicant, and Mr. Ashish Chavan, learned Special PP for the Respondent No.1 – ED at some length. With the assistance of the learned Counsel for the parties, I have perused the material on record.

4. Mr. Chaudhari, learned Senior Advocate, advanced a multi-pronged submission. Firstly, the threshold prescribed for arrest under Section 19 of the PMLA was not met. There was no justification for the arrest of the applicant. On the own showing of the ED, the applicant had appeared before the Investigating agency on 7 occasions. The applicant had rendered requisite cooperation. There was no reason for the investigating officer to believe that the applicant has been guilty of the offence punishable under this Act.

5. Mr. Chaudhri submitted that there is a distinction between the power to arrest and the necessity of arrest. In the case at hand, there was no necessity of arrest. Reliance was placed on the decisions of the Supreme Court in the cases of **Vijay Madanlal Choudhary and Ors. V/s. Union of India and Ors.**[1] and **Satender Kumar Antil V/s. Central Bureau of Investigation and Anr.**[2].

6. Mr. Chaudhari further submitted that when the aforesaid ground of illegal and unjustified arrest was raised while seeking bail, the learned Special Judge, PMLA approached the matter from a wrong perspective to hold that the said ground could not be considered at the stage of bail. It was urged that the Supreme Court in the case of **Satender Kumar Antil (supra)**, has in terms observed that such a ground can be considered at the stage of bail.

7. Secondly, Mr. Chaudhari submitted that the DRI investigation has not

1 (2022) SCC Online SC 929.
2 (2022) 10 SCC 51

proceeded beyond a show cause notice to the applicant and other entities. The said notice remains static and awaits adjudication. The show cause notice by DRI or statements recorded by the DRI cannot be relied upon as the material in possession of ED for the purpose of arrest and investigation under PMLA. In CBI case, which is stated to be a predicate offence, there has not been any investigation. Since CBI has not concluded its investigation, it cannot be said that the applicant has any role in receiving the smuggled goods. It was urged that ED cannot investigate the scheduled offence and its jurisdiction is dependent upon the conclusions that may be drawn by the CBI. .

8. Thirdly, Mr. Chaudhari submitted that the applicant had no role in the alleged smuggling of the goods from across the border, transportation thereafter to the places in the north east and further transportation to various places in India, including Nagpur. The role attributed to the applicant is that of knowingly receiving the smuggled adulterated betel nuts, for which there is no material to attribute such knowledge to the applicant, submitted Mr. Chaudhari.

9. Mr. Chaudhari submitted with a degree of vehemence that Abdul Hanan Ali (A2) who is alleged to be the mastermind behind the operations and habitual offender was not at all arrested by the Respondents. The learned Special Judge released accused No.2 by invoking the provisions contained in Section 88 of the Code of Criminal Procedure, 1973. Resultantly, the accused No.2 who allegedly defrauded

the Government to the tune of Rs.113 Crores, who did not appear before the IO despite several notices and who is allegedly a habitual offender, is at liberty and the applicant, who had procured and sold the betel nuts in the normal course of business is detained. Having regard to the role attributed to the accused No.2 and the applicant, the latter also deserves to be enlarged on bail, urged Mr. Chaudhari.

10. Mr. Chaudhari submitted that the foolishness on the part of the applicant in offering bribe to one of the contractual employees in the office of the ED to obtain copies of his statement, even if taken at its face, may not be construed against the applicant if he is otherwise entitled to be released on bail.

11. Mr. Chavan, learned Special PP, countered the submissions on behalf of the applicant. It was strenuously submitted that the material on record makes out a very strong prima facie case against the applicant for an offence punishable under Section 4 of the PMLA. Thus, the rigour contained in Section 45(1) of the PMLA is attracted. Resultantly, the applicant does not deserve to be enlarged on bail as, in the face of the material on record, it cannot be said that the applicant is not guilty of the offence for which he has been arraigned.

12. Joining issue, Mr. Chavan urged that the ground that the arrest was unjustified and illegal and did not meet the threshold prescribed under Section 19 of the PMLA, cannot be raised in an application for bail. The applicant ought to have raised such challenge in an appropriate proceedings questioning remand. A strong

reliance was placed by Mr. Chavan on the judgment of the Supreme Court in the case of **V. Senthil Balaji V/s. State represented by Deputy Director and Ors.**[3]

13. In any event, according to Mr. Chavan, in the facts of the case, the conditions stipulated by Section 19 of the PMLA have been followed in letter and spirit. The grounds of reasonable belief necessitating the arrest have been recorded and the adjudicating authority has also been apprised.

14. Mr. Chavan further submitted that the submissions sought to be canvassed on behalf of the applicant that the applicant was unaware of the smuggled nature of the betel nuts and he had procured betel nuts in the normal course of business is belied by the attendant circumstances. The knowledge and intention of the applicant can be gathered from the various acts, including the statement made by the applicant and transporter Mr. Manish Kothari, which indicate that M/s. Kheboto Traders was a fictitious entity and the applicant was the actual consignee of the smuggled goods. Money trail clearly demonstrates the placing and layering of 11.70 Crores through intermediate fictitious entities. Recovery of cash of Rs.16.50 Lakhs, which was a part of the proceeds of crime, from Ikram Haji Haroon Jada (A4), brother in law of the applicant, further incriminates the applicant. Moreover, the fact that the said amount formed part of the proceeds of crime has received the stamp of approval by the adjudicating authority.

3 2023 SCC Online SC 934

15. Mr. Chavan further submitted that the applicant has also been evasive and non cooperative during the course of investigation. The applicant initially tried to feign ignorance of everything. However, when confronted with credible material, the applicant caved in. What exacerbates the situation, according to Mr. Chavan, was an attempt to influence the investigation by offering bribe to the contractual employee. In the circumstances, the second condition that the applicant will not indulge in identical offences, if released on bail, cannot be said to have been fulfilled. Such conduct of the applicant singularly disentitles the applicant from any discretionary relief, submitted Mr. Chavan.

16. The aforesaid submissions now fall for consideration. To begin with, it is necessary to note, in view of the interdict contained in Section 45(1) of the PMLA, no person accused of an offence can be released on bail unless the Court is satisfied that there are reasonable ground for believing that such person is not guilty of such offence and that he is not likely to commit any offence while on bail. Satisfaction of the twin conditions is the statutory requirement. Sub-section (2) of Section 45 further clarifies that the limitation on granting bail under sub-section (1) is in addition to the limitation under the Code or any other law for the time being in force for granting of bail. Are there grounds which would entitle the applicant to bail despite the aforesaid statutory restrictions?

17. The first ground strenuously urged by Mr. Chaudhari was the absence of

material which would justify the belief that the applicant may be guilty of an offence under the PMLA. Taking the Court through the averments in the prosecution complaint and the material on record, an endeavour was made to urge that there was no justification for arrest. As a corollary, Mr. Chaudhari submitted that the said factor ought to have weighed with the learned Special Judge, PMLA in considering the entitlement for bail. Attention of the Court was invited to Paragraph 25 of the judgment of the Supreme Court in the case of **Satender Kumar Antil (supra)**, wherein it was enunciated that while considering the application for enlargement on bail, the Courts will have to satisfy themselves of due compliance of the provisions contained in Section 41 of the Code. Any non-compliance would entitle the accused to grant of bail.

18. In the facts of the case, I do not deem it necessary to delve deep into this ground, on which prayer for bail was premised. Firstly, the Court cannot loose sight of the fact that CBI FIR was registered pursuant to the directions given by the Division Bench in PIL. Secondly, it is necessary to note, there is material in the form of the interception and seizure of betel nuts by DRI, search and seizure operation at the premises of the applicant and Ikram Haji Haroon Jada (A4). Thirdly, the statements of witnesses, especially that of Manoj Kothari, the transporter, revealed that the applicant was the actual consignee of the alleged smuggled betel nuts and not M/s. Kheboto Traders, the purported consignee. In his statement recorded under

Section 50 of the PMLA, the applicant has allegedly stated that he had placed orders and procured betel nuts from F.M. Food. Fourthly, there is further material to show that the applicant had credited the amounts to the accounts of M/s. Kheboto Traders and K.S. Enterprises which were eventually transferred to the account of F.M. Food (para 10.1 of the prosecution complaint). In these circumstances, prima facie, it cannot be said that the Investigating Officer had no justification to arrest the applicant.

19. In any event, I find substance in the submission of Mr. Chavan that in view of the decision of the Supreme Court in the case of **V. Senthil Balaji V/s. State represented by Deputy Director and Ors. (supra),** the applicant ought to have assailed the order of remand in an appropriate proceedings. In the said case, the Supreme Court enunciated the position as under :

> "30. In a case where the mandate of Section 167 of the CrPC, 1973 and Section 19 of the PMLA, 2002 are totally ignored by a cryptic order, a writ of Habeas Corpus may be entertained, provided a challenge is specifically made. However, an order passed by a Magistrate giving reasons for a remand can only be tested in the manner provided under the statute and not by invoking Article 226 of the Constitution of India. There is a difference between a detention becoming illegal for not following the statutory mandate and wrong or inadequate reasons provided in a judicial order. While in the former case a writ of Habeas Corpus may be entertained, in the latter the only remedy available is to seek a relief statutorily given. In other words, a challenge to an order of remand on merit has to be made in tune with the statute, while non-compliance of a provision may entitle a party to invoke the extraordinary jurisdiction. In an arrest under Section 19 of the PMLA, 2002 a writ would lie only when a

person is not produced before the Court as mandated under sub-section (3), since it becomes a judicial custody thereafter and the concerned Court would be in a better position to consider due compliance.

………..

95. Summation of Law :

i. When an arrestee is forwarded to the jurisdictional Magistrate under Section 19(3) of the PMLA, 2002 no writ of Habeus Corpus would lie. Any plea of illegal arrest is to be made before such Magistrate since custody becomes judicial.

ii. Any non-compliance of the mandate of Section 19 of the PMLA, 2002 would enure to the benefit of the person arrested. For such non-compliance, the Competent Court shall have the power to initiate action under Section 62 of the PMLA, 2002.

iii. An order of remand has to be challenged only before a higher forum as provided under the CrPC, 1973 when it depicts a due application of mind both on merit and compliance of Section 167 (2) of the CrPC, 1973 read with Section 19 of the PMLA, 2002.

iv. Section 41A of the CrPC, 1973 has got no application to an arrest made under the PMLA, 2002."

20. The second submission on behalf of the applicant based on alleged inchoate nature of predicate offences deserves consideration. The fact that the CBI has registered FIR pursuant to the directions of the Division Bench in Public Interest Litigation is rather incontestable. It is not the requirement in law that the person who is accused of offence under the PMLA must also be arraigned as an accused in the predicate offence. The nature of the offence under Section 3 of the PMLA, was expounded by the Supreme Court in the case of **Vijay Madanlal Choudhary and**

<u>Ors. V/s. Union of India and Ors. (supra)</u> as under :

> "269. <u>From the bare language of Section 3 of the 2002 Act, it is amply clear that the 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</u>. The process of 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. Thus, involvement in any one of such process or activity connected with the proceeds of crime would constitute offence of money-laundering. <u>This offence otherwise has nothing to do with the criminal activity relating to a scheduled offence – except the proceeds of crime derived or obtained as a result of that crime</u>."
>
> (emphasis supplied)

21. A profitable reference can also be made to a recent decision in the case of ***<u>Pavana Dibbur vs. Directorate of Enforcement</u>***[4]**<u>,</u>** wherein after following the decision in the case of ***Vijay Chaudhary*** (supra) the Supreme Court repelled the contention raised on behalf of the appellant therein that appellant cannot be prosecuted under PMLA as he was not shown as an accused in the scheduled offence. The Supreme Court observed, *inter alia,* as under:

> "15. …….. The conditions precedent for attracting the offence under Section 3 of the PMLA are that there must be a scheduled offence and that there must be proceeds of crime in relation to the scheduled offence as defined in clause (u) fo sub-section (1) of Section 3 of the PMLA.
>
> 16. In a given case, if the prosecution for the scheduled offence ends in the acquittal of all the accused or discharge of all the accused or the proceedings of

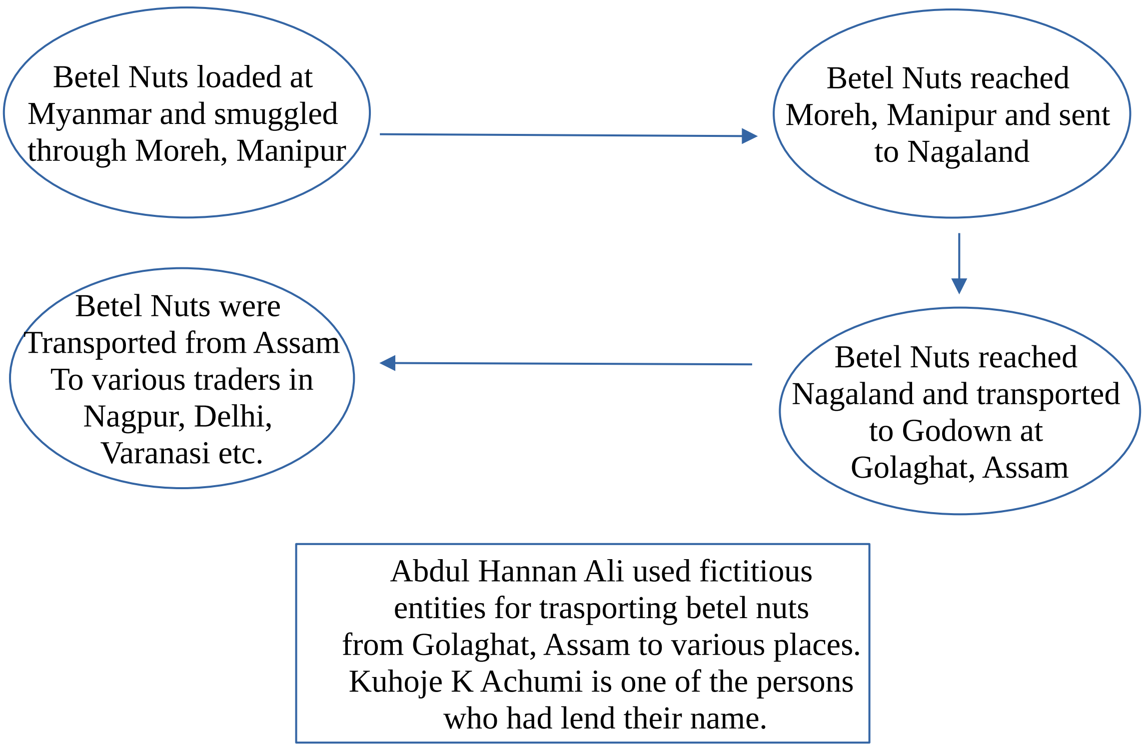
4 AIR 2024 SC 117.

> the scheduled offence are quashed in its entirety, the scheduled offence will not exist, and therefore, no one can be prosecuted for the offence punishable under Section 3 of the PMLA as there will not be any proceeds of crime. Thus, in such a case, the accused against whom the complaint under Section 3 of the PMLA is filed will benefit from the scheduled offence ending by acquittal or discharge of all the accused. Similarly, he will get the benefit of quashing the proceedings of the scheduled offence. However, an accused in the PMLA case who comes into the picture after the scheduled offence is committed by assisting in the concealment or use of proceeds of crime need not be an accused in the scheduled offence. Such an accused can still be prosecuted under PMLA so long as the scheduled offence exists. Thus, the second contention raised by the learned senior counsel appearing for the appellant on the ground that the appellant was not shown as an accused in the Charge-sheets filed in the scheduled offences deserves to be rejected."
>
> (emphasis supplied)

22. The submission that since there has not been any effective investigation in the FIR registered by CBI and till the CBI concludes its investigation, it cannot be said that the applicant has any role in the allegations levelled in the said FIR, also does not merit countenance. For the reason that the CBI has not filed the charge-sheet, it cannot be said that the predicate offence has effaced. As enunciated by the Supreme Court in the case of **Vijay Madanlal Choudhary and Ors. V/s. Union of India and Ors. (supra)**, it is only in the event the person named in the criminal activity relating to a scheduled offence is finally absolved by a Court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of the criminal case (scheduled offence) against him/her, there can be no action for money laundering against such a person or person claiming through him in relation to the property linked to the stated scheduled offence.

23. This position was further clarified by the Supreme Court in the afore-extracted observations in the case of ***Pavana Dibbur*** (supra) and in the case of **Saumya Chaurasia V/s. Directorate of Enforcement**[5].

24. This leads me to the gravamen of indictment that the applicant had procured smuggled and adulterated betel nuts evading the customs duty. To properly appreciate the role attributed to the applicant, it may be apposite to refer to the pictorial representation in paragraph 10.8 of the prosecution complaint. It reads as under :



5 Criminal Appeal No.3840 of 2023

25. At this stage itself, it may be necessary to note the alleged placing and layering of the proceeds of crime, generated out of the sale of smuggled betel nuts. It is alleged that the applicant had transferred in tranches a sum of Rs.1.71 Crores to the account of M/s. Kheboto Traders, Nagpur and a sum of Rs.1.31 Crores to M/s.K.S.Enterprises, Nagaland held by Kuhoje K. Achumi (A3) and, therefrom, the said amount came to be credited to the account of F.M.Food. Likewise, the applicant had credited a sum of Rs.6.22 Crores to the account of F.M.Food, aggregating to Rs.11.70 Crores.

26. Mr. Chaudhari submitted that in the pictorial representation, referred to above, the applicant had no role upto the 3rd circle. The applicant comes in the frame in the fourth circle. It was urged that the applicant is allegedly one of the traders in Nagpur, Delhi and Varanasi. Referring to the money trail (paragraph 10.1.4), Mr. Chaudhari would submit that the entire amount was transferred by the applicant through banking channel. That reflects the bonafide transaction in the trade.

27. In opposition to this, Mr. Chavan, learned Special PP, submitted that there are concomitant circumstances which indicate that the applicant was fully aware of the smuggled and adulterated nature of the betel nuts which the applicant had received and dwelt in. The circumstances of search and seizure of the smuggled and adulterated betel nuts, reports of analysis indicating that those betel nuts were of Indonesian origin, the seizure of cash from the applicant and Ikram Haji Haroon Jada

(A4), layering of the funds through intermediate fictitious entities, coupled with the statements of the applicant and the transporter Manoj Kothari, which indicate that the applicant had entered into transaction with Abdul Hanan (A2) and Kuhoje K. Achumi (A3), were pressed into service to draw home the point that the applicant was very much involved in the money laundering.

28. Prima facie, the aforesaid material may justify an inference that the applicant might have known the place of origin and the nature of the goods procured by him. Had the Court been called upon to decide this application on the basis of the aforesaid material and de hors the development qua Abdul Hannan Ali (A2), the submission of Mr. Chavan might have carried substance. However, the circumstances of release of Abdul Hannan Ali (A2), in the facts of the case, is of critical salience.

29. I have adverted to the role attributed to Abdul Hannan Ali (A2) in a little detail while narrating the facts of the case. At this juncture, the extraction of the conclusion drawn by the complainant in the prosecution complaint would be apposite. It reads as under :

> "<u>From the investigation and the evidences gathered, it is clearly established that Abdul Hannan Ali was the key person involved in smuggling of betel nuts from Myanmar and he was adulterating the betel nuts to resemble the same as of Indian Origin. He was the mastermind in smuggling of betel nuts into India without payment of Customs Duty thereby causing a loss to the Government. He had created various fictitious entities in the name of his associates for transporting the smuggled betel nuts from Assam to various places majorly to Nagpur. Kuhoje K Achumi was one of such associates.</u>

> The said fictitious entities were used for layering the generated proceeds of crime, which were ultimately transferred to the bank accounts held by the proprietorship firm of Abdul Hannan Ali, which was subsequently withdrawn in cash by Abdul Hannan Ali. Abdul Hannan Ali had not maintained any proper documentation with regard to purchases as admitted by his firm in the letter submitted to Customs, that they were conducting business in an unorganized manner. In his letter submitted to the Customs, it is further admitted that the payments are being made in cash to the persons from whom betel nuts were purchased. *Wasim Bawla had purchased the smuggled betel nuts from Abdul Hannan Ali by claiming the same as of Indian origin.* From the sale of the said betel nuts, he had generated proceeds of crime which were used for obtaining the documents related to the investigation in unauthorized manner. Thus, the accused persons have committed an offence of Money Laundering as defined under section 3 of PMLA, 2002 and they are liable to be prosecuted and punished u/s 4 of PMLA, 2002."
>
> (emphasis supplied)

30. It would be contextually relevant to note, in paragraph 11.2, it is alleged, Abdul Hanan Ali (A2) has directly indulged in the process of activities connected with the proceeds of crime to the tune of Rs.113.40 Crores. It needs no emphasis that Abdul Hannan Ali (A2) was allegedly the principal character in the alleged offences of smuggling betel nuts without the payment of the customs duty and the resultant offence of money laundering. Nor it requires an elaborate analysis to discern that the role attributed to Abdul Hannan Ali (A2) is far pervasive and grave than that of the applicant. To put in other words, Abdul Hannan Ali (A2) would find place in each of

the four circles in the pictorial representation, extracted above.

31. Abdul Hannan Ali (A2) was not arrested. He preferred an application for his release under Section 88 of the Code. The order passed by the learned Special Judge, PMLA, on 11 October 2023 records that the application of Abdul Hannan Ali (A2) was opposed by ED on the following grounds :

> "a. Accused is involved in a serious offence of money laundering.
>
> b. Accused has not cooperated the investigation.
>
> c. In spite of issuing summons on 27.04.2023, 22.06.2023, 14.07.2023, 07.08.2023, and 10.08.2023, accused had not appeared before the Investigating Officer for recording his statement under Sec. 50 of the PML Act.
>
> d. The applicant is a habitual offender dealing with smuggling of betel nuts from Myanmar in collusion with other accused.
>
> e. The applicant established fictitious entities in the name of his associates for smuggling betel nuts by evading tax causing revenue loss of Rs.113.40 crores to the government.
>
> f. The applicant opened bank accounts in the name of fictitious entitles for layering the proceeds of crime.
>
> g. If accused is released, he will abscond and tamper with the prosecutione evidence."

32. The learned Special Judge was persuaded to allow the said application as Abdul Hannan Ali (A2) was not arrested during the course of investigation and even after the filing of the prosecution complaint.

33. The situation which thus obtains is that Abdul Hannan Ali (A2), the principal confederate and mastermind in the alleged offence of money laundering, who

allegedly defrauded the state exchequor to the tune of Rs.113 Croes and was the supplier of the betel nuts which was received by the applicant and in respect of which the applicant transferred a sum of Rs.11.70 Crores, stands released on his executing bonds. The circumstances in which Abdul Hannan Ali (A2) could not be arrested need not be delved into, in this application However, the Court cannot be oblivious to incongruent situation where the principal offender, against whom there are more grave allegations, has not been arrested and the person who allegedly received a portion of the smuggled betel nuts has been deprived of his personal liberty. Deprivation of personal liberty cannot be a matter of chance (from the point of view of the accused) or choice (from the point of view of the investigator.). The principle of parity, in a situation of the present nature, must weigh with the Court. It is true, Abdul Hannan Ali (A2) was not released on bail and, at that stage, the question of fulfillment of twin conditions prescribed under Section 45 of the PMLA was not required to be delved into. Yet the resultant position that obtains can not be lost sight of. The person who allegedly smuggled the betel nuts and supplied the same to various traders is under no restraint and the applicant, who is allegedly one of the traders who received the allegedly smuggled betel nuts, is behind the bars. The decision to arrest or not to arrest is undoubtedly within the domain of the investigating agency. However, the role attributed to Abdul Hannan Ali (A2), extracted above, stares in the face. Therefore, in my considered view, the applicant deserves the same dispensation as has been extended to Abdul Hannan Ali (A2).

34. The submission of Mr. Chavan that the applicant has not rendered necessary co-operation when he was summoned by the ED, is required to be appreciated in the light of the fact that the applicant appeared before the Investigating Officer on seven occasions. In contrast, Abdul Hannan Ali (A2) never appeared before the Investigating Officer. The question as to whether the applicant rendered necessary co-operation in the investigation when he appeared before the Investigating Officer is, in a sense, by and large subjective one.

35. It is true, the allegations that the applicant attempted to bribe the contractual employee to obtain the copies of his statement are of serious nature. Yet the context of the matter is required to be kept in view and, in the totality of the circumstances, where the principal accused is at liberty, in the peculiar facts of the case, I am persuaded to exercise discretion in favour of the applicant.

36. Hence, the following order :

ORDER

(i) The Application stands allowed.

(ii) The Applicant – Wasim Siddiqui Bawla be released on bail in ECIR/MBZO-II/32/2022 registered with Enforcement of Directorate, Mumbai Zonal Office, II Mumbai on furnishing a PR bond in the sum of Rs.1,00,000/- and one or two sureties in the like amount to the satisfaction of the trial Court.

(iii) The applicant shall mark his presence before the Enforcement of Directorate, Mumbai Zonal Office, II, Mumbai on first Monday of every month between 11 am to 1 pm for a period of three years or till the conclusion of the trial, whichever is earlier.

(iv) The applicant shall not tamper with the prosecution evidence. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any police officer.

(v) On being released on bail, the applicant shall furnish his contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.

(vi) The applicant shall surrender his passport before the PMLA Court and and shall not leave the country without the prior permission of the learned Special Judge, PMLA Court.

(vii) The applicant shall regularly attend the proceedings before the jurisdictional Court.

(viii) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the co-accused and the trial Court shall not be influenced by any of the observations made hereinabove.

(ix) Interim Application No.1111 of 2024 also stands disposed.

(N.J.JAMADAR, J.)

37. At this stage, Mr. Chavan, learned Special PP, seeks stay to the operation of the bail order.

38. In the light of the view which the Court has been persuaded to take, the prayer for stay of the bail order does not appear to be justifiable. Hence, oral application for stay of the bail order stands rejected.

(N.J.JAMADAR, J.)