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

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*Reserved on: 28.05.2024*  
*Pronounced on: 01.07.2024*

+ **BAIL APPLN. 1739/2024 & CRL.M.(BAIL) 835/2024**

KALVAKUNTLA KAVITHA ..... Petitioner

Through: Mr. Vikram Chaudhari, Senior Advocate with Mr. Nitesh Rana, Mr. Mohith Rao, Mr. Deepak Nagar, Mr. Arveen, Ms. Muskan Khurana, Mr. Shaik Sohil Akhtar, Advocates

versus

CENTRAL BUREAU OF INVESTIGATION ..... Respondent

Through: Mr. D.P. Singh, SPP for CBI with Mr. Manu Mishra, Ms. Shreya Dutt, Mr. Imaan Khera, Advocates and ASP Rajiv Kumar

+ **BAIL APPLN. 1675/2024 & CRL.M.(BAIL) 799/2024**

SMT. KALVAKUNTLA KAVITHA ..... Petitioner

Through: Mr. Vikram Chaudhari, Senior Advocate with Mr. Nitesh Rana, Mr. Mohith Rao, Mr. Deepak Nagar, Mr. Arveen, Ms. Muskan Khurana, Mr. Shaik Sohil Akhtar, Advocates



versus

ENFORCEMENT DIRECTORATE

..... Respondent

Through: Mr. Zoheb Hossain, Special counsel for ED with Mr. Vivek Gurnani, Mr. Vivek Gaurav, Mr. Kartik Sabharwal, Ms. Abhipriya Rai, Mr. Sachin Sharma, Mr. Samarvir, Ms. Radhika Puri and Mr. Dipanshu Gaba, Advocates

**CORAM:**

**HON'BLE MS. JUSTICE SWARANA KANTA SHARMA**

**J U D G M E N T**

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### **SWARANA KANTA SHARMA, J.**

1. This judgment shall govern disposal of BAIL APPLN. 1675/2024 filed by the applicant in case registered against her by Directorate of Enforcement and BAIL APPLN. 1739/2024 filed by the applicant in case registered against her by the Central Bureau of Investigation, since the same arise out of similar facts, the latter being the predicate offence and the former being a case registered on the basis of the predicate offence. The facts of the case and the allegations against the applicant, to a large extent, are therefore identical.

### **FACTUAL BACKGROUND**

2. Factual background of the case is that the Central Bureau of Investigation ('CBI') had registered a case bearing no. RC0032022A0053 on 17.08.2022, for offences under Sections 120B



read with 477A of Indian Penal Code, 1860 (*'IPC'*) and Section 7 of Prevention of Corruption Act, 1988 (*'PC Act'*).

3. The case of CBI, in brief, is that during the formulation of the Delhi's Excise Policy of 2021-22, the accused persons had entered into a criminal conspiracy, thereby intentionally creating or leaving loopholes in the policy to be exploited later on. Substantial kickbacks were allegedly paid in advance to the public servants involved, in exchange for undue pecuniary benefits to the conspirators in the liquor trade. It is claimed that kickbacks totaling around Rs. 90-100 crores were paid in advance to Sh. Vijay Nair, Sh. Manish Sisodia, and other co-accused persons, by certain individuals in the South Indian liquor business (*'South Group'*). These kickbacks were found to have been returned back to them subsequently out of the profit margins of wholesale distributors and also through the credit notes issued by them to the retail zone licensees related to the South liquor lobby. Furthermore, the criminal conspiracy allegedly resulted in the formation of a cartel among three components of the policy: liquor manufacturers, wholesalers, and retailers.

4. After conducting investigation, the CBI had filed first chargesheet against 07 accused persons for offences punishable under Sections 120B of IPC and Sections 7, 7A and 8 of PC Act before the learned Trial Court on 25.11.2022, cognizance of which was taken on 15.12.2022. First supplementary charge sheet was filed by CBI on 25.04.2023 before the learned Trial Court. Thereafter, second supplementary charge sheet had also been filed on 08.07.2023 before



the learned Trial Court whereby the CBI had arrayed more accused persons.

5. During the course of further investigation, CBI on 20.02.2024 had issued notice to Smt. K. Kavitha under Section 41A of Cr.P.C. for joining the investigation on 26.02.2024, but as alleged, she did not join the investigation and thus, she could not be examined by the CBI. Subsequently, the applicant Smt. K. Kavitha was arrested by the Directorate of Enforcement in case no. ECIR/HIU-II/14/2022 on 15.03.2024. Thereafter, CBI had sought permission from the learned Trial Court to examine/interrogate her as she was in judicial custody in the Directorate of Enforcement case and had then interrogated her in judicial custody on 06.04.2024. Further, during the investigation by the CBI, it had been revealed that the accused/applicant Smt. K Kavitha was a partner in M/s. Indo Spirits (L-1 Wholesaler) through her proxy i.e., co-accused Sh. Arun Ramchandran Pillai. Further, Smt. K Kavitha had been arrested by the CBI on 11.04.2024 for her active involvement in the Delhi liquor policy case and further she had been remanded to the custody of CBI by the learned Trial Court *vide* order dated 12.04.2024.

6. In addition to the aforesaid, the Directorate of Enforcement alleges that the Delhi Excise Policy 2021-22 was crafted by top leaders of the Aam Aadmi Party to continuously generate and channel illegal funds to themselves, with deliberate loopholes left in the policy to facilitate criminal activities. A key policy change was increasing the wholesale profit margin from 5% to 12%, with 6% intended as kickbacks. It is alleged that due to urgent financial needs,



leaders of Aam Aadmi Party had sought advance kickbacks, and thus, Sh. Vijay Nair was appointed as the mediator, who had proposed to the present applicant Smt. K. Kavitha and other members of South Group to fund the party in exchange for profitable business opportunities. It is alleged that members of the ruling party in Delhi had received Rs. 100 crores as advance kickbacks from the South Group through intermediaries. This had led to the formation of a special-purpose vehicle i.e. M/s Indo Spirits, where the present applicant Smt. K. Kavitha and Sh. Raghav Magunta, through proxies Sh. Arun Pillai and Sh. Prem Rahul Manduri respectively, held a 65% partnership. It is alleged by the Directorate of Enforcement that M/s Indo Spirits was used to launder money, employing methods like control of the firm, excess credit notes, and overdue outstanding payments to recoup kickbacks. As far as investigation *qua* trial of kickbacks is concerned, the Directorate of Enforcement claims part of these funds was used in Aam Aadmi Party's Goa Assembly Election 2022 campaign, with Rs. 45 crores sent to Goa through *hawala* channels. The first prosecution complaint was filed by the Directorate of Enforcement on 26.11.2022 and the cognizance of the same was taken by the learned Trial Court on 20.12.2022. Thereafter, the Directorate of Enforcement has also filed six supplementary prosecution complaints. Subsequently, the applicant Smt. K Kavitha was arrested by the Directorate of Enforcement in the present case on 15.03.2024 and presently she is in judicial custody in the Directorate of Enforcement case along with the predicate offence case of the CBI.



**ARGUMENTS ADDRESSED ON BEHALF OF THE APPLICANT**

**Arguments *qua* the case registered by Central Bureau of Investigation**

7. Sh. Vikram Chaudhri, learned Senior Counsel for the applicant, submits that it is undisputed that the CBI had registered the present RC in August, 2022. On 11.12.2022, the CBI had issued a notice under Section 160 of Cr.P.C. to the applicant Smt. K Kavitha, who was then merely a witness. It is fervently argued that the CBI had examined the applicant at her residence for many hours on the said date, but the applicant was never arrayed as an accused. However, on 20.02.2024, i.e. after about one year, CBI had served notice under Section 41A of Cr.P.C. to the applicant. Learned Senior Counsel further argues that it is astonishing that from the bare perusal of the remand application filed by the CBI seeking custodial interrogation of Smt. K. Kavitha, it can be observed that the custody had been sought based on the material collected during the investigation conducted between December 2022 and July 2023. However, the present applicant had been arrested in April 2024, immediately before the Lok Sabha Elections 2024. Thus, the timing of the arrest of the present applicant/accused is questionable.

8. It is further argued that there has been a grave violation of the applicant's fundamental rights, as Article 21 of the Constitution, which guarantees the protection of life and personal liberty, and



Article 22(1) of the Constitution, which ensures protection against arrest and detention, have been grossly violated. Additionally, the principle of natural justice has been completely disregarded in the applicant's case. Moreover, it is argued that the provisions of Section 50 of Cr.P.C. have not been complied with by the investigating agency, as no information regarding her arrest was given to the applicant. Learned Senior Counsel also submits that no grounds of arrest were informed or communicated to the applicant as per the provision of Section 41 of Cr.P.C. It is further submitted that the arrest of the applicant was made without there being any necessity to arrest her.

9. It is further argued by the learned Senior Counsel for the applicant that a police officer is duty-bound to record the reasons for arrest in writing and that the reasons mentioned in the Arrest Memo of the applicant do not justify her arrest. It is further submitted that since there was no reason to arrest the present applicant, she is entitled to be enlarged on bail as held by the Hon'ble Supreme Court in the case of *Satender Kumar Antil v. Central Bureau of Investigation* 2022 SCC Online SC 825 as well as *Arnesh Kumar v. State of Bihar* (2014) 8 SCC 273

10. It is further submitted that the CBI's case is based merely on the statements of approvers, co-accused, and associates/relatives of the approver, which cannot be relied upon at the stage of bail.

11. It is further argued that in the present case, there is no apprehension of tampering with evidence or any attempt to prejudice the trial and that the applicant has deep roots in society and is not a





flight risk. It is also stated that the CBI is not at all justified in high handedly arresting the applicant when she was admittedly in judicial custody and there can be no apprehension attributed by the agency that the applicant may influence the witness or tamper with the evidence while in judicial custody. Additionally, the investigation is nearing completion, and the applicant has cooperated and joined the investigation, thereby satisfying the ‘triple test’ for the grant of bail as laid down in *P. Chidambaram v. Directorate of Enforcement, (2020) 13 SCC 791*. It is also submitted that the applicant is also entitled to bail on parity as the co-accused Vijay Nair, Abhishek Boinpally, Buchi Babu, Arvind Kumar Singh, and Chanpreet Singh have been granted bail by the Hon’ble Special Court. Thus, the applicant be enlarged on bail in the CBI case.

**Arguments *qua* the case registered by Directorate of Enforcement**

12. Sh. Vikram Chaudhri, learned Senior Counsel for the applicant argues that as far as the case of the Directorate of Enforcement is concerned, it is apparent that the arrest of the applicant was effected on the ground that she is not cooperating with the investigating agency and concealing true facts even after being confronted with the evidence. Reliance has been placed on the judgment of the Hon’ble Supreme Court in the case of *Pankaj Bansal v. Union of India 2023 SCC OnLine SC 1244* to argue that the arrest of the applicant was illegal and improper and it is further argued that the Directorate of Enforcement could not have expected an admission of guilt from the



applicant and the so-called non-cooperation in investigation is also not a ground for effecting her arrest.

13. It is argued that there is no evidence of any money trail connecting the applicant with the present case and that the Directorate of Enforcement has made inferences on its own and has based its case on the said inferences in this regard. It is stated that the Directorate of Enforcement has claimed in Para 22 of their reply that co-accused Sh. Arun Pillai had received Rs. 32.86 Crores from profit of Rs. 192.8 Crores from M/s Indo Spirits. The Directorate of Enforcement has claimed that out of Rs. 32.86 crores, Rs. 25.5 crores have been directly transferred to the bank account of Sh. Arun Pillai. However, the excerpt of the bank statement of Sh. Arun Pillai provided in the reply of Directorate of Enforcement makes it clear that not a single penny has been paid to the applicant Smt. K. Kavitha.

14. It is further argued that the Directorate of Enforcement has made remote inferences that some of the news channels to whom payment has been made by accused Sh. Arun Pillai are owned by the present applicant Smt. K. Kavitha and thus payment to these entities were her investment in the said entities. In this regard, it is submitted that, at best, Directorate of Enforcement has only alleged that the applicant entered into negotiation for stakes in these channels and that the applicant denies holding any stake in the said entities. It is further argued that any such allegations are figments of imagination of the Directorate of Enforcement. It is further the case of the Directorate of Enforcement that allegedly Rs. 5 crores has been



transferred to M/s Creative Developer by accused Sh. Arun Pillai for acquiring land and the deal was done through one Mr. Srihari who has done other deals with the applicant. Thus, allegations have been made by the Directorate of Enforcement that money was transferred for acquiring land for the applicant. In this regard, it is submitted that these allegations are absurd. The only allegation is that the land deal is arranged through Sh. Srihari, who also has other independent transactions with Smt. K. Kavitha. Thus, it is submitted that the Directorate of Enforcement has not been able to show any money trail to the applicant.

15. It is further argued that the Directorate of Enforcement has solely relied on the statements recorded under Section 50 of PMLA, which cannot be relied upon to deny bail to an accused even at this stage of trial. In this regard, reliance is placed upon the following decisions: *Sanjay Jain v. Enforcement Directorate 2024 SCC OnLine Del 1656*; *Vijay Agarwal v. Directorate of Enforcement 2023 SCC OnLine Del 3176*.

16. Sh. Vikram Chaudhri, learned Senior Counsel for the applicant argues that the retracted statements cannot be relied upon even at this stage, by the prosecution. It is argued that there is no evidence of destruction of evidence and the allegations are unfounded and malicious. Further as far as the allegations that the applicant did not provide her mobile phone for investigation is concerned, it is submitted that until 07.03.2023, she was not asked to produce any mobile phone. As far as the phones which were used by the applicant in the past two years is concerned, they had been distributed by her to



her staff members and when she had asked them to return the phones to her, as they were to be handed over to the Directorate of Enforcement, they were returned to her and she had handed-over the same to Directorate of Enforcement with representation on 21.03.2023. It is also argued that the argument of Directorate of Enforcement that certain phones were formatted between 11.03.2024 and 21.03.2024 is misplaced as she was not in possession of these phones when they were allegedly formatted as they were given back to her by her staff members who in order to safeguard their privacy had returned a formatted phones to her.

17. It is also submitted by learned Senior Counsel that the present applicant is the only woman who has been made an accused and arrested in the present case and as per proviso to Section 45 of PMLA, the case of a woman accused is to be treated at a different footing and she can be enlarged on bail and the twin conditions under Section 45(1) of PMLA are not required to be satisfied in her case.

18. It is, thus, argued on behalf of the applicant that there is no incriminating material on record to connect the present applicant with the offence of money laundering and therefore the applicant be enlarged on bail in the Directorate of Enforcement case.

### **ARGUMENTS ON BEHALF OF THE CENTRAL BUREAU OF INVESTIGATION**

19. Sh. D.P. Singh, learned Special Public Prosecutor (‘SPP’) for CBI argues that though the accused/applicant is not named in the FIR, however, her role in the case emerged in the course of further



investigation, from the statements of witnesses and approvers recorded under Sections 161 and 164 of the Cr.P.C., chats retrieved from the mobile phones of co-accused Sh. Buchi Babu and from the documents recovered during investigation pertaining to transaction of money in the guise of a land deal. It is further argued that the said documents/material have revealed the role of the applicant as one of the key conspirators in the case.

20. It is further submitted that all the statutory requirements, including those of Section 41 of Cr.P.C., were duly complied with by the investigating agency and grounds of arrest were also informed to the applicant, as also mentioned in the Arrest Memo. The bail plea of the applicant has further been opposed by the CBI on the ground that the applicant is a prominent politician and an influential person and she is likely to influence the witnesses and tamper with the evidence if enlarged on bail and that she will hamper the ongoing investigation. It is argued by the learned SPP that the applicant was confronted with the incriminating documents and statements of the witnesses during investigation and if enlarged on bail, she may attempt to tamper with the evidence and influence the witnesses in order to derail the investigation. So far as her plea for bail on the ground of parity is concerned, learned SPP for CBI has vehemently opposed the same. It is argued that the role of the applicant cannot be compared with that of the co-accused who have been admitted to bail. It is further urged that considering her strong influence and political clout also, the applicant cannot claim parity with the co-accused who have been admitted on bail.



21. Learned SPP for the CBI further relies on decisions in case of *Y.S. Jagannathan v. Central Bureau of Investigation* (2013) 7 SCC 439; *Nimmagadda Prasad v. Central Bureau of Investigation*, (2013) 7 SCC 466 and *State of Gujarat v. Mohanlal Jitmalji Porwal and Anr.* (1987) 2 SCC 364 and argues that the present case being that of an economic offence, stands on a different footing from other cases and considering the deep rooted and multi layered conspiracy in the present case, no ground for bail is made out.

22. It is also stated that at the time of interrogation when the application was allowed for permission to interrogate or arrest the accused, she has no right to be heard. It is also stated that incriminating evidence collected so far by the investigating agency necessitated the arrest of the present applicant by CBI as she was already in custody in a connected case ECIR/HIU-II/14/2022 and was lodged in Tihar Jail. It is stated that since during her interrogation, she has given evasive replies contrary to the evidence gathered during investigation and was concealing facts which were exclusively in her knowledge and relevant for the purpose of investigation, it had become essential to arrest her and conduct her custodial interrogation as she needed to be confronted with evidence to unearth larger conspiracy. It is also stated that the trail of money generated and her role was to be established along with other accused persons. It is also stated that she is not entitled to bail as public servants and public persons are involved in the present case and if released on bail, there is every likelihood that she will influence and interfere with the investigation. It is submitted that the investigation is at a very crucial



stage on certain key aspects, including the involvement of other public servants and private persons and therefore, it is prayed that the prayer for bail of the applicant, at this stage, be rejected.

### ARGUMENTS ON BEHALF OF DIRECTORATE OF ENFORCEMENT

23. Learned Special Counsel for Directorate of Enforcement argues that there is sufficient oral and documentary digital evidence against the present applicant which points out that she is the key conspirator of the criminal conspiracy for collection and payment of upfront money of Rs. 100 crores to Aam Aadmi Party through co-accused Sh. Vijay Nair and other accused persons in *lieu* of favourable provisions being made for the South Lobby in the excise policy of Delhi for the year 2021-22.

24. It is also argued by the learned Special Counsel that the applicant herein cannot take shelter of provision of being granted special treatment as she is a woman under Section 45 of PMLA as she is an educated and well-accomplished woman. It is argued that the applicant herein had not disclosed the password of her mobile phone and the other mobile phones were formatted by her, before being handed over to the Directorate of Enforcement. It is further argued that on the basis of material collected till date, there is sufficient material which necessitated her arrest and custody as the role of the applicant points out that she was one of the key conspirators in the present case. It is also stated that on the basis of material collected so far, there was reason to believe that she was



guilty of money laundering and therefore, that necessitated the arrest of the petitioner, which was done after following due process of law. It is also argued that on the basis of investigation conducted so far and the statements and other material collected, there is reason to believe that she is guilty of money laundering.

25. It is also argued that the witnesses and approvers in this case have clearly defined the role of the applicant, the manner in which the conspiracy was hatched, the place where the key conspirators had met in Delhi, the understanding between the present applicant and the co-accused persons, the place of such meetings as well as the chats retrieved in the present case between the co-accused(s) are sufficient to conclude that she is involved in the offence of money laundering. The attention of this Court has been drawn towards the contents of the reply and it is submitted that the detailed role of the applicant in commission of offence has been clearly outlined in the reply. It is therefore argued that the present bail application is liable to be rejected as it does not pass the test of Section 45 of the PMLA. It is also stated that the statement of the approvers and the statements under Section 50 of the PMLA are admissible in nature and can be relied upon at the stage of remand and grant or denial of bail and therefore, the argument of learned counsel for the applicant that the same cannot be looked into at this stage, as they have no evidentiary value and the evidentiary value will be decided only at the stage of trial, is wholly misconceived.

26. Therefore, it is prayed on behalf of the Directorate of Enforcement that the present bail application be dismissed.





27. This Court has **heard** arguments addressed by learned Senior Counsel appearing on behalf of the applicant, as well as learned counsels appearing on behalf of the respondents i.e. Central Bureau of Investigation and Directorate of Enforcement. The material placed on record by both the parties has also been perused and considered.

## **ANALYSIS & FINDINGS**

### **I. EVIDENCE AGAINST THE PRESENT APPLICANT**

#### **Material Collected by Central Bureau of Investigation Against the Applicant Ms. K. Kavitha**

28. During the investigation, it was revealed that Sh. Magunta S. Reddy, South Indian liquor businessman, had met the co-accused Sh. Arvind Kejriwal, Chief Minister of Delhi on 16.03.2023 and had sought his support for his business under the forthcoming Excise Policy for the State of Delhi for the year 2021-22. In his statement recorded under Section 164 of Cr.P.C., Sh. Magunta S. Reddy has revealed that Sh. Arvind Kejriwal had informed him that Smt. K. Kavitha had met him earlier and had offered to pay Rs. 100 crores to the Aam Aadmi Party for the purpose of doing liquor business in Delhi. He further stated that Sh. Kejriwal had assured him support and had informed him that the applicant Ms. K. Kavitha would follow up with him regarding the same. Thereafter, Ms. K. Kavitha had contacted Sh. Magunta S. Reddy on 19.03.2021 and had arranged a meeting with him at her Hyderabad residence on



20.03.2021, where she had requested Rs. 50 crores in exchange for business partnership and support, out of a total upfront amount of Rs. 100 crores. As per the statement of Sh. Magunta S. Reddy, he was told by the applicant Smt. K. Kavitha that she had met Sh. Arvind Kejriwal, who had asked her to arrange Rs. 100 crores. The Chartered Accountant of Ms. K. Kavitha i.e. Sh. Buchi Babu had then met Sh. Magunta S. Reddy on 21.03.2021 at his residence and had demanded the said amount of money, which eventually led to payments of Rs. 25 crores being made in installments to the associates of Ms. K. Kavitha i.e. Sh. Buchi Babu and Sh. Abhishek Boinpally in June 2021. This resulted in the Sh. Magunta S. Reddy's son, Sh. Raghav Magunta acquiring a 32.5% partnership in the wholesale liquor firm M/s Indo Spirits. This is also evident from the statement of Sh. Raghav Magunta recorded under Section 164 of Cr.P.C.

29. Further, statements by Sh. Dinesh Arora, who has turned approver recorded under Section 161, 164 and 306 of Cr.P.C. confirmed payments of Rs. 90-100 crores from the South Group to Sh. Vijay Nair, with Rs. 30 crores transferred by Sh. Abhishek Boinpally through Sh. Dinesh Arora via hawala channels for Aam Aadmi Party's campaign in Goa. One Sh. Ashok Kaushik, the Personal Assistant of Ms. K. Kavitha has confirmed in his statements recorded under Section 161 and 164 of Cr.P.C. about the delivery of Rs. 25 crores through *hawala* channels, which is also corroborated by Call Detail Records and statements of the concerned *hawala* operators.



30. Evidence in the form of chats retrieved from the mobile phone of Sh. Buchi babu have revealed that Ms. K. Kavitha's partnership in M/s Indo Spirits, through her proxy Sh. Arun R. Pillai, as well as her assistance to Sh. Raghav Magunta, the approver, in obtaining an NOC for his firm i.e. M/s Pixie Enterprises for Airport retail zone. Furthermore, the photographs retrieved from Sh. Manoj Rai's phone revealed the details of a meeting that had taken place on 20.09.2021, organized by M/s Pernod Ricard India Pvt. Ltd., to appoint M/s Indo Spirits as a wholesaler, in which Sh. Sharath Chandra Reddy of M/s Aurbindo Group, Sh. Buchibabu, Sh. Sameer Mahendru, Sh. Arun R. Pillai, Sh. Abhishek Boinpally, etc. were present.

31. The investigation also revealed that Sh. Sharath Chandra Reddy's participation in Delhi's liquor business under the New Excise Policy was influenced by Smt. K. Kavitha's assurances. It has also been revealed during the investigation that in the bidding for retail zones on 20.07.2021, firms related to Sh. Sharath Chandra Reddy had won five zones, and payments totaling Rs. 14 crores were made to the applicant Smt. K. Kavitha under a sham land deal. The payment of 1st installment of Rs. 7 crores was made in July 2021 and the payment of second installment of Rs. 7 crores was made in November 2021 through bank transactions. However, no land was actually transferred in pursuance to the said land deal. An amount of Rs. 80 lacs had also been paid in March 2021 to Telangana Jagruthi, an NGO run by the applicant, by Aurobindo Group's CSR funds, after she had allegedly given her assurance to Sh. Sharath Chandra Reddy to support his business in Delhi.



32. Additionally, Smt. K. Kavitha's associates, including Sh. Arun R. Pillai and Sh. Abhishek Boinpally had stayed in Delhi's Hotel Oberoi during the formulation of the Excise Policy, and had ensured that favorable provisions were incorporated in the new excise policy with the help of co-accused Sh. Vijay Nair.

33. **Therefore**, in view of the above material collected by the investigating agency, this Court is of the opinion that Smt. K. Kavitha was *prima facie* one of the main conspirators in the criminal conspiracy hatched in relation to formulation and implementation of Delhi Excise Policy 2021-22.

**Material Collected by Directorate of Enforcement Against the Applicant Smt. K. Kavitha**

34. As far as the role of present applicant in payment of kickbacks and overall conspiracy is concerned, the Directorate of Enforcement has relied upon the statements of Sh. Magunta S. Reddy, Sh. Raghav Magunta, Sh. Gopi Kumaram (staff of Sh. Raghav Magunta), Sh. Sarath Reddy (of South Group), Sh. Buchi Babu (CA of Smt K. Kavitha), and Sh. Dinesh Arora, recorded under Section 50 of PMLA. The details regarding the meeting of Sh. Magunta S. Reddy with Sh. Arvind Kejriwal, and with Smt. K. Kavitha, payment of Rs. 25 crores by Sh. Raghav Magunta to Sh. Buchi Babu and Sh. Abhishek Boinpally, etc., as revealed from some of these statements, have already been discussed in the preceding paragraphs. Further, during the course of investigation, upon examining the data of mobile phone of Sh. Buchi Babu i.e. CA of Smt K. Kavitha, certain portions



of the report of Group of Ministers were found in his mobile phone, two days before the said report was submitted by the GoM members to the Council of Ministers in Delhi. As alleged, these excerpts of the policy were received by him due to his access and connection with co-accused Sh. Vijay Nair who was acting on behalf of Sh. Manish Sisodia.

35. Moreover, Sh. Sarath Reddy had disclosed in his statement recorded under Section 50 of PMLA that in March 2021, Sh. Arun Pillai had informed him about a lucrative opportunity in the Delhi liquor business, and that Smt. K. Kavitha was discussing the upcoming Excise Policy with Sh. Arvind Kejriwal and Sh. Manish Sisodia, who had told Smt. Kavitha that if she would give Rs. 100 crores, the policy would be amended in her favor. She had confirmed this to Sh. Sarath Reddy during a meeting in Hyderabad, and had also told him that her team, including Sh. Arun Pillai, Sh. Buchi Babu, and Sh. Abhishek Boinpally, was working with Sh. Vijay Nair in Delhi. As per this statement, Sh. Sarath Reddy had agreed to contribute a part of Rs. 100 crores, once the business began.

36. It has also been found during the course of investigation that Smt. K. Kavitha was, ultimately, the incharge of the share of Sh. Arun R. Pillai in M/s Indo Spirits. In this regard, the Directorate of Enforcement has relied upon the statements of Sh. Sameer Mahandru, Sh. Arun R. Pillai, Sh. V. Srinivas, Sh. Buchi Babu and Sh. Raghav Magunta, which have been recorded under Section 50 of PMLA. The statement of Sh. Sameer Mahandru reveals that he was told by Sh. Arun Pillai that the real investors behind him were Sh. Magunta S.



Reddy, Sh. Sarath Reddy and Smt. K. Kavitha, and Sh. Arun Pillai had also made Sh. Sameer Mahandru speak to Smt. K. Kavitha on facetime after Pernod Ricard's business was agreed to be given to M/s Indo Spirits. Sh. Arun Pillai had revealed in his statements that he used to represent the interest of Smt. K. Kavitha in M/s Indo Spirits. One Sh. V. Srinivas, a relative/family friend of Smt. K. Kavitha, had disclosed that he had given Rs. 1 crore to Sh. Arun Pillai on the instructions of the present applicant, and this amount was used by Sh. Arun Pillai to pay his nominal investment in M/s Indo Spirits. Sh. Buchi Babu, attempting to explain one of his recovered chats with Sh. Raghav Magunta, had told that he was trying to convince Sh. Raghav Magunta that 33% share each in M/s Indo Spirits would be given to him as well as to Smt. K. Kavitha and Sh. Sameer Mahandru.

37. It is important to note at this juncture that as per the case of the prosecution, M/s Indo Spirits was a vehicle which was created to recoup the advance kickbacks paid by the South Group, and 65% share in M/s Indo Spirits were given to the members of South Group and thereafter, it was ensured that M/s Indo Spirits was made wholesale distributor of largest liquor manufacturer in Delhi and since the profit margin of wholesale distributors had been increased from 5% to 12% under the new policy, M/s Indo Spirits had earned a total profit of Rs. 193 crores within a span of 10 months, which has been termed as proceeds of crime by the Directorate of Enforcement.

38. The Directorate of Enforcement, in its reply, has also spelt out the role of applicant Smt. K. Kavitha with respect to proceeds of



crime, in detail and has referred to statements of various witnesses and the investigation conducted by it. Though detailed appreciation of the same is not necessary at this stage, an overview of the same would reveal that the personal assistant and associate of Smt. K Kavitha had disclosed about collecting two heavy bags containing cash from the office of Sh. Dinesh Arora, on instructions of Sh. Abhishek Boinpally, and delivering it to Sh. Vinod Chauhan, and Sh. Vinod Chauhan had then transferred the same for election campaign of AAP in Goa through hawala channels. Investigation has also revealed that Sh. Arun Pillai had received about Rs. 32.86 crores in his account, from the profits of M/s Indo Spirits, and out of this amount, Sh. Arun Pillai had paid Rs. 5 crores to one M/s Creative Developers for purchasing a property, however, the land was neither registered nor any sale agreement was signed at the time of transferring these funds and on the basis of statements of witnesses recorded by the agency, it has been alleged that this transaction had been done on the instructions of Smt. K Kavitha and Sh. Arun Pillai was only a benami in this transaction.

39. **Therefore**, in view of the above material collected by the investigating agency, this Court is of the opinion that Smt. K. Kavitha was *prima facie* involved in payment of kickbacks, establishing M/s Indo Spirit for recoupment of kickbacks, and in various other processes and activities relating to proceeds of crime, and thus, in commission of offence of money laundering as defined under Section 3 of PMLA, for the purpose of appreciating as to whether the twin condition under Section 45 PMLA are met or not



and to arrive at a decision as to whether there was material collected by the investigating agencies against the present applicant.

**II. WHETHER THE STATEMENTS OF APPROVERS & WITNESSES SHOULD BE DISREGARDED AT THE STAGE OF BAIL?**

40. One of the arguments of the learned Senior Counsel for the applicant is that the statements of the approvers recorded under Section 164 of Cr.P.C. and other statements recorded under Section 50 of PMLA cannot be relied upon at this stage, and if those statements of approvers and witnesses are removed from the consideration, there would be nothing incriminating against the applicant.

41. In this Court's opinion, this argument is devoid of merit. It is so, since in a criminal trial, at the stage of arrest and remand of an accused, only the statements of the concerned witnesses and the material collected so far by the investigating agencies corroborating such statements, reflecting the involvement of an accused prima facie, will be placed before the Court of law. Such material will be placed before a trial court or a higher Court for the purpose of seeking arrest or remand by the prosecuting agency and by the accused for the purpose of opposing remand or seeking bail.

42. As far as law on the evidentiary value of statements recorded under Section 50 of PMLA is concerned, the three-judge Bench of Hon'ble Apex Court in the case of *Rohit Tandon v. Directorate of*





*Enforcement (2018) 11 SCC 46*, has held that such statements are admissible in nature and can make out a formidable case about involvement of accused in the offence of money laundering. The relevant observations of the Hon'ble Apex Court are as under:

“31. ...The prosecution is relying on statements of 26 witnesses/accused already recorded, out of which 7 were considered by the Delhi High Court. These statements are admissible in evidence, in view of Section 50 of the Act of 2002. The same makes out a formidable case about the involvement of the appellant in commission of a serious offence of money laundering. It is, therefore, not possible for us to record satisfaction that there are reasonable grounds for believing that the appellant is not guilty of such offence...”

43. These observations were reiterated by the Hon'ble Apex Court in case of *Tarun Kumar v. Enforcement Directorate 2023 SCC OnLine SC 1486*.

44. As far as statements of approvers are concerned, the same have been recorded under Section 164 of Cr.P.C. before a Judicial Magistrate. In case of *Arvind Kejriwal v. Enforcement Directorate 2024 SCC OnLine Del 2685*, this Court has made the following observations on the reliability of statements of approvers at the stage of arrest, etc:

“88. This Court therefore holds that, the contents of above paragraph would lead to a conclusion that to doubt and cast aspersions regarding the manner of granting of pardon or recording statement of approver amounts to casting aspersions on the judicial process, since granting of pardon or recording of statement of approver is not the domain of investigating agency. It is a judicial process wherein a judicial officer follows the provisions of Section 164 of Cr.P.C. for recording the



statement of an approver and also for granting or not granting pardon to such approver. It will be useful to mention that before recording the confession of an approver, the concerned Judge satisfies himself regarding the confession being voluntary and puts specific questions to the person requesting to make a statement under Section 164 of Cr. P.C. as a co-accused. The learned Judge thereafter records his or her finding in the statement itself as to which questions were put to such person for arriving at conclusion that the person so making a confessional statement was not under any pressure or threat. Further, the concerned learned Judge also warns the person so making a confessional statement that the same can be used against him. Only thereafter, the learned Judge proceeds to record the statement and at the end of the statement appends a certificate regarding the correctness of the entire proceedings which includes the satisfaction of the judge recorded regarding the person making confessional statement not being under any pressure, coercion or threat.

89. In this context, it will also be important to note that an approver is an individual who provides crucial evidence against co-accused in exchange for leniency or immunity from prosecution as per law. However, it is the Court of law that evaluates the credibility and relevance of the evidence presented by the approver and determines whether to accept their testimony or not at the relevant stage of trial. Similarly, bail, which entails the release of an accused pending trial, is a judicial prerogative.

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92. Trials have taken place, are taking place and have ended in conviction or acquittal in which approver's statements have been recorded and relied upon by prosecution.”

45. While dealing with the argument that this Court cannot rely upon the statements recorded under Section 50 of PMLA or the statements of the approvers at this stage for grant of bail and in case, the same being devoid of evidentiary value, *sans* the same, there will



be no incriminating material to record satisfaction of the Court under Section 45 of PMLA, this Court deems it appropriate to observed that in criminal jurisprudence, journey of a criminal case goes to the following stages before its culmination into filing of report under Section 173 of Cr.P.C. or filing of a complaint as the case may be as under PMLA:

- Filing of complaint with the investigating agency.
- Preliminary enquiry into the allegations.
- Registration of FIR or RC or ECIR, as the case may be under different statutory laws.
- Investigation by examining the complainant and witnesses who may have knowledge about the case or who are alleged to be a part of the conspiracy.
- Analyzing the digital evidence, wherever available.
- Analyzing documentary and other material recovered during investigation.
- Arresting the accused persons, if necessary or deemed appropriate, as per provisions of law and judicial precedents
- Filing of chargesheet or prosecution complaints, as the case may be.

46. Recording of statements of witnesses, complainant, and in many cases an accused turning approver and his statement being recorded by a judicial magistrate, as well as collection of digital or forensic evidence in various forms results in incriminating material being in possession of the investigating agency, which is placed before the Trial Court for the purpose of its satisfaction regarding



grant of remand or bail. Similarly, at the stage of grant of bail before a higher Court, it will be the abovesaid initial material which will be placed before it for the purpose of reaching a conclusion regarding grant of bail or not. It is to be noted that at this stage when the chargesheet has not been filed, the conclusion of investigation and the entire material which will be part of a chargesheet will not be before a Court of law. In case a view is taken that even at the stage of grant of bail, when the chargesheet is yet to be filed and only the statement of witnesses, approvers and other material in form of documentary or forensic evidence cannot be looked into having no evidentiary value, would lead to a situation where the Courts will have nothing to look into at the stage of bail in absence of a conclusive chargesheet. As per the existing law, the Courts have to rely upon the statements of the witnesses etc. as mentioned above for the purpose of making out a *prima facie* view regarding involvement of an accused and the extent thereof for the purpose of exercising discretion to grant or deny bail.

47. There is also no dispute on the proposition that the evidentiary value of the statements of approvers and witnesses recorded during the course of investigation are to be tested during the trial i.e. after recording examination-in-chief and conducting cross-examination. Therefore, it is the stage of a criminal case which decides as to what evidentiary value is to be attached to a document or a statement of witness etc. Therefore, prior to commencement of trial, and during the stage when investigation is yet not concluded, chargesheet is not yet filed, and charges have also not been framed, it will be the



statement of the witnesses including those under Section 161 and 164 of Cr.P.C. and Section 50 of PMLA, statement of an approver recorded by judicial Magistrate and documents which have been collected during the course of investigation till that stage, which will form the basis of deciding as to whether there are sufficient reasons and sufficient material to either grant or reject bail to the accused.

48. Learned Senior Counsel for the applicant has also argued, at length, that the arrest of the applicant in the present case by the respondents was *mala fide*, illegal and there was no necessity to arrest her at the time when she was arrested. However, this Court is of the opinion that the issues regarding legality of arrest of the applicant, the timing of arrest, necessity of arrest, etc. have already been raised by the applicant in the petitions challenging arrest by the respondents. The petition wherein arrest by Directorate of Enforcement has been challenged is pending before the Hon'ble Apex Court and the petitioner challenging the legality of arrest by CBI is pending before the Roster bench of this Court.

49. Therefore, this Court is of the opinion that the present bail applications have to be decided on the basis of facts and material collected by the investigating agencies and the contentions regarding grant of bail raised by the learned defence counsels in light of the law and the judicial precedents. The contentions regarding the legality, timing and necessity of arrest are subject matters of different writ petitions pending before the Hon'ble Apex Court and the concerned roster bench now and will be dealt with at the time of hearing of those writ petitions



### III. WHETHER THE APPLICANT IS ENTITLED TO GRANT OF BAIL AT THIS STAGE?

#### **Principles Governing Grant of Bail**

50. The general principles and factors to be taken into consideration while deciding a bail application, as explained by the Hon'ble Apex Court in case of *Prasanta Kumar Sarkar v. Ashis Chatterjee* (2010) 14 SCC 496 are as follows:

- “9. ... (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by grant of bail.”

51. Moreover, the triple test for grant of bail requires that the following factors be taken into consideration:

- (i) Whether the accused is a flight risk?
- (ii) Whether the accused can tamper with evidence if released on bail? and



- (iii) Whether the accused can influence witnesses if released on bail?

### Section 45 of PMLA: The Twin Test

52. Insofar as the offence of money laundering, under Section 3 and 4 of PMLA, is concerned, Section 45(1) of PMLA prescribes the mandatory twin conditions which must be satisfied before an accused is granted bail. These twin conditions are:

- (i) The Court is satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence, and
- (ii) The accused is not likely to commit any offence while on bail.

53. In this regard, it will be apt to refer to the following observations of Hon'ble Apex Court in case of *Vijay Madanlal Choudhary v. Union of India* 2022 SCC OnLine SC 929, on the satisfaction of mandatory twin conditions under Section 45 of PMLA as well as gravity of offence of money laundering, which are extracted hereunder:

“387. ...Now, the **provision (Section 45) including twin conditions would apply to the offence(s) under the 2002 Act itself.** The provision post 2018 amendment, is in the nature of no bail in relation to the offence of money-laundering unless the twin conditions are fulfilled. The twin conditions are that there are reasonable grounds for believing that the Accused is not guilty of offence of money-laundering and that he is not likely to commit any offence while on bail. Considering the purposes and objects of the legislation in the form of 2002 Act and the background in which it had been enacted owing to the commitment made to the international bodies and on their recommendations, it is plainly clear that it is a special legislation to deal with



the subject of money-laundering activities having transnational impact on the financial systems including sovereignty and integrity of the countries. This is not an ordinary offence. To deal with such serious offence, stringent measures are provided in the 2002 Act for prevention of money-laundering and combating menace of money-laundering, including for attachment and confiscation of proceeds of crime and to prosecute persons involved in the process or activity connected with the proceeds of crime. **In view of the gravity of the fallout of money-laundering activities having transnational impact, a special procedural law for prevention and regulation, including to prosecute the person involved, has been enacted, grouping the offenders involved in the process or activity connected with the proceeds of crime as a separate class from ordinary criminals. The offence of money-laundering has been regarded as an aggravated form of crime “world over”. It is, therefore, a separate class of offence requiring effective and stringent measures to combat the menace of money-laundering.**

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401. We are in agreement with the observation made by the Court in *Ranjitsing Brahmajeetsing Sharma*. The Court while dealing with the application for grant of bail need not delve deep into the merits of the case and only a view of the Court based on available material on record is required. The Court will not weigh the evidence to find the guilt of the accused which is, of course, the work of Trial Court. **The Court is only required to place its view based on probability on the basis of reasonable material collected during investigation** and the said view will not be taken into consideration by the Trial Court in recording its finding of the guilt or acquittal during trial which is based on the evidence adduced during the trial. As explained by this Court in, the words used in Section 45 of the 2002 Act are “reasonable grounds for believing” **which means the Court has to see only if there is a genuine case against the accused and the prosecution is not required to prove the charge beyond reasonable doubt.**”

(emphasis supplied)





54. In case of *Tarun Kumar v. Enforcement Directorate 2023 SCC OnLine SC 1486*, the Hon'ble Apex Court has held as under:

“17. As well settled by now, the conditions specified under Section 45 are mandatory. They need to be complied with. **The Court is required to be satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and he is not likely to commit any offence while on bail.** It is needless to say that as per the statutory presumption permitted under Section 24 of the Act, the Court or the Authority is entitled to presume unless the contrary is proved, that in any proceedings relating to proceeds of crime under the Act, in the case of a person charged with the offence of money laundering under Section 3, such proceeds of crime are involved in money laundering. Such conditions enumerated in Section 45 of PML Act will have to be complied with even in respect of an application for bail made under Section 439 Cr. P.C. in view of the overriding effect given to the PML Act over the other law for the time being in force, under Section 71 of the PML Act.”

(emphasis supplied)

55. This Court, in case of *Manish Sisodia v. Enforcement Directorate 2024 SCC OnLine Del 3731*, has observed as under, on the scope of Section 45 of PMLA:

“96. At the stage of considering the bail application of a person, who is accused of committing the offence of money laundering under PMLA, **the Court is not required to conduct a mini-trial to establish his ‘guilt’ as provided under Section 45.** Instead, the Court's role is to scrutinize the material on record to determine **whether there are reasonable grounds to believe that the accused is ‘guilty’ of the offence under PMLA.** The focus is on *prima-facie* assessing the evidence available at this stage, to decide if it justifies either the continuation of custody or the grant of bail, without delving into a detailed



**examination of the merits of the case or making definitive findings of fact.”**

**Whether the Applicant Fulfils Twin Test under Section 45 of PMLA?**

56. As noted above, one of the conditions for satisfaction of twin test under Section 45 of PMLA is that the Court has to arrive at a conclusion, by taking a *prima facie* view of the material against the accused, that there are reasonable grounds for believing that he or she is not guilty of such offence.

57. Having gone through the material placed on record by the Directorate of Enforcement, including the statements of witnesses recorded under Section 50 of PMLA, statements of approvers recorded under Section 164 of Cr.P.C., other documentary evidence collected by the investigating agencies including the recovery of chats, etc., *which have been discussed in the preceding paragraphs in detail*, this Court is of the view that a *prima facie* case of commission of money laundering under Section 3 of PMLA against the applicant Smt. K. Kavitha is made out for the purpose of deciding his bail application, since it *prima facie* appears from such material collected by the Directorate of Enforcement that she was involved in various processes and activities relating to proceeds of crime, and this Court, even considering the broad probabilities of the case, cannot reach a conclusion that the applicant is not guilty of the offence of money laundering, at this stage for the purpose of deciding the bail application. **To conclude, the twin conditions under Section 45 of**



**PMLA are not fulfilled in the present case, so as to entitle the applicant to grant of bail in case registered by Directorate of Enforcement.**

### **Whether the Applicant Fulfils the Triple Test for Grant of Bail?**

58. As far as triple test for grant of bail is concerned, this Court notes that during the course of investigation, the applicant had presented nine mobile phones for examination on 21.03.2023 before the Directorate of Enforcement, which were found to be formatted with no data. She had denied formatting the devices and had informed the investigating agency that the said phones belonging to her were given by her to her household staff and other staff and that she had got them back for the purpose of handing over to the investigating agency. However, when questioned about who had deleted the data and on whose instructions, she was evasive and could provide no explanation. It is crucial to note in this regard that forensic examination of the said mobile phones had revealed that four of these phones were formatted on 14.03.2023 and 15.03.2023, i.e. after the applicant had been summoned on 11.03.2023 with instructions to produce her digital devices from the past two years. Therefore, considering this conduct of the applicant, this Court at this stage cannot rule out the possibility of her tampering with evidence if released on bail, moreso since investigation in the present case has yet not been fully concluded. Furthermore, this Court is also of the opinion that many of the crucial witnesses in this case are either close associates or employees of the present applicant, and since it is the



case of applicant herself that she is a well-accomplished woman and holds position of eminence in the field of politics, the possibility of influencing witnesses cannot also be ruled out at this stage. **Thus, this Court is of the opinion that the applicant herein does not fulfill the triple test for grant of bail.**

59. The investigation in the present case is at a crucial stage and the final chargesheets/prosecution complaints are yet to be filed when the bail application was heard, and charges are also yet to be framed.

#### **IV. WHETHER THE APPLICANT IS ENTITLED TO BENEFIT OF PROVISIO TO SECTION 45 OF PMLA BEING A WOMAN?**

60. One of the contentions raised by the learned Senior Counsel for the applicant is that the applicant herein, being a woman, is entitled to the benefit of *provisio* to Section 45(1) of PMLA.

61. Section 45 of PMLA, as noted above, provides the twin conditions which are required to be satisfied before granting bail to an accused under PMLA. However, its proviso provides the exception to this general rule, and it reads as under:

“...Provided that a person, who, is under the age of sixteen years, **or is a woman** or is sick or infirm, or is accused either on his own or along with other co-accused of money laundering a sum of less than one crore rupees **may be released on bail, if the Special Court so directs...**”

(emphasis supplied)



62. In case of *Enforcement Directorate v. Preeti Chandra SLP (Crl.) No. 7409/2023*, it has been observed by the Hon'ble Apex Court as under:

**“The proviso to Section 45 of the Prevention of Money Laundering Act, 2002 confers a discretion on the Court to grant bail where the accused is a woman. Similar provisions of Section 437 of the Code of Criminal Procedure, 1973 have been interpreted by this Court to mean that the statutory provision does not mean that person specified in the first proviso to sub-section (1) of Section 437 should necessarily be released on bail.”**

(emphasis supplied)

63. In the case of *Saumya Chaurasia v. Directorate of Enforcement 2023 SCC OnLine SC 1674*, the Hon'ble Supreme Court has explained the scope and intent of this *proviso*. The relevant observations are extracted hereunder:

“22. The next question that falls for consideration before the Court is whether the appellant being a woman should be granted the benefit of the first proviso to Section 45 of the PMLA, which reads as under:—

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24. The use of the expression “may be” in the first proviso to Section 45 clearly indicates that the benefit of the said proviso to the category of **persons mentioned therein may be extended at the discretion of the Court considering the facts and circumstances of each case, and could not be construed as a mandatory or obligatory on the part of the Court to release them.** Similar benevolent provision for granting bail to the category of persons below the age of sixteen years, women, sick or infirm has been made in Section 437 Cr. P.C. and many other special enactments also, **however by no stretch of imagination could such provision be construed as obligatory or mandatory in nature, otherwise all serious offences under such special Acts would be committed involving women and persons of tender**



age below 16 years. No doubt the courts need to be more **sensitive and sympathetic towards the category of persons** included in the first proviso to Section 45 and similar provisions in the other Acts, as the persons of tender age and **women who are likely to be more vulnerable, may sometimes be misused by the unscrupulous elements and made scapegoats for committing such Crimes, nonetheless, the courts also should not be oblivious to the fact that nowadays the educated and well placed women in the society engage themselves in the commercial ventures and enterprises, and advertently or inadvertently engage themselves in the illegal activities. In essence, the courts should exercise the discretion judiciously using their prudence, while granting the benefit of the first proviso to Section 45 PMLA to the category of persons mentioned therein. The extent of involvement of the persons falling in such category in the alleged offences, the nature of evidence collected by the investigating agency etc., would be material considerations.”**

(emphasis supplied)

64. Thus, the Hon'ble Supreme Court has observed that though the Courts should be sensitive and sympathetic to the vulnerable groups such as women, it must also recognize that educated and well-placed women may engage themselves in illegal activities. Therefore, courts are required to exercise their discretion judiciously, considering factors such as the extent of involvement and evidence against the accused when applying this *proviso*.

**Applicant is an accomplished and well-educated woman**

65. **As mentioned in the contents of the application** itself, the applicant Smt. K. Kavitha, is a member of the Telangana Legislative Council from the Nizamabad Local Bodies Constituency and has held significant political positions, including **Member of Parliament**



(MP) for Nizamabad formerly. During her tenure in the Lok Sabha, she served on several committees. She had initiated a 'Free Meal Initiative' in her constituency, providing meals at state hospitals and during the pandemic. She is also the founder of the Telangana Jagruti Skill Centre, offering vocational training to youth, and as per her pleadings has been involved in educating poor children in the Nalgonda district since 2006. It is claimed in the pleadings that she is a prominent figure in the Telangana statehood movement. She holds a Bachelor's degree in Engineering and a Master's degree in Sciences. She has also served as the National Commissioner of Bharat Scouts and Guides since 2005 amongst many other achievements mentioned in the pleadings.

66. It is **heartening to note** that the applicant Smt. K. Kavitha, is a highly qualified and well-accomplished person, having made significant contributions to politics and social work as enlisted by her in her pleadings. **The same were not disputed** by the investigating agencies. Her educational qualification and the activities, she has enlisted for the betterment of society in the State of Telangana are essentially, one side of herself and is impressive. **However, while deciding the present bail applications, though this Court may appreciate these accomplishments, it cannot lose sight of serious allegations levelled by the prosecution and the evidences collected during the course of investigation and presented before this Court,** which *prima facie* reveal her role in the offence in question.

67. Furthermore, as far as benefit of *proviso* to Section 45 is concerned, when it is the case of applicant herself that she is a well-



educated and accomplished woman, who has remained Member of Parliament, Member of Legislative Council, etc., this Court is bound to keep in mind the observations of the Hon'ble Apex Court in case of *Saumya Chaurasia (supra)*. The material collected by the Directorate of Enforcement, which has been discussed in the preceding paragraphs has pointed out that the applicant herein was one of the chief conspirators in the entire conspiracy relating to formulation and implementation of new Excise Policy of Delhi. In fact, some other accused persons were working on behalf of the applicant and as per her instructions, as noted in the preceding discussion.

68. Thus, Smt. K. Kavitha cannot be equated to a vulnerable woman who may have been misused to commit an offence, which is the class of women for whom the *proviso* to Section 45 of PMLA has been incorporated, as held by the Hon'ble Apex Court in case of *Saumya Chaurasia (supra)*. Accordingly, this Court is of the considered opinion that Smt. K. Kavitha is not entitled to the benefit of *proviso* to Section 45 of PMLA.

## V. THE DECISION

69. For the reasons recorded in the aforesaid discussion, this Court is of the view that no case for grant of regular bail in RC0032022A0053 and ECIR/HIU-II/14/2022 is made out at this stage.





70. Accordingly, the present bail applications are dismissed, alongwith pending applications if any.

71. **It is, however, clarified that nothing expressed hereinabove shall tantamount to an expression of opinion on the merits of the case.**

72. Copy of this judgment be given *dasti* under the signatures of court master to the learned counsel for the applicant.

73. The judgment be uploaded on the website forthwith.

**SWARANA KANTA SHARMA, J**

**JULY 01, 2024/ns**