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

Directorate of Enforcement v. M/s Sunstar Overseas Ltd. & Ors.
(Bail application of accused Ajay Kumar Yadav)
CC No.: 01/2024
CNR No.: DLCT01-013456-2024
ECIR No.: GNZO/09/2021
Under Sections: 3/4 Prevention of Money Laundering Act, 2002
PS: EOW

20.01.2025

Present: Mr. Simon Benjamin, Ld. SPP for ED and Mr. Aditya Jain, Ld. Counsel for ED.
Mr. Yashvardhan and Mr. Pranav Das, Ld. Counsel for the applicant/ accused, namely, Ajay Kumar Yadav.
The applicant/accused, Ajay Kumar Yadav has been produced from CJ-07, Tihar New Delhi. (through video conferencing).

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**'*) *read with* Section 45 of Prevention of Money Laundering Act (*hereinafter referred to as '**PMLA**'*) on behalf of accused, namely, Ajay Yadav (*hereinafter referred to as the '**applicant/accused**'*), seeking regular bail.

2. Pithily put, the genesis of the present proceedings is a complaint filed 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**'*)

ABHISHEK GOYAL Digitally signed by ABHISHEK GOYAL Date: 2025.01.20 16:18:14 +0530 and Section 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act, 1988 (*hereinafter referred to as* ***'PC Act'***). The said FIR, in turn, was registered on the basis of 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 the applicant, namely, 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 the applicant, active member of Ajay Yadav & Co. as well as 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 *'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, Rakesh Gulati 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 has not been named in the complaint filed by the then Chief Manager of PNB, Hindu College Branch, Sonepat, Haryana on the basis of which FIR No. RCHG2020A0021, dated 31.12.2020 was registered by CBI and even in the subsequent charge-sheet filed before the concerned Court at Chandigarh. As per the Ld. Counsel, the applicant, who has lawfully taken control of Sunstar Overseas Ltd. after following a rigorous process under the supervision of Resolution Professional (RP) of SOL and Hon'ble NCLT, in the CIRP of the said company, has been arrested without any basis and without providing any reason in the arrest memo, dated 01.07.2024. In this regard, Ld. Counsel further stated that Section 19 PMLA mandates that the arresting officer must record in writing reasons for his belief that the accused is involved in the offence,

however, in the present case, the said requirement is grossly wanting. As per the Ld. Counsel, independent mind has not been applied by the concerned authority while recording the reasons to believe of the arrest of the applicant. In fact, the allegations leveled against the applicant are noted as reasons to believe, which have been accepted in their entirety without applying judicial mind. Even under the grounds of arrest supplied to the applicant, reasons to believe are absent making the arrest and subsequent incarceration of the applicant liable to be set aside, forthwith. Further, as per Ld. Counsel, the applicant, is aged around 48 years and has no connection with the erstwhile promoters/ directors of SOL or the loan taken by them and its consequent alleged siphoning and/or diversion. As per the Ld. Counsel, the applicant himself strenuously asserted himself that the 'so called' Facility Agreement was not an agreement and that the same was neither signed by the applicant nor the terms mentioned therein ever agreed by the applicant. As per the Ld. Counsel, the arbitration arising out of the said agreement is pending adjudication before the Ld. Arbitrator, wherein the applicant has consistently pleaded that Umaiza never intended to give control of SOL to Shivakriti. In fact, as per the Ld. Counsel, in the pleadings in the said proceedings, the applicant has consistently pleaded that it has nothing to do with the said entities or the alleged siphon of amount.

3.1. Ld. Counsel further submitted that the applicant has, even otherwise, thoroughly co-operated with the investigating authorities during the entire investigation process and that he regularly appeared before the concerned authorities at ED as and when summoned. In this regard, Ld. Counsel further submitted that the applicant further provided all the documents as sought for by the prosecution agencies and simply because he did not confess or answer to the investigating officer as desired, cannot be the reason for arrest and continued incarceration of the applicant. Even otherwise, as per the Ld. Counsel, there is no further requirement for custodial interrogation of the applicant as the complaint has already been filed and cognizance taken. Ld. Counsel further submitted that the prosecution has failed to demonstrate any compelling reasons to justify continued detention of the applicant under Section 45 of PMLA. Ld. Counsel further submitted that the prosecution has failed to demonstrate even in prima facie manner that the applicant has committed the offence. In fact, as per the Ld. Counsel, the assertion of the prosecution that the Facility Agreement is a sham document has also been consistently iterated by the applicant and that the applicant has already challenged the said agreement even under the arbitral proceedings. In so far as the amount stated to be allegedly siphoned off to Umaiza, is actually the borrowed amount/fund from Shivakriti which is to be repaid by the applicant. Ld. Counsel further submitted that the material on record would demonstrate that Ajay Soni, who allegedly signed the said Facility Agreement himself affirmed that he never met or spoke with the applicant at any point in time, before the receipt of notice in the petition filed by Shivakriti before the Hon'ble High Court of Delhi. It was further vehemently argued that Umaiza had taken over SOL after due process of law, under the aegis of Hon’ble NCLT and by doubting the authenticity of said takeover, prosecution is doubting the entire CIRP. Ld. Counsel further submitted that the premise of the entire prosecution case is the Facility Agreement, which has been denied by the applicant and that no knowledge can be attributed against the applicant for the alleged proceeds of crime. Ld. Counsel further submitted that the applicant is completely unaware of the facts that the alleged funds borrowed by its LLP is tainted and laundered money as averred by the prosecution.

3.2. Ld. Counsel further submitted that the allegations leveled against the applicant are false, baseless, and ill-conceived, premised on conjectures, surmises as well as grossly insufficient to bring forth any guilt against the applicant. As per the Ld. Counsel, Sections 3/4 PMLA envisages a specific *mens rea*, which cannot be attributed to the applicant herein. 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, Ld. Counsel reiterated that 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; ***V. Senthil Balaji v. Deputy Director, Directorate of Enforcement, 2024 SCC OnLine SC 2626; Arvind Kejriwal v. Directorate of Enforcement, 2024 SCC OnLine SC 1703; Manish Sisodia v. Directorate of Enforcement, 2024 SCC OnLine SC 1920; Vijay***

Nair v. Directorate of Enforcement, 2024 SCC OnLine SC 3597; Prem Prakash v. Union of India, through the Directorate of Enforcement, (2024) 9 SCC 787; Ramkripal Meena v. Enforcement of Directorate, 2024 SCC Online SC 2276; Pankaj Bansal v. Union of India (2024) 7 SCC 576; P. Chidambaram v. Directorate of Enforcement (2020) 13 SCC 791; Sanjay Jain v. Enforcement Directorate, 2024 SCC Online Del 1656; Hari Om Rai v. Directorate of Enforcement, 2024 SCC Online Del 8095; Pankaj Kumar Tiwari v. Directorate of Enforcement, 2024 SCC Online Del 7387; Asif Hanif Thara v. Enforcement Directorate 2024 SCC Online MP 7379; Pushpendra Singh v. Directorate of Enforcement, Misc. Criminal Case no. 19929 of 2024, order dated 08.07.2024; Arvind Kejriwal v. Central Bureau of investigation (2024) SCC Online SC 2550; Ramesh Manglani v. Directorate of Enforcement, 2023 SCC Online Del 3234; Dr. Bindu Rana v. Serious Fraud Investigation Office, 2023 SCC Online Del 276; Ashish Mittal v. Serious Fraud Investigation Office, 2023 SCC Online Del 2484; Amandeep Singh Dhall v. Directorate of Enforcement, 2024 SCC Online Del 6497; Sukanya Mondal v. Directorate of Enforcement, 2024 SCC Online Del 6350; Directorate of Enforcement v. Ashish Kumar Verma, ECIR No. 23/STF/2021 (IA No. 10/2023), dated 15.02.2024, Ld. ASJ-06, PHC.

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 as per the investigation conducted by the prosecution, the applicant played a central role in acquiring SOL using the proceeds of crime, diverted through a complex financial arrangement, orchestrated by ex-promoters of SOL. As per Ld. SPP for ED, records and statements recorded under Section 50 PMLA establish that the applicant, knowingly participated in the layering, possession and utilization of tainted funds, with his entity acting in the forefront, enabling the projection of illicit proceeds of crime as legitimate assets, creating reasonable grounds to believe in the applicant's guilt under Section 45 PMLA. It was further submitted that the integral role of the applicant is demonstrated by his direct coordination and communication with the ex-promoters/directors of SOL. In this regard, it was submitted that the applicant not only engaged with the said officials of SOL well before the initiation of CIRP, rather, also travelled with them to facilitate sham transaction. 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 applicant's significant involvement in multilayered financial deals and familiarity with international financial entities, enhances a possibility of applicant's absconding/fleeing from justice. It was further submitted that this Court lacks jurisdiction to consider prolonged detention or delays in the predicate office proceedings as grounds for bail, as these remedies are exclusively available to constitutional courts under Articles 32/226 of the Constitution. Ld. SPP for ED further strenuously reiterated that Section 45 PMLA imposes stringent conditions for bail, requiring the court to be satisfied that the accused in not guilty of offence and unlikely to commit further office, which factors have to be given due consideration at the stage of determination of bail of an accused. Ld. SPP for ED, while relying on the decision in ***CBI v. V. Vijay Reddy, (2013) 7 SCC***

452, contended that bail cannot be granted to an accused solely on the ground that other implicated individuals have not been arrested and that each case has to be determined on its own merits. It was further submitted that the applicant's arrest in 01.07.2024 was in strict compliance with the provisions under Section 19 PMLA, including recording of the 'reasons to believe; and producing the applicant before the Court within statutory prescribed period. Even otherwise, Ld. SPP for ED, relying on the decision in ***Arvind Dham v. Union of India, 2024 SCC Online Del 8490***, contended that the Hon'ble High Court has clarified that the obligations imposed post-arrest by judicial interpretation do not retroactively affect earlier arrests. As per Ld. SPP for ED, the applicant's arrest, was conducted in full compliance with prevailing legal requirements, thus, remains legally sound and unimpeachable. It was further submitted that unlike ordinary statements, recorded in terms of the provisions under Cr.P.C., statements recorded under Section 50 PMLA carry a heightened legal weight and when supported by corroborative evidence, can form a robust basis of prosecution. As per Ld. SPP for ED, the prosecution has supplemented the statements of key individuals, recorded under Section 50 PMLA with abundant documentary and digital evidence, including email correspondences, financial records as well as digital trails, linking the applicant to the orchestration of illicit financial transactions. In this regard, Ld. SPP for ED further submitted that any minor discrepancies or the applicant's belated denial of signing of the Facility Agreement are insufficient to undermine the probative value of the statements recorded by ED. Even otherwise, it was submitted that the stage of determination of bail, reasonable grounds and broad probabilities suffice the stringent condition under law/PMLA.

4.2. Learned SPP for ED further vehemently contended that the applicant is not entitled to the benefit of the provisions under Section 32A of IBC. In this regard, Ld. SPP for ED contended that while the corporate debtor is granted immunity for offences committed prior to the commencement of CIRP, however, such statutory immunity does not extend to individuals associated with the corporate debtor, who were directly or indirectly involved in the commission of the offence. As per Ld. SPP for ED, the applicant though its SPV, Umaiza, acquired SOL under the CIRP process, however, acted on the advice and directions of its directors/promoters, Rohit Aggarwal and Manik Aggarwal, as corroborated with the documentary and testimonial evidence, disqualifying the applicant to claim protection under Section 32A of IBC. It was further vehemently contended that the sources of funds required under the approved resolution plan were never genuine, rather, secured and layered from the proceeds of crime through various entities, including, Kalptaru Fincap Ltd., Compact Capital Ltd., Shivakriti, Purshotam Profiles and Vinod Rice Mills, to ultimately acquired the assets of SOL. Correspondingly, documents such as air tickets and hotel booking confirm the applicant's visit with ex-promoters/directors of SOL and Paramjeet to NBFC offices for channeling proceeds of crime. Ld. SPP for ED further submitted that multiple investments and land deals alleged by the applicant with various parties were never backed by genuine documentations and funds were never repaid. In fact, as per Ld. SPP for ED, the approved resolution plan itself was based on false undertakings, including forged commitments from fictitious friends and relatives. Further, as per Ld. SPP for ED, no *bona fide* source of funds was ever established and no repayment as ever made to the so called lenders, confirming absence of legitimate financing. It was further submitted that the absence of proper wherewithal with the statutory authorities/agencies in CIRP proceedings to verify the genuineness of funds sources under the IBC, was exploited by the applicant and other accused persons to acquire SOL's asserts without being detected. However, subsequent investigations, expose the intricate conspiracy involving fraudulent documents and diversion of proceeds of funds in the instant case. Even otherwise, 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; ***Satyendar Kumar Jain v. Directorate of Enforcement, 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 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. The Directorate of Enforcement, 2023 SCC OnLine SC***

1586; Vijay Madanlal Chaudhary & 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. The Deputy Director, PMLA, Directorate of Enforcement 2010 SCC OnLine Bom 1116; P. Rajendran v. Directorate of Enforcement 2022 SCC OnLine Mad 9007; CBI v. V. Vijay Sai Reddy (2013) 7 SCC 452; Tarun Kumar v. Enforcement Directorate, 2023 SCC OnLine SC 1486; Ram Kishore Arora v. Directorate of Enforcement, 2023 SCC OnLine SC 1682; Y. Balaji v. Karthik Desari, 2023, SCC OnLine SC 645; and *V. Senthi Balaji v. Directorate of Enforcement, Crl. Appeal no. 4011 of 2024, dated 26.09.2024, SC.*

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/evidence note, 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 determination of bail requires maintaining a delicate equipoise between the conflicting interests of an individual and State. While on one hand, such an adjudication involves safeguarding the right to liberty of an accused by preventing harassment, humiliation, and unjustified detention, on the other hand, it entails ensuring free, fair and full investigation. Unquestionably, 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

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

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

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 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

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[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***

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

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 of crime are involved in money laundering..."*
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> *(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*

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

[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).*

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 applicant has been falsely 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;

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

> *"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…"*
>
> *(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."*
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> *(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."*
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> *(Emphasis supplied)*

12. In so far as contention of Ld. Counsel for the applicant pertaining to the alleged non-compliance of the provisions under Section 19 PMLA and absence of 'necessity of arrest' or 'reasons to believe' being recorded or supplied to the applicant, 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;

> *"***9. The applicant/ED has further stated that the accused* ***<u>Ajay Yadav was a partner of M/s. Umaiza Infracon LLP, the successful dissolution applicant of Sunstar Overseas Ltd. and he acquired M/s. Sunstar Overseas Ltd. during CIRP proceedings for Rs. 196 crores. It has been alleged that however, during PMLA investigation, it was revealed that the said fund was sourced by the Ex-promoters/Directors of the accused company out of proceeds of crime generated from M/s. Sunstar Overseas Ltd. and layered through erstwhile entities</u>****. The ED has prayed that fourteen days custody…*
>
> **** *** ****
>
> *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)*

13. 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. Even otherwise, it is observed from the ground of arrest, copy thereof, as supplied/filed/placed on record in the present proceedings by Ld. Counsel for the applicant before this Court, receipt of the said grounds has not been denied by the applicant. In fact, the same specifically records a receipt of the grounds of arrest by the applicant, soon after his arrest, in the presence of the witnesses, who endorsed their signatures as a token of correctness. Further, in order to evaluate the Ld. Counsel for the applicant's contention pertaining to absence of 'material in possession' and 'reason(s) to believe' for the arrest of the applicant is concerned, reference is made to the relevant extracts from the applicant's ground of arrest as under;

> *"…Investigation also revealed that **he was the part of conspiracy hatched by ex-promoters and directors of the accused company led by Rohit Aggarwal and Manik Aggarwal with the conscious knowledge of Rakesh Gulati. As part of the said conspiracy, he has been acting on the advices, directions and instructions of the ex- promoters/ directors of M/s Sunstar Overseas Ltd. viz. Rohit Aggarwal and Manik Aggarwal and submitted the resolution plan to acquire the corporate debtor Viz. M/s Sunstar Overseas Ltd. in NCLT**. By his*

aforesaid conduct revealed during PMLA investigation, he is therefore a 'related party' of the corporate debtor in terms of Clause (g) of Section 5(24) of the Insolvency and Bankruptcy Code (IBC), 2016, and as such, he is not covered under Clause (a) of Section 32A of the IBC, 2016.

*** *** ***

Further, it is revealed that Mr. Ajay Yadav was one of the partner and shareholder of M/s Umaiza Infracon LLP, the other being his wife Mrs. Lata Yadav. Despite having no knowledge or past experience of rice processing and its export, they purportedly planned to venture the segment.

Moreover, they did not even have funds of their own but the funding for said resolution plan was directly/indirectly provided by some corporate entities controlled by Rohit Aggarwal and Manik Aggarwal through either NBFCs or through other entities which were under the influence of Rohit Aggarwal and Manik Aggarwal viz. Vinod Rice Mill Pvt. Ltd. and Purshotam Profiles Pvt. Ltd. and Shivakriti Agro Pvt. Ltd. The funds so arranged is the proceeds of crime' generated from Sunstar Overseas Ltd. and concealed as well as diverted from erstwhile Sunstar Group companies/firms viz. M/s. Star Global Multiventures Pvt. Ltd., M/s. Star Rice Land Pvt. Ltd., M/s. Broadway Distribution Pvt. Ltd. and M/s. DH Trading Co., etc. through M/s. Kalptaru Fincap Ltd. (NBFC), M/s. Compact Capitals Ltd. (NBFC as well as one of the resolution applicant of M/s. Sunstar Overseas Ltd.) under the cover of sham loans and/or and also through unrelated companies viz. M/s. Vinod Rice Mill Pvt. Ltd. and Purshotam Profiles Pvt. Ltd. under the cover of sham land deals, against final settlement amount of Rs. 196 Crore in NCLT.

Out of said required fund, the loan of Rs.146 Crore was taken from M/s Shivakriti Agro Pvt. Ltd., which shows nothing but a nexus of ex-directors/promoters of the accused company (i.e. Aggarwal family led by Rohit Aggarwal and Manik Aggarwal) to take over M/s Sunstar Overseas Ltd. from M/s Umaiza Infracon LLP and thereafter, regain its actual control and business through their frontal entity- M/s Shivakriti Agro Pvt. Ltd. owned and controlled by his ex-employee and confidante Paramjeet. In that respect, M/s Shivakriti Agro Pvt. Ltd. and M/s Umaiza Infracon LLP entered into a Facility Agreement dated 30.09.2019 immediately after taking over the M/s Sunstar Overseas Ltd. through NCLT. This agreement was pre-conceived *and pre-designed as also evidenced from the terms used therein referring to the resolution plan of Ajay Yadav submitted to the NCLT. The provisions of this Facility Agreement would reveal that the loan taken from M/s Shivakriti Agro Pvt. Ltd., requiring repayment within a year of the agreement, is nothing but the "purchase price for acquisition of equity shares of the accused company in the event of failure to repay the loan and as conceived, not a single paisa has been returned by M/s Umaiza Infracon LLP to M/s Shivakriti Agro Pvt. Ltd. against said loan. From the wordings of the agreement, it is amply explicit that it is heavily inclined towards M/s. Shivakriti Agro Pvt. Ltd. and* ***hence, it is a sham as it was nothing but an instrument of accession for M/s Shivakriti Agro Pvt. Ltd. to take over M/s Sunstar Overseas Ltd. from M/s Umaiza Infracon LLP. In fact, rather than repayment to M/s Shivakriti Agro Pvt. Ltd., Mr. Ajay Yadav, through M/s Umaiza Infracon LLP, took further funds from M/s Shivakriti Agro Pvt. Ltd. for repayment of Rs.27,83,96,740/- to one of the NBFCs viz. M/s Kalpatru Fincap Ltd. out of total fund transfer of Rs.72 Crore****.*

Investigation also revealed that ***Ajay Yadav in August 2020, instead of repayment of the loans to M/s Shivakriti Agro Pvt. Ltd., sought no objection (NOC) from M/s Kalpatru Fincap Ltd. to sell off the part portion of assets of M/s Sunstar Overseas Ltd. to M/s Shivakriti Agro Pvt. Ltd. This shows that there was never an intention on behalf of M/s Umaiza Infracon LLP or Ajay Yadav to return the investment of investor viz. M/s Shivakriti Agro Pvt. Ltd****., but was to indirectly or directly hand over the control and business of M/s Sunstar Overseas Ltd. to M/s Shivakriti Agro Pvt. Ltd.*

Mr. Ajay Yadav ***was in contact with Mr. Rohit Aggarwal, Mr. Paramjeet Sharma as well as Mr. Rakesh Gulati, the auditor, long before M/s Sunstar Overseas Limited entered into CIRP proceedings****. Thus, a company having more than Rs. 950 Crore of liabilities was taken over by the entity which claims to have Rs. 6 Crore as personal funds and was able to acquire Rs. 190 Crore without hypothecation of any of his personal assets. Thus, Ajay Yadav through M/s Umaiza Infracon LLP conspired, and he is knowingly a party in the processes or activities connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting it as untainted property and hence, guilty of offence of money-laundering in terms of Section 3 of the PMLA, 2002 read with Section 70 of the said Act*

> ****   ***   ****
>
> *In view of above facts and material, I have reason to believe that you, Mr. Ajay Yadav, are guilty of offence of money-laundering, as defined under Section 3 of PMLA 2002 and hence, they are liable for punishment under Section 4 of the said Act. You have <u>directly attempted to indulge or knowingly assisted or are knowingly a party and are actually involved in aforesaid processes or activities connected with the said 'proceeds of crime' involved in the present case and then, projecting it as untainted property. There are sufficient evidences on record, which explicitly bring out that the above offence of money-laundering is being perpetually committed with full disregard to the statutory provisions with an intention to launder the proceeds of crime</u>. You have actively involved yourself in the offence of money-laundering, as discussed above. Further, you are capable of influencing witnesses, authorities as well as other persons involved in the case as also, there is a possibility of them tampering with the evidences…"*
>
> *(Emphasis supplied)*

14. Conspicuously, in light of the foregoing, this Court finds itself difficult to concede that there has been non-compliance of the provisions under Section 19 PMLA. As aforenoted, the applicant's grounds of arrest, clearly, encapsulate and iterate the arresting officer's intention, reasons and ground to believe as well as the material in possession of the prosecuting agency for arrest of the applicant. Needless to reiterate that till date, the applicant failed to challenge the aforenoted orders dated 02.07.2024 and 09.07.2024 of the Ld. Predecessor Judge and have only sought to aver in the instant application as to the violation of provisions under Section 19 PMLA. Correspondingly, in so far as the contention of Ld. Counsel for the applicant pertaining to non-supply of reasons to believe to the applicant in view of the dictate in ***Arvind Kejriwal v. Directorate Enforcement, (Supra.)*** as well as the dictates in ***V. Senthil Balaji v. Deputy Director, Directorate of Enforcement (Supra.)*** and

Pankaj Bansal v. Union of India, (Supra.) is concerned, this Court unmistakably observes that the latter decisions relate to recordings of reasons to believe and supply of grounds of arrest, while the former dictate further relates to supply of reasons to believe in writing to the accused. However, in this regard, this Court deems it pertinent to refer to the decision in ***Neeraj Saluja v. UOI, CRM-M-10124-2024 dated 30.09.2024 (Hon'ble P&H High Court)***, wherein the Hon'ble High Court of Punjab and Haryana, remarked as under;

> *"12. The issue regarding providing 'reasons to believe' to the person being arrested by ED has been dealt with expansively by the Hon'ble Supreme Court in Arvind Kejriwal v. Directorate of Enforcement (Para 36), wherein it has been held that it is difficult to accept that the "reasons to believe," as recorded in writing, are not to be furnished, and the requirements in Section 19(1) PMLA, are the jurisdictional conditions to be satisfied for arrest, the validity of which can be challenged by the accused and examined by the Court.*
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> *** *** ***
>
> *14. A perusal of the memo outlining the grounds of arrest reveals that the safeguards under Section 19 were adhered to, validating the arrest, and there is no failure to entitle the petitioner to be released by exercising the extraordinary powers of the High Court under S. 482 CrPC, 1973.*
>
> *** *** ***
>
> *24. The lack of a valid 'reason to believe' documented at the time of arrest, as required by Section 19, directly leads to an arrest being classified as illegal rather than a mere irregularity.*
>
> *25. The former, characterized by a fundamental breach of statutory requirements, renders the arrest void and precludes re-arrest on the same grounds. This interpretation upholds the principles of justice and the constitutional rights of individuals, ensuring that any deprivation of liberty is strictly under the law.*
>
> *26. **A perusal of the grounds of arrest explicitly reveal and point to the effect that the Arresting Officer had conveyed his intention, reasons, grounds and believe to arrest the petitioner. The order of grounds of arrest is in conformity with the***

requirement of Section 19 of PMLA Act. The satisfaction of the concerned Officer is also duly reflected in the wordings and the necessity of arrest and has also clearly revealed. Thus, there is no fault in the grounds of arrest and consequent arrest...”

(Emphasis supplied)

15. Here, it is further pertinent to mention that quite recently, even the Hon’ble High Court of Delhi in ***Arvind Dham vs. Union of India & Ors. (Supra.)***, unambiguously observed that the observation of the Hon’ble Apex Court in ***Arvind Kejriwal v. Directorate of Enforcement (Supra.)***, requiring ED to supply ‘reasons to believe’ to the arrestee cannot be made applicable, retrospectively. Relevant extracts of the said decision are as under;

“40. 'Reasons to believe', as per Section 19 of the PMLA, has to be recorded in writing by the competent officer, based on the genuine belief and reasoning, basis the material in possession, to establish the arrestee's guilt. The onus to establish satisfaction of the said condition will be on the ED, and not the arrestee. Reasons to believe should be furnished to the arrestee to enable him to exercise his right to challenge the validity of the arrest. An issue arose relating to whether this condition imposed by the Supreme Court in Arvind Kejriwal (supra) ought to be applied prospectively or retrospectively. For lack of any direction by the Supreme Court, counsel for the parties put forward their respective arguments. ***Suffice it to say, aside from any detailed interpretative assessment, while challenging the legality of arrest, the position to be assessed is at the time when the arrest was originally made and what the authorities, as per law crystallised at that time, were obligated to do****. In this case, the arrest was made on 09th July 2024, whereas the decision in Arvind Kejriwal (supra) was pronounced on 12th July 2024.* ***It would be difficult to assume that on 09th July 2024 the ED could have foreseen that this additional requirement would be stipulated by the Supreme Court in the coming week. To hold the ED to have complied with that requirement of supplying the reasons to believe would defy logic.*** *In any event, as argued by Special Counsel for ED, the grounds of arrest itself contain the substance of reasons to*

believe, being detailed in its narrative; same is evident from a perusal of the case file requisitioned from the ED.”

(Emphasis supplied)

16. Here, this Court deems it further pertinent to note that when the facts of the present case are scrupulously analyzed in light of the arguments addressed, the applicant, in the considered opinion of this Court, has 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 an active individual/member of M/s. Ajay Yadav & Company, a body of individuals, along with others, including applicant’s wife, Smt. Lata Yadav, Bharat Pal Singh and Prahlad Gautam. The applicant is further proclaimed to be an active partner along with his wife, of Umaiza, SPV of Ajay Yadav & Company, the successful Resolution Applicant of SOL. It is further explicitly recorded under the complaint that the funds for such acquisition were sourced by the ex-promoters/directors of SOL out of the ‘proceeds of crime’ generated by it and layered through its erstwhile related/controlled entities as well as through NBFCs, *i.e.,* M/s. Kalptaru Fincap Ltd., M/s. Compact Capital Ltd. Omkara Trust and Aerion Special Situation Fund, ACIPL Corporate Advisors India Pvt. Ltd., etc. and ARC, namely, M/s. Omkara Assets Reconstruction Pvt. Ltd., under the garb of sham borrowings and investments. Correspondingly, the complaint records that the applicant was in constant touch and correspondence with the ex-promoters/directors of SOL and co-accused Paramjeet, evidenced by the air tickets and hotel bookings, *prima facie* demonstrating the applicant’s involvement/active participation in channeling/diverting

proceeds of crime for eventual acquisition of SOL through channel of NCLT proceedings. Correspondingly, the applicant is further asserted to *inter alia* attended joint lender banks meeting along with Manik Aggarwal, Rakesh Aggarwal and Rohit Aggarwal, ex-directors/promoters of SOL, before initiation of CIRP proceedings by ICICI Bank, playing a significant role in the conspiracy to both divert/channel funds and for eventual acquisition of SOL by exploiting NLCT channel, deploying funds generated as proceeds of crime. In particular, it is *inter alia* recorded under the complaint as under;

> *"…10.17.2. That investigation also revealed that he was the part of a larger conspiracy hatched by ex-promoters /ex-directors of M/s. Sunstar Overseas Ltd. led by Rohit Aggarwal with the conscious involvement of Rakesh Kumar Gulati, Chartered Accountant & Auditor and Paramjeet, director/shareholder of Shivakriti Agro Pvt. Ltd.. Material evidences collected and presented supra establish that* ***he visited the Mumbai office of NBFCs along with Paramjeet, Manik and Rohit Aggarwal on crucial dates during Oct, 2018 and then in May, 2019 to give effect to aforesaid diversion of proceeds of crime which be used in NCLT****. Before that he aligned with Rohit Aggarwal to visit Amritsar also in August 2018 even when CIRP proceedings begain in July, 2018 itself probably to see other plant of M/s. Sunstar Overseas Ltd. These air tickets were booked by Paramjeet and recovered from his cabin during search of Shivakriti Agro Pvt. Ltd. situated in the same premises of Sunstar Overseas Ltd. at Bahalgarh, Sonepat, Haryana. Such evidences reveal how they all- Paramjeet, Rohit Aggarwal, Ajay Yadav and Manik Aggarwal mingled with each other and worked for same objective.*
>
> *10.17.3. That as part of this conspiracy, he has been acting on the advices and instructions of ex-promoters/ directors of M/s Sunstar Overseas Ltd.- Rohit Aggarwal and submitted the resolution plans in NCLT, after modifying several times, to acquire M/s Sunstar Overseas Ltd. He* ***did not have funds of his own and even EMD amount Rs.2 Crore for EOI was arranged for the first time by M/s. Omakra Assets Reconstruction Pvt. Ltd. in Dec, 2018 which had***

partnered it as "Financial sponsor". On second occasion, EMD amount of Rs.2 Crore was arranged by M/s Alankar Enterprise, Ahmedabad which was never repaid. This EMD amount of Rs.2 Crore was layered by Ajay Yadav through his and his wife's bank accounts and then integrated in his account on the date of payment i.e. 11.03.2019. It exhibits his mens rea in concealing and then diverting such funds used for said transactions.

10.17.4. The investigation also revealed that Ajay Yadav was indeed known to them since starting of 2017 and that he was involved in the financial affairs- especially bank loans matter- NPA matter of M/s. Sunstar Overseas Ltd. and also attended joint lender banks meeting along with Manik Aggarwal, Rakesh Aggarwal and Rohit Aggarwal, ex-directors/promoters of Sunstar Overseas Ltd. before initiation of CIRP proceedings by ICICI Bank. Ajay Yadav was in contact with Rohit Aggarwal, Paramjeet as well as Mr. Rakesh Kumar Gulati, the auditor, long before M/s Sunstar Overseas Ltd. entered into CIRP proceedings.

10.17.3. That further it is revealed that despite having no knowledge or past experience of rice processing and its export, Ajay Yadav through his BOI and SPV purportedly planned to venture the segment of rice business. The funding for said resolution plan was directly /indirectly provided by some corporate entities controlled by Rohit Aggarwal and Manik Aggarwal through either NBFCs or through other entities which were under the influence of Rohit Aggarwal and Manik Aggarwal. The funds so arranged and utilized are out of the 'proceeds of crime' generated from M/s. Sunstar Overseas Ltd. and concealed as well as diverted from erstwhile related/controlled entities viz. M/s. Star Global Multiventures Pvt. Ltd., M/s. Star Rice Land Pvt. Ltd., M/s. Broadway Distribution Pvt. Ltd. and M/s. DH Trading Co., etc. through M/s. Kalptaru Fincap Ltd. (NBFC), M/s. Compact Capital Ltd. (NBFC as well as one of the resolution applicant of M/s. Sunstar Overseas Ltd.) under the cover of sham loans and/or and also through unrelated companies viz. M/s. Vinod Rice Mill Pvt. Ltd. and Purshotam Profiles Pvt. Ltd. under the cover of sham land deals and also M/s. Shivakriti Agro Pvt. Ltd, against final settlement amount of Rs. 196 Crore in NCLT. Therefore, such material facts establish that he is knowingly a party and actually involved himslf in the activity and process connected to concealment, *possession, diversion, use and then projecting the 'proceeds of crime' as untainted property.*

10.17.4. That, out of said required fund, Rs.146 Crore was diverted from M/s Shivakriti Agro Pvt. Ltd., under the garb of sham instrument of Facility Agreement dated 30.09.2019 which shows nothing but a nexus of ex-directors/promoters of M/s. Sunstar Overseas Ltd. (led by Rohit Aggarwal and Manik Aggarwal) to take over M/s Sunstar Overseas Ltd. from M/s Umaiza Infracon LLP and thereafter, regain its indirect control and actual business through their dummy entity- M/s Shivakriti Agro Pvt. Ltd. owned and controlled by his ex-employee and Paramjeet @ Paramjeet Sharma under the cover of said Facility Agreement executed between M/s Shivakriti Agro Pvt. Ltd. and M/s Umaiza Infracon LLP immediately after NCLT order.

10.17.5. That, this agreement was pre-conceived and pre-designed as also evidenced from the terms used therein referring to the resolution plan of Ajay Yadav submitted to the NCLT. The provisions of this Facility Agreement would exhibit that it was a sham as the alleged loan amount was never repaid or even, intended to be repaid. From the wordings of the agreement, it is amply explicit that it is heavily inclined towards M/s. Shivakriti Agro Pvt. Ltd. and hence, it was nothing but an instrument of accession for M/s Shivakriti Agro Pvt. Ltd. to take over M/s Sunstar Overseas Ltd. from M/s Umaiza Infracon LLP. In fact, rather than repayment to M/s Shivakriti Agro Pvt. Ltd., Mr. Ajay Yadav, through M/s Umaiza Infracon LLP, took further funds from M/s Shivakriti Agro Pvt. Ltd. for repayment of approx. Rs.32 Crore to M/s Kalpatru Fincap Ltd. out of total fund diversion of Rs.67 Crore by it. Thus, a company having more than Rs. 950 Crore of liabilities was taken over by the entity which claimed to have Rs. 6 Crore as personal funds and was able to source funds of Rs. 190 Crore without hypothecation of any of his personal assets.

10.17.5. That, investigation also revealed that Ajay Yadav in August 2020, ***instead of repayment of the loans to M/s Shivakriti Agro Pvt. Ltd., sought no objection (NOC) from M/s Kalpatru Fincap Ltd. to sell off the part portion of assets of M/s Sunstar Overseas Ltd. to M/s Shivakriti Agro Pvt. Ltd****. This shows that there was never an intention on behalf of M/s Umaiza Infracon LLP or Ajay Yadav to return the investment of investor viz. M/s Shivakriti Agro Pvt. Ltd., but was to indirectly or directly hand over* *the control and business of M/s Sunstar Overseas Ltd. to M/s Shivakriti Agro Pvt. Ltd.*

10.17.6. That Investigation findings cited in relevant paras revealed that Ajay Yadav (active individual of Ajay Yadav & Co. as well as active partner of Umaiza Infracon LLP) acted on the directions and advices of ex-directors/promoters of M/s. Sunstar Overseas Ltd. (corporate debtor in NCLT) as per material evidences discussed in preceding paras and thus, the provisions of Section 32A(1) read with Section 5(24) of the IBC, 2016 get invoked in present set of facts as he became a related party of corporate debtor and consequently, Ajay Yadav and his above mentioned both the entities are therefore not covered under exemption provided in Section 32A of the IBC, 2016.

10.17.7. That based on the above revealed facts and circumstances surrounding the case, it therefore emerges that Ajay Yadav, an individual of Ajay Yadav & Co. (BOI) and partner in its SPV- M/s Umaiza Infracon LLP, conspired and he knowingly became party and actually involved himself in the processes and activities connected with the 'proceeds of crime' including its possession, use and projecting it as untainted property and hence, he is guilty of committing the offence of money-laundering, in terms of Section 3 of the PMLA, 2002, and punishable U/s 4 of the said Act…"

(Emphasis supplied)

17. Correspondingly, it is observed from the material placed on record, in particular, from the from statements of the witnesses/co-accused/accused persons, recorded in terms of the provisions under Section 50 PMLA[10], read in conjunction with

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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 such statements are admissible in nature and can make out a formidable case about involvement of accused in the offence of money laundering. 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. 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..."*

42. The challenge to Section 50 of PMLA was rejected by the Hon'ble Apex Court in case of Vijay Madanlal Choudhary (supra), wherein it was held that statements recorded under Section 50 of PMLA 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***

other material placed on record, including banks statements, details of air tickets/hotel bookings and Facility Agreement, the applicant's role in the commission of the offence, alleged against him stands fortified. In particular, there is evidence in form of air tickets as well as hotel bookings from Delhi to Mumbai, Amritsar, etc. (RUD-13), recovered and seized from co-accused, namely, Paramjeet's cabin at the premises of Shivakriti Agro Pvt. Ltd. during search conduced in terms of the provisions under Section 17 PMLA, demonstrating that the applicant visited the Mumbai office of NBFCs along with co-accused, namely, Paramjeet and Rohit Aggarwal, Manik Aggarwal, etc. to give effect to diversion of 'proceeds of crime' from entities owned/controlled by Rohit Aggarwal and Manik Aggarwal to Umaiza, eventually used for acquisition of SOL/SOL's asserts during NCLT proceedings. Notably, the said bookings/arrangements are asserted in the complaint to have been carried out/made by co-accused, Paramjeet. Relevantly, it is further observed from the statement of Mr. Navin Kanjwani, Director of M/s. Areion Fincap Pvt. Ltd. and son of Mrs. Poonam Kanjwani, the then shareholder of M/s. Kalptaru Fincap Ltd., recorded under Section 50 PMLA, wherein he *inter alia* affirmed as under;

> *"…**Q.34.** Please state the <u>name of person(s) who initially came forward for negotiations on behalf of following entities for ICUB borrowing Agreement with Kalptaru Fincap Ltd</u>.:*

(Supra) *with following observations;*

"15. In our opinion, there is <u>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</u>......."

*44. At the present stage of deciding the bail application of the accused, **<u>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</u>**." (Emphasis supplied)*

(i). Star Global Multi Ventures Pvt Ltd,
(ii). Broadway Distribution Pvt Ltd,
(iii). Star Rice Land Pvt Ltd,
(iv). DH Trading Co.,
(v). Compact Capital Ltd.

***Ans:** Mr. Rakesh Gulati, Chartered Accountant of Delhi was known to me in professional capacity. He introduced me to Mr. Rohit Aggarwal, who was ex-director/promoter of Sunstar Overseas Ltd. Both of them initiated talks about arranging certain funds from the above companies in the form of ICD which was to be utilised for acquiring Sunstar Overseas Ltd. in NCLT through Umaiza Infracon LLP of Ajay Yadav. **Ajay Yadav was first introduced by them as a professional; fund raiser for distressed assets**....”*

(Emphasis supplied)

18. Reference in this regard, is further made to the statement of Madan Gheek, director of M/s. Vinod Rice Mill Pvt Ltd., who asserted under his statement, tendered under Section 50 PMLAs as under;

*“...**Q.3** Please provide details of amounts paid to M/s. Umaiza Infracon LLP by Vinod Rice Mills Pvt Ltd.? Who sanctioned this amount? What was the purpose for providing such a huge amount to a new LLP? Please provide related documents?*

***Ans.** Four years back, my company Vinod Rice Mills Pvt Ltd. gave Rs.6 Crores Ms/ Umaiza Infracon LLP for purchase of 2 acres of land parcel situated at Bahalgarh, Sonipat, Haryana (Sunstar Overseas Ltd. plant) as we planned to established there a packing plant. We started discussion with Mr. Ajay Yadav of M/s Umaiza Infracon LLP at least one month before giving the said amount of Rs.6 Crore. **The rate we agreed upon was 3 Crores per acres. We gave him full amount on the same date in three transactions. Since the value for said land demanded by him was less as compared to others at the same location, we became interested and agreed for the land deal**. I don't have any paper or written communication with Mr. Ajay Yadav in support my claim of purchase of said land parcel at Bahalgarh.*

***Q. 4** Do you know Ajay Yadav, partner in M/s. Umaiza Infracon LLP and how? Please state in details.*

Ans. Mr Rohit Aggarwal of Sunstar Overseas Ltd. with whom I have old business links, introduced

> ***me to Mr Ajay Yadav***. *We had meeting for the said deal of land purchase.* ***I got the information of Sunstar Overseas Ltd going into hands of Mr Umaiza Infracon LLP and that they are in need of money***. *Hence, I approached Ajay Yadav with this offer of land deal after introduced by Rohit Aggarwal. I, Rohit Aggarwal and Ajay Yadav al there were in these meetings (2-3 nos.). Till now,* ***I have met Ajay Yadav 10-12 times and also met with his wife Lata Yadav. I asked him to give either money or land on failure of the same, I approached NCLT***, *Chandigarh against Ms/ Umaiza Infracon LLP for recovery of said amount. Subsequent to this, Ajay Yadav filed case in Civil Court, Sonipat, wherein he has alleged that he did not sell any land parcel to Vinod Rice Mills Pvt Ltd, but the deal was regarding sale of rice brands of Sunstar Overseas Ltd. and the money given by Vinod Rice Mills i.e. Rs. 6 Crore is only against the purchase of brands. Since the amount was not paid in full, Rs.6 Crore amount was forfeited by him and the sale of brands did not happen…"*
>
> *(Emphasis supplied)*

19. Markedly, from a perusal of the complaint and the other material placed on record, it is *inter alia* noted that statement of AU Small Finance Bank Ltd. A/c. No.-1921211823066867 (RUD-110) pertaining to Umaiza and the NBFCs (Kalptaru), exhibits infusion of funds, diverted from the Bank account no. 50428161030 of Kalptaru and PNB account bearing; 06325010000230 (RUD-111) of M/s. Compact Capital Ltd. to AU Small Finance Bank Ltd. A/c. No.-1921211823066867 of M/s. Umaiza Infracon LLP. Correspondingly, there are allegations of diversion of proceeds of crime to a tune of Rs. 6 Crore and Rs. 4 Crore from the SBI account of M/s. Vinod Rice Mill Pvt. Ltd. and HDFC Bank account of M/s. Purshotam Profiles Pvt. Ltd. to aforesaid account of Umaiza. Simultaneously, it is asserted that Umaiza also received funds from Shivakriti's account. In so far as the proceedings before the Hon'ble NCLT in CIRP of SOL is

concerned, it is *inter alia* noted under the complaint that on 28.03.2019, resolution applicant for SOL before NLCT, specified its identity as 'a consortium of Umaiza Infracon LLP (SPV) and Financial Sponsors' from the earlier submitted particulars as 'Ajay Yadav & Co. through its SPV-Umaiza Infracon LLP'. Notably, in the said amended plan, the source of funding was specified as Rs. 196 Crores, out of which a sum of Rs. 146 Crore was to be infused by Umaiza Infracon LLP, whilst the remaining amount of Rs. 50 Crores, was to be infused by financial sponsors. However, under the subsequent amended resolution plan/proposal, the summary proposal was revised by modifying the source of funds of Rs. 196 Crore by removing portion of financial sponsors and showing the whole amount against its SPV-Umaiza. Markedly, under the said plan, sum of Rs. 30-50 Crore was stated to be infused by M/s. Kalptaru Fincap Ltd; and Rs. 110 Crore was shown to be raised from friends and relatives, i.s., Manoj Kumar (Rs. 37.50 Crores); Manish Gautam (Rs. 37.50 Crores) and Pradeep Jain (Rs. 35 Crores). Here, it is apposite to refer to the statement of Manish Gautam, dated 07.07.2024 (RUD-119), wherein, while being confronted with the said funding for the resolution plan, as aforenoted, Mr. Gautam, proclaimed as under;

> *"…**Q.4.** Do you know Mr. Ajay Yadav?*
>
> ***A. 4.** Yes, I know Mr. Ajay Yadav. He is the friend of my father since 2015-16.*
>
> ***Q.5.** Do you ever have business relations with Mr. Ajay Yadav?*
>
> *A.5. **<u>No, I never have any business relations with Mr. Ajay Yadav</u>**.*
>
> ***Q.6.** Here is a commitment letter signed by you that you will provide Rs.37,50,00,000/- to Mr. Ajay Yadav. Please comment and provide details of the same.*

*A.6. I have seen the document i.e. Commitment Letter shown to me and in token of having seen the same, I have put my dated signatures on its each page. In this regard, **<u>I wish to state that I don't know about the commitment letter that is produced before me. I didn't sign any commitment letter stating that I will provide Rs. 37,50,00,000/- to Mr. Ajay Yadav</u>**. Further, it is also submitted that the sign appendant on this **<u>commitment letter against the name "Manish Gautam" is not my sign</u>**. My father may be knowing about the same…"*

(Emphasis supplied)

20. Markedly, from above, it is seen that Mr. Manish Gautam specifically denied awareness of any such commitment letter for infusing the sum amount of Rs. 37,50,00,000/- to Mr. Ajay Yadav, as noted in the aforementioned modified resolution plan, besides denied his signatures on the said commitment letter as well. Similarly, reference is made to statement of Mr. Pradeep Jain (RUD-120), recorded under Section 50 PMLA, where, it was *inter alia* proclaimed by Mr. Jain as under;

"…Q.6. Do you ever have business relations with Mr. Ajay Yadav?

*A.6. **<u>I have no business relations with Mr. Ajay Yadav. Though I have done a little work for his company M/s Sunstar Overseas Ltd, for which 1 received professional fees</u>**. I am also receiving salary from his company Advance India Builders and Promoters.*

*** *** ***

***Q. 13.** Here is a commitment letter signed by you mentioning that you will provide Rs.35 Crore to Mr. Ajay Yadav for CIRP proceedings of Sunstar Overseas Ltd. annexed by Ajay Yadav with his Resolution Plan submitted to RP of Sunstar Overseas Ltd. Please comment and provide details of the same.*

A. 13.** I have seen the document i.e. Commitment Letter shown to me and in token of having seen the same, I have put my dated signatures on its each page…I have identified the signature on the said commitment letter and **<u>I hereby confirm that the signatures on the commitment letter is mine</u>**. Mr. Ajay Yadav directed to sign the paper and **<u>I signed the same without reading the same. I never</u>

committed stating that I will provide Rs.35,00,00,000/- to Mr. Ajay Yadav*. I have no asset other than a flat having value of Rs. 46 Lakh.*

Q.14. *Did you possess assets worth Rs.35 Crore to pledge in the said commitment letter signed by you on the directions of Ajay Yadav?*

A.14. No. I did not possess assets worth Rs.35 Crore. Total assets of me and my family were not worth more than Rs.50 lakhs*…"*

(Emphasis supplied)

21. Strikingly, it is noted from above that Mr. Pradeep Jain, though, admitted his signatures on the aforenoted commitment letter, however, denied of having made any promise to the applicant. Correspondingly, as per Mr. Pradeep Jain, he did not possess the said amount of Rs. 35 Crore to infuse it in the resolution plan, as specified hereinabove. In so far as the funding from Kalptaru Fincap Ltd. to Umaiza is concerned, the complaint specifically notes as under;

"9.11.9. That, from scrutiny of copies of Facility/Loan Agreements (RUD-114) executed between M/s. Kalptaru Fincap Ltd and M/s. Umaiza Infracon LLP and Memorandum for Sanction/Approval of Business Loan of Rs. 50 Crore and Rs.20 Crore (RUD-115), it is revealed that–

(a) In both the agreements, nowhere the date of agreement or date under signature of both the parties is mentioned, not even in the Schedules forming part of the said agreements.

(b) For transaction of Rs.47 Crore dated 7th May, 2019 (mentioned as Rs.50 Crore in schedule), the date mentioned in the stamp paper of Agreement is 14th Oct, 2019.

(c) For transaction of Rs.20 Crore dated 11th Oct, 2019, the date mentioned in the stamp paper of Agreement is 11th Oct, 2019. Further, Application date mentioned in the Schedule attached to Agreement is 20th September, 2019.

(d) In agreement for transaction of Rs.47 Crore dated 7th May, 2019, the Application Date mentioned in the Schedule attached to the Agreement is 29th April, 2019 while as per Memorandum for Sanction /Approval of

Business Loan of Rs. 50 Crore, the sanction in Board Meeting is dated 20th April, 2019.

(e) The Memorandum for Sanction /Approval of Business Loan of Rs. 50 Crore is signed by Naveen Gupta (Director), his wife Sarita Gupta (Director) and his father Jai Kishan Gupta (Director).

(f) The Memorandum for Sanction /Approval of Business Loan of Rs. 20 Crore is signed by Naveen Gupta (Director), his wife Sarita Gupta (Director) and his father Jai Kishan Gupta (Director).

9.11.10. That, from the above ***it thus emerges that the both the agreements for aforesaid fund transfers (alleged loan) were executed only on 14th & 11th Oct, 2019 i.e. after lapse of more than 5 months of 1st fund transfer of Rs.47 Crore. It establishes that the aforesaid agreements were sham and they were designed and documented just to cover up the diversion of 'Proceeds of Crime' to the tune of Rs.67 Crore from M/s. Kalptaru Fincap Ltd. to M/s. Umaiza Infracon LLP****…"*

(Emphasis supplied)

22. Remarkably, it is also noted in the complaint that the applicant involved in diversion, layering and utilization of funds by deployment of entities, which were not even in existence/sham entities/made up entities. In particular, it is specifically noted under the complaint that the applicant deposited Rs. 2 Crore as earnest money deposit (EMD) on 11.03.2019 into designated Karur Vysya Bank account, for which the applicant has no source of funds. In fact, the Rs. 2 Crores were asserted to be those, received under the bank account of the applicant on 25.02.2019 from PNB A/c No. 6700002100001627 (**RUD-122**) of M/s. Alankar Enterprise, Ahmedabad. Notably, as per the complaint, the said amount of Rs. 2 Crore was never returned to M/s. Alankar Enterprise and that in order to ascerrain the genuineness of the said transaction, prosecution had issued summons to Mr. Dineshkumar Ratanlal Prajapati, Proprietor of

M/s. Alankar Enterprise, Ahmedabad (**RUD-127**) to tender evidence. However, the said firm as well as Dineshkumar are proclaimed to have not been located at all the addresses available on his records, despite best efforts. On the contrary, the complaint specifically records that from the period ranging from 25.02.2019 till 05.03.2019, the said fund was layered by the applicant in parts through his multiple bank accounts as well as that on his wife and subsequently, from 08.03.2019 till 11.03.2019, the said layered funds are avowed to have been routed back in parts and integrated into same Axis Bank A/c. No. 911010058906909 of the applicant, who made EMD payment to the designated Karur Vysya Bank account of SOL. Needless to mention that the Facility Agreement, executed between Shivakriti and Umaiza, asserted to be signed/executed by the applicant on behalf of Umaiza, immediately after acquiring SOL pursuant to NCLT's order dated 12.09.2019, depict that Shivakriti transferred a fund of Rs.146 Crore to Umaiza under the cover of loan for a period of 2 years with applicable interest rate of 21% p.a. along with the condition attached that on failure to repay the said amount, shares of SOL would stand transferred to Shivakriti. The said agreement is further stated to be heavily tilted in favour of Shivakriti that it even allows Shivakriti to acquire Umaiza in the event of Shivakriti's choosing not to exercise option of such *'purchase right'* for SOL. for M/s. Sunstar Overseas Ltd. Correspondingly, reference in respect of the foregoing is also made to the relevant statement/noting under the complaint as under;

> *"9.12.9. That, apart from above facts revealed during investigation, <u>it was also disclosed that instead of repayment of aforesaid alleged loan to M/s Shivakriti Agro Pvt. Ltd., Mr. Ajay Yadav,</u> **<u>sought no</u>***

objection (NOC) from M/s Kalptaru Fincap Ltd. in August 2020, to sell off the part portion of assets of M/s Sunstar Overseas Ltd. to M/s Shivakriti Agro Pvt. Ltd. *This shows that there was never an intention on behalf of M/s Umaiza Infracon LLP or of Mr. Ajay Yadav to return the loan extended by M/s Shivakriti Agro Pvt. Ltd., but was to indirectly or directly hand over the control and business of M/s Sunstar Overseas Ltd. to M/s Shivakriti Agro Pvt. Ltd. in word and spirit of Facility Agreement…"*

(Emphasis supplied)

23. 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, while acting in furtherance to conspiracy, connivance, as also upon the instructions of the ex-promoters/directors of SOL to facilitate transfer, layering and/or being indirectly involved in activities related to 'proceeds of crime' through sham transactions, fake entities, sham and bogus agreements, etc. 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

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

in favour of the applicant, *i.e.,* the applicant would not influence the prosecution witnesses or would not tamper with prosecution evidence, especially when the proceedings in the instant case are still at its nascent stage and the crime involved is grave. Needless to mention that the contention of the Ld. Counsel for the applicant that the Facility Agreement was not executed/signed by the applicant are subject matters of trial, which cannot be considered at this stage. Nonetheless, in this regard, reference is made to the statement of co-accused, Paramjeet, recorded under Section 50 PMLA (RUD-137), wherein he *inter alia* asserted as under;

> *"**Q.95** When, where and in whose presence was facility agreement d.t 30.09.2019 signed?*
>
> ***A.95.** The* ***facility agreement was signed on 30.09.2019 in the office of Mr. Rakesh Kumar Gulati by Mr. Ajay Soni, Mr. Ajay Yadav. I and Mr. Rakesh Kumar Gulati also signed on it as witness****…"*
>
> *(Emphasis supplied)*

24. Correspondingly, co-accused, Rakesh Gulati, avowed under his statement under Section 50 PMLA (RUD-138), as under;

> *"**Q.11** What was the objective behind executing Facility Agreement of M/s. Shiva Kriti Fashion Pvt Ltd with M/s. Umaiza Infracon LLP*
>
> ***Ans.** The objective behind executing said Facility Agreement was to transfer the assets as mentioned in the Agreement by Umaiza Infracon LP ot Shivakriti Fashion Pvt Ltd. (renamed as Shivakriti Agro Pvt. Ltd.) against payment of agreed consideration.*
>
> ****   ***   ****
>
> ***Q.17** Who signed the said Facility Agreement dated 30.09.2019? Who else were present when they signed the agreement?*
>
> ***Ans. Mr. Ajay Yadav of Umaiza Infracon LLP and Mr Ajay Soni of Shiva Kriti Fashion Pvt Ltd. (renamed as Shivakriti Agro Pvt Ltd.) signed the said agreement****.*
>
> ****   ***   ****

Q.20 Who else were present in the meeting apart from signing persons?

Ans. Apart from signing persons, Paramjeet and myself were only present there…"

(Emphasis supplied)

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

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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.***

applicant to satisfy the twin condition under Section 45 of PMLA, this Court does not deem it fit to grant bail to the applicant at this stage. At this stage, it is further apposite to note here that, though, this Court holds highest regard for the judgments 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, Ajay Yadav 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, Ajay Yadav 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, Ajay Yadav. 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: 2025.01.20 16:22:14 +0530

(Abhishek Goyal)
ASJ-03, Central District
Tis Hazari Courts, Delhi
20.01.2025