IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1021 OF 2022

Anil Vasantrao Deshmukh
Aged 73 years, Occu – Politican,
An Adult, Indian Inhabitant,
having his place of residence at
Dnyaneshwar Bungalow, Malabar
Hill, Mumbai – 400 006
(Accused is in Arthur Road Jail, Mumbai. … Applicant

Versus

State of Maharashtra
At the instance of
Assistant Director, Directorate
of Enforcement, 4th Floor, Kaiser – Hind Building,
Currimbhoy Road, Ballard Estate,
Mumbai – 400 001 … Respondent

Mr. Vikram Chaudhary, Senior Advocate with Mr. Aniket Nikam, Mr. Inderpal B. Singh, Mr. Hargun Sandhu, Ms. Devyani Chemburkar, ms. Sonam Gond, for Applicant.
Mr. R.M.Pethe, APP, for State.
Mr. Anil Singh, Additional Solicitor General, with Mr. Aditya Thakkar, Mr. Shreeram Shirsat, Ms. Smita Thackur, Mr. Amandeep Singh Sra, Mr. Pranav Thackur, Ms. Nishi Singhvi, Mr. Anna Oommen, Mr. Madhur Salkar, Mr. Shekhar Mane, Mr. Aamir Qureshi, Mr. V. Agarwal, Ms. Darshita for Respondent – ED.

CORAM : N.J.JAMADAR, J.

RESERVED ON : 28th SEPTEMBER, 2022
PRONOUNCED ON : 4th OCTOBER, 2022

P.C.:

1. The Applicant, who is arraigned in PMLA Case No.1089 of 2021 arising

out of ECIR No.NBZO/1/66 of 2021, at the instance of Directorate of Enforcement (ED) for the offences punishable under Section 4 read with Section 3 of the Prevention of Money Laundering Act, 2002 (PMLA), has preferred this Application to enlarge him on bail.

2. The prelude to the registration of the abovenumbered ECIR, can be stated as under :

2.1 A FIR bearing C.R.No.35 of 2021 was registered with Gamdevi Police Station, Mumbai, in connection with an occurrence, wherein a gelatin laden SUV was found near the residence of an industrialist. NIA took over investigation. Mr. Sachin Waze, the then API attached to the Crime Investigation, Unit of Crime Branch, Mumbai was arrested. In the wake of the controversy, by an order dated 17th March, 2021, Mr. Param Bir Singh, the then Commissioner of Police, Mumbai, came to be transferred from the said post. The Applicant was then holding the office of the Home Minister, Government of Maharashtra.

2.2 Mr. Param Bir Singh, addressed a letter dated 20th March, 2021 to the then Chief Minister of Maharashtra, making certain allegations against the Applicant. As the contents of the said letter came in public domain, a batch of Petitions including Public Interest Litigation No.6 of 2021, were instituted in this Court. The Division Bench of this Court by an order dated 5th April, 2021 directed the Central Bureau of Investigation (CBI) to conduct a preliminary inquiry into the complaint made by Smt.

Jayshree Patil, one of the Petitioners, to which a copy of the letter dated 20th March, 2021 was annexed. A challenge to the said order was turned down by the Supreme Court by an order dated 8th April, 2021.

2.3 Thereupon, the CBI conducted a preliminary inquiry and, on 21st April, 2021, registered FIR bearing No.RC No.2232021a0003 at ACB-V, New Delhi, against the Applicant and unknown others, with the assertion that the preliminary inquiry, prima facie, revealed that cognizable offence was made out wherein the Applicant and unknown others attempted to obtain undue advantage for improper and dishonest performance of their public duty. The Applicant and others allegedly exercised undue influence over the transfers and postings of the police officials and thereby also exercised undue influence over the performance of official duty by the officials. Thus, a regular case under Section 7 of the Prevention of Corruption Act, 1988 (the PC Act) and Section 120B of the Indian Penal Code came to be registered against the Applicant and unknown others.

2.4 Treating the aforesaid FIR registered by CBI as a source from which the information is received and the offence alleged therein as predicate offence, the Respondent – Enforcement Directorate (ED) registered the above ECIR against the Applicant and others for the offence punishable under Section 4 read with Section 3 of the PMLA. The Respondent asserted that as Section 120B of the Indian Penal Code and Section 7 of the PC Act, 1988 are Scheduled offences as mentioned in Paragraph 1

and 8 respectively of Part A, of the Schedule appended to PMLA, a prima facie case for offence of money laundering defined under Section 3 punishable under Section 4 of the PMLA appeared to have been made out.

2.5. In the intervening period, the challenges on behalf of the Applicant to the registration of the FIR by CBI and the issue of summons to the Applicant under Section 50 of the PMLA, were negatived by this Court. For the purpose of determination of this Application, it may be superfluous to delve into those aspects except to note that post disposal of the Writ Petition No.625 of 2021 by an order dated 29th October, 2021, the Applicant appeared before the Respondent – ED and, after interrogation, the Applicant came to be arrested on 2nd November, 2021. Post initial remand to ED's custody, the Applicant has been in judicial custody since 15th November, 2021.

2.6. In the meanwhile, on 23rd August, 2021 the Respondent filed a prosecution complaint against Mr. Sachin Waze and 13 others. The Special Court took cognizance of the offences on 16th September, 2021. After the arrest of the Applicant and necessary investigation, the Respondent filed supplementary prosecution complaint, wherein the Applicant has been arraigned for the offence of money laundering, giving an account of the role of the Applicant therein. The Special Court took cognizance of the offneces.

3. The gravamen of indictment against the Applicant, as borne out by the

allegations in the supplementary prosecution complaint, can be summarised as under :

3.1 The Applicant in the capacity of the Home Minister played a crucial role in reinstatement of Mr. Sachin Waze, who was under suspension for 16 years. The Applicant and Mr. Sachin Waze were working as a team to get illegal gratification through extortion and illegal activities. The Applicant instructed Mr. Sachin Waze to collect Rs.3 Lakhs per month from 1750 bar and restaurants across Mumbai. On the instructions of the Applicant, Mr. Sachin Waze collected cash amount of Rs.4.70 Crores from the bar owners during the months of December 2020 to February, 2021. Mr. Kundan Shinde, the then Personal Assistant of the Applicant, and a trusted aide, collected the cash amount of Rs.4.70 Crores from Sachin Waze, on behalf of the Applicant.

3.2 The Applicant abused his position to effect transfers and postings of the police officials with a view to obtain undue advantage. The Applicant passed on unofficial instructions to the members of the Police Establishment Board (PEB) and made them to make recommendations to, in turn, make transfers and postings. The Applicant allegedly received huge consideration through some intermediary for favourable transfers and postings of the police officials.

3.3. Mr. Sanjeev S. Panalde, the then Private Secretary of the Applicant, passed on the instructions of the Applicant to the members of the PEB and was also involved in collection of money from the Orchestra Bar owners. Mr. Sanjeev Palande,

thus, assisted the Applicant in money laundering activities.

3.4. It further transpired that the Applicant in pursuance of a criminal conspiracy with his son – Hrishikesh, transferred illegal gratification to Delhi based shell companies of Surendra and Virendra Jain, the co-accused, through Havala operators. Surendra and Virendra Jain, in turn, infused the said amount into the banking channel and further layered through Delhi based shell companies and, eventually, transferred the money so laundered, to the bank account of Shri Sai Shikshan Sanstha, a charitable Trust, managed and controlled by Applicant's family. In such fashion, an amount to the tune of Rs.1.71 Crores came to be transferred to the account of the Shri Sai Shikshan Sanstha, disguised as donation, in the month of February and March, 2021.

3.5. Allegations have also been made that in the past as well, the Applicant has indulged in money laundering activities and created various assets in the name of his family members out of unaccounted money. The Applicant was, therefore, actively involved in generation and laundering of the proceeds of crime.

4. The Applicant seeks to be enlarged on bail on the grounds, inter alia, that the prosecution case primarily rests on the statements of witnesses, recorded under PMLA, 2002, the credibility of whom is gravely suspect. Allegations against the Applicant are centered around the statements of Mr. Sachin Waze and Mr. Param Bir Singh, which do not command a semblance of credence. The statements of rest of

the witnesses do not have any incriminating tendency qua the Applicant. It would, therefore, be extremely unjust to deprive the personal liberty of the Applicant based on the statements of Mr. Sachin aze and Mr. Param Bir Singh, who stand thoroughly discredited by their acts, conduct and statements, which emerge from the prosecution case itself.

5. The Applicant asserts there is not an iota of incriminating material as regards the allegations of influencing the transfers and postings of the police officials. In fact, the Applicant in the capacity of the then Home Minister was statutorily empowered to pass orders of transfers and postings on the recommendations of PEB. In a majority of cases, orders were passed in conformity with the recommendations of PEB. In any event, there is no allegation that the Applicant made the members of PEB to make recommendations for illegal gratification. The Applicant further contends, neither there is material to show that the Applicant allegedly received a sum of Rs.4.70 Crores either directly or indirectly. Nor there is material to show that the sum of Rs.1.70 Crores which was transferred to the account of Shri Sai Shikshan Sanstha, was part of the alleged 'proceeds of crime'. In fact, the said transfer of funds to the account of Shri Sai Shikshan Sanstha represents legitimate transactions through banking channel. The bald statements of Mr. Surendra and Virendra Jain, co-accused, and Mr. Sudhir Baheti, Chartered Accountant, made under duress, cannot sustain the allegations of money laundering. In substance, there is no material to prima facie

demonstrate that the Applicant indulged in any activity which would fall within the mischief of money laundering defined under Section 3 of the PMLA. Alluding to the alleged vendetta and persecution at the instance of the Respondent – ED, for ulterior motive, the Applicant prays for release on bail.

6. It would be contextually relevant to note that in the Application, the applicant has also asserted that he is suffering from multiple ailments and the factors of old age and health condition of the Applicant also deserve to be taken into account in considering the prayer for bail.

7. An Affidavit in Reply is filed on behalf of the Respondent – ED, in opposition to the prayer of bail. Adverting to the nature of the accusation against the Applicant, its gravity, and the material collected during the course of investigation in support thereto, the Respondent contends that there is ample evidence to establish the complicity of the Applicant qua each of the accusations. In the face of the evidence, including the money trail, it cannot be said that the twin conditions for grant of bail, envisaged by Section 45 of PMLA, have been satisfied by the Applicant. Therefore, the interdict contained in Section 45 operates with full force and vigor and, resultantly, the Applicant does not deserve to be released on bail.

8. In the wake of the aforesaid assertions in the Application, the contentions in the Affidavit in Reply and the material placed on record, I have heard Mr. Chaudhary, learned Senior Advocate appearing for the Applicant and Mr. Anil

Singh, learned Additional Solicitor General for the Respondent – ED at a considerable length. The learned Counsel have taken me through the prosecution complaint, supplementary prosecution complaint, FIR registered against the Applicant and the others by CBI, the statements of witnesses recorded by ED under section 50 of the PMLA and the statements of the witnesses recorded by CBI and the statements of witnesses recorded under Section 164 of the Code of Criminal Procedure, 1973 by the learned Magistrates.

9. The learned Counsel also invited my attention to the various orders passed by the Supreme Court and this Court, in multiple proceedings. However, at the outset, it is necessary to note that the various orders passed by the Supreme Court and this Court, especially as regards the gravity of the allegations in the aforesaid letter dated 20th March, 2021, underscoring the necessity of a fair and impartial investigation, were in the context of the stage of the proceedings. At this juncture, we have traversed the stage of investigation qua the Applicant to a substantial extent, though in the supplementary prosecution complaint, the Respondent – ED, seeks to keep the door ajar for further investigation. At this stage, therefore, the Court is called upon to consider the entitlement of the Applicant for bail in the light of the material which is collected during the course of investigation. Of course, the prelude which led to the registration of ECIR needs to be kept in view.

10. Mr. Chaudhari, learned Senior Advocate appearing for the Applicant,

strenuously submitted that the prosecution of the Applicant, at the instance of the Respondent – ED, exemplifies the flagrant abuse of the statutory powers to brazenly trample upon the constitutional and statutory rights of the Applicant. A stark feature of this prosecution is the deep rooted 'subjectivity', at the cost of objective assessment resulting in a highly opinionated case against the Applicant peperred with expressions "appears", "seems" and the like. In the process, the truth and objectivity have become a casualty. Mr. Chaudhari would further urge that another peculiar feature of the case at hand, is the prosecution's endeavour to sustain it on the basis of statements of witnesses, sans any evidence, worth its name. That, according to Mr. Chaudhari, brings in the element of the credibility and reliability of the statements recorded under Section 50 of the PMLA.

11. Mr. Chaudhari further submitted that the statements of witnesses, even if construed at par, do not substantiate the prosecution version that the Applicant gave instructions to Sachin Waze to collect money from bar owners and received money, as alleged. Except the statement of Mr. Sachin Waze, which does not deserve an ounce of credence, there is no material in support of the primary allegation. On the contrary, if the statements of the witnesses recorded before the learned Magistrate under Section 164 of the Code in other cases, are considered, one gets an impression that money was collected at the instance of the then Commissioner of Police. Those statements recorded under Section 164 of the Code and made before Justice

Chandiwal Commission of Inquiry, stand on a higher pedestal than the statements extracted by ED under Section 50 of the PMLA, urged Mr. Chaudhari.

12. On the aspect of the alleged exercise of undue influence over the transfers and postings of the police officials, according to Mr. Chaudhary, there is no element of criminality discernible from the statements of any of the prosecution witnesses, except an utterly outrageous claim of Mr. Sachin Waze that he learnt that Rs.40 Crores were obtained by way of illegal gratification for effecting transfer and postings of police officials within Mumbai Police Commissionerate.

13. Taking the Court through the composition of the PEB and the provisions of the Maharashtra Police Act, 1951, which vest the authority in the Home Minister, in the matter of transfers and postings of police officials, Mr. Chaudhari would urge that the accusation is simply unfounded. In any event, there is no material to show that the said exercise generated any proceeds of crime to fall within the dragnet of money laundering.

14. Placing reliance on the recent pronouncement of the Supreme Court in the case of **Vijay Madanlal Choudhary V/s. Union of India and Ors.**[1], Mr. Chaudhari urged, with a degree of vehemence, that the allegation that the Applicant had, over a period of time, amassed ill gotten wealth, approximately Rs.13.25 Crores, and transferred the same to the account of Shri Sai Shikshan Sanstha, by no stretch of

[1] 2002 Online SC 929

imagination, can render the said amount 'proceeds of crime', even if assumed to be unaccounted, since there is no predicate offence in relation thereto. Even the sum of Rs.1.71 Crores allegedly transferred to the account of Shri Sai Shikshan Sanstha during February/March, 2021, cannot be termed as proceeds of crime in the absence of any link evidence to show placing, layering and integration of the said amount.

15. Lastly, Mr. Chaudhari would urge that the twin conditions under Section 45 of the PMLA can be said to have been adequately satisfied by the inherently contradictory and improbable nature of the accusation and the quality of material pressed in support thereof. In any event, the advanced age and precarious health condition of the Applicant, borne out by the medical record maintained at the prison and the government hospitals, warrants exercise of discretion in favour of the Applicant by resorting to the 1st proviso to Section 45 of PMLA.

16. Per contra, Mr. Anil Singh, learned Additional Solicitor General, submitted that the prayer for bail is required to be considered keeping in view the nature and purpose of PMLA, the seriousness and gravity of money laundering, which is judicially recognized, and the fact that money laundering forms an independent offence by itself. The legislative object behind prescribing twin conditions under Section 45 of the Act, also needs to be kept in view. A two pronged submission was canvassed by Mr. Singh in opposition to the prayer for bail. One, the Applicant has failed to demonstrate that the twin conditions are satisfied. Second,

even if it is assumed that the twin conditions are met, the Applicant, who wields considerable influence, and has not co-operated with the investigation, is not entitled to the exercise of discretion.

17. Amplifying the first submission, Mr. Singh stoutly submitted that validity of the twin conditions has been upheld by the Supreme Court in the case of **Vijay Choudhary (supra).** Taking the Court extensively through the pronouncement of the Supreme Court in the case of **Vijay Choudhary (supra)**, Mr. Singh submitted that PMLA is a Code in itself. It is held to be neither a pure regulatory legislation, nor pure penal legislation, but an amalgam of several facets essentially to address the scourge of money laundering. The offence of money laundering is considered as heinous a crime as terrorism and/or murder. It is a standalone offence. Each provision of the PMLA would have to be given its due significance. Therefore, the mandate of Section 45 must be satisfied by an accused who is charged with the offence of money laundering, before he is enlarged on bail.

18. Based on aforesaid legal premise, Mr. Singh would urge that, in the facts of the case, there is ample material in the form of the statements of witnesses, money trail and the evidence collected during the course of investigation to show that the Applicant was involved in money laundering. It was further submitted that what the Applicant desires the Court to do is, to hold a mini trial to arrive at the conclusion that the Applicant is not guilty of the offence. To this end, according to Mr. Singh, the

Applicant has adopted selective approach in banking upon the statements of witnesses which suit the Applicant's case. However, the material is required to be appraised as a whole. In any event, the credibility and reliability of the witnesses is not to be judged at this stage, and that is a matter for trial. Therefore, the Court would not be justified in embarking upon the exercise of evaluating the credibility of the witnesses at this stage.

19. To bolster up the aforesaid submission, Mr. Singh, in addition to the observations in the case of **Vijay Choudhari (supra)**, placed reliance on the judgments of the Supreme Court in the case of **Satish Jaggi V/s. State of Chhatisgarh and Ors.**[2] and **National Investigating Agency V/s. Zahoor Ahmad Shah Watali**[3].

20. I have given anxious consideration to the aforesaid submissions. To begin with, it may be expedient to note the considerations which normally weigh with Court in granting or refusal to grant bail in a non-bailable offence. Ordinarily, the nature and seriousness of the offences, the circumstances in which the offences were allegedly committed, the circumstances peculiar to the accused, in a given case, the nature and character of the evidence/material pressed into service against the accused, possibility or otherwise of the presence of the accused not being secured at the trial, reasonable apprehension of witnesses being tampered with and the possibility

2 (2007) 11 SCC 195
3 2019 (5) SCC 1

of the trial being completed within a reasonable period and the larger public interest, are the factors which influence the exercise of discretion.

21. It is also well settled that at the stage of consideration of entitlement for bail, a detailed examination of the material/evidence and elaborate documentation of the merits of the case are not required to be undertaken. Nonetheless, the Court is expected to ascribe reasons for granting or refusal to grant bail. The said exercise is, however, materially different from discussing merits/de-merits of the case as the Court would do at the stage of determination of guilt or otherwise of the accused.

22. The aforesaid requirements of ascribing reasons assumes more salience where there are statutory restrictions in the matter of grant of bail like Section 45 of the PMLA. Section 45 contains an interdict against the grant of bail to a person accused of an offence under PMLA, unless the Public Prosecutor has been given an opportunity to oppose the application and the Court is satisfied that there are reasonable grounds for believing that such person is not guilty of such offence and that if released on bail, he is not likely to commit any offence, while on bail. Sub-Section (2) of Section 45 further provides that the limitation on granting bail under sub-section (1), is in addition to the limitation under the Code or any other law for the time being in force for granting of bail.

23. When a Court is confronted with the aspect of grant of bail, where there are statutory restrictions, the first question that comes to the fore is the nature of

restrictions spelled out by the text of legislative mandate. On first principles, the restrictions do not mean that there is an absolute bar against grant of bail. It all turns upon the degree of restrictions, which the statutory provisions envisage and the tests to be applied to ascertain whether, in a given case, the statutory restrictions are overcome.

24. A useful reference in this context can be made to a three Judge Bench judgment of the Supreme Court in the case of **Ranjitsingh Brahmajeetsing Sharma V/s. State of Maharashtra**[4] wherein the contours of the power of the Court to grant bail in the face of the interdict contained in Section 21(4) of the Maharashtra Control of Organized Crime Act, 1999 arose for consideration. The interdict against the grant of bail under Section 21(4) of the MCOC Act, 1999 is *pari materia* the bar contained in Section 45(1) of the PMLA. In **Ranjitsingh Sharma (supra)** the Supreme Court illuminatingly postulated the approach to be adopted in arriving at the satisfaction as to whether the accused is "not guilty of such offence' and that the accused is "not likely to commit any offence while on bail". They read as under :

> "35. Presumption of innocence is a human right. [See Narendra Singh and Another Vs. State of M.P., (2004) 10 SCC 699, para 31] Article 21 in view of its expansive meaning not only protects life and liberty but also envisages a fair procedure. Liberty of a person should not ordinarily be interfered with unless there exist cogent grounds therefor. Sub-Section (4) of Section 21 must be interpreted keeping in view the aforementioned salutary principles. Giving an opportunity to the public prosecutor to oppose an application for release of

4 (2005) 5 SCC 294

an accused appears to be reasonable restriction but Clause (b) of Sub-section (4) of Section 21 must be given a proper meaning.

36. Does this statute require that before a person is released on bail, the court, albeit prima facie, must come to the conclusion that he is not guilty of such offence? Is it necessary for the Court to record such a finding? Would there be any machinery available to the Court to ascertain that once the accused is enlarged on bail, he would not commit any offence whatsoever?

37. Such findings are required to be recorded only for the purpose of arriving at an objective finding on the basis of materials on records only for grant of bail and for no other purpose .

38. We are furthermore of the opinion that the restrictions on the power of the Court to grant bail should not be pushed too far. If the Court, having regard to the materials brought on record, is satisfied that in all probability he may not be ultimately convicted, an order granting bail may be passed. The satisfaction of the Court as regards his likelihood of not committing an offence while on bail must be construed to mean an offence under the Act and not any offence whatsoever be it a minor or major offence. …….

44. The wording of Section 21(4), in our opinion, does not lead to the conclusion that the Court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act. If such a construction is placed, the court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the applicant. Such cannot be the intention of the Legislature. Section 21(4) of MCOCA, therefore, must be construed reasonably. It must be so construed that the Court is able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. Similarly, the Court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in futuro must be an offence under the Act and not any other offence. Since it is difficult to predict the future conduct of an

> accused, the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence.
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> 45. It is, furthermore, trite that for the purpose of considering an application for grant of bail, although detailed reasons are not necessary to be assigned, the order granting bail must demonstrate application of mind at least in serious cases as to why the applicant has been granted or denied the privilege of bail.
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> 46. The duty of the court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. However, while dealing with a special statute like MCOCA having regard to the provisions contained in sub-section (4) of Section 21 of the Act, the Court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. The findings recorded by the court while granting or refusing bail undoubtedly would be tentative in nature, which may not have any bearing on the merit of the case and the trial court would, thus, be free to decide the case on the basis of evidence adduced at the trial, without in any manner being prejudiced thereby."
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> (emphasis supplied)

25. The aforesaid pronouncement was followed with approval by the Supreme Court in the case of **Vijay Choudhary (supra)**, wherein the law on the aspect of the twin conditions under Section 45 of the PMLA was enunciated as under :

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

> principles of law as provided under Section 45 of the 2002 Act. While dealing with a similar provision prescribing twin conditions in MCOCA, this Court in Ranjitsingh Sharma (supra) held as under :
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> 44……
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> 45…..
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> 46….. (extracted above).
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> 401. We are in agreement with the observations made by the Court in Ranjitsing Sharma (supra). The Court while dealing with the application for grant of bail need not delve deep into the merits of the case and only a view of the Court based on available material on record is required. The Court will not weight the evidence to find the guilt of the accused which is, of course, the work of trial Court. The Court is only required to place its view based on probability on the basis of reasonable material collected during investigation and the said view will not be taken into consideration by the Trial Court in recording its finding of the guilt or acquittal during trial which is based on the evidence adduced during the trial. As explained by this Court in Nimmagadda Prasad[5], the words used in Setion 45 of the 2002 Act are "reasonable grounds for believing" which means the Court has to see only if there is a genuine case against the accused and the prosecution is not required to prove the charge beyond reasonable doubt."
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> (emphasis supplied)

26. The aforesaid pronouncements, thus, indicate that the statutory restrictions in the matter of grant of bail are required to be considered reasonably. A finding that the accused is not guilty of the offence and that he is not likely to commit an offence if released on bail, are required to be recorded only for the purpose of arriving at an objective finding on the strength of the material on record to assess the

5 (2013) 7 SCC 466

entitlement for bail only. If the Court having regard to the material brought on record is satisfied that, in all probability, the accused may not be ultimately convicted, an order granting bail may be passed. Conversely, it is not peremptory that the Court must arrive at a positive finding that the Applicant has not committed an offence under the Act. Likewise, a satisfaction that the accused is not likely to commit an offence while on bail is qua the offence of the kind with which the accused is charged and not any other offence.

27. On the aforesaid touchstone, reverting to the facts of the case, it has to be seen whether the aforesaid twin tests can be said to have been satisfied. To this end, the nature of evidence/material pressed into service against the Applicant is required to be appraised to arrive at a tentative finding of existence or otherwise of reasonable grounds for believing that the Applicant is not guilty of the offence, nor he is likely to commit an offence, if released on bail.

28. On the basis of the material on record, the prosecution case can be conveniently considered in three parts, (1) the Applicant instructed Mr. Sachin Waze to collect money from bar owners/establishments, and, accordingly, the money was collected and handed over to Mr. Kundan Shinde, the co-accused, by Mr. Sachin Waze on the instructions of the Applicant. (2) The Applicant was instrumental in influencing the transfers and postings of the police officials and given instructions to the members of the PEB to make a favourable recommendations which were finally

approved by him. (3) The Applicant generated several proceeds of crime out of the above scheduled offences and indulged in several activities connected with the proceeds of crime, including possession, concealment and projection as untainted property.

29. The offence of money laundering, in the context of the dealing with the proceeds of crime, is sought to be established by pressing into service the material to show that the funds were transferred to the account of Shri Sai Shikshan Sanstha from the shell companies by a complex process of placing, layering and integration. In the supplementary prosecution complaint, the money trail has been further divided into three parts : (1) out of the amount which was allegedly paid by Mr. Sachin Waze during the period February/March, 2021 a sum of Rs.1.71 Crores was transferred to the account of Shri Sai Shikshan Sanstha, Nagpur by initially transferring cash through Havala operators to Mr. Surendra and Virendra Jain, the co-accused, who, in turn, infused the said tainted money into the banking channel and eventually transferred the amount to the account of Shri Sai Shikshan Sanstha through the shell companies operated by them (first component). (2) The Applicant during his tenure as Home Minister, has laundered his unaccounted cash money to the tune of Rs.1.12 Crores by employing the aforesaid *modus operandi* during the period of 19th September, 2020 to 28th November, 2020 (second component). (3) The Applicant had been actively integrating his unaccounted cash into the banking system since April 2011, by likewise

transferring the amounts in the account of Shri Sai Shikshan Sanstha. It is also alleged that during the period 23rd July, 2011 to 13th May, 2019 unaccounted amount of Rs.10.42 Crores was accordingly integrated, (third component).

30. In substance, the Applicant allegedly laundered a sum of Rs.13.25 Crores since the year 2011, out of which Rs.2.83 Crores during his tenure as Home Minister, which also comprised a sum of Rs.1.71 Crores, out of Rs.4.70 Crores collected from the Orchestra bar owners through Mr. Sachin Waze (paragraph 8.9 of the Supplementary Prosecution Complaint).

31. Mr. Chaudhari strenuously submitted that the aforesaid allegation of money laundering in respect of the alleged transfer of Rs.1.12 Crores during the period the Applicant was holding the Office of Home Minister (second component) and a sum of Rs.10.42 Crores during the period 2011-19 (third component), cannot be termed as 'proceeds of crime'. The charge is, thus, totally misconceived. Those amounts, in the absence of any predicate offence in relation thereto, can never be termed as 'proceeds of crime'.

32. To bolster up this submission, Mr. Chaudhari placed a heavy reliance on the exposition of the term 'proceeds of crime' by the Supreme Court in the case of **Vijay Choudhary (supra)**. It was urged that to be proceeds of crime, the property must be derived or obtained directly or indirectly as a result of criminal activity relating to scheduled offence. The mere fact that the investigating agency could locate

certain transactions in the account of the Shri Sai Shikshan Sanstha, is not sufficient to draw an assumption that the said property forms part of the 'proceeds of crime'.

33. Particular emphasis was laid on the observations of the Supreme Court in paragraphs 250 to 253 of the said judgment. They read as under :

> "250. The other relevant definition is "proceeds of crime" in Section 2(1)(u) of the 2002 Act. This definition is common to all actions under the Act, namely, attachment, adjudication and confiscation being civil in nature as well as prosecution or criminal action. The original provision prior to amendment vide Finance Act, 2015 and Finance (No.2) Act, 2019, took within its sweep any property (mentioned in Section 2(1)(v) of the Act) derived or obtained, directly or indirectly, by any person "as a result of" criminal activity "relating to" a scheduled offence (mentioned in Section 2(1)(y) read with Schedule to the Act) or the value of any such property. Vide Finance Act, 2015, it further included such property (being proceeds of crime) which is taken or held outside the country, then the property equivalent in value held within the country and by further amendment vide Act 13 of 2018, it also added property which is abroad. By further amendment vide Finance (No.2) Act, 2019, Explanation has been added which is obviously a clarificatory amendment. That is evident from the plain language of the inserted Explanation itself. The fact that it also includes any property which may, directly or indirectly, be derived as a result of any criminal activity relatable to scheduled offence does not transcend beyond the original provision. In that, the word "relating to" (associated with/has to do with) used in the main provision is a present participle of word "relate" and the word "relatable" is only an adjective. The thrust of the original provision itself is to indicate that any property is derived or obtained, directly or indirectly, as a result of criminal activity concerning the scheduled offence, the same be regarded as proceeds of crime. In other words, property in whatever form mentioned in Section 2(1)(v), is or can be linked to criminal

activity relating to or relatable to scheduled offence, must be regarded as proceeds of crime for the purpose of the 2002 Act. It must follow that the Explanation inserted in 2019 is merely clarificatory and restatement of the position emerging from the principal provision [i.e., Section 2(1)(u)].

251. The "proceeds of crime" being the core of the ingredients constituting the offence of money-laundering, that expression needs to be construed strictly. In that, all properties recovered or attached by the investigating agency in connection with the criminal activity relating to a scheduled offence under the general law cannot be regarded as proceeds of crime. There may be cases where the property involved in the commission of scheduled offence attached by the investigating agency dealing with that offence, cannot be wholly or partly regarded as proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act — so long as the whole or some portion of the property has been derived or obtained by any person "as a result of" criminal activity relating to the stated scheduled offence. To be proceeds of crime, therefore, the property must be derived or obtained, directly or indirectly, "as a result of" criminal activity relating to a scheduled offence. To put it differently, the vehicle used in commission of scheduled offence may be attached as property in the concerned case (crime), it may still not be proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act. Similarly, possession of unaccounted property acquired by legal means may be actionable for tax violation and yet, will not be regarded as proceeds of crime unless the concerned tax legislation prescribes such violation as an offence and such offence is included in the Schedule of the 2002 Act. For being regarded as proceeds of crime, the property associated with the scheduled offence must have been derived or obtained by a person "as a result of" criminal activity relating to the concerned scheduled offence. This distinction must be borne in mind while reckoning any property referred to in the scheduled offence as proceeds of crime for the purpose of the 2002 Act. Dealing with proceeds of crime by way of any

process or activity constitutes offence of money-laundering under Section 3 of the Act.

252. Be it noted that the definition clause includes any property derived or obtained "indirectly" as well. This would include property derived or obtained from the sale proceeds or in a given case in lieu of or in exchange of the "property" which had been directly derived or obtained as a result of criminal activity relating to a scheduled offence. In the context of Explanation added in 2019 to the definition of expression "proceeds of crime", it would inevitably include other property which may not have been derived or obtained as a result of any criminal activity relatable to the scheduled offence. As noticed from the definition, it essentially refers to "any property" including abroad derived or obtained directly or indirectly. The Explanation added in 2019 in no way travels beyond that intent of tracking and reaching upto the property derived or obtained directly or indirectly as a result of criminal activity relating to a scheduled offence. Therefore, the Explanation is in the nature of clarification and not to increase the width of the main definition "proceeds of crime". The definition of "property" also contains Explanation which is for the removal of doubts and to clarify that the term property includes property of any kind used in the commission of an offence under the 2002 Act or any of the scheduled offences. In the earlier part of this judgment, we have already noted that every crime property need not be termed as proceeds of crime but the converse may be true. Additionally, some other property is purchased or derived from the proceeds of crime even such subsequently acquired property must be regarded as tainted property and actionable under the Act. For, it would become property for the purpose of taking action under the 2002 Act which is being used in the commission of offence of money-laundering. Such purposive interpretation would be necessary to uphold the purposes and objects for enactment of 2002 Act.

253. Tersely put, it is only such property which is derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled

> offence 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 supplied)

34. The Supreme Court has postulated in explicit terms that only such property which is derived or obtained directly or indirectly as a result of criminal activity relating to scheduled offence can be regarded as 'proceeds of crime'. The possession of unaccounted property acquired by legal means may be actionable for tax violations, yet will not be regarded as proceeds of crime unless it constitutes an offence which is included in the Schedule. For being regarded as proceeds of crime, the property associated with the scheduled offence must have been derived or

obtained by a person as a result of criminal activity relating to the concerned scheduled offence. 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. The expression 'derived or obtained' is indicative of criminal activity relating to a scheduled offence already accomplished.

35. Mr. Anil Singh, learned Additional Solicitor General, however, submitted that in the very judgment of **Vijay Choudhary (supra)**, the Supreme Court has further expounded that the offence of money laundering is not dependent on or linked to the date on which the scheduled offence or 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. It was further submitted that the Supreme Court has also held that the offence under Section 3 is a standalone offence. Therefore, according to Mr. Singh, the fact that the unaccounted money came to be transferred to the account of the Shri Sai Shikshan Sanstha before the alleged dates of the commission of predicate offence is of no significance.

36. It is true that the Supreme Court has observed in paragraph 270 of the judgment in the case of **Vijay Choudhary (supra)**, that the offence of money laundering is not dependent on or linked to the date on which the scheduled offence is

committed and the date which assumes significance is the date on which the person indulges in the process or activity connected with such proceeds of crime. However, further observations in paragraph 281 to 283 make the position abundantly clear that the existence of the proceeds of crime within the meaning of Section 2(1) (u) is quintessential. They read as under :

> **"281**. The next question is: whether the offence under Section 3 is a standalone offence? Indeed, it is dependent on the wrongful and illegal gain of property as a result of criminal activity relating to a scheduled offence. Nevertheless, it is concerning the process or activity connected with such property, which constitutes offence of money-laundering. The property must qualify the definition of "proceeds of crime" under Section 2(1)(u) of the 2002 Act. As observed earlier, all or whole of the crime property linked to scheduled offence need not be regarded as proceeds of crime, but all properties qualifying the definition of "proceeds of crime" under Section 2(1) (u) will necessarily be crime properties. Indeed, in the event of acquittal of the person concerned or being absolved from allegation of criminal activity relating to scheduled offence, and if it is established in the court of law that the crime property in the concerned case has been rightfully owned and possessed by him, such a property by no stretch of imagination can be termed as crime property and ex-consequenti proceeds of crime within the meaning of Section 2(1)(u) as it stands today. On the other hand, in the trial in connection with the scheduled offence, the Court would be obliged to direct return of such property as belonging to him. It would be then paradoxical to still regard such property as proceeds of crime despite such adjudication by a Court of competent jurisdiction. It is well within the jurisdiction of the concerned Court trying the scheduled offence to pronounce on that matter.
>
> **282.** Be it noted that the authority of the Authorised Officer under the 2002 Act to prosecute any person for offence of money- laundering gets triggered only if there exists proceeds of crime within the meaning of Section

> 2(1)(u) of the 2002 Act and further it is involved in any process or activity. Not even in a case of existence of undisclosed income and irrespective of its volume, the definition of "proceeds of crime" under Section 2(1)(u) will get attracted, unless the property has been derived or obtained as a result of criminal activity relating to a scheduled offence. It is possible that in a given case after the discovery of huge volume of undisclosed property, the authorised officer may be advised to send information to the jurisdictional police (under Section 66(2) of the 2002 Act) for registration of a scheduled offence contemporaneously, including for further investigation in a pending case, if any. On receipt of such information, the jurisdictional police would be obliged to register the case by way of FIR if it is a cognizable offence or as a non-cognizable offence (NC case), as the case may be. If the offence so reported is a scheduled offence, only in that eventuality, the property recovered by the authorised officer would partake the colour of proceeds of crime under Section 2(1)(u) of the 2002 Act, enabling him to take further action under the Act in that regard.
>
> **283**. Even though, the 2002 Act is a complete Code in itself, it is only in respect of matters connected with offence of money- laundering, and for that, existence of proceeds of crime within the meaning of Section 2(1)(u) of the Act is quintessential. Absent existence of proceeds of crime, as aforesaid, the authorities under the 2002 Act cannot step in or initiate any prosecution."

37. In the case at hand, as regards the aforesaid second and third components of transfer to the account of Shri Sai Shikshan Sanstha, it appears that in respect of the transfer of the amount during the period 2011-19 (third component), there is no allegation that the said property had been derived or obtained as a result of criminal activity relating to scheduled offence. Even in respect of the amount of Rs.1.12 Crores, allegedly transferred during the period September 2020 to November,

2020 (second component), there does not seems to be any allegation that the said property was derived or obtained as a result of any criminal activity relating to the scheduled offence. On the contrary, what is alleged is that the Applicant had laundered unaccounted cash amount to the tune of Rs.1.12 Crores to the account of Shri Sai Shikshan Sanstha, during his tenure as Home Minister (Para 8.7 of Supplementary Prosecution Complaint)

38. To add to this, money trail is sought to be established in respect of the amount of Rs.1.71 Crores only, which allegedly forms part of the amount of Rs.4,70 Crores allegedly extorted from the Orchestra Bar owners (para 8.9 and 8.10 of the Supplementary Prosecution Complaint).

39. In view of the aforesaid nature of the allegation and the material in support thereof, I am inclined to agree with the submission of Mr. Chaudhary that the prosecution case does not project the aforesaid two components of alleged unaccounted cash as 'proceeds of crime'. Whether the third component of Rs.1.71 Crores, prima facie, appears to be 'proceeds of crime', would be considered a little latter, while dealing with the primary accusation that the Applicant instructed Mr. Sachin Waze to collect money from bar owners/establishments, as that constitutes an integral part of the gravamen of indictment against the Applicant.

40. In order to lend support to the allegation that the Applicant exercised influence over the transfers and postings of the police officials and thereby obtained

undue advantage, the prosecution has banked upon the statements of Mr. Sachin Waze, Mr. Sanjeev Palande, Co-accused, Mr. Ravi Vhatkar, PA of the Applicant, Mr. Param Bir Singh, then Commissioner of Police and Mr. Sitaram Kunte, then Additional Chief Secretary.

41. Mr. Sanjeev Palande, the then PS to the Applicant, in his statement under Section 50 of the PMLA, stated that another Cabinet Minister representing a constituent party in the then Government, used to send recommendations for transfers and postings of police officials to the Applicant and a list for recommending the transfers and postings of the police officials was made final, and no record was maintained in the office of the Home Minister. Mr. Ravi Vhatkar, who was then working as OSD in the office of the Applicant, stated that the Applicant in consultation with another Cabinet Minister, used to prepare the list and forward the same to the concerned PEB for necessary action at their end.

42. Mr. Sitaram Kunte, the then Additional Chief Secretary (Home), and chairperson of PEB, also stated that the Applicant used to handover an unofficial list containing suggestions in respect of certain police officers/certain posts with regard to transfers and postings. He used to orally convey those recommendations / suggestions to the other members of PEB. The said suggestions were discussed and evaluated and whoever found suitable, as per merits, was considered and included unanimously by the PEB in the recommended list. He further added that most of the

suggestions/recommendations given by the Applicant, in the form of unofficial list, used to be included in the final order. At times, on the directions of the Applicant, Mr. Palande, then PS, used to handover such list to him.

43. Mr. Param Bir Singh, who was also a member of the PEB, stated that the list of names of the police officials to be transferred and posted, was prepared in the office of the Applicant and given to Mr. Sitaram Kunte, the then Additional Chief Secretary, and the proceedings of the committee were a mere formality where members in spite of their reservations and protests had to agree and sign the recommendations of the meeting of the Board.

44. On the strength of the aforesaid statements, Mr. Anil Singh, would submit that the fact that the Applicant prepared and forwarded unofficial list of the police officers for transfers and postings to the concerned PEB is stated to by one and all. This *modus operandi* was resorted to by the Applicant to make a farce of acceptance of all the recommendations of the PEB, in majority of the cases, as the recommendations were, in fact, those engineered by the Applicant himself. The exercise of undue influence in the matter of transfers and postings is, thus, writ large.

45. Mr. Chaudhari, learned Senior Advocate, joined the issue by advancing a submission that under the provisions of the Maharashtra Police Act, the Applicant in the capacity of the Home Minister was the authority to make the transfers and postings. The mere fact that the Applicant made certain suggestions which were

considered by the Board may not, by itself, amount to exercise of undue influence, much less, an offence. It was further submitted that even if the statements of the witnesses are taken at par, there is no element of criminality involved therein. None of the abovenamed witnesses or any of the persons who were either transferred and posted or denied the desired posting, have stated that the said exercise was done for illegal gratification. Consequently, there is no element of generation of 'proceeds of crime' for the alleged predicate offence. Only Mr. Sachin Waze makes a bald allegation that money exchanged hands.

46. From the perusal of the statement of Mr. Sachin Waze recorded on 19th June, 2021, it becomes evident that with regard to the transfers and postings of Deputy Commissioners of Police in the month of July, 2020, Mr. Waze stated that after 3-4 days of the transfers and postings orders being reversed, 'he learnt' that a sum of Rs.40 Crores had been collected from the police officers and out of that, Rs.20 Crores were given to the Applicant.

47. Mr. Param Bir Singh in the statement recorded under section 50 of the PMLA also adverted to the said incident of transfers and postings of DCPs in the month of July, 2020 and asserted that he 'had heard' that there were huge consideration paid to the Applicant through some intermediary for favourable transfers and postings.

48. In the aforesaid statements, evidently both the deponents claimed to

have 'learnt or heard' that money changed hands. These statements ex-facie cannot bear weight of the allegation of generation of proceeds of crime out of the alleged predicate offence of exercise of influence over the transfers and postings of the police officials. These statements ex-facie lack the element of certainty as to the source, time and place. They prima facie appears to be hear-say.

49. It is pertinent to note that there is no categorical allegation in the supplementary prosecution complaint that a particular property has been derived or obtained as a result of criminal activity relating to the scheduled offence of exercise of undue influence over transfers and postings. Instead what is alleged is that the Applicant laundered unaccounted cash during the period he was holding the office of the Home Minister.

50. This takes me to the crux of the allegations against the Applicant of instructing Mr. Sachin Waze to collect money from the orchestra bar owners/establishments. The statements of Mr. Sachin Waze, Mr. Sanjay Patil, the then Assistant Commissioner of Police, Social Service Branch, Mr. Mahesh Shetty, Mr. Rameshwwar Ramgopal Yadav and other bar owners and Mr. Param Bir Singh are pressed into service to buttress this allegation.

51. Primary reliance appears to be on the statement of Mr. Sachin Waze recorded under Section 50 of the PMLA and the confession in the CBI Case, recorded before the learned Magistrate. A brief resume of the statements may be necessary :

52. In the statement recorded on 19th June, 2021 Mr. Sachin Waze stated that in the month of October, 2020 after a meeting at the Applicant's official residence 'Dnyaneshwari', one Mr. Karankumar Shetty gave a list of 1750 bars and restaurants and asked him to collect Rs.3 Lakhs from each bar and restaurants in lieu of favouring them for operating their bars beyond prescribed time and without any restriction as to the occupancy. The Applicant asked Mr. Shetty to arrange a meeting of bar and restaurant owners with Mr. Sachin Waze. A meeting was arranged with the orchestra bar owners in the month of December, 2020. Representatives of the orchestra bar owners present thereat, were asked to pay a sum of Rs.3 Lakhs each. Another meeting was held on 16th December, 2020 which was also attended by Mr. Sanjay Patil, ACP. Mr. Waze claimed to have collected approximately a sum of Rs.4.70 Crores between December 2020 to February, 2021. In the month of January, 2021, the Applicant called and instructed him to handover the cash to Mr. Kundan Shinde, his PA, the co-accused. Immediately, Mr. Kundan Shinde called Mr. Waze and the latter handed over a sum approximately Rs.1.60 Crores to Mr. Kundan Shinde outside Sahayadri Guest House. In the month of February, 2021, the Applicant again called him and instructed to handover cash to Mr. Kundan Shinde. Again Mr. Waze received a call from Mr. Shinde and, accordingly, handed 11 bags containing cash amount of Rs.3 Crores to Mr. Shinde.

53. Mr. Waze further stated that he had informed Mr. Param Bir Singh about

the instructions of the Applicant to collect money and Mr. Param Bir Singh advised him against following the instructions of the Applicant. The subsequent statements of Mr. Waze are in elaboration of or explanatory to the aforesaid statement.

54. In the confession before the learned Magistrate, in CBI Case, Mr. Waze stated that, post Diwali 2020, the Applicant had told him that there were 1750 bars in Mumbai and on an average Rs.3 Lakhs per bar should be collected and given to him. On his disinclination, the Applicant threatened to suspend him again. Immediately, thereafter, he informed the said fact to Mr. Param Bir Singh, the then Commissioner of Police. Upon insistence of the Applicant, Mr. Waze claimed to have had a meeting with the representatives of the bar owners in mid December, 2020 and asked them to collect money and hand it over to him to be paid to 'No.1', a code word for the Applicant. Initially a good luck amount of Rs.40 Lakhs was paid by the bar owners namely Mahesh Shetty and Jaya Poojari. Only after the collections in the months of January and February, 2021, he had given the cash, so collected, to the Applicant through Mr. Shinde, the co-accused. The first installment was in the last week of January 2021, of about 1.70 Crores. Mr. Shinde had called him near Sahyadri Guest House and the bags containing cash were transferred from the car of Mr. Waze to that of Mr. Shinde. The second was of Rs.3 Crores which were again handed over, after Mr. Shinde called him near Raj Bhavan signal square.

55. Mr. Ramesh Kumar Yadav and Mr. Mahesh Shetty and other bar owners

whose statements have been recorded under Section 50 of the PMLA, have stated that meetings were held with Mr. Sachin Waze, in his office, in the premises of Commissioner of Police Office. The amounts to be paid as per category of the bar were decided and, at that time, Mr. Sachin Waze informed them that the money so collected will go to 'No.1' and Crime Branch and Social Service Branch of Mumbai Police. Monies were collected and paid to Mr. Sachin Waze.

56. Mr. Param Bir Singh, on his part, stated that Mr. Sachin Waze had briefed him about the expectation of the Applicant of collection of Rs.100 Crores including Rs.40-50 Crores from restaurants and bars, in the second half of February, 2021 and he had advised him not to succumb to the pressure and not to indulge in such illegal activities. Similarly, Mr. Patil, ACP had also briefed him and Mr. Patil was also advised against indulging in any such activities. As to who is No.1, referred to by Mr. Sachin Waze, Mr. Param Bir Singh stated that the Commissioner of Police was never called or referred to as No.1.

57. At this stage, it is necessary to note a material deviation from the aforesaid version in the form of statement of Mr. Sanjay Patil. In his statement recorded by ED under Section 50 of PMLA, Mr. Patil referred to the meetings in the office of Mr.Sachin Waze with the orchestra bar owners, wherein Mr. Sachin Waze, after the bar owners left the office, allegedly informed him that he was collecting money from the orchestra bar owners for allowing them to run the bars without any

restrictions. Subsequently, in the month of March, 2021 Mr. Waze informed him that the Applicant had asked him to collect Rs.3 Lakhs each from 1750 bars across Mumbai. Upon being enquired, Mr. Sachin Waze informed him that he had already appraised the Commissioner of Police about the said demand.

58. On 4th March, 2021 according to Mr. Patil, when he visited 'Dnyaneshwari' the then Official residence of the Applicant, along with Mr. Raju Bhujbal, the then DCP, Mr. Sanjeev Palande asked both of them as to whether the collection of Rs.3 Lakhs each from 1750 bars and restaurants across Mumbai was being made, to which he replied that the figure of number of bars was false and he and his branch were not indulging in any such collection. Mr. Patil claimed to have informed the said fact about the said conversation with Mr. Palande to Mr. Param Bir Singh, the then Commissioner of Police.

59. Mr. Patil in his statement under Section 161 of the Code before the Investigating Officer in CBI Case, claimed to have enquired with Mr. Waze as to why he was collecting the amount from the orchestra bar owners. Mr. Waze replied that he was doing it for 'No.1'. When he asked as to who was 'No.1', Mr. Waze informed him that it was Commissioner of Police. In another statement recorded by the learned Metropolitan Magistrate under Section 164 of the Code in C.R.No.71 of 2021 registered with Goregaon Police Station, Mr. Sanjay Patil reiterated that after the meeting with the orchestra bar owners, he had enquired with Mr. Sachin Waze as to

why he was collecting the amount, the latter replied that it was for No.1. Upon being further questioned as to who was No.1, Mr. Waze told that it was Commissioner of Police.

60. Banking upon the aforesaid statements of Mr. Sanjay Patil, and Mr. Mahesh Shetty, Uday Kumar Shetty and Jaya Poojari, owners of the bar recorded under Section 164 of the Code, wherein they asserted that in common parlance, Commissioner of Police was considered to be No.1 in the police hierarchy, it was submitted that the person for whom Mr. Waze was allegedly collecting money from the orchestra bar owners, was not the Applicant, but the then Commissioner of Police. These statements which were recorded before the learned Magistrate stand on a higher footing than the statements extracted by the ED under Section 50 of the PMLA.

61. The situation which thus, obtains is that the allegation of collection of a sum of Rs.4.70 Crores from the bar owners by Mr. Sachin Waze are borne out by the statements of Mr. Waze as well as the persons who claimed to have paid the said amount to Mr. Waze. The said amount in the context of the allegation would satisfy the description of 'proceeds of crime'. For whom or at whose behest/instance the said amount was collected is the pivotal question.

62. Mr. Anil Singh canvassed a submission that there is material to indicate that the proceeds of crime were delivered to the Applicant either directly or indirectly.

The said factum of possession itself would constitute an offence punishable under Section 3, even if there is no material to indicate that the said proceeds of crime were subsequently layered or integrated. In addition, according to Mr. Singh, in the case at hand, there is material to indicate that the proceeds of crime found its way to the accounts of Shri Sai Shikshan Sanstha through complex process of layering and integration.

63. At this stage, the statements of Mr. Surendra Jain, co-accused and Mr. Sudhir Baheti, Chartered Accountant, assume significance. Mr. Jain stated that he and his family members operate around 40 shell companies. Mr. Sudhir Baheti, CA, would convey the requirement of credit in lieu of cash. At the instructions of Mr. Sudhir Baheti, the amount were credited to the account of Shri Sai Shikshan Sanstha through RTGS/cheque. Since the year 2013, he had been crediting the amounts to the account of Shri Sai Shikshan Sanstha. He claimed to have transferred approximately Rs. 4 Crores to the account of Shri Sai Shikshan Sanstha through M/s. V.A.Realcom Pvt. Ltd., M/s. Reliable Finance Company Pvt. Ltd. and M/s. Utsav Securities Pvt. Ltd.

64. Mr. Sudhir Baheti, CA states that he had known Mr.Surendra and Virendra Jain, co-accused and Mr. Hrishikesh Deshmukh, son of the Applicant, who was managing the affairs of Shri Sai Shikshan Sanstha. At Mr. Hrishikesh's instance, he had coordinated transfer of credit to the account of Shri Sai Shikshan Sanstha

during the period 2013-2021. A sum of Rs.4,18,67,782/- was, thus, credited to the account of Shri Sai Shikshan Sanstha in the aforesaid fashion. After receipt of the credit, Mr. Hrishikesh Deshmukh used to pass the required amount in cash through Jain brothers to Havala operators.

65. As enunciated in the case of **Vijay Choudhary (supra)**, in the context of the allegation of money laundering, in the case at hand, it has to be seen whether there is material to show that the aforesaid amounts, especially a sum of Rs.1.71 Crores transferred to the account of Shri Sai Shikshan Sanstha, partakes the character of 'proceeds of crime'. To put it in other words, whether the said amount was derived or obtained directly or indirectly as a result of criminal activity relating to the scheduled offences for which the Applicant and others are arraigned. In Supplementary Prosecution Complaint, the prosecution has approached with a positive case that the said amount of Rs.1.71 Crores transferred during the months of February and March, 2021 (first component) forms part of the amount of Rs.4.70 Crores allegedly extorted by Mr. Sachin Waze from the bars owners and handed over to Mr. Kundan Shinde. This part of the allegation, as indicated above, primarily rests on the claim of Mr. Sachin Waze.

66. Mr. Chaudhary, learned Counsel for the Applicant, urged that the statement of Mr. Sanjay Patil that Mr. Sachin Waze told him that the money was being collected for the then Commissioner of Police, and the owners of the bars, who

categorically stated that in their estimation, 'No.1' in the police force was the Commissioner of Police, indicate that there is no link between the alleged criminal activities of Mr. Sachin Waze and the Applicant and the alleged 'proceeds of crime' so collected by Mr. Sachin Waze and the amount credited to the account of Shri Sai Shikshan Sanstha.

67. The statements of the bar owners do not appear to carry the matter any further as it is their assessment as to who the 'No.1' was in the common parlance. Mr. Sanjay Patil, however, asserted that upon being inquired, Mr. Sachin Waze told him that 'No.1' was the then Commissioner of Police. This statement of Mr. Sanjay Patil, in my view, is required to be considered in the context of the sequence of events. As it emerges from the record, Mr. Sanjay Patil's presence in the meeting of Mr. Sachin Waze with the representatives of the bar owners is stated to both by Mr. Sachin Waze and those representatives. He was the in-charge of Social Service Branch, which monitored the functioning of bars. The inquiry by Mr. Sanjay Patil as to for whom the amount was being collected was, in a sense, natural. At that point of time, when the extortion of money from the bar owners allegedly commenced, according to Mr. Patil, Mr. Sachin Waze disclosed that the money was being collected at the instance of the then Commissioner of Police.

68. In the aforesaid view of the matter, the credibility of accusation entirely hinges on the statements of Mr. Sachin Waze, the co-accused, on both the points, as to

at whose instance the money was collected and to whom the money, so collected, was allegedly delivered. The latter aspect, it appears, solely rests on the claim of Mr. Sachin Waze.

69. During the course of the submissions, on instructions, the Court was informed that Mr. Sachin Waze has been declared an approver by the CBI in the predicate offences, and in instant case also, an application has been preferred by Mr. Sachin Waze to declare him as an approver and the ED has given its no objection to the grant of the said prayer.

70. As of now, the status of Mr. Sachin Waze is a co-accused. The statements of Mr. Sachin Waze, banked upon by the prosecution, are but statements of a co-accused. To what extent, even at this stage, the statements of co-accused can be used against another, may warrant consideration. Even if it is assumed that the confession of a co-accused can be used against another co-accused, in the event of a joint trial, under Section 30 of the Evidence Act, 1872, or for that matter in the event of grant of pardon, the co-accused Mr. Sachin Waze deposes as an approver in favour of the prosecution, the question of reliability may arise in the light of the well recognized principles of law. Undoubtedly, that would be a matter for trial. But the character in which the statements are made by Mr. Sachin Waze and credibility of accusation therein qua the Applicant, in the light of the material on record, does bear upon the exercise of discretion while considering the prayer for bail.

71. I propose to consider the credibility of the statements of Mr. Sachin Waze from two perspectives. One, in the light of the multiple statements made by him Two, whether any support or sustenance can be drawn to the statements of Mr Sachin Waze from other quarters.

72. As the starting point of the alleged demand to collect money from the bars and restaurants was allegedly in the meeting in the month of October 2020 in which Mr. Karunakar Shetty had given the list of 1750 bars and restaurants, during the course of hearing, the Court inquired as to whether the statement of Mr. Karunakar Shetty was recorded. Mr. Anil Singh fairly tendered a copy of the statement of Mr. Karunakar Shetty which was recorded on 8th November, 2021. It would be suffice to note that Mr. Karunakar Shetty had a different tale to tell. He claimed to have met Mr. Sachin Waze once and, in the said meeting, the latter demanded Rs.10 lakhs for unhindered functioning of his restaurants and bar till late hours. On the aspect of the delivery of the cash amount, there is a significant difference in the version of Mr. Sachin Waze in the confession made before the learned Magistrate. In the statement before the ED, Mr. Sachin Waze claimed that he had received calls from the Applicant to deliver the cash amount to Mr. Kundan Shinde and the latter, thereafter, called him and collected the cash. In the confession before the learned Magistrate, Mr. Sachin Waze stated that he received call from Mr. Kundan Shinde and, thereupon, went to the designated places and delivered the cash. No call was thus attributed to the

Applicant before the delivery of the cash amount. This omission, prima facie, cannot be said to be innocuous. In a sense this runs against the claim of Mr. Sachin Waze of direct instructions by the Applicant to Mr. Sachin Waze, immediately before the alleged delivery of cash to Mr. Kundan Shinde.

73. On the second aspect, as noted above, Mr. Sanjay Patil's statements runs counter to the version of Mr. Sachin Waze as to the identity of the person for whom the amount was allegedly collected. As far as support sought to be drawn from the statement of Mr. Param Bir Singh, again it is imperative to note that Mr. Sachin Waze claimed to have appraised Mr. Param Bir Singh that there was instruction from the Applicant to collect money from the bars/restaurants in the month of February, 2021, but he did not disclose that he was already collecting the amount. The claim that Mr. Sanjeev Palande had also asked Mr. Sanjay Patil and Mr. Raju Bhujbal to collect a sum of Rs.3 Lakhs per month from 1750 bars/restaurants in a meeting of 4th March, 2021, prima facie, does not seem to have been borne out by the statement of Mr. Sanjay Patil. A perusal of the statement of Mr. Sanjay Patil indicates that, in the said meeting, Mr. Sanjeev Palande inquired with Mr. Sanjay Patil as to whether such amount was being collected from the bars/restaurants.

74. Without delving into the aspect of the alleged inconsistent statements made by Mr Sachin Waze before the other forums including Justice Chandiwal Commission of Enquiry, where Mr. Sachin Waze, allegedly disowned everything, in

my view, the aforesaid material, prima facie, renders it unsafe to place reliance on the statement of Mr. Sachin Waze, a co-accused, that cash amount was collected and delivered to Mr. Kundan Shinde at the instructions of the Applicant.

75. Mr. Chaudhary's criticisam of the credentials of Mr. Sachin Waze, in the light of the situation in which Mr. Sachin Waze finds himself, borne out by the material on record, may carry some substance. In the least, the tenure of Mr. Sachin Waze as a police officer has been controversial. He was under suspension for almost 16 years. He came to be arrested by NIA in C.R.No.35 of 2021 for the alleged murder of a person in connection with the occurrence of a gelatin laden SUV. His statements were recorded by ED whilst he remained in the custody of jurisdictional Court.

76. All these factors if considered on the anvil of the test enunciated in the case of Ranjitsingh Sharma (supra) may persuade the Court to hold that, in all probabilities, the Applicant may not be ultimately convicted.

77. The aforesaid consideration impels me to hold that the Applicant has succeeded in crossing the first hurdle. Satisfaction regarding the Applicant not committing the offence, while on bail, can be legitimately arrived at on the basis of the fact that there are no antecedents to the credit of the Applicant. Secondly, the substratum of the prosecution case is that it was the office of the Home Minister, which the Applicant abused to indulge in predicate offences. The Applicant has long been divested of the said office.

78. There is another facet which deserves consideration. Inviting the attention of the Court to the medical record, Mr. Chaudhary submitted that the Applicant is even otherwise entitled to be released on bail by invoking the first proviso to Section 45 of the PMLA. Mr. Anil Singh, learned ASG endeavoured to resist the prayer on the count that the Application is not preferred on medical grounds. I am afraid, it may not be proper to construe the first proviso to Section 45 in such a constricted way. The proviso can be taken into account even when the Court is considering the Application for bail on merits and not necessarily only when the accused seeks bail on the grounds mentioned in the proviso.

79. The first proviso to Section 45 reads as under :

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

80. The aforesaid proviso to Section 45 of PMLA appears to have been inserted by the legislature to mollify the rigour of the restrictions envisaged by the main part of sub-section (1) of Section 45 of PMLA. It is pertinent to note that such a provision is not to be found in other statutes which contain identical restrictions like MCOCA, NDPS and UAPA. The intent of the legislature to vest discretion in the Court to grant bail despite the existence of the bar in the main part of sub-section (1) of Section 45 is required to be given effect to. In my view, the proviso is required to be

construed in such a manner that effect can be given to main part of Section 45(1) as well as the discretion which the proviso vests in the Court.

81. As a general rule, the proper function of a proviso is that it qualifies the generality of enacting part by providing an exception and takes out, from the main enactment, a portion which, but for the proviso, would fall within the ambit of the enacting part. Normally a proviso is not construed in such fashion as to completely nullify the main enactment. If it is held that the proviso can be resorted to only after the accused fully satisfies the twin conditions, then the proviso would be rendered otiose. Conversely, if it is held that if the personal attributes of an accused satisfy the requirement of proviso, the accused can be released on bail, *de hors* the nature of the accusation and material in support thereof, e.g. in case of a woman accused, the main part of Section 45(1) would be rendered nugatory and the very object of insertion of twin conditions would be defeated. Steering clear of these two extremes, exercise of judicious discretion, depending of the facts of the given case, appears to be the correct approach.

82. In the case at hand, pursuant to the directions of the Court, the Chief Medical Officer, Mumbai Central Prison, Mumbai submitted a report on 8th July, 2022 wherein the Applicant was diagnosed to be suffering from :

> "Irritable Bowel with accelerated hypertension I known case of ischemic heart disease with bradycardia, chronic obstructive pulmonary disease, hyperlipidaemia, psoriasis, insomnia, recurrent bilateral shoulder dislocation

and right lower limb radiculopathy."

83. The health status as of that day of the Applicant was as under :

> "Patient is suffering from frequent episodes of loose motion, severe headache, chest pain episodes, high blood pressure, flared psoriasis, pain over shoulder joint post dislocation, tingling sensation over right lower limb. At present he is managed conservatively on medications."

84. Mr. Chaudhary further submitted that the Applicant had recent episodes of heath scare. On 14th July, 2022 the Applicant had a fall and shoulder dislocation. He was advised C.T. Brain. On 26th August, 2022 the Applicant was rushed to JJ Hospital as he had chest pain and a fall. He was advised MRI Brain Angio. Copies of the medical reports / certificates are placed on record in support of the submissions.

85. The material on record does indicate that the Applicant has been suffering from multiple ailments. He is 73 years of age. Few of the ailments may classified as de-generative. The medical reports/certificates also show that the Applicant is suffering from chronic ailments, as well. In the light of the material on record, it would be audacious to observe that the Applicant is not a sick person.

86. Mr. Anil Singh submitted that all the necessary treatment has been provided to the Applicant and there is no material to show that the Applicant is suffering from such a disease which cannot be treated at prison hospital and, therefore, the Applicant does not deserve to be enlarged on bail on medical grounds. Reliance

was placed on the judgments of the Supreme Court in the cases of State of **Uttar Pradesh V/s. Gayatri Prasad Prajapati**[6] and **Pawan @ Tamatar V/s. Ram Prakash Pandey and Anr.**[7] to bolster up the aforesaid submission.

87. Evidently, the exercise of discretion on medical ground is rooted in facts of a given case. In the case at hand, the Court has considered the entitlement of the Applicant for bail on merits as well, and found a prima facie case for exercise of discretion is made out. As the proviso empowers the Court to exercise the discretion in favour of an accused who is otherwise sick or infirm, the Court has considered the material on record and finds, in the totality of the circumstances, a case for exercise of the discretion under the proviso as well.

88. The Applicant appears to have roots in society. The possibility of fleeing away from justice seems remote. The apprehension on the part of the prosecution of tampering with evidence and threatening the witnesses can be taken care of by imposing appropriate conditions.

89. The Application, therefore, deserves to be allowed. Hence, the following order :

ORDER

(i) The Application stands allowed.

(ii) The Applicant – Anil V. Deshmukh be released on bail on

6 2020 SCC online SC 843
7 (2002) 9 SCC 166

furnishing a P.R. bond in the sum of Rs.1 Lakh and one or two sureties in the like amount to the satisfaction of the learned Judge, PMLA, Mumbai.

(iii) The Applicant shall report the Office of the Enforcement Directorate on every Monday in between 10.00 a.m. to 12.00 noon for a period of two months from the date of his release. Thereafter, the Applicant shall report to the said office on every alternate Monday from 10.00 a.m. to 12.00 noon for next four months.

(iv) The Applicant shall attend each and every date of the proceedings before the PMLA Court, Mumbai.

(v) The Applicant shall remain within the jurisdiction of the PMLA Court i.e. Greater Mumbai till the trial is concluded and shall not leave the area without prior permission of the PMLA Court.

(vi) The Applicant shall surrender his passport before the PMLA Court, if not already surrendered.

(vii) The Applicant shall not, either himself, or through any other person, tamper with the prosecution evidence and give threats or inducement to any of the prosecution witnesses.

(viii) The Applicant shall not indulge in any activities similar to the activities on the basis of which the Applicant stands prosecuted.

(ix) The Applicant shall not try to establish communication with the co-accused or any other person involved directly or indirectly in similar activities,

through any mode of communication.

(x) The Applicant shall co-operate with the expeditious disposal of the trial and in case the delay is caused on account of any act or conduct of the Applicant, the bail shall be liable to be cancelled.

(xi) In the event the Applicant violates any of the aforesaid conditions, the relief of bail granted by this Court shall be liable to be cancelled.

(xii) After release of the Applicant on bail, he shall file an undertaking within two weeks before the PMLA Court stating therein that he will strictly abide by the aforesaid conditions.

(xiii) By way of abundant caution, it is clarified that the observations made in the order are limited to the consideration of the question of grant of bail and they shall not be construed as an expression of opinion which bears on the merits of the matter in this case as well as the prosecution for the predicate offences.

(N.J.JAMADAR, J.)

At this stage, Mr. Anil Singh, learned ASG seeks stay to the execution and operation of this order as number of issues were raised by the Respondent based on the judgments of the Supreme Court. It is further submitted that in view of the current holidays, it may not be possible to immediately move the Supreme Court.

Mr. Nikam, learned Counsel for the Applicant resisted the prayer for

stay. It is submitted that after a full fledged hearing, this Court has passed an order and there is no justification to stay the order of grant of bail.

Since this Court has considered *inter alia* the aspect of 'proceeds of crime' and the effect of proviso to Section 45(1) of PMLA, the request for stay seems justifiable. As the Supreme Court will reopen on 10th October, 2022, it would be expedient in the interest of justice to direct that the bail order shall become effective from 13th October, 2022.

(N.J.JAMADR, J.)