IN THE COURT OF SH. ABHISHEK GOYAL, ADDITIONAL SESSIONS JUDGE-03, CENTRAL DISTRICT, TIS HAZARI COURTS, DELHI

Directorate of Enforcement Vs. M/s. Sunstar Overseas Ltd. & Ors.
(Applicant; Rakesh Kumar Gulati, in judicial custody)
CNR No.: DLCT01-013456-2024
CC No.: 01/2024
ECIR No.: GNZO/09/2021
Under Sections: 3/4 of PMLA Act, 2002
PS.: EOW

18.12.2024

Present: Mr. Simon Benjamin, Ld. SPP for ED and Mr. Aditya Jain, Ld. Counsel for ED.
Mr. Tanveer Ahmed Mir and Mr. Yash Datt, Mr. Chandra Shekhar Anand, Ld. Counsel for the accused, namely, Rakesh Kumar Gulati.
Accused, namely, Rakesh Kumar Gulati has been produced from judicial custody from CJ-07, Tihar Jail, Delhi.

ORDER ON BAIL

1. The present application has been filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (*hereinafter referred to as '**BNSS**'*)/Section 439 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as '**Cr.P.C.**'*) on behalf of accused, namely, Rakesh Kumar Gulati (*hereinafter referred to as the '**applicant/accused**'*), seeking regular bail.

2. Pithily put, the precursor to the present complaint proceedings, by/at the behest of the Directorate of Enforcement (*hereinafter referred to as '**ED/ prosecution**'*) is the registration of FIR bearing RCHG2020A0021, dated 31.12.2020 by CBI, ACB, Chandigarh against M/s. Sunstar Overseas Limited (*hereinafter referred to as '**SOL**'*) and its then, directors for the offences Section 120B read with Section(s) 406, 409, 420 of the Indian

Penal Code, 1860 (*hereinafter referred to as '**IPC**'*) and Section 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act, 1988 (*hereinafter referred to as '**PC Act**'*). The genesis of the said FIR, in turn, was a complaint filed by the (then) Chief Manager of Punjab National Bank, Hindu College Branch, Sonipat, Haryana, against the said company other individuals *inter alia* asserting that SOL and other individuals/accused persons availed of various credit facilities from a *'consortium of 9 (nine) lender banks'*, however, diverted and/or siphoned off the said loan funds, failed to repay the loan amounts as well as deliberately, intentionally, willfully and while acting in connivance as well as criminal conspiracy with each other, disposed of the hypothecated goods without depositing the proceeds thereof in cash credit account(s) of the consortium of lender banks. Consequently, it was alleged that SOL, also acting through its directors, promoters, employees, and other(s), committed the offences of criminal conspiracy, criminal misappropriation, criminal breach of trust, cheating, fraud, etc., thereby causing, a wrongful loss of around Rs. 951.88 Crore to the consortium bank. Correspondingly, pursuant to the various acts, omissions, incidents of fraud, offences being found out, determined, the account of accused company was marked as Non-Performing Asset/NPA *w.e.f.* 31.03.2015 by the Statutory Auditor on 31.03.2017 and the consortium of lender banks approved a Master Restructuring Agreement Package on 07.11.2015. Significantly, the lead banker of the consortium, *i.e.,* Karur Vysya Bank, Karol Bagh Branch, New Delhi, declared the account of the accused company as '*fraud*' and reported it to RBI on 08.07.2019. Apposite to further reiterate here that considering that the provisions under Section 120B r/w Section(s) 406, 409, 420 IPC and Section 13(2) r/w Section 13(1)(d) of PC Act are specified as scheduled offences under the Prevention of Money Laundering Act, 2002 (*hereinafter referred to as '**PMLA**'*), Enforcement Case Information Report No. GNZO/09/2021, dated 09.04.2021 (instant ***ECIR***) was registered by ED, and investigation ensued. In the meanwhile, upon conclusion of investigation in the FIR case, chargesheet/supplementary chargesheet was filed before the Court of Ld. Special Judicial Magistrate (CBI), Panchkula.

2.1. Correspondingly, on the basis of an application filed by ICICI Bank Ltd., in terms of the provisions under Section 7 of the Insolvency and Bankruptcy Code, 2016 (*hereinafter referred to as '**IBC**'*), before the National Company Law Tribunal (*hereinafter referred to as '**NCLT**'*), Corporate Insolvency Resolution Process (*hereinafter referred to as '**CIRP**'*) was initiated in respect of SOL, which commenced on 20.07.2018 and an Interim Resolution Professional/IRP was appointed. Notably, as per the report of IRP before NCLT, the claim amount, as admitted by the Financial Creditors/FCs and duly verified by IRP, stood at Rs. 1091,95,57,209/- (Rupees One Thousand Ninety One Crore Ninety Five Lakhs Fifty Seven Thousand Two Hundred and Nine only), as on 14.08.2018. Pertinent to further note, pursuant to ensuing CIRP, NCLT *vide* its order dated 12.09.l2019, approved the resolution plan of the Resolution Applicant, Ajay Yadav & Co., body of individuals including one Ajay Yadav, through its Special Purpose Vehicle, M/s. Umaiza Infracon LLP (*hereinafter referred to as '**Umaiza**'*). As per the approved Resolution Plan dated 20.04.2019, as per which, a sum of Rs.196 Crore was agreed to be paid in total on or before 11.10.2019 by the Resolution Applicant, whereupon the total shareholding of SOL was to be held/taken over by Umaiza. The investigation findings are further asserted to have revealed that Ajay Yadav, active individual of Ajay Yadav & Co. as well as active partner of Umaiza, acted on the directions and advice of ex-directors/promoters of SOL.

2.2. Markedly, pursuant to the ensuing investigation in the ECIR case, SOL through its then directors, promoters, etc., is *inter alia* determined to be engaged in the offence of money laundering by firstly, generating proceeds of crime to a tune of Rs. 539,37,04,689/- (Rupees Five Hundred and Thirty Nine Crores Thirty Seven Lakhs Four Thousand Six Hundred and Eighty Nine only) *inter alia* by, creation of fictitious indigenous buyer companies/firms and debtors by SOL and other accused; engagement in fictitious trade transactions between SOL and its related entities, *i.e.,* M/s. Star Global Multi Ventures Pvt. Ltd./SGMV and M/s. Star Rice Land Pvt. Ltd./SRLP with fictitious sellers/buyer firms under the garb of sham trade transactions; and engagement of transaction by SOL and its related entities, *i.e.,* SGMV and SRLP with overseas buyers. In the second step, the entities beneficially owned/controlled by ex-directors, promoters of SOL, *i.e.*, SGMV, SRLP, M/s. Broadway Distribution Pvt. Ltd. and M/s. DH Trading Co. are proclaimed to have diverted the *'proceeds of crime'* to NBFC, *i.e.,* M/s. Kalptaru Fincap Ltd. (*'**Kalptaru**' for short*), out of aforenoted acquired, concealed and diverted *'proceeds of crime'*, either directly or through layers of ARC and other NBFCs, namely, M/s. Omkara Assets Reconstruction Pvt. Ltd. and M/s. Compact Capital Ltd., under the cover of sham borrowings, loans and investments. Consequently, Kalptaru is proclaimed to have, thenceforth, possessed, concealed, and diverted the above said

ABHISHEK GOYAL Digitally signed by ABHISHEK GOYAL Date: 2024.12.18 16:58:32 +0530 *'proceeds of crime'* to the tune of Rs.72 Crore to Umaiza, which amount was utilized by Umaiza in acquiring the assets and properties of SOL in NCLT proceedings. Thirdly, a dummy entity(ies) of ex-directors/promoters of SOL*, i.e.,* M/s. Shivakriti Agro Pvt. Ltd./Shivakriti is asserted to have acquired the proceeds of crime by way of diversion of stocks of rice from SOL and SGMV as its certain seller firms, *i.e.,* M/s. AJ International, M/s. Sudhanshu Exim Pvt. Ltd. and M/s. Om Sai Traders, etc., engaged for purchase of rice/paddy during initial period of rice business, were found fictitious during investigation. Further, the 'proceeds of crime' to the tune of Rs. 1.35 Crore was asserted to be found possessed and diverted from SGMV to Shivakriti through a fictitious seller/buyer firm, *i.e.,* M/s. Aastha Enterprise, under the garb of sham trade transactions without any underlying sale/purchase of rice. Shivakriti is further asserted by prosecution to have possessed, concealed and further diverted the said proceeds of crime to Umaiza on the same day itself. In the last stage, as per the prosecution, Shivakriti, is asserted to have concealed and diverted the proceeds of crime to the tune of Rs. 146 Crore, during a period from 24.09.2019 to 20.03.2020, under the cover of a sham instrument of Facility Agreement dated 30.09.2019 (*hereinafter referred to as the **'Facility Agreement'***) intending to take over the assets and properties SOL. The said agreement is, correspondingly, asserted by ED to have been preconceived and designed by the ex-directors/ex-promoters of SOL, with their aid and association, solely with an intention to regain, indirect but actual control and business of SOL with the help of a shell entity*, i.e.,* Umaiza and the said dummy entity, namely, Shivakriti, even after NCLT proceedings and thereby, causing huge/wrongful loss to the

banks. Notably, during the course of investigation, the applicant along with co-accused persons, namely, Ajay Yadav and Paramjeet @ Paramjeet Sharma came to be arrested on 01.07.2024, in terms of the provisions under Section 19(1) PMLA, and produced before the Ld. Predecessor Judge on 02.07.2024, leading to their initial remand with ED, pursuant to order dated 02.07.2024 of the Ld. Predecessor Judge, followed by their subsequent judicial custody on 09.07.2024, which has been extended from time to time. Subsequently, upon the instant complaint having been filed before this Court, this Court took cognizance of the offence *vide* order dated 25.09.2024.

3. Learned Counsel for the applicant outrightly submitted that the applicant is a law-abiding citizen, aged around 62 years and engaged in practicing Chartered Accountancy for around last 36 (thirty six) years, having been engaged as a statutory auditor of various corporate houses, observing utmost diligence and case. Ld. Counsel further submitted that the applicant is innocent and has been falsely implicated in the present case by the ED. In this regard, Ld. Counsel outrightly averred that the allegations leveled against the applicant are not only false, baseless, and misconceived, rather, premised on surmises as well as grossly insufficient to bring forth any guilt against the applicant. In this regard, it was outrightly submitted that the applicant has not been arraigned as an accused in the predicate offence, rather, been named as a witness therein. Ld. Counsel further submitted that the allegations levelled against him by ED/prosecution are inherently false, with endeavor to wrongly implicate him in the present case, despite the applicant being engaged as external statutory auditor in the present case, having no control as a key managerial person or by in any way,

engaged in day-to-day affairs of the company/accused companies. In this regard, Ld. counsel further submitted that the applicant, as an external auditor, never had any control over the financial records of the accused companies as he was merely rendering his professional services based upon the documents submitted to him by the management. Ld. Counsel further submitted that the prosecution has produced no material to demonstrate the deployment of applicant's mail id. with Sunstar group of companies. Even otherwise, as per the Ld. Counsel, it is not unusual for an external auditor to have his email in the records of company for which he conducts an independent audit. Correspondingly, as per the Ld. Counsel for the applicant there was nothing usual for the applicant to operate as external auditor for SOL and Shivakriti as he knew the director of Shivakriti, Paramjeet, since his stint as employment with SOL. As per the Ld. Counsel, the applicant has neither any influence nor any say in the internal affairs as well as decisions of the said companies. It was further fervently argued that the prosecution has not set up any foundational case against the applicant herein on the basis of any cogent evidence, besides the prosecution has not placed a single document on record along with the present complaint, which would demonstrate the applicant's complicity in the present case in any internal affairs of SOL and Shivakriti. It was further submitted that the allegations levelled against the applicant herein are belied by the statement of witness(es), i.e., Sh. Gian Singh and co-accused, Ajay Yadav. Ld. Counsel further fervently argued that it has been erroneously alleged against the applicant that Ajay Soni acted on the advice/instructions of the applicant, an external auditor, considering that Ajay Soni is a seasoned businessman. Further, it was asserted that Ajay Soni attended various meetings, board resolution which in fact, demonstrate his active participation in various key decisions of the company. Correspondingly, as per the Ld. Counsel, the narrative put forth by Ajay Soni is in stark variance/contradiction with the documentary evidence, i.e., board meeting attendance sheets, certified copies of the records of board meetings, etc.

3.1. Learned Counsel for the applicant further enthusiastically contended that the email dated 19.07.2024, vehemently relied upon by the prosecution to build its case against the applicant, is nothing but a slur by Ajay Soni against the applicant, without there being any evidence to fortify his case. Even otherwise, as per the Ld. Counsel, said email is nothing but an endeavor on the part of Ajay Soni to save his own interest, whilst, falsely implicating the applicant in the present case. Ld. Counsel further submitted that the said email cannot otherwise be considered by this Court, in the absence of compliance of the provisions under Section 65B of the Indian Evidence Act, 1872/Evidence Act. In this regard, Ld. Counsel further submitted that despite placing heavy reliance on the version of Ajay Soni, the prosecution did not even deem it fit to confront Ajay Soni with the applicant herein, especially when he was testifying against the applicant. Further, as per the Ld. Counsel, statement of co-accused, Paramjeet would explicitly demonstrate that Ajay Soni was instrumental in the execution of the Facility Agreement and that the applicant has no role to play in the same. It was further submitted that the statements of the applicant cannot form the basis of prosecution's case against him, especially when the applicant has already retracted the said statement(s). Correspondingly, Ld. Counsel asserted that the statements/material placed on record against the applicant is not only grossly insufficient, rather, contradictory and self-destructive in nature, belying the entire case of the prosecution against the applicant. It was further submitted that the allegations of the prosecution that the applicant acted beyond his professional limits to facilitate/mediate laundering activities is nothing, but a conclusion of the allegations levelled against the applicant. In this regard, Ld. Counsel submitted that the applicant never acted beyond the realms of his professional limits and discharged his obligations with utmost diligence, fortified by the fact that CBI as well as ED made his audited balance sheets as relied upon documents in their chargesheet as well as prosecution complaint. Further, as per the Ld. Counsel, the applicant never acted as a mediator between any character in the present case as alleged by the prosecution, besides the applicant never appropriated any sham transaction for and on behalf of any company in the present complaint in his capacity as an external auditor or otherwise.

3.2. Learned Counsel further strenuously averred that the prosecution has attempted to falsely arraign the applicant by labelling him as a chartered accountant, whereas he was only the external/independent statutory auditor of SOL as well as some of its associates/subsidiaries, as well as of Shivakriti, never engaged in any day-to-day affairs of the said companies. Further, as per the Ld. Counsel, the applicant's relationship with SOL has only been professional wherein he carried out audits for the said company and its associates/subsidiaries based on the books of accounts, produced with relevant documents and records maintained by the management of the company and handed over to the applicant. It was further reiterated by the Ld. Counsel that while acting so, the applicant acted in utmost good faith and with due diligence in auditing the accounts of SOL. Further, it was submitted by the Ld. Counsel for the applicant that the applicant only continued as external auditor for SOL only till 2017 and post that, no audit of SOL was conducted by the applicant. In this regard, Ld. Counsel further strongly asserted that admittedly the applicant is not a beneficiary of any of the alleged laundered proceeds of crime and no property belonging to the applicant has been attached by the prosecution. On the contrary, the properties of several co-accused persons have been attached by the prosecution, despite which, the said co-accused persons were never arrested by the prosecution in the instant case. Ld. Counsel further submitted that the declaration of fraud by Punjab National Bank has since been set aside by the Hon'ble High Court of Delhi *vide* order dated 09.07.2024 in ***WP(C) No. 10526/2019, titled as Manik Aggarwal & Anr. v. Canara Bank & Ors.*** and that the benefit of same, must enure in favour of the applicant, as per the Ld. Counsel.

3.3. Ld. Counsel further submitted that the applicant, at no point of time, committed any of the act of money laundering under Sections 3/4 PMLA with any requisite *mens rea*, broad probabilities or any reasonable material for commission of such offence. As per the Ld. Counsel, no *mens rea*, leave along culpable intention/knowledge can be attributed to the applicant herein, in the performance of his obligation as auditor by the companies hereinunder noted. Further, as per the Ld. Counsel, the entire indictment of the applicant is premised solely on the statements recorded under Section 50 PMLA, which have no probative value unless corroborated and substantiated with evidence for making out a case under PMLA, which is grossly absent in the instant case. Further, as per the Ld. Counsel, the investigation in the instant case has already concluded, and complaint filed, besides cognizance has already been taken and that no useful purpose would be served for further incarceration of the applicant. As per the Ld. Counsel, not only the twin test of Section 45 PMLA not applicable to the applicant in the instant case, besides the triple test under Section 439 Cr.P.C./Section 483 BNSS are squarely covered in the instant case. In this regard, Ld. Counsel submitted that not only there is no likelihood of the applicant tampering with documents/evidence, rather, there is no possibility of influencing witnesses, besides there is no likelihood of applicant's flight risk. Ld. Counsel further submitted that applicant is entitled to bail for the reason that, though, the allegations are primarily centered against SOL and its ex-directors, promoters, etc., however, none of the ex-directors, promoters, etc., have been arrested in the instant case, rather, the applicant and two other accused persons have been wrongly kept in confinement in the instant case. As per the Ld. Counsel, the power to arrest the applicant has been wrongly invoked in the present case, besides the trial in the instant case is likely to take substantial time to commence and keeping the applicant under incarceration would lead to an absolute assault on the applicant's right to life and personal liberty. As per the Ld. Counsel, the applicant was apprehended on 01.07.2024, in the meanwhile, the investigation has been concluded, complaint has been filed and cognizance taken by this Court, hence, as per the Ld. Counsel no purpose would be served with further custody of the applicant. Lastly, it was submitted by the Ld. Counsel that the applicant is ready to abide all the terms and conditions imposed by this Court while granting bail, including co-operating with the investigating authorities, and making himself available for investigation/further investigation, as and when called for. Even otherwise, as per the Ld. Counsel neither the gravity of offence nor requirement for further investigation can be a sole ground to deny bail to the applicant herein. Conclusively, Ld. counsel for the applicant prayed that the present application be allowed, and that the applicant may be released on bail. In support of the said contentions, reliance was placed upon the decisions in; ***Vijay Madanlal Choudhary & Ors. v. Union of India & Ors. 2022 SCC Online SC 929; P. Chidambara, v. ED, (2019) 9 SCC 24; Prakash Industries v. Union of India, 2023 SCC Online Del 336; Bhavesh Jayanti Lakhani v. State of Maharashtra, (2009) 9 SCC 551; Ram Kishan v. Harmeet Kaur & Anr., (1972) 3 SCC 280; Prem Prakash v. Union of India, SLP Crl. No. 5416/2024, dated 28.08.2024 (SC); Baijnath Sah v. State of Bihar, (2010) 6 SCC 736; Raman Bhuria v. Enforcement Directorate, 2023 SCC Online Del. 657; C.P. Khandelwal v. ED, 2023 SCC Online Del. 1094; Sanjay Jain v. Enforcement Directorate, 2024 SCC Online Del. 1656; Rajesh Yadav v. State of U.P., (2022) 12 SCC 200; Surinder Kumar Khanna v. Intelligence Officer, Directorate of Revenue Intelligence, (2018) 8 SCC 271; Sanjay Chandra v. CBI, (2012) 1 SCC 14; Prabhakar Tewari v. State of U.P., (2020) 11 SCC 648; State of Madhya Pradesh v. Sheetla Sahai & Ors., (2009) 8 SCC 617; R. Vasudevan v. CBI, 2010 SCC Online Del 130; Ashish Mittal v. SFIO, 2023 SCC Online Del. 2484; Ripen Kumar v. Department of Customs, 2000 SCC Online Del. 784; State v. Abuzar, 2022 SCC Online Del. 3763; Vinod Solanki v. Union of India, 2008 SCC Online SC 1917; A. Tajudeen v. Union of India, (2015) 4 SCC 435; Ambalal Sarabhai Enterprises Ltd. v. KS Infraspace LLP, (2020) 5 SCC 410; Jitin Mothukiri v.***

State of Maharashtra, 2020 SCC Online Bom. 821; V. Senthil Balaji v. Deputy Director, Directorate of Enforcement, Crl. Appeal No. 4011 of 2024, dated 26.09.2024 (SC); Mahabir Prasad Rungta v. Directorate of Enforcement, SLP (Crl.) No. 12353/2024, dated 17.09.2024 (SC); Roop Kumar v. Mohan Thedani, 2003 SCC Online SC 472; Manish Kothari v. Department of Revenue, 2023 SCC Online Del. 5921; Nitin Bhatnagar v. Directorate of Enforcement, Order dated 14.03.2024 in CC No. 75/2019; Pankaj Kumar Tiwari v. Enforcement of Directorate, Bail Application 3210/2024, dated 24.10.2024 (DHC); Pooja Singh v. Directorate of Enforcement, 2023 SCC Online Del. 5285; Pinki Irani v. State (NCT of Delhi), 2023 SCC Online Del. 6722; Jainam Rathod v. State of Haryana & Anr., 2022 SCC Online SC 1506; Sanjay Aggarwal v. ED, 2022 SCC Online SC 1748; Laxmikant Tiwari v. Directorate of Enforcement, Criminal Appeal No. 4142/2024, dated 4.10.2024; Sunil Damani v. Directorate of Enforcement, Criminal Appeal No. 4108/2024, dated 3.10.2024; Mohd. Enamul Haque v. Directorate of Enforcement, Criminal Appeal 3984/2024, dated 23.09.2024; Arvind Kejriwal v. Central Bureau of Investigation, 2024 OnLine SC 2550; Neeraj Singhal v. Directorate of Enforcement, SLP Crl. No. 8439-8440 of 2024, dated 6.09.2024 (SC); Prem Prakash v UOI, through Directorate of Enforcement, SLP Crl. No. 5416/2024, dated 28.08.2024 (SC); Jalaluddin Khan v. Union of India, 2024 SCC OnLine SC 1945; Manish Sisodia v. Directorate of Enforcement, SLP(Crl) No. 8781/2024, dated 09.08.2024; Ramkripal Meena v. Directorate of Enforcement, SLP Crl. No. 3205/2024, dated 30.07.2024 (SC); Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari v. State of Utter Pradesh, 2024 SCC OnLine SC 1755; Javed Gulam Nabi

Shaikh v. State of Maharashtra & Anr., Criminal Appeal No. 2787/2024, dated 3.07.2024; Shoma Kanti Sen v. State of Maharashtra, (2024) 6 SCC 5910; Benoy Babu v. Directorate of Enforcement, SLP Crl. No. 11644-11645/2023, dated 08.12.2023 (SC); Jai Narayan Sharma v. Assistant Director, Directorate of Enforcement, Criminal Appeal No. 2726 of 2023, dated 5.09.2023; Rabi Prakash v. State of Odisha, 2023 SCC Online SC 1109; Ram Pratap Verma v. The State Through Directorate of Enforcement, SLP Crl. No. 8199/2022, dated 01.02.2023 (SC); Sanjay Agarwal v. ED, 2022 SCC Online SC 1748; Sanjay U. Desai v. SFIO, 2022 SCC Online SC 1507; Jainam Rathod v. State of Haryana & Anr., 2022 SCC Online SC 1506; Union of India v. K.A. Najeeb, (2021) 3 SCC 713; Nathi Lal & Ors. v. State of U.P. & Anr., Crl. Appeal No. 372/1988 dated 19.07.1988 (SC); State of M.P. v. Mishrilal (Dead) & Ors., Crl. Appeal No. 489/1996 dated 02.04.2003 (SC); and *Hari Om Rai v. Directorate of Enforcement, Bail Application No. 3548/2024, dated 20.11.2024 (DHC).*

4. *Per contra* Ld. SPP for ED vehemently opposed the present application, *inter alia,* on the ground that mandatory rigors of 'twin conditions' stipulated under Section 45(1) PMLA ought to be satisfied before grant of bail and that the applicant cannot be released on bail unless this Court is satisfied that there are reasonable ground for believing that the applicant is not guilty of said offence of that the applicant and that he is not likely to commit any offence while on bail. In this regard, Ld. SPP for ED outrightly asserted that the applicant has been prima facie determined to be guilty of the offence of money laundering and even the Ld. Predecessor Judge/this Court judicially acknowledged the vital role played by him, while

granting/extending remand of the applicant. Further, as per Ld. SPP for ED, the instant case involves serios economic offence of duping and defrauding banks, followed by siphoning of public money and under such circumstances, Ld. SPP for ED, asserted that bail cannot be granted as a matter of right and due consideration has to be given to the nature of offence, role of the accused, etc. As per Ld. SPP for ED, the offence of money laundering has serious repercussions and cannot be equated with other offences, necessitating adoption of a cautionary approach. Ld. SPP for ED averred that the mandatory rigors of twin conditions, stipulated under Section 45 PMLA ought to be satisfied by the applicant before grant of bail and the applicant cannot be accorded the benefit of bail, unless this Court is satisfied that there are reasonable grounds for believing that the applicant is not guilty of such offence and that he is not likely to commit any offence, while on bail. In this regard, Ld. SPP for ED reiterated that in case this Court is not satisfied that either of the said two conditions are not satisfied, the applicant cannot be released on bail, which burden has been not satisfied by the applicant in the instant case. Further, as per Ld. SPP for ED, there is no illegality in the arrest/apprehension of the applicant, which was as per the provisions of law, validated by repeated orders of remand of the Ld. Predecessor Judge and this Court. Even otherwise, as per Ld. SPP for ED, the factum of applicant not being named as an accused in the predicate case or being named as a witness in the predicate case, has no bearing in the instant proceedings for the law is trite that it is not necessary that an accused under PMLA should also be an accused in the Scheduled Offence, as Section 3 PMLA nowhere requires that a person accused of offence of money laundering must also be an accused/named in commission of schedule offence.

4.1. Ld. SPP for ED further submitted that the complicity and role of the various accused, including the applicant herein, is explicit from the contents of the complaint. In particular, as per Ld. SPP for ED, applicant was engaged as Chartered Accountant/Auditor for SOL and almost all of its related entities, thereby, looking after the audit/statutory compliances. Further, as per Ld. SPP for ED, the applicant's email if was found registered with many Sunstar Group companies, as well as found engaged in looking after the audit and accounts of Shivakriti and Star Global Multi Ventures Pvt. Ltd., which have a significant role in the present case. Ld. SPP for ED further asserted that investigation revealed that the applicant acted beyond his professional capacity, being CA and auditor of the said entities, as well as found to be involved in money laundering activities, knowing engaging in generation, acquisition, concealment, diversion and finally projecting the proceeds of crime in the case, as untainted property. Ld. SPP for ED further asserted that the role of the applicant is further explicated from the statement of Ajay Soni recorded under Section 50 PMLA, as well as the email correspondence dated 19.07.2022 by Ajay Soni to Ajay Yadav and Rakesh Gulati, wherein Ajay Soni named the applicant as official deal maker/agent, who actually got him/Ajay Soni involved in frauds and scams by Rohit Aggarwal and other directors of SOL. Correspondingly, as per Ld. SPP for ED, statement of Navin Kanjwani, Kalptaru, recorded under Section 50 PMLA reveal that the applicant arranged the meeting of Rohit Aggarwal with authorized representative of Kalptaru to facilitate major siphoning off/diversion of funds of around Rs. 40 Crore, which is nothing other than proceeds of crime from Star Global Multi Ventures Pvt. Ltd. Ld. SPP further reiterated that the applicant consciously acted beyond his professional limit to facilitate and mediate, at every important stage of money laundering activities and processes connected with the proceed of crime, as well as deployed his relationship/connection with Ajay Soni, NBFC, etc., to execute the conspiracy, hatched between the ex-directors, promoters, beneficial owners of SOL and as a result of his conscious involvement, facilitated regaining actual but indirect control of SOL by even exploiting NCLT mechanism.

4.2. Learned SPP for ED further vehemently contended that the applicant belongs to close knit network and has potential to tamper with the evidence as well as influence other related persons, suspects, witnesses, etc. Ld. SPP for ED further contended that the defence/applicant has endeavored to simply dismiss the significance of applicant's email registrations, correspondences, etc., with the accused company, which demonstrate his active role in coordinating, planning and conniving in illicit schemes with the accused/co-accused. Correspondingly, as per Ld. SPP for ED, the defence relies on general legal distinction between internal and external auditors without adequately addressing as to how the applicant's activities transcend beyond his professional obligations. Further, as per Ld. SPP for ED, feeble attempt has been made on the part of the applicant to downplay the statements of various persons/witnesses, including Ajay Soni's and Navin Kanjwani's statements, explicating the role of applicant as an active participant in the instant case. Further, as per Ld. SPP for ED, except for bare denial of the said statements and correspondences, nothing material/substantial is forthcoming on record to cogently establish the applicant's false implication in the present case. On the contrary, Ld. SPP for ED accentuated that the said email correspondences; factum of Facility Agreement dated 30.09.2019 having been signed by the applicant as one of its witnesses; digital records retrieved from the applicant's email demonstrating his continued correspondence with key accused persons; etc., are all, as per Ld. SPP for ED, sufficient to demonstrate the applicant's complicity, active role, connivance in the present case. Ld. SPP for ED further contended that applicant is not entitled to bail merely for the reason that other implicated individuals have not been arrested. In this regard, Ld. SPP for ED vehemently contended that the prosecution agency's discretionary power to arrest individuals is exercised solely on the specific evidence and critical role, which each accused plays in criminal enterprises, independent of the arrest/status of other implicated parties. Ld. SPP for ED, while further referring to purpose and object of the enactment/PMLA and various dictates of the several Courts, including the Hon'ble Apex Court, submitted that the nature of accusation in the present case, the gravity of offence, especially the fact of the same being a grave economic offence, impact of the offence on the economic and financial stability as well as integrity of the nation, reiterated that the applicant/accused, being an active participant of the offence committed in the instant case, deserves no indulgence from this Court. In support of the said contentions, reliance was placed upon the decisions in; ***Satyender Kumar Jain v. ED, 2023 SCC Online Del. 1953; Sanjay Singh v. Directorate of Enforcement, 2024 SCC Online Del. 773; P. Chidambaram v. Directorate of Enforcement, (2019) 9 SCC 24; Y.S. Jagan Mohan***

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Reddy v. CBI, (2013) 7 SCC 439; Gautam Kundu v. Directorate of Enforcement, (2015) 16 SCC 1, Rohit Tandon v. Directorate of Enforcement, (2018) 11 SCC 46; Pavana Dibbur v. ED, 2023 SCC Online SC 1586; Vijay Madanlal Choudhary & Ors. v. Union of India & Ors., 2022 SCC Online SC 929; Directorate of Enforcement v. Aditya Tripathi, 2023 SCC Online SC 619; Radha Mohan Lakhotia v. Deputy Director, PMLA, 2010 SCC Online Bom. 1116; P. Rajendran v. Directorate of Enforcement, Crl. Pet. 19880/2022 (Madras HC); Y. Balaji v. Kartik Desari, 2023 SCC Online SC 645; V. Senthil Balaji v. State, 2023 SCC Online SC 934; H.N. Rishbud v. State of Delhi, (1955) 1 SCR 1150; P. Chidambaram v. Directorate of Enforcement, (2019) 9 SCC 24; Naser Bin Abu Bakr Yafai v. State of Maharashtra, (2022) 6 SCC 308; Tarun Kumar v. Enforcement Directorate, 2023 SCC Online SC 1486; CBI v. V. Vijay Sai Reddy, (2013) 7 SCC 452

5. The arguments of Ld. Counsel for the applicant as well as that of Ld. SPP for ED, heard as well as case laws, synopsis/notes on arguments, as well as other material placed on record have been scrupulously scrutinized.

6. At the outset, this Court deems it apposite to note that the quandary that surrounds determination of bail is replete with innumerable factors, involving establishment of an equipoise between the conflicting interests. While on one hand, such an adjudication involves safeguarding the right to liberty of an individual, while preventing harassment, humiliation, and unjustified detention of the accused, on the other hand, it entails ensuring free, fair and full investigation. Undeniably, liberty of

an individual is valuable right, however, it is trite law[1] that such a protection cannot be absolute and there may be instances where the collective interests of community may predominate the right[2] of personal liberty of an individual. Ergo, it is quite understandable that while exercising the discretion to grant or refuse bail the Court will have to take into account various considerations[3], such as; *"the nature and seriousness of the offence; the circumstances in which the offence was committed; the character of the evidence; the circumstances which are peculiar to the accused; a reasonable apprehension of witnesses being influenced and evidence being tampered with; the larger interest of the public or the State; the position and status of the accused with reference to the victim and the witness; the likelihood of the accused fleeing from justice; the likelihood of the accused repeating the offence; the history of the case as well as the stage if investigation, etc…"* Further, strikingly, it is a settled law[4] that where there are sufficient reasons to have reasonable apprehension that the accused would flee from justice and/or tamper with prosecution evidence, such an accused can be refused bail. Apposite to further note that though, the courts are required to give reasons at the stage of determination of bail, however, a detailed examination of evidence and elaborate documentation of the merits of the case is not required[5] at such a stage. Further, court(s) cannot go into the question of credibility

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[1] *Masroor v. State of U.P., (2009) 14 SCC 286.*

[2] *Shahzad Hasan Khan v. Ishtiaq Hasan Khan, (1987) 2 SCC 684.*

[3] *Anil Mahajan v. Commissioner of Customs, 2000 SCC OnLine Del 119;* and *Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496.*

[4] *Anil Mahajan v. Commissioner of Customs, 84 (2000) DLT 854.*

[5] *Jagjeet Singh v. Ashish Mishra, (2022) 9 SCC 321*

and reliability of the witnesses/evidence put up by the prosecution, which can only be tested during the trial[6].

7. Another aspect, which this Court considers germane to note in respect of the foregoing is that it is well settled and persistently avowed in various judicial dictates that economic offences, in contradistinction to regular offences, which are generally directed towards particular person(s) or section(s) of society, affect and harm a larger populace as well as pose a serious threat to the financial systems of the countries, including to their integrity and sovereignty. Therefore, it is quite understandable that even in the instance of determination of bail, stringent rigors are envisaged under law/PMLA, in terms of the provision under Section 45 thereof, which provision, has been unambiguously declared by the Hon'ble Supreme Court[7] to be, *"reasonable and has direct nexus with the purposes and objects sought to be achieved by the 2002 Act and does not suffer from the vice of arbitrariness or unreasonableness."* Reference in this regard is further made to the decision of the Hon'ble Apex Court in ***Tarun Kumar v. Enforcement Directorate, (Supra.)***, wherein the Hon'ble Court, held as under;

> *"17. As well settled by now, the* ***conditions specified under Section 45 are mandatory. They need to be complied with****. The Court is required to be satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence, and he is not likely to commit any offence while on bail. It is needless to say that as per the statutory presumption permitted under Section 24 of the Act, the Court or the Authority is entitled to presume unless the contrary is proved, that in any proceedings relating to proceeds of crime under the Act, in the case of a person charged with the offence of money laundering under Section 3, such proceeds*

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[6] ***Satish Jaggi v. State of Chhattisgarh, (2007) 11 SCC 195.***

[7] ***Vijay Madanlal Choudhary v. Union of India, 2022 SCC Online SC 929.***

of crime are involved in money laundering. Such conditions enumerated in Section 45 of PML Act will have to be complied with even in respect of an application for bail made under Section 439 Cr. P.C. in view of the overriding effect given to the PML Act over the other law for the time being in force, under Section 71 of the PML Act."

(Emphasis Supplied)

8. Here, it is further relevant to note that the satisfaction contemplated under Section 45 of PMLA pertaining to the accused being not guilty has to be based on reasonable grounds, which envisages[8], *"something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence."* Even otherwise, where the rigors of Section 45 of PMLA are not applicable such as in a case where the applicant/accused (seeking bail) may fall within the exception/proviso to the said provision, it is a trite law[9], such an applicant, *"needs to satisfy the triple test under Section 437/439 Cr.P.C.; (i) Flight risk; (ii) Influencing any witness; (iii) Tampering with evidence"*, to convince court(s) to grant the relief of bail.

9. Consequently, being wary of the principles hereinunder noted, this Court deems it appropriate to consider the arguments raised on behalf of the applicant as well as that on behalf of ED. Relevantly, one of the primary contentions of the Ld. Counsel for the applicant before this Court is that the

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[8] ***Collector of Customs v. Ahmadalieva Nodira, (2004) 3 SCC 549*** *(Hon'ble Supreme Court while dealing with pari materia provision under Section 37 NDPS Act).*

[9] ***Kewal Krishna Kumar v. Enforcement Directorate, 2023 SCC Online Del 1547.***

applicant has been implicated in the present complaint proceedings, despite not being named as an accused in the predicate offence. In this regard, this Court unambiguously observes that the said contention has already been dealt with by the Ld. Predecessor Judge at the stage of passing of order of remand dated 02.07.2024/dealing with ED's application under Section 65 PMLA r/w S. 167 Cr.P.C., and also by this Court, in its order of cognizance dated 25.09.2024. Apposite at this stage, to reproduce the relevant extract from the order dated 02.07.2024 of the Ld. Predecessor Judge, as under;

> *"16. …it is not necessary that a person against whom, the offence u/s 3 of the PMLA is alleged must have been shown as the accused in the scheduled offence. As such, I am of the opinion that the submission of the ld. Counsels for the accused persons that the accused persons have not been shown as the accused in the scheduled offence is also not sustainable…"*
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> *(Emphasis supplied)*

10. Considerably, in respect of the foregoing, this Court deems it further apposite to make a reference to the decision in ***Pavana Dibbur v. Enforcement Directorate, (Supra.)***, wherein the Hon'ble Supreme Court, whilst confronted with a situation of akin kind, remarked as under;

> *"17. Coming back to Section 3 of the PMLA, on its plain reading, an offence under Section 3 can be committed after a scheduled offence is committed. For example, let us take the case of a person who is unconnected with the scheduled offence, knowingly assists the concealment of the proceeds of crime or knowingly assists the use of proceeds of crime. In that case, he can be held guilty of committing an offence under Section 3 of the PMLA. To give a concrete example, the offences under Sections 384 to 389 of the IPC relating to "extortion" are scheduled offences included in Paragraph 1 of the Schedule to the PMLA. An accused may commit a crime of extortion covered by Sections 384 to 389 of IPC and extort money. Subsequently, a person unconnected*

with the offence of extortion may assist the said accused in the concealment of the proceeds of extortion. In such a case, the person who assists the accused in the scheduled offence for concealing the proceeds of the crime of extortion can be guilty of the offence of money laundering. Therefore, it is ***not necessary that a person against whom the offence under Section 3 of the PMLA is alleged must have been shown as the accused in the scheduled offence****. What is held in paragraph 270 of the decision of this Court in the case of Vijay Madanlal Choudhary supports the above conclusion. The conditions precedent for attracting the offence under Section 3 of the PMLA are that there must be a scheduled offence and that there must be proceeds of crime in relation to the scheduled offence as defined in clause (u) of sub-section (1) of Section 3 of the PMLA."*

(Emphasis supplied)

11. Correspondingly, the Hon'ble High Court of Delhi in ***Anand Chauhan v. Directorate of Enforcement, 2017 SCC OnLine Del 7790***, on an earlier occasion, unambiguously remarked as under;

"27. A reading of Section 3 shows that the person who commits the offence of money laundering ***need not necessarily be a one who may have been involved in the acquisition of the proceeds of crime****. Thus, even if the petitioner herein is assumed to be not guilty of the offence under Section 13(2) read with Section 13(1)(e) of the PC Act, nevertheless, he is a person charged with abetting the said offence and with the laundering of the proceeds of the crime of Sh. Vir Bhadra Singh.*

28. I cannot agree with the submission of the petitioner that ***for the purpose of Sections 3 and 4 of the PMLA, the person accused of the commission of the offence under the PMLA should have committed the scheduled offence and acquired the proceeds of crime****. The proceeds of crime may be acquired by another person who commits one of the scheduled offences, and the person charged with money laundering may have only, directly or indirectly, assisted or knowingly become a party, or may be actually involved in the process or activity of, inter alia, concealing, possessing, acquiring or using and projecting or claiming the said proceeds of crime as untainted property. The purpose of scheduling the offences under the PMLA appears to be to enlist the*

> *various crimes through which the proceeds of crime may be generated. Thus, the submission of the petitioner that he cannot be charged under the PMLA, does not appear to have any merit."*
>
> *(Emphasis supplied)*

12. In so far as contention of Ld. Counsel for the applicant pertaining to the applicant being named as a witness in the predicate offence case, whilst, being named as an accused in the present proceedings is concerned, reference is made to the decision in ***Sathish Babu Sana v. Directorate of Enforcement & Ors., MANU/DE/4739/2024***, wherein the Hon'ble High Court of Delhi in an akin situation, noted as under;

> *"85. Admittedly, in the present case, the petitioners in the case registered by the CBI were arrayed as the witnesses to a case under scheduled offences. However, during the process of investigation, case under the provisions of PMLA has been registered wherein they have been arrayed as accused. The ratio of law laid down by the Hon'ble Supreme Court in Vijay Madanlal (Supra), clearly spells out that **it may happen in cases that a person who is witness in offences related to scheduled offences, during his interrogation, may put-forth some material which would indicate his involvement in the commission of offence under PMLA. This Court in a catena of decisions has already held that proceedings under the scheduled offences and PMLA are separate and distinct and have no binding upon each other**."*
>
> *(Emphasis supplied)*

13. Markedly, in order to appreciate the contention of the Ld. Counsel for the applicant pertaining to the setting aside of the '*fraud*' declaration by the Hon'ble High Court of Delhi, it would be apposite to refer to the relevant extract of the said order dated 09.07.2024 in ***WP(C) No. 10526/2019, titled as Manik Aggarwal & Anr. v. Canara Bank & Ors.***, wherein the Hon'ble Court *inter alia* observed as under;

> *"4. In view of the aforesaid, it is clear that in the absence of any opportunity for the petitioners to be*

heard or to submit any representation, the declaration of the petitioners' account as 'Fraud' is patently illegal. Accordingly, the declaration dated 19.07.2024 of the petitioners' account as 'Fraud' is hereby set aside. Consequently, any ***other ancillary proceedings initiated by the respondent banks shall also stand quashed****.”*

(Emphasis supplied)

14. Interestingly, from a perusal of the aforesaid order, it is quite unequivocal that the same pertains to quashing of fraud declaration dated 19.07.2024 of the accounts of the petitioners in the said proceedings, including, the accounts of co-accused Manik Aggarwal (who was one of the petitioners before the Hon’ble Court) as well as quashing of the other ancillary proceedings, initiated by the respondent banks pursuant thereto. Clearly, the order in unequivocal terms relates only to the said declaration dated 19.07.2024 of the petitioners (in the said proceedings), on technical ground of absence of opportunity/representation to the petitioners therein at the stage of such declaration and quashing of ancillary proceedings initiated by the banks. However, the instant order is silent in so far as the criminal proceedings, including the instant proceedings/case, against the applicant herein are concerned. Even otherwise, from a perusal of the instant complaint, it is noted that the order of ‘*fraud*’ declaration specified therein, relates to accused company, SOL by Karur Vysya Bank, Karol Bagh Branch, New Delhi, which is stated to have been subsequently, reported it to RBI on 08.07.2019. Needless to further mention that no order of stay or of quashing of proceedings in predicate offence/case has been brought to the attention of this Court.

15. Here, this Court deems it apposite to consider the contention of Ld. Counsel for the applicant pertaining to the applicant's not being involved in the generation of proceeds of crime or not being found in possession thereof to belie the case of prosecution against the applicant. As aforenoted, Ld. Counsel for the applicant fervently argued that the applicant is not a beneficiary of any of the alleged laundered proceeds of crime and no property belonging to the applicant has been attached by the prosecution, entitling him to be accorded the relief prayed for. In this regard, Ld. Counsel has further endeavored to create a dichotomy between the various ingredients of Section 3 PMLA *inter alia* asserting that the applicant has neither directly or indirectly attempted to indulge or knowingly assisted or knowingly, has been a party to or actually involved in any process or activity connected with the proceeds of crime including its possession; or acquisition; or use and that the latter part of the said provision pertaining to projecting the property as untainted property; or claiming the same to be untainted, if at all proved against the applicant, would not create any impediment in the applicant's entreaty as sought for under the present application. However, the said contention does not find favour with this Court considering that the said distinction, as sought to be argued by the Ld. Counsel for the applicant does not fall from a scrupulous analysis of the provision under Section 3 PMLA and this Court is further not impressed with the Ld. Counsel's asserting that the activity of an individual which may amount to projecting of claiming a property as untainted would in any manner be of lesser degree of offence that the generation, concealment, acquisition or use thereof, considering the objective of the said enactment. Reference in this regard is further made to

the decision in ***Vijay Madanlal Choudhary & Ors. v. Union of India (UOI) & Ors., MANU/SC/0924/2022***, wherein the Hon'ble Apex Court, explicated the law/provisions under Section 3 of PMLA in the following terms;

> *"40. The Explanation as inserted in 2019, therefore, does not entail in expanding the purport of Section 3 as it stood prior to 2019, but is only clarificatory in nature. Inasmuch as Section 3 is widely worded with a view to not only investigate the offence of money-laundering but also to prevent and regulate that offence. This provision plainly indicates that any (every) process or activity connected with the proceeds of crime results in offence of money-laundering.* ***Projecting or claiming the proceeds of crime as untainted property, in itself, is an attempt to indulge in or being involved in money-laundering****, just as knowingly concealing, possessing, acquiring or using of proceeds of crime, directly or indirectly. This is reinforced by the statement presented along with the Finance Bill, 2019 before the Parliament on 18.7.2019 as noted above192.*
>
> *** *** ***
>
> *42. From the bare language of Section 3 of the 2002 Act, it is amply clear that the offence of money-laundering is an independent offence regarding the process or activity connected with the proceeds of crime which had been derived or obtained as a result of criminal activity relating to or in relation to a scheduled offence. The process or activity can be in any form --* ***be it one of concealment, possession, acquisition, use of proceeds of crime as much as projecting it as untainted property or claiming it to be so****. Thus, involvement in anyone of such process or activity connected with the proceeds of crime would constitute offence of money-laundering. This offence otherwise has nothing to do with the criminal activity relating to a scheduled offence -- except the proceeds of crime derived or obtained as a result of that crime."*
>
> *(Emphasis supplied)*

16. Congruently, in light of the expansive terms, *"whoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime…"*,

used under Section 3 of PMLA, in light of the reasons foregoing, this Court is further not convinced with the submission of Ld. Counsel for the applicant that the applicant was devoid of necessary *mens rea* in the instant case. Further, the distinction sought to be accentuated by the Ld. Counsel for the applicant that the acts related to NCLT proceeding amount to a different cause of action/offence for which, separate complaint/reporting was necessitated in the instant case, in the considered opinion of this Court, not forthcoming from the material placed on the record of this Court. In fact, the complaint in unambiguous terms asserts that the money/proceeds of crime generated by laundering activities was eventually utilized to obtain, indirect but actual control and business of SOL with the help of a shell entity*, i.e.,* Umaiza and dummy entity Shivakriti even after NCLT proceedings and thereby, causing huge loss to the lender banks.

17. Reverting to the contention of the Ld. Counsel for the applicant pertaining to the alleged non-compliance of the provisions under Section 19 PMLA and absence of 'necessity of arrest' being demonstrated in the instant case, this Court deems it apposite to outrightly reproduce the relevant extract from the order dated 02.07.2024 of the Ld. Predecessor Judge, permitting seven days' remand with the ED, as under;

> *"***8.. … The applicant/ ED in the application has further stated that the accused <u>Rajesh Kumar Gulati has been the chartered accountant/ auditor of the accused company. It has been further stated that the above said accused had been looking after the audit and statutory compliances of the accused company as well as all the related companies and his email ID is registered with many Aggarwal Family's companies/ firms. It has been further stated that the above said accused is also looking after the audit and accounts of M/s Shivakriti Agro Ltd..</u>*
>
> **** *** ****

13. <u>I have carefully gone through the entire material available on record and heard the submissions of the Ld. Spl. PP for the ED and the ld. Counsels for the accused persons</u>.

14. As per the allegations as contained in the present application seeking the custody for a period of 14 days, the consortium of nine banks led by Karur Vysya Bank had granted certain credit facilities but the accused company failed to repay the loan amount and as on 30.06.2017, an amount of Rs. 951.88 crores is due and outstanding. It has been alleged that the accused company siphoned off/diverted the loan amount through various shell companies. It has been further alleged that two more sham/fictitious companies namely M/s. Star Global Multiventures Pvt. Ltd. and M/s. Star Rice Land Ltd. were created in the year 2010 and 2011 only with a view to siphon off the funds of the accused company. <u>The specific roles assigned to the three accused persons have already been reproduced in brief in the foregoing paras which have been described by the applicant/ED in the present application</u>.

****   ***   ****

*17. Keeping in view the above said discussion, **<u>the entirety of the facts and circumstances, the specific roles assigned to the above said three accused persons, with a view to unearth the trail of funds, for corroboration and confrontation with other persons involved in the case, the applicant/ED is granted custody for a period of seven days</u>**…"*

(Emphasis supplied)

18. Relevantly, from a perusal of the case records it is observed that the Ld. Predecessor Judge, *vide* separate order of the same date, *i.e.*, 02.07.2024, noted that the compliance of the provisions under Section 19(2) and 19(3) of PMLA have duly been undertaken by the IO, which has not been disputed even by the Ld. Counsel for the accused persons. Pertinently, the order dated 02.07.2024 of the Ld. Predecessor Judge has admittedly not been challenged by/on behalf of the applicant till date, rather, in the instant application, it has been merely asserted that the necessity of arrest or compliance of Section 19 PMLA has not been established in the instant case. However, upon a

conscientious analysis of the material placed on record, the said contentions of the Ld. Counsel too, does not find favour with this Court.

19. Significantly, when the facts of the present case are scrupulously analyzed, the applicant has, in the considered opinion of this Court, further failed to satisfy the twin-conditions for grant of any indulgence (of bail) in his favour. Pertinent to accentuate in this regard, it has been specifically recorded under the complaint that the applicant was working as Chartered Accountant/Auditor of SOL and almost all its related entities and further asserted to be looking after their audit and statutory compliances. The prosecution has further proclaimed that the applicant's email id. is also found registered with many Sunstar Group companies/firms, besides he is also declared to be looking after the audit and accounts of Shivakriti and M/s. Star Global Multi Ventures Pvt. Ltd., playing a significant role in the present case. In particular, it is *inter alia* recorded under the complaint as under;

> *"10.20.1 That he was the Chartered Accountant /Auditor of M/s. Sunstar Overseas Ltd. and almost all its related entities and has been looking after their audit and statutory compliances. His e-mail id is found registered with many Sunstar Group companies/ firms. <u>He was also looking after audit and accounts of M/s. Shivakriti Agro Pvt. Ltd. and M/s. Star Global Multi Ventures Pvt. Ltd. which have major role in this case, as per material evidences presented and discussed in preceding paras. In his capacity of chartered accountant and auditor of all said companies, he had hold of books of accounts and other financial records/ documents of the M/s. Sunstar Overseas Ltd, its related companies/firms and also of M/s Shivakriti Agro Pvt. Ltd</u>.*
>
> *10.20.2 That the investigation revealed that **<u>Rakesh Kumar Gulati has acted beyond his professional capacity of being a CA and auditor of aforesaid entities found involved in the money-</u>***

laundering and he knowingly assisted and knowingly indulged himself in the generation, acquisition, concealment, diversion and finally, projecting the 'proceeds of crime' involved in the case as untainted property.

10.20.3 That to verify and ascertain above facts, his very good friend- Mr. Ajay Soni, ex-director and shareholder of M/s Shivakriti Agro Pvt. Ltd. (SAPL) in his recorded statement discussed supra, wherein he inter alia stated and accepted that on the directions/ instructions/ requests of Mr. Rakesh Kumar Gulati, he handed over his company- M/s Shivakriti Agro Pvt. Ltd. for operational purposes to Rohit Aggarwal, who was director and controller of M/s Sunstar Overseas Ltd.. Thereafter, ex-directors of M/s. Sunstar Overseas Ltd. appointed new employees in M/s. Shivakriti Agro Pvt. Ltd. from a pool of ex-employees of M/s. Sunstar Overseas Ltd. By this, they assumed control of M/s. Shivakriti Agro Pvt Ltd. and commenced business operations but in the name of Ajay Soni, as he was still director and shareholder. Ajay Soni further revealed that he also signed many documents, such as agreements and board resolutions, as per the instructions of Rakesh Kumar Gulati, without questioning their contents. Ajay Soni further revealed that he had no knowledge of any transactions involving M/s. Shiva Kriti Fashion Pvt Ltd. (later renamed as Shivakriti Agro Pvt. Ltd.) as he signed all the documents presented to him by Rakesh Kumar Gulati believing in good faith and without questioning him about their contents. He also revealed that Rakesh Kumar Gulati and Rohit Aggrawal conspired together with regard to investments received in M/s Shivakriti Agro Pvt. Ltd. from overseas investors, transactions made to M/s Umaiza Infracon LLP for Facility Agreement done with the said entity and export advances received from overseas buyers- Jashan Trading LLC and Meenaraj Trading LLC during his tenure as director and shareholder. It therefore emerges that it was Rakesh Kumar Gulati who was acting as the face of Ajay Soni, the then Director of M/s Shivakriti Agro Pvt. Ltd., and the same had been accepted by them in their above referred statements tendered U/s 50 of PMLA.

10.20.4 That besides above, the seized digital records, specifically ***e-mail of Rakesh Kumar Gulati with e-mail id: rkgulati@rakeshgulati.com, it is found that Ajay Soni had sent an e-mail dated 19.07.2022 to Ajay Yadav, Rakesh Gulati and other wherein he categorically mentioned the name of his***

friend Rakesh Kumar Gulati as official deal maker /agent who actually got him involved in frauds and scams by Rohit Aggarwal and other directors of Sunstar Overseas Ltd*. He further stated that they are continuing very smartly and bluntly in business using his company with benami directors despite the blanket ban by various banks and all the investigating agencies of Govt of India on Rohit Aggarwal and other directors of Sunstar.*

Further, screen-shot of E-mail dated 03.01.2022 made by Mr. Ajay Soni to M/s Zephyrus and Eternity Legal reveals that:

> *"We have resigned upon getting to know the actual promoters are indulged in various illegal business practices and the past records of all of them are so very suspicious. Every investigation department of Govt. of India are investigating their ………. The matter with Umaiza Infracon too seems to be another scam by them*
>
> *We are also assessing possible actions, we can take towards Shiva Kriti Agro P Ltd., its promoters and associates M/s. Rakesh Gulati and associates, who attempted to entangle us to help them by giving our company Shiva Kriti Fashion Pvt Ltd., basis false informations."*

10.20.5 That, investigation revealed that Mr. Ajay Soni and his wife Mrs. Madhu Soni transferred 100% shareholding of their company- M/s Shivakriti Agro Pvt. Ltd. to Mr. Paramjeet and his wife Mrs. Seema Sharma on the instructions of Rakesh Kumar Gulati, who was the common auditor & CA for M/s Sunstar Overseas Ltd. as well as M/s Shivakriti Agro Pvt. Ltd. That some of above facts were also admitted by Rakesh Kumar Gulati in his Statement dated 16-17.01.2024 tendered on oath U/s 17 and testified on 01.07.2024 U/s 50 of the PMLA, 2002.

10.20.6 That to further very the facts disclosed supra, statement dated 27.05.2024 of Mr Navin Kanjwani, M/s. Kalptaru Fincap Ltd. recorded U/s 50 of the PMLA revealed that Rakesh Kumar Gulati arranged the meeting of Rohit Aggarwal with the authorized representatives of M/s. Kalptaru Fincap Ltd. to facilitate major siphoning-of /diversion of the funds of Rs.40 Crore which is nothing but the 'proceeds of crime' from M/s. Star Global Multi Ventures Pvt. Ltd., an erstwhile related entity of Sunstar Overseas Ltd., to M/s. Umaiza Infracon LLP which was used for acquisition of Sunstar Overseas Ltd. in NCLT. That furthermore, Vijay Inder Bhatia *of Compact Capital Ltd. also stated in his statement that Rakesh Kumar Gulati gave him contact no. of Ajay Yadav and asked him to divert the funds to Umaiza Infracon LLP and Rakesh Kumar Gulati arranged Rs.1 Crore to Compact Capital Ltd from Star Global Multi Ventures Pvt. Ltd.*

10.20.7 That therefore, it would constitute that he consiuosly acted beyond his professional limits to facilitate and mediate at every important stage of money-laundering activities and processes connected to proceeds of crime involved in money laundering. <u>He used his relationship and connections with Ajay Soni, NBFCs, etc. to execute the conspiracy hatched by ex-directors/promoters /benefial owners of M/s. Sunstar Overseas Ltd. and as a result of his conscious involvement in this whole conspiracy, ex-directors/promoters succeeded in regaining the indirect but actual control of assets and properties of M/s Sunstar Overseas Ltd. by way of him arranging network of sham and dummy entities and in appropriating sham transactions in the books of accounts of accused entities for which he was auditor and CA</u>.

10.20.8 That from the above facts and circumstances, it thus emerges that Rakesh Kumar Gulati knowingly assisted and actually involved himself in the processes and activities connected with the said 'proceeds of crime', including its generation, acquisition, possession, concealment, use and projecting it as untainted property and hence, he is guilty of committing the offence of money-laundering in terms of provisions of Section 3 of the PMLA, 2002 and hence, liable for punishment U/s 4 of the PMLA.

(Emphasis supplied)

20. Correspondingly, from statements recorded in terms of the provisions under Section 50 PMLA[10] of that of the

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[10] *Reference is made to the decision of the Hon'ble High Court of Delhi in* ***Sanjay Singh v. Directorate of Enforcement, MANU/DE/0841/2024****, wherein the Hon'ble Court, noted as under;*

"41. As regards the admissibility of statements recorded under Section 50 of PMLA, it is relevant to note that in the case of ***Rohit Tandon v. Directorate of Enforcement, (2018) 11 SCC 46****, three-judge bench of the Hon'ble Apex Court has held that <u>such statements are admissible in nature and can make out a formidable case about involvement of accused in the offence of money laundering</u>. The relevant observations of the Hon'ble Apex Court are as under;*

"31....The prosecution is relying on statements of 26 witnesses/accused already recorded, out of which 7 were considered by the Delhi High Court. <u>These statements are admissible in evidence, in view of Section 50 of the Act of 2002. The same makes out a formidable case about the involvement of the appellant in commission of a serious offence of money laundering. It is, therefore, not possible for us to record satisfaction that there are reasonable grounds for believing that the appellant is not guilty of such offence</u>..."

42. The <u>challenge to Section 50 of PMLA was rejected by the Hon'ble Apex Court in case of Vijay Madanlal Choudhary (supra)</u>, wherein it was held that statements recorded under Section 50 of PMLA applicant and other accused/co-accused and witnesses, in particular, that from the statements of one Ajay Soni, Paramjeet, Rakesh Aggarwal, Navin Kanjwani and Vijay Inder Bhatia, recorded under Section 50 PMLA, read in conjunction with the applicant's statement under the said provisions, as well as other material placed on record, including the e-mail correspondence and Facility Agreement, the applicant's role in the commission of the offence, alleged against him stands fortified, in so far as the applicant is asserted to be in the forefront of indirect by actual acquisition of SOL *via* deployment of Shivakriti and Umaiza. Noticeably, Ajay Soni, in his statement recorded under Section 50 PMLA, *inter alia* asserted as under;

> *"…Q 13: Please explain why you have incorporated M/s Shivakirti Agro Pvt. Ltd. (M/s Shivakirti Fashion Pvt. Ltd.)*
>
> *Ans: I would like to submit that M/s Shivakriti Fashion Pvt. Ltd. was established by me in 2000, with the assistance of CA Mr. Rakesh Gulati and upon the request of my wife, Madhu Soni. Both my wife, Smt. Madhu Soni, and I served as directors in this company, and we were also shareholders, each holding 5000 shares. Essentially, we were the beneficial owners of the company if any business occurred. However, till 2015-16, the company did not engage in any business activities due to our extensive involvement in Shivakrirti Export. In 2016, my CA,* ***Mr. Rakesh Gulati, approached me and requested that I transfer the company to Mr. Rohit Agarwal****, who is a Director and shareholder of M/s Sunstar Overseas Limited. Mr. Rakesh Gulati explained that Mr. Rohit, being one of his initial*

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cannot be compared to statements under Section 67 of NDPS Act, and that such statements were not in violation of Article 20(3) of the Constitution of India.

43. The aforesaid legal propositions were also reiterated by the Hon'ble Apex Court in case of ***Tarun Kumar (Supra)*** *with following observations;*

"15. In our opinion, there is hardly any merit in the said submission of Mr. Luthra. In Rohit Tandon vs. Directorate of Enforcement, a three Judge Bench has categorically observed that the statements of witnesses/accused are admissible in evidence in view of Section 50 of the said Act and such statements may make out a formidable case about the involvement of the accused in the commission of a serious offence of money laundering……."

44. At the present stage of deciding the bail application of the accused, ***when the trial has yet not commenced, this Court would be required to take into consideration the material collected by the investigating agency including statements of witnesses recorded under Section 50 of PMLA, and has held by the Hon'ble Apex Court, statements under Section 50 of PMLA can make out a formidable case of money laundering against an accused****." (Emphasis supplied)* *clients, had supported him during his difficult time, and I had also served as the CA for Sunstar Overseas Limited. Mr. Rohit was facing challenging circumstances, including disputes with the bank. Consequently,* ***I handed over the company to Mr. Rohit Agarwal on the request of Mr. Rakesh Gulati****. The Agarwal family assumed control of the company and commenced business operations under my name. Throughout this period,* ***I signed numerous documents, such as agreements and board resolutions, as per the instructions of Rakesh Gulati, without questioning their content****. Subsequently, I came to the knowledge via Rakesh Gulati that there were multiple legal cases against Mr. Rohit Agarwal and his family. As a result, my wife and I resigned from the company in 2020. Until 2020, I signed all company-related documents based on the directions and instructions of Mr. Rakesh Gulati. However, after that, neither my wife nor I have any affiliation with the company…"*

(Emphasis supplied)

21. Relevantly, the applicant, upon being confronted with his association with Ajay Soni and the transfer of Shivakriti Fashion Private Limited *inter alia* asserted in his statement under Section 50 PMLA as under;

"…Ques.29 Do you know Ajay Soni?

Ans. Yes, he is an ex-Director of M/s SAPL. I met him in FY 1990. He was engaged in the business of export of garments under the name of M/s Shivakriti Exports. I met him through common friend.

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Ques.32 Mr. Ajay Soni arrived at the premise i.e. 304, BD Chambers, 10/54, Desh Bandhu Gupta Road, Karol Bagh, New Delhi at 9.30 PM, on being asked about the details of transfer of shares of M/s SAPL to Paramjeet Sharma he stated that he does not know and never met any person namely; Paramjeet Sharma & Rohit Dogra and Mr. Rakesh Kumar Gulati asked me to sign the documents related to transfer of shares of M/s SAPL. Further, he stated that he is not aware of the fact that Rohit Dogra was appointed as a Director during my tenure as a Director in M/s SAPL. What do you have to say about this?

Ans. Yes, I agree with the facts being stated by Mr. Ajay Soni…"

(Emphasis supplied)

22. Apposite at this stage, to make reference to email dated 19.07.2022, issued by Ajay Soni to Ajay Yadav and the applicant *inter alia* noting as under;

> *"…Pls ref various meetings in recent months and so many phone discussions on below. The correct answer to your **below clarifications lies with Mr. Rakesh Gulati, The official deal maker/agent and Charted Accountant for Sunstar companies, who actually got us involved into these frauds and scams by Mr. Rohit Aggarwal and other Directors of Sunstar Overseas Ltd, for the reasons and interest best known to him**.*
>
> *He has been cc in this mail to give an appropriate reply, if he does not, still you will get your answer and take appropriate steps as discussed/documented.*
>
> *As evident to you, Needless to mention how smartly and bluntly they are continue in business despite of blanket ban by various banks and all the investigating agencies of Govt of India on Rohit Aggarwal and other directors of Sunstar, using our company with benami directors…"*
>
> *(Emphasis supplied)*

23. Notably, in the aforesaid email, specific allegations were made by Ajay Soni against the applicant herein, *inter alia* titling him as, *"the official deal maker/agent and Charted Accountant for Sunstar companies, who actually got us involved into these frauds and scams by Mr. Rohit Aggarwal and other Directors of Sunstar Overseas Ltd…".* However, the applicant despite being ccd in the said correspondence, neither replied to the same nor denied the allegations levelled therein by Ajay Soni. Rather, in his statement under Section 50 PMLA, the applicant merely denied having knowledge or ever seen the said correspondence, prior to the said date. Further, the reasons of applicant's executing the Facility Agreement, even as a witness is not forthcoming from the statement of the applicant. On the

contrary, the execution of applicant's signature as one of the witnesses to the said agreement, *prima facie* demonstrates *his* role to transcend as external statutory auditor in the present case, especially when the facility agreement is proclaimed as a devise to obtain indirect by actual control of SOL by deployment of Umaiza and Shivakriti.

24. Clearly, in light of the above, it is reiterated that the allegations against the applicant are quite serious as being alleged to have been involved with co-accused, as a key person to facilitate transfer and/or indirectly involved in activities related to 'proceeds of crime' through sham transactions of Shivakriti with SOL and other entities. However, despite the same, as aforenoted, the applicant has failed to demonstrate to this Court, substantial probable cause(s) for believing that the applicant is not guilty of the alleged offence and that the applicant is not likely to commit any offence, while on bail. Needless to reiterate that even otherwise, by the very nature/manner in which the offence in the instant case is stated to have been committed, by the layering of transactions to dupe the bankers/consortium banks, the matter is of grave concern, requiring a cautious/guarded examination by this Court. However, at this stage, even presuming for the sake of argument that the rigors of Section 45 PMLA would not be applicable in the instant case, even then, the Ld. Counsel for the applicant has failed to convince this Court that aforesaid triple test[11] would lean in favour of the applicant, *i.e.,* the applicant would not influence the prosecution witnesses or would not tamper with prosecution

[11] ***Kewal Krishna Kumar v. Enforcement Directorate, 2023 SCC Online Del 1547.***

evidence, especially when the proceedings in the instant case are still at its nascent stage and the crime involved is grave.

25. In so far as the contention of Ld. Counsel for the applicant pertaining to parity with the accused persons who have not been arrested in the instant case is concerned, this Court deems it apposite to observe that the law is trite[12] that the circumstance of not arresting the other accused itself cannot be a ground to grant bail. Relevant to further note in this regard that the law is further settled[13] that in deciding the case of parity, the role attributed to the accused, their position in relation to the incident and to the victim is considered to be of utmost importance. At the same time, parity applies in granting bail to an accused, where the co-accused has been granted bail on similar set of circumstances, which is not the case here. Lastly, in as much as the contention of the Ld. Counsel for the applicant pertaining to delay in trial is concerned, same in the considered opinion of this Court, cannot be the sole ground for grant of bail. Needless to mention, that even as per ***V. Senthil Balaji's Case (Supra.)*** such power can be exercised only by constitutional court.

26. Consequently, in conspectus of the above and further keeping in view the nature and gravity of the offence; the fact of applicant is involved in a crime of grave nature, having serious ramifications; the role/complicity and the *prima facie* incriminating evidence brought on record against the applicant; the proceedings are still at nascent stage and the failure of the applicant to satisfy the twin condition under Section 45 of

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[12] ***Central Bureau of Investigation v. V. Vijay Sai Reddy, MANU/SC/0486/2013.***

[13] ***Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana, (2021) 6 SCC 230;*** *and* ***Narayanaswamy v. State of Karnataka, 2017 SCC OnLine Kar 1066.***

PMLA, this Court does not deem it fit to grant bail to the applicant at this stage. At this stage, it is further relevant to note here that, though, this Court holds highest regard for the decisions relied upon by the Ld. Counsel for the applicant, however, none of the said decisions would come to the aid of the applicant in the manner as sought to be relied upon by the Ld. Counsel, as the facts and circumstances of the present case are clearly distinguishable. Needless to reiterate in this regard, the question of grant or refusal of bail depends upon a determination of several factors, which ultimately depends upon the unique facts and circumstances of a case before Court.

27. Accordingly, the present application under Section 483 BNSS/Section 439 Cr.P.C. for regular bail *qua* the applicant/accused, namely, Rakesh Kumar Gulati is ***dismissed***.

28. It is clarified herein that the observations made in the present order are only limited for the purpose of deciding the present application of the applicant, namely, Rakesh Kumar Gulati and would have no bearing on the factual matrix of the present case, which is a separate issue to be determined as per law.

29. A copy of the present order be given ***dasti*** to the Ld. Counsel for the applicant, namely, Rakesh Kumar Gulati. Further, a copy of this order **be marked to the concerned Jail Superintendent** with the direction to hand over the same/a copy thereof, to the applicant.

ABHISHEK GOYAL

Digitally signed by ABHISHEK GOYAL
Date: 2024.12.18 17:00:57 +0530

(Abhishek Goyal)
ASJ-03, Central District
Tis Hazari Courts, Delhi
18.12.2024