

Amberkar

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 4141 OF 2024

Suraj Satish Chavan

.. Applicant

Versus

Directorate of Enforcement & Anr.

.. Respondents

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- Mr. Ashok Mundargi, Sr. Advocate a/w Mr. Harshad Bhadbhade, Ms. Nikita Mandaniyan, Mr. Dileep Satale, Ms. Shagufta Patel, Mr. Shyam Dewani, Mr. Sachet Makhija & Mr. Dashang Doshi for Applicant
- Mr. H.S. Venegavkar, Special PP. a/w Mr. Aayush Kedia for Respondent No. 1 - ED
- Mr. Hitendra J. Dedhia, APP for the State
- Mr. Suryakanth Swankar. AD & Ms. Priyam Dubey, EO are present

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CORAM : MILIND N. JADHAV, J.**DATE : FEBRUARY 04, 2025****JUDGMENT:**

1. This Application is filed by Applicant / Accused (Sole Accused) for grant of bail under Section 439 of Cr.P.C. read with Section 45 of Prevention of Money Laundering Act, 2002 (for short "PMLA"). Applicant has been arrested and is in jail since 17.01.2024. The designated Special Court by order dated 09.09.2024 dismissed the Bail Application preferred by the Applicant. Bail Application is filed in connection with the alleged offence under Section 3 of the PMLA which is punishable under Section 4 of the said Act. Six volumes of the charge-sheet is filed as compilation by Applicant. Reference to

relevant documents is as per the documents appearing in the compilation.

2. Briefly stated, prosecution case is that Mumbai police registered FIR on 01.09.2023 on the basis of Complaint filed by Gopal Pandurang Lavne - EOW officer in respect of two specific Work orders issued by the Municipal Corporation of Greater Mumbai (for short “MCGM”) dated 14.04.2020 and 17.04.2020 to supply cooked food (khichdi) during the COVID-19 Pandemic lock down period between March 2020 and July 2020 to the Ward Offices for distribution to the citizens. Delay in filing the complaint is *prima facie* evident. Work order dated 14.04.2020 was issued in favour of M/s. Vaishnavi Kitchen (Sahyadri Refreshments) and Work order dated 17.04.2020 to M/s. Force One Multi Services for supply of 300 gms of food packet (khichdi) @Rs.33/- per packet plus GST. MCGM paid Rs.8.64 Crores to M/s. Force One Multi Services and Rs.5.93 Crores to M/s. Vaishnavi Kitchen (M/s. Sahyadri Refreshments) on completion of the above Work orders. Work orders were fully delivered and completed. Sanction of completion and satisfaction was issued by the Standing Committee of MCGM vide Resolution dated 10.02.2021. Said sanction is appended on page No.154 of Volume-III. On 23.04.2021, MCGM issued letter of completion and appreciation to M/s. Force One Multi services for completing the Work order.

3. Allegation in the complaint filed by Gopal Pandurang Lavne on 01.09.2023 is that both the aforesaid entities illegally gained public money to the tune of Rs.3.64 Crores out of the total money paid by MCGM to them under the twin Work orders which was fraudulently transferred to Applicant's Bank Account in the guise of his salary as an employee of M/s. Force One Multi Services and this led to a total loss of Rs.6.37 Crores of public money. On the basis of this allegation FIR of Scheduled Offence i.e. ECIR is filed on 17.10.2023 in the Special designated Court.

4. Briefly stated case of prosecution is as follows:-

4.1. Primary allegation is that contractual obligation under the Work orders was to supply 300 gram packet of food (khichdi) but M/s. Force One Multi Services supplied food packet weighing 100 grams and thus unjustly enriched itself.

4.2. Second allegation is that M/s. Force One Multi Services did not have its own kitchen facility and was majorly involved in sand transport business despite which it obtained the Work order due to influence exerted by Applicant on the Nodal Officer of MCGM. Thereafter M/s. Force One Multi Services entered into two sub-contracts with M/s. Sneha Caterers and Decorators and M/s. Golden Star Banquet Hall & Catering Services paid Rs.4.20 Crores to M/s.

Sneha Caterers and Decorators and Rs.84,00,000/- to M/s. Golden Star Banquet Hotel & Catering Services for supplying the food (khichdi) packets and illegally misappropriated the balance amount of Rs. 3.64 Crores.

5. Third allegation is that there was no specific mechanism framed by MCGM to check the actual quantity delivered by M/s. Force One Multi Services of the food (khichdi) packets.

6. Fourth allegation is that the amount of Rs.3.64 Crores in the hands of M/s. Force One Multi Services is 'proceeds of crime' which was partly diverted into the personal bank account of Applicant and into another bank account of Applicant's partnership firm called M/s. Fire Fighters Enterprises.

7. Fifth allegation is that Applicant received the alleged proceeds of crime since he was instrumental in getting the Work order to supply cooked food for M/s. Force One Multi Services by using his influence as a leader of the then political party in dispensation without having played any role in contributing to the supply of the cooked food despite which he received an amount of Rs.1.35 Crores into his bank account from M/s. Force One Multi Services during June 2020 to December 2020.

8. Sixth allegation is that Applicant received the alleged amount of Rs.1.35 Crores into his bank account by showing that he was a salaried employee of M/s. Force One Multi Services by relying upon two ante dated appointment letters dated 01.04.2019 and 01.04.2020 and thus is liable for having conspired in generating and layering the proceeds of crime.

9. In the above background, Mr. Mundargi, learned Senior Advocate for Applicant has made the following five submissions for seeking Applicant's enlargement on Bail.

9.1. He has drawn my attention to the FIR filed by Complainant dated 01.09.2023 appended at page No.1 of Volume-I of the Chargesheet to contend that Applicant is not named as accused therein. Next he has drawn my attention to the ECIR dated 17.10.2023 at page No.8 of the same volume to contend that Applicant is neither named as accused therein. He would submit that the 8 accused named in the FIR are also the same accused named in the ECIR. The accused persons are M/s. Force One Multi Services, M/s. Vaishanvi Kitchen (Sahyadri Refreshment), M/s. Sneha Caters and Decorators and their proprietors / partners. He would submit that Applicant is not named as accused in the predicate offense and the ECIR despite which he has been arrested solely on the basis of statements of accused appended to the chargesheet filed in the Special Case as lone accused for hatching

criminal conspiracy and illegally misappropriating public money. He would submit that using the statements of accused persons as witnesses solely for arrest of Applicant is the most unfair part of investigation. He would submit that no case whatsoever is made out by prosecution regarding its principal allegation that lesser weighing food packets were supplied and on which designated days / dates by M/s. Force One Multi Services and therefore the said allegation is vague, insufficient and merely exists on paper. He would submit that Applicant is targeted as he was a political functionary in the then existing political dispensation on the allegation that he played a vital part in procuring the Work orders, but this allegation stands belied in view of the statement recorded of Sanjay Mashilkar, Managing Partner of M/s. Force One Multi Services (Accused) dated 26.12.2023 appended at page No. 270 Volume-IV wherein he himself has admitted that he was also the Secretary of the same political dispensation at the then time. He would submit that on the basis of the above, prosecution complaint is filed in PMLA Special Case only against Applicant on 15.03.2024 who is currently in Judicial Custody. He would draw my attention to three specific paragraphs in the Complaint namely paragraph Nos.4.7.2, 13 and 14 and would submit that it is the case of prosecution in paragraph No.4.7.2 that M/s. Force One Multi Services blatantly flouted the terms of the Work order

without carrying out any tangible work or fulfilling its responsibility and wrongfully gained Rs. 3.68 Crores. He would draw my attention to paragraph 13, which is the conclusion of investigation wherein it is concluded that M/s. Sahyadri Refreshments and M/s. Force One Multi Services without fulfilling the eligibility criteria laid down by MCGM circumvented the regulations and resorted to illegitimate practices of supplying food (khichdi) packets and pocketed illegitimate gains of 2.82 Crores and 3.68 Crores respectively and thus this amount of Rs. 6.5 Crores is the proceeds of crime under Section 2(1)(u) in the instant case. He would draw my attention to the accusation that Applicant and his firm M/s Fire Fighters Enterprises received Rs.1.35 Crores out of the above amount and Applicant has further laundered the said amount for wrongful and illegal gain and acquired properties and assets with that amount which are liable to be confiscated. In paragraph 14, he would draw my attention to the conclusion that further investigation is pending in respect of the other named accused in the FIR “if found” to be involved in PMLA offence. Juxtaposing these 3 paragraphs, he would argue that all suspect persons in the chain have not been arrested, neither they have been made an accused in the Special Case. He would submit that merely on the basis of accused’s statement which are pure confessional statements, Applicant is arrested. He would vehemently submit that such accused statements

are clearly hit by the provisions of Sections 25 to 27 of the Indian Evidence Act, 1872 without being proved in accordance with law or even corroborated *prima facie*. He would reiterate that save and except merely stating that under weighing cooked food packets were supplied there is no proof of that fact appearing anywhere, either in the accused statements, BMC record or the entire chargesheet. He would submit that if it is prosecution case that Applicant illegally received Rs. 1.35 Crores out of 6.50 Crores being the proceeds of crime then the balance 5.15 crores is not accounted for and none of the other accused have been implicated or arrested save and except a pick and choose policy adopted by ED to arrest the Applicant only.

9.2. The second limb of his argument is that according to prosecution Applicant influenced the Municipal Authorities for procurement of Work order in favor of M/s. Force One Multi Services. He would draw my attention to the application form, the Work order appended at page No.21 and the valid licences issued in favour of M/s. Sneha Caterers and Decorators and Golden Star Banquet Hall & Catering Services appended at page Nos.46 and 47 of the same volume and persuade me to juxtapose the same with the statement of the Nodal Officer Ms. Sangeeta Hansale on page No.1 of Volume-III and contend that there is nothing incriminating in those documents which would dis-entitle grant of Work order to them. He would draw my

attention to (i) statement of Sanjay Mashilkar (accused), Partner of M/s. Force One Multi Services appended at page No. 273, Volume-IV; (ii) the reference to leave and license agreement executed between M/s. Force One Multi Services and Golden Star Banquet Hall & Catering Services stated therein at page No. 275 dated 01.12.2019; (iii) the reference to letter of completion and appreciation issued by MCGM dated 23.04.2021 to M/s. Force One Multi Services for completing the Work order stated therein at page No.276; (iv) the reference to nexus of Applicant with M/s. Force One Multi Services regarding the Work order as stated therein at page No. 277 and (v) the reference to the valid Partnership Deed of M/s. Force One Multi Services at page No. 279. The Deed of Partnership of M/s. Force One Multi Services is placed on record. He would vehemently submit that allegation of prosecution that M/s. Force One Multi Services is engaged in sand transport business stands clearly disproved when the partnership deed is seen as Force One Multi Services is, *inter alia*, engaged into hospitality services apart from its other services / activities.

9.3. Apart from the aforesaid factual issues, on the legal front he would draw my attention to the provisions of PMLA. While drawing my attention to Section 19(1), he would argue that for enforcement of the said provision to arrest the Applicant, Competent Authority is

required to record and form a belief of the reasons on which it desires to proceed against the Accused. He would submit to the extent that such belief ought to be recorded in writing which is not done in the present case nor Applicant is informed about the said reasons. In the same breath he would submit that before arrest applicant ought to have been conveyed the grounds of his arrest which is also not complied with as mandatorily provided under Section 50(1) of Cr.P.C.. He would submit that if arrested after compliance of the aforesaid two statutory provisions, Applicant ought to have been produced before the Magistrate to show compliance of the aforesaid provisions which is not done in the present case. He would draw my attention to the arrest order at page No. 253 and the post arrest grounds at page No. 254 of Volume-II to contend that the arrest order does not state the reasons contemplated under section 19(1) and the post arrest grounds clearly state that Applicant has played no role in the supply of cooked food (Khichdi) packets to MCGM. He would submit that there is clear contradistinction in the grounds of arrest at Sr. No.11 and 13 when juxtaposed with the ground at Sr. No.12 in this regard. He would submit that M/s. Force One Multi Services continued to supply food packets to MCGM under similar Work order even during the Covid-19 second pandemic wave period in 2021 after obtaining a Vendor licence and MCGM has not found anything suspicious or incongruous in that

regard. He would submit that indictment of Applicant and his arrest in the present case is completely on illegal grounds due to proximity of Applicant to the then political dispensation at the then time without any basis. He would submit that if it is prosecution case that Applicant had no role to play in the supply of food packets as stated in ground No.12 of his grounds of arrest, then the alleged case of prosecution of supply of under weighing food packets against Applicant falls to the ground.

9.4. He would submit that statements of accused / co-accused are inadmissible under Section 25 of the Indian Evidence Act, 1872, investigation in the crime is complete, exhaustive co-operation of the Applicant has been fully rendered, all disclosures have been made, trial of predicate offence is not likely to start as no chargesheet is filed therein, hence trial of PMLA offence cannot commence and therefore Applicant's further incarceration is unwarranted in such facts and he should be released on bail.

9.5. In support of his submissions he would refer to and rely on the following judgments to contend that conclusion of trial will take an unreasonable period of time and hence considering Applicant's right to liberty and right to speedy justice, he should be released on bail:-

- (i) *Pankaj Bansal Vs. Union of India and Ors.*¹;
- (ii) *Arvind Kejriwal Vs. Directorate of Enforcement*²;
- (iii) *Priyavrat Mandhana Vs. Directorate of Enforcement and Ors.*³;
- (iv) *Superintendent and Rememberancer of Legal Affairs, West Bengal Vs. Mohan Singh and Ors.*⁴;
- (v) *Anil Khadkiwala Vs. State (Government of NCT of Delhi) and Anr.*⁵;
- (vi) *Vinod Kumar, IAS Vs. Union of India and Ors.*⁶;
- (vii) *Ramkripal Meena Vs. Directorare of Enforcement*⁷;
- (viii) *Prem Prakash Vs. Union of India*⁸;
- (ix) *Manish Sisodia Vs. Directoate of Enforcement*⁹;
- (x) *Mahesh Pandurang Naik Vs. The State of Maha and Anr.*¹⁰;
- (xi) *Prabir Purkayastha Vs. State (NCT of Delhi)*¹¹;
- (xii) *Vaibhav Jain Vs. Directorate of Enforcement*¹²

1 (2024) 7 SCC 576

2 2024 SCC OnLine SC 1703

3 WPST No.16175 of 2024 decided on 12.09.2024 – Bombay High Court.

4 (1975) 3 SCC 706

5 (2019) 17 SCC 294

6 2021 SCC OnLine SC 559

7 Speacial Leave to Appeal (Cri.) No(s).3205/2024 decided on 30.07.2024

8 (2024) 9 SCC 787

9 AIR 2024 SC 4053

10 WP(ST) No.13835 of 2024

11 (2024) 8 SCC 254 : (2024) 3 SCC (Cri) 573

12 2024 SCC OnLine Del 7478

9.6. He would finally submit that Applicant has been in custody for more than one year and taking into consideration the period spent in custody and there being no likelihood of conclusion of trial within a short span, Applicant having fully co-operated with the prosecution, investigation having been completed, Applicant not being framed as an accused either in the predicate offense or ECIR and keeping in view the aforementioned peculiar facts and circumstances of this case, rigors of Section 45 of the PMLA be suitably relaxed to afford conditional liberty to Applicant and he be released on bail.

10. Mr. Venegavkar, learned Special PP in reply to the Applicant's case for grant of bail has made the following submissions:-

10.1. He would submit that Applicant has been found guilty of receiving illegal gain in his bank account from M/s. Force One Multi Services as stated in the prosecution case and ECIR. He would submit that the extent of proceeds for crime received by the Applicant is as such that Applicant cannot be entitled for bail due to his alleged involvement in influencing the procurement of the Work order, supply of under weighing food packets by the Vendor and illegal gain received by it having transferred part of the same to the bank account of Applicant. He would submit that *prima facie* case is made out against Applicant on the basis of disclosure made by him that he is recipient of Rs. 1.35 Crores in his bank account from M/s. Force One Multi

Services during the period June 2020 to December 2020 which has been received by him as his salary and some portion as personal loan. He would submit that Applicant has filed antedated appointment letters dated 01.04.2019 and 01.04.2020 prepared by him on the instructions of his Chartered Accountant to create an alibi for illegitimately receiving the above amount in his bank account from M/s. Force One Multi Services prior to inception of Covid-19 pandemic so as to illegally gain a kickback from the Vendor after it received the Work order from MCGM. He would submit that statements of the accused which are appended to the chargesheet clearly make out a case that Applicant influenced the Nodal Officer of MCGM and forced her to award the Work order to M/s. Force One Multi Services despite the said partnership firm not having its own kitchen and licence in its own name or premises. He would submit that M/s. Force One Multi Services is a firm engaged in sand & brick transportation and security services without having a valid kitchen or base kitchen for preparation of food articles to undertake the enormous task of preparation of food articles during Covid-19 pandemic. He would submit that M/s. Force One Multi Services surreptitiously entered into a sub-contract with M/s. Sneha Caterers and Decorators and M/s. Golden Star Banquet Hall & Catering Services to supply food packets (khichdi) to MCGM without there being any provision for the same under the Work order.

On the factual front, he would finally submit that both the aforesaid entities supplied under weighing food packets of 100 grams instead of the prescribed 300 grams under the said Work orders thus illegally profiteering and unjustly enriching them by crores of rupees and out of this amount of Rs. 1.35 Crores was routed to the bank account of Applicant without Applicant playing any role whatsoever in supply of food packets to MCGM. He would submit that the aforesaid amount of Rs. 3.64 Crores has been surreptitiously misappropriated by M/s. Force One Multi Services and investigation is on in the matter at present and if found guilty, other accused will also be implicated in accordance with law.

10.2. On the legal front, he would draw my attention to the relevant provisions of IPC and PMLA Act and would submit that it is not necessary for any person to be an accused in the Scheduled Offences to be implicated in PMLA. He would refer to the provisions of Section 2(u) "proceeds of crime" and Sections 3 and 4 regarding money laundering under PMLA and after reading them in elaborate detail would persuade me to juxtapose the same with Section 19(1) of the PMLA. He would submit that the arguments of Applicant that it is necessary to record the belief and reasons in writing and apprise them to the Applicant before his arrest and is required to be shown to him is incorrect. He would submit that in the present case itself, said belief

and satisfaction of the Competent Authority has been recorded in writing and he would persuade me to see the said recording in writing in the ECIR case file maintained by the prosecution and argue that it is not necessary for the prosecution to share the same with the Applicant. He would submit that once the said belief and reasons are recorded in writing all that the prosecution is required to do is to convey to Applicant the grounds of his arrest which has been done in the present case and therefore there cannot be any argument of non-compliance of the statutory provisions of Section 19(1) of PMLA. He would submit that chargesheet has been filed after thorough investigation depicting the role of the Applicant. He would draw my attention to the 21 grounds of arrest appended at page No. 254 of Volume-II and submit that the same were communicated to Applicant orally and in compliance with the directives of the Supreme Court. He would submit that communicating the grounds of arrest to Applicant orally is sufficient compliance of his fundamental right as also the provisions of Section 50 of the Cr.P.C. However, in his usual fairness he would submit that only in the case of delay in trial, the rigour of Section 45 of the PMLA can be waived in the given facts of the case. On instructions he would fairly concede that chargesheet in the predicate offence has not been filed yet. Thus the trial is not likely to start which would eventually delay the trial in the present case. He

would submit that prosecution desires to examine 20 witnesses as stated in the chargesheet and would persuade the Court to consider his submissions to oppose the Application for grant of bail to the Applicant.

11. Mr. Dedhia, learned APP appearing on behalf of the State has adopted the submissions made by Mr. Venegavkar and for brevity has not re-argued the same and persuaded me to take cognizance of the said submissions for the State.

12. I have heard Mr. Mundargi, learned Senior Advocate for Applicant; Mr. Venegavkar, learned Special PP for Respondent No. 1 and Mr. Dedhia, learned APP for the State. Submissions made by the learned Advocates have received due consideration of the Court.

13. At the outset, the statutory legal position as applicable is required to be considered and stated. Chapter III of the Constitution of India enumerates the fundamental rights which have been time and again construed to be inherent and any law which abrogates and abridges such fundamental rights would be violative of the basic structure doctrine including right of protection imposed against arrest and detention in certain cases contemplated under Article 22 of the Constitution of India. Article 22(1) and (2) read thus:-

"22. Protection against arrest and detention in certain cases - (1) No person who is arrested shall be detained in custody without being

informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate."

13.1. Corresponding to the aforementioned rights enshrined in the Constitution is the provisions of Section 50 of the Cr.P.C. pertaining to the grounds of arrest and right of bail to be informed to the person arrested. Section 50 of the Cr.P.C. reads thus:-

50. Person arrested to be informed of grounds of arrest and of right to bail - (1) Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.

(2) Where a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf."

14. In the present case Applicant was arrested by serving the arrest order dated 17.01.2024 which is on the same date of recording the reasons / belief by the Authority in its internal file. The recording of reasons is dated 17.01.2024. Arrest order is dated 17.01.2024 whereas grounds of arrest are dated 17.01.2024. It is *prima facie* seen that Applicant before me has thereafter fully co-operated with the investigation and made all relevant disclosures which is evident from the chargesheet. On perusal of the chargesheet, it is *prima facie* seen

that Applicant has not only participated in the investigation but has made all appropriate disclosures as called for by the prosecution. Investigation is completed. Chargesheet is filed on 15.03.2024.

15. An intriguing issue which compels me to consider the case of Applicant is that similar identical 32 Work orders were issued by the MCGM during the first wave of Covid-19 pandemic period to various Vendors / Contractors in each ward for supply of similar food packets during the Covid-19 pandemic lockdown as per requirement during morning and evening time to deliver lunch and dinner at various Ward Offices of the Municipal Corporation for distribution. It is seen that similar Work orders were given to various Vendors viz; NRAI (2 Work orders), Delhi Darbar (3 Work orders), Bohra Kitchen, Wadia Kitchen - Mini Bodhanwala (3 Work orders), Blue Sea Worli (2 Work orders), Dhanraj Shetty (2 orders), Laxmi SHG - Masurkar Madam, Shivsena - Rajashree Madam, Yogesh, Dhanraj Shetty, Sai Palace, Vaishnavi Kitchen - Bala Kadam, Force One Multi Services, Sundeep Hotels, Iskon Pankaj Singh, Classic Fast Food - Shetty, Amini Industries, Sheetal Ashish Hotel Pvt Ltd - Bhola Yadav, Shetty Brothers (Link View), Sheetal Ashish Hotels Pvt Ltd, Hotel Prasad International Dahisar Check Naka, Laxman Yadav Kitchen, Dinesh N. Shetty, SHG N Ward, Shetty Dinesh & Pravin Shetty all throughout Mumbai.

15.1. From the above, it is seen that Vaishnavi Kitchen - Bala Kadam and Force One Multi Services have been issued one Work order each. Material has been placed before me to show the application made by them in the prescribed format giving all such details appended thereto along with licenses issued by the Food and Drug Administration, Maharashtra State and the Health Department of the Municipal Corporation which are appended in Volume -I at page Nos. 1 to 50 of the Chargesheet. Licenses appended are all valid licenses issued in the name of M/s. Sneha Caterers and Decorators and M/s. Golden Star Banquet Hall & Catering Services with whom M/s. Force One Multi Services has a sub-contract and leave and license agreement details of which are reflected in the Chargesheet. It is seen that there is no impediment or provision of M/s. Force One Multi Services to have its own kitchen setup as per the terms of the Work order which has been brought to my notice *prima facie* since that is one of the principal allegation in the prosecution complaint. The Work orders are appended at page Nos. 20 & 21 of Volume-I. They are pursuant to the minutes of Standing Committee dated 07.04.2020 which are also appended at page No. 402 of Volume-III sanctioning and approving the issuance and completion of all Work orders. After the contract and the Work orders were completed, MCGM has issued sanction and approval for completion of the Work orders not only in respect of the Work

order given to M/s. Force One Multi Services but to all other 32 entities in Mumbai City as stated herein above. This sanction is in the form of the Standing Committee Resolution dated 30.02.2021 which is appended at page No. 154 of Volume-III of the Chargesheet which in paragraph Nos. 7 and 8 which accords sanction to the same. There is material placed on record to show that M/s. Force One Multi Services also continued to be a Vendor in the second wave of Covid-19 pandemic for supply of similar food packets during that time through the MCGM and nothing incongruous was found by the MCGM nor is there any indictment for the same. If at all it is the prosecution case that there is any illegal act on the part of the Vendor i.e. M/s. Force One Multi Services to provide under weighing food packets, *prima facie*, there is no material placed on record through any official document of the MCGM to substantiate this allegation which is clearly evident from the Chargesheet. All that the Chargesheet encloses are statements of accused which is the sole basis for the allegation and indictment of M/s. Force One Multi Services so as to come to the conclusion that it received illegal proceeds under the Works Order and routed the same to the Applicant. Veracity of Applicant's case on the basis of his letters to have received Rs. 1.35 Crores in his bank account from M/s. Force One Multi Services once again will be a matter of trial. Question arising before the Court in the above facts is that when

the investigation is completed, is further incarceration of the Applicant warranted or otherwise.

15.2. In this regard, I would like to refer to the provisions of Section 45 of the PMLA which reads as under:-

"45. Offences to be cognizable and non-bailable - (1)

¹[Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence ²[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, ³[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.

⁴[(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 ⁵*** subsection (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.

⁶*[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.]"*

15.3. The question is whether the rigours of Section 45 would apply to the facts of the present case as made out by the Applicant. As delineated and observed herein above and also while recording the submissions made by the learned Advocates appearing for the parties , it is seen that in the predicate offence Chargesheet has not been filed as yet. Applicant is not made accused either in the predicate offence or in the ECIR offence, trial is not likely to start in the predicate offence and hence trial in PMLA offence cannot be commenced and most importantly Applicant is incarcerated for 1 year and 18 days after duly cooperating with the investigation.

15.4. In this regard, attention is drawn to the observations made by the Supreme Court in paragraph Nos. 24 to 28 of the decision in the case of ***V. Senthil Balaji Vs. The Deputy Director, Directorate of Enforcement***¹³. Paragraph Nos. 24 to 28 read as under:-

"24. There are a few penal statutes that make a departure from the provisions of Sections 437, 438, and 439 of the Code of Criminal Procedure, 1973. A higher threshold is provided in these statutes for the grant of

13 AIR 2024 SC 4760

bail. By way of illustration, we may refer to Section 45(1)(ii) of PMLA, proviso to Section 43D(5) of the Unlawful Activities (Prevention) Act, 1967 and Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'NDPS Act'). The provisions regarding bail in some of such statutes start with a non-obstante Clause for overriding the provisions of Sections 437 to 439 of the Code of Criminal Procedure. The legislature has done so to secure the object of making the penal provisions in such enactments. For example, the PMLA provides for Section 45(1)(ii) as money laundering poses a serious threat not only to the country's financial system but also to its integrity and sovereignty.

25. Considering the gravity of the offences in such statutes, expeditious disposal of trials for the crimes under these statutes is contemplated. Moreover, such statutes contain provisions laying down higher threshold for the grant of bail. The expeditious disposal of the trial is also warranted considering the higher threshold set for the grant of bail. Hence, the requirement of expeditious disposal of cases must be read into these statutes. Inordinate delay in the conclusion of the trial and the higher threshold for the grant of bail cannot go together. It is a well-settled principle of our criminal jurisprudence that "bail is the rule, and jail is the exception." These stringent provisions regarding the grant of bail, such as Section 45(1)(iii) of the PMLA, cannot become a tool which can be used to incarcerate the Accused without trial for an unreasonably long time.

26. There are a series of decisions of this Court starting from the decision in the case of K.A. Najeeb (2021) 3 SCC 713, which hold that such stringent provisions for the grant of bail do not take away the power of Constitutional Courts to grant bail on the grounds of violation of Part III of the Constitution of India. We have already referred to paragraph 17 of the said decision, which lays down that the rigours of such provisions will melt down where there is no likelihood of trial being completed in a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. One of the reasons is that if, because of such provisions, incarceration of an undertrial Accused is continued for an

unreasonably long time, the provisions may be exposed to the vice of being violative of Article 21 of the Constitution of India.

27. Under the Statutes like PMLA, the minimum sentence is three years, and the maximum is seven years. The minimum sentence is higher when the scheduled offence is under the NDPS Act. When the trial of the complaint under PMLA is likely to prolong beyond reasonable limits, the Constitutional Courts will have to consider exercising their powers to grant bail. The reason is that Section 45(1)(ii) does not confer power on the State to detain an Accused for an unreasonably long time, especially when there is no possibility of trial concluding within a reasonable time. What a reasonable time is will depend on the provisions under which the Accused is being tried and other factors. One of the most relevant factor is the duration of the minimum and maximum sentence for the offence. Another important consideration is the higher threshold or stringent conditions which a statute provides for the grant of bail. Even an outer limit provided by the relevant law for the completion of the trial, if any, is also a factor to be considered. The extraordinary powers, as held in the case of K.A. Najeeb, can only be exercised by the Constitutional Courts. The Judges of the Constitutional Courts have vast experience. Based on the facts on record, if the Judges conclude that there is no possibility of a trial concluding in a reasonable time, the power of granting bail can always be exercised by the Constitutional Courts on the grounds of violation of Part III of the Constitution of India notwithstanding the statutory provisions. The Constitutional Courts can always exercise its jurisdiction Under Article 32 or Article 226, as the case may be. The Constitutional Courts have to bear in mind while dealing with the cases under the PMLA that, except in a few exceptional cases, the maximum sentence can be of seven years. The Constitutional Courts cannot allow provisions like Section 45(1)(ii) to become instruments in the hands of the ED to continue incarceration for a long time when there is no possibility of a trial of the scheduled offence and the PMLA offence concluding within a reasonable time. If the Constitutional Courts do not exercise their jurisdiction in such cases, the rights of the undertrials Under Article 21

of the Constitution of India will be defeated. In a given case, if an undue delay in the disposal of the trial of scheduled offences or disposal of trial under the PMLA can be substantially attributed to the Accused, the Constitutional Courts can always decline to exercise jurisdiction to issue prerogative writs. An exception will also be in a case where, considering the antecedents of the Accused, there is every possibility of the Accused becoming a real threat to society if enlarged on bail. The jurisdiction to issue prerogative writs is always discretionary.

28. Some day, the courts, especially the Constitutional Courts, will have to take a call on a peculiar situation that arises in our justice delivery system. There are cases where clean acquittal is granted by the criminal courts to the Accused after very long incarceration as an under trial. When we say clean acquittal, we are excluding the cases where the witnesses have turned hostile or there is a bona fide defective investigation. In such cases of clean acquittal, crucial years in the life of the Accused are lost. In a given case, it may amount to violation of rights of the Accused Under Article 21 of the Constitution which may give rise to a claim for compensation."

16. Offence of money-laundering has been defined under Section 3 of the PMLA and existence of proceeds of crime is the condition precedent for the offence under Section 3. Proceeds of crime has been defined in Section 2(u) of the PMLA. Section 2(u) and Section 3 of PMLA read as under:-

"2. Definitions: - (1)

(a)

(u) "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property [or where such property is taken or held outside the country, then the property equivalent in value held within the country] [or abroad];"

"3. Offence of money-laundering - Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the ¹[proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming] it as untainted property shall be guilty of offence of money-laundering.

²[Explanation.--For the removal of doubts, it is hereby clarified that,--

(i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:--

(a) concealment; or

(b) possession; or

(c) acquisition; or

(d) use; or

(e) projecting as untainted property; or

(f) claiming as untainted property,

in any manner whatsoever;

(ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.]"

16.1. Perusal of the above statutory provisions clearly depict that existence of the Scheduled Offence is a *sine qua non* for alleging the existence of proceeds of crime. Property derived or obtained, directly or indirectly, by a person as a result of criminal activity relating to a Scheduled Offence constitutes proceeds of crime. Thus existence of proceeds of crime at the time of trial of the offence under Section 3 of the PMLA can be proved only if the Scheduled Offence is established in prosecution of the Scheduled Offence. This clearly

envisages that even if trial of the case under the PMLA proceeds it cannot be officially tested unless the trial of the Scheduled Offence concludes. In the present case before me in the Scheduled Offence, Chargesheet has not been filed and trial is not likely to start in the near foreseeable future. Therefore *prima facie*, I see no possibility of both trials concluding in the foreseeable future. Applicant before me is in judicial custody pending trial for more than one year.

17. As far back as in 1923, the Calcutta High Court in the case of ***Nagendra Nath Chakrabarti Vs. King-Emperor***¹⁴ through Justice Mookerjee, J. writing the judgment on behalf of the Division Bench in paragraph Nos. 14 and 15 held as under:-

"14. It is indisputable that bail is not to be withheld merely as a punishment. The requirements as to bail are to secure the attendance of the accused at the trial : R v. Rose [1898] 18 Cox. C.C. 717. The proper test to be applied in the solution of the question, whether bail should be granted or refused, is whether it is probable that the party will appear to take his trial: Re Robinson [1859] 23 L.J.Q.B. 286, R. v. Scaifa [1841] 9 D.P.C. 553. The test is applied by reference to the following considerations:

(a) The nature of the accusation : R. v. Barronet [1853] 1 El. & Bl. 1; R. v. Butler [1881] 14 Cox. C.C. 530.

(b) The nature of the evidence in support of the accusation: Re Robinson (1859) 23 L.J.Q.B. 286; R. v. Butler [1881] 14 Cox. C.C. 530; R. v. McCormic [1864] 17 Ir. C.L.R. 411.

(c) The severity of the punishment which conviction will entail: Re Robinson [1859] 23 L.J.Q.B. 286; and this explains the reluctance of Courts to grant bail on charges of murder : Re Barthelemy [1852] 1 El. & Bl. 8; R. v. Andrews [1844] 2 D. & L. 10. In this connection we may recall that in England, bail in treason or felony is discretionary in the High Court or Courts having jurisdiction to try the offence: R. v. Mc Cartie [1859] 11 Ir. C.L.R. 188; R. v. Platt [1777] 1 Leach 157; on the other hand, bail in

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misdemeanour is said to be of right at common law : R. v. Spilsbury [1898] 2 Q.B. 615; R. v. Badgar [1843] 4 Q.B. 468; Re Frost [1888] 4 J.L.R. 757; see also R. v. Crowe [1829] 4 C. & P. 251; R. v. Beardmore [1836] 7 C. & P. 497; R. v. Osborne [1837] 7 C. & P. 799; King v. Fortier [1902] 13 Quebec K.B. 251. This distinction is reflected in sections 496 and 497 of the Criminal Procedure Code which treat respectively of the grant of bail in cases of what are described in the phraseology of the Indian Legislature as bailable and non-bailable offences.

15. *The substance of the matter is that the discretionary power of the Court to admit to bail is not arbitrary, but is judicial, Manikam v. Queen [1882] 6 Mad. 63, and is governed by established principles. The object of the detention of the accused being to secure his appearance to abide the sentence of law, the principal enquiry is, whether a recognizance would effect that end. In seeking an answer to this enquiry, Courts have considered the seriousness of the charge, the nature of the evidence, the severity of the punishment prescribed for the offence, and in some instances, the character, means and standing of the accused: see R. v. Bennett [1907] 49 L.T. 387; R. v. Atkins [1907] 49 L.T. 421; R. v. Manniny [1888] 5 T.L.R. 139; R. v. Wood [1845] 9 Ir. L.R. 71; R. v. Gallagher [1855] 7 W.C.L. 19; R. v. Stewart [1900] 4 Canada Cr. Cas. 131."*

17.1. From the above, it is seen that as far back as in 1923, High Court has taken a view that the proper test to be applied in the solution of question for grant of bail is whether it is probable that the party will appear to take his trial. Applicant before me is having deep roots in society. There is no possibility of him fleeing away from the country and not being available for facing the trial. In any case appropriate conditions can be imposed if that be the case to address the concern of the State. The Supreme Court in the case of ***Gudikanti Narasimhulu & Ors. Vs. Public Prosecutor, High Court of Andhra Pradesh***¹⁵ has reiterated the same principle. Keeping the aforesaid principle in mind and the facts of the present case, it is *prima facie* seen that the present case would largely depend upon documentary

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evidence which is already seized by the prosecution and is made part of the Chargesheet. As such there is no possibility of tampering with the evidence.

18. Attention is also drawn to a few penal statutes that make a departure from the provisions of the relevant Sections in Cr.P.C. In that regard, attention is drawn to the decision in the case of ***V. Senthil Balaji (supra)***, paragraph Nos. 24 and 28 of the said decision which have been delineated herein above.

19. In this regard attention is also invited to paragraph No. 28 of the decision of the Supreme Court in the case of ***Manish Sisodia Vs. Directorate of Enforcement***¹⁶ with respect to application of rigours of Section 45 of the PMLA especially in cases where there is delay in trial. The Supreme Court has held that if there is delay in trial, rigours of Section 45 would be inapplicable. Paragraph No. 28 of the said decision reads thus:-

"28. Detention or jail before being pronounced guilty of an offence should not become punishment without trial. If the trial gets protracted despite assurances of the prosecution, and it is clear that case will not be decided within a foreseeable time, the prayer for bail may be meritorious. While the prosecution may pertain to an economic offence, yet it may not be proper to equate these cases with those punishable with death, imprisonment for life, ten years or more like offences under the Narcotic Drugs and Psychotropic Substances Act, 1985, murder, cases of rape, dacoity, kidnapping for

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ransom, mass violence, etc. Neither is this a case where 100/1000s of depositors have been defrauded. The allegations have to be established and proven. The right to bail in cases of delay, coupled with incarceration for a long period, depending on the nature of the allegations, should be read into Section 439 of the Code and Section 45 of the PML Act. The reason is that the constitutional mandate is the higher law, and it is the basic right of the person charged of an offence and not convicted, that he be ensured and given a speedy trial. When the trial is not proceeding for reasons not attributable to the Accused, the court, unless there are good reasons, may well be guided to exercise the power to grant bail. This would be truer where the trial would take years."

20. Since the case before me is restricted to grant of bail on account of long incarceration of the under-trial accused / Applicant before me after he having fully co-operated in the investigation and made all disclosures, I refrain to comment on any of the merits of the matter. Any comment made above on the merits is cursory and only to the extent of considering the Applicant's case for grant of bail and is not an opinion expressed by the Court so as to influence the trial which may be noted.

21. It is seen that Applicant was arrested 17.01.2024. Thus he is in custody for the last more than 1 year, except from taking cognizance there is no other progress of the trial and the charges are yet to be framed and considered by the Special Court. There are 20 prosecution witnesses cited by the ED in their complaint and it would therefore be difficult to comprehend that trial is likely to be completed in the foreseeable future, rather there seems to be no possibility that

trial would be concluded in a reasonable time. Applicant has fully cooperated with the prosecution Agency and made all disclosures. Hence his further incarceration shall not serve any useful purpose rather it would amount to punishing him before guilt is proved.

22. In view of my above *prima facie* observations and findings and the Applicant having been incarcerated for more than one year, in the *prima facie* facts of the present case, trial of the Scheduled Offence and consequently PMLA offences not likely to be completed in the foreseeable future, if Applicant's detention is further continued, it would amount to infringement of his fundamental right under Article 21 of the Constitution of India of a speedy trial and guarantee of personal liberty. Principal allegation that Applicant being in an influential position in the State at the then time may have been related in the so called alleged situation as put forth by the prosecution but the said situation no longer prevails in the current dispensation. Therefore any apprehension of prosecution regarding tampering with the evidence can be redressed by imposing appropriate conditions.

23. In view of the above *prima facie* observations, Applicant is granted bail subject to the following terms and conditions:-

- (i) Applicant is directed to be released on bail in connection with Enforcement Case Information

Report (ECIR) bearing No. ECIR/MBZO-1/47/2023 for alleged offences u/S. 3 and 4 of Prevention of Money-Laundering Act - 2002 on furnishing P.R. Bond in the sum of Rs. 1,00,000/- with one or two sureties in the like amount; Applicant shall be released on furnishing cash bail of Rs.1,00,000/- immediately and is permitted to provide one or two sureties as directed within a period of 4 weeks from the date of his release from prison;

- (ii) Applicant shall report to the Investigating Officer in the office of the Enforcement Directorate once every month on the third Saturday between 10:00 a.m. to 12:00 noon for the first three months and thereafter as and when called;
- (iii) Applicant shall co-operate with the conduct of trial and attend the Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if he does so, it will entitle the prosecution to apply for cancellation of this order;
- (iv) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court. He

shall deposit his passport, if any, with the Special Court under the PMLA at Mumbai within one week after his release from prison on bail;

(v) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner;

(vi) Applicant shall keep the Investigating Officer informed of his current address and mobile contact number and / or change of residence or mobile details, if any, from time to time;

(vii) Any infraction of the above conditions shall entail the prosecution to seek cancellation of this order.

24. It is clarified that observations made in this order are limited for the purpose of granting Bail only and they are not to be construed as an expression of opinion by the Court on the merits of the case in any manner so as to influence the trial.

25. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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