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

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**RESERVED ON –11th May, 2023
PRONOUNCED ON -3rd July, 2023**

+ BAIL APPLN. 562/2023 & CRL.M.(BAIL) 269/2023

BENOY BABU

..... Petitioner

Through: Mr. Mukul Rohatgi, Sr. Advocate,
Mr. Siddharth Luthra, Sr. Advocate
with Ms. Ranjita Rohatgi, Mr.
Madhav Khurana, Mr. Vignaraj P.,
Mr. Samarth Luthra, Mr. Anmol
Kheta, Mr. Kauser and Mr. Kumar
Kashyap, Advocates.

Versus

DIRECTORATE OF ENFORCEMENT

..... Respondents

Through: Mr. S. V. Raju, ASG with Mr. Zoheb
Hossain, Special counsel for ED, Mr.
Vivek Gurnani, Mr. Baibhav, Mr.
Kartik Sabharwal, Mr. Bhanupriya
Meena and Mr. Gaurav Saini,
Advocates.



CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

INDEX

S. No	Particulars	Page No
1.	Factual Matrix	2-17
2.	Submissions on behalf of Petitioner	18-22
3.	Submissions on behalf of Respondent/ED	22-24
4.	Finding and Analysis	25-46

J U D G M E N T

DINESH KUMAR SHARMA,J :

BAIL APPLN. 562/2023 & CRL.M.(BAIL) 269/2023

A. FACTUAL MATRIX

1. The present order shall dispose of the bail application no. 562/2023 of *Benoy Babu vs Directorate of Enforcement*”.
2. The bail applications filed by petitioner Benoy Babu was dismissed by the learned Special Judge, PC Act , CBI-09 vide order dated 16.02.2023.
3. Briefly the facts as stated by Enforcement Directorate are as under:
“5. *An FIR No. RC0032022A0053 dated 17.08.2022 was registered by CBI, ACB, New Delhi against Sh. Manish Sisodia, Deputy Chief Minister, GNCTD of Delhi and others under Section*



120B r/w 477A of Indian Penal Code, 1860 and Section 7 of Prevention of Corruption Act, 1988 for irregularities in framing and implementation of the excise policy of GNCTD of Delhi for the year 2021-22.

6. *The FIR is registered on the direction of competent authority conveyed by Shri Praveen Kumar Rai, Director, MHA, Govt. Of India vide OM No. 14035/06/2022-Delhi-1 dated 22/07/22 for enquiry into the matter of irregularities in framing and implementation of the excise policy of GNCTD of Delhi for the year 2021-22. Vide said OM Shri Praveen Kumar Rai has also forwarded DO letter no. SLG/Conf./2022/75 dated 20/07/2022 of Shri Vinai Kumar Saxena, Hon'ble Lt. Governor, GNCTD of Delhi alleging irregularities in framing and implementation of the excise policy of GNCTD of Delhi for the year 2021-22.*
7. *The OM discloses that Shri Manish Sisodia, Deputy Chief Minister, GNCTD of Delhi, Shri Arva Gopi Krishna, the then Commissioner (Excise), GNCTD of Delhi and Shri Pankaj Bhatnagar, Assistant Commissioner (Excise), GNCTD of Delhi were instrumental in recommending and taking decisions pertaining to excise policy for the year 2021-22 without approval of competent authority with an intention to extend undue favors to the licensees post tender.*
8. *In the said FIR it has been inter-alia stated/alleged that:*
 - a. *Sh. Vijay Nair, Former CEO of M/s Only Much Louder, an entertainment and event management company, Shri Manoj Rai, Ex-employee of M/s Pernod Ricard, Sh. Amandeep*



Dhall, Owner of M/s Brindco Spirits & Sh. Sameer Mahendru. Owner of M/s Indo Spirits are actively involved in irregularities in framing and implementation of excise policy of GNCTD of Delhi for the year 2021-22.

- b. Some of the L-1 Licence holders are issuing credits notes to retail vendors with an ab-initio intention to divert the funds as undue pecuniary advantage to Public Servants. In furtherance to this, they are showing false entries in their books of accounts to keep their record straight.*
- c. Shri Amit Arora, Director of M/s Buddy Retail Pvt. Limited, 1402, Tower-15, Vipul Greens, Gurgaon. Haryana, Shri Dinesh Arora Rio Plot No.-139, III Floor. Block-A. Gujrawala Town, Phase-I. Delhi. Shri Arjun Pandey are close associates of Shri Manish Sisodia and are actively involved in managing and diverting the undue pecuniary advantage collected from Liquor Licensees to accused public servants. That Shri Sameer Mahendru, MD. M/s Indospirits has transferred an amount of one crore to account no. 10220210004647 of M/s Radha Industries maintained with UCO Bank. Rajendra Place, New Delhi. M/s Radha Industries is being managed by Shri Dinesh Arora. That Shri Arun Ramchandra Pillai used to collect undue pecuniary advantage from Shri Sameer Mahendru, MD. M/s Indospirit for onward transmission to accused public servant through Shri Vijay Nair. A person named Arjun Pandey has once collected huge cash amount of about*



Rs.2-4 crores from Shri Sameer Mahendru on behalf of Shri Vijay Nair.

- d. M/s Mahadev Liquors, a proprietorship firm was granted L-1 License. Sh. Sunny Marwah is the authorized signatory of the firm. Sh. Sunny Marwah is also director in companies/firms being managed by family of Late Sh. Ponty Chadha. That Sh. Sunny Marwah is in close contact with accused public servants and has been regularly giving undue pecuniary advantage to them.*
- 9. The predicate agency i.e., the CBI has filed a chargesheet dated 25.11.2022 with respect to their investigation done in the above-mentioned FIR no RC0032022A0053 dated 17.08.2022 in the Special Court, New Delhi. The cognizance of the same has been taken vide order dated 15.12.2022.*
- 10. The gist of the CBI chargesheet is as under:*
- a. The CBI has filed chargesheet in respect of the subject FIR on 24.11.2022. In the chargesheet filed by CBI. 6 accused persons have been covered- Sh. Sameer Mahandru, Sh. Vijay Nair. Sh. Abhishek Boinpally. Sh Gautam Mootha, Sh Arun Pillai and Excise officials Sh Kuldeep Singh. Deputy Commissioner, Excise. Sh Narinder Singh, Asst Commissioner. Excise.*
- b. The CBI has found that, a conspiracy was hatched by Sh Vijay Nair along with Sh Abhishek Boinpally. Sh Dinesh Arora and others to get the undue benefits by circumventing the provisions of the policy. That, Sh Dinesh Arora is a*



close associate of Sh Vijay Nair and he participated in multiple meetings took place amongst Sh Vijay Nair. Sh Abhishek Boinpally and others to discuss and plan the conspiracy. In one of these meetings that took place in Hyderabad Sh Vijay Nair told Sh Dinesh is to coordinate with Sh Abhishek Boinpally to transfer Rs. 20-30 Cr approx. to Sh Vijay Nair. That, this payment will be returned by way of getting stakes in business like Indo Spirit and extra credit notes to the retail zones managed by Sh Abhishek Boinpally from Brindco. In that meeting, it was conspired that the wholesale distribution of Pernod Ricard and Diageo would go to Indo Spirits and Brindco respectively That, after the recoupment was over, the 6% kickbacks collected from the wholesale businesses would be divided in half between Sh Vijay Nair and Sh Abhishek Boinpally.

- c. That, in pursuance to the said conspiracy, the money amounting to Rs. 20 to 30 crores was sent to Sh. Vijay Nair and his team between July to September 2021 in cash through hawala channels. Sh. Abhishek Boinpally used to call Sh. Dinesh Arora and tell him a phone number and currency note number, which he used to forward to the team of Vijay Nair and inform Shri Vijay Nair.*
- d. Sh. Vijay Nair instructed the employees of Pernod Ricard India Pvt. Ltd through messages and conversations over phone as well as in person that M/s Pernod Ricard India Pvt Ltd should not give its wholesale distributorship to M/s*



Brindco Sales Pvt. Limited as M/s Diageo is going to award its wholesale distributorship to M/s Brindco Sales Pvt. Limited.

- e. That, Shri Sameer Mahandru introduced Shri Arun R. Pillai and Shri Abhishek Boinpally as potential investors in Indo Spirits who have a backing of Sh. Magunta Srinivasulu Reddy of Balaji Group and Sh Sharad Reddy of Aurobindo Pharma. In this regard, a meeting was held at hotel Taj Mansingh, Delhi on 20.09.2021 in which the employees of M/s Pernod Ricard India Pvt Ltd, Sh. Abhishek Boinpally, Sh. Arun R Pillai, Sh. Sameer Mahandru, Sh. Magunta Srinivasulu Reddy, Sh Sharad Reddy and others were present.*
- f. When these persons applied for L1 license under the name of Indo Spirits Marketing Pvt Ltd, there were certain complaints mentioning cartelisation and EMD cross funding against Indospirits and Khao Gali and its promoter Sh Sameer Mahandru. The Excise officials issued a SCN but only partially covered the issues in the complaint with an intention of deliberately favouring the entity. That, the license of Indospirits was issued in conspiracy of Sh Vijay Nair, Sh Dinesh Arora, Sh Sameer Mahandru and the Excise officials.*
- g. That. Sh Sameer Mahandru formed a cartel through his entities Khao Gali, Indospirit Marketing Pvt Ltd. In violation of the Excise Policy 2021-22. That, the excise*



officials granted LI license to Indospirits without properly processing the file and collecting the requisite documents as well as without properly addressing the complaint against M/s Indospirits in lieu of Rs 30 lakh bribe taken by Sh Narender Singh from. Sh Sameer Mahandru and on the influence exerted by Sh Vijay Nair and Sh Dinesh Arora.

- h. That, Sh Abhishek Boinpally had threatened Sh Jagbir Sidhu of Diageo withdraw various complaints petitions filed anonymously/pseudonymously who he believed to have been filed by Sh Aman Dhall of Brindco, who was the wholesaler for Diageo else, Sh Abhishek Boinpally would blacklist Diageo from the 9 retail zones he was managing or was a part of. And that, he will get the wholesale license of his wholesale distributor M/s Brindco Sales and they will get it cancelled from the Excise Department.*
- i. That, the part of the profits accrued from Indospirits have been transferred to Sh Arun Pillai, which was basically a recovery of the kickback given in advance. That, part of that sum has reached Sh Abhishek Boinpally through Sh Gautam Mootha of India Ahead and Andhra Prabha Publications. This amount is now being claimed as a loan reversal from Gautam Mootha to Abhishek however there is no loan agreement between them. Part of the profits of Indo Spirits to the tune of Rs. 1.70 Cr has directly reached India Ahead and Andhra Prabha Publication. That, this money is of Rs. 1.70 Cr is repayment towards the upfront money sent by Sh.*

Abhishek Boinpally to Sh. Vijay Nair as Sh. Abhishek Boinpally has investment and interest in M/s Andra Prabha Publications Pvt Ltd and M/s India Ahead News.

j. Therefore, it is clearly revealed that Sh. Vijay Nair hatched a conspiracy with Sh. Dinesh Arora, Sh. Abhishek Boinpally, Sh. Arun R Pillai, Sh. Sameer Mahandru, Sh Mootha Gautam. Sh Kuldeep Singh, DC and Sh Narender Singh, AC and in pursuance of the same by using his position in the ruling party at Delhi took advance money of Rs 20-30 crores from Sh. Abhishek Boinpally through Sh. Dinesh Arora and in lieu of the same influenced the officers of M/s Pernod Ricard India Pvt Ltd as well as the officers of Excise Department of GNCT of Delhi to get the distributorship of M/s Pernod Ricard India Pvt Ltd and LI license for M/s Indo Spirits for which the same was not entitled.

11. Since the Section 120B of the Indian Penal Code, 1860 and Section 7 of the Prevention of Corruption Act. 1988 are scheduled offences under the Prevention of Money Laundering Act (PMLA), 2002, the Directorate of Enforcement has initiated an investigation in the matter by recording an ECIR No. ECIR/HIU-II/14/2022 on 22.08.2022. The investigation under PMLA is being conducted by the Directorate for tracing out Proceeds of Crime generated and laundered due to the alleged irregularities in the formulation and implementation of the Excise policy 2021-22. Further, ED has filed a Prosecution



Complaint dated 26.11.2022 arraying Sameer Mahandru and others as accused before the Hon'ble Special Court (PMLA). The Ld. Court has taken cognizance of the same vide its order dated 20.12.2022. Thereafter, 1st Supplementary Prosecution Complaint dated 06.01.2023 has been filed against Sh. Abhishek Boinpally and others before the Hon'ble PMLA Court. During the investigation, several searches have been conducted, statements have been recorded. ED has provisionally attached properties to the tune of Rs. 76.54 crores vide PAO No. 02/2023 dated 24.01.2023. The investigation done by ED has revealed as under:

- a. PMLA investigation done so far has revealed that, the Delhi Excise Policy, 2021-22 was created by the top leaders of the AAP to continuously generate and channel illegal funds to themselves. The extent of involvement and abatement done by the leaders of the AAP of the criminal activities undertaken by the accused further substantiates their design and scheme of the scam. The policy was formed with deliberate loopholes to facilitate illegal and criminal activities.*
- b. The policy promoted cartel formations through back door, awarded exorbitant wholesale profit margin @12% and huge retail profit margin of 185% and incentivized other illegal activities on account of criminal conspiracy by the top leaders of AAP to extract kickbacks from the businesses.*
- c. As disclosed by C. Arvind, DANICS, Secretary to Manish Sisodia, in his statement dated 07.12.2022, the draft GoM*

report was given to him in the mid of March 2021 when Sh. C Arvind was called by Manish Sisodia to the residence of Arvind Kejriwal, CM (where Satyender Jain was also present). The conspiracy of the GoM to give wholesale business to private entities and fix 12% margin (to get 6% kickback out from the same) is clear from the statement of C. Arvind wherein he disclosed that there was neither any discussion in the GoM meetings about giving wholesale to private entities nor fixing 12% profit margin for them. He further stated that it was the first time that he saw these proposals in the draft GoM report (i.e. document handed over to him) and he was directed to prepare the report on the basis of the said document.

- d. Due to the policy framework, where one manufacturer could only choose one wholesaler gave the manufacturers' a very critical position to decide the profits of the wholesale businesses. Though the manufacturers seemingly were supposed to take this crucial decision on their own as per their choice, but, this investigation has revealed that Pernod Ricard (one of the Accused), one of the biggest manufacturers in the country, also a subject of the ongoing investigation, was in fact directed by and conspired with Sh Vijay Nair to give their wholesale distribution business to the accused M/s Indo Spirits (L1 wholesaler), which is a part of the Super Cartel including Sh. Abhishek Boinpally.*
- e. Sh Vijay Nair, who has orchestrated this entire scam is not an ordinary worker of the AAP but a close associate of Sh Arvind*

Kejriwal, the CM of Delhi and was closely interacting with the Dy CM for the Excise policy related matters. Sh Vijay Nair, as per his statement under section 50 of PMLA, 2002 functions from the camp office of Sh Arvind Kejriwal, CM, Delhi. Further, Sh Vijay Nair, since 2020, has been residing in the Govt bungalow allotted to a Cabinet Minister of Delhi Govt, Sh Kailash Gehlot, part of GoM of Excise Policy 2021-22. Sh Vijay Nair, does not have any other residence in Delhi. Irony being, Sh Gehlot lives at another private residence in Najafgarh.

- f. Sh Vijay Nair had arranged meeting of the owner/controller of Indo Spirits Sh Sameer Mahandru, with Sh Arvind Kejriwal, CM, Delhi and when that didn't materialise, he arranged a video call through facetime on his phone for Sh Sameer and Sh Arvind Kejriwal, where Sh Arvind said to Sh Sameer that, Vijay is his boy and that Sh Sameer should trust him and carry on with him. These facts are relevant to mention so as to establish the abatement of his actions in relation to the Excise Policy scam, by the political leaders of the AAP.*
- g. Sh Vijay Nair, is Incharge of Media and Communication for the AAP, had no role in the Delhi Govt. in fact acted as a broker/liaison/middlemen on behalf of the top leaders of the AAP for getting bribes/kickbacks from various stakeholders in the Delhi Liquor business in exchange of favourable outcomes (policy changes) in the Excise Policy of 2021-22, which was being drafted at that time. He even threatened the stakeholders*

who were not agreeing to his demands that he changes suitable/desired by them may not go through entirely if they do not concede to his demands.

- h. Sh Vijay Nair, in connivance with Sh Dinesh Arora and through him with Sh Amit Arora, has also arm twisted a wholesaler to surrender the LI license and then coerced the manufacturers surrendered through that license to choose the wholesalers of his choice and favour to direct the profit margins to his co-conspirators, so that there was complete control on the kickbacks to be extracted.*
- i. Sh Vijay Nair, on behalf of leaders of AAP has received kickbacks to the tune of Rs. 100 Cr from a group, for convenience, we may call it the South Group (as termed in the statements of various persons recorded during the investigation), whose prominent persons are Sh Magunta Srinivasulu Reddy, Sh Raghav Magunta, Sh Sarath Reddy and Ms K Kavitha. The South Group was represented by Sh Abhishek Boinpally, Sh Arun Pillai and Sh Buchi Babu. Sh Abhishek Boinpalli facilitated the transfer of Rs. 100 Cr kickback in connivance and conspiracy with Sh Vijay Nair and his associate Sh Dinesh Arora.*
- j. Investigation of the trail of this kickback so far has revealed that part of these funds were used in the election campaign of the AAP for Goa Assembly elections 2022. Cash payments to the tune of Rs. 70 lacs were made to the volunteers who were part of the survey teams. Sh Vijay Nair himself has told certain*



persons involved in the campaign related work to receive the payments in cash. Advertisement/hoarding related work were directed to raise only part of the claims in the bill and receive the remaining in cash. These part cash payments were managed through Hawala Channels. Teams led by Sh Vijay Nair have directed certain firms to even issue bogus invoices.

- k. These kickbacks were paid in advance to the AAP leaders through Vijay Nair by the South Group as a part of agreement between the South Group and the AAP leaders. Against the kickbacks paid, the south group secured uninhibited access, undue favours, attained stakes in established wholesale businesses and multiple retail zones (over and above what was allowed in the policy). In one of the ways to recover/recoup the kickbacks given by the South Group, partners of the South group were given 65% stakes in Indo Spirits in collusion with the accused Sh Sameer Mahandru. The South group controlled these stakes in Indo Spirits, through false representation, concealment of true ownership and proxies i.e. Sh Arun Pillai and Sh Prem Rahul. This partnership formation was directed by Sh Vijay Nair on the assurance of giving the wholesale business of Pernod Ricard to Indo Spirits.*
- l. The gravity and depth of this criminal conspiracy is such that to grant L1 wholesale license to Indo Spirits despite various complaints highlighting Sameer's and Indospirit Marketing Pvt Ltd's role in cartelisation, when Sameer submitted a fresh application in a different name of Indo Spirits, the Dy CM,*



Delhi, Sh Manish Sisodia himself directed the Excise Commissioner to grant the license on priority.

m. Pernod Ricard, is one of the accused in the instant case, which through Sh Benoy Babu and others, in conspiracy with the super cartel and Sh Vijay Nair gave their wholesale business to Indo Spirits. The Excise Policy 2021-22 required the manufacturers to register their brands at the Lowest EDP net of all discount/commission/rebate of any nature whatsoever, however, Pernod Ricard by way of conspiracy has got their price fixed without deducting the discounts/rebates they offer thus getting a much higher price fixed for their brands and thus earning a huge additional profit which was ineligible to them and should have been passed to the consumers as lower MRP. If the manufacturer had registered the brands at actually lowest EDP, the capacity of the manufacturers to give out credit notes would have been limited. However, Pernod Ricard paid Rs. 131.9 Crores credit notes to the retailers via the wholesalers, where the benefit of discounts was shifted to the retailers instead of the actual consumer at large.

n. That, in order to create a device for continuous payment of kickbacks to Sh Vijay Nair, an unheard of margin of 12% was provided to the private wholesalers (LIs) contrary to the recommendations of the Expert Committee headed by Sh Ravi Dhawan, IAS and then Excise Commissioner which as detailed below, suggested for a single Govt entity as Wholesaler for Delhi. On this account, the Govt lost the revenue of 12% Rs.



581 cr. that would have accrued to it in case the Expert Committee recommendations were accepted by the Govt, which in the subject policy was assigned to the Pvt. Players, only to fill the personal coffers of the leaders of AAP. This loss to the Govt exchequer actually got illegally diverted into ostentatious profits to the wholesalers including the accused M/s Indo Spirits, which was used to recoup the kickbacks paid in advance by the South group.

- o. The South Group directly and indirectly controlled 9 retail zones, which included 5 retail zones of Sh Sarath Reddy (accused no). In some cases the control was via financing of the EMD (Earnest Money Deposit) for the L7 tender process. ostensible investments, relatives/dummies/proxies. Apart from the direct profits accruing from the wholesale business of Indo Spirits, modus operandi for recovering the kickback paid in advance by the South group, monies in the form of outstanding from the ostensible sales from the wholesale of Indo Spirit to Retail of the South group with an understanding that the outstanding was not to be recovered and the amount will be shown as recoverable in the books of account. Sh Sarath Reddy's controlled entities owed over Rs. 60 Cr (approx.) to Indo Spirits, which is shown as outstanding but was not meant to be recovered as part of the conspiracy.
- p. The retail business was lucrative and the turnover was huge on daily basis. Further, the retail sales were in cash and not credit based, meaning thereby the generation of funds/recovery of the



purchase cost was immediate. Thus, there was no valid reason for not repaying the outstanding towards the wholesaler either on the same day or soonest after.

q. Another novel method of recovery of the kickbacks was through passing of Credit Notes. Ordinarily the credit notes are passed to the person who had direct nexus with or has sold the goods, however, in this business, the manufacturers were giving credit notes to the retailers with whom they had no direct transactions with. Further, there was no apparent reason to give credit notes to businesses which are minting money with MRP being 3 times of the cost and having profit margin of 185% approx. The fact that the credit notes were an eyewash to transfer money illegally to pay kickbacks is evident from the fact that the ostensible reason of volume based credit notes was bogus and credit notes have been passed in an inconsistent manner considering the sale volume. For example, Pernod Ricard has not given any credit notes to M/s Adharv Enterprises (not a favoured L7) against the volume of 19,080 cases purchased in the months of Dec, 2021 Jan, 22 and Feb 22. However, Pernod Ricard has given Rs. 61.01 lakhs as credit notes to M/s Organomix Ecosystems Pvt. Ltd. (which is part of the South Group cartel) who has purchased 17,644 cases during the said 3 months.”

4. The role of the Petitioner has been discussed in detail in the complaint filed by ED and is not been discussed here for the sake of brevity.



B. SUBMISSIONS ON BEHALF OF THE PETITIONER

5. Sh. Mukul Rohatgi, Sr. Advocate, Sh. Siddharth Luthra, Sr. Advocate with Sh. Madhav Khurana, learned Advocate on behalf of the petitioner have submitted that the petitioner is a mere employee being a Regional Manager of Pernod Ricard India (**PRI**). It has been submitted that PRI has a global presence and there are several level of employees over the petitioner and the Supreme board of companies is the Board of Directors.
6. It has been submitted that neither the Petitioner nor the Company is an accused in the Chargesheet dated 24.11.2022 filed by the CBI and petitioner was only a witness in the predicate offence, therefore, the petitioner has no role in the main predicate offence.
7. It has been submitted that the petitioner and the company have wrongly been arrayed/added as an accused in the Supplementary Prosecution Complaint dated 06.01.2023 filed by the E.D.
8. Learned senior counsel for the petitioner submitted that the Petitioner is not guilty of money laundering as defined in Section 3 read with Section 2(1)(u) of the Act. It has been submitted that no money in any form or manner has been given to the Petitioner by anybody and the Petitioner has accordingly not “*laundered*” any money.
9. Reliance has been placed on *Vijay Madanlal Chaudhary V/s Union of India* reported in *2022 SCC Online SC 929* wherein it was held that it is only such property which is derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence can be regarded as proceeds of crime.



10. Learned senior counsel for the petitioner further submitted that a conjoint reading of Section 3 of PMLA with Section 2(1)(u) of the PMLA shows that the Section 2(1)(u) defines PoC as that property *derived* or *obtained*, directly or indirectly, by any person *as a result of criminal activity relating to a scheduled offence*. It was submitted that therefore, first there must be scheduled offence, from which proceeds of crime must be generated and it is only that person who assists in the generation of PoC or its concealment, possession, acquisition, use or projection or claiming it as untainted property can be held liable for committing the offence of Money laundering. It has been submitted that the allegation of grant of Corporate Guarantee by PRI to the other accused persons does not fall within the ambit of Proceeds of Crime (PoC) because the act of giving of Corporate Guarantee is not the alleged Scheduled Offence in the present case.
11. Learned senior counsel for the petitioner submitted that it is not the case of the ED that the funds of the Corporate Guarantee were derived or obtained as a result of a criminal activity. It was submitted that the grant of Corporate Guarantee is prior to even grant of the L7 licence by the Excise Department. Learned senior counsel for the petitioner submitted that role of E.D. commences post the commission of a crime, i.e. to investigate the proceeds generated from a crime and its laundering and the Petitioner has no such link.
12. Learned senior counsel for the petitioner submitted that the corporate guarantee of Rs. 200 Crores by the Company was granted through the Board of Directors in favor of 5 retailers. It has been submitted that extension of financial comfort can never be termed as a crime. It has

been submitted that the allegation that the hands of Indospirits (Sameer Mahandru-Wholesaler) were strengthened by grant of Corporate Guarantee is baseless. It has been submitted that the Petitioner got no money from anywhere and nor he has passed on any money to anybody. It has been submitted that it is Rs. 200 Crores worth of Corporate Guarantee by itself is not a PoC. This guarantee is based on the balance sheets of the Company. It has been submitted that the wholesaler may or may not sell products of PRI which will result in the profits to the Company and further the sale of products of PRI depends solely on the discretion of the customer.

13. Learned senior counsel for the petitioner submitted that in respect of the allegations of the E.D. that the petitioner got the copy of the draft of Excise Policy before it was announced can also not be termed as an offence under PMLA. It has been submitted that the leakage on media of various things is today an accepted position in society. It has been submitted that even in the ED's own case that the Excise Policy even before it was announced became viral. It has been submitted that obtaining and being privy to the Policy is not either PoC or laundering thereof. It has further been submitted that the Petitioner officially attended meetings called by the Delhi Government where various stakeholders were present.
14. Learned senior counsel for the petitioner submitted that the M/s Indospirits was authorized by PRI on the basis of L1 license granted by the Excise Department. The appointment also can neither be termed as PoC and nor does it amount to money laundering. It has been submitted that the infact PRI had in his its comments to the



Government had stated that the wholesaler should be a Government agency while the manufacturer and the retailer could be private persons. This plea of the PRI was accepted by the Expert Committee. However, the wholesaler was also made as a private party by the Government.

15. Learned senior counsel for the petitioner submitted that the petitioner is a mere employee in PRI and had no autonomy to take decisions solely at his end. It has been submitted that the E.D. has traversed beyond its jurisdiction as it cannot investigate allegations other than those which form part of the scheduled offence. Reliance has been placed upon *Prakash Industries v. ED (II)*, 2023 SCC Online Del 336.
16. Learned senior counsel for the petitioner submitted that the petitioner is a witness in the scheduled offence and therefore being a witness, it is evident that the Agency investigating the Scheduled Offence has arrived at a conclusion that the Petitioner is in no form or manner involved in the commission of the scheduled offence. It has been submitted that the it is not the ED's case that any part of the PoC has come to the Petitioner. Reliance has been placed upon:
 - i. **TD Tataji v. ED** (Order dated 21.11.2022 passed by the Hon'ble Apex Court in Spl. Leave to Appeal Criminal No. 10360/2022)
 - i. **TD Sonia v. ED** (Order dated 02.12.2022 passed by the Hon'ble Apex Court in Spl. Leave to Appeal Criminal No. 10667/2022)
 - ii. **Dilip Lalwani v. CBI**, CRM. M. No. 50475/2021 (O&M)
 - iii. **Emta Coal v. ED**, W.P. (C) 3821/2022
 - iv. **Naresh Goyal v. ED**, CrI. W.P. 4037/2022



17. It has been submitted that the petitioner has always cooperated in the investigation and is not a flight risk. It has been submitted that the petitioner has no authority to influence the witnesses or tamper with the evidence.
18. The learned senior counsels for the petitioner have placed reliance *Vijay Madanlal Choudhary & Ors. v. Union of India & Ors.* 2022 SCC OnLine SC 929 and *Subramanian Swamy v. A. Raja* (2012 9 SCC 257) to buttress the point that merely attending the official meetings as PRI representative at the express invitation of Delhi Excise Department does not constitute any sought of criminality.
19. It has been submitted that in *Subramanian Swamy (supra)* it was inter alia held that Criminal conspiracy cannot be inferred on the mere fact that there were official discussions between the officers of the MoF and that of DoT and between two Ministers, which are all recorded. It has been submitted that suspicion, however, strong, cannot take the place of legal proof and the meeting.

C. SUBMISSIONS ON BEHALF OF ENFORCEMENT DIRECTORATE

20. Sh. Zoheb Hossain, learned special counsel for the E.D. submitted that petitioner Benoy Babu had prior knowledge of liquor policy 2021 before it was made public which enabled Pernod Ricard to arrange finances even before the public announcement of the policy to create vehicle which was later on used for generating parking and use of proceeds of crime.
21. Sh. Zoheb Hossain, learned special counsel for the E.D. submitted that



petitioner Benoy Babu was able to arrange and provide financial support to two companies (namely M/s Khao Gali and M/s Bubbly Beverages) who had no business at that time when Mr Benoy Babu chose them to give financial support, which were part of South Group and were expected to get L7 License. It has been submitted that the loan availed by M/s Bubbly Beverages even was further used for cross funding another entity of the South group. The financial support was in form of bank guarantee to these companies. It has been submitted that the financial support to other three companies were made in order to maximize control over retail market. It has been submitted that on the strength of the bank guarantees, the companies took loan of Rs.140 Crore and as per the record, these companies not only availed the loan, but have not repaid full loan till the investigation was taken up by CBI & ED.

22. Sh. Zoheb Hossain, learned special counsel for the E.D. submitted that due to the financial support provided by Pernod Ricard, the 2 out these 5 companies directly got the L7 license and 1 company used it from cross funding of the EMD of another South Group entity, further not only that, but they were also able to maximize their profit due to tailormade liquor policy which resulted in not only parking of proceeds of crime but also its use by other stake holders including the South Group.
23. Sh. Zoheb Hossain, learned special counsel for the E.D. submitted that there was an involvement of petitioner Benoy Babu in selecting M/s Indo Spirit as wholesale distributor of M/s Pernod Ricard at the instance of another prime accused Vijay Nair which have helped South



Group to recover the kickback given to leaders of AAP.

24. Sh. Zoheb Hossain, learned special counsel for the E.D. submitted that despite several complaints, Indospirits was given L-1 License. The letter appointing M/s Indo Spirits as its exclusive distributor to register and sell the brands mentioned in authorisation letter was signed by Sh. Benoy Babu. It is also the case of the ED the petitioner signed the letter even before the formal approval from the PRI.
25. Sh. Zoheb Hossain, learned special counsel for the E.D. submitted that the financial support in the form of corporate guarantee in fact helped in formation of cartel of Pernod Ricard and thus received exponential financial gain. It has further been submitted that the petitioner was deeply involved in the conspiracy of the south group and facilitated their recoupment by his extended retail cartel formed through the financial support provided by M/s Pernod Ricard, which resulted in the huge profits accruing to M/s Indospirits.
26. Learned special counsel for the E.D. has placed reliance upon *Vijay Madanlal Choudhary & Ors. v. Union of India & Ors.* 2022 SCC OnLine SC 929, *Union of India v. Rattan Mallik* (2009) 2 SCC 624, *State of Gujarat v. Mohanlal Jitamalji Porwal* (1987) 2 SCC 364, *Y. S. Jagan Mohan Reddy v. CBI* (2013) 7 SCC 439, *Anil Kumar Yadav v. State (NCT of Delhi)* (2018) 12 SCC 129, *Sunil Dhaiya v. State (Govt. of NCT of Delhi)* (2016) SCC OnLine Del 5566 *Nimmagadda Prasad v. CBI*, (2013) 7 SCC 466, *Gautam Kundu v. Directorate of Enforcement* (2015) 16 SCC 1 and *Rohit Tandon v. Directorate of Enforcement* (2018) 11 SCC 46.



D. FINDING AND ANALYSIS

27. The offence of money laundering has been defined in section 3 of the PMLA, which reads as under:

“3. Offence of money-laundering.—Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of offence of money-laundering.”

28. The 'proceeds of crime' has been defined under Section 2 (u) of PMLA, which reads as under:

(u) “proceeds of crime” means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property 3 [or where such property is taken or held outside the country, then the property equivalent in value held within the country] 4 [or abroad]; ...

29. In this regard the proceeds of crime and the scope and ambit of Section 3 of PMLA has been well laid down in **Vijay Madanlal Chaudhary** (supra) wherein it has been held as under:

“263. Coming to Section 3 of the 2002 Act, the same defines the offence of money-laundering. The expression “money-laundering”, ordinarily, means the process or activity of placement, layering and finally integrating the tainted property in the formal economy of the country. However, Section 3 has a wider reach. The offence, as defined, captures every process and



activity in dealing with the proceeds of crime, directly or indirectly, and not limited to the happening of the final act of integration of tainted property in the formal economy to constitute an act of money-laundering. This is amply clear from the original provision, which has been further clarified by insertion of Explanation vide Finance (No. 2) Act, 2019. Section 3, as amended, reads thus:

"3. Offence of money-laundering.-Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including concealment, possession, acquisition or use and projecting or claiming] it as untainted property shall be guilty of offence of money-laundering.

Explanation. -For the removal of doubts, it is hereby clarified that,-

(i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:-

- a. concealment; or
- b. possession; or
- c. acquisition; or
- d. use; or
- e. projecting as untainted property; or
- f. claiming as untainted property, in any manner whatsoever,

(ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever."

265. *To put it differently, the section as it stood prior to 2019 had itself incorporated the expression "including", which is indicative of reference made to the different process or activity connected with the proceeds of crime. Thus, the principal provision (as also the Explanation) predicates that if a person is found to be directly or indirectly involved in any process or activity connected with the proceeds of crime must be held guilty of offence of money-laundering. If the interpretation set forth by the petitioners was to be accepted, it would follow that it is only upon projecting or claiming the property in question as untainted property, the offence would be complete. This would undermine the efficacy of the legislative intent behind Section 3 of the Act and also will be in disregard of the view expressed by the FATF in connection with the occurrence of the word "and" preceding the expression "projecting or claiming" therein. This Court in Pratap Singh v. State of Jharkhand, enunciated that the international treaties, covenants and conventions although may not be a part of municipal law, the same be referred to and followed by the Courts having regard to the fact that India is a party to the said treaties. This Court went on to observe that the Constitution of India and other ongoing statutes have been read consistently with the rules of international law. It is also observed that the Constitution of India and the enactments made by Parliament must necessarily be understood in the context of the present-day scenario and having regard to the international treaties and convention as our constitution takes note of the institutions of the world community which had been created. In Apparel Export Promotion Council v. A.K. Chopra, the Court observed that domestic Courts are under an obligation to give due regard to the international conventions and norms for construing the domestic laws, more so, when there is no inconsistency between them and there is a void in domestic law. This view has been restated in Githa Hariharan as a, as also in People's Union for Civil Liberties 82, and National Legal Services Authority v. Union of India.*

266. *In the Core Recommendations of the FATF referred to above, the same clearly mention that the word "and" in Section 3 of the*

2002 Act would not be fully in line with the Vienna and Palermo Conventions. This doubt has been ably responded and elucidated by India to the international body by referring to the jurisprudence as evolved in India to interpret the word "and" as "or" in the context of the legislative intent - to reckon any (every) process or activity connected with the proceeds of crime constituting offence of money-laundering. To buttress the stand taken by India before the FATF, reliance has been justly placed on reported decisions of this Court amongst other Sanjay Dutt, which had occasion to deal with the expression "arms and ammunition" occurring in Section 5 of the TADA Act. The Court noted that if it is to be read conjunctively because of word "and", the object of prohibiting unauthorised possession of the forbidden arms and ammunition would be easily frustrated by the simple device of one person carrying the forbidden arms and his accomplice carrying its ammunition so that neither is covered under Section 5 when any one of them carrying more would be so liable. The principle underlying this analysis by the Constitution Bench must apply proprio vigore to the interpretation of Section 3 of the 2002 Act. To the same end, this Court in the case of Ishwar Singh Bindra v. The State of U.P.¹⁶⁵, Joint Director of Mines Safety and Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd., interpreted the word "and" in the concerned legislation (s) as word "or" to give full effect to the legislative intent.

273. On a bare reading of Section 3, we find no difficulty in encapsulating the true ambit, given the various arguments advanced. Thus, in the conspectus of things It must follow that the interpretation put forth by the respondent will further the purposes and objectives behind the 2002 Act and also adequately address the recommendations and doubts of the international body whilst keeping in mind the constitutional limits. it would, therefore, be just to sustain the argument that the amendment of way or the explanation has been brought about already present words, only to clarify the any" and "including" which manifests the true meaning of the definition and clarities the mist around its true nature."



30. Section 45 of PMLA provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973, no person accused of an offence under this Act shall be released on bail or on his own bond unless—(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail. It is also pertinent to mention here that Section 45 also provides that twin conditions are in addition to the limitation under the Code of Criminal Procedure, 1973 or any other law for the time being in force on granting of bail. It is settled proposition Section 45 PMLA do not impose an absolute restraint on the grant of bail and the court at this stage is to prima facie consider whether applying the standard of broad probabilities the material against the applicant would result in conviction. It is also a settled proposition that at this stage the Court is only required to examine the matter to find out whether the accused was possessed of the requisite *mens rea*. It is also no longer *res integra* that the court is not required to record a positive finding that the accused had not committed the offence under the Act. It is also a settled proposition that the court at this stage is not required to weigh the evidence meticulously. The court is only required to arrive at a finding on the basis of broad probabilities. It is also a settled proposition that the court is not required to hold a mini trial at this stage and is required to examine the case on the basis of broad probabilities. It is also to be kept in mind that while exercising the



jurisdiction under Section 45 of PMLA, the court is required to take into consideration the limitations prescribed under Section 439 Cr.P.C.

31. In regard to the limitation under Section 439 Cr.P.C. in ***Kalyan Chandra Sarkar vs Rajesh Ranjhan*** (2004) 7 SCC 528 it has been held as under:

“The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

- (a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.*
 - (b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.*
 - (c) Prima facie satisfaction of the court in support of the charge.”*
32. Before proceeding further, it is also necessary to remind the scope of jurisdiction to be exercised while granting bail in the economic offence. The Hon’ble Supreme Court in the case of ***Y.S. Jagan Mohan Reddy v. CBI***, (2013) 7 SCC 439 528 held as under:

“Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations.”

33. In ***Nimmagadda Prasad v. CBI***, (2013) 7 SCC 466, it was inter alia held as under:

“Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep-rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as a grave offence affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.”

34. The bare reading of Section 3 of PMLA would make it clear if a person is involved in any process or activity connected with the proceeds of

crime, including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty offence of money laundering. Therefore, it is not necessary to attribute section 3 of the PMLA that the alleged person must have acquired or in possession of the proceeds of the crime. If a person has actually been involved in any process or activity connected with the proceeds of crime, it would be sufficient to prosecute him under Section 3 of PMLA. The argument that the proceeds of crime have not been received or the proceeds of crime have not been recovered and therefore section 3 of the PMLA will not come into operation is totally fallacious and is liable to be rejected. It is necessary to keep in mind that such crimes are committed under a deep conspiracy and under the dark cover. An act may not be an offence at all if it is done in relation to any process or activity not connected with the proceeds of crime, but if such an act is done in relation to any process or activity connected with the proceeds of crime it will certainly be an offence under Section 3 of PMLA. The scope and ingredients of offence of money laundering under Section 3 of PMLA has been defined in Vijay Madanlal Chaudhary (*supra*).

35. The present case is very peculiar in nature and may not have any parallel factual matrix. In brief, the allegations in the predicate offence was that the conspiracy was hatched between the political head and certain persons which included an individual allegedly representing the government with the manufacturer, liquor wholesaler and retailer. The conspiracy allegedly was hatched to introduce a new excise policy to benefit certain individuals who had given advance kickbacks to the

AAP. The prominent players if we put names to the faces are Mr.Manish Sisodia, the then Deputy Chief Minister and Excise Minister, Mr.Vijay Nair, purportedly Media Incharge of AAP, Sameer Mahendru. Mr.Amit Arora, Mr.Dinesh Arora, Mr.Abhishek Boinapally, Mr.Sharad Reddy, Mr.Butchi Babu, Mr.Binoy Babu and others. This court is conscious of the fact that the investigation relating to the conspiracy to frame the excise policy allegedly with malafide intention and alleged misuse of official position was the subject matter of the CBI in which the charge-sheet has already been filed by the CBI. However, in view of the fact that allegedly the basic intention behind framing the new excise policy was to recoup the advance kickbacks and to further gain undue advantage from the excise policy, the facts are to be taken in totality.

36. Presently, this court is considering the bail application of the abovesaid accused person namely Mr.Benoy Babu, who was arrested for the offence under Section 3 of the PMLA. For the purpose of clarity Mr.Bonoy Babu was an employee of M/s Pernod Recard. Similarly, the allegations against Benoy Babu, an employee of M/s Pernod Recard is that he was also in a deep conspiracy from the stage of formulation of policy and extended corporate guarantee of 200 crores to enable the other stakeholders to generate the proceeds of crime.
37. The plea raised by the defence is the ED has no material other than an inconsistent and unreliable statement of either co-accused or the public servants. The defence has raised a plea that in absence of any independent corroboration or material on record to substantiate such statements under Section 50 PMLA, the court on the basis of



probability should record a finding that accused persons are not guilty of such offence. The defence, during the course of their arguments, have repeatedly stated that the ED has cooked up the case merely on the basis of whims and fancies and there are contradictions in the testimonies of the witnesses. The defence has assailed the testimony of approver Dinesh Arora and has submitted that Dinesh Arora has made the statement under the influence of ED and to protect himself. It is also the case of the defence that the public servants who are under the direct control of Hon'ble LG, who is the complainant in the present case, have made their statements only to save their skin. In respect of Binoy Babu, Mr. Mukul Rohtagi and Mr. Siddharth Luthra, learned Senior counsels have submitted that he was a low-rank employee of Pernod Recard and had no authority to take decisions. The plea was that in any case, a grant of corporate guarantee cannot be taken as a process or an activity connected to the proceeds of crime.

38. This court is fully conscious of the fact that personal liberty is a sacrosanct right and pre-trial detention cannot be taken as a punitive measure. However such individual right has to be balanced with the rights of society at large. This court is also conscious of the fact that though the statements recorded under Section 50 PMLA are admissible in evidence but their evidentiary value has to be weighed at the time of trial. Mr. Mukul Rohatgi and Mr. Siddharth Luthra, learned senior counsels for Binoy Babu have argued that the ED is basing its case only on the statements of the witnesses recorded under Section 50 of PMLA. In case of Binoy Babu, the plea has also been raised that since he is a witness in the predicate offence and he could not have been



made an accused in the PMLA case. The present case arises out of an alleged conspiracy wherein the government framed an excise policy with a malafide intention to recoup the kickbacks received in advance from certain individuals and to further generate the ill money from the liquor trade. There are witnesses and witnesses on record to show that certain outsiders were actively participating from the stage of drafting and formulation of the policy. The reference to the statements of the witnesses have been made during the course of recording the submission of the learned defence counsels and learned counsel for ED.

39. The statements of the witnesses clearly indicates that some extraneous factors were working since the time of conceptualization, formulation and drafting of the excise policy. The allegation regarding generating of the emails in support of the excise policy also raises the red flag that everything was not being done in a transparent and bonafide manner.
40. This court at this stage, would restrain itself to make any comment further on this as the trial is yet to take place. The option before this court is either to go into the meticulous examinations of the witnesses as being argued by the learned defence counsels or to take into account the statements recorded under Section 50 of PMLA by the ED. It is correct that the case of ED is based on the statements under Section 50 PMLA cannot be taken as gospel truth but at the same, the court has to take into account the legislative intent behind enacting Section 50 PMLA. The statements under Section 50 PMLA are not akin to Section 161 Cr.P.C. The bare perusal of Section 50 makes it clear that these are deemed to be judicial proceedings. There are consequences for making a false statement or not complying to the summons under Section 50 of

PMLA as provided under Section 63 of the PMLA. This court at this stage cannot go into the probative value of the witnesses nor can it meticulously examine those facts. The involvement of the third parties in the formulating and drafting of the policy certainly points at *mens rea*.

41. The jurisdiction of bail is a discretionary jurisdiction. But this discretion has to be exercised on the settled principles in a judicial manner. The court has to bring in its judicial experience to arrive at a conclusion, which should be rational and logical. It is pertinent to mention that the accused and complainant/prosecution are entitled to know the reasons on the basis of which their bail application has been decided, but at the same time such reason should not be detailed in such a manner that it may prejudice the trial.
42. The investigation under PMLA by the E.D. qua Benoy Babu as stated by E.D. has revealed as under:
 - (i) Pernod Ricard, one of the accused entities, through Benoy Babu and others, in conspiracy with the South Group and Vijay Nair, gave their wholesale business to Indo Spirits.
 - (ii) The scheduled offence relates to a criminal conspiracy relating to the irregularities in framing and implementation of the excise policy with an intention to extend undue favours to the licences and diversion of undue pecuniary benefits collected from liquor licences to accused public servants and formation of cartel between manufacturers, wholesalers and retailers. The applicant is involved in at least 3 direct ways in the process or activity relating to generation of proceeds of crime.



- a. Benoy Babu is directly involved in Pernod Ricard wholesale business going to Indo Spirits (L1).
- b. Benoy Babu signed the approval letter for making Indo Spirits as its exclusive distributor even before the formal approval was received from the country head.
- c. Benoy Babu also was aware that no wholesaler can hold L7 retail licence and despite being aware of Sh Sameer Mahandru being owner of Khao Gali and Bubbly Beverages to whom corporate guarantee was given without any collateral gave Pernod Ricard's distribution business to Sameer Mahandru's Indo Spirit.
- d. When Pernod Ricard hosted a diner at Taj Mansingh Delhi all members of super cartel were present in this meeting and the agenda of meeting was celebration of maximum retail zone and in principal agreement of Indo Spirit getting Pernod Ricard wholesale business. Sh Benoy Babu coordinated with Sh Arun Pillai (representative of South Group) for making Sh Sarath Reddy and Sh MSR the event hosted by Pernod Ricard.
- e. The role of Benoy Babu in the cartelization with retailers by making investment in the guise of corporate guarantee was Benoy Babu's brain child by granting financial assistance of 200 crore to select retailers including co-accused Khao Gali and Bubbly Beverages would ensure a larger market share.
- f. The fact that on 02.06.2021 a month before the announcement of excise policy a presentation was made by Benoy Babu, the plan to form cartel and control retail businesses was given as a



slide and this was inserted on his specific instructions.

g. Khao Gali is an accused in these complaints filed by ED and one of the successful retail bidders involved in the larger conspiracy and was part of the super cartel. Khao Gali's name features in the FIR of predicate agencies.

h. The payment of corporate guarantee ensured that the retailers would buy 35% stocks from PRI which in turn would increase PRI market share 37% over a period of 3 years. This is corroborated by Bimal Khanna Strategy Head of PRI as well Benoy babu in his statement.

i. The CFO of Pernod Ricard India, Richa Singh deposed that there should have been written request from the parties, due diligence should have been done and collateral should have been done, none of which was done.

j. Furthermore, Benoy Babu was responsible for influencing policy formulation by sending 4000 doctored emails to government authorities by showing fake approval towards the policy.

(iii) The policy required all manufactures to register at the lowest EDP net of all discount/commission/rebate of any nature whatsoever, however, Pernod Ricard by way of conspiracy has got their price fixed without deducting the discounts/rebates they offer thus getting a much higher price fixed for their brands and thus earning a huge additional profit which was ineligible to them and should have been passed to the consumers as lower MRP. If the manufacturer had registered the brands at actually



lowest EDP, the capacity of the manufacturers to give out credit notes would have been limited. However, Pernod Ricard paid Rs. 131.9 Cr as credit notes to the retailers via the wholesalers, where the benefit of discounts was shifted to the retailers instead of the actual consumer at large.

(iv) In order to generate kickbacks in perpetuity, a novel method of recovery of the kickbacks formulated through passing of Credit Notes. Ordinarily the credit notes are passed to the person who had direct nexus with or has sold the goods, however, in this business, the manufacturers were giving credit notes to the retailers with whom they had no direct transactions with. Further, there was no apparent reason to give credit notes to businesses which are minting money with MRP being 3 times of the cost and having profit margin of 185% approx.

43. The communication between Benoy Babu, Manoj Rai and Vijay Nair dated 01.08.2021 and 09.08.2021 also reveals that the petitioner was in conspiracy with Vijay Nair and other and the south group. It has also come on the record that petitioner had also travelled to Mumbai to meet Vijay Nair in context of appointing M/s Indo spirits as M/s PRI distributors. It has also come on record that as per the policy no L1 wholesaler can hold L7 retail license. The E.D.'s case is that Benoy Babu was fully aware that Sameer Mahendru is the actually beneficiary behind M/s Khao Gali and M/s Bubbly Beverages and despite that Binoy Babu in line with Vijay Nair directions facilitated the Pernod Ricard distribution business to Sameer Mahendru's Indospirits. The case of the E.D. is also that the Benoy Babu is directly involved in the



generation of PoC of Rs.59.77 Cr which is the profit accrued to Pernod Ricard from the sales made to the retail zones of the cartel created via conspiracy with the South Group and Vijay Nair and with other companies to whom he provided financial support. Similarly, Benoy Babu was also directly and knowingly assisted in the generation of PoC of Rs. 163.5 Cr which is the enhanced profit of Pernod Ricard due to increase in market share as a result of conspiracy with co-accused Vijay Nair.

44. It is a matter of the record that petitioner Benoy Babu was not only in constant touch with Vijay Nair but also to south group. It is also relevant to note that PW-Vimal Khanna in his statement dated 18.10.2022 has stated that the name of parties for financial assistance was given by Benoy Babu. On account of the purpose of granting corporate guarantee was to increase the market share in the operating segment from 15% to 35% which resulted in the increase in the profit of the Pernod Ricard Rs.33.7 Crore (01.11.2020 to 31.08.2021) to 197.2 Crore (16.11.2021 to 31.08.2022), which shows a huge increase of 163.5 Crore (i.e. 485%).
45. It has also come on the record that the corporate guarantee of Rs.200 Crore was given without following any due diligence which indicates to the conspiracy. The investigation also reveals that Benoy Babu was a part of conspiracy to send 4,000 e-mails to the authorities through media agencies hired by ISWAI and most of these emails were sent by creating email Ids so that the same may be projected as sent by general public to the govt. authorities. It is also come on the record that Benoy Babu was in possession of the draft policy on 31.05.2021 whereas the



policy was made public in July 2021. Further, he has forwarded the same to Manoj Rai (his senior in Pernod Ricard) on whatsapp on 31.05.2021 this was available in the phone of Manoj Rai but the same is not available/deleted by Benoy Babu from his phone. It has been submitted that the petitioner had stated that he had received the same from Aman Dhall. However, it is come on record that petitioner selectively deleted his individual whatsapp chats with Sameer mahandru of Indospirits for the period to 26.10.2021.

46. As per the E.D., the material evidences against Benoy Babu are as follows:

i. Digital evidence of chats dated 28th March, 2021 wherein Sh Aman Dhall asked Benov Babu if he had sent the recommendations to Sh Vijay Nair, which reflects that Benoy Babu was involved in the formulation of Excise Policy.

ii. Digital evidences in form of email communication dated 31.05.2021 of Sh. Benoy Babu, PRI which revealed that he was in possession of confidential documents of Excise Department including the GoM report (which was never officially released to the public) and the Draft Excise Policy of Delhi (which was officially released after more than a month).

iii. Digital evidences in form of WhatsApp chat between Aman Dhall and BenoyBabu wherein it is seen that Benoy Babu has deleted the draft policy received from Aman Dhall.

- iv. Digital evidence in the form of WhatsApp chat between Arun Pillai and Benoy babu dated 04.09.2021, wherein Sh Arun Pillai has sought assistance from Benoy Babu for recruiting a CEO for the 5 zones of Sarath Reddy.
- v. Digital evidences in form of mail dated 20.05.2021 wherein Benoy Babu has sent sensitive information like recommendation of changes by Hon'ble Lt. Governor to the policy and information regarding reworking of policy and submission to Hon'ble Lt. Governor for final approval to other employees of PRI and thereafter asked *"Pls ensure we keep information in this mail strictly confidential"*
- vi. Digital evidences in form of mail attaching the PPTs wherein it is mentioned that the Rs. 200 cr. (in the form of Corporate Guarantee) is an investment by Pernod Ricard in retail business.
- vii. The E.D. has also relied upon the statement of Dinesh Arora dated 18.11.2022 and statements of Arun Pillai dated 18.09.2022, 02.10.2022 and 08.12.2022 to highlight the role of petitioner Benoy Babu.
47. The Enforcement Directorate has alleged that Benoy Babu was playing a key role in ensuring that Pernod Ricard L1 license was given to Indospirits. The ultimate aim was to make Indospirits a vehicle for recouping of the advance kickback paid to the AAP leaders on the directions of Vijay Nair.
48. It is correct that extending a corporate guarantee per se may not be a crime. However, if it is connected with any activity or process



connected with the proceeds of crime, it would inevitably come within the purview of money laundering under section 3 of PMLA. In this regard, a reference can also be made to *Vijay Madanlal Chaudhary (supra)* wherein it has inter alia been held that while construing the expression “and” in Section 3 as “or”, to give full play to the said provision so as to include “every” process or activity indulged into by anyone, including projecting or claiming the property as untainted property to constitute an offence of money-laundering on its own. It was further inter alia held that the act of projecting or claiming proceeds of crime to be untainted property presupposes that the person is in possession of or is using the same (proceeds of crime), also an independent activity constituting offence of money-laundering.

49. The Learned Special judge in it’s order prima facie opined that Benoy Baby was the brainchild behind the decision of M/s Pernod Ricard for furnishing corporate guarantees of Rs. 200 crores for the loans availed by other members of the cartel from HSBC bank and this was considered to be an investment to take control of the retail liquor business and to achieve highest market share in the sale of liquor brands by the company and thus, to ensure that the retail vendors which were part of the above cartel kept at least 30% stock of the liquor brands owned by this company. It was noted that the above-said corporate guarantees were given without any collateral security nor any formal requests in this regard made. Further, Ld. Special Judge observed that M/s Pernod Ricard never issued such types of corporate guarantees before and it was at the instance of the Benoy Baby that these guarantees were issued to HSBC bank. Further, the applicant



namely Benoy Baby was found to be actively involved in the formulation of a cartel between M/S Pernod Ricard, Wholesaler M/s Indospirits, and the nine other retail entities of other co-accused persons Sameer Mahendru, P.Sarath Chandra Reddy and Raghav Magunta.

50. Further, it was observed by the Ld. Special Judge that the applicant namely Benoy Baby was the signatory in the capacity of attorney of M/s Pernod Ricard to the documents pertaining to the grant of licenses to M/s Indospirit, and it was the applicant/accused who performed all the operations in respect to the appointment of wholesaler, furnishing corporate guarantees. Even though he was not the Director or major shareholder in the M/s Pernod Ricard, it was observed that in terms of the provisions contained under section 70 (2) of the PMLA he is equally liable for the offence of money laundering committed in the present case, apart from the company itself or any of its Directors, Secretaries or other Managers connected with the commission of the said offence, directly or indirectly. Further the Ld. Special Judge observed that like the other co-accused persons, the applicant/accused also came into the possession of the draft policy before its official publication and is alleged to have been instrumental in tampering with the evidence by way of destruction of his own mobile phones. Further, documentary evidence including call detail records and WhatsApp chats, etc. is also alleged to have surfaced, besides the other evidence, to show his involvement in the commission of the alleged offence of money laundering as a member of the said cartel. Allegedly applicant/accused is further being associated with some other amounts



of proceeds of crime and the total proceeds being attributed to him are stated to be around Rs. 563 crores. Further, the Ld. Special Court, PMLA, vide the same order, also rejected the bail applications of Sameer Mahendru, P. Sarath Chandra Reddy, Vijay Nair, and Abhishek Boinpally.

51. As discussed above, the accused persons in the present case acting in furtherance of the conspiracy circumvented the policy and got framed the policy in such a manner to continuously generate and channel illegal funds. The allegations are that deliberate loopholes were left to facilitate illegal and criminal activities.
52. I consider that at this stage, there is sufficient material on the record that the petitioner was indulging or knowingly assisting in process or activity connected with the proceeds of crime and it cannot be said that there are reasonable grounds for believing that petitioner is not guilty of such offence and he is not likely to commit any offence well. It was allegedly a well spun conspiracy to generate P.O.C. In such cases every person who is connected with any process or activity relating to P.O.C. cannot avoid his/her responsibility. The allegations are very serious in nature. Learned Special Judge has dismissed the bail application by a well reasoned order and there is no ground to interfere in the same. Hence, the present bail application stands dismissed as the petitioner has failed to pass the twin conditions as provided under Section 45 of PMLA.

DINESH KUMAR SHARMA, J

JULY 03, 2023/Pallavi