

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

**CRIMINAL APPLICATION NO. 1075 OF 2023
WITH
INTERIM APPLICATION NO. 575 OF 2026
IN
CRIMINAL APPLICATION NO. 1075 OF 2023**

Shri. Kishore S/o. Pessulal Dewani,
Major of age, Occupation : Advocate,
Residing at Plot No. 614, Prag, Byramji Town,
Nagpur – 440 013. **...Applicant**

Versus

1. The Directorate of Enforcement,
Through the Assistant Director,
Mumbai Zonal Office-I, Mumbai.

2. The State of Maharashtra ...Respondents

Mr. Sunil Manohar, learned Senior Advocate a/w Mr. Pralhad Paranjape, Ms. Sakshi Jogdand i/b Mr. Omkar Prashant Mulekar, learned Advocates for Applicant.

Ms. Pallavi N. Dabholkar, learned A.P.P. for the State/Respondent.

Mr. Prashant Mishra, Special Counsel a/w Mr. Bharat Jadhav & Mr. Krish Kariya, learned Advocates for Respondent No. 1-ED.

**CORAM : ASHWIN D. BHOBE, J.
DATED : 23rd FEBRUARY, 2026**

ORAL JUDGMENT:

1. Heard, Mr. Sunil Manohar, learned Senior Advocate for the Applicant, Mr. Prashant Mishra, learned Advocate for Respondent No. 1-ED and Ms. Pallavi Dabholkar, learned A.P.P. for the State/Respondent.

2. This Criminal Application, filed under Section 482 of the Code of Criminal Procedure, 1973 (“Cr.P.C.”), is preferred by the Applicant against the Order dated 16.09.2021 passed by the City Civil Court & Additional Sessions Judge, Greater Bombay (the Designated Court for the Prevention of Money Laundering Act, 2002) (for short “Designated Court”), issuing process against the Applicant in PMLA Special Case No. 1089 of 2021 and quashing the complaint in PMLA Special Case No. 1089 of 2021 filed against the Applicant for the offence under Section 3 punishable under Section 4 of the Prevention of Money Laundering Act, 2002 (for short “PMLA, 2002”).

3. The facts of the case are that, on 21.04.2021, a First Information Report (“FIR”) was registered against Anil Deshmukh and other unknown persons for the offence under Sections 7 of the Prevention of Corruption Act, 1988, and 120-B of the Indian Penal Code, 1980. Column 3(b) of the FIR states that the subject offence was committed “*During the period 2020-2021*”.

4. Pursuant to the investigation carried out in connection with the FIR, a complaint under the second proviso to Section 45 of the PMLA, 2002, was filed. ECIR No. ECIR/MBZO-1/66/2021, dated 11.05.2021, was recorded under the provisions of PM.L.A. The Applicant is shown as “Accused No. 11” in the complaint. The predicate offence is referred to in paragraph 3.3 of the complaint. The money trail, as evidenced by the investigation, is referred to in paragraph 7 of the complaint. A chart showing the money trail is in paragraph 8 of

the complaint. The estimation of proceeds of crime is referred to in paragraphs 9.2 to 9.4 of the complaint. The role assigned to the Applicant is referred to in paragraph 12.11 of the complaint. Proceedings were registered as PMLA Special Case No. 1089 of 2021.

5. A Supplementary Charge-sheet was filed on 29.12.2021.

6. By order dated 16.09.2021, passed in PMLA Special Case No. 1089 of 2021, the Designated Court issued process against the Applicant and the other accused. The order is reproduced below:

“ORDER

1. Read the complaint thoroughly. Also carefully examined the documents filed with the complaint. I have carefully read the statements of the witnesses recorded under section 50(2) and (3) Prevention of Money Laundering Act (for short P.M.L.A.). The record further shows that the Hon'ble High Court directed CBI to inquire the matter and accordingly directed preliminary enquiry in respect of the allegations of collections of money by them Home Minister Mr. Anil Deshmukh through accused No.1 and others. Accordingly CBI conducted enquiry and prima-facie found involvement of present accused, hence registered FIR No. RC2232021A0003 dated 21.04.2021 under section 7 of P.C. Act, 2018 r/w section 120-B of IPC, which are scheduled offences under Schedule-A of P.M.L.A. Act. ECIR No. ECIR/MBZO-1/66/2021 dated 11.05.2021 was recorded under the provisions of P.M.L.A. and investigation was conducted. It is therefore, clear that, Scheduled offence was already registered which is the basic qualification and requirement to initiate proceedings under P.M.L.A.

2. *On careful perusal of the statements and the charge showing trail of money prima-facie indicate that Rs.4.7 Crore received by Mr. Anil Deshmukh from Sachin Waze (accused No.1) and Kundan Shinde (accused No.3). Mr. Anil Deshmukh then transferred the said cash through Havala on the instructions of Mr. Hrishikesh Deshmukh to Surendra Jain (accused No.4) and Virendra Jain (accused No. 5). Then both of them through their companies which are on paper only, deposited the said amount by RTGS/cheques in the account of Shri. Sai Shikshan Sanstha, which is owned by Mr. Anil Deshmukh. The said transactions indicate that Rs.1.71 Crore transferred from November, 2020 to March, 2021 and total Rs.4.18 Crore transferred in the account of Shri Sai Shikshan Sanstha since 2013. In this way the said amount which was laundered through shell companies prima-facie indicates the proceeds of crime pointing out involvement of accused No.1 to 14 in the said money trail. Hence, there are prima-facie sufficient grounds to proceed against accused No.1 to 14 as per section 3 punishable under section 4 of P.M.L.A. Hence, following order is passed.*

ORDER

(a) *Issue process against accused Nos.1 to 14 as mentioned in the title, in P.M.L.A. Spl. Case No. 1089 of 2021 arising out of ECIR No.ECIR/MBZO-I/66/2021 for the offence under Section 3 punishable under Section 4 of The Prevention of Money Laundering Act, 2002.*

(b) *Issue summons to all accused including accused persons who are in the jail presently.”*

7. Mr. Sunil Manohar, learned Senior Advocate for the Applicant, has placed on record a brief synopsis of the arguments and canvassed the oral arguments. He submits that the prosecution's case is that the proceeds of crime were generated between December 2020 and February 2021. He

submits that vague statements are made that moneys were also transferred to the Trust account of the principal accused, Anil Deshmukh, from the year 2013. He submits, however, that there is no mention of whether these are proceeds of crime or how they were generated. He submits that the only allegation against the Applicant is that one company, M/s. Premier Port Links Pvt. Ltd., in which the Deshmukh Family and the Dewani Family held 50% shareholding and 50% investment, had purchased certain properties at Dhutum Village in the years 2005-2007. He submits that the said properties were purchased well before the alleged generation of proceeds of crime, as such, no offence under Section 3 of the PMLA, 2002, was made out against the Applicant. He submits that there is no averment in the charge-sheet that the Applicant had knowledge of the said proceeds of crime, which were generated 15 years after the purchase of the properties by M/s. Premier Port Links Pvt. Ltd. He submits that the Applicant was neither a shareholder nor a director of M/s. Premier Port Links Pvt. Ltd.

8. Mr. Prashant Mishra, learned Advocate for Respondent No. 1, has filed written submissions and advanced oral arguments. He submits that the Applicant, who seeks to invoke this Court's discretionary jurisdiction, has an alternative remedy by way of a revision application or a discharge application at the appropriate Court. He submits that no case is made out for the exercise of this Court's extraordinary jurisdiction. He further submits that the Applicant is a close aide of Anil Deshmukh, the erstwhile Home Minister, who has been named as an accused for misusing his post and attempting to collect Rs. 100 crores a month from

various bars and restaurants by directing officials of the Mumbai Police and the Government of Maharashtra. He submits that the investigation conducted by the ED has revealed that the Applicant has been the Director of M/s. Premier Port Links Pvt. Ltd. since 2009, and that his wife and Anil Deshmukh's sons are joint shareholders. He submits that M/s. Premier Port Links Pvt. Ltd. received loans worth Rs. 2 crores 20 lakhs from M/s. Flourish Properties Pvt. Ltd., an entity linked to the Deshmukh Family, and that these funds were used to purchase properties in Dhutum Village, as referred to in paragraph 5.12.20 of the complaint. He submits that the Applicant's role in permitting and facilitating financial transactions through Corporate Entities under his control, including transactions used for layering and routing of tainted funds, is specifically brought out in the complaint, which, according to Mr. Mishra, was sufficient to *prima facie* initiate process against the Applicant. He submits that the Designated Court has rightly issued the process. He relies on the decision of the Hon'ble Supreme Court in ***Vijay Madanlal Choudhary v/s. Union of India***¹.

9. Ms. Pallavi Dabholkar, learned A.P.P. for the State/Respondent No. 2, submits that the State is a formal party to the present proceedings.

10. Arguments heard. Records perused with the assistance of the learned Advocates. The rival contentions fall for consideration.

11. The prosecution's case is that proceeds of crime were

1. 2022 SCC OnLine SC 929.
Gitalaxmi

generated between December 2020 and February 2021. Material on record suggests that moneys were also transferred into the Trust account of the principal accused, Anil Deshmukh, from 2013.

12. FIR bearing no. RC2232021A0003, dated 21.04.2021, registered with the Central Bureau of Investigation, Anti-Corruption V, New Delhi, for offences punishable under Section 7 of the Prevention of Corruption Act, 1988, as amended by the Prevention of Corruption (Amendment) Act, 2018, relates to the suspected offence committed during the period 2020-2021.

13. The predicate offence is described by the prosecution in paragraph 3.3 of the complaint registered as PMLA Special Case No. 1089 of 2021, which reads as follows:

“3.3 On the basis of the aforesaid information/documents(s), prima-facie, a case for offence of money laundering (Section 3 of the Prevention of Money Laundering Act, 2002) punishable under Section 4 of the said Act appears to have been made out. Therefore, an ECIR No. ECIR/MBZO-1/66/2021 dated 11.05.2021 was recorded under the provisions of Prevention of Money Laundering Act 2002 for conducting investigation in this matter.”

14. According to the prosecution, the money trail indicates that the principal accused, Anil Deshmukh, collected Rs. 40,00,000/- in December 2020; Rs. 1.64 crores in January and February 2021; Rs. 2.66 crores in January and February 2021; and Rs. 4.70 crores between December 2020 and February 2021 from various bar owners.

15. Money trail, as evidenced by the investigation, is referred to in paragraph 7 of the complaint, which is reproduced herein below:

“7. Money Trails :

7.1 Investigation has revealed that accused Sachin Waze on the instructions of Shri Anil Deshmukh, the then Home Minister of State of Maharashtra has collected Rs. 40 lakhs in the month of December, 2020 as good luck money from various orchestra bar owners/managers.

7.2 Shri Sachin Waze on the instructions of Shri Anil Deshmukh, the then Home Minister of State of Maharashtra has collected Rs.1.64 Crore in the months of January and February, 2021 from various orchestra bar owners/managers falling under jurisdiction of Zone I to Zone VII of Mumbai Police Commissionerate.

7.3 Shri Sachin Waze on the instructions of Shri Anil Deshmukh, the then Home Minister of State of Maharashtra has collected Rs.2.66 Crore in the months of January and February, 2021 from various orchestra bar owners/managers falling under jurisdiction of Zone VIII to Zone XII of Mumbai Police Commissionerate.

7.4 Thus from above it is seen that the Sachin Waze, the then Head of CIU, Mumbai Police has collected money amounting to Rs. 4.70 Crore from various Orchestra bar owners/managers for smooth functioning of their orchestra bars.

7.5 Investigation further revealed that Shri Hrishikesh Deshmukh, son of Shri Anil Deshmukh was regularly transferring cash money to Shri Surendra Kumar Jain and Shri Virendra Jain through Hawala who further infused the cash into the banking channel upon layering through their various paper companies namely M/s Reliable finance corporation Pvt. Ltd., M/s VA Realcon Pvt. Ltd., M/s Utsav Securities Pvt. Ltd. and M/s SITAL Leasing and Finance Pvt. Ltd.

7.6 The total cash amounting to Rs.4.18 Crore of was received by Trust from said Delhi based companies in the garb

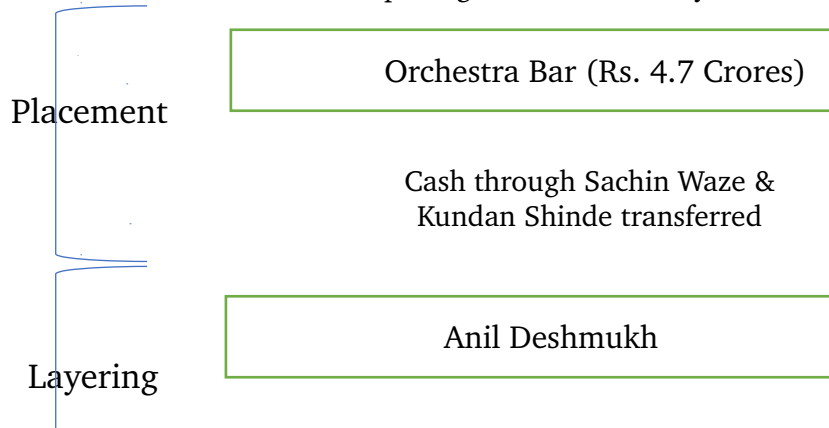
of donations. Out of that Rs 1.71 crore was transferred in February and March 2021. The details of donation received from Delhi based shell companies of Shri Surendra Jain and Shri Virendra Jain in the account no. 442402010051625 with Union Bank of India pertaining to Shri Sai Shikshan Sanstha is as under:-

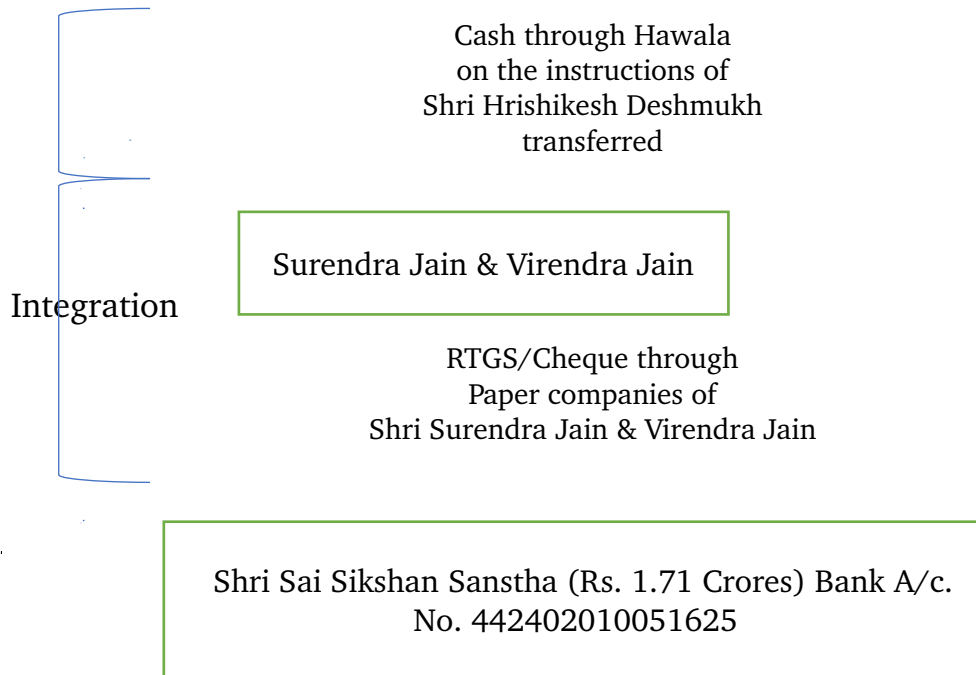
A/C HOLDER	Transaction Date	Narration	Credit in Rs.
Shri Sai Shikshan Sanstha	24-04-2019	RTGS:VA REALCON PVT LTD	2500000
Shri Sai Shikshan Sanstha	09-03-2021	RTGS:VA REALCON PVT LTD	1500000
Shri Sai Shikshan Sanstha	27-08-2013	RTGS:RELIABLE FINANCE COR	1000000
Shri Sai Shikshan Sanstha	13-05-2019	RTGS:RELIABLE FINANCE COR	3000000
Shri Sai Shikshan Sanstha	13-11-2020	RTGS:RELIABLE FINANCE COR	4300000
Shri Sai Shikshan Sanstha	17-11-2020	RTGS:RELIABLE FINANCE COR	2000000
Shri Sai Shikshan Sanstha	19-11-2020	RTGS:RELIABLE FINANCE COR	1700000
Shri Sai Shikshan Sanstha	20-11-2020	RTGS:RELIABLE FINANCE COR	2000000
Shri Sai Shikshan Sanstha	15-02-2021	RTGS:RELIABLE FINANCE COR	3490856
Shri Sai Shikshan Sanstha	17-02-2021	RTGS:RELIABLE FINANCE COR	5000000
Shri Sai Shikshan Sanstha	10-03-2021	RTGS:RELIABLE FINANCE COR	3500000
Shri Sai Shikshan Sanstha	11-03-2021	RTGS:RELIABLE FINANCE COR	2500000
Shri Sai Shikshan Sanstha	09-03-2018	RTGS:UTSAV SECURITIES PVT	5000000
Shri Sai Shikshan Sanstha	16-03-2018	RTGS:UTSAV SECURITIES PVT	2000000
Shri Sai Shikshan Sanstha	12-02-2021	RTGS:UTSAV SECURITIES PVT	654252
Shri Sai Shikshan Sanstha	12-02-2021	RTGS:UTSAV SECURITIES PVT	227960
Shri Sai Shikshan Sanstha	19-09-2020	RTGS:SITAL LEASING AND FI	920466
Shri Sai Shikshan Sanstha	22-09-2020	RTGS:SITAL LEASING AND FI	322973
Shri Sai Shikshan Sanstha	15-02-2021	RTGS:SITAL LEASING AND FI	251275
TOTAL			4,18,67,782

16. The chart showing the money trail in the complaint is reproduced below:

8. Chart showing trail of Money:

8.1 Flow Chart depicting the trail of money is as under:-





(Remarks : Rs. 1.71 Crore was transferred from November 2020 to March,2021. However, total Rs. 4.18 Crore was transferred in the account of Trust Shri Sai Shikshan Sanstha since 2013.)

8.2 Thus all three steps of Money laundering, i.e. Placement, Layering & Integration have been completed as elaborated above.

17. As per paragraph 9.2 of the complaint, the proceeds of crime are estimated at Rs. 4.70 crores, collected in cash from various bar owners between December 2020 and February 2021. Paragraph 9.3 of the complaint details how the tainted money is alleged to have been laundered by the principal accused, Anil Deshmukh, in collusion with Delhi-based shell companies.

18. Paragraph 9.4 of the complaint reads as follows:

“9.4 Shri Hrishikesh Deshmukh, son of Shri Anil Deshmukh, was indirectly controlling M/s Flourish Properties Pvt. Ltd. through his close associates and infused capital which was used for giving loan amounting to approx. Rs.2.20 Crore to M/s Premier Port Links Pvt. Ltd. and subsequently purchase of land in the name of M/s Premier Port Links Pvt. Ltd. Shri Kishore Dewani, 50%

owner, has categorically stated that this amount of Rs.2.2 Crore was the investment of Deshmukh's towards the purchase of the land. It can be noticed that Deshmukh family later acquired the M/s Flourish Properties Pvt. Ltd. at a mere value of approx. Rs.11 lakhs by way of purchasing the shares from close associates and also became 50% shareholder in M/s Premier Port Links Pvt. Ltd. which was acquired in mere Rs.17.95 lakh only. Thus, Deshmukh family have infused their funds by way of raising share capital through various dummy companies and upon layering the same funds were utilized through another company which purchased land and later by way of transfer of shares in nominal amount again established their control over both the companies including their assets i.e. land & building. The entire transaction was done with ulterior motive and without any authority on the part of Deshmukh family to execute purchase of land parcels on behalf of Deshmukh family in the name of M/s Premier Port Links Pvt. Ltd. The purchase transactions were done with malafide intentions for hiding its identity at the time of purchase and subsequently by way of purchasing shares of company at nominal price became 50% owner over the assets of company M/s Premier Port Links Pvt. Ltd. Further, this malafide intention is also clearly evident from the fact that Deshmukh family further infused money amounting to Rs.75 lakhs share application money from M/s Flourish Properties Pvt Ltd. and was given as loan to M/s Premier Port Links Pvt. Ltd. in the year 2006-07 whereas actual transfer of share of M/s Flourish Properties Pvt Ltd affected in the year 2010. Accordingly, the land which was purchased by M/s Premier Port Links Pvt. Ltd. on behest of Deshmukh family have been used for commission of offence under PMLA, 2002. Further, summons was issued to the directors of companies to whom shares were allotted and share application money of Rs.75 Lacs was received by the company. However, summons returned undelivered. It is suspected that cash had been infused in the guise of share application money in the company by Deshmukh family. Further, it is also suspected that part payment for purchase of land located at Dhutum Village by M/s Premier

Port Links Pvt. Ltd. had also been made in cash to farmers from whom the land was purchased. Investigations in this regard are still under progress.”

19. The role assigned to the Applicant is set out in paragraph 12.11 of the complaint, which reads as follows:

“12.11 Kishore Dewani, Director of M/s Premier Port Links Pvt. Ltd has assisted Deshmukh family in concealment and money laundering activities by allowing the company to take illegally loans of Rs.2.20 Crore from M/s Flourish properties Pvt. Ltd. in which Deshmukh family had infused the funds through bogus share capital. In furtherance to this, he conspired with Deshmukh family and transferred 50% shares of PPLPL to Shri Salil Deshmukh for a mere Rs. 17.5 Lakh while having asset of approx. Rs.5.4 Crore at that time He, therefore, was an active participant in the generation of proceeds of crime and actually involved in the laundering of the said proceeds of crime as defined under Section 3 read with Section 70 of the PMLA, 2002 and is liable for punishment under Section 4 of PMLA, 2002.”

20. Section 3 of the PMLA, 2002 reads thus :-

“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 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.

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.”

21. Section 2(1)(u) of the PMLA, 2002 defines “proceeds of crime”, Section 2(1)(v) of the PMLA, 2002 defines “property” and Section 2(1)(y) of the PMLA, 2002 defines “scheduled offence”, read thus,

*“2. **Definitions.**—(1) In this Act, unless the context otherwise requires,—*

*(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];*

[Explanation.—For the removal of doubts, it is hereby clarified that “proceeds of crime” include property not only

derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence;]

*(v) “**property**” means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located;*

[Explanation.—For the removal of doubts, it is hereby clarified that the term “property” includes property of any kind used in the commission of an offence under this Act or any of the scheduled offences;

(va) “real estate agent” means a real estate agent as defined in clause (88) of section 65 of the Finance Act, 1994 (32 of 1994);]

*(y) “**scheduled offence**” means—*

(i) the offences specified under Part A of the Schedule; or

[(ii) the offences specified under Part B of the Schedule if the total value involved in such offences is 7 [one crore rupees] or more; or

(iii) the offences specified under Part C of the Schedule.}]”

22. Under the PMLA, 2002, property not only derived or obtained from the scheduled offence already accomplished but also any property which may be directly or indirectly derived or obtained as a result of any criminal activity related to the scheduled offence already accomplished, constitutes proceeds of crime. The existence of proceeds of crime is a *sine qua non* of the offence under Section 3 of the PMLA, 2002.

23. Mr. Prashant Mishra has referred to paragraph 5.12.20 of the complaint to contend that the Applicant has a role in the crime. Said paragraph 5.12.20 is quoted below:

“5.12.20 Statement of Shri Kishore Pesaulal Dewani was recorded on 08.06.2021 & 10.07.2021 under the Provisions of Sub-Section (2) & (3) of Section 50 of the Prevention of Money Laundering Act, 2002 wherein he interalia stated that he is a Chartered Accountant and engaged in tax practice which includes advisory on tax matters; that his source of income is from profession, rent, interest & profit of companies owned by family.

On being asked about M/s Premier Port Links Pvt. Ltd. he interalia state that company was incorporated on dt. 07.09.2000; that the shareholders of the company till 28.03.2010 were Shri Hira Bhagchandani (100 shares with face value 10), Smt. Nisha Bhagchandani (100 shares with face value 10), Jitendra Motwani (4800 shares with face value 10), Jayesh Motwani (5000 shares with face value 10); that his son namely Akshay Dewani was appointed as director on 30.09.2004 who ceased to be director on 01.03.2010 and Shri Salil Deshmukh, son of Anil Deshmukh, was appointed as Director on dt. 10.01.2006 who ceased to be Director on 28.08.2012; that Shri Salil Deshmukh and he became the shareholder of the company on 28.03.2010 by acquiring 50% shares each from the earlier shareholders; that at present Shri Salil Deshmukh (25% shares), Hrishikesh Deshmukh (25% shares) & his wife namely Bharti Dewani (50% shares) are the shareholders of the company; that at present company has two directors namely Shri Umesh Agarwal & himself; that company has purchased approx. 20 acres of agriculture land located at Dhutum Village from various individuals/farmers between the year 2004-2008; that there are approx.

40-45 sale deeds for the purchase of the land at Dhutum Village by M/s Premier Port Links Pvt. Ltd.; that he had invested approx.. Rs.2 crore and Deshmukh Family also invested approx.. Rs.2 crore through a company namely M/s Flourish Properties Pvt. Ltd. as per books; that the said land at Dhutum Village was purchased for setting up for custom freight station (CFS) as it was not viable, the project could not materialised; that Shri Salil Deshmukh had invested Rs.5 lacs through cheque in the shares of the company March, 2010 and Rs.12.95 lacs through cheque in the year March, 2017, thereby holding 50% shares in the company; that Shri Salil Deshmukh out of 50% shares gifted his 25% shares to Shri Hrishikesh Deshmukh in the year March, 2017, thereby both holding 25% shares each.”

24. Even if the allegations in the charge-sheet and the material on record are taken as a true and correct depiction of the circumstances, it is seen that the proceeds of crime were generated between December 2020 and February 2021. As submitted by Mr Sunil Manohar, learned Senior Advocate for the Applicant, even if the statement in the complaint that the money was transferred to the Trust account of the principal accused, Anil Deshmukh, is accepted, the proceeds of crime will still have to be treated as generated in 2013. As per the charge-sheet, the Applicant, by entering transactions (sale deeds for the purchase of property at Dhutum Village) in the years 2005-2007, committed an offence under the PMLA, 2002. The other allegation against the Applicant is that he permitted the Deshmukh Family to invest in M/s. Premier Port Links Pvt. Ltd. by raising a loan of Rs. 2.20 crores. The charge-sheet reveals that the Applicant has also invested an equal amount. The supplementary charge-sheet does not refer to any further

material *qua* the Applicant.

25. From the material on record, the property purchased by M/s. Premier Port Links Pvt. Ltd. in the years 2005-2007, unarguably, cannot be said to have any connection with the proceeds of crime, as the acts constituting the scheduled offence took place after its acquisition, i.e. after December 2020 and up to February 2021. Even assuming the prosecution's case that the moneys were transferred to the Trust account of the principal accused, Anil Deshmukh, from 2013, the property purchased in 2005-2007 would still have no connection to the proceeds of crime.

26. Mr. Prashant Mishra, Special Counsel for Respondent No. 1, in paragraph 8 of his written submissions, has contended as follows:-

“8. It is submitted that in Vijay Madanlal Chaudhary v. Union of India (2022 SCC OnLine SC 929), the Hon'ble Supreme Court held that “270. ...In other words, the criminal activity may have been committed before the same had been notified on scheduled offence for the purpose of the 2002 Act, but if a person has indulged in or continues to indulge directly or indirectly in dealing with proceeds of crime, derived or obtained from such criminal activity even after it has been notified as scheduled offence, may be liable to be prosecuted for offence of money-laundering under the 2002 Act - for continuing to possess or conceal the proceeds of crime (fully or in part) or retaining possession thereof or uses it in trenches until fully exhausted. The offence of money-laundering is not dependent on or linked to the date on which the scheduled offence or if we may say so the predicate offence has been committed. The relevant date is the date on which the person indulges in the process or activity connected with such proceeds of crime. These

ingredients are intrinsic in the original provision (Section 3, as amended until 2013 and were in force till 31.7.2019); and the same has been merely explained and clarified by way of Explanation vide Finance (No.2) Act, 2019. Thus understood, inclusion of Clause (ii) in Explanation inserted in 2019 is of no consequence as it does not alter or enlarge the scope of Section 3 at all.

It was also held that “463. The person may be involved in any one or more than one process or activity connected with the proceeds of crime. All of them are treated as one class of offender involved in money-laundering. The proceeds of crime may be derived or obtained as a result of criminal activity with which the offender involved in money laundering offence may not be directly concerned at all. Even so, he becomes liable to be proceeded under Section 3 and punished under Section 4 of the 2002 Act. The principle of an accessory after the fact will have no application to the offence of money-laundering.”

27. Useful reference can be made to the pronouncement of the Hon'ble Supreme Court in the case of ***Pavana Dibbur v/s. Directorate of Enforcement***², which refers to the case of ***Vijay Madanlal Choudhary*** (*supra*) in paragraphs 15 to 19 and holds as follows:

“15. The condition precedent for the existence of proceeds of crime is the existence of a scheduled offence. On this aspect, it is necessary to refer to the decision of this Court in Vijay Madanlal Choudhary [Vijay Madanlal Choudhary v. Union of India, (2023) 12 SCC 1] . In para 109 of the said decision [Vijay Madanlal Choudhary v. Union of India, (2023) 12 SCC 1] , this Court held thus : (SCC p. 166)

“109. Tersely put, it is only such property which is derived or obtained, directly or indirectly, as a result

2. (2023)15 Supreme Court Cases 91.
Gitalaxmi

of criminal activity relating to a scheduled offence that can be regarded as proceeds of crime. The authorities under the 2002 Act cannot resort to action against any person for money laundering on an assumption that the property recovered by them must be proceeds of crime and that a scheduled offence has been committed, unless the same is registered with the jurisdictional police or pending inquiry by way of complaint before the competent forum. For, the expression “derived or obtained” is indicative of criminal activity relating to a scheduled offence already accomplished. Similarly, in the event the person named in the criminal activity relating to a scheduled offence is finally absolved by a court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of the criminal case (scheduled offence) against him/her, there can be no action for money laundering against such a person or person claiming through him in relation to the property linked to the stated scheduled offence. This interpretation alone can be countenanced on the basis of the provisions of the 2002 Act, in particular Section 2(1)(u) read with Section 3. Taking any other view would be rewriting of these provisions and disregarding the express language of definition clause “proceeds of crime”, as it obtains as of now.”

(emphasis in original and supplied)

16. In paras 134 and 135, this Court held thus : (Vijay Madanlal Choudhary case [Vijay Madanlal Choudhary v. Union of India, (2023) 12 SCC 1] , SCC p. 182)

“134. From the bare language of Section 3 of the 2002 Act, it is amply clear that the offence of money laundering is an independent offence regarding the process or activity connected with the proceeds of crime which had been derived or obtained as a result of criminal activity relating to or in relation to a

scheduled offence. The process or activity can be in any form — be it one of concealment, possession, acquisition, use of proceeds of crime as much as projecting it as untainted property or claiming it to be so. Thus, involvement in any one of such process or activity connected with the proceeds of crime would constitute offence of money laundering. This offence otherwise has nothing to do with the criminal activity relating to a scheduled offence — except the proceeds of crime derived or obtained as a result of that crime.

135. Needless to mention that such process or activity can be indulged in only after the property is derived or obtained as a result of criminal activity (a scheduled offence). It would be an offence of money-laundering to indulge in or to assist or being party to the process or activity connected with the proceeds of crime; and such process or activity in a given fact situation may be a continuing offence, irrespective of the date and time of commission of the scheduled offence. In other words, the criminal activity may have been committed before the same had been notified as scheduled offence for the purpose of the 2002 Act, but if a person has indulged in or continues to indulge directly or indirectly in dealing with proceeds of crime, derived or obtained from such criminal activity even after it has been notified as scheduled offence, may be liable to be prosecuted for offence of money laundering under the 2002 Act — for continuing to possess or conceal the proceeds of crime (fully or in part) or retaining possession thereof or uses it in trenches until fully exhausted. The offence of money-laundering is not dependent on or linked to the date on which the scheduled offence, or if we may say so, the predicate offence has been committed. The relevant date is the date on which the person indulges in the process or activity connected with such proceeds of crime. These ingredients are intrinsic in the original provision (Section 3, as amended until 2013 and were in force till 31-7-2019);

and the same has been merely explained and clarified by way of Explanation vide Finance (No. 2) Act, 2019. Thus understood, inclusion of clause (ii) in Explanation inserted in 2019 is of no consequence as it does not alter or enlarge the scope of Section 3 at all.”

(emphasis supplied)

17. Coming back to Section 3 PMLA, on its plain reading, an offence under Section 3 can be committed after a scheduled offence is committed. For example, let us take the case of a person who is unconnected with the scheduled offence, knowingly assists the concealment of the proceeds of crime or knowingly assists the use of proceeds of crime. In that case, he can be held guilty of committing an offence under Section 3 PMLA. To give a concrete example, the offences under Sections 384 to 389 IPC relating to “extortion” are scheduled offences included in Para 1 of the Schedule to PMLA. An accused may commit a crime of extortion covered by Sections 384 to 389 IPC and extort money. Subsequently, a person unconnected with the offence of extortion may assist the said accused in the concealment of the proceeds of extortion. In such a case, the person who assists the accused in the scheduled offence for concealing the proceeds of the crime of extortion can be guilty of the offence of money-laundering. Therefore, it is not necessary that a person against whom the offence under Section 3 PMLA is alleged must have been shown as the accused in the scheduled offence. What is held in para 135 of the decision of this Court in *Vijay Madanlal Choudhary* [*Vijay Madanlal Choudhary v. Union of India*, (2023) 12 SCC 1] supports the above conclusion. The conditions precedent for attracting the offence under Section 3 PMLA are that there must be a scheduled offence and that there must be proceeds of crime in relation to the scheduled offence as defined in clause (u) of sub-section (1) of Section 3 PMLA.

18. In a given case, if the prosecution for the scheduled

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

Acquisition of the first and second property

19. The allegation against the appellant in the complaint is that she purchased the property worth crores, though she did not have the source of income which would generate enough money to buy the subject properties. The allegation against the appellant is that she allowed and facilitated Accused 1 Madhukar Angur, to conceal the siphoned/misappropriated amounts by using her bank account. Another allegation is that she is shown to have purchased the second property from Accused 1, though she did not have the resources to pay the consideration. The allegation is that she allowed Accused 1 to use her bank accounts to facilitate siphoning the proceeds of the crime. Another allegation is that both the first and second properties have been acquired out of the proceeds of crime. The first property, ex facie, cannot be said to have any connection with the proceeds of crime as the acts constituting the scheduled offence took place after its

acquisition. The case of the appellant is that she possessed a substantial amount, as can be seen from the declaration made by her under the Income Declaration Scheme, 2016 in September 2016 and therefore, at the time of the acquisition of the second property, more than sufficient money was available with her to acquire the second property. The issue of whether the appellant used tainted money to acquire the second property can be decided only after the evidence is adduced. This is not a case where any material is placed on record to show that the sale consideration was paid from a particular bank account of the appellant. Therefore, it is not possible to record a finding at this stage that the second property was not acquired by using the proceeds of crime. We also make it clear that we have considered the issue only in the context of the applicability PMLA. We have not dealt with the issues of valuation and legality of the sale deeds.”

28. Mr Prashant Mishra, learned Advocate for Respondent No. 1, was unable to point out any material in the record indicating that the property at Dhutum Village purchased between 2005 and 2007, had any remote connection with the alleged proceeds of crime. He was also unable to point out any material to indicate the involvement of Applicant in the crime in question.

29. What is declared as an offence is knowingly dealing with the proceeds of crime, whether by concealment, possession, acquisition, use or by claiming or projecting the proceeds of crime as untainted property. The property at Dhutum Village, acquired between 2005 and 2007, *ex facie*, cannot be said to have any connection with the proceeds of crime, as the acts constituting the scheduled offence took place during the period 2020-2021, i.e. after its acquisition. The charge-sheet and the material on record do not make out any case for the offence under Sections 3 and 4 of the PMLA, 2002, against the Applicant.

30. Taking cognizance is a judicial act that requires the application of the mind. The Hon'ble Supreme Court in the case of ***Sunil Bharti Mittal v/s. Central Bureau of Investigation***³, in paragraphs 52 and 53, has held as follows:

“52. A wide discretion has been given as to grant or refusal of process, and it must be judicially exercised. A person ought not to be dragged into court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.

53. However, the words “sufficient ground for proceeding” appearing in Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect.”

31. The order dated 16.09.2021 passed by the Designated Court in PMLA Special Case No. 1089 of 2021 does not indicate that the Designated Court applied its mind to the material, if any, available against the Applicant. The said aspect has not been considered in the order dated 16.09.2021. The test of “sufficient ground for proceeding” against the Applicant is not satisfied. No reasons are found in the order dated 16.09.2021 to conclude that there is *prima facie* ground to proceed against the Applicant. The order dated 16.09.2021 is therefore bad in law

3. (2015)4 Supreme Court Cases 609.
Gitalaxmi

and liable to be set aside.

32. The ingredients of the offence under Sections 3 and 4 of the PMLA, 2002, are not established against the Applicant. The present case squarely falls within the principles for the exercise of powers under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (Section 482 of Cr.P.C.), to quash the impugned order dated 16.09.2021 passed by the Designated Court and to quash the complaint in PMLA Special Case No. 1089 of 2021, *qua* the Applicant (Accused No. 11), to prevent abuse of the process of law.

33. This Criminal Application is therefore allowed in terms of the prayer clauses (A) and (B). Consequently, the impugned order dated 16.09.2021, passed by the Designated Court in PMLA Special Case No. 1089 of 2021 against the Applicant, is quashed and set aside. The complaint in PMLA Special Case No. 1089 of 2021, *qua* the Applicant (Accused No. 11), is quashed.

34. Criminal Application No. 1075 of 2023 is disposed of. In the facts and circumstances of the present case, there shall be no order as to costs.

35. In view of Criminal Application No. 1075 of 2023 is disposed of, nothing would survive in Interim Application No. 575 of 2026, as such stands disposed of.

[ASHWIN D. BHOBE, J.]