$~4

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

Judgment reserved on: 09.09.2022

Judgment pronounced on: 08.02.2023

\+ **BAIL APPLN. 4330/2021 & CRL.M.(BAIL) 1514/2021**

RAMAN BHURARIA ..... Petitioner

Through: Mr. Arshdeep Singh Khurana, Mr. Ayush Agarwal, Mr. Harsh Mittal, Advocates

versus

DIRECTORATE OF ENFORCEMENT ..... Respondent

Through: Mr. Zoheb Hossain, Mr. Vivek Gurnani, Advocates for ED

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

: JASMEET SINGH, (J)

BAIL APPLN. 4330/2021

1. The present application is filed under Section 439 IPC read with Section 482 CrPC seeking bail in ECIR/12/DLZO-I/2021 dated 30.01.2021.

2. The applicant was arrested on the night of 12/13.08.2021 at 00:45 hrs. in the abovementioned ECIR, and thereafter remanded to Police Custody (PC) of the Enforcement Directorate (ED) for a period of 14 days until 25.08.2021.

3. Thereafter, the applicant has been remanded to Judicial Custody (JC) from time to time and continues to remain incarcerated in Judicial Custody in Tihar Jail, Delhi.

Signature Not Verified
Digitally Signed by AMIT ARORA
Signing Date:08.02.2023 12:07:41

4. The applicant had previously preferred two regular bail applications before the learned Trial Court and both have been rejected vide orders dated 05.10.2021 and 01.11.2021 respectively.

5. The brief facts giving rise to filing of the present bail application are as under:

6. On 31.12.2020, the CBI registered a FIR bearing No. RC0742020E0014 against M/s Shakti Bhog Foods Ltd. (hereinafter called as SBFL) and Mr. Kewal Krishan Kumar, Director/ Promoter of M/s SBFL under Section 120B read with Section 420/ 467/ 468/ 471 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter called as PC Act).

7. The FIR was registered based on a written complaint dated 11.06.2020 lodged by the State Bank of India (SBI). The allegations in the FIR pertain to financial irregularity and siphoning of funds in relation to credit facilities obtained by SBFL from a consortium of banks led by the SBI and thereby causing a loss of Rs. 3269.42 crores.

8. The Ld counsel for the applicant states that the applicant was not named as an accused/ suspect in the FIR. As per the FIR, the review period/period under enquiry of offence was between 2013 and 2017.

9. The applicant was an internal auditor of the SBFL for the financial year 2008-09 till 2013-14, and a statutory auditor of SBFL for the financial year 2006-07.

10. In the column No.12 of the FIR, the observations of the I.O. read as under:-

12.	*Action taken by the bank*	*I. The account turned NPA on*

Signature Not Verified
Digitally Signed by AMIT ARORA
Signing Date:08.02.2023 12:07:41

	against public servants including departmental proceedings initiated. If so, details thereof.	*account of inventory losses due to steep fall in paddy prices, underutilisation of Capex in rice/ paddy segment made in the last two years, Delay in tie up funds (PE investment) to tide over the losses.* *II. There is no apparent malafides in the monitoring of the account, though some minor omissions/ instances of negligence has been observed in Credit Audit Reports, these have not contributed in the account turning NPA. The company's operations were under considerable stress owing to various internal and external factors.*

11. It is submitted that the findings of the I.O. clearly show that the account of SBFL was declared NPA on account of commercial reason and, more importantly, there are no apparent *mala fides* in the monitoring of the account though there are some omissions/ instances of negligence.

12. Based upon the FIR, the respondent Enforcement Directorate (ED) filed the ECIR in which the applicant was not named as an accused.

13. It is further submitted that before the learned ACMM, the respondent ED on 25.01.2022 has made a statement that it needed two and a half months for completing its investigation. Thereafter, on 22.04.2022, the respondent requested for and was granted more time to complete its

Signature Not Verified
Digitally Signed by AMIT ARORA
Signing Date:08.02.2023 12:07:41

investigation.

14. It is also submitted that the 'triple test' for grant of bail laid down by various judgments are as under:

i. Flight risk

ii. Influencing any witness

iii. Tampering with evidence.

15. The learned Sessions Court in its order dated 18.11.2021 has given all 3 findings in favour of the applicant which have not been challenged by the respondent.

16. The order dated 18.11.2021 records as under:-

"11. So far as assessment of the merits of the present application under section 439 Cr.P.C. is concerned, the first step has to be to apply the 'triple test'. The applicant is not a flight risk since his passport stands deposited in the Court as a condition precedent for hearing his pre-arrest bail application. The argument of applicant having deep roots was also raised and considered while disposing off the first regular bail application. At that stage, the argument of 'applicant's deep roots in the society' was considered to be multidimensional and hence, rejected. At this stage however, the same consideration would not apply due to change in circumstance i.e. filing of supp. complaint arraigning the applicant. Though it has been stoutly argued by the ld. Spl. PP that investigation qua the role of the applicant is still on-going, the facts suggest a different picture. The supp. compliant was filed on 11.10.2021. Since then, the IO has not examined a single witness to further investigate the

Signature Not Verified
Digitally Signed byAMIT ARORA
Signing Date:08.02.2023 12:07:41

role of applicant. It was not until the present application came to be filed on 1.11.2021 that an application was moved to further question the applicant in jail premises and submission was put forth during the course of arguments on behalf of the ED that 3 more persons have been summoned for questioning to understand role of the applicant in the alleged offence. I have perused the case diary. 2 of those 3 persons have also been questioned, on 11.11.2021 and 13.11.2021. More importantly, the line of questioning of these 2 persons was only to further confirm the (alleged) role of the applicant in SBFL, something which has already been highlighted by a number of other witnesses. Further, so far as the apprehension of danger to his life has been expressed by a witness who also happens to be a long-running close associate of the applicant, ld. Counsel for the applicant pointed out that the statement of the said witness was recorded on 21.9.2021 but strangely, was not highlighted by the ED while arguing against the first regular bail application of the applicant. This shows how much really was this apprehension a concern for the ED such that it was not even brought to the notice of the Court on the earlier occasion when it should and could have been. I would agree with the submission of ld. Counsel for the applicant. Additionally, Ld. Counsel for the applicant has correctly placed reliance on the relevant judgements (cited above) to argue that mere apprehension of influencing the witnesses by the accused, without any real basis to entertain such an apprehension, is not a good ground for rejection of a regular bail. Even otherwise, as has been observed above, the investigation

Signature Not Verified
Digitally Signed byAMIT ARORA
Signing Date:08.02.2023 12:07:41

qua the role of the applicant seems to be practically over, leaving little scope for the accused to hamper the investigation by influencing witnesses. It needs a highlight that though wife of the applicant has been arraigned in the supp. complaint and the son of the applicant has also been questioned by the ED, yet there has been no complaint by the ED to the effect that either of them has approached any witness.

Ld. Spl. PP also raised the argument of investigating now turning towards the role of bank officers in laundering crime proceeds and the role of applicant in this regard i.e. in siphoning off bank funds (crime proceeds) through dummy entities/transactions. Suffice to say that it has been more than a month since the supp. complaint was filed and yet, from 8.10.2021 till 11.11.20021, no witness was summoned to further investigate the role of the applicant, and even on 11.11.2021 and 13.11.2021, the ED was only investigating the role of the applicant by summoning his employees and partner which also was done after the 2nd regular bail application was filed on 2.11.2021.

So far as the possibility of tampering with collected evidence is concerned, apart from the statements of witnesses recorded u/s 50 PML Act 2002, the evidence being in the nature of voluminous data and electronic records is already in the safe possession of the ED leaving no scope of its tampering by the applicant."

17. The Special Judge (PC Act) rejected the bail application of the applicant on considerations of parameters of Section 45of the Prevention of Money Laundering Act, 2002 (hereinafter called as PMLA).

Signature Not Verified
Digitally Signed byAMIT ARORA
Signing Date:08.02.2023 12:07:41

18. In the prosecution complaint, the allegations against the applicant are that the applicant had designed the entire plan of laundering of loan funds through dummy entities. By virtue of this mechanism on one hand the turnover and the stock of the company was inflated and on the other hand the loan funds were laundered. On analysis of the bank statement of shell corporations, it was revealed that funds received from SBFL were either withdrawn in cash or re-routed to further shell companies. It is submitted that all the entities mentioned in the prosecution complaint do not name the applicant. The applicant had nothing to do with these accommodation entries made by SBFL through various shell companies.

Accommodation entries through shell companies:

19. Mr Devki Nandan Garg and Mr Ashok Kumar Goel have been cited as accommodation entry operators. Mr Devki Nandan Garg and Mr Ashok Kumar Goel have named the accused in their statements on various dates. Mr Khurana has taken me through a chart wherein detailed comparison of the statement of Mr. Devki Nandan Garg and Mr Ashok Kumar Goel and the same reads as under:

S. No.	Devki Nandan Garg and Ashok Kumar Goel Previous Statements	Devki Nandan Garg	Ashok Kumar Goel
1	Devki Nandan Garg Statement dt. 05.07.2021,	Statement dt. 21.09.2021	Statement dt. 21.09.2021
	"On being asked I further state	"On being asked about	"On being asked

Signature Not Verified
Digitally Signed byAMIT ARORA
Signing Date:08.02.2023 12:07:41

	that I know Mr. Kewal Krishan Kumar Managing Director of Shakti Bhog Food Ltd. since last 20 years." <u>Devki Nandan Garg statement dt. 05.07.2021, Q4, Pg.3</u> "I have seen and signed copies of fictitious bills and bilitties on your file. The said bills and billitties are the same which were arranged by my firm namely M/s Lachhu Ram Agarwal to Mr. Kewal Krishan Kumar in Shakti Bhog Food Ltd. through employee namely Sandeep Mishra, Abdul Hassan Ansari and others. I had arranged the same on request of Mr Kewal Krishan Kumar and remitted/ transferred the payments further in the account of firms stated by Mr Abdul Hassan Ansari@ Pathak or Mr Sandeep Mishra	purpose of above-mentioned bogus transactions, I want to state that SBFL used to divert funds availed as credit facilities to my dummy entities and these funds are further transferred into bank accounts of SBFL or into other dummy entities or into group companies of SBFL or withdrawn as cash as per directions received from Shri KK Kumar, Shri Siddharth Kumar, Shri Raman Bhuraria, Shri Tarun Kumar or Shri Sandeep Mishra." <u>Statement dt. 21.09.2021,</u>	about purpose of above-mentioned bogus transactions, I want to state that SBFL used to divert funds availed as credit facilities to my dummy entities and these funds are further transferred into bank accounts of SBFL or into other dummy entities or into group companies of SBFL or withdrawn as cash as per directions received from Shri KK Kumar, Shri Siddharth Kumar, Shri Raman Bhuraria, Shri Tarun Kumar or Shri Sandeep Mishra."

Signature Not Verified
Digitally Signed by AMIT ARORA
Signing Date:08.02.2023 12:07:41

	both employee of Shakti Bhog Food Ltd. At commission@ 0.5% to 2%." <u>Devki Nandan Garg Statement dt.08.07.2021</u> "Shakti Bhog Food Ltd through Mr tarun Kumar, Mr Abdul Hassan Ansari and Mr Sandeep Mishra provided the account numbers in which the further remittances / RTGS were made. If there was any mismatch or delay in remittances, I was also approached by Shakit Bhog Food Ltd in some cases and the matter was resolved accordingly. The said parties/firms had also obtained commission .50% to 1 % for arranging the said services to Shakti Bhog Food Ltd." <u>Devki Nandan Garg Statement</u>	"On being asked about commission charged by me for providing accommodation entries, I want to state that I used to charge commission ranging from .5% to 1.5% on fake invoice value provided to SBFL. On being asked about mode of receipt of this commission, I want to state that I used to deduct amount of commission from funds received from banks accounts of SBFL and remaining funds are transferred as per directions received from Shri KK Kumar, Shri Siddharth Kumar, Shri Raman Bhuraria, Shri Tarun	<u>Statement dt. 22.09.2021,</u> "On being asked about commission charged by me for providing accommodation entries, I want to state that I used to charge commission ranging from .5% to 1.5% on fake invoice value provided to SBFL. On being asked about mode of receipt of this commission, I want to state that I used to deduct amount of commission from funds received from banks accounts of SBFL and remaining funds are transferred

Signature Not Verified
Digitally Signed by AMIT ARORA
Signing Date:08.02.2023 12:07:41

	dt. 08.07.2021, "I further state that in some cases payment was also transferred directly by our firms as per requirement of Shakti Bhog Food Ltd. but such instances are not much in number. Mr Abdual Hassan Ansari, Mr Tarun Kumar and Mr Sandeep Mishra had all knowledge of these transaction and they were the main persons who dealt these transactions on directions of Mr Kewal Krishan Kumar." Devki Nandan Garg Statement dt.10.07.2021 "Shakti Bhog Food Ltd. approached me through MD Sh.	Kumar or Shri Sandeep Mishra." Statement dt. 21.09.2021 "On being asked about end use of these funds of SBFL received in my dummy entities, I want to state that I used to transfer funds received from SBFL into other bank accounts of SBFL or into other dummy entities or into group companies of SBFL or withdraw cash. On being asked as to who used to direct me to transfer these funds, I want to state that directions to transfer funds were received	as per directions received from Shri KK Kumar, Shri Siddharth Kumar, Shri Raman Bhuraria, Shri Tarun Kumar or Shri Sandeep Mishra." Statement dt. 22.09.2021 "On being asked about end use of these funds of SBFL received in my dummy entities, I want to state that I used to transfer funds received from SBFL into other bank accounts of SBFL or into other dummy entities or into group companies of SBFL

Signature Not Verified
Digitally Signed by AMIT ARORA
Signing Date:08.02.2023 12:07:41

	Kewal Krishan Kumar and employee namely Mr. Sandeep Mishra, Mr. Abdul Hassan Ansari @ Pathak etc. for the said fictitious bills for discounting of bills and inland LC's purposes and accordingly arranged the same as per their requirements without actual movement of stock. The said persons had also stated detail of rate, quantity, types of grains, load, commission etc. for preparation of the said fake documents and accordingly I got prepare the said fake set of documents i.e bills, invoices, transport receipts etc. which were finally submitted by these personal banks for realisation of LC's and other purposes." <u>Devki Nandan Garg Statement dt.12.07.2021</u>	from Shri KK Kumar, Shri Siddharth Kumar, Shri Raman Bhuraria, Shri Tarun Kumar or Shri Sandeep Mishra. I want to further state that I used to deduct commission from the amount received from SBFL before further transfer of funds." <u>Statement dt. 21.09.2021</u> "On being asked about cash withdrawn from bank accounts of my dummy entities and end use of this cash, I want to state that I used to withdraw cash also from bank accounts of my	or withdraw cash. On being asked as to who used to direct me to transfer these funds, I want to state that directions to transfer funds were received from Shri KK Kumar, Shri Siddharth Kumar, Shri Raman Bhuraria, Shri Tarun Kumar or Shri Sandeep Mishra. I want to further state that I used to deduct commission from the amount received from SBFL before further transfer of funds." <u>Statement dt. 22.09.2021</u> "On being asked about cash withdrawn

Signature Not Verified
Digitally Signed by AMIT ARORA
Signing Date:08.02.2023 12:07:41

	"These firms used to provide accommodation entries by charging commission. I was aware of this fact because whenever I used toad more layers to any transactions by using their firms and buying and selling fake purchase sale and transport bills/invoices for Shakti Bhog Food ltd. Business. I had to rotate some money through their accounts and purchased some bills from them to complete cycle. Even, monument of Shakti Bhog Food Ltd. Sh. Kewal Krishan Kumar and Mr Tarun had also asked to rotate the funds some more channel" <u>Devki Nandan Garg Statement dt. 13.07.2021</u> "On being asked I further state that in some cases on request of Mr Kewal Krishan Kumar I	dummy entities as per instructions received from Shri KK Kumar, Shri Siddharth Kumar, Shri Raman Bhuraria, Shri Tarun Kumar or Shri Sandeep Mishra."	from bank accounts of my dummy entities and end use of this cash, I want to state that I used to withdraw cash also from bank accounts of my dummy entities as per instructions received from Shri KK Kumar, Shri Siddharth Kumar, Shri Raman Bhuraria, Shri Tarun Kumar or Shri Sandeep Mishra."

Signature Not Verified
Digitally Signed by AMIT ARORA
Signing Date:08.02.2023 12:07:41

	had also arranged funds in cash to Kewal Krishan Kumar towards the said RTGS and issued fictitious bills/bilities. I will also provide details of the said cash transactions. I had not business activity with Shakti Bhog Food Ltd." <u>Devki Nandan Garg Statement dt.24.07.2021</u> "It is further stated that I have prepared various fake transport invoices and bills raised by M/s Shri Shyam Road Lines on M/s Shakti Bhog Foods Limited. I have copies of few fake transport invoices prepared by me. These fake transport invoices are provided to Shri Abdul Hasan Ansari (Accountant of SBFL) for submission to banks by SBFL for the purpose of discounting of LC's by bank."		

Signature Not Verified
Digitally Signed byAMIT ARORA
Signing Date:08.02.2023 12:07:41

2.	<u>Ashok Kumar Goel Statement dt.20.08.2021, Q2, Pg.2</u> "On being asked about my acquaintance with SBFL, I want to state that I used to work as commission agent in trading of food grains in Lawrence Road Industrial Area, Delhi. Shri KK Kumar was member of Dal Mill Association, Lawrence Road and he used to meet my maternal uncle Late Shri Radhey Shyam Gupta frequently. I was introduced to him by my uncle and thereafter I developed personal acquaintance with him. In 2014, he called me over phone and insisted me to provide accommodation entries to Shakti Bhog Foods Limited (SBFL) & its Group Companies. He told me that he required shell/dummy companies to rotate funds from bank accounts of SBFL to inflate business of SBFL. He offered me		

HIGH COURT OF DELHI
सत्यमेव जयते

Signature Not Verified
Digitally Signed by AMIT ARORA
Signing Date:08.02.2023 12:07:41

	commission also for arranging accommodation entries. He requested me to provide fake purchase bills raised on SBFL and told me to give these fake bills to Shri Abdul Hasan Ansari (Accountant of SBFL) or Shri Tarun (Nephew of Shri KK Kumar). He further told me coordinate with Shri AH Ansari & Shri Tarun Kumar for any issues related to these accommodation entries." <u>Ashok Kumar Goel Statement dt. 20.08.2021</u> "On being asked about procedure to transfer/rotation of funds from dummy entities to SBFL or group companies, I want to state that Shri AH Ansari used to provide me fake bills to transfer funds from my dummy entities to SBFL or group concerns and Shri Tarun		

HIGH COURT OF DELHI
सत्यमेव जयते

Signature Not Verified
Digitally Signed by AMIT ARORA
Signing Date:08.02.2023 12:07:41

	Kumar used to communicate as to how much amount is required to be transferred in which account of SBFL or sister concerns. He used to provide me details of bank accounts of SBFL and its sister concerns to transfer funds on strength of fake bills without actual movement of goods."		

20. The Ld. Counsel for the applicant states that on bare perusal of the disclosure statements clearly demonstrate that they are pure cut, copy, paste job where even coma, inverted comas, exclamations are identical. Mr Khurana, also states that Mr Devki Nandan Garg has subsequently retracted from his statement. The statement of Mr Devki Nandan Garg reads as under:

> *"L. That on repeated query from the Investigating Agency, every time I have informed the Investigating Agency that I do not know Raman Bhuraria and I had never met him. The same was also confirmed by Raman Bhuraria himself, which is revealed from his Statement dated 07.07.2021. However, the Investigating Agency was not accepting the said fact and my statement as it is."*

21. This statement has been taken on record by the Special Judge (PC Act), CBI-12, RADC, New Delhi in its order dated 15.12.2021.

Signature Not Verified
Digitally Signed by AMIT ARORA
Signing Date:08.02.2023 12:07:41

"There is also an application moved on behalf of accused Devki Nandan for retraction from his statements which were recorded U/s 50 of PMLA during the course of ongoing investigation. Copy of this application has been supplied to the Ld. Spl. PP for the ED. However, since no arguments are to be addressed on this application, same is taken on record and accordingly disposed off."

22. The promoter Director, Mr Kewal Kumar has also retracted from his statement naming the applicant which reads as under:

"To

The Court of Sh. Ajay Gulati

Ld. Special Judge,

Rouse Avenue District Courts

New Delhi

Subject: Statement of Retraction

Respected Sir,

……..

Sir, the E.D. officials paid no heed and were pressurizing me to admit that I had resorted to creating diversions and they were repeatedly saying that I had siphoned off money, whereas I have siphoned off nothing. I told them constantly that all my assets are property documented and they can easily find out the source of funds but they were not interested in this activity at all. I also candidly told them that I have no other assets. Whilst seeking to produce me on 13.07.2021, same intimidatory tactics were applied and I was told not to disclose anything to Hon'ble Court, failing

Signature Not Verified
Digitally Signed byAMIT ARORA
Signing Date:08.02.2023 12:07:41

which my family members would be arrested as well. Under coercive tactics employed by E.D. officials, I was also told to state that in my activities of inflating the accounts there was a hand of my internal auditor Raman Bhuraria as well.

LTI

Kewal Krishan Kumar

Tihar Jail No.7, Delhi"

23. Mr Ashok Kumar Goel also retracted from his statement on 10.04.2022 which has been taken on record by the Special Judge (PC Act) on 22.04.2022.

24. The submission of Mr Khurana is that a bare perusal of statements of the two accused mentioned above clearly shows that they were pure cut, copy, paste job as they are identical in their content, description, detailing as well as accusations and hence no reliance can be placed upon them. He further states that assuming the said statements to be true, they both have been retracted:

A. Shri Kewal Krishna Kumar dated 28.08.2021 [Founder and Managing Director of SBFL].
B. Shri Devki Nandan Garg Retraction dated 14.12.2021 [Accommodation Entry Operator].
C. Shri Ashok Kumar Goel Retraction dated 10.04.2022 [Accommodation Entry Operator].
D. Shri Tarun Kumar has also filed Retraction dated 14.07.2022 (Key Managerial Personnel and also Nephew of Promoter – Kewal Krishan Kumar). (Arrested on 22.06.2022)

Signature Not Verified
Digitally Signed by AMIT ARORA
Signing Date:08.02.2023 12:07:41

E. Shri Sidharth Kumar has also filed Retraction dated 06.08.2022 (Key Managerial Personnel and also Son of Promoter – Kewal Krishan Kumar). (Arrested on 22.06.2022).

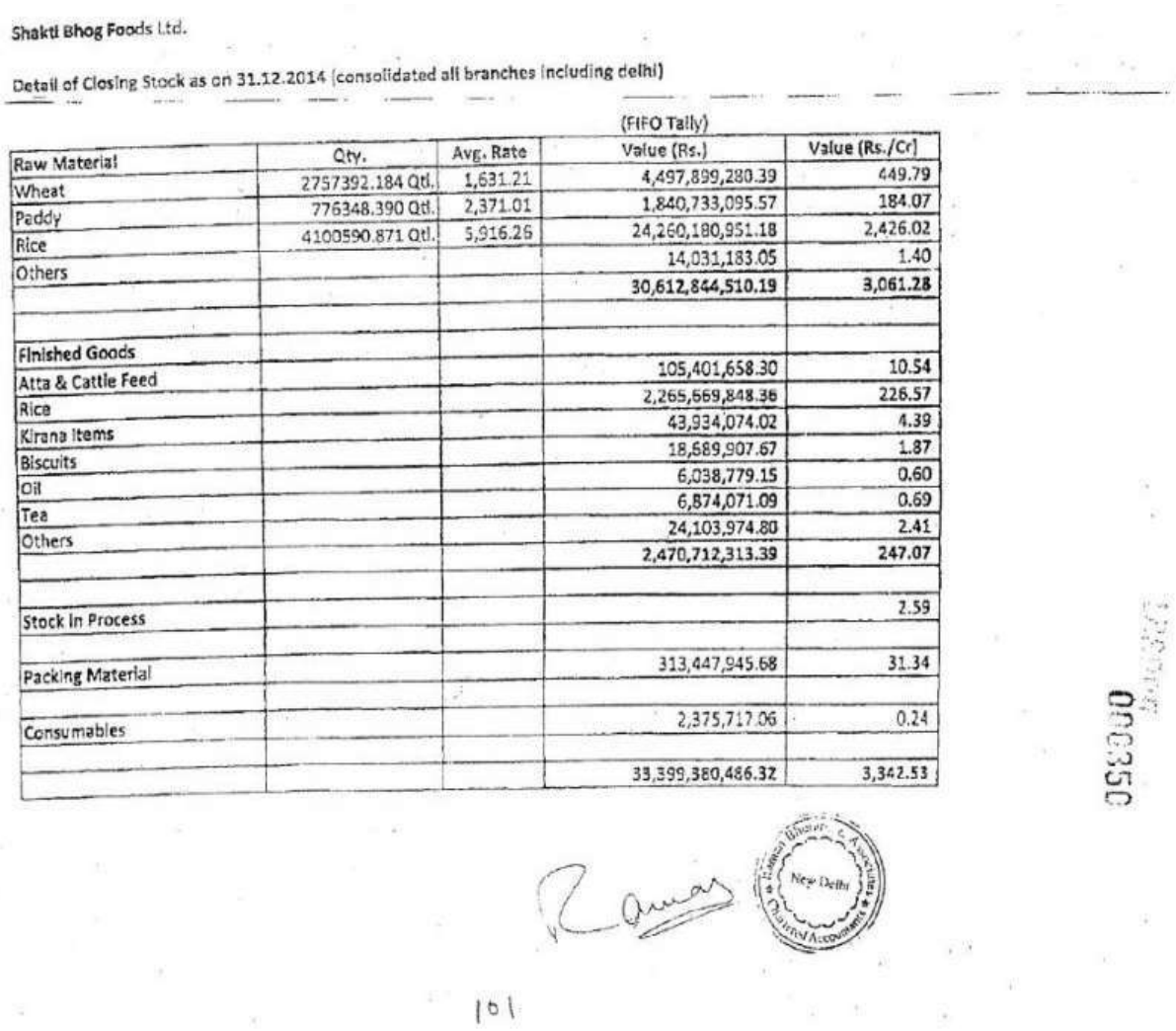
25. Lastly and most importantly it is submitted that besides the two statements of Ashok Kumar Goel and Devki Nandan Garg there is nothing else that links the applicant with the allegations made by the ED.

26. The next allegation is that fictitious stock damage report was got prepared at the applicant's instance and he attended the meeting as a special invitee where decision for disposal for damage stock was taken. It is stated by the applicant that the stock damage report dated 01.02.2016 is prepared by HUMS & Associates. Vide Board Resolution, HUMS & Associates were appointed as Internal Auditors and therefore when the report of 01.02.2016 was prepared, the applicant was not an Internal Auditor of SBFL. The only way by which the applicant is connected with this report is one unsigned minutes of meeting dated 10.02.2016 wherein the applicant was a special invitee. Assuming unsigned minutes can be relied upon, there is nothing to show that the applicant was involved in any way in making false report dated 01.02.2016.

27. The next allegation is that applicant is the person who was making false stock report and submitting to banks and obtaining loans (which on the basis of true stock reports, the company would not have obtained). The applicant submits that there is not a single stock statement has been signed by the applicant. The only document signed by the applicant is a stock receivable audit report as on 31.12.2014. The stock audit report is neither by the applicant nor signed by him but in fact is of an independently appointed stock Auditor. In the entire stock audit report, there is only one document

Signature Not Verified
Digitally Signed by AMIT ARORA
Signing Date:08.02.2023 12:07:41

signed by the applicant. There is nothing else which has been signed by the applicant.



Shakti Bhog Foods Ltd.

Detail of Closing Stock as on 31.12.2014 (consolidated all branches including delhi)

			(FIFO Tally)	
Raw Material	Qty.	Avg. Rate	Value (Rs.)	Value (Rs./Cr)
Wheat	2757392.184 Qtl.	1,631.21	4,497,899,280.39	449.79
Paddy	776348.390 Qtl.	2,371.01	1,840,733,095.57	184.07
Rice	4100590.871 Qtl.	5,916.26	24,260,180,951.18	2,426.02
Others			14,031,183.05	1.40
			30,612,844,510.19	**3,061.28**
Finished Goods				
Atta & Cattle Feed			105,401,658.30	10.54
Rice			2,265,669,848.36	226.57
Kirana Items			43,934,074.02	4.39
Biscuits			18,689,907.67	1.87
Oil			6,038,779.15	0.60
Tea			6,874,071.09	0.69
Others			24,103,974.80	2.41
			2,470,712,313.39	**247.07**
Stock in Process				2.59
Packing Material			313,447,945.68	31.34
Consumables			2,375,717.06	0.24
			33,399,380,486.32	3,342.53

101

Submissions by the ED:

Mr. Zoheb Hossain, Ld. standing counsel for the ED states as under:

A. Active involvement of the Applicant

28. The respondent submits that that the applicant was an internal auditor of SBFL and was actively involved in creation and projection of the

Signature Not Verified
Digitally Signed by AMIT ARORA
Signing Date:08.02.2023 12:07:41

inflated financials which involved dummy entities. The respondents have stated that from the perusal of the bank account No.010100063801 of Indraprastha Sehkari Bank Ltd., it would be clear that the said bank account was opened on 01.06.2011. The transactions in this bank account were made only on 20.12.2011, but, SBFL falsely reflected cheque payments through this bank account w.e.f. 03.04.2011 i.e., several months prior to opening and actual operation of the account. Prior to December 20, 2011, all transactions through this account were purely fictional entries. Additionally, this account reflects most of the transactions of SBFL with dummy entities to inflate its financials and which ultimately led to the commission of the offence of money laundering. . Since the applicant had audited the business and verified the false accounting entries in the company's books of accounts, the applicant thus played an active role in the commission of the offence.

B. The applicant was beneficiary of the proceeds of crime

29. The respondent submits that the applicant had two main firms namely (i)Raman Bhuraria & Associates, which was a CA firm engaged by SBFL for internal audit and by group companies as statutory auditor, and (ii) Bhuraria Consultants Pvt Ltd. In addition to receiving cash in the amount of Rs. 6.14 Crore, the applicant, his firm, and company also received proceeds of crime (PoC) worth Rs. 8.47 Crore, which are PoC obtained by aiding SBFL and its directors in commission of offence.

30. Additionally, the applicant was involved in the projection of a fictitious and false stock position as well as other SBFL financial data to consortium banks. He managed bank officials' visits for stock verification. Email correspondence from the applicant, dated 20.10.2011, which was

Signature Not Verified
Digitally Signed by AMIT ARORA
Signing Date:08.02.2023 12:07:41

discovered during the investigation, showed that he was involved in stock and related bank verification/audit matters. In this email, the Applicant has stated :

> *"As discussed with Mr. Tarun yesterday is not stock audit. It is just quarterly visit of bank to be conducted by outside agency, assigned to a CA firm on panel. Not Full Stock Audit. Nothing to vary (worry) and to be complied till November."*

31. The respondent submits that this email clearly shows the involvement of applicant in stocks of SBFL. This email when was confronted with employee of SBFL in his statement recorded u/s 50 of PMLA, 2002, stated that SBFL did not have the stock that it had claimed to have to lender banks. Furthermore, he claimed that SBFL was involved in paper transactions that were carried out on applicant's advise and that the applicant was fully aware that SBFL's stocks were inflated and that the company did not actually own the stocks it had claimed to have to lender banks. In another email exchanged between applicant and Abdul Hasan Ansari, list of Godowns of Rice and Wheat mentioning details of owner and address of Godowns of SBFL were exchanged

32. The applicant was also involved in preparing inflated financial documents of SBFL for enhancing loan from consortium banks.

C. Statements made u/s 50 PMLA divulges the role of the applicant

33. The facts regarding involvement and role of the applicant in the offence of money laundering have been divulged by the following people in their statements u/s 50 of the PMLA:

S.	Name and Designation	Statement u/s 50

Signature Not Verified
Digitally Signed byAMIT ARORA
Signing Date:08.02.2023 12:07:41

No.		dated
1.	Awadh Narayan Garg, employee of Raman Bhuraria & Associates	**10.09.2021**
2.	Dinesh Mohan, Accounts clerk in Raman Bhuraria & Associates	**30.09.2021**
3.	Mukesh Kumar Uniyal, employee of Raman Bhuraria & Associates	**30.09.2021**
4.	Smt. Neha Gupta, Partner at Raman Bhuraria & Associates	**01.10.2021**
5.	Sh. Piyush Ranjan, Partner at Raman Bhuraria & Associates	**13.09.2021**
6.	Sh. Prashant Gupta, classmate of Raman Bhuraria and director of Bhuraria Consultants	**21.09.2021**
7.	Sh. Shiv Kumar, employee of Raman Bhuraria & Associates	**30.09.2021**
8.	Smt. Usha Bhuraria, wife and co-accused	**01.10.2021**

34. The respondent states that since statements are u/s 50 PMLA, the aforesaid statements, by virtue of section 50, are admissible in evidence as also held by the Hon'ble Supreme Court and sufficient to reject bail as held in *Rohit Tandon vs. Directorate of Enforcement (2018) 11 SCC 46*. Further, the challenge to the said provision i.e., Section 50 of the PMLA has been dismissed by the Hon'ble Supreme Court upholding the validity of the said provision in its latest decision in the case of *Vijay Madanlal Chaudhary &*

Signature Not Verified
Digitally Signed byAMIT ARORA
Signing Date:08.02.2023 12:07:41

Ors. vs. Union of India & Ors. 2022 SCC OnLine SC 929.

D. Other material alleging the role of the applicant

35. The respondent also submits that the averment of the applicant accused that there is no material apart from statements in the present case is incorrect. There is also other material recovered against the applicant. This material placed on record is sufficient to persuade this Hon'ble Court that no satisfaction, as required u/s 45 of the PMLA, can be reached

i. The statement of Sh. Abdul Hasan Ansari is corroborated by the email correspondence dated 02.12.2015 between applicant and Abdul Hasan Ansari (with copy to CMD and Siddharth Kumar) by which applicant had demanded documents of the group companies.

ii. Evidences show that applicant was directly involved in arranging fake bills from entry operators like Devki Nandan Garg. While analysing the seized material, an email had been recovered from email correspondence between applicant and Abdul Hasan Ansari which contains the details of payments made by SBFL to the dummy entries operated by Devki Nandan Garg.

iii. SBFL booked some fake transactions in its books of accounts. From a perusal of the bank account no. 010100063801 of Indraprastha Sehkari Bank Ltd., it has been observed that the said bank account was made only on 20.12.2011. But, SBFL falsely reflected cheque payments through this bank account w.e.f. 03.04.2011 i.e., several months prior to opening and actual operation of the account. All the transactions made through this account before 20.12.2011 were nothing but fictitious entries.

Signature Not Verified
Digitally Signed byAMIT ARORA
Signing Date:08.02.2023 12:07:41

iv. Audit report dated 31.12.2014 signed by RG Sharma, Stock Auditor, which states that 100% accounting supervision/feedback is provided by internal auditor. Investigation revealed that applicant was responsible for managing and control of affairs of SBFL.

v. A table showing details of closing stock as on 31.12.2014 was received from the lender bank i.e., State Bank of India and the said document reflects the inflated and fictitious stock position which was submitted to the lender bank for availing loan facility. This document was signed by applicant.

E. Validity of the retracted statements

36. The reliance placed by the accused applicant on the fact that Devki Nandan Garg, Entry Operator, has retracted his statement, is liable to be rejected as it is submitted that the statements of Devki Nandan Garg were recorded on 05.07.2021, 08.07.2021, 10.07.2021, 12.07.2021, 13.07.202 24.07.2021, 23.08.2021, 18.09.2021, 20.09.2021, 21.09.2021, 22.09.2021, 23.09.2021, 24.09.2021, 25.09.2021, 26.09.2021, 27.09.2021, 28.09.2021 & 29.09.2021 and Devki Nandan Garg filed an application for retraction on 15.12.2021. The respondent contends that Devki Nandan Garg was arrested by the ED on 21.09.2021, produced before the Ld. Special Court, PMLA on 21.09.2021 when the Ld. Court remanded him to ED custody. Remand was then further extended till 24.09.2021 and thereafter Devki Nandan Garg was remanded to judicial custody on 29.09.2021. Judicial custody was extended from time to time on 26.10.2021, 09.11.2021, 23.11.2021 and despite all these opportunities, no allegation of any coercion was raised by Devki Nandan Garg and this itself strikes at the credibility of the retraction application This court in *Dayawanti v. Commissioner of Income*

Signature Not Verified
Digitally Signed by AMIT ARORA
Signing Date:08.02.2023 12:07:41

Tax, 2016 SCC OnLine Del 5772 has held as under:

> *"**19.** The nature of the books included katchaparchas, papers containing calculations and amounts routed to bank accounts of various members of the family, sums receivable towards business, etc. They also included documents relating to purchase of property. The statements were made under oath on 18-04-2006 and 03-05-2006. No doubt, they were not during the course of search. Yet, they were made voluntarily. There was no allegation ever that the assessee or any of her family members, including Abhay and Varun Gupta, who made the main statements under oath, were pressurized to do so; there was in fact no contemporaneous retraction. Indeed, the assessee appears to have resiled from the statement, only through the returns, filed after receipt of notice under Section 153A. The probative value of these statements is to be seen not from only whether it was allowed to stand, or whether it was resiled from. The stage when such statement is resiled, whether the assessee was able to give any explanation for the statement, its connection with the material seized, all are relevant, in the opinion of the court, to judge if it is to be considered in an assessment. In other words, there cannot be a rule carved in stone, as it were, that statements that are resiled cannot be considered at all…"*

37. With regards to the statements being identical and hence tutored is incorrect and liable to be dismissed. As submitted during the course of arguments that statements or the said persons were again recorded by the

Signature Not Verified
Digitally Signed by AMIT ARORA
Signing Date:08.02.2023 12:07:41

ED in their own handwriting and all of them have stated in their subsequent statements that the previous statements were given voluntarily.

38. The reliance placed by the applicant on decisions to state that bail should be granted in the present case as trial is likely to take time are not applicable. As it is submitted that the Hon'ble Supreme Court has taken a view that mere long incarceration in jail would not be per se illegal and has further held that in case the accused has committed the offence, he is bound to stay behind bars. Such detention in jail even as an undertrial prisoner, there being a provision for bail, through restricted, is not violative of Article 21 of the Constitution. Even the three Judge Bench of the Hon'ble Supreme Court in *Vijay Madanlal (supra)*, while upholding the mandatory twin conditions for grant of bail u/s 45 of the PMLA, has held that the right of bail arises at the stage of Section 436A Cr.P.C.

39. The respondent finally submits that the economic offences in itself are considered to be gravest offence against the society at large and hence are required to be treated differently in the matter of bail. It is submitted that the hon'ble courts have successively held that the entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book as such offences affects the very fabric of democratic governance and probity in public life.

Analysis

40. I have heard the learned counsels for the parties.

41. At this juncture, it is imperative to have an overview of the PMLA, post the *Vijay Madan lal(supra)* case. The three Judge Bench decision of the Hon'ble Supreme Court in its recent decision in the case of *Vijay Madanlal*

Signature Not Verified
Digitally Signed by AMIT ARORA
Signing Date:08.02.2023 12:07:41

Chaudhary (supra) and connected matters, has upheld the mandatory twin conditions u/s 45 of the PMLA.

42. The PMLA is a special statute. If a person is charged under the PMLA, he has to overcome the twin conditions of Section 45(1)(ii) of PMLA. Section 45 (1)(ii) reads as under:

> *"(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:*
>
> *Provided that a person who is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the special court so directs:*
>
> *Provided further that the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by—*
>
> *(i) the Director; or*
>
> *(ii) any officer of the Central Government or State Government authorised in writing in this behalf by the Central Government by a general or a special order made in this behalf by that Government."*

43. The twin conditions, are independent of each other and require the Court to weigh each one of them and adjudicate on the potential guilt of the offender based on the material relied upon by the accused and the opposition made to the same by the prosecution.

Signature Not Verified
Digitally Signed byAMIT ARORA
Signing Date:08.02.2023 12:07:41

44. Hence the Hon'ble Court is not required to render a finding of guilt or acquittal at this stage, nor is it required to conduct a mini trial or meticulously examine the evidence but rather is to examine whether the applicant has made out reasonable grounds for believing that he is not guilty. In *Union of India vs. Rattan Mallik (2009) 2 SCC 624,* while dealing with section 37 of the NDPS**,** which similar to the section 45 PMLA, the Hon'ble Supreme Court observed;

> ***"14.*** *We may, however, hasten to add that while considering an application for bail with reference to Section 37 of the NDPS Act, the court is not called upon to record a finding of "not guilty". At this stage, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding as to whether or not the accused has committed offence under the NDPS Act. What is to be seen is whether there is reasonable ground for believing that the accused is not guilty of the offence(s) he is charged with and further that he is not likely to commit an offence under the said Act while on bail. The satisfaction of the court about the existence of the said twin conditions is for a limited purpose and is confined to the question of releasing the accused on bail."*

45. After *Vijay Madanlal (supra)* case, it is clear that this court is not to go into the conclusive guilt or innocence of the accused but base its finding on a prima facie test.

Signature Not Verified
Digitally Signed byAMIT ARORA
Signing Date:08.02.2023 12:07:41

I. <u>Prima Facie no reasonable grounds for believing that the applicant is guilty</u>

46. The applicant is not named in the FIR. The applicant is also not named as an accused in the ECIR registered by the ED, as the same is simply a replica of the FIR registered by the CBI.

47. The role assigned to the applicant is mentioned in the arrest memo dated 13.08.2021. The arrest memo alleged as under:

> *"9. Allegations: He has directly or indirectly attempted to indulge, knowingly assisted and is involved in the process and activities connected with the proceeds of crime which includes its concealment, possession, acquisition and use and projecting it as untainted property thereby committing the offence of money laundering."*

48. Hence the role assigned to the Applicant is that since he was an Internal Auditor of SBFL and statutory auditor of several sister concerns of SBFL, it was through his aid and assistance that Shakti Bhog Foods Limited, borrowed, layered and siphoned off the loan funds using the platform of about 24 known group companies and several shell entities. It is also alleged that he was directly involved in paper sale purchase transactions of SBFL without conducting any actual business transactions which resulted in inflation of their financials. It was on the strength of these audited but falsely inflated financials that SBFL was able to obtain loans from banks. The borrowed funds were then channelized through the bank accounts of several Shakti Bhog group entities which had actually provided a platform for changing the colour of the borrowed funds from liabilities to assets and then, for siphoning off the same by creating a web of complex transactions

Signature Not Verified
Digitally Signed by AMIT ARORA
Signing Date:08.02.2023 12:07:41

leading to commission of the offence of money laundering. The applicant was auditor of several group companies during the period when offence took place. For this purpose, he received the commission in form of fees and hence is involved in the offence of money laundering.

49. The timeline of the applicant with SBFL is reproduced hereinbelow:

3. **Applicant's timeline in M/s Shakti Bhog Food Limited:**

FY 2006-07	Conducted Statutory Audit (Appointed on 20.04.2007)
FY 2007-08 to 2013-14	Conducted Internal Audit. The Internal Audit process for FY2013-14 was ended by September 2014. Applicant also provided Tax and Banking Consultancy.
June 2015	Applicant resigned as Internal Auditor of SBFL and Hums & Associates appointed as Internal Auditor
FY 2014-15 and FY 2015-16	Raman Bhuraria was retained by SBFL for Banking Consultancy, for which his remuneration was fixed at Rs. 5,00,000 p.m.

50. As is clear from the above, the applicant was not the statutory auditor at the time of the commission of offence i.e., the period between 2013 and 2017.

51. The ED has alleged that the applicant was the mastermind of the whole operation and to prove the same the ED has produced evidence in form of some emails and statements of management and employees of SBFL given u/s 50 of the PMLA.

52. The categorical allegations against the applicant are as follows:

A. It is alleged that the applicant has an important role in disposal of alleged damaged inventory (decision of which was taken in meeting dated 10.02.2016 when he was participating in the meeting of the board of directors as a special invitee). These minutes of meeting were confronted to the applicant during the course of his statement given u/s 50 of PMLA, 2002. Further, minutes of the meeting of the consortium

Signature Not Verified
Digitally Signed by AMIT ARORA
Signing Date:08.02.2023 12:07:41

banks shows that applicant also presented the case of SBFL before the consortium of banks. He was also part of the meeting of the board of directors which decided disposal of falsely claimed damaged stock. The applicant contends that no reliance can be made on the unsigned minutes of Board Meeting dated 10.02.2016.

In my opinion, prima facie, it does not transpire from the above documents that the applicant actually attended the meeting. Since there is no attendance sheet placed on record, there is no convincing document to show his attendance. Moreover, these are unsigned and unstamped minutes and hence reliance on the same is at best dubious. Since the Applicant was associated with SBFL till FY2015-16, even if the applicant attended, it was only as a special invitee and not a proof of actual participation and decision making. Moreover, the Stock Damage Report was prepared by M/s HUMS and Associates who were the then internal auditors of SBFL as shown by the resolution dated 07.09.2015 for appointment of M/s HUMS & Associates as internal auditor. Lastly, and most importantly, even if it is assumed that the applicant was a part of the said meeting, the minutes do not show that any decision was taken with regards to the stocks.

B. There is an email dated 08.01.2016 which underlines the role of the Applicant in arranging fake bills from entry operators and banks made payments for devolved LCs directly to the entry operators. Applicant was confronted with the Email dt. 08.01.2016.

A perusal of the concerned Mail shows that it was sent by Mr. Anshu Gautam (SBFL Employee) to AH Ansari @ Pathak. Applicant was only copied along with other persons. The email does not again not

Signature Not Verified
Digitally Signed by AMIT ARORA
Signing Date:08.02.2023 12:07:41

directly or indirectly point to the guilt of the applicant as he was only copied in the email. The applicant was neither the originator not the original primary recipient.

C. Applicant used to operate shell companies from his office building. Prima facie no documentary material on record to show that Applicant was involved in creation or operation of these companies.

D. Applicant used to stock the godown in such a manner that it could not be accessed which made physical verification impossible.

Again, prima facie, the ED has not provided any documentary proof to show that the applicant was engaged in decision making involving the stocking the godowns. In addition, the applicant has provided extracts of the Fire & Burglary Risk Based Inspection Report which were in power and possession of the respondent along with photographs of godowns wherein stocks can be seen to be clearly accessible and visible.

E. ED's allegation regarding Proceeds of Crime: Applicant received Rs. 14.61 Crores (Rs. 6.14 Crs. Cash Deposits + Rs 8.47 Crs. in Banks Accounts).

Admittedly, the applicant conducted statutory audit for the year FY 2006-07 and internal auditor for 2007-8 to 2013-14 and being the professional auditor, the applicant was entitled to charge a professional fee. Hence, the amount in the bank accounts is legitimate professional fee received by Applicant from SBFL and group companies for his audit related work & other consultancy. All the Professional fees received by the Applicant has duly been disclosed, audited and all applicable taxes were paid. The respondent's case is not that the

Signature Not Verified
Digitally Signed byAMIT ARORA
Signing Date:08.02.2023 12:07:41

Applicant did not render professional services to SBFL & group concerns. Prima facie this is a plausible explanation. This is especially so, since during investigation, no cash or undisclosed assets recovered from Applicant and his family.

Moreover, immovable properties, bank accounts, bank lockers and other assets of Applicant and his family stand seized, frozen or attached by the ED. Hence, the alienation of alleged Proceeds of Crime is not possible. As regard the cash deposits, the applicant has stated that the same is result of cash withdraws and less expenditure over a substantial over period of time. The explanation for the cash deposits given by the applicant i.e., the excess cash withdrawal was redeposited in the account is plausible and gains even more significance in view of the fact that they have withstood the scrutiny of income tax department.

F. The ED has placed Emails Correspondence along with attachments, between Applicant and Abdul Hassan Ansari containing details of payments made by SBFL to alleged dummy entities operated by Devki Nandan Garg. The emails are challenged by the applicant on the ground that the documents attached are not attachments to the said email. The email was confronted to the Applicant and signed on 15.08.2021 during investigation, however, the attachments pertain to some different email confronted to the Applicant on 12.08.2021. Further, the actual email attachments would pertain to bank advices for LC Discounting in September, 2015 (as can be seen from the email), however, the attachments shown by the ED relate to Lakshmi Vilas Bank for the FY 2012-13.

Signature Not Verified
Digitally Signed byAMIT ARORA
Signing Date:08.02.2023 12:07:41

Since the veracity of the contents of these emails have been denied and there is a plausible explanation given by the applicant, these emails cannot be the factum which cliches the guilt of the applicant. Moreover, the veracity of these emails and their relevance can only be examined after detailed evidence is led.

G. The other documents relied by the ED are the relevant parts of the books of accounts of SBFL viz-a-viz the relevant Bank Account Statement. SBFL booked some fake transactions in its books of accounts. From a perusal of the bank account no. 010100063801 of Indraprastha Sehkari Bank Ltd., it has been observed that the said bank account was made only on 20.12.2011. But, SBFL falsely reflected cheque payments through this bank account w.e.f. 03.04.2011 i.e., several months prior to opening and actual operation of the account. All the transactions made through this account before 20.12.2011 were nothing but fictitious entries.

I am of the view that even if these documents are considered to be true, prima facie, these documents do not disclose as to how the Applicant was involved in creation of these documents or routing of funds. The ED has also not been able to prima facie show excepts averments show that the applicant was directly involved in the creation of these documents or the entries.

H. The last document on which reliance is being placed by the ED to bring home the guilt of the applicant, is the audit report dated 31.12.2014 signed by RG Sharma, Stock Auditor, which states that 100% accounting supervision/feedback is provided by internal auditor. It is further alleged applicant was responsible for managing and control

Signature Not Verified
Digitally Signed byAMIT ARORA
Signing Date:08.02.2023 12:07:41

of affairs of SBFL.

A table showing details of closing stock as on 31.12.2014 was received from the lender bank i.e., State Bank of India and the said document reflects the inflated and fictitious stock position which was submitted to the lender bank for availing loan facility. This document is signed by the applicant. Although this document shows inflated stock position which was signed by the applicant, a bare perusal of the report will prima facie make it clear that the Physical Stock Verification was the job of the RG Sharma & Co., an Independent Stock Auditor appointed by SBI. The ED has not placed any material on record to show that this document forming part of the Stock Receivables Report was in any manner incorrect or false. Assuming that it is false, there is no explanation offered by the ED as to why the stock auditor of the bank has not been made an accused. Moreover, the signatures of the Applicant were the requirement of the Banks to the effect that the financial documents for yearend 31.12.2014 be signed by a CA (preferably Internal Auditor).

53. In this view of the matter, the aforesaid documents do not support the contention of the ED that the applicant is guilty. Heavy reliance has been placed on section 50 of PMLA statements made by the employees of the SBFL. The only relevant document remaining that prima facie may establish the guilt are the statements u/s 50 of the PMLA.The investigation of the ED is hinged on the statements made u/s 50 of the employees of the SBFL.

54. In *Vijay Madanlal (supra)*, the Hon'ble Supreme Court has observed as follows:

Signature Not Verified
Digitally Signed byAMIT ARORA
Signing Date:08.02.2023 12:07:41

"431. In the context of the 2002 Act, it must be remembered that the summon is issued by the Authority under Section 50 in connection with the inquiry regarding proceeds of crime which may have been attached and pending adjudication before the Adjudicating Authority. In respect of such action, the designated officials have been empowered to summon any person for collection of information and evidence to be presented before the Adjudicating Authority. It is not necessarily for initiating a prosecution against the noticee as such. The power entrusted to the designated officials under this Act, though couched as investigation in real sense, is to undertake inquiry to ascertain relevant facts to facilitate initiation of or pursuing with an action regarding proceeds of crime, if the situation so warrants and for being presented before the Adjudicating Authority. It is a different matter that the information and evidence so collated during the inquiry made, may disclose commission of offence of money-laundering and the involvement of the person, who has been summoned for making disclosures pursuant to the summons issued by the Authority. At this stage, there would be no formal document indicative of likelihood of involvement of such person as an accused of offence of money-laundering. If the statement made by him reveals the offence of money-laundering or the existence of proceeds of crime, that becomes actionable under the Act itself. To put it differently, at the stage of recording of statement for the purpose of inquiring into the relevant facts in connection with the property being proceeds of crime is, in that sense, not an investigation for prosecution as such;

Signature Not Verified
Digitally Signed byAMIT ARORA
Signing Date:08.02.2023 12:07:41

and in any case, there would be no formal accusation against the noticee. Such summons can be issued even to witnesses in the inquiry so conducted by the authorised officials. However, after further inquiry on the basis of other material and evidence, the involvement of such person (noticee) is revealed, the authorised officials can certainly proceed against him for his acts of commission or omission. In such a situation, at the stage of issue of summons, the person cannot claim protection under Article 20(3) of the Constitution. However, if his/her statement is recorded after a formal arrest by the ED official, the consequences of Article 20(3) or Section 25 of the Evidence Act may come into play to urge that the same being in the nature of confession, shall not be proved against him. Further, it would not preclude the prosecution from proceeding against such a person including for consequences under Section 63 of the 2002 Act on the basis of other tangible material to indicate the falsity of his claim. That would be a matter of rule of evidence.

444. ..The third aspect which had weighed with the Court in Tofan Singh[692] is that the police officer investigating an offence under the NDPS Act, the provisions of Sections 161 to 164 of the 1973 Code as also Section 25 of the Evidence Act, would come into play making the statement made before them by the accused as inadmissible. Whereas, the investigation into the same offence was to be done by the designated officer under the NDPS Act, the safeguards contained in Sections 161 to 164 of the 1973 Code and Section 25 of the Evidence Act, will have no application and the

Signature Not Verified
Digitally Signed byAMIT ARORA
Signing Date:08.02.2023 12:07:41

statement made before them would be inadmissible in evidence. This had resulted in discrimination. No such situation emerges from the provisions of the 2002 Act. Whereas, the 2002 Act clearly authorises only the authorities under the 2002 Act referred to in Section 48 to step in and summon the person when occasion arises and proceed to record the statement and take relevant documents on record. For that, express provision has been made authorising them to do so and by a legal fiction, deemed it to be a statement recorded in a judicial proceeding by virtue of Section 50(4) of the 2002 Act. A regular police officer will neither be in a position to take cognizance of the offence of money-laundering, much less be permitted to record the statement which is to be made part of the proceeding before the Adjudicating Authority under the 2002 Act for confirmation of the provisional attachment order and confiscation of the proceeds of crime for eventual vesting in the Central Government. That may entail in civil consequences. It is a different matter that some material or evidence is made part of the complaint if required to be filed against the person involved in the process or activity connected with money-laundering so as to prosecute him for offence punishable under Section 3 of the 2002 Act. The next point which has been reckoned by this Court in the said decision is that in the provisions of NDPS Act, upon culmination of investigation of crime by a designated officer under that Act (other than a Police Officer), he proceeds to file a complaint; but has no authority to further investigate the offence, if required. Whereas, if the same offence was investigated by a

Signature Not Verified
Digitally Signed byAMIT ARORA
Signing Date:08.02.2023 12:07:41

regular Police Officer after filing of the police report under Section 173(2) of the 1973 Code, he could still do further investigation by invoking Section 173(8) of the 1973 Code. This, on the face of it, was discriminatory."

55. The Supreme Court, thus, clarified that the statements made u/s 50 are admissible evidence. However, these statements are now retracted as follows:

- Shri Kewal Krishna Kumar dated 28.08.2021 [Founder and Managing Director of SBFL].
- Shri Devki Nandan Garg Retraction dated 14.12.2021 [Accommodation Entry Operator].
- Shri Ashok Kumar Goel Retraction dated 10.04.2022 [Accommodation Entry Operator].
- Shri Tarun Kumar has also filed Retraction dated 14.07.2022 (Key Managerial Personnel and also Nephew of Promoter – Kewal Krishan Kumar). (Arrested on 22.06.2022)
- Shri Sidharth Kumar has also filed Retraction dated 06.08.2022 (Key Managerial Personnel and also Son of Promoter – Kewal Krishan Kumar). (Arrested on 22.06.2022).

56. Hence, the question which I am confronted with is not whether these retracted statements are admissible but whether these retracted statements are reliable? At this stage, I have to see the reliability of these retracted statements in the facts and circumstances of this case.

57. The reliability of the retracted statements has been discussed by the

Signature Not Verified
Digitally Signed byAMIT ARORA
Signing Date:08.02.2023 12:07:41

division bench of this court *Central Excise v. Vishnu & Co. Pvt. Ltd., 2015 SCC OnLine Del 13824:*

> ***"40.*** *In fact Ms. Sharma too insisted upon reading from such retracted statements in order to persuade the Court to hold that the impugned order of the CESTAT is perverse. According to her the retraction made more than 20 months after the making of the initial statements "would have no effect in the eye of law". She too submitted that the responsibility of ensuring the presence of such persons for cross-examination was of the noticees themselves.*
>
> ***41.*** *What the above submission overlooks is the 'reliability' of such statements. Once it is shown that the maker of such statement has in fact resiled from it, even if it is after a period of time, then it is no longer safe to rely upon it as a substantive piece of evidence. The question is not so much as to admissibility of such statement as much as it is about its 'reliability'. It is the latter requirement that warrants a judicial authority to seek, as a rule of prudence, some corroboration of such retracted statement by some other reliable independent material. This is the approach adopted by the CESTAT and the Court finds it to be in consonance with the settled legal position in this regard."*

58. In the present case as well, the question is not regarding the admissibility but the reliability. The statements had concretely named the applicant. However, in their subsequent retraction the reliability of the statements themselves become doubtful. Statements of Employees of SBFL, Accommodation Entry Operators (Devki Nandan Garg & Ashok Kumar

Signature Not Verified
Digitally Signed by AMIT ARORA
Signing Date:08.02.2023 12:07:41

Goel) are a cut copy paste job with even the punctation marks of commas, full stops not differing.

59. Prima facie in view of the retraction, the reliability of these statements is questionable. The retracted statements cannot form the basis of the guilt of the applicant of the offences as alleged. Prima facie, I find it difficult to place the guilt of the offence under PMLA on the applicant, based on these statements. Further, the questions as to why the statements were retracted are questions of trial.

60. The ED has placed reliance on *Rohit Tandon v. Directorate of Enforcement, (2018) 11 SCC 46* and submitted that Economic Offences are to be treated on a different footing since economic offences have deep-rooted conspiracies and involve huge loss of public funds which need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

61. The observation of the Supreme Court is binding on this court. However, in *Rohit Tandon (supra)*, the facts were different. For one, the primary reason for dismissal of bail was availability of documentary evidence against the Applicant therein and recovery of huge amount of unaccounted cash for which no explanation could be provided as noted by the Hon'ble Supreme Court. Moreover, in *Rohit Tandon* was subsequently granted bail 5 months thereafter by this Hon'ble Court in "*Raj Kumar Goel v. Directorate of Enforcement, 2018 SCC OnLine Del 8873, reported as 2018 SCC OnLine Del 8873*

> ***"25.*** *Thus the major change which is required to be considered by this Court as per the decision of Supreme Court in Kalyan Chandra*

Signature Not Verified
Digitally Signed by AMIT ARORA
Signing Date:08.02.2023 12:07:41

Sarkar (supra) referred to by Additional Solicitor General in the present case is the non-applicability of the twin conditions under Section 45 of PMLA which was the major reason for rejection of the earlier bail application of Rohit Tandon. Second major consideration is that the offence punishable under Section 4 PMLA provides for maximum sentence of imprisonment for seven years with a minimum sentence for imprisonment of three years. Petitioners have been in custody for a period of now more than one year four months and despite directions of the Hon'ble Supreme Court vide order dated 10th November, 2017 that day-to-day trial should continue, till date arguments on charge have not begun. As noted above in the predicate offence, that is, FIR No. 205/2016 the Crime Branch did not even think it fit to arrest the petitioners and filed a charge-sheet without arrest. The evidence in the present case is primarily documentary in nature and statements of accused which are admissible in evidence have already been recorded under Section 50 of PMLA. Further corroborative evidence in the form of CCTV footage and call detail records is also documentary in nature. Moreover as per the requirement of Section 44 of PMLA trials in FIR No. 205/2016 for the scheduled offence as well as Section 4 PMLA in ECIR No. 18/DLZOII/2016 are required to be held together. Hence the trial is likely to take some time. Thus, this Court deems it fit to grant bail to the petitioners."

62. In the present case, there is no relevant document to support the allegations. Admittedly the applicant has the 15-year association with SBFL, but despite the allegation that he was the mastermind of the whole operation

Signature Not Verified
Digitally Signed by AMIT ARORA
Signing Date:08.02.2023 12:07:41

the ED has relied on 5 documents to show the applicant's complicity. For the reasons as noted, the documents do not show that the applicant is guilty of offences as alleged against him. In addition, there is not satisfactory explanation given by the ED for the lack of documents that directly point to the applicant as the *"mastermind."*

63. In addition, the observation of the IO also assumes importance in determining whether the applicant is prima facie not guilty. The IO in the column No.12 of the FIR, noted that the account the SBFL was declared NPA on account of commercial reason and, more importantly, there were no apparent *mala fides* in the monitoring of the account though there are some omissions/ instances of negligence. This observation is indicative of the fact that initial investigation in the role of the applicant had not led to a conclusive finding against the applicant.

II. <u>Delay in filing chargesheet; Investigating still continuing:</u>

64. In the present case, out of a possible 7-year sentence, the applicant in case has already served more than 17 months of pre-trial detention (as of 23.01.2023). It is also important to state that the applicant has been interrogated only once on 13.11.2021 in entire judicial custody of more than 1 year.

65. I was also apprised of the fact that even now the trial in this case has not begun. During the arguments, the ED had sought leave of the Ld. Trial Court to file the following documents in the 4th Prosecution:

i. additional documents,

ii. additional list of witnesses,

Signature Not Verified
Digitally Signed by AMIT ARORA
Signing Date:08.02.2023 12:07:41

iii. further Complaints

66. In my opinion, there can be no arguments on framing charges or initiation of a trial because the investigation is still ongoing. The ED has listed 109 witnesses till date and the Prosecution Complaints run into lakhs of pages in multiple trunks. Without a completion of investigation, no charges can be framed nor can trial cannot begin. In the light of this, the court cannot let the applicant undergo long period of detention. If this court allows the continuing pre-trial incarceration, the same will amount to deprivation of personal liberty as well as travesty of justice as the same is equivalent to punishment without trial.

67. In *Vijay Madanlal (supra)* as well the Hon'ble supreme Court, also upheld the sentiment of unjustified detention. The Hon'ble SC observed that:

> ***"416.*** *The Union of India also recognized the right to speedy trial and access to justice as fundamental right in their written submissions and, thus, submitted that in a limited situation right of bail can be granted in case of violation of Article 21 of the Constitution…*
>
> ***417.*** *Be that as it may, in our opinion, this provision is comparable with the statutory bail provision or, so to say, the default bail, to be granted in terms of Section 167 of the 1973 Code consequent to failure of the investigating agency to file the chargesheet within the statutory period and, in the context of the 2002 Act, complaint within the specified period after arrest of the person concerned. In the case of Section 167 of the 1973 Code, an indefeasible right is triggered in favour of the accused the moment the investigating agency commits default in filing the chargesheet/complaint within the statutory period. The provision in the form of Section 436A of the 1973 Code, as has now come into being is in recognition of the*

Signature Not Verified
Digitally Signed by AMIT ARORA
Signing Date:08.02.2023 12:07:41

constitutional right of the accused regarding speedy trial under Article 21 of the Constitution. For, it is a sanguine hope of every accused, who is in custody in particular, that he/she should be tried expeditiously — so as to uphold the tenets of speedy justice. If the trial cannot proceed even after the accused has undergone one-half of the maximum period of imprisonment provided by law, there is no reason to deny him this lesser relief of considering his prayer for release on bail or bond, as the case may be, with appropriate conditions, including to secure his/her presence during the trial.

418. *Learned Solicitor General was at pains to persuade us that this view would impact the objectives of the 2002 Act and is in the nature of super imposition of Section 436A of the 1973 Code over Section 45 of the 2002 Act. He has also expressed concern that the same logic may be invoked in respect of other serious offences, including terrorist offences which would be counterproductive. So be it. We are not impressed by this submission. For, it is the constitutional obligation of the State to ensure that trials are concluded expeditiously and at least within a reasonable time where strict bail provisions apply. If a person is detained for a period extending up to one-half of the maximum period of imprisonment specified by law and is still facing trial, it is nothing short of failure of the State in upholding the constitutional rights of the citizens, including person accused of an offence."*

68. In the present case, although the applicant, has not undergone half of the period, the offence with which the applicant is charged with is punishable with imprisonment upto 7 years but not with life or death. There are no criminal antecedents reported against the applicant. Out of this sentence, the applicant has already undergone 17 months of incarceration

69. Even though the allegations are serious but the chargesheet is yet to be filed. Assuming that the applicant was the mastermind, the respondent

Signature Not Verified
Digitally Signed byAMIT ARORA
Signing Date:08.02.2023 12:07:41

did not name him in the original FIR. The applicant had conducted audit of the company and had certified the fictitious accounting entries in the books of accounts of the company to inflate financials of SBFL, even then during his entire custody he has been interrogated only on one occasion on 13.11.2021.

70. The period of incarceration as well as the delay in investigation along with any reliable material which directly involved the Applicant justifies a prima facie release on bail. The only substantial evidence which is produced are the statements u/s 50 PMLA which too have been retracted.

71. These statements u/s 50 PMLA do not in my opinion, prima facie establish that the applicant was the mastermind of the whole operation.

72. With regards to the apprehension on the part of the prosecution of tampering with the evidence and threatening the witnesses can be taken care of by imposing stringent conditions. The CBI may proceed with the investigation but not at the cost of continued incarceration of the applicant.

73. The standing counsel for the ED has been given the opportunity to oppose the bail. Hence the twin conditions as enumerated u/s 45 of PMLA have been met.

74. Having regard to the totality of the circumstances, in my opinion, the applicant should be released on bail. The application is, therefore, allowed in terms of the following conditions:

(a) The applicant shall furnish a personal bond in the sum of Rs. 50,000/- (Rupees fifty Thousand Only) each with 01 surety in the like amount, to the satisfaction of the trial Court;

(b) The applicant shall not leave the country and if the applicant has a passport, he shall surrender the same to the trial Court;

Signature Not Verified
Digitally Signed by AMIT ARORA
Signing Date:08.02.2023 12:07:41

(c) The applicant shall furnish to the IO/SHO concerned his cellphone number on which the applicant may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;

(d) The applicant shall drop a Google pin location from his mobile phone to the IO concerned which shall be kept operational throughout his bail;

(e) The applicant shall not indulge in any act or omission that is unlawful, illegal or that would prejudice the proceedings in pending cases, if any;

(f) The applicant shall join investigation as and when directed by the IO and will appear in court as and when required;

75. Nothing stated hereinabove shall tantamount to an expression of opinion on the merits of the case.

76. The application along with pending application(s), if any, are disposed of accordingly.

JASMEET SINGH, J

February 08th, 2023
MS, sr

Click here to check corrigendum, if any

Signature Not Verified
Digitally Signed by AMIT ARORA
Signing Date:08.02.2023 12:07:41