



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 546 OF 2023

SANJAY RAJKUMAR CHHABRIAA ..APPLICANT

VS.

1) DIRECTORATE OF ENFORCEMENT

2) THE STATE OF MAHARASHTRA

..RESPONDENTS

Adv. Vibhav Krishna a/w Adv. Tahlil Prande a/w Adv. Anmol B. i/b Juris Consillis for the Applicant.

Shri Devang Vyas, Additional Solicitor General a/w Adv. H.S. Venegavkar a/w Adv. Aayush Kedia a/w Adv. Anusha Amin and Adv. Vaibhavi Chaudhary for Respondent No.1.

Ms. Rutuja Ambekar, APP for the State.

Mr. Kuldeep Singh, Investigating Officer is present.

CORAM : M. S. KARNIK, J.
RESERVED ON : OCTOBER 05, 2023
PRONOUNCED ON : OCTOBER 09, 2023

JUDGMENT:

For ease of reference this judgment is divided into following parts:-

1	Introduction	Paragraph Nos. 1 to 5
2	The prosecution case as reproduced from the counter affidavit filed before the Special Court	Paragraph No. 6
3	Submissions of the learned counsel for the applicant	Paragraph Nos. 7 to 21
4	Arguments of the respondent-ED	Paragraph Nos. 22 to 27
5	Consideration	Paragraph Nos. 28 to 44

Introduction:-

1. The applicant approached the Special Court under The Prevention of Money-Laundering Act, 2002 ("PMLA" for short), for default bail under Section 167(2) of the Code of Criminal Procedure, 1973 ("Cr.P.C." for short). By the order dated 25/08/2022, the Special Judge under PMLA rejected the application. The applicant is accused No. 25 in the Special Case No. 452 of 2020 under PMLA. The applicant was arrested by CBI in R.C. No. 219/2020 E0004 dated 07/03/2020 on 28/04/2022. The applicant was in CBI custody from 29/04/2022 till 13/05/2022. The applicant was arrested by the respondent No. 1 – Directorate of Enforcement (ED) and was investigated from 07/06/2022 till 17/06/2022 and thereafter remanded to jail custody. ED filed a third supplementary prosecution complaint ("said complaint" for short) on 04/08/2022. The period of 60 days for continuing the remand from 07/06/2022 expired on 06/08/2022.

2. Learned counsel for the applicant fairly submitted that there is no dispute that the said complaint was filed on the

59th day i.e. within the period of 60 days. The applicant preferred default bail application under Section 167(2) of the Cr.P.C. (Exhibit 308) before the Special Court on 08/08/2022. The submission of the learned counsel for the applicant is that the said complaint was filed by respondent No.1 without completing the investigation only with a view to scuttle the indefeasible right accrued in favour of the applicant to claim the default bail. The application (Exhibit 308) for default bail was rejected by the Special Court on 25/08/2022.

3. The applicant has filed the application for regular bail before the Special Court on 27/03/2023. The respondent filed a reply to the regular bail application on 10/04/2023. The Supreme Court granted default bail to the applicant in the CBI case in Writ Petition (Criminal) No. 60 of 2023 on 26/04/2023.

4. The applicant had previously filed an application for default bail (Exhibit 458) before the Special Court on the basis of the judgment passed in his favour by the Supreme Court in Writ Petition (Criminal) No. 60 of 2023. The Special

Court by order dated 16/05/2023 permitted withdrawal of the said default bail application as not pressed.

5. Thereafter, the application (Exhibit 308) for default bail was filed. The grievance of the learned counsel for the applicant is that the investigation is still pending and the applicant continues to be detained despite the investigation not being completed till date.

6. Before I deal with the controversy involved in this application, it would be apposite to appreciate the prosecution case. The prosecution case as reproduced from the counter affidavit is thus:

A. *That CBI/EO-I, New Delhi, registered an FIR bearing No. RC 219 2020 E0004 dated 07.03.2020, against DHFL, M/s DOIT Urban Ventures (India) Limited, Rana Kapoor, the then Promoter Director and CEO of M/s Yes Bank Ltd, Kapil Wadhawan, Promoter Director of M/s Dewan Housing Finance Limited & Ors. under Sections 120B r/w 420 of IPC & Section 7, 12 & 13(2) r/w 13 10(d) of PC Act. 1988. Brief fact of the FIR as follows:*

1) Rana Kapoor while working as MD cum CEO of Yes Bank had connived with Kapil Wadhawan, Promoter Director of M/s DHFL and others with intention to extend undue financial benefit to M/s DHFL by Yes Bank Ltd. and to get in return undue benefit from Wadhawans for himself and his family members through the companies held by them (Rana Kapoor's family). Yes Bank had bought debentures worth Rs 3,700 Crore and Masala Bonds of Rs.283 Crore between April 2018

to June 2018 from DHFL while DHFL gave loan of Rs 600 Crore to DOIT Urban Ventures Pvt. Ltd. which is beneficially owned by Rana Kapoor and his family. The so-called loan was sanctioned by DHFL to DUVPL in violation of almost all the set rules/regulations, guidelines, procedures required to have been followed in DHFL. Apart from this, M/s Yes Bank Ltd. also sanctioned a loan of Rs. 750 crores to M/s Belief Realtors Pvt. Ltd. (beneficially owned by Wadhawans) for its Bandra Reclamation Project, Mumbai but the entire amount was siphoned off by Wadhawans to M/s DHFL by way of layering through their other group companies without spending a single penny for the said project.

B. *Pursuant to the aforesaid FIR, a new case bearing ECIR No. ECIR/MBZO-1/03/2020 dated 07.03.2020 was recorded by the Directorate of Enforcement ('ED') for investigation into suspected commission of the offence of Money Laundering as defined under Section 3 punishable under Section 4 of the Prevention of Money Laundering Act (hereinafter referred to as "PMLA") 2002 against the said accused persons & entities.*

C. *That consequent upon investigation conducted under PMLA, 2002, a Prosecution Complaint registered as PMLA Special Case No. 452/2020 was filed by ED on 06.05.2020 for the offence of money laundering under section 3 and punishable under section 4 of the Act has been filed before the Hon'ble Special PMLA Court (C.R. 16), Mumbai, the designated Special Court under the Prevention of Money Laundering Act, 2002. The Hon'ble Court was pleased to take cognizance of the said offence and issued the process.*

D. *During the Investigation following Supplementary PCs have also been filed*
i) *1st Supplementary PC on 11.07.2020 (Kapil/Dheeraj Wadhawan & Ors).*
ii) *2nd Supplementary PC on 14.03.2022 (regular PC w.r.t. confirmation of PAO).*

iii) 3rd Supplementary PC on 04.08.2022 (Sanjay Chhabria, Avinash Bhosale & Ors).

E. *During the investigation of this case following persons have been arrested by ED:*

i) Mr. Rana Kapoor on 08.03.2020;

ii) Mr. Kapil Wadhawan on 14.05.2020;

iii) Mr. Dheeraj Wadhawan on 14.05.2020;

iv) Mr. Sanjay Chhabria ("Present Applicant") on 07.06.2022;

v) Mr. Avinash Bhosale on 28.06.2022.

F. *Mr. Sanjay Chhabria ("Present Applicant") had been arrested on 07.06.2022 for his role in the instant case.*

G. *The Hon'ble Special Court was pleased to grant custody of Mr. Sanjay Chhabria till 14th June 2022, subsequently extended till 17 June 2022. After that he was sent to Judicial Custody.*

H. *The Respondent-department filed 3rd Supplementary Prosecution Complaint in the instant case before the Hon'ble Special Court on 04.08.2022, wherein the applicant has been arraigned as Accused No. 25. The Hon'ble was pleased to take cognizance of the said Prosecution Complaint vide its order dated 25.08.2022. Since then, the applicant is lodged in Arthur Road Jail.*

I. *The applicant had preferred an application (Exh. 308) dated 08.08.2022 under sec. 167(2) of Cr.P.C for default Bail before Hon'ble PMLA on the contention of the applicant, this Hon'ble Court called the report from the Court Registry to ascertain whether the Prosecution Complaint was filed beyond 60 days. The Hon'ble Court in its order dated 25.08.2022 in the said Ex. 308 has recorded that the said complaint was filed by ED on 04.08.2022 at 3 PM which was the 59th day and therefore the supplementary complaint was filed even prior to 60 days and not beyond thereof.*

J. *The applicant has preferred regular Bail*

Application (Exh. 449 dated 27.03.2023) before the Hon'ble Special Court. The arguments in the said application from the defence as well as the prosecution side have been completed. The Hon'ble Spl. Court has reserved in the said Bail Application.

K. *The applicant had also preferred an application w/s 167 of Cr.P.C on 27.04.2023 before Ld. Special Court seeking default Bail under section 167(2) Cr.P.C relying on the judgement of the Hon'ble Supreme Court in Ritu Chhabria vs. Union of India WP (Crl) 60 of 2023, which was later withdrawn by applicant on 16.05.2023. It is pertinent to mention herein that Ritu Chhabria judgment is under challenge before the Hon'ble Supreme Court.*

4. Investigation Under PMLA Qua Applicant

4.1 *Rana Kapoor the promoter of Yes Bank and Kapil Wadhawan & Dheeraj Wadhawan Promoter Directors of DHFL, through the companies beneficially owned by them and/or their family members, associates and others have fraudulently obtained and siphoned off thousands of crore of rupees by cheating and defrauding the Yes Bank and DHFL by misusing their official position. From the investigation conducted so far, the total estimated proceeds of crime is to the tune of Rs.5333 Crore.*

4.2 *Rana Kapoor while working as MD cum CEO of Yes Bank had connived with Kapil Wadhawan, Promoter Director of M/s DHFL and others with intention to extend undue financial benefit to M/s DHFL by Yes Bank Ltd. and to get in return undue benefit from Wadhawans for himself and his family members through the companies held by them (Rana Kapoor's family). Yes Bank had bought debentures worth Rs 3,700 Crore and Masala Bonds of Rs.283 Crore between April 2018 to June 2018 from DHFL, while DHFL gave loan of Rs 600 Crore to DOIT Urban Ventures Pvt. Ltd. which is beneficially owned by Rana Kapoor and his family.*

4.3 *M/s DHFL has granted loan of Rs. 600 Crore to*

DUVPL against mortgage of sub-standard property worth only Rs. 39.66 crore by showing inflated value as Rs. 735 crore. It is significant to mention here that just before sanction of this loan, Yes Bank had invested Rs. 3983 crore in DHFL. This is an obvious case of 'quid pro quo'. Investigation has revealed that behind the façade of DUVPL, Rana Kapoor was the person on ground interacting with Kapil Wadhawan for sanction of loan. Not only this, the so-called loan was sanctioned by DHFL to DUVPL in violation of almost all the set rules/regulations, guidelines, procedures required to have been followed in DHFL. Thus, there is a criminal conspiracy between Rana Kapoor and the promoters of DHFL in sanctioning the amount of Rs. 600 Crore.

4.4 *After receipt of the public fund of Yes Bank into DHFL to the tune of Rs.3983 Crore, Mr. Kapil Wadhawan diverted Rs.2317 Crore to the entities of Mr. Sanjay Chhabria in the name of development of one of his projects namely 'Avenue-54' at Santacruz. But Mr. Sanjay Chhabria, instead of using this fund for development of the said project, further diverted huge part of it for other purposes. He, in conspiracy with Mr. Avinash Bhosale, diverted Rs.267 Crore and Rs. 25 Crore out of this fund to his (Avinash Bhosale's) beneficially owned entities namely M/s Nibodh Realty LLP and M/s Abil Diary LLP respectively. Also, as per the directions of Mr. Kapil Wadhawan, Mr. Sanjay Chhabria (applicant) diverted a fund of Rs.115 Crore to M/s Mentor Capital Ltd. Apart from this, huge part of this fund was used by Mr. Sanjay Chhabria for repayment of loans and interest thereon with regard his other group companies. The project for which this loan had been disbursed by DHFL is still incomplete and the loan has turned into NPA.*

4.5 *From the investigation conducted, it is revealed that Wadhawans of DHFL conspired with Mr. Sanjay Chhabria of Radius Group and diverted Rs.2317 Crore to his Radius Group Companies in the garb of loan. Break up of this so-called loan of Rs. 2317 Crore is as under:*

1. Rs. 1100 Crore to M/s Radius Estate Project Pvt. Ltd. ("REPPL")
2. Rs. 439 Crore to M/s Sumer Radius Realty Pvt. Ltd. ("SRRPL") (loan sanctioned was Rs. 900 Crore in the name of SRRPL but disbursed only Rs. 439 Crore & out this Rs. 439 Crore, Rs. 280 was disbursed to SRRPL and Rs. 159 Crore to REPPL)
3. Rs. 678 Crore to M/s Flag Industries (I) Pvt. Ltd.
4. Rs. 100 Crore to REPPL.

4.6 It is also revealed that this fund has been diverted in the name of development of "Avenue 54" project of Radius Group. The period of diversion of funds of Rs. 2317 Crore by DHFL is the same when Wadhawan had obtained the said investment of Rs. 3983 Crore in DHFL from YES Bank. The fund of Rs. 2317 Crore is nothing but part of the Proceeds of Crime (POC) of Rs. 3983 Crore received by DHFL from the Yes Bank. The said fund of Rs. 2317 Crore received by Radius Group of Mr. Sanjay Chhabria from DHFL was not utilized for the declared purpose.

4.7 Project finance team of DHFL had raised concern with regard to sanction of said loan of Rs. 2778 crore to Radius group of Sanjay Chhabria despite that Mr. Sanjay Chhbaria conspired with Mr. Kapil Wadhawan and got sanctioned loan of Rs. 2778 Crore from DHFL. It is also revealed that this fund (Rs. 2317 crore) has been diverted in the name of development of "Avenue 54" project of Radius Group. The said fund of Rs. 2317 Crore received by Radius Group of Mr. Sanjay Chhabria from DHFL was not utilized for the declared purpose. This was done with the criminal intent of illegally enjoying the public money without providing proper collateral and rotating the money for their own end use. Sanjay Chhbaria with malafide intention took the loan and diverted the fund for the purpose to evergreen of earlier loans, repayment of loan taken from other private entities and repayment/issuances of ICD to other business/corporate entities.

4.8 It is revealed during the investigation that on receiving the said so called loan of Rs. 1100 Crore in

REPPL, Mr. Sanjay Chhabria has diverted Rs. 175 Crore to Ms Nibodh Realty LLP of Mr. Avinash Bhosale. Out of the remaining funds, Rs. 260 Crore was transferred to Ms Radius Enterprises and from here Rs. 75 Crore was diverted to M/s Nibodh Realty LLP, Rs. 13.80 Crore to Bank of Baroda as interest payment w.r.t. loan of his another project namely One BKC, Rs. 5.6 Crore to Yes Bank as interest payment w.r.t. loan of his another project namely Anantya Project & Rs. 61.70 Crore as interest on debentures.

4.9 *That out of the said so called loan of Rs. 439 Crore in SRRPL & REPPL, Mr. Sanjay Chhabria has diverted Rs. 17.40 Crore to M/s Nibodh Realty LLP, Rs. 25 Crore to M/s Abil Dairy LLP of Mr. Avinash Bhosale, Rs. 20 Crore to Bank of Baroda as interest payment w.r.t. loan of his another project namely One BKC & Rs. 26 Crore to DHFL as interest payment w.r.t. loan of his another project namely X BKC.*

4.10 *That on receiving the said so called loan of Rs. 678 Crore in Ms Flag Industries India Pvt. Ltd., Mr. Sanjay Chhabria has diverted Rs. 115 Crore to M/s Mentor Capital Ltd. which was further utilised for purchase of shares of DHFL, Rs. 58.90 Crore to DHFL as interest payment w.r.t. loan of his another project namely X BKC, Rs. 41 Crore as ICD to SRRPL, Rs.25 Crore as ICD to one M/s Uttwani Realty, Rs. 2.6 Crore to Standard Chartered Bank as interest payment w.r.t. loan of his another project namely Harbour Heights, Rs. 5.60 Crore to Bank of Baroda as interest payment.*

4.11 *That from the said so called loan of Rs. 100 Crore in REPPL, Mr. Sanjay Chhabria has diverted Rs. 5.6 Crore to Yes Bank as interest payment with respect to loan of his another project namely Anantya Project., Rs. 2.5 Crore to Standard Chartered Bank as interest payment w.r.t. loan of his another project namely Harbour Heights & Rs. 2.6 Crore as ICD repayments.*

4.12 *The Applicant/ Accused is the promoter director of Radius Group of companies. He had entered into a*

criminal conspiracy with Kapil Wadhawan of DHFL and illegally & fraudulently obtained huge amount of funds in the name of loan for development of one of his JV projects namely 'Avenue-54' at Santacruz, Mumbai. But, instead of using the said fund for the development of 'Avenue-54' project, he in connivance with Mr. Kapil Wadhawan and others diverted the entire amount for their own beneficial uses. The said fund of Rs. 2317 Crore received from DHFL was not utilized for the declared purpose and was diverted for other purposes and the loan account has turned into NPA."

Submissions of the learned counsel for the applicant:-

7. The Applicant is Accused No. 25 in prosecution filed in ECIR No. /MBZO-1/03/2020, for offence under Section 3, punishable under Section 4 of PMLA, and has filed the present application against manifestly arbitrary order dated 25.8.2022 passed by the Special Court, rejecting his application for default bail, merely because a prosecution complaint was filed in registry on 59th day of remand, though admittedly before "culmination of investigation".

8. Neither in the reply to the default bail application, nor in the impugned Order rejecting default bail, it was even claimed that the 'investigation' was complete. However, the opposition to default bail, and the rejection thereof was on the ground that the 'Complaint' was complete, and that

further investigation was permissible under the Act.

9. Even in the reply dated 11.8.2023 filed by the ED in the present proceedings at paragraph No. 2.3 (page 40) and at paragraph No. 4.13 (page 53), pleadings of denial are made by the Respondent but it does not contain any positive statement or assertion that the investigation is completed.

10. To wriggle out of this settled legal position, the ED is now taking an ex facie fallacious stand that under the subject prosecution complaint dated 4.8.2022 filed on 59th day of remand, the investigation was completed qua the petitioner. Without prejudice to the legal position that investigation ought to be completed of the 'case', to assail the veracity of such ex-facie fallacious stand regarding investigation being completed qua the petitioner, attention is invited to-

(i) Following extracts of para 6.8 & 15.4 of the subject prosecution complaint (page 148 of the compilation) itself-

"6.8 ... Further investigation with regard to money trail is in progress."

"15.4 Investigation is complete qua the properties mentioned in the present complaint as well as

related transactions mentioned therein, against the above-mentioned accused persons. However, investigation is still in progress in respect of other properties/ transactions/ persons/ entities. The Complainant craves leave of this Hon'ble Court for conducting further investigation and as and when investigation is complete in other aspects, to file supplementary complaint(s) in due course."

(ii) Paragraph No. 7 of the ED's reply dated 10.4.2023 in applicant's regular Bail Application (page 200 of the compilation of the Applicant), wherein it is stated that-

"Investigation in the instant case is still going, at this stage possibility of applicant influence the witness, cannot be ruled out...."

11. It is thus admitted position emanating from the alleged prosecution complaint that investigation into money trail and against other properties, transactions and entities of the applicant and others, which are not mentioned in the complaint, is still in progress. The pendency of investigation is further fortified from the stand of Respondent in above Para 7 of their reply to regular bail application.

12. Mechanical continuation of remand by rejecting default bail application without looking into and ascertaining this most crucial aspect of pendency of investigation by perusing the averments made in the alleged prosecution complaint,

was therefore ex facie erroneous and in violation of statutory and fundamental rights.

13. Thus, merely by filing a complaint/charge sheet of interim nature without first completing the investigation within the time allowed, an investigating agency cannot curtail the fundamental and statutory right of the accused, which accrues on default in completing investigation within the time allowed.

14. Thus, the Applicant is entitled to default bail under Section 167(2) Cr.P.C. which is his statutory as well as fundamental right, accrued on account of default in completing investigation within the maximum permissible period of remand. Under the impugned Order, his right to be released was wrongly denied.

15. Mere filing of an alleged chargesheet/prosecution complaint, without first completing the investigation, do not extinguish the right of an accused for grant of default bail, because of statutory embargo under Section 167(2) Cr.P.C. on grant of remand beyond 60 days during investigation. Filing interim/ incomplete prosecution Complaint/

Chargesheet, while the investigation being pending, is a clever subterfuge to prevent accused from claiming his right to default bail and cannot be countenanced. Neither there is any presumption in PMLA or Cr.P.C. that mere filing of a Complaint, even though admittedly without completing investigation, would extinguish statutory right of accused under Section 167(2), nor is any such presumption claimed by the respondent. A right to investigate beyond 60 days being executive function, do not override the embargo on grant of remand u/s 167(2) Cr.P.C. beyond 60 days, which is a judicial function, and cannot come in the way of corresponding right to default bail.

16. The present application pertains to personal liberty of the applicant, which is most cherished fundamental right guaranteed under Article 21. It is settled law that technical objections cannot come in the way of substantial justice in the matters of violation of fundamental rights guaranteed under Article 21 of the Constitution of India.

17. The present Application is limited to the applicants entitlement of default Bail u/s 167(2) Cr.P.C., reserving his

right, entitlement and liberty to pursue other remedies available under law including on the basis of the recent judgment dated 3.10.2023 of Hon'ble Supreme Court in Pankaj Bansal Vs. Enforcement Directorate¹.

18. Reliance is placed on the observations of the Hon'ble Supreme Court in:-

- i. M Ravindran vs Directorate of Revenue Intelligence² (Para 13, 17.4 and 17.6, 18.10)- (41st Law Commission Report on abuse of process by filing preliminary police reports to curtail right to default bail, leading to present Cr.P.C. providing for 60 or 90 days time with object to protect fundamental right to speedy investigation and trial has also been extensively referred in this judgment.)
- ii. Rakesh Kumar Paul vs State of Assam³ (Para 14.19 and Para 44)
- iii. Vijay Madanlal Chaudhary Vs Union of India⁴ (Para 445)
- iv. Enforcement Directorate v Kapil Wadhawan⁵ (paras 37

1 Criminal Appeal No. 3051-3052 of 2023

2 (2021) 2 SCC 485

3 (2017) 15 SCC 67

4 (2022) SCC Online 929

5 Cri Appeal No. 701-702 of 2020 reported in 2023 SCC Online SC 972

and 52)

- v. Sanjay Dutt vs State through CBI⁶ (Para 2, 53(2)(b))
- vi. Fakhrey Alam vs State of UP⁷ (Para 14)
- vii. Judgebir Singh Vs. NIA⁸ (Para 22, 29, 30, 33, 43 and 62)

19. Reliance is also placed on the observations of the Bombay High Court in:-

- i. Punjaram vs State of Maharashtra⁹ (paras 16,20,21,25,27)
- ii. Manik Sahebrao Chaugule vs The State of Maharashtra¹⁰ (paras 6 and 7)
- iii. Sunil Vasantrao Phulbande vs State of Maharashtra¹¹ (paras 11, 12 and 15)
- iv. In Ranjeet Manohar Macherkar v. State of Maharashtra¹², a co-ordinate bench of this Court allowed the accused's application dated 03.04.2013 under Section 167(2) Cr.P.C. though preferred post filing of a charge sheet dated 05.11.2012, with the following observations:

⁶ (1994) 5 SCC 410

⁷ SLP (Cri) No. 6181 of 2020

⁸ 2023 SCC Online SC 543

⁹ 2005 SCC Online Bom 1595

¹⁰ Criminal Bail Application No. 241 of 2017 dated 23.3.2017

¹¹ 2002 (3) MhLJ 689

¹² Cr. BA No. 509 of 2014-Order dated 14 July 2014

"6. It is true that filing of a charge-sheet or a complaint would ordinarily signify completion of investigation. If a charge sheet or a complaint, as the case may be has not been filed, it would be obvious that the investigation is in progress, but the converse may not be true. If the investigating agency files some document or documents claiming the same be a charge-sheet or a complaint that would not be the end of the matter, and the crucial aspect would be whether the investigation has, in fact, been completed. It may be observed that the proviso to Sub-section (2) of Section 167 of the Code, does not speak about the filing of the charge-sheet, but refers to the completion of investigation."

"7.Obviously, therefore, the investigation was incomplete; and collection on evidence on the most vital aspect of the prosecution case was still going on on 03.04.2013, the date on which the applicant made a prayer for bail."

"8. The applicant was therefore, entitled to be released on bail, in view of the first proviso to Section 167(2) of the Code, as modified by Sub-section (4) of Section 36A of the N.D. P.S. Act...."

20. Vide the judgment dated 13.02.2023, the High Court of J & K Ladakh in the matter of Gopal Krishan v. UT of J&K¹³, observed that-

"10. Firstly, the Court of learned Sessions Judge, Udhampur evaded to refer to its own observation on record that the first police report so filed against the petitioners was an empty formality. If that was the state of the purported police report/challan then that would have meant only one thing in the eyes of law which is that the presentation of said police report was a pseudo police report/challan aimed with sole objective to cover up the default on the part of the Police Station, Udhampur to complete the

¹³ Bail Application No. 12 of 2023

investigation within the time given so as to checkmate the petitioners becoming entitled to default bail.”

21. The present application pertains to personal liberty of the Applicant, which is most cherished fundamental right guaranteed under Article 21. It is settled law that technical objections cannot come in the way of substantial justice in the matters of violation of fundamental rights guaranteed under Article 21 of the Constitution of India.

Arguments of the respondent-ED

22. That the investigation of the respondents in ECIR No. with respect to the present applicant has been completed.

23. That, the petitioner contends that as per the prosecution complaint, the investigation in the said ECIR is still pending and reliance has been placed on paragraph No. 15.4 already reproduced hereinbefore. In paragraph No.15.4, emphasis is placed on the first sentence, which states that the investigation in relation to the applicant has already been completed. That would mean to say that the role of the accused, with respect to the said offence has been investigated and the prosecution complaint (akin to a chargesheet) has already been filed. The reason for leave to

conduct further investigation is in relation to the crime as a whole and not the accused in specific. The further investigation as stated is for the larger offence of money laundering, since there are several layers to the offence that takes place, and hence the investigation is for the other properties, entities etc, which are part of the larger fraud. The respondent's investigation is to investigate the further trail of the proceeds of crime/crime money and other persons involved as well. Reliance is placed on the judgment of Vijay Madanlal Choudhary Vs Union of India (supra) and Section 44 of PMLA. Further, there are several situations in offences under the Indian Penal Code, where upon submission of the final report, the Magistrate is not satisfied with the investigation and directs re-investigation, that would not extend the right of default bail under Section 167(2) to the other co-accused, against whom the chargesheet has been filed and accepted by the court.

24. Reliance was placed on paragraph No. 7 of the reply filed by the respondent before the Special Court, which is quoted hereinbefore. It is stated that these general

statements are made to oppose the bail application of an applicant on merits because after bail he can influence/intimidate the witnesses. Further, it is also further clarified that there is no statement made by the respondent that the investigation against the applicant is being conducted. This is a vast money laundering case which involves many layers of fund trails and investigation to unearth the same is in progress and to trace the further flow of money trail.

25. The Applicant placed reliance on the judgment of the Hon'ble Supreme Court where Mr. Kapil Wadhawan was granted relief in his plea under Section 167(2). The said relief was granted, since the prosecution complaint filed was delayed and filed beyond the prescribed period of 60 days. However, in this case, the said complaint has been filed on the 59th day, which has been observed by the Special Court, while rejecting the first default bail application of the applicant. Hence, in the present case, the decision in Kapil Wadhawan (supra) cannot be relied upon.

26. That, the applicant in the present case, was arrested by the respondent on 07/06/2022, and the said complaint was filed on 04/08/2022, i.e. on the 59th day. However, cognizance of the said complaint was taken only on 25/08/2022. Hence, the indefeasible right to default bail expires upon the filing of the said complaint i.e. on 04/08/2022.

27. That the applicant argued that the indefeasible right of the applicant would arise under Section 167(2) in the following two circumstances:

- i. When the said complaint has been filed beyond the period of 60 days and
- ii. When the said complaint has been filed within 60 days, but the investigation qua the accused is incomplete.

In the present case, the accused does not fall under the first circumstance. Additionally, as paragraph No. 15.4 of the said complaint explicitly states that the investigation with respect to the Applicant has been completed, in the present case the Applicant does not fall under the second criteria either.

Consideration:-

28. I have perused the copy of the application, order passed by the Special Judge rejecting the application for default bail and materials placed on record.

29. I have heard Shri Vibhav Krishna learned counsel for the applicant and learned Senior Advocate Shri Vyas, Additional Solicitor General (ASG) for respondent – ED.

30. The case of the applicant is that the indefeasible right to default bail under Section 167(2) of the Cr.P.C. would arise when the complaint has been filed beyond 60 days and; that though the complaint has been filed within a period of 60 days but the investigation qua the accused is incomplete and hence the right to default bail is accrued. The entire argument of learned counsel for the applicant is that though the so-called complaint was filed on the 59th day, the investigation is incomplete on the showing of the ED itself. Learned counsel for the applicant laid much emphasis on paragraph No. 15.4 of the complaint which reads thus:-

“15.4 Investigation is complete qua the properties mentioned in the present complaint as well as related transactions mentioned therein, against the

above-mentioned accused persons. However, investigation is still in progress in respect of other properties /transactions /persons /entities. The complainant craves leave of this Hon'ble Court for conducting further investigation and as and when investigation is complete in other aspects, to file supplementary complaint(s) in due course."

31. It is the submission that factually the investigation is ongoing and hence pursuant to the filing of the piecemeal complaint on the 59th day, the applicant filed the application for default bail under Section 167(2) of the Cr.P.C. thereby availing his indefeasible statutory right to default bail on 08/08/2022.

32. The question is whether the applicant can be permitted to furnish the bail bonds under section 167(2) of Cr.P.C. and whether the said complaint can be said to an incomplete complaint filed only to defeat the indefeasible right accrued in favour of the applicant. To appreciate the submissions canvassed on behalf of the parites, reference to the relevant statutory provisions is important.

33. Section 167(2) of the Cr.P.C. reads thus:-

"167 Procedure when investigation cannot be completed in twenty-four hours-

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or

has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that--

(a) the Magistrate may authorise the detention of the accused person, otherwise than in custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;

(b) no Magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage;

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall

authorise detention in the custody of the police.

Explanation I.--For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail.

Explanation II.--If any question arises whether an accused person was produced before the Magistrate as required under clause (b), the production of the accused person may be proved by his signature on the order authorising detention or by the order certified by the Magistrate as to production of the accused person through the medium of electronic video linkage, as the case may be.

Provided further that in case of a woman under eighteen years of age, the detention shall be authorised to be in the custody of a remand home or recognised social institution."

(emphasis supplied by me)

34. Sections 3, 4 and 44 of PMLA read 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 its 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."

"4. Punishment for money-laundering - Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine:

Provided that where the proceeds of crime involved in money-laundering relates to any offence specified under paragraph 2 of Part A of the Schedule, the provisions of this section shall have effect as if for the words "which may extend to seven years", the words "which may extend to ten years" had been substituted."

"44. Offences triable by Special Courts - (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),--

- (a) an offence punishable under section 4 and any scheduled offence connected to the offence under that section shall be triable by the Special Court constituted for the area in which the offence has been committed:

Provided that the Special Court, trying a scheduled offence before the commencement of this Act, shall

continue to try such scheduled offence; or;

(b) a Special Court may, upon a complaint made by an authority authorised in this behalf under this Act take cognizance of offence under section 3, without the accused being committed to it for trial;

(c) if the court which has taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the complaint of the offence of money-laundering under sub-clause (b), it shall, on an application by the authority authorised to file a complaint under this Act, commit the case relating to the scheduled offence to the Special Court and the Special Court shall, on receipt of such case proceed to deal with it from the stage at which it is committed.

(d) a Special Court while trying the scheduled offence or the offence of money-laundering shall hold trial in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) as it applies to a trial before a Court of Session.

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

(i) the jurisdiction of the Special Court while dealing with the offence under this Act, during investigation, enquiry or trial under this Act, shall not be dependent upon any orders passed in respect of the scheduled offence, and the trial of both sets of offences by the same court shall not be construed as joint trial;

(ii) the complaint shall be deemed to include any subsequent complaint in respect of further investigation that may be conducted to bring any further evidence, oral or documentary, against any accused person involved in respect of the offence, for which complaint has already been filed, whether named in the original complaint or not.

(2) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973 (2 of 1974) and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to "Magistrate" in that section includes also a reference to a Special Court designated under section 43."

(emphasis supplied by me)

35. It will also be important to bear in mind the observations of the Hon'ble Supreme Court, in the context of section 167(2) of Cr.P.C. in the following cases.

(A) In a recent judgment dated 27.03.2023, in Enforcement Directorate v. Kapil Wadhawan (supra), a three judges bench has inter-alia observed that-

"34. Pertinently, there is no fixed end point within which, the police or investigation authorities are required to complete the investigation. However, if the investigation is not completed and chargeheet is not filed within 60 or 90 days, a right of default bail accrues to the accused....".

(B) In Para 445 of Vijay Madanlal Choudhary Vs Union of India (supra), Their Lordships observed that on 'culmination of investigation' complaint is to be filed.

(C) Further, in Senthil Balaji¹⁴, which is also in the context of PMLA, it was observed that-

14 2023 SCC Online 34

"71. It is to protect the interest of an accused person by restricting the period of investigation, a failure of which would entitle an arrestee to be released. This again is yet another facet of Article 21 of the Constitution of India....."

(D) In *Satender Kumar Antil vs CBI*¹⁵, issue of default bail is extensively dealt with in paragraph Nos. 38 to 41, and in paragraph Nos. 39 and 41, it was held as follows-

"39. Section 167(2) was introduced in the year 1978, giving emphasis to the maximum period of time to complete the investigation. This provision has got a laudable object behind it, which is to ensure an expeditious investigation and a fair trial, and to set down a rationalised procedure that protects the interests of the indigent sections of society. This is also another limb of Article 21. Presumption of Innocence is also inbuilt in this provision. An investigating agency has to expedite the process of investigation as a suspect is languishing under incarceration. Thus, a duty is enjoined upon the agency to complete the investigation within the time prescribed and a failure would enable the release of the accused. The right enshrined is an absolute and infeasible one, inuring to the benefit of suspect."

"41. As a consequence of the right flowing from the said provision, courts will have to give due effect to it, and thus any detention beyond this period would certainly be illegal, being an affront to the liberty of the person concerned. Therefore, it is not only the duty of the investigating agency but also the courts to see to it that an accused gets the benefit of Section 167(2)."

(E) In *S.Kasi v. State*¹⁶ Their Lordships observed that-

15 (2022) 10 SCC 51

16 MANU/SC/0491/2020

"18.....The right of prosecution to carry on investigation and submit a charge sheet is not akin to right of liberty of a person enshrined under Article 21 and reflected in other statutes including Section 167, CrPC."

36. The respondent is investigating the case of money laundering vide ECIR/MBZO-I/03/2020. During the course of the investigation, the role of the applicant was revealed. The applicant came to be arrested on 07/06/2022 under Section 19 of the PMLA. The said complaint was filed before the special court of PMLA on 04/08/2022 i.e. on the 59th day. The special court vide its order dated 25/08/2022 took cognizance of the said complaint. An application was filed by the applicant for availing of his indefeasible statutory right under section 167(2) of Cr.P.C. prior to the special court taking cognizance of the complaint. As indicated earlier much emphasis is placed on the averment made in paragraph No. 15.4 quoted hereinbefore to urge that investigation is still in progress and without completing the investigation the said complaint has been filed in a piecemeal manner only to scuttle the indefeasible right accrued in favour of the applicant under section 167(2) of Cr.P.C.

37. On the other hand, the learned Additional Solicitor General urged that the complaint has to be construed in its entirety in the context of the ongoing investigation and not just by taking a line or two from the complaint to presuppose that the investigation is incomplete with respect to the properties mentioned in the said complaint as well as related transactions mentioned therein, against the applicant. It must be taken note that a reading of Section 44 of PMLA would reveal that a complaint filed under Section 44 of the PMLA shall be deemed to include any subsequent complaint in respect of further investigation that may be conducted to bring any further evidence, oral or documentary, against any accused person involved in respect of offence for which the complaint has already been filed whether named in the original complaint or not. The applicant was remanded on 07/06/2022. The said complaint was filed on 04/08/2022, on the 59th day before the expiration of 60 days.

38. Let me consider whether the said complaint is an incomplete one filed on a piecemeal basis to scuttle the

indefeasible right which was to be accrued in favour of the applicant and as to whether the investigation qua the applicant is incomplete. The offence of money laundering involves multiple interconnected transactions and the same demands cumbersome investigation. The investigating officer is well within his power to conduct further investigation. The applicant undoubtedly has the right to a fair trial which is a dimension of the right to life and personal liberty under Article 21 of the Constitution of India. Likewise, it is also the duty of the respondent to conduct a comprehensive and complete investigation as regards the offence.

39. The concept of further investigation and supplementary report is dealt with under Section 173(8) Cr.P.C. The earlier Code of Criminal Procedure, 1898, did not contain a provision regarding the concept of 'further investigation' in its ambit. It was in 1969, for the first time, that 'The Law Commission of India' in its 41st report recommended adding a provision relating to 'further investigation' under the Cr.P.C. within its ambit. The Code

of Criminal Procedure, 1898, did not contain a provision to deal with the situation wherein the police officer had submitted the police report to the Magistrate who had taken cognizance and what happens if thereafter upon the police report under Section 190(1)(b) of the earlier Code of Criminal Procedure, 1898, some other relevant facts or evidence were later discovered in relation to the same offence. The respondent is investigating an economic offence which demands in-depth and detailed investigation. The concept of further investigation is well-defined in the procedure under the Cr.P.C.

40. I am in agreement with the submission of learned ASG when it is submitted that the crime of money laundering is characterized by its intricate nature, involving numerous interconnected transactions and conspiracies. Money laundering refers to the process of making illegally obtained money appear legitimate or "clean" in order to disguise its illicit origins. Typically, this is done to conceal the source of funds acquired through criminal activities like drug trafficking, corruption, fraud, or organized crime. The

ultimate goal of money laundering is to integrate illicit funds into the lawful financial system, making it challenging for authorities to trace and seize the proceeds. The process of money laundering consists of three primary stages: placement, layering, and integration. In the placement stage, illegal funds are introduced into the financial system, often through methods such as cash deposits, smurfing (breaking down large amounts into smaller ones), or utilizing front businesses. The subsequent layering stage involves the movement of funds through multiple transactions, accounts, and jurisdictions to obscure their origin. This may include numerous transfers, conversions between different currencies, and complex financial maneuvers. Finally, during the integration stage, the laundered money is reintroduced into the legitimate economy, giving the appearance of lawful funds. This can be accomplished through investments, acquiring assets like real estate or luxury goods, or blending illicit funds with legal business activities. In summary, money laundering involves intricate processes designed to obfuscate the origin

of illegally obtained funds. The placement, layering, and integration stages collectively enable criminals to successfully integrate their illicit proceeds into the legitimate financial system, making it difficult for law enforcement agencies to uncover and seize the unlawfully obtained assets.

41. The complexity of a money laundering case is determined by the intricacy and sophistication of the methods used to disguise the illicit funds. In simpler cases, the money laundering process may involve a straightforward series of transactions, with minimal attempts to conceal the source of the funds. These cases often have a limited number of steps and are relatively easier to investigate and understand. On the other hand, complex money laundering cases, such as the one at hand, encompass multiple levels of transactions. These cases typically involve intricate schemes and techniques aimed at creating numerous layers of obfuscation, making it challenging for investigators to unravel the true nature of the illicit funds. Complex cases may include a wide range of

methods, such as the use of offshore accounts, shell companies, international transfers, and intricate financial structures.

42. The money laundering case in question originated from a conspiracy involving Rana Kapoor, the former CEO of YES Bank, and the Wadhawans, the founders of DHFL (Dewan Housing Finance Corporation Limited). As part of a quid pro quo arrangement, Rana Kapoor and the Wadhawans colluded to carry out illicit financial transactions. In this scheme, Rana Kapoor, in his capacity at YES Bank, facilitated an investment of Rs. 3,983 crore in DHFL. In return, DHFL provided a loan of Rs. 600 crore to DOIT Urban Ventures Pvt. Ltd., a company beneficially owned by Rana Kapoor and his family. Additionally, YES Bank sanctioned a loan of Rs. 750 crore to Belief Realtors Pvt. Ltd., a company beneficially owned by Mr. Dheeraj Wadhawan, without it being utilized for its intended purpose. Subsequent investigation revealed that following the receipt of these substantial funds from YES Bank, Kapil Wadhawan, one of the key figures in DHFL, diverted Rs.

2,317 crore to entities owned by Mr. Sanjay Chhabria, who is the present applicant in this case. The diverted funds were purportedly meant for the development of the "Avenue-54" project in Santacruz. However, instead of utilizing the funds for the intended project, Mr. Sanjay Chhabria further redirected a significant portion of the money for other undisclosed purposes. In collaboration with Mr. Avinash Bhosale, Mr. Sanjay Chhabria diverted Rs. 267 crore and Rs. 25 crore to entities owned by Mr. Avinash Bhosale, namely M/s Nibodh Realty LLP and M/s Abil Diary LLP, respectively. Moreover, as per the instructions of Kapil Wadhawan, Mr. Sanjay Chhabria redirected Rs. 115 crore to M/s Mentor Capital Ltd. Furthermore, a substantial portion of these diverted funds was utilized by Mr. Sanjay Chhabria to repay loans and interest associated with his other group companies. The project for which DHFL disbursed the loan remained incomplete, and as a result, the loan has become non-performing. In summary, it is the accusation that the money laundering case involves a conspiracy wherein Rana Kapoor and the Wadhawans engaged in fraudulent financial

transactions, diverting significant sums of money for personal gain. Mr. Sanjay Chhabria, as the present applicant, played a crucial role in diverting the funds and misusing them for various undisclosed purposes, including repayment of loans and interests.

43. In paragraph No.15.4 of the complaint, it has been specifically stated that the investigation is complete qua the properties mentioned in the said complaint in respect of the applicant as well as related to the transaction mentioned therein. It is further mentioned that the investigation is still in progress in respect of other properties / transactions / persons/ entities. No doubt, it is further mentioned that the investigation is still in progress with other properties / transactions/ persons/entities. However, it is obvious that the role of the applicant with respect to the said offence has been investigated and hence the said complaint akin to a chargesheet has been filed. The leave of the Special Court to conduct further investigation obviously has to be understood to be in relation to the crime as a whole and not the accused in specific. The further investigation is for the

larger offence of money laundering, since there are several layers to the offence that takes place and hence it is in that context the investigation is for the other properties, entities, etc. which are part of the larger fraud. I find substance in the contention that it is for this reason leave of the Special Court was sought for conducting further investigation and that as and when the investigation is complete in other aspects, to file supplementary complaint(s) in due course.

44. In my opinion, reading paragraph No.15.4 in the manner in which the learned counsel for the applicant wants this Court to be read would defeat the very object of a fair and complete investigation into the offence under PMLA. The investigation related to the offence of money laundering is complex in nature and involves numerous interconnected transactions and conspiracies. It is the specific case of the respondent that the investigation is still in progress with respect to other properties/transactions/persons/entities, and in any case the explanation (ii) below Section 44 of the PMLA ordains that the complaint shall be deemed to include any subsequent complaint in respect of further investigation

that may be conducted to bring any further evidence, oral or documentary, against any accused person in respect of the offence, for which the complaint has already been filed, whether named in the original complaint or not. There are no restrictions on the investigating agency from fulfilling its duties under the provisions of PMLA. The averment made in paragraph No.15.4 of the said complaint seeking leave to conduct further investigation and the stand that the investigation is still in progress has to be understood in the larger context of the ongoing investigation into the crime. A specific stand has been taken by the respondent-ED that the investigation regarding the applicant is complete. There is no embargo for conducting any further investigation in the case by the respondent to bring any further evidence, oral or documentary, against any accused person involved in respect of the offence, against which the complaint is already been filed, whether named in the original complaint or not. The averment of the respondent, in the reply filed by them to the regular bail application filed by the applicant before the Special Court, in paragraph No.7 that "as the

investigation in the instant case is still going, at this stage the possibility of influencing witnesses can not be ruled out” had to be read in the context afore discussed. It is material to note that even the Special Court has taken cognizance of the said complaint, albeit after the application for default bail is filed.

45. I do not find any merit in the submission of learned counsel for the applicant that the said complaint qua the applicant is piecemeal, incomplete or made with the intetion of defeating the indefeasible right to seek default bail. I am more than satisfied with the stand of the respondent that paragraph No. 15.4 of the said complaint cannot be read in isolation dehors the contents of the said complaint and the statutory provisions governing the indefeasible right to default bail under Section 167(2) of the Cr.P.C. I do not find any error committed by the Special Court in dismissing the application (Exhibit 308) preferred by the applicant for default bail.

46. The application is rejected.

(M. S. KARNIK, J.)