



2024:DHC:7008



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

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Reserved on: 27th August, 2024
Pronounced on: 11th September, 2024

+ **BAIL APPLN. 3322/2023 & CRL.M.As. 712/2024, 635/2024, 838/2024, 1358/2024**

ARUN RAMCHANDRAN PILLAI

S/o Shri K.S. Ramchandran Pillai,
R/o Villa 16, Sushee, Eden Garden,
Kokapet, Hyderabad
Through Pariokar/wife,
Rupa Arun Pillai

..... Petitioner

Through: Mr. Mohit Mathur, Sr. Advocate with
Mr. Nitesh Rana, Mr. Anuj Tiwari,
Mr. Kaushal Kait, Mr. Deepak Nagar,
Ms. Soumya Kumar, Mr. Rahul
Kumar & Mr. Nikhil Kohli,
Advocates.

Versus

DIRECTORATE OF ENFORCEMENT

(Through its Assistant Director)
Headquarters Office,
Directorate of Enforcement,
Pravartan Bhawan,
11, A.P.J. Abdul Kalam Road,
New Delhi-110011

..... Respondent

Through: Mr. Zoheb Hossain & Mr. Manish
Jain, Special Counsels, Mr. Vivek
Gurnani, Panel Counsel, Mr. Vivek
Guurav, Mr. Kanishk Maurya, Mr.
Pranjal Tripathi & Mr. Kartik
Sabharwal, Advocates.



CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present Bail Application under Section 439 read with Section 167(2) of the Code of Criminal Procedure, 1973 (*hereinafter referred to as "Cr.P.C., 1973"*) read with Section 45 of the Prevention of Money Laundering Act, 2002 (*hereinafter referred to as "PMLA, 2002"*) has been filed on behalf of the Applicant seeking grant of Regular Bail in ECIR No. ECIR/HIU-II/14/2022 (*hereinafter referred to as "ECIR case"*) dated 22.08.2022 registered under Sections 3/4 PMLA, 2002 at Police Station HIU, Directorate of Enforcement (*hereinafter referred to as "ED"*).

2. The Applicant has submitted that he is an experienced professional with expertise in Tier-I Client Management, Regulatory, and Policy expertise, Project Strategy and Management, Government Advisory, Business Development with substantial International exposure. He is a Bachelor of Technology in Mechanical Engineering from the University of Kerala and has also completed Master of Science in Mechanical Engineering from University of Saskatchewan and Master of Business Administration from Indian School of Business, Hyderabad. The Applicant has worked in a varied range of sectors and fields across countries. The Applicant started his career with Reliance Industries Limited and went on to work in Canada for seven years as an Analyst at the Ontario Power Generation Nuclear Safety Solutions Limited and worked with various other Companies. The Applicant had volunteered to work with organisations such as UNICEF, Canada to



educate children about UNICEF's Work for Children across the world, as well as with *Afghans4Tomorrow* to help improve the business skills of students at the Kabul Education University. The Applicant despite being lodged in Tihar Jail No. 4 as an under-trial prisoner, has volunteered to work as *Horticulture Sahayak*.

3. It is stated that the GNCTD released the Delhi Excise Policy for the Year 2021-2022 (*hereinafter referred to as the "Excise Policy"*) on 05.07.2021, after the fulfilment of all the procedures of Tenders and Allotment; the Excise Policy was implemented on 17.11.2021 by the GNCTD.

4. However, vague allegations have been made against high ranking Government officials that they were in cahoots with one other and other persons, and were instrumental in recommending the Excise Policy without the approval of the Competent Authority to extend favours to certain licensees that were issued after the implementation of the Excise Policy.

5. A Complaint dated 20.07.2022 addressed to the Union Home Secretary by the Hon'ble Lieutenant Governor, NCTD *vide* D.O. Letter No. SLG/Conf./2022/75 alleging large-scale malpractice and corruption in the framing and implementation of the Excise Policy for the Year 2021-22, was conveyed to the Central Bureau of Investigation (CBI) by the Director, Ministry of Home Affairs, Government of India *vide* O.M. No. 14035/06/2022-Delhi-1 dated 22.07.2022 for necessary enquiry and action.

6. Thereafter, the CBI registered an FIR No. RC0032022A0053 (*hereinafter referred to as "CBI case"*) dated 17.08.2022 under Section 120B of the Indian Penal Code, 1860 read with Sections 7/7A/8 of Prevention of Corruption Act, 1988 at Police Station CBI, ACB, New Delhi



against Manish Sisodia and 14 others.

7. After five days of registration of the CBI case, the respondent also registered the aforementioned ED case. Even though the Applicant was named as an accused in this ED case, but the facts were never disclosed to him while issuing summons to him. During the course of investigations by the CBI and the respondent ED, the Applicant was summoned at least on 40 occasions which were duly complied and the Applicant fully cooperated with the Investigating Agency. However, the Investigating Agency conducted the entire investigations by coercing the witnesses/accused/suspect and more particularly the Applicant to give self-incriminating statements.

8. In the interim, on 25.11.2022, the CBI filed the Chargesheet in the CBI case, wherein the Applicant was arrayed as an accused. He has been granted bail in the CBI case by the learned Special Judge *vide* Order dated 28.02.2023.

9. The *first Supplementary Chargesheet in CBI case* has been filed in the Court on 25.04.2023 against the four other accused persons, including the Accused-Manish Sisodia. All the 11 accused persons are facing trial in the CBI case.

10. Insofar as *the facts of the ED case are concerned*, it is alleged that the investigations have revealed that advance kickback amount of Rs. 100 crores has been paid to the politicians and other public servants in Delhi. Hence, due to the nexus created by the political persons, Government officers and officials and other accused persons involved in this conspiracy, a total loss of Rs. 2873 cores has been caused to the Exchequer of GNCTD.

11. It is also alleged that all the accused persons are found to have been



involved in multiple activities related to or connected with proceeds of crime of scheduled offences in regard to which the ED registered the case in terms of Section 3 of PMLA, 2002. It is alleged that all the accused persons have dealt with the proceeds of crime and they are guilty of offence of money laundering punishable under Section 4 of the PMLA, 2002.

12. The Applicant has been alleged to be the key member of the criminal conspiracy and has been the part of the South Group. The Applicant has participated and was deeply involved in drafting and formulation of the Excise Policy 2021-22 in conspiracy with Vijay Nair.

13. In March, 2021, the Applicant, Butchi Babu and Abhishek Boinpally had acted with Vijay Nair and Sameer Mahandru for discussing the business opportunities in the new Excise Policy and forming a partnership. The Applicant allegedly gave the inputs to Vijay Nair and further had been a party to the discussions with him and had proposed favours in the Excise Policy that was under drafting at that time.

14. The *main Complaint* has been filed by the respondent on 22.08.2022, where the Applicant was named as an accused. *Eight Supplementary Complaints* have been filed by the respondent thereafter, against the various accused persons.

15. The Applicant has sought the regular bail in the ED case on the ground that the investigations carried out by the respondent were against the canons of law and the respondent abused its power for the purpose of search, seizure and for extortion of incriminating statements from the Applicant as well as the other witnesses.

16. The Applicant has been **arrested on 06.03.2023** at around 09:20 P.M. by the respondent in flagrant violation of Section 19 of PMLA, 2002. It is



evident from the record that the Applicant or next his kin was not provided with the reasons to arrest the Applicant, for the reasons best known to the respondent. No Arrest Memo has ever been prepared in regard to his arrest. The *reasons for belief* while arresting the Applicant have to be recorded in writing. However, the arrest has been made in a mechanical manner by way of a Format based arrest Order and that not even an attempt has been made to set up the reasons for arrest of the Applicant. The arrest of the Applicant has been made without taking into account that he had been *granted interim bail in the CBI case vide Order dated 03.01.2022 and had been admitted to regular bail in CBI case vide Order dated 28.02.2023* in the connected predicate offence. It was also ignored that the Applicant had cooperated with the investigations and was arrayed as an accused in the Chargesheet without arrest being made by the CBI.

17. Further ground for seeking regular bail pleaded on behalf of the Applicant are that no *prima facie case* is made out against the Applicant. The entire case of the respondent rests on the statements extracted under Section 50 of PMLA, 2002 from the Approvers, Witnesses or co-accused persons, to which there is not a single document which corroborates the statements of them and there is not a single piece of evidence which points to the guilt of the Applicant. Moreover, though such statements may be admissible in evidence but their prohibitive value is extremely weak and cannot be made a sole basis for reaching any conclusion under Section 45 of PMLA, 2002. Those Statements under Section 50 of PMLA, 2002 are only corroboratory in nature and are required to be substantiated with further evidence. Reliance has been placed on behalf of the Applicant on the decision in Chandra Prakash Khandelwal vs. Directorate of Enforcement,



decided *vide* Bail Application 2470/2022 by the Co-ordinate Bench of this Court on 23.02.2023, wherein it had been observed that the weightage of Section 50 of PMLA, 2002 statement can be seen only at the time of trial.

18. It is further argued that only such property which is derived or obtained directly or indirectly as a result of criminal activity relating to *scheduled offence* can be termed as *proceeds of crime*. The possession of unaccounted property acquired by legal means may be actionable for tax violations, yet cannot be regarded as proceeds of crime unless it constitutes an offence which is included in the Schedule, as has been observed in the decision of Anil Vasant Rao Deshmukh vs. State of Maharashtra, 2022 SCC OnLine Bom 3150.

19. The Applicant has further asserted that *even on merits*, no case is made out against him as there is no corroborative evidence to substantiate the allegations made against him.

20. It has been alleged by the respondent that the Applicant used to collect undue pecuniary advantage from Sameer Mahandru, Managing Director, M/s Indo Spirits for onward transmission to accused public servant through Vijay Nair. It is also alleged that the Applicant in collusion with Sarath Chandra Reddy, Sameer Mahandru and other accused persons, created a nexus of manufacturer, wholesaler, retailers. PRI gave its L1 wholesale business to M/s Indo Spirits (L1) of Sameer Mahandru, wherein Sarath Chandra Reddy, Magunta Srinivasulu Reddy along with others were having financial interests through the Applicant and Prem Rahul Manduri. Out of 32 retail zones, 9 were controlled by this cartel.

21. It has been further alleged that the Applicant is one of the key persons in the entire exercise of Excise Policy Scam involving payments of



huge kickbacks and formation of the biggest cartel of the South Group represented by the Applicant along with Abhishek Boinpalli and Butchi Babu.

22. The Applicant is claimed to be a partner of 32.5% in M/s Indo Spirits which had got an L1 licence. M/s Indo Spirits is a partnership firm of Prem Rahul and Indospirit Distribution Limited, wherein the Applicant and Prem Rahul represented the *benami* investments of K. Kavitha and Magunta Srinivasulu Reddy and his son Raghav Magunta.

23. It is further the case of the respondent that the Applicant along with his associates, Abhishek Boinpalli and Buchi Babu on behalf of the South Group, orchestrated the whole scheme of forming a cartel of the manufacturers, wholesalers and retail which controlled more than 30% of the whole liquor business in Delhi.

24. It is also alleged that on paper, the Applicant has invested Rs. 3,40,00,000/- in M/s Indo Spirits, out of which, 1,00,00,000/- was given to the Applicant on the instructions of K. Kavitha. In exchange of the kickbacks given by the South Group to Vijay Nair and AAP, M/s Indo Spirits was made the wholesaler of M13 PRI which is one of the most profitable L1. The funds of Rs. 3,40,00,000/- which was used to show the investment in M/s Indo Spirits, is actually claimed to be the proceeds of crime.

25. Further allegations against the Applicant are that he conducted, organised and participated in several Meetings to form and shape this cartel. One such meeting took place in May, 2021 at Gauri Apartments, New Delhi, wherein he along with his associates Abhishek Boinpalli and Buchi Babu, met Vijay Nair and others to discuss the retail cartel formation and an



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arrangement was arrived at, wherein ADS Group was supposed to assist the South Group to set up its business in Delhi. In June, 2021, the Applicant along with his associates, Abhishek Boinpalli and Buchi Babu arranged the meeting of Sameer Mahandru with Sarath Chandra Reddy with regards to investments in liquor business. They all flew in a chartered flight of Sarath Chandra Reddy from Hyderabad to Delhi, wherein they discussed investments in M/s Indo Spirits. In September, 2021, PRI had hosted a dinner at Taj Mansingh, Delhi for successful retail bidders, which was attended by the Applicant as well.

26. Similar meeting is claimed to have been held in April, 2022, to discuss the issues of recovering the bribes paid from their business operations which were faltering.

27. Further, it has been alleged that the Credit Notes of worth of Rs. 4,35,00,000/- to these three L7 firms were issued by M/s Indo Spirits on the directions of the Applicant.

28. Furthermore, there was more than Rs. 60,00,00,000/- approximately pertaining to retail zones of Trident Chemphar Pvt. Ltd., Organomix Ecosystems and Sri Avantika Contractors towards Indo Spirits. This pattern of outstanding payments is unusual and disproportionately high when compared to the non-cartel retail zones. According to the statement of *M/s Indo Spirits*, this outstanding was not to be followed up, which makes it evident that this was another way of *recoupment*.

29. It is claimed that the Applicant was involved in this scam from the beginning in March, 2021. The Applicant and others had connected with Vijay Nair and Sameer Mahandru for discussing the business opportunities in the Excise Policy and about forming a partnership. He is claimed to have



been involved in the Policy formulation and given inputs to Vijay Nair and had been a part of the discussions where Vijay Nair proposed favours in the Policy that was under drafting at that time.

30. Further, M/s Indo Spirits 12% profit margin for the Policy period stood at Rs. 192,80,00,000/- as provided by the Excise Department of Delhi *vide* its Letter dated 23.09.2022. This amount was claimed to be an outcome of the conspiracy hatched by the Applicant and others as a result of exchange of kickbacks and favours and were the *proceeds of crime*. Similar allegations have been made about various amounts which are claimed to have been generated as proceeds of crime.

31. The Applicant has denied the entire case of the respondent as a figment of imagination of the respondent. It is claimed that the Applicant is not involved in generating or dealing with proceeds of crime and is not guilty of offence under Sections 3/4 of PMLA, 2002.

32. It is asserted that the Applicant fulfils the twin conditions as prescribed under Section 45 of PMLA, 2002, for which, reliance has been placed on the decisions in Ranjitsingh Brahmajeetsingh Sharma vs. State of Maharashtra & Anr., (2005) 5 SCC 294 and Vijay Madanlal Choudhary & Ors. vs. Union of India & Ors., 2022 SCC OnLine SC 929.

33. It is claimed that the threshold for arrest under Section 19 of PMLA, 2002 is very high and the Applicant has been arrested on 06.03.2023 at around 09:20 P.M. by the respondent in flagrant violation of Section 19 of PMLA, 2002. Furthermore, the investigations are still pending *qua* the other persons and it will take years for the trial to begin. The Prosecution Complaint and Supplementary Prosecution Complaints contain 16,576 pages of relied upon documents. Further two other Supplementary Prosecution



Complaints have been filed on 06.04.2023 and 28.04.2023. Owing to the voluminous nature of evidence, the trial would take years to conclude, for which, the reliance has been placed on the decisions in State of Kerala vs. Raneef, (2011) 1 SCC 784 and Sanjay Agarwal vs. Directorate of Enforcement, decided *vide* CrI. Appeal 1835/2022 by the Apex Court on 21.10.2022.

34. It is further stated on behalf of the Applicant he satisfies the general *triple test* for grant of regular bail as laid down in the case of P. Chidambaram vs. CBI, (2020) 13 SCC 337. In the instant case, there was not even a hint of any allegation that the Applicant has attempted to *influence any witness*. The Applicant has deep roots in the society and is *not a flight risk*. The investigations are complete and the Applicant has cooperated and joined the investigation.

35. It is stated that the Special Judge while declining the bail to the Applicant *vide* Order dated 08.06.2023, has failed to appreciate all the aforesaid factors. The *medical condition of the Applicant and his wife has also been ignored*. The Applicant has claimed that he has lost 15 kgs. of weight during incarceration of around six months and has recurring fever. The Applicant's mother has recently suffered strokes and is in a very high fragile condition on account of her old age.

36. Therefore, the Applicant has thus made a prayer that he may be granted bail in the ED case.

37. ***The Reply has been filed on behalf of the respondent***, wherein a preliminary objection has been taken that the Applicant is not entitled to grant of bail as he has failed to satisfy the twin conditions as laid down under Section 45 of PMLA, 2002. He is a highly influential individual and



is accused of commission of a white collar crime and has the potential to tamper with the evidences and influence the witnesses.

38. It is submitted that there exists a reasonable apprehension of crucial evidence being destroyed if the Applicant is enlarged on bail. He is involved in the commission of grave economic offences and there is ample evidence on record to link him with the commission of offence of money laundering and his release on bail is not warranted. Even otherwise, the likelihood of the Applicant of evading the process of law if enlarged on bail, cannot be ruled out. While personal liberty is of paramount importance, the same is not absolute but subject to reasonable restrictions, including the interest of the State and public. Reliance has been placed on behalf of the respondent on the decisions in Vijay Madanlal Choudhary, (supra), State of Kerala vs. Rajesh, (2020) 12 SCC 122 and Rohit Tandon vs. Directorate of Enforcement, (2018) 11 SCC 46.

39. It is submitted that as per the evidence collected during the course of investigations, the Applicant is one of the key persons in the entire Excise Policy Scam involving payment of huge kickbacks amounts from the South Group to Vijay Nair and the recoupment of the same from the business in Delhi. The Applicant has a partnership of 32.5% in M/s Indo Spirits which got L1 licence. He along with other co-accused persons orchestrated the whole scheme of forming a cartel of the manufacturers, wholesalers and retail which controlled almost 30% of the entire liquor business in Delhi alone.

40. The Applicant was involved in formation of cartel of manufacturers, wholesalers and multiple retail zones. Though on paper, the Applicant is shown as a partner of M/s Indo Spirits, but he represented the interest of K.



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Kavitha as her proxy, which is established by the extensive evidence that has been collected during the investigations.

41. It has been explained that the Applicant was deeply involved in the drafting and formulation of the Excise Policy 2021-22 in conspiracy with Vijay Nair and had given inputs to Vijay Nair and being a part of the discussions where Vijay Nair had proposed favours in the Policy that was under drafting at that time.

42. It is claimed that Manish Sisodia had called C. Arvind to the residence of Arvind Kejriwal on 18.03.2021 and handed over a document containing the draft of GoM Report on the basis of which he got typed the Document dated 19.03.2021 that was retrieved from a computer from the office Conference Room of Manish Sisodia. The draft GoM Report prior to 19.03.2021 contained the wholesale profit margin to be only 5%, which in the subsequent document typed on 19.03.2021, had been enhanced to 12% profit margin. The change of profit margin in the GoM Report from 5% to 12% overlapped with the stay of the members/representatives of the South Group in Oberoi Hotel, New Delhi from 14.03.2021 till 17.03.2021 during which period, a print was taken at hotel and a document was handed over by Manish Sisodia which clearly proves the collusion of the Applicant and other representatives/members of the South Group to increase the profit margin of wholesalers from 5% to 12%. Out of this 12%, 6% profit was earmarked as kickbacks to be given to AAP. On an average, the total annual sale of Delhi was Rs. 4000-5000 crores. The three biggest L1 wholesalers i.e., Indo Spirits, Brindco and Mahadev Liquors, controlled approximately Rs. 3,500/- crores. 12% of Rs. 3,500/- crores which is about 420 crores. Therefore, Rs. 210/- crores i.e., 6% of the profit was supposed to be



collected by the AAP. All L1s were supposed to give 6% kickback money in principal, but major focus was only on the top three wholesalers.

43. The respondent has given the details of various transactions to explain that the Applicant first transferred Rs. 5,00,00,000/- to M/s Creative Developers for purchase of property. Though it was neither registered nor any Sale Agreement was signed at the time of transferring of funds by the Applicant to Creative Developers which makes it evident that this was only a *benami* transaction. Various details of the transactions have been explained *vide* which the proceeds of crime have been utilised.

44. ***On merits***, all the averments made in the present petition are denied.

45. It is submitted that considering the active involvement of the Applicant with the South Group in the formulation of the Excise Policy and his active role in conspiracy of kickbacks, payments of the same and its recoupment, the Applicant is not entitled to grant of bail.

46. ***Learned Senior Advocate on behalf of the Applicant has argued in detail and has also filed the Written Submissions*** that while it has been claimed that the Applicant had an active role in cartel formation, but there is no such evidence as the investment of Rs. 3.4 crores into M/s Indo Spirits was sourced through legal channels and from different entities as loan. There is no evidence that the investment was financed by K. Kavitha or at her behest. The only allegation is *qua* Rs. 1,00,00,000/- given by V. Srinivas on the instructions of K. Kavitha, but it is admitted to be a loan which has been repaid on 10.12.2021.

47. It is also submitted that the statements made by Sameer Mahandru have been retracted. Moreover, Sameer Mahandru is an accomplice and hence, his statements are not reliable.



48. Similarly, statements given by Butchi Babu for the same reason cannot be relied upon as he is also an accused in scheduled offence. No statement/evidence of any transaction/payment of money from the Applicant to K. Kavitha, has been produced. It is submitted that the cartel formation at the most was a violation of the Policy, but it was a business cartel.

49. Further, it is argued on behalf of the Applicant that there is no evidence whatsoever to establish the role of the Applicant in formulation of Policy. There is no recovery of Policy/GoM Report from the Applicant or from his mobile phone. The stay at Oberoi Hotel during the same period when changes were made in GoM Report, does not prove the Applicant's role in formation of Policy. Only Statements under Section 50 of PMLA, 2002 are there which are not only in material contradiction but also are of the accomplices who are accused in the present case and the same are not reliable.

50. Insofar as the allegations of payment of advance kickbacks are concerned, there is no evidence of the involvement of the Applicant in payment of Rs. 100 crores as bribe. There is no statement of *hawala* operator to whom the cash was allegedly handed over in Delhi.

51. It is also submitted that Butchi Babu's Statement dated 23.02.2023 is vague and the Applicant has retracted from his Statement dated 18.09.2022.

52. Further, *Dinesh Arora* has turned an approver in the CBI case and has given his Statement dated 01.10.2022, but the same does not mention the name of the Applicant for his involvement in payment of advance kickbacks.

53. The *other allegation of the recoupment of kickbacks* is also not supported by any direct evidence. The sum of Rs. 25.5 crores had been



transferred directly in the account of the Applicant, out of which, Rs. 6.68 crores had been transferred from M/s Indo Spirits. It is claimed that all the transactions were through banking channels and no cash transaction took place. The money used was for the personal use and the Applicant's share of expenses for M/s Indo Spirits. There is no evidence of the amount having been forwarded by the Applicant to K. Kavitha directly or indirectly.

54. It is thus, submitted that the Applicant not only establishes the twin conditions contained in Section 45 of PMLA, 2002 but also satisfies the triple test.

55. Therefore, it is submitted that the Applicant is entitled to bail.

56. *Learned Special Counsel on behalf of the respondent* has vehemently opposed the present petition. The arguments addressed on behalf of the respondent are essentially on the same lines as contain in its Reply.

57. It has been re-emphasised that the Applicant was actively involved in the conspiracy for cartel formation and has played an active role in Policy formation and also participated in conspiracy of kickbacks, payments of the same and its recoupment. Detailed transactions have been recorded in the ED case about the handling of the proceeds of crime by the Applicant.

58. The twin conditions as laid down in Section 45 of PMLA, 2002 are, therefore, not satisfied.

59. Furthermore, the offence of money laundering is an independent offence and grant of bail in predicate offence has no bearing to the present proceeding.

60. Reliance has been placed on behalf of the respondent on the decisions in Vijay Madanlal Choudhary, (supra), Pavana Dibbur vs. Enforcement



Directorate, 2023 SCC OnLine SC 1586, ED vs. Aditya Tripathi, decided *vide* Criminal Appeal No. 1401/2023 by the Apex Court on 12.05.2023, P. Rajendran vs. Directorate of Enforcement, decided *vide* Criminal Original Petition No. 19880/2023 by the Madras High Court on 14.09.2022, J. Sekar vs. Union of India & Ors., 2018 SCC OnLine Del 6253, Radha Mohan Lakhota vs. Directorate of Enforcement, 2010 SCC OnLine Bom 1116 and Dr. Manik Bhattacharaya vs. Ramesh Malik & Ors., decided *vide* SLP (C) 16325/2022.

61. In the end, *it is argued that the delay cannot be the sole ground to grant bail* even after the Court is of the view that the person is guilty of the offence of money laundering.

62. Reliance has also been placed on the decisions in Tarun Kumar vs. Enforcement Directorate, 2023 SCC OnLine SC 1486, Satyender Kumar Jain vs. Directorate of Enforcement decided *vide* SLP (Crl) 6561/2023, State of Bihar & Anr. vs. Amit Kumar, (2017) 13 SCC 751 and Religare Finvest Ltd. vs. State of NCT of Delhi & Anr., decided *vide* CRL.M.C. 796/2021 by the Co-ordinate Bench of this Court on 14.06.2021.

63. **Submissions heard and record as well as judgments perused.**

64. It is admitted by the parties that the CBI case was registered on 17.08.2022 under Section 120B of the Indian Penal Code, 1860 read with Sections 7/7A/8 of Prevention of Corruption Act, 1988 at Police Station CBI, ACB, New Delhi against Manish Sisodia and others, wherein the Applicant was named as an accused, but the Chargesheet in the CBI case (predicate offence) was filed without the arrest of the Applicant and he has been admitted to bail in the CBI case *vide* Order dated 28.02.2023

65. Further, the ED case was registered after five days of registration of



the CBI case on 22.08.2022 on the allegations that the Applicant was actively involved in the conspiracy of drafting the Delhi Excise Policy 2021-22 and was also actively involved in forming the cartel and also participated in conspiracy of kickbacks, payments of the same and its recoupment and also that he had undertaken various transactions in regard to the transactions related to proceeds of crime. The evidence so collected by the respondent is in the nature of statements of the accomplices, witnesses and co-accused persons, many of which have been retracted.

66. It is pertinent to observe that the Prosecution Complaint has already been filed against the Applicant, in which he has been summoned. The investigations *qua* the Applicant are complete.

67. Moreover, the Applicant is an experienced professional with various educational qualifications and had volunteered to work with Organisations such as UNICEF Canada to educate children about UNICEF's work for children across the world, as well as with *Afghans4tomorrow* to help improve the business skills of students at the Kabul Education University. The Applicant despite being lodged in Tihar Jail No.4 as an under-trial prisoner, has volunteered as *Horticulture Sahayak*. ***The Applicant has deep roots in the society and is not a flight risk and has business and professions which are based in India and he is not likely to abscond from the country.***

68. As noted in *Manish Sisodia v. Directorate of Enforcement* 2024 INSC, there is *no possibility of tampering of evidence* by the Applicant if the Applicant is granted bail as the case is primarily dependent on documentary evidence which is already seized by the prosecution. Similarly, the apprehension regarding influencing witnesses and that of being *a flight risk*



can be diffused by imposing stringent conditions while granting bail. ***Therefore, the conditions of triple test are duly satisfied by the Applicant.***

69. It is admitted that the Applicant has been behind bars since 06.03.2023, there are around 69,000 pages of documents involved in both CBI and ED matters. Moreover, there are 493 witnesses, who have to be examined on behalf of the prosecution. In the same case, the other accused persons, namely, *Manish Sisodia*, *K.Kavitha*, and *Vijay Nair* have already been admitted to bail in similar circumstances.

70. In the case of *Manish Sisodia* (supra) the Hon'ble Supreme Court observed that prolonged incarceration before being pronounced guilty of an offence should not be permitted to become punishment without trial. It was further observed that fundamental right of liberty provided under Article 21 of the Constitution is superior to statutory restrictions and reiterated the principle that "*bail is the rule and refusal is an exception*". The Apex Court reiterated observation in *Gudikanti Narasimhulu v. Public Prosecutor, High Court of A.P.* (1978) 1 SCC 240 that the objective to keep a person in judicial custody pending trial or disposal of an appeal is to secure their attendance at trial. The same observations have been reiterated by the Apex Court while granting bail to similarly placed accused under the Complaint in PMLA case in *Kalvakuntla Kavitha v. Directorate of Enforcement* 2024 INSC 632 and *Vijay Nair v. Directorate of Enforcement* in SLP (Crl.) No. 22137/2024 vide order dated 02.09.2024.

71. Considering the above, the Applicant is admitted to bail on the following terms and conditions: -



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- a. The Applicant is directed to be released *forthwith* on bail in connection with the ECIR No. ECIR/HIU-II/14/2022 dated 22.08.2022, registered by the Directorate of Enforcement, subject to furnishing a personal bond in the sum of Rs.10,00,000/- with two sureties of the like amount; to the satisfaction of the learned Special Judge/Trial Court.
 - b. The Applicant shall appear before the Court as and when the matter is taken up for hearing.
 - c. The Applicant shall provide mobile number to the IO concerned which shall be kept in working condition at all times and he shall not change the mobile number, without prior intimate to the Investigating Officer concerned.
 - d. The Applicant shall not change his residential address and in case of change of the residential address, the same shall be intimated to this Court, by way of an affidavit.
 - e. The Applicant shall surrender his passport with the learned Special Court;
 - f. The Applicant shall report to the Investigating Officer on every Monday and Thursday between 10:00 to 11:00 AM;
 - g. The Applicant shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses.
 - h. The Applicant shall not leave the country, without permission of this Court.
 - i. The Applicant shall not make any attempt to tamper with the evidence or influence the witnesses;
72. Any observation made herein is without prejudice to the trial.



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73. The petition along with pending applications are disposed of.
74. The copy of this Order be communicated to the concerned Jail Superintendent as well as to the learned Trial Court.

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 11, 2024
S.Sharma