

HIGH COURT OF DELHI

BENCH – HON'BLE DR.JUSTIC SUDHIR KUMAR JAIN

Date of Decision: June 25, 2024

Case No.

CRL.M.C 4858/2024

APPELLANT(S): Directorate of EnforcementPetitioner

VERSUS

RESPONDENT(S): Arvind KejriwalRespondent

Legislation:

Section 120B read with Section 477A of the Indian Penal Code, 1860 (IPC)

Section 7 of the Prevention of Corruption Act, 1988

Sections 3, 19, and 45 of the Prevention of Money-Laundering Act, 2002 (PMLA)

Section 174 of the Code of Criminal Procedure, 1973 (Cr.P.C.)

Subject: Petition challenging the order of the Vacation Judge granting bail to the respondent, Arvind Kejriwal, in connection with allegations of money laundering linked to the Delhi Liquor Scam.

Headnotes:

Bail Application – Opportunity to Present Case – Violation of Section 45 PMLA – Directorate of Enforcement (ED) contended that they were not given a proper opportunity to oppose the bail application – Vacation Judge denied

oral prayer for stay of bail – Failure to fulfill mandatory twin conditions of Section 45 PMLA [Para 2(i), 5].

Vicarious Liability – Political Party Involvement – ED argued that the respondent had a vicarious liability under Section 70 PMLA, alleging that proceeds of crime were used for the Aam Aadmi Party's election campaign in Goa – Vacation Judge failed to consider this aspect [Paras 5.4, 16].

Mala Fide Intent – Timing of Arrest – Vacation Judge found malafide in the timing of the ED's actions – High Court observed that the judgment dated 09.04.2024 by Co-ordinate Bench had cleared ED of mala fide intentions [Para 15].

Judicial Discipline – Previous Findings – High Court noted that the Vacation Judge should have adhered to findings of the Co-ordinate Bench – Judgment dated 09.04.2024 had already addressed the issues considered by the Vacation Judge [Para 15].

Decision: Stay Application allowed – Operation of the Impugned Order stayed – Bail order set aside, and matter referred to Roster Bench for further consideration [Para 22].

Referred Cases:

- Neeru Yadav v. State of Uttar Pradesh, (2014) 16 SCC 508
- Satender Kumar Antil v. CBI and Another, (2022) 10 SCC 51
- Vijay Madanlal Choudhary v. Union of India, 2022 SCC OnLine SC 929
- Pavana Dibbur v. The Directorate of Enforcement, Criminal Appeal No. 2779/2023, decided on 29th November 2023

Representing Advocates:

For Petitioner: Mr. S. V. Raju, ASG with Mr. Zoheb Hossain, Special Counsel for ED, and others.

For Respondent: Dr. Abhishek Manu Singhvi, Senior Advocate with Mr. Vikram Chaudhari, Senior Advocate, and others.

ORDER

CRL.M.A. 18446/2024 (stay)

1. The factual background of the case as appearing from the record is that CBI registered an FIR bearing no. RC-0032022A0053 dated 17.08.2022 against Sh. Manish Sisodia, Deputy Chief Minister, GNCTD and others under section 120 B read with section 477A of IPC, 1860 and section 7 of Prevention of Corruption Act, 1988 on the allegations of irregularities in framing and implementation of Excise Policy of GNCTD for the year 2021-22. Thereafter, the petitioner/Directorate of Enforcement (hereinafter referred to as “**ED**”) recorded ECIR bearing no. ECIR/HIU-II/14/2022 on 22.08.2022 and initiated investigation to trace out proceeds of the crime stated to have been generated due to alleged irregularities in formulation and implementation of Excise Policy 2021-22. CBI filed the charge-sheet in predicate offence on 25.11.2022. ED filed the Prosecution Complaint on 26.11.2022 and the Special Court has taken the cognizance vide order dated 20.12.2022. ED subsequently also filed 06 supplementary charge-sheets and cognizance was taken by the Special Court on these supplementary charge sheets accordingly.

1.1 ED issued 9 summon to the respondent which were stated to be replied by the respondent but the respondent did not appear before ED in response to the summons. ED filed complaints under section 174 of Code of Criminal Procedure, 1973 (hereinafter referred to as “**the Code**”) bearing no. CT 02/2024 dated 02.02.2024 and CT 04/2024 against the respondent on which the cognizance was taken vide order dated 07.02.2024 and 07.03.2024 respectively passed by the Special Judge, Rouse Avenue Courts, New Delhi. The respondent challenged the cognizance orders dated 07.02.2024 and 07.03.2024 but the concerned Special Court vide order dated 15.03.2024 declined to grant any interim relief to the respondent. The respondent on 19.03.2024 also filed a writ petition bearing W.P. (Crl) 937/2024 seeking quashing of summons under section 50 PMLA dated 26.02.2024 and 16.03.2024 and notice was issued by this Court for 22.04.2024. The respondent also filed an application bearing Crl. M. A. no 9106/2024 in W.P. (Crl) 937/2024 and the Division Bench of this Court did not grant any interim relief to the respondent on the said application vide order dated 21.03.2024.

1.2 ED arrested the respondent on 21.03.2024 at 9:05 PM under section 19 the Prevention of Money-Laundering Act, 2002 (hereinafter referred to as “**PMLA**”) for the purpose of further investigation. The respondent being

aggrieved by the arrest filed the writ petition bearing Diary No. 13598/2024 before the Hon'ble Supreme Court which was listed on 22.03.2024. The Hon'ble Supreme Court dismissed the said writ petition as withdrawn after giving liberty to the respondent to raise all pleas and contentions before the trial court during the remand proceedings. The Special Judge vide order dated 22.03.2024 granted the custody of the respondent to ED for investigation till 28.03.2024 which was extended till 01.04.2024. The respondent was remanded to judicial custody on 01.04.2024 which is continuing up till date.

1.3 The respondent on 26.03.2024 preferred a writ petition bearing no. W.P. (Crl) 985/2024 to challenge his arrest on the ground of illegality and the remand order dated 22.03.2024 which was replied by ED. The writ petition bearing W.P. (Crl) 985/2024 was dismissed by Co-ordinate Bench of this Court vide judgment dated 09.04.2024. The respondent being aggrieved by the judgment dated 09.04.2024 filed SLP (Crl) bearing no 5154/2024 before the Hon'ble Supreme Court. The respondent was granted interim bail in SLP (Crl) 5154/2024 vide order dated 10.05.2024 till 01.06.2024 on the account of campaigning in the upcoming Lok Sabha general elections. The Hon'ble Supreme Court has already reserved judgment after conclusion of arguments in SLP (Crl) 5154/2024 vide order dated 17.05.2024.

1.4 The respondent on 30.05.2024 filed interim bail application vide IA no. 91/2024 and regular bail application vide IA no. 92/2024 before the Special Judge. The Special Judge has dismissed IA no 91/2024 for grant of interim bail vide order dated 05.06.2024. ED and the respondent have handed over written notes during the course of arguments on the bail application bearing IA no. 92/2024. The Court of Ms. Niyay Bindu, Vacation Judge, (PC Act), CBI-13, Rouse Avenue District Courts, New Delhi (hereinafter referred to as "**the Vacation Judge**") vide order dated 20.06.2024 (hereinafter referred to as "**the Impugned Order**") granted bail to the respondent.

1.5 ED being aggrieved by Impugned Order filed the present petition bearing Crl.M.C. no. 4858/2024 under section 439(2) read with section 482 of the Code to challenge the Impugned Order along with Crl.M.A. no. 18446/2024 with the prayer to grant *ad interim ex parte* stay of the operation of Impugned Order and said application is under disposal vide present order. The notice of Crl.M.C. no. 4858/2024 was ordered to be issued to the respondent which was accepted on behalf of the respondent and was ordered to be listed on 10.07.2024 before the Roaster Bench. This Court on 21.06.2024 heard the arguments at length on Crl.M.A. no. 18446/2024 and accordingly reserved

the order and further till the pronouncement of the order on CrI.M.A. no. 18446/2024, the operation of the Impugned Order was stayed. The present order is restricted to disposal of CrI.M.A. no. 18446/2024.

2. ED in the present petition has challenged the Impugned Order primarily on the following grounds besides others:

i) **The Vacation Judge has denied ED a proper opportunity to present its case which is utter violation of first mandatory condition as per section 45 of PMLA. The oral prayer made on behalf of ED for seeking stay of the impugned order was also rejected by the Vacation Judge in utter disregard of settled precedents of law.**

ii) **The averments raised on behalf of the respondent before the Vacation Judge during the course of arguments have already been considered and rejected by another Co-ordinate Bench of this Court in judgment dated 09.04.2024. The Co-ordinate Bench of this Court in judgment dated 09.04.2024 has considered material collected by ED against the respondent, credibility of statements of witnesses and approver, validity of arrest of the respondent and remand order dated 22.03.2024, time of arrest of the respondent for not joining investigation despite issuance and service of 9 summons and no fresh material collected by ED since October, 2023, etc.**

iii) **There is evidence and material against the respondent to demonstrate that the respondent has committed offence of money laundering in his individual capacity and in his vicarious liability as per section 70(1) of PMLA and no court could have come to a reasonable ground to believe that he is not guilty of offence of money laundering.**

iv) **The respondent had active role in demanding kickback and meeting with south group. The respondent also had role in formulation of Excise Policy and utilization of proceed of crime amounting to Rs.45 crores approximately.**

v) **The statements recorded under section 50 of PMLA are admissible in nature and can be relied upon at the stage of remand or even to reject bail.**

3. Sh. S.V. Raju, the learned Additional Solicitor General assisted by Sh. Zoheb Hossain, Special Counsel advanced arguments for ED. Dr. Abhishek Manu Singhvi and Sh. Vikram Chaudhari, the learned Senior Counsels

advanced arguments on behalf of the respondent. ED and the respondent have also submitted a written note/ submissions in terms of order dated 21.06.2024 which are perused and considered.

4. Before averting to the arguments, it is necessary to reproduce the relevant paragraphs of the Impugned Order which were also referred by learned Senior Counsels for both the parties during course of arguments. The para nos. 16, 20, 24, 25, 26, 27, 29, 31 and 33 are reproduced verbatim as under:-

16. Although, various bulky documents and citations have been filed by both the parties, most of which were not even relevant in respect of the present application but it seems that both the parties have filed the same alongwith detailed oral arguments with the apprehension as to an order may be passed in favour of the opposite party. Admittedly, the present matter is a peculiar case wherein various accused, witnesses and stake holders are involved and neither ED nor the defense wants the order to be passed in favour of the other. However, it is not possible to go through these thousands of pages of the documents at this juncture but this is the duty of the court to work upon the matter whichever comes for consideration and pass the order in accordance with the law. Although, sometimes the courts refrain from passing such orders on account of various reasons which may be having long lasting effects. . . .

20. So far as the well settled principle of bail is concerned, several guidelines have been issued by the Hon'ble Supreme Court specifically in the celebrated judgment of Satender Kumar Antil Versus CBI & Anr. which have been enlightening the trial courts to a great extent and compliance of those guidelines have been ensured on State level as well on District level.

24. ED is taking plea that the investigation is still pending in this matter and there is a likelihood that the applicant may influence the witnesses and tamper with the evidence. On oral enquiry by the court, the IO informed that out of the total alleged amount of 100 crores, around 40 crores has been traced out in the previous months and the remaining 60 crores yet to be traced. On this aspect, ED has failed to clarify as to how much time is required for tracing out the

complete money trail. Meaning thereby that until and unless this exercise of tracing out the remaining amount gets completed by ED, accused is supposed to remain behind bars that too without proper evidence against him. This is also not an acceptable submission of ED.

25. ED is again and again pressing upon the twin conditions available under Section 45 of PMLA to fortify its arguments that the aspect of bail under PMLA is altogether different from the provisions of bail under CrPC but one consideration is not being taken care of by ED that even for implicating a person as an accused in such a criminal matter is also required to be done under certain guidelines and legal procedures. Maxim of law that every person must be presumed innocent until proven guilty seems to be not applicable in the given case in respect of the present accused.

26. This is also noticeable that ED is silent about the facts as to how the proceeds of crime have been utilized in Assemble Elections at Goa by AAP as admittedly after about two years, the bigger portion of the alleged amount remains to be traced out.

27. There are certain undisputed facts as specified on behalf of the applicant that in the month of July 2022, the material was available with the ED against the accused but he was called only in August 2023 which shows malafide of ED and ED has failed to answer this objection of the applicant.

29. Ld. Counsel for the applicant states that statements of co-accused do not show any incriminating material against applicant. But, Ld. ASG stated that the statements of those co-accused/approvers is sufficient to establish the personal relation of the applicant with some of them and also the specific role and involvement of the applicant in the alleged offence. It may be possible that some known persons of the applicant are having involvement in an offence or being known to a third person, involved in the offence, but ED has failed to give any direct evidence against the applicant in respect of the proceeds of crime.

31. On the other hand, ED is silent of certain issues raised by the applicant such as that he was not named either in CBI case or in the ECIR FIR. Secondly, the allegations against the applicant have surfaced after the subsequent statements of certain coaccused. Thirdly, this is also an admitted fact that the accused has not been summoned by the court till date, yet, he is lying in the judicial custody at the instance of ED on the pretext of the investigation being still going on.

33. Interestingly, both the parties have relied upon the observations of Hon'ble Supreme Court as given in the celebrated case of Vijay Madanlal Chaudhary versus Union of India in respect of bail under Section 45 of PMLA. However, in view of the above discussion and on the prima facie basis, the guilt of the accused is yet to be established. In respect of the condition that he shall not involve in the offence after his release on bail, it is already undertaken so by the applicant in his application. Moreover, if bail is granted, the same shall be conditional which shall put the applicant under an obligation in this regard.

5. Sh. S.V. Raju argued that the Impugned Order is perverse as the Vacation Judge has not given an opportunity of being heard to ED to oppose the bail application filed by the respondent as per mandate of section 45(1)(i) of PMLA. The Vacation Judge has also not recorded its satisfaction that there are reasonable grounds to believe that the respondent has not committed offence of money laundering and is not likely to commit any offence while on bail as per section 45(1)(ii) of PMLA. Sh. S. V. Raju has referred para no. 16 of the Impugned Order.

5.1 Sh. S.V. Raju also argued that the Vacation Judge in para no. 27 of the Impugned Order has recorded wrong finding that the material was available with ED in the month of July, 2022 against the respondent who was called only in the month of August, 2023 which reflected *mala fide* of ED. It was also argued that ECIR subject matter of the present petition was registered in the month of August, 2022. The respondent was arrested on 21.03.2024 and thereafter filed writ petition bearing W.P.(CrI) 985/2024 to challenge his arrest

and remand and the Co-ordinate Bench of this Court in para no 155 of the judgment dated 09.04.2024 has already held that there was nothing before the Court to reach a conclusion that the timing of the arrest was deliberated by ED and the conduct of the respondent was not responsible for a situation in which there was no other option except to arrest him for joining the investigation.

5.2 Sh. S. V. Raju further argued that the respondent has filed SLP

(Crl) 5154/2024 to impugn the judgment dated 09.04.2024 passed in W.P.(Crl) 985/2024 before the Hon'ble Supreme Court wherein the respondent vide order dated 10.05.2024 was granted interim bail. It was mentioned in order dated 10.05.2024 that nothing in the order shall be treated as an expression of opinion on the merits of the case of the Criminal Appeal pending before the Hon'ble Supreme Court. The Hon'ble Supreme Court on 17.05.2024 has already heard the arguments and the judgment is reserved. The Supreme Court vide order dated 17.05.2024 has given the liberty to the respondent to file an application for grant of bail which was ordered to be considered and decided in accordance with law. Sh. S. V. Raju also referred the order dated 10.11.2023 passed in SLP (Crl) no. 14510/2023 titled as **Sanjay Singh V Union of India and another** wherein the liberty was given to the petitioner Sanjay Singh to apply for grant of regular bail which if filed will be considered and decided on its merits without being influenced by the impugned judgment and accordingly it was argued that no such observation was made by the Hon'ble Supreme Court in order dated 17.05.2024 while giving the liberty to the respondent to file an application for grant of bail.

5.3 Sh. S. V. Raju also argued that the Impugned Order is perverse being passed on irrelevant consideration and by ignoring relevant consideration. The Vacation Judge in Impugned Order has taken the contrary view pertaining to the issues which have already been considered and decided vide judgment dated 09.04.2024 and said order has never been set aside or stayed by the Hon'ble Supreme Court. The findings as given in judgment dated 09.04.2024 were binding on the Vacation Judge. Sh. S. V. Raju also referred various paras of Impugned Order in particular para nos. 16, 27, 28, 29, 31, 32 and 33 to substantiate his arguments.

5.4 Sh. S. V. Raju further argued that the Vacation Judge has not considered vicarious liability of the respondent as per section 70(1) of the PMLA as the political party i.e. Aam Aadmi Party (AAP) was also found guilty of money laundering being the beneficiary of proceeds of crime generated in Delhi

Liquor Scam. It was further argued that the proceeds of crime amounting to Rs.45 crores was utilized in the election campaign of AAP in Goa Assembly Election conducted in 2022. Accordingly, AAP has committed offence of money laundering through respondent and the respondent is accordingly covered under section 70 of PMLA.

5.5 Sh. S.V. Raju argued that the bail can be cancelled if the court granting the bail have taken into consideration factors which should not have been taken into consideration or bail is founded on irrelevant consideration and referred **Neeru Yadav V State of U.P.**, (2014) 16 SCC 508. Accordingly, it was argued that the Impugned Order passed by the Vacation Judge be stayed till the final decision of the present petition.

5.6 ED in its written note has raised various issues for considerations and most of these issues/points were argued by Sh. S. V. Raju in oral submissions.

6. Dr. Abhishek Manu Singhvi, the learned Senior Counsel for the respondent argued that the respondent cannot be detained in jail indefinitely and the Vacation Judge was not expected to mention each and every argument stated to have been advanced on behalf of ED in impugned order. The judgment dated 09.04.2024 passed in W.P. (Crl) 985/2024 was not decided on merits of the case but only dealt with arrest of the respondent under section 19 of PMLA and referred para no. 4 of the judgment dated 09.04.2024 wherein it was observed by the learned Single Judge that the petition is not an application seeking grant of bail, but release on the ground of arrest of the respondent being illegal.

6.1 Dr. Singhvi further argued that the cancellation of bail and grant of bail are two different aspects and the Impugned Order is not perverse as the Vacation Judge has considered every aspect while passing the Impugned Order. If the present application is allowed, it would amount to cancellation of bail. Dr. Singhvi in support of his arguments cited **Dolat Ram V State of Haryana**, (1995) 1 SCC 349; **Kanwar Singh Meena V State of Rajasthan**, (2012) 12 SCC 180; **Subhendu Mishra V Subhrat Kumar Mishra**, 2000 SCC (Crl) 1580; **Mahant Chand Nath Yogi V State of Haryana**, (2003) 1 SCC 326 and **Bhagirath Sinh V State of Gujarat**, (1984) 1 SCC 284 and also the judgments delivered by other benches of this Court.

6.2 Dr. Singhvi further argued that the Hon'ble Supreme Court in SLP (Crl) 5154/2024 titled as **Arvind Kejriwal V Directorate of Enforcement** vide order dated 10.05.2024 has granted leave to the respondent against the

judgment dated 09.04.2024 passed in W.P.(Crl) 985/2024 and as such the judgment dated 09.04.2024 is under active consideration of the Hon'ble Supreme Court. Dr. Singhvi also referred para no. 15 of the order dated 10.05.2024 passed by the Hon'ble Supreme Court whereby the respondent was granted interim bail and order dated 17.05.2024 whereby liberty was granted to the respondent to file an application for grant of bail. Dr. Singhvi further stated that the judgment dated 09.04.2024 is not final and cannot be mixed with issue regarding the grant of bail to the respondent. The Vacation Judge was competent to decide the bail application independent of judgment dated 09.04.2024.

- 6.3 Dr. Singhvi while emphasizing that the personal liberty of a person is supreme mentioned that the respondent did not misuse interim bail granted for about 20 days by the Hon'ble Supreme Court vide order dated 10.05.2024. There cannot be any perversity if a different view is taken by the Vacation Judge while passing the Impugned Order. The respondent was not named as an accused either in RC registered by CBI or in ECIR registered by ED. Dr. Singhvi also referred the various paragraphs of impugned order. It was stated that no money trail could be traced qua the respondent as per section 3 of PMLA. Dr. Singhvi also referred law relating to section 45 of PMLA and in particular, **Vijay Madan Lal Chaudhary V Union of India**, 2022 SCC OnLine SC 929 and other judgments delivered by the Apex Court and prayed for dismissal of the stay application.
7. Sh. Vikram Chaudhari, the learned Senior Counsel also advanced arguments on behalf of the respondent and argued that the Vacation Judge gave findings on each argument advanced on behalf of the parties and stated that the Vacation Judge in first 15 pages of the Impugned Order has recorded the facts and arguments of the parties and also referred the para no. 15 of the order dated 10.05.2024 passed by the Hon'ble Supreme Court. It was also stated that no prejudice shall be caused if the respondent is released on bail and the Vacation Judge as reflecting from para no. 36 of the Impugned Order has considered most of the relevant arguments and contentions raised on behalf of the parties which were accordingly dealt with.
8. The written submissions were also submitted on behalf of the respondent. It is mentioned in written submissions that the co-accused P. Sarath Reddy (PSR) made his statement on 09.11.2022 under section 50 of PMLA wherein he did not say any incriminating fact against the respondent. The co-accused Magunta Sreenivasulu Reddy (MSR) made his statement on

24.03.2023 under section 50 of PMLA without mentioning any incriminating fact against the respondent. PSR was examined 9 times under section 50 of PMLA between his arrest and April, 2023 but he did not make any allegation against the respondent. However, PSR was granted pardon by the Special Judge on 29.05.2024 i.e. after 20 days from the grant of bail on 08.05.2024 by this Court as grant of bail was not objected by ED. ED issued 9 summon to the respondent but the respondent was not arrested till March, 2024.

8.1 In the written submissions besides arguments advanced by learned Senior Counsels for the respondent, it is also stated that issue pertaining to cancellation of bail is completely different from issue pertaining to grant or rejection of bail. ED is seeking cancellation of bail on the ground of perversity and not on the ground of misuse of liberty, tampering of evidence, influencing the witnesses etc. The Impugned Order passed by the Vacation Judge is not only reasoned and passed on basis of contentions and arguments of the parties but is also reflective of application of judicial mind. The Vacation Judge in impugned order considered the relevant material which is contrary to arguments advanced on behalf of ED. ED was given sufficient opportunity by the Vacation Judge to advance arguments. The Vacation Judge also recorded finding that conduct of ED was *mala fide*. The Vacation Judge was not required to render finding on guilt or acquittal of the respondent but only to make a reasonable ground for believing that the respondent is not guilty on broad probabilities. The respondent in written submissions also stated other pleas and averments which have been argued by the learned Senior Counsels for the respondents.

9. This Court is conscious of the fact that this order pertains to disposal of stay application bearing no. 18446/2024 and the main petition has already been ordered to be listed before the Roster Bench on 10.07.2024 for consideration. It is pertinent to mention that substantial arguments advanced by both the parties and submissions as mentioned in written submissions/note are pertaining to main petition under section 439 (2) of the Code.
10. Sh. S. V. Raju opened the arguments by referring the para no. 16 of the Impugned Order wherein the Vacation Judge has observed that it is not possible to go through thousands of pages of documents filed by the respective parties but it is the duty of the court to work upon the matter whichever comes for consideration and passed the order in accordance with law. The Vacation Judge in para no. 36 of the Impugned Order as also referred by Dr. Singhvi observed that most of the relevant arguments and

contentions raised on behalf of the parties are being dealt with in Impugned Order by the Vacation Judge. It is not understandable that on one hand, the Vacation Judge has expressed her inability to go through entire documents stated to have been running into thousands of pages at the time of passing the Impugned Order and on the other hand, how in para no. 36 the Vacation Judge has mentioned that relevant arguments and contentions raised on behalf of the parties are dealt with. The perusal of the Impugned Order is reflecting that the Vacation Judge has passed the Impugned Order without going through and appreciating the entire material brought on record by the rival parties which reflects perversity in Impugned Order. There is factual force in the arguments advanced by Sh. S. V. Raju that the Vacation Judge has not passed the Impugned Order after due consideration of entire material on record. Although, Sh. Vikram Chaudhari referred the para no. 36 of the Impugned Order but the averment made in para no. 36 of the Impugned Order does not inspire any confidence to the effect that the Vacation Judge before passing the Impugned Order has considered the entire material brought on record. The observation made by the Vacation Judge in Impugned Order is uncalled for, unwarranted and out of context. The Vacation Judge should refrain from making such observations in the Impugned Order. The Vacation Judge was required to consider every important and relevant document at time of passing of Impugned Order.

10.1 The Vacation Judge in para nos. 1 to 6 has mentioned the contentions of the parties i.e. ED and the respondent and the arguments advanced by their respective counsels but the perusal of Impugned Order is reflecting that the Vacation Judge did not discussed and considered said contentions and the arguments in impugned order. It is also worth mentioning that ED submitted a written note in the concerned Special Court/Vacation Judge in support of the argument wherein the petitioner has raised various points as detailed therein for consideration but the Vacation Judge has not considered the said points/issues as mentioned in the written note submitted by ED before the Special Court/Vacation Judge.

- 11.** Dr. Singhvi vehemently argued that the grant of bail and cancellation of bail are two different aspects and also cited various judgments in support of his arguments as referred hereinabove. It is accepted proposition of law that the rejection of the bail in a nonbailable case at initial stage and the cancellation of bail so granted have to be considered and dealt with on different basis and very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted. Sh. S.V. Raju has argued

that the relevant factors which should have been considered while dealing with the application for bail have not been taken note of or that the bail is founded on irrelevant consideration and in this eventuality, the superior court can set aside the order for grant of bail. Sh. S. V. Raju in support of his arguments as mentioned hereinabove cited **Neeru Yadav V State of Uttar Pradesh** (supra). However, the issue whether the present main petition under section 439(2) of the Code is maintainable or not maintainable has to be considered appropriately by the concerned Roster Bench while dealing with the main petition.

12. Sh. S.V. Raju while attacking the Impugned Order stated that the Vacation Judge has not given appropriate opportunity to ED to oppose the bail application as per section 45(1) of PMLA and the facts and circumstances leading to the denial of opportunity to ED as per the mandate of section 45(1) of PMLA are mentioned in the main petition under section 439(2) of the Code which requires due consideration by the court. Sh. Vikam Chaudhari in his argument after referring pages no. 1 to 15 of the Impugned Order has rebutted this argument of ED but in humble assessment of this court, argument raised by Sh. S. V. Raju needs due consideration of this court. Every court is under an obligation to give sufficient and appropriate opportunity to represent their respective case before the court. ED ought to have given adequate opportunity to advance arguments on bail application by the Vacation Judge.
13. The Vacation Judge in para no. 25 of the Impugned Order observed that ED has again and again pressed the twin conditions as per section 45 of PMLA which are stated to be altogether different from the provision of bail under the Code and further observed that due consideration is not being taken care by ED that even for implicating a person as an accused in such a criminal matter, it is also required to be done under certain guidelines and legal procedures. Sh. S.V. Raju argued that the trial court should have satisfied itself with the twin conditions as laid down under section 45 of PMLA but the Vacation Judge in the Impugned Order has not considered the twin conditions as per section 45 of PMLA. Dr. Singhvi has countered this argument by stating that the Vacation Judge in Impugned Order has considered correct proposition of section 45 of PMLA. It is correct that the Hon'ble Supreme Court in **Vijay Madan Lal Choudhary V Union of India** (supra) which is also referred by Dr. Singhvi has observed that at the stage of consideration of application for grant of bail, it is expected to consider the question from the angle as to whether the accused was possessed of the requisite *mens rea* and the court

is not required to record a positive finding that the accused had not committed an offence under the Act. It was further observed that the Court ought to maintain a delicate balance between a judgment of acquittal and conviction and order granting bail much before commencement of trial. The Court is not supposed to weigh the evidence meticulously. However, the Vacation Judge in the Impugned Order has not discussed requirement of section 45 of PMLA while passing the Impugned Order. The trial court should have at least recorded its satisfaction about fulfillment of twin conditions of section 45 of PMLA before passing the impugned order.

14. Sh. S.V. Raju also referred the para no. 20 of the Impugned Order wherein the Vacation Judge observed that the Hon'ble Supreme Court in **Satender Kumar Antil V CBI and Another**, (2022) 10 SCC 51 also laid down several guidelines for grant of bail and argued that the law laid down in **Satender Kumar Antil** is applicable if the accused is not arrested during the investigation. It appears that the Vacation Judge has not discussed and appreciated **Satender Kumar Antil** in the right perspective.
15. Sh. S.V. Raju also referred the para no. 27 of the Impugned Order wherein the Vacation Judge observed that the material was available with ED against the respondent in the month of July, 2022 but the respondent was called in August, 2023 which reflected *mala fide* of ED and ED has failed to answer this objection of the respondent. Sh. S.V. Raju argued that the present ECIR was registered in the month of August, 2022 as such the said observation of the Vacation Judge is factually incorrect. Dr. Singhvi, however, countered the said argument by stating that there may be typographical error in para no. 27 of the Impugned Order and in place of July, 2022, it should have been read as July, 2023 and in place of August, 2023, it should have been read as October, 2023. Be as it may be, the Vacation Judge observed that there was *mala fide* on the part of ED. It is worth mentioning here that the Co-ordinate Bench of this Court while delivering the judgment dated 09.04.2024 in W.P.(Crl) 985/2024, in para no. 151 observed absence of any *mala fide* intention on the part of ED and further observed that the Court has to examine the arrest and remand of the respondent irrespective of the timing of the elections. Dr. Singhvi although argued that the finding given vide judgment dated 09.04.2024 has not attained finality but this Court cannot lose sight of the fact that the Hon'ble Supreme Court while hearing SLP(Crl) 5154/2024 although granted the leave against the judgment dated 09.04.2024, but did

not stay operation of judgment dated 09.04.2024. The Vacation Judge after following the judicial discipline should not have observe in para no. 27 of the Impugned Order that there was *mala fide* on the part of ED particularly in light of observation made in judgment dated 09.04.2024 as referred herein above.

16. Sh.S.V. Raju also argued that ED during the hearing of bail application subject matter of Impugned Order has raised issue of vicarious liability qua the respondent as per section 70 of PMLA but the said issued was not dealt by the Vacation Judge in the Impugned Order. The perusal of written note submitted by ED before the Special Judge/Vacation Judge reflects that the issue regarding the role of respondent for vicarious liability was taken by ED by mentioning that the role of the petitioner in vicarious liability was specifically examined and established after 30.10.2023 but said issue did not find any place in the Impugned Order.
17. Dr. Singhvi argued that that the personal liberty of a person is supreme and mentioned that the respondent did not misuse the interim bail granted for about 20 days. It is also stated in written submissions submitted on behalf of the respondent that Hon'ble Supreme Court vide order dated 10.05.2024 passed in SLP (Crl) 5154/2024 granted interim bail to the respondent after taking into consideration all objections of ED including objections/contentions raised in the present petition. The Hon'ble Supreme Court vide order dated 17.05.2024 also gave liberty to the respondent to file an application for grant of bail and said application if any, shall be considered and decided in accordance with law. Dr. Singhvi also argued that if present application is allowed it shall tantamount to cancellation of bail and further if the main petition under section 439 (2) of the Code is dismissed, the respondent can be again sent back to judicial custody.

17.1 The personal liberty as guaranteed under Article 21 of the Constitution cannot be deprived to a citizen except with the procedure established by law. The respondent was arrested on 21.03.2024 for further investigation when the respondent did not join investigation despite issuance of 9 summon. The respondent filed a petition bearing W.P. (Crl) no. 985/2024 to challenge arrest order dated 21.03.2024 and to declare consequential proceedings as illegal, *non-est*, arbitrary and unconstitutional and custody remand being passed in a mechanical and patently routine manner. However, the petition bearing W.P. (Crl) no. 985/2024 was dismissed by the Coordinate Bench of this court vide judgment dated 09.04.2024. The respondent has filed SLP (Crl)

5154/2024 before the Hon'ble Supreme Court and leave was granted vide order dated 10.05.2024 and judgment has already been reserved after conclusion of arguments vide order dated 17.05.2024. It is worth mentioning that operation of the judgment dated 09.04.2024 was not stayed by the Hon'ble Supreme Court. So at this stage it cannot be said that arrest and remand of the respondent was not in accordance with law and personal liberty of the respondent was curtailed without following procedure established by law.

17.2 It is correct that the respondent was granted interim bail vide order dated 10.05.2024 which was emphatically referred by Dr. Singhvi passed in SLP (Crl) 5154/2024 by the Hon'ble Supreme Court. The Hon'ble Supreme Court in order dated 10.05.2024 observed that the respondent has not been convicted although serious accusations have been made against the respondent. It was further observed that the respondent does not have any criminal antecedents and the respondent is not a threat to the society. It was further observed that investigation is pending since August, 2022 and further legality and validity of arrest is under challenge before the Hon'ble Supreme Court. Accordingly, the respondent was granted interim bail till 01.06.2024 in background of the 18th Lok Sabha General Election on conditions as detailed in para no. 18 of the order dated 10.05.2024. Although, there is no allegation of misuse of interim bail by the respondent but one fact cannot be lose sight is that the respondent was not granted interim bail on merit but in background of 18th Lok Sabha General Elections. Accordingly, arguments advanced by Dr. Singhvi do not provide much help to the respondent. There is also no force in argument advanced by Dr. Singhvi that if the present petition under section 439 (2) of the Code is dismissed then the respondent can be again remanded to judicial custody particularly in view of the fact that Impugned Order passed by the Vacation Judge is under serious challenge and grounds of challenge as raised by ED requires consideration of concerned court.

18. Dr. Singhvi after referring para no. 24 of the Impugned Order stated that no recovery of proceeds of crime was traced to the respondent. The Vacation Judge in para no. 24 of the Impugned Order observed that ED has failed to clarify that how much time is required for tracing out the complete money trail particularly the remaining Rs.60 crores. It was further observed that unless and until the exercise of tracing out of remaining amount is completed by ED, the respondent cannot be supposed to remain behind bars without proper evidence against him. The perusal of the note submitted by

ED before the Special Judge/Vacation Judge reflected that the said plea was encountered by ED but not sufficiently and adequately dealt with by the Vacation Judge in the Impugned Order.

19. The Vacation Judge in para no 31 of the Impugned Order observed that the respondent was neither named in RC filed by CBI nor in ECIR filed by ED and allegations against the respondent surfaced on account of subsequent statements of certain accused persons. The Vacation Judge also observed that the respondent is in custody at instance of ED on pretext of ongoing investigation despite he was not summoned by the court. Sh. S. V. Raju referred **Pavana Dibbur V The Directorate of Enforcement**, Criminal Appeal no. 2779/2023 decided on 29th November, 2023 wherein it was observed that it is not necessary that a person against whom the offence under section 3 of PMLA is alleged must have been shown as the accused in the scheduled offence. It was further observed that the conditions precedent for attracting the offence under section 3 of the PMLA are that there must be a scheduled offence and that there must be proceeds of crime. It was argued that observation of the Vacation Judge in Impugned Order is not legally tenable and as such Impugned Order is perverse. The argument as such advanced by Sh. S. V. Raju requires further consideration.

20. Sh. S.V. Raju also argued that the Impugned Order was passed on the basis of irrelevant consideration by ignoring relevant consideration. In the humble submission of this Court, these points are required to be considered by the Roster Bench at time of consideration of petition under section 439(2) of the Code.

21. The arguments advanced by Dr. Singhvi and Sh. Vikram Chaudhari that arrest of the respondent was bad, the judgment dated 09.04.2024 has not attained finality and other arguments which are not specifically dealt with or discussed in this order in humble opinion of this Court are required to be dealt with at the time of consideration of the petition under section 439(2) of the Code.

22. The Vacation Judge while passing the Impugned Order did not appropriately appreciate the material/documents submitted on record and pleas taken by ED and the averments/grounds as raised in the petition under section 439(2) of the Code require serious consideration while dealing with said petition. Accordingly, the present application is allowed and the operation of the Impugned Order is stayed.

23. It is made clear that nothing in this order shall be taken as any opinion or observation on the merits of the petition under section 439 (2) of the Code.

24. Copy of this order be given *dasti* to both parties under signature of the court master.

CRL.M.C 4858/2024

1. List on 10.07.2024 before the Roster Bench, as already fixed.

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