IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION (APL) NO. 201 OF 2021

WITH

CRIMINAL BAIL APPLICATION NO. 974 OF 2021

1 Babulal Verma
S/o. Mulchand Varma

2 Kamal Kishore Gupta
S/o.Gokalchand Gupta & Anr. … Petitioners

Vs.

1 Enforcement Directorate, Mumbai

2 State of Maharashtra … Respondents

Mr.Vijay Aggarwal a/w. Mr. Mudit Jain, Mr. Rahul Agarwal, Mr. Aftab Diamondwala, Mr.Ashraf Diamondwala, Mr.Pradeep Jain and Mr. Vijay Dali i/b. Diamondwala & Co. for the Applicants in APL No. 201 of 2021.
Mr. Vijay Aggarwal a/w Mr. D.S. Mhaispurkar for the Applicants in BA No. 974 of 2021.
Mr. Anil Singh, Additional Solicitor General a/w. Mr. H.S. Venegavkar and Mr. Adtiya Thakkar for the Respondent No.1-ED.
Mr. Amit Palkar, A.P.P. for Respondent No.2-State.

CORAM : A.S. GADKARI, J.
DATE : 16th March 2021.

JUDGMENT:-

By the present Application No.201 of 2021, under Section 482 read with Section 483 of the Code of Criminal Procedure, 1973 (for short, *"the Cr.P.C."*), the Applicants have impugned Order dated 15th February, 2021 passed below Exhs-7 and 8 in PMLA RA No.117 of 2021 and Order

dated 28th January, 2021 passed in Remand Application No.117 of 2021 by learned Special Judge, Mumbai and for direction to release the Applicants from confinement from Jail in ECIR No.ECIR/MBZO-III/20/2020.

Application No.974 of 2021 is for seeking bail by Applicants.

2 By the impugned Order dated 15th February, 2021, learned Special Judge has allowed the Application of Respondent No.1 filed below Exh-7 for extension of judicial custody of the Applicants and has rejected Application preferred by the Applicants below Exh-8 for grant of bail on any type of bond.

3 Heard Mr. Aggarwal learned counsel for the Applicants in APL No.201 of 2021 and BA No.974 of 2021, Mr. Anil Singh, learned Additional Solicitor General for the Respondent No.1-ED and Mr. Palkar, learned APP for the Respondent No.2-State.

4 The facts giving rise for filing the present Applications, can be briefly stated as under:-

(i) Mr. Mahendra S. Surana, lodged a Crime bearing No.109 of 2020 on 7th March, 2020 with City Chowk Police Station, Aurangabad under Sections 406, 420 read with Section 34 of the Indian Penal Code (for short, *"the IPC"*) against the Applicants and other accused persons. It is stated therein that, the informant is one of the Directors of M/s. Aurangabad Gymkhana Club Private Limited, (for short, *"Aurangabad Gymkhana"*). It is alleged therein that, all the accused persons in the said crime jointly

connived with each other and committed the act of criminal breach of trust and cheated the Aurangabad Gymkhana and it's Directors for an amount of Rs.12,17,84,451/-by issuing cheques from blocked/ freezed account. The detailed narration of facts mentioned in the said FIR are not necessary for decision of the present Applications and therefore, its reproduction is hereby avoided.

(ii) On 10th July, 2020, the Respondent No.1 (for short *"ED"*) received a Complaint from Aurangabad Gymkhana against M/s. Omkar Realtors and Developers Private Limited (for short, *"Omkar Realtors"*) and its promoters/Directors. The said Complaint referred to FIR No.109 of 2020 filed at City Chowk Police Station, Aurangabad. After perusing the said Complaint, it appeared to the Respondent No.1-ED that, a Scheduled Offence as mentioned in Paragraph No.1 of the Schedule of the Prevention of Money-Laundering Act, 2002 (for short, *"PMLA"*) has taken place. It was also revealed to the Respondent No.1 that, Omkar Realtors has more than Rs.2000 Crores of loan of Yes Bank as outstanding. That, the loan was not used for intended purposes and diverted for other purposes. On the basis of the said information, it appeared to the ED that, the proceeds of crime generated out of criminal activities related to the Scheduled Offences appeared to be routed, utilized and parked by the accused and has projected it as, untainted.

(iii) An ECIR bearing No.ECIR/MBZO-II/20/2020 dated 16th

December, 2020 has been accordingly recorded and taken up for investigation under the provisions of PMLA and the Rules framed thereunder.

(iv) During the course of investigation of the present crime, it was further revealed to the Respondent No.1 that, rehab buildings of Anand Nagar SRA CHS, have not been constructed, however, the FSI which would have been available after construction of rehab buildings, was mortgaged with Yes Bank and loan of Rs.410 Crores was taken. This kind of notional FSI was used for availing credit facility from banks. It was also revealed that, Rs.410 Crores of loan was given for the purpose of construction of SRA/Rehab Buildings and part of sale buildings, however, the said loan was diverted towards construction of sale buildings and no rehab buildings were constructed.

(v) During the course of investigation of the present crime, the Applicants were produced before the Special Court from time to time for their remand, which was granted by the impugned Orders. It is to be noted here that, after the impugned Order dated 28th January 2021 was passed, thereby remanding Applicants to ED custody till 30th January 2021, by a subsequent Order dated 30th January, 2021, the Special Court, extended custody of the Applicants for further period of 3 days i.e. upto 2nd February, 2021. That, on 2nd February 2021, the Applicants were again produced before the Special Court for seeking their further custody with a Remand

Application. The Special Court, by its Order dated 2nd February 2021, rejected the request of the Respondent No.1 for further custodial interrogation and directed that, the Applicants be remanded to judicial custody till 15th February 2021. The said Order dated 2nd February 2021, was impugned before this Court by the Respondent No.1 by way of Criminal Revision Application No.22 of 2021. This Court, by its Order dated 8th February 2021, upheld the Order of Special Court dated 2nd February 2021 and dismissed the said Revision Application.

(vi) The record further indicates that, on 6th February 2021, the Complainant in CR No.109 of 2020, Mr. Mahendra S. Surana, submitted a letter of even date, to the Investigating Officer of the said crime, stating therein that, he filed the said Complaint out of misunderstanding. That, the accused persons therein personally went to his office on 9th February, 2021 and paid an amount of Rs.14,73,84,361/- after deducting TDS of Rs.15,10,991/- from the amount due to the Complainant in consideration of Rs.12,17,84,451/- by way of Demand Draft and it was transferred in the account of the Complainant's firm in the Axis Bank, Aadalat Road Branch, Aurangabad.

(vii) The Investigating Officer of CR No.109 of 2020 accordingly submitted, "C" Summary Report in the Court of Judicial Magistrate, First Class, Aurangabad on 10th February, 2021. The learned IIIrd Civil Judge, Junior Division and Judicial Magistrate, First Class, Aurangabad accepted

the said C-Final Report by its Order dated 12th February, 2021. The learned Magistrate, while accepting the said "C" Summary Report, has observed that, considering the aspects of the said case and the report of the Investigating Officer and the say of the informant in the form of Affidavit, as the alleged offences punishable under Sections 406, 420 read with Section 34 of the IPC are compoundable and the same are compounded between the informant and all the accused persons, no reason remains to keep the said C-Final Report pending. It accordingly accepted the said report.

(viii) As the period of judicial custody of the Applicants was to come to an end on 15th February 2021, the Respondent No.1 produced the Applicants before the Special Court by filing an elaborate Remand Application below Exh-7, under Section 65 of PMLA read with Section 167 of the Cr.P.C. seeking further judicial custody of the Applicants for 14 days. The Applicants also filed an Application below Exh-8 dated 15th February, 2021 for opposing any further remand and for forthwith release of the Applicants on any type of bond or otherwise, as may be directed by the concerned Court in the crime registered by ED. The Special Court, by its common Order dated 15th February 2021, passed below Exhs-7 and 8 was pleased to allow the Application of Respondent No.1 below Exh-7 and remanded the Applicants to judicial custody till 1st March 2021 and rejected Application filed by the Applicants below Exh-8.

5 Mr. Aggarwal, learned counsel for the Applicants submitted that, Amendment to Sub-Section (b) of Section 44 of the PMLA by way of insertion of proviso came into effect from 1st August, 2019. He submitted that, the Hon'ble Supreme Court pronounced its judgment in the case of *P. Chidambaram Vs. Directorate of Enforcement*, reported in *(2019) 9 S.C.C. 24* on 5th September, 2019. That, after taking into consideration the said Amendment, the Hon'ble Supreme Court in para No.24 has categorically held that, *"Scheduled offence"* is a *sine qua non* for the offence of money-laundering which would generate money that is being laundered. He submitted that, in the Frequently Asked Questions (FAQs) on the PMLA, published by the Enforcement Directorate, Government of India and in particular question Nos.6, 10 to 13, the Respondent No.1 has given information about what is money laundering?, what is the offence of money laundering?, proceeds of crime, Scheduled Offence and Predicate offence. He submitted that, to question No.13 i.e. what is a predicate offence?, the answer given by the ED to it is, every Scheduled Offence is a predicate offence. The Scheduled Offence is called predicate offence and the occurrence of the same is a pre-requisite for initiating investigation into the offence of money laundering. He also drew my attention to Annexure-4, Format No.1 i.e. the Form prescribed by the Respondent No.1 for lodgment of ECIR. He further submitted that, the then Finance Minister, who was the presenting Minister of the Finance Act in Rajya Sabha on 17th December,

2012 has said that, *"we must remember that money-laundering is a very technically-defined offence. It is not the way we understand 'money-laundering' in a colloquial sense. It is a technically-defined offence. It postulates that there must be a predicate offence and it is dealing with the proceeds of a crime. That is the offence of money-laundering. It is more than simply converting black-money into white or white money into black. That is an offence under the Income Tax Act……..So, it is a very technical offence. The predicate offences are all listed in the Schedule. Unless there is a predicate offence, there cannot be an offence of money-laundering."*

By relying on a decision of the Supreme Court in the case of *K.P. Varghese Vs. Income Tax Officer, Ernakulam & Ors.* reported in *MANU/ SC/0300/1981 : AIR 1981 SC 1922*, he submitted that, where the speech made by the Finance Minister while introducing a Clause in the Act, was relied upon by the Court for the purpose of ascertaining what was the reason for introducing that Clause. The same has to be construed as intention of Legislature.

Mr. Aggarwal therefore, submitted that, the moment Predicate/ Schduled offence comes to an end, the offence lodged by Respondent No.1 on the basis of the said Predicate Offence also comes to an end and does not remain in existence. He submitted that, it is a settled legal proposition that, if initial action is not in consonance with law, all subsequent and

consequential proceedings would fall through for the reason that illegality strikes at the root of the order. In such a fact situation, the legal maxim *sublato fundamento cadit opus* meaning thereby that foundation being removed, structure/work falls, comes into play and applies on all scores in the present case. In support of his contention, he relied on the decision of the Supreme Court in the case of *State of Punjab Vs. Davinder Pal Singh Bhullar,* reported in *(2011) 14 S.C.C. 770*. By relying on a decision of the Hon'ble Supreme Court in the case of *Sanjaysingh Ramrao Chavan Vs. Dattatray Gulabrao Phalke & Ors.* reported in *(2015) 3 S.C.C. 123* and in particular para No.17, Mr. Aggarwal submitted that, therefore once the 'crux' goes, the superstructure also falls, lacking in legs. Hence, prosecution becomes a futile exercise, as the materials available do not show that an offence is made out as against the accused.

He therefore, vehemently submitted that, once the Scheduled Offence lodged against the Applicants is compromised/compounded by the Complainant therein, the structure of the present crime registered by ED falls on ground, as it does not survive and is *non-est.* He submitted that, in view thereof, the offence registered by the Respondent No.1 under the PMLA now stands wiped out from the record and therefore, there is no question of Applicants being remanded to further custody and therefore, the Applicants are entitled to be released on bail.

He further submitted that, in the case of *Om Prakash Nogaja*

& Anr. Vs. K. Nageshwar Rao & Anr. decided by the learned Single Judge of this Court, on 10th August, 2009, in Criminal Application No.3360 of 2009, it is held that, it is only when property is derived or obtained as a result of criminal activity relating to the Scheduled Offence, then and then alone the offence under Section 3 of PMLA could be committed by indulging any process or activity connected with the proceeds of crime and by projecting it, as untainted property. He therefore, at the cost of repetition submitted that, as the Scheduled Offence in the present case, has been compounded and the learned Magistrate has accepted "C" Summary Report, the prosecution initiated by the Respondent No.1 under PMLA does not survive.

Mr. Aggarwal submitted that, the Respondent No.1 in Para No.2.3 of its reply has stated that, after recording the case under PMLA, inquiry, investigation and trial under the said Act is totally independent from the investigation and Orders of the Scheduled Offence. He submitted that, the Explanation inserted to Section 44(1)(d) of PMLA will not change the basic provision of Section 44(c) and Explanation (i) thereto. In support of his contention, he relied on the decision of the Hon'ble Supreme Court in the case of *Hardev Motor Transport Vs. State of Madhya Pradesh* reported in *2006 (8) S.C.C. 613*. He submitted that, it has been held therein that, by inserting an explanation in Scheduled of the Act, main provisions of the Act cannot be defeated. He submitted that, hence the explanation to Section 44(1)(d) cannot be read in a manner so as to defeat the basic purpose for

which the PMLA was introduced.

Mr. Aggarwal further contended that, even this Court in an earlier round of litigation i.e. in Criminal Revision Application No.22 of 2021 in its Order dated 8th February, 2021, has observed that, on the basis of a Scheduled Offence i.e. FIR No.109 OF 2020, the present crime has been registered by the Respondent No.1 on 16th December, 2020. He submitted that, as the Predicate/Scheduled Offence itself is not in existence, the existence of a crime under PMLA is wiped out.

Mr. Aggarwal submitted that, the reasoning given by the Special Court while passing impugned Order dated 15th February, 2021 is fallacious. He submitted that, the impugned Orders are wholly erroneous and needs to be quashed and set aside.

6 Mr. Anil Singh, the learned Additional Solicitor General of India, while opposing the Applications drew my attention to the Remand Application dated 15th February, 2021 filed below Exh-7. He submitted that, the facts mentioned in the said Application would make it abundantly clear that, the offence which is being investigated by the Respondent No.1 is a very serious economic offence, with an allegation of money-laundering of Rs.410 Crores by the Applicants. He submitted that, as per the Respondent No.1, the firm of the Applicants has more than Rs.2000 Crores of loan of Yes Bank as outstanding. He submitted that, even if a settlement has taken place between the Original Complainant and the Applicants

herein, in the said Predicate/Scheduled Offence, the ED continues to investigate the aspect as to, where the laundered money has gone. He submitted that, the object behind enacting the present Act is laudable. It is the prime intention of the Legislature to investigate into the offence of money-laundering. He submitted that, for removal of doubts, the Legislature has inserted Explanation to Sub-Section (d) of Section 44 by Finance (No. 2) Act, 2019 (23 of 2019), which has come into effect from 1st August, 2019. That, in view of the explanation to Sub-Section (d) of Section 44, the jurisdiction of the Investigating Agency and Special Court under PMLA, is not dependent on any Orders passed in respect of the Scheduled Offence. By referring to Explanation to Section (2)(1)(u), he submitted that, proceeds of crime include property not only derived or obtained from the Scheduled Offence but, also any property which may directly or indirectly be derived or obtained, as a result of any criminal activity relatable to the Scheduled Offence. He submitted that, the said Explanation is wide enough to interpret and constricted or narrow interpretation of the same is not permissible. He submitted that, during the course of the investigation of the present crime, it clearly revealed that, the Applicants along with other accused persons have diverted a loan of Rs.410 Crores obtained from Yes Bank for some other purpose, than for which it was approved. That, the Applicants have committed an offence as contemplated under Section 3 of PMLA. He submitted that, the criminal

activities of the Applicants have larger effect on the society as an economic offence committed in a planned manner.

Mr. Singh further submitted that, proviso to Sub-Section (b) of Section 44 has been brought into effect with 1st August, 2019 and therefore, it cannot be said that, merely because of a closure report is filed in the Scheduled Offence, the Respondent No.1 cannot continue with the investigation. He submitted that, if the Respondent No.1 comes to the conclusion that, no offence under PMLA is made out, it may submit a closure report before the Special Court.

Mr. Singh, further submitted that, the ED came into picture when it was informed to them by the Complainant in the Scheduled Offence. That, it is a case of money-laundering of Rs.410 crores. That, the Applicants along with other Accused persons have taken loan of Rs.410 crores from Yes Bank by mortgaging future FSI for constructing rehab buildings for slum dwellers. The rehab buildings for slum dwellers are not constructed till today. That, no rehabilitation of the slum dwellers has taken place and the said money has been diverted and used somewhere else by the Applicants.

Mr. Singh submitted that, the investigation of the present crime is an independent investigation. Once the ECIR is registered, then the base/Predicate/Scheduled Offence is no more further required for taking offence under PMLA to its logical end. He submitted that, scheduled

offence is necessary only for registration of an offence under PMLA and thereafter, whatever may happen to the Predicate/Scheduled Offence is totally irrelevant. He submitted that, otherwise the basic purpose of enacting PMLA will be frustrated. He submitted that, the Division Bench of this Court in the case of *Radha Mohan Lakhotia Vs. Deputy Director, PMLA, Directorate of Enforcement* reported in *2010 SCC Online Bom. 1116*, has held that, the offence of money-laundering under Section 3 of the Act is an independent offence. That, the said view has been followed by the Division Bench of the Madras High Court in the case of *VGN Developers P. Ltd & Ors. Vs. The Deputy Director, Directorate of Enforcement* reported in MANU/TN/6087/2019. He submitted that, the PMLA is self contained and the offence registered under it, can stand alone, independent of Predicate Offence. He submitted that, similar view has been expressed by the Sikkim High Court in the case of *Eastern Institute for Integrated Learning in Management University Vs. The Joint Director, Directorate of Enforcement and Ors. dated 17th September, 2015* and *Smt. Usha Agarwal Vs. Union of India & Ors. dated 29th August, 2017*.

He therefore, submitted that, there are no merits in the Applications and it may be dismissed summarily.

7 In rejoinder to the arguments of the learned Additional Solicitor General, Mr. Aggarwal submitted that, in the present case, the Complainant in the Predicate crime himself states that, he lodged the said

Complaint out of misunderstanding and therefore, the Investigating Agency has filed "C" Summary Report before the Trial Court, which has been accepted by the learned Magistrate. He submitted that, the Respondent No.1 derives jurisdiction on the basis of the Scheduled Offence only. That, once the Predicate/Scheduled Offence goes, the case of Respondent No.1 collapses. He submitted that, the observations made by the Division Bench in *Radha Mohan Lakhotia's* case *(Supra)* are restricted to that case only. He submitted that, the Judgment of the Madras High Court in *VGN Developers P. Ltd (Supra)* is under challenge before the Hon'ble Supreme Court and the trial arising out of the said case has been stayed by an Order dated 17th December, 2019. He therefore, once again prayed that, the present Applications may be allowed.

8 Section 2(1) of the PMLA defines various terms. Sub-section (n) defines 'intermediary'; (na) defines 'investigation'; (p) defines 'money-laundering'; (u) defines 'proceeds of crime' and (y) defines 'Scheduled Offence'. Section 3 of the Act defines Offence of money-laundering. Section 4 prescribes punishment for money-laundering and Section 5 of the Act prescribes attachment of property involved in money-laundering.

A conjoint reading of Sections 2(1)(n)(na)(p)(u)(y), 3, 4 and 5 with the Statement of Object in enacting the PMLA would clearly indicate that, it has been enacted with an avowed object to investigate into the offence of money-laundering and to punish the accused for commission of

the said offence. It also provides for attachment of property involved in money-laundering.

9 It is the settled position of law by a catena of judgments that, a statute is an edict of the Legislature and the conventional way of interpreting or construing a statute is to seek the 'intention' of its maker. A statute is to be construed according to the intent of them, that make it and the duty of judicature is to act upon the true intention of the Legislature. If a statutory provision is open to more than one interpretation the Court has to choose that interpretation which represents the true intention of the Legislature, in other words the 'legal meaning' or 'true meaning' of the statutory provision. The statute must be read as a whole in its context. It is now firmly established that the intention of the Legislature must be found by reading the statute as a whole.

The statute to be construed to make it effective and workable and the Courts strongly lean against a construction which reduces a statute to futility. A statute or any enacting provision therein must be so construed as to make it effective and operative. The Courts should therefore reject that construction which will defeat the plain intention of the Legislature even though there may be some inaccuracy or inexactness in the language used in a provision. Every provision and word must be looked at generally and in the context in which it is used. Elementary principle of interpreting any word while considering a statute is to gather the intention of the

legislature. The Court can make a purposeful interpretation so as to effectuate the intention of the legislature and not a purposeless one in order to defeat the intention of the legislature wholly or in part.

10 At the time of debate in Rajya Sabha, while introducing Amendment to the Finance Act on 17th December, 2012, the then Finance Minister has categorically made the aforestated statements as reproduced in para No.5 page No.8 above. From the statement of the Finance Minister, it can be clearly discerned that, for lodgement for an offence under the PMLA, there must be a Predicate Offence and it is dealing with the proceeds of a crime. The information published by Respondent No.1-ED pertaining to FAQs, for an answer to question No.13 therein, it has been specifically stated that, every Scheduled Offence is a Predicate Offence. The Scheduled Offence is called Predicate Offence and the occurrence of the same is pre-requisite for initiating investigation into the offence of money-laundering.

The Hon'ble Supreme Court, in the case of *P. Chidambaram (Supra)* while considering various provisions of PMLA and in particular Section 2(1)(y), which defines "Scheduled Offence" has held that, "Scheduled Offence" is a sine qua non for the offence of money-laundering which would generate the money that is being laundered. It is held that, PMLA contains schedules, which originally contained three parts namely, Part-A, Part-B and Part-C.

The Division Bench of this Court in the case of *Radha Mohan*

Lakhotia (Supra) in para No.13 has held that, Sections 3 and 4 of the Act deal with the offence of money-laundering and punishment for money-laundering respectively. That, both these provisions, even on strict construction, plainly indicate that, the person to be proceeded for this offence need not necessarily be charged of having committed a Scheduled Offence. For the Expression used is "whosoever". The offence of money-laundering under Section 3 of the Act is an independent offence. It is committed if "any person" directly or indirectly attends to indulge or knowingly assists or knowingly is a party or is actually involving any process or activity connected with the proceeds of crime and projecting it as untainted property. The Division Bench thus in unequivocal terms has held that, the offence of money-laundering under Section 3 of the PMLA is an independent offence.

The Division Bench of Madras High Court in the case of *VGN Developers P. Ltd & Ors. (Supra)* has relied upon the decision in the case of *Radha Mohan Lakhotia (Supra).* The Madras High Court accepted the contention of the learned Additional Solicitor General appearing therein, that, the PMLA is self-contained and stand alone and thus, independent of predicating offence. It has been held that, it cannot be stated that, a mere closure by the CBI would provide a death knell to the proceedings of the Respondent (i.e.ED therein). That, in a given case, the complaint may emanate from a registration of a case involving scheduled offence. But the

fate of the investigation in the said scheduled offence cannot have bearing to the proceedings under the PMLA. From the reading of the said decision it is clear that, mere filing of closure report by the Investigating Agency will not create any impediment or hurdle in the process of investigation by the ED of an offence registered under PMLA and being investigated by it.

11 It is thus absolutely clear that, for initiation/registration of a crime under the PMLA, the only necessity is registration of a Predicate/Scheduled Offence as prescribed in various Paragraphs of the Schedule appended to the Act and nothing more than it. In other words, for initiating or setting the criminal law in motion under the PMLA, it is only that requirement of having a predicate/Scheduled crime registered prior to it. Once an offence under the PMLA is registered on the basis of a Scheduled Offence, then it stands on its own and it thereafter does not require support of Predicate/Scheduled Offence. It further does not depend upon the ultimate result of the Predicate/Scheduled Offence. Even if the Predicate/Scheduled Offence is compromised, compounded, quashed or the accused therein is/are acquitted, the investigation of ED under PMLA does not get affected, wiped away or ceased to continue. It may continue till the ED concludes investigation and either files complaint or closure report before the Court of competent jurisdiction.

12 The language of Sections 3 and 4 of PMLA, makes it absolutely clear that, the investigation of an offence under Section 3, which is

punishable under Section 4, is not dependent upon the ultimate result of the Predicate/Scheduled Offence. In other words, it is a totally independent investigation as defined and contemplated under Section 2(na), of an offence committed under Section 3 of the said Act.

PMLA is a special statute enacted with a specific object i.e. to track and investigate cases of money-laundering. Therefore, after lodgment of Predicate/Scheduled Offence, its ultimate result will not have any bearing on the lodgment/investigation of a crime under the PMLA and the offence under the PMLA will survive and stand alone on its own. A Predicate/Scheduled Offence is necessary only for registration of crime/ launching prosecution under PMLA and once a crime is registered under the PMLA, then the ED has to take it to its logical end, as contemplated under Section 44 of the Act.

13 The PMLA itself, does not provide for any contingency like the case in hand and argued by the learned counsel for the Applicants. Section 44(b) only provides for filing of a complaint or submission of a closure report by the Investigating Agency under PMLA and none else.

If the contention of the learned counsel for the Applicants that, once the foundation is removed, the structure/ work thereon falls is accepted, then it will have frustrating effect on the intention of Legislature in enacting the PMLA. The observations of the Hon'ble Supreme Court in the case of *State of Punjab Vs. Davinder Pal Singh Bhullar, (supra)* in

paragraph No.107 and *Sanjaysingh Ramrao Chavan (Supra)* in para No.17 are in context of the facts of the said case and pertaining to the offences under the provisions of IPC and P.C. Act and therefore, the same cannot be applied to the case in hand which arises out of a special statute namely PMLA enacted by the Legislature with an avowed object.

Hypothetically, 'an accused' in a Predicate/Scheduled Offence is highly influential either monetarily or by muscle power and by use of his influence gets the base offence, compromised or compounded to avoid further investigation by ED i.e. money laundering or the trail of proceeds of crime by him, either in the Predicate/Scheduled Offence or any of the activities revealed therefrom. And, if the aforestated contention of the learned counsel for the Applicants is accepted, it will put to an end to the independent investigation of ED i.e. certainly not the intention of Legislature in enacting the PMLA. Therefore, if the contention of the learned counsel for the Applicants is accepted, in that event, it would be easiest mode for the accused in a case under PMLA to scuttle and/or put an end to the investigation under the PMLA. Therefore, the said contention needs to be rejected.

14 In view of the aforesaid discussion, it is clear that, even if the Investigating Agency investigating a Scheduled Offence has filed closure report in it and the Court of competent jurisdiction has accepted it, it will not wipe out or cease to continue the investigation of Respondent No.1

(ED) in the offence of money-laundering being investigated by it. The investigation of Respondent No.1 will continue on its own till it reaches the stage as contemplated under Section 44 of the PMLA.

The contention for the learned counsel for the Applicants in that behalf is accordingly answered.

15 The Respondent No.1 is investigating an offence under Sections 3 and 4 of the PMLA. The Respondent No.1 in its Application filed below Exh-7 has stated that, it has been revealed during the investigation of the present crime that, the firm of the Applicants namely M/s. Omkar Relators and Developers Private Limited had clubbed project of 4 SRA projects namely (i) Mahalaxmi SRA CHS in G South Ward, (ii) Ganeshwadi Utkarsha SRA CHS in F South Ward, (iii) Sheikh Mishree SRA CHS in F North Ward and (iv) Anand Nagar SRA CHS in F North Ward. The total loan taken for the said project of Worli 1973 from Yes Bank was Rs.3155 Crores out of which Rs.2755 Crores was disbursed. That, a loan of Rs.1800 Crores is still outstanding and the same has turned NPA. It has been further revealed that, the rehab buildings of Anand Nagar SRA CHS have not been constructed, however, the FSI, which would have been available after construction of the rehab buildings was mortgaged with Yes Bank and the loan of Rs.410 Crores was taken. Thus, a kind of notional FSI was used for availing the credit facility from Banks. It is also revealed that, Rs.410 Crores loan was given for the purpose of construction of SRA/Rehab

buildings and part of sale buildings, however, total loan was diverted towards sale buildings and no rehab buildings were constructed. It was further found that, the said loan was sanctioned by creating exclusive charge on all development rights/FSI/Saleable area/ interest with respect to Wadala SRA Project along with structure built thereon (present and future) along with any sale of TDR/FSI generated from this project. That, the rehab buildings of SRA project at Wadala and Antop Hill were to be completed along with O.C. for the same rehab buildings. However, the rehab buildings are still not completed. The Respondent No.1 is investigating into the money-laundering of the said huge amount by the Applicants. The Respondent No.1 therefore, filed a detailed Application for further judicial custody of the Applicants below Exh-7 as noted earlier. The Trial Court, by its impugned Order has allowed the said Application.

16 It is the settled position of law that, in a case of money-laundering where it involves many stages of “placement”, “layering i.e. funds moved to other institutions to conceal origin” and “interrogation i.e. funds used to acquire various assets”, it requires systematic and analysed investigation which would be of great advantage.

The further remand of Applicants to judicial custody is therefore proper on all counts. This Court finds that, the Special Court has not committed any error while passing impugned Order thereby remanding the Applicants to further judicial custody. In view of the above discussion, it

is not necessary to interfere with the impugned Order dated 15th February, 2021 passed below Exhs-7 and 8 in PMLA RA No.117 of 2021 by learned Special Judge, Mumbai.

17 Coming to prayer clause (b) of the Application, whereby the Applicants have impugned Order dated 28th January, 2021 in Remand Application No.117 of 2021, thereby remanded them further to the custody of ED till 30th January, 2021. It is to be noted here that, after the impugned Order dated 28th January 2021 was passed, remanding Applicants to ED custody till 30th January 2021, by an Order dated 30th January, 2021, the Special Court, extended custody of the Applicants for a further period of 3 days i.e. upto 2nd February, 2021. That, on 2nd February 2021, the Applicants were again produced before the Special Court for seeking their further custody with a Remand Application. The Special Court, by its Order dated 2nd February 2021, rejected the request of the Respondent No.1 for further custodial interrogation and directed that, the Applicants be remanded to judicial custody till 15th February 2021. The said Order dated 2nd February 2021, was impugned before this Court by the Respondent No.1 by way of Criminal Revision Application No.22 of 2021. This Court, by its Order dated 8th February 2021, upheld the Order of Special Court dated 2nd February 2021 and dismissed the said Revision Application. It is thus clear that, the subsequent remands of Applicants by Orders dated 30th January, 2021 and 2nd February, 2021 have been approved by this Court. As noted

earlier, the Order dated 2nd February, 2021 passed by the Special Court remanding the Applicants to the judicial custody has been upheld by this Court by its Order dated 8th February, 2021. The said prayer clause (b) of the present Application therefore does not survive.

In view of the above discussions the Applicants cannot be released from confinement or on bail.

18 A corollary to the aforestated deliberation is that, there are no merits in the present Application and is accordingly dismissed.

19 In view of dismissal of Application No.201 of 2021, the Bail Application No. 974 of 2021 does not survive and is accordingly disposed off.

(A.S. GADKARI, J.)