2024:DHC:7421

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

RESERVED ON: 25.07.2024

% ***PRONOUNCED ON: 18.09.2024***

\+ CRL.M.C. 5481/2022

DIRECTORATE OF ENFORCEMENT ..... Petitioner

Through: Mr.Zoheb Hossain, special cousel for ED with Mr. Vivek Gurnani, Mr. Kartik Sabharwal, Mr. Kanishk Maurya, Mr. Vivek Gaurav and Ms.Abhipriya Rai, , Advts. for ED.

versus

RAHIL HITESHBHAI CHOVATIA ..... Respondent

Through: Mr. Vikram Chaudhari, Sr. Adv. with Mr. Rishi Sehgal, Ms. Arveen Sekhon, Ms. Nikita Gill, Ms. Muskaan Khurana, Advts.

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA,J :

1. The present petition under Section 439(2) read with Section 482 Code of Criminal Procedure, 1973 has been filed against the impugned order dated 19.10.2022 passed by learned ASJ, Patiala House Courts, New Delhi in ECIR/20/HIU/2021 dated 01.09.2021 vide which the learned ASJ granted the bail to the Respondent.

2. The facts, as briefly set out by the Directorate of Enforcement, are that a letter dated 10.06.2021 was received from the Inspector General of Police, Crime Law & Order, Uttarakhand, informing about the registration of FIRs bearing No. 14/2021 dated 18.05.2021, No. 1/2021 dated 18.05.2021, and No. 19/2021 dated 20.05.2021 by the Uttarakhand Police for the commission of offences under Section 420 of the IPC and under Sections 66C & 66D of the IT Act. It was also informed that FIR No. 141/2021 dated 29.05.2021 was registered by the Special Cell, Delhi Police, against unknown persons for the commission of offences under Sections 419, 420, 468, 471, 34, and 120-B of the IPC and Section 66D of the IT Act. FIR No. 8/2021 dated 01.06.2021 was registered for the commission of offences under Section 420 of the IPC and Section 66D of the IT Act by the CID, Cybercrime PS, Karnataka State Police, regarding similar cases of cheating and fraud nationwide, amounting to approximately Rs. 250-300 crores.

3. The preliminary investigation revealed that this was a case of large-scale money laundering, wherein public money was looted through apps such as Power Bank App, Tesla Power Bank App, Ezplan, etc., by luring people with the promise of doubling their money in a short period. Initially, the public received 10-15% of the deposited amount as interest; however, after some time, they stopped receiving any money, and the executives of these apps became inaccessible. Allegedly, the money deposited by the public was further transferred to the bank accounts of various shell entities through payment gateways such as

PayU and Razorpay, as well as through regular banking channels. The Special Cell, Delhi Police, also filed a chargesheet on 29.07.2021 in FIR No. 141/2021 dated 29.05.2021. It was stated that the proceeds of crime (PoC) of approximately Rs. 250 crores were collected through the Razorpay payment gateway from more than 5 lakh victims in this cheating and fraud case. The Special Cell chargesheeted around 15 people, and 59 bank accounts were frozen. The chargesheet also alleged that some Chinese nationals were the masterminds behind the Power Bank App fraud and that, in conspiracy with local individuals, including some CA/CS professionals, they formed companies, appointed directors, opened bank and payment gateway accounts, and arranged SIM cards. Allegedly, the chargesheeted individuals and others assisted the Chinese nationals in conspiring to induce innocent people to invest their hard-earned money through online apps and websites like Power Bank App, Tesla Power Bank App, and Ezplan.

4. Pursuant to the filing of the chargesheet, some of the offences were classified as scheduled offences, prompting the Directorate of Enforcement (ED) to begin an investigation under the Prevention of Money Laundering Act (PMLA), 2002, and register ECIR-No. ECIR/20/HIU/2021. During the course of the investigation, the ED discovered that, from August 2020 to June 2021, various shell companies such as M/s. Diyabati Technology Pvt Ltd, M/s. Maojaza Technology Pvt Ltd, M/s. Sumyth Technologies Pvt Ltd, etc. (first-layer entities), were either formed or acquired by Chinese nationals with the assistance of Indian nationals. The bank accounts of these

first-layer shell companies were then used to collect money from the public, and this money, obtained through fraudulent means, was further layered and laundered through several bank accounts of other dummy entities, such as M/s. Akash Corporation, M/s. Haresh Corporation, M/s. Balaji Traders, M/s. Dynamic Fab World, M/s. Jitender Enterprises, etc. (second-layer entities), during the period from August 2020 to June 2021. Ultimately, the laundered money was transferred out of the country under the guise of payments for imports, import logistics, and in the form of cryptocurrencies.

5. During the course of the investigation, the ICICI Bank accounts of M/s. Diyabati Technology Pvt Ltd (Account No. 244605500362), M/s. Maojaza Technologies Private Ltd (Account No. 244605500407), and M/s. Sumyth Technologies Private Ltd (Account No. 244605500408) (first-layer shell entities) were analyzed. This analysis revealed that substantial funds received in these accounts were subsequently transferred to various other bank accounts, including the IndusInd Bank accounts of M/s. Akash Corporation (Account No. 259023954406) and M/s. Haresh Corporation (Account No. 201004377970) (second-layer entities). The ED's investigation also uncovered that these funds were further layered and laundered through additional accounts, including the ICICI Bank account of M/s. Sagar Diamonds Ltd. (Account No. 123805005479) and the IndusInd Bank account of M/s. Patel Rushabh & Co. (Account No. 201007176105) (third-layer entities). It was submitted that M/s. Sagar Diamonds Ltd. further transferred these funds either to its own SBI account (Account No. 039392347980) for

outward remittances under the guise of imports or to the IDFC Bank account (Account No. 100055588628) and SBI account (Account No. 39583280574) of M/s. RHC Global Exports Pvt Ltd (fourth-layer entities), which further remitted the funds outward under the pretense of imports from Hong Kong and Dubai.

6. During the investigation, summons were issued to M/s. Akash Corporation on 19.04.2022, but they were returned with the remark "Left." Summons were also issued to Mr. Vaibhav Dipak Shah, Director of M/s. Sagar Diamonds Ltd., on 02.06.2022, 24.06.2022, and 28.06.2022, but these were not complied with. Instead of complying, Mr. Vaibhav Dipak Shah fled to Dubai on 28.06.2022. An analysis of the KYC and ICICI bank account statements of M/s. Sagar Diamonds Ltd. revealed that the bank account was opened on 28.08.2020, and approximately Rs. 7.50 crores of public funds, identified so far as being obtained through fraud, were laundered through this account during May 2021. These funds were then transferred to M/s. RHC Global Exports Pvt. Ltd., an associated entity of M/s. Sagar Diamonds Ltd. Further analysis of the bank account statements of M/s. RHC Global Exports Pvt. Ltd. revealed that the company remitted hundreds of crores abroad during the scam period from November 2020 to June 2021 under the guise of payments for imports. The KYC information for the SBI and IDFC bank accounts of M/s. RHC Global Exports Pvt. Ltd., as well as the ICICI bank account statement of M/s. Sagar Diamonds Ltd., showed that the respondent was a common Director in both companies.

7. The respondent was summoned to record his statement on 11.07.2022. However, instead of cooperating with the investigation, the respondent allegedly attempted to flee to Dubai and was detained by the Bureau of Immigration (BOI) on 07.07.2022. Subsequently, his statement was recorded under Section 50 of the PMLA, 2002. Rather than providing the requested details, the respondent shifted the responsibility onto Mr. Vaibhav Dipak Shah, his brother-in-law, claiming that Shah handled all matters related to trading, exports/imports, and finance for M/s. Sagar Diamond Ltd. and M/s. RHC Global Exports Pvt. Ltd. The ED's case is that the respondent, despite being a Director of both companies, deliberately shifted the burden of providing details to Shah, knowing he had already fled to Dubai and could not be contacted. The investigation also revealed that the respondent had obtained a three-year work visa for the UAE, allowing him to travel frequently to Dubai under the guise of employment as a Sales Executive at Gems Star Trading FZE, based in Ajman, UAE. Furthermore, it was found that M/s. Sagar Diamonds Ltd. had made outward remittances of approximately Rs. 12 crores during May 2021 to Gems Star Trading FZE under the pretext of payments for diamond imports, indicating the respondent's involvement in transactions executed abroad.

8. The respondent was arrested on 19.09.2022 at 23.40 hours at New Delhi.

9. Vide the impugned order dated 19.10.2022, learned Sessions Judge after noting the submissions of the parties and the relevant laws, admitted the respondent on bail on the following terms;

A. There is no reference in the response/reply of the ED regarding any connection of respondent or his company with shell companies like M/s. Diyabati Technology Pvt Ltd, M/s. Maojaza Technology Pvt Ltd, M/s. Sumyth Technologies Pvt Ltd, etc. (first layer entities).

B. There is no evidence shown on the record reflecting any connection of respondent with M/s. Akash Corporation, M/s. Haresh Corporation, M/s. Balaji Traders, M/s. Dynamic Fab World, M/s. Jitender Enterprises, etc. (second layer entities) and therefore mere acquisition of transfer of funds from account of "first layer entities" to second, third, fourth layer entities in itself does not show required knowledge of those funds being proceeds of crime.

C. The allegations made by the ED regarding transfer of huge amount from the account to first layer entities to successive layer entities are without any establishing any connection of respondent with such transfer of funds.

D. M/s Sagar Diamonds Ltd of which allegedly the respondent is one of the Director is in the business of manufacturing in gold/diamond jewellery and it had business with M/s Akash Corporation. The only transaction between M/s Sager Dimonds Ltd and M/s RHC Global Exports Pvt. Ltd is regarding Rs.7.10 crores which is based on e-invoices showing that it was business transaction regarding the purchase of jewellery.

E. The remittance of sum of Rs.10 crores to Gems Star and Jiya Impex is also supported with e-way bills, airway bills, project

invoices etc.

F. Though, the ED has made allegation of transfer of of funds to the tune of Rs.160 Crores from M/s Akash Corporation, M/s Harsh Corporation, M/s Patel Rushab & Co. to M/s Sagar Diamonds Ltd, However, admittedly, the ED has alleged laundering to the tune of Rs.7.10 crores without any documentary basis of segregating sum of Rs.7.10 crores to the other amounts. Learned Trial Court also inter alia held that it is not clear as to how the funds so transferred have been described as proceeds of crime.

G. The bare fact that the ED could locate certain transactions in the account of M/s Sagar Diamonds Ltd and M/s RHC Global Exports Pvt. Ltd. is not itself sufficient to draw an assumption that the said property/funds found part of proceeds of crime.

H. The respondent is related to the fourth layer entities, and there is no evidence connecting them to the first and second layer entities. The ED, through the present petition, has challenged the grant of bail on the following grounds;

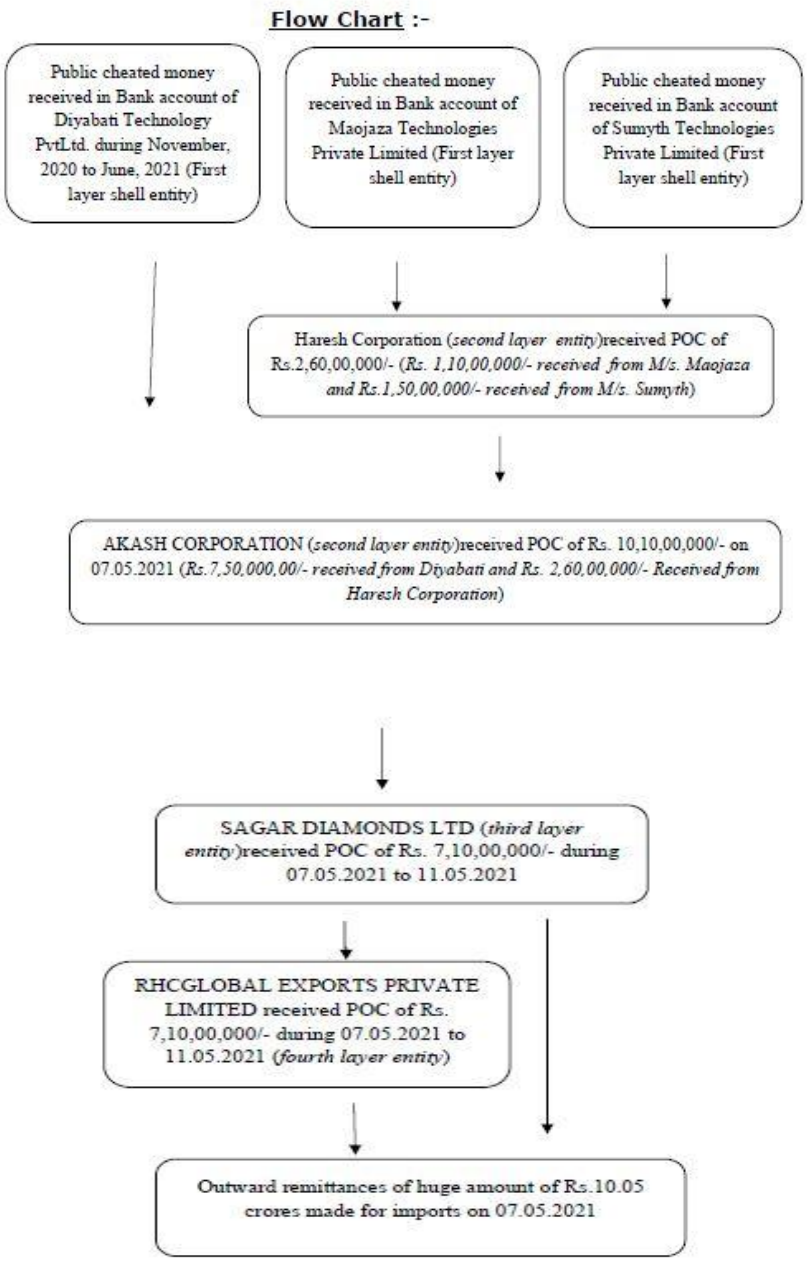
(i) That the petitioner has remained non cooperative during the investigation and did not submit the complete book of accounts of M/s Sagar Diamonds Ltd and M/s RHC Global Exports Pvt. Ltd. The analysis of the part books of accounts of M/s. RHC Global Exports Pvt Ltd and M/s. Sagar Diamonds Ltd and Bank account statements of M/s. Akash Corporation, M/s. Patel Rushabh & Co., M/s. Haresh Corporation, M/s. RHC Global Exports Pvt Ltd and M/s. Sagar Diamonds Ltd, it is noticed that M/s.

Sagar Diamonds Ltd has received funds to the tune of approx. Rs.160 crores from M/s. Akash Corporation, M/s. Haresh Corporation and M/s. Patel Rushabh & Co. during the scam period i.e. from November, 2020 to June, 2021 and therefore the observation of he learned Trial Court that there is no material on the record to connect the "fourth layer entities" concerning to the respondent with the first and second layer entitites is wrong on the face of it. In this regard ED has also submitted that M/s. RHC Global Exports Pvt Ltd has shown purchases of approx. Rs.40.20 crores from M/s. Akash Corporation during the period from November, 2020 to March, 2021.

(ii) The bail is also liable to the cancelled as the respondent in his statements recorded u/s 50 of the PMLA, falsely stated that he does not know any Mr. Akash Panchal (M/s. Akash Corporation), Mr. Rushabh Patel (M/s. Patel Rushabh & Co.) and Mr. Haresh Panchal (M/s. Haresh Corporation) whereas the whatsapp chats of Mr.Saurin Shah another Director in M/s. Sagar Diamonds Ltd on 05.09.2022, indicates that Mr. Vaibhav Shah & Mr. Saurin Shah are in contact with the aforesaid persons of M/s Akash Corporation for preparing legal Declarations/Affidavits with regard to the sham transactions carried out involving the respondent and his associated persons and entities.

(iii) The analysis of these documents has revealed that all the said persons have executed such legal documents on 22.08.2022 mentioning the same addresses at which the Summons were issued. The ED alleged that these persons are not available at such addresses and are not traceable. The field enquiries also revealed that Mr. Akash Panchal, and Mr. Haresh Panchal relatives and had sold and vacated their property at 13, Pallavith Society, Shahibaug, Ahmedabad in the year 2019. The field enquiry also revealed that Mr.Akash and Mr. Haresh Panchal both are engaged in the business of trading of Vegetables. Similarly, Mr. Rushabh Patel is engaged in the business of Grains. Similarly, M/s. Akash Corporation, M/s. Patel Rushabh & Co. and M/s. Haresh Corporation were not found into diamonds and jewellery business. The ED has also alleged that the respondent has been authorized signatory on behalf of M/s. Sagar Diamonds Ltd. and M/s. RHC Global Exports Pvt Ltd.

(iv) The flow chart as prepared by the ED showing the layering of funds is as follows;



(v) The bail is liable to the cancelled as if respondent remains on bail he shall derail the entire investigation and the offshore location where the money was laundered and transferred will not be identified.

(vi) The respondent had failed to satisfy with twin conditions

for grant of bail as required under Section 45 of the PMLA.

(vii) ED has also sought the cancellation of bail on the ground that petitioner is at flight risk as even after service of the summons, he tried to flee away from the justice. The ED alleged that the respondent and his brother in law Mr. Vaibhav Dipak Shah and his associate Mr. Saurin Rasiklal Shah are having strong network in India and abroad and they may influence the witnesses or destroy evidence pertaining to the investigation.

(viii) The present case is very serious case which pertains to a conspiracy hatched by a Chinese syndicate to dupe and gullible citizens of this country and constitutes a class apart and need to be visited with a different approach in the matter of bail. The ED has placed reliance on the following judgments;

State of Gujarat* v. *Mohanlal Jitamalji Porwal, (1987) 2 SCC 364],

Anil Kumar Yadav v. State (NCT of Delhi),(2018) 12 SCC 129

Sunil Dahiya v. State (Govt. of NCT of Delhi), 2016 SCC OnLine Del 5566

10. It is pertinent to mention here that after filing of the bail applications, certain orders came to be passed by this Bench regarding the modification of the terms and conditions of the bail. However, it is not disputed that the respondent has not violated any condition of the bail.

11. The respondent in its counter affidavit denied all the averments and submitted that well reasoned order for bail has been passed. It has been submitted that the respondent had appeared the ED as and when summoned and illegally arrested on 19.09.2022. The respondent submitted that even after grant of bail he had appeared as and when directed by the ED. The respondent submitted that the present petition is devoid of any substance or spirit but merely a browbeating, harassing and intimidating tactics with the sole motive and aim being to coerce, compel and force him to toe the line of the ED to make a confessional statement. The respondent submitted that the learned Sessions Judge has passed a detailed order on the basis of the material on the record. It has also been submitted that the learned Sessions Judge has followed the well settled principle "bail is a right and jail is an exception."

12. The respondent submitted that he is well qualified person being certified trader from Gemological Institute of America and over the few years. It has been submitted that the respondent is the Director of M/s RHC Global Exports Pvt. Ltd which is a diamond trading company based in the city of Mumbai and Surat that deals in cutting and polishing diamonds as well as rough diamonds. It has been submitted that the respondent is non-executive Director of M/s Sagar Diamonds Limited till he resigned on 02.08.2021. It has further been submitted that the respondent had no link or concern with the aforesaid FIRs lodged in respect of present scam nor he has been chargheeted by the Special Cell, Delhi Police. It has further been submitted that the allegation against the respondent which is being investigated by the ED is that "*funds to the tune of Rs.7.10 crores approax. Were further*

layered and laundered involving the Bank accounts of M/s Sagar Diamonds Ltd."

13. It has further been submitted that the transactions of Rs.7.10 Crores received from M/s Akash Corporation for the purchase of rough diamonds is genuine and duly accounted for and supported by invoices. It has further been submitted that the respondent is M/s Sagar Diamonds Limited is a public limited company and all the information regarding its financials are in public domain. It has further been submitted that the summons was issued to M/s Sagar Diamonds Limited through Mr. Vaibhav Deepak Shah, Director for appearance on 15.06.2022 to produce ""*Details of all transactions with M/s. Akash Corporation (Account No 259023954406) during the period January – 2021 to December – 2021, along with transaction proofs i.e. copy of invoices, vouchers, ledger, etc".* It has further been submitted that the notice was adequately and properly complied with by the respondent. It has further been submitted that the respondent was travelling to Dubai in the usual course of his business and was not aware about the Look Out Circular (LOC).

14. It has further been submitted that the money was received in the account of M/s RHC Global Exports Pvt. Ltd. from M/s Sagar Diamonds Ltd. in respect of the sale transaction of rough diamonds in the normal course of business and the respondent has no involvement with any activity arising out of the scheduled offence. It has further been submitted that subsequently, co accused Vaibhav Dipak Shah was admitted to anticipatory bail on 15.112022. Respondent submitted that Mr. Vaibhav Dipak Shah has already deposited an amount of Rs.7.10

Crore which was alleged proceeds of crime. In support of his submissions, learned counsel for the respondent has relied upon the following judgments;

i. ***Dolat Ram v. State of Haryana***, (1995) 1 SCC 349;

ii. ***Abdul Basit v. Mohd. Abdul Kadir Chaudhary***, (2014) 10 SCC 754;

iii. ***Myakala Dharmarajam v. State of Telangana***, (2020) 2 SCC 74;

iv. ***Air Customs Versus Shail Anand and Another*** 2022 SCC OnLine Del 114.

15. The respondent submitted that there are no supervening circumstances for cancelling of the bail nor is there any allegation that the respondent has misused or interfered in the course of the investigation. There is also no any allegation of tampering with the evidence or witnesses or threatening. The respondent submitted that he always complied with the conditions of the bail.

16. ED has filed the rejoinder to the counter affidavit filed by the respondent denying all the averments made in the counter affidavit and reiterated the averments made in the petition.

17. In the rejoinder, the ED submitted that an analysis of Mr. Akash Panchal's bank account showed a significant and frequent rotation of funds, disproportionate to the nature of his business and its terms. The ED further submitted that Mr. Akash Panchal, in his statement under Section 50 of the PMLA dated 18.11.2022, admitted to providing bogus accommodation entries to M/s Sagar Diamonds Ltd. and M/s RHC Global Exports Pvt. Ltd. through their directors, including the

respondent. It also emerged in Mr. Akash Panchal's statement under Section 50 of the PMLA that the respondent used to inform him of their requirements for RTGS payments into the bank account of M/s Sagar Diamonds Ltd. Additionally, Mr. Akash Panchal testified that he had not received any goods or materials from M/s Sagar Diamonds Ltd. during April 2022 against any outstanding amount, as these were merely accommodation entries. Furthermore, in his statement under Section 50 of the PMLA recorded on 18.11.2022, Mr. Akash Panchal stated that he was advised by an advocate, calling on behalf of M/s Sagar Diamonds Ltd. and its directors, including the respondent, not to appear before the ED until instructed to do so.

18. In the rejoinder, it was stated that Mr. Akash Panchal, in his statement under Section 50 of the PMLA recorded on 18.11.2022, admitted to executing a false legal document dated 23.08.2022. Allegedly, Mr. Akash Panchal also stated that he had not conducted any business trading with the first-layer entities and had only provided accommodation entries. The ED alleges that, thereafter, Mr. Akash Panchal failed to respond to the summons, left the given address, and retracted his statement made on 18.11.2022. The ED further alleged that mobile phones seized from Mr. Akash Panchal revealed that he was in contact with the respondent and had shared various worksheets containing details of financial transactions with shell entities and banking transaction messages, which were not found recorded in the books of account submitted by the directors of M/s Sagar Diamonds Ltd. The ED also alleged that an MOU for a property deal, executed by some individuals, including the respondent, on 24.05.2021, establishes

that Mr. Akash Panchal was in contact with the respondent. Therefore, the respondent's claim of not knowing Mr. Akash Panchal is false. It was also stated that Mr. Akash Panchal was in regular contact with Mr. Vaibhav Dipak Shah. The ED alleged that documents revealed that the funds arranged by Mr. Akash Panchal from his group entities were involved in a scheme to transfer funds into the bank accounts of M/s Sagar Diamonds Ltd.

19. The documents including transactions of Rs 5.65 crores with M/s Sagar Diamonds Ltd. In the rejoinder, ED also explained the statement made by Mr.Saurin Shah regarding engaging him in various activities by Mr.Vaibhav Dipak Shah.

20. In the rejoinder, the ED brought to the notice of the Courts to the following submissions/facts pertinent to the issue at hand:

a) SDL Directors were in contact of Akash Panchal, however, he neither produced Akash Panchal during investigation as committed by Rahil Chovatia in his statement on 13.07.2022 nor provided present whereabouts of Akash Panchal.

b) Legal Counsel of Vaibhav Dipak Shah and Rahil Chovatia instructed Akash Panchal not to join investigation in compliance of summons dated 25.07.2022 with an intention to derail the investigation.

c) SDL Directors Rahil Chovatia, Saurin Shah and Vaibhav Shah got prepared false affidavits from Akash Panchal on 23.08.2022 in respect of sham transactions with Akash Corporation with an intention to falsely explain the same.

d) SDL. Director Rahil Chovatia, being aware of the line of investigation and of the fact that mobile of codirector Mr. Saurin Shah has been impounded by the Directorate, deleted his whatsapp account data from his phone after impounding of mobile of Saurin Shah on 05.09.2022 by Directorate.

e) Legal Counsel of Vaibhav Shah and Rahil Chovatia got prepared false affidavit on 17.11.2022 for the Bail application matter of Mr. Saurin Rasiklal Shah.

f) On 18.11.2022, Akash Panchal was located by the Directorate and his statement was recorded in presence of Rahil Chovatia wherein he admitted that he has not done any diamond trading with Sagar Diamonds Ltd and has only provided accommodation entries to it as required by Rahil Chovatia and Vaibhav Shah. He also submitted his three mobile phones to corroborate the fact that he is into the business of providing accommodation entries and stated that he will submit further details/documents on 21.11.2022. However, he has not joined investigation till date.

g) On 23.11.2022, a postal letter from Akash Panchal is received by the Directorate informing his retraction from his statements dated 18.11.2022.

h) SDL Directors have been in contact with Akash Panchal throughout the investigation, however, instead of providing his whereabouts they influenced him not to join the investigation in compliance of summons. It is very likely that after recording statements of Akash Panchal on 18.11.2022 in presence of Rahil

Chovatia, SDL Directors have again influenced Akash Panchal not to join further investigation and also to retract from his statement.

i) In view of above, it is clear that SDL Directors have been creating false evidences and influencing the persons involved in the transactions under investigation which has delayed and hampered the investigation in PMLA case.

21. Sh. Zoheb Hossain, learned special counsel, along with Mr. Vivek Gurnani, submits that the order granting bail by the learned Sessions Judge is unjustified, illegal, and perverse, and therefore liable to be set aside. The learned counsel argued that bail can be canceled if it is wholly unjustified, patently illegal, or perverse. In support of this submission, reliance was placed on ***Puran v. Rambilas*** (2001) 6 SCC 338, wherein it was *inter alia* held that the rejection of bail at the initial stage and the cancellation of already granted bail should be considered differently, requiring very cogent circumstances for cancellation. Grounds for canceling bail include interference with justice, evasion, or abuse of the bail concession, although these are not exhaustive. Additionally, a perverse order granting bail in a heinous crime without reasons can be grounds for cancellation. The concept of canceling bail due to an unjustified or illegal order differs from canceling bail due to misconduct or new facts, as clarified in ***Gurcharan Singh v. State (Delhi Admn.)*** (1978) 1 SCC 118 under Section 439(2), the focus should be on whether the bail order had serious infirmities, justifying High Court interference in the interest of justice.

22. Learned Special Counsel submitted that while the jurisdiction to grant bail is discretionary, it cannot be exercised in an arbitrary, capricious, or injudicious manner. It was argued that bail can be canceled not only due to supervening circumstances or misconduct by the accused but also if the bail order is unjustified. Counsel submitted that if the bail order fails to consider relevant factors or is granted based on irrelevant considerations, the superior courts can set it aside. In such cases, the violation of conditions by the accused or supervening circumstances becomes irrelevant. Reliance has been placed on ***Neeru Yadav v. State of U.P.*** (2014) 16 SCC 508, wherein the Supreme Court*inter alia*held that while granting bail is discretionary, this discretion must be exercised with caution, especially in cases involving serious crimes. The Court referred to several precedents, such as ***Ram Govind Upadhyay v. Sudarshan*** (2002) 3 SCC 598 and ***Prasanta Kumar Sarkar v. Ashis Chatterjee*** (2010) 14 SCC 496, emphasizing the importance of considering the nature and severity of the crime, the potential for witness tampering, and the genuineness of the prosecution. The Court also highlighted that the cancellation of bail due to misconduct or new circumstances is distinct from setting aside an unjustified or illegal bail order. In the latter case, the focus is on the legality and soundness of the initial decision to grant bail, not on subsequent events or violations.

23. Sh. Zoheb Hossain, learned special counsel with Mr. Vivek Gurnani, submit that the impugned order by the learned Sessions Judge has passed the impugned order by ignoring material and evidence on the record and therefore suffers from perversity. It has been submitted that

though the detailed examination of evidence and elaborate documentation of the merits of the case may not be undertaken but the Court is required to be on reasons.

24. Mr. Vikram Choudhari, learned senior counsel for the respondent submits that simply put initially, the companies first layer entities were formed during the scammed period were found and purchased by the Chinese national with the help of some Indians. During the scam period, the bank account of these first layer companies were used for collecting the proceeds of crime to the tune of Rs. 250 crores from public through Power Bank App. Such cheated money was further layered and laundered through several bank account of various other dummy entities i.e., second layer entities. During the period August 2020 to June 2021 (during the scam period) and finally this money was taken out of country through third/fourth layer entities in the guise of payments made in the form of imports, import logistics and in the form of crypto currencies.

25. Learned counsel further submitted that during the period 07.05.2021 to 11.05.2021, POC to the tune of Rs. 10.10 crores was transferred from the first layer entities to the bank account of M/s Akash Corporation and M/s Haresh Corporation. During the period 07.05.2021 to 11.05.2021 and this was further layered and laundered during the same period in the ICICI Bank account of M/s Sagar Diamonds Ltd. M/s Sagar Diamonds Ltd. further transferred the said funds either to its own SBI account or in the guise of for making outward remittances in the guise of import or to the IDFC Bank account and SBI account of M/s. RHC Global Exports Pvt. Ltd. M/s. RHC Global Exports Pvt. Ltd.

further remitted the said POC or Rs. 10.10 crores outward during the same period remittances in the guise of imports from Hongkong and Dubai.

26. Learned counsel further submitted that Mr. Akash Panchal and Mr. Haresh Panchal, who are relatives and actually involved in the business of trading vegetables, were in constant touch with the respondent and other directors of M/s Sagar Diamonds Pvt. Ltd., including Mr. Vaibhav Dipak Shah and Mr. Saurin Shah, for preparing legal declarations related to the sham transactions.

27. Learned counsel submitted that Mr. Vaibhav Dipak Shah did not join the investigation and fled to Dubai on 28.06.2022. It was further submitted that the respondent made a false statement claiming he did not know Mr. Akash Panchal, whereas M/s. RHC Global Exports Pvt. Ltd., in which the respondent is a Director and shareholder, showed purchases of approximately Rs. 40.20 crores from M/s Akash Corporation during the period from November 2020 to March 2021. It was also submitted that the respondent is a director in both M/s Sagar Diamonds Pvt. Ltd. and M/s RHC Global Exports Pvt. Ltd. Additionally, it was noted that M/s Sagar Diamonds Pvt. Ltd. recorded sales of diamonds and jewelry to M/s Akash Corporation in April 2022 against long-standing advance payments of Rs. 97.67 crores, including the direct proceeds of crime of Rs. 10.10 crores, made since May/June 2021.

28. Sh. Zoheb Hossain, learned Special Counsel, along with Mr. Vivek Gurnani, representing the ED, submitted that it is improbable that a Promoter and Director of M/s. RHC Global Exports Pvt. Ltd., a

company engaged in diamond trading where the raw materials are so expensive, would not be involved in the company's sale and purchase matters. The learned Special Counsel also submitted that the respondent falsely shifted the responsibility onto Mr. Vaibhav Dipak Shah, knowing that he was unavailable for investigation. Furthermore, Mr. Vaibhav Dipak Shah was not associated with the company M/s RHC Global Exports Pvt. Ltd. in any official capacity, making it inexplicable how he could have been handling the company's purchase and export-import matters.

29. Learned counsel submitted that the respondent did not provide any documentary evidence authorizing Mr. Vaibhav Dipak Shah to handle such dealings on behalf of M/s RHC Global Exports Pvt. Ltd. The learned counsel further submitted that the respondent obtained a work visa permit for the UAE, valid for three years, to travel frequently to Dubai under the pretense of being employed as a Sales Executive at Gems Star Trading FZE, based in Ajman, UAE. M/s Sagar Diamonds Ltd. made an outward remittance of approximately Rs. 12 crores to this entity during the relevant scam period in May 2021, under the guise of payments for diamond imports, indicating that the accused was also involved in the transactions executed abroad.

30. Learned counsel submitted that the accused was the authorized signature of M/s RHC Global Exports Pvt. Ltd. and M/s Sagar Diamonds Ltd. Learned counsel submitted that the prosecution complaint has already been filed. It has further been submitted that after grant of bail to the respondent, Mr.Akash Panchal initially, remained absconded till he was traced on 18.11.2022 at Mumbai. It has

been submitted that in his statement under Section 50 of PMLA on 18.11.2022 at Mumbai Zonal Office, Mr. Akash Panchal admitted that he used to provide accommodation entries on the instructions of/to the M/s Sagar Diamonds Ltd. and M/s RHC Global Pvt. Ltd. on instructions of the respondent. Learned counsel also submitted that Mr.Akash Panchal had also admitted that he had not done any business with the first layer entities and had provided only accommodation entries.

31. Learned special counsel submits that the discretion has been revealed that Mr.Akash Panchal was not involved in any real business activity and was only providing accommodation entries. An entry of 5.65 cores was given to M/s Sagar Diamonds Ltd. which establishes that the fund availed by his group entities (involved in accommodation entries) were used to the transfer into the bank account of M/s. Sagar Diamonds Ltd. Learned counsel also submitted that there is material on the record that Mr. Akash Panchal and the respondent were in constant touch with each other and this fact has also been incorporated by the statement of Mr. Sourin Shah recorded in the statement of Section 50 of PMLA.

32. Learned counsel for the ED submitted that this is very serious case and it was revealed during investigation in PMLA that Mr. Sourin Shah was found assisting and making efforts for getting closure of this PMLA case of M/s Sagar Diamonds Ltd. and getting the impounded mobile phones of its Directors released for which POC of Rs.2.60 crores was also paid in case to Mr.Dinesh Singh Kushwaha and Mr.Jeetendra Prasad through hawala channel by exchanging ten rupee notes for delivery of cash amounts during the period September, 2022.

A search operation under Section 19 of PMLA was conducted on 01.03.2023 at Mumbai, Ahmedabad and Surat based offices and factory premises of Vaibhav Dipak Shah and his group companies M/s Sagar Diamonds Ltd., M/s RHC Global Exports Pvt.Ltd and M/s Sagarempire Jewels Pvt. Ltd. learned counsel submitted that the findings of search operation are as below;

i. No local stock was found at Mumbai and Ahmedabad offices of said companies, whereas, total local trade stock of approax 28.67 crorers was shown in stock registers of books of account M/s Sagar Diamonds Ltd. and M/s RHC Global Exports Pvt. Ltd. No explanation regarding the reason of physical stock of approax Rs.1425 crores not found during the searches at office and factory premises as shown in the books of account of abovesaid companies. The respondent and Mr. Vaibhav Dipak Shah has failed to explained the same despite opportunities given to them.

ii. The samples of Stock-in-Trade at SEZ units of above companies, the precious stones (Ruby) which were imported by these entities were found to be synthetic and of very low value in comparison to the import prices shown in their respective import documentation.

iii. Unexplained huge outstanding export balances of around Rs.16500 crores (i.e. Rs.7000 crores of M/s Sagar diamonds Ltd., Rs.6500 crores of M/s Sagarempire Jewels Pvt. Ltd., Rs.4500 Crores of M/s RHC Global Exports Pvt. Ltd.) was also noticed and same remained unexplained.

iv. The analysis of ledger of accounts of M/s Sagar Diamonds Ltd. and M/s RHC Global Exports Pvt. Ltd revealed that each of the said two entities has shown export sales of more than Rs.200 crores to Mars Ind & Comm Services Ltd. during the scam period April to June 2021 against which either the payment is outstanding till date or barter import purchases of similar goods has been shown to set off the Imports & Exports in their books of account. It hs further submitted that M/s Sagar Diamonds Ltd. shown total outstanding payment of Rs.1880 crores against exports to Mars Ind & Comm Services Ltd,Hongkong as on 01.04.2021 which was increased to Rs.5,374 crores as on 01.04.2022 and fianll the same was found increased to Rs.11,684 crores as on date of search whereas M/s RHC Global Exports Pvt. Ltd had shown total outstanding payment of Rs.304 cores against exports to Mars Ind & Comm Services Ltd. Hongkong as on 01.04.2021 which was increased to Rs.4,630 crores as on 01.04.2022 and finally the same was found increased upto Rs.6754 crores as on date of search. Learned counsel submitted that such exponential increase in huge outstanding funds against the Exports as well as the overvaluation and misdeclaration of the goods imported/exported found during search without any rationale and explaination by Mr.Vaibhav Dipak Shah and is associates leaves no scope of doubt that such Indian and foreign entities are in control of Mr. Vaibhav Dipak Shah are being used by

him with the sole motive to executive his illegal hawala activities and remitting funds outside the country.

v. The search operation also revealed that out of the funds of approx Rs.97.17 crores received during the same period from 14.04.2021 to 24.05.2021 (power bank app scam period), around Rs.90 crores were remitted by M/s Sagar Diamonds Ltd. to one Dubai based entity namely Gems Star Trading FZE of Mr.Amit Lakhani in the guise of payments against imports of Diamonds, which were shown exported to Mars Ind & Comm Services Ltd. Hongkong during the relevant period of 28.04.2021 to 02.06.2021. The enquiry revealed that Mr Amit Lakhani is close associate of Mr. Vaibhav Dipak Shah and involved in process of formation of shell entities at UAE and opening their bank accounts by introducing dummy proprietors through his other entity. Learned counsel submitted that respondent has also shown him as self as Sales Executive in Gems Star Trading FZE based at Ajman, UAE. Learned counsel submitted that therefore it is established that Mr. Vaibhav Dipak Shah and respondent are involved in remitting funds outside the country for executing hawala activities in the guise of Imorts through his controlled entities M/s Diamonds Ltd. and M/s RHC Global Exports Pvt. Ltd.

33. Mr. Vikram Choudhari, the learned counsel for the respondent vehemently denied all the averments made by the ED and submitted that the learned Trial Court has passed a reasoned and detailed order. It

has been submitted that in the learned Trial Court has rightly noted in the reply filed by ED, there is no reference of the respondent regarding his connection with "first layer entities". Learned counsel submitted that admittedly, the respondent has not been named or chargesheeted by the Special Cell. Learned senior counsel submitted that the learned Trial Court has rightly observed that no evidence has been placed reflecting any correction with the second layer entities. It has been submitted that the observations made by the learned Trial Court regarding the missing link of required knowledge "proceeds of crime" cannot be interfered.

34. Learned counsel submits that this case involves alleged money laundering to the tune of Rs. 7.10 crores, which has already been deposited by Mr. Vaibhav Dipak Shah and Mr. Akash Panchal. Counsel further submitted that the ED has now come up with exponentially higher figures, seemingly to mislead the Court. It was submitted that the transactions between M/s Sagar Diamonds Pvt. Ltd. and M/s RHC Global Pvt. Ltd. are supported by documents and are genuine transactions. Similarly, it was submitted that the transaction of Rs. 10.10 crores was made for importing goods, and during the relevant time, amounts of Rs. 507,599 were transferred to Gem Star, and Rs. 50,535,188 was transferred to M/s Jiya Impex. It was submitted that these were genuine transactions, duly documented. Learned senior counsel further submitted that there is no material on record to connect the respondent even with the second-layer entities.

35. Learned senior counsel submitted that it has been rightly observed that the mere transfer of funds from the accounts of first-layer entities to

second, third, or fourth-layer entities does not, by itself, indicate acquired knowledge that those funds were "proceeds of crime."

36. Learned senior counsel submitted that the respondent has no connection with Mr. Akash Panchal, Mr. Haresh Panchal, and that the transactions between M/s Akash Corporation and M/s Sagar Diamonds Pvt. Ltd. are ordinary and regular business transactions. It was submitted that among the many customers of the petitioner's company, M/s Akash Corporation Pvt. Ltd. is just one of them. Learned senior counsel argued that the allegations of the respondent being in touch with Mr. Akash Panchal on WhatsApp are merely inferences drawn to harass the respondent. Further, it was submitted that the respondent has no connection whatsoever with the case of Mr. Vaibhav Dipak Shah.

37. Learned senior counsel submitted that Mr. Vaibhav Dipak Shah was prevented from leaving the UAE due to a travel ban imposed on him by the authorities at the instance of certain vested interests. Counsel further argued that the ordinary business transactions between the companies were based on proper documentation, as per the law, with evidence provided. It was submitted that the assumptions made by the ED are baseless and merely based on whims and fancies. Learned senior counsel submitted that, in the present case, the cancellation of bail is devoid of any substantial merit and appears to be an attempt to harass and intimidate the respondent, with the sole motive of compelling and forcing him to align with the ED and make a confessional statement.

38. Learned senior counsel submitted that in landmark case ***Vijay Madanlal Chaudhary v. Union of India and Anr.*** 2022 SCC OnLine SC 929 , the following principles have been lead;

> *a. The term 'money laundering has no meaning other than the offence contemplated under Section 3 thereof which essentially hovers around dealing etc. with 'proceeds of crime:*
>
> *b. The definition of proceeds of crime, money laundering or property refers to only that property which may, directly or indirectly be derived as a result of any criminal activity relatable to scheduled offence;*
>
> *c. The word "relating to" (associated with/has to do with) used in Section 3 indicates only that property which is derived or obtained, directly or indirectly, as a result of criminal activity concerning the scheduled offence to be regarded as proceeds of crime;*
>
> *d. The "proceeds of crime" being the core of the ingredients constituting the offence of money-laundering, that expression needs to be construed strictly and therefore, the property must be derived or obtained, directly or indirectly, "as a result of" criminal activity relating to a scheduled offence;*
>
> *e. 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;*
>
> *f. Action cannot be resorted to against any person for money-laundering on an assumption that the property recovered from 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:*

g. In the event the person named in the criminal activity relating to a scheduled offence is 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.

39. Learned senior counsel further submitted that, based on the principles laid down, even the offense under the PMLA is not attracted. Learned senior counsel also submitted that, to date, the respondent and the co-accused have furnished all the information, materials, and documents sought by the ED from time to time, as revealed in the chart annexed as Annexure–R6 with the counter-affidavit filed by the respondent.

40. The Directorate of Enforcement has filed the present petition for cancellation of bail. The law regarding cancellation of bail was explained by apex court in ***Abdul Basit alias Raju and Others vs. Mohd. Abdul Kadir Chaudhary*** (2014) 10 SCC 754 wherein it was inter alia held as under:

"14. Under Chapter XXXIII, Section 439(1) empowers the High Court as well as the Court of Session to direct any accused person to be released on bail. Section 439(2) empowers the High Court to direct any person who has been released on bail under Chapter XXXIII of the Code be arrested and committed to custody i.e. the power to cancel the bail granted to an accused person. Generally the grounds for cancellation of bail, broadly, are, (i) the accused, misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place

himself beyond the reach of his surety, etc. These grounds are illustrative and not exhaustive. ....”

41. It is also pertinent to mention here that the concept of setting aside an unjustified, illegal or perverse order is absolutely different from cancelling an order of bail on the ground that the accused was misconducted himself or because of some supervening circumstances warranting such cancellation. Reliance can be placed upon ***Puran vs. Rambilas*** (2001) 6 SCC 338. Similarly in ***Narender K.Amin vs. State of Gujarat*** (2008) 13 ACC 584 it was reiterated that when irrelevant materials have been taken into consideration by the court granting order of bail, the same makes the said order vulnerable and subject to scrutiny by the appellate court. Thus, if an order of grant of bail is perverse, the same can be set at naught only by the superior court. In ***Ranjit Singh vs. State of M.P.*** (2013) 16 SCC 797 it was inter alia held that there is a distinction between the concept of setting aside an unjustified, illegal or perverse order and cancellation of an order of bail on the ground that the accused has misconducted himself or certain supervening circumstances warrant such cancellation. Thus, if the order granting bail is found to be perverse one or passed on irrelevant materials, it can be annulled by the superior court. In ***Mayakala Dharmarajam and others vs. State of Telangana and Another*** (2020) 2 SCC 743, the petition was filed for cancellation of bail on ground of illegality of order passed by the Sessions Court and conduct of appellants subsequent to their release after bail was granted. The High court allowed the application for cancellation of bail. It was contended by the appellants that no specific overt act was attributed to any of the

accused, except for omnibus allegations made against them. The apex court inter alia held that it must be remembered that rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to. The apex court inter alia held that cancellation of bail can be done in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. It was further inter alia held that if the court granting bail ignores relevant material indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail. It is pertinent to mention here that the apex court while examining the aspect of perversity inter alia held though the the Sessions Court did not discuss the material on record in detail, but there is an indication from the orders by which bail was granted that the entire material was perused before grant of bail. The apex court also observed that it was not the case of either the complainant-Respondent No.2 or the State that irrelevant considerations have been taken into account by the Sessions Court while granting bail to the Appellants. Thus, the apex court has inter alia held that bail granted to the appellants cannot be termed as perverse as the Sessions Court was conscious of the fact that the investigation was completed and there was no likelihood of the Appellant tampering with the evidence.

42. In ***Dolat Ram and Others vs. State of Haryana*** (1995) 1 SCC 249, the apex court while drawing the distinction between exercise of

jurisdiction in rejection of bail and cancellation of bail has inter alia held as under:

> *"Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail already granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial"*

43. Recently, the apex court in ***Prem Prakash vs. Union of India through the Directorate of Enforcement*** SLP (Crl) no. 5614/2024 dated 28.08.2024, while considering the scope of enquiry under Section 45 of PMLA has inter alia held as under:

> *"13. Coming back to the scope of inquiry under Section 45, Vijay Madanlal Choudhary (Supra), while reiterating and agreeing with the holding in Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra and Another reported in (2005) 5 SCC 294, held that the Court while dealing with the application for grant of bail in PMLA need not delve deep into the merits of the case and only a view of the Court based on the available material available on record is required. It held that the Court is only required to place its view based on probability on the basis of reasonable material collected during investigation. The words used in Section 45 are "reasonable grounds for believing" which means that 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. We deem it fit to extract the relevant portion (Para 131) from Vijay Madanlal Choudhary (supra):

"131. 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 Ranjitsing Brahmajeetsing Sharma (supra), held as under:

"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 the 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.

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.

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".

We are in agreement with the observation made by the court in Ranjitsing Brahmajeetsing 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 weigh 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 (supra), the words used in section 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."

(emphasis supplied)

44. In ***Manish Kothari v. Director of Enforcement*** BAIL APPLN. 2341/2023 dated 22.09.2023, the Delhi High Court reiterated that at the stage of considering a bail application, it should assess whether the accused possessed the requisite mens rea without requiring a definitive

finding of guilt. The jurisprudence of bail emphasizes that a person's liberty should not be interfered with except in exceptional cases, and courts should examine the case on the scale of broad probabilities. In several cases, including ***Sanjay Pandey v. Directorate of Enforcement*** SCC OnLine Delhi 4279 and ***Ranjit Singh Brahamjeet Singh Sharma v. State of Maharashtra*** (2005) 1 SCR 876, the principle of broad probabilities has been applied in granting bail. Additionally, the Supreme Court in ***Mohd. Muslim @ Hussain vs. State (NCT of Delhi)*** 2023 SCC OnLineSC 352 held that the court's assessment of the accused's likely guilt is a prima facie determination based on a reasonable reading of the material on record. This approach ensures that the liberty of individuals accused under special laws is balanced against public interest, without a meticulous examination of evidence during the bail stage.

45. In the present case, Mr.Zoheb Hossain, learned special Counsel for ED and Mr.Vivek Gurnani learned counsel have emphatically argued that the learned trial court has not discussed the entire material on record and has made certain observations which are contrary to the facts.

46. To start with the order granting bail is only a prima facie view being expressed by the court and such observations are not taken into consideration while deciding the matter finally. Generally, any observations made at the stage of bail are not taken into account after the parties lead their evidence and the matter is appreciated by the learned trial court. The case of the ED is based on the fact that the entity of the respondent has received the funds from the first, second and third layer entities. It is to be kept in mind that even as per ***Vijay***

Madan Lal Chaudhary (supra) it has categorically been held that ingredients constituting the offence of money laundering needs to be construed strictly. It is also no longer a matter of debate that the probative value of statement under section 50 of PMLA is to be considered at the stage of trial. The bail cannot be denied merely on the assumption that the property recovered from the respondent must be proceed of crime.

47. The ED has also sought cancellation of bail on the ground of certain WhatsApp chat of Mr.Saurin Shah another director in M/s Sagar Diamond Ltd. indicates that he was in touch of Vaibhav Shah for preparing legal declaration/affidavit of Akash Corporation. The criminality regarding transfer of funds is something which is to be considered at the stage of trial. The least discussion at the time on the merits of the case is desirable so as not to prejudice either of the parties.

48. The ED has alleged that the investigation enquiry revealed that Mr.Akash Panchal and Mr.Harish Panchal are not available at the given address and they were engaged in the business of trading of vegetables. The apprehension of the ED that if the petitioner is allowed to be remain on bail he may derail the investigation or is a flight risk are mere apprehension and no substantial reason has been given. The E.D. may always move the court for imposing more stringent condition. The facts of the case may be very serious in nature but that has to be tested and examined during the course of trial. The defence being put up is that all the transactions between the firm of the respondent with other entities are the genuine sale transactions in the normal course of

business. It is also a matter of record that alleged proceeds of crime of Rs.7.10 crore has already been deposited by Mr.Vaibhav Deepak Shah.

49. The frequent rotation of funds disproportionate to the nature of business of Mr.Akash Panchal and the authenticity of statement under Section 50 of PMLA is required to be examined during the trial. The investigation has already been completed and the complaint has already been filed. I consider that there is no material on record to allow the application of ED for cancellation of bail. This Court considers that there is nothing on record to indicate that the bail has been granted on the irrelevant considerations. Thus, the present petition is liable to be dismissed. However, before parting with, it is made clear that any observation made by the learned Sessions Judge in the order granting bail will not be taken into consideration at the time of final appreciation of evidence. The case at the final stage shall be decided in accordance with the law on the basis of material available on record.

50. In view of the above, the present petition and all the pending applications are rejected.

DINESH KUMAR SHARMA, J

SEPTEMBER 18, 2024
Pallavi/rb/NA..