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

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Reserved on: 31.05.2024
Pronounced on: 01.07.2024+ **BAIL APPLN. 1606/2024 & CRL.M.(BAIL) 771/2024****ZEESHAN HAIDER**

..... Petitioner

Through: Mr. Rajat Bhardwaj, Ms.
Ankita M. Bhardwaj and Mr.
Kaustubh Khanna, Advocates

versus

DIRECTORATE OF ENFORCEMENT

..... Respondent

Through: Mr. Zoheb Hossain, Special
Counsel for ED with Mr.
Manish Jain, SPP, Mr. Vivek
Gurnani, Mr. Kartik
Sabharwal, Ms. Abhipriya, Mr.
Vivek Gaurav and Mr.
Dipanshu Gaba, Advocates.+ **BAIL APPLN. 1091/2024****DAUD NASIR**

..... Petitioner

Through: Mr. Ramesh Gupta, Senior
Advocate with Mr. Manish
Baidwan, Mr. Ankit Sharma
and Mr. Rishabh Kumar
Singh, Advocates.

versus

DIRECTORATE OF ENFORCEMENT

..... Respondent

Through: Mr. Zoheb Hossain, Special
Counsel for ED with Mr.
Manish Jain, SPP, Mr. Vivek



Gurnani, Mr. Kartik
Sabharwal, Ms. Abhipriya, Mr.
Vivek Gaurav and Mr.
Dipanshu Gaba, Advocates.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. This judgment shall decide the applications filed under Section 439 of the Code of Criminal Procedure, 1973 ('*Cr.P.C.*') read with Section 45 of the Prevention of Money Laundering Act, 2005 ('*PMLA*') on behalf of the applicants Zeeshan Haider and Daud Nasir, who have sought regular bail in case arising out of ECIR bearing No. ECIR/DLZO-I/35/2022, for offences punishable under Sections 3/4 of PMLA.

2. **The case of the prosecution**, as discerned from the impugned order and the ECIR No. DLZO-I/35/2022, is that a case was registered against Amanatullah Khan, a Member of Legislative Assembly ('*MLA*') of Delhi, as well as Mr. Mahboob Alam, the then CEO of Delhi Waqf Board ('*DWB*') and other unknown persons, in relation to the predicate offence's case registered against the accused persons i.e. FIR No. 9(A) dated 23.11.2016, registered by the Central Bureau of Investigation ('*CBI*'), AC-III, New Delhi for offences punishable under Section 120B of Indian Penal Code, 1860 ('*IPC*') and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 ('*PC Act*'). Thereafter, the following cases were also clubbed in the present ECIR:



- (i) FIR no. 05, dated 28.01.2020, P.S. Anti Corruption Bureau of Delhi Police, under Section 7 of the PC Act, read with Section 120B of IPC;
- (ii) FIR no. 378, dated 16.09.2022, P.S. Jamia Nagar, under Sections 25, 54 & 59 of The Arms Act, 1959, and
- (iii) FIR no. 380 dated 16.09.2022, PS Jamia Nagar, u/s 25, 54 & 59 of The Arms Act, 1959.

3. In the present ECIR, after investigation, the Directorate of Enforcement has filed a prosecution complaint against accused no. 1 i.e. Zeeshan Haider, accused no. 2 i.e. Daud Nasir, accused no. 3 i.e. Jawed Imam Siddiqui, accused no. 4 i.e. Kausar Imam Siddiqui and accused no. 5 i.e. M/s Sky Powers, a partnership firm being controlled and managed by accused no. 1 Zeeshan Haider, for the offences punishable under Sections 3 and 4 of PMLA.

4. The prosecuting agency i.e., the Directorate of Enforcement alleges as under:

- i.* As alleged, accused Amanatullah Khan, MLA and Chairman of DWB had accumulated proceeds of crime out of illegal gratification in lieu of giving favours to the bidders by leasing out the Waqf properties to them, illegally giving jobs to various persons in DWB and misappropriating DWB funds.
- ii.* Amanatullah Khan, in conspiracy with the present applicants namely Zeeshan Haider and Daud Nasir, and co-accused persons Jawed Imam Siddiqui, Kausar Imam Siddiqui and M/s Sky Powers had laundered the proceeds of crime by utilizing the same for purchasing properties i.e. Plot nos. 275



and 276, Tikona Park, Jamia Nagar, Delhi from Jawed Imam Siddiqui, in the name of M/s Sky Powers as well as Sarah Construction Company i.e. a proprietorship of Daud Nasir, *vide* Sale Agreement dated 17.09.2021. As per the evidence recovered by the investigating agencies including one white colour diary, an amount of approximately Rs. 36 crores had been paid, for purchasing the properties in question, to Jawed Ahmed Siddiqui and his wife Ms. Ayesha Quamar. Out of Rs. 36 crores, an amount of Rs. 27 crores had been paid in cash and Rs. 9 crores through bank.

iii. Further, the present accused/applicant Zeeshan Haider had allegedly paid a sum of Rs. 12.80 crores, of which Rs. 8.90 crores had been purportedly paid in cash and Rs. 3.90 crores had been transferred through banking channels. During investigation, his Income Tax Returns (ITRs) and Balance Sheets had been analyzed and his declared Gross Total Income, since the fiscal year 2014-15, was found to be Rs. 3.5 to 4.5 lacs, except for the Assessment Year 2019-20, when the same was Rs. 10.31 lacs. Furthermore, for his firm M/s Sky Powers, he had declared a Gross Total Income of zero for the Assessment Years 2018-19, 2019-20, and 2020-21. As alleged, considering his and his firm's income, it is improbable that he could have financed the acquisition of land worth crores of rupees.

iv. Moreover, the accused/applicant Daud Nasir had allegedly paid about Rs. 6.54 crores, out of which Rs. 4.32



crores had been paid in cash and Rs. 2.22 crores had been transferred through banking channels. During investigation, his Income Tax Returns (ITRs) and Balance Sheets were also analyzed and it was revealed that he had declared a Gross Total Income of about Rs. 5 to 7 lacs only, and on the basis of this income, it was implausible that applicant Daud Nasir could have financed the acquisition of land valued at Rs. 36 crores.

v. Further during investigation, it was revealed that co-accused Jawed Imam Siddiqui was the owner of properties in question, which were acquired in the name of his wife, Ms. Ayesha Quamar. It is also alleged that the accused persons had orchestrated a false and fabricated Agreement to Sell dated 17.09.2021, indicating a total sale consideration of Rs. 13.40 crores, with the intent to mislead the investigation.

vi. It is also alleged that through the aforementioned agreement, the applicants Zeeshan Haider and Daud Nasir have allegedly acted as *benamidars* for Amanatullah Khan. With the intention to conceal the actual amount paid to the seller, applicants Zeeshan Haider and Daud Nasir, and co-accused Jawed Imam Siddiqui and Kausar Imam Siddiqui allegedly collaborated to launder the proceeds of crime of Amanatullah Khan. It is alleged that out of the total payment of approximately Rs. 36 crores made to Jawed Imam Siddiqui, Rs. 27 crores are the proceeds of crime acquired by the accused Amanatullah Khan.

5. It is, thus, alleged by the Directorate of Enforcement that the



present applicants Zeeshan Haider and Daud Nasir and co-accused Jawed Imam Siddiqui were involved in the acquisition, possession, concealment, use and projecting proceeds of crime of Amanatullah Khan.

6. **Sh. Rajat Bhardwaj, learned counsel appearing on behalf of the applicant Zeeshan Haider** submits that the applicant is a senior citizen of 66 years of age and he is not an accused in the scheduled offence and he is not the recipient of any funds from any of the accused persons in the scheduled offences cases. It is argued that the present applicant was illegally detained for more than 24 hours i.e., from 11 AM on 10.11.2023 to 2:18 PM on the next day i.e., 11.11.2023 and thereafter, the applicant was arrested at 2:19 PM on 11.11.2023.

7. It is submitted that the respondent i.e., the Directorate of Enforcement in purported 'grounds of arrest' provided to the applicant alleged that Sh. Amanatullah Khan, while working as the chairman of the Delhi Waqf Board, has caused financial loss to the exchequers of the Delhi Government and has caused illegal gain to himself and other accused persons. As per the allegations of the Directorate of Enforcement, the applicant herein has purchased a property by utilizing the cash which forms part of the proceeds of crime acquired by Amanatullah Khan in the alleged predicate offence. Further, as per the allegations levelled by the Directorate of Enforcement, the present applicant i.e. Zeeshan Haider is that the diaries seized from the premises of Kausar Imam Siddiqui had allegedly revealed that there were huge transactions running into 100



crores between the present applicant and Amanatullah Khan. It is also alleged that the present applicant is a close associate of co-accused Amanatullah Khan. In this regard, it is argued that there is no material of sterling quality which can establish any connection/relation, in any manner, between the applicant and Amanatullah Khan.

8. Sh. Bhardwaj, learned counsel for the applicant further argues that the Directorate of Enforcement has failed to establish any causal link between the proceeds of crime and the applicant. He argues that the alleged laundered amount has no nexus with the investigation done *qua* the predicate offence. It is also argued that the case of the Directorate of Enforcement is solely based on statements made by the witnesses or co-accused under Section 50 of PMLA and that the prosecution complaint filed by the Directorate of Enforcement does not put forth a single document which corroborates their statements. Further, the diary entries relied upon by the agency do not pass the test laid down in case of ***CBI v. V.C. Shukla (1998) 3 SCC 410*** as diary entries are not admissible evidence. It is further argued that the recovery memo in this case has no mention of any 'white diary'.

9. It is also argued that the Directorate of Enforcement has no jurisdiction to commence or continue the investigation against the applicant herein, as the instant ECIR is nothing but gross abuse of process of law. The offence punishable under Section 3 of the PMLA is dependent upon the illegal gain of property derived as a result of criminal activity relating to a scheduled offence, which in the present matter is missing as there are no pecuniary benefits alleged to have



been involved in the predicate offence. It is argued that there is no material or allegation of sterling quality which substantiates that any amount received or utilized by the applicant was generated from a criminal activity. In the absence of any illegal benefit being drawn by the Applicant, no offence under PMLA 2002 can be made out against the present applicant.

10. It is further argued that as far as twin conditions under Section 45 of PMLA is concerned, there is no evidence or material which has been recovered by the Directorate of Enforcement incriminating the applicant herein. There are only disclosure statements against the applicant and in the absence of any evidence, the Directorate of Enforcement cannot even *prima facie* determine that the present applicant is guilty of the offence punishable under Sections 3/4 of PMLA. It is further submitted that the statements recorded under Section 50 of PMLA are uncorroborated. It is also argued that the learned Special Judge while rejecting the application of bail of the applicant did not appreciate that the arrest of the applicant violates Section 19 of PMLA since an officer can arrest a person if he has reason to believe on the basis of material in his possession that the person is guilty of any offence. The arresting officer has to pass an order of arrest wherein he has to record his satisfaction and come to a finding that the applicant herein is guilty of an offence. Such a requirement under the statute cannot be brushed under the carpet by mechanical statements. There has to be due application of mind and the same has to be reflected from the arrest order. Therefore, in absence of the twin conditions under Section 45 of the PMLA being



satisfied in the present matter and there being no *prima facie* case being made out against the applicant, the applicant is entitled to be enlarged on bail.

11. **Sh. Ramesh Gupta, learned Senior Counsel appearing on behalf of the applicant Daud Nasir** argues that the applicant had been arrested on 11.11.2023 by the Directorate of Enforcement in the present ECIR and he has been in judicial custody for more than five months. It is argued that the Directorate of Enforcement has failed to establish as to how the alleged amount laundered by the present applicant is 'proceeds of crime' since the applicant at the time of investigation had provided his bank account statements, wherein he had taken loan amounts from people who wanted to invest their money in his construction business. The alleged laundered amount has no nexus with the predicate offence cases and 'proceeds of crime' is a *sine qua non* for the commission of the offence of money laundering. It is further argued that as per case of the Directorate of Enforcement, the applicant's role has been limited to his act of purchasing the property bearing no. 275 and 276. As per the investigating agency, the diary seized from the premises of co-accused Kausar Imam Siddiqui had revealed that a sum of Rs. 36 crores, out of which Rs. 27 crores had been paid in cash and Rs. 9 crores had been paid through bank, was involved in the alleged transaction. On the other hand, it is alleged that the applicant i.e., Daud Nasir had paid Rs. 4.52 crores in cash and co-accused Zeeshan Haider had paid an amount of Rs. 8.9 crores in cash. Thus, the total cash involved, as per the diary is Rs 13.42 crores, which in itself



casts doubts on the admissibility and genuineness of the diary. The Directorate of Enforcement has failed to provide material on record as to how they came to the conclusion that the agreement to sell having a sale consideration of Rs 13.14 is forged and fabricated and the agreement to sell with the sale consideration of Rs 36 crores is genuine.

12. With regards to the alleged property in dispute, it is submitted by learned Senior Counsel that the applicant herein was a silent partner in the purchase of the property in dispute and that he had no knowledge of any sort with regard to sources of funds pulled in by other co-accused persons who had contributed to the purchase amount. It is also argued that the applicant herein is part of the construction business and is referred to as a builder in society. The very intent behind purchasing the aforementioned property was to make earnest profit by constructing flats and then resale it in the market with profitable margins. The share/investment of the applicant in the said property was Rs 2.02 crores, and in accordance with this amount invested, the applicant would have received the profits after further resale of the said property. It is further submitted that the applicant had arranged Rs. 72 lakhs by himself, which included his savings and help from friends and family. The applicant's relatives namely Nida Sheren had contributed Rs 20 lakhs, Owasis paid Rs 9 lakhs and Faisal Hasan had paid Rs. 6 Lacs and further Rs. 1.30 crore had been invested by other sleeping partners i.e., Rahat, Matloob, Nursat and Waqar through cheques. The said amount was invested on the basis of mutual trust between the applicant and other sleeping



partners, thereby the names of the aforementioned sleeping partners were not mentioned in the sale agreement. The perusal of the bank statements of the applicant along with details provided by the applicant about the source of funds makes it crystal clear that the amount invested in the said property was not 'proceeds of crime' rather it was an amount which was taken on loan from various people. Thus, it is argued that the ingredients of Section 3 of PMLA cannot be met and any alleged amount cannot fall under the definition of 'proceeds of crime' as per Section 2(1)(u) of PMLA.

13. Sh. Gupta, learned Senior Counsel further argues that upon careful examination of the seized diary entry, it is evident that there is no mention of any payment being made by the applicant to Amantullah Khan or vice versa. Even if the seized diary is considered to be authentic and genuine, the transaction details concerning the applicant only pertain to the amount paid by the applicant. It is pertinent to mention that, even after referring to the said transaction in the seized diary, it cannot be concluded that there was any connection between the applicant and the alleged main conspirator, Amanatullah Khan. Therefore, the applicant is wrongly associated with money laundering involving the 'proceeds of crime' generated through the alleged misuse of Delhi Waqf Board funds. Furthermore, it is submitted that the record clearly shows there is no link whatsoever between the allegations made by the Directorate of Enforcement and the predicate offence thoroughly investigated by the Central Bureau of Investigation.

14. It is further argued that this Court is only required to be



satisfied that there are reasonable grounds for believing that the accused is not guilty of such an offence and he is not likely to commit any offence while on bail. Thus in light of the same, the applicant herein fulfils the twin conditions of Section 45 of the PMLA. It is further submitted that there is no likelihood of the applicant committing a similar offence if released on bail, as he has a clean record. It is argued that all the records related to the alleged transaction, both physical and electronic, have already been seized by the Directorate of Enforcement, and there is no likelihood of tampering of evidence, therefore, keeping him in judicial custody serves no purpose. It is stated that he is a respectable citizen of country with deep roots in Indian society and has a family consisting of his wife, father, mother, and children, thus, there is no concern that he poses a flight risk. It is also argued that the applicant herein had been granted interim bail for a period of 15 days by this Court *vide* order dated 10.05.2024 on the grounds that his wife had met with an accident and surgery had to be conducted and for the said purpose. It is submitted that the applicant did not misuse the liberty granted to him and had duly surrendered after the expiry of his interim bail. Therefore, the twin conditions under Section 45 of the PMLA being satisfied in the present case and there being no *prima facie* case made out against the applicant, the applicant deserved to be enlarged on bail.

15. **Sh. Zoheb Hossain, learned Special Counsel appearing on behalf of the Directorate of Enforcement** at the very outset argues that the applicant/accused i.e. Daud Nasir has played a fraud upon



this Court as the interim bail granted to him *vide* order dated 10.05.2024 was for the purpose of taking care of his wife during the surgery. In this regard it is argued that surgery of applicant Daud Nasir's wife was scheduled on 17.05.2024 in the Fortis Hospital on the basis of which the interim bail was granted by this Court but the same was not conducted. From the email dated 28.05.2024 sent by Fortis Hospital to the Directorate of Enforcement, it is revealed that as per complaint of the applicant's wife, the Doctor concerned had prescribed certain medical tests before surgery for decompression and fixation of slip disc. However, the applicant's wife neither submitted the prescribed report to the doctors of Fortis Hospital, nor had gone to hospital for admission/surgery on the scheduled date i.e. 16.05.2024. The concerned doctor has also reported that some relative of the applicant's wife had visited the Hospital without bringing the patient and patient was not willing for surgery. The ground on which interim bail was, thus, granted to Daud Nasir was surgery of his wife relating to decompression and fixation of slip disc at Fortis Hospital, Shalimar Bagh, New Delhi, but the alleged surgery was performed on 21.05.2024 at Aadhyal Multispecialty Hospital which instead was related to dermoid cyst at lumbosacral region which is a minor surgery. Moreover, the surgery was performed at the Aadhyal Multispecialty Hospital which was also concealed from this Court. It is submitted that the applicant Daud Nasir had deliberately and maliciously suppressed and concealed the material facts from this Court on the basis of which accused Daud Nasir had sought release on Interim Bail. Therefore, on this ground alone his



regular bail application be dismissed.

16. Even otherwise, it is argued that the material placed on record by the Directorate of Enforcement is sufficient to persuade this court that no satisfaction, as required under Section 45 of the PMLA, can be reached. It is argued that at this stage, the Court is not required to render a finding of guilt, nor it is required to conduct a mini-trial or meticulously examine the evidence. Rather, it has to examine whether the accused persons i.e., Zeeshan Haider and Daud Nasir have made out reasonable grounds for believing that they are not guilty of money laundering.

17. It is argued that as far as merits of the case are concerned, the property in question was sold to both the applicants i.e. Daud Nasir and Zeeshan Haider, who are close associates of Amanatullah Khan, in the year 2021, with Kausar Imam Siddiqui acting as the intermediary. Various transactions were mentioned in one of the diaries, pertaining to the sale of Plot Nos. 275 and 276, TTI, Tikona Park, Jamia Nagar, New Delhi, in the name of the wife of Jawed Imam Siddiqui, which had been seized by ACB, CBI and had been handed over to the Directorate of Enforcement. It is stated that upon verification of these transactions, it was revealed that the total amount involved in the sale of the said property was approximately Rs. 36 crores, and out of this amount, transactions totalling approximately Rs. 9 crore were through bank transfers, which are also reflected in the bank accounts of Jawed Imam Siddiqui. However, the remaining transactions, amounting to approximately Rs. 27 crore, were in cash. Further, both the applicants Zeeshan



Haider and Daud Nasir had knowingly assisted in the acquisition, possession, concealment, and projection of proceeds of crime as untainted, which constitutes an offence of money laundering under Section 3 of PMLA.

18. It is further argued that the conduct of Zeeshan Haider in the concealment of the proceeds of crime, through the forgery of a document, clearly demonstrates that he has knowingly assisted Amanatullah Khan and his associates, Daud Nasir and others, in the transaction involving the sale of the properties in question. It is then argued that as held by the Hon'ble Apex Court in several cases, the statements recorded under Section 50 of PMLA are admissible in nature, and such statements may establish a strong case regarding the involvement of the accused in the serious offence of money laundering. Additionally, the argument that the diary has no evidentiary value is without merit, as the entries in the diary have been corroborated by statements recorded under Section 50 of the Act and other material evidence collected by the Directorate of Enforcement.

19. It is also argued that the transactions carried out through banks, which are mentioned in the diary, match with the corresponding bank account statements of the sellers of the property. Similarly, certain cash transactions mentioned in the diary also match with the cash deposits made in the bank accounts of Jawed Imam Siddiqui and Ayesha Quamar. It, thus, corroborates the contents of the seized diary which show that the total amount of consideration for purchasing the property in question was Rs. 36 crores, and therefore, the agreement



showing the sale consideration amount as Rs. 13.4 crore was a false and fabricated agreement, which had been created at a later stage to mislead the investigation and to conceal the actual sale transaction value, so that the cash amounting to Rs. 27 crore could be infused in the property. It is also pointed out that the seizure memo in this case clearly mentions about recovery/seizure of one 'executive diary' which is the white diary in this case. In conclusion, it is argued that in the present case, ample evidence has been presented to *prima facie* establish that both the applicants have engaged themselves in money laundering activities by participating in processes or activities related to scheduled offences and actively concealing material facts. It is thus prayed that the regular bail application moved by both the applicant/accused i.e., Zeeshan Haider and Daud Nasir be dismissed.

20. This Court has **heard** arguments addressed by the learned counsels on behalf of the accused persons as well as the investigating agency, and has perused the material placed on record.

21. For the purpose of deciding the present bail applications, it will be apposite to take note of the law of **Section 45 of PMLA**. In this regard, Section 45 has been extracted hereunder:

“45. Offences to be cognisable and non-bailable.

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence under this Act shall be released on bail or on his own bond unless-

(i) the Public Prosecutor has been given a opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the court is satisfied **that there are reasonable grounds for**



believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm, or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees may be released on bail, if the Special Court so directs:

Provided further that the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by-

- (i) the Director; or
- (ii) any officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government.

(1A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.

(2) The limitation on granting of bail specified in sub- section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

Explanation.--For the removal of doubts, it is clarified that the expression "Offences to be cognizable and non- bailable" shall mean and shall be deemed to have always meant that all offences under this Act shall be cognizable offences and non-bailable offences notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (2 of 1974), and accordingly the officers authorised under this Act are empowered to arrest an accused without warrant, subject to the fulfillment of conditions under section 19 and subject to the conditions enshrined under this section."

(emphasis supplied)

22. Section 45(1) of PMLA lists the twin conditions that must be satisfied before an accused can be enlarged on bail in a case of



money laundering. In this context, it will also be relevant to take note of the observations of Hon'ble Apex Court in case of *Vijay Madanlal Choudhary v. Union of India* 2022 SCC OnLine SC 929, on the satisfaction of mandatory twin conditions under Section 45 of PMLA, which are extracted hereunder:

“387. Having said thus, we must now address the challenge to the twin conditions as applicable post amendment of 2018. That challenge will have to be tested on its own merits and not in reference to the reasons weighed with this Court in declaring the provision, (as it existed at the relevant time), applicable only to offences punishable for a term of imprisonment of more than three years under Part A of the Schedule to the 2002 Act. Now, the provision (Section 45) including twin conditions would apply to the offence(s) under the 2002 Act itself. The provision post 2018 amendment, is in the nature of no bail in relation to the offence of money-laundering unless the twin conditions are fulfilled. The twin conditions are that there are reasonable grounds for believing that the Accused is not guilty of offence of money-laundering and that he is not likely to commit any offence while on bail. Considering the purposes and objects of the legislation in the form of 2002 Act and the background in which it had been enacted owing to the commitment made to the international bodies and on their recommendations, it is plainly clear that it is a special legislation to deal with the subject of money-laundering activities having transnational impact on the financial systems including sovereignty and integrity of the countries. This is not an ordinary offence. To deal with such serious offence, stringent measures are provided in the 2002 Act for prevention of money-laundering and combating menace of money-laundering, including for attachment and confiscation of proceeds of crime and to prosecute persons involved in the process or activity connected with the proceeds of crime. **In view of the gravity of the fallout of money-laundering activities having transnational impact, a special procedural law for prevention and regulation, including to prosecute the person involved, has been enacted, grouping the offenders involved in the process or activity connected with the proceeds of crime as a separate class from ordinary criminals. The offence of money-laundering has been regarded as an aggravated form of crime "world over". It**



is, therefore, a separate class of offence requiring effective and stringent measures to combat the menace of money-laundering.”

400. It is important to note that the twin conditions provided under Section 45 of the 2002 Act, though restrict the right of the accused to grant of bail, but it cannot be said that the conditions provided under Section 45 impose absolute restraint on the grant of bail. The discretion vests in the Court which is not arbitrary or irrational but judicial, guided by the principles of law as provided under Section 45 of the 2002 Act.

401. We are in agreement with the observation made by the Court in *Ranjitsing Brahmajeetsing Sharma*. **The Court while dealing with the application for grant of bail need not delve deep into the merits of the case and only a view of the Court based on available material on record is required. The Court will not weigh the evidence to find the guilt of the accused which is, of course, the work of Trial Court. The Court is only required to place its view based on probability on the basis of reasonable material collected during investigation and the said view will not be taken into consideration by the Trial Court in recording its finding of the guilt or acquittal during trial which is based on the evidence adduced during the trial.** As explained by this Court in *Prasad Nimmagadda*, the words used in Section 45 of the 2002 Act are “reasonable grounds for believing” which means the Court has to see only if there is a genuine case against the accused and the prosecution is not required to prove the charge beyond reasonable doubt.”

(Emphasis Supplied)

23. In case of *Tarun Kumar v. Enforcement Directorate 2023 SCC OnLine SC 1486*, the Hon’ble Apex Court had held as under:

“17. As well settled by now, **the conditions specified under Section 45 are mandatory. They need to be complied with. The Court is required to be satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and he is not likely to commit any offence while on bail.** It is needless to say that as per the statutory presumption permitted under Section 24 of the Act,



the Court or the Authority is entitled to presume unless the contrary is proved, that in any proceedings relating to proceeds of crime under the Act, in the case of a person charged with the offence of money laundering under Section 3, such proceeds of crime are involved in money laundering. Such conditions enumerated in Section 45 of PML Act will have to be complied with even in respect of an application for bail made under Section 439 Cr. P.C. in view of the overriding effect given to the PML Act over the other law for the time being in force, under Section 71 of the PML Act.”

(Emphasis Supplied)

24. In the present case, the **ACB**, while investigating FIR No. 05/2020, **conducted searches** at various locations owned and controlled by Amanatullah Khan and his associates, including Hamid Ali Khan and Kausar Imam Siddiqui (accused no. 4). These searches led to the seizure of incriminating documents, illegal weapons, and three diaries detailing cash transactions exceeding Rs. 100 crores from 2018 to 2022, related to property transactions in Delhi, Dehradun, Telangana, and other locations. A white diary seized from Kausar Imam Siddiqui has revealed significant cash transactions between Jawed Imam Siddiqui (accused no. 3) and Amanatullah Khan, his associates including the present applicant's/accuseds Zeeshan Haider and Daud Nasir, specifically documented on pages 92 to 103 under the heading '*2021 Sale Plot- 12 Gj 17.09.2021 Sale for Zeeshan*'.

25. The total amount involved in the aforementioned transactions was approximately Rs. 36 crore, with about Rs. 9 crore through banks and around Rs. 27 crore in cash, of the Rs. 36 crore, approximately Rs. 8 crore were transacted in cash directly by Amanatullah Khan, while the remaining amount was handled by both



the applicant/accused i.e., Daud Nasir, Zeeshan Haider and others. Further as per the case of the Directorate of Enforcement co-accused Jawed Imam Siddiqui owned properties Plot Nos. 275 and 276, TTI, Tikona Park, Jamia Nagar, New Delhi, totaling about 1200 square yards, in the name of his wife, Ayesha Quamar. These properties were purchased from Syed Ahmed Raza Zaidi, Ms. Samina Zaidi, Heba Zaidi Khosla, and Aashti Zaidi, through Conveyance Deeds numbered 2005 and 2004, both dated 12.04.2019. These properties were then transferred to both the applicants i.e., Zeeshan Haider and Daud Nasir, close associates of Amanatullah Khan, in 2021 through an Agreement to Sell dated 17.09.2021. According to the version of the accused persons, agreement dated 17.09.2021 was purportedly executed between the seller Ayesha Quamar and the purchaser i.e. M/s. Sky Powers i.e. a firm owned by applicant Zeeshan Haider, as well as Sara Constructions, a proprietorship of applicant Daud Nasir. In this agreement, the sale consideration was mentioned as Rs. 13.40 crores out of which Rs. 5 crores were shown to have been paid through bank transactions and rest of the amount was shown to be paid in future, without there being any further details.

26. In the present case, further **searches were conducted by the Directorate of Enforcement** at several locations, leading to the seizure of various incriminating records and digital evidence, including Zeeshan Haider's mobile phone and another sale agreement dated 17.09.2021. This was in addition to the agreement previously submitted by the accused for the same properties and executed between the same parties. In this new sale agreement, the total sale



amount was shown as Rs. 36 crore, with Rs. 5 crore paid via bank transactions and the remaining amount to be paid in the future, without further details. The agreement was witnessed by Kausar Imam Siddiqui and Waqar Ahmed Khan. The prosecution contends that the agreement seized by the Directorate of Enforcement during the search is the original one for the properties in question, while the earlier agreement submitted by the accused is false and fabricated.

27. Furthermore, Kausar Imam Siddiqui, in his statement under Section 50 of PMLA, revealed that he had known Amanatullah Khan for a long time and became closely associated with him in January 2020 after joining the Aam Aadmi Party. He has also disclosed that in September-October 2021, as Vice President of Ward No. 189 (AAP), he had managed expenses, organized rallies, and arranged transportation on Amanatullah Khan's instructions.

28. Kausar Imam Siddiqui has denied knowledge of a sale agreement for Rs. 13.40 crore and confirmed that the genuine agreement was for Rs. 36 crore, which he had witnessed. He has admitted that the entries in the white diary seized by the ACB, including those regarding the transaction in question, were written by him under Amanatullah Khan's direction. He has also stated that his cousin, Jawed Imam Siddiqui had sold the properties to the present applicant/accused Zeeshan Haider and Daud Nasir through him at Amanatullah Khan's behest, for which he was to receive Rs. 50-55 lakh as commission but had only received Rs. 16-17 lakh so far.

29. Further, the bank account statements of the property sellers, Jawed Imam Siddiqui and Ayesha Quamar have revealed that the



amounts transacted through banks were credited to their accounts. It is alleged that between 2017 and 2022, Rs. 11 crore were deposited into their accounts, with Rs. 3.81 crore declared as proceeds from the property sale. The prosecution asserts that the bank transactions recorded in the diary align with the sellers' bank statements. Similarly, certain cash transactions in the diary match the cash deposits in the sellers' accounts, corroborating the diary's contents and indicating that the actual sale amount was Rs. 36 crores. Thus, *prima facie* the agreement of Rs.13.4 crore was created to conceal Rs. 27 crore cash component, which is considered the 'proceeds of crime'.

30. Further, the bank accounts statement of present applicant/accused Daud Nasir, who purportedly paid Rs. 6.54 crore (Rs. 2.2 crore via bank and Rs. 4.32 crore in cash), revealed that his firm had an annual income of only Rs. 5-7 lakh, making such a purchase impossible. Similarly, the other applicant/accused i.e., Zeeshan Haider, who had allegedly paid Rs. 12.3 crore (Rs. 3.4 crore via bank and Rs. 8.9 crore in cash), had a gross income of Rs. 3-4 lakh annually and Rs. 10 lakh in 2019-20. His firm, M/s. Sky Powers, had no income during the relevant period, making the property purchase impossible. The diary also shows applicant Zeeshan Haider's signature on the Rs. 36 crore transaction entries.

31. While the conclusive evidentiary value of the statements under Section 50 PMLA will be determined at the end of the trial, the Courts can rely on the statements under Section 50 of PMLA and other material collected by the prosecution to determine if a *prima*



facie case is made out for the purpose of granting bail. Furthermore, if a contrary view is taken, it would mean disregarding or ignoring the collected materials on record when forming a *prima facie* view, which is essential before the filing of the chargesheet and sometimes during the hearing of bail application. At this stage, the only evidence available includes the statements recorded under Section 50 of PMLA and other corroborating material, such as electronic evidence, money transactions, or documentary evidence. This evidence is crucial for the Court to assess a person's involvement in an offence under PMLA. Therefore, this Court finds that the argument that statements under Section 50 of PMLA cannot be considered at the stage of bail is without merit.

32. Furthermore, In the case of *Rohit Tandon v. Directorate of Enforcement* (2018) 11 SCC 46, three- judge bench of the Hon'ble Apex Court has held that statements made under Section 50 of the PMLA are admissible in nature and can make out a formidable case about involvement of accused in the offence of money laundering. The relevant observations of the Hon'ble Apex Court are as under:

“ 31. ...The prosecution is relying on statements of 26 witnesses/accused already recorded, out of which 7 were considered by the Delhi High Court. **These statements are admissible in evidence, in view of Section 50 of the Act of 2002. The same makes out a formidable case about the involvement of the appellant in commission of a serious offence of money laundering.** It is, therefore, not possible for us to record satisfaction that there are reasonable grounds for believing that the appellant is not guilty of such offence...”

(Emphasis supplied)



33. Regarding the contention that there is no incriminating material against the present applicants, this Court notes that the Directorate of Enforcement had conducted searches at the premises of all the accused persons including both the present applicants. During the investigation, statements of several witnesses, including the accused, were recorded under Section 50 of the PMLA. Additionally, numerous documents were collected from various government and private institutions. Among these, a white diary was seized from co-accused Kausar Imam Siddiqui, which revealed substantial cash transactions running in crores of rupees between Javed Imam, Amanatullah Khan, both the present accused/applicant Zeeshan Haider and Daud Nasir. These transactions, related to the property in question, were both in cash and through banking channels, totaling approximately Rs. 36 crores. The seizure of the diary by the investigating agency reveals that the properties in question were purchased for about Rs. 36 crore out of which Rs. 27 crore were paid in cash out of the total amount of Rs. 36 crore. Furthermore, the recovery of one sale agreement which shows the sale consideration as Rs. 36 crores, as against one alleged false and fabricated agreement shows the sale consideration of Rs. 13.40 crore had been allegedly prepared to conceal the proceeds of crime and misguide the investigating agencies. The bank account statements of the sellers of the properties in question, *prima facie* corroborate the factum of the sale agreement having consideration of Rs. 36 crores being genuine and the agreement having Rs. 13.40 crores as sale consideration being false and fabricated. It is also noted that the bank



account statements of purchasers i.e., the present applicant/accused Zeeshan Haider and Daud Nasir had purportedly paid money, which reflect that the cash amounts paid by both the applicants may be the proceeds of crime generated by Mr. Amanatullah Khan as a result of offence related to the scheduled offence.

34. Therefore, the material evidence gathered during the course of the investigation by the Directorate of Enforcement reveals that Amanatullah Khan had hatched a criminal conspiracy along with his close associates i.e., the present applicants/accuseds and others and pursuant to the same, he had invested his ill-gotten money i.e. proceeds of crime, in the immovable properties through his associates namely Zeeshan Haider, Daud Nasir and others. As alleged, Amanatullah Khan had purchased immovable properties in the name of benamidars i.e. the present applicants Zeeshan Haider and Daud Nasir, by concealing and suppressing their actual value which is very nominal in comparison to their actual sale value and actively concealed amounts that were paid in cash to the seller, which are the proceeds of crime acquired by Amanatullah Khan out of his corrupt and illegal activities relating to the offences scheduled under PMLA.

35. This Court further upon careful consideration of the submissions and documents presented by Sh. Zoheb Hossain learned Special Counsel for the Directorate of Enforcement, notes that the interim bail granted to applicant Daud Nasir on 10.05.2024, was primarily for the purpose of taking care of his wife during her scheduled surgery on 17.05.2024 at Fortis Hospital, Shalimar Bagh, New Delhi. It has been argued that this surgery was not conducted as



scheduled. This Court has gone through the email dated 28.05.2024 sent by Fortis Hospital to the Directorate of Enforcement which reveals that the applicant's wife neither submitted the prescribed medical reports to the doctors nor went to the hospital for admission or surgery on the scheduled date. The concerned doctor reported that a relative of the applicant's wife visited the hospital without the patient. This Court further notes that the surgery was ultimately performed on 21.05.2024 at Aadhyal Multispecialty Hospital and was related to a dermoid cyst at the lumbosacral region, described as a minor surgery, differing significantly from the initially proposed decompression and fixation of the slip disc. This change in the nature and location of the surgery was not disclosed to this Court and the interim bail sought by Daud Nasir was on different grounds. This Court is of the opinion that the applicant/accused Daud Nasir has misled the Court by misrepresenting the need for interim bail, which was granted based on the necessity of a major surgery at Fortis Hospital. Thus, the conduct of the applicant Daud Nasir is doubtful and this Court is of the opinion if the applicant Daud Nasir if released on bail, may misuse the liberty and may attempt to tamper with evidence or influence witnesses.

36. Thus, the material brought before this Court at this stage is sufficient to attract bar under Section 45 of PMLA on both the applicants. Considering the aforesaid facts and circumstances, this Court does not find it a fit case for grant of regular bail to the present applicants i.e., Zeeshan Haider and Daud Nasir.

37. In view of the above, the present application, along with



pending applications, if any, stands dismissed.

38. It is, however, clarified that the observations made hereinabove are solely for the purpose of adjudicating the present applications seeking regular bail, and the same shall not be construed as the opinion of this Court on the merits of the case.

39. The Judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JULY 01, 2024/zp