

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

ORDER BELOW EXH.82
(BAIL APPLICATION)

IN
PMLA SPL. CASE NO.377 OF 2021

Mr. Sachin Joshi
S/o Jagdish Mohanlal Joshi,
Age – 37 year, Occ – Business,
R/o – 2001/2002, Tivoli Cooperative Housing,
Society, Central Avenue, Hiranandani Gardens,
Powai, Mumbai-400076 ... Applicant

Versus

1. The Office of Enforcement Directorate
Kaiser-E-Hind, Ground and 4th floor,
Currimbhoy Road, Ballard Estate,
Mumbai-400001.

2. The State of Maharashtra ... Respondents

Appearance:

Mr. Abad Ponda, Ld. Sr. Counsel @ Ld. Adv. Dr. Sujay Kantawala
@ Ld. Adv. Mr. Subhash Jadhav for the applicant.
Mr. Hiten Venegaonkar @ Mrs. Kavita Patil, Ld. Spl. P. Ps.

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

DATE : March 7, 2022.

ORDER

1. Applicant Sachin Joshi is accused No.5 in this case. He is Director of his various companies mentioned in the title of the complaint (Exh.1). ECIR/MBZO-II/20/2020 is recorded against him. He is praying to release on bail under Ss. 167 (2) and 439 of the Cr.P.C. r.w. Ss. 45, 46 and 65 of the Prevention of Money Laundering Act, 2002 (for short 'PML Act').

2. Directorate of Enforcement (for short 'ED') filed say at Exh.82A and strongly opposed the application alleging applicant's involvement of applicant in the offence of money laundering and further to reject the same. Detail points of contest made by ED will be discussed afterwards.

3. It is contention of the applicant that, he was remanded to judicial custody on 22.02.2021. This Court took cognizance of the complaint on 30.03.2021. Eversince till date he has been in judicial custody, but was released on temporary bail for some period. In this way, he contended to allow the application as he is nowhere involved in the offence alleged against him nor anyway connected with Proceeds of Crime. He has been falsely implicated in the case. He has a very good background. He is an actor and has unblemished record. Also he is businessman having his own companies. He was never convicted in any offence etc.

4. Heard at length arguments of Ld. Sr. Counsel Mr. Abad Ponda for the applicant and Ld. S.P.P. Mr. Hiten Venegaonkar in number of sessions. Both of them relied on voluminous documents. Following points arise for my determination. I am recording following findings thereon for the reasons discussed below :-

POINTS	FINDINGS
1. On opposing the application by the Ld. S.P.P. whether the applicant has satisfied that, there are reasonable grounds for believing that he is not guilty of such offence and that, he is not likely to commit any offence while on bail ?	Yes
2. What Order ?	As per final order

REASONS**POINT NO.1.****HISTORY OF THIS APPLICATION.**

5. ED received complaint dt.10/29.07.2020 against Omkar Realtors and Developers Pvt. Ltd (for short 'ORDPL'), its promoters, directors, from Aurangabad Gymkhana Club Pvt. Ltd. (for short 'AGCPL'). From the said complaint it was revealed that, AGCPL through Mr. Mahindra Sampatraj Surana had filed a complaint to Commissioner of Police, EOW, Aurangabad and FIR No.109/2020 under Ss. 406,420 r.w Sec.34 IPC was registered at City Chowk Police Station, Aurangabad on 07.03.2020. It was registered against Mr. Rajendra Mulchand Varma, Mr. Gaurav Vishnukumar Gupta, Mr. Babulal Mulchand Varma, Mr. Kamal Kishore Gokalchand Gupta, Mr. Rahul Maru and Mr. Mohan Subramaniam being promoters/directors and officials of ORDPL. Closure report (summary) dt.10.02.2021 was filed by the Officials concerned of the said police station. Informant of FIR No.109/2020 also filed his consent affidavit dt.12.02.2021 and the same was accepted by the Ld. III J.M.F.C. Court, Aurangabad. On the same day i.e. 12.02.2021 the Court accepted the closure Report (summary).

6. ECIR No.MBZO-II-20/2020 was registered on the basis of FIR No.109/2020 after 6-8 months of the said FIR. Process was issued against accused persons vide order dt.30.03.2021. In the meantime, the applicant filed Bail Application No.183/2021. The Court called medical reports of the applicant from the Jail Authority. On 03.04.2021 the Court (my Ld. Predecessor) granted bail to the applicant on medical grounds. However, the then Ld. Court kept implementation of the bail order in abeyance till 09.04.2021. ED challenged the said order dt.03.04.2021 granting bail to the applicant before the Hon'ble Bombay

High Court in Cr. Application No.127/2021. On 05.05.2021 temporary bail for two months was granted to the applicant by the Hon'ble High Court and he was released from Arthur Road Jail on 07.05.2021. Thereafter he took treatment in Lilavati Hospital. Applicant then filed B.A. (Exh.12). It was objected on the ground of maintainability. On 23.06.2021 the then Court passed order holding that bail application (Exh.12) being not maintainable as the applicant was released on interim bail. Applicant then preferred Interim Application No.2311 of 2021 in Cr. Application No.127/2021 before the Hon'ble High Court and challenged the order dt.23.06.2021 passed by the then Court. Thereafter, he preferred a Special (Crl) No.4482/2021 before the Hon'ble Supreme Court challenging the order dt.05.05.2021 passed by the Hon'ble High Court in Cr. Application No.127/2021. Vide order dt.02.07.2021 the Hon'ble Supreme Court extended the temporary bail granted to the applicant by the Hon'ble High Court until further orders. Applicant then filed application (Exh.72) and sought withdrawal of the bail application (Exh.12), and the same was allowed.

7. The Hon'ble Supreme Court pleased to continue the temporary bail for a period of four months. In the meantime the applicant withdrew interim application No.2311/2021 from the Hon'ble High Court for challenging the order passed by this Court on 23.06.2021. By order dt.21.12.2021 the Hon'ble High Court allowed the applicant to withdraw the Interim Application No.2311/2021 in Cr. Application No.127/2021. Thereafter, applicant challenged the order dt.23.06.2021 passed by this Court regarding maintainability, before the Hon'ble High Court vide Writ Petition No.6732/2021. **The Hon'ble High Court vide order dt.06.01.2022 held that, if the applicant prefers a fresh bail application before this Court alongwith a fresh purshis, this Court is**

to decide the same on its own merits, uninfluenced by the order dt.23.06.2021 passed by the then Court, on the maintainability of the applicant's bail application below Exh.12. In this background the applicant preferred the present fresh regular bail application (Exh.82) on merits before this Court.

8. Ld. Sr. Counsel Mr. Ponda argued his side to maximum extent, when Ld. S.PP Mr. Hiten Venegonkar again raised the question of maintainability, hence, it was decided vide order dt.20.01.2022 being **PRELIMINARY ORDER IN RESPECT OF MAINTAINABILITY OF THE BAIL APPLICATION (EXH.82) AND PURSHIS (EXH.82B)** and this Court decided as follows,

“Filing of fresh application (Exh.82) for bail alongwith Purshis (Exh.82B) is maintainable, but hearing thereof on merits for the remainder (i.e. argument of Ld. S.PP Mr. Hiten Venegaonkar) is deferred to dt. 27.01.2022 till the applicant makes compliance of the order of the Hon'ble Supreme Court, whichever is earlier.”

9. Applicant again approached the Hon'ble Supreme Court vide **Misc. Application No.69/2022 in SLP (Crl.) No.4482/2022**, seeking extension of interim/temporary bail granted by the Hon'ble Supreme Court vide order dt.28.09.2021. The Hon'ble Supreme Court vide order dt.28.01.2022 declined to allow the said application for extension of interim bail. In this way, this part-heard application (Exh.82) was to be continued only after the applicant complies the order of the Hon'ble Supreme Court. In this background the applicant surrendered himself before the Jail Authority. Thereafter, Ld. S.PP Mr. Venegaonkar began his argument and concluded the same. This is in short the history of this bail application and the facts behind it.

10.

GROUNDNS FOR THIS APPLICATION

- a. One of the grounds relates to medical issues of the applicant as he suffers from Anxiety, Asthma, Acid Reflux, Slip Disk and Shoulder Pain. He is under treatment of Dr. Harshad J. Shah over a period of years. For that, medical prescriptions are relied.
- b (i) The applicant has undergone Appendicitis surgery in Dubai. Since he remanded to judicial custody on 22.02.2021, developed grave medical condition like per rectal bleeding. He was tested positive for COVID-19. He had CT severity score of 12/25 (Corads-6), small fat containing paraumbilical hernia, patchy fibrotic infiltrates with ill-defined ground glass opacities noted in bilateral lung fields (Corads-6) and for the treatment of the same the applicant was on injectable antibiotics, anti-viral indications and low dose steroids.

(ii) He has been admitted to Lilavati Hospital, Mumbai for the said treatment, wherein he was in the Critical Care Unit and underwent 72 hours Holter Monitoring which interalia showed three episodes of Tachycardia with Ectopic Ventricular Beats. Ultimately the doctors suggested that, the applicant should undergo a detailed Coronary Angiography.
- c Statement of Mr. Babulal Varma recorded on 29.01.2021 and 30.01.2021 makes it clear that, the loan amount of **Rs.410 Crores** received from YES Bank was completely used for different purposes as stated by Mr. Babulal Varma in his statement **dt.29.01.2021 and 30.01.2021** (Vol.-II, Exh.9, RUD pages 97-113). These statements of Babulal Varma are further confirmed by Mr. Kamal Kishore Gupta in his statement **dt.29.01.2021 and 30.01.2021** (Vol.II, Exh.11, RUD pages 188-189).
- d Utilization of Rs.410 Crores is explained by Surana Developers (Wadala LLP) in the statement (Vol.II, Exh.10, RUD pages 114-187).
- e None of the amounts under the Term Loan of Rs.410 Crores were even given to the applicant in view of statements of Babulal Varma and Kamal Kishore Gupta dt.29.01.2021 and 30.01.2021 recorded under Sec.50 of PML Act.
- f Statement of utilization of Term Loan availed from YES Bank submitted by Surana Developers (Wadala LLP) vide letter dt.29.01.2021 indicates this fact.

- g** Statement of Mr. Satya Mohapatra recorded on **26.02.2021** under Sec.50 of PML Act, (Vol.V, Exh.34 RUD pages 592-594) indicates that, the Term Loan advanced by YES Bank to Surana/Omkar Groups are properly utilized by the said groups.
- h** It is no one's case that, the amount received from YES Bank is not utilized for the redevelopment of the Wadala project and this fact is evident from the statements of Babulal Varma, Kamal Kishore Gupta and Mr. Satya Mohapatra recorded on **29.01.2021** and **30.01.2021**, and **dt.26.02.2021** respectively.
- i** In the FIR No.109/2020 registered with City Chowk Police Station, Aurangabad, there is absolutely no whisper about the applicant nor he is connected with the said FIR in any manner nor he has committed any offence under Sec.420,406 of I.P.C. as alleged therein.
- j** Applicant's arrest was a complete malafide and arbitrary action of respondent No.1 for the said ECIR, when no predicate/scheduled offence exists wherein the applicant is named as an accused or in any manner involved in the alleged dispute between the said first informant and accused persons named in the said FIR No.109/2020.
- k** Applicant is absolutely not concerned with the transactions between the group companies of Omkar and group companies of applicant have nothing to do with the FIR No.109/2020.
- l** Prosecution must clearly specify as to which scheduled offence was committed and substantiate the same with requisite evidence. Prosecution must prove that, the said scheduled offence as specified and proved resulted in generation of 'proceeds of crime' and also the same 'proceeds of crime' were the subject matter of alleged offence under Sec.3 of PML Act. However, the complaint completely lacks of these details.
- m** **Knowledge to the person about the proceeds of crime is necessary. There is no allegation in the complaint that applicant possessed any knowledge about the commission of any scheduled offence or generation of proceeds of crime from any such offence.**
- n** The provision of reverse burden of proof under Sec.24 of PML Act can only be invoked once the initial burden is discharged by the prosecution.
- o** Prosecution has to first prove the 'scheduled offence' and generation of 'proceeds of crime', therefrom which the prosecution has completely failed to prove in the present case.

- p The only allegation in the FIR with respect to the loan of Rs.410 Crore taken from YES Bank by Surana Developers (Wadala LLP) is that, the same was not utilized for the purposes for which it was granted. The very reading of the FIR apparently indicates that, no specific allegation was made in the FIR. If the terms of contract between YES Bank, Surana Developers (Wadala LLP) were not followed, it can be at the most a case of breach of contract; which is of civil nature and cannot be a subject matter of criminal case. Even the allegations in the FIR are considered as it is, there is nothing to show that, any of the expenses made by Surana Developers (Wadala LLP) out of the said amount Rs.410 Crores were made for any unauthorized purpose.
- q Case of ED itself indicates that, Rs.410 Crores received from Yes Bank have been utilized by Omkar Group for the redevelopment of Wadala/Worli Project and the same is evident from the statements of Mr. Babulal Varma, Mr. Satya Mohapatra.
- r Not a single rupee out of Rs.410 Crores has come to the applicant. None of the monies transferred to the applicant and group of companies of the applicant have been transferred from the YES Bank Loan account or even from the sum of Rs.410 Crores. In this way, the applicant is not even a recipient of proceeds of crime.
- s Sum of approximately Rs.87 Crores received by the applicant and his group companies from the group companies of M/s ORDPL has nothing to do with YES Bank loan of Rs.410 Crores. The transactions between the applicant and ORDPL are genuine business transactions as per valid agreements entered into between the parties being the terms sheet dt.15.03.2019.
- t Applicant and his group companies have paid GST of Rs.4,85,45,000/- and TDS of Rs.2,94,50,000/- in respect of the monies received from Omkar Group.
- u All the representatives from YES Bank are made witnesses and not a single person from YES bank has been made an accused, therefore it cannot be said that the bank is complicit and involved with Omkar Group.
- v Alleged sum of approximately Rs.87 Crores that is received by the applicant and his group companies from the group companies of M/s ORDPL, has nothing to do with YES Bank loan of Rs.410 Crores, which is evident from the fact that, some of the amounts were received by the applicant before the disbursement of YES Bank loan amounts to ORDPL. Those amounts, thus, by no stretch of imagination can be out of the alleged Proceeds Of Crime. The first three disbursements were made on 04.08.2016 viz. A) Yes Bank (Processing Fees -Rs.12,60,60,000/-. B) Larsen

& Toubro Ltd. (Civil and Infra Works – Rs.14,00,00,000/- and C) UC Metals (Civil and Infra Works – Rs.11,00,00,000/-). Thus, amounts received till 04.08.2016 by the applicant have no connection with YES Bank money.

- w** No FIR was lodged in respect of the allegations about YES Bank loan and as such ED gets no jurisdiction to investigate the said offence.
- x** Details of utilization of Rs.410 Crores loan taken from YES Bank by ORDPL (complaint page No.114, Exh.10) clearly demonstrates that, the amounts disbursed by YES Bank were spent on specific jobs/works/purposes and the entities to whom the said payments were made are clearly identifiable in the said list, which clearly demonstrates that those funds were never mixed up with other funds of Omkar Group. Therefore, question of these amounts ever coming in the hands of the applicant does not arise.
- y** Large funds have gone out of those amounts to entities such as L & T, Blue Star, Government and Public Sector Undertakings and such other reputed entities. A look at the nature of expenditure and entities who received those funds would show clearly that, all these payments were for business purpose and there is no possibility of any diversion, nor is there any allegation nor there can be any possibility of fund diversion for unauthorized purposes, much less to the applicant.
- z** **In any case, it is apparent that the funds received by the applicant are entirely from sources having no connection with the said sum of Rs.410 Crores received from Yes Bank.** Hence, there is no case made out of receipt of any alleged proceeds of crime by the applicant. Therefore, question of his involvement in money laundering offence does not arise.

These are the main grounds claimed by the applicant for grant of bail.

CONTENTION OF COMPLAINANT-ED.

11. ED contended that, whatever grounds claimed by the applicant are misleading and to hide his involvement in an offence alleged against him. They denied the said grounds in their para wise reply and contended to reject the application.

12. I carefully examined grounds for bail, relevant documents referred by both sides and arguments advanced by both of them. When this application was preferred and pending for hearing, medical ground was one of the main grounds. During the pendency of this application due to initial order dt.20.01.2022 below Exh.82, the matter reached the Hon'ble Supreme Court vide Misc. Application No.69/2022 in Special Criminal No.4482/2021. On 28.01.2022 the Hon'ble Supreme Court disposed of the same observing as follows,

“This application has been filed seeking an extension of interim/temporary bail for a period of six months in view of the serious ill-health of the applicant.

Mr.Mukul Rohatgi, learned senior counsel, referred a medical certificate issued by the Lilavati Hospital and Research Centre on 10.01.2022 and argued that the applicant is suffering from Acute Coronary Syndrome, a precursor towards the risk of a sudden cardiac death apart from various other ailments. He submitted that the applicant is in position to appear before the Court. He requests this Court to extend the interim bail granted for a period of at least four weeks and direct the trial court to consider the application for bail without insisting on surrender by the applicant.

In the facts and circumstances of this case, we are not inclined to allow the application for extension of interim / temporary bail granted by the order dt.28.09.2021.”

In this way, the Hon'ble Supreme Court rejected the medical ground of the applicant. Same medical ground is also made for this application when the matter was pending before the Hon'ble Supreme Court. Considering the observations of the Hon'ble Supreme Court, I am of the opinion that the applicant is not entitled to claim and get bail on medical grounds. Therefore, much discussion on this ground is not necessary.

COMPASS OF INQUIRY OF THIS APPLICATION.

13. Admittedly, this application was filed on the basis of direction given by the Hon'ble High Court **dt. January 6, 2022 in Sachin s/o Jagdish Mohanlal Joshi Vs. The Office of Enforcement Directorate & Anr. (Criminal Writ Petition No.6332/2021)**. The said direction in paragraph No.5 is as follows,

“5. Needless to state that if the petitioner files a **fresh bail application** before the learned Special Judge (P.M.L.A.) alongwith a fresh purshis, **the learned Special Judge to decide the same, on its own merits, uninfluenced by its earlier order dated 23rd June, 2021**. All contentions of the parties are kept open. Parties are at liberty to file compilation of judgments before the learned Judge, on which they propose to rely.”

Admittedly, complainant ED has not challenged this order of the Hon'ble High Court before the Hon'ble Supreme Court. It is, therefore, necessary that past orders if any cannot influence this application and in order to examine the merits, test of applicability of twin conditions under Sec.45 (1) (i) and (ii) of PML Act is required to be examined. Certainly applicability of twin conditions and attracting rigours thereof is based on prima-facie establishing the foundational facts by complainant-ED. This is compass of inquiry of this application. Therefore, after establishing foundational facts and on giving an opportunity to the learned S.P.P. there should be satisfaction that, there are reasonable grounds for believing that, accused is not guilty of such offence and that, he is not likely to commit any offence while on bail. Certainly thorough examination of merits to conclude the judgment of acquittal is not necessary, but a little and detail survey of case of ED and accused is necessary and inevitable for deciding this application.

**CURRENT SETTLED LEGAL POSITION IN RESPECT OF TWIN
CONDITIONS UNDER SEC.45 OF PML ACT.**

14. When this application was filed, in every other application ED used to argue that, even after **Nikesh Tarachand Shah Vs. Union of India and Anr., (2018)11 SCC 1** rigours of twin conditions under Sec.45 (1) of PML Act attract in bail application. It was also used to be argued on accused side that, amendment after Nikesh Tarachand Shah neither revive nor resurrect the twin conditions under Sec.45 (1) of PML Act. Even the same situation was there when this application was filed. Recently in the case of **Ajay Kumar Vs. Directorate of Enforcement, (2022) SCC OnLine Bom 196** Hon'ble Division Bench of the Hon'ble Bombay High Court has held that, the twin conditions mentioned in Sec.45 (1) of the PML Act would revive and operate by virtue of Amendment Act which is on date in force. Therefore, the Court has to examine the application as per the twin conditions under Sec.45 (1) of PML Act. Ld. Sr. Counsel Mr. Ponda fairly submitted that, twin conditions have been revived and he will restrict his argument and submissions on the basis thereof and not on various citations he has relied on while filing this application indicating non existence of twin conditions. However, he submitted that even in order to attract rigours, it is for the complainant-ED to show that the present applicant is directly or indirectly involved in any of the stages of the process of money laundering for ex. Placement, layering, integration of the Proceeds of Crime, only then the question of attracting rigours of twin conditions will arise.

CASE ALLEGED IN THE COMPLAINT AND SAY (EXH.82A) OF ED.

15. ECIR/MBZO-II/20/2020 was recorded on 16.12.2020 based on FIR No.109/2020 in respect of scheduled offence registered

with City Chowk Police Station, Aurangabad. In its investigation it was revealed that, accused Babulal Varma and others have laundered Rs.410 Crores. This amount of Rs.410 Crores was in fact a loan granted by YES Bank to ORDPL. It was not utilized for the purpose for which it was granted, but the same was siphoned off and projected as untainted. Therefore, this amount Rs.410 Crores is Proceeds of Crime (POC). Present applicant has received an amount of Rs.80 Crores from ORDPL, which is part of Proceeds of Crime and used it for the personal business expenses. This Rs.80 Crores was transferred from the accounts of ORDPL, out of which part amount was transferred into the account of Sachin Joshi and part amount was transferred into the account of Viking Group of companies, in which the applicant was Director. An amount of Rs.48 Crores approximately was transferred for the purpose of investment and an amount of Rs.31 Crores (approx.) was transferred for the purpose of facilitation of fee for evacuation of tenements, settlement of non-eligible tenants, resettlement in permanent accommodation, brokerage etc. In this way, ED contended that the role attributed to the applicant is in respect of placement and layering of proceeds of crime (POC).

FOUNDATIONAL FACTS TO BE SHOWN BY ED PRIMA FACIE.

16. Applicant has specifically contended that, he has not received a single penny out of POC i.e Rs.80 Crores (approx.) which was out of YES Bank loan Rs.410 Crores. Therefore, in order to claim rigours under Sec.45 of PML Act initially ED has to justify these foundational facts with documents like Bank Statements etc.

17. Case alleged against the applicant in the complaint and documents is that, he is recipient of POC. Complaint clearly indicates

that, applicant Sachin Joshi is noway concerned with the Process of Generation of POC. Ld. Sr. Counsel Mr. Ponda specifically argued that, the applicant is not concerned with the case and allegations against accused Babulal Varma and Kamal Kishore Gupta. In order to justify their case, prima-facie burden is on ED to show that out of Rs.410 Crores (POC) Sachin Joshi received a single rupee. He further submitted that, oral statements under Sec.50 of PML Act and the transactions mentioned therein, should be corroborated by the documents and account statements. This exercise can be done by actually comparing entries in various bank statements pertaining to the applicant Sachin Joshi and further comparing them with flow charts given in the complaint. According to ED money came from POC to the account of Sachin Joshi. ORDPL has many bank accounts as they have huge construction business and activities having dealings with various agencies.

18. Ld. Sr. Counsel Mr. Ponda further submitted that, whatever amounts Sachin Joshi had received, are through bank accounts of Omkar Group. Therefore, ED has to point out the trail of money firstly from the loan amount of Rs.410 Crores to Rs.80 Crores. Secondly from Rs.80 Crores to various accounts of ORDPL (for ex. ICICI). Thirdly, from accounts of ERA Realtors, Accord Builders, Shri Nidhi, Rock Spaces and ORDPL to applicant Sachin Joshi. Bank statements have clear entries to show the inflow of the amounts alongwith its source to the accounts of applicant Sachin Joshi. Prima-facie such entires are the best evidence of its source and roots. I carefully examined this aspect. Basically, all the monetary transactions are there in the bank statements of Sachin Joshi. It is necessary to examine by tallying bank entries, (a) whatever sum of Rs.80 Crores out of Rs.410 Crores from YES Bank

was initially transferred from YES Bank A/c No. 1000180200001099 of ORDPL in the account of ICICI of ORDPL, (b) From ORDPL's ICICI it was transferred to the accounts of ORDPL Group Companies for ex.- Accord etc. and then (c) From the said Group companies of ORDPL in the account of applicant Sachin Joshi and his group companies.

19. Basically initial burden is on ED to justify their contention alleged in the complaint and Provisional Attachment Order (PAO). Therefore, it is obligatory on the part of ED to prima-facie show bank entries relating to flow of money, its source and roots. Mere vague statements that Rs.410 Crores loan amount given by YES Bank is POC and Rs.80 Crores thereof gone to the account of applicant Sachin Joshi are not sufficient as bank entries are the best evidence. The complaint contains only flow charts without details of bank entries corresponding the amounts mentioned therefor. Whatever contended in the complaint has to be prima-facie justified with the help of bank entries disclosing the incoming and outgoing flow of tainted money i.e. POC Rs.410/Rs.80 Crores. In view of twin conditions under Sec.45 (1)(ii) of PML Act, whenever bail application is to be decided, there should be a subjective satisfaction of the Court for arriving at a concrete conclusion as to whether there are reasonable grounds for believing that applicant is not guilty of such offence and that he is not likely to commit any offence while on bail. Exercise of such tally and cross-checking of account statements of ORDPL as well as applicant Sachin Joshi is therefore inevitable. The inquiry under Sec.45 (1) of PML Act is a short survey to examine whether complainant-ED has made out any case to attract rigours of twin conditions under Sec.45 (1) of PML Act. Even if it is a long and lengthy exercise, yet doing the same is inevitable and has no excuse.

**ACCOUNTS AND STATISTICS ABOUT THE TRAIL & SPENDING OF
Rs.410 CRORES (POC) AS SPECIFICALLY ALLEGED IN THE
COMPLAINT.**

20. Case pleaded by ED in their complaint plays an important role. It is their own case about generation of POC and its distribution based on statements under Sec.50 of PML Act, which they alleged on page No.15 paragraphs No.10.8 and 10.09. Same are reproduced below as ready reckoner.

- 10.8 The statement of Shri Babulal Varma was recorded on 29.01.2021 and 30.01.2021 (copy enclosed as Exhibit-9) under Section 50(2) and 50 (3) of PMLA, wherein he inter-alia explained the details of utilization of Rs.410 Crores taken from Yes Bank, submitted by M/s Surana Developers LLP vide letter dated 29.01.2021 (copy enclosed as Exhibit-10). The details of which are as under:-

Particulars	Amount (Rs.)
Expenditure incurred	397,60,13,661
Yes Bank Facility Fees & Service Tax on Facility Set Up	12,60,00,000
Yes Bank Loan	410,20,13,661

- 10.9 Further, Shri Babulal Varma stated that the funds of Rs.410 Crores have been used for Worli and clubbed schemes in respect of 1973 Project. The major expenditure being Rs.1,01,73,70,018/- towards civil and infra works; Rs.48,66,25,491/- towards interest on loan; Rs.28,83,47,204/- towards Finishing works such as tiling, marble laying, gypsum, painting, doors, handles, masonry, granite laying etc.; Rs.26,84,91,604/- towards MEP works which includes mechanical electrical, plumbing & fire fighting works; Rs.17,95,55,316/- towards payment of Direct and Indirect taxes alongwith Service tax, VAT, custody duty etc.; Rs.17,60,86,750/- to Slum Rehabilitation Authority towards approvals of Worli 1973 and all the Clubbed scheme namely – Worli main Scheme, Ganeshwadi, Sheikh Mishree and Anand Nagar in Wadala; Rs.24,10,06,674/- towards facade works; Rs.12,60,00,000/- to Yes Bank was towards processing fee; Rs.11,39,96,297/- to Aurangabad Gymkhana as per MOU dated 7th Nov, 2015; Rs.18,44,21,151,- towards procurement of materials such as steel, marbles and other building material used in construction of 1973 Worli sale building and Worli Mahalaxmi CHS SRA Rehab building along with these major expenditure, he also explained the details of various other expenditure. **He further**

stated that all the expenditure out of the term loan of Rs.410 Crores were incurred towards the construction of 1974 Worli sale building and Worli Mahalaxmi CHS SRA Rehab building.

It is therefore, clear that whole term loan of Rs.410 Crore (POC) disbursed by YES Bank was utilized for two projects – 1973 Worli Sale Building and Worli Mahalaxmi CHS SRA Rehab building. Admittedly, case of complainant-ED in respect of applicant Sachin Joshi is that, he has not played any role in generation of POC. Admittedly, name of Sachin Joshi is not even mentioned in the FIR of schedule offence lodged at Aurangabad. The role attributed to Sachin Joshi is that, he is a recipient of POC and not a generator thereof. It is also necessary for ED to show that, whatever amounts received by applicant Sachin Joshi were received with knowledge that the said amounts pertain to POC Rs.410 Crores. Initial burden is on ED to at least justify the foundational facts alleged in the complaint that Term Loan of Rs.410 Crores granted by YES Bank is basically POC. Babulal Varma and Kamal Kishore Gupta after receiving the first disbursement of the said loan on **03.08.2016**, inserted this dirty money into the financial system amounting to placement thereof, which is one of the important steps in the process of money laundering. It is also necessary for ED to clarify and prima-facie show that, after placing such dirty money (Rs.410 Crores) the said POC were separated from their criminal origin by moving them through a series of financial transactions in order to make it harder to establish a connection between them, amounting to layering, the third important stage in the process of money laundering. Fourth and last stage the ED has to prima-facie show with the help of foundational facts alleged in the complaint coupled with relevant bank documents that, such generated, placed and layered proceeds were legitimately explained for the source of funds allowing them to be

retained, invested or used to acquire goods or assets, amounting to Integration. So it is for the ED to prima-facie show that, the present applicant has role and he is part of these stages with knowledge that he is dealing with the POC directly or indirectly.

21. In order to examine this aspect, it is necessary to refer contention of ED in **Provisional Attachment Order : PAO / MBZO-II/01/2022 dt. January 14, 2022**. In paragraph No.3.8 thereof ED contended that, YES Bank Ltd. released the said loan of Rs.410 Crores in five tranches and also given the table thereof alongwith date and amount of each trench. Paragraph No.5 has heading '**Money Trail of the Proceeds of Crime**'. I am reproducing paragraphs No.5.1, 5.2 and 5.3 of PAO as it is to understand the case alleged by ED in their complaint and PAO, which is as follows,

5.1 And whereas the investigation conducted so far revealed that Yes Bank Ltd. has disbursed a loan of Rs.110 Crore into the Bank Account No.005863700000044 of M/s Surana Developers Wadala, LLP in a single transaction held in the Yes Bank Ltd. and amount of Rs.300 Crores was disbursed into the Bank Account No. 5863700000802 of M/s Surana Developers Wadala, LLP in four tranches held in the Yes Bank Ltd. Thus, a total of Rs.410 Crores was disbursed by the Yes Bank Ltd. In 5 tranches, the details of the same are shown in Table No.1 below :-

Sr. No	Bank Account Number	Name of the Account Holder	Date of Transaction	Amount (in Rs.)
1	005863700000044	Surana Developers, Wadala	03.08.2016	1100000000
2	5863700000802	Surana Developers, Wadala	31.08.2016	150000000
3	5863700000802	Surana Developers, Wadala	30.09.2016	1000000000
4	5863700000802	Surana Developers, Wadala	30.12.2016	1000000000
5	5863700000802	Surana Developers, Wadala	21.03.2017	850000000

5.2 Immediately after the disbursal of the funds of Rs.410 Crores, an amount of Rs.310 Crores was transferred into the Bank Account No.1000180200001099 of M/s ORDPL held with Yes Bank Ltd., and an amount of Rs.100 Crores was transferred into the Bank Account No.1000181300002334 of M/s ORDPL held with Yes Bank Ltd. The details of the transfer of Rs.410 Crores from the accounts of M/s Surana Developers Wadala, LLP into the account of M/s ORDPL are shown in Table No.2 below :-

Table No.2

Sr. No	Date of transaction	Funds transferred from Bank A/c No. of M/s Surana Developers Wadala, LLP	Funds transferred to Bank A/c No. of M/s ORDPL	Amt (Rs. in Crores)
1	03.08.2016	005863700000044	1000180200001099	110
2	06.09.2016	5863700000802	1000180200001099	15
3	30.09.2016	5863700000802	1000181300002334	100
4	02.01.2017	5863700000802	1000180200001099	100
5	22.03.2017	5863700000802	1000180200001099	85
		Total		410

5.3 Thereafter, an amount of Rs.100 Crores which was transferred on 30.09.2016 from the Bank Account No. **5863700000802** into the Bank Account No. **1000181300002334** was again transferred into the Bank Account No. **1000180200001099** on 03.10.2016. Thus, the total amount of Rs.410 Crores was transferred into the Bank Account No. **1000180200001099** of M/s. ORDPL.

In this way first two stages in the process of money laundering i.e generation and placement of POC as per the case of ED, indicate that, initially whole amount of **Rs.410 Crores** came in the account of Surana Developers Wadala from **03.08.2016 to 21.03.2017**. These amounts were further transferred from Surana Developers Wadala to ORDPL in their two accounts with YES Bank i.e **A/c No.1000180200001099 and A/c No. 1000181300002334**. In this way ORDPL received Rs.410 Crores as per Table No.2 above i.e **Rs.310 Crores in YES Bank A/c No. 1000180200001099 and Rs.100 Crores in YES Bank A/c No. 1000181300002334**. Again the said Rs.100 Crores in

YES Bank A/c No. **1000181300002334** had been transferred in the YES Bank A/c No. **1000180200001099** of ORDPL. In this way, in A/c No. **1000180200001099** alleged total POC Rs.410 Crores got accumulated.

22. Page No.78 to 91 of complaint are the flow charts of money trail of the Term Loan Rs.410 Crores i.e POC. Annexure A-2 thereof is a chart which indicates that, Sachin Joshi i.e applicant, and his Viking group companies received the amount as follows,

- Rs.5,59,78,000/- (Viking Beverage) received from ORDPL,
- Rs.19,38,40,000/- (Sachin Joshi) received (Rs.1,08,00,000/-) from ERA Realtors, (Rs. 1,18,80,000) from Accord Builders, (Rs.9,70,75,000/-) from Shri. Nidhi and from ORDPL.
- Rs.8,56,00,000/- (Viking Aviation) received (Rs.50,00,000) from Roshni Developers, and remaining from ORDPL.
- Rs.15,26,70,000/- (Viking Media) received (Rs.50,00,000) from Roshni Developers, (Rs.1,40,00,000) from Omkar Venture and remaining from ORDPL.
- Rs.6,40,00,000/- (Viking Corp.), received (Rs.7,59,00,000) from Rock Spaces and remaining from ORDPL.
- Rs.46,40,000 (Viking Ventures) received from ORDPL.
- Rs.2,60,00,000/- (Viking Building) received from ORDPL.

Thus, it is clear that, applicant Sachin Joshi received Rs. 5,59,78,000 + Rs. 19,38,40,000 + Rs. 8,56,00,000 + Rs. 15,26,70,000 + Rs. 6,40,00,000 + Rs.46,40,000 + Rs.2,60,00,000 = **Total Rs. 58,27,28,000.**

23. Flow Chart (Annexure-A3) at page No.81 of the complaint indicates following details :-

“Applicant Sachin Joshi in his Axis Bank Account received Rs.11,60,80,000 from ORDPL, Rs.1,08,00,000 from ERA Realtors, Rs.1,18,80,000 from Accord Builders and Rs.9,70,75,000 from Shri Nidhi Concept Realtors.”

These are ORDPL Group companis. In this way, applicant Sachin Joshi received Rs. 11,60,80,000 + Rs. 1,08,00,000 + Rs.1,18,80,000 + Rs.9,70,75,000 = Toral **Rs.23,58,35,000** from ORDPL, ERA Realtors, Accord Builders and Shri Nidhi Concept Realtors.

The Total of amounts shown in the Flow Chart (Annexure A2 and Annexure A3) of the complaint, thus comes **Rs. 58,27,28,000 + Rs.23,58,35,000 = Total Rs.81,85,63,000**. In this way approximate Rs.80 Crores out of Rs.410 Crores of Proceeds of Crime came to the applicant Sachin Joshi, as alleged in the complaint and PAO, is the case of ED. At the cost of repetition it is also the case of ED that, this amount of Rs.410 Crores came to the account of ORDPL YES Bank from Surana Realtors, as per tables mentioned above. Thus, sum of Rs.410 Crores was with ORDPL in their **A/c No. 1000180200001099** and thereafter it was flown from the **A/c No. 1000180200001099** in the accounts ORDPL and from where, it further trailed in the various accounts of Sachin Joshi and his group companies, is the precise case of the complainant. Certainly in order to prove these foundational facts, it is obligatory on the part of ED to show the flow of money from YES Bank **A/c No. 1000180200001099** of ORDPL into the accounts of ERA Realtors, Accord Builders, Shri Nidhi, Rock Spaces and again ORDPL. So the flow from ORDPL's YES Bank **A/c No. 1000180200001099** in the account of above entities, has to be established prima-facie even if the case of ED is accepted as it is, as pleaded in the complaint and PAO.

24. Admittedly, except flow charts at page No.78 to 91 with blunt and salient quotation of amounts under corresponding heads, no details how monies Rs.410 Crores in YES Bank A/c No. 1000180200001099 of ORDPL are transferred in ICICI bank accounts of ORDPL and in the bank accounts of ERA Realtors, Accord Builders, Shri. Nidhi, Rock Spaces for their further transfer in various accounts of applicant Sachin Joshi as shown in the flow charts. This is a material foundational fact in order to ascertain the trail of money. In fact complainant is expected to justify their contention by minutely showing transfer and flow of money as referred above. However, they have not done this exercise. On the other hand, Ld. Sr. Counsel Mr. Ponda has made this exercise. For that he produced all bank account statements of ORDPL with other banks. ORDPL being a very big group in the business of construction, has their accounts in various banks for example – ICICI Bank etc. and not only in YES Bank where the POC were accumulated. There is absolutely nothing before the Court to show that, Rs.410 Crores in YES bank A/c No. 1000180200001099 has been ever transferred in the account of ORDPL with ICICI Bank or any other bank. Ld. Sr. Counsel Mr. Ponda filed all relevant bank statements of ORDPL, ERA Realtors, Accord Builders, Shri. Nidhi and Rock Spaces and pointed out with the evidence of entries that, all that what applicant had received from ORDPL is from **ICICI** and other banks, but not a penny from the YES Bank. Therefore, prima-facie it is glaringly evident that alleged monies (POC) transferred to the applicant Sachin from their criminal origin i.e Yes Bank by moving them through a series of financial transactions in order to make harder to establish a connection between them, which is called as layering, is absent in the case of prosecution as alleged in the complaint and PAO.

25. It is necessary to note that, initial burden in respect of foundational facts is on the complainant-ED that, whatever received by the applicant Sachin Joshi is a part of proceeds of crime. There is no dispute that, **YES Bank disbursed the first trench of Term Loan (Rs.410 Crores) to Surana Developers Wadala LLP on 03.08.2016.** Prior to 03.08.2016, neither there was any loan from YES Bank nor any proceeds of crime was generated. Even complainant ED admits this fact and situation. **Alleged Generation of Proceeds of Crime by way of Term Loan for the first time took place on 03.08.2016.** There are two entries showing transfer of money from Omkar Realtors to applicant Sachin. First entry dt. **30.04.2016** in respect of **Rs.1,67,20,000 (net) Rs.1,83,20,000 (gross)** is a transfer from ORDPL having its ICICI Bank A/c No.074005001036 in the account of Sachin Joshi.

26. Similarly second entry dt.02.08.2016 for Rs.1,05,00,000 (net), Rs.1,15,00,000 (gross) is a transfer from ORDPL having its ICICI Bank A/c No.074005001036 in the account of Sachin Joshi. Similarly all other entries in the bank statements pertaining to ORDPL indicating transfer of money from ORDPL to Sachin Joshi is only through ICICI bank of ORDPL. There is absolutely nothing before the Court to show that, Rs.410 Crore (POC) with YES Bank A/c No. **1000180200001099** of ORDPL had ever been transferred in another bank account of ORDPL with ICICI Bank. Yet, all such entries in the statements of various bank accounts of ORDPL are shown as tainted dirty money i.e. POC Rs.410 Crores. On the contrary some of the entries indicate that Piramal Reality Pvt. Ltd. had given loan to ORDPL and applicant received some of the amounts therefrom. There is absolutely no satisfactory bank statements or any other document to show that single rupee Sachin Joshi had received from ORDPL account with YES Bank. It is

contention of applicant that, he and his group companies have many business transactions with ORDPL. Above two entries **dt. 30.04.2016** and **dt. 02.08.2016** and all subsequent entries in the bank statements at page No.391 to 522 of the bail application are basically shown as POC, when POC was not even conceived but born on **03.08.2016** when first trench was disbursed as per the case of complainant-ED.

27. It is very astonishing that many amounts quoted in the complaint and PAO being POC relate to the period prior to the first date of generation of POC i.e. **03.08.2016**. It is necessary to note such entries to understand how ED has put forward their case by making **mingling various amounts** claiming them being POC, **when POC was not even conceived**. When this fact was heavily canvassed by Ld. Sr. Counsel Mr. Ponda, next date Ld. S.P.P Mr. Venegaonkar produced their chart to rebut the same, yet the fact noted above remained unshaken. Following table of the details collected from the bulky chart showing bank entries filed by complainant-ED, **clearly indicates how the amounts shown as POC when POC was not even conceived as per Sec.2 (1)(u) of the PML Act.**

Sr. No	Page No. of Chart submitted by ED	Entry No. in Chart submitted by ED	Date	Amount (Rs.)
1	3	First	26.04.2016	82,02,081
2	6	First	02.08.2016	5,00,00,000
				5,82,02,081
3	27	1	26.05.2016	52,25,000
4	27	2	26.05.2016	1,56,75,000
5	27	3	03.06.2016	1,04,50,000
6	27	4	20.06.2016	38,50,000
7	27	5	28.06.2016	55,00,000
8	27	6	30.06.2016	11,00,000
9	27	7	25.07.2016	3,27,75,000
10	27	8	26.07.2016	1,12,25,000

11	27	9	27.07.2016	58,75,000
				9,16,75,000
12	5	Last	30.04.2016	1,67,00,000
		Total		16,65,77,081

At the cost of repetition the date of first trench of disbursement of Term Loan Rs.410 Crores (POC) is **03.08.2016**. All the above amounts of Rs.16,65,77,081/- **are claimed in the complaint and PAO as proceeds of crime, when POC was not even conceived**. All this ultimately indicates the failure of ED to show that, such amounts and all other amounts which the applicant received from ORDPL are part of layering, integration, (the fourth stage) in the process of money laundering. In this background it will be far fetched to hold that applicant Sachin Joshi was knowing and quite aware that Babulal Varma, Kamal Kishore Gupta and others have generated POC (Rs.410 Crores) and he (Sachin Joshi) is the material link in the process of placement, layering and integration thereof. There is absolutely nothing to point out smurfing and structuring the loan amount of Rs.410 Crores (POC) by way of breaking it up into smaller transactions of Rs.87 Crores and further breaking up the same by making transactions into the companies of ORDPL and Sachin Joshi. There is nothing before the Court for prima-facie holding that whatever received by Sachin Joshi was completely known to him that the same is POC and he is dealing with POC for accelerating the process of money laundering as defined under Sec.2(1)(u) r.w. Sec.3 of the PML Act. Therefore, role attributed to him at Sr.No.3 on page No.66 of the complaint is not prima-facie supported and corroborated by their own documents of ED.

28. In their statements under Ss. 50 of PML Act, Babulal Varma and Kamal Kishore Gupta have elaborately stated the distribution of

Term Loan. Paragraph No.3.8, 10.9 in the complaint indicates that, even ED has also placed its reliance on their statements as such.

29. Complaint and documents clearly indicate that, the monies received from the group companies of M/s Omkar Realtors and Developers Pvt. Ltd. are as per the Term Sheet dt.15.03.2019 and Facilitator Agreement dt.01.04.2016. The said Term Sheet dt.15.03.2019 is at Exh.23 in Vol.IV of the documents filed with complaint. Facilitator Agreement dt.01.04.2016 is at Exh.24, Vol.IV. Careful reading of the Term Sheet indicates that the execution of definitive agreement had to take place after the total amount of Rs.100 Crores was received by the applicant. Till date the applicant has received only Rs.48,87,48,000/- under the said Term Sheet. Under the Facilitator Agreement, the applicant has received around Rs.31,35,95,000/- because his name is lent to the SRA projects as a brand ambassador and for the uses of his name, goodwill, reputation and brand for the said projects. It is pertinent to note that, the applicant and his group companies have paid **GST of Rs.4,85,45,000/-** and **TDS of Rs.2,94,50,000/-** in respect of the monies he received from the ORDPL. In this background and the documents referred above alongwith other so many documents, no where indicate that Group Companies of the applicant were only on paper to facilitate layering and integration of the POC Rs.410/Rs.80 Crores as alleged in the complaint.

30. Ld. S.PP Mr. Venegaonkar pointed out statement of Mr. Sanjay Sethi of M/s. Viking Group of companies recorded under Sec.50 (1) and (2) of PML Act on 29.01.2021 and 30.01.2021, wherein he was asked regarding the purpose of transfer of Rs.87 Crores funds form M/s ORDPL into the accounts of Sachin Joshi and his Viking Group of

Companies. He stated that, part of the funds have come as investment and with respect of remaining part, wherein bills / invoices mention about rendering of SRA related services, he stated that their companies are not into any SRA related activities and no such services are given by Mr. Sachin Joshi.

31. Mr. Venegaonkar further placed reliance on the statement of Mr. Mayank Shrivastava, General Manager – ORDPL recorded on 19.02.2021 who looks after all SRA related works of ORDPL. He stated that, no such name or brand of Mr. Sachin Joshi is or was ever used in Omakr SRA works and he has never heard any of such name or brand nor there is any such trend in SRA projects of using brand name of any celebrity for clearing or rehabilitating the slums. I caerfully examined these statements. Even if these are statements under Sec.50 (1) and (2) of PML Act, yet it cannot be ignored that, basically these two persons are staff of ORDPL (Babulal Varma) and Sachin Joshi. Policy decisions between head of two companies i.e. ORDPL and Sachin Joshi's group companies is a matter between them only. Their staff might not have any knowledge thereof. Yet, the basic question remains because all the transactions are evident from bank statements. Alleged POC Rs.410 Crores were in ORDPL YES Bank A/c No.1000180200001099. There is absolutely nothing to show that, when and how these monies have gone in ORDPL ICICI accounts. Therefore, prima-facie all the bank account statements which is prima-facie best evidence before the Court, do not corroborate the statements under Sec.50 (1) and (2) of PML Act. Eventhough Sec.50(2),(3) and (4) of the PML Act and Sec.164 Cr.P.C. as *pari materia* provisions, yet in the present case such statements have prima-facie no corroboration of the best evidence of all bank transactions referred above.

32. Basically burden of showing this foundational fact is on complainant-ED and the same is not explained with cogent documentary evidence in order to rebut and falsify whatever contended by Ld. Sr. Counsel Mr. Ponda on the strength of bank statements and dates of disbursements.

33. In the aforesaid background, submission on behalf of applicant appears convincing that, the applicant has a peculiar brand value in respect of real estate business. On one hand he is a known film star and on the other hand he has been involved in the real estate business in Mumbai, Goa, Pune and Jaipur for last more than 15 years and successfully completed large number of real estate projects including a four stars hotel in Mumbai, a five stars hotel in Goa, one commercial hotel building in Mumbai. He has also gotton statutory approvals for 1 Million square feet in Jaipur and 3 Million square feet in Pune, and as such he enjoys goodwill and brand value in the real estate business. Ld. Adv. Sr. Counsel Mr. Ponda further argued that, one of the most important factors in any Slum Rehabilitation Project (SRA) is convincing the slum dwellers, both legal and illegal, to handover possession to the developer. The same entails that, large number of slum dwellers should trust the developer. The real estate developers in Mumbai, in order to earn the said Trust, associate any known entity with the project in order to convince the slum dwellers of the trustworthiness. Therefore, face of the applicant being a film actor having successful track record in real estate business, trusted by the common men, has been used. I carefully examined this argument. Considering the huge record of transactions filed with the application, prima-facie indicates that there is substance in the argument of Ld. Sr. Counsel Mr. Ponda. It is also prima-facie justifying that even though ED

alleged companies of applicant as 'paper companies', yet the same does not appear prima-facie probable.

34. I have already made exhaustive discussion how money trail from ORDPL YES Bank **A/c No. 1000180200001099** to ORDPL ICICI Bank is not prima-facie evident from the complaint. Even there is nothing to show that, monies were transferred from ORDPL YES Bank **A/c No. 1000181300002334** into the ICICI Bank accounts M/s ERA Realtors, Accord Builders, M/s. Shri Nidhi, M/s Rock Spaces and M/s. Roshni Developers. Therefore, material two steps of layering and integration are prima-facie missing from the allegations in the complaint and materials supporting it. This is the most important foundational fact which ED failed to establish prima-facie. In the short survey to ascertain eligibility of the applicant under Sec.45(1)(ii) of the PML Act, examining the same is permissible at the stage of bail and there is no other alternative for the same. If the foundational fact is not there, the question of presumption in inter connected transactions under Sec.23 r.w. Sec.24 of PML Act at this stage does not arise. In order to attract rigours of twin conditions under Sec.45 (1) of PML Act, complainant must at least prima-facie show the existence of the above discussed foundational facts. If the same is missing, rigours of twin conditions would not attract.

35. I have already noted above how the applicant did not receive a single penny from ORDPL YES Bank **A/c No. 1000180200001099**. I have also noted how there is absolutely nothing before the Court to point out money trail/layering from ORDPL YES Bank **A/c No. 1000180200001099** to ORDPL ICICI bank **A/c No.074005001036** as well as ORDPL Group Companies' various

accounts from where money had been transferred in the account of Sachin Joshi. Therefore, prima-facie it appears that, applicant is not involved directly or indirectly in dealing with proceeds of crime as defined under Sec.2 (1)(u) r.w. Sec. 3 of PML Act. Therefore, as argued by Id. Sr. Counsel Mr. Ponda, prima-facie it appears that, there are certain business transactions between the applicant, his group companies with ORDPL and their group companies. These transactions have absolutely no nexus with Rs.410 Crores (Term Loan-POC). Bank entries relate to such other transaction having no nexus with POC. Hence, no prima-facie case of money laundering is made out against applicant Sachin Joshi.

36. Ld. Sr. Counsel Mr. Ponda placed his reliance on **Satyam Computer Services Ltd. Vs. Directorate of Enforcement, (2018 SCC OnLine Hyd. 787)**, wherein it is held as, “Assuming that the amount of Rs.822/- Crores constituted the proceeds of crime, the same, even according to the impugned order, had gone out of the company in the form of salaries etc., and it has also mingled with other legitimate sources of incomes. This money had been put into day-to-day use. Once this is clear, we do not now how the Fixed Deposits could be attached. Therefore, the contention that the impugned order contains contradiction in terms, cannot be brushed aside easily.” Somewhat similar situation is here in this case, wherein ED alleged that, Rs.80 Crores out of POC Rs.410 Crores went to the applicant. But there is absolutely no documentary evidence to indicate this travel from ORDPL YES Bank A/c No. 1000180200001099 to ORDPL ICICI bank and further to other group companies of ORDPL having their ICICI bank accounts and at last reaching the same to Sachin Joshi and his group companies. Unless this basic foundational trail is established the

applicant cannot be held responsible for any placement, layering or integration in the process of money laundering.

37. Principal object of the PML Act is 'Confiscation' of proceeds of crime. In the present case, ED has already attached properties of the applicant worth Rs.80 Crores. Hence, part of the object has been already fulfilled. Further everything has been documented in eight huge volumes with the complaint. Co-accused are behind bars since more than a year. There is no certainty that the trial will begin and conclude in near future. In this background and in view of above detailed discussion, I hold that there are reasonable grounds for believing that applicant is not guilty of such offence in order to attract rigours of Sec.45(1)(i) and (ii) of PML Act. Even if the rigours of twin conditions under Sec.45(1) of PML Act are applied, yet the case of applicant is qualified under Sec.45(1)(i) and (ii) of PML Act. Applicant has various immovable properties, establishments and companies in India. If certain conditions are imposed on him, he will not flee from India nor would commit any offence while on bail. In this background Point No.1 is answered in the affirmative and following order is passed :-

ORDER

1. Application (Exh.82) is allowed.
2. Applicant Mr. Sachin Joshi S/o Jagdish Mohanlal Joshi be released on bail in PMLA Spl. Case No.377 OF 2021 (ECIR/MBZO-II/20/2020) by executing PR bond of Rs.30,00,000/- (Rupees Thirty Lakhs Only) and one or two sureties of like amount, and on following conditions,

- i) The applicant shall not leave India till further order.
 - ii) The applicant shall submit his passport with E.D.
 - iii) The applicant shall inform this Court and the Investigating Agency his place of residence and his contact numbers as well as contact numbers of his family members residing with him.
 - iv) The applicant shall attend the office of E.D. whenever called for investigation and every date of the Court, and, shall also cooperate remaining investigation, if any.
 - v) The applicant shall not undertake any acts which will cause prejudice to the proceedings before the Court.
 - vi) The applicant shall not personally or through any other make any attempt to meet witnesses or tamper with evidence.
 - vii) The applicant shall not involve in any activity relating to proceeds of crime.
 - viii) In the event of breach of any of the conditions, the E.D. will be at liberty to prefer an application for cancellation of bail.
- 3) The applicant be released on furnishing provisional cash security of Rs.30,00,000/- (Rupees Thirty Lakhs Only) for a period of two months, with PR bond as directed above.

Dt.: 07.03.2022



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

Signed on

: 07.03.2022

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER”	
07.03.2022 at hours UPLOAD DATE AND TIME	(KISHOR PRAKASH SHERWADE) NAME OF STENOGRAPHER
Name of the Judge	HHJ M. G. DESHPANDE (COURT ROOM NO.16)
Date of pronouncement of judgment/order	07.03.2022
Judgment/order signed by P.O. on	07.03.2022
Judgment/order uploaded on	07.03.2022