AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3 OF 2025
WITH
INTERIM APPLICATION NO.2415 OF 2025
AND
INTERIM APPLICATION NO.2438 OF 2025

Sujit Patker, Age 47 years,
Occupation- Management Consultant,
R/at: C/201, Sumit Artista, CST Road,
Santacruz (East), Mumbai 400 098
(At present lodged in Arthur Road
Central Prison, Mumbai) **... Applicant**

V/s.

1. Directorate of Enforcement,
through the Assistant Director,
Zonal Office No.-1, Kaiser-I-Hind
Building, Ballard Estate, Fort,
Mumbai 400 001

2. The State of Maharashtra **... Respondents**

Mr. Aabad Ponda, Senior Advocate with Mr. Vivek Babar, & Mr. Nilesh Navale for the applicant.

Mr. Hiten Venegaonkar with Mr. Shubham Joshi & Mr. Aayush Yadav for respondent No.1-ED.

Ms. Pallavi N. Dabholkar, APP for respondent No.2-State.

CORAM : AMIT BORKAR, J.

DATED : JULY 16, 2025

P.C.:

1. The present application is filed under the provisions of Section 483 of the Bhartiya Nagarik Suraksha Sanhita, 2023, whereby the applicant seeks his release on regular bail in connection with Crime Register No.756 of 2022, initially registered with Azad Maidan Police Station for offences punishable under Sections 120-B read with Sections 406, 420, 465, 467, 468, 471 and 304-A read with Section 34 of the Indian Penal Code, 1860. The said offence was thereafter transferred for investigation to the Economic Offences Wing (EOW), Mumbai, and accordingly renumbered as FIR No.144 of 2022. Pursuant thereto, an Enforcement Case Information Report (ECIR) bearing No. ECIR/MBZO-I/63/2022 also came to be registered by the Enforcement Directorate for offences under Sections 120-B, 420, and 471 of the Indian Penal Code, 1860.

2. The gravamen of the prosecution case, as disclosed in the First Information Report and the investigation conducted thus far, is that during the unprecedented outbreak of the Covid-19 pandemic in or about March 2020, various Municipal Corporations and Municipal Councils in the State of Maharashtra, including the Municipal Corporation of Greater Mumbai (hereinafter referred to as “MCGM”), were constrained to establish large-scale temporary medical infrastructure in the form of ‘Jumbo Covid Centers’ equipped with beds of various categories, including oxygenated, non-oxygenated and ICU beds, for catering to the influx of Covid-19 patients. In that backdrop, the MCGM floated an Expression of Interest (EOI) on its official portal on 22nd June 2020, inviting bids from eligible entities for the purpose of establishment, operation and management of such medical facilities. The said bids were required to be submitted on or before 27th June 2020.

3. It is the case of the prosecution that one M/s. Lifeline Hospital Management Services (hereinafter referred to as "M/s. LHMS"), a partnership firm purportedly constituted by four partners—namely, Mr. Sujit Patker (accused No.1), Dr. Hemant Gupta (accused No.3), Mr. Sanjay Shah (accused No.4), and Mr. Rajiv Salunkhe (accused No.5)—came into existence on 26th June 2020, i.e., merely one day prior to the closing date for submission of the EOI. The said firm, though newly constituted, submitted its proposal and participated in the said tender process floated by the MCGM. It is alleged that upon consideration of the bid, MCGM accepted the proposal of M/s. LHMS and accordingly issued a letter of acceptance in its favour for operation and management of the Jumbo Covid Centers located at NSCI Worli and Dahisar.

4. According to the investigating agency, M/s. LHMS, in its bid documents, submitted a purported trust deed instead of the mandatory partnership deed and further concealed the fact that it was not registered as a partnership firm as on the date of submission of the bid. The registration of M/s. LHMS with the Registrar of Firms is alleged to have been carried out subsequently on 22nd July 2020. Thus, according to the prosecution, there was a deliberate suppression of material facts and submission of misleading documents by M/s. LHMS at the very inception.

5. The further allegation as emerging from the investigation is that, despite the apparent discrepancies in the documents submitted by M/s. LHMS and the absence of any prior experience in the field, the firm succeeded in procuring the contract for supply of manpower, namely, Doctors, Nurses, Wardboys, Aayas and Technicians, at the aforesaid Covid centers. The prosecution contends that the applicant herein played an active role in facilitating the award of the said contract by leveraging his connections with highly placed and influential individuals, including officers of the MCGM, thereby orchestrating undue favour to M/s. LHMS in the tender process.

6. It is further the case of the prosecution that, pursuant to the award of the said contracts, M/s. LHMS had raised a total of 82 invoices, out of which 63 pertained to the Dahisar Jumbo Covid Facility and 19 to the NSCI Worli Jumbo Covid Facility, towards the services allegedly rendered during the period from July 2020 to February 2022. The total value of these invoices amounted to ₹32,76,33,861.50/-. During the process of scrutiny and clearance of the said invoices, the Municipal Corporation of Greater Mumbai levied a penalty amounting to ₹31,47,076.60/- on account of certain discrepancies, and consequently, bills worth ₹32,44,86,784.90/- were sanctioned for payment. It is stated that between the period September 2020 to June 2022, M/s. LHMS received the aforementioned sanctioned amount of ₹32,44,86,784.90/- from MCGM in relation to the contract for supply of medical personnel. Upon analysis of the disbursement trail of the said amount, it has been revealed that TDS amounting to ₹60,15,149.20/- was deducted at source by MCGM, and the remaining sum of ₹31,84,71,635.72/- was credited into the HDFC Bank Account bearing No. 59210234567899 held in the name of M/s. LHMS at its Jawahar Nagar, Goregaon (West) Branch.

7. The prosecution further alleges that upon verification of the documents submitted by M/s. LHMS in support of its invoices, grave discrepancies and irregularities came to light in the attendance sheets and related records. The actual physical presence of doctors and medical staff on the relevant dates, as verified from the available registers and independent records, did not tally with the attendance sheets submitted for bill clearance. It is alleged that, under the instructions of the present applicant and other accused partners of M/s. LHMS, their subordinates, namely, Mr. Prince Vishwakarma and Dr. Arvind Singh, prepared and submitted fabricated and forged attendance records to the MCGM authorities, falsely projecting several persons as having regularly rendered services at Dahisar and Worli NSCI Jumbo Covid Centers.

8. The prosecution has also alleged that a criminal conspiracy was entered into by the partners of M/s. LHMS, including the present applicant, in collusion with Mr. Kishore Bisure, the then Dean of the concerned hospital and arrayed as accused No.2, with the object of misrepresenting before the MCGM that the ratio of doctors to patients was maintained in accordance with the standards and specifications stipulated under the Expression of Interest floated by the MCGM. It is alleged that this misrepresentation enabled the firm to unjustly continue its engagement and receive payments.

9. It is the further allegation of the prosecution that at no point in time did M/s. LHMS actually maintain the requisite number of medical personnel at the said Covid centers, as mandated under the EOI. Nevertheless, bills were meticulously prepared in a manner which gave the impression of strict compliance with the MCGM's norms regarding manpower allocation for oxygenated, non-oxygenated and ICU beds. In fact, in several instances, the records reflected deployment of staff exceeding the required strength. To give authenticity to such forged documentation, fake and forged signatures were appended on the attendance sheets, purportedly by the staff shown as deployed, thereby misleading the MCGM through orchestrated internal manipulation at the facility level.

10. It has also come on record, as per the prosecution, that M/s. LHMS did conduct interviews of a number of doctors, nurses and support staff with a view to engaging them for service at the Covid facilities. During such interviews, the firm collected personal documents including Aadhaar Cards, PAN Cards and other KYC credentials. However, several of these medical professionals were never actually engaged or deployed by M/s. LHMS at the said centers. Despite this, the firm, through its partners including the present applicant, allegedly utilized such personal data to create a pool of fictitious employees by submitting the said documents to the MCGM as if the individuals had been appointed. Thereafter, fake and fabricated attendance records were generated in their names to support inflated invoices and extract undue financial benefit from the public exchequer.

11. It is further alleged that, acting upon the express instructions of the present applicant and the other co-accused partners of M/s. LHMS, invoices were meticulously prepared and submitted to the Municipal Corporation of Greater Mumbai (MCGM) which were accompanied by fake and fabricated attendance records. These attendance sheets allegedly misrepresented the deployment of doctors and other medical personnel, despite the fact that there existed substantial under-deployment to the extent of 50% to 60%. The said misrepresentation was systematically carried out over a sustained period, with an intention to unjustly enrich themselves by inflating the manpower numbers, thereby defrauding the MCGM and ultimately the public exchequer.

12. It is the specific case of the prosecution that the partners of M/s. LHMS, acting in active connivance and conspiracy with certain officials of the MCGM, derived wrongful and undue pecuniary gains for themselves. Investigation has revealed that approximately 50% to 60% of the medical staff projected as deployed at the Covid Centers was, in fact, never appointed or physically present. From the pattern of functioning and documentation maintained at the Dahisar and NSCI Worli Jumbo Covid Centers, the prosecution contends that less than half the required number of doctors and allied medical personnel were actually deployed during the peak pandemic period. The glaring mismatch between the contractual requirements and the actual deployment of personnel, coupled with the absence of verification by the concerned authorities, suggests a deliberate and premeditated scheme of siphoning public funds under the guise of manpower contracts.

13. In light of the foregoing circumstances and based upon material unearthed during investigation, it is ultimately alleged that the partners of M/s. LHMS, namely Mr. Sujit Patker, Dr. Hemant Gupta, Mr. Sanjay Shah, and Mr. Rajiv Salunkhe, in furtherance of a common intention and by entering into a criminal conspiracy with certain officials of the MCGM, orchestrated the award of the manpower contract in favour of their firm through fraudulent means. It is alleged that after obtaining the contract, these individuals indulged in systematic manipulation of attendance records and submission of fictitious bills to the MCGM authorities. As a quid pro quo, it is alleged that certain MCGM officers, including the Dean of the concerned Jumbo Covid Centers, accepted illegal gratification and allowed the submission and clearance of such fabricated documents without verifying the actual presence of requisite medical staff, ICU facilities, beds, and other essentials, as mandated under the contract.

14. Due to the said false representations, manipulation of official records, and abetment by public servants, a total amount of ₹32,44,86,784.90/- was disbursed by the MCGM to M/s. LHMS during the period from 16th September 2020 to 24th June 2022. The said disbursement, as per the prosecution, is tainted with criminality at both ends, the private contracting party and the complicit public officials, and has resulted in substantial loss to the public exchequer and breach of trust reposed in public institutions during a critical public health emergency.

15. Mr. Ponda Learned Senior Advocate appearing for the applicant has submitted that Accused No.3, Dr. Hemant Gupta, is a medical professional having expertise in setting up hospital units and Intensive Care Units (ICU), and was previously associated with JJ Hospital. It is contended that Dr. Gupta was primarily entrusted with the responsibility of managing and operating the affairs of the Jumbo Covid Centers. To that effect, all the partners of M/s. LHMS are stated to have executed a certificate in favour of Accused No.3, vesting him with authority to take all decisions and act on behalf of the firm in matters relating to the said contract. Despite these facts, Accused No.3 was neither arrested during investigation nor taken into custody thereafter. On the contrary, he was granted bail under Section 88 of the Code of Criminal Procedure, 1973, without any custodial interrogation.

16. It is further submitted that the applicant was not involved in the drafting of the partnership deed of M/s. LHMS and, therefore, the allegation of forgery of such document cannot be attributed to him. The applicant had no role to play in the maintenance of attendance records or in the preparation and submission of invoices raised by the firm. Even the day-to-day operations and administrative management of the Dahisar and Worli Jumbo Covid Centers were being handled by Dr. Arvind Singh and one Sandip Gupta, under the supervision of Accused No.3. The applicant had no direct role in financial administration or economic record-keeping of the firm. Amongst the four partners of M/s. LHMS, it is pointed out that only the applicant and Accused No.2 were arrested; the remaining co-accused, including Accused No.3, continue to remain at liberty. It is brought to the attention of this Court that Accused No.2 has already been granted bail by a Coordinate Bench on 12th February 2025. As regards the allegation that the applicant is responsible for causing excess payment of ₹2.81 Crore, it is submitted that immovable and other properties belonging to the applicant, valued at an amount greater than the said sum, stand attached by the competent authority.

17. In support of his contentions, the learned Senior Advocate has placed reliance upon the decision of the Hon'ble Supreme Court in *Mohammed Ibrahim & Ors. v. State of Bihar & Ors.*, (2009) 8 SCC 751, to submit that the essential ingredients of Sections 465, 467, 468, and 471 of the Indian Penal Code are not satisfied in the present case. It is submitted that the applicant has neither forged nor executed any document falsely purporting it to have been made by another person; nor has he fabricated, altered or procured any document through deception. Therefore, according to the learned counsel, the invocation of the said penal provisions against the applicant is legally unsustainable. In furtherance of this submission, reliance is also placed on the judgments in *Sukhbir Singh Badal v. Balwant Singh Khera & Ors.*, 2023 SCC OnLine SC 522; *Niranjan Lakhumal Hiranandani v. CBI & Anr.*, 2018 SCC OnLine Bom 1116; *Shankarlal Vishwakarma v. State*, 1992 MPLJ 791; *Motisinh Gambhirsinh v. State*, 1961 SCC OnLine Guj 2; and *State v. Parasram*, 1964 RLW 501.

18. With reference to the allegations under the Prevention of Money-Laundering Act, 2002 (PMLA), the learned Senior Advocate has placed reliance on the decision in *Vijay Madanlal Choudhary &*

Ors. v. Union of India & Ors., 2022 SCC OnLine SC 929, to contend that the essential ingredients of Section 3 of the PMLA are not attracted in the facts of the present case. It is submitted that the applicant was arrested on 19th July 2023 and has since been in custody for almost two years. In support of the plea for bail, reliance is placed on a series of recent judgments of the Hon'ble Supreme Court, namely: *Ramkripal Meena v. Directorate of Enforcement*, SLP (Cri.) No.3205 of 2024, decided on 30th July 2024; *Neeraj Singal v. Directorate of Enforcement*, Criminal Appeal Nos.8439–8440 of 2024, decided on 6th September 2024; *Laxmikant Tiwari v. Directorate of Enforcement*, Criminal Appeal No.4142 of 2024, decided on 4th October 2024; *Udhaw Singh v. Enforcement Directorate*, Criminal Appeal No.799 of 2025, decided on 17th February 2025; and *Anwar Dhebar v. Directorate of Enforcement*, Criminal Appeal No.2669 of 2025, decided on 19th May 2025.

19. It is submitted that, as per the prosecution's own case, co-accused Dr. Hemant Gupta is stated to have received ₹2.85 Crore and is shown to be holding a 30% partnership stake in M/s. LHMS, which is identical to the stake held by the present applicant. The prosecution alleges that Dr. Gupta was fully aware of the intent of the other partners and actively participated in securing the manpower contract by submission of documents alleged to be forged. He is also alleged to have played a vital role in submitting fabricated attendance records and invoices to the MCGM. The charge-sheet, however, acknowledges that all the partners of M/s. LHMS had collectively given Dr. Gupta a no-objection to handle the entire operations and management of the firm. Despite these allegations, Dr. Gupta has not been arrested and has been released on bail under Section 88 of the Code of Criminal Procedure.

20. The learned Senior Advocate has further placed reliance on the decisions in *R. Vasudevan v. CBI, New Delhi*, 2010 SCC OnLine Del 130 and *Menino Lopes v. State of Goa*, 1994 Mh.L.J. 1803, to contend that the mere association of a person with a partnership firm or a decision taken by other partners, without specific overt acts or mens rea attributable to the applicant, is not sufficient to fasten criminal liability.

21. Learned Senior Advocate appearing for the applicant has further submitted that the prospects of the trial commencing in the near future are extremely remote, as even the stage of framing of charges has not yet been reached. It is pointed out that the prosecution has cited as many as 63 witnesses, including several public officials, and considering the voluminous documentary evidence involved, the conclusion of trial within a reasonable time frame appears to be highly unlikely. It is, therefore, urged that continued incarceration of the applicant, pending an uncertain and protracted trial, would amount to pre-trial punishment, which is impermissible in law.

22. *Per contra,* Mr. Venegaonkar learned Special Counsel, appearing on behalf of the Enforcement Directorate, has vehemently opposed the application for bail and submitted that the applicant was not merely a passive or dormant partner, but had an active and pivotal role in the entire transaction from the inception of the partnership firm M/s. LHMS. It is submitted that the applicant had utilized the official letterhead of the said firm, which itself came into existence on 26th June 2020, and projected his interest in obtaining the contract for supply of manpower and health-related services at the Jumbo Covid Centers. This act, according to the prosecution, clearly reflects his contemporaneous knowledge and intent to participate in the tender process despite the absence of proper registration or previous experience.

23. It is further contended that the statement of co-accused Dr. Hemant Gupta, recorded during the course of investigation under the relevant provisions of the PMLA, reveals that the applicant, along with one Sunil Kadam, had specifically instructed the subordinate staff to prepare and submit fabricated documents and forged attendance sheets in order to project compliance with manpower requirements, although there existed significant under-deployment to the extent of 40 to 50%. It is categorically alleged that the applicant had also made arrangements to procure gold bars and gold biscuits, purportedly for distribution to politically exposed persons and officials of the MCGM in order to secure favourable treatment during the contract execution and clearance of bills.

24. The prosecution places reliance on the statement of another co-accused, Sanjay Shah, who has stated that the entire communication with MCGM officials and the task of liasoning was handled by the applicant. According to this witness, the applicant was responsible for arranging gold bars worth ₹60 Lakh, intended to be given to various public officials, and that a cash amount of

₹16 Lakh was handed over by the said witness to the applicant. It is alleged that several fake bills were prepared at the instance and under the instructions of the applicant, and not merely by his co-partners. Other witnesses have also, according to the prosecution, implicated the applicant in the preparation of fictitious vouchers, inflated invoices, and forged attendance sheets, which ultimately resulted in wrongful gain to the tune of ₹18.50 Crore to M/s. LHMS and corresponding loss to the public exchequer.

25. While distinguishing the role of Dr. Hemant Gupta, learned Special Counsel has submitted that, although he too was a partner of M/s. LHMS, his involvement was primarily in the operational and medical aspects of the Covid Centers, and he is not shown to have played any role in the generation, layering, or projection of proceeds of crime as untainted property. It is therefore submitted that the primary acts of money-laundering, namely, concealment, possession, acquisition and use of proceeds of crime—are attributable to the applicant alone.

26. In the aforesaid backdrop, it is submitted that the material collected during investigation prima facie demonstrates that the applicant was not only aware of the criminal design from inception, but was one of its chief architects, who took active and conscious decisions pertaining to the submission of false documents, manipulation of contractual compliance, liasoning with corrupt public officials, and eventual receipt and handling of proceeds of crime in the nature of excess payments made by MCGM. Accordingly, it is submitted that the applicant does not satisfy the mandatory twin conditions for grant of bail as prescribed under Section 45 of the Prevention of Money-Laundering Act, 2002, and therefore is not entitled to any relief at this stage.

27. I have given my anxious consideration to the rival submissions advanced by the learned Senior Advocate for the applicant and the learned Special Counsel appearing for the Enforcement Directorate. I have also perused the material placed on record, including the charge-sheet, statements recorded under the PMLA, and other documents relied upon by the investigating agency.

28. The learned Senior Advocate appearing on behalf of the applicant has also placed heavy reliance on the decision of the Supreme Court in *Mohammed Ibrahim* (supra), to assail the applicability of Sections 465, 467, 468 and 471 of the Indian Penal Code, 1860 to the present case. It is submitted that a plain reading of the said judgment reveals that in order to attract the penal provisions relating to forgery, it must be specifically alleged and prima facie shown that the accused either made or executed a document, (i) claiming it to have been made by another person, or (ii) altered or tampered with an existing document, or (iii) obtained a document through deception. In the present case, it is contended that the applicant has neither authored nor executed any such forged or fabricated document in his own handwriting, nor is there any direct evidence to demonstrate that he impersonated another or forged the handwriting, seal or signature of any person.

29. According to him the Court in *Mohammed Ibrahim* (supra) clarified that mere submission of incorrect information or reliance on a document that may subsequently be found to be defective or irregular, without the foundational elements of deceitful making or false personation, does not fall within the ambit of “forgery” as defined under Section 463 IPC. Applying the ratio of the said judgment to the facts of the present case, the contention of the applicant is that there is no material to indicate that he forged any document or procured it through impersonation, nor is there any ocular or documentary evidence that suggests that the applicant tampered with any document or altered it with dishonest intention.

30. In furtherance of this line of argument, reliance is also placed on the decision of the Supreme Court in *Sukhbir Singh Badal v. Balwant Singh Khera & Ors.*, 2023 SCC OnLine SC 522, wherein the Court reiterated that criminal provisions relating to forgery and use of forged documents require a specific mens rea and cannot be invoked mechanically in absence of foundational allegations and material. In the present case, the prosecution, according to the learned counsel, has not identified any single document which has been forged or executed by the applicant in a false name, or on behalf of a fictitious entity, nor is there any evidence to show that the document was altered post-execution.

31. The learned counsel has further relied on the decision of the Bombay High Court in *Niranjan Lakhumal Hiranandani v. CBI & Anr.*, 2018 SCC OnLine Bom 1116, contending that this Court held that participation in an act involving submission of questionable documents, without active involvement in their fabrication, would not suffice to attract penal liability under Sections 465 to 471 IPC. Similarly, in *Shankarlal Vishwakarma v. State*, 1992 MPLJ 791 and *Motisinh Gambhirsinh v. State*, 1961 SCC OnLine Guj 2, the High Courts have consistently held that the offence of forgery cannot be inferred merely on the basis of passive association or by holding a position in a firm where documents were allegedly misused, unless there is specific evidence attributing the act of forgery to the accused.

32. According to him in *State v. Parasram*, 1964 RLW 501, the Rajasthan High Court has also held that general allegations and vague assertions of "forgery" cannot substitute the legal requirement of identifying the forged document, the person who made it, and the mens rea involved therein. Applying this line of reasoning, the applicant contends that, even if there was an element of misrepresentation in the functioning of M/s. LHMS, the same cannot automatically invite penal consequences under the stringent provisions relating to forgery in absence of direct and cogent material indicating his authorship or active creation of forged records.

33. It is true that the prosecution has alleged that false attendance records and inflated invoices were submitted to the Municipal Corporation for wrongful gain. According to the material on record, some of the co-accused partners of M/s. LHMS have stated that it was the applicant who gave instructions to the staff for preparation of such fabricated and false records. However, the Court cannot ignore that these statements, though incriminating, are yet to be tested during trial and are not corroborated by independent or documentary evidence at this stage. It is also not the case of the prosecution that any such instructions were issued in writing or that any contemporaneous document has been brought on record showing the applicant directing the fabrication of false documents.

34. Mere allegations in statements of co-accused cannot by themselves form the sole basis for continued pre-trial detention, unless such statements are supported by independent evidence or lead to recovery of incriminating material. It is also relevant to note that the firm M/s. LHMS was functioning through multiple partners, and the day-to-day operational responsibilities were primarily vested in co-accused Dr. Hemant Gupta, as evidenced by the no-objection certificate given by all partners in his favour.

35. Therefore, at this prima facie stage, while the prosecution may attribute a role to the applicant in the creation of false records, the nature of his actual involvement, the extent of his knowledge, and whether he acted with criminal intent, are all matters that require detailed examination during trial. In the absence of direct material showing that the applicant himself forged the documents or fabricated the records, the allegations of forgery and conspiracy, though serious, cannot justify indefinite pre-trial custody, especially when co-accused similarly placed have not been arrested or have been released on bail.

36. As per the allegations levelled by the prosecution, the applicant is stated to be one of the principal partners of the partnership firm M/s. LHMS, which was awarded the contract for manpower supply and management of Jumbo Covid Centers during the outbreak of the Covid-19 pandemic in Mumbai. It is alleged that the applicant, in active connivance with other partners and certain officials of the MCGM, played a central role in obtaining the said contract through submission of forged and fabricated documents. Further, it is the case of the prosecution that upon securing the contract, the applicant actively participated in the subsequent fabrication of attendance records and inflated billing, thereby causing wrongful gain to the firm and wrongful loss to the public exchequer.

37. The prosecution has sought to project the applicant as one of the key conspirators who not only facilitated the award of contract through improper means but also oversaw the systematic preparation of false documentation for clearance of invoices pertaining to supply of medical personnel. The total amount of ₹32.44 Crores is alleged to have been released by MCGM to M/s. LHMS over a span of nearly two years. The material unearthed during investigation, including statements of co-accused and other witnesses, suggests that the actual deployment of medical personnel was significantly lower than what was reflected in the documents submitted to MCGM.

38. In light of the above, the provisions of the PMLA have been invoked against the applicant. The Enforcement Directorate has alleged that the proceeds of crime, as defined under Section 2(1)(u) of the PMLA, were generated through the said fraudulent contract and were thereafter layered and projected as untainted.

The specific allegation is that the applicant had a direct and active role in laundering the proceeds of crime to the extent of ₹18.50 Crore by orchestrating the entire scheme of falsification and misrepresentation.

39. One of the significant submissions urged on behalf of the applicant is based on the principle of parity. It is pointed out that as per the prosecution's own case, co-accused Dr. Hemant Gupta, who is shown to be holding a 30% partnership share in M/s. LHMS, identical to that of the present applicant, has allegedly received an amount of ₹2.85 Crore. The prosecution further alleges that Dr. Gupta was not only fully aware of the alleged intent of the other partners but also actively participated in the process of securing the manpower contract by submission of the very same documents which are now alleged to be forged. He is further alleged to have overseen the management of the Covid Centers and participated in the process of submitting fabricated attendance sheets and invoices to the MCGM for claiming inflated payments. The charge-sheet itself records that all the partners, including the applicant, had issued a formal no-objection authorising Dr. Gupta to take independent charge of the entire operations and administration of M/s. LHMS.

40. Despite these serious allegations, it is not in dispute that Dr. Hemant Gupta has not been arrested during investigation, and has been granted bail upon appearance under Section 88 of the Code of Criminal Procedure, 1973. This differential treatment of two similarly placed accused, despite allegations of equal participation, forms a crucial plank of the applicant's plea for bail. It is well settled that parity is a constitutionally recognised principle under Article 14, and any departure from the same must be justified by cogent and distinguishable material.

41. *Per contra*, learned Special Counsel for the Enforcement Directorate has sought to distinguish the role of Dr. Gupta by contending that his participation was limited to the medical and operational affairs of the Covid Centers, and that he is not implicated in any manner in the generation, layering, or projection of proceeds of crime as defined under Section 3 of the Prevention of Money-Laundering Act, 2002. According to the learned Special Counsel, the core allegations of money-laundering,viz., concealment, possession, acquisition, and use of proceeds of crime, are specifically and directly attributable to the present applicant, who is alleged to have liaised with officials, arranged for bribes, created fictitious bills, and received the laundered funds through banking channels.

42. While the Court is conscious of the serious nature of the allegations against the applicant and the statutory framework of Section 45 of the PMLA, the principle of parity cannot be lightly disregarded, particularly when the co-accused, allegedly involved in the initial illegality, including the submission of forged documents and overseeing of Covid Center operations, continues to remain at liberty. The prosecution's attempt to compartmentalise the offence into "operational" and "financial" dimensions appears artificial at this stage, especially when the same chain of transactions and the same body of evidence is relied upon to allege conspiracy and money-laundering.

43. While considering the question of bail, what is of significance is the degree of active participation, not mere nomenclature of acts. A person involved in submission of fake documents and claims based on falsified records, even if not physically handling the money, cannot be absolved at the threshold from the taint of money-laundering, unless specific material shows differential intent or mens rea. However, this also implies that in the absence of such distinct material against one co-accused, discriminatory incarceration of another co-accused with identical factual allegations would be legally unsustainable.

44. In the instant case, although the prosecution attributes to the applicant an active role in dealing with proceeds of crime, it cannot be overlooked that the entire offence emerges from a common business arrangement, wherein the decision-making was collective, and the benefit accrued to all partners. Whether the applicant alone engaged in laundering, or acted under the firm's collective policy, is a matter for trial. In the absence of compelling material to demonstrate the applicant's exclusive culpability distinct from Dr. Gupta, the ground of parity must weigh in favour of the applicant at this stage.

45. That being said, the allegations as they stand, if taken at face value, do prima facie indicate complicity of the applicant in generation of proceeds of crime. However, the question that arises for consideration is whether, in the facts of the case, continued incarceration of the applicant is warranted to meet the ends of justice, particularly when investigation is complete, the applicant has been in custody since July 2023, and the trial is not showing signs of commencing in the near future. These factors must be evaluated in light of the overarching principle that bail is the rule and jail is the exception, especially where there is no likelihood of the accused tampering with evidence or absconding.

46. On the other hand, the applicant has brought to the fore certain compelling circumstances. It is submitted that co-accused Dr. Hemant Gupta, who is similarly placed in terms of partnership share, received more amount than the Applicant and who was responsible for the day-to-day management of the Covid Centers, has not been arrested during investigation and was released on bail under Section 88 of the Code of Criminal Procedure, 1973. The charge-sheet itself refers to a no-objection issued by all partners, conferring authority upon Dr. Gupta to handle all operational matters of the firm. The prosecution, however, has not sought his custodial interrogation despite attributing key acts to him. This Court finds merit in the contention that the applicant stands on parity with such co-accused.

47. It is an admitted position that the applicant has been in custody since 19 July 2023, and has undergone incarceration for nearly two years. It is also not in dispute that charges are yet to be framed, and the prosecution has cited 63 witnesses, many of whom are public officials. Having regard to the volume of evidence and the number of witnesses cited, it is highly unlikely that the trial will conclude within a reasonable period of time. In such circumstances, continued incarceration of the applicant would result in pre-trial punishment, which is impermissible under our constitutional framework.

48. It is not the case of the prosecution that the applicant is a flight risk or that he has attempted to tamper with evidence or influence witnesses during the pendency of investigation. All relevant material has already been collected. The applicant has no prior criminal antecedents and is a permanent resident of Mumbai. Moreover, his assets have been provisionally attached, and further safeguards can be imposed through suitable bail conditions to secure his presence during trial and to prevent interference with the process of justice.

49. In *Union of India v. K.A. Najeeb*, (2021) 3 SCC 713, the Hon'ble Supreme Court has held that constitutional courts are empowered to grant bail even where statutory restrictions apply, if the right to life and liberty under Article 21 of the Constitution is undermined by prolonged incarceration and delay in trial.

50. Though this Court is cognizant of the twin conditions prescribed under Section 45 of the PMLA, it is also mindful of the principles of liberty and the factual distinction that the present applicant is not shown to have indulged in any direct acts of concealment or projection of proceeds of crime as untainted property. The application, therefore, deserves favourable consideration.

51. In view of the aforesaid circumstances and taking into consideration the period of custody undergone by the applicant, the ground of parity with co-accused, and the delay in commencement of trial, this Court is of the opinion that the applicant is entitled to be released on bail.

52. Accordingly, the applicant is directed to be released on regular bail in connection with ECIR No. ECIR/MBZO-I/63/2022 and FIR No.144 of 2022 arising out of Crime Register No.756 of 2022, subject to the following conditions:

(i) The applicant shall execute a P.R. bond of ₹1,00,000/- (Rupees One Lakh) with two solvent sureties in the like amount.

(ii) The applicant shall not leave the jurisdiction of State of Maharashtra without prior permission of Trial Court.

(iii) The applicant shall mark his attendance before the concerned Investigating Officer on the first Monday of every month between 10:00 a.m. to 12:00 noon.

(iv) The applicant shall not tamper with evidence or attempt to influence witnesses in any manner.

(v) The applicant shall furnish his current residential address, mobile number, and email ID to the Investigating Officer and inform the Court of any change therein forthwith.

53. It is made clear that any breach of the aforesaid conditions shall result in revocation of bail.

54. Bail Application stands allowed in the aforesaid terms.

55. In view of this order, both the interim applications stand disposed of as infructuous.

(AMIT BORKAR, J.)