IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 728 OF 2024

Sachin Balasaheb Sawant … Applicant

vs.

The Union of India and another … Respondents

Mr. Ashok Mundargi, Senior Counsel, a/w. Mr. Niranjan Mundargi, Mr. Vikram Sutaria, Mr. Mithilesh Mishra and Mr. Swapnil Balajiwale, i/b. Mr. Ujjwalkumar Chavhan for applicant.

Mr. Shreeram Shirsat a/w. Mr. Nishad Mokashi, Mr. Shekhar Mane, Mr. Nikhil Daga and Ms. Karishma Rajesh for respondent No.1-ED.

Ms. Rutuja Anil Ambekar, APP for respondent No.2-State.

CORAM : MANISH PITALE, J
RESERVED ON : 29th AUGUST, 2024
PRONOUNCED ON : 09th OCTOBER, 2024

ORDER:

. The applicant in the present case was arrested on 27.06.2023 and he is seeking bail, on the basis that despite the rigours of the twin test contemplated under Section 45 of the Prevention of Money Laundering Act, 2002 (PMLA), he is entitled to such relief.

2. The applicant joined the Indian Revenue Service in the year 2008 and after completing his training, he joined Central Excise Zone on 17.05.2010. Having served in various capacities, including as Deputy Director, Directorate of Enforcement, Mumbai, he was working as Additional Commissioner (Appeals), Lucknow CGST and CX Zone, when FIR dated 30.06.2022 was registered by the ACB, Mumbai against the applicant for offences under

Sections 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988 (PC Act) and Section 13(2) read with Section 13(1)(b) of the PC Act as amended in the year 2018, as also Section 109 of the Indian Penal Code, 1860. It was alleged in the FIR that during the check period between 12.01.2011 and 31.08.2020, the applicant had amassed assets disproportionate to his known sources of income, to the extent of about ₹ 2.45 crores. Anonymous information was received by the Central Bureau of Investigation (CBI) and on this basis, the ACB, Mumbai caused the FIR to be registered. It is pertinent to note that while investigation was undertaken in pursuance of the FIR, the applicant was never arrested. It is also an admitted position that even the chargesheet has not been filed till date in the said FIR.

3. Subsequently, on 13.12.2022, Enforcement Case Information Report (ECIR) bearing No.ECIR/MBZO-I/69/2022 was registered by the Directorate of Enforcement, Mumbai Zonal Unit, Mumbai (ED) i.e. respondent No.1 herein. The aforesaid FIR was treated as the scheduled or the predicate offence and it was recorded that the applicant had illegally amassed assets disproportionate to the tune of 204% of the known and legal sources of his income and that of his family members. On 27.06.2023, the applicant was arrested in connection with the aforesaid ECIR. In August 2023, the respondent No.1 filed complaint under Section 45 of the PMLA before the City Civil and Additional Sessions Judge, Greater Bombay (hereinafter referred to as the designated Court). In the said complaint, apart from giving the details of the material found during the course of investigation in connection with the said ECIR, gist of the statements recorded under Section 50 of the PMLA was also given. The proceedings are pending before the designated Court.

4. Mr. Ashok Mundargi, the learned senior counsel appearing for the applicant made the following submissions, while seeking bail for the applicant:

(a) It was submitted that a perusal of the FIR concerning the predicate offence in the present case, would show that it is an unsigned document, as the signature of the complainant/informant is missing. In fact, the column pertaining to complainant/informant in the FIR is blank. According to the learned senior counsel appearing for the applicant, this renders the FIR itself fundamentally defective and consequently, it vitiates the ECIR also. On this basis, it is claimed that the arrest of the applicant is rendered illegal and unsustainable.

(b) By referring to Section 13(1)(e) of the PC Act, prior to its amendment in the year 2018 and also Section 13(1)(b) of the PC Act, post its amendment in the year 2018, it was submitted that the very nature of the offence is such that the occasion to file the chargesheet and to proceed against the applicant in the predicate offence, would arise only if the applicant is unable to satisfactorily account for property, allegedly disproportionate to his known sources of income. Reliance was placed on the judgment of the Supreme Court, in the case of the *State of Haryana and others vs. Bhajan Lal and others* [**1992 Supp (1) SCC 335**], particularly paragraph No.76 thereof, to contend that there cannot be a preconceived idea of guilt in such cases. This indicates that respondent No.1 could not have registered the ECIR on a presumption that the assets stated to be disproportionate to the known sources of income of the applicant in the FIR, were indeed disproportionate assets and proceeds of crime in their entirety. It was only if the applicant was unable to satisfactorily account for such assets that the occasion would arise to register the ECIR and to proceed for investigation under the

provisions of the PMLA, by treating only such assets which were not satisfactorily accounted for, as the proceeds of crime.

(c) The CBI not having filed the chargesheet in connection with the said FIR and before it could be concluded that the applicant had failed to satisfactorily account for the assets, the respondent No.1 could not have proceeded to investigate into the matter, as doing so amounts to encroaching upon the province of the CBI as the investigating authority in respect of the FIR. Respondent No.1 can carry out the investigation only in respect of offences under Sections 3 and 4 of the PMLA and it cannot presume that the predicate offence has been committed. In this regard, reliance was placed on the judgment of the Supreme Court in the case of *Vijay Madanlal Choudhary and others vs. Union of India and others* (**2022 SCC OnLine SC 929**), judgments of the Delhi High Court, in the cases of *M/s. Prakash Industries Limited vs. Union of India and another* (**judgment and order dated 24.01.2023 passed in Writ Petition (C) No.13361 of 2018**) and *Harish Fabiani and others vs. Enforcement Directorate and others* (**judgment and order dated 26.09.2022 passed in Writ Petition (Crl) No.408 of 2022**) and judgment of Madras High Court in the case of *R.K.M. Powergen Private Limited vs. the Assistant Director, Directorate of Enforcement and another* (**judgment and order dated 08.06.2022 passed in Writ Petition No.24700 of 2021**).

(d) It was submitted that arrest order in the present case was vitiated, as contents of the remand application would show that there was hardly any material with respondent No.1 to record the reasons to believe for arresting the applicant. The applicant was arrested on 27.06.2023 and remand application was moved before the designated Court on 28.06.2023, while all the statements recorded under Section 50 of the PMLA in the present case, were recorded after the applicant was

arrested. According to the learned senior counsel appearing for the applicant, this demonstrates a preconceived notion of guilt on the part of respondent No.1, when the applicant was arrested, while there was hardly any material for reasons to believe by applying the objective test to arrest the applicant. In this regard, reliance was placed on judgments of the Supreme Court in the case of *Arvind Kejriwal vs. Directorate of Enforcement* (**judgment and order dated 12.07.2024 passed in Criminal Appeal No.2493 of 2024**), *V. Senthil Balaji vs. The State* (**judgment and order dated 07.08.2023 passed in Criminal Appeal Nos.2284-2285 of 2023**) and *Pankaj Bansal vs. Union of India and others* (**2023 SCC OnLine SC 1244**).

(e) It was further submitted that reliance placed on the statements recorded under Section 50 of the PMLA during the course of investigation was also misplaced, for the reason that all such statements were recorded after the applicant was arrested and also, that respondent No.1-ED proceeded on the presumption that the applicant had failed to satisfactorily account for the alleged disproportionate assets, without the CBI even having filed the chargesheet in connection with said FIR.

(f) It was submitted that the contention raised on behalf of respondent No.1, while opposing the present bail application by placing reliance on the statement of the applicant recorded under the provisions of the PMLA, is equally misplaced. Reliance was specifically placed on judgment of the Supreme Court in the case of *Prem Prakash vs. Union of India* (**judgment and order dated 28.08.2024 passed in Criminal Appeal arising out of SLP (Crl) No.5416 of 2024**), wherein the Supreme Court clarified the position of law that such statement of the accused recorded when he is already arrested, cannot be considered, as it would be hit by Section 25 of the Evidence Act.

(g) It was submitted that in the present case, when even chargesheet has not been filed in the predicate offence, there is absolutely no possibility of the trial being commenced against the applicant. It was emphasized that the stage of moving an appropriate application under Section 44(1)(c) of the PMLA is yet to arise and therefore, it is evident that the applicant will remain languishing in jail, with no possibility of the trial even commencing. In that context, the learned senior counsel for the applicant placed reliance on the judgments and orders passed by the Supreme Court in the case of *Ramkripal Meena vs. Directorate of Enforcement* (**judgment and order dated 30.07.2024 passed in SLP (Crl) No. 3205 of 2024**) and *Manish Sisodia vs. Directorate of Enforcement* (**judgment and order dated 09.08.2024 passed in Criminal Appeal arising out of SLP (Criminal) No.8781 of 2024**), to contend that the applicant having already undergone incarceration for more than 1 year and 3 months, he may be released on bail. The learned senior counsel for the applicant also relied upon a recent order dated 23.08.2024 passed by the Supreme Court in Writ Petition (Civil) No.406 of 2013 (**In re - Inhuman Conditions in 1382 Prisons**), whereby the Supreme Court directed immediate implementation of Section 479 of the Bharatiya Nyaya Suraksha Sanhita, 2023 (BNSS) for releasing the accused undertrials on bail, who have completed ½ or 1/3rd of the period of imprisonment.

5. On the other hand, Mr. Shreeram Shirsat, the learned counsel appearing for respondent No.1-ED opposed the prayer for bail and submitted as follows:

(a) The learned counsel for respondent No.1 first submitted that the contention raised on behalf of the applicant that respondent No.1 could

not even look at the question of disproportionate assets of the applicant and the investigation could be limited only to offences under Sections 3 and 4 of the PMLA, is wholly misplaced. It was submitted that in the present case, in the context of the predicate offence registered under the provisions of the PC Act, the investigation was undertaken with regard to the proceeds of crime, as contemplated under the PMLA and accordingly, steps taken by respondent No.1 towards investigation pertained to such aspects of the matter. It was submitted that a similar contention was rejected by this Court in the case of *Badshah Majid Malik vs. Directorate of Enforcement, Mumbai* (**order dated 19.06.2024 passed in Bail Application No.3135 of 2022**), when it was held that in terms of the law laid down by the Supreme Court in the case of **Vijay Madanlal Choudhary and others vs. Union of India and others** (*supra*), the offence of money laundering is not dependent on or linked with the date on which the scheduled offence was committed, but the relevant date is the date on which the person indulges in activities connected with the proceeds of crime.

(b) It was submitted that in the present case, all the facets of money laundering were satisfied and respondent No.1, through its investigation, had established the trail of money. It was evident that the applicant had routed ill-gotten money through his family members in cash amounts to purchase assets, thereby indicating that a strong *prima facie* case is clearly made out against the applicant. Much emphasis was placed on the details of cash amounts that came to light during the course of investigation.

(c) It was submitted that in the present case, at least 4 specific instances of placement, layering and integration were evident. These included a flat purchased at Sanpada, Navi Mumbai, thereafter, a flat purchased in

Adarsh Co-operative Society, Dadar, Mumbai as also a vehicle i.e. Ford Endeavour and in order to amass such assets, using bank accounts of family members. It was emphasized that the father of the applicant was a retired ASI from Mumbai Police, having his pension as the only source of income. The brother of the applicant is working as a police official in a relatively lower rank in the Protection Unit of Maharashtra Police and hence, none of them have any significant legal sources of income to justify the aforementioned assets.

(d) Much emphasis was placed on answers given by various persons, who were questioned during the course of investigation, including the father of the applicant, the applicant's driver and an associate of the applicant named Shashi Prabha Chauhan and others. By referring to the responses given to specific questions put to the said persons, it was claimed that no explanation was forthcoming about transfer of considerable cash amounts into the accounts of family members of the applicant, which were then used for purchasing movable and immovable properties. Even the statement of the applicant did not lead to any satisfactory explanation pertaining to the assets, which could be said to be amassed through proceeds of crime.

(e) It was submitted that in the present case, the applicant had undergone incarceration for only about 1 year and 3 months, thereby indicating that he cannot claim that the law laid down by the Supreme Court, in the context of long incarceration and remote possibility of the trial being completed in reasonable period of time. It was submitted that all efforts would be made to complete the trial at the earliest before the designated Court and the applicant may not be released on bail on the said ground.

6. This Court has considered the rival submissions in the light of the material placed on record. In the present case, it is crucial that the predicate offence pertains to allegation against the applicant of having amassed assets over a specific period of time (check period) disproportionate to his known and legal sources of income. Since the check period extends from 12.01.2011 to 31.08.2020, offences have been registered against the applicant under the PC Act, as it stood prior to the amendment of the year 2018 as also post-amendment. Therefore, offences have been registered in the predicate offence under the FIR as per Section 13(2) read with Section 13(1)(e) of the PC Act (prior to amendment in the year 2018) and Section 13(2) red with Section 13(1)(b) of the PC Act (post its amendment in the year 2018). In that light, it would be appropriate to refer to the said provisions pre and post amendment of the PC Act in the year 2018.

7. Section 13(1)(e) prior to amendment of the PC Act in the year 2018, reads as follows:

> "13. **Criminal misconduct by a public servant**:
> (1) A public servant is said to commit the offence of criminal misconduct-
> (a) xxxx
> (b) xxxx
> (c) xxxx
> (d) xxxx
> (e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.
>
> *Explanation*- For the purposes of this section, "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance

with the provisions of any law, rules or orders for the time being applicable to a public servant."

8. Section 13(1)(b) and Section 13(2) of the PC Act, post amendment in the year 2018, reads as follows:

> "13. **Criminal misconduct by a public servant**:
> (1) A public servant is said to commit the offence of criminal misconduct-
> (a) xxxx
> (b) if he intentionally enriches himself illicitly during the period of his office.
>
> *Explanation 1*. - A person shall be presumed to have intentionally enriched himself illicitly if he or any person on his behalf, is in possession of or has, at any time during the period of his office, been in possession of pecuniary resources or property disproportionate to his known sources of income which the public servant cannot satisfactorily account for.
>
> *Explanation 2.* - The expression "known sources of income" means income received from any lawful sources.
>
> (2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than four years but which may extend to ten years and shall also be liable to fine."

9. A perusal of the above-quoted provisions shows that the essential ingredient of the offence is failure on the part of the public servant to satisfactorily account for property disproportionate to his known sources of income. The explanations appended to the above-quoted provisions specifically clarify the purport of the expression "known sources of income". Thus, a *prima facie* case for offence under the said provision can be said to be made out, when the explanation given by the public servant, alleged to be holding property disproportionate to his known sources of income, is found

unsatisfactory. Chargesheet in such cases is filed, when the public servant accused for the said offence, is unable to offer a satisfactory account of the assets. The investigation into such an offence requires the investigating authority to take into account the explanation offered by the public servant and other material that comes on record during the course of investigation, to reach a conclusion as to whether the matter needs to go to trial upon filing of the chargesheet.

10. In the present case, admittedly, till date, the chargesheet has not been filed by the CBI in connection with the FIR registered against the applicant in the predicate offence. In other words, the investigation into the said matter is still pending and it is yet to culminate into filing of a final report.

11. A perusal of the ECIR registered in the present case, in the context of which the applicant was arrested, shows that the entire amount recorded in the FIR as being disproportionate assets to the extent of 204%, has been treated as proceeds of crime, for invoking the provisions of PMLA and to undertake investigation in respect of offences under Sections 3 and 4 thereof. In fact, the tenor of arguments on behalf of respondent No.1 in the present case, was that the said respondent was conducting investigation in the context of offences under Sections 3 and 4 of the PMLA, since the respondent was clearly entitled to investigate into activities undertaken by the applicant in connection with the proceeds of crime. It is in this context that the contention raised on behalf of the applicant that the respondent has encroached upon the province of the investigating authority i.e. CBI for offences under the PC Act, needs to be appreciated. There cannot be any quarrel with the proposition laid down by this Court in the case of **Badshah Majid Malik vs. Directorate of Enforcement, Mumbai** (*supra*), but the

observations made in the said order have to be appreciated in the factual matrix concerning the said case. The allegations in the said case pertained to smuggling on the basis of forged documents and the predicate offence was registered under the provisions of the Customs Act, 1962 by the Directorate of Revenue Intelligence. The Directorate of Enforcement in that case, had invoked the provisions of the PMLA, in the context of specific material, the value of which was determined, being smuggled illegally on the basis of forged documents. The proceeds of crime and the manner in which they were subsequently utilized, were the subject matter in the said case. It is in the context of such facts that reliance was placed on the judgment of the Supreme Court in the case of **Vijay Madanlal Choudhary and others vs. Union of India and others** (*supra*), to hold that the offence of money laundering was not dependent on the date on which the predicate offence was committed, but the relevant date was the date on which the accused indulged in the activities connected with the proceeds of crime.

12. In the present case, there is substance in the contention raised on behalf of the applicant that the offence which is treated as the predicate offence, is a peculiar offence, the principal ingredient of which is failure of the accused to satisfactorily account for the assets in question and thereafter, it can be said that specific assets could be categorized as disproportionate assets or assets disproportionate to the known sources of income of the accused. In the present case, the CBI has not even filed a chargesheet and if the applicant is able to satisfactorily account for the assets alleged to be disproportionate to his known sources of income, the CBI may not have any occasion to file the chargesheet against the applicant. There may be a situation where the CBI finds that the applicant has been able to satisfactorily account for part of the assets and that he is unable to

satisfactorily account for the remaining part. It is only in respect of those assets which, the applicant is unable to satisfactorily account for, that it perhaps could be said that such assets form the basis of proceeds of crime. The investigation still remaining pending in the predicate offence, in the facts of this case and the nature of offence alleged against the applicant, shows that what could be termed as proceeds of crime is yet in a flux and indeterminate, due to which this Court finds substance in the aforesaid contention raised on behalf of the applicant.

13. The respondent No.1 would certainly be well within its rights to conduct investigation, in respect of offences under Sections 3 and 4 of the PMLA and in that context, record statements of witnesses, but it would necessarily have to be in the context of the offence of money laundering, which in turn is inextricably linked with proceeds of crime. In that context, the definition of "proceeds of crime" under Section 2(u) of the PMLA shows that it means a property derived or obtained directly or indirectly by any person as a result of criminal activity relating to a scheduled offence or predicate offence. In the present case, property derived as a result of criminal activity relating to scheduled offence or predicate offence, would be *prima facie* ascertained only when the investigating agency i.e. CBI in the present case, finds that the applicant has not satisfactorily accounted for particular assets, after completion of investigation. The fact that the investigation as regards the predicate offence under the provisions of the PC Act, is yet to be completed and chargesheet is yet to be filed, demonstrates that the investigation conducted by respondent No.1 in the present case and the presumption that the entire amount of assets mentioned in the FIR are "proceeds of crime", can be *prima facie* said to be unsustainable.

14. In this context, reliance placed on behalf of the applicant on the judgment of the Supreme Court in the case of **State of Haryana and others vs. Bhajan Lal and others** (*supra*) appears to be appropriate. In the said judgment, reference was made to *pari materia* provisions of the PC Act, 1947 pertaining to the offence of possessing assets disproportionate to the known sources of income. In paragraph No.76 of the said judgment, the Supreme Court held as follows:

> "76. The gravamen of the accusation is that Shri Bhajan Lal has amassed huge assets by misusing his ministerial authority earlier to 1986 which assets are disproportionate to his known and licit sources of income. It has been repeatedly pointed out that mere possession of any pecuniary resources or property is by itself not an offence, but it is the failure to satisfactorily account for such possession of pecuniary resources or property that makes the possession objectionable and constitutes the offence within the ambit of Section 5(1)(e) of the Act. Therefore, a police officer with whom an investigation of an offence under Section 5(1)(e) of the Act is entrusted should not proceed with a preconceived idea of guilt of that person indicted with such offence and subject him to any harassment and victimisation, because in case the allegations of illegal accumulation of wealth are found during the course of investigation as baseless, the harm done not only to that person but also to the office he held will be incalculable and inestimable."

15. The above-quoted portion of the judgment of the Supreme Court specifically holds that the investigating authority should not proceed with a preconceived idea of guilt that the person indicted with such offence is victimized because in the event the allegation of illegal accumulation of wealth is found to be baseless at the stage of investigation itself, the harm done to such a person as also the office held by such person, would be

incalculable. The aforesaid observation indicates that the investigating authority concerned with offences under the PC Act may also reach a conclusion that the accused public servant has been able to satisfactorily account for the assets held by him, thereby indicating that the whole set of allegations was baseless. In the present case, in the absence of completion of investigation by the CBI for the predicate offence under Section 13 of the PC Act, pre and post its amendment of the year 2018, the stage is yet to arrive to reach any definite conclusion as to whether the allegations made against the applicant are baseless or partially correct. Therefore, it can be said that the applicant has made out a *prima facie* case in his favour, with regard to respondent No.1 proceeding on a presumption not permitted under law and in that sense, trenching upon the domain of the investigating authority i.e. the CBI conducting the investigation in the predicate offence under Section 13 of the PC Act.

16. In this backdrop, when the contents of the ECIR and the remand application are perused, it becomes evident that respondent No.1 has proceeded on the presumption that the entire extent of assets recorded in the FIR in the predicate offence, are proceeds of crime. Respondent No.1 has proceeded to conduct the investigation and to record statements in order to itself reach a conclusion that the applicant has failed to satisfactorily account for the assets recorded in the FIR and the entire alleged disproportionate assets to the extent of 204% of the known sources of income, have been treated as proceeds of crime. It is relevant to note that when the applicant was arrested on 27.06.2023, the only material available with respondent No.1 was the material on the basis of which the FIR in the predicate offence in the first place, was registered. Considering the peculiar nature of the predicate offence in the facts and circumstances of the present case, the

applicant has made out a strong *prima facie* case in his favour that he could not have been arrested merely on the basis of such material. It is in this backdrop that the applicant can be said to have made out a *prima facie* case to claim that respondent No.1 failed to apply any objective test to the material available with it, before proceeding under Section 19 of the PMLA, to exercise its power to arrest. A perusal of the law laid down by the Supreme Court in the cases of **Arvind Kejriwal vs. Directorate of Enforcement** (*supra*), **V. Senthil Balaji vs. The State** (*supra*) **and Pankaj Bansal vs. Union of India and others** (*supra*), would show that respondent No.1 cannot proceed merely on the basis of suspicion to exercise power under Section 19 of the PMLA to arrest the accused person. In the present case, when the applicant was arrested on 27.06.2023, the only material available with respondent No.1 was in the form of allegations made in the FIR concerning the predicate offence under Section 13 of the PC Act, which, at the most, could be termed to be material giving rise to some suspicion, but it would fall short of credible information or material enough to raise a reasonable suspicion against the applicant.

17. Hence, the applicant has made out a *prima facie* case in his favour that his arrest on 27.06.2023 was in the teeth of the law laid down by the Supreme Court in the context of Section 19 of the PMLA. There is substance in the contention raised on behalf of the applicant that all the statements of the individuals, including family members of the applicant, were recorded under Section 50 of the PMLA, after the applicant was arrested on 27.06.2023. Respondent No.1 proceeded to record such statements and to carry out its investigation as if to itself go into the question of the applicant offering a satisfactory account of the assets. If respondent No.1 is to proceed in the context of the activity connected with “proceeds of crime” for offence

under Section 3 of the PMLA, punishable under Section 4 thereof, the proceeds of crime themselves being indeterminate in the facts of the present case, recording of such statements and contents thereof, cannot be relied upon to oppose the prayer for bail made on behalf of the applicant. It cannot be forgotten that in the present case, the predicate offence pertains to the check period of 12.01.2011 to 31.08.2020 and the CBI, as the investigating authority in the predicate offence, is still investigating into the question as to whether the applicant has been able to satisfactorily account for the assets acquired during the check period. This aspect considerably blunts the effect of statements recorded during the course of investigation by respondent No.1 in the context of the ECIR.

18. There is substance in the contention raised on behalf of the applicant that respondent No.1 cannot rely upon the contents of the statement of the applicant himself recorded by respondent No.1. Such a statement was admittedly recorded when the applicant was already arrested and he was in custody. The Supreme Court in the case of **Prem Prakash vs. Union of India** (*supra*) has specifically held that the statements of the accused recorded in such a manner, when they are already in custody, to the extent that the contents thereof can be considered incriminating against the makers of such statements, are hit by Section 25 of the Evidence Act. Thus, at this stage, this Court will not even look at the contents of the statement of the applicant recorded by respondent No.1. Hence, reliance placed on the same on behalf of respondent No.1, while opposing the present bail application, is wholly misplaced.

19. There is also substance in the contention raised on behalf of the applicant that the manner in which respondent No.1 has proceeded in the

present case, shows that an attempt is made to even foreclose the defence of the applicant in the context of the predicate offence. Statements of probable witnesses concerning the predicate offence under the PC Act, are recorded and sought to be relied upon by respondent No.1, while opposing the present bail application. The same cannot be permitted in the facts and circumstances of the present case.

20. It is a matter of fact that insofar as the predicate offence is concerned, the investigation by CBI is yet to be completed and the final report has not been filed. Therefore, the stage of moving an appropriate application under Section 44(1)(c) of the PMLA is yet to arrive. If at all the chargesheet is filed against the applicant, upon the investigation authority in the predicate offence reaching a conclusion that the applicant has failed to satisfactorily account for the assets or he has only partially satisfactorily accounted for such assets, that the chargesheet would be accordingly filed and thereafter, the stage would arrive for moving an appropriate application under Section 44(1)(c) of the PMLA, for further appropriate directions in the matter.

21. This situation clearly indicates that the trial will not even commence in the foreseeable future and hence, there is no question of the trial being completed within a reasonable period of time. The applicant has remained in judicial custody for more than 1 year and 3 months. In the aforementioned circumstances, the applicant will remain languishing in jail, while the trial itself will not commence. The Supreme Court in its recent judgments and orders, passed in the cases of **Ramkripal Meena vs. Directorate of Enforcement** (*supra*), **Manish Sisodia vs. Directorate of Enforcement** (*supra*) and **Prem Prakash vs. Union of India** (*supra*), has emphasized on the said aspect of the matter and the accused therein have been granted bail, when

they had suffered incarceration for periods ranging between 1 year and 1 month to about 2 years. In the present case, as noted hereinabove, the applicant has already suffered incarceration for more than 1 year and 3 months. In this context, the directions of the Court issued in the case of (**In re in Human Conditions in 1382 Prisons**) in the context of Section 479 of the BNSS can also not be ignored.

22. In view of the above, this Court is of the opinion that the applicant has indeed satisfied the stringent twin test contemplated under Section 45 of the PMLA, as he has made out a *prima facie* case on merits to satisfy the first limb of the test and the second limb is also satisfied in the facts and circumstances of the present case. Even otherwise, the aforementioned position of law clarified by the Supreme Court, in the context of period of incarceration suffered by the applicant and remote possibility of the trial being completed within a reasonable period of time, inures to the benefit of the applicant and the present application deserves to be allowed.

23. In view of the above, the application is allowed in the following terms:

(i) The applicant shall be released on bail in connection with Special Case No. 1282 of 2023, arising out of ECIR/MBZO-I/69/2022 of Directorate of Enforcement, Mumbai Zonal Unit, Mumbai, on furnishing PR Bond of ₹ 50,000/- and one or two sureties in the like amount to the satisfaction of the designated Court.

(ii) The applicant, upon being released on bail, shall report to the office of the Directorate of Enforcement, Mumbai Zonal Unit, Mumbai, on first Monday of every alternate month between 10:00 a.m. and 12:00 noon during the pendency of the proceedings before the designated Court.

(iii) Upon release, within one week, the applicant shall inform the Investigating Officer as well as the designated court about his contact number and residential address and update the same in case of any change.

(iv) The applicant shall co-operate with the designated Court in completing the proceedings expeditiously and attend the proceedings before the designated Court on each and every date, unless specifically exempted;

(v) The applicant shall not tamper with the evidence of the prosecution in any manner. He shall not undertake any action that may influence the informant, witnesses and other persons concerned with the case.

24. The applicant shall be liable to face proceedings for cancellation of bail, in the event any of the aforesaid conditions are violated.

25. It is also clarified that the observations made in this order are limited to the disposal of the present application and the designated court shall proceed further in the matter without being influenced by the observations made hereinabove.

26. The application is disposed of.

(MANISH PITALE, J)