



2024:DHC:7114



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

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*Reserved on: 3rd September, 2024
Pronounced on: 17th September, 2024*

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BAIL APPLN. 2761/2024

AMANDEEP SINGH DHALL
s/o BRINDER PAL SINGH DHALL
E-38, KALINDI COLONY
DELHI-110065

.....Petitioner

Through: Mr. Dayan Krishnan and Mr. Sidharth Aggarwal, Sr. Advocates with Mr. Tanveer Ahmed Mir, Mr. Vedanta Varma, Mr. Adit Pujari, Mr. Shashwat Sarin, Mr. Shaurya and Mr. Manvinder Singh Shekhawat, Advocates

versus

DIRECTORATE OF ENFORCEMENT
THROUGH ITS DIRECTOR
CENTRAL REGION OFFICE
ROOM NO.309, C BLOCK, PRAVARTAN BHAWAN
11, A.P.J.ABDUL KALAM ROAD
NEW DELHI-110011

.....Respondent

Through: Mr. Zoheb Hossain, Spl Counsel, Mr. Vivek Gurnani, Panel Counsel, Mr. Kartik Sabharwal, Mr. Pranjal Tripathi and Mr. Kanishk Maurya, Advocates

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present Petition under Section 483 of Bhartiya Nagarik Suraksha Sanhita, 2023 (“BNSS, 2023”) read with Section 45 of the Prevention of



Money Laundering Act, 2002 (*hereinafter referred to as “PMLA, 2002”*) has been filed on behalf of the Applicant seeking grant of regular Bail in ECIR No. ECIR/HIU-II/14/2022 (*hereinafter referred to as “ED case”*) dated 22.08.2022 registered under Sections 3/4 PMLA, 2002 at Police Station HIU, Directorate of Enforcement (*hereinafter referred to as the “said ECIR”*).

2. The Applicant has submitted that he is a highly-educated 50-year-old citizen of India who is holding B. Com. (Hons.) from Hindu College, University of Delhi with early training in the U.K. Graduate Honours and Certifications from Harvard Business School, Masters of International Management and Stanford School of Business, Enterprise Program for Growing Companies (EPGC). The Applicant along with his family, run *M/s Brindco Sales Pvt. Ltd.* (*‘M/s Brindco’ hereinafter*), a successful Company that is engaged in the business of sale and distribution of alcoholic beverages for the last 55 years with strong relationship with leading Indian alcohol manufacturing Companies.

3. ***The brief facts of the case are*** that the GNCTD released the Delhi Excise Policy for the Year 2021-2022 (*hereinafter referred to as the “Excise Policy”*) on 05.07.2021. After the fulfilment of all the procedures of tenders and allotment, the Excise Policy was implemented on 17.11.2021 by the GNCTD.

4. A Complaint addressed to the Union Home Secretary by the Hon’ble Lieutenant Governor, NCTD *vide* D.O. Letter No. SLG/Conf./2022/75 alleging large-scale malpractice and corruption in the framing and implementation of the Excise Policy for the Year 2021-22 and the said Complaint dated 20.07.2022 was conveyed to the Central Bureau of



Investigation (CBI) by the Director, Ministry of Home Affairs, Government of India *vide* O.M. No. 14035/06/2022-Delhi-1 dated 22.07.2022 for necessary enquiry and action.

5. Thereafter, the CBI registered an FIR No. RC0032022A0053 (*hereinafter referred to as* “CBI case”) dated 17.08.2022 under Section 120B of the Indian Penal Code, 1860 read with Sections 7/7A/8 of Prevention of Corruption Act, 1988 at Police Station CBI, ACB, New Delhi against Manish Sisodia and 14 others wherein no allegation wherein were made against the Applicant regarding framing and implementation of the Excise Policy.

6. After five days of registration of the CBI case, the respondent also registered the aforementioned ED case. The Main Prosecution Complaint was filed by the ED on 26.11.2022 against five persons and thereafter 1stSupplementary Prosecution Complaint (‘SPC’ *hereinafter*) was filed on 06.01.2023 wherein it was alleged that the kickbacks were disguised through the issuance of Credit Notes to retailers with no direct transaction history.

7. The Applicant submits that he was arrested on 01.03.2023 by the ED and was duly produced before the Ld. Special Judge, Rouse Avenue Courts, Central District, New Delhi. The 2nd SPC was filed on 27.04.2023, after a month of the Applicant’s arrest wherein he was not made an accused. In the CBI Case, a Supplementary Chargesheet was filed against Five persons including the Applicant. Thereafter on 27.04.2023, 3rd SPC was filed by the ED wherein *M/s Brindco* was arrayed as Accused No. 27 and the Applicant was arrayed as Accused No. 28.

8. It is submitted that after the 3rd SPC, *M/s Brindco* filed a Writ Petition titled *Brindco Sales Pvt. Ltd. v. Govt. of NCT of Delhi & Anr.* W.P. (C)



5954/2023 wherein *M/s Brindco* furnished evidence demonstrating that profit margins calculated by the respondent for sale of liquor based on 12% margin from November 2021 to August 2022 including costs and overheads, was Rs. 85.65 Cr. which was staggeringly different from calculations of respondent which stood at 179.30 Crore. It is emphasised that the ED filed an affidavit corroborating calculation of *M/s Brindco* in the said Writ Petition.

9. It is submitted that eight SPCs were filed arraigning Sh. Manish Sisodia, K. Kavitha, Chanpreet Singh Rayat, Arvind Kejriwal among others. However, investigation *qua* the Applicant stood complete at the time of filing of the 3rd SPC which is apparent from the fact that Respondent has made no reference to the applicant in the subsequent Prosecution Complaints.

10. The Applicant submits that being aggrieved by his illegal detention on 17.04.2023, he filed a Regular Bail Application before the Ld. Special Judge, RAC, New Delhi in the ED Case which was dismissed *vide* Order dated 09.06.2023. Further, the Applicant also sought Default Bail u/s 167(2) of Cr.P.C. before the Ld. Special Judge, Rouse Avenue Court, New Delhi in the ED case which was also dismissed *vide* Order dated 09.06.2023.

11. Subsequently on 25.08.2023 CBI Registered FIR No. RC 0032023A0033 against Mr. Pawan Khatri and Others including the Applicant and his father, Mr. Birendra Pal Singh. It is essential to note that despite being in custody in Tihar Jail from 01.03.2023, he was never interrogated until lapse of 11 months on 11.07.2024 when the Applicant was interrogated by an Officer of the CBI. It is submitted that there is no evidence implicating the Applicant in the alleged offence mentioned in this



FIR except 'self-serving' statements by other co-accused.

12. Further, no recoveries were made from the Applicant; there were no contemporaneous statements recorded involving the Applicant; there is no CCTV footage or audio or any form of record demonstrating the Applicant's involvement and no cash was recovered from the Applicant or his father. The ED conducted raids on 04.07.2023 to 05.07.2023 and recorded Statements under Section 50 PMLA, 2002. The Enforcement Directorate (ED) did not notify the Central Bureau of Investigation (CBI) about the offence until a month later, on 07.08.2023/08.08.2023, which resulted in the FIR being filed on 25.08.2023. Interestingly, the FIR claims there was "no delay" in its registration, despite the ED's complaint indicating that the searches had occurred about a month and a half earlier, on 04.07.2023.

13. Furthermore, the ED continued to investigate the scheduled offense that became the basis for the FIR without promptly informing the relevant jurisdictional agency. During the investigation, the ED seized certain documents and cash between 04.07.2023- 05.07.2023., while the Applicant was in their custody. It is submitted that given this timeline and the lack of supporting evidence, it is evident that the charges against the Applicant are completely baseless.

14. It is submitted that in the CBI Case the Applicant preferred a Regular Bail Application before this Court and *vide* Order dated 19.09.2023 this Court granted the Applicant permission to seek treatment in Private hospital. Thereafter, the Applicant filed an SLP before the Apex Court as the regular bail application had remained pending for approximately 40 hearings. Consequently, the Apex Court directed this Court to decide the Application in an expeditious manner. The Bail Application was dismissed by this Court



vide Order dated 04.06.2024.

15. It is further submitted that the Trial in the case is at the stage of scrutiny of documents which is currently ongoing and the trial is bound to take a long time.

16. The Applicant submits that there was no imminent need or necessity for his arrest as he had joined investigations 32 times *vide* Summons under *Section 50* of PMLA, 2002 with each visit taking 6-8 hours. Further, the Respondent concedes that the first substantial source of information received by the Agency pertaining to this matter originated from Writ Petitions filed by the Applicant.

17. It is submitted that the Respondent has only interrogated the Applicant *once* during his period of incarceration with his last dated of interrogation in the ED case on 16.11.2023, showing that his continued incarceration is not required for further investigation.

18. It is submitted on behalf of the Applicant that there is no necessity for his continued custody as he has been in custody for nearly seventeen months while the investigation has been pending for 2 years, the 7th and 8th SPC have been filed on 17.05.2024 and 28.06.2024, respectively and the record consists of over 215 witnesses and over 500 documents running into tens of thousands of pages, therefore, there is no likelihood of the trial commencing in the near future. It is submitted that prolonged and meaningless incarceration is an unjustified and intolerable violation of Fundamental Right to Life and liberty under Article 21 of the Constitution. Reliance for the same has been placed on Javed Gulam Nabi Sheikh v. State of Maharashtra CrI. App No. 2787/2024 dated 03.07.2024; Sheikh Javed Iqbal v. State of UP CrI. App No. 2790/2024 dated 18.07.2024; Ashutosh Garg v. Union of



India SLP (Crl.) No. 8740/2024; Sanjay Raghunath Aggarwal v. Directorate of Enforcement Crl. Appeal No. 1198/2023; Benoy Baby v. Directorate of Enforcement SLP (Crl.) No. 11644-11655/2023; Abhishek Boinpally v. Directorate of Enforcement SLP (Crim.) No. 9038/2023 and Manish Sisodia v. Directorate of Enforcement SLP (Crl.) No. 8188/2023.

19. It is submitted that the purpose of pre-trial incarceration is not punitive and it is trite law that continued incarceration militates against the fundamental doctrine of ‘presumption of innocence’. Further, several co-accused persons have been enlarged on a bail and therefore, on parity, the Applicant is entitled to bail. Reliance for the same is placed on Orders of the coordinate bench of this Hon’ble Court in C.P. Khandelwal Vs. ED [Bail Application 2470/2022], Dr.Bindu Rana Vs. SFIO [Bail Application 3643/2022] and Ashish Mittal Vs. SFIO [Bail Application 251/2023] as well as Ramesh Manglani Vs. ED [Bail Application 3611/2022].

20. The Applicant submits that there are reasonable grounds to believe that he is ‘not guilty’ of the offence. The grounds of arrest were never furnished to the Applicant and therefore, he is entitled to be enlarged on Bail.

21. It is submitted that *M/s Brindco* had nothing to gain from the change in the excise policy and the contentions of the ED are based on the misconception of their business model as *M/s Brindco* was not a wholesaler prior to the Excise Policy 2021-22 and was merely an agent and power of attorney holder of the wholesaler i.e. the L1 Licensee. It is a fact that only manufacturers would have been eligible for the L1 License and act as wholesalers, therefore the alleged benefit of increased profit margin from 5% to 12% was margin of the manufacturer and not of *M/s Brindco*. It was



only after the Excise Policy 2021-22 came into force that *M/s Brindco* became a wholesaler.

22. It is submitted that under the old Policy, the Applicant and his Company were already making substantial profits of 9.4% and had no incentive to conspire for a possible profit of only 6% out of the 12% under the new Policy. Therefore, it is absurd to suggest that the Applicant participated in a conspiracy to frame a Policy which resulted in it earning a lesser margin.

23. It is further submitted that the Applicant had no role in the formulation of the Excise Policy as it is trite law that mere meetings are not sufficient to prove a conspiracy. Reliance for the same is placed on *Sudhir Shantilal Mehta v. CBI*, (2009) 8 SCC 1; *Kehar Singh v. State (Delhi Admn.)*, (1988) 3 SCC 609; and *Yogesh v. State of Maharashtra*, (2008) 10 SCC 394. Additionally, the initial meeting at Oberoi Maidens occurred on 27.03.2021, by which point the Excise Policy had already been established. The Prosecution Complaint itself mentions that the modified Policy, as detailed in the GoM report, was presented to the Council of Ministers on 22.03.2021. i.e. 5 days prior to the meeting on which the alleged culpability of the Applicant hinges.

24. Further, the ED in its complaint has alleged that the Applicant shared a copy of the policy on WhatsApp on 31.05.2021, before the release of the same in July 2021. It is submitted that in April-May 2021 various WhatsApp groups were created where information regarding the Draft Excise Policy was being circulated *en masse*; singling out the Applicant by ED is blatant cherry picking. Pertinently, the Policy was available in the public domain as early as 22.03.2021 *vide Aabkari Time*. Further, as per Sh. Sharad Reddy



(South Group) in his 164 Cr.P.C. statement clarified that it was K.Kavitha, Arun Pillai, Abhishek Boinpally and Buchi Babu who had the copy of Excise Policy and were involved in making the Policy jointly with leaders of AAP. Thus, WhatsApp chats and statements recorded by the ED show that the Applicant was not the sole recipient of the draft Policy which was already in the public domain.

25. It is also alleged that the Applicant used/destroyed/changed 4 phones in the span of two years. However, detailed answers for the same have been provided by the Applicant to the ED *vide* statement dated 17.11.2022 and various emails. The Applicant states that he had changed his phone in June 2021 on account of damaged camera; in October 2021 he had upgraded to the latest iPhone 13, subsequently in June 2022 phone was changed on account of screen damage and in 2022 the Applicant changed his phone to an iPhone 11 since the CBI had seized his phone.

26. The Applicant submits that ED's allegation that *M/s Brindco* got profits worth Rs. 179.3 Crore as a result of conspiracy by the Applicant, Vijay Nair and the South Group, is wholly misconceived as profits worth Rs. 93.64 Crore out of Rs. 179.3 Crore is profits from sale of foreign liquor which is not even stated to have accrued to the Applicant or his Company as there was no 12% margin on foreign liquor. Further, the remaining profit of Rs. 85.6 Crore emanates from 12% of the profit from sale of Indian-Made Foreign Liquor.

27. It is further stated that ED's allegation Rs. 4.9 Crore in excess credit notes was paid from the 12% profit margin of Rs. 173.9 Crore is already included in the said amount making it double counting error to add this amount separately to the proceeds of crime. Additionally, issuance of Credit



Notes *inter se* the parties is a valid business practice in the liquor Industry.

28. The Applicant submits the ED admits that total amount of Rs. 5.44 Crore was given by *M/s Brindco* to retailers as '*performance linked incentive*' out of total sales of Rs. 674.92 Crore. This amount of purported performance-linked incentives pertaining to the 'South Group' is only to the tune of Rs. 1,57,91,377/-. The discretionary Credit Notes to the extent of Rs. 51,86,509/- out of the amount of Rs. 5.44 Crore, stand accepted as genuine by the ED. The basis for calculation of the Credit Notes in question includes performance linked incentive for Foreign Liquor, which itself demonstrates the falsity of allegations of the ED, as the kickback ought to have been generated from 6% additional profit margin on IMFL.

29. It is submitted that another allegation made by ED against the other co-accused is that one method of facilitating 'kickbacks' was for the distributors to not recover sale proceeds from the retailers which are then written off as bad debts. It is emphasized that unlike *M/s Indo Spirits*, which allegedly declared a bad debt of Rs. 60 crore, from the retailers of the South Group, *M/s Brindco* successfully recovered all its outstanding payments from South Group retailers and has no outstanding is pending on its account. Therefore, the Applicant submits that ED's allegations are purely circumstantial, illogical and inconsistent.

30. It is submitted that the ED alleges that Rs. 2.78 crore was to be paid from *M/s Brindco's* 12% profit margin but was diverted to non-cartel retailer. However, this Rs. 2.78 crore is already part of the Rs. 179.3 crore profits, and including this separately results in double counting. It is submitted that if the said Credit Notes had to be paid to the South Group, and were *instead* issued to other retailers, the same have to be a part of the



alleged extra 6% margin. Secondly, the allegation is false and misconstrued. It is significant to note that the incentive offer was approved and funded by the manufacturer UBL and not issued at the instance of *M/s Brindco*. Further, UBL issued Credit Notes worth Rs. 14.72 Crore, and *M/s Brindco* distributed these as instructed thus, *M/s Brindco* merely passed on the Credit Notes from the manufacturer to the retailers per instructions from UBL. Moreover, if as alleged, such Credit Notes are alleged to not have been received by the 4 Retailers in question, then no cash would have been generated from such Credit Notes. It is submitted that the Applicant has furnished documentary evidence that the concerned retailers concerned themselves have acknowledged receipt.

31. The Applicant submits that the ED merely relies on statements under Section 50 PMLA, 2002 of the co-accused which are essentially inadmissible and are not substantive pieces of evidence without corroboration. Reliance for the same is placed on *Sanjay Jain v. ED* (supra); *Ram Kishan v. Harmeet Kaur and Anr.* (1972) 3 SCC 280 and *Baijnath Sah v. State of Bihar* (2010) 6 SCC 736.

32. It is further submitted that admissible evidence is not *ipso facto* reliable evidence and veracity of such statements are the matters of trial. Reliance for the same is placed on judgments of this Hon'ble Court in *Raman Bhuraria vs. Enforcement Directorate* [Bail Appln. 4330 / 2021 decided on 08.02.2023]; *Parasmal Lodha vs. Assistant Director, Directorate of Enforcement* [Bail Appln. 835 / 2017 decided on 29.05.2017]; *Amarendra Dhari Singh vs. Directorate of Enforcement* [Bail Appln. 2293 / 2017 decided on 05.08.2021]; *Chandra Prakash Khandelwal vs. Directorate of Enforcement* [Bail Appln. 2470 / 2022 decided on 23.02.2023], and *Sanjay*



Jain vs. Directorate of Enforcement [Bail Application No. 3807/2022].

33. It is submitted that the Applicant is entitled to bail on grounds enunciated in Vijay Madanlal Chaudhary & Ors. v. Union of India 2022 SCC Online SC 929 as it satisfies the twin conditions under Section 45 of the PMLA, 2002.

34. It is submitted that non-provision of grounds of arrest entitles the Applicant to be released from custody. Reliance for the same is placed on Pankaj Bansal v. Union of India 2023 INSC 866 and Prabir Purkayastha v. Union of India 2024 INSC 414.

35. The Applicant submits there are no reasonable apprehension that the Applicant is likely to commit any offence while on bail.

36. It is submitted that gravity of offences alleged *per se* is not a ground to deny bail. Reliance for the same is placed on Manish Sisodia (supra); Gurbaksh Singh Sibbi and Ors. v. State of Punjab (1980) 2 SCC 565; Sanjay Chandra v. CBI (2012) 1 SCC 40; Sheikh Javed Iqbal @ Ashfaw Ansari @ Javed Ansari v. State of UP 2024 INSC 534.

37. Therefore, the Applicant has thus made a prayer that he may be granted bail in the ED case.

38. ***The Reply has been filed on behalf of the respondent***, wherein preliminary objection has been taken that the Applicant is not entitled to grant of bail as he has failed to satisfy the twin conditions as laid down under Section 45 of PMLA, 2002. He is a highly influential individual and is accused of commission of a white collar crime and has the potential to tamper with the evidences and influence the witnesses.

39. It is submitted that there exists a reasonable apprehension of crucial evidence being destroyed if the Applicant is enlarged on bail. He is involved



in the commission of grave economic offences and there is ample evidence on record to link him with the commission of offence of money laundering and his release on bail is not warranted. Even otherwise, the likelihood of the Applicant of evading the process of law if enlarged on bail cannot be ruled out. While personal liberty is of paramount importance, the same is not absolute but subject to reasonable restrictions, including the interest of the State and public. Reliance has been placed on behalf of the respondent on the decisions in Vijay Madanlal Choudhary, (supra), State of Kerala vs. Rajesh, (2020) 12 SCC 122 and Rohit Tandon vs. Directorate of Enforcement, (2018) 11 SCC 46.

40. It is submitted that that the Applicant has prior criminal antecedents as the Applicant along with his father have indulged in the bribing of middleman to save themselves from being prosecuted in the present case. It is submitted that as per the evidence collected during the course of the investigations, statements recorded u/s 17 and 50 of the PMLA, 2002, digital evidence of CCTV footage etc. reveal that the Applicant alone gave Rs. 5 Crore to Mr. Praveen Vats (chartered Accountant) to arrange help from ED in respect of the ongoing case, which establishes a *prima facie* case against the Applicant.

41. It is submitted that the Applicant was involved in the formation of the Policy which is evident from the fact that he was in possession of the draft Policy on 31.05.2021 despite the Excise Policy officially being released in July 2021, which is proved from the WhatsApp chats found in the phone of Manoj Rai who received the Policy from the Applicant. The Applicant also forwarded the draft Policy to BenoyBabu with whom he was actively discussing the provisions of the Policy.



42. Further, it is submitted that the Applicant played a key role in coordinating meetings relating to formulation of the Excise Policy including the meeting on 27.03.2021 at *Oberoi Maidens Hotel* with Vijay Nair and manufacturers such as Benoy Babu of *M/s Pernod Ricard*, Jagbir Sidhu of *M/s Diageo* etc. and Meeting in May 2021 at Gauri Apartments wherein the Applicant met Abhishek Boinpally, Buchi Babu, Arjun Pandey and Vijay Nair, to discuss changes to Delhi Liquor Policy.

43. It is further claimed that the Applicant had actively participated in conspiracy of kickbacks, payments of the same and its recoupment. The Excise Policy was formulated with 12% profit margin for L1 wholesaler, out of which, 6% profit was earmarked as kickbacks to be given to AAP. The Applicant paid kickbacks to the South Group as part of this scheme through Dinesh Arora, Abhishek Boinpally and Chandan Reddy by issuing discretionary/excess Credit Notes to select few Retailers who were part of the South Group/Cartel. It is submitted that the Applicant gave excess Credit Notes for Rs. 4,89,88,961/- from his profit margin to retailers which were being controlled by South group, which was an indirect way of passing on the kickbacks from their profit margin to recoup bribe of Rs. 100 Crore by the South Group.

44. The Respondent/ED submits that as a consequence of the criminal activities of the Applicant along with other related, individual proceeds of crime of at least 186.98 crore have been generated.

45. It is submitted it is well settled that statements under Section 50 PMLA, 2002 are admissible in nature and can be relied upon at the stage of remand or even to reject bail. Reliance for the same is placed on Vijay Madanlal Chaudhary (supra) ; Tarun Kumar vs. Enforcement Directorate,



2023 SCC OnLine SC 1486; Satyender Kumar Jain vs. Directorate of Enforcement decided *vide* SLP (Crl) 6561/2023; and Rohit Tandon v. Directorate of Enforcement (2018) 11 SCC 46.

46. ***On merits***, all the averments made in the present petition are denied.

47. It is submitted that in light of the active involvement of the Applicant with the South Group in the formulation of the Excise Policy and his active role in conspiracy of kickbacks, the Applicant is not entitled to grant of bail.

48. ***Learned Senior Advocate on behalf of the Applicant has argued in detail and has also filed the Written Submissions*** where it is asserted that the Applicant had no role in the formulation of the Excise Policy. The Ld. Counsel submits that while it is claimed by the ED that *M/s Brindco* got profits worth Rs. 179.3 Crore as a result of conspiracy by the Applicant, Vijay Nair and the South Group the same is incorrect as profits worth Rs. 93.64 Crore out of Rs. 179.3 Cr were profits from sale of foreign liquor and there was no 12% margin on foreign liquor. It is further argued that ED's allegation Rs. 4.9 Crore in excess credit notes was baseless as the issuance of Credit Notes *inter se* the parties is a valid business practice in the liquor industry.

49. The Counsel for the Applicant submits that ED during the investigation in the present ED case, discovered new leads and made a Complaint dated 07.08.2023 which was received by the CBI on 08.08.2023 and consequently FIR No. RC 0032023A0033 was registered on 25.08.2023 wherein it was alleged by Praveen Vats (Chartered Accountant), who's house was raided/searched by the ED on 04.07.2023, stated under *Section 50 PMLA, 2002* claiming that he had received Rs. 5 Crore from the Applicant prior to his arrest is riddled with contradictions as per his Reply to OA No.



943/2023, filed pursuant to search and seizures made on 04.07.2023 and 05.07.2023, he stated that he was not involved in giving or receiving of any bribes specifically from the Applicant. It is vehemently submitted that the Statements of Praveen Vats are contradictory and cannot be relied upon. It is submitted that assuming the allegations made by ED/CBI are correct then the is simply a case where the father of the Applicant was extorted to secure benefits from ED officers while his son was in custody.

50. The Ld. Counsel asserted that as per the Apex Court's observation in Prem Prakash v. Union of India through ED 2024 SCC OnLine SC 2270 the statements of co-accused do not have the character of substantive evidence.

51. Further, it is argued on behalf of the Applicant that there is no evidence whatsoever to establish the role of the Applicant in formulation of Policy. There is no recovery of Policy/GoM Report from the Applicant or from his mobile phone.

52. It is submitted that the stay at Oberoi Hotel during the same period when changes were made in GoM Report, does not prove the Applicant's role in formation of Policy. Only Statements under Section 50 of PMLA, 2002 are there which are not only in material contradiction but also are of the accomplices who are accused in the present case and the same are not reliable.

53. Insofar as the allegations of payment of advance kickbacks are concerned, there is no evidence of the involvement of the Applicant.

54. It is thus submitted that the Applicant not only establishes the twin conditions contained in Section 45 of PMLA, 2002 but also satisfies the triple test.



55. Therefore, it is submitted that the Applicant is entitled to bail.

56. *Learned Special Counsel on behalf of the ED* has vehemently opposed the present petition. The arguments addressed on behalf of the respondent are essentially on the same lines as contained in its *Reply*.

57. It has been re-emphasised that the Applicant was actively involved in the conspiracy and has played an active role in Policy formation and also participated in conspiracy of kickbacks, payments of the same and its recoupment. The detailed transactions have been recorded in the ED case about the handling of the proceeds of crime by the Applicant.

58. It is submitted that during the course of arguments, the Applicant has not even argued that the mandatory twin conditions u/s 45 PMLA, 2002 are satisfied on the facts of his case and has merely placed reliance on *Manish Sisodia v. CBI* 2024 INSC 595; *K.Kavitha v. ED* 2024 INSC 632 and *Vijay Nair v. Directorate of Enforcement* in SLP (CrI.) No. 22137/2024 *vide* order dated 02.09.2024 which do not lay down any thumb rule that bail in PMLA cases has to be granted ignoring all facts and circumstances merely on the ground of long period of incarceration and alleged delay in trial. Therefore, it is submitted that despite the aforesaid Orders of the Hon'ble Supreme Court, the present applicant is not entitled to be released on bail in light of the role and conduct of the Applicant in attempting to influence the investigation as stated in the *Reply*. Further, it is stated that the Delay in trial is directly attributable to the Applicant as held by Ld. Special court *vide* Orders dated 20.01.2024 and 07.02.2024.

59. Furthermore, the offence of Money Laundering is an independent offence and grant of bail in predicate offence has no bearing to the present proceeding.



60. Reliance has been placed on behalf of the respondent on the decisions in Vijay Madanlal Choudhary, (supra), Pavana Dibbur vs. Enforcement Directorate, 2023 SCC OnLine SC 1586, ED vs. Aditya Tripathi, decided vide Criminal Appeal No. 1401/2023 by the Apex Court on 12.05.2023, P. Rajendran vs. Directorate of Enforcement, decided vide Criminal Original Petition No. 19880/2023 by the Madras High Court on 14.09.2022, J. Sekar vs. Union of India & Ors., 2018 SCC OnLine Del 6253, Radha Mohan Lakhota vs. Directorate of Enforcement, 2010 SCC OnLine Bom 1116 and Dr.Manik Bhattacharaya vs. Ramesh Malik &Ors., decided vide SLP (C) 16325/2022.

61. In the end, it is argued that the delay cannot be the sole ground to grant bail even after the Court is of the view that the person is guilty of the offence of money laundering.

62. Reliance has also been placed on the decisions in Tarun Kumar vs. Enforcement Directorate, 2023 SCC OnLine SC 1486, Satyender Kumar Jain vs. Directorate of Enforcement decided vide SLP (Crl) 6561/2023, State of Bihar & Anr. vs. Amit Kumar, (2017) 13 SCC 751 and Religare Finvest Ltd. vs. State of NCT of Delhi &Anr., decided vide CRL.M.C. 796/2021 by the Co-ordinate Bench of this Court on 14.06.2021.

63. Therefore, it is vehemently submitted that the Applicant should not be released on Bail.

64. **Submissions heard and record as well as judgments perused.**

65. It is admitted by the parties that the CBI case was registered on 17.08.2022 under Section 120B of the Indian Penal Code, 1860 read with Sections 7/7A/8 of Prevention of Corruption Act, 1988 at Police Station CBI, ACB, New Delhi against Manish Sisodia and 14 others and the



Chargesheet in the CBI case was filed without arraying him as an accused.

66. The Applicant was arrested on 01.03.2023 by the ED and was duly produced before the Ld. Special Judge, Rouse Avenue Courts, Central District, New Delhi. Pertinently, the Applicant was not made an accused in the 2nd SPC was filed on 27.04.2023, even after a month of the Applicant's arrest. It was only on 27.04.2023, 3rd SPC was filed by the ED wherein *M/s Brindco* was arrayed as Accused No. 27 and the Applicant was arrayed as Accused No. 28 on the allegations that the Applicant was actively involved in the conspiracy of drafting the Delhi Excise Policy 2021-22 and was also actively involved in conspiracy of kickbacks, payments of the same and its recoupment and also that he had undertaken various transactions related to proceeds of crime.

67. The evidence so collected by the respondent is in the nature of statements of the accomplices, witnesses and co-accused persons, many of which have been retracted.

68. It is pertinent to observe that the prosecution Complaint has already been filed against the Applicant in which he has been summoned. The investigations *qua* the Applicant are complete in the present matter.

69. **Moreover, the Applicant** is a highly-educated 50-year-old citizen of India who is holding B. Com. (Hons.) from Hindu College, University of Delhi with early training in the U.K. Graduate Honours and certifications from Harvard Business School, Masters of International Management and Stanford School of Business, Enterprise Program for Growing Companies (EPGC). The Applicant along with his family run *M/s Brindco Sales Pvt. Ltd.* (*'M/s Brindco' hereinafter*), that is engaged in the business of sale and distribution of alcoholic beverages for the last 55 years with strong



relationship with leading Indian alcohol manufacturing Companies. The Applicant has *deep roots in the society* and is *not a flight risk* and has business and professions which are based in India and he is not likely to abscond from the country.

70. Also, the evidence so collected in the ED case is documentary in nature and there is *no likelihood of his tampering with the witnesses or influencing the witnesses*. Regardless, conditions can be imposed to ensure the Applicant's attendance to face the trial.

71. It is admitted that the Applicant has been behind bars since 01.03.2023, there are around 69,000 pages of documents involved in both CBI and ED matters. Moreover, there are 493 witnesses, who have to be examined on behalf of the prosecution. In the same case, the other accused persons, namely, *Manish Sisodia, K.Kavitha, Vijay Nair, Sameer Mahandru, Arvind Kejriwal* among others have already been admitted to bail in similar circumstances.

72. In the case of *Manish Sisodia v. Directorate of Enforcement* 2024 INSC 595 the Hon'ble Supreme Court observed that prolonged incarceration before being pronounced guilty of an offence should not be permitted to become punishment without trial. It was further observed that fundamental right of liberty provided under Article 21 of the Constitution is superior to statutory restrictions and reiterated the principle that "*bail is the rule and refusal is an exception*". The same has been reiterated by the Apex Court in while granting bail to similarly placed accused under PMLA, 2002 in *Kalvakuntla Kavitha v. Directorate of Enforcement* 2024 INSC 632 and *Vijay Nair v. Directorate of Enforcement* in SLP (Crl.) No. 22137/2024 *vide* order dated 02.09.2024.



73. In Prem Prakash (supra) the Apex Court has held that the fundamental right enshrined under Article 21 cannot be arbitrarily subjugated to the statutory bar in Section 45 of PMLA, 2002 which has been reiterated by the Apex Court while granting bail under the PMLA 2002 in Vijay Nair (supra).

74. Insofar as the role of the Applicant in the present case is concerned, he stands on a better footing than the other co-accused, who have been recently granted bail.

75. The Apex Court in Manish Sisodia (supra) reiterated observation in Gudikanti Narasimhulu v. Public Prosecutor, High Court of A.P. (1978) 1 SCC 240 that the objective to keep a person in judicial custody pending trial or disposal of an appeal is to secure their attendance at trial.

76. The ED case is primarily dependent on documentary evidence which is already seized by the prosecution. Similarly, the apprehension regarding influencing witnesses and that of being a flight risk can be diffused by imposing stringent conditions while granting bail. Therefore, the conditions of triple test are duly satisfied by the Applicant.

77. Considering the above, the Applicant is admitted to bail, on the following terms and conditions: -

- a. The Applicant is directed to be released *forthwith* on bail in connection with the ECIR No. ECIR/HIU-II/14/2022 dated 22.08.2022, registered by the Directorate of Enforcement, subject to furnishing a bail bond in the sum of Rs.10,00,000/- with two sureties of the like amount; to the satisfaction of the learned Special Judge/Trial Court.



- b. The Applicant shall appear before the Court as and when the matter is taken up for hearing.
 - c. The Applicant shall provide mobile number to the IO concerned which shall be kept in working condition at all times and he shall not change the mobile number, without prior intimate to the Investigating Officer concerned.
 - d. The Applicant shall not change his residential address and in case of change of the residential address, the same shall be intimated to this Court, by way of affidavit.
 - e. The Applicant shall surrender his passport with the learned Special Court;
 - f. The Applicant shall report to the Investigating Officer on every Monday and Thursday between 10:00 to 11:00 AM;
 - g. The Applicant shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses.
 - h. The Applicant shall not leave the country, without permission of this Court.
 - i. The Applicant shall not make any attempt to tamper with the evidence or influence the witnesses;
78. Any observation made herein is without prejudice to the trial.
79. The petition is disposed of.
80. The copy of this Order be communicated to the concerned Jail Superintendent as well as to the learned Trial Court.

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 17, 2024