

IN THE SPECIAL COURT UNDER THE P.M.L. ACT, GR. BOMBAY

ORDER BELOW EXH.8
IN
PMLA SPL. CASE NO.356 OF 2022

Pravin Madhukar Raut
Age – 61 year,
S/o Late Shri Madhukar Raut,
R/o – 504, Dosti Orchid, Dosti Acres,
Antop Hill, Wadala (East), Mumbai-37 ... Applicant(A3)

Versus

Directorate of Enforcement
Government of India, through the
Assistant Director, Mumbai Zonal Office-I,
4th floor, Kaiser-I-Hind, Currimbhoy Road,
Ballard Estate, Mumbai-01. ... Complainant.

Appearance:

Mr. Aabad Ponda, Ld. Sr. Counsel @ Mr. Nitesh Jain, Mr. Hridhay
Khurana, Ld. Advs. i/b Trilegal for the applicant(A3).
Mr. Hiten Venegavkar @ Mrs. Kavita Patil, Ld. Spl. P.Ps.

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BAIL APPLICATION NO.582 OF 2022
IN
PMLA SPL. CASE NO.356 OF 2022

Sanjay Rajaram Raut
Age – 61 year,
S/o Late Shri Rajaram Ganpat Raut,
R/o – Maitri Niwas, Friends Colony, Bhandup Village,
Mumbai 400 042 ... Applicant(A5)

Versus

Directorate of Enforcement
Government of India, through the
Assistant Director, Mumbai Zonal Office-I,
4th floor, Kaiser-I-Hind, Currimbhoy Road,
Ballard Estate, Mumbai-01. ... Complainant

Appearance:

Mr. Ashok Mundergi, Ld. Sr. Counsel @ Ld. Adv. Mr. Vikrant Sabne for the applicant (A5).

Ld. A.S.G. Mr. Anil Singh @ Mrs. Kavita Patil, Ld. Spl. P.P.

CORAM : M. G. DESHPANDE,
SPECIAL JUDGE UNDER THE PML ACT,
(C.R.No.16)

DATE : November 9, 2022.

COMMON ORDER

1. Initially Pravin Raut (A3) was arrested and Main Prosecution Complaint was filed against him. His bail application was being heard ever since. In the meantime ED arrested Sanjay Raut (A5) and subsequently filed Supplementary Complaint against him. He had also filed Bail Application No.582 of 2022 during the pendency of the investigation. In this way when Supplementary Complaint against him was filed, bail applications of both i.e. Pravin Raut(A3) and Sanjay Raut(A5) were pending. Basic case of the Directorate of Enforcement (for short 'ED') in both i.e. Main and Supplementary Complaints is that, Pravin Raut (A3) was the Director of GACPL, who was responsible for selling free sale component, generated Proceeds of Crime (in short 'POC') Rs.95 Cr./ Rs.100 Cr./ Rs.112 Cr. and subsequently laundered it. The trail of the said money came to Sanjay Raut(A5) and his wife. This is the basic case pleaded in the Main and Supplementary Complaint. Therefore facts, circumstances of transaction and reasons required for discussion of bail application (Exh.8) of Pravin Raut(A5) are similar in respect of bail application Sanjay Raut(A5). In order to avoid multiplicity and length of separate orders, this Court finds it necessary to decide both applications by way of this common order; but with separate discussions wherein Bail Application (Exh.8) of Pravin Raut(A3) will be discussed first and thereafter, that of Sanjay Raut(A5).

2. Applicant Pravin Madhukar Raut in application (Exh.8) is Accused No.3 in this case, prayed for grant of bail contending his innocence and false implication. ED vide say (Exh.8A) strongly opposed the application alleging his active involvement in generation, placement, layering and integration of Proceeds Of Crime (POC), amounting a serious offence of money laundering. With this basic contention, ED contended to reject the application as in money laundering offence, '**Jail is Rule and Bail is Exception**'.

3. Applicant in Bail Application No.582 of 2022 Sanjay Rajaram Raut is Accused No.5 in this case, prayed for grant of bail contending his innocence and false implication. ED vide say (Exh.2) strongly opposed the application alleging that the applicant(A5) is involved in the crime right from the beginning in the process of generation, placement, layering and integration of the Proceeds Of Crime and thus committed serious offence of Money Laundering under Sec.3 of the Prevention of Money-laundering Act (for short 'the PML Act'). It is specifically contended that for laundering money and the proceeds thereof Pravin Madhukar Raut (A3) acted as proxy and front man for Mr. Sanjay Raut(A5). It is also contended how the offence of Money Laundering is serious wherein '**Bail is Exception and Jail is Rule**'. With this, it is contended to reject the application.

4. Heard Ld. Sr. Counsel Mr. Aabad Ponda for Pravin Raut(A3) and Ld. SPP Mr. Hiten Venegaonkar @ Ld. SPP Mrs. Kavita Patil at length for Bail Application Exh.8. Apart from this, Ld. Sr. Counsel Mr. Aabad Ponda filed written submissions (Exh.8B and Exh.8C). ED also filed their reply (Rejoinders) to the written submissions of the Applicant (A3) vide Exh.8D and Exh.8E. I carefully read the same.

5. Also heard Ld. Sr. Counsel Mr. Ashok Mundergi @ Ld. Adv. Mr. Vikrant Sabne for Sanjay Raut(A5), the applicant in Bail Application No.582 of 2022. Heard Ld. Additional Solicitor General Mr. Anil Singh @ Mr. Ashish Chavan @ Mr. Aditya Thakkar @ Mrs. Kavita Patil at length. Ld. Sr. Counsel Mr. Mundergi filed written notes, submissions (Exh.19). Even Ld. A.S.G. filed written submissions Exh.20 on 02.11.2022. I carefully read the same.

6. Language of Sec.45(1)(i)(ii) prescribes that, the Public Prosecutor has to be given an opportunity to oppose the application, which has been given abundantly in the instance case. Secondly, where the Public Prosecutor opposes the application, the **Court has to be satisfied that there are reasonable grounds for believing that accused is/are not guilty of such offence and that he/they is/are not likely to commit any offence while on bail.** Therefore, in the background of arguments in both bail applications, it is inevitable to frame following points as per language of Sec.45(1)(i)(ii) of the PML Act for determination. I am recording following findings thereon for the reasons discussed below :-

POINTS	FINDINGS
1. On opposing the applications by the Ld. A.S.G and Ld. S.P.P., whether the applicants (A3 and A5) have satisfied that, there are reasonable grounds for believing that they are not guilty of such offence and that, they are not likely to commit any offence while on bail, as per Sec.45(1)(i)(ii) of the PML Act?	Yes.
2. What Order ?	As per final order.

REASONS**ALL POINTS.**

7. As noted above, first of all Bail Application (Exh.8) of Pravin Raut(A3) is being discussed and after conclusion thereof, Bail Application No.582 of 2022 will be discussed.

**I. BAIL APPLICATION (EXH.8) OF PRAVIN RAUT (A3).
CASE OF ENFORCEMENT DIRECTORATE.**

8. EOW, Mumbai lodged **FIR No.22/2018 dt. 13.03.2018** on the basis of the complaint filed by Mr. Nitin Gadkari, Executive Engineer, MHADA, Mumbai against M/s. Guru Ashish Construction Pvt. Ltd. (A4), Rakesh Kumar Wadhawan (A1), Sarang Wadhawan (A2), both directors of M/s. Guru Ashish Construction Pvt. Ltd. (for short 'GACPL') alleging wrongful loss to the tune of Rs.1034 Crore to MHADA and corresponding gain to themselves and others. Crime under Ss. 409, 420, 120B IPC was registered. Offence under Ss. 420 and 120B IPC being Scheduled Offences under the Prevention of Money Laundering Act, 2002 (in short 'PML Act'), Enforcement Directorate recorded **ECIR/MBZO-I/80/2021 on 08.09.2021** and undertook investigation thereof.

9. ALLEGATIONS MADE IN THE FIR NO.22 OF 2018

- a. MHADA is the owner of the land bearing CTS No.260, 260/1, 261 to 104, 264, 264/1 to 296, 265/1 to 40, 267, 267/17 to 24, 268(part), 268/45 to 86, 347, 347/1 to 16, 363, 36/1 to 56 and bearing CTS No.18A/1, 18A/2, 22A to 22A/6, 22A/7A, 22A/7B, 22A/8A, 22A/8B, 22A/9, 22A/10, 22A/11A, 22A/11B, 22A/12, 22A/15, CTS No.22, 22/1 to 95, 23, 23/1 to 32, 24, 24/1 to 48 and 27(part) of village Pahadi, Goregaon admeasuring 47 acres. MHADA had provided tenements to 672 tenants being members of Goregaon Siddharth Nagar Sahakari Grihanirman Society Ltd.
- b. Authority in order to redevelop the said 672 tenements entered into

Joint Development Agreement with M/s Guru Ashish Construction Pvt. Ltd (A4).

- c. On **10.04.2008** Joint Development Agreement was entered into between MHADA, Society (Goregaon Siddharth Sahakari Grihanirman Sanstha Ltd.) and the developer GACPL for the purpose of redeveloping the tenements occupied by the said 672 tenants on the land belonging to MHADA.
- d. By virtue of the said agreement, it was agreed that each of 672 tenants, built up area of 767 square feet would be provided. MHADA was to provide with a constructed built up area of 1,11,476.82 sq.mt. on the said property. In lieu thereof, the developer was entitled to develop the free sale component in the land belonging to MHADA and to sell flats to various third party flat purchasers.
- e. In the actual measurement the area of those tenements was found to be 1,93,599.20 sq.mt. as against the original area of 1,65,805.20 sq.mt. as recorded in the Development Agreement **dt.10.04.2008**.
- f. The FSI calculation towards the portion of developed area to be handed over to MHADA by the developer was based on the area of 1,65,805.20 sq.mt. Hence, there was manipulation of FSI which had resulted in undue benefit to the Developer. It was also found that by virtue of three years delay between the signing of the agreement and completion of the actual measurement resulted in escalation of property prices considerably which caused undue benefits to the Developer.
- g. Hence, on 15.06.2011 MHADA issued notice to the Developer seeking revision of the developed area to be handed over to MHADA. The developer replied the said notice on **22.06.2011**, accepted and agreed that without the prior written consent of the other party (MHADA) the developer had no right to assign the rights and obligations under the said Tripartite Agreement to any third party and also confirmed that they had not done so.
- h. Thereafter **Deed of Confirmation and Modification** was executed on **09.11.2011** between the parties. On the basis thereof and a letter **dt.26.07.2011** issued by then VP and CEO of MHADA, the Developer disposed off various parcels of MHADA land for construction of free sale component to various third party developers without informing MHADA or obtaining its consent and thereby received substantial amount of money for the sale.

On the basis of these facts and allegations, **FIR No.22 of 2018** under **Ss. 420, 409 and 120B of IPC** was registered.

10. ECIR AND FACTS ALLEGEDLY REVEALED IN THE PMLA INVESTIGATION.

- a. In the investigation conducted by ED it was revealed that Pravin Raut (A3) with Nipun Thakkar, Former Director of GACPL negotiated with the erstwhile developer Lokhandwala Developers and assigned his rights in favour of GACPL against monetary compensation for the 'Patra Chawl Redevelopment Project' also knowns as 'Goregaon Siddharth Nagar Sahakari Grihanirman Sanstha Ltd.' GACPL was acquired by Nipun Thakkar in 2007 from the earlier stakeholders. During year 2007 there was a understanding amongst Pravin Raut(A3), Nipun Thakkar and Rakesh Wadhawan. Accordingly, on **20.02.2007** Nipun Thakkar gave Pravin Raut 25% Sweat Equity (As claimed by Pravin Raut) and 50% Equity was given to Rakesh Wadhawan (A1) who came as Investor and Executor of the project and remaining 25% Equity was kept by Nipun Thakkar within his family. **On 18.11.2013 Pravin Raut (A3) resigned the Directorship of GACPL.**
- b. **ED investigation allegedly revealed that Pravin Raut (A3) exercised great influence from conception to execution.** He (A3) was well aware of the fact that, there was no specific permission from MHADA to sell flats and create third party rights. Yet, without any such permission from MHADA they launched a Housing Project in the name of 'MEADOWS' and took bookings from 458 home buyers and collected Rs.138 Crore. For that Pravin Raut (A3) wrote a letter to MHADA being director of GACPL, seeking permission to sell the sales portion without specific permission of MHADA for each such sale. It was revealed that GACPL had sold the FSI to third party developer before receipt of any communication from MHADA and before signing the Deed of Confirmation and Modification. In this way all arrangements were made in a preplanned way to siphon off money of needy home buyers, third party developer and the tenants were left homeless.
- c. Tripartite Agreement **dt. 10.04.2008**, Deed of Confirmation and Modification **dt.03.11.2011** and various other documents indicate that Pravin Raut (A3) was actively involved with other Directors Rakesh Kumar Wadhawan (A1) and Sarang Wadhawan (A2) in various activities relating to the project. He (A3) has received huge amount around Rs.95 Crore from HDIL during 2008-2010 without any valid reason. According to him (A3) Rs.50 Crore out of Rs.95 Crore he received against the sale of Sweat equity and remaining Rs.45 Crore from land deal at Palghar. It was revealed that, 25% Sweat Equity (12500 equity shares) of M/s GACPL was not a Sweat Equity, but it was an alibi created by Pravin Raut (A3) and Wadhawans (A1 and A2) to create facade of legitimacy and this money meant for construction of flats for displaced tenants and home buyers, were illegally transferred. Such allotment of 25 % Sweat Equity (12500 equity) shares has not

been reflected in the books of account of the company. In this way Pravin Raut (A3) due to his involvement in obtaining the approval for sale of FSI from MHADA laundered POC approximately Rs.1040 Crore which he generated from the said activity.

- d. GACPL sold FSI to various third party developers for Rs.1034 Crore and transferred the said amount to the parent company i.e. HDIL and also sister concern for their business purpose. Money trail revealed that around Rs.100 Crore Pravin Raut (A3) **received in his bank account from HDIL and further transferred the same in acquiring assets.** Hence, he is knowingly involved in the process of generating the proceeds of crime and transferred of Rs.95 Crore for the acquisition of assets. Illegal sale of FSI during the said period was taken place and siphoning off funds to his account has happened when he was serving as Direction of GACPL. For selling FSI with the active connivance of other accused and knowingly indulging himself in laundering of POC, brings him under Sec.3 with Sec.70(2) of the PML Act.

PROCEEDS OF CRIME AS ALLEGED BY ED.

11. Gist of contention of ED is that GACPL illegally sold the FSI to third party Developers and raised Rs1039.79 Crore/Rs.1048.96 Crore. Out of this amount Rs.147.17 Crore has been paid to Municipal Corporation, Greater Mumbai. GACPL through HDIL launched a project named 'MEADOWS' in 2010 at Patra Chawl, Goregaon and against bookings from 458 home buyers, an amount of Rs.138 Crore was collected. For illegal sale of FSI, the accused generated total amount of **Rs.1039.79 Crore.** Approximately Rs.1039.79 Crore were received in the bank account of GACPL, HDIL and its group Companies during 2010-14. Some part of these amounts were utilized in developing the project which remains incomplete. Whereas, most of the funds were siphoned off to various accounts. The company had availed term loans from Union Bank of India around Rs.100 Crore by way of Non-Convertible debentures and around Rs.215 Crore from IL and FS Ltd. Some part of these amounts were utilized in developing the projects

which remains incomplete. In this way the entire amount Rs.1039.79 Crore are illegally collected by unauthorized sale of FSI, is the Proceeds Of Crime as per Sec.2(1) (u) of the PML Act.

12. On the basis of these facts, various documents filed with the complaint and statements recorded under Sec.50(2) and (3) of the PML Act, ED resisted this application and contended to reject the same.

13. **FACTS AND GROUNDS FOR CLAIMING BAIL.**

- a. Alleged FSI Sale Proceeds are Rs.1039.79 Crore. However, actual role of Pravin Raut (A3) was not considered by the ED in redevelopment of Siddharath Nagar project, when he was never involved in any manner in alleged generation/ utilization of FSI Sale Proceeds (POC).
- b. In various Survey Numbers owned by MHADA, referred in the complaint having total area around 40 Acres, MHADA had constructed 808 Ground floor structures consisting of "Patra Chawls" having each tenements ad-measuring 220 sq. feet (Siddharth Nagar). The 672 tenants thereof organized themselves in a society known as 'Goregaon Siddharath Nagar Sahakari Grihanirman Sanstha Ltd.' (for short 'the society').
- c. The said society on **09.09.1986** entered into an agreement with Lokhandwala Society and Development Company (Lokhandwala Developers) to develop a gross land of 13.18 Acres of the said land.
- d. In 1991–1992 Lokhandwala Developers constructed 3 buildings comprising of Ground plus 4 floor upper storeys. On **23.11.1992** the society terminated agreement with Lokhandwala Developers as the said developers had offered accommodation ad-measuring 325 sq. feet of Carpet Area as opposed to 365 sq. feet for each occupant.
- e. Lokhandwala Developers instituted **Suit No.4476/1985 before the Hon'ble Bombay High Court.**
- f. The Accused No.3 with his old acquaintance Mr. Nippun Thakkar had executed Projects in partnership with him in Nalasopara.
- g. Some projects of Nippun Thakkar in Mumbai were stuck in litigation and thereafter he suffered from health issues, hence he

asked help of Accused No.3 acknowledging his experience in the field.

- h** On **01.06.2000 GAPCL was incorporated** with Nippun Thakkar and others. In 2000 Mr. Mansukh Sureja, Mr. Chetan Kothari and Mr. Chetan Patel introduced the redevelopment of Siddharath Nagar to GACPL.
- i**. In 2004-2005 Mr. Nippun Thakkar approached accused No.3 for his assistance, skills and experience for Siddharath Nagar Goregaon Project.
- j**. The role attributed to accused No.3 was that he (A3) shall introduce Mr. Thakkar to potential investors for GACPL, the applicant shall settle the dispute between the Lokhandwala Developers and the society on behalf of Mr. Thakkar and shall also handle litigation of the society on behalf of Mr. Thakkar.
- k**. In 2006 Mr. Thakkar was planning to exit, hence the applicant(A3) helped with a proposal of bringing Mr. Rakesh Wadhawan (A1) for taking over the Siddharath Nagar project.
- l**. On **18.06.2009 Development Agreement** was entered between GACPL and the society when Mr. Thakkar healths was deteriorated and he was keen to sell GACPL and negotiations thereof were undergoing.
- m**. On **17.12.2006** and agreement was entered between Mr. Nippun Thakkar and Rakesh Wadhawan (A1) to facilitate procurement of shares of other three shareholders of GACPL.
- n**. On **20.03.2007 accused No.3 was appointed as Director of GACPL** and Mr. Thakkar for the efforts of accused No.3 introduced accused No.1 as an Investor in GACPL and accordingly Mr. Thakkar gave 25% Sweat Equity shares to accused No.3 and this 25% Sweat Equity Shares were fully based on the efforts of accused No.3 in the project and past successful business relationship between him and Mr. Thakkar. This fact was recorded in Registrar of Companies (ROC). Also Board Resolution was passed by GACPL for allotment of its Equity Shares.
- o**. In this way on **20.03.2007** the accused No.3 held 25% Swate Equity Shares in GACPL, accused No.1 held 50% shares and Thakkar family of Mr. Nippun held 25% shareholding.
- p**. Accused No.3 had limited role in GACPL with an understanding between him and Rakesh Kumar Wadhawan (A1), wherein he has to execute and register shifting agreements with tenants/occupants, provide assistance in legal proceedings,

liaisoning with MHADA and obtaining approval from time to time.

- q. Accused No.3 was already granted bail by the Ld. Sessions Court on **21.03.2020** in respect of EOW FIR which was filed in 2018, wherein the Court clearly observed that (i) from the amount misappropriated out of redevelopment work, no amount is deposited in the bank account of the accused No.3, (ii) the applicant has not signed any agreement with any developer, (iii) since 2010 the applicant has not participated any transaction and (iv) the applicant is not signatory of any bank transaction.
- r. There are no grounds for believing that, the accused No.3 is guilty of offence of money laundering as there is no material evidence against him.
- s. The prosecution complaint fails to disclose the commission of Predicate Offence. Whatever alleged in the complaint discloses the occurrence of civil dispute which is not a Predicate Offence.
- t. The accused No.3 had very limited period in GACPL.
- u. At the relevant time his limited tenure in GACPL was related to obtain individual letters from the tenants and agreements relating to permanent alternate accommodation, eviction of tenants, field work and procedural correspondence with MHADA and handling various litigations.
- v. Accused No.3 was never in-charge of sale of development rights nor has any knowledge thereof, when accused No.1 and 2 were directly connected for the same.
- w. Accused No.3 is not liable under Sec.70(2) of the PML Act.
- x. The prosecution complaint incorrectly mentions that the Development Agreement with third party developers was executed without obtaining consent from MHADA.
- y. Rs.99 Crore is not a part of POC, but constitutes genuine transaction, subject matter is completely a matter of separate ECIR.
- z. Accused No.3 passes the triple test.

14. With above and various other facts and grounds Accused No.3 referred various Court litigations which reached upto the Hon'ble Supreme Court and further contended that he has a limited role in GACPL as director from 2010 to 2013. Apart from this he contended that allegations qua receipt of Rs.95 Crore by him being POC, is false.

As far as this prosecution complaint is concerned, Rs.90 Crore is not alleged to be POC. He received Rs.95 Crore from legitimate source of funds and not at all connected to the FSI sale proceeds and there is absolutely no document to show that Rs.95 Crore is related to the said FSI sale proceeds. These are basic contentions of Pravin Raut (A3)

15. Ld. Sr. Counsel Mr. Aabad Ponda placed his reliance on his detailed oral argument and three written submissions which are rejoined by the ED. The points of his argument will be referred in the discussion.

ARGUMENT OF LD. SPP MR. HITEN VENEGAVKAR.

16. Ld. SPP Mr. Venegavkar argued that, FIR No.22 of 2018 relates to Ss.120B, 420 and 409 IPC, out of them offences under Ss. 120B and 420 are Predicate Offences, therefore, ECIR is qualified. Admittedly, the land in question belongs to MHADA, who inducted 672 occupants and redevelopment thereof was decided vide Tripartite Agreement. According to him, as per the said agreement 767 Sq. feet built up area flat was to be given individually to each of such occupants. Benefit to sell openly the remaining portions was given to the Developer. He further referred clause (iv) page No.5 and contended how 1,93,599.20 sq. mtrs. was actually found for the original area of 1,65,805.20 sq. mtrs. and developers misused the same. This is the first criminal activity. Regarding the second criminal activity, Ld. SPP Mr. Venegavkar referred clause (v) of page NO.6 of the complaint pointing out the facts revealed in searches and surveys during investigation. He further submitted that the developer first of all collected bookings for the project MEADOWS by selling the FSI to third party developers and never constructed anything in the land proposed for MHADA occupants.

With these and various other factors alleged in the complaint Ld. SPP Mr. Venegavkar submitted that, Rs.1039.79 Crore POC was raised. The Applicant(A3) was instrumental and played an important role in generating and laundering POC and ultimately received Rs.112 Crore from the POC, transferred some part thereof in the account of Mrs. Varsha Raut and Sanjay Raut(A5) and also both of them further invested the same by purchasing plots/lands at Kihim, Alibaug. In this way he committed offence of money laundering and hence, not entitled to bail. I carefully examined this argument.

17. Whole attack of ED and their arguments advanced by Ld. ASG Mr. Anil Singh is that, there is money-laundering. In an offence of money laundering, due to seriousness thereof, "JAIL IS RULE AND BAIL IS AN EXCEPTION". Hence, thorough examination of available materials as required for ascertaining a prima-facie case, without any mini-trial, is inevitable. Guidelines of the Hon'ble Supreme Court and the Hon'ble High Court in recent authorities reiterated that if allegations and consequences thereof are serious, 'Beyond reasonable doubt and not preponderance of probabilities' is the test even for deciding bail application. So, in order to make such prima-facie assessment on the basis of available materials, it is necessary to note some basic concepts under the PML Act and thereafter factual and legal aspects can be seen.

PROCEEDS OF CRIME AND IMPORTANT STAGES IN MONEY-LAUNDERING OFFENCE.

18. 'Proceeds of Crime' is defined under Sec.2(1)(u) of the PML Act as follows,

"Proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity

relating to a scheduled offence or the value of any such property [or where such property is taken or held outside the country, the the property equivalent n value held within the country] [or abroad]" [Explanation – For the removal of doubts, it is hereby clarified that “proceeds of crime” including property not only derived or obtained from the scheduled offence but also any property **which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence**]

Recently the Hon'ble Supreme Court in the landmark authority in the case of **Vijay Madanlal Choudhary and others Vs. Union of India and others, [Special Leave Petition (Criminal) No.4634 of 2014, decided on 27.07.2022]** laid down elaborate guidelines regarding concept of “Proceeds of Crime” which are as follows,

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

concerned scheduled offence. This distinction must be borne in mind while reckoning any property referred to in the scheduled offence as proceeds of crime for the purpose of the 2002 Act. Dealing with proceeds of crime by way of any process or activity constitutes offence of money-laundering under Section 3 of the Act.

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

“33. Tersely put, it is only such property which is derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence can be regarded as proceeds of crime. The authorities under the 2002 Act cannot resort to action against any person for money-laundering on an assumption that the property recovered by them must be proceeds of crime and that a scheduled offence has been committed, unless the same is registered with the jurisdictional police or pending inquiry by way of complaint

before the competent forum. For, the expression “derived or obtained” is indicative of criminal activity relating to a scheduled offence already accomplished. Similarly, **in the event the person named in the criminal activity relating to a scheduled offence is finally absolved by a Court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of the criminal case (scheduled offence) against him/her, there can be no action for money-laundering against such a person or person claiming through him in relation to the property linked to the stated scheduled offence.** This interpretation alone can be countenanced on the basis of the provisions of the 2002 Act, in particular Section 2(1)(u) read with Section 3. Taking any other view would be rewriting of these provisions and disregarding the express language of definition clause “proceeds of crime”, as it obtains as of now.”

It is, therefore clear that, there should be a nexus between property derived or obtained, directly or indirectly “as a result of” criminal activity relating to “the stated scheduled offence”. Even at the stage of bail on the basis of available materials, examination to prima-facie find out, was there any scheduled offence, at the relevant (contemporary) time? Was the POC derived or obtained, directly or indirectly as a result of criminal activity relating to a scheduled offence? Inquiry and examination of these two questions play very very vital role in deciding the fate of this bail application. When a criminal activity relating to POC has to be examined prima-facie, certainly Scheduled Offence and its contemporary facts will have to be examined and there is no option to overlook or ignore the same.

19. It is a fact that, there was no FIR relating to any scheduled offence at the relevant time during 2006-07 onwards till 2013 (when A3 resigned on **18.11.2013**) and even thereafter till **13.03.2018** alleging offences of Cheating (Sec.420) and Criminal Conspiracy (Sec.120B), which are Predicate Offences. On the contrary it is a fact

that FIR No.22/2018 was lodged on **13.03.2018** for alleged offences under Ss. 406,420 and 120B IPC for the facts relating to it occurred in **2006-07 till 2013** (when A3 resigned GACPL on 18.11.2013. Hence, there is no escape for ED from pointing out the **foundational facts** happened during the said period amounting a criminal conspiracy and a cheating, that too beyond reasonable doubt, in the context with Sec.24 of the PML Act. In **Ajay Kumar Chandraprakash Baheti Vs. Directorate of Enforcement, (2022) SCC OnLine Bom. 1451** recently the Hon'ble Bombay High Court clearly held as follows,

“53. Having a sizable or any and every unaccounted money, would not epso facto indicate the commission of an offence under the PMLA 2002. **In other words in order to prove the offence of money-laundering it has to be established that the money involved are the proceeds of crime and having full knowledge of the same, the person concerned projects it as 'untainted property'**. The process undertaken in doing so amounts to offence of money-laundering.”

So, it is therefore necessary to examine whether money which Pravin Raut (A3) had dealt with, is basically a proceeds of crime generated from the criminal activity relating to offence under Ss.420 and 120B IPC and he was dealing with the same having full knowledge thereof that it was tainted POC and further projected the same as 'untainted'. In order to make prima-facie examination as to whether there was any criminal activity relating to offences of cheating and criminal conspiracy, the test therefore would be, whether the Applicant (A3) had a dishonest or fraudulent intention at the time of entering into the Tripartite Agreement **dt.10.04.2008** on behalf of GACPL or while addressing the letter **dt.09.06.2011** on behalf of GACPL.

20. In other words it has to be examined prima-facie to find out, (a) Whether the applicant(A3) with his wise brain took calculated steps right from the beginning, initially hatched criminal conspiracy with Mr. Nippun Thakkar and subsequently with co-accused persons, and then entered into a Tripartite Agreement on **10.04.2008** with inducement and dishonest intention only and only to defraud and cheat 672 tenants as well as MHADA and induced them with such intention, executed the agreement for cheating them forever. Dishonest intention right from the inception of such inducement is also a material constituent aspect, which has to be satisfied.

21. Apart from the above, other three basic ingredients of Sec.3 of PML Act are necessary to be seen, which are **Placement, Layering and Integration.**

(a) '**Placement**' refers to the physical disposal of bulk cash proceeds **derived from the illegal activity.** Moving the funds from direct association with the crime. The ultimate aim of this phase is to remove the cash (POC) from the location of acquisition so as to avoid detection from the Authorities. 'Placement' represents the initial entry of funds into financial cycle. It is a physical movement of cash (POC) away from the location where it was obtained and its placement in the legitimate financial system.

(b) '**Layering**' refers to separation of illicit proceeds from the source by creating complex layers of financial transactions. In the course of layering, there is the first attempt at concealment or disguise of the source of the ownership of the funds by creating complex layer of financial transactions designed to disguise the audit trail and provides secrecy. Its purpose is to dissociate the illegal monies from the source of crime by purposely creating a complex web of financial transactions aimed at concealing any audit trail as well as the source and ownership of funds.

(c) **'Integration'** is the final stage at which 'laundered' property/ money is reintroduced into the legitimate economy. This stage of money-laundering process entails that the money infused into the normal commercial sphere is collected and made available to criminals to be enjoyed or re-invested into their criminal activities. The funds that were processed during the layering stage are placed in apparently legal business.

22. It is therefore clear that, the process of generation of POC, its placement, layering and integration is an outcome of wise brains, with calculated steps with dishonest mala-fide intention a Mens-Rea **in respect of criminal activity relating to the Scheduled Offence**. In the instant case whether the material on record depicts all such steps and stages including criminal activity relating to the Predicate Offence, is the real test which will decide the fate of this application. It is therefore necessary to examine all available material thoroughly in the context with the basic requirements to apply stringent twin conditions under Sec.45, the PML Act. Hence, thorough examination is necessary that too without any mini-trial to find out whether the complaint and materials on record are qualified.

23. Admittedly, there was no FIR for the allegations and circumstances of transactions happened in **2006-07** till the date of resignation of Pravin Raut (A3). **FIR No.22/2018** was lodged much subsequently on **13.03.2018**. Definition under Sec.3 of the PML Act clearly states that money-laundering is inextricably linked to the Predicate Offence. **So, it is bounden duty and obligatory on the Court to sit in the arm-chair of the contemporary period and examine those facts associated to it.** This exercise is unavoidable and inevitable, but necessary to find out whether there was any criminal

activity relating to the Predicate Offence for which no FIR was registered at that time. At the cost of repetition it has to be noted that, this exercise is necessary and inevitable to find out whether there was any inducement and cheating at the inception when there was no such FIR **till 2013** and even thereafter **till 13.03.2018**.

MATERIALS WHETHER INDICATE EXISTENCE OF THE SCHEDULED OFFENCE? GENERATION OF POC AND MONEY-LAUNDERING?

Facts and Material relating of Contemporary Period.

24. Execution of Tripartite Agreement **dt.10.04.2008** by the Society, GACPL and MHADA is an admitted fact. On **20.03.2007** the applicant(A3) became Director of GACPL, specifically for handling various litigations concerning Siddharth Nagar Project. Prior to it there was similar project initiated by Lokhandwala Builders and the same was trapped in battle of litigation for a very long period, hence could not attain finality. Mr. Nippun Thakkar gave 25% Sweat Equity shares to the applicant(A3). The copy of **Resolution dt.31.03.2007** filed by the applicant (A3) clearly shows the inter-se arrangement of the shares with clear specification thereof. Volume VI, page 166 filed by ED with prosecution complaint (PC) clearly shows that the Society and GACPL submitted a joint proposal for development. **MHADA Resolution No.6280 dt.01.11.2007** indicates that it has sanctioned the Redevelopment Scheme. On **03.03.2008** the State Government granted its approval for Redevelopment.

25. The **Tripartite Agreement dt.10.04.2008** indicates mutual rights, liabilities and obligations of the parties to it having following main features.

- a. Area of 26.82 Acres was included in a proposal which was to be implemented by the Society, GACPL and MHADA.
- b. The tenants were to be allotted tenements having Carpet area of 555 square feet, free of cost
- c. GACPL was permitted to sell balance built up area in order to recover the project cost.

Much capital is made in the PC that FSI was sold without permission and consent of MHADA, but the basic Tripartite Agreement dt.10.04.2008 to which MHADA was also a party, clearly indicates that it has given liberty to GACPL to sell balance built up area, for raising money.

26. The applicant(A3) placed reliance on 'Annual Return' under the **Companies Act (Schedule V – Part I) and Form 20B**, which clearly indicates that HDIL and Rakesh Kumar Wadhawan (A1) purchased applicant's stake for a total consideration of Rs.50 Crore. In this way the applicant(A3) received Rs.50 Crore for selling his 25% share and received the same from GACPL. The copies filed by the applicant(A3) show that, thereafter Civil litigation cropped up before the Hon'ble Bombay High Court vide (i) **Writ Petition No.2690 of 2010 dt.02.12.2010**, (ii) **Writ Petition No.851 of 2010 dt.08.04.2010**, (iii) **Notice of Motion No.523 of 2010 dt.01.10.2010** and (iv) **Notice of Motion No.547 and 548 of 2010 in Writ Petition No.1478 of 2009 dt.11.10.2010**. The Hon'ble High Court dismissed all these proceedings specifically noting as follows :-

- a. the work of development has already progressed.
- b. out of the 672 occupants, the present developer claims to have consents of 571 occupants.
- c. documents have been registered with 472 of the occupants.

The structure of 412 occupants have already been demolished and they have either shifted to transit accommodation or are in receipt of payment in lieu thereof.

The Hon'ble High Court further held that it would be manifestly against the interest of the occupants whose structures have been demolished and who are now awaiting the completion of the schemes. Judicial note requires to be taken that the process of obtaining consent from the occupants is a tedious and time consuming task for any Developer including the instant. In this way after noting the remarkable progress of development and justifying the said process, the Hon'ble High Court refused to exercise of the jurisdiction and also considering the merits dismissed all those proceedings on **10.02.2011**.

27. It is therefore apparent to prima-facie hold that until **10.02.2011**, there was absolutely no element of cheating, intention to cheat and induce 672 occupants and MHADA nor any criminal conspiracy or breach of trust on the part of the applicant(A3) and GACPL. **On the contrary the Hon'ble High Court had appreciated the development work and progress thereof. This fact is evident from the order of the Hon'ble High Court.** All this prima-facie indicates ab-initio absence of element of cheating and criminal conspiracy. Even drawing any inference about the same after a long time of 8 years in 2018 till date is not permissible. **All this prima-facie further goes to show that, the said development activity vide Tripartite Agreement dt.10.04.2008, was not intended dishonestly to induce and cheat 672 tenants as well as MHADA for prima-facie holding it as a 'criminal activity of inducement and cheating at the inception relating to the Scheduled Offence'.** In my opinion this is one of the important aspects.

28. Various documents filed with the PC prima-facie demonstrate how there was substantial progress after **Tripartite Agreement dt.10.04.2008**. Volume VI Page 217 indicates a submission **dt.12.05.2009** regarding consent obtained from the tenants. Copy of order **dt.07.10.2011** in **Writ Petition No.272/2011** clearly indicates that, proceedings before the Hon'ble Bombay High Court arising out of the Siddharth Nagar Project were **decided/withdrawn on 01.02.2010, 02.02.2011 and 07.10.2011**. In the order **dt.07.10.2011** the Hon'ble High Court in paragraph 2 clearly noted as follows,

“2. The order passed by this Court was impugned in Special Leave Petitions before the Supreme Court which were dismissed on **15 April 2011** and **25 April 2011** respectively. Since the dismissal of the earlier petition by this Court about eight months ago, the work under the projects has substantially advanced. Counsel appearing on behalf of the society and for the developer has placed on the record a compilation which shows that :

- (i) out of total number of **672** occupants, **637** or **95%** have executed letters of consent and **607** or **90%** have entered into registered agreements;
- (ii) 644 structures equivalent to **96%** have been demolished.
- (iii) An amount approximately of **Rs.113.23** Crores has been expended towards the project; and
- (iv) The work of construction has substantially progressed.”

Even the order of the Hon'ble Bombay High Court was challenged before the Hon'ble Supreme Court and same was pending before the Hon'ble Supreme Court till **06.07.2012**. However, on 06.07.2012 the Hon'ble Supreme Court dismissed the same and this fact is evident from the copy of order **dt.06.07.2012** in **Special Leave to Appeal (Civil)CC 10282/2012**.

29. Volume VI page 218 with PC shows that MHADA approved layout on **19.05.2009**. Eviction orders by MHADA were served upon the occupants on **18.12.2010**. In the meantime the said land was surveyed and Modification Deed was executed. Prima-facie it is crystal clear that, till **06.07.2012** (the Hon'ble Supreme Court order) though the development project was dragged in the battle of litigations, yet simultaneously it was progressing and the same was acknowledged by the Hon'ble Bombay High Court. Can all these activities and the litigations cropped up as such, be termed as criminal activities relating to a Scheduled Offence, as contemplated in Sec.2(1)(u) r.w. Sec.3 of the PML Act? Prima-facie there is absolutely nothing to show that there was dishonest intention of Pravin Raut(A3) from the inception and at the very beginning of the transaction, to hold him guilty for an offence under Sec.420 IPC or even Sec.120B IPC. On the contrary all such activities indicate genuineness thereof.

30. Ld. Sr. Counsel Mr. Aabad Ponda placed reliance on **Pran Jyoti Bhuyan V. State of Assam, (2014 SCC OnLine Gau 18)**, wherein it was held that it is inbuilt in Section 415 of the IPC that there must be a dishonest intention from the very beginning of the transaction, which is a sine qua non to hold an accused guilty for commission of the said offence. When allegations are made regarding failure on the part of an accused to keep his promise in the absence of a culpable intention at the time of making the initial promise, no offence under Sec.420 of the IPC can be said to be made out. Therefore, intention and inducement at the inception of circumstances of transaction play very important role, because in this case at the relevant time no FIR relating to any Scheduled Offence was lodged and the same was lodged recently on **13.03.2018** for the said facts which allegedly

took place in 2008-11. Therefore careful examination of this aspect is necessary to find out whether there was any scheduled offence and criminal activity relating to it at the relevant time.

31. The record is self demonstrative that, all the civil litigations and various activities like obtaining consent of occupants, sanction of layout by MHADA, land survey etc. were in fact bonafide and genuine activities, prima-facie indicating the intention of developer to complete the project within the stipulated time for which the Society, GACPL and MHADA executing **Tripartite Agreement dt.10.04.2008**. Therefore, all these facts, circumstances of transaction and the activities nowhere even remotely suggest that those were the criminal activities relating to the Scheduled Offence. Nor the same depicts any deception, malafide intention to cheat when GACPL entered into the Tripartite Agreement dt.10.04.2008 in order to commit any Scheduled Offence under Ss.420, 120B IPC.

32. Volume VI page 181 is a letter **dt.09.06.2011** written by the applicant (A3) to the Vice President, MHADA. Careful perusal thereof indicates that the applicant(A3) pointed out to the MHADA how substantial time was consumed in various litigations before the Hon'ble Bombay High Court in respect of Resolution and Tripartite Agreement. MHADA was further pointed out the time consumed and expenses incurred for vacating the land. It was also requested for appointing an Officer from MHADA for signing Agreements on its behalf. Responding the said request as such made vide the letter **dt.09.06.2011**, MHADA vide their letter **dt.26.07.2011**, clearly conveyed as follows,

“3. To appoint an Officer who can sign Sale Agreement on behalf of MHADA for the Free Sale Component in the share of the

Developer. However, it is suggested that by signing of every Agreement, MHADA may create a huge liability of free sale component of the developer upon MHADA. **For this reason, free sale area should be allowed to be sold by the developer on his own responsibility with the condition that saleable area should not exceed the approved share of the Developer in terms of FSI or constructed flats and construction should be carried out in proportion for MHADA, Society and the Developer as approved by MHADA.**

During the discussion you have agreed that instead of signing the Sale Deed at this juncture, you will only take booking for free sale flats and enter into Agreement for Sale. **It is further clarified that you will be permitted to sell free sale component where signature of the MHADA officers will not be required, however NOC to the Occupation Certificate for free sale component shall not be issued by MHADA unless and until proportionate share of built up area is handed over to MHADA.**

33. This MHADA letter **dt.26.07.2011** is prima-facie the best evidence to show that, GACPL was permitted to enter into agreements for sale and also to take bookings for free sale flat in respect of free sale component with certain conditions. Stepping ahead the correspondence between MHADA **dt.15.06.2011** and GACPL **dt.20.06.2011** clearly indicates that MHADA and GACPL unequivocally agreed to Review the conditions of Tripartite Agreement, suggesting consequential amendments to the Tripartite Agreement. In this way it was agreed to execute a Modification Deed and the draft thereof was circulated amongst the MHADA Officers.

34. Volume VI Page 189 is an **Office Note dt.25.08.2011** in respect of the proposed Modification Deed, for the circulation thereof internally for discussion and finalization. **Office Note dt.02.09.2011** in respect of proposed Modification Deed proposing change to **Clause 2.1.2(xviii)** of the Tripartite Agreement as follows,

“On 2 September 2011 [Page 194, Vol VI, RUD], MHADA prepared an office note setting out their remarks on the proposed

Modification Deed. By the said office note, it is evident that GACPL proposed the following change to Clause 2.1.2(xviii) of the Tripartite Agreement:

“Prior to executing of Sale Deed or Conveyance Deed or Lease Deed as the case may be of the said land or any portion thereof to the organization of various unit holders, **the Developer shall obtain a No Objection Certificate from the Chief Officer of MHADA.**”

Responding the aforesaid proposed change, MHADA prepared internal Note stating as **“This Clause should not be modified. Although there is no need to sign each and every Sale Deed. However, it would be appropriate to obtain to MHADA's NOC before conveyance”**.

35. Documents in Volume VI Page 203 and 204 dt.03.09.2011 indicate that MHADA resolved in respect of **Clause 2.1.2(xviii)** of the Tripartite Agreement, that the Clause may be included as per permission granted vide letter dt.27.07.2011. MHADA's internal note dt.23.09.2011 states as follows,

“... Considering all other clauses as per the observations of the Hon. VP & CEO/A, draft Deed of Confirmation and Modification has been prepared and kept forthwith.

CO/MB is requested to kindly get the same verified as per the approval granted by the Hon. VP&CEO/A and thereafter steps to finalise/execute the same may be taken. After execution, the deed will have to be submitted to the Authority for ex facto approval.”

MHADA's internal note dt.01.11.2011 while approving **Modification Deed** states as under,

“After discussion the Hon. VP&CEO/A has accorded its approval for the clauses to be included and accordingly the draft has been finalized. Along with the draft Modification, certain annexures are required to be annexed which have been prepared considering the subsequent changes in the area of the plot etc. This draft is in order....”

36. On **09.11.2011** the Modification Deed was executed between MHADA, the Society and GACPL. The applicant(A3) signed the same in the capacity of Director of GACPL. By virtue of **Clause 11** of the Modification Deed, **Clause (xviii)** of the Tripartite Agreement was replaced as follows,

“... It is further expressly agreed and understood between the parties hereto that in case the Developer desires to sell the free sale component on its own terms and responsibility either in its entirety or in part including sale of flats/units that would be construed in the free sale building component then the Developer may do so provided however, MHADA shall not be responsible for any liability that may arise from the same and the Developer shall not exceed the FSI that is allotted to it under the Joint Development Agreement, and shall further ensure that the share of MHADA and rehabilitation component for the Tenant is not adversely affected and for that purpose the Developer may enter into arrangements/agreements/deeds or any such kind of writing as it may deem fit where there will be no requirement of signatory either from MHADA or Society on the documents/writings that would be executed and registered in regard to free sale component of the Developer. However, it is agreed that the NOC to the Occupation Certificate for Free Sale Component shall not be issued by MHADA unless and until proportionate share of built up area is handed over to MHADA.

Clause 19 of the Modification Deed is nothing but a lawful acknowledgment given by all the parties to the said Deed regarding validity, binding force of amendment, rectification and clarification thereof. **It was further recited that, the Tripartite Agreement and the Modification Deed were to be read as one Agreement and construed together.** All this prima-facie indicates that, it is MHADA who had given permission to sell free component by putting rider of their NOC. On **06.06.2012** the applicant(A3) in the capacity as a Director in GACPL wrote a letter about detailed queries regarding the project. It is an admitted fact that the order **dt.07.10.2011** passed in **W.P. No.272 of 2011** was challenged before the Hon'ble Supreme

Court in **Special Leave Petition No.10282 of 2012** and the Hon'ble Supreme Court dismissed the same vide order **dt.06.06.2012**. On **18.11.2013** the applicant (A3) gave his resignation as a Director from GACPL. His resignation was reflected in the records of the Ministry of Corporate Affairs. **FORM-12** is a prima-facie best evidence of this facts.

37. Careful perusal of complaint and all voluminous documents prima-facie reflects that the applicant(A3) had never entered into or participated directly or indirectly any discussions relating to Sale of Development Rights on the said land to third party developers. **On the contrary the record clearly shows that and even it is the case of ED that, the third party developers entered into Development Agreement for Siddharth Nagar Project at the instance of Rakesh Kumar Wadhawan (A1) and Sarang Wadhawan(A2)**. Statements of various witnesses recorded under Sec.50(2) and (3) of the PML Act prima-facie corroborate that the applicant(A3) was never privy to the discussions that transpired between the third party developers, Rakesh Kumar Wadhawan(A1) and Sarang Wadhawan (A2). All such discussions were fronted entirely by Accused No.1 and 2.

38. It is also clear that after applicant's resignation as a Director from GACPL (**dt.18.11.2013**), the applicant(A3) was not involved in the management or affairs of GACPL. Even the case of ED speaks the same that, whatever POC generated, it was during 2008 to 2011. Admittedly, the first part of battle of litigations continued till the Hon'ble Supreme Court dismissed **SLP II No.10282 of 2012 on 06.07.2012**. Hardly **one year and five months** thereafter the applicant(A3) resigned GACPL. Till then and even in the second round of every litigation, MHADA was party. Yet, never contended that the

applicant(A3) was the main person who induced MHADA and 672 occupants and further cheated them, laundered money from the activity relating to the Scheduled Offence (Ss.420,120B IPC), which is the basic requirement for offence of cheating. Even otherwise it is on record that right from the beginning a battle of civil litigations was going on in respect of the said project and the Hon'ble Supreme Court shut down this first round of litigation on 06.07.2012. Record indicates that even prior to it since 1994-95 the Society and erstwhile developer Lokhandwala were litigating. Therefore, it is clear that **from 2007 till 2012** there was a Court litigation and also simultaneously there was a remarkable progress in the project. Therefore, question of generating proceeds of crime during **the said period till 06.07.2012** does not arise nor it can be said that the applicant had entered GACPL and the project in question, with a calculated intention to cheat as required under Sec.420 IPC. **Even after 06.07.2012 till the date of his resignation i.e. 18.11.2013 question of generation of POC does not arise, because ED itself contended that alleged period of generation of POC is 2007-2011.** It is material to note that even in 2018 MHADA continued litigation with Rakesh (A1), Sarang (A2), their HDIL and also accepted/consented that they are the persons, who allegedly sold FSI and also acknowledged Affidavit of Sarang(A2) with his sworn statement that he entered into 12 Agreements with third party developers for selling FSI. Therefore, the question of generating POC by the Applicant(A3) after 18.11.2013 till date does not arise.

39. Admittedly there was no FIR for the alleged contemporary acts happened during 2007 to 2011, at the relevant time. Therefore, conduct of MHADA while lodging FIR in respect of Predicate Offences in

2018 for the transactions which had taken place prior to 2013, speaks volumes. Basically MHADA is estopped from doing so. MHADA is debarred to say anything which it had alleged in the FIR No.22 of 2018. I strongly feel that this aspect cannot be overlooked and ignored while deciding merits of this application.

40. It is also necessary to take judicial note of the stand previously taken by MHADA. All documents with the Prosecution Complaint indicate that **previously MHADA had taken stand that the purported wrong doings have been committed by Rakesh Kumar Wadhawan (A1), Sarang Wadhawan (A2) and their HDIL.** Ld. Sr. Counsel Mr. Aabad Pond submitted an order passed by the Hon'ble Bombay High Court restraining HDIL from disposing of any of its immovable properties/assets, except in ordinary course of business. The said order states as follows,

“HDIL shall file an Affidavit setting out its immovable properties/assets (encumbered and unencumbered) and a copy of the same shall be handed over to the Advocates for the parties on or before 26th April, 2018. The said assets shall not be disposed of by HDIL except in usual course of business.”

Ld. Sr. Counsel Mr. Aabad Ponda further pointed out that HDIL preferred Notice of Motion (LODG) No.1279 of 2018 and sought clarification of the above referred order. The Hon'ble High Court by order dt.06.08.2018 disposed off the same noting **HDIL's role in the execution of Development Agreements with third party developers** as follows,

“8. The plaintiff's filed the above Suits before this Court impugning the termination notice dated 12th January, 2018. At the ad-interim stage, the Senior Advocates appearing for the Plaintiffs in the above Suits submitted that MHADA cannot terminate the Agreement with GACPL since the same will cause

grave harm, loss and damage to the Plaintiffs and MHADA. It was submitted on behalf of MHADA, that GACPL was not entitled in law to enter into any such Agreements with the Plaintiffs and the termination notice was valid. **However, the Plaintiffs in the above Suits as well as MHADA agreed, that in view of the undertakings given by Shri Wadhawan in the Meadows Suit, HDIL, which is a holding Company of GACPL, is responsible for the misdeeds of GACPL.**”

41. In this way not only the Hon'ble High Court confirmed that, HDIL (A1 and A2) is responsible for the misdeeds of GACPL, but also it is MHADA who had agreed this clear situation before the Hon'ble High Court and made representation as such. **Where the question arises about alleged role of the Applicant(A3) and alleged inducing, cheating and criminal conspiracy by him? Can we go behind the clear observations made by the Hon'ble High Court simply because one fine morning forgetting and keeping aside all this, MHADA filed FIR No.22/2018? Are we permitted to do so? And after such a long spell of time, can it be permitted to contend that it was only money-laundering and various civil litigations, survey proceedings, Modification Deed amending Tripartite Agreement, executing Agreements with occupants had absolutely no influence on the delay in progress of the project? That too when MHADA itself had allowed the Developers to Sale Free Sale Component noting the background of expenses made by the Developer and the time consumed in litigation.**

42. Ld. Sr. Counsel Mr. Aabad Ponda further placed his reliance on an **Affidavit dt.08.02.2017** filed by Sarang Wadhawan (A2) before the Hon'ble High Court stating that, GACPL has entered into agreement with third party developers. The same is as follows,

“23. Defendant No.1 has entered 12 Agreements with various

third parties for sale of its development right in the free sale portion of the said layout in Sectors R-6, 6-7, R-8, R-12 (Part) and R-12 (Part).”

What more is required to prima-facie hold that accused No.1 and 2 were basically involved in the process of making agreements with third party developers and selling the free sale component? At the same time no prima-facie evidence is required to hold that the applicant had absolutely no role in all such transactions and earnings therefrom. Apart from this, judicial note has to be taken that in the said proceeding before the Hon'ble High Court, MHADA was the party and accepted this situation. Nowhere at that time MHADA had contended a word that the Applicant(A3) had cheated them and 672 occupants of Patra Chawl. Sarang Wadhawan (A2) had filed affidavit in the said matter on 08.02.2017 and made a sworn statement as referred above. Thereafter, vide order **dt.24.04.2018** MHADA's contention was recorded wherein it has stated **“HDIL, which is holding company of GACPL, is responsible for misdeeds”**. Sworn statements made by Sarang Wadhawan (A2), findings given by the Hon'ble High Court on the basis thereof and conduct of MHADA make it abundantly clear as follows,

- a. **Even MHADA believed that after execution of Tripartite Agreement, substantial progress took place in Siddharth Nagar Project.**
- b. **Conduct of MHADA prima-facie indicates that it intentionally permitted and affirmed the transactions between GACPL and third party developers for the free sale component.**
- c. **In the suit before the Hon'ble High Court, it is MHADA who affirmed that purported wrong doings alleged in the complaint were done by HDIL, Rakesh (A1) and Sarang (A2).**

So, MHADA is prima-facie estopped and cannot be allowed to deny the same and fasten criminal liability on the Applicant(A3).

When the serious question of Right to Liberty of the applicant (A3) is there, the Court cannot accept and put premium on such approbate and reprobate attitude of the MHADA. All this what MHADA has been doing is by its declaration, act or omission, intentionally caused or permitted another person including the Hon'ble High Court to believe a thing to be true and to act upon such belief, hence MHADA cannot be allowed to deny the truth of that thing. So, MHADA cannot approbate and reprobate. It cannot both affirm and dis-affirm the same transaction. Discussion of all this is necessary and inevitable as it is MHADA who has lodged **FIR No.22/2018** on one fine morning **dt.13.03.2018** for the alleged facts which had taken place during 2007-2013. All such conduct of MHADA is not only suspicious but also indicates an abuse of process of law.

43. Ld. Sr. Counsel Mr. Aabad Ponda placed reliance on **J. Sekar @ Sekar Reddy Vs. Directorate of Enforcement (Criminal Appeal No.738 of 2022)** wherein the Hon'ble Supreme Court held as follows,

“18. ... In our opinion, even in cases of PMLA, the **Court cannot proceed on the basis of preponderance of probabilities**. On perusal of the statement of Objects and Reasons specified in PMLA, it is the stringent law brought by Parliament to check money laundering. **Thus, the allegation must be proved beyond reasonable doubt in the Court**. Even otherwise, it is incumbent upon the Court to look into the allegation and the material collected in support thereto and to find out whether the prima facie offence is made out. Unless the allegations are substantiated by the authorities and proved against a person in the court of law, the person is innocent.”

Most important thing is that Rakesh Kumar Wadhawan (A1) and Sarang Wadhawan (A2) whom MHADA has blamed the most, were not even arrested under Sec.19 of the PML Act and a person like

the Applicant(A3) was arrested for the discussion referred above. The whole discussion referred above clearly demonstrates that, it was a long battle of Civil disputes which delayed the project and parties had approached proper and competent forum for the same; and offences under Sec.420, 120B IPC do not attract as there is prima-facie nothing to show that, POC were generated by accused No.3 from the criminal activity relating to the Predicate Offence. When there is no offence of cheating and criminal conspiracy i.e. Predicate Offence and any criminal activity relating to it, there cannot be a Proceeds Of Crime. When there are no POC, question of arresting the applicant(A3) under Sec.19 of the PML Act does not arise nor the rigors of stringent twin conditions under Sec.45(1) of the PML Act come in the way for deciding his bail application. In order to arrest any person under Sec.19 of the PML Act the qualification is 'reason to believe that such person has been guilty of an offence punishable under the PML Act'. This basic qualification is missing in the instant case for arresting the Applicant(A3).

44. What is prima-facie evident from the materials on record and statements recorded under Sec.50(2) and (3) of the PML Act is that, the applicant(A3) was in-charge of handling the litigation arising out of Siddharth Nagar Project. He had to obtain individual letters from the tenants, eviction of the tenants, field work, make correspondence with MHADA and other authorities relating to project and handling various litigations. There is absolutely nothing to show that he was part of any criminal conspiracy for inducing and cheating 672 occupants as well as MHADA and generating POC from the activities relating to it, that too at the relevant time when no such FIR was lodged for those alleged contemporary activities. Even there is absolutely nothing before the Court to prima-facie satisfy that, he(A3) had sold FSI relating to free

sale component, generated money called as POC defined under Sec.2(1) (u) and further laundered the same as required under Sec.3 of the PML Act.

45. There was another limb of Civil litigation relating to the property under the project, wherein MHADA terminated previous agreements. Volume VI Page 301 is a letter **dt.23.04.2015** relying on MHADA's Resolution **dt.19.01.2014** whereby further sale of free component was stayed with direction not to issue further I.O.D. and C.C. for the free sale component. The copy of document in Volume VI indicates a joint meeting **dt.24.06.2015** with GACPL and MHADA VP and CEO, wherein GACPL submitted revised time lines for completion of Siddharth Nagar Project. It is pertinent to note that even after alleged past bitter experience, again MHADA dealt with GACPL and accepted the said revised time schedule. On **29.04.2016** GACPL again submitted revised time lines for completion of the construction. On **12.05.2017** there was a meeting between GACPL and MHADA wherein GACPL communicated revised time line for payment of balance rent to the society, Revised Schedule of construction of the society's building, the balance payment of MCGM regarding building approvals of the society's buildings and schedule of construction of MHADA share. On **12.01.2018** MHADA, vide its letter to GACPL, terminated the Tripartite Agreement and the said letter is at page 348 of Volume VI.

46. Aggrieved by Accused No.1 and 2 and HDIL's conduct, Aggrieved tenants and certain third party developers approached the Hon'ble High Court vide Notice of Motion (L) No.180 of 2017 in Suit (L) No.40 of 2017. The Hon'ble High Court on 02.02.2017 directed Accused No.1,2 and HDIL to maintain status-quo in respect of proposed

construction. However, the Hon'ble High Court vide **Order dt.20.02.2017** permitted accused No.1 and 2 with construction of project. The Hon'ble High Court by an **Order dt.20.02.2017** recorded certain representations made by accused No.1 and 2, whereby both of them undertook to comply with all the requirements of MHADA and Municipal Corporation to ensure that no stop work notice is issued. Also, it was agreed that, the Agreement and Contracts entered into with Contractors by defendants should be shared with plaintiff therein by defendants No.1 and 2 (A1 and A2). Accused No. 1 and 2 undertook to ensure that there will be no default by them in completing the buildings agreed to be handed over to MHADA. It was agreed that, there will be no interference in appointment of any Contractor / Consultant and **defendants No.1 and 2 shall have full liberty and freedom to appoint the Contractor.**

47. The Hon'ble High Court by an **Order dt.14.03.2018** directed accused No.1 and 2 and their HDIL to disclose (a) all their assets, movable and immovable, (b) all their bank accounts and (c) Income Tax Returns. **This Court is therefore of the view that, ED has either lost sight or purposely not referred all these litigations and circumstances of transaction with such details in the PC, for the reasons best known to them.** It is material to note that, ED has made much capital regarding MHADA's termination of Tripartite Agreement, yet the subsequent proceedings they had participated before the Hon'ble High Court (which are referred above) clearly indicate that MHADA was party before the Hon'ble High Court and accepted the order **dt.14.03.2018 ignoring termination dt.12.01.2018.** All such references which are discussed above, are also referred in the orders passed by the Hon'ble High Court. While making prima-facie

examination of the case for bail, all the above referred facts prima-facie conclusively indicate that,

- a. The execution and completion of the Tripartite Agreement.
- b. Dealings with Third Party Developers.
- c. Receipt of Funds.

And everything whichever related to it, was managed by Rakesh Kumar Wadhawan (A1), Sarang Wadhawan (A2) and their HDIL.

48. In none of all such litigations a whisper was alleged by anyone including MHADA that, it was Pravin Raut(A3) who sold FSI of Free Sale Component, generated ill-gotten money i.e. POC, and solely responsible for the alleged liability and criminal acts as well as all that he allegedly had done was nothing but he being puppet (Proxy, front-man) in the hands of Sanjay Raut(A5) who, behind the curtain, was the main culprit as alleged in the supplementary complaint for the first time in utter disregard with deviation to their own stand of ED alleged in the Main PC. All that what has been discussed hereinbefore prima-facie indicates that, the applicant(A3) was never party to any litigation before the Hon'ble High Court. The fact that the Applicant(A3) was not concerned with any affairs and in fact Rakesh Kumar Wadhawan (A1), Sarang Wadhawan (A2) and their HDIL were dealing with everything, is well corroborated by various statements recorded under Sec.50(2) and (3) of the PML Act.

49. The **Order dt.24.04.2018** passed by the Hon'ble High Court restrained HDIL from disposing of its movable properties/assets, except in the ordinary course of business. HDIL vide Notice of Motion

(LODG) No.1279 of 2018 sought clarification of this order dt.24.04.2018. On **06.06.2018 the Hon'ble High Court disposed of the same by noting HDIL's role in the execution of Development Agreements with Third Party Developers as follows,**

“8. The plaintiffs filed the above Suits before this Court impugning the termination notice dated 12th January, 2018. At the ad-interim stage, the Senior Advocates appearing for the Plaintiffs in the above Suits submitted that MHADA cannot terminate the Agreement with GACPL since the same will cause grave harm, loss and damage to the Plaintiffs and MHADA. It was submitted on behalf of MHADA, that GACPL was not entitled in law to enter into any such Agreements with the Plaintiffs and the termination notice was valid. **However, the Plaintiffs in the above Suits as well as MHADA agreed, that in view of the undertakings given by Shri Wadhawan in the Meadows Suit, HDIL, which is a holding Company of GACPL, is responsible for the misdeeds of GACPL.**”

50. Wadhawans were holding maximum shares of GACPL which cannot be ignored. Yet, they were not even arrested and ED has availed pick and choose strategy while arresting Pravin Raut(A3) and Sanjay Raut (A5). PC as well as supplementary complaint have not a whisper of any of aboveresferred battle of litigations, circumstances of transaction and conclusive observations made by the Hon'ble High Court. Certainly all these cannot be lost of sight while deciding merits of the bail application.

51. Ld. Sr. Counsel Mr. Aabad Ponda, in order to juxtapose the above referred observations made by the Hon'ble High Court, placed his reliance on the **Affidavit dt.08.02.2017** filed before the Hon'ble High Court, wherein Sarang Wadhawan (A2) has made sworn statements which are referred in paragraph 42 above. At the cost of repetition it has to be noted that MHADA was party to the said litigation before the

Hon'ble High Court. Sarang Wadhawan (A2) has explicitly stated that, GACPL has entered into Development Agreements with third party developers. After that vide an **order dt.24.04.2018** MHADA's contention was explicitly recorded wherein it has stated **“HDIL, which is a holding company of GACPL, is responsible for the misdeeds of GACPL”**. While making assessment of prima-facie case from the point of twin conditions under Sec.45(1)(i)(ii) of the PML Act even without entering into any mini-trial, prima-facie all this glaringly establishes that the purported wrongdoings alleged in the Prosecution Complaint were always done by Rakesh Kumar Wadhawan (A1), Sarang Wadhawan (A2) and their HDIL. Even it is MHADA who has consistently adopted the said position. Admittedly Pravin Raut (A3) or even Sanjay Raut (A5) were never related to HDIL. Nor MHADA ever alleged in the FIR relating to Scheduled Offence that even Rakesh Kumar Wadhawan (A1), Sarang Wadhawan (A2) and their HDIL were front entities rather puppets in the hands of Sanjay Raut(A5) which for the first time they have alleged as such in the supplementary complaint against Sanjay Raut(A5). Certainly this aspect cannot be overlooked.

SALE OF F.S.I. OF FREE SALE COMPONENT

52. In the background of above detailed discussion, judicial note of misdeeds of Rakesh Kumar Wadhawan (A1), Sarang Wadhawan (A2) and their HDIL taken by the Hon'ble High Court, and available quality materials with PC as well as which have been filed by the Applicant(A3), it is prima-facie established that during Pravin Raut's (A3) tenure with GACPL he(A3) was never involved in any decisions relating to alleged exploitation of FSI on that land. In fact, after registration of FIR, Rakesh and Sarang (A1 and A2) entered into

development agreements with various third party developers and generated the FSI sale proceeds. Further, scrutiny of bank accounts referred in the PC reveals that the sale proceeds of FSI were transferred to HDIL and its group companies. There is nothing to show that the Applicant(A3) has received any amount from the alleged FSI sale proceeds. The tables referred in the PC nowhere reflect Applicant's (A3) name or any bank account in relation to whether he has received any amount from the customer, third party developers or any amount has been transferred to him otherwise.

53. On the contrary ED's own case which it (ED) had put before the Adjudicating Authority vide **OC 1396 of 2021** is that, **Pravin Raut (A3) received Rs.95 Crore from Outstanding Loan which was illegally availed by the HDIL from Punjab and Maharashtra Co-operative Bank Ltd. (PMC)**. Their own contention of ED as such prima-facie demolishes their case alleged in the Prosecution Complaint that, **Rs.95 Crore Pravin Raut (A3) had generated and placed by illegal sale of free component FSI**. These self contradictory contentions of ED, clearly indicate that no evidence is required to prima-facie hold that, entire money trail which allegedly pertains to FSI sale proceeds is prima-facie nothing but a false and feigned contention put forth by the ED, which basically has absolutely no link with the Applicant(A3). All this prima-facie goes to show how the ED is doing approbate and reprobate.

54. In the aforesaid premises argument of Ld. Sr. Counsel Mr. Aabad Ponda prima-facie justifies that, the restrictions contained in the obligations recited in the Tripartite Agreement were relatable only to the component of the project accruing to the benefit of MHADA and the

tenants, which component was ascertained in the Tripartite Agreement. In this regard, the restrictions recited in **Clause 9.3** of the Tripartite Agreement in the capacity of Assignment of Rights contained in the Tripartite Agreement, were relatable only to the component of the project accruing to the benefit of MHADA and the tenants, which component was ascertained as per the Tripartite Agreement. Hence, contention of ED that the transfer of FSI to third party developers was in violation of Tripartite Agreement, is unfounded and prima-facie baseless.

WHETHER RS.95 CRORE ARE PROCEEDS OF CRIME (POC) IN VIEW OF ED'S ATTITUDE OF APPROBATE AND REPROBATE FOR THE SAME?

55. ED has taken two/three different stands and contentions about POC. **First and the basic contention** of ED is that, Pravin Raut (A3) has received Rs.95 Crore out of Rs.1039.79 Crore of alleged POC generated by selling FSI of free sale component. **Second contention** of ED is referred in an unnumbered paragraph 3, lines No.4,5 and 6 on page 43 of the Main PC. Wherein, it is specifically alleged as, "It is further revealed that Pravin Raut (A3) has received **huge** amount around **Rs.100 Crore** from HDIL from the period of 2008-10". **Third contention** of ED is in the supplementary complaint filed against Sanjay Raut (A5) as well as paragraph 9.11 on page No.27 of the main Prosecution Complaint wherein it is alleged as, "It is further revealed that Pravin Raut (A3) has received around **Rs.112 Crore** from HDIL during the period 2008-2010 in the **multiple installments** and he(A3) failed to give any valid reasons for transfer of such funds in his account". In this way, general words like "**huge**" "**around**" "**approximately**" "**multiple installments**" are used for specifying those

accounts when the test is that of beyond reasonable doubt.

56. Quantum of POC claimed by ED in paragraph 11 at page 38 of the Main PC, it is alleged as follows,

“11. Quantum of POC :

GuruAshish Construction Pvt. Ltd has illegally sold the FSI to third party developers and raised Rs.1048.96 Crore. Out of this amount Rs.147.17 Crore has been paid to Municipal Corporation of Greater Mumbai. Further GuruAshish Construction Pvt. Ltd. through HDIL launched a project in the year 2010 namely MEADOWS at Patra Chawl, Goregaon and against bookings from 458 home buyers an amount of Rs.138 Crore were collected. Thus, for illegal sale of FSI the accused has generated total amount of Rs.1039.79 Crore. Accordingly, **approx.** Rs. 1039.79 Crore were received in the bank account of GuruAshish, HDIL and its group companies during the year 2010-14. **Some part** of these amounts were utilised in developing the project which remains incomplete. Whereas **most of the funds** were siphoned off **to various accounts**. The Company had availed Terms loans from Union Bank of India round Rs.100 Crore by way of Non-Convertible Debentures and **around** Rs.215 Crore from IL&FS Ltd. **Some part** of these amount were utilised in developing the project which remains incomplete. Whereas **most of the funds** were siphoned off. The entire amount totalling to Rs.1039.79 Crore illegally collected by unauthorised sale of FSI is the Proceeds of Crime in terms of Section 2(1)(u) of PMLA,2002. The investigation is under progress to trace the proceeds of the crime.

57. It is material to note that even ED also pleaded in the Main Prosecution Complaint the specific role of Rakesh (A1), Sarang (A2) Wadhawans in **paragraph 13.01 on page 42** in following words,

“Rakesh Wadhawan and his son Sarang Wadhwan were the Directors of Guru Ashish Construction Pvt Ltd and also the decision makers. The decision to sale the FSI was decided by them and also decided the utilisation of the proceeds of sale. They have siphoned of the subject sale proceeds to their other companies forming the part of HDIL. Thus, at the time of the contravention was committed Rakesh Wadhawan and his son Sarang Wadhawan were in charge of all of the affairs of the company and all the illegalities of unauthorised sale of FSI and siphoning off funds were taken place with their active involvement. Being the authorised person to operate the bank

accounts they have siphoned off the proceeds generated out of sale of FSI according to their whims and fancies”.

Each and every word, as above, pleaded by the ED in PC paragraph No.13.01 clearly shows that even ED has not disputed this situation that, A1, A2 and their HDIL are the sole persons in generating, placing, layering and integrating the alleged POC. This basic admitted fact which dispense with the proof thereof even at this prima-facie stage. Short paragraph beneath the above paragraph in PC is the conclusion drawn by the ED regarding A1, A2, GACPL and their alleged involvement in an offence under Sec.3 r.w. Sec.4 of the PML Act. Own materials of ED prima-facie make it crystal clear that ED itself had attributed prime role to Wadhawans (A1 and A2) that, they were Directors of GACPL and sole decision makers, who were in-charge of all the affairs of the company at the time when contravention was committed and further all illegalities of unauthorized sale of FSI and siphoning off funds were taken place with their active involvement. This duo being authorized persons to operate the bank accounts had siphoned off the proceeds generated out of alleged sale of FSI according to their whims and fancies. It was already discussed in detail how the Hon'ble High Court recorded the conclusive findings holding the same. Even Affidavit of Sarang (A2) filed in the Hon'ble High Court in one of such proceedings contains his sworn statement admitting everything as referred above. Even MHADA who is now making hue and cry to hush up its own wrongs by filing FIR No.22 of 2018, had also clearly consented all this before the Court of Law. What more is required for prima-facie holding that Pravin Raut(A3) has absolutely no role or whatsoever concern with such activities of Rakesh(A1), Sarang(A2), their HDIL and also GACPL. So how Pravin Raut(A3) can be prima-

facie held as 'Generator and Launderer' of money (POC) Rs.95 Crore/Rs.100 Crore/Rs.112 Crore/Rs.1039.79 Crore?

58. Another aspect requires consideration. In both prosecution complaints ED has alleged that, Pravin Raut(A3) is generator of POC and recipient of Rs.95 Cr./Rs.100 Cr./Rs.112 Cr. thereof. Some out of it, he (A3) further transferred to his wife and the wife of Sanjay Raut(A5). It is a fact that the ED on **31.12.2020** in relation to separate **ECIR/MBZO-I/09/2019** took **Order No.16 of 2020** i.e. for Provisional Attachment Order (PAO) and provisionally attached various properties of the Applicant(A3) worth approximately **Rs.72 Crore**. Basis for this action was the allegation that, HDIL had availed huge illegal loan from PMC Bank and total Rs.6117.93 Crore thereof was outstanding. Next contention for the said PAO was that HDIL had paid an amount of **Rs.95 Crore** to the applicant(A3). For that Ld. Sr. Counsel Mr. Aabad Ponda filed copy of PAO No.16 of 2020 in **F.No.ECIR/MBZO-I/09/2019 dt.31.12.2020**. It is necessary to reproduce relevant portions from OC 1396 of 2021 as follows,

“The total outstanding loan of **INR 6117.93** crores from PMC Bank to HDIL Group constitute the proceeds of crime.”

9.1 Investigation also revealed that from the aforesaid proceeds of crime M/s. HDIL paid an amount of INR 95 Crores to Mr. Pravin Raut.”

“... Thus, during investigation, it was revealed **that Pravin Raut has received Rs.95 Crores from HDIL, which has availed loans from PMC Bank fraudulently and this money has been utilised for purchase of land in Palghar Taluka...**”

So, this contention of ED itself clearly indicates that the source of Rs.95 Crore received by Pravin Raut(A3) from HDIL is out of outstanding loan availed by HDIL (A1 and A2) from the PMC Bank. On

25.01.2021 ED filed and Original Complaint No.1396 of 2021 (OC No.1396 of 2021) under Sec.5(5) of the PML Act before the Hon'ble Adjudicating Authority with a specific contention as such about **Rs.95 Crore**. Thereafter, responding notice dt.05.02.2021 issued by the Hon'ble Adjudicating Authority, the applicant(A3) filed his detailed reply on 25.03.2021 and disclosed sources of acquisition contending that Rs.95 Crore alleged POC are legitimate and arise out of genuine transaction and also the same he received much prior to 2011, when HDIL availed the loan for the first time from the PMC Bank. In this way the Applicant(A3) contended how the said Rs.95 Crore are not a part of POC.

59. The Hon'ble Adjudicating Authority confirmed provisionally attached properties of the Applicant(A3) vide **Order dt.14.12.2021**. The Applicant(A3) challenged it before the Hon'ble Delhi High Court vide **Writ Petition (C) 10681 of 2021** pointing out that 180 days have been lapsed in June, 2021 itself. The Hon'ble Delhi High Court vide order **dt.23.09.2021** directed that final order of the Hon'ble Adjudicating Authority ought not to be implemented till the question of law involved in the Writ Petition is finally decided by the Hon'ble Division Bench of the Hon'ble Delhi High Court. Ld. Sr. Counsel Mr. Aabad Ponda further pointed out that the Order dt.14.12.2021 passed by the MUM/Adjudicating Authority has been challenged before **the Hon'ble PMLA Appellate Tribunal, New Delhi vide FPA/PMLA/2022** and the same is pending.

60. All this prima-facie glaringly demonstrates how the ED had taken altogether different self-contradictory rather self-destructive stands for claiming the same POC Rs.95 Crore. At the cost of repetition

it has to be noted that, the same amount of Rs.95 Crore, ED has been alleging as POC for two altogether different ECIRs. On one hand in ECIR 2019, ED's case in the OC 1396 of 2021 is that Rs.95 Crore received by the Applicant(A3) forms a part of the outstanding loan which was taken by HDIL from the PMC Bank. On the other hand, ED has taken exact self-contradictory stand in the present PC making allegations against the Applicant(A3) by contending the same Rs.95 Crore being the alleged FSI Sale Proceeds, which is not established prima-facie. All this prima-facie indicates that Rs.95 Crore has neither any connection nor does it form a part of alleged FSI Sale Proceeds i.e. Rs.1039.79 Crore. ED may take such two altogether different self-contradictory rather self-destructive stands, but the same cannot be acknowledged at law, when the serious question of Right of Liberty of a person is before the Court.

61. At the cost of repetition, it is necessary to refer three different stands taken by ED which are as follows,

- a. HDIL (A1 and A2) are generators of Proceeds of Crime through illegal loan and Pravin Raut(A3) is recipient of Rs.95 Crore thereof.
- b. In Prosecution Complaint against the Applicant(A3) it is alleged that, he(A3) is generator of POC and also recipient of Rs.95 Crore thereof.
- c. In Supplementary Complaint against Sanjay Raut(A5) ED now contends that neither A1, A2, their HDIL and the Applicant(A3) are the main persons in the process of money laundering, but Sanjay Raut(A5) is the main person behind this entire show and Pravin Raut(A3) is his puppet, proxy, front-man who generated POC for him(A5) and allegedly paid a meager thereof **Rs.1,06,44,375 (Main PC) and Rs.3,27,85,475 (Supplementary Complaint)** to Sanjay Raut(A5). In this way, ED itself contends that Sanjay Raut (A5) who is the main person behind the curtain did all these things for **Rs.1,06,44,375 and Rs.3,27,85,475**. Whereas his frontier and A1,A1, HDIL, GACPL received huge i.e. Rs.1039.79 Crore.

Such self-contradictory rather self-destructive, incompatible stands taken by ED cannot be acknowledged at law, even at the preliminary stage of prima-facie assessment of the case for bail. What ED has done as such leads to draw two prima-facie inferences. Firstly, if contention of ED in ECIR 2019 and PAO thereof is accepted, then there is no POC involved in the present **ECIR/MBZO-I/80/2021 dt.08.09.2021** in respect of the Applicant(A3). Secondly, if contention of ED in the present case (**ECIR/MBZO-I/80/2021**) is accepted, same clearly indicates that, ED has dragged the Applicant(A3) in ECIR 2019 by falsely implicating him. All this further clearly indicates that ED itself suggests that, if POC (Rs.95 Crore/Rs.112 Crore) alleged against the Applicant(A3) herein is true, then the POC Rs.95 Crore they have contended earlier in ECIR 2019 is false and should be disbelieved. If ED wants to rely on Rs.95 Crore POC alleged in ECIR 2019 being true, then whatever contended by them in the present **ECIR/MBZO-I/80/2021** is presumed to be false and should be disbelieved. In this way prima-facie it is evident that, ED has blown hot and cold. **All this is nothing but a Classic example of “Approbate and Reprobate”, which cannot be acknowledged at law. One cannot approbate and reprobate and blow hot and cold. If someone does so and Court upholds the same, that will amount putting premium on such approbate and reprobate attitude. Certainly Court cannot do as such.**

62. Next aspect which requires consideration is that, after giving details of money trail in the prosecution complaint, pursuant to the Bail Application (Exh.8), ED filed its Reply(Exh.8A) and referred various new details of alleged money trail, which were basically not given in the PC. For that ED has given a table on page No.13 of their say/reply (Exh.8A). The said table refers certain transactions from

three entities – Bhoomi Shashwat Estate Pvt. Ltd., Ekta Everglade Homes and Kiyana Ventures LLP. Ld. Sr. Counsel Mr. Aabad Ponda in his oral as well as written submissions pointed out following facts :-

- a. In the reply (Exh.8A) page 13 Items No.9, 10, 11, 12 and 14 relating to certain new transactions from Bhoomi to the HDIL, PMC Bank account, have been added, which basically have no place in the PC.
- b. None of the transactions from Bhoomi mentioned in PC and reply (Exh.8A), shows that those amounts were transferred to the personal account of the Applicant(A3).
- c. Similarly two transactions mentioned at Items 16 and 17, page 14 of reply (Exh.8A) to show that, monies from Ekta have been transferred to HDIL, PMC bank account. However, as per complaint in relation to the same transactions from Ekta (page 29 PC Items 1 and 3) monies were further transferred to certain accounts of other entities and not to the account of the Applicant(A3).
- d. Two transactions mentioned at Items 18 and 19 at page 14 of the reply (Exh.8A) to show that the monies from Kiyana have been transferred to HDIL, PMC Bank accounts. Applicant's(A3) case is that he was then paid from this account and from these moneies. However, as per the complaint in relation to the same transaction from Kiyana (page 34 of PC Items No.2 and 3) monies were further transferred to certain accounts of other entities and not to the account of the Applicant(A3).

In this way, Ld. Sr. Counsel Mr. Aabad Ponda rightly pointed out that no material whatsoever either in the reply or even the PC, contends that the applicant has received monies from the alleged FSI Sale Proceeds. On the contrary it is prima-facie evident that as per ED's own case, these monies were transferred to some other entities and not to the applicant's personal account.

63. All this prima-facie indicates that there is no material in the PC or reply (Exh.8A) even to alleged that the Applicant(A3) has received monies from the alleged FSI Sale Proceeds. If the case alleged

and pleaded in the PC is accepted as it is, these monies appear to have been transferred to some other entities and not to the Applicant's(A3) personal account. When the test of “beyond reasonable doubt” is applied prima-facie, the materials on record coupled with argument of Ld. Sr. Counsel Mr. Aabad Ponda makes the defence probable on preponderance of probabilities. At the same time PC and argument of Ld. SPP Mr. Hiten Venegavkar has absolutely no justification for the same. In order to understand this aspect with more clarity Ld. Sr. Counsel Mr. Aabad Ponda pointed out and placed reliance on the table which accused No.3 has submitted in his rejoinder (Exh.8C). There cannot be any hesitation to reproduce the same as it will help to discover the truth which is the ultimate goal of the criminal trial/proceedings. Nor the Court can overlook or ignore the same when specifically pointed out in the written submissions. Therefore, the said table is being reproduced as it is below,

SR NO	PARTY NAME	DATE	AMOUNT (IN INR)	CORRESPONDING SERIAL NO/PAGE NUMBER IN PC	CORRESPONDING BENEFICIARY AS PER THE PC
1.	Bhoomi Shashwat Estate Pvt Ltd	15.03.2010	1 Crore	Serial No. 6 / Page 29	TRF TO SAPPHIRE PMC 1024
2.		18.03.2010	2 Crores	Serial No. 7 / Page 29	TRF TO SAPPHIRE PMC 1024
3.		22.03.2010	1 Crore	Serial No. 8 / Page 29	TRF TO SAPPHIRE PMC 1024
4.		07.09.2010	2 Crores	Serial No. 9 / Page 29	TRF TO SAPPHIRE PMC 1024
5.		24.10.2009	5 Crores	Not mentioned in the Prosecution Complaint	
6.		03.11.2009	2 Crores	Serial No. 14 / Page 29	TRF TO HDIL IDBI & VENDORS

7.		03.11.2009	2 Crores	Not mentioned in the Prosecution Complaint	
8.		06.11.2009	50 Lakhs	Serial No. 16 /	TRF TO SAPPHIRE PMC 1024
9.		09.11.2009	1 Crore	Not mentioned in the Prosecution Complaint	
10.		21.11.2009	1 Crore	Not mentioned in the Prosecution Complaint	
11.		23.11.2009	1 Crore	Not mentioned in the Prosecution Complaint	
12.		24.11.2009	1 Crore	Not mentioned in the Prosecution Complaint	
13.		20.02.2010	1 Crore	Not mentioned in the Prosecution Complaint	
14.		22.02.2010	1 Crore	Not mentioned in the Prosecution Complaint	
15.		07.01.2012	1.25 Crores	Serial No. 23 / Page 29	TRF TO SATYAM PMC 141
16.	Ekta Everglade Homes Pvt. Ltd	14.09.2010	2.5 Crores	Serial No. 1 / Page 29	TRF TO SAPPHIRE PMC 1024
17.		26.10.2010	5 Crores	Serial No. 3 / Page 29	TRF TO CDM
18.	Kiyana Ventures LLP	05.10.2010	11 Crores	Serial No. 2 / Page 34	TRF TO SAPPHIRE PMC 1024
19.		08.10.2010	14 Crores	Serial No. 3 / Page 34	TRF TO SATYAM PMC 1416

This table and money trail shown therein clearly indicates that whatever monies and trail thereof mentioned in the table filed with reply (Exh.8A) by the ED, demonstrate that no monies have been received by the applicant(A3) from the alleged FSI Sale Proceeds. Such modification vide table in the Reply (Exh.8A) is contrary to the case alleged by ED in the Prosecution Complaint. Even otherwise prima-facie there is nothing to show that the Applicant(A3) had received any monies out of the FSI Sale Proceeds. It is also prima-facie evident that, ED in their Reply (Exh.8A) dt.17.06.2022 included such entries which do not constitute Proceeds of Crime as defined under Sec.2(1)(u) of the

PML Act nor any criminal activity relating to Scheduled Offence which is the basic qualification to book any person like the Applicant(A3) for allegedly having committed an offence of money laundering.

64. The next important aspect relates to the Supplementary Complaint filed against Sanjay Raut(A5), wherein altogether new invention has been cropped up. Judicial Note requires to be taken of a fact that initially only Pravin Raut(A3) was arrested and his bail application was being argued at length since its filing on 05.05.2022, Reply (Exh.8A) **dt.21.06.2022** onwards. In this way, the bail application of the Applicant(A3) was being heard on the basis of specific role PC attributed to him. Hearing of this bail application was going on from June, 2022. In the meantime ED arrested Sanjay Raut(A5) on **01.08.2022**. Investigation in respect of Supplementary Complaint against him (A5) was allegedly going on. PC against the Applicant(A3) was filed on **07.04.2022**. In this way, in the meantime prior to filing of Supplementary Complaint against Sanjay Raut(A5), the present Applicant(A3) had disclosed his defence by way of two volumes of this bail application, detailed written submissions (Exh.8B and Exh.8E). Therefore, filing of Supplementary Complaint deviating earlier stand taken in the Main PC by ED attributing main role to Sanjay Raut(A5) speaks volumes.

65. The basic case of ED in the Main PC was that it is the Applicant(A3) who generated POC and received Rs.95 Crore/Rs.100 Crore/Rs.112 Crore out of Rs.1039.79 Crore and further transferred a very meager of Rs.1.06 Crore to his wife and then to the wife of Sanjay Raut(A5). In this background Supplementary Complaint against Sanjay Raut(A5) came with an altogether new invention that it was not the

Applicant(A3), but Sanjay Raut(A5) is the main person/culprit who was doing all such activities behind the curtain and the Applicant(A3) was his proxy, front-man and a puppet in the hands of Sanjay Raut(A5). Hence, the case took a miraculous twist by way of Supplementary Complaint, thereby making '**Dramatis Personae**' and transposing the roles attributed to them (A3 and A5). And hence, Sanjay Raut(A5) was attributed a Prime Role which he allegedly played by keeping himself behind the curtain. While attributing such Main Role to Sanjay Raut (A5), prosecution completely forgot that everywhere in the Main PC they had attributed Main Role to Rakesh Kumar Wadhawan (A1), Sarang Wadhawan (A2) and their HDIL, making them responsible even for GACPL, which was confirmed by the Hon'ble High Court.

66. In this way, in the Supplementary Complaint dt.15.09.2022 ED levelled following allegations against the Applicant(A3),

- a. The Applicant (A3) received Rs.112 Crore in his bank account from HDIL in the guise of Sale of Equity and Redevelopment of the project during 2010-11. Out of this, Rs.1.06 Crore was moved from the Applicant's (A3) bank account to the bank account's of Sanjay Raut(A5) and his wife.
- b. For the nexus of Sanjay Raut(A5) with this project it is alleged that, Secretary, Housing Department on **14.08.2006** prepared an internal note contending that the then Union Agriculture Minister had desired a discussion for the redevelopment of the Siddharth Nagar Project. Sanjay Raut(A5) had participated the said meeting and indicated that redevelopment of Siddharth Nagar Project as per GR of year 1988, is not viable.
- c. Thereafter, the Development Agreement dt.18.08.2006 was executed between the society and GACPL for 13.8 Acres of land for 672 tenants.
- d. Some times in September,2007 a meeting was called upon by the then Chief Minister to know the financial

implications of the Siddharth Nagar Project as per the current and proposed development control regulations. In the said meeting Mr. Sanjay Raut(A5), the office bearers of the society and MHADA officers were present. **No minutes were prepared for this meeting.**

- e. Thereafter, accused No.1 to 3 took entry in GACPL after changing shareholding pattern and structure by the exit of earlier shareholders.
- f. The initial project of Siddharth Nagar Project was to construct rehab for the tenants in 13.8 Acres. After the entry of Mr. Sanjay Raut(A5) the scope of the project increased to 47 Acres. The role played by Mr. Sanjay Raut(A5) was crucial in granting the Siddharth Nagar Project to GACPL. He introduced Pravin Raut (A3) as his front in GACPL at 25% share without any investment in the company.
- g. Mr. Pravin Raut(A3) was a proxy and confidante of Mr. Sanjay Raut(A5). Due to the understanding between Accused No.1,2 and 5, the Applicant(A3) was inducted in GACPL and was authorised to liaise with MHADA on behalf of GACPL.

Mr. Pravin Raut (A3) was a close friend of Mr. Sanjay Raut(A5) and was authorised to correspond with MHADA and other local authorities. Mr. Pravin Raut (A3) obtained favourable approvals from MHADA and was able to sell FSI to developers, due to his proximity with Mr. Sanjay Raut(A5).
- h. Cash worth INR 13.6 Crores was withdrawn from the account of accused No.4 by accused No.1 and 2. Mr. Sanjay Raut has been connected with the purported proceeds of crime by stating that,“Sanjay Raut has acquired many assets during the period the POC was siphoned off and also cash amount has been used by Sanjay Raut and for acquiring **some of** these assets and also for meeting **various** personal expenses.” The cash received by Accused No.5 has been utilised to acquire assets in Kihim, Alibaug.
- i. Accused No.1,2,3 and 5 have conspired with each other and indulged in the offence of money-laundering.

67. These are the main allegations made in the Supplementary Complaint against Sanjay Raut(A5) . I have already noted on the basis of materials available with the prosecution complaint and the copies of documents filed by the Applicant(A3) that basically the prosecution is failed to point out the proceeds of crime, as claimed in the complaint. I have also noted how the prosecution has blown hot and cold by making approbate and reprobate for the same and also how it claimed the same Rs.95 Crores being Proceeds of Crime in this as well as 2019 ECIR. I have also noted how such approbate and reprobate attitude of the ED cannot be acknowledged at law when the serious question of liberty of the Applicant(A3) is before the Court. I have also noted, how the alleged Proceeds of Crime Rs.95 Crore, Rs.100 Crore and Rs.112 Crore alleged in the Main PC cannot be a Proceeds of Crime at all, as defined under Sec.2(1)(u) of the PML Act. In this background the miraculous invention made by way of Supplementary Complaint transposing the basic role attributed to the Applicant(A3) to a secondary role being front-man of Sanjay Raut(A5) and attributing the main role to Sanjay Raut (A5), is material aspect which cannot be ignored while allowing or even rejecting the application. So called **Office Note dt.14.08.2006** prepared by Secretary, Housing Department reflecting desire of the then Union Agriculture Minister and participation of Sanjay Raut(A5) in the said meeting as well as meeting with the then Chief Minister which has no record or basis of any minutes, and, the statement of Mr. Chandan Kelekar are the only two things, whereby the present Applicant(A3) and Sanjay Raut(A5) are now claimed to be accused.

68. It is contention of ED that PC Rs.1039.79 Crore POC received in the account of GACPL by the sale of FSI to third party developers (para 11 at page 38 of the PC). It is also alleged that, the

said total POC received in the account of GACPL was further diverted to HDIL and its associate entities. Even I have already reproduced paragraph 11 in the Main PC and exhaustively discussed how ED has held Rakesh (A1), Sarang (A2) and their HDIL solely responsible for generating POC and laundering it. Not only this but, I have already discussed in detail how the Hon'ble High Court took the note of this fact and held A1, A2 and HDIL responsible for the misdeeds in respect of GACPL. I have also noted the stand taken by MHADA everywhere consenting and admitting this situation. I have also noted how even MHADA has not pointed any finger of objection towards the Applicant(A3) or even Sanjay Raut(A5) at the relevant time right from the beginning i.e. from 2006-07 till before resignation of Applicant(A3) in 2013 and thereafter, till 2018 (even after registration of FIR No.22 of 2018) before the Hon'ble High Court in various proceedings. Records further clearly show that even after termination of Tripartite Agreement and Modification Deed, MHADA went on negotiating with Rakesh(A1), Sarang(A2) and HDIL and also accepted the verdicts of the Hon'ble High Court wherein Sarang(A2) had filed Affidavit making a sworn statement how he, Rakesh (A1) and HDIL had executed 12 agreements with third party developers for the sale of FSI.

69. It has to be noted that, contention of ED without any particulars of time and minutes of meetings with the then Union Minister and the then Chief Minister, Sanjay Raut and top Government Officer Secretary of Housing Department, has prima-facie absolutely no corroboration. Statement of Mr. Chandan Kelekar has to be viewed in this background, even if statements under Sec.50(2) and (3) of the PML Act carry weight. The quality of that statement can be looked into without touching the aspect of its appreciation for arriving at prima-

facie opinion. Merits of such statement is certainly a matter of trial, but the quality of the said material can be seen in the background of stringent twin conditions under Sec.45(1)(i)(ii) of the PML Act and as held by the Hon'ble High Court in the case of **Anil Vasantrao Deshmukh Vs. State of Maharashtra (Bail Application No.1021 of 2022, decided on 04.11.2022)**.

70. It is an admitted fact that once upon a time the Applicant(A3) and his wife, Ms. Swapna Patkar, Mr. Sujit Patkar, Sanjay Raut(A5) and his wife were close family friends. All of them had some trips and also purchased properties. If they had purchased any properties as such, and Ms. Swapna Patkar makes any statements, does not mean that such properties are purchased from the POC, when this Court has formed a prima-facie opinion that basically there is no POC. Therefore, quality of material of such statements can be seen.

71. Careful reading of statement of Mr. Chandan Kelekar, Architect, **dt.25.08.2022**, who claims to have a Photographic Memory and answer given by him to first question begins with “**I do not remember the exact date**”. Further “**I do not know the reasons** for exit of Mr. Nippun Thakkar, but “**as told by Shri Mansukhbhai Sureja**”. All this prima-facie indicates this material (his statement) is based on hearsay facts and some of them are beyond his remembrance. The date of this second statement **dt.25.08.2022** wherein he refers the meetings of the then Union Agriculture Minister, Chief Minister, Sanjay Raut(A5) and another with the then Chief Minister etc. is crucial. Because all these facts he had disclosed for the first time on **25.08.2022**, when the main Complaint against the applicant(A3) was already filed, he(A3) had already disclosed his defence in two big volumes of this bail

application. Even some written submissions made on his behalf for the bail application were also on record when investigation in respect of Supplementary Complaint was allegedly going on. Therefore, this date **25.08.2022** regarding second statement of Chandan Kelekar is **material and significant**. It is because previously when the investigation against the Applicant(A3) was going on prior to filing of the Main PC, this Mr. Chandan Kelekar had submitted his **first statement** under Sec.50(2) and (3) of the PML Act on **17.09.2021**. It is material to note that in this first statement he has not even whispered about any such meeting among the then Union Minister, Chief Minister, MHADA Officers, he himself etc. But it is only after the Applicant(A3) filed two big volumes of this bail application with written submissions and made out his defence. For the first time on **25.08.2022**, Mr. Chandan Kelekar has made statement as follows,

“Firstly, in around September 2007 a meeting was called upon by the then Hon'ble Chief Minister of Maharashtra, Shri Vilasrao Deshmukh to know the financial implications of the project as per the current as well as the future proposed Development Control Regulations. In this meeting Shri Sanjay Raut, the office bearer of Patra Chawl viz Shri Rajaran Shinde, Shri P.Y. Shinde, Coordinator, Shri Gavas, **the MHADA Officers viz T. Chandrashekhar (V.P.), Chief Officer, Legal Adviser, Chief Engineer, Chief Architect** were present. On being asked I state, I was also present in the meeting being the project Architect. After understanding the financial implications in this Project, Shri Vilasrao Deshmukh suggested that the proposal should be first concluded in the MHADA Authority meeting and thereafter to be forwarded to the Govt. for its approval. **On being asked if any minutes were prepared for the meeting I state that no minutes were prepared** only directions were given to get the proposal sanctioned from the authority.”

Admittedly, he has not stated anything as such in his previous statement **dt.17.09.2021** during investigation against the

Pravin Raut(A3) and for the first time he is stating as such when the applicant(A3) had made out his case in two big volumes of bail application and written arguments. All this speaks volumes pointing out that this material is not of a quality to decide the fate of this bail application relating to the serious question of applicant's liberty. Apart from this, another important aspect has to be considered that, such statement of Mr.Chandan Kelekar indicates that high positional MHADA and Government officers were present for the said alleged meeting of the then Chief Minister that too without recording any minutes thereof. Throughout, right from the beginning even till date before the Hon'ble High Court, MHADA was party to all the Civil litigations relating to this project. Even MHADA who were/are one of the parties before the the Hon'ble Bombay High Court, had not whispered about this aspect throughout including in the course of investigation relating to the Main PC. This speaks volumes which cannot be taken lightly nor can be ignored. Therefore, the whole story which has been cropped up alleging against and implicating Sanjay Raut(A5) for the first time by way of Supplementary Complaint is based mainly on this statement of Mr.Chandan Kelekar, which is basically not a good quality material, as held by the the Hon'ble Bombay High Court in the case of **Anil Vasantro Deshmukh Vs. State of Maharashtra (Bail Application No.1021 of 2022, decided on 04.10.2022)** (the part of observations of the Hon. High Court in Anil Deshmukh regarding such statement being not quality material, has to be referred.).

This is the first statement in the Supplementary Complaint against Sanjay Raut(A5) and thereafter ED did '**Dramatis Personae**' and transposed the role of the Applicant(A3) and attributing main role to Sanjay Raut(A5). Except this statement there is absolutely nothing against the Applicant(A3) and even against Sanjay Raut(A5). Even

otherwise also his statement prima-facie demonstrates that the Applicant(A3) was liasoning with MHADA, occupants and the same which supports the contentions of the Applicant(A3).

72. Careful examination of the statement dt.21.02.2022 of Mr. Parag Munot recorded under Sec.50(2) and (3) of the PML Act, clearly indicates that he specifically stated how HDIL was marketing for selling the Development Rights/FSI in Siddharth Nagar. He further states that in an around August-September,2010 they had a meeting with Rakesh Wadhawan(A1) and Sarang Wadhawan (A2) of HDIL . Stepping head he further clearly states that **he had not interacted with Pravin Raut(A3) relating to this project**. As such there is no interaction with him, however, in one meeting with Rakesh Wadhawan(A3) and Sarang Wadhawan (A2) in HDIL Tower, Mr. Rakesh Kumar Wadhawan (A1) introduced Pravin Raut(A3).

73. Careful perusal of the statement dt.21.02.2022 of Mr. Manish Agarwal recorded under Sec.50(2) and (3) of the PML Act indicates he clearly stated that they came to know about the project from market sources and contacted Mr. Rakesh Kumar Wadhawan (A1), Director of GACPL, who gave him information of the project referring to the Resolution dt.30.07.2011. He further states that only Rakesh(A1) was interacting with them and they had not interacted with any other persons. On further asking him he further states that, he had never met Sarang Wadhawan (A2) and their only point of contact was Rakesh Wadhawan(A1).

74. Statement of Ashok Mohanani dt.22.02.2022 recorded under Sec.50(2) and (3) of the PML Act indicates that, he was asked

with whom he and his persons from Ekta Everglade Home Pvt. Ltd were interacting for the project? While answering it, he specifically referred the names Rakesh Kumar Wadhawan (A1), Sarang Wadhawan (A2), Mr. Ashok Gupta, Director of HDIL, Avinash Vyvhare, In-house Architect of HDIL. He was thereafter specifically **asked to explain about his interaction with Pravin Raut (A3), Director of GACPL. It is material to note that he specifically answered as, “Mr. Rakesh Kumar Wadhawan introduced him to Mr. Pravin Raut at his office and he met him couple of times as a courtesy”**.

75. Mr. Liladhar Pansania in his statement dt.22.02.2022 recorded under Sec.50(2) and (3) of the PML Act, states that, he is the Finance Director of Fist Infra Pvt. Ltd and his company was special purpose vehicle for execution of the development at Siddharath Nagar, Goregaon. They were in direct contact with HDIL's Rakesh Wadhawan, Sarang Wadhawan, Waryam Singh and there was no mediator involved for the said purpose. He further states that letter dt.26.07.2011 issued by the MHADA to GACPL is part of the agreement. Also the Resolution dt.30.07.2011 by the Society is a part of the Agreement. He further states that their Director Mr. Kelwin Singh interacted with Rakesh Wadhawan of GACPL, Mr. Kelwin Singh was supplying ready mix concrete to HDIL at their various sites from 2008 onwards and as such HDIL and its promoters were known to his Directors as they being suppliers of HDIL. He further specifically stated that he had never interacted with Pravin Raut(A3).

76. Mr. Sukumar Shetty in his statement dt.22.02.2022 recorded under Sec.50(2) and (3) of the PML Act, states that, he is Chief Financial Officer of KBJ Developers Pvt. Ltd. He further

specifically stated that Rakesh Kumar Wadhawan (A1) was the person with whom persons from his company KBJ Developers Pvt. Ltd. were interacting. **He specifically stated that, they do not know Pravin Raut (A3).**

77. Mr. Akshay Jayantilal Doshi in his statement dt.02.03.2022 recorded under Sec.50(2) and (3) of the PML Act, gave answer to the question as to how he had received project from GACPL, as Rakesh Kumar Wadhawan (A1) himself approached him, introduced and convinced him for the project of Siddharth Nagar, which is available for investment and potential business. He clearly states that, he had never any interaction with Pravin Raut (A3) with regard to the dealing of the project and Mr. Chandan Kelekar, their Project Architect introduced him to Pravin Raut (A3), during a meeting with MHADA.

78. Rakesh Wadhawan (A1) in his statement dt.24.03.2022 recorded under Sec.50(2) and (3) of the PML Act, states that, the FSI was sold for raising finance and increasing the viability of the project. He further stated that, money was utilised for payment of rent to the Society members/tenants which may be in the range of Crores of rupees (Approximately to 600 tenants), payment to MHADA i.e. approval expenses which may be in the range of Rs.80 Cr., construction of tenants building Rs.180 Crore (basement+upper parking on first floor+ Ground+Stroreys), MHADA construction approximately Rs.170 Cr., development of infrastructure of MHADA around Rs.85 Cr., Premium to MCGM Rs.25 Cr., construction of sale building Rs.120 Cr., besides there were administrative expenses for the same. He further stated that he had paid Nippun Thakkar Rs.50 Cr. and Lokhandwala Builders was paid Rs.14.5 Cr. and all those expenses were on account of this project.

79. Even statement of Mr. Chandan Kelekar recorded on 17.09.2021 under Sec.50(2) and (3) of the PML Act **clearly indicates that, layouts were prepared as per instruction of Rakesh Wadhawan.** Statement of Jagdish Rai Agarwal dt.03.03.2022 under Sec.50(2) and (3) of the PML Act, who is substantial Shareholder and Director of Gold Finger Reality Investors Pvt. Ltd., looking after day-to-day work of his company for taking decision and implementing the same. He also states that for his company he and **his persons were interacting with Rakesh Kumar Wadhawan (A1) and they had never any interaction with Pravin Raut (A3).**

80. Prima-facie all these statements indicate that Pravin Raut (A3) had absolutely no role as alleged in the PC. He was simply liaising MHADA. Government authorities, tenants etc. FSI was sold to raise funds and the same was as per the Terms of Tripartite Agreement as well as Modification Deed. ED has straightway contended that all this was not permitted by MHADA, but the same is against the recitals, terms and conditions in the Tripartite Agreement and Modification Deed. Even if their contention is accepted as it is, yet the Hon'ble High Court has clearly noted the undertakings given by Rakesh Kumar Wadhawan (A1), Sarang Wadhawan (A2) which were consented by MHADA and further noted how Wadhawans and their HDIL being holding company of GACPL are responsible for misdeeds of GACPL. All above statements prima-facie indicates that Wadhawans and not Pravin Raut(A3) was dealing with anyone for FSI and project strategies.

81. Apart from this, Ld. Sr. Counsel Mr. Aabad Ponda submitted details of amount received from HDIL between 01.04.2008 to

14.10.2010 and credited to A/c No.000610110002514 with Bank of India, Borivali West Branch. In this way he has submitted a chart showing Rs.95 Cr. received by the Applicant(A3) from 03.04.2008 till 14.10.2010. The charge is Annexure 'X' to Part-II of the Bail Application. The Applicant(A3) has also filed bank statement of Pravin Raut showing the flow of these amounts which prima-facie indicates that not a single penny he(A3) had received from any third party FSI buyer of free sale component. Even otherwise contention raised by ED is PAO for ECIR 2019, itself indicates that whatever they contended in this present ECIR is false and Pravin Raut(A3) did not receive anything.

82. Similarly in his statement Mr. Hemant Patil states his awareness about applicant's (A3) association with HDIL in Siddharth Nagar Project as, "I am not linked or connected with Patra Chawl Redevelopment Project". Prosecution has recorded statements of number of witnesses, but I am of the opinion that unless prosecution prima-facie establishes that the amount of Rs.95 Crore/Rs.100 Crore/Rs.112 Crore is the POC generated from the criminal activity relating to the Scheduled Offence of cheating and criminal conspiracy, that too supported by prima-facie evidence, such materials by way of statements cannot become sole basis for prima-facie holding the Applicant(A3) is involved and had committed in the offence of money-laundering. Exactly here the prosecution is miserably failed to prima-facie establish that alleged Rs.95 Cr./Rs.100 Cr./Rs112 Cr. is an outcome of criminal activity relating to Scheduled Offence in order to hold the same Proceeds of Crime as defined under Sec.2(1)(u) of the PML Act. On the other hand Applicant(A3) everywhere submitted that he got Rs.50 Crore out of Rs.95 Crore from selling shares and remaining Rs.45 Crore he got out of his efforts in settling the dispute of Irani land

at Palghar. His contention is supported by voluminous documents relating to Iran land.

83. Apart from this, basically ED itself has explained how the Applicant(A3) got Rs.95 Crore and eased his burden to explain the same. ED has specifically contended that Wadhawans obtained illegal huge loans from PMC Bank and Union Bank of India and **Rs.6117.93** Crore thereof was outstanding. Wadhawans through HDIL transferred Rs.95 Crore thereof to the Applicant(A3). With this clear stand the ED had took attachment orders from the Hon'ble Adjudicating Authority **OC 1396 of 2021. In this way it is the ED who has basically explained the source of these Rs.95 Crore leaving nothing to explain by the Applicant(A3).** Apart from this explanation for possession of said amount given by the Applicant(A3) that he received Rs.50 Crore out of Rs.95 Crore against the sale of **Sweat Equity** and remaining Rs.45 Crore from land deal at Palghar, is prima-facie probable. Though the explanation given by the Applicant(A3) regarding Rs.95 Cr. is prima-facie appears plausible and probable, even otherwise if he fails to explain the same, at the most it would be an unaccounted money having different consequences provided under the respective Penal Laws. Unless the prosecution points out the said amount relates to POC i.e. generated by criminal activity relating to Scheduled Offence, he (A3) is not accountable for the same, particularly in view of the recent law laid down by the Hon'ble Supreme Court in paragraphs 31,32, 33 in the case of Vijay Madanlal Choudhary (supra).

84. Pravin Raut (A3) gave account regarding Rs.95 Crore that Rs.50 Crore he received towards sale of 25% share in GACPL from Siddharth Nagar Project during 01.04.2008 to 14.10.2010. In his

statement under Sec.50 of the PML Act dt.21.09.2020 while answering question No.5 regarding remainder he received in relation to minimum guaranteed profits in Irani land deal and Siddharath Nagar Project from 23.04.2010 to 14.10.2010. He has filed various documents which prima-facie justify his role in resolving the property of Iranis situated at Palghar. In this way, according to him, none of these amounts were received during the period when the POC Rs.1039.79 Crore was received/illegally collected. There is no document to prima-facie show that the applicant received any POC. On the other hand ED contends that whatever he received i.e. Rs.95 Crore, is POC in respect of ECIR 2019, which was generated and laundered by A1,A2 and their HDIL by illegally raising loan from PMC Bank, which itself prima-facie proves contention of Pravin Raut (A3).

85. In order to support his contention regarding Rs.50 Crore, he filed the Annual Returns of GACPL dt.21.05.2010, Evinced that he had transferred 2,49,900 shares in GACPL in favour of HDIL and 100 shares in GACPL in favour of Rakesh Kumar Wadhawan (A1). Secondly Form 20B filed by GACPL with the Ministry of Corporate Affairs evinces that during the financial year ending 31.03.2010, he had no shareholding in GACPL. He further filed following proofs of receipt of Rs.95 Crore.

- a. His bank statement
- b. Statements given by him before the ED on 21.09.2020 particularly responding questions No.3, 4 and 5.
- c. Statement given by him to the ED dt.09.10.2020 responding question No.3.
- d. Statement given by him to the ED dt.01.02.2022 responding question No.5.

In Vijay Madanlal Choudhary and others Vs. Union of India and others, [Special Leave Petition (Criminal) No.4634 of 2014, decided on 27.07.2022] the Hon'ble Supreme Court has held that, **“Authority of the Authorised Officer under the 2002 Act to prosecute any person for offence of money-laundering gets triggered only if there exists proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act and further it is involved in any process or activity. Not even in a case of existence of undisclosed income and irrespective of its volume, the definition of “proceeds of crime” under Section 2(1)(u) will get attracted, unless the property has been derived or obtained as a result of criminal activity relating to a scheduled offence.”** Therefore, whatever explanation given by Pravin Raut(A3) is prima-facie satisfied, when ED is basically failed to indicate that there is POC generated by the criminal activity involved in the Predicate Offence. All this clearly indicates that Pravin Raut (A3) was illegally arrested under Sec.19 of the PML Act.

86. On the contrary there is absolutely nothing to show that alleged Proceeds of Crime herein is basically a proceeds of crime as defined under Sec.2(1)(u) of the PML Act. Apart from this, the role attributed to Rakesh (A1), Sarang(A2), HDIL and GACPL which was consented by MHADA and recorded by the Hon'ble High Court, itself indicates that those Rakesh (A1) and Sarang (A2) are the main accused persons in so called generating, placing, layering and integrating the alleged POC. Not only this but also it is a fact that after 2013 till date MHADA is still dealing with accused No.1 and 2 and consenting their Affidavits before the Hon'ble High Court. It is very astonishing that Rakesh (A1) and Sarang (A2) with HDIL and GACPL (controlled by A1 and A2) who had allegedly generated Rs.1039.79 Cr. proceeds of Crime

and committed alleged money-laundering were not even arrested by the ED under Sec.19 of the PML Act. Even after their release under Sec.88 Cr.P.C., ED has not challenged the said order and allowed it to become absolute and final. On the contrary alleged meager recipients of Rs.95 Cr./Rs.100 Cr./Rs.112 (A3) Cr. as well as **Rs.1,06,44,375.** (A5) are behind bars from a very long time, indicating disparity.

87. Apart from this, prima-facie it appears that the huge battle of litigations which is going on right from the inception of the Project (and even prior to it since 1995 when Lokhandwala Developers were initially undertook the task, but did nothing till 2006) and the same continued even after 2013 (A3's resignation) till date, delayed the said project and it was not due to any money-laundering by the Applicant(A3). I have already discussed in detail with the settled position of law that intention of cheating right from the inception i.e. beginning, is a material ingredient to attract offence of cheating. I have clearly noted that absence thereof which further goes to show that there was no Predicate Offence. It is also apparent that initially Accused No.3 was arrested under Sec.19 of the PML Act purely for this Civil litigation, which is not a Predicate Offence. Therefore, prima-facie his arrest is completely illegal. Therefore, question of attracting stringent twin conditions under Sec.45(1) of the PML Act does not arise. Even otherwise, in the background of above detailed discussion, I hold that he(A3) has satisfied the rigors, if any, of the twin conditions under Sec.45 PML Act. A person who is wrongfully and illegally arrested is certainly entitled to get bail.

88. It is material to note that the Ld. Sessions Judge while granting bail to the Applicant(A3) in the crime relating to the

Scheduled Offences Crime, in his order **dt.21.03.2022** in **Bail Application No.831 of 2020** clearly held firstly that, from the amount misappropriated out of redevelopment work, no amount is deposited in the bank account of the Applicant(A3). Secondly, the applicant has not signed any agreement with any developer. Thirdly, since 2010, the applicant has not participated any transaction and Fourthly, the Applicant(A3) is not signatory of any bank transaction. Admittedly, EOW and even ED had not challenged the said Bail Order and allowed it to become absolute. These observations made by the Ld. Sessions Judge dealing with bail application in respect of Scheduled Offence cannot be overlooked. There is nothing to show that the Applicant(A3) has committed breach of any conditions imposed on him vide the said Bail Order.

89. All that what is discussed above and which is evident from the record, material with PC, prima-facie indicates that Applicant(A3) was arrested for a Civil litigation which is not a Predicate Offence. There is no provision to arrest any person for a civil dispute under Sec.19 of the PML Act. Even there is nothing before the Court to show that right from the inception the Applicant(A3) had any intention to cheat either 672 occupants or even MHADA at the relevant time. There is nothing to show that there was any Predicate Offence, as alleged in the FIR No.22 of 2018, at the relevant time in respect of period from 2007 to 2011. There is nothing before the Court to show that POC was generated during 2007 to 2011 by the present Applicant(A3) in order to qualify his arrest under Sec.19 of the PML Act. In this way, I am of the opinion that after giving the Ld. S.P.P. full opportunity of hearing and to oppose this application, this Court is satisfied that there are reasonable grounds for believing that the Applicant(A3) is not guilty of

such offence and that he is not likely to commit any offence while on bail. I, therefore, hold that the Applicant(A3) has satisfied rigors of twin conditions. At the cost of repetition I am of the opinion that, basically there is no Scheduled Offence and whatever alleged is a purely civil dispute, which is not a Predicate Offence to qualify arrest under Sec.19 of the PML Act and further to satisfy the rigors of twin conditions under Sec.45(1) of the PML Act.

II. BAIL APPLICATION NO.582 OF 2022 OF SANJAY RAUT (A5)

90. This applicant(A5) was subsequently arrested when the Prosecution Complaint against Pravin Raut (A3) was filed and his Bail Application was being heard. So by way of supplementary complaint this applicant (A5) is being prosecuted. The case alleged in the Supplementary Prosecution Complaint is as follows,

FIR No.22/2018 dt.13.03.2018 was registered by EOW, Mumbai under Ss. 409, 420, 120B of IPC against Rakesh Kumar Wadhawan(A1), Sarang Wadhawan (A2) and others on the complaint of Mr. Nitin Gadkari, Executive Engineer, MHADA, Mumbai as M/s. Guru Ashish Construction Pvt. Ltd. (A4), has cheated MHADA by floating the proposal for redevelopment of the land belonging the MHADA and including MHADA to enter into contractual arrangement for rehabilitation of the tenants. Thereby GACPL obtained permissions from MHADA to enter upon MHADA land and carry out development activities but the Developer sold the FSI of the free sale component and created third party rights on the land belonging to MHADA. It is further alleged that the said 47 acres land at Patra Chawl, Goregon belongs to MHADA and there were 672 tenants in the said plot. Various permissions, approvals and additional FSIs were obtained by M/s GACPL. The Proceeds Of Crime (POC) were generated from the predicate offences mentioned in the FIR No.22/2018 dt.13.03.2018. Rakeshkumar Wadhawan (A1), Sarang Wadhawan (A2) and Pravin Raut (A3) all the

Directors of M/s GACPL and Others sold FSI and generated POC of Rs.1039.79 Crore, instead of utilizing this collected amount of Rs.1039.79 Crore in constructions of flats for the tenants and MHADA. **Rakesh Wadhawan (A1) and Sarang Wadhawan (A2)** had diverted majority amounts to various accounts of their Companies. Both **Rakesh Wadhawan (A1)** and **Sarang Wadhawan(A2)** had also diverted huge amounts to **Pravin Raut (A3)** and Others during that period.

91. From the investigation conducted by the ED it was revealed that **Pravin Raut (A3)** received around **Rs.112 Crore** in his bank account from the bank account of M/s HDIL in the guise of sale of equity and for development of project during 2010-2011. These amounts of POC were further transferred to various accounts apart from utilization of some of these amounts in acquiring assets and other expenses. Scrutiny of the bank accounts and their analysis revealed that POC amounting **Rs.1.06 Crore** (approximately moved from the bank account maintained/ controlled by Pravin Raut to the bank account of Mr.Sanjay Raut (5) and his wife Mrs.Varsha Raut as follows,

Sr.No.	Flow of POC and its Projection	Period	Amount of POC received	Name of the Beneficiary
1	From the account of Pravin Raut as an unsecured loan	2009-10	Rs. 55 Lakh	Smt. Varsha Raut
2	Prathamesh Developer (a business entity of Pravin Raut with holding major share of 75% against investment of Rs.17,10,000/- and Rs.12,40,000/- by Shri Sanjay Raut and Smt. Varsha Raut.	2011	Rs.37.50 Lakhs over and above the original amount with in the span of 1 month	Smt. Varsha Raut and Shri Sanjay Raut
3	For investment of Rs.5625/- only in firm Avani Infrastructure by Smt Varsha Raut.		Rs.13,94,375/-	Smt. Varsha Raut
	Total		Rs.1,06,44,375/-	

92. Rakeshkumar Wadhawan(A1), Sarang Wadhawan(A2), Pravin Raut (A3) through M/s GACPL (A4) entered into an agreement for the redevelopment of the Patra Chawl, Siddharth Nagar, Goregaon (West), Mumbai. As per the terms of agreement entered into with the Society and MHADA, they were to rehabilitate 672 tenants and to provide to MHADA constructed built-up area 1,11,476.82 sqmtrs on the said property. **Further they agreed to construct flats for MHADA. In consideration, the Developer was entitled to develop the free sale component on the land belonging to MHADA and to sell flats to various third party flat purchasers. However, GACPL sold the free sale component before completing its obligation. The sale proceeds of FSI amounting Rs.1034 Crore were siphoned off to the Companies of HDIL Group for business purposes while the obligation with regard to the tenants and MHADA remained unfulfilled. GACPL through its Directors Rakeshkumar Wadhawan(A1) Sarang Wadhawan(A2) and Pravin Raut (A3) knowing indulged in laundering the Proceeds Of Crime as defined under Sec.3 of the PML Act. This is the basic case of ED against Sanjay Raut (A5) and highlighted portion is the gist thereof.**

**BRIEF SUMMARY OF INVESTIGATION ALLEGED IN THE
PARAGRAPH 10 OF THE SUPPLEMENTARY COMPLAINT.**

93. 672 tenants relating to Patra Chawl Project were to receive rent till they get the possession of the flats constructed by the developers, and **accordingly got the same till 2016-17.** But thereafter developer stopped paying the rents. Many tenants opted to settle their dues by selling their tenements as they were not ready to wait. Rakesh Kumar Wadhawan (A1), Sarang Wadhawan (A2), Pravin Raut (A3), **Sanjay Raut(A5)** conspired and indulged in the offence of money

laundering. On 12.08.2006 the then Union Agriculture Minister had desired a discussion at Y.B. Chavan Center, regarding redevelopment scheme for Siddharth Nagar, EWS Row Houses/Tenements at Goregaon. Secretary, Housing and Chief Officer Board, participated the said discussion. Sanjay Raut(A5) and Mr. Thakkar were present in the meeting. Besides that Sanjay Raut(A5) also participated the Chamber Meeting called by the then Chief Minister of Maharashtra on this subject, which was held on 03.09.2007. Thereafter, shareholding pattern and structure of M/s. GACPL was changed by exit of earlier shareholders and entry of Pravin Raut (A3), Rakesh Kumar Wadhawan (A1) and Sarang Wadhawan (A2).

94. Pravin Raut (A3) being experienced in the field and known to Sanjay Raut(A5) being his friend since prior to 2002-03, became proxy and confidante, and further inducted in GACPL vide Board Resolution dt.24.09.2007. GACPL entrusted Pravin Raut (A3) only with the task to liase with Government Authorities. He(A3) was only a signatory for making correspondences with MHADA and was entrusted with limited task to liase with all Government/Semi-Government/Statutory and Local Authorities. He(A3) used to manage Government Authorities, mostly MHADA, to obtain various benefits by getting favourable approvals, as a result of which FSI were sold to developers. He(A3) claimed to be holding 25% shares of GACPL and was just the face, whereas everything was controlled by Sanjay Raut(A5) being de-facto shareholder/ owner. In this way Sanjay Raut(A5) was operating from behind the veil and controlling the activities through his proxy Pravin Raut (A3). In this way, IT APPEARS that Pravin Raut (A3)/Sanjay Raut(A5) MIGHT HAVE

received more POC in the manner best known to them. It is also revealed that, **Sanjay Raut(A5)** has acquired many assets during the period the POC was siphoned off and also cash amount has been used by him (A5) for acquiring **some of these assets** and also for meeting the various personal expenses. He(A5) sourced these cash from his proxy Pravin Raut (A3) through GACPL. Besides the recipient of the amount of POC directly through banking channel, **huge cash** were received by him(A5) from GACPL(A4) and/or A1 and A2. It was utilized for acquisition of assets in Kihim for the proposed Resort project during that period. The details of cash utilized in the purchase are as under,

Sr No	Name of Sellers	Details of the property	Registered Value	Cash given to the sellers.
1.	Amol Shripad Khale	Village Kihim, Tal-Alibag, Dist. Raigad, Gunta No.508 & 540, Plot No.1 & 2.	8,00,000/-	34,00,000
2.	Dilip Madhusudan Morjaria	Village Kihim, Tal-Alibag, Dist. Raigad, Gunta No.508 & 540, Plot No.4.	4,00,000/-	18,00,000
3.	Abhay Sursh Malap	Village Kihim, Tal-Alibag, Dist. Raigad, Gunta No.508 & 540, Plot No.5 & 6.	4,00,000/-	36,00,000
4.	Girja Shanker Shukla	Village Kihim, Tal-Alibag, Dist. Raigad, Gunta No.508 & 540, Plot No.7	4,00,000/-	24,00,000
5.	Sridhar Balkrishna Edekar	Village Kihim, Tal-Alibag, Dist. Raigad, Gunta No.508 & 540, Plot No.8.	7,00,000/-	38,00,000
6.	Avinash Shriam Deshpande	Village Kihim, Tal-Alibag, Dist. Raigad, Gunta No.508 & 540, Plot No.11.	7,00,000/-	
7.	Avinash Shriam Deshpande	Village Kihim, Tal-Alibag, Dist. Raigad, Gunta No.508 & 540, Plot No.12.	10,00,000/-	30,00,000

8.	Bharat Vijay Ushirkar	Village Kihim, Tal-Alibag, Dist. Raigad, Gunta No.508 & 540, Plot No.13.	5,00,000/-	24,00,000
				2,04,00,000

95. Mr. Dhananjay Lendhe claimed that he received Rs.5 Lakh from Sanjay Raut and on depositing it in the bank he issued cheque of Rs.5 Lakh to Mrs. Varsha Raut. Sanjay Raut(A5) claimed that, he received a loan of Rs.12,41,100/- from Kantibhai, Dadar, but no such person was identified. Bank Account revealed that the subject amount was received from the account of G'Diam Jewells, Opera House, when no such company in the name of G'Diam Jewells, is operated on the given address. This revealed that, it was an accommodation entry against cash. Unidentified person Kantibhai routed money Rs.12,41,100/- of Sanjay Raut(A5) which was utilized for acquiring assets. In this way, it was revealed that, Sanjay Raut(A5) has diverted the POC in the following manner,

- i. Total cash of Rs.2,04,00,000/- was infused in acquisition of 10 parcel of land at Kihim during 2010-2-12,
- ii. Rs.55 Lakhs routed through the Bank account of wife of accused No.3 Pravin Raut utilised acquisition of flat at Garden Court, Dadar East, Mumbai.
- iii. Rs.37.50 Lakhs routed through the Bank account of the firm of A-3 i.e. Prathmesh Developer utilised for acquisition of flat at Garden Court.
- iv. Rs.13,94,375/- routed through Avni Infrastructure received in the bank account his wife Varsha Ratu.
- v. Rs.5,00,000/- and Rs.12,41,100/- were routed through the bank account of Dhananjay Lendhe and G'Diam Jewel reportedly belongs to "Kanti Bhai Dadar" which is yet to be identified.

Scope of initial project of Patra Chawl for constructing rehab for tenants in 13.18 Acres was extended to 47 Acres after entry of

Sanjay Raut(A5), hence he played crucial role in granting the same. He introduced Pravin Raut(A3) as his front in GACPL at 25% share without investment. Pravin Raut (A3), old acquaintance of Sanjay Raut(A5) was spending his money on Air-ticket, domestic and foreign visits of Sanjay Raut and his family. He has provided **huge amount in cheque** to Sanjay Raut(A5) in the garb of return of investment etc. He has also provided **huge unaccounted cash** to Sanjay Raut(A5), which was **siphoned off from the Patra Chawl Project**. He(A5) mislead investigation regarding infusion of cash in the bank accounts of his wife and also payment of POC in cash for purchase of Alibaug land in the name of his wife and dummy person. He(A5) has threatened various witnesses from whom he had purchased land in Alibaug. He has abused Swapna Patkar with dire consequences, trying to take back the Benami land purchased in her name. He has taken POC in cash and used for personal purposes and purchase of properties. In this way he was the real person behind the sale deal who pressurized sellers to part with land and also paid them cash. In this background ED contended that, Sanjay Raut(A5) has received POC to the extent of Rs.3,27,85,475/- from GACPL. Apart from this he(A5) **has also received huge cash through Pravin Raut(A3) and/or Rakesh(A1), Sarang(A2)**.

96. This is the case pleaded in the Supplementary Complaint in addition to the case alleged in the Main Complaint against Sanjay Raut. The same is reproduced as mentioned at page 50 to 55 of the Supplementary Complaint.

97. GROUNDS FOR CLAIMING BAIL.

- a. The applicant (A5) is nowhere connected to M/s GACPL or HDIL or Patra Chawl Project in any manner.
- b. He is a Member of Parliament (Rajyasabha) for more than 18 years and Senior Leader of the Shivsena Party and also holds a Diplomatic Pass-Port.
- c. He is the Executive Editor of Newspaper SAMANA which is mouth piece of the Shivsena Party and as such is a well respected person having deep roots in the Society.
- d. The present case is perfect example of abuse of powers and Political Vendetta and he is victimized to forcibly crush the opposition faced by the ruling party.
- e. Existence of a **tripartite agreement dt.10.04.2008** is an admitted fact whereby M/s GACPL was authorized to redevelop the 47 Acres of land belonging to MHADA being CTS No.260,260/1 to 100,261 to 104, 264, 264/1 to 296, 265/1 to 40, 267,267/17 to 24,268(part), 268/45 to 86,347,347/1 to 16,363,36/1 to 56 and bearing CTS No.18A/1, 18A/2, 22A to 22A/6, 22A/7A, 22A/7B, 22/A/8A, 22A/8B, 22A/9,22A/10,22A/11A, 22/11B,22A/12, 22A/15, CTS No.22, 22/1 to 95, 22,23/1 to 32, 24,24/1 to 48 and 27 (part) at Viilage Pahadi, Goregaon.
- f. It is an admitted fact that Mr. Pravin Raut (A3) on **09.06.2011** had applied to MHADA seeking permission to sell the free sale component to raise funds for completing the said project.
- g. It is also an admitted fact that **MHADA vide its Order dt.26.07.2011** had permitted M/s GACPL to sell the free sale component to raise funds to complete the project.
- h. Hence, money received by GACPL from the sale component is under the permission of MHADA and the same was given for **raising funds** for completing the project.
- i. If contention of ED is believed that money received by GACPL was siphoned of and used for purposes other than completing the project, then certainly such money is not POC and the same is not derived by committing a Predicate Offence or any activity relating to it.
- j. Basically no Predicate Offence is made out as any rights, liabilities, performances, non-performances violation of terms of agreement would be Civil in nature and warrant Civil Remedies before appropriate Forum.
- k. The applicant (A5) is charged of receiving proceeds of Crime to the tune of Rs.1,06,44,375/- on 3 major allegations against him being
 - (i) Receiving of Rs.55 Lakh from the account of Mrs.Madhuri

Pravin Raut which is allegedly is POC.

- (ii) An amount of Rs.37,50,000/- received by the applicant (A5) from Prathamesh Developers.
- (iii) An amount of Rs.13,94,375/- allegedly received by the the Applicant from Avani Infrastructure.

- l. The Applicant (A5) had taken a personal loan of Rs.55 Lakh from Mrs. Madhuri Pravin Raut and the same had been shown in the Rajya Sabha Affidavit of the Applicant (A5) and the same was repaid by him from legal and valid source of funds.
- m. Rs.37,50,000/- received by Applicant (A5) are returned of investment which he (A5) had invested in the project of Prathamesh Developers with a promise of specific profit. But the project gone in dispute between land owner and the tenant hence, the Applicant (A5) decided to withdraw his investment and he was given a limited profit against his investment.
- n. Amount of Rs.13,94,375/- allegedly received by him (A5) from Avani Infrastructure in fact was never received by him and the same is only a booked profit in the books of the Company and never received by the Applicant and his family.
- o. Reply filed by the EOW, Mumbai to the Bail Application of Pravin Raut (A3) (after his arrest on 13.02.2020), is with contention that a third party being "Grat Thonrton" conducted forensic audit of the accounts of the Company and came to a conclusion that Pravin Raut (A3) had not signed any agreement with the 9 Developers to whom the said free sale component was sold and also that from the amount allegedly misappropriated out of the redevelopment work, no amount is deposited in the account of Mr. Pravin Raut (A3). All this demonstrates that alleged misappropriated funds had never received in the account of Pravin Raut (A3), hence the question of Applicant (A5) receiving any POC from Pravin Raut (A3) does not arise at all and the entire case against the Applicant(A5) becomes baseless, illegal and devoid of merits.
- p. **Order dt.21.03.2020** passed by the Sessions Court gives a fatal blow to the entire case against the Applicant(A5).
- q. If money received by Pravin Raut (A3) is not tainted money, then no Predicate Offence is prima-facie made out against the present Applicant(A5). Hence even a single day of custody of the Applicant(A5) would be illegal.
- r. There are two different ECIRs registered against Pravin Raut (A3) being ECIR MBZO-I/9/2019 and ECIR MBZO-I/80/2021 by the same Investigating Agency i.e. ED and it is the same Investigating Agency, the ED who in the ECIR MBZO-I/09/2019 claims that Rs.112 Crore received by Pravin Raut (A3) is POC derived from PMC Bank fraud which is a

totally different case and no where connected to the present case. In the said case properties of Pravin Raut (A3) had been already attached.

- s. On the other hand the same Investigating Agency , the ED in the present case claims that the same Rs.112 Crore as received by Pravin Raut (A3) is POC derived from the sale of FSI in the Patra Chawl Project, which itself speaks volumes.
- t. The Applicant (A5) is a victim of the Political change of power and thereby abuse of criminal machinery at the hands of ruling party. There is no likelihood of his absconding.
- u. The Applicant(A5) is heart patient and has undergone Angioplasty twice and there are 6 stents in his heart. He is under strict diet, medication and observation of the doctor. He is ready to abide conditions imposed by the Court and undertakes to remain present whenever called.

These are the grounds the Sanjay Raut(A5) claimed for bail.

98. This Bail Application was filed when the Supplementary Prosecution Complaint against him(A5) was awaiting. Ld. Sr. Counsel Mr. Ashok Mundergi after receiving Supplementary Prosecution Complaint, opted not to take additional grounds but answer and rebut various new allegations made in the Supplementary PC by way of argument, written submission relating to argument (as per Purshis Exh.16) and various documents. Ld. A.S.G. Mr. Anil Singh raised objection that Accused No.5 has not taken any additional grounds after filing of Supplementary Complaint, hence all allegations made in the Supplementary Complaint have gone unchallenged as per law of pleadings, which is applicable to law of bail.

99. I carefully examined this argument of Ld. A.S.G. Mr. Anil Singh. Basically the Applicant(A5) in his Purshish (Exh.16) clearly informed the ED and the Court that he (A5) would opt to argue and file written submissions for allegations made in the Supplementary

Complaint. Accordingly, Ld. Sr.Counsel Mr. Mundergi argued each and every point alleged in the Supplementary Complaint and also filed written submissions (Exh.19). Thereafter, Ld. A.S.G. Mr. Anil Singh thoroughly argued for two long sessions on various points contended in the written submissions(Exh.19). Not only this but also ED filed their detailed rejoinder written submissions (Exh.20) on 02.11.2022 which runs into 34 pages. In this way, ED has availed an opportunity to rebut or refute whatever argued by Ld. Sr. Counsel Mr. Ashok Mundergi and Mr. Vikrant Sabne. Basically the question involved in law relating to the bail relates to the right to liberty of a person which is a fundamental right of everyone. If a person like Accused No.5 avails particular mode of presenting his case, argument and ED has orally as well as by written submissions (Exh.20) rejoined, rebutted and refuted it, there is absolutely no substance in raising such technical dispute particularly when the right to liberty of an arrested person is on stake. Therefore, such technicalities and technical objection raised by ED cannot debar the accused to argue the merits of the allegations made in the Supplementary Complaint for the decision of his bail application.

100. I have already made exhaustive discussion in the above order in respect of Bail Application of Pravin Raut(A3). After examining materials on record prima-facie from the point of the qualifications provided under Sec.45(1)(i)(ii) of the PML Act, I arrived at following main conclusions;

- A. **Considering the long battle of Civil litigation, there is complete absence of fraudulent or dishonest intention of Pravin Raut(A3) in cheating MHADA and the Society of 672 occupants. It is also held that the facts and circumstances of transaction of the contemporary period (2007-2011)**

nowhere indicate that Pravin Raut(A3) undertook the said task to generate POC by indulging an activity relating to Scheduled Offences i.e. Sec.420,120B IPC.

- B. In the background of "A" above, I further prima-facie arrived at conclusion that there is absolutely no Predicate Offence involved in this case as alleged in the FIR. Hence, question of any criminal activity relating to it for generating POC does not arise.
- C. It is further held that Accused No.3 is prima-facie neither generator of POC Rs.95 Cr./Rs.100 Cr./Rs.112 Cr. nor recipient thereof by way of criminal activity relating to Scheduled Offence.
- D. It is also prima-facie held how ED itself contended in ECIR 2019 that Accused No.3 received Rs.95 Crore through HDIL out of outstanding illegal loan of Rs.6117.93 Crore raised by Rakesh (A1) and Sarang (A2) from PMC Bank. In this way, it is prima-facie held that accused No.3 is neither generator of Rs.95 Crore POC nor recipient thereof and the self-contradictory rather self-destructive stand taken by ED as such, itself prima-facie establishes as such.

101. Right from the beginning (in Main PC) till the Supplementary Complaint against Accused No.5, ED's contention is that accused No.3 is generator, recipient of Rs.95 Cr. / Rs.100 Cr. / Rs.112 Cr. From this amount, an amount **Rs.1,06,44,375 (Main PC) and Rs.3,27,85,475 (as per Supplementary Complaint)**. In this way Accused No.5 became recipient of the above mentioned amounts with '**Dramatis Personae**' whereby Pravin Raut(A3) who was basically alleged as one of the main accused became front-man of Sanjay Raut(A5), whereas Sanjay Raut(A5) became one of the accused who did all what that has alleged in the Supplementary Complaint by keeping himself behind the curtain.

102. In the aforesaid background and for the detailed reasons in respect of Bail Application (Exh.8) of Pravin Raut (A3) basically Sanjay

Raut(A5) is entitled to get bail without a word of further discussion. It is because there are no POC nor Pravin Raut(A3) had any role in generating POC and laundering the same. Nor he(A3) had indulged into any criminal activity relating to Scheduled Offence in order to attract Ss.420, 120B IPC (Predicate Offences) r.w. Ss.2(1)(u) and 3 of the PML Act. On this count itself it is prima-facie glaringly evident that the Applicant(A5) was neither arrested for any activity relating to Scheduled Offence nor involved in any process of generating POC, placing, layering and integration thereof. All the reasons exhaustively discussed in the bail order of Pravin Raut (A3) (supra) are applicable to the case of Sanjay Raut(A5). Failure of ED to prima-facie bring the case of Sanjay Raut(A5) under the stringent twin conditions, automatically benefits his (A5) case. In this way, I am of the firm opinion that, Sanjay Raut(A5) is entitled to be released on various contentions raised in the Main PC against Pravin Raut(A3). One of them is that, Rs.95 Cr. is POC generated by Rakesh (A1), Sarang(A2) and their HDIL by way of illegal loan from PMC Bank.

103. Supplementary Complaint came with specific allegations that **“Not Pravin Raut(A3), but Sanjay Raut(A5) is the main person behind this project and Pravin Raut (A3) was his front man”**. It is **Sanjay Raut(A5) behind the curtain, who was doing everything and received Rs.1,06,44,375 (Main PC) and Rs.3,27,85,475 (as per Supplementary Complaint) POC. Not only this but, he(A5) is now made wholly responsible in generating POC and laundering the same by transposing Pravin Raut (A3) as a secondary person.** Gist of allegations in Supplementary Complaint is as follows,

- a. Pravin Raut(A3) received Rs.112 Cr. through A1,A2 and their HDIL, in his bank account. Out of these, 1.06 Cr. was moved from Pravin Raut's (A3) bank account to the bank account of Sanjay Raut(A5).
- b. **On 14.08.2006 Secretary, Housing Department, prepared a Note contending that, the then Union Agricultural Minister had desired discussion about redevelopment of Siddharth Nagar Project. Sanjay Raut(A5) participated the said meeting and indicated that redevelopment of the Siddharth Nagar Project as per G.R. of 1988 may not be viable.**
- c. Thereafter, Development Agreement dt.18.08.2006 was executed between the Society and GACPL for 13.18 Acres of land for 672 tenants.
- d. **Some time in September, 2007 a meeting was called upon by the then Chief Minister to know the financial implications of the Siddharth Nagar Project as per the current and proposed Development Control Regulations. In the meeting Mr.Sanjay Raut(A5), the Office bearers of the Society and MHADA Officers were present. No minutes were prepared for this meeting.**
- e. GACPL, thereafter, changed shareholding pattern and structure by exit of earlier shareholder and entry of Accused No.1 to 3.
- f. The scope of initial project for the tenants in 13.18 Acres was enlarged to 47 Acres after the entry of Sanjay Raut(A5), who played role in granting the Siddharth Nagar Project to GACPL and further introduced Pravin Raut (A3) as his front in GACPL at 25% shares. In this way, Pravin Raut (A3) became proxy and confidante of Sanjay Raut(A5).
- g. Pravin Raut (A3) was a close friend of Sanjay Raut(A5), authorized to correspond with MHADA and other local authorities. He(A3) obtained favourable approvals from MHADA and was able to sell FSI to developers due to his proximity with Sanjay Raut(A5).
- h. Cash worth Rs.13.06 Cr. was withdrawn from the account of GACPL(A4) by Rakesh Kumar Wadhawan (A1) and Sarang Wadhawan (A2). Sanjay Raut(A5) has been connected with the purported POC by stating as, "Sanjay Raut has acquired **many assets** during the period the poc was siphoned off and also cash amount has been used by Sanjay Raut for acquiring **some of these assets** and also for meeting various personal expenses"

In this way in Supplementary Complaint it is alleged that, Accused No.1 to 3 and 5 conspired and indulged in the offence of money laundering.

104. I carefully examined these allegations made in the Supplementary Complaint and argument of Ld. A.S.G. Mr. Anil Singh, based on the say to the bail application as well as rejoinders to the written submissions of Sanjay Raut(A5). All this prima-facie demonstrates that statement of Mr. Chandan Kelekar is the sole basis on which Sanjay Raut(A5) is connected and fastened to Siddharth Nagar Project. It is his bald and bare words regarding two meetings highlighted and referred above, wherein the then Union Agriculture Minister and the Chief Minister of Maharashtra took alleged two meetings. No evidence is required to hold that the Union Agriculture Minister and the Chief Minister of Maharashtra are very high dignitaries holding Constitutional posts, who possess exceptional top-level protocols. Allegations made in the Supplementary Complaint indicate that these two high dignitaries had allegedly took two meetings in the presence of Sanjay Raut(A5) and high level Government Officials. The allegations in the Supplementary Complaint further indicate that a policy decision in respect of Patra Chawl Project was taken in those meetings. When such high dignitaries took any such decision, it is very astonishing that no minutes of any of such two meetings had been recorded. In fact minutes of such high level official meetings are bound to be recorded as per the Protocol. Even some record is always maintained in respect of such meetings for the official purpose. Because those two meetings were not held by politicians but were held by the then Union Agriculture Minister and Chief Minister of Maharashtra.

105. Careful examination of whole documents and statements it is prima-facie evident that, except Chandan Kelekar, who is not any Government Official, but allegedly participated those meetings states about the same with minute details out of his photographic memory. ED has not recorded statements of the MHADA and Government Officers present in the said meeting viz. T. Chandrashekhar (V.P.), Chief Officer, Legal Adviser, Chief Engineer, Chief Architect. Even **no official record which is bound to be preserved by the Office of the Chief Minister**, regarding the suggestions given by Mr. Vilasrao Deshmukh, the then Chief Minister, in the said meeting as stated by Chandan Kelekar in answer to question No.3 of his statement **dt.25.08.2022**. As noted above, no statement of Government/MHADA Officers allegedly present in the said meeting has been recorded by ED, but ED recorded the statement of Mr.Chandan Kelekar only, for the reasons best known to them, and, the same prima-facie speaks volumes. Except this contention and the statement of Mr. Chandan Kelekar, there is absolutely no material, at least to prima-facie support existence of the alleged two meetings.

106. At this prima-facie stage appreciation of evidentiary value and giving finding of acquittal or conviction is not permissible, but while assessing the case for bail, certainly we cannot forget the character and quality of the material required and prescribed under Sec.45(1)(i)(ii) of the PML Act. I strongly feel that, unless the quality and character of material is assessed, parameters for assessment of applicability of twin conditions, questions relating to prima-facie satisfaction – dissatisfaction of the twin conditions under Sec.45(1)(i)(ii) of the PML Act, cannot be resolved. Ratio of recent authority of the Hon'ble Bombay High Court in the case of **Anil Vasantrao Deshmukh**

Vs. Stae of Maharashtra (Bail Application No.1021 of 2022, decided on 04.11.2022), wherein Vijay Madanlal Choudhary and others Vs. Union of India and others, [Special Leave Petition (Criminal) No.4634 of 2014, decided on 27.07.2022] is also relied upon, lays down that, character and quality of statements can certainly be seen at the stage of bail.

107. Apart from this, I am of the firm opinion that, simply provision under Sec.50(2) and (3) of the PML Act gives certain importance and weightage to the statements, does not mean that, such statements are straight way binding on the Court, whatever its quality may be. And, the Court is debarred to look into its quality. On the contrary Condition (ii) of Sec.45(1) of the PML Act clearly prescribes prima-facie scanning of quality of materials. So, if the Court accepts such statements as it is, irrespective of quality of its material and character, there will be no scope for application of judicial mind. In that situation it will lead to hazardous consequences that, not the Court but altogether strange person like Mr. Chandan Kelekar, authors of such statements will take the fate of the case in their hands, which is not the true purport of Sec.45(1)(i)(ii) of the PML Act. Therefore, Mr.Chandan Kelekar's statement which allegedly assumes importance, is the only statement regarding alleged two meetings of the then Union Agriculture Minister and the then Chief Minister, therefore requires cautious consideration and examination.

108. The **date 25.08.2022** when Mr. Chandan Kelekar's second statement was recorded, has great significance. It is material to note that his second statement was recorded when Main Prosecution Complaint was already filed and Pravin Raut (A3) had already filed his

bail application (Exh.8) way back on 05.05.2022 and also had completely disclosed his defence, making it known to everyone including ED. Hence, the **date 25.08.2022** of his second statement carries great significance. I have already noted how by Supplementary Complaint, ED astonishingly made '**Dramatis Personae**' transposing the roles attributed to Pravin Raut (A3) and Sanjay Raut(A5) making this applicant(A5) as a main culprit. The date of statement of Mr. Chandan Kelekar has to be viewed with this background. It has to be noted that his **first statement** was recorded on **17.09.2021**, wherein he had not stated a word about such two meetings with the then Union Agriculture Minister and the then Chief Minister late Mr. Vilasrao Deshmukh, though it was allegedly within his knowledge. But for the first time by way of '**Dramatis Personae**' on **25.08.2022** he states about the same as follows,

“I do not remember the exact date, but Shri Nippun Thakkar has exited from this project after approval of the project around 2000....”

“... I do not know the reasons for Shri Nippun Thakkar's exit from the project **but as told by** Shri Mansukhbhai Sureja, it was pre-decided that after the approval of the project. Shri Nippun Thakkar will exit from this project. I state that HDIL and Pravin Raut entered the project together in the year 2006....”

“Firstly, in around September 2007 a meeting was called upon by the then Hon'ble Chief Minister of Maharashtra, Shri Vilasrao Deshmukh to know the financial implications of the project as per the current as well as the future proposed Development Control Regulations. In this meeting Shri Sanjay Raut, the office bearer of Patra Chawl viz Shri Rajaran Shinde, Shri P.Y. Shinde, Coordinator, Shri Gavas, the MHADA Officers viz T. Chandrashekar (V.P.), Chief Officer, Legal Adviser, Chief Engineer, Chief Architect were present. On being asked I state, I was also present in the meeting being the project Architect. After understanding the financial implications in this Project, Shri Vilasrao Deshmukh suggested that the proposal should be first concluded in the MHADA Authority meeting and thereafter to be forwarded to the Govt. for its approval. On being asked if any minutes were prepared for the meeting I state that no minutes were prepared only directions were given to get the proposal sanctioned from the authority.”

109. His (Chandan Kelekar's) above statement dt.25.08.2022 prima-facie indicates that **he has a photographic memory in respect of two meetings when he is unable to state other things for want of remembrance.** Basically his statement has no connection with the Predicate Offence. Even if such bald and bare words of Mr. Chandan Kelekar without support of any quality official materials, are accepted to be true in the guise of Sec.24 of the PML Act, certainly there is no presumption under any law that criminal conspiracy to cheat and misappropriate, was hatched in those two meetings with the then Union Agriculture Minister and the then Chief Minister. It will be far fetched to hold as such. Even if his words in the statement **dt.25.08.2022** are straight way accepted as true, without application of judicial mind, T. Chandrashekhar, the then V.P. and high level MHADA Officers, Government Officials will also have to be considered as a part of the said criminal conspiracy as per Sec.120B IPC.

110. Careful perusal of the Main and Supplementary Complaints prima-facie indicates that, ED has allegations against MHADA, yet the following questions still remain unanswered :

- i. **Why all the Government and MHADA Officials participated the said two meetings are not accused herein?**
- ii. **Why only Pravin Raut (A3) and Sanjay Raut(A5) were arrested and main money-launderers Rakesh Wadhawan (A1) and Sarang Wadhawan (A2) who had admitted their misdeeds by making sworn statements in the Affidavit before the Hon'ble High Court, were not even arrested, when the ED had arrested them in almost every other previous crimes?**
- iii. **How it can be justified at law?**

111. When prima-facie this truth is glaring, how can it be hushed up? **Particularly when the Hon'ble Supreme Court repeatedly laid down as "Truth is the guiding star. Criminal Trial is a voyage for discovery of truth. Truth alone triumphs and Court should always make each and every endeavour to discover truth"**. This is in respect of statement of Mr. Chandan Kelekar, which is the only basis for arraigning Sanjay Raut(A5) by way of Supplementary Complaint.

112. Trail of money is shown in the Main and Supplementary Complaints to show that, money has been transferred from the bank account of Pravin Raut (A3) in the bank account of Mr. Varsha Sanjay Raut and Sanjay Raut(A5) initially **Rs.1,06,44,375 (Main PC) and subsequently Rs.3,27,85,475 (as per Supplementary Complaint)** which is POC. According to ED this amount is out of Rs.95 Cr./ Rs.100 Cr. / Rs.112 Cr. allegedly generated by Pravin Raut (A3) and thereafter, further laundered. I have already made an exhaustive discussion and noted the miserable failure of the ED to prima-facie establish the said amounts being POC. I have also noted how, the ED has made approbate and reprobate in respect of Rs.95 Cr. by saying on one hand having generated from selling FSI free sale component and on another hand saying the same having received from illegal loan obtained by Wadhawans from the PMC. This failure itself leaves nothing to prima-facie prove by Sanjay Raut(A5).

113. Various amounts are quoted by ED in the Supplementary Complaint and written submissions in rejoinder. But it is necessary to examine whether it has any nexus with the POC as defined under Sec.2(1)(u) r.w. Sec.3 of the PML Act. I have already noted above how is the statement of Mr.Chandan Kelekar and the quality thereof. Except

this, regarding various other entries of money flow claimed by the ED is also based on the statements of various other witnesses and further contention of ED how the same was unaccounted but found with Sanjay Raut(A5). It is also necessary to examine what is there to show all these properties are derived from the POC and POC was generated by criminal activity relating to Scheduled Offence. Even if some amounts are given/transferred by Pravin Raut (A3) to Sanjay Raut(A5) straight way no inference can be drawn that those were POC generated from certain act/criminal activities done by him in respect of Predicate Offence. It is material to note that, the order **dt.21.03.2020** passed by the Ld. Addl. Sessions Judge (C.R.No.37), Mumbai in **Bail Application No.831 of 2020** in respect of Predicate Offence allegedly committed by Pravin Raut (A3), the Investigating Officer had made a statement across the bar that, he and prosecution would be filing report **under Sec.169 Cr.P.C against Pravin Raut (A3)** and this aspect cannot be ignored.

114. It is an admitted fact that, once upon a time Pravin Raut (A3), his wife, Sanjay Raut(A5), his wife, Swapna Patkar and her husband Mr. Sujit Patkar, were very close family friends. Except statements recorded under Sec.50(2) and (3) of the PML Act, there is nothing which remotely suggests that the Applicant(A5) was instrumental in all what has been alleged in the Supplementary Complaint. Old acquaintance between Pravin Raut (A3) and Sanjay Raut(A5) as well as their family relations is not much disputed fact. Mere giving of money by Pravin Raut (A3) to Sanjay Raut(A5) would not amount sharing of POC, when the main component of the POC is absolutely absent, as held in the Bail Application of Pravin Raut (A3).

115. Much capital is made by the ED of five statements of Ms. Swapna Patkar recorded under Sec.50 of the PML Act. In the statement dt.09.12.2020 she states that she is Consultant Physiologist with Lilavati Hospital and has her own Clinic in her residence at Kalina. She also does Corporate Training and has been teaching in Mumbai University in the field of Psychology. However, Ld. Adv. Mr. Vikrant Sabne in his reply to the argument of Ld. A.S.G., submitted across the bar and even it is specifically mentioned in the written submissions of Accused No.5 that basically all such activities undertaken by Ms. Swapna Patkar are based on a forged and fabricated Doctor's degree in the field of Psychology and thereby she had cheated the Lilavati Hospital and Mumbai University. FIR was registered against her for the same and she was lodged in Central Jail for a long time.

116. In the same statements Ms. Swapna Patkar further claims that, she had paid Rs.50 Lakh to Sanjay Raut(A5), regarding the registered cost of the plot at Alibaug. In her statement dt.01.09.2021 she specifically states that, **she is not aware of the market value of the property, but it may be** around Rs.10 Crore. She further states that she had never met the land owner and all negotiations were done by Mr. Sujit Patkar and Sanjay Raut(A5) and that the amount over and above the registered value was also dealt with by them and she **only went for signing at Registration Office**. In her **third statement dt.23.12.2021** she claims that **her husband Mr. Sujit Patkar was coordinating all the land owners for cash. He was handling cash on behalf of Sanjay Raut(A5)**. He was the person who was collecting cash and handing over the same to the land owners. She had witnessed too many of these discussions between Sujit Patkar and land owners. On the contrary in answer to Question No.3 (page 180 Vol.II), she

states that **as regard the source of money of Sujit Patkar, only he can explain**, which is deviating from her earlier statement wherein she states that Sujit Patkar was handling cash on behalf of Sanjay Raut(A5). Page 180 Vol.II in answer to Question No.5 she states that, she had never met the land owners, but in another statement she states that she met one land owner named Shridhar Edekar and he was a very old person. Further she clearly states that all negotiations were made by Sujit Patkar and Sanjay Raut(A5) and she simply had gone for registration, which prima-facie indicates that she has no actual knowledge of the real circumstances of transaction.

117. ED's case is that, monies received by Sanjay Raut(A5) and his wife Varsha Raut were invested in purchasing various plots/lands at Kihim, Alibaug. For that Sanjay Raut(A5) allegedly threatened the said land owners and compelled them to sell their lands/plots to him and Sujit Patkar. Their contention as such is based on the statements of witnesses including this witness Ms. Swapna Patkar. She on page 184 (Vol.II) clearly states that when she met Mr. Shridhar Edekar he was a very old person and he informed her that, "I came to know later that he has been threatened to sell his land. Therefore, prima-facie it is clear that it is not her first hand knowledge of the said fact, but the same is based on the hearsay knowledge of someone else. I am constrained to note that, Ld. A.S.G. Mr. Anil Singh while arguing the case vehemently referred word "**Whosoever**" in Sec.3 of the PML Act and contended how the case of Sanjay Raut(A5) falls under the said caption having dealt with POC. If the same parameter is applied to the case of Ms. Swapna Patkar, she being recipient of alleged POC and purchased land/plot for herself and her husband at the instance of Sanjay Raut(A5), would be equally liable under Sec.3 of the PML Act.

Astonishingly regarding her also, the ED appears to have availed pick and choose strategy for the reasons best known to them. Prima-facie it is evident that ED had done the same with her which they did with Rakesh(A1) and Sarang(A2) and allowed Ms. Swapna Patkar to be scot-free, for the reasons best known to the ED.

118. On page 188 (Vol.II) Ms. Swapna Patkar again specifically states that, she and Mrs. Varsha Raut (wife of A5), came into picture only at the time of registration. All this prima-facie indicates that whatever she states about various facts and circumstances of transaction alleged against Sanjay Raut(A5) is not her as per her firsthand knowledge. On page 192 (Vol.II) of her statement dt.23.08.2022 she states that, **she has not interacted directly with any seller and had not met any of the sellers before or after registration of the property and have only seen them at the time of registration and she had not given any cash to any of the sellers nor came in contact with them.** On page 193 (Vol.II) she clearly states that she has no role to pay in the Resort at any stage of planning and execution. In this way all five statements of Ms. Swapna Patkar prima-facie indicate that her role was only to visit the office of registration and sign the execution of documents only. It is her own contention that, except this, she has no knowledge of anything, yet she states that whatever amount received by Sanjay Raut(A5) was from Patra Chawl project and her husband received the same from him(A5) and thereafter the properties were purchased. All this speaks volumes about her conduct and ED's reliance on her statements. Therefore, quality of material with which she has stated as such, is an important consideration at the stage of bail application. All this prima-facie raises question about quality of her statement, particularly at page No.177, 178, questions 8,9,11, page 179

questions No.1 and 2, page 180 questions No.3,5 and answers thereof, question No.8, page 182 and 183 clearly indicates that few days ago what she said and what she is saying next occasion. Similarly page 188 question No.4 indicates contradiction to page 180/183.

119. Mr. Sujit Patkar is husband of Mr. Swapna Patkar makes contradictory statement with the statement of his wife Ms.Swapna Patkar that it was Ms. Swapna Patkar, who wanted to start residential project at Alibaug and for the same she had discussion with Sanjay Raut(A5). On page 479 he specifically states that, he met the land owners at the time of registration of the land, which is against the statement and contention of Ms. Swapna Patkar that, it was her husband Sujit Patkar who did all the negotiations. **While answering question No.11 (page 479) he specifically states that he had not negotiated with the sellers of the land at Kihim and his wife Ms. Swapna Patkar has carried out the deals by herself at her office in Sion, Mumbai.**

120. As noted above Mrs. Swapna Patkar, her husband Sujit Patkar had dealt with other work i.e. meeting land owners etc., but on page 479 while answering question No.12 Mr. Sujit Patkar states that, he was not even present at the time of negotiations with the land owners and further relating to question No.15 states that, he does not have any information if any payments were given through other means. In his second statement dt.09.09.2022 at page 490, he again confirmed that, it was Mrs. Swapna Patkar who wanted to start the Resort at Kihim and after Mr. Sanjay Raut had shown interest, they started looking for plots. **On page 492, question No.6 he further states that, he does not know from where the cash part of the payment to the**

land owner was made. Question No.8 on page No.492 (Vol.II) he specifically contended that, **he has no information about cash in the purchase of land.** Careful perusal of his statements prima-facie indicates that, same question was framed and put to him number of times in different manner so as to obtain a specific answer to point that Sanjay Raut (A5) somewhere was involved in the cash transactions. Bare reading of all his statements, prima-facie reflects this fact, which cannot be ignored while assessing the case at prima-facie stage when the consequences thereof have directly impact on the serious question of personal liberty of Accused No.5.

121. Amol Khale is one of the sellers of those plots which were allegedly purchased by Sanjay Raut(A5) with the help of POC. His statement **dt.04.02.2022** refers that he had not received cash but entire payment was made in cheque. Whereas, in his another statement **dt.05.08.2022** he states that, Rs.8 Lakh he received through cheque and Rs.34 Lakh in cash. He clearly states that, his brother Dilip Khale was paid through cheque. Whereas, while answering question No.13 on page 45 he states that, he was restricted to sell the said properties as per wish of his deceased Cousin **he executed and he is completely unaware about any cash transaction.** Stepping ahead while answering question No.9 (Page 54) he states that, 8.83 Gunthas mentioned is the exact land sold for which **his brother might have received Rs.34 Lakh above the cheque amount of Rs.8 Lakh.** Bare reading thereof prima-facie indicates that, his statement as such is self-contradictory to his statement dt.04.02.2022.

122. Smt. Shubhangi Patil is stating the facts which are within the knowledge of her deceased father. She states (question No.5, page

74) that, Sanjay Raut(A5) had paid the registered amount in cheque and rest in cash to her father as the consideration of the said 8-9 plots, but her father was not happy with the said payment. Though there was cash component, **however she is not aware about the cash component which was given by Sanjay Raut(A5) to her father.** Answers given by her to question 3 (page 73) are “**not aware**” and in **similar pattern**, prima-facie indicating that she is not aware of real facts and circumstances of transaction.

123. Mr. Bharat Ushirkar in his statement **dt.04.02.2022** states about sell proceedings for Rs.6 Lakh and **no cash was ever received.** Whereas in the statement **dt.07.09.2022** he states **having received Rs.24 Lakh in cash and Rs.6 through cheque.**

124. Mr. Avinash Deshpande on **04.02.2022** states that he received Rs.13 Lakh in cash and Rs.17 lakh through cheque. Whereas in the statement **dt.07.09.2022** he states having received Rs.30 lakh in cash and Rs.17 through cheques. Mr. Amit Shukla in his statement **dt.04.02.2022** states that he did not receive any payment in cash. Whereas, in the statement **dt.05.08.2022** he states having received Rs.24 Lakh in cash and Rs.4 Lakh through cheque. Mr. Dilip Morgaria in his statement **dt.04.02.2022** states that he did not receive cash. Whereas, in his third statement **dt.05.08.2022** states that, he received Rs.18 Lakh in cash and Rs.4 through cheque.

125. All these, which are referred above, are the statements of vendors who allegedly sold their plot/lands at Kihim, Dist. Raigad which Sanjay Raut(A5) allegedly purchased through the POC. Quality of statements as noted previously, cannot be ignored when the bail

application under PML Act is to be decided in the background of twin conditions under Sec.45(1) of the PML Act. Particularly, such quality of material which clearly indicates that all these witnesses have been stating the facts which are not within their special knowledge, cannot be overlooked. Basically if the case alleged by ED is accepted as it is, both **Rs.1,06,44,375 (Main PC) and Rs.3,27,85,475 (as per Supplementary Complaint)** were allegedly received by Sanjay Raut(A5) which is basically a POC allegedly generated by Pravin Raut (A3) by criminal activities of cheating, criminal conspiracy and misappropriation as alleged in the FIR. On that count I have clearly held how this aspect is not prima-facie established and how there is no Predicate Offence as alleged in the FIR No.22/2018 for the facts and circumstances allegedly taken place during 2007-11.

126. The second limb of contention of the ED is that Pravin Raut (A3) received Rs.95 Cr./Rs.100 Cr/ Rs.112 Cr being POC generated by Wadhawans for HDIL by raising illegal loans from the PMLC bank and keeping huge thereof outstanding. This another contention of ED itself demolishes their first contention that Pravin Raut (A3) had not generated any POC as alleged in the FIR. Therefore, prima-facie on both counts, there is no case to hold that, there were any POC as alleged, the same was generated by Pravin Raut (A3) or he obtained the part of POC (Rs.112 Cr.) from Wadhawans through their illegal bank loans and subsequently a meager part thereof was received by Sanjay Raut(A5) having clear knowledge that he had been dealing with the POC generated from the criminal activity relating to Scheduled Offence.

127. Basically there is no POC nor any Scheduled Offence in order to attract provision under Sec.2(1)(u) r.w. Sec.3 of the PML Act.

Apart from this, prima-facie there is absolutely nothing to show that whatever received by Sanjay Raut(A5) is POC. Recently the Hon'ble Bombay High Court, in the case of **Ajay Kumar Chandraprakash Baheti Vs. Directorate of Enforcement, the Assistant Director, Sub-Zonal Office, (2022 SCC OnLine Bom 1451)** while dealing with the bail under provision of the PML Act held as follows,

“Having a sizable or any and every unaccounted money, would not epso facto indicate the commission of an offence under the PMLA 2002. In other words in order to prove the offence of money-laundering it has to be established that the money involved are the proceeds of crime and having full knowledge of the same, the person concerned projects it as 'untainted property'. The process undertaken in doing to amounts to offence of 'money-laundering'.

Sanjay Raut(A5) though had received some monies as alleged in the Prosecution Complaint from Pravin Raut (A3), yet there is absolutely nothing to show that, it is a POC with knowledge thereof to Sanjay Raut(A5). Basically it is not a POC. Therefore, some unaccounted money had been dealt with by Sanjay Raut(A5) at the relevant time during 2007-11 or any other period thereafter, for purchasing plots at Kihim, cannot be thrown in the stock of POC. Possessing and dealing with unaccounted money may have different consequences under the different Penal Laws, but the same cannot be equated with the term POC defined under Sec.2(1)(u) of the PML Act for making Sanjay Raut(A5) accountable and liable under the wide meaning of the opening word **“Whosoever”** in Sec.3 of the PML Act.

128. In the above context, it can be added that even if Sanjay Raut(A5) in his statement under Sec.50 of the PML Act had referred the name of one Kantibhai of Dadar to justify alleged unaccounted cash and

ED contended that no such person or entity was actually found in existence, the same will not throw him (A5) directly under Sec.2(1)(u) r.w. Sec.3 under assumption and presumption that the same relates to any criminal activity relating to Scheduled Offence. Question of presumption under Sec.24 of the PML Act does not arise with the quality of such material, which is discussed above.

129. In the statements of Kantilal Doshi dt.01.02.2022 and 07.08.2022 he has stated that Sanjay Raut(A5) and his wife Varsha Raut had once invested in the project of Prathmesh Developers LLP which was started in 2010 at village Kurgaon, Plot No.3,4 and 5 approximately 629 sq. mtrs. Sanjay Raut(A5) from his bank account in Saraswat Bank had transferred Rs.17,10,000/- on 08.10.2011 and from the bank account in Kurla Nagrik Bank, Mrs. Varsha Raut had transferred Rs.12,40,000/-. In this way prima-facie he has given account of the money transfers which corroborate the contention of the applicant(A5). Question No.7 is put to him specifically asking as to how there was an extra amount of Rs.37.75 Lakh in addition to the original investment, was paid to Sanjay Raut and Mrs. Varsha Raut within one month of the investment, although the project was not started. However, he has stated that he is a small shareholder amongst the shareholder, holding shares of 5%. Most of the decisions of the company were taken by Pravin Raut(A3) who possessing major shares i.e.70% stake and he had paid the said amount as per the instruction of Pravin Raut (A3). He has specifically stated that, he does not know the reason why Pravin Raut (A3) decided to pay the extra amount to Sanjay Raut(A5) Mrs. Varsha Raut. He was further asked in a leading way, whether these transactions are done by Pravin Raut (A3) in his personal capacity and whether in lieu of these transactions any benefit was

received by the company person and he was again asked to state the similar type of any other transactions. **On this, he has clearly stated that he does not know about those transactions and they can explain the same.**

130. Ld. Sr. Counsel Mr. Mundergi pointed out answers given by Pravin Raut (A3) in his statement dt.05.02.2022 wherein he states that, Sanjay Raut(A5) and Mrs. Varsha Raut had invested in premises developed by Prathmesh Developers LLP in Kurgaon village, Palghar Taluka. They have invested Rs.35 Lakh approximately and purchased ground + 2 structure admeasuring 5000 sq. feet. Though the RCC structure was completed, yet the Kul (tenancy right holder) had filed an appeal claiming tenancy right before Prant Adhikari, wherein the Appellate Authority passed an order in his favour. When he(A3) took bookings, was not aware of this fact, hence, he returned the total amount + profit i.e. Rs.50 Lakh (booking amount of Rs.35 Lakh + profit of Rs.15 Lakh) taken from Mrs. Varsha and Sanjay Raut(A5). He further stated that when the said tenancy dispute was revealed, Mrs. Varsha and Sanjay Raut(A5) were interested in that particular premise only therefore, he returned the initial booking amount + profit within a month. Therefore, whatever stated by Kantilal Doshi on 07.08.2022 is fully corroborated to the statement of Pravin Raut (A3) dt.05.02.2022. Again the question remains that, those amounts Rs.17,10,000/- and Rs.12,40,000/- invested by Mrs. Varsha and Sanjay Raut(A5) do not have any nexus between them and alleged POC.

131. Ramji Veera, friend of Pravin Raut (A3) in his statement dt.24.08.2012 stated that Pravin Raut (A3) is his good friend. ED's case is that when they took search in the house of Sanjay Raut(A5) got

certificate-cum-policy schedule in respect of Innova bearing MH02-CV 7749 of which stands in the name of this Ramji Veera. Therefore, question No.6 put to him specifically for the reason thereof. He stated that, he is the said policy holder in respect of the vehicle Innova which was purchased on his name by Prathmesh Developers LLP. On the basis of his statement as such ED contended that the said money and vehicle purchased from it, is laundered money and a property derived from POC. Basically there is nothing as such at the prima-facie stage to draw such far-fetched inference. Even if the vehicle standing in the name of Ramji Veera is purchased for Prathmesh Developers LLP, wherein Pravin Raut was 70% shareholder, it cannot be said that the same is an incriminating material to prima-facie establish with POC. Many statements and even ED has also not disputed long friendship of Pravin Raut (A3) and Sanjay Raut(A5) and their close family relations. It is also an admitted fact that, Pravin Raut (A3) is in the business of real estate, builder and developer, even since 2000 onwards. Considering their close family relations if he purchases vehicle in the name of Ramji Veera and allows the same for the use of Sanjay Raut(A5) alongwith policy documents, can it be straight way said that it is POC generated from the criminal activities relating to Scheduled Offence or a property purchased from the POC?

132. In the same way ED has made a case that Pravin Raut from the POC arranged foreign trips for Sanjay Raut(A5) and his family. Even certain facts are on record. These two close families had travelled at the relevant time. Merely Pravin Raut (A3) could not give the account of money relating to travel tickets, for want of remembrance, can it be straight way connected with POC or the criminal activity relating to Scheduled Offence? Basically ED is miserably failed to point out any

POC or even any criminal activity relating to Scheduled Offence, when it is clearly pointed out by Pravin Raut (A3) that it was purely a civil dispute at the relevant time and whatever misdeeds occurred in respect of Patra Chawl Project were solely due to Rakesh (A1), Sarang (A2) and their HDIL. He has further clearly shown how the ED has shown the same Rs.95 Cr. being POC generated by Rakesh (A1), Sarang (A2) and HDIL by obtaining illegal loan from PMC Bank and he became alleged recipient thereof. I have also noted how this approbate and reprobate stand of the ED cannot be acknowledged at law. There are no POC nor any criminal activity relating to the Scheduled Offence to prima-facie hold Pravin Raut (A3) responsible for the same.

133. Ld. Sr. Counsel Mr. Mundergi submitted that Sanjay Raut(A5) has shown Rs.55 Lakh personal loan taken from Mrs. Madhuri Pravin Raut and mentioned the same in his Affidavit submitted for Rajya Sabha Election. Simply he had returned the same, pursuant notice received from EOW, does not mean that he admits his guilt in respect of money-laundering. Regarding Rs.30 Lakh he has given the explanation that Mrs. Varsha Raut received the same from Avani Infrastructure and the same is supported by the Ledger Account of the said Avani Infrastructure. Not only this but also Sanjay Raut(A5) had mentioned this amount as outstanding loan in his Rajya Sabha Declaration Form. Regarding repayment of Rs.37 Lakh within one month, Pravin Raut (A3) has given plausible explanation for the same. Even then the same does not point out any nexus with the alleged POC.

134. Ld. A.S.G. Mr. Anil Singh argued that, contradiction between statements of the witnesses cannot be looked into and therefore, whatever stated by the witnesses has to be accepted as it is. I

carefully examined this argument. I have already noted that, even if the statements under Sec.50(2) and (3) carry weightage, yet the quality of its material cannot be ignored. All these statements were recorded subsequently or contemporary when Pravin Raut (A3) had filed his bail application and opened his contention. In this background transposition of roles attributed to Pravin Raut (A3) and Sanjay Raut(A5) by 'Dramatis Personae' in the Supplementary Complaint, has great significance. Therefore, quality of such material is always open even at the stage of bail as held by the Hon'ble High Court recently in the case of Anil Vasant Rao Deshmukh (supra).

135. At the cost of repetition in order to point out the quality of the material relating to the statements, it is necessary to note that, in the statement of Amol Khale dt.04.02.2022 verification note was taken in his handwriting as to how he submitted the said statement voluntarily being true without any force, pressure and coercion. In some statements such verification is not appearing. It is material to note that, another witness Vijay Ushirkar in his previous statement dt.04.02.2022 specifically denied having received any cash for his land deal, but subsequently recently on 07.09.2022 in order to bring this fact in support of ED, question No.2 was put to him as to why he denied having received cash, in his statement dt.04.02.2022? At this time he states that at the time of his previous statement he was under fear, hence stated one thing and now on 07.09.2022 stating something contradictory to his statement dt.04.02.2022. How such material can be straight way accepted to uphold the contention of ED, even if statements under Sec.50 carry importance? Whether the Court owes some higher duty or not even at the stage of bail to apply judicial mind? Or whether Sec.50(2) and (3) of the PML Act has any purport to

suggest that Court is bound by such statement whatever may be the quality of material thereof and has absolutely no option?

136. Copies of Affidavits submitted by Sanjay Raut(A5) in the process of Rajya Sabha Election prima-facie indicate that he had mentioned each and every Assets therein including Rs.55 Lakh and whatever alleged in the complaint alongwith the source thereof. ED has made much capital about Avani Infrastructure being bogus entity availed by the applicant(A5) only to accommodate entries in the name of Mrs. Varsha Ratu. However, copies of Ledger Account of Avani Infrastructure which is the best prima-facie evidence do not support such contention of ED. In this background, I hold that even statement of Shoaib Sequeira dt.11.07.2022 does not carry much importance as the same has no connection with the Scheduled Offence and had been recorded when Pravin Raut(A3) filed his bail application and disclosed his contention.

137. It is ED's contention that, Sanjay Raut(A5) has purchased several plots at village Kihim, Alibaug at the rate below market value and also paid the remaining amount in cash and thereby he (A5) has used and influenced the cash received from the POC for purchasing the said plots. I have already discussed in detail the quality of material available through the statements of plots sellers. It cannot be ignored that, those plots were purchased long long ago at the prevailing market rate. He purchased it in the name of his wife Mrs. Varsha alongwith this then partners Ms. Swapna Patkar, Sujit Patkar. Ld. Sr. Counsel Mr. Ashok Mundergi produced copies of **INDEX-II**, which prima-facie indicate that even todays market value of those properties is not as it has been portrayed by the ED to be the market value at the

contemporary time of their purchase. How these documents can be ignored and exaggeration made by ED has to be accepted? Hence, much discussion on this component is not necessary, particularly when all those amounts alleged in the Supplementary Complaint have absolutely no nexus either with POC or any criminal activity relating to Scheduled Offence. I have also noted pick and choose attitude of the ED in not arraigning concerned MHADA officials. I have also noted how the ED has not arraigned Ms. Swapna Patkar as accused nor arrested her when their own allegations in the complaint and materials available through her statements prima-facie demonstrate that, she had dealt with POC with alleged knowledge thereof.

138. ED has made much capital about alleged threats given by Sanjay Raut(A5) to Ms. Swapna Patkar and contended that Accused No.5 is an influential person, hence cannot be released on bail. It is material to note that, Ld. Sr. Counsel Mr. Mundergi placed reliance on the copy of **FIR No.794/2022 dt.31.07.2022** registered at **20.00 hours at Vakola Police Station under Ss.504, 506, 509 IPC for the alleged incident/offence dt.22.11.2016, which itself speaks volumes.** The most important thing is that Deputy Commissioner of Police, Zone-VIII, Mumbai, submitted his long report to the Registrar, National Commission for Women, New Delhi, on 26.08.2020 with conclusion of investigation as follows,

“20. As far as matters reported to the police, necessary legal action as per law has already been taken by Vakola, Mahim and Manor Police Stations and are either pending before the competent court or are pending investigation. **The allegations made in the application of Smt. Swapna Patkar are borne out of property dispute and troubled marriage relationship. The dispute between the applicant and the non-applicant over property is of civil nature and it is necessary for them to approach the competent Civil Court. In connection with their family dispute, both the parties**

have already approached Hon'ble Family Court and the same is pending for hearing.

21. The allegations made by applicant Smt. Swapna Patkar are found to be without any evidence and are borne out of her troubled marriage relationship & dispute over property. The disputes are civil in nature and both parties can approach competent courts to resolve the issues. Hence, the application needs no further inquiry.”

139. Statement of Pravin Raut (A3) recorded by ED on 05.02.2022 gives prima-facie clear account about the claims of ED. In the written submissions (Exh.20) filed by ED on 02.11.2022, everywhere the same story is repeated which is alleged in the Supplementary Complaint. It is also reiterated how Sanjay Raut(A5) could not give satisfactory explanation for the amount came into his account and in the account of his wife. Basically ED cannot travel reverse saying that particular amounts revealed in the investigation and found during house search of Sanjay Raut(A5) were unaccounted and without any satisfactory explanations, hence the same are POC. Basically first of all ED has to point out foundational facts relating to existence of POC beyond reasonable doubt as to any particular amount having generated as POC from the criminal activities relating to Scheduled Offences. 'Unaccounted Money' without explanation and without nexus with POC or any activity relating to Scheduled Offence cannot be capitalised as done by the ED herein. I have already referred above paragraphs 31 to 33 in the case of Vijay Madanlal Choudhary (supra). Even the Hon'ble High Court in the case of Ajay Kumar Chandraprakash Baheti Vs. Directorate of Enforcement (Cr. Bail Application No.1149 of 2021, already cited supra) held has follows,

32. From the reading of above enunciation of law, it is evident that, the offence of money-laundering, however, is not to be appreciated in isolation, but is to be read with complementary provisions, i.e., the offences enlisted in the schedule of the Act. The language of Section 3 clearly implies the money involved in the offence of money-laundering is necessarily the proceeds of crime, arising out of a criminal activity in relation to the scheduled offence enlisted in the Schedule of the Act. Hence, the essential ingredients for the offence of Section 3 of the PMLA 2002 become :

- i) The proceeds of crime
- ii) Proceeds of crime arising out of the offences specified in schedule of the Act;
- iii) Factum of offence while committing the offence of money laundering.

33. Further it is clear that the allegations must be proved beyond reasonable doubt and the Court cannot proceed on the basis of preponderance of probabilities. Unless the allegations are substantiated by the authorities and proved against a person in the Court of law, the person is innocent.

34. Thus, in this case, to consider whether there is any reasonable ground to believe that the applicant is guilty of alleged crime, it is necessary to examine whether the alleged property being proceeds of crime, derived or obtained, directly or indirectly by the applicant as a result of criminal activity relating to a scheduled offence?

45. The expression “proceeds of crime” is defined under clause (u) of Section 2(1) of the PMLA which makes it clear that proceeds of crime means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property.

52. Having a sizable or any and every unaccounted money, would not *epso facto* indicate the commission of an offence under the PMLA 2002. In other words, in order to prove the offence of money-laundering it has to be established that the money involved are the proceeds of crime and having full knowledge of the same, the person concerned projects it as ‘untainted property’. The process undertaken in doing so amounts to offence of ‘money-laundering’.

140. In the background of above detailed discussion in respect of bail application of Pravin Raut (A3) and Sanjay Raut(A5), I hold that, basically there are no POC nor was there any Scheduled Offence to

qualify the ECIR. Pravin Raut (A3) was arrested for civil litigation and Sanjay Raut(A5) for no reason. Basically arrest of both of them under Sec.19 PML Act is illegal for want of Scheduled Offence and the civil dispute not being Scheduled Offence. Therefore, question of coming rigors of stringent twin conditions under Sec.45(1)(i)(ii) in their way does not arise. Even if for the sake of consideration it is assumed that the said rigors attract, yet I hold that both accused (A3 and A5) have satisfied the twin conditions as held by the Hon'ble High Court in the case of Madan Gopal Chaturvedi Vs. Directorate of Enforcement (Cr. Bail Application No.330 of 2022) held as follows,

20. In this case, the Investigating Agency did not arrest Sarang Wadhawan and as a result thereof, Sarang Wadhawan could secure bail from the Special Court by order dated 07.04.2022. The investigation qua the applicant is complete. The necessary seizure of the documents have been made. The two units have been attached. **Thus, I do not find any justification to detain the applicant behind bar pending trial which may take some time for its conclusion.** The later aspect has also been acknowledged by learned Special Judge in the order dated 07.04.2022. **I find that the twin conditions in Section 45(1) are satisfied in this case.** In the circumstances of the case, I do not find it necessary to make detailed reference to the cases cited, a the risk of prolixity.”

141. Some other aspects which make both applicants entitled to get bail are necessary to be discussed which are as follows,

**ILLEGAL ARREST OF BOTH ACCUSED AS AN OUTCOME
OF PICK AND CHOOSE STRATEGY.**

Prime and main object of the PML Act is 'Confiscation' and not an illegal arrest and detention of arrestee for uncertain period. Admittedly, in the instant case ED has attached properties of Pravin Raut (A3) worth Rs.72 Crore and properties of Sanjay Raut(A5) more than the claim of the money-laundering. I have already noted above,

only bald and bare words of Chandan Kelekar alleging two meetings with the then Union Agriculture Minister and the then Chief Minister of Maharashtra, caused arrest of Sanjay Raut(A5) and formed basis for Supplementary Complaint. High level MHADA and Government officials had participated the said meetings as per Mr. Chandan Kelekar. Yet, none of them is made accused or even arrested, in spite of suspicious conduct of MHADA throughout right from 2007 till date. However, only Sanjay Raut(A5) was arrested. Skipping all officials of MHADA and Government i.e. T. Chandrashekhar etc, referred by Mr.Chandan Kelekar, Wadhawans and Ms. Swapna Patkar, is nothing but conveying a message to the then Union Agriculture Minister and then then Chief Minister creating fear psyche in their mind that, they are the next in this queue. **Certainly, this is not an object and true purport of the PML Act.**

142. The Hon'ble Supreme Court has repeatedly laid down that, power to arrest has to be used exceptionally as a last resort. The Hon'ble Supreme Court and the Hon'ble High Court have repeatedly laid down that, arrest has far reaching consequences and power to arrest is extreme and has to be exercised with great caution, sparingly as a last resort. The Hon'ble Lordship Shri Justice R.V. Raveendran of the Hon'ble Supreme Court recently in the Journal Section of the (2022)8 SCC (J)1 mentioned various factors in his article "JUSTICE DELIVERY – SOME CHALLENGES AND SOLUTIONS, on page 9 para 2 as follows,

"Not all accused are guilty. Many an innocent are being accused of crimes or are framed on the basis of slipshod investigations, false accusations, political or local rivalry, and family vendetta. Though a person accused of a crime is deemed innocent till proved guilty in a court of law, an arrest or being charged with an offence takes away

his freedom and livelihood, apart from destroying his reputation. His family members are shunned, becoming outcasts overnight. At any given point of time, there are about three lakh undertrials (persons held in custody awaiting trial) locked up in prisons, making up for about two-thirds of the prison population.”

ED Investigating Officers are not Police Officers, but have power to arrest as per Sec.19 (1) of the PML Act, which reads as follows,

19. Power to arrest – (1) If the Director, Deputy Director, Assistant Director, or any other officer authorised in this behalf by the Central Government by general or special order, **has on the basis of material in his possession reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.”**

The material available with ED Investigating Officer was FIR No.22 of 2018 registered for the offence relating to the facts allegedly took place during 2007 to 2011. The materials available with the Main Complaint and Supplementary Complaint prima-facie indicate a long civil litigation which delayed project, caused due to misdeeds of Rakesh Kumar Wadhawan (A1), Sarang Wadhawan (A2) and their HDIL, which too was acknowledged by the Hon'ble High Court. Yet, Pravin Raut (A3) and Sanjay Raut(A5) were arrested for the same. It is also a clear case of ED that initially there was huge amount of POC Rs.1039.79 Crore and hardly 10% thereof i.e. Rs.95 Cr./Rs.100 Cr/Rs.112 Cr. had come to Pravin Raut (A3) and very meager, approximately 1% of the said Rs.112 Cr., Sanjay Raut(A5) allegedly received **Rs.1,06,44,375 (Main PC) and Rs.3,27,85,475 (as per Supplementary Complaint)**. Admittedly, their (A3 and A5) properties were attached by ED under PAO. ED has also taken a self-destructive

stand that Pravin Raut (A3) received POC Rs.95 Crore from the illegal outstanding huge loan raised by Wadhawans and their HDIL from PMC Bank.

143. It is an astonishing admitted fact that Rakesh (A1) and Sarang (A2) Wadhawans who not only generated huge Rs.1039.79 Crore, but also allegedly placed, layered and integrated the same, were never arrested by the ED I.O. under the power of Sec.19 of the PML Act. It is the ED who had filed many complaints/ECIRs relating to money laundering wherein these Wadhawans are accused and arrested by the ED and they could not secure bail till date in such so many other cases/crimes. However, in the instant case considering the major role attributed to them which they (A1 and A2) have also admitted, yet ED has not arrested and allowed them to be scot-free, for the reasons best known to them.

144. On the other hand, ED arrested Pravin Raut (A3) purely for a civil dispute which is not any Scheduled Offence and Sanjay Raut(A5) for no reasons. All this prima-facie indicates that the extreme and exceptional powers of arrest, ED Investigating Officers have used very casually in utter disregard to Sec.19 of the PML Act, which is very very serious in the background of repeated guidelines of the Hon'ble Supreme Court in respect of arrest. It cannot be ignored that Pravin Raut (A3) was arrested on **02.02.2022** and ever since till date for about **nine months** he has been behind bars. Similarly Sanjay Raut(A5) was arrested on **01.08.2022** and ever since till date behind bars more than **three months**. Basically, there was no reason nor any occasion to arrest both of them under Sec.19 of the PML Act for the allegations which are basically nothing but a civil dispute. Basically, the arrest of

both of them under Sec.19 is not qualified. It is material to note that, initially ED raided the house of Sanjay Raut(A5) on 31.07.2022 and did not allow him(A5) to move anywhere throughout the day. Thereafter, he was brought to ED office and after grilling him, in the mid-night of **31.07.2022** arrested him at 12.35 a.m. of **01.08.2022**. Basically there was no legal necessity to arrest him in the mid-night when in reality he could not avail the benefits of the guidelines laid down by the Hon'ble Supreme Court in the case of Arnesh Kumar. Today we are in the era of Vijay Madanlal Choudhari (Paras 31,32,33), D.K. Basu, Arneshkumar and Satender Kumar Antil. But the ED appears to have ignored the same. His presence could have been secured by way of summons and not by the way in which he was arrested in the late night.

145. He was summoned earlier but he sought time to remain present. That could not be the reason to exercise power of arrest with such extremity when ED had never arrested main accused persons Rakesh Wadhawan and Sarang Wadhawan. Therefore, I am of the firm opinion that arrest of both accused (A3 and A5) is basically illegal without any qualifications required under Sec.19 of the PML Act. This itself is sufficient to release both the accused on bail. It is pertinent to note that after such unusual mid-night arrest of Sanjay Raut(A5) and even during the first ED custody period he(A5) was kept in a windowless room where only four walls were around him. Accused No.5 pointed out that he had undergone Angioplasty twice and there are six stents in his heart. He also made complaint before this Court, how he was kept in a room where there is absolutely no ventilation and how he is unable to sustain air-condition. It is only then due to the Court intervention he could get a room with some ventilation in ED custody. All this prima-facie indicates that his arrest is nothing but a

witch-hunt and annihilation of his valuable rights. Ld. Counsel Mr. Aabad Ponda and Mr. Ashok Mundergi pointed out disparity committed by the ED while arresting both accused(A3 and A5) by leaving the main accused persons Rakesh(A1) and Sarang(A2) Wadhawans scot-free. When this disparity is brought to the notice of the Court, the Court is under legal obligation to make parity. This alone is sufficient to release both accused on bail.

**EXTRA-ORDINARY PACE OF THE ED IN CAUSING ARREST AND
NOT EVEN A SNAIL SPEED IN CONDUCTING TRIALS.**

146. Experience of this Court constrained me to note that in every ECIR the speed of ED in arresting accused is extra-ordinary. Even in every matter whole period of 14-15 days prescribed under Cr.P.C. is consumed and exhausted in seeking ED custody of the accused. Once any accused is remanded in judicial custody, the pace taken by ED for arresting him automatically gets down to almost zero. Once the applicant (accused) files bail applications, ED takes at least three to four weeks or more than that to file their reply. In the instant case, Pravin Raut filed his bail application on 05.05.2022. From 18.05.2022 onwards, 31.05.2022 and 08.06.2022 ED did not file their say. On 21.06.2022 ED filed their say, which clearly indicates that one and half months ED took to file say to bail application of Pravin Raut (A3) when he is an under-trial prisoner. Decision of his bail application is condition precedent to decide bail application of Sanjay Raut(A5) also, which the ED wanted to prolong for long time. Apart from this, in every matter it is noticed that, ED takes very very long time to reply the simple applications filed by any accused.

147. I am constrained to refer the example on this aspect. In Special Case No.6 of 2019 Purshis (Exh.127) on behalf of Accused No.2 informing his death was filed on 12.05.2022 alongwith copy of death certificate. In order to safeguard interest of the ED, this Court simply asked them to verify this fact to pass an order of abatement. I am constrained to note that ED simply consumed time from 12.05.2022 and ultimately filed their very very long reply (Exh.142) referring unwarranted contention as to how money was laundered as alleged in the offence, purport of Sec.70 of IPC and further contended to reject the application. A simple Purshis informing death took ED to file very long reply which runs in 7-8 pages. How the trials of PMLA cases would progress? This Court has submitted detailed report to the Hon'ble Principle Judge on 13.05.2022 responding the representation dt.06.04.2022 made by the Enforcement Directorate.

148. I am constrained to note that, not a single trial right from the establishment of this Designated Court, the ED has concluded by leading evidence and the Court could not give a single judgment right from the last decade. This Court has submitted a detailed report to the Hon'ble Principal Judge, regarding such modus-operandi availed by the ED in conducting trials. Every time explanation to Sec.44 of the PML Act stating that, "Further investigation is going on in each and every case" is capitalised. Even the cases wherein this Court has framed charge, could not record evidence more than one-two pages. In this way, the extra-ordinary pace with which ED arrests accused becomes not even a snail speed in conducting trials. It appears that ED knows only Ss.19 and 45 of the PML Act, but forgets that there is a provision for trial of an offence under PML Act as per Sec.44 thereof. It is unfortunate that even this Court is forgetting that evidence has to be

recorded, trials have to be conducted and judgments are to be delivered even in the PMLA special cases. There is absolutely not a single judgment after a complete trial in this Court right from the beginning and during the tenure of my all Ld. Predecessors. Is ED not accountable for such modus-operandi availed by them in not beginning and concluding a single trial? I have already noted above how ED took one and half months to file say to the bail application of Pravin Raut (A3). **Time has come to make ED aware of Sec.44 of the PML Act and this Court is duty bound to do so in view of the oath it has taken to work without fear and without favour.** Everyone including the ED knows recent directions of the Hon'ble Supreme Court in the case of Satender Kumar Antil Vs. Central Bureau of Investigation and every bail application has to be decided as expeditiously as possible not more than the span of time provided therein. In this background it is necessary to take serious note that Pravin Raut's (A3) bail application has been pending since 05.05.2022 i.e. more than six months, and even Sanjay Raut's (A5) bail application has been pending since 08.09.2022 i.e. more than three months, even if both of them were illegally arrested under Sec.19 of the PML Act. Yet, the ED wants to keep those applications pending for uncertain period. This is very serious. All this prima-facie indicates that, ED is forgetting that, we are in the era of Vijay Madanlal Choudhary (paragraphs 31 to 33), D.K. Basu, Arnesh Kumar and Satender Kumar Antil. The directions in the Satender Kumar Antil are equally binding on ED.

149. Contention of ED in the Supplementary Complaint of making '**Dramatis Personae**' while transposing roles attributed to Pravin Raut (A3) and Sanjay Raut(A5) and that Pravin Raut (A3) was

front-man, proxy for Sanjay Raut(A5), is not sustainable in the natural course of conduct. Their own case indicates that Pravin Raut (A3) generated and laundered Rs.112 Crore and Sanjay Raut(A5) received **Rs.1,06,44,375 (Main PC) and Rs.3,27,85,475 (as per Supplementary Complaint)** therefrom. No person like Sanjay Raut(A5) would allow his front-man to earn Rs.112 Crore and pay him a very meager therefrom **Rs.1,06,44,375/Rs.3,27,85,475**, and purchases properties therefrom. Apart from this, I have discussed already how except bald and bare words of Mr. Chandan Kelekar stating a tale that, once upon a time there were two meetings allegedly taken by the then Union Agriculture Minister and the then Chief Minister, there is absolutely nothing to prima-facie justify such contention. I have also held that, a person may possess unaccounted money and Sanjay Raut(A5) might have possessed the same and purchased the properties at Kihim, Dist. Raigad, Innova car etc. but the same cannot presumably bring him and fasten with the Proceeds of Crime when the ED is duty bound to prima-facie establish the existence of POC generated by a criminal activity relating to the Scheduled Offence. This vital element is absent in the case of both the accused (A3 and A5) for detaining them in judicial custody by rejecting their bail applications.

150. This is a fact that ever since Pravin Raut (A3) was granted bail in the Scheduled Offence, he has not committed breach of any conditions imposed by the then Court. Similarly Sanjay Raut(A5) is a Member of Parliament (Rajya Sabha) and there is no likelihood of fleeing from justice and absconding. In the background of all detailed discussion in respect of bail applications of Pravin Raut (A3) and Sanjay Raut(A5) on giving opportunity to the Ld. A.S.G. Mr. Anil Singh and Ld.

S.P.P Mr. Hiten Venegavkar and opposing these applications by them, this Court is satisfied that there are reasonable grounds for believing that both accused (A3 and A5) are not guilty of such offence and that they are not likely to commit offence while on bail.

151. Ld. A.S.G. Mr. Anil Singh placed his reliance on following authorities,

- i. Marath Sashidharan Vs. Directorate of Enforcement and another (Criminal Bail Application No.1046 of 2021, decided on 23.02.2022).
- ii. National Investigation Agency Vs. Zahoor Ahmad Shah Watali, (2019)5 SCC 1.
- iii. Pawan alias Tamatar Vs. Ram Prakash Pandey and another, (2002)9 SCC 166.
- iv. State of U.P. Vs. Gayatri Prasad Prajapati (2020 SCC OnLine SC 843).
- v. Satish Jaggi Vs. State of Chhattisgarh and others, (2007)11 SCC 195.
- vi. Gharban Ali Pour Azadi Vs. Intelligence Officer, Air Intelligence Unit, Bombay and Others (1996 SCC OnLine Bom 59).
- vii. Gautam Kundu Vs. Directorate of Enforcement (Prevention of Money-Laundering Act) Government of India, through Manoj Kumar, Assistaant Director, Eastern Region, (2015)15 SCC 1.

I carefully studied the ratio, guidelines and law laid down in the above authorities. However, facts in the instant case are peculiar, wherein ED has taken duel stand and contended the Proceed of Crime involved in the instant ECIR and in the ECIR of 2019 is one and the same. Basically this Court prima-facie held that such self-destructive stand itself proves the case of the applicants. Apart from this, I am of the prima-facie opinion that civil litigation is the reason for arrest and ECIR of both accused which is basically not a Predicate Offence. There is absolutely nothing to show that right from the inception in 2006-

2007 Pravin Raut (A3) and also Sanjay Raut(A5) keeping himself behind the curtain, entered this project with a wise brain with an intention to fraudulently induce and cheat MHADA and 672 occupants thereof. A1,A2 and their HDIL clearly admitted that their misdeeds caused delay and the same was acknowledged by the Hon'ble High Court when the MHADA too consented it. All this has been ignored by ED and caused arrest of both accused by the extreme use of power. In this way both of them were illegally arrested under Sec.19 of the PML Act. In none of the above authorities such peculiar facts are involved. Therefore, with great respect the parameters and ratio laid down therein are not applicable to this case.

CONCLUSION

152. After hearing both sides at length and on going through the detailed written submissions and rejoinders, this Court reached at following conclusion.

- i. Extreme and exceptional power of effecting arrest which ought to have been used very very sparingly, has been used by the ED Investigating Officers under Sec.19 of the PML Act, is ab-initio illegal. Hence, on this count alone the question of attracting rigors of stringent twin conditions under Sec.45(1)(i)(ii) of the PML Act does not arise and both accused cannot be detained in the judicial custody henceforth, for the same.
- ii. Simply labeling pure civil disputes with “money-laundering” or “an Economic Offence” itself cannot automatically acquire such status and ultimately drag an innocent person in a miserable situation in the guise of arrest under Sec.19 and stringent twin conditions of Sec.45(1)(i)(ii) of the PML Act. THE Court has to do what is right irrespective of who is before it.
- iii. From the records materials and the detailed discussion made above, it is clear how Pravin Raut (A3) is arrested for a pure civil litigation, whereas Sanjay Raut(A5) for no reason. This truth is glaring. The Court is under legal obligation and duty to find out

truth even at the stage of bail. The Hon'ble Supreme Court time and again laid down, **“Truth is the guiding star. Criminal trial is voyage of discovery of truth. The truth alone triumphs and every endeavour has to be made by the Court to discover the truth and make justice.”**

- iv. Even otherwise the twin conditions cast such an important duty on the Court to have a thorough examination and assessment at the stage of bail without making any mini-trial
- v. Even if MHADA, who is party to the every stage and every litigation, which had reached upto the Hon'ble High Court, yet astonishingly lodged FIR No.22 of 2018 for the facts and circumstances of transaction which had allegedly taken place during 2006 to 2013. In this way the conduct of MHADA right from beginning till date is suspicious and even ED admitted the same in their complaints, yet ED has not made any MHADA staff accused.
- vi. MHADA's attitude as such lodging FIR No.22 of 2018 on one fine morning can neither throw dust in the eyes of the Court nor can brush of and wash out long civil litigations which were even acknowledged by the Hon'High Court. Hence, this Court cannot join its voice in the chorus of ED and MHADA.
- vii. Rakesh and Sarang (A1 and A2) for their misdeeds and being the main accused persons admitted the same by affidavit of Sarang Wadhawan, were not arrested by the ED but they have been left scot-free. But at the same time Pravin Raut(A3) was arrested for civil dispute, whereas Sanjay Raut(A5) for no reason. All this clearly indicates disparity, pick and choose attitude of the ED and the Court cannot put premium on the same but legally bound to make parity.
- viii. If the Court still accepts contention of ED and MHADA and further rejects the bail applications of Pravin Raut (A3) and Sanjay Raut(A5) that will amount putting premium on such pick and choose strategies of the Agency. Certainly in that event any common man, innocent and honest people, will lose faith and confidence which they have reposed in the judicial system as a temple of justice. Hence, judicial principles which guide the Court cannot be ignored.
- ix. Many statements of witnesses recorded by ED clearly refer the prominent role of Wadhawans (A1 and A2) and their HDIL, but they were not arrested and Pravin Raut (A3) and Sanjay Raut(A5) who have absolutely no concern in generating POC or laundering money as well as indulging the criminal activities relating to the Scheduled Offence, were arrested for subsequent transactions, they have made from their own money. Such

conduct of the Agency cannot be garbed for detaining both accused (A3 and A5) behind bars for an uncertain period.

- x. Like the laudable object of the PML Act casting duty on the Court to safeguard it, equally the court is protector of rights of accused and innocent persons who are illegally arrested. The Court cannot become predator of such valuable rights of the accused, but is duty bound to be a protector thereof as laid down by the Hon'ble Supreme Court. If the Court ignores this aspect, where the people will go for justice?
- xi This Court being the Court of First Instance has great responsibility of not committing a slightest mistake which will turn into miscarriage of justice. Therefore, this Court has taken a thorough survey of the available records/materials within four corners of the limits required to resolve this question relating to the twin conditions and only thereafter, arrived at such conclusion by not transgressing the boundaries and not committing any mini-trial.
- Xii. In PMLA bail matters, orders become long and run into at least around 40-50 pages, does not mean that Court has done mini-trial as argued by the Ld. A.S.G. Mr. Anil Singh. On the contrary the stringent twin conditions under Sec.45(1)(i)(ii) of the PML Act prescribe prima-facie thorough examination. Even the recent order of the Hon'ble High Court in the case of Anil Vasant Rao Deshmukh (supra) runs into 53 pages. The present order is a common order for two bail applications relating to voluminous record, hence bound to run in number of pages.

153. With this, I hold that both accused are basically arrested illegally. Both of them are entitled to parity in view of disparity made by the ED in not arresting the main accused persons Rakesh(A1), Sarang (A2), their HDIL, MHADA and Government Officials/staff responsible for misdeeds of A1 and A2 at the relevant time in 2006-2018. Apart from this, I also held that both accused have satisfied twin conditions under Sec.45(1)(i)(ii) of the PML Act. There is absolutely nothing before the Court that ever since Pravin Raut (A3) has been released on bail in a Scheduled Offence, he has committed any breach of the conditions imposed by the said Court. Similarly, whatever contended by ED against Sanjay Raut(A5) can be safeguarded by

imposing certain conditions on him. Hence, there is no likelihood that both of them will likely to commit any offence while on bail. Hence, Point No.1 is answered in the affirmative and following order is passed :-

ORDER

1. Bail Application (Exh.8) and Bail Application No.582 of 2022 are allowed.
2. Pravin Raut (A3) and Sanjay Raut (A5) be released on bail in PMLA Special Case No.356 of 2022 (ECIR/MBZO-I/80/2021) by everyone of them executing PR bond of Rs.2,00,000/- (Rupees Two Lakh) with one or two sureties of like amount.
3. Both accused shall undertake not to pressurize any of the prosecution witnesses and not to indulge in any activity detrimental to the interest of this case of ED.
4. Both accused shall undertake that they will not skip the important dates relating to important stages in the trial i.e. framing of charge, recording of evidence etc.
5. Both accused (A3 and A5) shall not leave India without prior permission of the Court.
6. Both accused are permitted be released on provisional cash security of Rs.2,00,000/- (Rupees Two Lakh) each with PR bond for two months.

Dt.: 09.11.2022



(M.G. Deshpande)
Spl. Judge under the PML Act,
City Sessions Court,
Mumbai.

Signed on : 09.11.2022.

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER”

09.11.2022 at hours UPLOAD DATE AND TIME	(KISHOR PRAKASH SHERWADE) NAME OF STENOGRAPHER
Name of the Judge	HHJ M. G. DESHPANDE (COURT ROOM NO.16)
Date of pronouncement of judgment/order	09.11.2022
Judgment/order signed by P.O. on	09.11.2022
Judgment/order uploaded on	09.11.2022