



§~

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

%

Reserved on: 14.05.2024
Pronounced on: 21.05.2024

+ **BAIL APPLN. 1557/2024**

MANISH SISODIA

..... Petitioner

Through: Mr. Dayan Krishnan and Mr. Mohit Mathur, Senior Advocates with Mr. Vivek Jain, Mohd. Irshad, Mr. Rajat Bharadwaj, Mr. Karan Sharma, Mr. Rishkesh Kumar, Mr. Rajat Jain, Mr. Sadiq Noor, Mr. Mohit Siwach, Mr. Kaustubh Khanna, Mr. Shailesh Chauhan, Mr. Harsh Gautam, Mr. Kunal Raj & Mr. Rishabh Sharma, Advocates.

versus

DIRECTORATE OF ENFORCEMENT Respondent

Through: Mr. Zoheb Hossain, Special Counsel for ED & Mr. Vivek Gurnani, Ms. Abhipriya Rai, Mr. Kartik Sabharwal, Mr. Hithash Raja & Mr. Sachin Sharma, Advocates.

+ **BAIL APPLN. 1559/2024**

MANISH SISODIA

..... Petitioner

Through: Mr. Dayan Krishnan and Mr.



Mohit Mathur, Senior Advocates with Mr. Vivek Jain, Mohd. Irshad, Mr. Rajat Bharadwaj, Mr. Karan Sharma, Mr. Rishkesh Kumar, Mr. Rajat Jain, Mr. Sadiq Noor, Mr. Mohit Siwach, Mr. Kaustubh Khanna, Mr. Shailesh Chauhan, Mr. Harsh Gautam, Mr. Kunal Raj & Mr. Rishabh Sharma, Advocates.

versus

CENTRAL BUREAU OF INVESTIGATIONRespondent

Through: Mr. Ripudaman Bhardwaj, SPP for CBI with Mr. Kushagra Kumar, Adv. with I.O. SP Rajiv Kumar.

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

J U D G M E N T

SWARANA KANTA SHARMA, J.

INTRODUCTION.....	5
BRIEF FACTS OF THE CASE	7
SUBMISSIONS ON BEHALF OF APPLICANT SH. MANISH SISODIA.....	10
Submissions qua the case registered by Central Bureau of Investigation	10
Submissions qua the case filed by Directorate of Enforcement.....	14
SUBMISSIONS ON BEHALF OF THE RESPONDENTS	17
Submissions on behalf of Directorate of Enforcement	17



Submissions on behalf Central Bureau of Investigation.....	22
ISSUES BEFORE THIS COURT	25
DIRECTIONS OF THE HON'BLE SUPREME COURT IN JUDGMENT DATED 30.10.2023: WHETHER THE APPLICANT IS ENTITLED TO BAIL ON SOLE GROUND OF DELAY IN TRIAL?.....	26
WHETHER THERE IS DELAY IN TRIAL, FOR THE REASONS ATTRIBUTABLE TO APPLICANT SH. MANISH SISODIA?	32
Applications preferred by the Applicant in CBI case before the Ld. Trial Court	33
Applications preferred by the Applicant in E.D. case before the Ld. Trial Court	36
Whether the applicant or other accused persons can be held responsible for delay in initiation of trial due to their act of filing different applications before the learned Trial Court?	40
Applications unrelated to Section 207/208 of Cr.P.C.	46
Different 'Players' and 'Factors' Affecting the Speed of Trial.....	47
Observations Regarding All Accused Persons Acting in 'Concert' With Each Other To Delay Trial: Whether Reasonable and Justifiable?	48
Delay in commencement of trial cannot be attributed to the ED or CBI or Ld. Trial Court.....	49
Have the proceedings before the learned Trial Court proceeded at Snail's pace?	52
PRINCIPLES GOVERNING GRANT OF REGULAR BAIL UNDER SECTION 439 OF CR.P.C. & IN CASES INVOLVING ECONOMIC OFFENCES.....	56
PRINCIPLES GOVERNING GRANT OF BAIL UNDER PMLA	58
THE CASE OF CBI AND E.D. & THE ROLE OF APPLICANT SH. MANISH SISODIA	61
Timeline of Events reflecting the Role of Applicant Sh. Manish	



Sisodia.....	63
Association of the Applicant Sh. Manish Sisodia with co-accused Sh. Vijay Nair	71
Orchestration of Pre-Decided Emails by Sh. Manish Sisodia and Creation of Fake Public Opinion.....	73
Change of Draft Cabinet Note by Sh. Manish Sisodia to Hide Opinion of Legal Experts	76
No Reasons to Justify Increase in Wholesale Profit Margin from 5% to 12%	78
Role of Applicant in Ensuring Allotment of L-1 License to M/s Indo Spirits	79
Creation of Uneven Level Playing Field	80
Destruction of Electronic Evidence by Sh. Manish Sisodia	81
Role of Applicant Sh. Manish Sisodia in Commission of Offence of Money Laundering under Section 3 of PMLA	82
To Sum Up: The Modus Operandi	86
WHETHER CASE FOR GRANT OF BAIL IS MADE OUT, ON MERITS?	89
WHETHER THE APPLICANT CAN BE GRANTED BAIL ON SOLE GROUND OF DELAY IN TRIAL, EVEN THOUGH HE IS NOT ENTITLED TO GRANT OF BAIL ON MERITS?	94
CONCLUSION	99
Manufacturing Fake Public Opinion: Another Form of Corruption.....	99
Judicial Resolve Against Corruption while dealing with applications for bail when investigation is pending.....	102
The Decision	104



INTRODUCTION

1. This judgment shall govern disposal of BAIL APPLN. 1557/2024 filed by the applicant in case registered against him by Directorate of Enforcement ('E.D.') and BAIL APPLN. 1559/2024 filed by the applicant in case registered against him by Central Bureau of Investigation ('CBI'), 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 and the allegations to a large extent are therefore identical.

2. Since both bail applications are being decided by one common order, **the brevity of the bail order had to be sacrificed.**

3. **The initial journey of the case began when a letter was issued on 20.07.2022 by Sh. Vinai Kumar Saxena, the Lieutenant Governor of Delhi, alleging irregularities in the framing and implementation of Delhi's Excise Policy for the year 2021-22.** Subsequent to this, Sh. Praveen Kumar Rai, Director, Ministry of Home Affairs, Government of India, had directed an enquiry into the said matter, *vide* Office Memorandum dated 22.07.2022. Pursuant thereto, the Central Bureau of Investigation 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').

4. The Directorate of Enforcement entered the arena of investigation in this case, since the offences for which RC was registered by the Central Bureau of Investigation were scheduled



offences under the Prevention of Money Laundering Act, 2002 ('PMLA'). Thus, an **ECIR bearing no. ECIR/HIU-II/14/2022** was recorded and investigation was initiated by the Directorate of Enforcement.

5. On 26.02.2023, the present applicant Sh. Manish Sisodia was arrested by the Central Bureau of Investigation in the predicate offence under the Prevention of Corruption Act, and while he was in custody, he was also arrested by the Directorate of Enforcement on 09.03.2023 in the related offences under PMLA.

6. The regular bail application, preferred by Sh. Manish Sisodia, was dismissed by this Court on 30.05.2023, in the case arising out of RC registered by Central Bureau of Investigation. His bail application, preferred in the case arising out of ECIR registered by Directorate of Enforcement, was dismissed by this Court on 03.07.2023.

7. Thereafter, Sh. Manish Sisodia had approached the Hon'ble Apex Court by way of filing Special Leave Petitions against the aforesaid orders, thereby seeking bail in both the cases. *Vide a common judgment* dated 30.10.2023 passed by the **Hon'ble Apex Court**, in case reported as *Manish Sisodia v. CBI 2023 SCC OnLine SC 1393*, both the Special Leave Petitions preferred by Sh. Manish Sisodia were dismissed. In addition to this, **Review Petition** as well as **Curative Petition** filed by Sh. Manish Sisodia before the Hon'ble Apex Court also came to be **dismissed**.

8. However, while dismissing the applicant's Special Leave Petitions seeking release on regular bail, the Hon'ble Apex Court



vide judgment dated 30.10.2023, had also granted liberty to the applicant herein, to approach the learned Trial Court afresh for seeking grant of regular bail, by way of following observations:

“29. In view of the assurance given at the Bar on behalf of the prosecution that they shall conclude the trial by taking appropriate steps within next six to eight months, we give liberty to the appellant – Manish Sisodia to move a fresh application for bail in case of change in circumstances, or in case the trial is protracted and proceeds at a snail’s pace in next three months. If any application for bail is filed in the above circumstances, the same would be considered by the trial court on merits without being influenced by the dismissal of the earlier bail application, including the present judgment. Observations made above, re.: right to speedy trial, will, however, be taken into consideration. The appellant – Manish Sisodia may also file an application for interim bail in case of ill health and medical emergency due to illness of his wife. Such application would be also examined on its own merits.”

9. In light of these observations, the applicant had again approached the learned Trial Court on 27.01.2024 by filing fresh bail applications in both the cases, wherein he had sought grant of regular bail *primarily* on the grounds of delay in trial. Both the applications were dismissed by the learned Trial Court *vide* orders dated 30.04.2024, resulting in the present bail applications.

BRIEF FACTS OF THE CASE

10. The case set out by the Central Bureau of Investigation, 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.

11. After conducting investigation, the Central Bureau of Investigation 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. Thereafter, further investigation was conducted by the Central Bureau of Investigation, during which Sh. Manish Sisodia was also arrested on 26.02.2023. On 25.04.2023 and 08.07.2023, two supplementary chargesheets had also been filed before the learned Trial Court, against a total of 16 accused persons.

12. In addition to aforesaid, **the Directorate of Enforcement alleges** that the Delhi Excise Policy 2021-22 was crafted by top



leaders of the Aam Aadmi Party, including the present applicant Sh. Manish Sisodia 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, Sh. Manish Sisodia and other Aam Aadmi Party leaders had sought advance kickbacks, and thus, Sh. Vijay Nair was appointed as the mediator, who had proposed to Ms. K. Kavitha and other members of South Group to fund the party in exchange for profitable business opportunities. It is alleged that Sh. Manish Sisodia and other accused persons and 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, M/s Indo Spirits, where Ms. K. Kavitha and Sh. Raghav Magunta, through proxies Sh. Arun Pillai and Sh. Prem Rahul Manduri, held a 65% partnership. 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 AAP's 2022 Goa Assembly election campaign, with Rs. 45 crores sent to Goa through hawala channels. As per the case of Directorate of Enforcement, the applicant is the key conspirator in this case, who was actively involved in generating, concealing, projecting as untainted, and using the proceeds of crime.



13. The first prosecution complaint was filed by the Directorate of Enforcement was on 26.11.2022 and the cognizance of the same was taken by the learned Trial Court on 20.12.2022. Thereafter, Directorate of Enforcement has also filed five supplementary prosecution complaints, the sixth supplementary prosecution complaint was filed during the pendency of the present applications against co-accused Sh. Kejriwal. The applicant herein i.e. Sh. Manish Sisodia was made an accused by way of fourth supplementary prosecution complaint filed on 04.05.2023.

SUBMISSIONS ON BEHALF OF APPLICANT SH. MANISH SISODIA

Submissions qua the case registered by Central Bureau of Investigation

14. Learned Senior Counsel Sh. Mohit Mathur, appearing on behalf of the applicant argues that the Hon'ble Supreme Court in case of *Manish Sisodia (supra) vide* judgment dated 30.10.2023 had given liberty to the applicant to approach the learned Trial Court afresh for seeking regular bail, in case the trial is protracted and proceeds at a snail's pace. Considering the same, the applicant herein moved his second regular bail application dated 27.01.2024 before the learned Trial Court, however, the same came to be dismissed on 30.04.2024. Therefore, he states that the applicant is before this Court seeking grant of regular bail.

15. It is submitted by Sh. Mohit Mathur that the learned Trial Court in order dated 30.04.2024 has given a positive finding in para



no. 44 that “*since trial is yet to commence there is no change in circumstance*”. It is submitted that despite the fact that the trial is yet to commence and there was clear direction of Hon’ble Supreme Court to grant bail to the present applicant if the trial proceeds at a snail’s pace, the learned Trial Court has dismissed the bail application preferred by the applicant. It is fervently argued that the learned Trial Court has ignored the directions given by the Hon’ble Supreme Court and has incorrectly observed in the impugned order that the slow pace of proceedings before the Court is attributable to the applicant herein. This finding, Sh. Mathur states, is patently perverse. It is so because the learned Trial Court has observed this merely on the ground that the present applicant had moved 13 applications before the learned Trial Court and had thus caused delay in trial. It is submitted that while recording such observations, the learned Trial Court has failed to consider that the applicant/accused had merely exercised his legal rights to seek different reliefs in accordance with law. Sh. Mathur further submits that in the present case, the Central Bureau of Investigation has filed thousands of documents in the course of its investigation for the last about 1½ years, which had various deficiencies and many a times, the documents which were supplied by the agency contained certain pages which were dim and not legible. It is stated that the applicant had moved certain applications to that effect, which were in fact allowed by the learned Trial Court. Thus, it is stated that the observations made by the learned Trial Court are totally incorrect



since all the applications had been allowed by the learned Trial Court itself.

16. It is further submitted that one of the applications moved by the present applicant was seeking permission to meet his wife physically since his wife is suffering from various ailments and that the said application was allowed by the learned Trial Court by way of custody parole and thus, this application cannot be regarded as a delay tactic. Further, the other applications filed by the applicant have been erroneously termed as frivolous by the learned Trial Court to justify the rejection of grant of bail, however, the said applications were of such nature which are filed by an accused in the normal course of criminal trial, and it is a matter of fact that the present applicant has to approach the learned Trial Court for seeking such reliefs since he is in judicial custody and he has no other legal recourse available to him. It is argued that counting these applications as a factor for delay in trial is, on the face of it, incorrect, arbitrary, unfair, unjust and perverse.

17. Sh. Mathur also points out that the learned Trial Court in the impugned order dated 30.04.2024 has used the word '*acted in concert*' for all the accused persons. He submits that since several accused persons are still in judicial custody, such a finding would be highly erroneous, as the same, in a way, points fingers directly towards the defence counsels for the accused persons that they have conspired with each other to file various applications. It is also submitted that the learned Trial Court has erred in returning a finding that the trial was delayed due to multiple applications filed by other



co-accused persons, and even if such is the case, any delay caused by any co-accused person cannot be attributed to the present applicant.

18. It is also submitted that at the time when the judgment was delivered in case of *Manish Sisodia (supra)* by the Hon'ble Apex Court, i.e. on 30.10.2023, the CBI matter before the learned Trial Court was at the stage of scrutiny of documents under Sections 207 and 208 of Cr.P.C., and it was at the exact same stage when the second bail application was filed by the applicant before the learned Trial Court on 27.01.2024. It is also argued that the chargesheets in the present case were filed way back on 24.11.2022, 27.04.2023 and 08.07.2023, however, the CBI had failed to produce the list of un-relied documents as mandated under Section 207 of Cr.P.C., until December, 2023. It is also pointed out that order dated 22.11.2023 of the learned Trial Court shows that even the chargesheets and documents were not paginated by respondent, which was ordered to be done by the Court.

19. Sh. Mathur, learned Senior Counsel for the applicant further submits that even arguments on charge have not been concluded in the present case and the trial is, thus, yet to commence. It is submitted that the applicant cannot be incarcerated for an indefinite period of time where further investigation is going on *qua* other accused persons also and the chargesheet against the present applicant stands filed a year back on 25.04.2023.

20. In these circumstances, it is prayed that the applicant be enlarged on bail, keeping in mind the judgment of Hon'ble Supreme Court in case of *Manish Sisodia (supra)*.



Submissions qua the case filed by Directorate of Enforcement

21. Sh. Dayan Krishnan, learned Senior Counsel appearing on behalf of applicant argues that the applicant was arrested on 09.03.2023, and has been in judicial custody for more than 14 months. It is further argued that the Hon'ble Supreme Court in *Manish Sisodia (supra)* has confirmed that the applicant can seek regular bail in case the trial is not proceeding further, since speedy trial is a facet of Article 21 of Constitution, and the same must be read into both Section 439 of Cr.P.C. and Section 45 of PMLA; and where the trial would not be proceeding for reasons not attributable to the accused, the Court would be justified in granting bail. Therefore, it is submitted that the applicant herein had filed his second regular bail application before the learned Trial Court which was dismissed vide order dated 30.04.2024. Pursuant to that, the applicant is before this Court seeking grant of regular bail in case arising out of ECIR bearing no. HIU-II/14/2022.

22. It is argued that by Sh. Dayan Krishnan that as mentioned in the judgment of *Manish Sisodia (supra)*, the prosecuting agency i.e. the Directorate of Enforcement had tendered a categorical assurance to the Hon'ble Supreme Court that the trial will be concluded within 6-8 months, from 30.10.2023, which has been blatantly breached by the agency. It is submitted that despite the aforesaid assurance, the investigation is still going on and it is admitted that as on date, the trial has not even commenced and the case is still at the stage of supply and scrutiny of documents under Sections 207/208 of Cr.P.C.



It is further stated that it is clear from the conduct of the Directorate of Enforcement that the investigation is continuing till now, as recently Sh. Arvind Kejriwal was arrested on 21.03.2024 and one Sh. Chanpreet Singh on 16.04.2024, and even during the pendency of present applications, the Directorate of Enforcement has admitted that on 03.05.2024, they have arrested one Sh. Vinod Chauhan whose interrogation is still going on. Thus, it is submitted that the fact that the investigation is still going on is a clear breach of the assurance given to the Hon'ble Supreme Court on 30.10.2023, and this factor has not at all been considered by the learned Trial Court in the impugned order dated 30.04.2024.

23. Sh. Dayan Krishnan, learned Senior Counsel vehemently argues that the observations of the learned Trial Court in para no. 76 to 79 of the impugned order dated 30.04.2024 that the applicant, by acting in concert with various co-accused persons, has been delaying the trial, are mere speculations and there is no basis or material on record to support such an incorrect conclusion. It is stated that the conduct of the applicant from the impugned order makes it abundantly clear that he was not acting to delay the proceedings. With regard to the tabulation of various applications filed by the accused persons including the applicant in the impugned order, Sh. Krishnan submits that the applications at serial no. 96 and 97 were admittedly filed before the Hon'ble Supreme Court passed its judgment in *Manish Sisodia* (*supra*). The application under Section 207 of Cr.P.C. listed at serial no. 98 was also filed way back on 21.11.2023 and was subsequently allowed by the learned Trial Court.



The entries at Serial No. 102 & 103 do not even pertain to the applications filed by the applicant, but two submissions made by the applicant on applications filed by the Directorate of Enforcement, including the belated applications to complete relied upon documents. Furthermore, the factors allegedly causing delay i.e. application for supply of hard copies of relied upon documents, cannot be attributed to the applicant since no such application was preferred by the present applicant.

24. It is argued on behalf of the applicant that in fact, it is the Directorate of Enforcement itself which has been delaying the trial. It is stated that in order dated 22.11.2023, the learned Trial Court in para 9 has categorically noted that the Directorate of Enforcement was attempting to introduce new documents in relied upon documents for earlier prosecution complaints, without the leave of the Court. Subsequently, on 06.12.2023, the Directorate of Enforcement had preferred an application seeking to place on record around 540 pages of documents which were relied upon in the main and four supplementary prosecution complaints but ironically, these documents, which should have been already filed, were not included in the relied upon documents along with those complaints. This application was filed by the Directorate of Enforcement more than a year after the filing of the first prosecution complaint dated 26.11.2022 and more than seven months after the fourth supplementary complaint dated 04.05.2023. Therefore, it is argued that the learned Trial Court *vide* order dated 30.04.2024 has incorrectly held that the delay was on the part of the applicant herein.



It is argued that the learned Special Court has erred in considering all the applications of the accused persons to return a finding that the accused persons are delaying trial on one pretext or the other.

25. As regards the merits of the case, though it is argued that merits are not to be gone into at this stage by this Court, it is pointed out that the Hon'ble Apex Court has dealt with the merits of the allegations already in the judgment dated 30.10.2023, which this Court may take into consideration.

26. Therefore, it is prayed that considering the fact that the trial in this case has not even begun, the applicant herein be enlarged on regular bail as per judgment dated 30.10.2023 passed in *Manish Sisodia* (*supra*).

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

Submissions on behalf of Directorate of Enforcement

27. Sh. Zoheb Hossain, learned Special Counsel appearing on behalf of the Directorate of Enforcement argues that the bail applications in PMLA cases are required to be decided in light of the *mandatory twin conditions* laid down in Section 45 of PMLA and until such conditions are fulfilled, bail cannot be granted. In this regard, it is submitted that the applicant Sh. Manish Sisodia is admittedly a former Minister in the Govt. of NCT of Delhi and hence a highly influential individual, coupled with the fact that he is accused of commission of a grave economic offence and has potential to tamper with the evidence and influence the witnesses. It



is also submitted that further investigation is going on to trace proceeds of crime and the role of various persons are still to be ascertained. It is further stated that in this case, huge amounts of proceeds of crime have been found to be laundered and investigation to trace the proceeds of crime is ongoing, and there exists a reasonable apprehension of crucial evidence being destroyed if the applicant is enlarged on bail. It is also stated that there is ample evidence on record to link Sh. Manish Sisodia to the commission of the offence of money laundering, and his release on bail would adversely affect further investigation to unearth the deep-rooted multi-layered conspiracy. It is further submitted that Directorate of Enforcement is taking all possible steps to conduct an effective and fair investigation, which would be hampered if the applicant is released on bail; especially in light of the nature of the case, severity of allegations and voluminous evidence on record.

28. It is further argued by Sh. Zoheb Hossain that the conspiracy in this case was to see that Aam Aadmi Party makes wrongful gains in the form of bribes given by persons who were favoured in the proposed New Excise Policy and in the said process it had been assured that the accused persons giving bribes would recoup as well as get additional benefits out of the New Excise Policy. It is further submitted that the applicant was actively involved in the formulation and implementation of the New Excise Policy that would enable the bribe giver to recoup/recover the bribe and make more money. It is argued that the opinion/report of the Expert Committee headed by



Mr. Ravi Dhawan, the then Excise Commissioner, was only to create an impression of a false transparency since the recommendations of the expert committee were never implemented or even debated upon or discussed during the farcical meetings of the Delhi Government.

29. It is further argued that Sh. Manish Sisodia and his associates were involved in destruction of evidence to derail the investigation. The applicant herein had changed his phone on 22.07.2022, i.e. the day on which the complaint of Lt. Governor of Delhi, to the CBI, was covered in media/news. The role of present applicant is summarised by the Directorate of Enforcement as under:

- (i) Rejected the expert committee recommendations on making a Govt. Corporation controlled wholesale entity.
- (ii) Planted emails to give a facade of public suggestions/ approval to deviate from an expert report. *“Decisions taken with right intent seldom need cover up, one only layers up facts when one has something to hide.”*
- (iii) Increased the wholesale profit margin from 5% to 12% without any rationale, discussion and due process of decision making.
- (iv) Pressured Pernod Ricard to give its wholesale business to M/s Indo Spirits through Vijay Nair.
- (v) Made sure M/s Indo Spirits was granted L1 wholesale license despite there being various complaints of cartelisation against Sh. Sameer Mahandru (one of the partners of M/s Indo Spirits) and the same were



highlighted by the then Excise Commissioner Sh. Arava Gopi Krishna to Sh. Manish Sisodia.

- (vi) Sh. Manish Sisodia directed Sh. Dinesh Arora to work with Sh. Vijay Nair in this Scam, following which Sh. Dinesh Arora coordinated the transfer of advance kickbacks of Rs.31 Crore from the South Group to Sh. Vijay Nair which then transferred and part of it was used in the election campaign of AAP in Goa through Rajesh Joshi.
- (vii) Sh. Abhishek Boinpally transfers Rs.7.1 Crore bribe to the AAP leaders through Sh. Gautam Mootha for Goa elections.
- (viii) Sh. Abhishek Boinpally transferred Rs. 25 Crore approx. bribe through Sh. Ashok Kaushik for Goa elections campaign of AAP.
- (ix) Amit Arora paid Rs.2.2 Crores bribe to Sh. Manish Sisodia for making changes in the policy.

30. Learned Special Counsel further argues that the proceedings before the learned Trial Court have not proceeded at snail's pace. The same is evident from the fact that till date, almost 100 applications have been filed by the accused persons under Section 207/208 of Cr.P.C and almost all the applications have been disposed of as on date. Despite the number of applications and the nature of the requests made, the Directorate of Enforcement has taken all necessary steps to comply with several requests with a view to



expedite the trial. It is also argued that this progress has taken place despite concerted and consistent efforts of the accused persons to delay the trial. In this regard, it is further submitted that from 26.11.2022 (i.e. the date of filing the first prosecution complaint) till 30.10.2023 (i.e. date of Hon'ble Supreme Court order rejecting the bail of Sh. Manish Sisodia), only 40 applications were filed by the accused persons including Sh. Manish Sisodia. However, right after the bail was rejected and the applicant was given liberty to file bail again if the trial protracted, the number of applications filed by the accused persons increased to 130 in a period of six months. It is argued that most of these applications were repetitive, redundant and frivolous. It is further stated that almost all the accused persons requested for supply of hard copies of all relied upon documents/prosecution complaints on 21.11.2023 i.e. after the judgment of Hon'ble Supreme Court dated 30.10.2023. This fact has also been noted by the learned Trial Court in its order dated 30.04.2024 while rejecting the bail application of Sh. Manish Sisodia.

31. Learned Special Counsel also submits that the applicant had also filed an application seeking CCTV footage of his interrogation during ED custody, on 20.01.2024 i.e. after a period of almost 11 months without explaining the reasons, which was to delay the trial.

32. Thus, keeping in view the role of Sh. Manish Sisodia in the present case and in view of the rigors of Section 45 PMLA, the Directorate of Enforcement opposes the bail application filed by Sh. Manish Sisodia and prays that the same be dismissed.



Submissions on behalf Central Bureau of Investigation

33. Sh. Ripudaman Bhardwaj, learned Special Public Prosecutor for the Central Bureau of Investigation argues that the delay in the present case is on the part of the accused persons. It is stated that in compliance of provisions under Section 207 of Cr.P.C., the soft and hard copies of all the relied upon documents, statement of witnesses and list of un-relied documents and statements relevant to the ongoing investigation were also submitted as well as supplied to the counsels of all the accused persons. It is further argued that the arguments on charge have already been initiated and CBI has already argued on two dates, after completion of the proceedings under Section 207 Cr.P.C.

34. It is stated that the accused persons including the applicant herein have tried to delay the proceedings by way of filing frivolous applications under Section 207 of Cr.P.C. However, CBI has complied with all the directions issued by the learned Trial Court on the applications of the accused persons, expeditiously, within the given time frame to expedite the trial in this case. It is argued that the accused persons are still trying to delay the trial by way of filing applications before the learned Trial Court and before this Court for staying hearing of arguments on charge, with sole intention to create grounds for Sh. Manish Sisodia to seek bail on the basis of delay in the trial.

35. Learned SPP for CBI further argues that Sh. Manish Sisodia has filed total 13 applications before the learned Trial Court after



rejection of his bail application by the Hon'ble Supreme Court on 30.10.2023. It has been claimed by Sh. Manish Sisodia that thousands of documents have been filed by CBI, however, during the proceedings under Section 207 of Cr.P.C., as per direction of the learned Trial Court *vide* order dated 19.10.2023, the process of inspection of un-relied documents and un-relied statements of witnesses was to be concluded by the defence Counsels by 22.11.2023. However, the counsels of the accused persons did not complete the inspection of un-relied documents and un-relied statements of witnesses by the said date. In view of the same, the learned Trial Court *vide* its order dated 22.11.2023 directed them to complete the work of inspection by 22.12.2023. However, in compliance with the said order, the counsel for the applicant visited the CBI office for the purpose of inspection of un-relied documents and statements of the witnesses only for four days and that too for a few hours.

36. It is further argued that despite conducting the inspection of the un-relied documents, the accused persons, with the intention to delay the trial, again filed an application under Section 207 Cr.P.C. before the learned Trial Court on 22.12.2023, for supply of copies of the documents seized during the searches conducted by CBI at the premises of the accused petitioner; whereas copies of the search lists containing the details of such documents had already been provided to the accused persons on the date of the search itself.

37. Mr. Ripudaman Bhardwaj, Learned Special Public Prosecutor for the CBI argues that the accused persons did not complete the



inspection of un-relied documents by 22.12.2023 and filed applications for further extension of the time for conducting the inspection. On their request, the learned Trial Court further extended the time for inspection of un-relied documents till 19.01.2024. However, on 19.01.2024, the accused persons again filed fresh applications under Section 207 of Cr.P.C. for supply of some more documents/digital evidence, i.e., after lapse of more than six months of filing of the second supplementary chargesheet on 08.07.2023. Therefore, the proceedings under Section 207 of Cr.P.C. were further extended till 05.02.2024. Thus, it is argued that the accused persons including the applicant herein have delayed the proceedings under Section 207 of Cr.P.C. by taking three months time from 19.10.2023 to 19.01.2024 for inspection of un-relied documents despite repeated directions from learned Trial Court to conclude the same expeditiously.

38. It is argued on behalf of CBI that there is sufficient oral and documentary evidence against Sh. Manish Sisodia. It is further argued that the investigation has revealed that he is the main architect of the entire criminal conspiracy of tweaking and manipulating the formulation and implementation of the New Excise Policy. It is submitted that the investigation has also revealed that Sh. Manish Sisodia is also involved in the destruction of vital files related to the formulation of the New Excise Policy as well as his mobile phone on the day on which the matter was referred to CBI by Ministry of Home Affairs, Government of India, for investigation i.e. 22.07.2022.



39. It is further argued that further investigation is at a very crucial stage on certain key aspects, including the involvement of other public servants and private persons as well as to ascertain all the beneficiaries of the bribe. If Sh. Manish Sisodia is released on bail, there is every likelihood that he will thwart the investigation herein, more specifically when he has failed to meet the 'triple test', as laid down by Hon'ble Supreme Court in a catena of decisions. Therefore, it is prayed that the present bail application be dismissed.

40. This Court has heard arguments addressed on behalf of the applicant Sh. Manish Sisodia by the learned Senior Counsels, as well as learned counsels appearing on behalf of the Central Bureau of Investigation and Directorate of Enforcement. The material placed on record by both the sides has also been perused and considered.

ISSUES BEFORE THIS COURT

41. The issues which were raised during the course of arguments, and which arise for consideration for deciding this bail application, are as under:

- i. Whether the order of the Hon'ble Supreme Court entitles the present applicant to grant of bail, solely on the ground of delay of trial?
- ii. Has there been a delay in this case attributable to Sh. Manish Sisodia?
- iii. Is the applicant Sh. Manish Sisodia entitled to grant



of bail in both the cases i.e. cases registered by CBI and E.D.?

DIRECTIONS OF THE HON'BLE SUPREME COURT IN JUDGMENT DATED 30.10.2023: WHETHER THE APPLICANT IS ENTITLED TO BAIL ON SOLE GROUND OF DELAY IN TRIAL?

42. By virtue of judgment dated 30.10.2023, though the petitions filed by Sh. Manish Sisodia, seeking bail in both the cases, were dismissed by the **Hon'ble Apex Court, he was granted liberty to approach the learned Trial Court afresh for seeking bail in case of change in circumstances, or in case the trial is protracted and proceeds at a snail's pace in next three months**, after taking into account the submission made by Directorate of Enforcement that the trial in this case shall be concluded within a period of six to eight months.

43. The bone of contention, between the learned Senior Counsels appearing on behalf of the applicant and learned counsels appearing on behalf of the respondents, is the interpretation of paragraph no. 28, and more particularly, paragraph no. 29 of the judgment dated 30.10.2023 passed in *Manish Sisodia (supra)*. For reference, these paragraphs are extracted hereunder:

“28. Detention or jail before being pronounced guilty of an offence should not become punishment without trial. If the trial gets protracted despite assurances of the prosecution, and it is clear that case will not be decided within a foreseeable time, the prayer for bail may be meritorious. While the prosecution may pertain to an economic offence, yet it may not be proper to equate



these cases with those punishable with death, imprisonment for life, ten years or more like offences under the Narcotic Drugs and Psychotropic Substances Act, 1985, murder, cases of rape, dacoity, kidnaping for ransom, mass violence, etc. Neither is this a case where 100/1000s of depositors have been defrauded. The allegations have to be established and proven. The right to bail in cases of delay, coupled with incarceration for a long period, depending on the nature of the allegations, should be read into Section 439 of the Code and Section 45 of the PML Act. The reason is that the constitutional mandate is the higher law, and it is the basic right of the person charged of an offence and not convicted, that he be ensured and given a speedy trial. When the trial is not proceeding for reasons not attributable to the accused, the court, unless there are good reasons, may well be guided to exercise the power to grant bail. This would be truer where the trial would take years.

29. In view of the assurance given at the Bar on behalf of the prosecution that they shall conclude the trial by taking appropriate steps within next six to eight months, we give liberty to the appellant – Manish Sisodia to move a fresh application for bail in case of change in circumstances, or in case the trial is protracted and proceeds at a snail’s pace in next three months. If any application for bail is filed in the above circumstances, the same would be considered by the trial court on merits without being influenced by the dismissal of the earlier bail application, including the present judgment. Observations made above, re.: right to speedy trial, will, however, be taken into consideration. The appellant – Manish Sisodia may also file an application for interim bail in case of ill- health and medical emergency due to illness of his wife. Such application would be also examined on its own merits.”

44. Learned Senior Counsels for the applicants have insisted that the proceedings before the learned Trial Court in this case have moved at snail’s pace, and the cause for such delay is not attributable



to the present applicant and in view of the judgment of the Hon'ble Apex Court, especially the observations in para 28 and 29 which are unambiguous and clear, such delay in itself becomes a ground for grant of bail as no person can be incarcerated indefinitely without being pronounced guilty. They have also argued that the merits of the case have already been decided once by the Hon'ble Apex Court, and the phrase '*on merits*' as appearing in paragraph 29 would mean the merits of the fresh bail application only, which has been filed on the ground of delay in trial.

45. Learned Special Counsel for the Directorate of Enforcement, on the other hand, insists that the reading of para 28, 29 and 30 cannot be meant to be holding that non-commencement of trial would in itself be the sole ground for bail or that bail can be asked for as a matter of right if the trial is not concluded in six to eight months. It is argued that the reading of paragraph 29 makes it clear that the liberty which was granted to the applicant was to file a fresh application, but the same is required to be decided by the Courts on the merits of the case, wherein one of the factors which can be taken into consideration is the delay in trial.

46. Therefore, the learned counsels appearing for both the parties have brought an issue before this Court, which concerns the interpretation of the directions passed by the Hon'ble Apex Court.

47. **In this Court's opinion**, insofar as observations contained in paragraph 28 of judgment delivered in *Manish Sisodia (supra)* are concerned, the said paragraph contains general but crucial observations made by the Hon'ble Apex Court regarding the perils of



prolonged incarceration of an individual without trial. However, to resolve the controversy raised before this Court, paragraph 29 of the judgment can be understood in the following manner:

“ ...(1) In view of the assurance given at the Bar on behalf of the prosecution that they shall conclude the trial by taking appropriate steps within next six to eight months.

(2) we give liberty to the appellant – Manish Sisodia to move a fresh application for bail.

(i) in case of change in circumstances, or

(ii) in case the trial is protracted and proceeds at a snail’s pace in next three months.

(3) If any application for bail is filed in the above circumstances, the same would be considered by the trial court,

(a) on merits without being influenced by the dismissal of the earlier bail application, including the present judgment.

(b) Observations made above, re.: right to speedy trial, will, however, be taken into consideration. ”

48. Furthermore, it was also clarified by the Hon’ble Apex Court in **paragraph 30** of the judgment dated 30.10.2023 that the observations made in the said judgment, either way, were only for the disposal of those appeals, and those observations would not influence the Trial Court on the merits of the case, which would proceed in



accordance with law, and be decided on the basis of the evidence led. It was further expressed by the Hon'ble Apex Court that all disputed factual and legal issues were left open.

49. After carefully considering the observations made by the Hon'ble Supreme Court, **this Court is of the opinion** that:

- (i) *Firstly*, the Hon'ble Supreme Court had granted only liberty to the present applicant Sh. Manish Sisodia to institute a fresh bail application before the learned Trial Court either in case of change in circumstances or if the trial is protracted and proceeds at a snail's pace in the next three months.
- (ii) *Secondly*, it was clearly expressed by the Hon'ble *Supreme* Court that any such fresh bail application would be considered and decided by the learned Trial Court 'on merits', without being influenced by the dismissal of earlier bail applications including the ones dismissed by the Hon'ble Supreme Court.
- (iii) *Thirdly*, it was also observed that the observations made in the judgment dated 30.10.2023, either way, were only for the *purpose* of disposal of those appeals.
- (iv) And *fourthly*, it was directed that while considering the fresh bail *applications*, the learned Trial Court shall also take into account the observations made by the Hon'ble Supreme Court *qua* the right to speedy trial.



50. **In this Court's opinion**, the order of the Hon'ble Supreme Court does not curtail the right of the learned Trial Court or this Court, of hearing arguments on bail application filed by the applicant on merit. Neither does it confine this Court or Trial Court to decide the bail application solely by examination of cause of delay in concluding trial.

51. The Hon'ble Supreme Court has also clearly mentioned in **paragraph no. 29 and 30 of the judgment dated 30.10.2023 that the Courts hearing application for bail will not be influenced by the observations made in the previous orders of rejection of bail of Sh. Manish Sisodia.**

52. **In this Court's opinion**, this observation of the Hon'ble Apex Court leads to only one conclusion that the learned Trial Court or this Court in event of the applicant moving fresh bail application can, independently apply its mind to the facts of the case and decide the bail application on merit. Further, holding and accepting the arguments of learned Senior counsels for the applicant that this Court cannot go beyond the observations made by the Hon'ble Supreme Court is also meritless, since the Hon'ble Supreme Court itself has clarified in the judgment that all the factual and legal issues are left open, and the Court which will be hearing bail application will not be influenced by the observations made in that judgment.

53. Therefore, in the considered **opinion of this Court**, the directions of the Hon'ble Supreme Court entitle the applicant Sh. Manish Sisodia to file a fresh bail application in case he feels that the trial has not expeditiously proceeded in this case. The adjudication of



the bail application, therefore has to be on the basis of the merits of the case, with an additional consideration of delay in trial or the right of speedy trial.

WHETHER THERE IS DELAY IN TRIAL, FOR THE REASONS ATTRIBUTABLE TO APPLICANT SH. MANISH SISODIA?

54. In the case at hand, this Court notes that the learned Trial Court has observed in impugned orders dated 30.04.2024 that the applicant individually, and along with different accused persons, had filed multiple applications or made oral submissions frequently, out of which some were frivolous, and this too, was done on a piecemeal basis, and thus, it was apparent that there was a concerted effort of the accused persons in accomplishing their shared purpose i.e. causing delay in the matter. It was also observed that despite the apparent attempts to slow down the progress of the case, it could not be regarded as proceeding at “snail’s pace”.

55. After considering the rival contentions, this Court is of the opinion that it shall be crucial to first take note of the applications preferred by the applicant Sh. Manish Sisodia, which were either filed or disposed of, after the judgment dated 30.10.2023 by the Hon’ble Apex Court in case of *Manish Sisodia (supra)*.



Applications preferred by the Applicant in CBI case before the Ld. Trial Court

S.NO.	DATE OF APPLICATION / ORAL SUBMISSION	NATURE OF APPLICATIONS/ ORAL REQUESTS	WHETHER THE APPLICATION WAS ALLOWED BY THE LEARNED TRIAL COURT?
1.	10.11.2023	Seeking permission to meet his wife physically for five days in custody.	The said application was allowed by the learned Trial Court <i>vide</i> order dated 10.11.2023
2.	05.12.2023	Seeking permission to sign some affidavit and Vakalatnama	The said application was allowed by the learned Trial Court <i>vide</i> order dated 05.12.2023.
3.	22.12.2023	Application under Section 207 Cr.P.C.	The said application was disposed of by the learned Trial Court <i>vide</i> order dated 19.01.2024. However, the request in this application for supply of copies of the documents or articles which were seized by officers of CBI during the course of searches was rejected.



4.	22.12.2023	Application seeking permission to put his signatures on documents	The said application was allowed by the learned Trial Court <i>vide</i> order dated 22.12.2023.
5.	22.12.2023	Application seeking permission to sign a cheque	The said application was allowed by the learned Trial Court <i>vide</i> order dated 22.12.2023.
6.	27.01.2024	Application seeking custody parole to meet his ailing wife for two days on weekly basis	The said application was allowed on 05.02.2024 and the applicant was granted once a week custody parole to go to his home and meet his wife.
7.	08.02.2024	Application for grant of interim bail to attend the marriage of his niece for a period of 5 days	The said application was allowed by the learned Trial Court <i>vide</i> order dated 12.02.2024
8.	01.03.2024	Application seeking discharge of sureties furnished before the learned Trial Court in terms of order dated 12.02.2024.	The said application was allowed by the learned Trial Court <i>vide</i> order dated 02.03.2024



9.	01.03.2024	Application seeing modification in the order dated 05.02.2024 passed by the learned Trial Court.	The said application was allowed by the learned Trial Court <i>vide</i> order dated 02.03.2024 and the travel expenses to meet applicant's wife in custody parole was modified to the extent that the expenses will be borne by the State.
10.	15.03.2024	Application on behalf of accused Manish Sisodia seeking preponement of hearing on his regular bail application	The said application was allowed by the learned Trial Court <i>vide</i> order dated 15.03.2024 and the matter was then listed on 18.03.2024 at 2 PM.
11.	26.03.2024	Application seeking preponement of date of hearing of the bail application filed on behalf of the accused Manish Sisodia.	The said application was allowed by the learned Trial Court <i>vide</i> order dated 27.03.2024 and the matter was then listed on 02.04.2024 at 2 PM.



12.	30.03.2024	Application seeking issuance of Production warrants of A-8, Manish Sisodia under Section 267 of Cr.P.C. during arguments on his bail application	The said application was allowed by the learned Trial Court <i>vide</i> order dated 01.04.2024.
13.	12.04.2024	Application for grant of interim bail for election campaigning by Manish Sisodia. (withdrawn on 20.04.2024)	The said application was withdrawn by the Applicant as the order in the regular bail application was reserved by the learned Trial Court.

Applications preferred by the Applicant in E.D. case before the Ld. Trial Court

S.NO.	DATE OF APPLICATION / REQUEST	NATURE OF APPLICATIONS/ ORAL REQUESTS	WHETHER THE APPLICATIONS WERE ALLOWED BY THE LEARNED TRIAL COURT?
--------------	--------------------------------------	--	--



1.	19.07.2023	Application filed by the applicant for supply of missing documents and legible copies under Sections 207/208 of Cr.P.C.	The said application was allowed by the learned Trial Court <i>vide</i> order dated 25.08.2023
2.	12.10.2023	Application seeking supply of missing digital data/ pen drive/HD under Sections 207/208 of Cr.P.C.	The said application was allowed by the learned Trial Court <i>vide</i> order dated 11.12.2023
3.	21.11.2023	Application seeking supply of missing/ legible copies of documents under Sections 207/208 of Cr.P.C.	The said application was allowed by the learned Trial Court <i>vide</i> order dated 21.11.2023
4.	19.01.2024	Application for Inspection of Non-RUDs	The said application was allowed by the learned Trial Court <i>vide</i> order dated 07.03.2024
5.	20.01.2024	Application seeking CCTV footage of interrogation period.	The said application was allowed by the learned Trial Court <i>vide</i> order dated 20.01.2024



6.	27.01.2024	Application seeking custody parole	The said application was allowed <i>vide</i> order dated 05.02.2024 and the applicant was granted once a week custody parole to go to his home and meet his wife.
7.	08.02.2024	Application for grant of interim bail to attend the marriage of his niece for a period of 5 days.	The said application was allowed <i>vide</i> order dated 12.02.2024
8.	01.03.2024	Application seeking discharge of sureties furnished before the learned Trial Court in terms of order dated 12.02.2024.	The said application was allowed by the learned Trial Court <i>vide</i> order dated 02.03.2024
9.	01.03.2024	Application seeing modification in the order dated 05.02.2024 passed by the learned Trial Court.	The said application was allowed by the learned Trial Court <i>vide</i> order dated 02.03.2024 and the travel expenses to meet applicant's wife in custody parole was modified to the extent that the expenses will be borne by the State.



10.	15.03.2024	Application on behalf of accused Manish Sisodia seeking preponement of hearing on his regular bail application	The said application was allowed by the learned Trial Court <i>vide</i> order dated 15.03.2024 and the matter was then listed on 18.03.2024 at 2PM.
11.	26.03.2024	Application seeking preponement of date of hearing of the bail application filed on behalf of the accused Manish Sisodia.	The said application was allowed by the learned Trial Court <i>vide</i> order dated 27.03.2024 and the matter was then listed on 02.04.2024 at 2PM.
12.	30.03.2024	Application seeking issuance of Production warrants of A-8, Manish Sisodia under Section 267 CrPC during arguments on his bail application	The said application was allowed by the learned Trial Court <i>vide</i> order dated 01.04.2024.



13.	12.04.2024	Application for grant of interim bail under Section 45 PMLA for election campaigning by Manish Sisodia. (withdrawn on 20.04.2024)	The said application was withdrawn by the Applicant as the order in the regular bail application was reserved by the learned Trial Court.
-----	------------	---	---

Whether the applicant or other accused persons can be held responsible for delay in initiation of trial due to their act of filing different applications before the learned Trial Court?

56. There is **no dispute about the fact that the trial in this case is yet to commence**, since the proceedings, which are to be mandatorily carried out under the law as per code of Criminal Procedure, are still underway as the accused persons have moved multiple individual applications related and unrelated to Sections 207/208 of Cr.P.C. i.e. for supply of relevant documents, which is continuing till today.

57. This Court notes that in a case of conspiracy which involves multiple accused persons, it is but natural that each accused, who may have a different advocate will have to be provided with a separate set of chargesheet and documents. This right, to be supplied with the relevant documents before the stage of framing of charge, is enshrined in Section 207 and 208 of Cr.P.C., which provide as under:

“**207.** Supply to the accused of copy of police report and other documents.



In any case where the proceeding has been instituted on a police report, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following:-

- (i) the police report;
- (ii) the first information report recorded under section 154;
- (iii) the statements recorded under sub-section (3) of section 161 of all persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part in regard to which a request for such exclusion has been made by the police officer under sub-section (6) of section 173;
- (iv) the confessions and statements, if any, recorded under section 164;
- (v) any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub-section (5) of section 173:

Provided that the Magistrate may, after perusing any such part of a statement as is referred to in clause (iii) and considering the reasons given by the police officer for the request, direct that a copy of that part of the statement or of such portion thereof as the Magistrate thinks proper, shall be furnished to the accused :Provided further that if the Magistrate is satisfied that any document referred to in clause (v) is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court.”

208. Supply of copies of statements and documents to accused in other cases triable by Court of Session.

Where, in a case instituted otherwise than on a police report, it appears to the Magistrate issuing process under section 204 that the offence is triable exclusively by the Court of Session, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following:



- (i) the statements recorded under section 200 or section 202, of all persons examined by the Magistrate;
- (ii) the statements and confessions, if any, recorded under section 161 or section 164;
- (iii) any documents produced before the Magistrate on which the prosecution proposes to rely:

Provided that if the Magistrate is satisfied that any such document is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court.”

58. In the case of *P. Gopalkrishnan v. State of Kerala (2020) 9 SCC 161*, the provision of Section 207 of Cr.P.C. was held to be a part of right to fair trial. The relevant observations are under:

“21. Be that as it may, furnishing of documents to the accused under Section 207 of the 1973 Code is a facet of right of the accused to a fair trial enshrined in Article 21 of the Constitution...”

59. The Hon’ble Apex Court, in case of *In Re: To issue certain guidelines regarding inadequacies and deficiencies in criminal trial v. State of Andhra Pradesh, Suo Moto Writ (Crl.) No. 1/2017 decided on 20.04.2021*, has made the following observations with respect to the supply of relevant documents as well as supply of list of unrelayed documents to an accused:

“This court is of the opinion that while furnishing the list of statements, documents and material objects under Section 207/208 Cr.P.C., the magistrate should also ensure that a list of other materials, (such as statements, or objects/ documents seized, but not relied on) should be furnished to the accused. This is to ensure that in case the accused is of the view that such materials are



necessary to be produced for a proper and just trial, she or he may seek appropriate orders, under the Cr.P.C. (Section 91 referred at footnote), for their production during the trial, in the interests of justice. It is directed accordingly; the draft rules have been accordingly modified.”

60. Therefore, this Court cannot ignore the valuable right of an accused to access justice, and avail legal remedies available to him within the framework of the law especially when he is in judicial custody or even otherwise when he is facing criminal trial.

61. **However**, it is also important to ensure that the provisions of Sections 207/208 of Cr.P.C. and the necessary procedural law is not misused by an accused to stall the proceedings before a Court of law.

62. In the case at hand, this Court takes note of the fact that in one of the orders pertaining to the complaint instituted by the Directorate of Enforcement i.e. order dated 11.12.2023, it was recorded by the learned Trial Court that despite being served with the electronic devices containing the prosecution complaints and relied upon documents, the applicant Sh. Manish Sisodia was raising the issue of non-supply of these documents, at a belated stage. The relevant observations are as under:

“As per these applications, some DVDs/hard discs/pen drives and backup of the e-mail dumps etc. have not been supplied, though IO submits that contents of these electronic storage devices were included in the hard discs, which were earlier supplied to all the accused and which contained the contents of concerned prosecution complaints as well as relied upon documents filed in support thereof. It is strange that the issue of non supply of such DVDs/hard discs etc. was not raised by the



above accused persons in their earlier applications and no reasonable justification is being furnished as to why these missing documents were not included in the earlier applications filed under the above provisions, when the issue of missing/ illegible pages of other documents was already raised.

Ld. SPP for ED states that there is no end to filing of such applications by the accused persons and without going into the question whether these documents were earlier supplied or not, they are ready to supply copies of above electronic devices again to the above two accused.”

63. In another order dated 19.01.2024, in the case filed by CBI, the learned Trial Court while dismissing an application filed by the applicant Sh. Manish Sisodia had observed as under:

“Arguments on the above application of A8 have been heard. A copy of the search list prepared during the course of search proceedings carried out at the residential as well as official premises of the said accused was admittedly supplied during the course of proceedings itself and there is no requirement of supplying copies of the documents or articles, which were seized during the said searches. Hence, the request contained in this application for supply of copies of the documents or articles which were seized by officers of CBI during the course of above searches is rejected. Though, the legality of above search proceedings has also been questioned by Ld. Counsel representing the said accused, but it will be a matter of trial only. With these observations, this application stands disposed off.”

64. The record in the case registered by CBI, including the order sheets of the learned Trial Court, further reveals the following facts:

- (i) As per direction of the learned Trial Court *vide* order dated 19.10.2023, the process of inspection of un-relied



documents and un-relied statements of witnesses was to be concluded by the defence counsels by 22.11.2023. However, the counsels of the accused persons did not complete the inspection of un-relied documents and un-relied statements of witnesses by the said date.

- (ii) In view of the same, the learned Trial Court *vide* its order dated 22.11.2023 had directed the defence counsels to conclude the inspections by 22.12.2023. In compliance with the said order, the counsel for the applicant visited the CBI office for the purpose of inspection of un-relied documents and statements of the witnesses only for four days and that too for a few hours, as per the case of CBI.
- (iii) It is further noted that despite conducting the inspection of the un-relied documents, the accused persons including Sh. Manish Sisodia, had again filed an application under Section 207 Cr.P.C. before the learned Trial Court on 22.12.2023, for supply of copies of the documents seized during the searches conducted by CBI at the premises of the accused petitioner; whereas copies of the search lists containing the details of such documents had already been provided to the accused persons on the date of the search itself. Thus,



the said application was dismissed by the learned Trial Court

- (iv) The accused persons did not conclude the inspection of un-relied documents by 22.12.2023, and had filed applications for further extension of the time for conducting the inspection. At their request, the learned Trial Court had further extended the time for inspection of un-relied documents till 19.01.2024.
- (v) On 19.01.2024, however, the accused persons had again filed fresh applications under Section 207 of Cr.P.C. for supply of some more documents/digital evidence, i.e., after the lapse of more than six months of filing of the second supplementary chargesheet on 08.07.2023. Therefore, the proceedings under Section 207 of Cr.P.C. were further extended till 05.02.2024.

65. Thus, *prima facie*, **the accused persons including the applicant herein have delayed the pre-charge proceedings** under Section 207 of Cr.P.C. by taking three months time from 19.10.2023 to 19.01.2024 for inspection of un-relied documents despite repeated directions from learned Trial Court to conclude the same expeditiously.

Applications unrelated to Section 207/208 of Cr.P.C.

66. This Court also notes that except the application pertaining to Section 207/208 of Cr.P.C., the applicant had also filed several other



applications, unrelated to Section 207/208 of Cr.P.C. In this Court's opinion, the mere act of filing an application seeking **any** relief cannot automatically be construed as a delay tactic since an accused, who is in judicial custody, cannot be stopped from moving applications for fulfilment and enforcement of their personal, legal and fundamental rights and their applications cannot be simply termed as frivolous.

67. The accused persons, especially the undertrial prisoners, have only a Trial Court to turn to for redressal of their personal grievances and seeking permissions for small and big reliefs such as signing of a cheque in custody, signing of Vakalatnama in custody, meeting their family members, permission to carry with them articles such as kettle, reading material, custody parole etc. The list can be endless as the circumstances and situations an undertrial faces cannot be foreseen. These permissions can only be granted by the learned Trial Courts and cannot be termed as frivolous.

Different 'Players' and 'Factors' Affecting the Speed of Trial

68. While the prosecution as well as the defence are two of the key players playing a crucial role in the trial process, the speed of a trial cannot be solely attributed to the actions of either of them. Rather, the speed of a trial is influenced by a multitude of elements and a combination of various factors, including the complexity of the case, the volume of evidence, the availability of witnesses, the efficiency of legal procedures, and the judicial workload, among several other



factors. These ‘factors’, combined together, often affect the pace at which a trial progresses.

69. **The duration of pre-trial proceedings**, which includes the mandatory procedures and steps provided under Cr.P.C in criminal cases, **necessarily adds to the overall pace and duration of trial of a case.**

Observations Regarding All Accused Persons Acting in ‘Concert’ With Each Other To Delay Trial: Whether Reasonable and Justifiable?

70. One of the issues raised and argued by Sh. Mohit Mathur was that the learned Trial Court has erroneously held that the delay has been caused by the ‘concerted efforts’ of all the accused persons, without there being any basis for such an observation.

71. **In the opinion of this Court**, while the accused persons may be perceived as acting collectively, it is essential to acknowledge their distinct roles and rights as individuals before the Court. In legal proceedings involving multiple accused persons, it is not uncommon for their legal strategies to align or for similar applications to be filed by their respective legal counsels. However, the mere similarity in legal approach adopted by different counsels for the accused persons **may not be a concerted effort** as each accused is entitled to pursue his defence independently.



Delay in commencement of trial cannot be attributed to the ED or CBI or Ld. Trial Court

72. The investigation in a case may often be marked by a gradual disclosure and accumulation of evidence, which is a common phenomenon especially in cases involving economic offences. As the statements of witnesses are recorded and documentary evidence is collected, the factual landscape of the case becomes clearer, often revealing complexities that may not initially be apparent. Moreover, the discovery of new evidence or the emergence of unforeseen legal issues may necessitate additional time for thorough examination and consideration. Legal proceedings are needless to say, inherently complex, with each stage of the investigation or pre-trial proceedings, uncovering new information and raising new questions that require careful consideration.

73. The investigation in this case, of course, became more tedious, cumbersome and challenging since the accused persons either destroyed their mobile phones which contained relevant data and incriminating material or refused to provide the password of their phones, making it more difficult and challenging for the investigating agency to link one accused with another. The alleged *Hawala* transactions and the cash being sent through *Hawala* channels spread over different states, and investigating accused(s) and witnesses in different states, have also added to the length of investigation spread over different states of the country, leading to filing of supplementary chargesheets/prosecution complaints.



74. In light of these realities, it is understandable that the commencement or conclusion of trial may take longer time than anticipated initially.

75. Further, in case the learned Trial Court would not have given the accused persons an opportunity or would have allowed their applications for supply of copies, it would have adversely affected the rights of the accused persons. For the last six months, the accused persons have been moving applications on various grounds for supply of copies or inspection of record.

76. In such circumstances, it will be travesty of justice to hold that the delay was on part of Directorate of Enforcement or Central Bureau of Investigation since the prosecution has consistently complied with all the orders of the Courts and had supplied copies which were being demanded by the accused persons for the purpose of addressing arguments on charge. The prosecution did not take time or delay commencement of trial by not providing them copies or not complying with the orders of the Court. Further, most of the applications were decided on the same day by the learned Trial Court.

77. Further, the **arguments on charge have not commenced despite best efforts by the prosecution** of complying with all the orders of the Court, since the accused persons wanted individual digital copies, then hard copies, then legible copies, then list of un-relied documents, then inspection of all the documents and the voluminous record, and more supplementary prosecution complaints



have also been filed now, which the accused persons want to refer to for the purpose of addressing arguments on charge.

78. This Court further holds that there has been no delay on the part of the learned Trial Court and that arguments on charge in the case filed by CBI have already been part-heard and further arguments were not addressed as co-accused namely Sh. Abhishek Boinpally, Sh. Arun R. Pillai, Sh. Sameer Mahendru, Sh. Amandeep Singh Dhall, Sh. Arjun Pandey, Sh. Rajesh Joshi and Sh. Chanpreet Singh Rai have filed an application and argued before the learned Trial Court that till the entire investigation is completed, the arguments on charge should not be heard.

79. In this regard, the learned Trial Court while dismissing the application seeking stay on hearing arguments on charge in the case registered by the CBI, *vide* order dated 27.03.2024, had observed as under:

“24. Even otherwise, as also discussed above, two of the accused in this case i.e. A8 Manish Sisodia and A9 Amandeep Singh Dhall are still running in judicial custody since long and in considered opinion of this court, their interests will be more prejudiced if the proceedings of this case are halted for no fault on their part and they are made to sit in prison or are kept detained pending conclusion of the further investigation. Thus, it is rather in the interests of accused themselves, especially the accused who are running in judicial custody, if a hearing on charges is commenced by this court without waiting for conclusion of the ongoing further investigation.

25. During the course of hearing on these applications, it has also been stated by IO that the ongoing further investigation may be completed within three to four



months and the same is pending not because of any fault on their part, but because of the fact that some of the suspects or offenders are evading the joining of investigation. There are sixteen accused who have been chargesheeted in the case till date and conclusion of hearing on charges on behalf of prosecution as well as on behalf of these sixteen accused may take a considerable time and a possibility can not be ruled out that any of the other offenders or suspects is made to join investigation in the meanwhile or any supplementary chargesheet is filed again consequent upon his arrest and on conclusion of investigation qua him. However, then the court may stop or halt the hearing on charges till the copies of such supplementary chargesheet and documents filed and relied upon in support thereof are supplied to all the accused persons and the same are scrutinized. The accused shall also get an opportunity in such a situation to address their arguments qua the above documents or evidence brought on record or witnesses added to the list of prosecution through such supplementary chargesheet. However, if any fresh evidence qua the accused who have already chargesheeted in this case is also collected by the investigating agency during the course of such further investigation and the same is required to be used even qua these accused, then as per observations made by the Hon'ble High Court in the case of Sri Desaraju Venugopal (Supra) it would be incumbent upon the respondent to inform this court and to seek its permission to further investigate the matter qua these accused, if the same is felt necessary”.

Have the proceedings before the learned Trial Court proceeded at Snail's pace?

80. It may be difficult to mathematically assess, through judicial determination, the causes of delay which could be attributed to one person or entity.



81. However, in the present case, the delay in commencement of trial can be attributed to the following causes:

- a. The inherent time requirements due to complexity of the case.
- b. Multiple applications moved by multiple accused persons under different sections of law.
- c. Limitations of the system and institution to supply copies in a seamless manner in a digitized form.
- d. The demand of the accused persons for being provided with hard copies of the record in addition to digitized copies.

82. Furthermore, there have been delays in the present case which were procedural requirements. **The learned Trial Court has taken meaningful steps on every date of hearing** to dispose of the applications on the same day which could be disposed of without waiting for a reply, and has also expeditiously adjudicated by disposing of the applications filed by multiple accused persons for supply of copies. **Thus, this Court cannot hold that the pre-trial proceedings before the learned Trial Court have proceeded at snail's pace.**

83. However, due to multiple accused persons and voluminous record, there has been a delay in commencement of trial, despite the Directorate of Enforcement providing the copies and the record as was asked for by the Court expeditiously, even withdrawing a petition i.e. CRL.M.C. 1419/2023 filed before this Court to ensure



speedy pre-trial proceedings. The present accused Sh. Manish Sisodia has not stated before the learned Trial Court in the case registered by Directorate of Enforcement that he may be heard on charge. Since Sh. Manish Sisodia had moved an application seeking inspection of un-relied documents before the stage of charge itself, this Court presumes that the documents relied upon by the prosecution have been thus supplied to the counsel for the applicant persons to his satisfaction in the case filed by Directorate of Enforcement as they are now in the process of inspection of un-relied documents in the *malkhana* of the concerned Investigating Agency.

84. **However, this Court is also of the opinion** that for the purpose of arguments on charge, there was no need to completely inspect all the un-relied documents as they can be used only at the stage of trial which has not commenced yet, and only a list of un-relied documents is to be provided to the accused persons before arguments on charge, as per the judgment of Hon'ble Apex Court in case of *In Re: To issue certain guidelines regarding inadequacies and deficiencies in criminal trial (supra)*. Be that as it may, the order of the learned Trial Court dated 07.03.2024 allowing the physical inspection of un-relied documents by the accused persons has not been challenged by the Directorate of Enforcement, and thus, the counsels for accused persons are now physically inspecting thousands of un-relied documents, which is also beyond the control of the Directorate of Enforcement and it is unclear as to how much time will they take to inspect the said record.



85. It was also not the fault of either the investigating agencies or the learned Trial Court that there have been multiple accused persons, delay by accused persons in joining investigation, thousands of documents seized as the conspiracy spreads over many states, and one interrogation is leading to several further facts and deeds. No fault can be found with the Directorate of Enforcement or Central Bureau of Investigation that there was a voluminous record of investigation. It is also not the fault attributable to the prosecution or the learned Trial Court that some of the accused persons in the CBI case do not want to address arguments on charge till investigation is finally concluded. It is also not the fault of prosecution that multiple individual accused persons have multiple individual defence counsels who will argue individually before the learned Trial Court, both during the course of pre-trial proceedings and later during trial, which will take time.

86. The practical realities of trial and pre-trial stages in the complex case as the present one involving extensive investigation may, at times, compromise with speed of the pre-trial duration.

87. While one has to attach a different approach to a person who is in judicial custody as his needs are different from others according to his circumstances, human life is unpredictable and there may be a number of unpredictable situations for a person in judicial custody for which he has to approach the Court. For example, in the case of the present applicant, his moving the application to meet his wife due to her illness or the need to attend to her is by no stretch of imagination frivolous but a necessity, which is unrelated to



proceedings under Section 207/208 of Cr.P.C. and had to be adjudicated at the earliest. This Court observes that the applications which had to be adjudicated upon, in totality have taken judicial time to adjudicate. **Such adjudicatory time taken by the Court and the applications moved by the applicant may not be related to law but are related to life.**

88. **At times, justice hurried may lead to justice being buried either to the accused or to the prosecution which is not the intent of criminal jurisprudence of this country**, as has been most recently observed in the case of *Sunita Devi v. State of Bihar* 2024 INSC 448 by the Hon'ble Apex Court.

PRINCIPLES GOVERNING GRANT OF REGULAR BAIL UNDER SECTION 439 OF CR.P.C. & IN CASES INVOLVING ECONOMIC OFFENCES

89. Before proceeding to assess the present case on merits, it shall be necessary to consider the principles of law, which govern the grant of bail, both in relation to the case registered by CBI for offences under the Prevention of Corruption Act, and by Directorate of Enforcement for offences under the PMLA.

90. The principles and factors governing grant of regular bail under Section 439 of Cr.P.C., as summarised by the Hon'ble Supreme 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.”

91. The relevant observations of Hon’ble Supreme Court in case of *Nimmagadda Prasad v. CBI (2013) 7 SCC 466*, are also extracted hereunder:

“24. While granting bail, the court has to keep in mind the **nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations.** It has also to be kept in mind that for the purpose of granting bail, the legislature has used the words “*reasonable grounds for believing*” instead of “*the evidence*” which means the court dealing with the grant of bail can only satisfy itself as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.”

(emphasis supplied)



92. In the case of *Y.S. Jagan Mohan Reddy v. CBI (2013) 7 SCC 439*, the Hon'ble Supreme Court observed that **economic offences** constitute a class apart, and thus, gravity of such offences has to be kept in mind while considering a plea for grant of bail. The relevant observations are extracted hereunder:

“34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.”

(emphasis supplied)

PRINCIPLES GOVERNING GRANT OF BAIL UNDER PMLA

93. As regards the offence of money laundering, under Section 3 and 4 of PMLA, the mandatory twin conditions under Section 45(1) of PMLA are required to be satisfied, before an accused can be enlarged on 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.

94. In this context, it will be relevant to take note of the 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.**

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)

95. 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)



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.**

THE CASE OF CBI AND E.D. & THE ROLE OF APPLICANT SH. MANISH SISODIA

97. It is not disputed that during the relevant period i.e., 2020 to 2022, the applicant Sh. Manish Sisodia was functioning as the Deputy Chief Minister and Finance Minister of the Government of NCT of Delhi. He was also heading the Excise Department of Government of NCT of Delhi, and was, thus, entrusted with the responsibility for formulation and implementation of the Excise Policy 2021-22.

98. The investigation conducted in the present case by the **Central Bureau of Investigation** revealed that the formulation and implementation of the Excise Policy was allegedly manipulated to facilitate the monopolization and cartelization of wholesale and retail



liquor trade in Delhi by the accused persons, including the members of the 'South Group', through the co-accused Sh. Vijay Nair (Head of Communication and Social Media Cell of Aam Aadmi Party and close associate of Sh. Manish Sisodia), for siphoning off 6% out of the 12% windfall profit margin for wholesalers provided in the Policy, in lieu of payment of advance kickbacks/bribes. Further investigation *qua* the present applicant Sh. Manish Sisodia revealed that the New Excise Policy was formulated by a Group of Ministers (GoM) headed by the present applicant, with a preconceived agenda. The accused persons, who were members of the South Group, played a major role in formulation of the Excise Policy and they were always present in Delhi at the crucial stages of Policy formulation and were in touch with co-accused Sh. Vijay Nair, a close associate of the present applicant.

99. The **Directorate of Enforcement** alleges that Sh. Manish Sisodia was not only the head of the Group of Ministers (GoM) which was tasked by the Cabinet to examine all aspects of the erstwhile excise system, report of the expert committee and comments received from the stakeholders, but he was also the Excise Minister and had played a key role in modifying the terms of the Excise policy in a manner which would benefit the co-accused persons. It is alleged that Sh. Manish Sisodia had got the policy formulated and implemented in a way so as to allow illegal gains to certain persons/entities, against advance kickbacks of about Rs. 100 crores received from them, which were later utilised by the Aam Aadmi Party in the Goa Assembly Elections.



100. Thus, it is alleged that Sh. Manish Sisodia was one of the key conspirators in formulating, conceptualizing and implementing the various processes and activities in dealing with the proceeds of crime including creating an entire ecosystem for generating, concealing, projecting as untainted, possessing and using the proceeds of crime.

Timeline of Events reflecting the Role of Applicant Sh. Manish Sisodia

101. For a clear understanding, the timeline of the events that transpired in this case, *as alleged* by the Central Bureau of Investigation and Directorate of Enforcement in their chargesheets and the fourth supplementary prosecution complaint respectively, on the basis of investigation conducted so far, is encapsulated below:

DATE	EVENT & ROLE OF THE PRESENT APPLICANT SH. MANISH SISODIA
04.09.2020	An Expert Committee, headed by Sh. Ravi Dhawan, IAS, the then Excise Commissioner, was constituted by Sh. Manish Sisodia, the then Deputy Chief Minister of Delhi, which was tasked with providing suggestive measures for simplifying liquor pricing mechanism, checking malpractices, ensuring equitable access to liquor supply, etc. The Deputy Commissioner (Excise) and Additional Commissioner (Trade & Taxes) were also the other committee members.



13.10.2020	The Expert Committee submitted its report, <i>inter alia</i> recommending separation between manufacturer and wholesaler, and handing over wholesale operations to one government entity in Delhi, opening of individual-run private retail liquor vents through lottery system, etc.
31.12.2020	On the instructions of Sh. Manish Sisodia, the report of Expert Committee was uploaded on the website of Delhi Excise Department for public/stakeholders' comments and the deadline for submission of the comments was 21.01.2021.
01.01.2021 to 21.01.2021	Pre-decided emails were sent, on the directions of Sh. Manish Sisodia, at the email IDs of Delhi Excise Department and Sh. Manish Sisodia, in the form of suggestions/ feedback on the Expert Committee Report. The suggestions in these emails were contrary to the recommendations of the Expert Committee headed by Sh. Ravi Dhawan.



27.01.2021 to 02.02.2021	<ul style="list-style-type: none"> • A draft Cabinet note was prepared by Sh. Rahul Singh on 28.01.2021, the then Excise Commissioner, which contained the opinions of three legal experts. • Pursuant to this draft Cabinet note having been prepared which was against the desire of Sh. Manish Sisodia, Sh. Rahul Singh was transferred on 01/02.02.2021. • New Excise Commissioner Sh. Sanjay Goel was appointed and was asked to prepare a fresh Cabinet note, without annexing the opinion of three legal experts.
05.02.2021	<ul style="list-style-type: none"> • Report of Expert Committee and comments received from public/stakeholders (including the pre-decided emails sent on the directions of Sh. Manish Sisodia) were placed before the Council of Ministers in Cabinet Meeting as per directions of Sh. Manish Sisodia. • Group of Ministers (GoM) was constituted to examine all aspects of the existing excise system. • GoM consisted of Sh. Manish Sisodia, Sh. Satyendra Jain and Sh. Kailash Gehlot.
14.03.2021 to 17.03.2021	The representatives and certain members of the 'South Group' were present in Delhi and were staying at Oberoi Hotel. The records of the hotel have been collected by the investigating agencies.



15.03.2021	The draft GoM Report running into 30 pages, which was modified on 15.03.2021, contained the proposed profit margin for wholesalers as 5% only. This document was recovered from the personal computer of Sh. Manish Sisodia during investigation.
15.03.2021 to 16.03.2021	The Business centre of Oberoi Hotel was used by the South Group representatives, to obtain print-out of a 36 page document, which is evident from the records/bills of Oberoi Hotel. This 36 page document was allegedly the proposed draft of the GoM report.
18.03.2021	<ul style="list-style-type: none"> • Sh. C. Arvind, Secretary to Sh. Manish Sisodia was called by Sh. Manish Sisodia to the official residence of Chief Minister Sh. Arvind Kejriwal, and was handed over a document by him. He was asked to prepare the fresh draft of the GoM Report on the basis of the said document. • As per the statement of Sh. C. Arvind, this document contained 38 pages, i.e. 36 pages <i>plus</i> 1 title page <i>plus</i> 1 index page. • As per the case of prosecution, this matches with the 36 page document, print out of which was taken at the Oberoi Hotel.



<p>18.03.2021 to 19.03.2021</p>	<ul style="list-style-type: none"> • The document given by Sh. Manish Sisodia to Sh. C. Arvind at the house of Sh. Arvind Kejriwal, was typed by Sh. C. Arvind on the computer placed in the Conference Hall of office of Sh. Manish Sisodia. • During investigation, the last modified date of the said file, found on the computer, was 19.03.2021. • In this document, profit margin of LI wholesalers was mentioned as 12%, whereas the same was mentioned as 5% in the Draft GoM report prepared on 15.03.2021, and no meeting of GoM had taken place during the period of these three/four days.
<p>20.03.2021</p>	<p>Sh. Vijay Nair shared the provisions/parts of the new Draft GoM Report with Sh. Buchi Babu and Sh. Arun Pillai, which was revealed during investigation through the chats retrieved from the phone of Sh. Butchi Babu, as well as the statement of Sh. Butchi Babu.</p>
<p>22.03.2021</p>	<ul style="list-style-type: none"> • The GoM Report was submitted before the Council of Ministers. • This Report also contained the contents, which were found in the chat of Sh. Buchi Babu, which were neither part of Draft GoM dated 15.03.2021 nor 19.03.2021, but were incorporated in the final GoM report.



22.03.2021	The Council of Ministers accepted the GoM report and directed the Excise Department to implement the report, and accordingly prepare the Excise Policy for the year 2021-22.
27.03.2021	A meeting between Sh. Vijay Nair with Sh. Amandeep Singh Dhall, Sh. Benoy Babu, Sh. Jagbir Sidhu etc. took place at Hotel Oberoi Maidens, Civil Lines, Delhi.
05.04.2021	The GoM <i>vide</i> minutes dated 05.04.2021 recommended and approved the additional clarification/ modification in the GoM report wherein the definition of related party/sister concern was diluted. This was incorporated to facilitate co-accused Sh. Sameer Mahandru and other members of South Group to capture wholesale market through M/s Indo Spirits and even retail zones through M/s Khao Gali, as Sh. Sameer Mahandru had made his wife resign from the directorship of M/s. Geetech Dynamic (major shareholder of M/s. Khao Gali) and made director in M/s Indo Spirits, and M/s. Khao Gali was later allotted two retail zones.



18.06.2021	A meeting between Sh. Vijay Nair and Sh. Dinesh Arora with Sh. Arun Pillai, Sh. Abhishek Boinpally and Sh. Butchi Babu took place at ITC Kohinoor, Hyderabad in connection with the Excise Policy of Delhi. In this meeting, Sh. Vijay Nair assured them that he would get them the control/share in maximum L1s and ensure that big brands like Pernod Ricard choose their L1 as whole distributors.
05.07.2021	The final Excise Policy was uploaded on the website of Delhi Excise Department.
15.08.2021	Sh. Vijay Nair met Sh. Benoy Babu and Sh. Manoj Rai, employees of Pernod Ricard i.e. one of the leading manufacturers of liquor in Delhi, at Mumbai. Sh. Vijay Nair introduced himself as Officer on Special Duty in the Excise Department, and directed them that Pernod Ricard must engage M/s Indo Spirits for its wholesale business, instead of Brindco. This was revealed through statements dated 14.09.2022 and 17.11.2022 of Sh. Benoy Babu and Manoj Rai, as well as certain screenshots of chats retrieved from the mobile phone of Sh. Benoy Babu.



20.09.2021	A dinner was hosted at Taj Mansingh Hotel by Pernod Ricard for South Group cartel, which was attended by Sh. Sameer Mahendru, Sh. Sarath Reddy, Sh. M.S. Reddy, Sh. Manoj Rai, Sh. Benoy Babu, Sh. Arun Pillai, Sh. Abhishek Boinpally and others. This dinner was meant to acknowledge the agreement regarding wholesale distribution between the Pernod Ricard and M/s Indo Spirits. This fact is corroborated by the statements of Sh. Sameer Mahandru and Sh. Arun Pillai.
08.11.2021	Wholesale Distributor License (L-1) was allotted to M/s Indo Spirits, after Sh. Manish Sisodia had directed the concerned officers to allot the said license on priority basis.
17.11.2021	The Excise Policy 2021-22 was implemented.
20.07.2022	Letter was written by Lt. Governor, Delhi alleging irregularities in framing and implementation of Delhi Excise Policy 2021-22.
22.07.2022	<ul style="list-style-type: none"> • Written complaint was filed by Director, Ministry of Home Affairs, Government of India, regarding the Delhi Excise Policy Scam. • Two Mobile Phones were destroyed by Sh. Manish Sisodia.



17.08.2022	RC was registered by the Central Bureau of Investigation.
22.08.2022	ECIR was recorded by the Directorate of Enforcement.
31.08.2022	The Excise Policy of 2021-22 was discontinued.

Association of the Applicant Sh. Manish Sisodia with co-accused Sh. Vijay Nair

102. The facts would thus reveal that Sh. Vijay Nair, who was the Incharge of Media and Communication Wing of Aam Aadmi Party, was one of the key persons who was in touch with all other stakeholders as well as co-accused persons including members of the South Group, from whom kickbacks were demanded and received. Thus, it would be important to also examine his association with Sh. Manish Sisodia, the present applicant.

103. Sh. Vijay Nair in his statement dated 18.11.2022 had admitted that he used to live in a government bungalow which was officially allotted to a Cabinet Minister Sh. Kailash Gehlot, without any official authorization, and this bungalow was situated close to the residence of the Chief Minister of Delhi. He had also disclosed that he used to operate from the camp office of Delhi's Chief Minister Sh. Arvind Kejriwal.

104. Sh. C. Arvind, the then Secretary to Sh. Manish Sisodia, in his statement recorded under Section 50 of PMLA, has disclosed that Sh. Vijay Nair was the In-charge of Media and Communication for AAP



and used to work from Chief Minister's camp office. He had further disclosed that after the Excise Policy was announced, the frequency of meetings between Sh. Vijay Nair and Sh. Manish Sisodia had increased, and whenever Sh. Vijay Nair would come and meet Sh. Manish Sisodia in the office, they both would go to one retiring room and have discussions.

105. This Court has also perused the statement of approver Sh. Dinesh Arora, which reveals that Sh. Manish Sisodia had informed him that Sh. Vijay Nair would call him and coordinate and cooperate with him for whatever work is required to be done in the matter of excise policy, and that he could trust Sh. Vijay Nair.

106. A perusal of the statement of co-accused Sh. Arun R. Pillai also discloses that Sh. Vijay Nair had the support and sanction of Sh. Kejriwal and Sh. Manish Sisodia for all his activities related to the Excise Policy 2021-22. The statement of Sh. Butchi Babu also reveals that Sh. Vijay Nair was acting on behalf of Sh. Kejriwal and Sh. Manish Sisodia and was working on their behalf on the Excise policy. During the course of investigation, a few provisions of the liquor policy were also found in the WhatsApp chats of Butchi Babu, sent by Sh. Vijay Nair, before the policy was finalized by the Group of Ministers headed by Sh. Manish Sisodia.

107. Thus, there is sufficient material on record, at this stage to *prima facie* show that Sh. Vijay Nair was acting on behalf of the applicant Sh. Manish Sisodia as well as Aam Aadmi Party in demanding and receiving the kickbacks from co-accused persons



including members of South Group and ensuring that favourable clauses were inserted in the new Liquor Policy for their benefit.

Orchestration of Pre-Decided Emails by Sh. Manish Sisodia and Creation of Fake Public Opinion

108. The Directorate of Enforcement has found during its investigation that Sh. Manish Sisodia had directed interns from the Delhi Minorities Commission to send emails containing suggestions and comments on the Expert Committee Report. However, the content of these emails was provided by Sh. Manish Sisodia, allegedly to suit his own agenda. In this regard, Sh. Manish Sisodia had directed Sh. Zakir Khan, Chairman of the Delhi Minorities Commission, to have these pre-drafted emails sent. Sh. Khan had communicated this to the Commission's interns through one Sh. Kartikey Azad, leading to the interns sending multiple identical emails to the Excise Department and Sh. Manish Sisodia.

109. It is alleged that since the major recommendations regarding the excise policy given by the Expert Committee were not in line with Sh. Manish Sisodia's desires, he had orchestrated the sending of these emails to the Excise Department's email address where public and stakeholder comments had been invited, as well as to his own email address. The suggestions, such as the introduction of an auction system and the reduction of Excise and VAT, which eventually became recommendations of the GoM for formulating the liquor policy, were thus allegedly planted by Sh. Manish Sisodia. This was done to project them as the opinions of the public and stakeholders,



thereby camouflaging the GoM's malafide intention to deviate from the Expert Committee's report.

110. In this regard, the Court has pursued the statement dated 27.03.2023 of Sh. Zakir Khan, Chairman of the Delhi Minorities Commission. Sh. Khan has revealed that Sh. Manish Sisodia had informed him about the formulation of a new Excise policy in Delhi and that the Expert Committee's report was open for public comments. Sh. Manish Sisodia had instructed him to ensure the submission of the following comments: (i) equal distribution of liquor shops across all districts to control illegal sales, and (ii) adoption of an auction/tender system instead of the lottery system for obtaining shop licenses. Due to Sh. Manish Sisodia's seniority, Sh. Khan had straightaway passed these instructions to Sh. Kartikey Azad, an intern at the Delhi Minorities Commission. Sh. Khan also admitted that he was unfamiliar with the contents of the Expert Committee report and the details of the auction or lottery systems. In his subsequent statement dated 28.03.2023, Sh. Khan has also disclosed that Sh. Manish Sisodia had provided him with a written note containing the comments to be sent to the Excise Department email IDs.

111. Sh. Kartikeya Azad, the head of interns at the Delhi Minorities Commission, also gave his statement on 24.03.2023. He recounted that on 14.01.2021, Sh. Zakir Khan had called him and other interns to his office, where he had instructed them to send emails to Sh. Manish Sisodia and the Excise Department using pre-written content provided by Sh. Khan. This content, containing recommendations for



the Delhi Excise Policy, was shared in the WhatsApp group 'DMC Jan. 21'. Following Sh. Khan's instructions, Sh. Azad had directed the interns to send the emails and he had subsequently collected screenshots of the sent emails, which he had thereafter forwarded to Sh. Khan *via* WhatsApp.

112. Statements of other interns also corroborate the accounts given by Sh. Zakir Khan and Sh. Kartikeya Azad.

113. It also came on record during investigation that some more emails containing similar content as noted above were recovered from the email dump of Sh. Manish Sisodia. Statements of Ms. AS and Ms. RR, recorded under Section 50 of PMLA, indicated that in January 2021, Ms. AS, who was working at the Delhi Assembly Research Centre, was asked by Sh. Rajesh Gupta, an MLA from AAP, to send an email with provided content. Ms. AS admitted in her statement that she did not understand the contents of the email, which contained suggestions regarding the Expert Committee report. She had also asked four friends to send the same email. Chats between Ms. AS and Sh. Rajesh Gupta, MLA from AAP, corroborate these facts.

114. During investigation, it was discovered that after orchestrating these emails, present applicant Sh. Manish Sisodia had asked his Secretary, Sh. C. Arvind, to obtain the comments received by the Excise Department from six specific email IDs, which Sh. Manish Sisodia had provided. Sh. C. Arvind had then directed Sh. Alok Srivastava, who worked in the Deputy CM's office, to acquire these comments from the Excise Department. Sh. Srivastava had contacted



Sh. Gaurav Mann of the Excise Department to compile the suggestions received from these six email IDs and send them *via* email to Sh. Srivastava, who had then printed and handed them to Sh. C. Arvind, who had subsequently given them to Sh. Manish Sisodia.

115. The Directorate of Enforcement has corroborated these facts through an email dated 19.01.2021 sent by Sh. Gaurav Mann to Sh. Alok Srivastava, WhatsApp chats between them, and the statements of Sh. C. Arvind, Sh. Gaurav Mann, and Sh. Alok Srivastava.

116. Thus, the aforesaid facts *prima facie* reveal at this stage, that in order to overcome the hurdle posed by the Expert Committee Report, Sh. Manish Sisodia had called for public opinion, parts of which were also manufactured by him only, in order to show to the general public that it was the general public and other stakeholders, who were giving suggestions contrary to the Expert Committee report, and not the Government of Delhi, which were taken into consideration while formulating the new Excise Policy.

Change of Draft Cabinet Note by Sh. Manish Sisodia to Hide Opinion of Legal Experts

117. As noted in the timeline, the Expert Committee had submitted its report on 13.10.2020, which was published on the Excise Department's website for public comments on 31.12.2020, with a deadline of 21.01.2021. Subsequently, the Group of Ministers was constituted on 05.02.2021.

118. Between this period, the prosecution alleges that Sh. Manish Sisodia had deliberately altered a draft Cabinet note to exclude the



opinions of three legal experts — including one former Attorney General of India and two former Judges of the Hon'ble Supreme Court, which was obtained by Delhi ALCOBEV Retailers Association and mailed to the email ID of Excise Department. These legal experts had recommended maintaining the existing excise policy, which would have hindered Sh. Manish Sisodia's desire to introduce a new policy, allegedly in conspiracy with the South Group.

119. The investigation also revealed that on 28.01.2021, Sh. Rahul Singh, the then Excise Commissioner, and other officials had submitted the draft Cabinet note containing these legal opinions. However, Sh. Manish Sisodia had allegedly scolded him for including the legal opinions and subsequently had him transferred on 01/02.02.2021. Following this, Sh. Sanjay Goel, the new Excise Commissioner, submitted a revised Cabinet note on 04.02.2021, excluding the opinion of legal experts, as directed by the present applicant Sh. Manish Sisodia.

120. These facts are supported by the statements of Sh. Rahul Singh, Sh. Gaurav Mann, Sh. C. Arvind and Sh. Sanjay Goel, recorded under Section 50 of PMLA, as well as the photograph of Draft Cabinet note prepared by Sh. Rahul Singh recovered from the mobile phone of Sh. Gaurav Mann.



No Reasons to Justify Increase in Wholesale Profit Margin from 5% to 12%

121. It is a matter of fact that in the new Excise Policy, the profit margin of wholesale distributors was increased from 5% to 12%.

122. This Court notes that as alleged by the prosecution, discussions or decisions regarding handing over the entire wholesale operation to private entities, or raising the profit margin to 12% from 5% did not occur during the meetings of the Group of Ministers. This is supported by statements of Sh. Sanjay Goel dated 11.04.2023 and Sh. Arvind Chandran dated 14.04.2023, as well as the minutes of the meetings which clearly reflect that no such policy decisions were made during those meetings.

123. This Court also notes that Sh. Manish Sisodia, in his statement dated 07.03.2023, had failed to offer any reasonable justification for the proposed increase in the profit margin from 5% to 12%. It is also important to note that neither Sh. Manish Sisodia nor any other Minister, who were part of the Group of Ministers, had sought clarification on the rationale behind the 5% profit margin stipulated in the previous regime. This aspect was brought to light by Sh. Arava Gopi Krishna in his statement dated 13.04.2023.

124. This is an important aspect since the prosecution has alleged that the draft of GoM report which was prepared on 15.03.2021 mentioned the wholesale profit margin as 5%, whereas the document finalised on 18/19.03.2021, on the instructions of Sh. Manish Sisodia, contained the wholesale profit margin as 12%, which was allegedly



increased at the behest of members of South Liquor Group for recoupment of the bribes paid by them in advance.

Role of Applicant in Ensuring Allotment of L-1 License to M/s Indo Spirits

125. The prosecution has also alleged, on the basis of investigation conducted by it, that the present applicant was instrumental in providing undue favours to M/s Indo Spirits, which was designed to be a vehicle for recoupment of kickbacks for the South Group. As alleged, Sh. Manish Sisodia had expedited the process of issuing the L-1 license for M/s Indo Spirits.

126. This allegation is *prima facie* supported by the statement of Sh. Arava Gopi Krishna, then Excise Commissioner, who has disclosed that Sh. C. Arvind as well as Sh. Manish Sisodia had firmly instructed him to ensure that the license was granted to M/s Indo Spirits as soon as possible. The statement of Sh. C. Arvind also reveals that he was asked by Sh. Manish Sisodia to ensure that the issue regarding the file of M/s Indo Spirits is resolved. This is further corroborated by the statement of Sh. Narinder Singh, the then Assistant Commissioner (IMFL), who has disclosed that Sh. Arava Gopi Krishna had called him on 05.11.2021 and asked him to grant the license to M/s Indo Spirits on priority basis.

127. As per prosecution, this allegation can also be materially corroborated with the way the file of M/s Indo Spirits was cleared on the same day and formal order of allocation of license was issued on 08.11.2021.



Creation of Uneven Level Playing Field

128. By formulation of the liquor policy in question, an uneven level playing field was also created as far as the retailers of liquor are concerned, which is evident from the provisions of the Policy.

129. The provisions of the Policy imposed prohibitive costs and stringent eligibility criteria that effectively excluded smaller retailers from the competition. The high non-refundable participation fee of Rs.10 lakhs and substantial earnest money deposit requirements of Rs. 30 crores (in case of bidding for one retail zone) and Rs. 60 crores (in case of bidding for more than one retail zone), favored larger entities with significant financial resources, allowing them to dominate the bidding process for retail zones. Small retailers, unable to meet these financial thresholds, were thus precluded from entering the race for winning retail zones or vends. Consequently, the policy *prima facie* facilitated the concentration of retail licenses in the hands of a few large players, as also argued by learned Special counsel for E.D.

130. Furthermore, the investigation in this case also revealed that a complaint regarding allegations of cartelization involving M/s Indo Spirits (i.e. wholesale distributor), M/s Khao Gali Restaurants Pvt Ltd (i.e. retail zone licensee), and others had already been received on 18.10.2021. However, this complaint was ignored by the Excise Department. Despite this complaint being pending against M/s Indo Spirits, Sh. Manish Sisodia, as revealed from the statements of witnesses in the CBI case, had directed the concerned officials of Excise department to clear the file of M/s Indo Spirits and ensure that



it was allotted wholesale distributor licence (L-1), which shows his direct role in the entire scheme of conspiracy.

Destruction of Electronic Evidence by Sh. Manish Sisodia

131. This Court also notes that one of the allegations against Sh. Manish Sisodia pertains to the destruction of evidence, allegedly to obstruct the investigation in the present case.

132. The fourth supplementary prosecution complaint filed by the Directorate of Enforcement reveals that during the period from **01.01.2021 to 19.08.2022**, the applicant, Sh. Manish Sisodia, **used three mobile handsets**. The **last handset**, which was seized from him on 19.08.2022 during searches conducted by the CBI, **had been in use by him since 22.07.2022**. **Notably, this date coincides with the referral of the present matter for CBI inquiry by the Ministry of Home Affairs, based on a letter written by the Lt. Governor of Delhi.**

133. It is alleged that the **two handsets** used by the applicant prior to 22.07.2022 **have been destroyed by him**. In his statement, Sh. Manish Sisodia claimed that his previous mobile handset was damaged, and thus, he had to change the same. However, he was unable to provide the whereabouts or any details regarding the phone he used prior to 14.03.2023.

134. **In this Court's opinion**, such acts raise significant concerns about the deliberate destruction of potential electronic evidence, which could have been crucial to the investigation.



135. **Therefore**, this Court cannot rule out the potential of the applicant to destroy and tamper with the evidence, and influence witnesses in future, if released on bail, which is based on the **reasonable apprehension** of the prosecuting agency which is derived from the **previous conduct** of the accused available on record.

Role of Applicant Sh. Manish Sisodia in Commission of Offence of Money Laundering under Section 3 of PMLA

136. The case of Directorate of Enforcement, in a nutshell, is that being the concerned Minister responsible for formulation of the Excise Policy, the applicant Sh. Manish Sisodia had formulated and implemented the Policy in a way which would allow illegal gains to certain persons/entities, which as per prosecution, was done in exchange of advance kickbacks received from them. Therefore, Sh. Manish Sisodia was instrumental in creating an entire ecosystem for generating, concealing, projecting as untainted, possessing and using the proceeds of crime.

137. It is crucial to note that Section 2(1)(u) of PMLA provides that any property derived or obtained directly or indirectly as a result of scheduled offence as well as of criminal activity related to Scheduled offence, is proceeds of crime. Additionally, as per Section 3 of PMLA, the offence of money laundering includes any direct or indirect attempt in indulging or knowingly assisting or being party or being actually involved in any process or activity connected with the process of crime.



138. As regards the issue of proceeds of crime, the Hon'ble Apex Court while dismissing the bail application of the applicant herein, *vide* judgment dated 31.10.2023, had recorded the following observations:

“21. However, there is one clear ground or charge in the complaint filed under the PML Act, which is free from perceptible legal challenge and the facts as alleged are tentatively supported by material and evidence. This discussion is equally relevant for the charge-sheet filed by the CBI under the PoC Act and IPC. We would like to recapitulate the facts as alleged, which it is stated establish an offence under Section 3 of the PML Act and the PoC Act. These are:

- In a period of about ten months, during which the new excise policy was in operation, the wholesale distributors had earned Rs. 581,00,00,000 (rupees five hundred eighty one crores only) as the fixed fee.
- The one time licence fee collected from 14 wholesale distributors was about Rs.70,00,00,000 (rupees seventy crores only).
- Under the old policy 5% commission was payable to the wholesale distributors/licensees
- The difference between the 12%; minus 5% of the wholesale profit margin plus Rs.70,00,00,000/-; it is submitted, would constitute proceeds of crime, an offence punishable under the PML Act. The proceeds of crime were acquired, used and were in possession of the wholesale distributors who have unlawfully benefitted from illegal gain at the expense of the government exchequer and the consumers/buyers. Relevant portion of the criminal complaint filed by the DoE dated 04.05.2023, reads:

“One of the reasons given by Sh Manish Sisodia is to compensate the wholesaler for increased license fee from Rs 5 lacs to Rs. 5 Cr. During this policy period, 14 LI licences were given by



Excise Department, by raising the license fee for LI to Rs. 5 Cr in the entire period of operation of the Delhi Excise Policy 2021- 22, the Govt. has earned Rs. 75.16 Cr from the license fee of LI (as per Excise department communication dated 11.04.2023) (RUD 34). On the other hand the excess profit earned by the wholesalers during this period is to the tune of Rs. 338 Cr. (7% additional profit earned due to increase from 5% to 12%, Rs. 581 Cr being the total profit of LI as informed by Excise department). Therefore there is no logical correlation between the license fee increase and the profit margin increase. Whereas this excess profit margin benefit could have been passed on to the consumers in form of lower MRP. Contrary to the claim that the policy was meant to benefit the public or the exchequer, it was rather a conspiracy to ensure massive illegal gains to a select few private players/individuals/entities.”

139. Thus, the Hon’ble Apex Court has observed that there is no dispute about the fact that the wholesale distributors had earned profits of Rs. 581 crore during the period of ten months, and excess profit earned by them, due to increase in their margin from 5% to 12%, was Rs. 338 crore, which the prosecution alleges to be the proceeds of crime.

140. This Court further notes that the case of prosecution, as per the fourth supplementary prosecution complaint, is that the applicant Sh. Manish Sisodia is directly and knowingly involved in the processes or activities which are related to proceeds of crime. Though the prosecution alleged that proceeds of crime to the tune of Rs. 622.67 crore were generated through activities of Sh. Manish Sisodia, one of the important particulars to take note of is that M/s Indo Spirits had



earned a profit of Rs. 192.8 crore in a span of 10 months due to the new Excise Policy. It is submitted that Sh. Manish Sisodia, in conspiracy with the South Group and Sh. Vijay Nair, assisted and facilitated the formation of M/s Indo Spirits as a vehicle to recoup and launder the proceeds of crime, which then acquired the L-1 wholesale license by the acts of conspiracy and in lieu of the payment of alleged kickbacks. Thus, the entire profit (12%) of M/s Indo Spirits of Rs. 192.8 crore, would constitute proceeds of crime as per Section 2(1) (u) of PMLA. As inferred from the investigation conducted, *prima facie* it appears at this stage that Sh. Manish Sisodia has knowingly assisted the members of South Groups and other co-accused persons by ensuring grant of L-1 license to M/s Indo Spirits as well as ensuring, through Sh. Vijay Nair, that M/s Indo Spirits gets the distribution business of M/s Pernod Ricard.

141. It is also the case of the Directorate of Enforcement that advance kickbacks to the tune of Rs. 100 crores were received by the applicant and Aam Aadmi Party, through Sh. Vijay Nair, from the members of South Group, in *lieu* of which favourable clauses were incorporated in the new Excise Policy. The investigation had also revealed that Sh. Manish Sisodia had directed approver Sh. Dinesh Arora to work with co-accused Sh. Vijay Nair, following which Sh. Dinesh Arora had coordinated the transfer of advance kickbacks of Rs. 31 crores from the South Group to Sh. Vijay Nair, parts of which were allegedly used in the election campaign of Aam Aadmi Party in Goa.



142. The connection of Sh. Manish Sisodia with the alleged kickbacks was a result of the new Excise policy created by Sh. Manish Sisodia and therefore, *it will be a matter of trial* regarding the nexus between Sh. Vijay Nair and the allegation that the kickbacks were received by Sh. Vijay Nair at behest of Sh. Manish Sisodia, in lieu of the kickbacks which were received on his behalf by Sh. Vijay Nair and used for Goa Elections later on.

To Sum Up: The Modus Operandi

- Sh. Manish Sisodia, was the Deputy Chief Minister of Delhi and the Minister with 18 portfolios, including the Excise Department.
- An Expert Committee was constituted by Sh. Manish Sisodia for the purpose of ‘reforming the liquor trade in Delhi’.
- The Report submitted by the Expert Committee included suggestions such as: (i) handing over wholesale operations of entire Delhi to one Government entity, (ii) opening of private liquor vends through lottery system instead of auction/bidding system to prevent carterlization, etc.
- These suggestions of the Expert Committee Report were against the pre-determined agenda of Sh. Manish Sisodia. Therefore, the report of Expert Committee was put up for ‘public suggestions/feedback’ on the website of the Excise



Department

- To circumvent the suggestions of the Expert Committee Report, planted emails containing content which was in contrast to the suggestions of Expert Committee report, were prepared by Sh. Manish Sisodia to suit his purposes and aim.
- On the directions of Sh. Manish Sisodia, some students interning with the Delhi Minorities Commission and Delhi Assembly Research Centre were asked to send these pre-decided emails on the official Email ID of Excise Department, as their opinion on the new Excise Policy.
- The summary of the content of these pre-decided emails was then called by Sh. Manish Sisodia, to be presented before the Council of Ministers of Delhi Government.
- Council of Ministers, headed by Chief Minister Sh. Arvind Kejriwal, constituted a 'Group of Ministers' headed by Sh. Manish Sisodia, for examining all aspects of the existing liquor policy, Expert Committee Report, and the public feedback.
- During the period when the report of Group of Ministers was being prepared, the members of the South Liquor Group were present in Delhi. Investigation revealed that certain clauses were added in the report of Group of Ministers at the behest of South Liquor Lobby.



- Investigation also revealed that advance kickbacks i.e. bribes, allegedly to the tune of Rs. 100 crores were paid by co-accused persons including the members of South Liquor Lobby, in exchange of getting favourable clauses added in the policy for their benefit. As per investigation, Rs. 45 crores out of these kickbacks were used in Goa Assembly Elections by the Aam Aadmi Party to which the applicant belongs.

- The draft report of Group of Ministers, which was finalized by Sh. Manish Sisodia, was thereafter approved by the Council of Ministers of Delhi Government headed by Sh. Arvind Kejriwal. Thus, the new Excise/Liquor Policy of Delhi was formed.

- How did this policy work to the detriment of relatively smaller businesses and vendors?
 - (a) Wholesale distributor license could be granted only to those business entities which had minimum annual turnover of Rs. 150 crores in last three years, and could pay license fees of Rs. 5 crores.

 - (b) Retail Vends for selling liquor were to be operated by Retail Zone Licensee holders. Entry barriers, such as non-refundable participation fee and very high earnest money deposit, were created even for Retail Zone License bidding/auction.



→ How did this policy work to the benefit of select individuals and large businesses?

(a) Investigation revealed that a firm namely M/s Indo Spirits was created, in which 65% of the shares were given to the members of South Group. Sh. Manish Sisodia ensured that M/s Indo Spirits was firstly made the wholesale distributor of biggest liquor manufacturer in Delhi i.e. Pernod Ricard, and secondly, that it was granted the whole distributor license (L-1) under the new excise policy.

(b) In the new policy, the profit margin of wholesale distributors (L-1) was increased from 5% to 12%, without any reasonable justification. This ended up in wholesale distributors earning additional profits of Rs. 338 crores in a span of 10 months.

(c) During this period, total profit earned by one wholesale distributor i.e. M/s Indo Spirits alone was Rs. 193 crores out of Rs. 581 crores.

WHETHER CASE FOR GRANT OF BAIL IS MADE OUT, ON MERITS?

143. In the initial discussion of this judgment, this Court has referred to the principles which would ordinarily govern the grant of bail for offences under the PC Act and the PMLA. The triple test for



grant of bail, require 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?

144. **In addition to the triple test**, the Courts have to also consider other factors such as the **nature** of offence and **severity** of **punishment**, nature of **evidence** collected by the investigating agency, etc. while adjudicating an application seeking grant of regular bail. Furthermore, while considering grant of bail in cases under PMLA, the Courts also have to take into account the **rigors** of Section **45** of **PMLA**, wherever applicable.

145. In the present case, learned Senior Counsels appearing on behalf of Sh. Manish Sisodia had argued that the applicant satisfies the triple test for grant of bail. **However**, this Court is also of the opinion that as alleged by the prosecution on the basis of material collected and investigation conducted so far, that the applicant Sh. Manish Sisodia had *prima facie* indulged in acts of destruction of crucial evidence including electronic evidence. It is an admitted fact that Sh. Manish Sisodia had failed to produce two of his mobile phones which he had been using prior to initiation of investigation in this case and had claimed that the same were damaged, but he was not aware of their whereabouts. Thus, the possibility of tampering



with evidence, if the applicant is released on bail, cannot be ruled out in this case.

146. This Court further notes that the applicant was serving as the **Deputy Chief Minister of Delhi and was holding 18 portfolios in the Cabinet**. This shows that he was a powerful power centre of the party as he, as a single individual, had responsibility of 18 Ministries dealing with multiple portfolios and was having many senior officers working under him to run the administration of those departments. These senior officers, some of whom have given statements against him can be influenced in case he is released on bail. The applicant is also a senior leader of Aam Aadmi Party. Thus, he is an influential person within the power corridors of Delhi Government. This Court has already noted that many crucial witnesses who are yet to be examined during the trial of this case are public servants at various levels, who have given statements against Sh. Manish Sisodia under Section 50 of PMLA and Section 161/164 of Cr.P.C., and the possibility of the applicant trying to influence the witnesses, if released on bail cannot be ruled out. While observing so, this Court also remains conscious of the fact that further investigation *qua* some other accused persons is still underway. As far as the applicant being flight risk is concerned, even if that may *prima facie* not be apparent from the record, however, passing the triple test would mean that all the conditions of the triple test should be satisfied. The other two conditions of the triple test regarding influencing the witnesses or tampering with evidence have not been satisfied since Sh. Manish Sisodia in the past has allegedly destroyed evidence and there is



prima facie material on record with the investigating agency in this regard.

147. Therefore, this Court is of the view that the **applicant Sh. Manish Sisodia fails to satisfy the triple test for grant of bail.**

148. As far the offence of money laundering under PMLA is concerned, **Section 45 of PMLA** provides that for the purpose of granting bail to an accused, the twin condition test is to be passed wherein, the Court will have to arrive at a finding, even if on the basis of broad probabilities of the case, that the accused is not guilty of offence of money laundering.

149. In this case, however, after considering the material placed on record by the prosecution, *which has been discussed in the preceding paragraphs in detail*, **this Court is of the view** that prosecution has made out a *prima facie* case of commission of money laundering under Section 3 of PMLA against Sh. Manish Sisodia, at this stage. It is to be noted at the outset that the requirement of recovery of cash amount from a particular person may not necessarily be a mandatory requirement in a money laundering case where the allegations are of being part of a conspiracy consisting of multiple accused persons. Even otherwise, the transaction of monies, received as kickbacks, as per the evidence now available on record after further investigation in the case by the Directorate of Enforcement was allegedly through *Hawala* operators and there are statements recorded under Section 50 of PMLA in this regard. There are further statements as to how money was received for Goa elections in cash through *Hawala* channels.



150. To sum up, there is no dispute about the fact that Sh. Manish Sisodia was the Minister concerned of Excise Department, who was responsible for formulation as well as implementation of Delhi Excise Policy 2021-22, and due to the irregularities committed in its formulation, such as increasing the margin of wholesale distributors from 5% to 12% without any reasonable justification, the wholesale distributors were able to earn an additional profit of 7% amounting to Rs. 338 crores. There is material on record to *prima facie* show that the members of South Group were involved in formulation of the Delhi Excise Policy and had met with co-accused Sh. Vijay Nair on several occasions, who was the In-charge of Media and Communication wing of Aam Aadmi Party and used to function from the office of Delhi's Chief Minister and at times, had represented himself as OSD to the Excise Department, whose Minister concerned was Sh. Manish Sisodia. The prosecution has also shown *prima facie* that M/s Indo Spirits was created as a vehicle to recoup the alleged kickbacks, and the members of South Group were given shares to the extent of 65% in the said firm. It had also come on record, on the basis of statements of witnesses, that Sh. Manish Sisodia had directed the officials of Excise Department to ensure that L-1 license was granted to M/s Indo Spirits.

151. Thus, it becomes *prima facie* apparent that by committing the above-mentioned acts, the applicant Sh. Manish Sisodia was actively involved in formulation and implementation of various processes and activities in dealing with proceeds of crime, thereby committing the offence of money laundering as defined under Section 3 of PMLA,



which needless to say, also includes direct or indirect attempts to indulge or knowingly assisting or being a part of any process or activity connected with the proceeds of crime.

152. Therefore, the applicant Sh. Manish Sisodia **also fails to cross the bar and rigours of Section 45 of PMLA** as this Court cannot arrive at a conclusion that Sh. Manish Sisodia is *prima facie* not guilty of offence alleged against him on the basis of the material placed before this Court.

153. **It is again clarified and reiterated, at cost of repetition, that at the stage of grant of bail, this Court has to only *prima facie* go through the material and not conduct a mini-trial to reach a conclusion as to whether the accused is guilty beyond reasonable doubt or not. The stage of such assessment is the stage of trial and not hearing of a bail application.**

WHETHER THE APPLICANT CAN BE GRANTED BAIL ON SOLE GROUND OF DELAY IN TRIAL, EVEN THOUGH HE IS NOT ENTITLED TO GRANT OF BAIL ON MERITS?

154. Learned Senior Counsels for the applicant Sh. Manish Sisodia had argued that the applicant is entitled to grant of bail, even solely on the ground that the trial has not yet commenced and it is still at the stage of scrutiny of documents under Section 207/208 of Cr.P.C. Conversely, learned counsels for the respondents had argued that in case of serious economic offences, delay in trial cannot be the sole ground for grant of bail as held by the Hon'ble Apex Court in catena of judgments.



155. The present case before this Court involves commission of serious offence of corruption in public office and specifically money laundering. These offences strike at the heart of our economic and social systems, undermining the rule of law and eroding public trust in our institutions.

156. In cases of economic offences, the Hon'ble Apex Court has held that economic offences, which have deep rooted conspiracies, have to be considered as grave offences for the purpose of grant of bail [Ref: *Y.S. Jagan Mohan Reddy (supra)*].

157. It has also been held that economic offences are grave offences considering their consequences on the society as a whole, and the gravity will have to be considered on a case-to-case basis, on the basis of facts involved therein [Ref: *P. Chidambaram v. Directorate of Enforcement (2020) 13 SCC 791*].

158. In addition to aforesaid, the Hon'ble Apex Court has also time and again held that delay cannot be the sole criteria for grant of bail in cases of economic offences and/or those involving money laundering. In case of *State of Bihar v. Amit Kumar (2017) 13 SCC 751*, following important observations were made by the Hon'ble Apex Court:

“8. A bare reading of the order impugned discloses that the High Court has not given any reasoning while granting bail. **In a mechanical way, the High Court granted bail more on the fact that the accused is already in custody for a long time. When the seriousness of the offence is such the mere fact that he was in jail for however long time should not be the concern of the courts.** We are not able to appreciate such a casual approach while granting bail in a case which has the effect of undermining the trust of people



in the integrity of the education system in the State of Bihar.”

(emphasis supplied)

159. Similarly, in case of *Tarun Kumar (supra)*, while dismissing the bail of the accused therein, it was held by the Hon’ble Apex Court that the agencies have to take a lot of minute exercise in cases involving intricate nature of transactions and that the economic offences are to be visited with a different approach. The relevant observations are extracted hereunder:

“21. The apprehension of the learned counsel for the appellant that the trial is likely to take long time and the appellant would be incarcerated for indefinite period, is also not well founded in view of the observations made by this Court in case of *Vijay Madanlal (supra)*. On the application of Section 436A of the Code of Criminal Procedure, 1973, it has been categorically held therein that: -

“419. Section 436A of the 1973 Code, is a wholesome beneficial provision, which is for effectuating the right of speedy trial guaranteed by Article 21 of the Constitution and which merely specifies the outer limits within which the trial is expected to be concluded, failing which, the accused ought not to be detained further. Indeed, Section 436A of the 1973 Code also contemplates that the relief under this provision cannot be granted mechanically. It is still within the discretion of the Court, unlike the default bail under Section 167 of the 1973 Code. Under Section 436A of the 1973 Code, however, the Court is required to consider the relief on case-to-case basis. As the proviso therein itself recognises that, in a given case, the detention can be continued by the Court even longer than one-half of the period, for which, reasons are to be recorded by it in writing and also by imposing such terms and conditions so as to ensure that after release, the accused makes himself/herself available



for expeditious completion of the trial.”

22. Lastly, it may be noted that as held in catena of decisions, the economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country. Undoubtedly, economic offences have serious repercussions on the development of the country as a whole. To cite a few judgments in this regard are Y.S. Jagan Mohan Reddy vs. Central Bureau of Investigation⁸, Nimmagadda Prasad vs. Central Bureau of Investigation⁹, Gautam Kundu vs. Directorate of Enforcement (supra), State of Bihar and Another vs. Amit Kumar alias Bachcha Rai¹⁰. This court taking a serious note with regard to the economic offences had observed as back as in 1987 in case of *State of Gujarat vs. Mohanlal Jitamalji Porwal and Another* as under:-

“5... The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to books. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the National Economy and National Interest...”

23. With the advancement of technology and Artificial Intelligence, the economic offences like money laundering have become a real threat to the functioning of the financial system of the country and have become a great challenge for the investigating agencies to detect and comprehend the intricate nature of transactions, as also the role of the persons involved therein. Lot of minute exercise is expected to be undertaken by the Investigating



Agency to see that no innocent person is wrongly booked and that no culprit escapes from the clutches of the law. When the detention of the accused is continued by the Court, the courts are also expected to conclude the trials within a reasonable time, further ensuring the right of speedy trial guaranteed by Article 21 of the Constitution.”

160. In case of *Satyender Kumar Jain v. Directorate of Enforcement, SLP (Crl) 6561/2023*, the Hon’ble Apex Court has observed that the provision for grant of bail, on the basis of delay in trial, is already imbibed in Section 436A of Cr.P.C. which provides that an undertrial, who has remained in custody for a period of one-half of the maximum punishment which can be awarded to him upon conviction, shall be released on bail, and that Section 436A also applies with full force to PMLA. The relevant observations are extracted hereunder:

“33. The appellants were released on bail for temporary period after their arrest and the appellant-Satyendar Kumar Jain was released on bail on medical ground on 30.05.2022, which has continued till this day. He shall now surrender forthwith before the Special Court. It is needless to say that right to speedy trial and access to justice is a valuable right enshrined in the Constitution of India, and provisions of Section 436A of the Cr.P.C. would apply with full force to the cases of money laundering falling under Section 3 of the PMLA, subject to the Provisos and the Explanation contained therein.”

161. Therefore, in view of the above-referred judicial precedents, this Court is of the opinion that the **applicant herein cannot be entitled to bail solely on the ground of delay in trial**, especially when he has failed to pass the triple test and other parameters



including gravity of offence, for grant of bail under Section 439 of Cr.P.C. as well as the twin conditions under Section 45 of PMLA.

CONCLUSION

162. In this Court's opinion, **corruption is a menace which when committed while holding a public office eats the very crop that it has to guard.**

Manufacturing Fake Public Opinion: Another Form of Corruption

163. The case at hand allegedly *prima facie* hints at misuse of power and breach of public trust by the applicant, who was serving as the Deputy Chief Minister of Delhi at the relevant point of time. As a minister having 18 portfolios including the Department of Excise, the applicant was entrusted with the formulation of a new liquor policy for the NCT of Delhi. However, the material collected during investigation, *which has been discussed in detail in the preceding paragraphs, prima facie at this stage*, shows that the aim of the applicant was to create a policy which would benefit selected individuals, especially the wholesale distributors, in return of advance kickbacks received from them.

164. However, the applicant allegedly subverted this process of making the policy by fabricating the public feedback to suit his pre-determined goal. The applicant had called public comments on the report submitted by the Expert Committee for the formulation of the liquor policy, ostensibly to incorporate the views and suggestions of the common citizens of Delhi, and other stakeholders, in the



upcoming Excise Policy. However, as per the case of CBI and other material on record and statement of many witnesses recorded at this stage, point out that rather than genuinely seeking opinion of the common citizens of Delhi, the applicant had rather orchestrated a scheme as per material collected by the prosecution, whereby some pre-drafted emails, containing specific suggestions aligned with his own interests, were sent to the designated feedback email addresses. These emails were sent under the guise of public feedback or opinion, by individuals who were instructed to do so by the applicant Sh. Manish Sisodia himself. It has also come on record during investigation that out of more than 14,000 emails received as public feedback only those pre-decided emails were placed before the Council of Ministers/Group of Ministers which were pre drafted by Sh. Manish Sisodia and made to sent to his own people.

165. In this Court's opinion, **this deceptive act** was a calculated move **to create an illusion** that the Excise policy was formed after careful consideration of feedback received from the public. But in reality, the feedback was manufactured to justify the applicant's predetermined decision to formulate the Excise policy, in defiance of the Expert Committee Report, to enrich a few individuals, in exchange for kickbacks. It is interesting to note that the public opinion also contained the opinion of legal experts including one former Attorney General of India and two former Judges of the Hon'ble Supreme Court, which was obtained by one Retailers Association and sent to the Excise Department as feedback from the stakeholders. It shows that the stakeholders were trying to participate



in giving constructive opinion in the formulation of the new liquor policy presuming that their opinion matters, and since the Delhi Government itself had called for their opinion, it would be taken into consideration.

166. **Noteworthy is also the fact that the public reposes its faith in the Government that if suggestions are being called from them, they will be considered too.** However, the same were brushed aside by removing the same from the draft cabinet note which was prepared by the then Excise Commissioner on the behest of Sh. Manish Sisodia, since the same did not align with the pre-determined goal of the applicant. This material on record *prima facie* allegedly points towards the intent and one of the steps towards acceptance of the changes that Sh. Manish Sisodia wanted to bring in the New Excise policy.

167. The dissemination of false opinions, particularly when presented as genuine feedback, also constitutes a form of corruption. In the eyes of the Court, the distinction between manufacturing public opinion and gathering genuine public feedback is stark.

168. This **camouflage of public opinion** may be used as a shield by the policymakers, to protect themselves from criticism or accountability, by creating an **illusion of legitimacy** around policies that **may lack genuine public endorsement**. Thus, the practice of portraying policies as having widespread public support through fake responses is deceptive as it not only **misleads the public** but also serves to camouflage the lack of authentic support for the policies in question which is also the allegation of the prosecuting agencies



regarding which they have placed material on record and will be tested during trial.

169. To sum up, in a nutshell, the alleged **acts of corruption in this case originated** from the applicant Sh. Manish Sisodia's desire to create a liquor policy that would benefit selected individuals, in return for substantial amounts of advanced kickbacks, which the prosecution claims to be around Rs. 100 crores, part of which were allegedly used for Goa Elections as per new material collected by prosecution. This was one of the steps towards ensuring that it was portrayed to the general people that the New Excise policy reflected and was based on the will of the people of Delhi whereas in fact it was purely based on the will of Sh. Manish Sisodia and the co-accused persons who were part of the alleged conspiracy.

Judicial Resolve Against Corruption while dealing with applications for bail when investigation is pending

170. While public figures will be accountable for the decisions they make, the **Courts have to respond** to cases of corruption and money laundering and **have to send a strong message that there is no culture of a laid back approach** by the Courts in dealing with such cases.

171. Even while granting or denying bail to an accused, the Courts have to assess the **seriousness of an offence**. Dealing with the present case, this Court notes that the Prevention of Corruption Act



was enacted to curb the menace of corruption. The Courts of law apply the laws so enacted to ensure rule of law.

172. If money is used to influence and dominate policy decisions by politicians for the purpose of putting the bribe at the disposal of such public figures, the Courts in such cases have to ensure that the trust of the public still survives in its ability to bring the alleged accused(s) within the fold of law and treat the offence as serious. It is incumbent upon the judiciary to remain steadfast in its pursuit of justice, **regardless of the stature or influence of the individuals involved.**

173. Moreover, the **form of corruption** which has the **tendency of stealing the legitimate resources of the poor ordinary people and giving it to the rich can be one of the worst forms of corruption.**

174. Small and medium-sized enterprises, which are managed by **common people**, and are the **backbone of economic growth and job creation**, are particularly **vulnerable** to the detrimental impacts of corruption which is *prima facie* visible in the formulation of the new Excise Policy which **eradicated the common and small time businesses and gave the entire playing field in the liquor business to those who had money, power and had created a cartel** on the basis of financial gains to those formulating a policy, which adds to the seriousness of the offence at this stage.

175. **In this Court's opinion**, non-recovery of any amount of money in cash cannot be a proof *prima facie* that no corruption has taken place since the offender's mind uses the new technology to commit offences without leaving traces of commission of offences. There can be no question of acceptance of argument regarding no



recovery of cash in this case too, in view of the statements of some of the *Hawala* Dealers and other witnesses recorded during further investigation of the case as well as after the last bail application of the applicant Sh. Manish Sisodia was rejected.

176. The Courts of law may be considered as constant thorns in the way of free-flowing corruption and, even if that be so and are termed as thorns, it scores the victory for the masses.

The Decision

177. In view of the foregoing discussion and detailed reasons recorded in the paragraph nos. 143 to 161, this Court is of the opinion that the applicant Sh. Manish Sisodia has failed to make out a case for grant of bail at this stage.

178. Since the matter was argued on merit by the learned Senior counsel for the applicant Sh. Manish Sisodia and at length by the learned counsels for Directorate of Enforcement and CBI, and since this Court has reached a conclusion that the judgment of Hon'ble Supreme Court dated 30.10.2023 is clear that the case has to be decided on merits also and not solely on the basis of delay in trial, without being influenced by the order of Hon'ble Supreme Court, this Court has decided the present bail applications in view of extensive arguments on delay as well as on merits regarding the role of Sh. Manish Sisodia, so that justice is not only done but is seem to be done.



179. Accordingly, the present applications seeking grant of regular bail are hereby dismissed.

180. It is, however, clarified that the observations made in this judgment are *prima facie* in nature which have been made with the sole purpose of deciding the present bail applications at this stage, and the same will not in any manner affect the merits of the case during trial.

CRL.M.A. 13610/2024 in BAIL APPLN. 1557/2024

CRL.M.A. 13621/2024 in BAIL APPLN. 1559/2024

181. These applications have been filed on behalf of the applicant Sh. Manish Sisodia seeking permission to physically meet his wife for two days on a weekly basis in custody.

182. It is the case of the applicant that his wife has been suffering from serious medical ailments and over the past year, her condition has deteriorated further. It is further submitted that though family members of the incarcerated person are allowed to meet physically once a week in the jail, however owing to the severe medical condition suffered by her, she is unable to meet her husband physically which is also causing grave mental trauma to her. Thus, it is prayed that the applicant herein, who is the only caretaker/ attendant for his wife, must remain present to take care of her and be permitted to meet her in custody.

183. This Court notes that the wife of the applicant Sh. Manish Sisodia is unfortunately suffering from several diseases and ailments, and understandably, must be under stress and need the support of her



husband. Needless to say, such support can only be provided by the present applicant being her husband. It is the communication between the life partners and the re-assurance for their support that gives strength to a partner in need of such strength.

184. This Court therefore, is of the opinion that Sh. Manish Sisodia will be permitted to visit his residence to meet his wife in custody, at State expense, once every week. The other terms and conditions shall remain the same as were imposed by the learned Trial Court previously.

185. With the above directions, these applications are disposed of.

186. Copy of this judgment be given *dasti* under the signature of Court Master free of cost to the learned counsel appearing on behalf of the applicant as the applicant is in judicial custody.

187. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MAY 21, 2024/ns

TD/TS/ASB