IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2430 OF 2025

Khilji Mohsinahmed Mustakali ...Applicant

Versus

Assistant Director,
Directorate of Enforcement & Anr. ...Respondents

Mr. Aabad Ponda, Senior Advocate a/w Adv. Jugal Kanani i/b.
Adv. Prabanjay R. Dave, for the Applicant.
Mrs. Manisha Jagtap a/w Ms. Yashashree Raut, for
Respondent No.1-(ED).
Mrs. Sangeeta Shinde, APP for the Respondent No.2-State.

CORAM: SHYAM C. CHANDAK, J.

RESERVED ON : 28th NOVEMBER, 2025
PRONOUNCED ON : 05th DECEMBER, 2025

JUDGMENT :-

. This bail application arises on account of rejection of the application for bail filed by the Applicant before the trial Court invoking Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 ("**BNSS**") r/w Section 45 of the Prevention of Money Laundering Act, 2002 ("**PMLA**"), in an ECIR bearing No.ECIR/MBZO-II/20/2024.

Respondent No.1 filed an Affidavit-in-Reply and opposed this application.

2. Heard Mr. Aabad Ponda, the learned Senior Counsel appearing for the Applicant and Ms. Manisha Jagtap, the learned Special PP for Respondent No.1-ED. Perused the Application, the reply and the written submissions presented by the respective Counsel.

3. Based on an F.I.R. bearing No.295 of 2024, dated 07/11/2024 under Sections 318 (4) 338, 340 (2) of BNS, 2023, registered with Malegaon Chawani Police Station, Nashik, Respondent No.1 has registered the said ECIR bearing No.ECIR/MBZO-II/20/2024 on 11/11/2024.

3.1 Said F.I.R. No.295 of 2024 was registered on the complaint filed by Jayesh Lotan Misal, wherein it is stated that one Seraj Ahmed Mohammad Harun Memon had collected the documents of identity from the informant, his brother Ganesh Misal and some other persons in the guise of giving them a financial benefit, *.i.e.,* a job in APMC, Malegaon. Said Seraj Ahmed and his accomplices then used those documents to establish shell entities. Further, certain bank accounts were opened in NAMCO Bank, Malegaon, Nashik in the name of such shell entities. It is alleged that, in addition, Seraj Ahmed acquired new SIM Cards in the name of the informant and others and linked the SIM Cards with those bank accounts for the purpose of taking control and to operate those bank accounts. Later on, the said bank accounts were used to carry financial transactions including circular transactions running into hundreds of cores and also to make term deposits from that money. Investigation revealed that in all 14 such bank accounts were opened with said NAMCO Bank in the name of different shell entities by said Mr. Seraj Ahmed.

3.2 The transaction statements, account opening forms, KYC documents etc. of said 14 bank accounts revealed that, credits amounting to more than Rs.112.72 Crores approx. were made from the accounts of around 200 firms/companies, within a span of 1 to 2 months only. Immediately after accumulating the amounts by way of such credits, said amounts were transferred to various other accounts maintained in the name of different persons/entities. Majority of the amount was transferred through online banking including RTGS/NEFT/IMPS. Out of the credited amounts, three fixed deposits were created in said NAMCO Bank in the name of Pratik P.

Jadhav, Ganesh L. Mishal and Jayesh L. Mishal, who were proprietors of M/s Choice Marketing, M/s Red Rose Trading Co. and M/s Sunrise Traders, respectively.

3.3 Five such accounts were maintained with the Bank of Maharashtra in the name of M/s. Dhanraj Agro, M/s. Red Rose Trading Co., M/s. Choice Marketing, M/s. Megha Traders and M/s. Sunrise Traders, which were established by said Siraj Ahmed with the help of the documents of identity of i) Moin Khan Ismail Khan, ii) Ganesh Lothan Misal, iii) Pratik Popat Jadhav, iv) Manoj Gorakh Misal, and v) Jayesh Lotan Misal, respectively. Rs.45.06 crores approx. were received in these five accounts from the accounts of various firms/companies within 3-4 months. Immediately, the amounts so credited in those accounts were transferred to several other accounts maintained in the name of various entities.

3.4 An analysis of the bank accounts of M/s. Hardik Enterprises and M/s. Haresh Trading Co. maintained with Axis Bank revealed that cash amounting to Rs.28,22,00,000/- was withdrawn from the said bank accounts within a span of less than two months, *i.e.*, October to November, 2024. Statement of Mr. Harsh Bairwa, and Mr.Hardikkumar Solanki, recorded under Section 50 of the PMLA, revealed that, although the accounts were opened in the name of M/s. Haresh and M/s. Hardik, these accounts were not operated by them. Said entities were established on the instructions of Gaurang Ganpat Parmar and Riteshkumar Shah to whom they had also handed over all the documents, *i.e.*, cheque book, debit cards and passbook, etc. of the said accounts. The said bank accounts were opened under the APMC scheme as instructed by the offenders. It is alleged that Ritesh Shah, present applicant (Accused No.4) and Sharifmiya Amirmiya Shaikh were actively involved in the aforesaid banking transactions and the three were working for Mehmood Abdul Samad Bhagad @ Challenger King, on whose instructions the said APMC bank

accounts of the shell entities were actually opened; subsequently huge amount was collected in those accounts and it was followed by the withdrawal, as above.

3.5 Investigation revealed that the applicant and his accomplices tried to escape from India. Therefore, the Applicant and Sharifmiya Amirmiya Shaikh were arrested on 02/01/2025. Their statement came to be recorded under Section 50 of PMLA. Therein, the applicant and Sharifmiya Shaikh confessed that they alongwith their associates were actively involved in establishing the aforesaid shell companies on the instructions of Mr. Mehmood Bhagad @ Chalenger King and that, they have received commission in cash from said Mehmood Bhagad against withdrawing the money in cash from the bank accounts of the shell companies namely M/s. Hardik and M/s. Haresh. They also revealed that the amounts credited in the bank accounts of M/s. Hardik and M/s. Haresh belonged to Mehmood Bhagad @ Challenger King, who generated those funds from illegal business including illegal online gaming/betting activities. The retrieved WhatsApp chats of the applicant revealed various posts sharing details of M/s. Hardik and M/s. Haresh and the ED case etc. Thus, the above named accused persons have played a very crucial role in laundering huge money and has not come out with correct facts.

4. Mr. Ponda, the learned Senior Counsel made following submissions :

a) The very foundation for the present proceedings under the PMLA is absent, as there is no material to attract and establish against the applicant the ingredients of the alleged scheduled offences under Sections 318 (4), 338 and 340 (2) of the BNS, 2023.

b) Section 2 (1) (*u*), PMLA defines "*proceeds of crime*" as any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a schedule office. The statutory

requirement is thus: there must be a derivation, obtainment, creation, or generation of property relatable to criminal activity.

c) The prosecution case, however, does not allege the creation or obtainment of any property by the applicant. The allegations, taken at the highest, suggest that certain individuals were deceived by inducements, such as job opportunities etc. Even so:

- Where a person is deceived into parting with something under misrepresentation, but no property, actually materialises as a gain in the hands of the accused, the situation is one of wrongful loss, not wrongful gain.
- No new property has come into existence or changed hands. There is only a diminution, not a derivation.
- The PMLA is not concerned with wrongful loss. The act targets the birth of tainted property, not its death.
- Therefore, where no property is derived or obtained, the very foundation of the PMLA, existence of proceeds of crime, fails.

d) In the absence of any proceeds of crime, the offence of money laundering is not sustainable, and the allegations under Sections 318 (4) BNS/420 IPC, will not be suffice to invoke the offence of PMLA.

e) Considering the material on record, even the offences under Sections 338 and 340 (2) BNS are not made out in this case. Because, the documents with the help of which the bank accounts were opened, were genuine documents, belonging to real and identifiable individuals. Said individuals had provided their documents in a hope of getting employment, as promised. To support this submission, reliance is placed on ***Mohammed, Ibrahim and Ors. vs. State of Bihar and Anr.***[1], therein, in paragraph 14 it is observed and held as under :

1. 2009 (8) SCC 751

> **"14.** An analysis of Section 464 of the Penal Code shows that it divides false documents into three categories:
>
> *1*. The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.
>
> *2*. The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.
>
> *3*. The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (*a*) unsoundness of mind; or (*b*) intoxication; or (*c*) deception practised upon him, know the contents of the document or the nature of the alteration.
>
> In short, a person is said to have made a "false document", if (*i*) he made or executed a document claiming to be someone else or authorised by someone else; or (*ii*) he altered or tampered a document; or (*iii*) he obtained a document by practising deception, or from a person not in control of his senses."

f) As held in ***Niranjan Lakhumal Hiranandani vs. Central bureau of investigation and Anr.***[2], in paragraph 42, "forgery" can be done only by three methods viz;

> (1) by a person who signs or prepares a document, or by or under the authority of the person, he knows, he does not possess;
>
> (2) by altering a document in material particulars;
>
> (3) by obtaining the consent of a person who cannot give consent, like a person who is insane or under intoxication or in any manner, unable to give free consent;"

g) Gambling/online betting is not a scheduled office, because the

2. 2018 SCC OnLine Bom 1116

Public Gambling Act, 1867, the Maharashtra Prevention of Gambling Act, 1887 and any specific laws governing online gambling/meeting where not included in the schedule to the PMLA. Gambling is a State subject under entry 34 of List II of the Seventh Schedule to the Constitution of India. Consequently, none of the Central or State gambling enactments constitute schedule offices under PMLA.

h) This position is clarified in ***Vijay Madanlal Choudhary & Ors. Vs. Union of India & Ors.***[3], in paragraph 105, 106,107, 109, 143 and 382.4. It reads :

> "105. The other relevant definition is "proceeds of crime" in Section 2(1)(*u*) of the 2002 Act. This definition is common to all actions under the Act, namely, attachment, adjudication and confiscation being civil in nature as well as prosecution or criminal action. The original provision prior to amendment vide the Finance Act, 2015 and Finance (No. 2) Act, 2019, took within its sweep any property [mentioned in Section 2(1)(*v*) PMLA] derived or obtained, directly or indirectly, by any person "as a result of" criminal activity "relating to" a scheduled offence [mentioned in Section 2(1)(*y*) read with Schedule to the Act] or the value of any such property. Vide the Finance Act, 2015, it further included such property (being proceeds of crime) which is taken or held outside the country, then the property equivalent in value held within the country and by further amendment vide Act 13 of 2018, it also added property which is abroad. By further amendment vide Finance (No. 2) Act, 2019, Explanation has been added which is obviously a clarificatory amendment. That is evident from the plain language of the inserted Explanation itself. The fact that it also includes any property which may, directly or indirectly, be derived as a result of any criminal activity relatable to scheduled offence does not transcend beyond the original provision. In that, the word "relating to" (associated with/has to do with) used in the main provision is a present

3. (2023) 12 SCC 1

participle of word “relate” and the word “relatable” is only an adjective. The thrust of the original provision itself is to indicate that any property is derived or obtained, directly or indirectly, as a result of criminal activity concerning the scheduled offence, the same be regarded as proceeds of crime. In other words, property in whatever form mentioned in Section 2(1)(*v*), is or can be linked to criminal activity relating to or relatable to scheduled offence, must be regarded as proceeds of crime for the purpose of the 2002 Act. It must follow that the Explanation inserted in 2019 is merely clarificatory and restatement of the position emerging from the principal provision [i.e. Section 2(1)(*u*)].

106. The “proceeds of crime” being the core of the ingredients constituting the offence of money laundering, that expression needs to be construed strictly. In that, all properties recovered or attached by the investigating agency in connection with the criminal activity relating to a scheduled offence under the general law cannot be regarded as proceeds of crime. There may be cases where the property involved in the commission of scheduled offence attached by the investigating agency dealing with that offence, cannot be wholly or partly regarded as proceeds of crime within the meaning of Section 2(1)(*u*) of the 2002 Act — so long as the whole or some portion of the property has been derived or obtained by any person “as a result of” criminal activity relating to the stated scheduled offence. To be proceeds of crime, therefore, the property must be derived or obtained, directly or indirectly, “as a result of” criminal activity relating to a scheduled offence. To put it differently, the vehicle used in commission of scheduled offence may be attached as property in the case (crime) concerned, it may still not be proceeds of crime within the meaning of Section 2(1)(*u*) of the 2002 Act. Similarly, possession of unaccounted property acquired by legal means may be actionable for tax violation and yet, will not be regarded as proceeds of crime unless the tax legislation concerned prescribes such violation as an offence and such offence is included

in the Schedule to the 2002 Act. For being regarded as proceeds of crime, the property associated with the scheduled offence must have been derived or obtained by a person "as a result of" criminal activity relating to the scheduled offence concerned. This distinction must be borne in mind while reckoning any property referred to in the scheduled offence as proceeds of crime for the purpose of the 2002 Act. Dealing with proceeds of crime by way of any process or activity constitutes offence of money laundering under Section 3 PMLA.

107. Be it noted that the definition clause includes any property derived or obtained "indirectly" as well. This would include property derived or obtained from the sale proceeds or in a given case in lieu of or in exchange of the "property" which had been directly derived or obtained as a result of criminal activity relating to a scheduled offence. In the context of the Explanation added in 2019 to the definition of the expression "proceeds of crime", it would inevitably include other property which may not have been derived or obtained as a result of any criminal activity relatable to the scheduled offence. As noticed from the definition, it essentially refers to "any property" including abroad derived or obtained directly or indirectly. The Explanation added in 2019 in no way travels beyond that intent of tracking and reaching up to the property derived or obtained directly or indirectly as a result of criminal activity relating to a scheduled offence. Therefore, the Explanation is in the nature of clarification and not to increase the width of the main definition of "proceeds of crime". The definition of "property" also contains Explanation which is for the removal of doubts and to clarify that the term property includes property of any kind used in the commission of an offence under the 2002 Act or any of the scheduled offences.

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109. Tersely put, it is only such property which is derived or obtained, directly or indirectly, as a result of criminal activity

relating to a scheduled offence that can be regarded as proceeds of crime. The authorities under the 2002 Act cannot resort to action against any person for money laundering on an assumption that the property recovered by them must be proceeds of crime and that a scheduled offence has been committed, unless the same is registered with the jurisdictional police or pending inquiry by way of complaint before the competent forum. For, the expression "derived or obtained" is indicative of criminal activity relating to a scheduled offence already accomplished. Similarly, in the event the person named in the criminal activity relating to a scheduled offence is finally absolved by a court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of the criminal case (scheduled offence) against him/her, there can be no action for money laundering against such a person or person claiming through him in relation to the property linked to the stated scheduled offence. This interpretation alone can be countenanced on the basis of the provisions of the 2002 Act, in particular Section 2(1)(*u*) read with Section 3. Taking any other view would be rewriting of these provisions and disregarding the express language of the definition clause "proceeds of crime", as it obtains as of now.

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143. However, in the present case we find that the Explanation only sets forth in motion to clear the mist around the main definition, if any. It is not to widen the ambit of Section 3 of the 2002 Act as such. Further, the meaning ascribed to the expression "and" to be read as "or" is in consonance with the contemporary thinking of the international community and in consonance with the Vienna and Palermo Conventions.

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382.4. The Explanation inserted to clause (*u*) of Section 2(1) of the 2002 Act does not travel beyond the main provision predicating tracking and reaching up to the property derived or obtained directly or indirectly as a result of criminal activity relating to a scheduled offence."

i) It is therefore follows that, in the case on hand, no offence under Section 3 of the PMLA is made out. Consequently, no proceedings under the said Act can be sustained. Any attempt by the prosecution to stretch the definition of “proceeds of crime” beyond the legislative contours authoritatively settled by the Supreme Court, must fail.

j) Without prejudice to the aforesaid submission, he submitted that the applicant has no involvement whatsoever in any of the offences alleged in the FIR. Said allegations are entirely not supported by material evidence and rest on conjecture rather than factual foundation.

k) The applicant has never visited any bank branch in which the accounts of the alleged shell entities were maintained for the purpose of making withdrawals, deposits or any other banking transaction. He has also never visited any ATM centre for the purpose of withdrawing the funds from such accounts. The enforcement directorate has not produced any ATM, receipt, CCTV footage, withdrawal slip, bank, transaction, record or any other documentary evidence, bearing the applicants signature or linking him in any manner to the withdrawals from the bank accounts of the alleged shell entities.

l) The alleged statement of the Applicant recorded under Section 50 of the PMLA Act, by itself, does not constitute a substantive evidence in the absence of corroborative material.

Because, a person in custody of the same agency conducting the investigation, cannot be regarded as one acting with a free or unrestrained mind. The coercive environment and inherent vulnerability of an accused in such custody render it unsafe, unfair and contrary to established principles of criminal jurisprudence to

treat such statements as voluntary or reliable. Therefore, the Hon'ble Supreme Court has recently reiterated this position in ***Prem Prakash vs. Union of India***[4], where it was held that statements of an accused recorded under section 50 of the PMLA during the course of custodial interrogation by the same agency cannot be treated as admissible evidence against the maker in the absence of safeguards, ensuring voluntariness and reliability. In fact, after relying upon the decision in the case of ***Vijay Madan Lal*** (supra), the Hon'ble Supreme Court in paragraph 33 has held as under :

> "33. In the facts of the present case, we hold that the statement of the appellant if to be considered as incriminating against the maker, will be hit by Section 25 of the Evidence Act since he has given the statement whilst in judicial custody, pursuant to another proceeding instituted by the same Investigating Agency. Taken as he was from the judicial custody to record the statement, it will be a travesty of justice to render the statement admissible against the appellant."

5. In reply, Ms. Jagtap, the learned Special PP for Respondent No.1-ED, vehemently submitted that the present crime has been committed in a designed manner and with conspiracy. At the outset, Ms Jagtap submitted that, initially, the applicant and his co-accused induced certain innocent individuals to provide their KYC documents etc. on a false pretext to give them a job/employment. Further, with the help of those documents, the accused persons established the shell companies and opened bank accounts in the name of said companies. Later on, amounts in crores were transferred in these shell companies' accounts and majority amounts were withdrawn in cash. A couple of bank entries also surfaced during the course of the investigation which indicate that certain monies were credited in the bank account of the present applicant from one of the shell company's bank account. She submits that, originally, this offence was registered with the local police station. Later on, finding clue of an offence of the PMLA, the aforesaid ECIR came to be registered and accordingly the special case was filed. She submits that there is ample material to attract the predicate

4. (2024) 9 SCC 787

offences under BNS 2023, which led to the registration the offences under the PMLA. She submitted that the money withdrawn from the shell companies' bank accounts are likely to be used in criminal activities against the Nation. Therefore, the ATS has registered a separate offence. There is more than sufficient material against the applicant showing his involvement in the acts of opening of the bank accounts and withdrawing the crime proceeds out of it. Therefore, the trial Court rejected his prayer for bail. There is no change in the circumstances. Hence, bail be refused.

6. I have considered these submissions and the cited reported cases. The first question that surfaced is, whether there is a *prima facie* case of the offences of Sections 318, 336 and 338 (2) BNS. But before adverting to this question, let us first look into following definitions provided in BNS, 2023.

Sections	Particulars
2 (7)	"dishonestly" means doing anything with the intention of causing wrongful gain to one person or wrongful loss to another person.
2 (9)	"fraudulently" means doing anything with the intention to defraud but not otherwise.
2 (14)	"injury" means any harm whatever illegally caused to any person, in body, mind, reputation or property.
2 (15)	"illegal" and "legally bound to do".—The word "illegal" is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action; and a person is said to be "legally bound to do" whatever it is illegal in him to omit.
2 (31)	"valuable security" means a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right.
2 (36)	"wrongful gain" means gain by unlawful means of property to which the person gaining is not legally entitled;
2 (37)	"wrongful loss" means the loss by unlawful means of property

	to which the person losing it is legally entitled;
2 (38)	"gaining wrongfully" and "losing wrongfully".—A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.

Section **318. Cheating**.—(1) Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to cheat.

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section."

Section **318** (4) Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

Section **335. Making a false document**.—A person is said to make a false document or false electronic record—

(A) Who dishonestly or fraudulently— (i) makes, signs, seals or executes a document or part of a document; (ii) makes or transmits

any electronic record or part of any electronic record; (iii) affixes any electronic signature on any electronic record; (iv) makes any mark denoting the execution of a document or the authenticity of the electronic signature, with the intention of causing it to be believed that such document or part of document, electronic record or electronic signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

(B) Who without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with electronic signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

(C) Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his electronic signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.

Explanation 1.—A man's signature of his own name may amount to forgery.

Explanation 2.—The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person,

intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

Explanation 3.—For the purposes of this section, the expression "affixing electronic signature" shall have the meaning assigned to it in clause (d) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000).

Section **336. Forgery**.—Whoever makes any false document or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery."

338. Forgery of valuable security, will, etc.—Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

340. Forged document or electronic record and using it as genuine.—(1) A false document or electronic record made wholly or

in part by forgery is designated a forged document or electronic record.

(2) Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged document or electronic record, shall be punished in the same manner as if he had forged such document or electronic record.

7. As defined in Section 2 (*u*) of the PMLA, "proceeds of crime" means any property derived or obtained directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country [or abroad]; [Explanation.—For the removal of doubts, it is hereby clarified 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;]

8. In view of the aforesaid definitions and provisions of law, I have carefully perused the text of the F.I.R. No.295 of 2024, the statement of the prosecution witness Mr Gaurang Ganpat Parmar and the written submissions. It revealed that the accused Ritesh Shah, Sharifmiya, the present applicant and their co-accused, in connivance with each other, caused the innocent individuals referred in the F.I.R. No.295 of 2024, Mr Harsh Bairwa and Mr Hardikkumar Solanki to part with the documents of their identity with intent to use it to open the shell entities including M/s Haresh Trading Co. and M/s Hardik Enterprises. The documents were obtained with the help of deception and on the basis of the false promise of giving them a job in the APMC. Later on, shell companies were established

and their bank accounts were opened with the help of said documents. If such a deception or falsity was not put into service against the said individuals and had the accused persons disclosed the real purpose to them before obtaining their documents of identity, said individuals would not have agreed to share their said documents.

Mr Gaurang Parmar, also disclosed that after opening the relevant bank account of M/s Hardik, the related signed cheque book and debit card were handed over to Mr Ritesh Shah, who used to report the present applicant. He also revealed that the applicant used to work for his co-accused Sharifmiya. Then, all the transactions in the bank accounts, including the cash withdrawals, were carried out by the applicant and Sharifmiya. Similar *modus operandi* was followed in respect of opening and operating the bank account of M/s Haresh and the other bank accounts. Even the bank accounts of M/s Hardik and M/s Haresh were transferred from one branch to another to make the daily withdrawal possible, avoiding return or dishonour of the cheques. This all was operated and controlled by Ritesh Shah, Sharifmiya and the present applicant. It is further revealed that Mr Sunish Gupta – Br. Manager of Axis Bank, Mr. Gaurang Parmar and the applicant used to get commission towards the withdrawal of the amounts. It is thus apparent that the applicant knowingly participated in the criminal activities to help the main accused for laundering of the money, for pecuniary benefit. As alleged, the money which was originally deposited in the bank accounts of the shell companies was accumulated through illegal business and online gambling/betting.

Section 2 (*v)* of the PMLA defines the word 'property' which means any property or asset and includes intangible property. Bank accounts are intangible property because they represent a right to receive money rather than a physical object. To support this conclusion it is apt to refer the

decision in ***State of Maharashtra vs. Tapas D. Neogy***[5], therein, in paragraph 12, it is held by the Apex Court that the bank account of the accused or any of his relations is "property" within the meaning of Section 102 of Cr.P.C. and police officer in course of investigation can seize or prohibit the operation of the said account if such assets have direct links with the commission of the offence. In the case on hand, first, the accused persons deceived the individual victims of the crime, then made them to open their bank accounts and lastly, caused them to allow the accused to take complete control and operations of the bank accounts in their hands. This was a clear wrongful loss of documents and right to operate the bank account by the individuals and wrongful gain of property by the accused persons.

9. Unarguably, cheque is a type of 'bill of exchange'. As noted above, the money accumulated/credited in the bank accounts of the shell companies including M/s Hardik and M/s Haresh, were not withdrawn by the actual account holders but by Ritesh Shah, Sharifmiya, the applicant and others. However, without showing any of these three accused and their co-accused as 'payee' in the said cheques, the withdrawal by cheque was not possible. Therefore, the conclusion is inevitable that when the accused concerned wrote his name as 'payee' in the blank signed cheques to encash it, he did it falsely and without any authority, to derive or obtain the money from the bank account concerned. Similarly, without impersonation, cash withdrawal was also not possible, physically or using ATM card. All the time, the said individuals were kept in the dark about the purpose for which the accounts were to be opened and the said signed blank cheques were to be used.

10. Thus, the deception and dishonest act of the applicant and his co-accused, leading to opening and operating the bank accounts of the shell

5. (1999) 7 SCC 685

entities, resulted in handing over the signed cheque books (valuable security), making false valuable security, *i.e.*, writing the name of the payee in the blank cheques signed in advance by the victims and finally, using the said cheques as genuine for withdrawal/delivery of the money. The said act of the applicant and his co-accused caused a wrongful gain for themselves and the main accused. No doubt, as argued by Mr Ponda, the learned Senior Counsel, no monetary loss might have been caused to the said account holder individuals. Nevertheless, Section 318 BNS is not limited to delivery of such victim's property. On the contrary, it is attracted against delivery of any property to any person by the person who was deceived and fraudulently or dishonestly induced to do so. Thus, this is a clear case of cheating the individuals namely Mr Haresh, Mr Hardik and others named in the F.I.R. No.295/2024, making a false valuable security (cheque) and using it as a genuine or legal cheque and ultimately, making a wrongful gain by the applicant for himself and the main accused. The fraudulent transactions also deceived the bank/s. This act is completely covered by the provisions of Section 318 (4), 338 and 340(2) of BNS.

11. Penal liability for any crime/offence arises on the basis of the related criminal act or omission and the end result of it. Considering the facts and circumstances of the case on hand, it appears that, if these individuals were not deceived and not made to give their documents of identity, with their informed consent for opening of the bank accounts in the names of shell companies and handing over the signed cheque books, the original money allegedly generated by way of an illegal business and/or online gambling/betting could not have been credited in the bank accounts of the shell companies nor its withdrawal was possible. In other words, association of the money gained by way of illegal business and/or online gambling/betting with the bank accounts of the shell companies opened by cheating and showing that money as that of the innocent individuals, was integral part of the entire scheme of this crime. Otherwise deriving or

obtainment of said money with the help of false valuable security was not possible.

Although gambling itself is not a scheduled offence, the core of the criminal scheme in this case was cheating and forgery — forging identities – forging blank cheques – forging shell-company accounts — all these are listed/scheduled offences. Those offences directly helped to show that the money withdrawn was falsely projected as proceeds of genuine trading/business. Thus, it became tainted with the scheduled offences, because the laundering did not happen immediately from the gambling proceeds; there was a criminal overlay (forgery/cheating) that converted gambling returns into apparently legitimate company funds. The Explanation under PMLA makes clear that even property indirectly derived via criminal activity related to a scheduled offence qualifies. So the funds withdrawn had become tainted proceeds.

12. In view thereof, the money ultimately withdrawn by the applicant and his co-accused from the bank accounts of the shell companies was certainly the "proceeds of crime" as defined in Section 2 (*u*) of the PMLA.

13. Considering the facts and circumstances of the case, it appears that, APMC accounts, integral to agricultural trade, are routinely involved in large-scale cash transactions. APMCs often handle high-value transactions due to the nature of their operations, including the trading of agricultural commodities. However, such accounts are vulnerable to misuse due to absence of strict oversight and regulatory mechanisms. APMC transactions often involve multiple layers of intermediaries, such as commission agents and traders, further complicating the traceability of funds. Looking at the design of the offence, it appears that, the mastermind behind the money laundering operation and his co-accused were keenly aware of the inherent difficulty in tracing the purpose and end-use of the funds. At the cost of

repetition, since the originally credited money was generated illegally, it was difficult for the accused persons to show it as a money legally earned. It is not the case that the said money was disclosed under the provisions of the Income Tax Act. As such, it needed an unusual mechanism for withdrawal. Therefore, taking undue advantage of the vulnerability of the APMC accounts, initially, the accused persons deceived and cheated the said individuals to give their documents of identity and using the false cheques withdrawing the money from the shell companies' accounts which were opened with the help of said documents. Thus, the accused persons conjointly laundered the money with an intent to show it a legally earned money by them through a genuine business.

If this conclusion is not drawn, disagreeing with what Mr Ponda, the learned Senior Counsel has argued, then any money accumulated so illegally, will easily become a legally derived or obtained money and escape the provisions of the PMLA which is incorporated and implemented to protect the economy of the country. It will thus narrow the object which the legislation has associated with the PMLA. That is why, in ***Vijay Madanlal*** (supra), while dealing with the words 'proceeds of crime' and scope of the explanation appended to it, the Apex Court observed that unaccounted property acquired by legal means may be actionable for tax violation and yet, will not be regarded as proceeds of crime unless the tax legislation concerned prescribes such violation as an offence and such offence is included in the Schedule to the 2002 Act. If the unaccounted property by illegal means was also to be covered, the Apex Court would have widened the scope of the said illustration to cover both, *i.e.*, unaccounted property acquired by legal and illegal means.

14. In the wake of above, I hold that there is a strong case against the applicant of having committed the alleged offences. Secondly, looking at the nature of the offence, there is strong possibility of the applicant

causing disappearance of the evidence of this offence. In addition, it cannot be said that the applicant is not likely to commit any offence while on bail. The Application therefore, fails and liable to be rejected. The Application is rejected, accordingly.

(SHYAM C. CHANDAK, J.)