IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRIMINAL) NO. OF 2021

IN THE MATTER OF:

Lawyers Against Malicious Prosecution …Petitioner

Versus

Union of India and Others …Respondents

PAPERBOOK

(FOR INDEX KINDLY SEE INSIDE)

ADVOCATE FOR THE PETITIONER: MR. PRATEEK K. CHADHA

INDEX

S.No.	Particulars	Page No. of Part to which it belongs		Remarks
	(i)	(ii)	(iii)	(iv)
1.	Listing Proforma			
2.	Memo of Parties			
3.	Cover Page of Paper Book			
4.	Index of Record of Proceedings			
5.	Defect List			
6.	Note Sheet			
7.	Synopsis	B-E		
8.	List of Dates and Events	F-G		
9.	Writ Petition under Article 32 of the Constitution of India along with supporting Affidavit.	1-42		
10.	**Annexure-P-1:** A true copy of Bar Association ID, Adhaar and Pan Card issued in the name of the Director of the Petitioner association.	43-44		
11.	**Annexure-P-2:** A true copy of the Order dated 16.08.2021 passed by this	45-54		

	Hon'ble Court in Criminal Appeal 838 of 2021.			
12.	**Annexure-P-3:** A true copy of the Order dated 22.07.2016 passed by the Hon'ble Punjab and Haryana High Court in CRWP No. 971 of 2016.	55-71		
13.	**Annexure-P-4:** A true copy of the Order dated 22.05.2017 passed by the Punjab and Haryana High Court in CRM No. M 14509 of 2017.	72-75		
14.	**Annexure-P-5:** A true copy of the Order dated 15.05.2018 passed by the High Court of Jharkhand at Ranchi in ABA No. 2812 of 2018.	76-77		
15.	**Annexure-P-6:** A true copy of the Order dated 12.03.2018 passed by the Special Sessions Court, Jaipur (Prevention of Money Laundering Act, 2002/ (special Court Communal Riots Case), Jaipur Metropolitan in Criminal Complaint No. 02 of 2016.	78-97		
16.	**Annexure-P-7:** A true copy of the Order dated 24.01.2020 passed by the Hon'ble Rajasthan High	98-131		

	Court in S.B. Criminal Revision Petition No. 273 of 2019.			
17.	**Annexure-P-8:** A true copy of the Order dated 07.05.2015 passed by the Gujarat High Court in Special Criminal Application (Quashing) No. 4922 of 2014.	132-145		
18.	**Annexure-P-9:** A true copy of the Order dated 22.01.2020 passed by the High Court of Judicature at Allahabad, Lucknow Bench in Case No. 61 of 2020.	146-159		
19.	**Annexure-P-10:** A true copy of the Order dated 14.09.2018 passed by the High Court of Jharkhand at Ranchi in ABA No. 3212 of 2018.	160-162		
20.	**Annexure-P-11:** A true copy of the Order dated 21.02.2014 passed by the High Court of Gujarat at Ahmedabad in Criminal Miscellaneous Application No. 2492 of 2014.	163-172		
21.	**Annexure-P-12:** A true copy of the Order dated 06.07.2020 passed by the High Court of Judicature for Rajasthan Bench at	173-181		

	Jaipur in S.B. Criminal Miscellaneous Bail Application No. 6273 of 2020.			
22.	**Annexure-P-13:** A true copy of the Order dated 28.02.2017 passed by the High Court of Punjab and Haryana at Chandigarh in CRM No. M-42455 of 2016.	182-185		
23.	**Annexure-P-14:** A true copy of the Order dated 13.02.2020 passed by the High Court of Punjab and Haryana at Chandigarh in CRM-M No. 12488 of 2019.	186-197		
24.	**Annexure-P-15:** A true copy of the Order dated 19.11.2014 passed by the High Court of Gujarat at Ahmedabad in Special Criminal Application (Quashing) No. 4697 of 2014.	198-205		
25.	F/M		206	
26.	V/A		207-210	

PROFORMA FOR FIRST LISTING

SECTION PIL-W

The case pertains to (Please tick/check the correct box):

□ Central Act: (Title) :

□Section:

□Central Rule: (Title):

□Rule No(s):

□State Act: (Title) : _____NA_____

□Section: _____NA _____

□State Rule: (Title)

□Rule No(s):

□Impugned Interim Order: _____NA_____

□ Impugned Final Order/ Decree :

□ High Court:

□ Name of Judges-

□Tribunal/Authority:(Name) _____NA_____

1. Nature of matter: ☐ Civil ☐ Criminal

2. (a) Petitioner: Lawyers Against Malicious Prosecution

(b) e-mail ID: _____NA_____

(c)Mobile phone number: _____NA_____

3. (a) Respondent: Union of India and Others

(b) e-mail ID: _____NA_____

(c) Mobile phone number: _____NA_____

4. (a) Main category classification: : 08: Letter Petition & PIL Matters

(b) Sub classification: 0812: Others

5. Not to be listed before: NA

6. a) Similar disposed of matter with citation, if any, & case details: No similar matter disposed of.

b) Similar pending matter with case details : No similar matter pending

7. Criminal Matters: No

(a) Whether accused/convict has surrendered:

Yes No

(b) FIR No.

Date:

(c) Police Station:

(d) Sentence Awarded: _____

(e) Sentence Undergone:

8. Land Acquisition Matters: NA

(a) Date of Section 4 notification: _____ NA _____

(b) Date of Section 6 notification: _____ NA _____

(c) Date of Section 17 notification: _____NA _____

9. Tax Matters: State the tax effect: _____ NA _____

10. Special Category (first petitioner/appellant only): NA

Senior citizen> 65 years SC/ST Woman/child

Disabled Legal Aid case In custody

11. Vehicle Number (in case of Motor Accident Claim matters): NA

PRATEEK K. CHADHA

Date: 08.09.2021 **(AOR CODE : 2651)**

ADVOCATE FOR THE PETITIONER

D-416, LGF, DEFENCE COLONY

NEW DELHI-110024

PHONE- 09871588144

RECORD OF PROCEEDINGS

Sl. No.	Date of Record of Proceedings	Pages
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		
14.		
15.		
16.		
17.		
18.		
19.		
20.		

SYNOPSIS

That the present Writ Petition is being filed under Article 32 of the Constitution of India by the Petitioner to enforce fundamental rights, particularly the Right to Life (Article 21) & Right to Equality (Article 14) guaranteed by the Constitution. The Petitioner is a public spirited individual, firmly believes that the Indian constitution guarantees life and liberty, justice and equality for all persons. Therefore, he has moved this Writ Petition under Article 32 of the Constitution of India, which seeks to invoke the most salient fundamental right, the right to life guaranteed under Article 21.

That the Petitioner is an unregistered association of lawyers from across the country who have founded a common platform "Lawyers Against Malicious Prosecution" (https://LawyersAgainstMaliciousProsecution.org) represented by it to legally battle against malicious prosecution launched against innocent individuals and organizations on one pretext or other as well as on the basis of private, financial, political or prejudiced interests.

It is submitted that the Complaints / Prosecution Complaints filed by a non-Police Force stands on a lower footing than the Final Report filed by a Police Force under Sections 170 & 178 of Cr.P.C. If the Investigating Agency has not arrested the accused during investigation, then it means that the Investigation Agency has decided not to arrest the accused on considered grounds and it is then a total violation of Article 21 rights of the accused to be produced before the designated special court through NBWs, and thereafter to be sent to judicial custody by the designated special court on the court taking cognizance of the complaint. In such situations as above, the accused is denied the right (remedy)

available to him / her under Cr.P.C Section 438 / 439 to apply for anticipatory bail as the accused is either arrested under a NBW and produced before the Court and / or he / she is remanded to judicial custody on his / her appearance in the designated court and the court taking cognizance of the complaint. And Hon'ble High Courts often do not accept Cr.P.C 438 / 439 petitions till cause of action apprehending arrest arises from cognizance of a complaint being taken by the designated special court by which time it is too late for the accused to avail of the Cr.P.C Section 438 / 439 remedy.

This Hon'ble court and various High Courts have, time and again, stated that the Magistrate is duty bound to accept the final report/charge sheet filed by the police/investigation agency. However, the question that arose before this Hon'ble court in ***Siddharth vs State of Uttar Pradesh &Anr.*** was whether the accused, who has joined the investigation, and has not been arrested during the investigation or when the investigation is complete, needs to be arrested before the charge sheet is taken on record? In answering this question, this Hon'ble court has delivered the final judgement in Siddhartha Vs State of Uttar Pradesh & anr wherein it has been stated that; *"We are, in fact, faced with a situation where contrary to the observations in Joginder Kumar's case how a police officer has to deal with a scenario of arrest, the trial courts are stated to be insisting on the arrest of an accused as a pre-requisite formality to take the charge sheet on record in view of the provisions of Section 170 of the Cr.P.C. We consider such a course misplaced and contrary to the very intent of Section 170 of the Cr.P.C."* The section 170 of Criminal Procedure Code(CrPC) envisages as follows "170. Cases to be sent to Magistrate, when evidence is sufficient. – (1)

If, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit him for trial, or, if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed." The Order in the aforesaid matter has clarified that the position of arrest of the accused under Section 170 Cr.P.C. at post investigation stage after completion of investigation. However, a similar position in matters under Section 200 & 204 Cr.P.C remains open with high ambiguity persisting wherein most trial courts issue NBWs against the accused on taking cognizance of the complaint and thereafter sent the accused to judicial custody even though the accused was never arrested by the Investigating Agency during investigation. Such issue of NBWs and remand to judicial custody despite not being arrested during investigation is almost a foregone conclusion in complaints filed by ED, Customs, DRI & other such specialized agencies who have powers to arrest but files a complaint under Cr.P.C 200 & 204 and the accused ends up being incarcerated for long periods in judicial custody due to such approach by the trial courts.

Thus, in order to invoke the most salient fundamental right, the right to life guaranteed under Article 21, the Petitioner files the present Writ Petition under Article 32 praying to frame and lay down principles to the designated special courts, in complaint cases where complaints are filed under Cr.P.C Section 200 &

process is issued under Cr.P.C Section 204 wherein the accused were not arrested during investigation by the Investigation Agency which mandates the designated special courts to follow the same principles that this Hon'ble Court proposes to lay down in cases under Cr.P.C Section 170 as per the orders of this Hon'ble Court in ***Satinder Kumar Antil Vs CBI*** dated 25.07.2021 and 18.08.2021.

Hence, the present Writ Petition.

LIST OF DATES & EVENTS

28.07.2021	This Hon'ble Court vide Order dated 16.08.2021 in Special Leave Petition (Criminal) No. 5191 of 2021 was pleased to issue notice taking note of "Learned senior counsel submits that the system which is sought to be followed specially in the State of Uttar Pradesh is that even if a person is not arrested during investigation, on charge sheet being filed, more so, in such cases of CBI a person is sent to custody and thus, his appearance and applying for bail would have resulted in his being sent to custody". "Prima facie, we cannot appreciate why in such a scenario is there a requirement for the petitioner being sent to custody. Be that as it may, it will be appropriate to lay down some principles in this behalf.
16.08.2021	That this Hon'ble Court in Criminal Appeal No. 838 of 2021 titled as ***Siddharth vs. State of Uttar Pradesh and Another*** considered the question of law whether the accused, who has joined the investigation, and has not been arrested during the investigation or when the investigation is complete, needs to be arrested before the charge sheet is taken on record and vide Order dated 16.08.2021 wherein this Hon'ble Court clarified that the position of arrest of the accused under Section 170 Cr.P.C. However, a similar position in matters under Section 200 & 204 Cr.P.C remains open with high ambiguity persisting wherein

most trial courts issue NBWs against the accused on taking cognizance of the complaint and thereafter sent the accused to judicial custody even though the accused was never arrested by the Investigating Agency during investigation. Such issue of NBWs and remand to judicial custody despite not being arrested during investigation is almost a foregone conclusion in complaints filed by ED, Customs, DRI & other such specialized agencies who have powers to arrest but files a complaint under Cr.P.C 200 & 204 and the accused ends up being incarcerated for long periods in judicial custody due to such approach by the trial courts.

18.08.2021 This Hon'ble Court vide Order dated 18.08.2021 in Special Leave Petition (Criminal) No. 5191 of 2021 held that "We have passed order interpreting Section 170 of the Cr.P.C. in Criminal Appeal arising out of SLP(Crl.) No. 5442/2021 [Siddharth vs. the State of Uttar Pradesh &Anr.], decided on 16.08.2021. The counsels may have the benefit of the said order to assist us in the present case".

01.09.2021 Hence, the present Writ Petition.

IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRIMINAL) NO. OF 2021

IN THE MATTER OF:

Lawyers Against Malicious Prosecution
Through its Director,
A-22, Basement, Jungpura Extension (near Kabli Hotel),
New Delhi-110014 …Petitioner

Versus

1. Union of India
Through the Secretary,
Ministry of Law and Justice,
4th Floor, A- wing, Shastri Bhawan,
Delhi-110001 …Respondent No. 1

2. Union of India
Through the Secretary,
Ministry of Home Affairs,
North Block,
New Delhi-110001 …Respondent No. 2

(All are contesting Respondents)

WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA.

To
The Hon'ble Chief Justice of India
And His Companion Justices of the
Supreme Court of India.

The humble Petition on behalf of
of the Petitioner above named.

1. That the Petitioner is an unregistered association of lawyers from across the country who have founded a common platform "Lawyers Against Malicious Prosecution"(https://LawyersAgainstMaliciousProsecution .org) represented by it to legally battle against malicious prosecution launched against innocent individuals and organizations on one pretext or other as well as on the basis of private, financial, political or prejudiced interests. That the Petitioner is represented by its Director who is a lawyer by profession and is a member of the Supreme Court Bar Association (L05421), holding an Adhaar Card bearing No. 457186669977 and PAN Card bearing No. AEGPM2881K, having email ID mather.shaffi@gmail.com. It is submitted that no civil, criminal or revenue matter is pending against the Petitioner in any court of law. A true copy of Bar Association ID, Adhaar and Pan Card issued in the name of the Director of the Petitioner association is annexed and marked hereto as **Annexure-P-1 (43 to 44)**

2. That the present Writ Petition is being filed by the Petitioner under Article 32 of the Constitution of India to enforce fundamental rights, particularly the Right to Life (Article 21) & Right to Equality (Article 14) guaranteed by the Constitution. The Petitioner is a public spirited individual. The Petitioner firmly believes that the Indian constitution guarantees life and liberty, justice and equality for all persons. Therefore, he has moved this Writ Petition under Article 32 of the Constitution of India, which seeks to invoke the most salient fundamental right, the right to life guaranteed under Article 21.

3. That in ***Re: Satinder Kumar Antil vs. CBI***, when the Special Leave Petition (Criminal) No. 5191 of 2021 came up for admission, this Hon'ble Court asked: "We put to learned senior counsel for the petitioner as to why the

petitioner did not appear after summons were sent in pursuance to cognizance being taken as logically, the petitioner ought to have appeared and applied for regular bail and there should have been no case for anticipatory bail at that stage. Learned senior counsel submits that the system which is sought to be followed specially in the State of Uttar Pradesh is that even if a person is not arrested during investigation, on charge sheet being filed, more so, in such cases of CBI a person is sent to custody and thus, his appearance and applying for bail would have resulted in his being sent to custody”."Prima facie, we cannot appreciate why in such a scenario is there a requirement for the petitioner being sent to custody. Be that as it may, it will be appropriate to lay down some principles in this behalf.", In the order in this matter on 18.08.2021, this Hon’ble Court ordered “We have passed order interpreting Section 170 of the Cr.P.C. in Criminal Appeal arising out of SLP(Crl.) No. 5442/2021 [Siddharth vs. the State of Uttar Pradesh &Anr.], decided on 16.08.2021. The counsels may have the benefit of the said order to assist us in the present case”.

4. This Hon’ble court and various High Courts have, time and again, stated that the Magistrate is duty bound to accept the final report/charge sheet filed by the police/investigation agency. However, the question that arose before this Hon’ble court in Siddharth vs State of Uttar Pradesh &Anr. (CRIMINAL APPEAL NO.838 OF 2021) was whether the accused, who has joined the investigation, and has not been arrested during the

investigation or when the investigation is complete, needs to be arrested before the charge sheet is taken on record?

5. In answering this question, this Hon'ble court has delivered the final judgement in Siddhartha Vs State of Uttar Pradesh & anr wherein it has been stated that; *"We are, in fact, faced with a situation where contrary to the observations in Joginder Kumar's case how a police officer has to deal with a scenario of arrest, the trial courts are stated to be insisting on the arrest of an accused as a pre-requisite formality to take the charge sheet on record in view of the provisions of Section 170 of the Cr.P.C. We consider such a course misplaced and contrary to the very intent of Section 170 of the Cr.P.C."* The section 170 of Criminal Procedure Code(CrPC) envisages as follows "170. Cases to be sent to Magistrate, when evidence is sufficient. – (1) If, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit him for trial, or, if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed."

6. This Hon'ble court has explained the meaning of the term "Custody" as mentioned in the Section 170 of Cr.P.C in

the matter of Siddhartha vs State of Uttar Pradesh (CRIMINAL APPEAL NO.838 OF 2021) in following words: "The word "custody" appearing in Section 170 of the Cr.P.C. does not contemplate either police or judicial custody but it merely connotes the presentation of the accused by the Investigating Officer before the court while filing the charge sheet."

7. The Order in the aforesaid matter has clarified that the position of arrest of the accused under Section 170 Cr.P.C. at post investigation stage after completion of investigation. However, a similar position in matters under Section 200 & 204 Cr.P.C remains open with high ambiguity persisting wherein most trial courts issue NBWs against the accused on taking cognizance of the complaint and thereafter sent the accused to judicial custody even though the accused was never arrested by the Investigating Agency during investigation. Such issue of NBWs and remand to judicial custody despite not being arrested during investigation is almost a foregone conclusion in complaints filed by ED, Customs, DRI & other such specialized agencies who have powers to arrest but files a complaint under Cr.P.C 200 & 204 and the accused ends up being incarcerated for long periods in judicial custody due to such approach by the trial courts. A true copy of the Order dated 16.08.2021 passed by this Hon'ble Court in Criminal Appeal 838 of 2021 is annexed and marked hereto as **Annexure-P-2(Pg. Nos. 45 to 54).**

8. That it is submitted that Section 200 of the Code of Criminal Procedure, 1973 states as follows; “200. Examination of the complainant. A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate: Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses- (a) if a public servant acting or- purporting to act in the discharge of his official duties or a Court has made the complaint; or (b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192: Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re- examine them.”

9. That it is submitted that under Section 200 of the Code, it is incumbent on the Magistrate taking cognizance on a complaint to examine upon oath the complainant and his witnesses present if any, at sufficient length to satisfy himself. The object is to test whether allegations make out a prima facie case to assure the Magistrate to issue process under Section 204 Cr.P.C, 1973.

10. That after recording statements and evidence of complainant and witnesses respectively under Section 200 Cr.P.C, 1973, the Magistrate may issue process under

Section 204 of the Code, dismiss the complaint u/s 203 or postpone the issue of the process until inquiry under Section 202 is complete. The Section 200 Cr.P.C casts an imperative duty on the Magistrate to examine the witnesses as well. Once the Magistrate is satisfied that prima-facie there is a case against the accused, he will issue process under Section 204 Cr.P.C. Section 204 states as follows; "204. Issue of process. (1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be- (a) a summons- case, he shall issue his summons for the attendance of the accused, or (b) a warrant- case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction. (2) No summons or warrant shall be issued against the accused under sub- section (1) until a list of the prosecution witnesses has been filed. (3) In a proceeding instituted upon a complaint made in writing every summons or warrant issued under sub- section (1) shall be accompanied by a copy of such complaint. (4) When by any law for the time being in force any process- fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint. (5) Nothing in this section shall be deemed to affect the provisions of section 87."

11. That this Hon'ble Court in ***Bhushan Kumar vs. State (N.C.T. of Delhi), (2012) 2 SCC (Cri.) 872*** held that the expression ―cognizance in Sections 190 and 204 Cr.P.C. is entirely different thing from initiation of Proceedings; rather it is the condition precedent to the initiation of proceedings by the Magistrate or the Judge. Cognizance is taken of the cases/offences and not of persons. Under Section 190 of the Code, it is the application of judicial mind to the averments in the complaint that constitute cognizance. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and whether or not there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction can be determined only at the trial, not at the stage of inquiry. If there is sufficient ground for proceeding, the Magistrate is empowered for issuance of under Section 204 of the Code.

12. That it is submitted that Section 204 does not cast any burden upon the Magistrate to give any reasoned Order, rather Section 204 Cr.P.C. only mandates the Magistrate to form an opinion as to whether there exists a sufficient ground for summons to be issued. The difficulty that is being faced by the accused in complaint under Section 200 Cr.P.C, by a public servant acting or purporting to act in the discharge of his official duties especially by the Directorate of Enforcement(ED) and the Customs Department, is that the magistrates throughout the nation have been summoning the accused through non-bailable warrants at the time of issuance of process. The accused

person who has cooperated with the investigation throughout and has not been arrested during the investigation are sent to judicial custody upon completion of investigation, during the course of trial just because there is no specific Law in the country which regulates the issue of non-bailable warrants.

13. That it is submitted that in light of the unparalleled power vested in the Magistrate under Section 204 of the Cr.P.C, the Magistrates are issuing non-bailable warrants irrespective of the nature of case and without applying any judicious mind. It is imperative to mention that non-bailable warrants should be issued to bring a person to court when summoning of bailable warrants would be unlikely to have the desired result. The court should properly balance both personal liberty and social interest before issuing warrants. Warrant of arrest cannot be issued mechanically, else a wrongful detention would amount to denial of constitutional mandate envisaged in Article 21 of the Constitution of India.

14. That this Hon'ble Court in ***Raghuvansh Dewanchand Bhasin Vs. State of Maharashtra and Another reported in (2012) 9 SCC 791*** has held that a warrant of arrest cannot be issued mechanically, but only after recording satisfaction that in the facts and circumstances of the case, it is warranted. Similarly, in Vikas Vs. State of Rajasthan, wherein this Hon'ble Court has reiterated the settled principles of law regarding the issuance of non−bailable warrants and has specifically stated that in complaint

cases, at the first instance, summons should be issued and then a bailable warrant, failing which a non−bailable warrant should be issued. The relevant extract of the judgment is as below: *"17. In the legislative history for the purposes of bail, the terms 'bailable' and 'non−bailable' are mostly used to formally distinguish one of the two classes of cases, viz. 'bailable' offences in which bail may be claimed as a right in every case whereas the question of grant of bail in non− bailable offences to such a person is left by the legislature in the court's discretion to be exercised on a consideration of the totality of the facts and circumstances of a given case. The discretion has, of course, to be a judicial one informed by tradition methodized by analogy, disciplined by system and sub−ordinated to the primordial necessity of order in social life. Another such instance of judicial discretion is the issue of non−bailable warrant in a complaint case under an application of Section 319 of the Cr.P.C. The power under Section 319 of the Cr.P.C being discretionary must be exercised judiciously with extreme care and caution. The court should properly balance both personal liberty and societal interest before issuing warrants. There cannot be any straight−jacket formula for issuance of warrants but as a general rule, unless an accused is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non−bailable warrants should be avoided. The conditions for the issuance of non−bailable warrant are re−iterated in the case of Inder Mohan Goswami (Supra) and in the case of the State of U.P. vs. Poosu and Anr; 1976 3 SCC 1, wherein it is*

mentioned that: (Inder Mohan Goswami Case, SCC p.17, para 53) "53. Non−bailable warrant should be issued to bring a person to court when summons or bailable warrants would be unlikely to have the desired result."

15. That this Hon'ble Court in ***Inder Mohan Goswami vs. State of Uttranchal reported in (2007) 12 SCC 1***, SCC p.17, paras 54 to 57, a 3 judge bench of this Hon'ble Court has laid down the principles as to how and when NBWs can and should be issued by the trial courts as follows: *"54. As far as possible, if the court is of the opinion that a summon will suffice in getting the appearance of the accused in the court, the summon or the bailable warrants should be preferred. The warrants either bailable or non-bailable should never be issued without proper scrutiny of facts and complete application of mind, due to the extremely serious consequences and ramifications which ensue on issuance of warrants. The court must very carefully examine whether the criminal complaint or FIR has not been filed with an oblique motive. 55. In complaint cases, at the first instance, the court should direct serving of the summons along with the copy of the complaint. If the accused seem to be avoiding the summons, the court, in the second instance should issue bailable warrant. In the third instance, when the court is fully satisfied that the accused is avoiding the court's proceeding intentionally, the process of issuance of the non-bailable warrant should be resorted to. Personal liberty is paramount, therefore, we caution courts at the first and second instance to refrain from issuing non-bailable warrants. 56. The power being*

discretionary must be exercised judiciously with extreme care and caution. The court should properly balance both personal liberty and societal interest before issuing warrants. There cannot be any straitjacket formula for issuance of warrants but as a general rule, unless an accused is charged with the commission of an offence of a heinous crime and it is feared that he is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrants should be avoided. 57. The court should try to maintain proper balance between individual liberty and the interest of the public and the State while issuing non-bailable warrant."

This Hon'ble Court has thus clearly laid down the position of law pertaining to the issue of NBWs and judicial remand. It is, therefore, incumbent upon the designated special court in complaint cases to issue a summons first. If that does not elicit the appearance of the accused, then a bailable warrant should be issued. Only if the presence of the accused could not have been brought forth by the above two means, first the summons and then the bailable warrant, only then would it be justifiable to issue a non-bailable warrant to ensure the production of the accused before the court.

16. That contrary to this legal position, the designated special courts running criminal matters of ED, Customs, DRI etc. are mechanically issuing non-bailable warrants against accused persons even when the accused have not been arrested during investigation and have extended full cooperation to the investigating agency, without

appreciating the facts and nature of each case. In states like Rajasthan, Punjab, Haryana, Gujarat, Madhya Pradesh etc., the designated special courts taking cognizance of complaint cases filed by ED, Customs, DRI etc. are issuing non-bailable warrants in cases where accused persons are not arrested during the course of investigation and remanding them to judicial custody on appearance in the court / production in the court where after they are languishing in judicial custody for long periods till bail is granted either by the concerned Hon'ble High Court or this Hon'ble Court. In such matters, often, several Hon'ble High Courts are also not inclined to change the non-bailable warrant to bailable warrant or grant anticipatory bail despite the aforesaid circumstance of the accused not having been arrested during investigation and they having cooperated with the Investigation agency. Such approach is taken by the designated special courts and several Hon'ble High Courts distinguishing such practice from the law laid down by this Hon'ble Court in *Inder Mohan Goswami* on the basis that such cases, i.e., economic offence cases, must be considered on altogether distinct criteria as the same affects the economy as a whole and destroys the very basic fibre of the Society. Even so, this alone cannot be a reason for curtailing an accused person's rights enshrined under Article 21. More importantly, this practice by the designated special courts across the country facilitates the maliciously prosecuted accused to end up languishing in jail for long periods, even on very thin and often fake prosecution complaints. On the other hand, the investigating agencies who do not have the reasons to

arrest the accused during investigation (who also fear being prosecuted in the future for malicious prosecution as they are aware that the case is foisted one for extraneous reasons), take cover of the judicial order to keep the innocent accused in jail in judicial custody for long periods of time.

17. That the Division Bench of the Hon'ble Punjab and Haryana High Court in ***Arun Sharma vs. Union of India and others, 2016(3) RCR (Criminal) 883*** held that if any person was neither arrested during investigation under PMLA nor produced in custody as envisaged in Section 170 Cr.P.C., upon issuance of process either by summons or warrant, if he appears before Court on his own volition, he 2 of 4 would be entitled to forthwith furnish his bonds with or without sureties for further appearances without any incarceration in custody. It is held in that case that rigors of Section 45(1)(ii) of PMLA would be attracted only while considering the application of an accused for release on bail or his own bond, if he has been arrested by the authorised officer under Section 19 of the PMLA before taking cognizance. A true copy of the Order dated 22.07.2016 passed by the Hon'ble Punjab and Haryana High Court in CRWP No. 971 of 2016 is annexed and marked hereto as **Annexure-P- 3 (Pg. Nos. 55 to 71).**

18. The Hon'ble Division Bench of High Court of Punjab and Haryana has stated in CRM No.M-42455 of 2016 titled as ***Harmesh Kumar Gaba vs. Assistant Director, Directorate of Enforcement reported in (2017) SCC OnLine P&H***

118, granted the bail by holding that it is seriously doubtful whether rigors of Section 45 of PMLA would be attracted in this case as the petitioner is not accused of an offence punishable for a term of imprisonment of more than three years in Part 'A' of the Schedule attached to PMLA, 2002 and the petitioner was not subjected to custodial interrogation regardless of express powers given to E.D. under Section 19 of the Act.

19. In the matter of ***Pankaj Pratapbhai Thakkar vs. Deputy Director & Another reported in Special 2014 SCC OnLine Guj 1372,*** the principal contention raised on behalf of the petitioner therein was that there was no justification for the Designated Judge to issue non-bailable warrant while taking cognizance upon the complaint and ordering issue of process. Referring to the Order of this Hon'ble Court in Mohan Goswami v. State of Uttaranchal, Supra the Hon'ble High Court of Gujarat quashed the warrant issued against the petitioners.

20. In the matter of ***Parminder Kumar vs. Assistant Director Enforcement (CRM No. M 14509 of 2017)*** the Hon'ble High Court of Punjab and Haryana held that the Petitioners had surrendered on basis of a summons issued against him and he was never arrested by ED and also that the Petitioner was on bail in predicate offence. In view of these facts the Petitioner was released on bail. This judicial custody of the Petitioner could have been clearly avoided in the case on the very same grounds on which he was released on bail. A true copy of the Order dated

22.05.2017 passed by the Punjab and Haryana High Court in CRM No. M 14509 of 2017 is annexed and marked hereto as **Annexure-P-4(Pg. Nos. 72 to 75).**

21. In the matter of ***Dharamveer Bhadoria vs. Directorate of Enforcement (_A.B.A. No. 2812 of 2018)*** the Petitioner apprehending his arrest by the Spl Judge PMLA Act Ranchi approached the Hon'ble High court of Jharkhand at Ranchi. It was held that "*24. Having heard the learned counsel for the parties and after going through the records and considering the fact that in main case of C.B.I i.e. RC-20(A)2009, the petitioner has been admitted on bail, final form has been submitted in this case, cognizance has been taken, trial will take some time, during investigation the petitioner co-operated in the investigation and he has never been arrested by the E.D, I am inclined to admit the petitioner on anticipatory bail with cost on the following grounds*:" Similar observations were also made by High court of Jharkhand at Ranchi in the matter of ***Dilip Kumar singh vs. Enforcement Directorate (ABA No 3212 of 2018)***.

A true copy of the Order dated 15.05.2018 passed by the High Court of Jharkhand at Ranchi in ABA No. 2812 of 2018 is annexed and marked hereto as **Annexure-P-5 (Pg. Nos. 76 to 77).**

22. That the Petitioner has also obtained the Orders in some cases from designated PMLA court in Rajasthan where in it is observed that the accused therein are being summoned

by an arrest warrant at the time when cognizance is taken by the court. Following are some of such cases.

i. Ankur Tiwari, Deputy Director vs. Bhoor Raj Purohit Complaint Case No. 11 of 2019
ii. Sitaram Meena, Deputy Director, Vs. Pushya Mitra Singh Dev and Ors Complaint Case No.02/2016
iii. Deputy director vs. Sanjay Sethi Complaint Case No. 10 of 2018
iv. Bhoor Singh vs. Union of India Complaint Case No. 11/2019
v. Shyam Sundar Singhvi vs Union of India Complaint Case No. 10/2018
vi. P.M. Singh Deo vs. Union of India Complaint Case No. 2/2016

A true copy of the Order dated 12.03.2018 passed by the Special Sessions Court, Jaipur (Prevention of Money Laundering Act, 2002/ (special Court Communal Riots Case), Jaipur Metropolitan in Criminal Complaint No. 02 of 2016 is annexed and marked hereto as **Annexure-P-6 (Pg. Nos. 78 to 97).**

23. That the Hon'ble Rajasthan High Court in ***Tamanna Begum Widow Of Late Mohammad Sher Khan vs Enforcement Directorate*** vide Order dated 24.01.2020 held that "The present order will decide two sets of cases i.e. Revision Petitions filed under Section 397 read with Section 401 Cr.P.C. challenging the order dated 21.01.2019 passed by the Special Sessions Court, Jaipur (Prevention of Money Laundering Act, 2002) - Special

Court (Communal Riots Cases), Jaipur Metropolitan, Jaipur, *whereby cognizance has been taken for offence punishable under* ***Sections 3*** *&* ***4*** *of the Prevention of Money Laundering Act, 2002 (hereinafter shall be referred as 'PMLA, 2002') & arrest warrants have been issued to secure the presence of the accused persons.* The other set of cases are Criminal Miscellaneous Petitions filed under Section 482 Cr.P.C. challenging order of the Trial Court wherein it has refused to convert arrest warrants of the petitioners into bailable warrants by not exercising power under Section 70(2) Cr.P.C." A true copy of the Order dated 24.01.2020 passed by the Hon'ble Rajasthan High Court in S.B. Criminal Revision Petition No. 273 of 2019 is annexed and marked hereto as **Annexure-P-7 (Pg. Nos. 98 to 131).**

24. That the Hon'ble Gujarat High Court in ***Vithalbhai Jethabhai Zariwala vs State of Gujarat & Anr*** held that "4. It appears from the materials on record that the Designated Judge under the PMLA Act, vide order dated 21st December, 2013, took cognizance upon the complaint and ordered issue of warrant against all the accused named therein. The applicant herein figure as accused No.7 in the complaint. Pursuant to the order passed by the Designated Judge, the applicant herein was arrested and remanded to judicial custody. The applicant, thereafter, filed a bail application before the learned Designated Judge which was ordered to be rejected. Being dissatisfied, the applicant, thereafter, filed an application for bail before this court. A Coordinate Bench of this court also rejected the bail

R/SCR.A/4922/2014 ORDER application. It appears that the His Lordship (Coram:A.S. Dave, J.) rejected the bail application on merits. 5. In this petition before me, the principal contention raised on behalf of the applicant is that *at the time of taking cognizance upon the complaint filed by the Deputy Director, the Designated Judge ought not to have passed the order of issue of warrant.* Such submission is based on the decision of the Supreme Court in the case of Inder Mohan Goswami vs. State of Uttaranchal, reported in 2007 (12) SCC 1. I had the occasion to consider an identical issue raised by identically situated accused persons against whom complaint has been lodged under the PMLA Act. I took the view that there was no justification for the Designated Judge to issue a non-bailable warrant while taking cognizance upon the complaint, more particularly, when there was nothing on record to suggest that the accused would not appear before the trial court or would abscond and thereby delay the trial." A true copy of the Order dated 07.05.2015 passed by the Gujarat High Court in Special Criminal Application (Quashing) No. 4922 of 2014 is annexed and marked hereto as **Annexure-P-8 (Pg. Nos. 132 to 145).**

25. That the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench in ***Virendra Goel vs U.O.I. Thru. Directorate of Enforcement*** vide Order dated 22.01.2020 held that "2. The petitioner and other co-accused had been summoned for 29.01.2018 by the Court for appearance and participation in trial for offences under Section ¾ of the Prevention of Money Laundering Act, 2002

(hereinafter referred to as the "PML Act'). The petitioner and other co-accused did not appear in person on 29.01.2018 in compliance of summoning order before the Court, however, their counsels appeared on the date fixed, and sought sometime to file applications necessary for putting appearance and furnishing bonds etc. on the ground that the petitioner and other co-accused were already released on bail in schedule offence(s), and they had not misused the liberty. It was further contended that the Enforcement Directorate did not arrest the petitioner during the investigation under Section 19 PML Act. It was also contended that the trial of schedule offence(s) as well as offence(s) under PML Act should be jointly conducted by the Court as provided under the provisions of Section 44(1)(C) PML Act. The Special Court, however, vide order dated 29th January, 2018 did not grant any relief, as prayed for, and issued non-bailable warrants against the petitioner and other accused." A true copy of the Order dated 22.01.2020 passed by the High Court of Judicature at Allahabad, Lucknow Bench in Case No. 61 of 2020 is annexed and marked hereto as **Annexure-P-9 (Pg. Nos. 146 to 159).**

26. That the Hon'ble Jharkhand High Court in ***Dilip Kumar Singh vs The Enforcement Of Directorate*** vide Order dated14.09.2018 held that "Having heard the learned counsel for the parties and after going through the records, final form, material collected by the C.B.I./E.D against the petitioner and also the fact that final form has been submitted in this case, trial will take some time and during

investigation, the petitioner has fully co-operated in the investigation and he was never arrested by the C.B.I./E.D. In the facts and circumstances of the case, I am inclined to admit the petitioner on anticipatory bail." A true copy of the Order dated 14.09.2018 passed by the High Court of Jharkhand at Ranchi in ABA No. 3212 of 2018 is annexed and marked hereto as **Annexure-P-10 (Pg. Nos. 160 to 162).**

27. That the Hon'ble Jharkhand High Court in ***Dharamveer Bhadoria vs Directorate of Enforcement*** vide Order dated 20.07.2018 has held that "1. The petitioner is apprehending his arrest in connection with Complaint Case ECIR/06/PAT/2012/PMLA in which cognizance of offence has been taken under section 3 and under section 4 of the Prevention of Money Laundering Act, 2002 by the Court of Sri A.K. Mishra No. 1, Spl. Judge, P.M.L. Act, Ranchi... 18. It is further submitted that investigation in this case is complete and final form has been submitted accordingly, cognizance has been taken, the petitioner has cooperated with the investigation and he has appeared before the Investigating Officer as and when required and he has never been arrested during investigation and Trial will take some time. Considering all these facts, the petitioners deserve privilege of anticipatory bail."

28. That the Hon'ble Gujarat High Court in ***Dipakbhai Balkrishna Sulakhe & Others vs Directorate Of Enforcement Office*** vide Order dated 21.02.2014 held that "29. Now plain reading of Sub−section (1) of Section 45 of PML Act, it reveals that PML Act has over riding effect

over the provisions of Cr.P.C. I took this view upon plain reading of the words of the Sub−section (1) of Section 45 of PML Act which are as "Notwithstanding anything contained in the Dipakbhai Balkrishna Sulakhe & 3 vs Directorate Of Enforcement Code of Criminal Procedure, 1973 (2 of 1974)". Moreover, legislature has used the words "no person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule shall be released on bail". This word connoted that legislature has intended to deal with question regarding release on bail despite the offence is punishable for term for more than 3 years. The conditions in respect of said offence are narrated further with legislative mandate to the Judicial Officer that application for such released cannot be decided without giving opportunity of hearing to Public Prosecutor. Plain reading of this clause (i) of Sub−section 1 of Section 45 of PML Act connotes that court is under legal obligation to respect the legislative mandate that application for bail can not be decided without hearing to Public Prosecutor Heading of Section 45 clearly shows that "Offences to be cognizable and non−bailable". Plain reading of this word used by the legislature clearly makes me conclusive that initial order while taking cognizance for the PMLA Criminal Case No. 1 of 2013, order passed by this Court for issuance of non−bailable warrant is the order passed by this Court, perfectly within the legal parameter of Section 45 of PML Act. 30. In such circumstances attempt by learned advocate to show that in prior incidents about directly issuing R/CR.MA/2492/2014 ORDER bailable warrant

while dealing with the case of PMLA cannot be followed. Thus, the order on 21.12.2013 and taking cognizance and issuance of non−bailable warrant is within the legal parameters as contemplated under Section 45 of the PML Act. 31. Thus, after issuance of NBW, Court is under further legislative mandate to provide an opportunity to oppose application. In the case on hand there is no clarity before me that after having undertaken the duty by learned advocate for applicants/ accused for serving a process to opponent no. 1, whether same are duly served to opponent No. 1. Moreover, learned advocate Mr. Mishra has also refrain from filing a purshis that he has been duly authorized to defend this bail application on behalf of opponent no. 1, after serving of a process to opponent no...” A true copy of the Order dated 21.02.2014 passed by the High Court of Gujarat at Ahmedabad in Criminal Miscellaneous Application No. 2492 of 2014 is annexed and marked hereto as **Annexure-P-11(Pg. Nos. 163 to 172).**

29. That the Hon’ble Patna High Court in ***Dr. Manisha vs The Union Of India, Ministry Of*** vide Order dated 11.12.2018 held that “The petitioner seeks pre-arrest bail in connection with Special Trial No. (PMLA) 2 of 2017(Ref: ECIR No.20/PAT/2012 dated 06.12.2012) under Section 4 of the PMLA, 2002. It is submitted by the learned counsel for the petitioner that an FIR was instituted under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988 against the father-in-law of the petitioner in which upon completion of investigation, the petitioner and her husband were made accused Patna High

Court Cr.Misc. No.60631 of 2018(3) dt.11-12-2018 and on completion of investigation, they were sent up for trial. As far as the petitioner is concerned, in the said case investment in her name was shown to the extent of Rs.1,60,386/ only. She has already been granted bail in that case. However, even before the completion of trial of the said case, Enforcement Directorate has instituted the instant complaint, which is bad in law. Mr. S. D. Sanjay, learned Senior Counsel appearing for Union of India has opposed the application for grant of pre- arrest bail to the petitioner."

30. That the Hon'ble High Court of Judicature for Rajasthan Bench at Jaipur S.B. Criminal Miscellaneous Bail Application No. 6273/2020 held that 3. "Mr. Anil Upman and Mr. Deepak Chauhan learned counsel for both the accused applicants have submitted that similarly situated co-accused persons have been enlarged on bail by the coordinate bench of this court vide order dated 12-5-2020 and the case of accused applicants is not distinguishable from them. Both the applicants are not required for the purpose of investigation/ enquiry as the Enforcement Directorate has already filed the complaint in the matter. During the course of investigation, statements of both the applicants were recorded and they fully cooperated in the investigation. Neither they were arrested during the course of investigation, nor there was any prayer to summon them through arrest warrants. Both the applicants have already been granted bail in the scheduled offences, on the basis of which this case has been registered. Both the applicants

could not appear before the trial court immediately after the summoning by the trial court, as they were pursuing legal remedies available to them. Both the applicants also satisfy the conditions of triple test on the basis of which other co-accused persons have been granted bail. The bail applications should be allowed. Learned counsel for the applicants have relied upon the judgments in Sita Ram Vs. State of Rajasthan [1994(1) RLW 227], Suraj Vs. State of Rajasthan [RLW 1986 Raj. 325], Data Ram Singh Vs. State of U.P. [(2018)3 SCC 22], P. Chidambaram Vs. CBI [AIR 2019 SC 5273], P. Chidambaram Vs. Directorate of Enforcement [AIR 2019 SC 1669], Sanjay Chandra Vs. CBI [(2012)1 SCC 40], Sushila Aggarwal Vs. State (NCT of Delhi) [(2020 SCC Online SC 98], S. Kassi Vs. State [JT 2020(6) SCC 363] and Siddharam Satlingappa Mhetre Vs. State of Maharashtra [2011 Cr.L.R. (SC) 1]." A true copy of the Order dated 06.07.2020 passed by the High Court of Judicature for Rajasthan Bench at Jaipur in S.B. Criminal Miscellaneous Bail Application No. 6273 of 2020 is annexed and marked hereto as **Annexure-P-12 (Pg. Nos. 173 to 181).**

31. That the Hon'ble Punjab and Haryana High Court in ***Harmesh Kumar Gaba vs Assistant Director Directorate of Enforcement*** vide Order dated 28.02.2017 held that "So far as the complaint in hand is concerned, the investigation is over and its cognizance has already been taken. Since the petitioner was not required and was not taken into custody during the course of investigation of the instant complaint, no useful purpose shall be served by putting

him in judicial custody at this stage. It thus appears to be a fit case for grant of pre-arrest bail. That apart, it is seriously doubtful whether rigors of Section 45 2 of 4 of PMLA would be attracted in this case as the petitioner is not accused of an offence punishable for a term of imprisonment of more than three years in Part `A' of the Schedule attached to PMLA, 2002. Similarly, since the petitioner was not subjected to custodial interrogation regardless of express powers given to E.D under Section 19 of the Act, we see no reason whatsoever as to why the petitioner's liberty be curtailed by sending him to judicial custody at this juncture." A true copy of the Order dated 28.02.2017 passed by the High Court of Punjab and Haryana at Chandigarh in CRM No. M-42455 of 2016 is annexed and marked hereto as **Annexure-P-13 (Pg. Nos. 182 to 185).**

32. That the Hon'ble Punjab and Haryana High Court in ***Mandeep Singh vs Assistant Director, Directorate of Enforcement*** vide Order dated 13.02.2020 held that "[20]. Interim protection was granted to the petitioners by this Court after filing of the complaint. The complaint came to be filed only 31.08.2018 and thereafter order of summoning was passed on 02.11.2018. Statements of the petitioners have already been recorded and they have shown their readiness to join the proceedings as and when called upon to do so by the Investigating Agency. Prosecution has already attached 33 10 of 12 properties for total value of Rs.2,62,46,148/- and two Hotels namely Hotel Marc Royale-I and Hotel Marc Royale-II have also

been attached. Value of those, as per complaint itself comes out to be about Rs.70 crores even as per distressed value. [21]. In CRM-M No.28490 of 2018 titled 'Dalip Singh Mann and another vs. Niranjan Singh, Assistant Director, Director of Enforcement, Govt. of India' decided on 01.10.2015, the Division Bench of this Court has considered the controversy, when Section 45 of the PMLA was in operation. It was held that during investigation of the money laundering case, the petitioners therein were never arrested by the Enforcement Directorate in exercise of its powers under Section 19 of the Act and the assets created by the petitioners with the alleged aid of proceeds of crime have already been seized/attached, then rigour of Section 45(1)(ii) of the Act would be attracted only while considering the bail plea of an accused, who has been arrested by the E.D. under Section 19 of the Act. The ratio of aforesaid case helps the cause of petitioners for confirmation of interim anticipatory bail granted in their favour. [22]. Taking into consideration the totality of facts and circumstances of this case, the interim orders dated 19.04.2019 30.04.2019 and 10.05.2019 passed in CRM-M Nos.12488, 19330 and 21330 of 2019 respectively, are made absolute." A true copy of the Order dated 13.02.2020 passed by the High Court of Punjab and Haryana at Chandigarh in CRM-M No. 12488 of 2019 is annexed and marked hereto as **Annexure-P-14 (Pg. Nos. 186 to 197).**

33. That the Hon'ble Gujarat High Court in ***Pankaj Pratapbhai Thakkar & Others vs Deputy Director &***

Others vide Order dated 19.11.2014 held that "12. Let this matter appear on 17th November, 2014. The respondent no.1 be served directly. Direct service is permitted today." I have heard Mr.Vatsa, the learned advocate appearing on behalf of the applicants and Mr.Devang Vyas, the learned Assistant Solicitor General of India appearing on behalf of the department. Mr.Vyas very fairly submitted that the applicants herein were called for the purpose of interrogation by the authorities prior to the filing of the complaint. Their statements were recorded, and at that relevant point of time, they had cooperated with the inquiry. He further submits that at the relevant point of time, the authority concerned had not R/SCR.A/4697/2014 ORDER thought fit to arrest them. Mr.Vyas further submits that in such circumstances, the learned Designated Judge probably could not have issued non-bailable warrant. Mr.Vyas very fairly submitted that there cannot be any debate as regards the position of law discussed by this Court in its order dated 7 th November 2014. Mr.Vatsa, the learned advocate appearing on behalf of the applicants submitted that as recorded by this Court in para 10 of the order dated 7th November 2014, all the applicants remained present before the Designated Court and their presence was also marked. He submits that at that point of time, they also offered surety, however, the same was objected by the learned advocate appearing on behalf of the department since this petition was pending before this Court. Mr.Vyas clarifies that with the disposal of this petition there should not be any objection on the part of the

department if the Designated Court accepts the surety which has been offered by the applicants.

In the aforesaid view of the matter, nothing more is required to be adjudicated. The position of law has been well- explained by the Supreme Court in the case of Inder Mohan Goswami and another v. State of Uttaranchal and others, reported in 2008(1) GLH 603, wherein the Supreme Court has explained when non-bailable warrant should be issued. The Supreme Court has observed thus: "When non-bailable warrants should be issued.

Non-bailable warrant should be issued to bring a person to court when summons of bailable warrants would be R/SCR.A/4697/2014 ORDER unlikely to have the desired result. This could be when: it is reasonable to believe that the person will not voluntarily appear in court; or the police authorities are unable to find the person to serve him with a summon; or it is considered that the person could harm someone if not placed into custody immediately. As far as possible, if the court is of the opinion that a summon will suffice in getting the appearance of the accused in the court, the summon or the bailable warrants should be preferred. The warrants either bailable or non-bailable should never be issued without proper scrutiny of facts and complete application of mind, due to the extremely serious consequences and ramifications which ensue on issuance of warrants. The court must very carefully examine whether the Criminal Complaint or FIR has not been filed with an oblique motive. In complaint cases, at the first instance, the court should direct serving of the summons along with the copy

of the complaint. If the accused seem to be avoiding the summons, the court, in the second instance should issue bailable- warrant. In the third instance, when the court is fully satisfied that the accused is avoiding the courts proceeding intentionally, the process of issuance of the non-bailable warrant should be resorted to. Personal liberty is paramount, therefore, we caution courts at the first and second instance to refrain from issuing non- bailable warrants. The power being discretionary must be exercised judiciously with extreme care and caution. The court should properly balance both personal liberty and societal interest before issuing warrants. There cannot be any straight-jacket formula for issuance of warrants but as a general rule, unless an accused is charged with the commission of an offence of a heinous crime and it is feared that he is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-R/SCR.A/4697/2014 ORDER bailable warrants should be avoided.The Court should try to maintain proper balance between individual liberty and the interest of the public and the State while issuing non-bailable warrant." In the result, this application is allowed. A part of the order passed by the learned Designated Judge under the PML Act, Ahmedabad (Rural), so far as the issue of warrant is concerned, is hereby ordered to be quashed.” A true copy of the Order dated 19.11.2014 passed by the High Court of Gujarat at Ahmedabad in Special Criminal Application (Quashing) No. 4697 of 2014 is annexed and marked hereto as **Annexure-P-15 (Pg. Nos. 198 to 205).**

34. That the Hon'ble Punjab and Haryana High Court in ***Parminder Kumar vs Assistant Director Enforcement*** vide Order dated 22.05.2017 held that "The perusal of the record shows that criminal complaint has 1 of 4 been filed by the Assistant Director, Directorate of Enforcement, U.T. Govt. against the present petitioner along with other co-accused. Learned Special Judge, CBI, Punjab vide order dated 26.07.2016, summoned all the accused for 05.09.2016. The present petitioner surrendered before the Court and filed application for grant of regular bail. Learned Special Judge, CBI, Punjab vide order dated 09.01.2017, dismissed the bail application in view the provisions of Section 45 of the Act.

Learned counsel for the petitioner relied upon the judgment passed by Hon'ble Division Bench of this Court in CRM No.M-28490 of 2015 titled as Dalip Singh Mann and another vs. Niranjan Singh, Assistant Director, Directorate of Enforcement, Govt. of India, decided on 01.10.2015, in which this Court granted bail by holding that during investigation of the money laundering case, the petitioners were never arrested by the Enforcement Directorate in exercise of its powers under Section 19 of the Act. It is also held in that judgment that rigors of Section 45(1)(ii) of the Act would be attracted only while considering the bail plea of an accused who has been arrested by the E.D. under Section 19 of the Act. In that case, the complaint was at initial stage, therefore, the Hon'ble Division Bench granted the bail.

Learned counsel for the petitioner further cited judgment passed by the Hon'ble Division Bench of this Court

in Arun Sharma vs. Union of India and others, 2016(3) RCR (Criminal) 883, in which also, it is held by the Hon'ble Division Bench that if any person was neither arrested during investigation under PMLA nor produced in custody as envisaged in Section 170 Cr.P.C., upon issuance of process either by summons or warrant, if he appears before Court on his own volition, he 2 of 4 would be entitled to forthwith furnish his bonds with or without sureties for further appearances without any incarceration in custody. It is held in that case that rigors of Section 45(1)(ii) of PMLA would be attracted only while considering the application of an accused for release on bail or his own bond, if he has been arrested by the authorised officer under Section 19 of the PMLA before taking cognizance.

Learned counsel for the also placed reliance upon the judgment passed by the Hon'ble Division Bench of this Court in CRM No.M-42455 of 2016 titled as Harmesh Kumar Gaba vs. Assistant Director, Directorate of Enforcement, decided on 28.02.2017, in which, the Hon'ble Division Bench of this Court granted the bail by holding that it is seriously doubtful whether rigors of Section 45 of PMLA would be attracted in this case as the petitioner is not accused of an offence punishable for a term of imprisonment of more than three years in Part 'A' of the Schedule attached to PMLA, 2002 and the petitioner was not subjected to custodial interrogation regardless of express powers given to E.D. under Section 19 of the Act.

Keeping in view the law laid by the Hon'ble Division Benches of this Court, I find that these cited judgments

fully apply to the facts of the present case as in the case in hand, admittedly, the accused has surrendered on the basis of the summons issued against him and he was never arrested by the E.D. Under Section 19 of the Act. Furthermore, in the main case, which was got registered by the CBI, the present petitioner is already on bail."

35. That list of cases which the Petitioner could collate from across the country within the short time which the Petitioner got from 18.08.2021, the date on which this Hon'ble Court ordered to list the Satinder Kumar Antil vs. CBI matter on 03.09.2021 and abuse of process of law has been witnessed is as follows:

Cases	**Details**	**Court**	**Pages/Paras**
In Re: Satinder Kumar Antil vs. CBI		Supreme Court of India	
Siddharth vs. the State of Uttar Pradesh & Anr.	CRIMINAL APPEAL NO.838 OF 2021		
Bhushan Kumar vs. State (N.C.T. of Delhi)	(2012) 2 SCC (Cri.) 872	Supreme Court of India	
Raghuvansh Dewanchand Bhasin Vs. State of Maharashtra And Another		Supreme Court of India	
Vikas Vs. State of Rajasthan		Supreme Court of India	
Inder Mohan Goswami Case		Supreme Court of India, 3	p.17, paras 54 to 57

		judge bench	
State of U.P. vs. Poosu and Anr;	1976 3 SCC 1		
Prithviraj saremal kothari v. P. S. Srinivas, Assistant Director, Directorate of Enforcement			
Bhoor Singh 1 & 2			
PM Singh deo PMLA ORDER			
Shyam singhvi PMLA ORDER			
Dharamveer Bhadoria vs Directorate of Enforcement			
Dilip Kumar Singh vs Directorate of Enforcement			
Dipakbhai Balkrishna Sulakhe & Others vs Directorate of Enforcement			
Dr. Ashok Singhvi vs Union of India			
Dr. Jagdeesh Sagar vs Assistant Director, Directorate of Enforcement			

Dr. Manisha v. Union of India			
Harmesh Kumar Gaba vs Assistant Director, Directorate of Enforcement			
Mandeep Singh vs. Assistant Director, Directorate of Enforcement			
Pankaj Pratapbhai Thakkar vs. Deputy Director, Directorate of Enforcement			
Parminder Kaur vs Assistant Director, Directorate of Enforcement			
Tamanna Begum vs. Enforcement Directorate			
Virendra Goel vs UOI through ED			
Vithalbhai Jethabhai Zariwala vs State Of Gujarat			

36. In the light of the aforementioned circumstances, the Petitioner is preferring the present Writ Petition inter alia on the following grounds, which are urged in the alternative and without prejudice to one another:

GROUNDS

A. Complaints / Prosecution Complaints filed by a non Police Force stands on a lower footing than the Final Report filed by a Police Force under Cr.P.C Sections 170 & 178.

B. If the Investigating Agency has not arrested the accused during investigation, then it means that the Investigation Agency has decided not to arrest the accused on considered grounds and it is then a total violation of Article 21 rights of the accused to be produced before the designated special court through NBWs, and thereafter to be sent to judicial custody by the designated special court on the court taking cognizance of the complaint.

C. In such situations as in ground 2 above, the accused is denied the right (remedy) available to him / her under Cr.P.C Section 438 / 439 to apply for anticipatory bail as the accused is either arrested under a NBW and produced before the Court and / or he / she is remanded to judicial custody on his / her appearance in the designated court and the court taking cognizance of the complaint. And Hon'ble High Courts often do not accept Cr.P.C 438 / 439 petitions till cause of action apprehending arrest arises from cognizance of a complaint being taken by the designated special court by which time it is too late for the accused to avail of the Cr.P.C Section 438 / 439 remedy.

D. That, irrespective of the seriousness of the case against the accused, the Designated Special Court is bound to follow the proper procedure and the judicial guidelines formulated

by this Hon'ble Court while issuing a warrant of arrest, the purpose of which is to secure the presence of the accused.

E. That the accused is not required for the purpose of investigation/enquiry in cases where the Central Investigating Agencies like ED, Customs and DRI have already filed their complaint before the designated special court. Moreover, as a matter of investigating procedure and law, ED, Customs and DRI are required to and therefore record statements from the accused during their investigation stage itself and that too under oath. In such instances, the Designated Special Court should not issue a non-bailable warrant in PMLA, Customs and DRI matters only because of the reason that it is considered an offence against the state.

F. In Inder Mohan Goswami Case, SCC p.17, paras 54 to 57, a 3-judgebench of this Hon'ble Court has laid down the principles as to how and when NBWs can and should be issued by the trial courts as follows; *"54. As far as possible, if the court is of the opinion that a summon will suffice in getting the appearance of the accused in the court, the summon or the bailable warrants should be preferred. The warrants either bailable or non-bailable should never be issued without proper scrutiny of facts and complete application of mind, due to the extremely serious consequences and ramifications which ensue on issuance of warrants. The court must very carefully examine whether the criminal complaint or FIR has not been filed with an oblique motive. 55. In complaint cases, at the first*

instance, the court should direct serving of the summons along with the copy of the complaint. If the accused seem to be avoiding the summons, the court, in the second instance should issue bailable warrant. In the third instance, when the court is fully satisfied that the accused is avoiding the court's proceeding intentionally, the process of issuance of the non-bailable warrant should be resorted to. Personal liberty is paramount, therefore, we caution courts at the first and second instance to refrain from issuing non-bailable warrants. 56. The power being discretionary must be exercised judiciously with extreme care and caution. The court should properly balance both personal liberty and societal interest before issuing warrants. There cannot be any straitjacket formula for issuance of warrants but as a general rule, unless an accused is charged with the commission of an offence of a heinous crime and it is feared that he is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrants should be avoided. 57. The court should try to maintain proper balance between individual liberty and the interest of the public and the State while issuing non-bailable warrant." This Hon'ble Court has reaffirmed these principles in Raghuvansh Dewanchand Bhasin Vs. State of Maharashtra and Another and similarly in Vikas Vs. State of Rajasthan.

G. In Satinder Kumar Antil Vs. CBI, this Hon'ble Court stated "Learned senior counsel submits that the system which is sought to be followed specially in the State of Uttar Pradesh is that even if a person is not arrested during

investigation, on charge sheet being filed, more so, in such cases of CBI a person is sent to custody and thus, his appearance and applying for bail would have resulted in his being sent to custody". "Prima facie, we cannot appreciate why in such a scenario is there a requirement for the petitioner being sent to custody. Be that as it may, it will be appropriate to lay down some principles in this behalf.".

H. In Siddhartha Vs State of Uttar Pradesh &anr, this Hon'ble Court stated that "We are, in fact, faced with a situation where contrary to the observations in Joginder Kumar's case how a police officer has to deal with a scenario of arrest, the trial courts are stated to be insisting on the arrest of an accused as a pre-requisite formality to take the charge sheet on record in view of the provisions of Section 170 of the Cr.P.C. We consider such a course misplaced and contrary to the very intent of Section 170 of the Cr.P.C."

I. In Satinder Kumar AntilVs. CBI, this Hon'ble Court has stated "We have passed order interpreting Section 170 of the Cr.P.C. in Criminal Appeal arising out of SLP(Crl.) No. 5442/2021 [Siddharth Vs. the State of Uttar Pradesh &Anr.], decided on 16.08.2021. The counsels may have the benefit of the said order to assist us in the present case".

J. That the Petitioner craves leave to add, alter or delete from the grounds mentioned above.

K. That the Petitioner has not filed any other Petition before this Hon'ble Court or any other Court seeking the same reliefs.

PRAYER

In the facts and circumstances mentioned herein above, it is most humbly prayed that this Hon'ble Court may graciously be pleased:

i. To frame and lay down principles to the designated special courts, in complaint cases where complaints are filed under Cr.P.C Section 200 & process is issued under Cr.P.C Section 204 wherein the accused were not arrested during investigation by the Investigation Agency which mandates the designated special courts to follow the same principles that this Hon'ble Court proposes to lay down in cases under Cr.P.C Section 170 as per the orders of this Hon'ble Court in Satinder Kumar Antil Vs CBI dated 25.07.2021 and 18.08.2021.

ii. To issue any other or further order(s) and/or directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case and in the interest of justice.

Filed By:

Place: New Delhi PRTAEEK K. CHADHA

Filed On: 08.09.2021 ADVOCATE FOR THE PETITIONER

K. That the Petitioner has no personal interest in the present matter and has not filed any other Petition before this Hon'ble Court or any other Court seeking the same reliefs.

PRAYER

In the facts and circumstances mentioned herein above, it is most humbly prayed that this Hon'ble Court may graciously be pleased:

i. To frame and lay down principles to the designated special courts, in complaint cases where complaints are filed under Cr.P.C Section 200 & process is issued under Cr.P.C Section 204 wherein the accused were not arrested during investigation by the Investigation Agency which mandates the designated special courts to follow the same principles that this Hon'ble Court proposes to lay down in cases under Cr.P.C Section 170 as per the orders of this Hon'ble Court in Satinder Kumar Antil Vs CBI dated 25.07.2021 and 18.08.2021.

ii. To issue any other or further order(s) and/or directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case and in the interest of justice.

Filed By:

Place: New Delhi PRATEEK K. CHADHA

Filed On: 08.09.2021 ADVOCATE FOR THE PETITIONER

IN THE SUPREME COURT OF INDIA

CRIMINALORIGINAL JURISDICTION

WRIT PETITION (CRIMINAL) NO. OF 2021

IN THE MATTER OF:

Lawyers Against Malicious Prosecution ...Petitioner

Versus

Union of India and Others ...Respondents

AFFIDAVIT

I, Shaffi Mather s/o K M I Mather aged about50-year-oldr/o Mather Estate, Thevakkal, Cochin, 682021, Kerala, presently at New Delhi do hereby solemnly affirm and state on oath as follows:

1. That I am volunteering as the Director of the Petitioner and am fully aware of the facts and circumstances surrounding the present case. Thus, I am competent to swear and depose the present affidavit on behalf of the Petitioner.

2. That I am conversant with the facts and circumstances of the case and am competent to swear this affidavit.

3. That I have read the contents of the accompanying Synopsis and list of dates (page B to G), Writ Petition (page 1 to 42) and IAs (page no.___ to ___) and state that the same are true to the best of my knowledge, information and belief.

NOTARY Debjyoti Behuria Advocate Regn. No. 19716 Period: 24/02/2020 to 24/02/2025 Central Delhi GOVT. OF INDIA

4. That the instant petition is based on information available in public domain. That the Annexures are true to their respective originals.

5. That I have done whatever inquiry/investigation that was in my power to do and collected all data/material which was available and which was relevant for this court to entertain the instant petition. I further confirm that I have not concealed in the present petition any data/material/information which may have enabled this Hon'ble Court to form an opinion whether to entertain the instant petition or not and/or whether to grant any relief.

NOTARY Deepak Behuria Advocate Regn. No. 19716 Period: 24/02/2020 to 24/02/2025 Central Delhi GOVT. OF INDIA

6. That there is no personal interest/ gain, private motive or oblique reason in filing the present Petition.

I identified the deponent who has signed in my presence.

I identified the deponent who has signed in my presence.

31 AUG 2021

DEPONENT

For Lawyers Against Malicious Prosecution

Director

VERIFICATION

I do hereby verify that the contents of the above affidavit are true and correct to the best of my knowledge and no part of it is false and that nothing material has been concealed thereform.

Verified at New Delhi on this 31st day of August, 2021

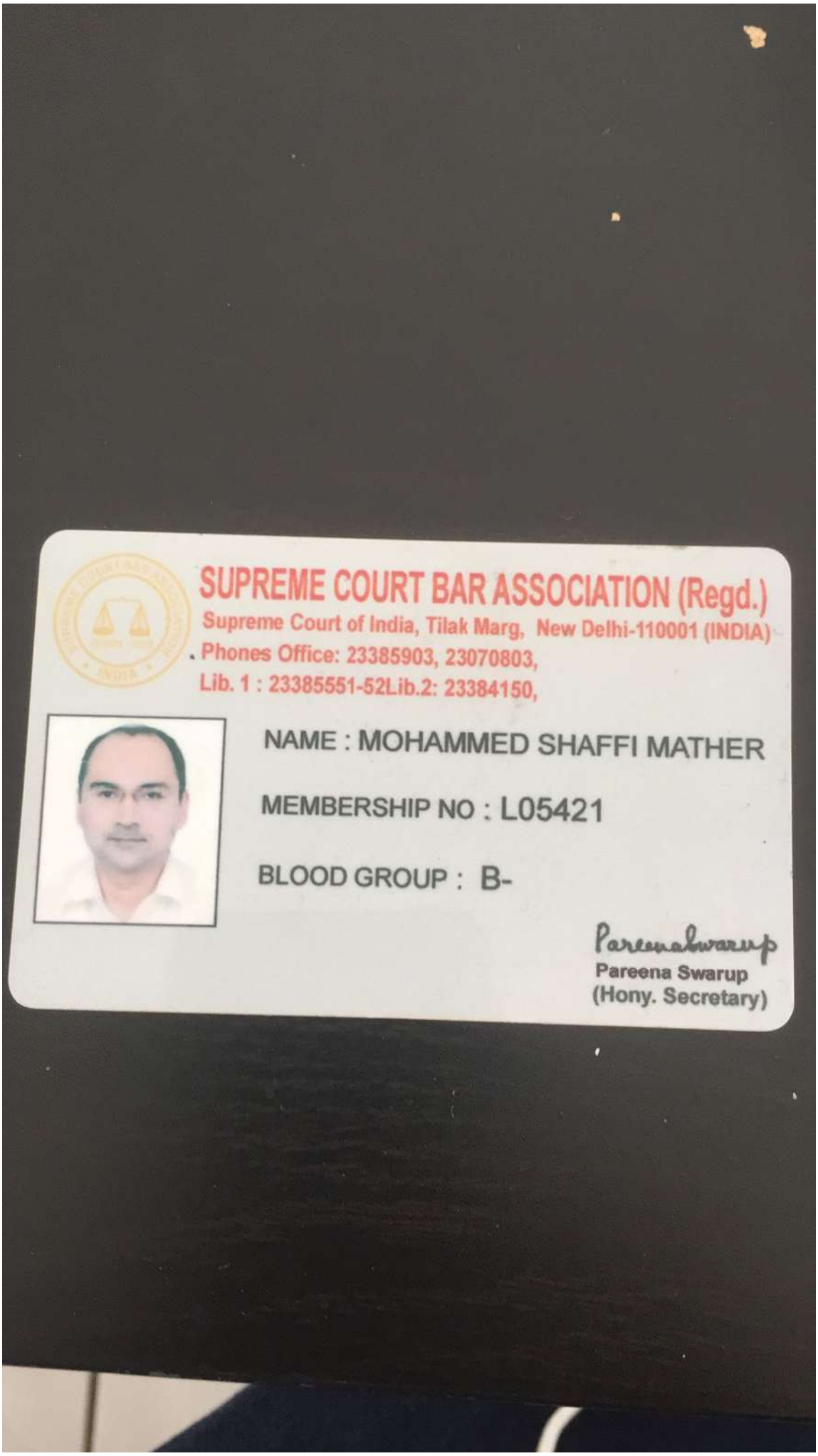
DEPONENT

For Lawyers Against Malicious Prosecution

Director

CERTIFIED THAT THE DEPONENT
Shri/Smt./Km. Shruti Mathur
S/o, W/o R/o KMJ Mathur Pratibha Chauhan
Identified by ... me at
Has solemnly ... which
Delhi on 206
That the contents of ... to him/her
have been read & explained
are true & correct to his/her knowledge

31 AUG 2021 NOTARY



SUPREME COURT BAR ASSOCIATION (Regd.)
Supreme Court of India, Tilak Marg, New Delhi-110001 (INDIA)
Phones Office: 23385903, 23070803,
Lib. 1 : 23385551-52Lib.2: 23384150,

NAME : MOHAMMED SHAFFI MATHER

MEMBERSHIP NO : L05421

BLOOD GROUP : B-

Pareena Swarup
(Hony. Secretary)

भारत सरकार

आधार

भारतीय विशिष्ट पहचान प्राधिकरण

भारत सरकार

Unique Identification Authority of India

Government of India

Enrollment No 2003/37016/10611

To,
K I Mohammed Shaffi Mather
S/O: K M Ibrahimkutty Mather
Mather Estate
Maniyathra Mugal Road
Anakuzhikkattu Temple Thevakkal
Thrikkakara North (Part)
Vadacode Kailas Colony Kanayannur Ernakulam
Kerala 682021
9198470574

07/09/2013

Ref: 488 / 29K / 528275 / 528677 / P

SH603384840FT

आपका आधार क्रमांक / Your Aadhaar No. :

4571 8666 9977

आधार - आम आदमी का अधिकार

भारत सरकार

Government of India

K I Mohammed Shaffi Mather
DOB : 06/02/1970
Male

4571 8666 9977

आधार - आम आदमी का अधिकार


आयकर विभाग
INCOME TAX DEPARTMENT
भारत सरकार
GOVT. OF INDIA
KAKANATTIL IBRAHIMKUTTY
MOHAMMED SHAFFI MATHER
IBRAHIMKUTTY MATHER
06/02/1970
Permanent Account Number
AEGPM2881K
Signature
COLOR PHOTOCOPY

//True Copy//

Annexure-P-2

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.838 OF 2021

(Arising out of SLP(Crl.) No.5442/2021)

SIDDHARTH **APPELLANT(S)**

VERSUS

THE STATE OF UTTAR PRADESH & ANR. **RESPONDENT(S)**

O R D E R

Leave granted.

The short issue before us is whether the anticipatory bail application of the appellant ought to have been allowed. We may note that as per the Order dated 02.8.2021 we had granted interim protection.

The fact which emerges is that the appellant along with 83 other private persons were sought to be roped in a FIR which was registered seven years ago. The appellant claims to be supplier of stone for which royalty was paid in advance to these

holders and claims not to be involved in the tendering process. Similar person was stated to have been granted interim protection until filing of the police report. The appellant had already joined the investigation before approaching this Court and the chargesheet was stated to be ready to be filed. However, the reason to approach this Court was on account of arrest memo having been issued.

It is not disputed before us by learned counsel for the respondent that the chargesheet is ready to be filed but submits that the trial court takes a view that unless the person is taken into custody the chargesheet will not be taken on record in view of Section 170 of the Cr.P.C.

In order to appreciate the controversy we reproduce the provision of Section 170 of Cr.P.C. as under:

> **“170. Cases to be sent to Magistrate, when evidence is sufficient. – (1) If, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try**

> **the accused or commit him for trial, or, if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed."**

There are judicial precedents available on the interpretation of the aforesaid provision albeit the Delhi High Court.

In *Court on its own motion v. Central Bureau of Investigation*[1], the Delhi High Court dealt with an argument similar to the contention of the respondent that Section 170 Cr.P.C. prevents the trial court from taking a chargesheet on record unless the accused is taken into custody. The relevant extracts are as under:

> **"15. Word "custody" appearing in this Section does not contemplate either police or judicial custody. It merely connotes the presentation of accused by the Investigating Officer before the Court at the time of filing of the chargesheet whereafter the role of the Court starts. Had it not been so the Investigating Officer would not have been vested with powers to release a person on bail in a bailable offence after finding that there was sufficient evidence to put the accused on trial and it would have been obligatory upon him to produce such an accused in custody before the Magistrate for being released on bail by the Court.**

1 2004 (72) DRJ 629

16. In case the police/Investigating Officer thinks it unnecessary to present the accused in custody for the reason that accused would neither abscond nor would disobey the summons as he has been co-operating in investigation and investigation can be completed without arresting him, the IO is not obliged to produce such an accused in custody.

[…]

19. It appears that the learned Special Judge was labouring under a misconception that in every non-bailable and cognizable offence the police is required to invariably arrest a person, even if it is not essential for the purpose of investigation.

20. Rather the law is otherwise. In normal and ordinary course the police should always avoid arresting a person and sending him to jail, if it is possible for the police to complete the investigation without his arrest and if every kind of co-operation is provided by the accused to the Investigating Officer in completing the investigation. It is only in cases of utmost necessity, where the investigation cannot be completed without arresting the person, for instance, a person may be required for recovery of incriminating articles or weapon of offence or for eliciting some information or clue as to his accomplices or any circumstantial evidence, that his arrest may be necessary. Such an arrest may also be necessary if the concerned Investigating Officer or Officer-in-charge of the Police Station thinks that presence of accused will be difficult to procure because of grave and serious nature of crime as the possibility of his absconding or disobeying the process or fleeing from justice cannot be ruled out."

In a subsequent judgment the Division Bench of the Delhi High Court in *Court on its own Motion v. State*[2] relied on these observations in *Re Court on its own Motion (supra)* and observed that it is not essential in every case involving a cognizable and non-bailable offence that an accused be taken into custody when the chargesheet/final report is filed.

The Delhi High Court is not alone in having adopted this view and other High Courts apparently have also followed suit on the proposition that criminal courts cannot refuse to accept a chargesheet simply because the accused has not been arrested and produced before the court.

In *Deendayal Kishanchand & Ors. v. State of Gujarat*[3], the High Court observed as under:

> **"2.…It was the case of the prosecution that two accused, i. e. present petitioners Nos. 4 and 5, who are ladies, were not available to be produced before the Court along with the charge-sheet, even though earlier they were released on bail. Therefore, as the Court refused to accept the charge-sheet unless all the accused are produced, the charge-sheet could not be submitted, and ultimately also, by a specific letter, it seems from the record, the charge-sheet was submitted**

2 (2018) 254 DLT 641 (DB)
3 1983 Crl.LJ 1583

without accused Nos. 4 and 5. This is very clear from the evidence on record. […]

… … … … … …

8. I must say at this stage that the refusal by criminal Courts either through the learned Magistrate or through their office staff to accept the charge-sheet without production of the accused persons is not justified by any provision of law. Therefore, it should be impressed upon all the Courts that they should accept the charge-sheet whenever it is produced by the police with any endorsement to be made on the charge-sheet by the staff or the Magistrate pertaining to any omission or requirement in the charge-sheet. But when the police submit the charge-sheet, it is the duty of the Court to accept it especially in view of the provisions of Section 468 of the Code which creates a limitation of taking cognizance of offence. Likewise, police authorities also should impress on all police officers that if charge-sheet is not accepted for any such reason, then attention of the Sessions Judge should be drawn to these facts and get suitable orders so that such difficulties would not arise henceforth."

We are in agreement with the aforesaid view of the High Courts and would like to give our imprimatur to the said judicial view. It has rightly been observed on consideration of Section 170 of the Cr.P.C. that it does not impose an obligation on the Officer-in-charge to arrest each and every accused at the time of filing of the chargesheet. We have, in fact, come across cases where the accused has cooperated with the

investigation throughout and yet on the chargesheet being filed non-bailable warrants have been issued for his production premised on the requirement that there is an obligation to arrest the accused and produce him before the court. We are of the view that if the Investigating Officer does not believe that the accused will abscond or disobey summons he/she is not required to be produced in custody. The word "custody" appearing in Section 170 of the Cr.P.C. does not contemplate either police or judicial custody but it merely connotes the presentation of the accused by the Investigating Officer before the court while filing the chargesheet.

We may note that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A

distinction must be made between the existence of the power to arrest and the justification for exercise of it.[4] If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused.

We are, in fact, faced with a situation where contrary to the observations in *Joginder Kumar's* case how a police officer has to deal with a scenario of arrest, the trial courts are stated to be insisting on the arrest of an accused as a pre-requisite formality to take the chargesheet on record in view of the provisions of Section 170 of the Cr.P.C. We consider such a course misplaced and contrary to the very intent of Section 170 of the Cr.P.C.

In the present case when the appellant has joined the investigation, investigation has completed and he has been roped in after seven

4 Joginder Kumar v. State of UP & Ors. (1994) 4 SCC 260

years of registration of the FIR we can think of no reason why at this stage he must be arrested before the chargesheet is taken on record. We may note that learned counsel for the appellant has already stated before us that on summons being issued the appellant will put the appearance before the trial court.

We accordingly set aside the impugned order and allow the appeal in terms aforesaid leaving the parties to bear their own costs.

.....J.
[SANJAY KISHAN KAUL]

.....J.
[HRISHIKESH ROY]

NEW DELHI;
AUGUST 16, 2021.

ITEM NO.38 Court 6 (Video Conferencing) SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No.5442/2021

(Arising out of impugned final judgment and order dated 09-07-2021 in CRMABA No. 5029/2021 passed by the High Court of Judicature at Allahabad, Lucknow Bench)

SIDDHARTH **Petitioner(s)**

VERSUS

THE STATE OF UTTAR PRADESH & ANR. **Respondent(s)**

Date : 16-08-2021 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE HRISHIKESH ROY

For Petitioner(s) **Mr. P. K. Dube, Sr. Adv.**
Mr. Ravi Sharma, AOR
Mr. Sandeep Gaur, Adv.
Mr. Sujeet Kumar, Adv.
Ms. Madhulika Rai Sharma, Adv.
Ms. Chhaya Gupta, Adv.
Mr. Anjani kumar Rai, Adv.

For Respondent(s) **Ms. Garima Prashad, Sr. Adv., AAG**
Mr. Sarvesh Singh Baghel, AOR
Mr. Utkarsh Sharma, Adv.

UPON hearing the counsel the Court made the following

O R D E R

Leave granted.

Appeal is allowed in terms of the signed reportable order.

Pending applications stand disposed of.

(RASHMI DHYANI) **(POONAM VAID)**
COURT MASTER **COURT MASTER**
(Signed reportable order is placed on the file)

//True Copy//

Annexure-P-3

CRWP No. 971 of 2016 1

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRWP No. 971 of 2016
DATE OF DECISION :- July 22, 2016

Arun Sharma **...Appellant**

Versus

Union of India and others **...Respondents**

CORAM: HON'BLE MR.JUSTICE M.JEYAPAUL

HON'BLE MRS. JUSTICE SNEH PRASHAR

Present:- Mr. Kanhiya Soni, Advocate for the petitioner.

***

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? Yes/No

M.JEYAPAUL, J.

1. On asking of the Court Mr. V.K. Kaushal, Advocate took notice for Union of India.

2. Heard the submissions made on either side.

3. The petitioner is a practicing advocate, who has invoked extra ordinary writ jurisdiction under Article 226 read with 227 of the Constitution of India, in respect of a PMLA Complaint No.4 of 2015 filed by an authority under PMLA before the Special Court for PMLA at Mumbai in ECIR no. ECIR/14/MZO/2013 inter alia against M/s Namdhari Food International Pvt. Ltd., Shri Inder Singh Bal, Shri Iqbal Singh Bal,

Shri Surjit Singh Bal, M/s. Namdhari Rice and General Mills, Shri Daljit Singh Bal, Shri Jaspal Singh Bal and Jai Singh Bal, collectively known as 'Namdhari Group' of Sirsa, Haryana. The said ECIR was registered on the basis of Scheduled offences alleged in FIR No. 216 of 2013 registered u/s 120B, 409, 465, 467, 468, 471, 474, 477(A) of IPC inter alia against the said two companies, which was later investigated by Economic Offence Wing, Mumbai by renumbering the same as CR no. 89 of 2013. Charge Sheet and Supplementary Charge Sheets have been filed in the said Scheduled Offence in CR no. 89 of 2013. Vide a Provisional Attachment Order no. 05/2015 the Plant of M/s Namdhari Food International Ltd at Sri Jiwan Nagar, Dabwali Road, Tehsil: Rania, Sirsa, Haryana was also attached under PMLA.

4. The petitioner contends that despite grave and heinous offence under PMLA by these accused, no arrest was made during investigations by exercising power conferred vide Sec.19 of PMLA. Even the Special Court while taking cognizance, instead of issuing non-bailable warrants, issued only summons to these accused persons. He submits that economic offences is worse than murder and therefore Sec. 45(1)(ii) of PMLA imposes twin conditions, which are to be satisfied before release on bail or bond of any person accused of offence under PMLA, and which are similar to those imposed under NDPS Act, TADA, POTA, MCOCCA etc. Consequently, according to him the application of Sec. 45 and Sec.19 of PMLA is not governed in any manner by the fact of filing a Complaint under PMLA or by an order of taking cognizance thereon. He submits that a Division Bench of this Court, however, vide **order dated 1.10.2015** in **CRM NO. M-28490**

of 2015 in the matter of **Dalip Singh Mann and Ors vs. Enforcement Directorate,** erroneously, without any rational basis and contrary to the legislative intent, held that the rigors of Section 45(1)(ii) of the Act would be attracted only while considering the bail plea of an accused who has been arrested by the Enforcement Directorate under Section 19 of the Act. He submits that the view cannot be treated as having any precedent value and shall not be applied in the instant PMLA Case No. 4 of 2015. He submits that these accused have amassed moveable and immoveable assets by resorting to money laundering, and that if they are not arrested under section 19 of PMLA and taken in judicial custody, they are likely to tamper with the evidence and may influence the witnesses.

5. We have adverted to the ratio laid down by the Hon'ble Supreme Court in **Navinchandra N. Majithia v. State of Maharashtra, (2000) 7 SCC 640** as regard the issue of jurisdiction. We are satisfied that substantial cause of action has arisen in the jurisdiction of this Court.

6. For the purpose of the adjudication of the legal issues involved in the instant petition, detailed allusion on allegations in the PMLA Complaint no. 4 of 2015 as stated in the writ petition is not warranted. It would suffice to say that around June 2016 cognizance was taken by the Special Court for PMLA at Mumbai in the said PMLA Complaint No.4 of 2015. There is no dispute on the fact that during the investigations under PMLA, these accused persons were not arrested by the authorities under section 19 of PMLA. After filing of Complaint, Process was issued by issuing summons to the accused including the aforesaid accused nos. 52 to 55 and 60 to 63 from Sirsa, Haryana, who allegedly committed offence

under PMLA within the jurisdiction of this Hon'ble Court.

7. At the outset, we may say that we find no merit whatsoever in the arguments of the petitioner and are not inclined to take a view different from that taken by the co-ordinate Division Bench of this Court vide order dated 1.10.2015 in CRM NO. M-28490 of 2015 in the matter of **Dalip Singh Mann and Ors vs. Enforcement Directorate**, or even for considering reference to larger bench. We are giving detailed reasons for arriving at this conclusion.

8. We have carefully considered the submissions and the relevant statutory provisions. We find no substance in the submission of the Petitioner that even at post cognizance stage, any person already arraigned as an accused of offense under Sections 3 read with section 4 of PMLA, can be arrested under Section 19 of PMLA. We are also not impressed by the argument that when a person, who is arraigned as accused in the Complaint for trying him for an offence under Section 3 read with Section 4 of PMLA, appears before the Special Court for PMLA pursuant to issuance of process vide summons or warrant, any consideration of his application for furnishing bail or bond by such person, whether interim or final, would be necessarily governed by the rigors imposed under Section 45(1)(ii) of the PMLA, read with section 65 and 71 of PMLA. We find no merit in his submission that section 45(1)(ii) would override the provisions relating to bails and bonds contained in the Code in Section 88 and section 167(2) of the Code, if it relates to person accused of Scheduled Offence under Part A of the Schedule to PMLA (as amended). We also find no merit in the further contention that it is open for the Investigating Agency under PMLA

to file a Complaint without completing investigation. Such contention is totally contrary to section 167(2) of CrPC, which requires completion of investigations and filing complaint, if statutory default bail is to be denied. The submission of the petitioner that section 173(8) would apply in PMLA Complaint cases appears to be erroneous, inasmuch as it is not applicable in absence of a report under section 173(2). Section 173(8) reads as under-

> **"173. Report of police officer on completion of investigation.**— ……
>
> (8)Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2)."

9. We find that for arresting any person under section 19(1) of PMLA, an authorized officer shall have on the basis of material in his possession, reason to believe, which is to be recorded in writing, that such person has been guilty of an offence punishable under PMLA. Section 19 (3) provides that every person so arrested shall be taken to the jurisdictional Judicial Magistrate or Metropolitan Magistrate within twenty-four hours, which shall exclude the time necessary for the journey from the place of arrest to the Magistrate's Court. This time of twenty-four hours denotes that if investigation cannot be completed within this time so as to file a Complaint, the arrested person shall be produced before Court for appropriate action i.e. either remand to appropriate custody or his release on

bail or bond. However, section 45 of PMLA creates an embargo on release on bail or on his own bond if such person is accused of an offence punishable for a term of imprisonment of more than three years under Part-A of the Schedule with exception regarding persons mentioned in the first proviso to section 45(1), unless the following two conditions are satisfied-

> (*i*) the Public Prosecutor has been given an opportunity to oppose the application for such release; and
>
> (*ii*) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:
>
> The application of section 45(1) is therefore to be read in the context of section 19(3) of PMLA in respect of an arrested person brought in custody before Court. Second proviso to section 45(1) creates a bar on taking cognizance except upon a complaint in writing by an authorised officer. This insertion of further bar by way of a proviso instead of creating a separate independent section, clearly presupposes consideration of application for release on bail or bond under section 45 of only such a person, who is already arrested and is in custody at a stage prior to stage of taking cognizance upon filing of a complaint.

10. Section 65 of PMLA stipulates that the provisions of the Code of Criminal Procedure, 1973 shall apply, in so far as they are not inconsistent with the provisions of PMLA, to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under PMLA. Section 71 of PMLA provides that the provisions of PMLA shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in

force. These provision are akin to section 4(2) read with section 5 of the CrPC, which also makes the provisions of the CrPC applicable for these purposes in every special statute, but subject to the inconsistent provisions of such special statutes. We find that after arrest of a person under section 19 of PMLA, he is to be produced before the Court within 24 hours if the investigations could not be completed within that time. Thereafter, if the investigation is not completed even within further period of sixty days from the date of first remand, in such event section 167(2) of the CrPC would directly come in aid of such arrested person. He shall have indefeasible right to be released on bail in the PMLA case, if he is prepared to and does furnish bail, in the light of the categorical findings contained in the binding precedent in ***Union of India v. Thamisharasi, (1995) 4 SCC 190*** in the matter concerning **NDPS Act** which admittedly contains similar embargo on grant of bail vide **section 37** of the said Act. The Hon'ble Supreme Court was pleased to observe that **:**

"11……It is this context in which Section 37(1)(*b*) has to be construed wherein are specified the limitations on granting of bail. We must, therefore, look to the corresponding provision in the Code of Criminal Procedure with which Section 37(1)(*b*) of the Act can be treated to be inconsistent. In the Code of Criminal Procedure, it is Section 437 and not Section 167 which is the corresponding provision for this purpose. The corresponding limitation on grant of bail in case of non-bailable offences under Section 437 is as follows:

> "(*i*) such person shall not be so released if there appear reasonable grounds for believing that he

has been guilty of an offence punishable with death or imprisonment for life;"

In other words, under Section 437 of the Code the person is not to be released on bail "if there appear reasonable grounds for believing that he has been guilty of an offence …" while according to Section 37 of the NDPS Act, the accused shall not be released on bail unless "the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence ……..…". The requirement of reasonable grounds for belief in the guilt of the accused to refuse bail is more stringent and, therefore, more beneficial to the accused than the requirement of reasonable grounds for the belief that he is not guilty of the offence under Section 37 of the NDPS Act. Under Section 437 CrPC the burden is on the prosecution to show the existence of reasonable grounds for believing that the accused is guilty while under Section 37 of the Act the burden is on the accused to show the existence of reasonable grounds for the belief that he is not guilty of the offence. In the first case, the presumption of innocence in favour of the accused is displaced only on the prosecution showing the existence of reasonable grounds to believe that the accused is guilty while under the NDPS Act it is the accused who has to show that there are reasonable grounds for believing that he is not guilty.

12. The limitation on the power to release on bail in Section 437 CrPC is in the nature of a restriction on that power, if reasonable grounds exist for the belief that the accused is guilty. On the other hand, the limitation on this power in Section 37 of the NDPS Act is in the nature of a condition precedent for the exercise of that power, so that, the accused shall not be released on bail *unless*

the court is satisfied that there are reasonable grounds to believe that he is not guilty. Under Section 437 CrPC it is for the prosecution to show the existence of reasonable grounds to support the belief in the guilt of the accused to attract the restriction on the power to grant bail; but under Section 37 NDPS Act it is the accused who must show the existence of grounds for the belief that he is not guilty, to satisfy the condition precedent and lift the embargo on the power to grant bail. This appears to be the distinction between the two provisions which makes Section 37 of the NDPS Act more stringent.

13. Accordingly, provision in Section 37 to the extent it is inconsistent with Section 437 of the Code of Criminal Procedure supersedes the corresponding provision in the Code and imposes limitations on granting of bail in addition to the limitations under the Code of Criminal Procedure as expressly provided in sub-section (2) of Section 37. These limitations on granting of bail specified in sub-section (1) of Section 37 are in addition to the limitations under Section 437 of the Code of Criminal Procedure and were enacted only for this purpose; and **they do not have the effect of excluding the applicability of the proviso to sub-section (2) of Section 167 CrPC which operates in a different field relating to the total period of custody of the accused permissible during investigation**.

14. In our opinion, in order to exclude the application of the proviso to sub-section (2) of Section 167 CrPC in such cases an express provision indicating the contrary intention was required or at least some provision from which such a conclusion emerged by necessary implication. **As shown by us, there is no such provision in the NDPS Act and the scheme of the Act**

> **indicates that the total period of custody of the accused permissible during investigation is to be found in Section 167 CrPC which is expressly applied. The absence of any provision inconsistent therewith in this Act is significant."**

11. On the same principles, in absence of anything inconsistent in PMLA with section 88 of CrPC, when a person voluntarily appears before the Special Court for PMLA pursuant to issuance of process vide summons or warrant, and offers submission of bonds for further appearances before the Court, any consideration of his application for furnishing such bond, would be necessarily governed by section 88 of the CrPC read with section 65 of PMLA. Section 88 of the CrPC reads as follows-

> **"88. Power to take bond for appearance.**— When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant, is present in such Court, such officer may require such person to execute a bond, with or without sureties, for his appearance in such Court, or any other Court to which the case may be transferred for trial."

This Section 88 (corresponding to section 91 of CrPC, 1898) would not apply qua a person whose appearance is not on his volition, but is brought in custody by the authorities as held by the Constitution Bench of the Hon'ble Supreme Court in **Madhu Limaye v. Ved Murti, AIR 1971 SC 2481** wherein it was observed that-

> "18……In fact Section 91 applies to a person who is present in Court and is free because it speaks of his being bound over, to appear on another day before the Court. That shows that the person must be a free agent

> whether to appear or not. If the person is already under arrest and in custody, as were the petitioners, their appearance depended not on their own volition but on the volition of the person who had their custody……"

Thus, in a situation like this where the accused were not arrested under section 19 of PMLA during investigations and were not produced in custody for taking cognizance, section 88 of CrPC shall apply upon appearance of the accused person on his own volition before the Trial Court to furnish bonds for further appearances.

12. We find that as explained by the Hon'ble Supreme Court in **Union of India v. Thamisharasi** (supra), the embargo under Section 45(1)(ii) of PMLA being similar to that under section 37 of NDPS will operate in a different field occupied by section 437 and would override the same, but would have no bearing on application of the provisions of section 88 and section 167(2) of CrPC. The absence of any provision in PMLA inconsistent with section 88 and section 167(2) of CrPC is significant.

13. The co-ordinate Bench of this Court in the said **Order dated 1.10.2015** in **CRM NO. M-28490 of 2015 in Dalip Singh Mann and Ors vs. Enforcement Directorate** (supra) was considering a case where the petitioners were summoned to face trial in a Statutory Complaint titled Niranjan Singh, Assistant Director, Directorate of Enforcement, Jalandhar, Government of India Vs. Balshinder Singh and others filed under Section 45 (1) of PMLA. It was an admitted fact that during investigation of the money laundering case, those petitioners were never arrested by the Enforcement Directorate in exercise of its powers under Section 19 of the Act. Since those petitioners showed their willingness to appear before the

Trial Court and to furnish bonds, vide the interim order dated 26.8.2015, they were permitted to appear before the Court of learned Sessions Judge-cum-Special Judge, Patiala with a direction to admit them to interim bail on furnishing bail bonds to the satisfaction of that Court. In this fact situation section 88 of CrPC was applicable, and hence there was no reason for the co-ordinate Bench to take any other view than logically taken by it. Moreover, the view taken by the co-ordinate Bench is also in consonance with the guidelines laid down for criminal courts by the Hon'ble Delhi High Court in **Court on its own Motion v. State through CBI, 2004 (1) JCC 308** which was again reiterated and relied upon in **Sanjay Chaturvedi v. State, (2006) 132 DLT 692** a judgment rendered by Hon'ble Justice A.K. Sikri, wherein the following guidelines were laid down inter alia in relation to offences those could be investigated without arrest -

"4. In case of *Court on its own Motion* v. *State through CBI* (supra), this Court had issued directions for criminal Courts which are as under:

> Arrest of a person for less serious or such kinds of offence or offences those can be investigated without arrest by the police cannot be brooked by any civilised society.
>
> *Directions for Criminal Courts—*
>
> (i) Whenever officer-in-charge of police station or investigation agency like CBI files a charge-sheet without arresting the accused during investigation and does not produce the accused in custody as referred in Section 170, Cr.P.C the Magistrate or the Court empowered to take cognizance or try the accused shall accept the charge-sheet forthwith and proceed according

to the procedure laid down in Section 173, Cr.P.C and exercise the options available to it as discussed in this judgment. In such a case the Magistrate or Court shall invariably issue a process of summons and not warrant of arrest.

(ii) In case the Court or Magistrate exercises the discretion of issuing warrant of arrest at any stage including the stage while taking cognizance of the charge-sheet, he or it shall have to record the reasons in writing as contemplated under Section 87, Cr.P.C that the accused has either been absconding or shall not obey the summons or has refused to appear despite proof of due service of summons upon him."

"(v) The Court shall on appearance of an accused in non-bailable offence who has neither been arrested by the police/investigating agency during investigation nor produced in custody as envisaged in Section 170, Cr.P.C call upon the accused to move a bail application if the accused does not move it on his own and release him on bail as the circumstance of his having not been arrested during investigation or not being produced in custody is itself sufficient to entitle him to be released on bail. Reason is simple. If a person has been at large and free for several years and has not been even arrested during investigation, to send him to jail by refusing bail suddenly, merely because charge-sheet has been filed is against the basic principles governing grant or refusal of bail."

14. Even a three judge Bench of the Hon'ble Supreme Court in **Inder Mohan Goswami Vs. State of Uttranchal, (2007) 12 SCC 1** was pleased to lay down the following guidelines-

"49. Non-bailable warrant should be issued to bring a person to

court when summons or bailable warrants would be unlikely to have the desired result. This could be when:

> • it is reasonable to believe that the person will not voluntarily appear in court; or
> • the police authorities are unable to find the person to serve him with a summon; or
> • it is considered that the person could harm someone if not placed into custody immediately."

> **"51.** In complaint cases, at the first instance, the court should direct serving of the summons along with the copy of the complaint. If the accused seem to be avoiding the summons, the court, in the second instance should issue bailable warrant. In the third instance, when the court is fully satisfied that the accused is avoiding the court's proceeding intentionally, the process of issuance of the non-bailable warrant should be resorted to. Personal liberty is paramount, therefore, we caution courts at the first and second instance to refrain from issuing non-bailable warrants."

15. In view of the above, the Special Court was duty bound to first issue summons in absence of any reasons mentioned in section 87 of the Code or as mentioned in para 53 of the aforesaid binding precedent of a three judge Bench of Hon'ble Supreme Court. It is not necessary to arrest every person during investigations under PMLA. There is no reason to incarcerate such persons in custody after taking cognizance on complaint filed against them, if they were not arrested by the investigating agency though available during investigation.

16. At post cognizance stage, any person already arraigned as an

accused of offence under Sections 3 read with section 4 of PMLA, cannot be arrested under Section 19 of PMLA. Such person can be arrested only upon execution of warrant if issued by the Court taking cognizance. After taking cognizance, any arrest by an authority under section 19 would be illegal, as the Court takes charge of the matter and any arrest thereafter cannot be without obtaining warrant from the Court. Therefore, we do not find merits in the arguments advanced by the petitioner in this behalf.

17. We therefore have no hesitation in holding that if any person was neither arrested during investigation under PMLA, nor produced in custody as envisaged in Section 170, Cr.P.C, upon issuance of process either by summons or warrant, if he appears before Court on his own volition, he would be entitled to forthwith furnish his bonds with or without sureties for further appearances without any incarceration in custody. The Co-ordinate Division Bench of this Court the said **Order dated 1.10.2015** in **CRM NO. M-28490 of 2015 in Dalip Singh Mann and Ors vs. Enforcement Directorate** (supra) had correctly observed that-

> "2. Vide the interim order dated 26.8.2015, the petitioners were permitted to surrender before the Court of learned Sessions Judge-cum-Special Judge, Patiala with a direction to admit them to interim bail on furnishing bail bonds to the satisfaction of that Court."
>
> "5) Having given our thoughtful consideration to the submissions, we are satisfied that no purpose shall be served by putting the petitioners in judicial custody pending trial in the Statutory Complaint. We say for the reasons that:
>
> (i) It is an admitted fact that during investigation

of the money laundering case, the petitioners were never arrested by the Enforcement Directorate in exercise of its powers under Section 19 of the Act;"

"(v) It further appears that rigors of Section 45 (1)(ii) of the Act would be attracted only while considering the bail plea of an accused who has been arrested by the E.D. Under Section 19 of the Act;"

"6) Taking into consideration the totality of the circumstances, the interim order dated 26.8.2015 is made absolute."

18. In view of the detailed reasoning recorded hereinabove-

(a) We have no hesitation in concurring with the above view already taken by the co-ordinate Division Bench of this Court in **Dalip Singh Mann and Ors vs. Enforcement Directorate** (supra) that rigors of Section 45(1)(ii) of PMLA would be attracted only while considering the application of an accused for release on bail or his own bond, if he has been arrested by the authorized officer under Section 19 of the PMLA before taking cognizance.

(b) In other words, if any person though available was neither arrested during investigation under PMLA, nor produced in custody as envisaged in Section 170 Cr.P.C, if upon issuance of process in a PMLA Complaint either by summons or warrant he appears before Court on his own volition, he would be entitled to forthwith furnish his bonds with or without sureties for further appearances

without any incarceration in custody.

(c) Section 45(1)(ii) of PMLA has no application in case of a person not arrested under section 19 of PMLA in such execution of bond for further appearance.

(d) At post cognizance stage, any person already arraigned as an accused of offence under Sections 3 read with section 4 of PMLA, cannot be arrested under Section 19 of PMLA, and such person can be arrested only upon execution of warrant if issued by the Court taking cognizance.

19. In view of the above, we dismiss the writ petition by rejecting all the prayers of the petitioner without any cost. We have not expressed any opinion on the merits of the allegations in the PMLA Complaint case.

(M. JEYAPAUL)
JUDGE

(SNEH PRASHAR)
JUDGE

July 22, 2016
p.singh

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Annexure-P-4

208

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.M-14509 of 2017 (O&M)
Date of Decision: May 22, 2017

Parminder Kumar @ Sushil Mishra @ Sandeep Mishra @ Parminder Singh Bihal

...Petitioner

VERSUS

Assistant Director Enforcement, U.T. Govt.

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Preetinder Singh Ahluwalia, Advocate
for the petitioner.

Mr.S.S.Sandhu, Standing Counsel
for the respondent.

****

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 439 Cr.P.C. for grant of regular bail in criminal complaint No.1 of 2016 dated 26.07.2016 under Section 44 read with Section 45 of the Prevention of Money Laundering Act 2002 (for brevity 'the Act') for the offence committed under Section 3 and punishable under Section 4 of the Act.

Notice of motion was issued. Learned Standing counsel for the respondent appeared and contested the petition.

I have heard learned counsel for the parties and have gone through the record.

The perusal of the record shows that criminal complaint has

been filed by the Assistant Director, Directorate of Enforcement, U.T. Govt. against the present petitioner along with other co-accused. Learned Special Judge, CBI, Punjab vide order dated 26.07.2016, summoned all the accused for 05.09.2016. The present petitioner surrendered before the Court and filed application for grant of regular bail. Learned Special Judge, CBI, Punjab vide order dated 09.01.2017, dismissed the bail application in view the provisions of Section 45 of the Act.

Learned counsel for the petitioner relied upon the judgment passed by Hon'ble Division Bench of this Court in ***CRM No.M-28490 of 2015 titled as Dalip Singh Mann and another vs. Niranjan Singh, Assistant Director, Directorate of Enforcement, Govt. of India, decided on 01.10.2015***, in which this Court granted bail by holding that during investigation of the money laundering case, the petitioners were never arrested by the Enforcement Directorate in exercise of its powers under Section 19 of the Act. It is also held in that judgment that rigors of Section 45(1)(ii) of the Act would be attracted only while considering the bail plea of an accused who has been arrested by the E.D. under Section 19 of the Act. In that case, the complaint was at initial stage, therefore, the Hon'ble Division Bench granted the bail.

Learned counsel for the petitioner further cited judgment passed by the Hon'ble Division Bench of this Court in ***Arun Sharma vs. Union of India and others, 2016(3) RCR (Criminal) 883***, in which also, it is held by the Hon'ble Division Bench that if any person was neither arrested during investigation under PMLA nor produced in custody as envisaged in Section 170 Cr.P.C., upon issuance of process either by summons or warrant, if he appears before Court on his own volition, he

would be entitled to forthwith furnish his bonds with or without sureties for further appearances without any incarceration in custody. It is held in that case that rigors of Section 45(1)(ii) of PMLA would be attracted only while considering the application of an accused for release on bail or his own bond, if he has been arrested by the authorised officer under Section 19 of the PMLA before taking cognizance.

Learned counsel for the also placed reliance upon the judgment passed by the Hon'ble Division Bench of this Court in ***CRM No.M-42455 of 2016 titled as Harmesh Kumar Gaba vs. Assistant Director, Directorate of Enforcement, decided on 28.02.2017***, in which, the Hon'ble Division Bench of this Court granted the bail by holding that it is seriously doubtful whether rigors of Section 45 of PMLA would be attracted in this case as the petitioner is not accused of an offence punishable for a term of imprisonment of more than three years in Part 'A' of the Schedule attached to PMLA, 2002 and the petitioner was not subjected to custodial interrogation regardless of express powers given to E.D. under Section 19 of the Act.

Keeping in view the law laid by the Hon'ble Division Benches of this Court, I find that these cited judgments fully apply to the facts of the present case as in the case in hand, admittedly, the accused has surrendered on the basis of the summons issued against him and he was never arrested by the E.D. Under Section 19 of the Act. Furthermore, in the main case, which was got registered by the CBI, the present petitioner is already on bail.

In view of the above facts and circumstances, I find merit in the present petition and the same is allowed. The petitioner is ordered to be

released on bail subject to his furnishing personal/surety bonds in the sum of ₹50,000/- with one surety in the like amount to the satisfaction of the trial Court.

May 22, 2017 **(INDERJIT SINGH)**
Vgulati **JUDGE**

Whether speaking/reasoned **Yes**
Whether reportable **No**

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Annexure-P-5

IN THE HIGH COURT OF JHARKHAND AT RANCHI
A.B.A. No. 2812 of 2018

Dharamveer Bhadoria **.....** Petitioner

Versus

Directorate of Enforcement, Ranchi **.....** Opp. Party

CORAM: HON'BLE MR. JUSTICE ANANT BIJAY SINGH

For the Petitioner : Mr. Rupesh Singh, Advocate.
Mr. Amarendra Pradhan, Advocate.
For the ED : Mr. Amit Kumar Das, Advocate.

02/Dated: 15/05/2018

Petitioner is apprehending his arrest in connection with Complaint Case No. ECIR/06/PAT/2012/PMLA, dated 13.03.2012 filed in the court of Spl. Judge, PMLA, Ranchi by the Deputy Director, ED on 31.03.2018, in which cognizance has been taken under Section 3 and punishable under Section 4 of the Prevention of Money Laundering Act, 2002 vide order dated 31.03.2018 passed by the learned Special Judge, P.M.L. Act, Ranchi.

Learned counsel for the petitioner has submitted that initially FIR No. RC-20(A) was registered by the Central Bureau of Investigation, Ranchi on 22.10.2009 for violation of Section 120-B read with Section 420, 467, 468 and 471 of I.P.C. and Section 13 (2) read with Section 13 (1)(d) of Prevention of Corruption Act against Shri Basudeo Tiwary, the then Executive Engineer, RCD, Chaibasa, M/s Nav Nirman Builders for criminal conspiracy, cheating, forgery of valuable security, forgery for the purpose of cheating as genuine, a forged document and criminal misconduct. After investigation on 03.12.2010, the CBI submitted final form under Section 120-B of I.P.C. read with Sections 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act and not under Sections 420, 467,468, 471 of the I.P.C. Learned counsel for the petitioner further submitted that the Hon'ble Supreme Court in Special Leave to Appeal (Crl.) No(s) 5737 of 2012 under order dated 21.08.2012 was pleased to give liberty to the petitioner to surrender and to pray for regular bail and the court below was directed to release the petitioner on bail to the satisfaction of Surrendering Court.

Learned counsel for the ED seeks time to take instruction and to file counter affidavit.

Prayer is allowed.

List this case on 22.06.2018.

Till then, no coercive steps shall be taken against the petitioner in connection with Complaint Case No. ECIR/06/PAT/2012/PMLA, pending in the court of Spl. Judge, P.M.L. Act, Ranchi.

Let a copy of order be sent to the court below and also handed over to learned counsel for the ED.

(Anant Bijay Singh, J.)

Sunil/

//True Copy//

Annexure-P-6

Special Sessions Court, Jaipur (Prevention of Money Laundering Act, 2002/ (special Court Communal Riots Case), Jaipur Metropolitan.

Presiding Officer- Narendra Kumar Singh

Criminal Complaint No. 02/2016

Sitaram Meena, assistant Director, Directorate of Enforcement , 2nd Floor, Jivan Needhi, Life Insurance Corporation Building, Bhawani Singh Road, Jaipur- 302005 ...Complainant

Versus

1. Pushya Mitra Singhdev son of late G. Ramchandra, 7/8 Hari Marg, Geeta Vihar, Maharana Pratap Circle, Sector-22, Pratap Nagar, Jagatpura, and Inspector General, Assistant Chief Security Commissioner, Railway Safety Board. Jaipur North-Western Railway, Jaipur

2. Anita Singhdev wife Pushya Mitra Singhdev 7/8 Hari Marg, Geeta Vihar, Maharana Pratap Circle, Sector-22, Pratap Nagar, Jagatpura, Jaipur.

...accused

Complaint under section 45 (1) Prevention of Money Laundering Act. 2002

Attended:

1- Shri Jitendra Singh Poonia - learned advocate complainant.

-: Order ::

Date: 12 March, 2018

1. This complaint was made before this court by the complainant Sitaram Meena, Assistant Director Enforcement Directorate, Government of India, Jaipur against the accused Pushya Mitra Singhdeo and Anita Singhdeo against the provisionsIt has been presented under the provisions of sub-section-1 of section-45 of the Prevention Act, 2002.
2. Learned counsel has presented the argument on behalf of the complainant that in respect of the facts alleged in the complaint, proper records and documents have been presented by the complainant side and the facts alleged in the complaint and attached with the complaint From the records/documents made, the offense of section 4 of the Prevention of Money Laundering Act 2002 against the above accused is prima facie proved and accordingly the trial should be started against the above accused after taking cognizance of the above section.
3. Learned counsel by this Court on behalf of the complainant Submission has been considered. In the complaint letter presented by the complainant side and all the relevant attached with it, the document has been perused.
4. It has been alleged in the said complaint that the complainant is in the post of Assistant Director in Enforcement Directorate and accordingly discharging his official duties. He is a public servant, he has the right to present this complaint in pursuance of the order dated 11.11.2014 under the provisions of section 45 of the Prevention of Money Laundering Act, 2002, The Directorate is a research agency of the Government of India,

which deals with money laundering. Works for enforcement under the provisions of the Prevention Act.

5. The complainant has alleged in this complaint that the Central Investigation Department, Anti-Corruption Unit-4, New Delhi has given a First Information First. Report No. R.C. - 4(A) / 2009 / ACU. In pursuance of 4, the investigation was carried out with Pushya Mitra Singhdeo and during the investigation the CBI. Date: 13.10. In 2009, search proceedings were conducted and according to the CBI's first information report, Pushya Mitra Singhdev had Rs.1,03,00,771/- in his possession Rs.103, amount in his own name and in the name of his wife from 18.12.1985 to 18- 12 E 9 dated 31.3.2009, for which they have not been able to give a satisfactory answer, the income was inconsistent with their known sources. The CBI, prima facie, by Pushya Mitra Singhdeo of the Prevention of Corruption Act, 1988, 5-12/2 183), has committed an offense under Section 13(2) read with Section 13(4) (e) and Anita Singhdeo. Section 199 of the Indian Penal Code under section- 13(1)(e) found to have been committed by the offense prima facie by Pushya Mitra Singhdeo of the Prevention of Corruption Act, 1988 under section 13 (2) read section 13 (1) (e) 13/02) and against Anita Singhdeo section of the Indian Penal Code - 109 read / have been found to have committed an offense under section 13 (1) (e). CBI presented the charge sheet on 28.12.2011 before the competent court. CBI investigation also presented the fact that Anita Singhdev is a housewife who has abetted Pushya Mitra 'Sanhdev' to acquire the above incompatible properties. During the said period Pushya Mitra Singhdev

had acquired movable and immovable properties in his own name and in the name of his wife Anita, which were inconsistent with the properties of the and the CBI found inconsistent assets of Rs.57.67.977.10. Found certified.

6. In this complaint, it has also been alleged by the complainant that on 5.2.2013, by the Special Judge CBI against Pushya Mitra Singhdeo, Section 13 (2) of the Prevention of Corruption Act, 1988 read Section 13 (1) (e) Cognizance has been taken against Anita Singhdeo under Section 109 of the Indian Penal Code read Section 13(2) of the Prevention of Corruption Act, 1988 read Section 13(1)(e).
7. In this complaint, the complainant has also alleged that during the investigation the statements of the accused have also been recorded and documents have been collected. It has been revealed from the investigation that the said accused are involved in the offense of money laundering from proceeds of crime i.e. disproportionate assets and from the investigation conducted by the Enforcement Directorate, it is It is evident that the accused have invested money received from criminal activities related to scheduled offences in the purchase of movable/immovable properties. The research also revealed that proceeds of crime i.e. disproportionate assets were continuously diverted into movable properties in their names to launder money so that the stains of illegal sources could be unearthed. CBI. It is established from the research of K.P. that Pushya Mitra Singhdev got appraisal of house number 7, 8, 23 and 24 Geeta Vihar C, Jagatpura, near NRI Circle, behind Sector 22, Pratap Nagar, Jaipur through GS Bafna

evaluator. The cost of the said construction was appraised at Rs.50,71,600/-, while the valuation of the said property was done by Shri D.K.Tikkiwal Valuation Officer Income Tax, Jaipur, then the estimated cost of the construction was assessed atat Rs.66,43,962/-. Research also establishes that Shop No. 57. Ganpati Plaza, M.I. Road, Jaipur was purchased by Pushya Mitra Singhdev from Gulabrai Lokwani and Smt. Laxmi Lokwani for Rs.6,01,560/-. Research also establishes that Pushya Mitra Singhdeo R.P.F. Officers Co-Operative Group Housing Society Ltd. is a member of Sector-9 Gurgaon and paid Rs.361000/- to the society. According to the reply of the manager of the society, the said pallet was sold to Arun Kumar and Mrs. Kanchan Nigam by Pushya Mitra Singhdev for Rs. 6500000/- on 28.05.2013.

8. It is also alleged in this complaint that it is established from research that Anita Singhdev has acquired 17/30 share of 4.91 hectare agricultural land (2.78 hectare / 11 bigha 13 biswa) land which is situated in Jaisingh Nagar, Chandwaji dated: 11.11. Bought it in 2004 from Bhanwarlal and others for Rs.4,50,000/-. 178230/- was paid as stamp duty and registration fee for the said day. Thus the total cost of the said land was Rs.6,28,230/-. Mrs. Anita Singhdev has purchased Plot No. 11-12 which is located near Pratap Nagar, Pashupatinath Nagar, from Pradeep Agrawal for Rs. 80,000/- on 1.0.2003. Pushya Mitra Singhdeo has neither taken permission from the competent authority nor informed him before the purchase of the said plot by his wife. Anita Singhdev is a housewife. In this way, the

amount received illegally by Pushya Mitra Sahdev has been made available to his wife for the said purchase.

9. It is also alleged in this complaint that the CBI It is established from the research of K.K. that Anita Singhdev had purchased 13/30 share of 4.91 hectare agricultural land from Mahadev Ramkavar, Badri, Devi Sahai, Jagdish, Mangal, Bhairu, Kalyan, Gyarsilal, Ramnarayan and Ramdev for Rs.3,45,000/- . But with bad luck, he prepared the name of Anita Singhdev wife Pushya Mitra Singhdev instead of Anita Singh Dev daughter Shri Bhimraj Meena Plot No. 5 Pratap Nagar, Jaipur. On the basis of this power of attorney, he pretended to sell this land to Mrs. Uma Devi. Uma Devi is the mother of Pushya Mitra Singhdev and Anita is the mother-in-law of Singhdev. The sub-registrar estimated the cost of the said land to be Rs.85,20,000/- and Anita Singhdeo has paid Rs.451200/- for stamp duty and possession for the sale price of Rs.85,20,000/-. Thus an investment of Rs 796200/- has been made to buy the said land. Pushya Mitra Singhdeo and Anita Singhdeo have been accused of disproportionate income invested in property and deposited in bank Unable to set the amount correctly. For this reason, attachment proceedings were taken by the Directorate of Enforcement, which were provisionally attached on the Directorate's date: 26.6.2015. The Adjudicating Authority, New Delhi has confirmed the said interim attachment order dated: 10.12.2015. One FDR dated 23.7.2013 in movable properties is in the name of Bank of Baroda Pushya Mitra Singhdeo. This amount has been received by selling plot no. C-102 on 18.19 and 20 AK

Nigam on 28.5.2013. The property acquired by the above fifty is inconsistent.

10. It has also been alleged in this complaint that during the period from 1.4.96 to 31.12.2007, the CBI in its charge sheet in the present case stated that it is evident that Pushya Mitra Singhdev had property worth Rs 57,76,797.10 in his possession, for which he could not give satisfactory accounts. Anita Singhdev is a housewife. He has actively helped and abetted Pushya Mitra Singhdev in acquiring the above incompatible properties. CBI. It is established from the charge sheet of P.C. that Pushya Mitra Singhdeo had property worth Rs 486892 in his possession at the beginning of the said period in his own name and in the name of his wife Anita Singhdeo. After the end of aforementioned cheque period, total worth of his asests was found to be 10255475/-. His immovable assets worth Rs. 4715922 in the name of Pushya Mitra Singhdev in his own name or in the name of his wife Anita Singhdev and in the name of his daughter during the period 1.4.96 to 31.12.2007. Thus it is clear that Pushp Mitra Singhdeo and Anita Singhdeo had movable and immovable properties of Rs.10255,475 and Rs.4715822.75 at the end of the said bank period. CBI investigation has also revealed that from date: 1.4.96 to 31.12.2007, Pushya Mitra Singhdev and his family members have been searched from all sources and the total income was found to be 1,40,25,548.31.

11. It is also alleged that Pushya Mitra Singhdev and his family members have spent a total amount of Rs 5317939.66 on various heads during the period from 1.4.96 to 31.12.2007 and thus in the CBI an amount of Rs 5776796.10 during the

said period. Incongruous properties are marked to be in the possession of Pushya Mitra Singhdev. Anita Singhdev is a housewife. He has helped and abetted Pushya Mitra Singhdev to acquire movable and immovable properties. Under the provisions of section 50 of the Prevention of Money Laundering Act 2002 of Anita Singhdev and Pushya Mitra Singhdeo, the articles have also been written. Anita Singhdeo has failed to establish her statement that she has had a regular business and earned a regular income from it. The CBI has considered her a housewife in her research. Pushya Mitra Singhdeo and Anita Singhdeo could not prove the inconsistent income invested in properties and deposited in bank accounts. He gave away his movable and immovable properties from the fire of crime and from this amount in such a way as to show them to be spotless and to hide their true origin and to remove them from their criminal sources. Can go They have mixed the said illegal money with the legally earned money so that they can use the laundered amount.

12. Along with this complaint, the complainant Sitaram Meena has also submitted his affidavit.

13. With this complaint on behalf of the complainant, the CBI. Special Court by CBI A copy of the document of the charge sheet presented in front of the IPC has been presented and this fact has also been identified along with other facts in this charge sheet.

14. From the aforesaid facts and figures, it is well established that Shri Pushya Mitra Singhdeo was in possession of disproportionate assets to the tune of Rs. 57,76,797/- during the check period from 1.4.96

to 31.12.2007 for which he could not satisfactorily account for.

15. Anita Singhdeo is a housewife she has no independent source of income except interest credited in SB accounts RD A/cs, LICs, commission from TATA AIG Life Insurance. She has actively aided and abetted immovable and movable assets in her name.

16. The aforesaid facts constitute commission of offences punishable u/s 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988 against Shri Pushya Mitra Singhdeo constitute commission of offences punishable u/s 109 Indian Penal Code r/w 13(2) r/w 13(1)(3) of the Prevention of Corruption Act, 1988.

14. Thus the CBI by the accused Pushya Mitra Singhdeo against Section 13 of the Prevention of Corruption Act, Section 13 (2), Section 13 (1) (e) and Section 109 of the Indian Penal Code against Anita Singhdev and Section 13 (2) of the Prevention of Corruption Act, read Section 13 (1) (e) has been found to have proved the offence. In the same sequence, the complainant's side referred Special Judge CBI. A copy of the order dated 5.2.2013 of No. 1 Jaipur has also been submitted. According to the order of this date: 5.2.2013, the said court has read section 13 (2) of the Prevention of Corruption Act against the accused Pushya Mitra Singhdev and section 13 (1) (e) of the Indian Penal Code against Anita Singhdev r/w109 IPC and r/w 13(2) r/w 13(1)(e) of the Prevention of Corruption Act and the offence is proved. Whereby the pendency / institution of the

scheduled offense as defined in section 2Y of the Prevention of Money Laundering Act against the accused is proved. Thus, from the above documents, prima facie, the pending / institution of the scheduled offenses provided in the Prevention of Money Laundering Act against the accused persons Pushya Mitra Singhdev and Anita Singhdev is proved.

15. After the research done by the complainant side of the facts alleged in this complaint, this allegation has been made in relation to the accused Pushya Mitra Singhdev.

> *Role of Shri Pushya Mitra Singhdev - CBI Chargesheet No. 6/2011 dated 28.12. presented by New Delhi under Section 173 of the Code of Criminal Procedure. 2011 It is evident that during the period of his services he was posted as public servant at various places during the check period from 1.4.1996 to 31.12.2007. 57,76,797/- in the possession of Shri Pushya Mitra Singhdeo, in respect of which he could not give any satisfactory account and he transferred the said inconsistent property to various properties in the name of his own and his family members. etc. in such a way as to make them appear immaculate and to hide their true origins and to remove them from their criminal source. He has invested the above inconsistent income in movable/immovable properties in Shri Pushya Mitra Singhdev and mixed the money with the legitimate money earned by lawful means. So that they can use the redeemed amount.*

16. In the same sequence, with respect to Anita Singhdeo, it is stated that:

Role of Anita Singhdev She is a housewife. They have their savings bank accounts and R.D. There is no other independent source of income other than the interest credited to the account, commission received from Tata AIG Life Insurance. He actively assisted and abetted Shri Pushya Mitra Singhdev in acquiring movable and immovable properties in his name so as to hide the real origin of the proceeds of the said offense and keep them away from their criminal source.

17. In this way, after the investigation was done by the complainant side in relation to the accused Pushya Mitra Singhdeo and Anita Singhdeo, the above facts have been concluded.

18. With this complaint, the complainant has presented an order dated 10.12.2015 in relation to the above accused and their property by the IADJUDICATING AUTHORITY, New Delhi, established under the Prevention of Money Laundering Act, and in this order It has been held that –

> 60. In the given fact and circumstances of the case and after considering all the materials placed on the records including OC, RUD, statements recorded under section 50 of the Act. Replied/ Documents filed by the Defendants and Rejoinders of the Complainant as we as the Oral submissions made by the parties, I am of the prima-facie view that the Complainant has made out a case for confirmation of PAO. Accordingly, the PAO is confirmed.
>
> 61. It is held that the property which have been attached u/s 5 of the Act in this case as equivalent of

the property acquired as disproportionate assets is as per the provisions of the Act.

62. It is held that the properties which has been attached under Section 5 of the Act in this case are involved in Money Laundering. The Defendants are in possession of Proceeds of Crime within the meaning of provisions of Prevention of Money Laundering Act, 2002 and accordingly it is ordered that the attachment of the property shall

a. continue during the pendency of the proceedings relating to any offence under this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case may be; and

b. become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60 of the PMLA, 2002 (as amended), by the Special Court.

19. Thus the said ADJUDICATING AUTHORITY, New Delhi attached the property belonging to the above accused is defined under the Prevention of Money Laundering Act as determined to be Proceeds of crime.

20. With this complaint, the complainant side of Bharat Bhawan Nirman Co-Operative Society's allotment letter of plot in favor of Anita Singhdev dated: 14.7.1997 and date: 19.1.1997 Report of the assessing officer of Income Tax

Department dated: 24.11.2010 in favor of Pushya Mitra Singhdev Sale letter of shop No. A-57 located at Ganpati Plaza, MI Road, Jaipur in favor of Arun Kumar and Kanchan by Pushya Mitra Singhdev, in favor of flat No. C-102 which is located in Gurgaon. Bhanwar Lal. By Bhairu Narayan, Shankar, Gajanand, Gopal, Chhitar Shivnarayan and Shanti, 70/30 of the land Khasra No. 301 was left in Jai Singh Nagar dated: 11.11.2004, Anita Singhdev and other documents have also been presented. The above documents prima facie support the facts stated in this complaint on behalf of the complainant.

21. CBI in its charge sheet which has been presented against Pushya Mitra Singhdev and Anita Singhdev on page number 36 of the charge sheet, of Pushya Mitra Singhdeo and Anita Singhdeo while computing the disproportionate assets, the following facts have been recognized:

I.	Assets held on 01.04.1996	Rs. 4,86,892
II.	Assets held on 31.12.07	Rs. 1,49,71,297.75
III.	Assets acquired during check period from 01.04.96 to 31.12.07 (II-I)	Rs. 1,44,84,405.75
IV.	Expenditure during check period 01.04.96 to 31.12.07	Rs. 53,17,939.66
V.	Total Assets & expenditure during check period from 01.04.96 to 31.12.07 (III+IV)	Rs. 19,802,345.41
VI.	Income during check period from 01.04.96 to 31.12.07	Rs. 14,025,548.31
VII.	DISPROPORTIONATE ASSETS (V-VI)	Rs. 5,776,797.1

22. Thus the CBI In relation to the income of the said accused in the period from: 1.4.1996 to 31.12.2007, the above facts have been identified by the. CBI. Against Pushya Mitra Singhdeo under Section 13(2) of the Prevention of Corruption Act read Section-13(1)(e) and against Anita Singhdeo, Section 109 of the Indian Penal Code read Section-13(2) of the Prevention of Corruption Act, 1988. The offense of .13 (1) (e) is held to be proved. Section 13 of the Prevention of Corruption Act has been included in the Prevention of Money Laundering Act as a scheduled offense in the year 2009. In the humble opinion of this Court, in the context of the above facts available on the file, this Court has made a reference to the said fact at this stage. It is also relevant and necessary to be considered.

23. Hon'ble Supreme Court by Sajjan Singh Vs. State of Punjab in A.I.R. 1964 SC 484 and in this judicial illustration, by the Hon'ble Supreme Court, under the provisions provided in the Prevention of Corruption Act, it is explained in relation to receiving the inconsistent property before coming into effect of the Act or after coming into effect of the Act. It is held that-

> It may also be mentioned that if pecuniary resources property acquired before the date of commencement of the Act were to be left out of account in applying sub-section (3) od S. 5 it would be proper and reasonable to limit the receipt of income against which the proportion is to be considered also to the period after the Act. On the face of it this would lead to a curious and anomalous position by no means satisfactory or helpful to the accused himself. For, the

income received during the years previous to the commencement of the Act may have helped in the acquisition of property after the commencement of the Act. From whatever point we look at the matter it seems to us clear that the pecuniary resources and property in the possession of the accused person or any other person on his behalf have to be taken into consideration for the purpose of sub- section 3 of section 5, whether these were acquired before or after the Act came into force.

24. Thus the Hon'ble Supreme Court held the above judicial if in the illustration, this law has been propounded that if incompatible property has been acquired before coming into effect of the Act or after coming into effect of the Act, even then such inconsistent property will also be included under the offense of Prevention of Corruption Act. Therefore, in the context of the above law propounded by the Hon'ble Supreme Court, this complaint is not legally tainted in any way due to the inclusion of section 13 of the Prevention of Corruption Act in the scheduled offense of the Prevention of Money Laundering Act in the year 2009.

25. In section 24 of the Prevention of Money Laundering Act, it has been provided by the judge that the court will give cases to be done under the Prevention of Money Laundering Act. In the proceedings, unless the contrary is proved, it shall be presumed that the Proceeds of crime related to money laundering is involved and provision has also been made for the presumption of Proceeds of crime. In the same sequence, in section-71 of the same Act, the provisions

made in this Act have an overriding effect on the law prevailing at that time.

26. In this way, in the context of all the relevant documents attached with the complaint and the provisions made in the Prevention of Money Laundering Act, while employing the disproportionate amount / property acquired illegally by the accused Pushya Mitra Singhdeo and Anita Singhdeo And after integrating it, the above illegally acquired amount has been done to legalize the property, which is a Proceeds of crime which is an offense under the Prevention of Money Laundering Act and thus against the above accused the Prevention of Money Laundering Act. The offense defined in section 3 of the Act, whose punishment is provided in section 4 of the same Act, is prima facie proved.

27. Therefore, according to the above discussion, on the basis of the complaint presented by the complainant and all the documents presented by the complainant side, the offense defined in Section-3 of the Prevention of Money Laundering Act against the accused Pushya Mitra Singhdev and Anita Singhdeo, whose The offense of the punishment provided in section 4 of the same Act is prima facie proved and there is a proper and sufficient basis for taking cognizance of the above offense against the accused from all the records and issuing process against the above two accused.

28. This Court has been appointed by the Government of India in accordance with the provisions provided in sub-section 1 of section 43 of the Prevention of Money Laundering Act, 2002. It has been notified as a Special Sessions Court for cases of offenses punishable under section 4 of the

Prevention of Money Laundering Act, 2002, vide notification published in the Gazette dated 5th February, 2016, has jurisdiction to try cases of offenses punishable under section 4.

29. Therefore the accused persons Pushya Mitra Singhdev, son of late Mr. Ramchandra, 7/8 Hari Marg, Geeta Vihar, Maharana Pratap Circle, Sector-22, Pratap Nagar, Jagatpura, Jaipur – Inspector General, Assistant Chief Security Commissioner, Railway Safety Board, North-Western Railway, Jaipur and Anita Singhdev wife Pushya Mitra Singhdeo Section-3 against 7/8 Hari Marg, Geeta Vihar, Maharana Pratap Circle, Sector-22, Pratap Nagar, Jagatpura, Jaipur as defined in the Prevention of Money Laundering Act, 2002 and the punishment for which is provided in section 4 of the same Act. The cognizance of the offence is taken.

30. It has been provided that Section 45 of the said Act makes this offense non-bailable. In such a situation, it is lawful to pass an order to summon both the above accused with an arrest warrant and an order is passed to summon both the above accused with an arrest warrant. Regular session of this matter be registered as a case.

Sd/-

(Narendra Kumar Sharma)

Special Sessions Court, Jaipur

(Prevention of Money Laundering Act, 2002/

(special Court Communal Riots Case), Jaipur Metropolitan.

31. Ordered today dated 12.03.2018, dictated to my stenographer in open court.

Sd/-

(Narendra Kumar Sharma)

Special Sessions Court, Jaipur

(Prevention of Money Laundering Act, 2002/

(special Court Communal Riots Case), Jaipur Metropolitan.

12.03.2018 Date: 9.3.2018 declared as holiday, letter presented today

The complainant was not present, the application for condonation of attendance of the complainant was presented, which is accepted for today. advocate complainant. Shri Jitendra Singh Poonia present.

In relation to the cognition, the order was written and pronounced separately. According to the order, the accused persons Pushya Mitra Singhdev, son of Late G. Ramchandra, 7/8 Hari Marg, Geeta Vihar, Maharana Pratap Circle, Sector-22, Pratap Nagar, Jagatpura, Jaipur- Inspector General, Assistant Chief Security Commissioner, Railway Safety Board, North Western Railway, Jaipur and Anita Singhdev wife Pushya Mitra Singhdev 7 /8 Hari Marg, Geeta Vihar, Maharana Pratap Circle, Sector-22, Pratap Nagar, Jagatpura, Jaipur against Section-3 of the Prevention of Money Laundering Act, 2002 for the offenses of which the punishment is provided in Section-4 of the same Act. cognizance is taken. Section 45 of the said Act provides for this offense to be non-bailable. In such a situation, it is lawful to issue an order to summon both the above accused with an arrest warrant and an order is passed to summon both the above accused with an arrest warrant. This case should be registered as a regular session case.

To be produced on the date: SS.18, summoned for the letter.

Sd/-

(Narendra Kumar Sharma)

Special Sessions Court, Jaipur

(Prevention of Money Laundering Act, 2002/

(special Court Communal Riots Case), Jaipur Metropolitan.

//True Translated Copy//

Annexure-P-7

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Revision Petition No. 273/2019

Shyam Sunder Singhvi S/o Shri Kastoor Chand Singhvi, R/o 301-N-1 Road, Bhupalpura, Udaipur (Raj.)

----Petitioner

Versus

Union Of India Through Uma Nand Vijay, Assistant Director, Enforcement Directorate, Second Floor, Jeevan Nidhi-Ii, L.i.c. Bhawan, Bhawani Singh Road, Jaipur 302005

----Respondent

Connected With

S.B. Criminal Revision Petition No. 275/2019

Dr.Ashok Singhvi S/o Dr.A.M. Singhvi, R/o 7 Hospital Road, C Scheme, Jaipur.

----Petitioner

Versus

1. Union Of India, Through PP.
2. Umanand Vijay, Assistant Director, Enforcement Directorate, Second Floor, Jeevan Nidhi II, LIC Office, Bhawani Singh Road, Jaipur 302005.

----Respondents

S.B. Criminal Revision Petition No. 1061/2019

Tamanna Begum Widow Of Late Mohammad Sher Khan, R/o Khwaja Bagh Vill. Saba Ps Shambhupura Dist. Chittorgarh

----Petitioner

Versus

Assistant Director Enforcement Directorate, 2nd Floor Jeevan Nidhi 2nd LIC Bhawan Bhawani Singh Road Jaipur

----Respondent

S.B. Criminal Miscellaneous (Petition) No. 2872/2019

Tamanna Begum Widow Of Late Mohammad Sher Khan, R/o Khwaja Bagh, Village Saba, Ps Shambhupura, District Chittorgarh, Raj.

----Petitioner

Versus

Enforcement Directorate, Through Its Assistant Director Umanand Vijay, 2nd Floor, Jeevan Nidhi 2nd, LIC Bhawan, Bhawani Singh Road, Jaipur, Raj.

----Respondent

S.B. Criminal Miscellaneous (Petition) No. 4770/2019

Pushkar Raj Ameta S/o Shri Indra Lal Ameta, R/o 13, New Ashok Vihar, Chand Badi, Khara Kuan, Udaipur, Raj. 313001.

----Petitioner

Versus

Union Of India, Through Umanand Vijay, Assistant Director, Directorate Of Enforcement, Second Floor, Jeevan Nidhi II, Jeevan Beema Nigam Bhawan, Bhawani Singh Road, Jaipur, Raj.

----Respondent

S.B. Criminal Miscellaneous (Petition) No. 4771/2019

Pankaj Gehlot S/o Shri Ishwar Singh Gehlot, R/o A 204, Dharendra Apartment, New Navrat Complex, Udaipur, Raj. 313001.

----Petitioner

Versus

Union Of India, Through Umanand Vijay, Assistant Director, Directorate Of Enforcement, Second Floor, Jeevan Nidhi II, Jeevan Beema Nigam Bhawan, Bhawani Singh Road, Jaipur, Raj.

----Respondent

S.B. Criminal Miscellaneous (Petition) No. 5426/2019

Dr. Ashok Singhvi S/o Dr. A.m. Singhvi, R/o 7, Hospital Road, C Scheme, Jaipur.

----Petitioner

Versus

Umanand Vijay, Assistant Director Enforcement Directorate, Second Floor, Jeevan Nidhi-II, L.I.C. Office, Bhawani Singh Road, Jaipur, Raj. 302005.

----Respondent

S.B. Criminal Miscellaneous (Petition) No. 5427/2019

Shyam Sunder Singhvi S/o Shri Kastoor Chand Singhvi, R/o 301-N-1 Road, Bhupalpura, Udaipur, Raj.

----Petitioner

Versus

Union Of India, Through Shri Uma Nand Vijay, Assistant Director, Enforcement Directorate, Second Floor, Jeevan Nidhi II, L.I.C. Bhawan, Bhawani Singh Road, Jaipur.

----Respondent

S.B. Criminal Miscellaneous (Petition) No. 5430/2019

Mohammad Rashid Sheikh S/o Shri Akbar Deen Sheikh, R/o Nayi Abadi Khajodpur, Village Sava, Police Station Shambhupura, District Chittorgarh, Raj.

----Petitioner

Versus

Umanand Vijay, Assistant Director, Enforcement Directorate, Second Floor, Jeevan Nidhi II, L.I.C. Building, Bhawani Singh Road, Jaipur 302005, Raj.

----Respondent

S.B. Criminal Miscellaneous (Petition) No. 5524/2019

Dheerendra Singh @ Chintoo S/o Shri Surya Baksh Singh, R/o 48F, Rishabh Nagar, Kalka Mata Road, Udaipur Rajasthan 313001.

----Petitioner

Versus

Umanand Vijay, Assistant Director, Directorate Of Enforcement, 2nd Floor, Jeevan Nidhi II, LIC Building, Bhawani Singh Road Jaipur 302005.

----Respondent

For Petitioner(s) : Mr. A.K. Sharma, Sr. Adv. assisted by Mr. Mohit Khandelwal, Adv. & Mr. Deepak Chauhan, Adv., Mr. Rajendra Prasad, Sr. Adv. assisted by Mr. Karan Tibrewal, Adv., Mr. Vivek Raj Singh Bajwa, Adv. Mr. S.S. Hora, Adv., Mr. Shobhit Tiwari, Adv., Mr. Vikas Kabra, Adv., Mr. Peush Nag, Adv., Mr. Vikas Jain,Adv., Mr. Suresh Kumar Sahni, Adv. with Mr. R.M., Sharma, Adv., Mr. Amol Vyas, Adv.

For Respondent(s) : Mr. R.D.Rastogi, ASG with Mr. Akshay Bhardwaj, Adv., Mr. Aneesh Khandelwal, Adv. & Mr. Devesh Yadav, Adv., Mr. Anand Sharma, Adv., Mr. Ashish Kumar, Adv.

HON'BLE MR. JUSTICE ASHOK KUMAR GAUR

Judgment

Judgment Reserved on : 29th November, 2019

REPORTABLE

Date of Pronouncement : 24th January, 2020

By the Court:

The present order will decide two sets of cases i.e. Revision Petitions filed under Section 397 read with Section 401 Cr.P.C. challenging the order dated 21.01.2019 passed by the Special Sessions Court, Jaipur (Prevention of Money Laundering Act, 2002) – Special Court (Communal Riots Cases), Jaipur Metropolitan, Jaipur, whereby cognizance has been taken for offence punishable under Sections 3 & 4 of the Prevention of Money Laundering Act, 2002 (hereinafter shall be referred as 'PMLA, 2002') & arrest warrants have been issued to secure the presence of the accused persons.

2. The other set of cases are Criminal Miscellaneous Petitions filed under Section 482 Cr.P.C. challenging order of the Trial Court wherein it has refused to convert arrest warrants of the petitioners into bailable warrants by not exercising power under Section 70(2) Cr.P.C.

(Revision Petitions)

3. This Court has taken note of the facts from the file of S.B. Criminal Revision Petition No. 273/2019 (Shyam Sundar Singhvi Vs. Union of India), which is treated as the lead case. The facts, in nutshell, are that Anti Corruption Bureau, Jaipur on 19.09.2015 registered an FIR bearing No.251/2015 under Sections 120-B & 409 IPC and under Sections 7, 8, 9, 10, 12, 13(1)(a)(c)(d), 13(2) & 14 of Prevention of Corruption Act against Sanjay Sethi, Shyam Sundar Singhvi-petitioner, Dheerendra Singh @ Chintu, Mohd.

Sher Khan, Mohd. Rashid Sheikh, Dr. Ashok Singhvi, Pankaj Gehlot & Pushkar Raj Ameta.

4. The main allegation in the FIR was with regard to misuse of official position of the accused and to hatch criminal conspiracy to cause loss of revenue to the State Exchequer. The prosecution also alleged that acts of the accused amounted to criminal breach of trust and they were involved in making huge money for their personal gains.

5. The Anti Corruption Bureau (in short 'ACB') after registration of FIR commenced investigation and filed charge-sheet on 04.11.2015 against the accused persons vide charge-sheet No.276/2015 for offences punishable under Sections 7, 8, 9, 10, 12, 13(1)(a)(c)(d), 13(2) & 14 of Prevention of Corruption Act and Section 120-B and 409 IPC.

6. The ACB in the charge-sheet found that the accused Sanjay Sethi was engaged in the business of mining and he was a tout of the Department of Mines and used to identify businessmen engaged in the mining business anywhere in the State of Rajasthan, with the help of officers of the Department of Mines. The accused Sanjay Sethi, because of his close association with the co-accused Dr. Ashok Singhvi, the then Principal Secretary, Department of Mines, used to get instructions to close the mines of the businessmen for one or another reason and thereafter he used to contact the businessmen and after striking out the deal with the officers of the Department of Mines, got their mines reopened while imposing minor penalty in collusion with the officers of the Department of Mines and in lieu of the said transaction, he used to collect huge amount of money from the businessmen.

7. The ACB also found, after keeping the cell phone of Sanjay Sethi on surveillance, that six mines of co-accused Mohd. Sher Khan were closed on the ground of unsafe mining and other irregularities, only for the purpose of extracting illegal gratification from him for the official functionaries of the Department of Mines. It was further revealed to the ACB that in order to get the mines reopened, Mohd. Sher Khan contacted Sanjay Sethi and Pankaj Gehlot, through their Charted Accountant Shyam Sundar Singhvi for the purpose of reopening of mines. It was found by the ACB that the bribe amount was fixed to the tune of Rs.2.50 Crores and it was alleged that Sanjay Sethi had informed Dr. Ashok Singhvi that deal was finalized at Rs.1.25 Crores and out of which Rs.1 Crore was for Dr. Ashok Singhvi and Rs.25 Lakhs was for others and Dr. Ashok Singhvi had given his consent for the said deal. It was further found by the ACB that Rs.2.60 crores was withdrawn from different bank accounts and Mohd. Rashid Sheikh was to handover the amount of Rs.2.55 crores and in pursuance thereof Rs.2.55 crores were handed over by Shyam Sunder Singhvi to Sanjay Sethi and his associate Dheerendra Singh @ Chintu on 16.09.2015. The ACB team visited the office of Shyam Sunder Singhvi and seized the amount of Rs.2.50 crores from Sanjay Sethi and Dheerendra Singh and Rs.5 lakhs was kept with Shyam Sunder Singhvi, as commission, paid to Shyam Sunder in the deal.

8. The Directorate of Enforcement, after the charge-sheet being filed by the ACB, registered an Enforcement Case Information Report (ECIR) on 30.10.2015 against eight accused persons i.e. Sanjay Sethi, Dr. Ashok Singhvi, Pankaj Gehlot, Pushkar Raj Ameta, Shyam Sunder Singhvi, Mohd. Rashid Sheikh, Dheerendra Singh @ Chintu and Tamanna Begum on the allegations of money

laundering under Sections 3 & 4 of the Prevention of Money Laundering Act, 2002 which involved 'proceeds of crime' amounting to Rs.2.55 Crores, as the offences punishable under Sections 120-B IPC and Sections 7, 8, 9, 10 & 13 of Prevention of Corruption Act, were specified under Paragraph-1 & Paragraph-8 respectively of Part-A of the scheduled offences under PMLA, 2002.

9. On 16.07.2018, on the basis of the aforesaid allegations against the aforesaid accused persons, the Assistant Director, Directorate of Enforcement filed a prosecution complaint under Section 45(1) of the PMLA, 2002 before the Special Court (Communal Rights Cases), Jaipur.

10. The said prosecution complaint was registered as Criminal Complaint No.10/2018 by the Special Court (Prevention of Money Laundering Act). The criminal compliant was initially lodged in English and thereafter a Hindi translation of the same was also submitted by the Enforcement Directorate.

11. The Special Judge, after hearing submissions of Enforcement Directorate, proceeded to take cognizance against the accused persons including the petitioner for the offence under Section 4 of the PMLA, 2002 and also ordered to secure the presence of all the accused persons through execution of arrest warrants vide order dated 21.01.2019.

12. All the petitioners have pleaded in their Revision Petitions that the Special Court, has proceeded to take cognizance against them for offence under Section 4 of PMLA, 2002 in disregard of the fact that essential ingredients of the offence under Section 3 of PMLA, 2002 defining the offence of money laundering, do not stand disclosed even prima-facie. The petitioners have pleaded

that Special Judge further perpetuated gross abuse of process of court by directly issuing arrest warrants to secure the presence of the accused persons.

13. Mr.Vivek Bajwa, learned counsel appearing for the accused Shyam Sunder Singh has made following submissions:-

13.1 The impugned order of taking cognizance has been passed in a mechanical manner without applying due judicious mind as the punitive ingredients of the offence under Section 3 of PMLA, 2002 are not spelt out in the present case, on the bare perusal of the criminal complaint filed by the Enforcement Directorate.

13.2 The offence of money laundering, as defined under Section 3 & penalized under Section 4 of PMLA, 2002, requires that proceeds of crime are concealed or possessed or acquired or used for the purpose of projecting or claiming it to be untainted property. The proceeds of crime is a property which is derived directly or indirectly by a person as a result of criminal activity relating to a scheduled offence. Counsel argued that the entire case of the Enforcement Directorate is founded on the version given out by the ACB in their charge-sheet for the scheduled offence and the charge-sheet submitted by the ACB does not make out a case under Section 3 of the PMLA, 2002. The facts of the case did not reflect that even the illegal gratification was accepted or obtained by any of the public servants, much less after obtaining the same, they had projected or claimed the same to be untainted property.

13.3 The basic requirement of committing offence under Section 3 of PMLA, 2002 was not fulfilled as there has to be placement, layering and integration of proceeds of crime.

13.4 The amendments in Section 3 of PMLA, 2002 are punitive in nature and as such they are prospective.

13.5 The accused persons have participated during enquiry and no arrest was demanded at any point of time and as such while taking cognizance of the offences, arrest warrants ought not to have been issued.

14. Mr.A.K.Sharma, learned Senior Advocate appearing for the accused Dr.Ashok Singhvi has made following submissions:-

14.1 There is no allegation against the petitioner and in absence of any specific allegation of committing offence under Section 3 of the PMLA, 2002, the cognizance order is vitiated.

14.2 The entire charge-sheet, filed under the provisions of the Prevention of Corruption Act, and the complaint filed under the provisions of PMLA, 2002 nowhere show demand or receipt of any money by the petitioner and even there is no attempt on the part of the petitioner to connect him with the commission of offence under Section 3 of the PMLA, 2002.

14.3 The proceeds of crime, as defined under Section 2(1)(u) of the PMLA, 2002 and explanation added to the said definition, nowhere establishes that the petitioner had any role in receiving the proceeds of crime.

15. Mr.S.S.Hora, learned counsel appearing for the accused Sanjay Sethi has made following submissions:-

15.1 The ingredients of Section 3 of PMLA, 2002 have not been even prima-facie established against the petitioners as there has been no placement, layering and integration of proceeds of crime.

15.2 The proceeds of crime were converted in Fixed Deposits and the same have been deposited in the Court and as such it cannot be said that any offence has been committed.

16. Mr.Rajendra Prasad, learned Senior Advocate appearing for the accused Tamanna Begum has made following submissions:-

16.1 The petitioner Tamanna Begum is not involved in commission of any crime. The application under Section 451 Cr.P.C. was filed by the petitioner Tamanna Begum being wife of Mohd. Sher Khan for return of money which was seized for committing the alleged scheduled offence.

16.2 When the husband of the petitioner Mohd. Sher Khan cannot be punished for the scheduled offence, the petitioner Tamanna Begum cannot be made accused under the provisions of PMLA, 2002.

16.3 There has been no allegation of any kind of activity undertaken by the petitioner Tamanna Begum, which can become an offence either under the PMLA, 2002 or the Prevention of Corruption Act. Counsel placed reliance on the judgment passed by the Karnataka High Court dated 13.03.2017 in the case of **Obulapuram Mining Co.Pvt.Ltd. & Ors. Vs. Jt.Director, Directorate of Enforcement & Ors. [Writ Petition Nos.5962, 11442 & 11440-11441 of 2016]**; judgment passed by the Jharkhand High Court dated 19.02.2013 in the case of **Binod Kumar Sinha @ Binod Kumar Vs. State of Jharkhand [Writ Petition (Crl.)**

No.257/2012 with Crl.Rev.No.920/2012 & Crl.Rev.No.699/2011]; judgment passed by the coordinate Bench of this Court dated 23.04.2019 passed in the case of **Kanhaiyalal & Anr. Vs. State of Rajasthan & Anr. [S.B.Crl.Misc.Petition No.2381/2019]**.

17. Mr.Peush Nag & Mr.Suresh Kumar Sahni, learned counsel appearing for the other accused petitioners have also reiterated the same submissions.

18. Per contra, Mr.R.D. Rastogi, learned Additional Solicitor General, has submitted that this case has a chequered history and the petitioners have indulged themselves in several rounds of luxurious litigation because of their affluent economic condition. Learned counsel submitted that Dr.Ashok Singhvi had earlier filed S.B.Criminal Misc. Petition No.2805/2015 before the Principal Seat of this Court at Jodhpur for quashing of the FIR No.251/2015 registered at Police Station ACB, Jaipur under the Prevention of Corruption Act and also challenged the chargesheet No.276/2015 and the entire proceedings in the case pending before the Sessions Judge (Anti Corruption), Udaipur. The said Criminal Misc. Petition was dismissed by the Principal Seat of this Court at Jodhpur vide order dated 23.03.2018. Thereafter, Dr.Ashok Singhvi challenged the order dated 23.03.2018 before the Apex Court in SLP (Criminal) No.7267/2018 and the said SLP came to be dismissed as withdrawn on 24.09.2018.

19. Mr.Rastogi submitted that the petitioners initially filed revision petitions before this Court challenging the order of cognizance seeking conversion of arrest warrants into bailable warrants and when no order was passed by this Court on the revision petitions for converting arrest warrants into bailable

warrants, the petitioners moved applications under Section 70(2) Cr.P.C. before the learned PMLA Court to convert arrest warrants into bailable warrants and since there prayer has been rejected by the learned PMLA Court, they have filed separate criminal misc. petitions for conversion of their arrest warrants into bailable warrants.

20. Counsel further submitted that when the cases were listed before the learned PMLA Court, where files of predicate offences under the Prevention of Corruption Act, were also transferred, the accused persons moved application for seeking exemption from personal appearance on the ground of illness and on the other hand, the arrest warrants issued by the Trial Court under the PMLA, 2002 remained unexecuted for months together, the Trial Court forfeited the bail bonds in offences under the Prevention of Corruption Act and the bail was cancelled on 21.09.2019 and still the accused persons are evading their appearance before the Court.

21. Counsel has further submitted that even two accused persons namely Mohd. Rashid Sheikh and Sanjay Sethi moved bail application but the Trial Court dismissed their application seeking anticipatory bail and as such these petitioners want the relief from this Court which has been denied to them by the Trial Court.

22. Mr.Rastogi has raised following submissions before this court:-

22.1 Power under Sections 397 and 401 Cr.P.C. can be exercised only in exceptional cases and the court is primarily to see the contents of the complaint alone and no other material is to be considered.

22.2 The remedy available under Section 482 Cr.P.C. is not like an appeal and the High Court should not act as an investigating agency in order to exercise powers like an appellate court.

22.3 The conduct of the accused persons is highly objectionable and they do not deserve any relief from this Court.

22.4 The economic offences stand on a different footing and such offences constitute a separate class and they need to be visited with a different approach.

22.5 A person can be prosecuted for an offence of money laundering even if he is not guilty of the scheduled offences and the prosecution can be launched only for the offence of money laundering.

22.6 The Special Court has powers under Section 204 Cr.P.C. to call the accused persons through arrest warrants and in the present matter, the Trial Court has not exceeded or acted beyond its jurisdiction.

23. I have heard learned counsel for the parties and with their assistance perused the material available on record.

24. This Court is required to consider the scope of Sections 397 & 401 Cr.P.C. in respect of the order of taking cognizance passed by the trial court.

25. This court while hearing revision petitions under Sections 397 and 401 Cr.P.C. cannot sit as an appellate Court and re-appreciate the evidence unless the judgment of the trial court suffers from perversity. The material, which is placed before the Magistrate, for taking cognizance, leads to a situation where the Magistrate finds sufficient grounds for proceeding in the case. The

satisfaction of the Magistrate has to be based on the material placed before him.

26. This court finds that in the present facts of the case, the trial court has taken into account the complaint which was filed against the accused persons and after going through the various statements and documents produced by the prosecution, the Sessions Judge found that there are sufficient grounds for taking cognizance against the accused persons and as such after considering contents of the complaint and material, the order of cognizance has been passed.

27. The Apex Court has time and again laid down the parameters where High Court can examine the validity of order of cognizance. The Apex Court has consistently laid down that the power of revision can only be exercised in exceptional cases and if criminal proceedings have been initiated illegally, vexatiously or without jurisdiction, then such power can be exercised by the High Court.

28. This court further finds that the Apex Court has also laid down the law that power of revision has to be exercised by the High Court sparingly with circumspection and in rarest of rare case. The Apex Court has also time and again considered the scope of power of the High Court and such power of High Court is not for considering or going into the merits and demerits of the case at the time of taking cognizance. This court finds that in exercise of revisional power, High Court should not interfere only because it forms a different opinion on the same material. The High Court, unless finds that the order impugned is perverse on face of it and the court below did not exercise its jurisdiction or there is an illegality or irregularity on the face of order impugned, should not interfere with the order passed by the court below

while exercising powers under Sections 397 and 401 Cr.P.C. The satisfaction of the court taking cognizance, if based on the material placed before it, discloses that cognizance of an offence is required to be taken, the said order will not be termed as a perverse order.

29. This court finds that initially ACB had registered FIR and later on filed charge-sheet against the accused persons for the offences of Prevention of Corruption Act. The Directorate of Enforcement thereafter registered an Enforcement Case Information Report (ECIR) against the accused persons on the allegations of money laundering under Sections 3 and 4 of the PMLA, 2002 involving proceeds of crime and on the basis of this said allegations, the Assistant Director, Directorate of Enforcement later on filed prosecution complaint under Section 45(1) of the PMLA, 2002. This court finds that the trial court, after analyzing the material placed before it, found that the allegations levelled against the accused persons require that cognizance should be taken of the offences and further the case needs to be tried by holding a regular trial.

30. The submission of the learned senior counsel on behalf of petitioners that the basic ingredients of offences under Section 3 of the PMLA, 2002 are not made out in the present case and as such, this Court is required to see even prima facie case is not made out against the accused persons, this court finds that analyzing the evidence and giving finding with respect to merits of the matter at the present stage, will not be an appropriate stage to consider merits of the case. The Investigating Agency has considered the various statements given by different persons and also collected the evidence to connect the accused persons with

the commission of offence under the PMLA, 2002 and right to defend an accused person is available during the trial and interference at the initial stage, after taking cognizance, will not be an appropriate exercise of power by the High Court at this stage.

31. The submission of the learned counsel for the petitioners that the entire case of Enforcement Directorate is founded on the version given out by the ACB in their chargesheet for the scheduled offences and as such no case is made out under Section 3 of the PMLA, 2002, this Court finds that the investigation by the authorities, statement recorded and material collected, if prima facie establish that proceeds of crime are projected to be untainted property, in any manner, no fault can be found with the order of taking cognizance by the competent court.

32. This court finds that the Legislature has enacted the PMLA, 2002 with object to prevent money-laundering and connected activities, as it posed a serious threat not only to the financial systems but also to the integrity and sovereignty of the Country. This court finds that if offence of money laundering, as defined in Section 3 of the PMLA, 2002, is to be alleged against the accused persons, the Investigating Agency is required to look into the basic ingredients for commission of such offence. The very purpose of the PMLA, 2002 is to nab the activities, which ultimately result into money laundering.

33. The submission of learned counsel for the petitioners that in absence of basic requirement of Section 3 of the PMLA, 2002 like placement, layering and integration of proceeds of crime, no offence is made out, this court finds that the words "placement, layering and integration of proceeds of crime" are in fact

interpretation in a judgment passed by the Delhi High Court in the case of **M/s.Mahanivesh Oils & Foods Pvt. Ltd. Vs. Directorate of Enforcement** reported in **2016 (1) High Court Cases (Del) 265**. The said judgment passed by the Delhi High Court and observation made therein has been stayed by the Division Bench in LPA No.144/2016 [Directorate of Enforcement Vs. M/s. Mahanivesh Oils & Foods Pvt. Ltd.] vide order dated 30.11.2016 while observing as follows:-

> "We have observed that while allowing the writ petition by the order under appeal, certain findings were recorded by the learned Single Judge with regard to the enforcement of the Prevention of Money Laundering Act, 2002 on interpretation of the provisions of the said Act.
>
> We make it clear that the findings so recorded by the learned Single Judge shall not be construed as conclusive and binding precedent until further orders."

34. This court even while going through the complaint under Section 45(1) of the PMLA, 2002 finds that the Investigating Agency has also mentioned that the seized amount was tried to be layered and integrated being proceeds of crime in main economy and further efforts were made to integrate the proceeds of crime with the mainstream economy by showing the sale proceeds of some mines of Umar village and claimed the same to be untainted property. This court without making any comments on the findings recorded by the Investigating Agency, however, finds that the objection with regard to placement, layering and integration of proceeds of crime, have been mentioned by the prosecuting agency.

35. The submission of learned counsel for the petitioners that the court below has not taken into account the requirement of basic ingredients for commission of offence under Section 3 of the

PMLA, 2002 and same being not spelt out even from the bare perusal of the criminal complaint filed by the Enforcement Directorate, this court, after considering the various provisions contained in PMLA, 2002 with respect to "proceeds of crime" as defined under Section 2(u), "property" as defined under Section 2(v) and Section 3 of the PMLA, 2002, finds that for making out an offence under Section 3 of the PMLA, 2002, the court is required to consider that any person who involves himself directly or indirectly with any process or activity connected with the proceeds of crime and projects the same to be untainted money, can very well be prosecuted under Section 3 of the PMLA, 2002. The court below, if after considering the allegations against the petitioners and after analysing the material placed before it, has come to the conclusion that cognizance is required to be taken, and no fault can be found with such an order.

36. The submission of learned counsel for the petitioners is that the amendment in Section 3 of the PMLA, 2002 by adding explanation to it, has been brought by way of Finance Act No.2 of 2019 w.e.f. 01.08.2019 and as such the amendment being declaratory in nature and the provision been punitive in nature, has to be applied with prospective effect.

37. Mr.Bajwa, learned counsel submitted that considering the definition of "offence of money laundering" as per Section 3 of the PMLA, 2002, no offence, against the accused petitioners, is made out as the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming as tainted property, was not prima facie proved against the accused petitioners. Counsel submitted that the subsequent explanation added by way of amendment has defined the activities like

concealment or possession or acquisition or use or claiming or projecting as untainted property, by considering any of such activity to be committing, an offence. Counsel has argued that prior to addition of explanation, all the ingredients, defining money laundering, were required to be alleged for charging a person for commission of offence under Section 3 of the PMLA, 2002 and only by virtue of explanation, specifying any of the activities, offence can be committed by a person.

38. Counsel has placed reliance on the judgment passed by the Apex Court in the case of **Popular Muthiah Vs. State represented by Inspector of Police** reported in **JT 2006 (6) SC 332** and **Nikesh Tarachand Shah Vs. UOI & Ors.** reported in **2017 (13) Scale 6098** and a judgment of this court dated 09.05.2018 passed in the case of **Pushya Mitra Singh Deo & Anr. Vs. UOI [S.B.Crl.Misc. Petition No.2097/2018]**.

39. Mr.R.D.Rastogi, learned Additional Solicitor General, on the contrary, has argued that the amendment brought by the Finance Act, 2019 was merely clarificatory and being clarificatory in nature, the same has to be retrospective, as the principal Act was not amended but only the intent of the Legislature was clarified which was already there in the principal Act. Mr.Rastogi has placed reliance on the judgment rendered by the Apex Court in **Commissioner of Income Tax (Central)-I, New Delhi Vs. Vatika Township Pvt.Ltd.** reported in **(2015) 1 SCC 1** and the judgment passed by Division Bench of the Madras High Court dated 04.10.2019 in the case of **M/s.VGN developers Pvt.Ltd. Vs. The Deputy Director, Directorate of Enforcement (Crl.O.P.No. 9796/2019 and Crl.M.P.No.5129/2019)**.

40. This court before dealing with the issue in hand, would like to reproduce the original Section 3 of the PMLA Act, 2002 and explanation added, by way of amendment, as follows:-

> "**3. Offence of money-Laundering**.-Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.
>
> *Explanation*.—For the removal of doubts, it is hereby clarified that,—
> (i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:—
> (a) concealment; or
> (b) possession; or
> (c) acquisition; or
> (d) use; or
> (e) projecting as untainted property; or
> (f) claiming as untainted property,
> in any manner whatsoever;
>
> (ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever."

41. This court finds that reading of Section 3 of the PMLA, 2002 reveals that the offence of money laundering is an offence regarding indulging in any process or activity connected with proceeds of crime including its concealment, possession, acquisition or use and further projecting and claiming the same to be untainted property. The said definition given in Section 3 of the PMLA, 2002 was later on clarified by adding explanation and as such it does not change the basic ingredients which were required to be alleged against a person for committing an offence under

Section 3 of the PMLA, 2002. The clarification which has been added in fact was for removal of doubts, may be due to somewhat ambiguous definition inserted in the main provision of Section 3 of the PMLA, 2002. Thus, the Legislature if by way of amendment adds explanation for removal of doubts, it cannot be said that a punitive provision has been inserted in the definition and the same has to be given effect from a prospective date. This court further finds that explanation which is added by way of amendment may not be of any assistance to the accused petitioners and as far as allegations of committing offence against the accused petitioners under Section 3 of the PMLA, 2002 are concerned, the prosecution has leveled allegations of money laundering against the accused petitioners, as per the definition given under Section 3 of the PMLA, 2002.

42. The submission of the learned senior counsel Mr.A.K.Sharma that allegation against the accused petitioner-Ashok Singhvi nowhere connects him with commission of offence under Section 3 of the PMLA, 2002 or as per the explanation provided under Section 2(1)(u), this court finds that the prosecution has leveled allegations against all the accused petitioners that proceeds of crime, which were obtained from the scheduled offences, are involved and accused persons by way of their acts have committed offence under Section 3 of the PMLA, 2002 and receiving proceeds of crime itself may not be the relevant consideration for forming the opinion of involvement of accused in commission of crime.

43. The submission of learned counsel for the petitioner Mr.Hora that since proceeds of crime were converted into fixed deposits, it cannot be said that any offence has been committed under the PMLA, 2002, this court has noted the said argument to be

rejected. The proceeds of crime, if later on, after recovery made by the police, have been converted into fixed deposits, the same can amount to an offence having been committed under Section 3 of the PMLA, 2002.

44. The submission of learned Senior Advocate Mr.Rajendra Prasad that the petitioner Tamanna Begum cannot be punished for the scheduled offences and as such she cannot be made accused under the provisions of PMLA, 2002 and her no activity can become an offence either under the PMLA, 2002 or under the provisions of Prevention of Corruption Act, this court finds that for the purpose of Sections 3 and 4 of the PMLA, 2002, a person accused under the PMLA, 2002 may not have committed the scheduled offence and such person can be prosecuted for the offence of money laundering even if such person is not guilty of the scheduled offences.

45. Mr.R.D.Rastogi. learned Additional Solicitor General has placed reliance on a judgment passed by the Division Bench of the Gujarat High Court in **Rakesh Manekchand Kothari Vs. UOI [Special Criminal Application (Direction) No.4496/2014]** dated 16.01.2015 and on the strength of the said judgment submitted that PMLA, 2002 applies to the person who is connected with the criminal activity relating to the scheduled offences but may not be an offender of the scheduled offences.

46. This court finds that the court below after considering the law on the subject has come to the conclusion that the petitioner Tamanna Begum is also involved in commission of offence under Section 3 of the PMLA, 2002 and as such this court does not find any reason to take a different view on the issue of involvement of the petitioner Tamanna Begum in the present case.

47. This court finds that position of law which emerges is that offence of money laundering under Section 3 of the PMLA, 2002 is an independent offence and money laundering is a stand alone offence under the PMLA, 2002.

48. Accordingly, this court finds that the order passed by the court below of taking cognizance dated 21.01.2019 does not require any interference by this court and all the revision petitions are dismissed.

Misc. Petition (Section 482 Cr.P.C.)

49. The petitioners, in this set of cases, have filed misc. petition under Section 482 Cr.P.C. feeling aggrieved due to issuance of arrest warrants against them, after order of taking cognizance was passed by the court below. The petitioners have sought prayer from this court that arrest warrants, issued against them, be converted into bailable warrants and power given under Section 70(2) Cr.P.C. may be exercised by this court. All the petitioners had approached the Sessions Court for converting non-bailable warrants into bailable warrants, however, such prayer was declined by the court below by passing the orders on following different dates:-

a. Crl.Misc.Petition No.2872/2019 dated 30.03.2019
b. Crl.Misc.Petition No.4770/2019 dated 11.04.2019
c. Crl.Misc.Petition No.4771/2019 dated 11.04.2019
d. Crl.Misc.Petition No.5426/2019 dated 17.08.2019
e. Crl.Misc.Petition No.5427/2019 dated 17.08.2019
f. Crl.Misc.Petition No.5430/2019 dated 04.04.2019
g. Crl.Misc.Petition No.5524/2019 dated 19.08.2019

50. Counsel for the petitioners have submitted that the court below has committed illegality in rejecting the prayer of converting

non-bailable warrants into bailable warrants and it ought to have exercised its power under Section 70(2) Cr.P.C. Counsel for the petitioners argued that the court below has assigned wrong reasons for not entertaining the applications of the petitioners for converting the non-bailable warrants into bailable warrants by treating the said power to be a review power of the criminal court and the same not being available to the court below, as such this court needs to set aside such orders passed by the court below.

51. Counsel for the petitioners have argued that no separate findings have been given by the court below while rejecting their applications and power to convert non-bailable warrants into bailable warrants is an independent power of the competent Criminal Court and such court was not denuded of its power to consider the case of the petitioners for issuance of bailable warrants. Counsel for the petitioners have argued that the petitioners had appeared before the Enforcement Directorate, after they were called for recording the statement and at no point of time the Investigating Agency, sought to arrest the petitioners and in view of full cooperation extended by the petitioners, their appearance in the court by way of non-bailable warrants, after arresting them was not justified in the facts of the case.

52. Counsel for the petitioners have argued that statement of the petitioners were recorded under Section 50 of the PMLA, 2002 and whatever information/document was required by the prosecuting Agency, the same exercise having been undertaken, there remains no reason to summon the petitioners by way of non-bailable warrants.

53. Counsel for the petitioners have argued that the Apex Court time and again has laid down the law that resort to non-bailable

warrant, at the first instance without availing other methods to secure/summon the accused by way of summon and bailable warrant, should not be adopted by the courts. Counsel argued that the law laid down by the Apex Court in the case of **Inder Mohan Goswami Vs. State of Uttranchal** reported in **(2007) 12 SCC 1** still holds the field and the accused petitioners ought not to have been summoned by way of arrest warrants. Counsel placed reliance on the judgment of this Court dated 11.10.2017 passed in **Surendra Kumar Sharma & Anr. Vs. Ms.Annupama Saxena [S.B.Crl.Misc. Petition No.5068/2017]** and judgment of this Court dated 17.12.2018 passed in **Pushpendra Agrawal Vs. Mukesh Kumar Meena [S.B.Crl.Misc. Petition No.7892/2018]**.

54. Counsel for the petitioners have argued that even in the complaint, which was filed by the Enforcement Directorate under section 45(1) of the PMLA,2002, it was nowhere prayed for issuing non-bailable warrants and on the contrary, specific prayer was made only to take cognizance and issue process of trial for punishment of the accused persons and further prayer was also made for confiscation of the properties, involved in the money laundering or which was used for the commission of offence of money laundering.

55. Per contra, Mr.Rastogi, learned Additional Solicitor General has submitted that the court below has rightly dismissed the applications filed by the petitioners under Section 70(2) Cr.P.C. after applying its mind to the facts of the present case and has further assigned cogent reasons for not summoning the accused petitioners by way of bailable warrants. Counsel argued that a bare reading of the order passed by the court below nowhere

reflects that relevant considerations were not kept in mind and further it is not only refusal to exercise power by terming the same as review power but also independent and separate reasonings have been given for not allowing the prayer of the accused petitioners to convert their non-bailable warrants into bailable warrants.

56. Mr.Rastogi has submitted that the court below has kept in mind the parameters for issuing non-bailable warrants in the present case. The entire facts of the case, nature of allegation, severity of punishment and impact of offence on the society as a whole, have been kept in mind while passing the impugned orders refusing to convert the non-bailable warrants into bailable warrants. Mr.Rastogi has further submitted that the court below has exercised power under Section 204 Cr.P.C. and it has discretion to call all the accused persons through non-bailable warrants and as such court below has rightly exercised its jurisdiction. Counsel argued that the High Court may not exercise its power under Section 482 Cr.P.C. even if there is a wrong exercise of jurisdiction by the trial court. Counsel has further argued that the prayer for converting non-bailable warrants into bailable warrants is like granting anticipatory bail and placing reliance on the case of Inder Mohan Goswami (supra) by the petitioners is totally misplaced. Counsel further argued that after rejection of their applications, filed under section 70(2) Cr.P.C. the accused persons may have different remedy like seeking regular bail before the trial court and granting relief of bail under section 482 Cr.P.C., is not warranted.

57. This court deems it proper to refer the relevant paragraphs of the judgment rendered by the Apex Court in **Inder Mohan**

Goswami Vs. State of Uttranchal reported in **(2007) 12 SCC 1**, which are as follows :-

> "6. According to the appellants, time was the essence of the contract and respondent no.3 had failed to pay the balance amount by Rs.10,10,650/-. The Sabha had sent a legal notice dated 3.4.1999 (first legal notice) to respondent no.3 to fulfill his contractual obligations under the sale agreement and informing that if he failed to do so, the agreement to sell would stand cancelled and the amount paid as earnest money would be forfeited. In reply to the said notice, respondent no.3 vide his reply dated 5.5.1999 stated that he had not defaulted in payment of the remaining amount. He stated in the reply that as per the agreement the land had to be measured and that he was ready to pay the balance amount once that was done.
>
> 7. Pt. Mohan Lal Sharma, the President of the Sabha, expired on 30.8.1999. On 5.1.2000, both the parties i.e. the representative of the Sabha and the representatives of M/s Ahuja Builders met at the site of the disputed land in the presence of Patwari (Revenue Official). The land of old Khasra No.140 and new Khasra Nos.61, 62, 63, 64, 65, 66, 67, 68 and part of 89, 90 was measured by the Patwari. The balance land, after adjusting the land given in lieu of construction of the Ghat, came out to be 11.19 Bighas. The total sale consideration for this land worked out to be Rs.15,10,650/-. Respondent no.3 had already paid Rs.4,00,000/- as earnest money out of this amount. He had paid a further sum of Rs.1,00,000/- on 21.3.1997. On the request of respondent no.3, the Sabha reduced the amount owed of Rs.1,50,000/- to him in view of the existence of a passage on the said land. Out of the balance of Rs.8,60,650/-, a further concession of Rs.60,650/- was given to Respondent no.3. He thus had to pay the balance amount of Rs.8,00,000/-. The said measurement sheet was endorsed by respondent nos.3 and 4 and the representatives of the Sabha on 19.3.2000.
>
> 8. The general power of attorney executed by late Mohan Lal Sharma, President of the Sabha, had ceased to be in effect after his death. Therefore, the need of a fresh power of attorney was felt and respondent no.3 desired that the fresh Power of Attorney be executed in the name of his son, Suresh Ahuja (respondent no.4 herein) for the very same 13.5 Bighas of land in regard to which earlier Power of Attorney dated 13.12.1996 had been given. Accordingly, General Secretary of the Sabha, appellant no.1 herein, executed a fresh General Power of Attorney on 15.1.2000 in respect of 13.5 Bighas of land situated in part of Old Khasra No.140 (new Khasra Nos. 61, 62, 63, 64, 65, 66, 67, 68 and part of 89, 90) in Village Haripur Kalan, Rishikesh, Dehradun, in favour of Suresh Ahuja (respondent no.4) as per the request of respondent no.3.

12. Having committed breach of his contractual obligations, respondent no.3 filed a criminal complaint to the SHO of Raiwala, Rishikesh police station on 23.4.2003 against the appellants and three other persons alleging that he had been cheated by the appellants in connivance with other persons by selling a portion of his land to a third party and by cancelling the General Power of Attorney. After examining the matter, the SHO arrived at the conclusion that no cognizable offence had been committed and the dispute in question was of civil nature for which the civil remedy is available in law.

13. Respondent no.3 filed another complaint on the same day, i.e. 23.4.2003, to the Senior Superintendent of Police, Dehradun and got the FIR registered against the appellant and three other persons. The allegation of respondent no.3 was that the appellants in connivance with other persons had sold the part of land situated in Old Khasra No.140 and new Khasra No.89 which had been transferred to them by way of General Power of Attorney. The FIR was registered on 23.4.2003 as Case No.26 of 2003 under sections 420, 467 and 120-B IPC.

14. It may be pertinent to mention that on 27.5.2003, respondent no.3 filed a civil suit in the court of Civil Judge (Senior Division) against the Sabha bearing Original Suit No.302 of 2003 titled Himmat Rai Ahuja v. Sanatan Dharam Pratinidhi Sabha. In this suit, respondent no.3 prayed for cancellation of sale deed executed by the Sabha in favour of Sunil Kumar and for permanent injunction against the appellants herein restraining them from interfering in his alleged property. Thus, the issues relating to ascertaining the right, title of the land in dispute and also the issue of correct demarcation of land in Khasra No.140 are pending adjudication in a competent civil court.

16. Aggrieved by the filing of the false and incorrect charge-sheet in the court of Special Judicial Magistrate, Rishikesh in Criminal Case No.1728 of 2003 titled State v. Inder Mohan Goswami & Others, the appellants filed a Criminal Miscellaneous Application No.248 of 2003 in the High Court of Uttaranchal at Nainital under Section 482 Cr.P.C. for quashing the proceedings against them. The High Court was pleased to pass the interim order on 22.10.2003 staying further proceedings. A reply was filed on behalf of the State by Shri Dinesh Kumar Sharma, SHO, Raiwala Police Station, in which two points were raised:

1. That, appellant no.1 has wrongly cancelled the General Power of Attorney given to respondent no.4; and

2. That, appellant no.1 has wrongly and illegally executed the sale deed of land comprising in Khasra No.140 (New Khasra Nos.61 to 68, 89 and 90) without returning the earnest money of respondent Nos.3 and 4.

17. The High Court by order dated 16.7.2004 dismissed the petition under Section 482 Cr.P.C. filed by the appellants on

the ground that the records show that the allegations in the FIR constitute an offence as alleged by the complainant. The said order is challenged in this appeal by special leave.

22. The veracity of the facts alleged by the appellants and the respondents can only be ascertained on the basis of evidence and documents by a civil court of competent jurisdiction. The dispute in question is purely of civil nature and respondent no.3 has already instituted a civil suit in the court of Civil Judge. In the facts and circumstances of this case, initiating criminal proceedings by the respondents against the appellants is clearly an abuse of the process of the court.

46. The court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurize the accused. On analysis of the aforementioned cases, we are of the opinion that it is neither possible nor desirable to lay down an inflexible rule that would govern the exercise of inherent jurisdiction. Inherent jurisdiction of the High Courts under Section 482 Cr.P.C. though wide has to be exercised sparingly, carefully and with caution and only when it is justified by the tests specifically laid down in the Statute itself and in the aforementioned cases. In view of the settled legal position, the impugned judgment cannot be sustained.

47. Before parting with this appeal, we would like to discuss an issue which is of great public importance, i.e., how and when warrants should be issued by the Court? It has come to our notice that in many cases that bailable and non-bailable warrants are issued casually and mechanically. In the instant case, the court without properly comprehending the nature of controversy involved and without exhausting the available remedies issued non-bailable warrants.

Personal liberty and the interest of the State

50. Civilized countries have recognized that liberty is the most precious of all the human rights. The American Declaration of Independence 1776, French Declaration of the Rights of Men and the Citizen 1789, Universal Declaration of Human Rights and the International Covenant of Civil and Political Rights, 1966 all speak with one voice - liberty is the natural and inalienable right of every human being. Similarly, Article 21 of our Constitution proclaims that no one shall be deprived of his liberty except in accordance with the procedure prescribed by law.

51. The issuance of non-bailable warrants involves interference with personal liberty. Arrest and imprisonment means deprivation of the most precious right of an individual. Therefore, the courts have to be extremely careful before issuing non-bailable warrants.

52. Just as liberty is precious for an individual so is the interest of the society in maintaining law and order. Both are extremely important for the survival of a civilized society. Sometimes in the larger interest of the Public and the State

it becomes absolutely imperative to curtail freedom of an individual for a certain period, only then the non-bailable warrants should be issued.

When non-bailable warrants should be issued

53. Non-bailable warrant should be issued to bring a person to court when summons of bailable warrants would be unlikely to have the desired result. This could be when:

- it is reasonable to believe that the person will not voluntarily appear in court; or
- the police authorities are unable to find the person to serve him with a summon; or
- it is considered that the person could harm someone if not placed into custody immediately.

54. As far as possible, if the court is of the opinion that a summon will suffice in getting the appearance of the accused in the court, the summon or the bailable warrants should be preferred. The warrants either bailable or non-bailable should never be issued without proper scrutiny of facts and complete application of mind, due to the extremely serious consequences and ramifications which ensue on issuance of warrants. The court must very carefully examine whether the Criminal Complaint or FIR has not been filed with an oblique motive.

55. In complaint cases, at the first instance, the court should direct serving of the summons along with the copy of the complaint. If the accused seem to be avoiding the summons, the court, in the second instance should issue bailable-warrant. In the third instance, when the court is fully satisfied that the accused is avoiding the court's proceeding intentionally, the process of issuance of the non-bailable warrant should be resorted to. Personal liberty is paramount, therefore, we caution courts at the first and second instance to refrain from issuing non-bailable warrants.

56. The power being discretionary must be exercised judiciously with extreme care and caution. The court should properly balance both personal liberty and societal interest before issuing warrants. There cannot be any straight-jacket formula for issuance of warrants but as a general rule, unless an accused is charged with the commission of an offence of a heinous crime and it is feared that he is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrants should be avoided.

57. The Court should try to maintain proper balance between individual liberty and the interest of the public and the State while issuing non-bailable warrant."

58. In the humble opinion of this court, the Apex Court on analysing the facts of the case of Inder Mohan Goswami (supra) came to the conclusion that the averments made in the FIR do not

make out a case for prosecution under Section 420 and 467 IPC. The Apex Court held that criminal prosecution should not be used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurize the accused. The Apex Court further held that it was neither possible nor desirable to lay down an inflexible rule that would govern the exercise of inherent jurisdiction under Section 482 Cr.P.C. The Apex Court further held that though powers are very wide under Section 482 Cr.P.C. but they are to be exercised sparingly, carefully and with caution. The Apex Court, while considering the issue of personal liberty and the interest of the State and in what manner non-bailable warrants should be issued to bring a person to the court when summons or bailable warrants would be unlikely to have the desired result, held that the court has to properly balance both personal liberty and societal interest before issuing warrants and there cannot be any straitjacket formula for issuance of warrants.

59. This court finds that time and again the Apex Court has laid down the law that economic offences are required to be dealt with strict approach as these offences affect the economy of the whole Nation and economic offences are committed with a pre-meditated design. This court finds that the economic offences stand on a different footing and they constituent a class apart and need to be visited with a different approach. The economic offences have deep rooted conspiracies and involving huge loss of public funds and thus, 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. The Apex Court in the case of **Y.S.Jagan Mohan Reddy Vs. CBI** reported in **(2013) 7 SSC 439** has considered the nature

of economic offences and the relevant portion of the judgment is quoted hereunder:-

> "34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs 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.
>
> 35. 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."

60. The Apex Court in the case of **State of Gujarat Vs. Mohanlal Jitamalji Porwal and Anr.** reported in **(1987) 2 SSC 364** has considered the nature of economic offences and has held 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. The High Court was therefore altogether unjustified in rejecting the application made by the learned Assistant Public Prosecutor invoking the powers of the Court under Section 391 of the CrPC. We are of the opinion that the application should have been granted in the facts and circumstances of the case with the end in view to do full and true justice. The application made by the learned Assistant Public Prosecutor is therefore granted. The High Court will issue appropriate directions for the recording of the evidence to prove the report of the Mint Master under Section 391 Cr.P.C. when the matter goes back to High

> Court and is listed for directions. The appeal is therefore allowed. The order of acquittal is set aside. The matter is remitted to the High Court for proceeding further in accordance with law in the light of the abovesaid directions."

61. This court finds that the co-ordinate Bench of this court in **S.B.Criminal Misc. Petition No.474/2010 (Pooran Singh and Anr. Vs. State of Rajasthan)** decided on 25.05.2010 has considered the issue in respect of warrant of arrest issued against the accused persons. The coordinate Bench has also considered the principles laid down by the Apex Court in the case of Inder Mohan Goswami (supra) and found that status of the accused is one of the considerations that has to be taken into account and those people who are supposed to uphold the law and if they violate the law such persons should also realize the consequences of violating the law.

62. This court finds that the court below has taken into account the nature of allegations levelled against the accused petitioners, role of accused petitioners, impact of the alleged offences on the society and the scope of interference in economic matters by giving undue leverage to the accused petitioners affecting the interest of the society and has accordingly rejected the prayer of the petitioners in rightful manner. The offences under PMLA, 2002 are cognizance and non-bailable, as per Section 45 of the Act.

63. This court does not find any error in the orders passed by the court below and accordingly all the petitions are dismissed. This court makes it clear that what has been observed by this court is only for the purpose of disposal of the present revision petitions and misc. petitions and any observation made, shall either may not prejudice rights of the parties and the trial court may also not be influenced/inhibited, by the observations made by this court

and the trial court shall proceed independently in accordance with the law. No cost.

(ASHOK KUMAR GAUR),J

Solanki DS, PS

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 4922 of 2014

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VITHALBHAI JETHABHAI ZARIWALA....Applicant(s)

Versus

STATE OF GUJARAT & 1....Respondent(s)

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Appearance:
MR MR RJ GOSWAMI for MR DINESH B PATEL, ADVOCATE and
MR HB CHAMPAVAT, ADVOCATE for the Applicant(s) No. 1
MR DEVANG VYAS, ASG for the Respondent(s) No. 2
MR PARTH DIVYESHWAR for the Respondent(s) No. 2
MR JK SHAH APP for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE ANANT S. DAVE**

Date : 07/05/2015

ORAL ORDER

Heard learned counsels for the parties, Mr. R.J.Goswami for the petitioner, Mr. Parth Divyeshwar for the respondent NO.2 and Mr. J.K.Shah, learned APP for the respondent No.1.

2 It is not in dispute that the petitioner along with other three accused persons approached this Court by filing Criminal Misc. Application [for regular bail] No.2492 of 2014 and this Court vide order dated 21.02.2014 rejected the said application since this Court was in agreement with the reasoning recorded by the learned Sessions and Designate Judge,

Ahmedabad [Rural] in rejecting the bail application.

3 Admittedly, in the above application, the issue about legality and validity of issuance of non-bailable warrant was neither pressed nor considered and later on the present petition is filed by the petitioner. The contentions on law as well as on facts were considered by order dated 10.12.2014 passed by a co-ordinate Bench of this Court [Coram : Hon'ble Mr. Justice J.B.Pardiwala] and it was almost concluded that issuance of non-bailable warrant was illegal.

3.1 However, since earlier application for bail was rejected by order dated 21.02.2014 by this Court, in Criminal Misc. Application No.2492 of 2014, this matter is also placed before this Court after obtaining permission by the Hon'ble the Acting Chief Justice, this matter is placed before this Court.

3.2 For the sake of convenience, order dated 10.12.2014 passed by co-ordinate Bench of this Court [Hon'ble Mr. Justice J.B.Pardiwala] reads as under:

"1. Draft amendment allowed.

2.By this application, the applicant-original accused No.7 prays for the following reliefs:

(A) To allow this application.

(B) To issue a writ of certiorari and to quash and set aside the order for issuance of warrant dated 21.12.2013 passed below Exh.1 in PMLA

Case no.01/2013 pending before the Hon'ble Designated Special Court, Ahmedabad (Rural) established under the Prevention of Money Laundering Act, 2002 and be pleased to convert or modify the order for issuance of warrant into summons and further be pleased to direct the release of the petitioner from judicial custody on appropriate terms and conditions.

(C) Pending admission, hearing and final disposal of this application to stay the order dated 21.12.2013 passed below Exh.1 in PMLA Case no.01/2013 pending before the Hon'ble Designated Special Court, Ahmedabad (Rural) and to release the petitioner from judicial custody on appropriate terms and conditions.

D.To pass any other or further orders as may be deemed fit and proper.

3. By way of draft amendment, the applicant has prayed for the reliefs in the following terms:

15(E) To declare the order of issuance of warrant against the petitioner passed below Exh 1 in PMLA case no.01/2013 as illegal and against provision of Article 21 of the Constitution of India and against the provisions of Code of Criminal Procedure, 1973 and to release the petitioner from the custody forthwith.

15(F) To declare the arrest of the petitioner as illegal and against the provision of Article 21 of the Constitution of India and against the provisions of Code of Criminal Procedure, 1973.

4. It appears from the materials on record that the Designated Judge under the PMLA Act, vide order dated 21st December, 2013, took cognizance upon the complaint and ordered issue of warrant against all the accused named therein. The applicant herein figure as accused No.7 in the complaint. Pursuant to the order passed by the Designated Judge, the applicant herein was arrested and remanded to judicial custody. The applicant, thereafter, filed a bail application before the learned Designated Judge which was ordered to be rejected. Being

dissatisfied, the applicant, thereafter, filed an application for bail before this court. A Coordinate Bench of this court also rejected the bail application. It appears that the His Lordship (Coram:A.S. Dave, J.) rejected the bail application on merits.

5. In this petition before me, the principal contention raised on behalf of the applicant is that at the time of taking cognizance upon the complaint filed by the Deputy Director, the Designated Judge ought not to have passed the order of issue of warrant. Such submission is based on the decision of the Supreme Court in the case of ***Inder Mohan Goswami vs. State of Uttaranchal****, reported in 2007 (12) SCC 1. I had the occasion to consider an identical issue raised by identically situated accused persons against whom complaint has been lodged under the PMLA Act. I took the view that there was no justification for the Designated Judge to issue a non-bailable warrant while taking cognizance upon the complaint, more particularly, when there was nothing on record to suggest that the accused would not appear before the trial court or would abscond and thereby delay the trial.*

6. I may quote the order passed by me dated 19th November, 2014.

> *By this application under Article 227 of the Constitution of India, the applicants original accused persons seek to challenge the order dated 29th October 2014 passed by the learned Designated Judge below Exh.1 in P.M.L.A. Case No.4 of 2014.*

It appears that a first supplementary complaint to the P.M.L.A. Case No.3 of 2014 dated 18th July 2014 was lodged by the Deputy Director for the offence under Section 4 of the Prevention of Money Laundering Act, 2002 in the Court of the Principal District and Sessions Judge, Ahmedabad (Rural) (the designated Special Court under the Prevention of Money Laundering Act, 2002) at Ahmedabad. The Designated Judge under the PML Act, 2002 passed the following order below Exh.1:

ORDER BELOW EXH-1

Heard Spl.PP Mr.Sudhir Gupta. It prima facie

reveals that there is substance in the complaint as files by the complainant. Hence the following order :

ORDER

1. Cognizance as submitted is taken, hence this complaint be registered and numbered.

2. Issue warrant against accused No.2, 4, 5, 7, 8, 9, 10 and summons against accused No.3 and 6. R/O dated 10-11- 2014.

3. Yadi to Sabarmati central jail with regard to this case for the appearance of the accused No.1.

Date :-29/10/2014 Designated Judge, Under PML Act. Ahmedabad (Rural) @ Mirzapur, Gujarat.

The petitioners herein original accused call in question the legality and validity of the order of issue of warrant passed by the Designated Judge under the PMLA Act, 2002. The principal contention raised on behalf of the petitioners herein is that there was no justification for the Designated Judge to issue non-bailable warrant while taking cognizance upon the complaint and ordering issue of process. The contention is that the learned Designated Judge ought not to have issued warrant in the first instance, more particularly, when there was nothing on record to suggest that the accused would not appear before the trial Court or would abscond and thereby delay the trial. This Court passed the following order dated 7th November 2014 :

1. Issue Notice to the respondents returnable on 19th November, 2014. Mr. Soni, the learned APP waives service of notice for and on behalf of the respondent no.2-State of Gujarat.

2. The principal contention raised on behalf of the petitioners is with regard to the legality and validity of the order of issue of warrant passed by the Designated Judge under P.M.L. Act 2002, Ahmedabad (Rural), Mirzapur, Ahmedabad dated 29th October, 2012.

3. It appears that a complaint has been lodged against the applicants herein for the offence of money laundering punishable under Section 4 of the Act 2002, read with Section 120B of the Indian Penal Code. The complaint has been filed by the Deputy Director, Directorate of Enforcement, Ministry of Finance, Department of Revenue, Government of India in exercise of his powers under Section 45 of the Act 2002. It also appears that it is the First Supplementary complaint dated 29th October, 2014 filed in the Complaint dated 18th July, 2014 in the P.M.L.A Case No.3 of 2014 by the Deputy Director,Enforcement Directorate.

4. In the said complaint the complainant prayed before the Court to take cognizance of the offence of money laundering in terms of Section 3 punishable under Section 4 of the P.M.L. Act 2002 and issue process against the accused persons in accordance with law. The complainant also prayed to direct confiscation of the properties involved in the money laundering in terms of Section 8(5) of P.M.L. Act 2002. The complainant also prayed for issuing non-bailable warrant in lieu of prosecution against the accused.

5. It appears that the learned Sessions Judge passed an order below complaint No.4/14 on 29th October, 2014 and directed to register the complaint as P.M.L.A Case against all the accused. The Learned Sessions Judge also ordered to issue warrant against the petitioners herein (original accused nos. 2,4,5,7,8,9 and 10) and the warrant was made returnable on 10th November, 2014.

6. The submission on behalf of the petitioners is that the learned Designated Judge ought not to have issued warrant in the first instance, more particularly when there is nothing on record to suggest that the accused persons would not honour the summons or that the accused persons have already absconded. The learned advocate appearing on behalf of the petitioners has drawn my attention to the averments made in the complaint. There are no such averments made by the complainant. My attention is drawn to the provisions of Section

87 of the Code of Criminal Procedure which provides for issue of warrant in lieu or in addition to summons. However the condition precedent is assigning reasons in writing. My attention has been drawn to a decision of the Supreme Court in the case of Inder Mohan Goswami and another Vs. State of Uttaranchal and others, reported in 2008 (1) G.L.H. 603, wherein, the Supreme Court has observed that non bailable warrant should be issued to bring a person to court when summons or bailable warrants would be unlikely to have the desired result. This could be when it is reasonable to believe that the person will not voluntarily appear in court; or the police authorities are unable to find the person to serve him with a summon; or it is considered that the person could harm someone if not placed into custody immediately.

7.The Supreme Court has further observed that the power to issue warrant is discretionary and must be exercised judiciously with extreme care and caution. The court should properly balance both personal liberty and societal interest before issuing warrants. There cannot be any straitjacket formula for issuance of warrants but as a general rule, unless an accused is charged with the commission of an offence of a heinous crime and it is feared that he is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrants should be avoided.

8. On a plain reading of the provisions of law as well as the decision of the Supreme Court, it appears prima facie that if the offence is heinous, the Court may be justified in issuing non-bailable warrants simultaneously with the order of process, but it appears on a plain reading of Section 87 of the Code of Criminal Procedure that at the same time the Court concerned is also obliged to satisfy itself by recording reasons that the accused persons are likely to evade the process of law or have already absconded. Issuance of non bailable warrant should be avoided except in case of heinous crime or it is feared that accused is likely to tamper or destroy the evidences or is likely to evade the process of law.

9. I do not find any such findings recorded by the designated judge in her order dated 29th October, 2014 while issuing warrant.

10. Mr.S.M. Vatsa, the learned advocate appearing on behalf of the petitioners makes a statement upon instructions that the petitioners herein will abide by the order of issue of process to remain present before the Court on 10th November, 2014.

11. Having heard the learned counsel appearing for the petitioners and having gone through the materials on record, I am of the view that the petitioners have been able to make out a strong prima facie case to have an interim order to the limited extent that, the order passed by the Designated Judge for issue of warrant shall remain stayed from its operation, till the next date of hearing.

12. Let this matter appear on 17th November, 2014. The respondent no.1 be served directly. Direct service is permitted today.

I have heard Mr.Vatsa, the learned advocate appearing on behalf of the applicants and Mr.Devang Vyas, the learned Assistant Solicitor General of India appearing on behalf of the department. Mr.Vyas very fairly submitted that the applicants herein were called for the purpose of interrogation by the authorities prior to the filing of the complaint. Their statements were recorded, and at that relevant point of time, they had cooperated with the inquiry. He further submits that at the relevant point of time, the authority concerned had not thought fit to arrest them. Mr.Vyas further submits that in such circumstances, the learned Designated Judge probably could not have issued non-bailable warrant. Mr.Vyas very fairly submitted that there cannot be any debate as regards the position of law discussed by this Court in its order dated 7th November 2014. Mr.Vatsa, the learned advocate appearing on behalf of the applicants submitted that as recorded by this Court in para10 of the order dated 7th November 2014, all the applicants remained present before the Designated Court

and their presence was also marked. He submits that at that point of time, they also offered surety, however, the same was objected by the learned advocate appearing on behalf of the department since this petition was pending before this Court. Mr.Vyas clarifies that with the disposal of this petition there should not be any objection on the part of the department if the Designated Court accepts the surety which has been offered by the applicants. In the aforesaid view of the matter, nothing more is required to be adjudicated. The position of law has been well explained by the Supreme Court in the case of Inder Mohan Goswami and another v. State of Uttaranchal and others, reported in 2008(1) GLH 603, wherein the Supreme Court has explained when non-bailable warrant should be issued. The Supreme Court has observed thus :

When non-bailable warrants should be issued.

Non-bailable warrant should be issued to bring a person to court when summons of bailable warrants would be unlikely to have the desired result. This could be when:

it is reasonable to believe that the person will not voluntarily appear in court; or the police authorities are unable to find the person to serve him with a summon; or it is considered that the person could harm someone if not placed into custody immediately.

As far as possible, if the court is of the opinion that a summon will suffice in getting the appearance of the accused in the court, the summon or the bailable warrants should be preferred. The warrants either bailable or non-bailable should never be issued without proper scrutiny of facts and complete application of mind, due to the extremely serious consequences and ramifications which ensue on issuance of warrants. The court must very carefully examine whether the Criminal Complaint or FIR has not been filed with an oblique motive.

In complaint cases, at the first instance, the court should direct serving of the summons along with the copy of the complaint. If the

accused seem to be avoiding the summons, the court, in the second instance should issue bailable- warrant. In the third instance, when the court is fully satisfied that the accused is avoiding the courts proceeding intentionally, the process of issuance of the non-bailable warrant should be resorted to. Personal liberty is paramount, therefore, we caution courts at the first and second instance to refrain from issuing nonbailable warrants.

The power being discretionary must be exercised judiciously with extreme care and caution. The court should properly balance both personal liberty and societal interest before issuing warrants. There cannot be any straight-jacket formula for issuance of warrants but as a general rule, unless an accused is charged with the commission of an offence of a heinous crime and it is feared that he is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non- bailable warrants should be avoided.

The Court should try to maintain proper balance between individual liberty and the interest of the public and the State while issuing non-bailable warrant.

In the result, this application is allowed. A part of the order passed by the learned Designated Judge under the PML Act, Ahmedabad (Rural), so far as the issue of warrant is concerned, is hereby ordered to be quashed.

I clarify that it will be absolutely for the learned Designated Judge to decide what type of surety is to be accepted including the requisite amount. I do not express any opinion in that regard. The applicants shall regularly appear before the trial Court on the date fixed for hearing and mark their presence.

Direct service is permitted.

7. Mr. Goswami, the learned advocate appearing on behalf of the applicant submits that since the applicant was arrested pursuant to a non-bailable warrant and if the order of issue of non-bailable warrant itself was not tenable in law, then in such

circumstances, the detention of the applicant would be unlawful and contrary to Article 21 of the Constitution of India.

8.I inquired with Mr. Goswami, the learned advocate, whether such contention was raised before the learned Single Judge at the time of arguing the bail application. Mr. Goswami fairly submitted that such contention was not raised. However, the application was rejected on its own merits on other grounds.

9. In this application, the applicant wants me to adjudicate this issue and give a declaration that his arrest pursuant to the non-bailable warrant was illegal. His prayer is that once this court declares the arrest to be illegal, he is to be ordered to be released on bail.

10. I am afraid, I am unable to accept such submission for the simple reason that the bail application of the applicant has been adjudicated on merits and His Lordship Anant S. Dave, J., vide order dated 21st February, 2014, has rejected after assigning reasons in detail.

11. I cannot sit in appeal over an order of a Coordinate Bench. In such circumstances, I am of the view that this matter may be heard by the learned Judge who decided the bail application of the applicant. Let this matter be placed before the Hon'ble the Acting Chief Justice for appropriate orders".

4 Reliance is also placed on the decision in the case of Inder Mohan Goswami and another vs. State of Utaranchal and others, reported in 2008(1) GLH 603 wherein the Apex Court has observed that non-bailable warrant should be issued to bring a person to court when summons or bailable warrants would unlikely to have the desired result. The Apex Court expressed note of care and caution while dealing with liberty of the

citizens and exercising powers of issuance of non-bailable warrants.

In juxtaposition to what was recorded in para 12 of the above order, in a similar case, where the learned ASG appearing on behalf of the Department fairly submitted that the petitioners therein and petitioners herein were called for the purpose of interrogation by the authorities and the authorities thought it fit not to arrest them. However, it transpires that pursuant to execution of non-bailable warrants the petitioners are in jail since 18.01.2014.

5 Upon considering overall facts and circumstances that [i] in earlier application for bail, the issue of non-bailable warrant and exercise of power thereof never fell for consideration; what is recorded in order dated 10.12.2014 and the legal position, as discussed therein, and relying on the decision of the Apex Court in the case of Inder Mohan Goswami[supra] and in view of alternative prayer made pursuant to amended prayer 15(G) to release the petitioner on bail, without discussing the evidence in detail, prima facie, this Court is of the opinion that this is a fit case to exercise the discretion to enlarge the petitioner on bail.

6 Hence, this petition is allowed and the petitioner is ordered to be released on bail pursuant to the complaint filed with Hon'ble Designated Special Court, District and Sessions, Ahmedabad [Rural] being

PMLA Case NO.01/2013, on executing a bond of Rs.50,000/- (Rupees Fifty Thousand only) with one surety of the like amount to the satisfaction of the trial court and subject to the conditions that he shall;

[a] not take undue advantage of liberty or misuse liberty;

[b] not act in a manner injuries to the interest of the prosecution;

[c] surrender passport, if any, to the lower court within a week;

[d] not leave the State of Gujarat without prior permission of the Sessions Judge concerned;

[e] mark presence at the respondent No.2, on the first Sunday of every month between 10 a.m. and 3 p.m for three months only;

[f] furnish the present address of residence to the I.O. and also to the Court at the time of execution of the bond and shall not change the residence without prior permission of this Court;

7 The Authorities will release the petitioner only if he is not required in connection with any other offence for the time being. If breach of any of the above conditions is committed, the Sessions Judge concerned will be free to issue warrant or take appropriate action in the matter. Bail bond to be

executed before the lower court having jurisdiction to try the case. It will be open for the concerned Court to delete, modify and/or relax any of the above conditions in accordance with law. At the trial, the trial court shall not be influenced by the observations of preliminary nature, qua the evidence at this stage, made by this Court while enlarging the petitioner on bail. Rule is made absolute to the aforesaid extent. D.S. Permitted.

(ANANT S.DAVE, J.)

pvv

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Annexure-P-9

A.F.R.

Court No. 13

Case :- U/S 482/378/407 No. - 61 of 2020
Applicant :- Virendra Goel
Opposite Party :- U.O.I. Thru. Directorate Of Enforcement, P.M.L. Act
Counsel for Applicant :- Anuuj Taandon,Purnendu Chakravarty
Counsel for Opposite Party :- A.S.G.,Shiv P. Shukla

Hon'ble Dinesh Kumar Singh,J.

1. This petition under Sections 482 of the Code of Criminal Procedure, 1973 has been filed, impugning the order dated 12th November, 2019 passed by the Sessions Judge/Special Judge, PMLA, Lucknow on applications filed by the petitioner and other co-accused for allowing them to furnish bonds to the satisfaction of the PMLA Court in Complaint Case No. 9 of 2017 instead of taking them in custody and dealing with their bail applications etc.

2. The petitioner and other co-accused had been summoned for 29.01.2018 by the Court for appearance and participation in trial for offences under Section ¾ of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as the 'PML Act'). The petitioner and other co-accused did not appear in person on 29.01.2018 in compliance of summoning order before the Court, however, their counsels appeared on the date fixed, and sought sometime to file applications necessary for putting appearance and furnishing bonds etc. on the ground that the petitioner and other co-accused were already released on bail in schedule offence(s), and they had not misused the liberty.

It was further contended that the Enforcement Directorate did not arrest the petitioner during the investigation under Section 19 PML Act. It was also contended that the trial of schedule offence(s) as well as offence(s) under PML Act should be jointly conducted by the Court as provided under the provisions of Section 44(1)(C) PML Act.

The Special Court, however, vide order dated 29th January, 2018 did not grant any relief, as prayed for, and issued non-bailable warrants against the petitioner and other accused.

3. The petitioner, instead of appearing before the Special Court, approached this Court by way of filing Petition No. 509 of 2018 under Section 482 CrPC, praying therein that the proceedings of Complaint Case No. 9 of 2017 initiated by the Enforcement Directorate before the Special Judge, PMLA/Sessions Judge, Lucknow be quashed, and secondly that the petitioner should be directed to furnish personal bond to the satisfaction of the Court concerned in the aforesaid complaint case, and the Court be directed to accept the same. However, during the course of arguments, the first prayer was not pressed.

4. This Court, vide order dated 13th February, 2018, without expressing its opinion on merit of the case, disposed of the said 482 petition, providing the petitioner to move an application before the learned Special Judge, PMLA through counsel within a week under Section 88 CrPC read with Section 45 PML Act, and, it was provided that the learned Special Judge should deal with the application strictly in accordance with law.

It was further provided that till the decision on the said application, non-bailable warrant issued against the petitioner vide order dated 29th January, 2018 would not be given effect to.

5. Pursuant to the aforesaid opportunity granted by this Court, the petitioner and other co-accused moved applications before the Special Judge, PMLA, Lucknow, praying therein that the Special Court should accept the bonds or personal bonds under the provisions of Section 88 CrPC read with Section 45 PML Act.

6. The Sessions Judge/Special Judge, PMLA, vide impugned order dated 12th November, 2019 has dismissed the applications filed by the petitioner and other co-accused in the light of judgment dated 23rd

March, 2006 passed by the Division Bench of this Court in Criminal Misc. Application No.8810 of 1989 '*Babu Lal and others Vs. Smt. Momina Begum'* and Criminal Misc. Application No.8811 of 1989 '*Parasnath Dubey and others Vs. State of U.P. and others*'. This Court had issued Circular Letter No.33 of 2006 dated 7thAugust, 2006, circulating the judgment dated 23rd March, 2006 for its strict compliance. The relevant portion of the judgment dated 23rd March, 2006, which is contained in the Circular Letter No. 33 of 2006 dated 7th August, 2006 has been reproduced by the learned Special Judge in the impugned order.

7. The Division Bench of this Court, in the aforesaid judgment, had held that in cases which were governed by Sections 436 and 437 CrPC, the provisions of Section 88 CrPC would not be applicable for the reason that Section 436 and 437 CrPC are specific provisions which deal with particular kind of cases, whereas scope of Section 88 CrPC is much wider. The case, in which Section 436 CrPC is applicable, an accused has to appear before the Court, and thereafter, only the question of granting bail would arise. It had been further held that where summon or warrant to an accused was issued, the procedure under Section 436 and 437 CrPC would be necessarily followed, and summon or warrant, as the case may be, had to be executed and honoured.

8. The learned Special Judge, PMLA, in the impugned order has further held that the cases relating to schedule offence(s) and offence(s) under PML Act are mutually exclusive and, therefore, the benefit given in schedule offence(s) cannot be extended to the offence(s) of money laundering. The Special Judge has, thus, rejected the applications filed by the petitioner and other co-accused.

9. The proceedings of Complaint Case No. 9 of 2017 pending before the Special Judge, PMLA, Lucknow relates to a mega scam of

several hundred crores known as National Rural Health Mission (hereinafter referred to as "NRHM") scam in Uttar Pradesh.

10 Allegation, against the petitioner and other co accused, is that they were involved a criminal conspiracy and in furtherance thereto they misappropriated an amount of Rs. 2.94 Crores approximately in supplying computers and peripherals by M/s HCL Infosystems Limited, Lucknow to NRHM.

11. The CBI had registered an FIR on 2nd January, 2012 under Sections 120-B and 409 IPC and Section 13(2) read with Section 13(1)(d) Prevention of Corruption Act, 1988 (hereinafter referred to as 'PC Act') against the petitioner and other co-accused. The FIR was registered by the CBI in compliance of the order dated 15th November, 2011 passed by this Court in Writ Petition No. 3611 (M/B) of 2011 (PIL) and connected Writ Petition No.2647 (M/B) of 2011 (PIL).

12. In sum and substance, allegations are that Mr. G.K. Batra, the then Managing Director, Shreetron India Limited, Lucknow, a subsidiary of U.P. Electronic Corporation Limited (a State Government Undertaking), Mr. Virendra Goel, the present accused, proprietor of M/s Axis Marketing, New Delhi, Mr. Neeraj Upadhyay, Proprietor of M/s Radhey Shyam Enterprises, Lucknow and Mr. Avichal Mishra, Executive of M/s HCL Infosystems Limited, Lucknow and other unknown persons entered into a criminal conspiracy and in furtherance thereto misappropriated an amount of Rs.2.94 Crores by showing undue favours to private firms.

13. In pursuance of the tendered notice, three firms viz. M/s HCL Infosystems Limited, Lucknow, M/s Axis Marketing, New Delhi and M/s Radhey Shyam Enterprises, Lucknow submitted their bids, which were opened on 7th August, 2009. The lowest bidder was M/s HCL Infosystems Limited, Lucknow and, thus, the work of supplying computers and peripherals was given to M/s HCL Infosystems Limited, Lucknow. Strangely enough, after getting the order for

supplying the computers and peripherals, the HCL Infosystems Limited, Lucknow informed that supply would be made through M/s Axis Marketing, New Delhi and M/s Radhey Shyam Enterprises, Lucknow, and both the firms would supply 50% each of the items. Shreetron India Limited made the total payment of Rs.7.49 Crores to M/s Axis Marketing, New Delhi and M/s Radhey Shyam Enterprises, Lucknow. However, the said two firms made payment of only Rs.4.55 Crores to M/s HCL Infosystems Limited and they, caused a pecuniary loss of Rs.2.94 Crores to the NRHM scheme. These accused had misappropriated balance amount of Rs.2.94 Crores.

14. Investigation under the provisions of PML Act was undertaken by Enforcement Directorate vide order dated 14th April, 2012 to investigate the offence of money laundering with reference to predicate offence(s) initiated vide FIR dated 2nd January, 2012 registered by the CBI in which the CBI had filed charge-sheet against four accused.

15. The investigation under the PML Act pertained to generation of proceeds of crime by causing wrongful loss of Central Government funds allotted under the National Rural Health Mission Scheme in supply of 951 computers and peripherals through M/s Shreetron India Limited at an exorbitant price. The investigation under the PML Act has revealed that a sum of Rs.1,29,21,903/-, which is the 'proceeds of crime' in terms of Section 2(1)(u) o PML Act, was in possession of Mr. V.K. Batra, son of Late G.K. Batra, Mr. Virendra Goel, Smt. Nidhi Upadhyay, wife of Mr. Neeraj Upadhyay and Mr. Neeraj Upadhyay.

16. The assets acquired by the aforesaid persons from the "proceeds of crime" were attached vide order dated 15thJanuary, 2015.

17. After investigation, a complaint case was filed, which is Complaint Case No. 9 of 2017 pending before the Sessions Judge/Special Judge, PMLA, Lucknow.

18. Heard Mr. Purnendu Chakravarty, learned counsel representing the petitioner, as well as Mr. Shiv P. Shukla, learned counsel representing the respondents.

19. Learned counsel for the petitioner has submitted that Section 45 PML Act provides for release of an accused on bail or on his own bond. The release of any accused on bond has been incorporated under section 45 of the PML Act because if the accused would be on bail in the schedule offence(s) and, the complaint by the Enforcement Directorate is filed under the PML Act in respect of the same predicate offence, no purpose would be served in sending the accused in custody for offences under PML Act and, under these circumstances the accused should be released on bond. He has submitted that circumstance for release on bond under Section 45 PML Act would be that if the Enforcement Directorate did not arrest the accused under Section 19 PML Act during the course of investigation and in the predicate offence(s) accused is on bail, then the accused should be released on bond inasmuch as custody of the accused would not be required during trial and, therefore, no purpose would be served by sending the accused in jail and, then he would be required to apply for regular bail. The learned counsel has placed reliance on the following judgments in support of his contentions:-

i) ***Pankaj Jain Vs. Union of India and another, 2018 (5) SCC 743***;

ii) ***Arun Sharma Vs. Union of India, 2016 SCC Online P&H 5954;***

iii) ***Madhu Limaye and another Vs. Ved Murti and others, 1971 AIR 2486;***

Besides, ***Nikesh Tarachand Shah Vs. Union of India and another (2018) 11 SCC Page-1.***

20. The learned counsel for the petitioner has further submitted that as per Section 44 (1)(C) PML Act trials of cases in relation of predicate offence(s) and offence(s) under the PML Act are to be conducted by the same Court.

21. Per contra, Mr. Shiv P. Shukla, learned counsel appearing for the Enforcement Directorate, has submitted that the offence(s) under the PML Act are cognizable and non-bailable. He has submitted that a person, who is facing trial for non-bailable offence(s), cannot be released on furnishing bond. The learned counsel has further submitted that the judgment of the Punjab-Haryana High Court in *Arun Sharma Vs. Union of India* has been held to be not correctly decided by the Supreme Court in its judgment in the case of *Pankaj Jain Vs. Union of India and another* (supra).

22. The learned counsel for the Enforcement Directorate has further submitted that Section 88 CrPC confers discretion on the Presiding Officer of the Court. Section 88 CrPC does not confer any enforceable right to an accused that he must be released on furnishing bond. The predicate/schedule offence(s) and offence(s) under the PML Act are mutually exclusive. An accused does not become entitled automatically to be released on furnishing bond if the Court has granted him bail in schedule offence(s). Further Section 44 PML Act provides for transfer of trial of case under predicate offence to the Court of Special Judge on an application by the prosecution. It does not give any right to the accused to ask for transfer of the case under predicate offence(s) before the Special Judge. It is for the prosecution to decide whether it would be appropriate, convenient and in the interest of justice that the trial of schedule offence(s) and offence(s) under PML Act should be held by the same Court or not. The learned counsel has further submitted that the fact that the petitioner had been granted bail in the predicate offences by the concerned Court, and he was not arrested under Section 19 PML Act during the course of investigation would be the circumstances to be considered while deciding the bail application, but these factors do not confer a right to an accused to be released on furnishing bond or he should be allowed to furnish bond.

23. I have considered the submissions advanced by the counsels representing the respective parties and perused the record.

24. The question, which falls for consideration, is whether an accused facing trial for offences under the provisions of Section ¾ PML Act is entitled to be released on furnishing bond under Section 45 PML Act read with Section 88 Code of Criminal Procedure if he has been granted bail in the predicate/schedule offence(s) and, he was not arrested under Section 19 PML Act during the course of investigation by the Enforcement Directorate. Section 45 PML Act provides that the offences under the PML Act are cognizable and non-bailable.

25. The Supreme Court in *Nikesh Tarachand Shah Vs. Union of India's* case (supra) had struck down the two conditions mentioned in section 45 for grant of bail i.e. the Public Prosecutor has to be given an opportunity to oppose an application for release on bail and the Court must be satisfied where the Public Prosecutor opposes the application that there are reasonable grounds for believing that the accused is not guilty of such offence(s) and that he is not likely to commit any offence while on bail. Para-54 of the aforesaid judgment, on reproduction, reads as under:-

> ***"54.*** *Regard being had to the above, we declare Section 45(1) of the Prevention of Money-Laundering Act, 2002, insofar as it imposes two further conditions for release on bail, to be unconstitutional as it violates Articles 14 and 21 of the Constitution of India. All the matters before us in which bail has been denied, because of the presence of the twin conditions contained in Section 45, will now go back to the respective courts, which denied bail. All such orders are set aside, and the cases remanded to the respective courts to be heard on merits, without application of the twin conditions contained in Section 45 of the 2002 Act. Considering that the persons are languishing in jail and that personal liberty is involved, all these matters are to be taken up at the earliest by the respective courts for fresh decision. The writ petitions and the appeals are disposed of accordingly."*

The aforesaid decision has no bearing to the controversy involved in the present case.

26. Section 45 PML Act of post decision in *Nikesh Tarachand Shah* reads as under:-

> ***"45. Offences to be cognizable and non-bailable**.—(1) [Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence 107 [under this Act] shall be released on bail or on his own bond unless—]*
>
> *(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and*
>
> *(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:*
>
> *Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm [or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees], may be released on bail, if the Special Court so directs:*
>
> *Provided further that the Special Court shall not take cognizance of any offence punishable under Section 4 except upon a complaint in writing made by—*
>
> *(i) the Director; or*
>
> *(ii) any officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government.*
>
> *[(1-A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.]*
>
> *(2) The limitation on granting of bail specified in [* * *] sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.*
>
> *[Explanation.—For the removal of doubts, it is clarified that the expression "Offences to be cognizable and non-bailable" shall mean and shall be deemed to have always meant that all offences under this Act shall be cognizable offences and non-bailable offences notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973, and accordingly the officers authorised under this Act are empowered to arrest an accused without warrant, subject to the fulfilment of conditions under Section 19 and subject to the conditions enshrined under this section.]"*

27. Section 46 PML Act provides that the provisions of CrPC, including the provisions as to the bails or bonds, shall apply to the proceedings before Special Court and for the purposes of such provisions, the Special Court shall be deemed to be a Court of Session. Section 65 PML Act further provides that the provisions of CrPC shall apply in so far as they are not inconsistent with the provisions of this Act, in arrest, search, seizure, attachment, confiscation, investigation and prosecution and all other proceedings under this Act. Thus, from a conjoint reading of Section 45, 46 and 65 PML Act, it is clear that the provisions of the CrPC would be applicable in the proceedings before the Special Court, including the provisions of bails or bonds and also would be applicable in respect of arrest, search, seizure, attachment, confiscation, investigation and prosecution and all other proceedings under this Act. Thus, the provisions of CrPC have been made applicable even in respect of granting bail or furnishing bond, as the case may be. The application of an accused in the case relating to PML Act has to be considered in accordance with the provisions contained in this regard in the CrPC. Section 88 CrPC reads as under:-

> ***"Section 88.*** *Power to take bond for appearance. When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant, is present in such Court, such officer may require such person to execute a bond, with or without sureties, for his appearance in such Court, or any other Court to which the case may be transferred for trial."*

28. The Supreme Court had an occasion to consider Section 91 of CrPC, 1898 similar to provisions of Section 88 new Code of 1973 in *Madhu Limaye and another Vs. Ved Murti and others* (supra) 1970 (3) SCC 739. The following observations were made in context of Section 91:-

> *"……In fact section 91 applies to a person who is present in Court and is free because it speaks of his being bound over, to appear on another day before the Court. That*

> *shows that the person must be a "free agent" whether to appear or not. If the person is already under arrest and in custody, as were the petitioners, their appearances depended not on their own volition, but on the volition of the person, who had his custody……. ."*

29. The Punjab-Haryana High Court in *Arun Sharma* Vs. *Union of India,* relying on the said observations of the Supreme Court in the case of *Madhu Limaye and another,* has held that in a situation where the accused were not arrested under Section 19 of the PML Act during the course of investigation and were not produced in custody for taking cognizance, Section 88 CrPC shall apply upon appearance of the accused person on their own volition before the trial Court to furnish bonds for their appearance.

30. A person, who has been issued summon or warrant to appear before the Court, cannot be said to be a 'free agent'. The Supreme Court in *Pankaj Jain* Vs. *Union of India and another* (supra) has dealt with the judgment of the Punjab-Haryana High Court in paras-27 to 29, and in para-29 it has held as under:-

> ***"29.*** *In the Punjab & Haryana case, the High Court has relied on judgment of this Court in Madhu Limaye v. Ved Murti [Madhu Limaye v. Ved Murti, (1970) 3 SCC 739] and held that Section 88 shall be applicable since accused were not arrested under Section 19 of PMLA during investigation and were not taken into custody for taking cognizance. What the Punjab & Haryana High Court missed, is that this Court in the same paragraph had observed "that shows that the person must be a free agent whether to appear or not". When the accused was issued warrant of arrest to appear in the court and proceeding under Sections 82 and 83 CrPC has been initiated, he cannot be held to be a free agent to appear or not to appear in the court. We thus are of the view that the Punjab & Haryana High Court has not correctly applied Section 88 in the aforesaid case."*

31. The Supreme Court in the aforesaid judgment has also held that the words used in Section 88 confer a discretion on the Court concerned whether to accept bond from the accused or from a person appearing in the Court or not. This Section does not confer any right

on the accused to enforce for accepting the bond. Thus, since the judgment of the Punjab-Haryana High Court in *Arun Sharma,* (supra) does not lay down correct law, the petitioner ca not claim benefit of the same. A person accused of the offences under Section 3/4 PML Act, has been issued summon or warrant to appear before the Court, is not a 'free agent', and mere fact that he has been granted bail by the Court in predicate/schedule offence(s), and he was not arrested by the Enforcement Directorate under Section 19 during the course of investigation are only factors to be considered at the time of considering the bail application of the accused by the PMLA Court, but it would not be correct to say that he is a "free agent" and, therefore, his bond should be accepted and he is not required to apply for regular bail.

32. Provisions to bail and bond are provided in Chapter-XXXIII of the Cr.P.C. The special provisions contained in Chapter-XXXIII of the Code cannot be made to rendered otiose by interpreting general provision of Section 88 of the Code. When a person is accused of cognizable and non-bailable offence, his bail application has to be dealt with the provisions contained in Chapter XIII of the Code. The Supreme Court in *Pankaj Jain* Vs. *Union of India* (supra) in paras-24 and 25 has approvingly quoted the judgments of Delhi High Court in ***Sanjay Chandra Vs. CBI, 2011 OnLine Del 2365*** and Patna High Court in ***Anand Deo Singh Vs. State of Bihar, 2000 SCC OnLine Pat 311*****,** which are reproduced hereunder:-

> ***"24.*** *Another judgment of the Delhi High Court in Sanjay Chandra v. CBI [SanjayChandra v. CBI, 2011 SCC OnLine Del 2365] decided on 23-5-2011 supports the submission raised by the learned Additional Solicitor General that power under Section 88 CrPC, the word "may" used in Section 88 CrPC is not mandatory and is a matter of judicial discretion. Paras 20, 21 and 22 of the judgment are to the following effect: (SCC OnLine Del)*
>
> > *"20. Learned Shri Ram Jethmalani and learned Shri K.T.S. Tulsi, Senior Advocates appearing for accused Sanjay Chandra, learned Shri Mukul Rohatgi, Senior Advocate*

appearing for accused Vinod Goenka, learned Shri Soli Sorabjee and learned Shri Ranjit Kumar, Senior Advocates appearing for accused Gautam Doshi, learned Shri Rajiv Nayar, Senior Advocate appearing for accused Hari Nair and learned Shri Neeraj Kishan Kaul, Senior Advocate appearing for accused Surendra Pipara, at the outset, have contended that the order of learned Special Judge dated 20-4-2011 rejecting the bail of the petitioners is violative of the mandate of Section 88 CrPC. It is contended that admittedly the petitioners were neither arrested during investigation nor were they produced in custody along with the charge-sheet as envisaged under Section 170 CrPC. Therefore, the trial court was supposed to release the petitioners on bail by seeking bonds with or without sureties in view of Section 88 CrPC. Thus, it is urged that on this count alone, the petitioners are entitled to bail.

21. The interpretation sought to be given by the petitioners is misconceived and based upon incorrect reading of Section 88 CrPC, which is reproduced thus:

*'**88. Power to take bond for appearance**.—When any person for whose appearance or arrest the officer presiding in any court is empowered to issue a summons or warrant, is present in such court, such officer may require such person to execute a bond, with or without sureties, for his appearance in such court, or any other court to which the case may be transferred for trial.'*

22. On reading of the above, it is obvious that Section 88 CrPC empowers the court to seek bond for appearance from any person present in the court in exercise of its judicial discretion. The section also provides that aforesaid power is not unrestricted and it can be exercised only against such persons for whose appearance or arrest the court is empowered to issue summons or warrants. The words used in the section are "may require such person to execute a bond" and any person present in the court. The user of word "may" signifies that Section 88 CrPC is not mandatory and it is a matter of judicial discretion of the court. The word "any person" signifies that the power of the court defined under Section 88 CrPC is not accused specific only, but it can be exercised against other category of persons such as the witness whose presence the court may deem necessary for the purpose of inquiry or trial. Careful reading of Section 88 CrPC makes it evident that it is a general provision defining the power of the court, but it does not provide how and in what manner this discretionary power is to be exercised. The petitioners are accused of having committed non-bailable offences.

> *Therefore, their case for bail falls within Section 437 of the Code of Criminal Procedure which is the specific provision dealing with grant of bail to an accused in cases of non-bailable offences. Thus, on conjoint reading of Sections 88 and 437 CrPC, it is obvious that Section 88 CrPC is not an independent section and it is subject to Section 437 CrPC. Therefore, I do not find merit in the contention that order of the learned Special Judge refusing bail to the petitioners is illegal being violative of Section 88 CrPC."*
>
> ***25.*** *Another judgment which is relevant in this context is the judgment of the Patna High Court in Anand Deo Singh v. State of Bihar [Anand Deo Singh v. State of Bihar, 2000 SCC OnLine Pat 311 : (2000) 2 PLJR 686] . The Patna High Court had the occasion to consider Section 88 CrPC where in para 18, following has been held: (SCC OnLine Pat)*
>
> > *"18. In my considered view, Section 88 of the Code is an enabling provision, which vests a discretion in the Magistrate to exercise power under the said section asking the person to execute a bond for appearance only in bailable cases or in trivial cases and it cannot be resorted to in cases of serious offences. Section 436 of the Code itself provides that bond may be asked for only in cases of bailable offences."*

33. In view of the aforesaid discussions, I do not find that the learned Special Judge has committed any error in passing the impugned order and rejecting the applications of the petitioner and other co-accused for releasing them on furnishing bonds. The accused are not 'free agents' as they were issued summon for appearance on 29th January, 2018 and when they did not appear, they had been issued non-bailable warrants vide order dated 29th November, 2018. The accused are trying to delay the trial and, therefore, it is provided that the Special Judge, PMLA, Lucknow should take all necessary steps for their appearance before the Court and early conclusion of the trial.

34. This petition stands ***dismissed***.

35. Let a copy of this order be transmitted to the Sessions Judge/Special Judge, PMLA, Lucknow forthwith.

[D.K. Singh,J.]

Order Date:22.01.2020
MVS/-

//True Copy//

Annexure-P-10

IN THE HIGH COURT OF JHARKHAND AT RANCHI
A.B.A. No. 3212 of 2018

Dilip Kumar Singh ..... Petitioner

Versus

The Enforcement of Directorate ..... Opp. Party

CORAM: HON'BLE MR. JUSTICE ANANT BIJAY SINGH

For the Petitioner : Mr. Indrajit Sinha, Advocate.
For the E.D : Mr. A.K. Das, Adv.

05/Dated: 14/09/2018

The petitioner is apprehending his arrest in connection with ECIR NO. ECIR/09/PAT/12/PMLA registered under Sections 4 of the Prevention of Money Laundering Act, 2002.

The brief facts of the case is that an FIR bearing No.RC03(A)/2010 was registered by the Central Bureau of Investigation, ACB on 16.02.2010 for cheating the Government in the matter of four submitting false and bogus invoices showing procurement of bitumen for execution of contract work awarded to the said contractor which caused wrongful gain to the Contractor and corresponding wrongful loss to the State Exchequer. On the basis of aforesaid FIR an ECIR was recorded for investigation under the Provisions of Prevention of Money Laundering Act, 2002 by the Directorate of Enforcement vide no. ECIR/09/PAT/12/PMLA.

Learned counsel for the petitioner has submitted that the petitioner is one of the Director of M/s Classic Coal Construction Pvt. Ltd and has been falsely implicated on account of submission of forged invoices relating to procurement of bitumen. It is further submitted that the petitioner was a salaried Director and he was responsible for site work of the company and so far as the procurement of bitumen and other materials are concerned, the Company has issued authorization for lifting of bitumen in favour of one Puroshattam Jaiswal, however the invoices does not contain the signature of the petitioner or had issued by him. So, petitioner deserves the privilege of anticipatory bail.

Learned counsel for the E.D has opposed the prayer for bail and filed counter affidavit. Learned counsel for the E.D. has submitted that during investigation it was found that on the basis of forged and fabricated bills, an amount of Rs.3,25,86,670/- was credited in the account of M/s Classic Coal Construction Pvt. Ltd. by way of eleven cheques. It was also established during investigation that the said account was operated by the present petitioner. During investigation it was further found that the petitioner had purchased various properties.

Having heard the learned counsel for the parties and after going through the records, final form, material collected by the C.B.I./E.D against the petitioner and also the fact that final form has been submitted in this case, trial will take some time and during investigation, the petitioner has fully co-operated in the investigation and he was never arrested by the C.B.I./E.D.

In the facts and circumstances of the case, I am inclined to admit the petitioner on anticipatory bail. The above named petitioner is directed to surrender in the court below latest by 10.10.2018 and in the event of his arrest or surrender, the court below shall release him on bail on his furnishing bail bond of Rs.25,000/- (Twenty Five Thousand) with two sureties of the like amount each to the satisfaction of learned Special Judge, PMLA, Ranchi, in connection with ECIR NO. ECIR/09/PAT/12/PMLA, subject to the condition as laid down under Section 438(2) of the Cr.P.C. and subject to further conditions are as follows:-

(i) One of the bailors must be a local resident and solvent person of Ranchi district.

(ii) Petitioner shall fully cooperate with the E.D and also physically appear on each and every date before the trial court till framing of charge. If he want exemption from appearance, he will inform the E.D in advance and after taking necessary permission from

Special Court, PMLA, Ranchi, he may be exempted from personal appearance.

(iii) The petitioner shall not try to influence the prosecution witnesses during trial.

(iv) The petitioner will deposit his passport, if any, before the trial court and if the petitioner fails to do so, as directed by this Court, the ED shall file an application for cancellation of his bail before this Court.

(v) The petitioner will deposit Rs.51,000/- before the Secretary/ President Jharkhand High Court Advocates' Association latest by 04.10.2018 by way of cost and shall submit receipt of the same before the trial court at the time of surrender.

Let a copy of this order be communicated to the trial court as well as a copy of this order be handed over to the learned standing counsel for the E.D and Secretary/ President Jharkhand High Court Advocates' Association.

(Anant Bijay Singh, J.)

fahim/-

//True Copy//

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION (FOR REGULAR BAIL) NO. 2492 of 2014

==========

DIPAKBHAI BALKRISHNA SULAKHE & 3....Applicant(s)

Versus

DIRECTORATE OF ENFORCEMENT OFFICE & 1....Respondent(s)

==========

Appearance:
MR. ARSH R SHAIKH, ADVOCATE for the Applicant(s) No. 1 - 4
MR. RZ SHAIKH, ADVOCATE for the Applicant(s) No. 1 - 4
MR IH SYED, ADVOCATE for the Respondent(s) No. 1
MR HARDIK SONI APP for the Respondent(s) No. 2

==========

CORAM: **HONOURABLE MR.JUSTICE ANANT S. DAVE**

Date : 21/02/2014

ORAL ORDER

1. Rule. Learned APP, waives service of rule on behalf of respondent-State.

2. This application is preferred under Section 439 of the Code of Criminal Procedure, 1973 by the applicants who are facing accusations for the offences under Sections 3 and 4 of Money Laundering Act, 2002 [hereinafter referred to as "PML Act"] being PMLA Complaint Case No. 01 of 2013 and that the applicants along with other co-accused are arraigned in the cases registered by CBI under three RCs i.e. (i) RC-10(A)/2010 dated 18.09.2010 about the fraud with regard to Senior Citizen Savings Scheme, (ii) RC 14(A)/2010 dated 26.10.2010 about

the fraud with regard to Monthly Income Schemes and (iii) RC 2(A)/2011 dated 22.02.2011 about the fraud of interests for Monthly Income Schemes and withdrawal of amount of saving scheme and thereby defrauding the account holder. The details of which are provided in the complaint filed at page 13 and 14. The CBI filed three charge-sheets against various accused including the present applicants as mentioned in para 2(d) of the complaint, for the offences punishable under Sections 120B, 467 and 471 of the Indian Penal Code and Section 13(2) read with Section 13(1) of the Prevention of Corruption Act and also scheduled offences as per Section 2(y) of the PML Act.

2.1. In the above backdrop of the circumstances, learned advocate for the applicants contended that the record so far pertaining to alleged offences and transactions is already with the Investigating authority i.e. The Directorate of Enforcement Office - respondent no. 1 herein and the trial has yet not commenced and even after commencement of the trial, it may take years together to try requirements and till then the applicants are not to be kept behind the bar. It is submitted that in a nature of case like this, when there is no possibility of tampering with the evidence in any manner, either influencing witnesses or any other tampering, the Court may enlarge the accused on bail.

3. Heard learned counsel for the applicants, learned counsel for respondent no. 1 and learned APP for the respondent – State. Considering the nature of crime and offences registered under the PML Act coupled with registration of offences by CBI under Sections 120B, 467 and 471 of the Indian Penal Code and now the Special Court designated under Sub-section (1) of Section 43 of the PML Act for the

trial of the offences under Section 3 and punishable under Section 4 of the PML Act, I am of the view that in such type of cases of huge financial scam, where senior citizens who had invested their lifetime earnings, came to be defrauded, I am not inclined to enlarge the applicants on bail, even by imposing stringent conditions. Further, in view of well reasoned order passed by the learned Sessions & Designated Judge, Ahmedabad Rural to which, I am in complete agreement with the reasonings given by the Court below in paragraph nos. 25 to 37. Hence, I find no reasons to interfere with the same. The said paragraphs are reproduced herein below :-

> *"25. Foregoing submissions made by learned advocate at length makes me conclusive that there is no doubt nor any situation before me to raise any doubt regarding the settled principle that 'Bail is a Rule and Jail is a Exception'. I am bound by this ratio which is binding to all Courts within India since long there about 1977. Therefore, here is a question before me that case on hand falls within the purview of Rule or falls within the purview of Exception ? Again it is required to be noted that learned advocate for the applicants has submitted before me regarding the guide-line and dictum of the Hon'ble Apex Court but there is no submission before me that what was the intention of legislature for enacting the PML Act 2002 and after enactment in 2002 what was the intention by legislature in amending the PML Act, 2005, then in 2009 and then in 2012. I am of the opinion that when a question arises before the Court for any provision Court has to put harmonious construction amongst all the provision of legislative intention and it is not open for any Court to interpret the single provision or provision of any single Act but it is the duty of Court to interpret the facts and circumstances of the case within the legal parameter of all the Laws enacted by the legislature and while doing this exercise I can not say that I have to draw my attention*

towards only Cr.P.C., as interpreted the provisions of Cr.P.C., by the Hon'ble Apex Court and thereby I can not say that on basis of only interpretation in the Cr.P.C., more particularly for Section 439 of Cr.P.C. I have to decide this application. But, I am under the legislative mandate to interpret the legislative intention for Section 439 of Cr.P.C., and the guide-line by Hon'ble High Courts and Hon'ble Supreme Court for this provision as discussed above, but at the same time when this bail application is connected with the provisions of PML Act, I am also under the legislative mandate to consider the legislative intention as contained in Section 45(1) Section 45(2) of the PML Act. Therefore, the discussion of both these provisions are required to be followed during this discussion.

26. As discussed earlier legislative intention is crystal clear that limitation on granting of the bail specified in Sub-section (1) n of Section 45 of PML Act is in addition to the limitation under the Code of Criminal Procedure. More particularly this petition being a bail application under Section 439 of Cr.P.C., Legislative intention which I find from the plain reading of Sub-section (2) of Section 45 of PML Act is to be read over and nature of limitation in granting the bail is to be discussed when the bail is sought for or bail is to be enlarged in connection with the crimes under the PML Act.

27. Thus, I am under the legislative mandate and to follow the legislative intention, I have to deal with points that what is contemplated under Sub-section 2 of Section 45 of PML Act and in no circumstances, I am at liberty to ignore this legislative intention, as this application is for enlargement of bail is in connection with the PMLA Case No. 1 of 2013.

28. Much discussion are there by me regarding legislative intention of PML Act during the Criminal Misc. Application No. 41/2014 which was preferred by present applicants with their prayer for anticipatory bail, wherein the question is decided by this Court that there is no merits in the submission that on basis of Section 201 and 210 of

Cr.P.C., this PML Act proceedings are not maintainable. Moreover, despite such observation during the paragraph 6 of the order in said Criminal Misc. Application No. 41/2014, learned advocate for the applicants have submitted nothing in connection with the applicability/non-applicability of Section 45 of PML Act and how the case of applicants is within the parameter as to granting of the bail even under Section 45 of the PML Act is not pleaded and mentioned nothing on this point.

29. Now plain reading of Sub-section (1) of Section 45 of PML Act, it reveals that PML Act has over riding effect over the provisions of Cr.P.C. I took this view upon plain reading of the words of the Sub-section (1) of Section 45 of PML Act which are as "Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)". Moreover, legislature has used the words "no person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule shall be released on bail". This word connoted that legislature has intended to deal with question regarding release on bail despite the offence is punishable for term for more than 3 years. The conditions in respect of said offence are narrated further with legislative mandate to the Judicial Officer that application for such released can not be decided without giving opportunity of hearing to Public Prosecutor. Plain reading of this clause (i) of Sub-section 1 of Section 45 of PML Act connotes that court is under legal obligation to respect the legislative mandate that application for bail can not be decided without hearing to Public Prosecutor Heading of Section 45 clearly shows that "Offences to be cognizable and non-bailable". Plain reading of this word used by the legislature clearly makes me conclusive that initial order while taking cognizance for the PMLA Criminal Case No. 1 of 2013, order passed by this Court for issuance of non-bailable warrant is the order passed by this Court, perfectly within the legal parameter of Section 45 of PML Act.

30. In such circumstances attempt by learned advocate to show that in prior incidents about directly issuing

bailable warrant while dealing with the case of PMLA can not be followed. Thus, the order on 21.12.2013 and taking cognizance and issuance of non-bailable warrant is within the legal parameters as contemplated under Section 45 of the PML Act.

31. Thus, after issuance of NBW, Court is under further legislative mandate to provide an opportunity to oppose application. In the case on hand there is no clarity before me that after having undertaken the duty by learned advocate for applicants/ accused for serving a process to opponent no. 1, whether same are duly served to opponent No. 1. Moreover, learned advocate Mr. Mishra has also refrain from filing a purshis that he has been duly authorized to defend this bail application on behalf of opponent no. 1, after serving of a process to opponent no. 1. I leave this lacuna yet to be explained by learned advocate Mr. Mishra and learned advocate for the applicants. But I can certainly say that what is done by them is not a nature which can be labeled that same is within the legal parameters. Moreover, Vakalatnama is found filed at Ex.2 in PMLA Criminal Case No. 1 of 2013 to represent the case by Mr. S.N. Mishra and Bhagyodaya Mishra but signature is by single advocate for acceptance of Vakalatnama without any clarification that out of Mr. S.N. Mishra and Shri Bhagyodaya Mishra who accepted the Vakalatnama. Here it is required to be noted that Vakalatnama Exh. 2 in PMLA Criminal Case No. 1 of 2013 is incomplete and same is to be filed again with the clarification by the Authority that who is given authorization to plead on behalf of the complainant namely Deputy Director, Directorate of Enforcement, Government of India, Ahmedabad. With this observation I proceed further towards the further discussion.

32. Clause (ii) of Sub-section 1 of Section 45 of PML Act speaks that "where the Public Prosecutor opposes the application". In the case on hand learned advocate Mr. Mishra has endorsed "Formally objection ……." Here in the case on hand on the basis of this endorsement I am at conclusion that this application is opposed. Here it is

necessary to take note that it is open for parties to the proceedings to oppose any application or not to oppose any application but clause (i) of Sub-Section 1 of Section 45 of PML Act provides for what to do by the court when opposition. In the case on hand when application is opposed then Court is under the duty to follow that legislative mandate. Now to see that what is the legislative mandate, is to be gathered from words "Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail." In the case on hand thus, what is to be considered while dealing with the bail application under the PML Act or in connection with the case of bail wherein the PML Act, is such that Court has to satisfy itself that Court can enlarge on bail in a cases (wherein there are reasonable grounds for believing that applicants who have applied for bail is not guilty). To show such as a prima facie case that there are reasonable ground on the basis of which such person has untainted property and therefore prima facie he can not be believed to be a guilty – duty to show such lies on accused/ applicants.

33. Thus, when this legislative intention is considered for the case on hand then it reveals crystal clear that burden lies on present applicants to show that they are reasonable ground for believing that they are not guilty and they are wrongly involved in the case on hand. For this aspect there is no submission before me. Moreover, while filing the PMLA case 4 volumes are produced by the prosecution, what is the role of the present applicants is not submitted at all. It is required to be noted that in any accusation by the prosecution when there are more than one accused, role of each of the accused will not be same and role of each of the accused will be different. While enlarging on bail, it is necessary for Court to consider the aspect regarding alleged role of alleged each accused. For this application not a word is submitted by learned advocate for the applicants or by learned advocate Mr.Mishra who is yet under suspicious that whether he has assigned a duty to defend this bail application. I took

this note more particularly when the learned advocate have proceeded before me for the hearing without filing Vakalatnama. If the Vakalatnama is required in main PMLA Case, then without even a purshis, how the learned advocate has proceeded is yet not found understandable within the legal parameters.

34. Moreover, clause (ii) of Sub-section (1) of Section 45 of PML Act connotes that two requirement is to be satisfied. As amongst the same, one requirement is discussed above and next requirement is "He is not likely to commit any offence while on bail". This bail application is filed by learned advocate and this learned advocate is duly authorized by the Vakalatnama Exh.2 but what is contemplated by legislature is to have the satisfaction of the court with anything on record even by way of undertaking with the words that "he is not likely to commit any offence while on bail". During the bail the application or by the separate affidavit nothing is shown for this second part of clause (ii) of Sub-section 1 of Section 45 of PML Act.

35. Thus, foregoing discussion makes me conclusive that Court is under legislative mandate to Section 45 of PML Act and for legislature has intended to have over riding effect to PML Act over the provision of Cr. P.C., nothing is submitted before me that how the applicant can be enlarged on bail within the legal parameters as discussed above.

36. However, the proviso to Clause (i) & Clause (ii) of Sub-section (1) of Section 45 of PML Act provides that "in case of a person below the age of 16 years or in a case of a woman or a person is a sick or infirm, he be released on bail if the Special Court so directs". Looking towards the proviso though not submitted by learned advocate for other side, I find the justification to enlarge applicant no. 5 on bail on several conditions and for the rest of the applicants, as per foregoing discussion, I have to follow the legislative mandate and to pass necessary order as intended by the legislature as discussed above.

37. Moreover, legislative intention of PML Act is not only to punish the accused upon found to be guilty but the prime intention of legislature for enacting the PML Act is to derive the 'proceeds of crime' and to apply the same towards the victims against whom economic offence is committed. While dealing with this aspect how 'proceeds of crime' could be gathered after the applicants to be enlarged on bail, is not submitted before me nor there is a submission before me that the case on hand all the proceeds of crime are accumulated and nothing has remained to follow for the legislative intention for gathering the 'proceeds of crime'. Therefore, in the case on hand, in absence of iota of the words on this count I do not find any merits in granting the bail to applicant no. 1 to 4. Therefore, against them this application deserves to be rejected. However, necessary conditions is to be imposed to follow the legislature intention of Special Statute of PML Act. Hence, I pass the following order."

-:ORDER:-

This Criminal Misc. Application No. 87/2014 is partly allowed only in respect of applicant no. 5 Anilaben N. Makwana who is mentioned as accused no. 10 in clause title of Criminal Misc. Application No. 87/2014.

For the applicant no. 1 to 4 this application is rejected.

Application No. 5 – Anilaben N. Makwana to be enlarged on bail upon execution of personal bond for Rs.30,000/- and also for two surety of the like amount and also upon the following conditions.

1. The applicant no. 5/ accused shall not hamper or tamper with the prosecution evidence and/ or any witness of prosecution.

2. The applicant no. 5/ accused shall surrender her passport, if any to the court at the time of execution of the bail bond.

3. The applicant no. 5/ accused shall not leave the boundary of the State of Gujarat without prior permission of the Court.

4. The applicant no. 5/ accused shall remained present before the Investigating Officer if her presence is necessary for the investigation purpose.

5. The applicant no. 5 / accused shall produce the list of immovable and movable property held in her name or in the name of her brother, sister, father , mother, children and husband before the Court within 30 days from this order.

6. Applicant no. 5 shall have to file undertaking that she will not dispose of any immovable property or cause to dispose of any immovable property which is alleged to be a proceeds of crime by prosecution.
In case of breach of any of the condition above bail granted to her shall be liable to be cancelled."

4. In view of the above, and considering the overall facts and circumstances of the case, I am in complete agreement with the reasonings given by learned Sessions & Designated Judge, Ahmedabad Rural. This application is, therefore, rejected. Rule is discharged.

(ANANT S.DAVE, J.)

/phalguni/

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

1.S.B. Criminal Miscellaneous Bail Application No. 6273/2020

Dr. Ashok Singhvi S/o A.M. Singhvi, R/o 7 Hospital Road C-Scheme Jaipur (Presently Confined In Central Jail Jaipur)

----Petitioner

Versus

1. Union Of India, Through The Additional S.G.
2. Uma Nand Vijay Assistant Director, Directorate Of Enforcement IInd Floor Jeevan Nidhi-II L.I.C. Bhawan Bhawani Singh Road Jaipur

----Respondents

2. S.B. Criminal Miscellaneous Bail Application No. 6923/2020

Mohammad Rashid Sheikh S/o Shri Akbar Deen Sheikh, Aged About 54 Years, R/o Nai Abadi Khajodpura Gaon Sawa Ps Shambhoopura Dist. Chhitorgarh Raj. (At Present Confined In Central Jail Jaipur)

----Petitioner

Versus

Umanand Vijay, assistant Director, Enforcement Directorate IIn Floor Jeevan Nidhi-II L.I.C. Bhawan, Bhawani Singh Road, Jaipur

----Respondent

For Petitioner(s) : Mr. Deepak Chauhan with
Mr. Mohit Khandelwal
Mr. Anil Upman, through VC

For Respondent(s) : Mr. R.D. Rastogi, ASG with
Mr. Anand Sharma, through VC

HON'BLE MR. JUSTICE SATISH KUMAR SHARMA

Order

Date of Order: **July _6_, 2020**

1. These bail applications under Section 439 Cr.P.C. have been filed by the accused applicants in Sessions Case No.1/2019 pending in the court of Special Court (Money Laundering Act, 2002) Jaipur Metropolitan, Jaipur for offence under Section 3/4 of the Prevention of Money Laundering Act, 2002 involving an amount of Rs.2.55 Crores as tainted money of scheduled offence of corruption in mining department of the State Government of Rajasthan.

2. Heard learned counsel for both the sides and perused the material available on record as well as written submissions filed on behalf of non applicants.

3. Mr. Anil Upman and Mr. Deepak Chauhan learned counsel for both the accused applicants have submitted that similarly situated co-accused persons have been enlarged on bail by the coordinate bench of this court vide order dated 12-5-2020 and the case of accused applicants is not distinguishable from them. Both the applicants are not required for the purpose of investigation/ enquiry as the Enforcement Directorate has already filed the complaint in the matter. During the course of investigation, statements of both the applicants were recorded and they fully cooperated in the investigation. Neither they were arrested during the course of investigation, nor there was any prayer to summon them through arrest warrants. Both the applicants have already been granted bail in the scheduled offences, on the basis of which this case has been registered. Both the applicants could not appear before the trial court immediately after the summoning by

the trial court, as they were pursuing legal remedies available to them. Both the applicants also satisfy the conditions of triple test on the basis of which other co-accused persons have been granted bail. The bail applications should be allowed. Learned counsel for the applicants have relied upon the judgments in Sita Ram Vs. State of Rajasthan [1994(1) RLW 227], Suraj Vs. State of Rajasthan [RLW 1986 Raj. 325], Data Ram Singh Vs. State of U.P. [(2018)3 SCC 22], P. Chidambaram Vs. CBI [AIR 2019 SC 5273], P. Chidambaram Vs. Directorate of Enforcement [AIR 2019 SC 1669], Sanjay Chandra Vs. CBI [(2012)1 SCC 40], Sushila Aggarwal Vs. State (NCT of Delhi) [(2020 SCC Online SC 98], S. Kassi Vs. State [JT 2020(6) SCC 363] and Siddharam Satlingappa Mhetre Vs. State of Maharashtra [2011 Cr.L.R. (SC) 1].

4. Mr. R.D.Rastogi, learned ASG assisted with Mr. Anand Sharma has vehemently opposed the bail applications with the submissions that as per settled legal position expounded by Hon'ble Supreme Court in series of judgments, bail in economic offences must be considered on altogether distinct criteria as the same affect the economy as a whole and destroy the very basic fiber of the Society. The bail cannot be granted solely on the ground of parity i.e. co-accused persons have been granted bail, but while considering the bail application, the prima-facie case, role of each accused, conduct of the accused and other relevant factors should be taken into account. In this case most important factor of prima-facie case in the light of relevant provision of the Prevention of Money Laundering Act, 2002 (hereinafter `the PML Act') has not been considered by Hon'ble coordinate Bench and

therefore, the department is in the process of getting cancelled the bail granted to co-accused persons. Since scheduled offences and other offences of IPC are totally distinct from the offences punishable in PML Act, the applicants are not entitled for bail on the basis of bail granted to them for the scheduled offence related to this case. As per Section 45 of the PML Act, bail cannot be granted to the accused if prima-facie offence is made out against him. In this case, cognizance order and the order of rejecting the application for conversion of non bailable warrants into bailable were challenged by the accused applicants but the same were confirmed by this court as well as by the Hon'ble Supreme Court. Hence, it cannot be disputed that prima-facie offence is made out against the applicants. Thus, the bar on granting bail to the applicants under Section 45 of the PML Act is squarely applicable in this case. It was further submitted that it is also settled legal position that the accused is not entitled for bail solely on the ground that he was not arrested during enquiry/ investigation, and filing of complaint/ charge sheet indicates that offence is made out against the accused. Both the accused applicants are kingpin of this case, accused applicant Ashok Singhvi was holding the post of Principle Secretary, Department of Mines, Government of Rajasthan. He misused the position to earn bribe in a planned conspiracy. A total amount of Rs.2.55 crores were seized and recovered in the raid conducted by the Anti Corruption Bureau, out of which Rs.1.58 crores were arranged by the applicant Mohd. Rashid Sheikh. Strong evidence in the form of call recordings, bank account details, other ocular, documentary and circumstantial evidence is available in view of which they cannot

claim parity with those co-accused persons, who have been granted bail. Besides above position, the conduct of the present applicants differentiates them from other co-accused persons because they themselves surrendered before the trial court on 19-2-2020/ 17-3-2020, as per order of the Hon'ble Supreme Court of India whereas present accused applicants despite being fully aware of the situation did not surrender on 17-02-2020 in parity with other co-accused persons, rather they surrendered on 1-6-2020 and 19-6-2020, respectively. The accused applicants have not been able to point out any illegality or infirmity in the order of the trial court rejecting the bail applications. Thus in view of factual matrix of the case and applicable legal provisions, no case of bail is made out at all and the bail applications deserve to be dismissed. He placed reliance on the judgments in Kanwar Singh Meena Vs. State of Rajasthan [(2012)12 SCC 180], State of UP Vs. Amarmani Tripathi [(2005)8 SCC 21], Mahipal Vs. Rajesh Kumar @ Polia, Criminal Appeal No.1843/ 2019 @ SLP (Cri.) No.6339/ 2019 decided on 5-12-2019, State of Orissa Vs. Mahimananda Mishra [(2018)10 SCC 516], Shyam Sunder Singhvi Vs. Union of India, SB Cr. Revision Petition No.273/2019 decided on 24-1-2020, Shyam Sunder Singhvi Vs. Union of India [Special Leave to Appeal (Crl.)No.792/2020 decided on 10-2-2020], Dr. Ashok Singhvi Vs. State of Rajasthan [SB Cr. Misc. (Pet.) No.2805/2016 decided on 23-3-2018], Dr. Ashok Singhvi Vs. State of Rajasthan [Special Leave to Appeal (Crl.) No.7267/2018 decided on 24-9-2018], Dr. Shivender Mohan Singh Vs. State of NCT of Delhi [W.P. (Crl) Urgent 10/2020 decided on 6-4-2020], Suo motu Vs. State of Rajasthan [DB Civil Writ Petition

No.5618/2020 decided on 17-5-2020], Y.S. Jagan Mohan Reddy Vs. Central Bureau of Investigation [(2013)7 SCC 439], Serious Fraud Investigation Office Vs. Nittin Johari [(2019)9 SCC 165], State of Gujarat Vs. Mohanlal Jitamalji Porwal [(1987)2 SCC 364], Pankaj Jain Vs. Union of India [(2018)5 SCC 743], Dinesh Kumar Vs. State of M.P. [M.Cr.C. No.9763/2020 decided on 19-3-2020], Nikesh Tarachand Shah Vs. Union of India [(2018)11 SCC 1], Rakesh Manekchand Kothari Vs. Union of India [2015 SCC Online Guj. 3507], M/s. VGN Developers P. Ltd. Vs. The Deputy Director, Directorate of Enforcement, [Cri.O.P. No.9796/2019 decided on 4-10-2019], Anand Chauhan Vs. Directorate of Enforcement [2017 SCC Online Del 7790], Virupakshappa Gouda Vs. State of Karnataka [(2017)5 SCC 406], Sanjay Sethi Vs. Union of India [SLP (Criminal) No.2224/2020 decided on 12-3-2020], Nitin Johari Vs. Serious Fraud Investigation Office [Bail Appln. No.1971/2019 decided on 27-1-2020], Oro Trade Network (India) Limited Vs. Rajesh Kumar Sharma [SB Cr. Miscellaneous Bail Application No.14613/2018 decided on 6-12-2018], Arpit Jain Vs. Union of India [SB Cr. Misc. Bail Application No.16957/2017 decided on 18-12-2017], Smt. Himani Munjal [SB Cr. Miscellaneous Bail Application No.10350/2018 decided on 10-9-2018] and Sandeep Kumar Agrawal Vs. Union of India [SB Cr. Miscellaneous Bail Application No.7499/2018 decided on 5-7-2018].

5. The contentions put forth by both the sides have been carefully considered in the light of judicial pronouncements referred to above.

6. Learned counsel for both the accused applicants have urged for bail mainly on the basis of parity with those co-accused persons, who have been enlarged on bail by coordinate bench of this court.

7. In this regard, the legal position expounded in S. Kasi Vs State (supra) and other judgments cited on behalf of the applicants cannot be disputed that in order to maintain judicial discipline, a coordinate bench is bound to follow the judicial decision of earlier coordinate bench. If the coordinate bench does not agree with the principle of law enunciated by another coordinate bench, the matter must be referred to a larger bench.

8. While having full respect to the coordinate bench of this Court and without making any comment on its order, suffice it to note the relevant legal position expounded in above referred judgments that while granting or refusing bail to an accused in a particular case, the role of every accused in the alleged crime along with other relevant factors are to be considered. A particular accused cannot claim to be released on bail only on the ground of grant of bail to other co-accused person. Accordingly even the same bench in a given case grants bail to an accused and refuses to another one having different footings.

9. In the instant case, other co-accused persons have been enlarged on bail by the coordinate bench of this court but the case of present applicants is not similar to those co-accused persons looking to their major role in the alleged crime, the evidence

collected against them, their conduct of evading trial and other relevant factors.

10. Without expressing any opinion to the merits of the case, suffice it to say that the record of the case prima facie reveals that being Principle Secretary of Mining Department, accused Ashok Singhvi has been main kingpin of the conspiracy, in furtherance of which a huge amount of Rs.2.55 crores was collected as bribe. Ample evidence including telephone recording, call details is available on the record which very well connects him with the crime. Likewise, accused Rashid Sheikh has also played a key role in the scheduled offence as he admittedly arranged Rs.1.58 crores out of total tainted money of Rs.2.55 crores.

11. Besides above distinct major role of the present applicants, other co-accused persons, who have been granted bail, had surrendered themselves before the trial court within the stipulated time as per the order of the Hon'ble Supreme Court of India and thus they shown respect to the legal system but the present applicants, who were well aware of the order of the Hon'ble Supreme Court of India, willfully evaded the process without any cogent reasons and instead of 17-02-2020, they surrendered before the trial court only on 1-6-2020 and 19-6-2020.

12. In view of settled legal position and the fact of finality of cognizance order in this case, such contentions of applicants are not tenable that they are entitled for bail due to bail in scheduled

offence or they were not arrested during the course of investigation.

13. It has not been held in the judgments, cited by counsel for the applicants, that a particular accused having different footings or distinguished case is entitled for bail only on the basis of bail granted to other co-accused, hence the same do not help the applicants.

14. In view of the above, the case of both the present accused applicants cannot be said to be similar to that of those co-accused persons who have been enlarged on bail by coordinate bench of this court, therefore, keeping in view the specific major role of the present accused applicants, strong evidence available against them, their conduct to evade the trial, probable impact on the Society on granting bail to present accused applicants having distinct status in this economic offence of severe nature of rampant corruption in Government departments and all other relevant factors as envisaged in PML Act, as well as in above referred judicial pronouncements, both the present applicants do not deserve to be enlarged on bail.

15. As a result, the applications of both the present accused applicants are hereby dismissed.

(SATISH KUMAR SHARMA),J

ARUN SHARMA/

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Annexure-P-13

THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

****

CRM No. M-42455 of 2016

Date of Decision:28.02.2017

Harmesh Kumar Gaba

.....Petitioner

Vs.

Assistant Director, Directorate of Enforcement

.....Respondent

CORAM:- HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present:- Mr. P.S. Ahluwalia, Advocate for the petitioner.

Ms. Ranjana Sahi, Advocate for the respondent.

****

SURYA KANT, J.(Oral)

The petitioner seeks pre-arrest bail in criminal complaint No.1 dated 22.01.2016 in case ECIR No.02/JLZO/2013 filed by the Enforcement Directorate under Sections 3 and 4 of the Prevention of Money Laundering Act, 2002 (for short, `the PMLA') which is pending in the Court of learned Special Judge, Patiala.

There are several persons including the petitioner who have been arrayed as accused in the above stated complaint. The main allegations in the complaint are against Chunni Lal Gaba who is brother of the petitioner and Gurjit Kumar Gaba who is son of Chunni Lal Gaba. Against both of them, cases under the NDPS Act have also been registered

and there are specific allegations of manufacturing and sale of illicit drugs/ contrabands against them. The company in which Chunni Lal Gaba and Gurjit Kumar Gaba are Directors, namely, M/s Medcare Remedies Pvt. Ltd is also co-accused.

So far as the petitioner is concerned, no case under NDPS Act has been registered against him and he is not a Director in M/s Medcare Remedies Pvt. Ltd. The Companies/ firms in which the petitioner is a Director/ partner are not accused of committing any offence in Part `A' of the Schedule of PMLA.

The investigation in the instant complaint is over and whenever the petitioner was summoned, he appeared before the E.D. It is not alleged by E.D. that the petitioner was non-cooperative or he deliberately did not divulge the information. Be that as it may, if the petitioner has shown any reluctance in divulging the information in a subsequent matter under investigation, that will constitute an independent offence within the meaning of PMLA, 2002 for which the E.D shall be at liberty to proceed against him in accordance with law.

So far as the complaint in hand is concerned, the investigation is over and its cognizance has already been taken. Since the petitioner was not required and was not taken into custody during the course of investigation of the instant complaint, no useful purpose shall be served by putting him in judicial custody at this stage. It thus appears to be a fit case for grant of pre-arrest bail.

That apart, it is seriously doubtful whether rigors of Section 45

of PMLA would be attracted in this case as the petitioner is not accused of an offence punishable for a term of imprisonment of more than three years in Part `A' of the Schedule attached to PMLA, 2002. Similarly, since the petitioner was not subjected to custodial interrogation regardless of express powers given to E.D under Section 19 of the Act, we see no reason whatsoever as to why the petitioner's liberty be curtailed by sending him to judicial custody at this juncture.

At best, with a view to ensure that the outcome of the complaint is not affected in any manner, the petitioner can be restrained from alienating and/or creating any third party rights in respect of his attached properties or such other properties which are subject matter of the complaint and/or are under investigation.

For the reasons afore-stated, the instant petition is allowed. It is directed that the petitioner on surrender before the learned Special Judge, Patiala shall furnish the bail bonds to the satisfaction of the said Court and he shall be admitted to interim bail subject to the following terms:-

(i) the petitioner shall not leave the country without prior permission of the Special Court or this Court;

(ii) the petitioner shall continue to appear before the Special Court and shall not hamper the ongoing trial;

(iii) the petitioner shall continue to avail the concession of bail subject to the attachment/ seizure of his immovable properties already identified by the Enforcement Directorate;

(iv) the learned Special Judge shall ensure that in this case no order to release the attached properties is passed;

(v) the petitioner shall also abide by such other conditions as may be imposed by learned Special Judge while accepting his bail bonds.

(SURYA KANT)
JUDGE

(SUDIP AHLUWALIA)
JUDGE

28.02.2017
renu

Whether Speaking/reasoned Yes/No
Whether Reportable Yes/No

//True Copy//

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **CRM-M No.12488 of 2019**
Date of Decision: 13.02.2020

Mandeep Singh **.....Petitioner**
Vs
Assistant Director, Directorate of Enforcement, PMLA, Jalandhar **....Respondent**

2. **CRM-M No.19330 of 2019**

Makhan Singh **.....Petitioner**
Vs
Assistant Director, Directorate of Enforcement, PMLA, Jalandhar **....Respondent**

3. **CRM-M No.21330 of 2019**

Avtar Singh **.....Petitioner**
Vs
Assistant Director, Directorate of Enforcement, PMLA, Jalandhar **....Respondent**

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Dr. Anmol Rattan Sidhu, Sr. Advocate with
Mr. Pratham Sethi, Advocate
for the petitioner.

Mr. P.S. Ahluwalia, Advocate
for the petitioner in CRM-M No.19330 of 2019.

Mr. Virat Amarnath, Advocate
for the petitioner in CRM-M No.21330 of 2019.

Mr. Arvind Moudgil, Senior Panel Advocate
Mr. Lokesh Narang, Senior Panel Advocate and
Ms. Sharmila Sharma, Senior Panel Advocate
for the respondent(s).

****

RAJ MOHAN SINGH, J.

[1]. Vide this common order, CRM-M No.12488 of 2019, CRM-M No.19330 of 2019 and CRM-M No.21330 of 2019 are being decided. Since all the petition arise out of same FIR, therefore, common facts are being noticed.

[2]. Petitioners have prayed for grant of anticipatory bail under Section 438 Cr.P.C. read with Section 65 of Prevention of Money Laundering Act, 2002 (for short 'the PMLA') in Prosecution Complaint No.COMA/2/2018 dated 31.08.2018 titled 'Assistant Director, Directorate of Enforcement vs. M/s Ashiana Inn Ltd. & other registered on the basis of ECIR/JLZO/01/2016 dated 18.02.2016 under Section 45(1) of the PMLA.

[3]. For the offence of money laundering under Section 3 punishable under Section 4 of the Prevention of Money Laundering Act, 2002, the FIR No.12 dated 26.08.2015 under the Prevention of Corruption Act, 1988 was lodged against the petitioners for being in possession of disproportionate assets to the known sources of his income. Petitioners were granted bail in FIR No.12 dated 26.08.2015 under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act and Section 120-B IPC, Police Station Vigilance Bureau, Flying Squad-1, Punjab at Mohali.

[4]. The aforesaid FIR was registered against Mandeep Singh, IAS. It was alleged that he had acquired disproportionate assets. Other accused/petitioners were also arrayed on the allegations of having connived with the principal accused i.e. Mandeep Singh.

[5]. Petitioners have been summoned in pursuance of institution of complaint after taking cognizance by the trial Court. They have been summoned vide order dated 02.11.2018 to face trial in complaint instituted under Section 45(1) of the PMLA. The application filed by Mandeep Singh for grant of anticipatory bail before the Special Judge under the Prevention of Money Laundering Act, SAS Nagar (Mohali) has been dismissed vide order dated 01.03.2019.

[6]. After issuance of notice of motion, interim order dated 09.04.2019 was passed in favour of the petitioner-Mandeep Singh in CRM-M No.12488 of 2019 to the following effect:-

> *This is a petition for grant of pre-arrest bail to the petitioner under Section 438 Cr.P.C. registered under Section 65 of the Prevention of Money Laundering Act, 2002 (for short the Act) in Prosecution Complaint No.COMA/2/2018 titled as Assistant Director, Directorate of Enforcement Vs. M/s Ashiana Inn Ltd & other registered on the basis of ECIR/JLZ0/01/2016 dated 18.02.2016 u/s 45 (1) of P.M.L.A.*
>
> *The brief facts are that initially an FIR under the Prevention of Corruption Act, 1988 (for short the P.C. Act)*

was lodged against the petitioner for being in possession of assets disproportionate to his income. Admittedly, he remained in custody for more than 3 months before he was bailed out by this Court. On the basis of that FIR the Enforcement Directorate filed the present case against the petitioner in respect of laundering and diversion of those ill gotten assets and it is in this complaint that the petitioner is seeking anticipatory bail.

Counsel appearing on behalf of the respondent-Enforcement Directorate has accepted that the present complaint is based on the FIR under the P.C. Act. He has argued that this is a case where the petitioner has diverted almost Rs.600 crores of ill gotten assets. He has argued that the investigation is still going on, to which the senior counsel appearing for the petitioner has responded by stating that the petitioner would have no objection in appearing before the Investigating Officer.

In the circumstances, I deem it appropriate to grant interim bail to the petitioner to enable him to appear before the Investigating Officer.

In the meantime, let the petitioner appear before the Investigating Officer on 15.04.2019 at 10.00 AM and on any other date as and when his presence is required and he will be released on bail by the Investigating Officer subject to the conditions envisaged under Section 438 (2) Cr.P.C.

Learned senior counsel for the petitioner further states that the petitioner has to appear before the Court in response to the summons on 18.04.2019, on his so appearing he shall be released on interim bail.

Adjourned to 28.05.2019, to await the report of the

Investigating Officer."

[7]. In CRM-M No.19330 of 2019, notice of motion was issued on 30.04.2019 and the petition was ordered to be listed along with CRM-M No.12488 of 2019. Interim order was also passed in the same terms as passed in CRM-M No.12488 of 2019.

[8]. In CRM-M No.21330 of 2019, similar order was passed on 10.05.2019 and the petition was ordered to be listed along with CRM-M No.12488 of 2019. Interim order was passed in the same terms as passed in CRM-M No.12488 of 2019.

[9]. Learned Senior counsel and other counsel appearing on behalf of the petitioner(s) submitted that the investigation in the complaint case is still going on and in view of interim protection granted by the High Court, the petitioners have been appearing before the Investigating Officer. The investigation in the complaint started on 18.02.2016. The complaint in question came to be filed on 31.08.2018. Petitioners have been summoned only on 02.11.2018. Petitioners were never sought to be arrested during process of inquiry/investigation prior to filing of the complaint for more than 2½ years.

[10]. It has been further submitted that during course of inquiry before filing of complaint and before passing of order of summoning, statements of the petitioners were recorded by

joining them in the investigation. For instance statement of Makhan Singh was recorded on 25.05.2016 and he had revealed all the facts necessary for investigation of the case. His statement was further recorded on 11.07.2017. Petitioners were never arrested during inquiry. Under Section 19 of the PMLA, the prosecuting agency could have arrested the petitioners, but the prosecuting agency, only associated the petitioners during process of inquiry/investigation. Provisional attachment of properties has also been made before summoning of the petitioners.

[11]. As per record, the prosecuting agency has attached 33 properties of worth Rs.2,62,46,148/-. As per recital in the complaint itself, the prosecuting Agency has also attached Hotel Marc Royale-I, village Dhakoli, Tehsil Dera Bassi owned by Avtar Singh, whose fair market value is Rs.33.47 crores, conservative value is Rs.28.44 crores. The distressed value of the same has been assessed as Rs.26.75 crores. Prosecuting Agency has also attached Hotel Marc Royale-II village Dhakoli, Tehsil Dera Bassi owned by M/s Ashiana Inn (P) Ltd. now known as M/s Ashiana Inn Ltd, whose fair market value of Rs.58.36 crores, conservative value of Rs.49.60 crores and distressed value of Rs.43.75 crores have been assessed.

[12]. It has been further submitted that since the petitioners

have not misused the concession of interim direction issued by this Court and they have already furnished bail bonds/surety bonds to the satisfaction of the concerned Special Judge, SAS Nagar, Mohali**,** therefore, in the light of observations made by the Hon'ble Apex Court in ***Dataram Singh vs. State of Uttar Pradesh & Anr., 2018(2) R.C.R.) Criminal 131***, petitioners are entitled for bail. The indulgence qua the same had already been granted by this Court and the petitioners have already furnished bail bonds/surety bonds to the satisfaction of the concerned Special Judge. Para Nos.2 and 17 of the aforesaid judgment reads as under:-

> "*2. A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception. Unfortunately, some of these basic principles appear to have been lost sight of with the result that more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society.*
>
> *17. In our opinion, it is not necessary to go into the*

correctness or otherwise of the allegations made against the appellant. This is a matter that will, of course, be dealt with by the trial judge. However, what is important, as far as we are concerned, is that during the entire period of investigations which appear to have been spread over seven months, the appellant was not arrested by the investigating officer. Even when the appellant apprehended that he might be arrested after the charge sheet was filed against him, he was not arrested for a considerable period of time. When he approached the Allahabad High Court for quashing the FIR lodged against him, he was granted two months time to appear before the trial judge. All these facts are an indication that there was no apprehension that the appellant would abscond or would hamper the trial in any manner. That being the case, the trial judge, as well as the High Court ought to have judiciously exercised discretion and granted bail to the appellant. It is nobody's case that the appellant is a shady character and there is nothing on record to indicate that the appellant had earlier been involved in any unacceptable activity, let alone any alleged illegal activity."

[13]. It has been further submitted that Section 45(1) of the PMLA was declared to be ultra vires in ***Nikesh Tarachand Shah vs. Union of India & Anr., 2018(2) R.C.R. (Criminal) 232*** on 23.11.2017. The aforesaid provision has been re-enforced w.e.f. 19.04.2018 and the amendment is prospective in nature. Pre-trial bail provision under Section 45 of the PMLA, imposing twin stringent conditions for the offences classified thereunder was held to be arbitrary, discriminatory and invalid.

[14]. At the last, it has been submitted that in the event of further investigation, the petitioners are not averse to join the investigation as and when called upon to do so. In terms of the prayer clause of the complaint, the custodial interrogation of the petitioners is not required.

[15]. Per contra, learned counsel appearing on the behalf of the respondent vehemently opposed the prayer on the ground that after filing of the complaint and order of summoning, the petitioners are required to surrender before the trial Court and seek regular bail in accordance with law.

[16]. I have considered the submission made by learned counsel for the parties.

[17]. Both the parties have tried to argue the case on merits, which in considered opinion of this Court is not necessary for deciding the bail, lest it may prejudice the case of any of the parties.

[18]. Vide order dated 20.01.2020 passed by this Court, the case was adjourned at the instance of learned counsel for the respondent-Directorate of Enforcement, PMLA Jalandhar in order to have the details of the properties attached by the Department. As narrated above, the Department has already attached the properties of the petitioners as per valuation shown

in the documents narrated in preceding paras of the judgment.

[19]. Evidently, the investigation started in the complaint w.e.f. 18.02.2016. For more than 2½ years, the petitioners were never sought to be arrested, rather they were allowed to join the investigation by means of recording their statements and provisional attachment of their properties was also done. Petitioners could have been arrested under Section 19 of the PMLA, but the same was not done by the respondent-Department. Even as per reply submitted by Assistant Director/respondent in CRM-M No.21330 of 2019 titled 'Avtar Singh vs. Assistant Directorate of Enforcement, PMLA Jalandhar, para no.7 reas as under:-

> *"Para 7:- That the contents of his Para require no reply except that the petitioner may be required to join investigation in future, in case any fresh fact/issue needs investigation. However, presence of accused before Investigating Officer is not immediately required for further investigation."*

[20]. Interim protection was granted to the petitioners by this Court after filing of the complaint. The complaint came to be filed only 31.08.2018 and thereafter order of summoning was passed on 02.11.2018. Statements of the petitioners have already been recorded and they have shown their readiness to join the proceedings as and when called upon to do so by the Investigating Agency. Prosecution has already attached 33

properties for total value of Rs.2,62,46,148/- and two Hotels namely Hotel Marc Royale-I and Hotel Marc Royale-II have also been attached. Value of those, as per complaint itself comes out to be about Rs.70 crores even as per distressed value.

[21]. In ***CRM-M No.28490 of 2018*** titled '***Dalip Singh Mann and another vs. Niranjan Singh, Assistant Director, Director of Enforcement, Govt. of India***' decided on 01.10.2015, the Division Bench of this Court has considered the controversy**,** when Section 45 of the PMLA was in operation. It was held that during investigation of the money laundering case, the petitioners therein were never arrested by the Enforcement Directorate in exercise of its powers under Section 19 of the Act and the assets created by the petitioners with the alleged aid of proceeds of crime have already been seized/attached, then rigour of Section 45(1)(ii) of the Act would be attracted only while considering the bail plea of an accused**,** who has been arrested by the E.D. under Section 19 of the Act. The ratio of aforesaid case helps the cause of petitioners for confirmation of interim anticipatory bail granted in their favour.

[22]. Taking into consideration the totality of facts and circumstances of this case, the interim orders dated 19.04.2019 30.04.2019 and 10.05.2019 passed in CRM-M Nos.12488, 19330 and 21330 of 2019 respectively, are made absolute.

[23]. All the petitions stand disposed of accordingly.

February 13, 2020 **(RAJ MOHAN SINGH)**
Atik **JUDGE**
Whether speaking/reasoned Yes/No
Whether reportable Yes/No

//True Copy//

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 4697 of 2014

==========

PANKAJ PRATAPBHAI THAKKAR & 6....Applicant(s)

Versus

DEPUTY DIRECTOR & 1....Respondent(s)

==========

Appearance:

MR S M VATSA, ADVOCATE for the Applicant(s) No. 1 - 7

MR DEVANG VYAS, ASST.SOLICITOR GENERAL OF INDIA for the Respondent(s) No. 1

MR LR PUJARI, APP for the Respondent(s) No. 2 - 2.2

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CORAM: **HONOURABLE MR.JUSTICE J.B.PARDIWALA**

Date : 19/11/2014

ORAL ORDER

By this application under Article 227 of the Constitution of India, the applicants – original accused persons seek to challenge the order dated 29th October 2014 passed by the learned Designated Judge below Exh.1 in P.M.L.A. Case No.4 of 2014.

It appears that a first supplementary complaint to the P.M.L.A. Case No.3 of 2014 dated 18th July 2014 was lodged by the Deputy Director for the offence under Section 4 of the Prevention of Money Laundering Act, 2002 in the Court of the Principal District and Sessions Judge, Ahmedabad (Rural) (the designated Special Court under the Prevention of Money Laundering Act, 2002) at Ahmedabad. The Designated Judge

under the PML Act, 2002 passed the following order below Exh.1:

"***ORDER BELOW EXH-1***

Heard Spl.PP Mr.Sudhir Gupta. It prima facie reveals that there is substance in the complaint as files by the complainant. Hence the following order :

ORDER

1. *Cognizance as submitted is taken, hence this complaint be registered and numbered.*

2. *Issue warrant against accused No.2, 4, 5, 7, 8, 9, 10 and summons against accused No.3 and 6. R/O dated 10-11-2014.*

3. *Yadi to Sabarmati central jail with regard to this case for the appearance of the accused No.1.*

Date :-29/10/2014 Designated Judge,
Under PML Act.
Ahmedabad (Rural) @ Mirzapur, Gujarat."

The petitioners herein – original accused call in question the legality and validity of the order of issue of warrant passed by the Designated Judge under the PMLA Act, 2002.

The principal contention raised on behalf of the petitioners herein is that there was no justification for the Designated Judge to issue non-bailable warrant while taking cognizance upon the complaint and ordering issue of process. The contention is that the learned Designated Judge ought not to have issued warrant in the first instance, more particularly, when there was nothing on record to suggest that the accused would not appear before the trial Court or would abscond and thereby delay the trial. This Court passed the following order

dated 7th November 2014 :

> *"1. Issue Notice to the respondents returnable on 19th November, 2014. Mr. Soni, the learned APP waives service of notice for and on behalf of the respondent no.2-State of Gujarat.*
>
> *2. The principal contention raised on behalf of the petitioners is with regard to the legality and validity of the order of issue of warrant passed by the Designated Judge under P.M.L. Act 2002, Ahmedabad (Rural), Mirzapur, Ahmedabad dated 29th October, 2012.*
>
> *3. It appears that a complaint has been lodged against the applicants herein for the offence of money laundering punishable under Section 4 of the Act 2002, read with Section 120B of the Indian Penal Code. The complaint has been filed by the Deputy Director, Directorate of Enforcement, Ministry of Finance, Department of Revenue, Government of India in exercise of his powers under Section 45 of the Act 2002. It also appears that it is the First Supplementary complaint dated 29th October, 2014 filed in the Complaint dated 18th July, 2014 in the P.M.L.A Case No.3 of 2014 by the Deputy Director, Enforcement Directorate.*
>
> *4. In the said complaint the complainant prayed before the Court to take cognizance of the offence of money laundering in terms of Section 3 punishable under Section 4 of the P.M.L. Act 2002 and issue process against the accused persons in accordance with law. The complainant also prayed to direct confiscation of the properties involved in the money laundering in terms of Section 8(5) of P.M.L. Act 2002. The complainant also prayed for issuing non-bailable warrant in lieu of prosecution against the accused.*
>
> *5. It appears that the learned Sessions Judge passed an order below complaint No.4/14 on 29th October, 2014 and directed to register the complaint as P.M.L.A Case against all the accused. The Learned Sessions Judge also ordered to issue warrant against the petitioners herein (original accused nos. 2,4,5,7,8,9 and 10) and the warrant was made returnable on 10th November, 2014.*

6. The submission on behalf of the petitioners is that the learned Designated Judge ought not to have issued warrant in the first instance, more particularly when there is nothing on record to suggest that the accused persons would not honour the summons or that the accused persons have already absconded. The learned advocate appearing on behalf of the petitioners has drawn my attention to the averments made in the complaint. There are no such averments made by the complainant. My attention is drawn to the provisions of Section 87 of the Code of Criminal Procedure which provides for issue of warrant in lieu or in addition to summons. However the condition precedent is assigning reasons in writing. My attention has been drawn to a decision of the Supreme Court in the case of ***Inder Mohan Goswami and another Vs. State of Uttaranchal and others****, reported in* ***2008 (1) G.L.H. 603,*** *wherein, the Supreme Court has observed that non bailable warrant should be issued to bring a person to court when summons or bailable warrants would be unlikely to have the desired result. This could be when it is reasonable to believe that the person will not voluntarily appear in court; or the police authorities are unable to find the person to serve him with a summon; or it is considered that the person could harm someone if not placed into custody immediately.*

7. The Supreme Court has further observed that the power to issue warrant is discretionary and must be exercised judiciously with extreme care and caution. The court should properly balance both personal liberty and societal interest before issuing warrants. There cannot be any straitjacket formula for issuance of warrants but as a general rule, unless an accused is charged with the commission of an offence of a heinous crime and it is feared that he is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrants should be avoided.

8. On a plain reading of the provisions of law as well as the decision of the Supreme Court, it appears prima facie that if the offence is heinous, the Court may be justified in issuing non-bailable warrants simultaneously with the order of process, but it appears on a plain reading of

Section 87 of the Code of Criminal Procedure that at the same time the Court concerned is also obliged to satisfy itself by recording reasons that the accused persons are likely to evade the process of law or have already absconded. Issuance of non bailable warrant should be avoided except in case of heinous crime or it is feared that accused is likely to tamper or destroy the evidences or is likely to evade the process of law.

9. I do not find any such findings recorded by the designated judge in her order dated 29th October, 2014 while issuing warrant.

10. Mr.S.M. Vatsa, the learned advocate appearing on behalf of the petitioners makes a statement upon instructions that the petitioners herein will abide by the order of issue of process to remain present before the Court on 10th November, 2014.

11. Having heard the learned counsel appearing for the petitioners and having gone through the materials on record, I am of the view that the petitioners have been able to make out a strong prima facie case to have an interim order to the limited extent that, the order passed by the Designated Judge for issue of warrant shall remain stayed from its operation, till the next date of hearing.

*12. Let this matter appear on **17th November, 2014**. The respondent no.1 be served directly. Direct service is permitted today."*

I have heard Mr.Vatsa, the learned advocate appearing on behalf of the applicants and Mr.Devang Vyas, the learned Assistant Solicitor General of India appearing on behalf of the department. Mr.Vyas very fairly submitted that the applicants herein were called for the purpose of interrogation by the authorities prior to the filing of the complaint. Their statements were recorded, and at that relevant point of time, they had cooperated with the inquiry. He further submits that at the relevant point of time, the authority concerned had not

thought fit to arrest them. Mr.Vyas further submits that in such circumstances, the learned Designated Judge probably could not have issued non-bailable warrant. Mr.Vyas very fairly submitted that there cannot be any debate as regards the position of law discussed by this Court in its order dated 7th November 2014.

Mr.Vatsa, the learned advocate appearing on behalf of the applicants submitted that as recorded by this Court in para 10 of the order dated 7th November 2014, all the applicants remained present before the Designated Court and their presence was also marked. He submits that at that point of time, they also offered surety, however, the same was objected by the learned advocate appearing on behalf of the department since this petition was pending before this Court. Mr.Vyas clarifies that with the disposal of this petition there should not be any objection on the part of the department if the Designated Court accepts the surety which has been offered by the applicants.

In the aforesaid view of the matter, nothing more is required to be adjudicated. The position of law has been well-explained by the Supreme Court in the case of Inder Mohan Goswami and another v. State of Uttaranchal and others, reported in 2008(1) GLH 603, wherein the Supreme Court has explained when non-bailable warrant should be issued. The Supreme Court has observed thus :

> *"**When non-bailable warrants should be issued.***
>
> *Non-bailable warrant should be issued to bring a person to court when summons of bailable warrants would be*

unlikely to have the desired result. This could be when:

> *it is reasonable to believe that the person will not voluntarily appear in court; or*
>
> *the police authorities are unable to find the person to serve him with a summon; or*
>
> *it is considered that the person could harm someone if not placed into custody immediately.*

As far as possible, if the court is of the opinion that a summon will suffice in getting the appearance of the accused in the court, the summon or the bailable warrants should be preferred. The warrants either bailable or non-bailable should never be issued without proper scrutiny of facts and complete application of mind, due to the extremely serious consequences and ramifications which ensue on issuance of warrants. The court must very carefully examine whether the Criminal Complaint or FIR has not been filed with an oblique motive.

In complaint cases, at the first instance, the court should direct serving of the summons along with the copy of the complaint. If the accused seem to be avoiding the summons, the court, in the second instance should issue bailable- warrant. In the third instance, when the court is fully satisfied that the accused is avoiding the courts proceeding intentionally, the process of issuance of the non-bailable warrant should be resorted to. Personal liberty is paramount, therefore, we caution courts at the first and second instance to refrain from issuing non-bailable warrants.

The power being discretionary must be exercised judiciously with extreme care and caution. The court should properly balance both personal liberty and societal interest before issuing warrants. There cannot be any straight-jacket formula for issuance of warrants but as a general rule, unless an accused is charged with the commission of an offence of a heinous crime and it is feared that he is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-

bailable warrants should be avoided.

The Court should try to maintain proper balance between individual liberty and the interest of the public and the State while issuing non-bailable warrant."

In the result, this application is allowed. A part of the order passed by the learned Designated Judge under the PML Act, Ahmedabad (Rural), so far as the issue of warrant is concerned, is hereby ordered to be quashed.

I clarify that it will be absolutely for the learned Designated Judge to decide what type of surety is to be accepted including the requisite amount. I do not express any opinion in that regard. The applicants shall regularly appear before the trial Court on the date fixed for hearing and mark their presence.

Direct service is permitted.

(J.B.PARDIWALA, J.)

MOIN

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SECTION PIL-W

IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRIMINAL) NO. OF 2021

IN THE MATTER OF:

Lawyers Against Malicious Prosecution …Petitioner

Versus

Union of India and Others …Respondents

INDEX OF FILING

I N D E X

S.No.	Particulars	Copy	Court Fee
1.	Writ Petition along with Affidavit		

Certified that the copies are correct

Filed on: 08.09.2021

(PRATEEK K. CHADHA)
ADVOCATE FOR THE PETITIONER
AOR CODE: 2651
D-416, LGF, Defence Colony
New Delhi-110024
Phone-09871588144

VAKALATNAMA

IN THE SUPREME COURT OF INDIA
WRIT PETITION (CRIMINAL) NO. OF 2021

IN THE MATTER OF:

Lawyers Against Malicious Prosecution — Petitioner(s)

Versus

Union of India and Others — Respondent(s)

I,Shafii Mather, volunteering as Director of the Petitionerin the above do hereby appoint and retain **Prateek K. Chadha**, Advocate-on-Record to act and appear for me/us in the above Suit Appeal/Petition/Reference and on my/our behalf to conduct and prosecute (or defend) the same and all proceedings that may be taken in respect of any application connected with the same of any against decree or order passed therein, including proceedings in taxation and application for Review, to file and obtain return of documents, and to deposit and receive money on my/our behalf in the said suit Appeal/Petition/Reference and in application of Review and to represent me/us and to take all necessary steps on my/our behalf in the above matter.
I/we agree to ratify all acts done by the aforesaid Advocate in pursuance of this authority.

Dated this the day of August, 2021

ACCEPTED AND IDENTIFIED & CERTIFIED

(PRATEEK K. CHADHA)

(Shaffi Mather)
PETITIONER

For Lawyers Against Malicious Prosecution

Director

MEMO OF APPEARANCE

The Registrar,
The Supreme Court of India
New Delhi

Please enter my appearance on behalf of the Petitioner(s)/Respondent/ Appellant(s)_____ in the above matter.

Dated 08.09. **2021**

(PRATEEK K. CHADHA)
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RESOLUTION No. 2 OF THE BOARD OF DIRECTORS OF LAWYERS AGAINST MALICIOUS PROSECUTION IN THE MEETING DATED 31 AUGUST, 2021

Filing a PIL in the Hon'ble Supreme Court of India to clarify Position in trial courts when prosecution complaint is filed as to whether the accused who is not arrested during investigation is to be summoned vide a NBW and thereafter sent to judicial custody on appearance

The Board of Directors of Lawyers Against Malicious Prosecution discussed the recent orders of the Hon'ble Supreme Court of India in Siddhartha vs. CBI & Satinder Kumar Antil vs. CBI wherein the Supreme Court has issued directions to the trial courts as to how the trial court should proceed in cases wherein the accused was never arrested during investigation and final report has been filed in the matter. Several Board Members raised the point that many trial courts across India issues NBWs to summon the accused when prosecution complaints are filed by ED, DRI, Customs etc. even though the concerned investigative agency has never arrested the accused during investigation. Also, it was pointed out, on appearance, such accused are remanded to judicial custody where they languish for long periods of time till either the concerned Hon'ble High Court or the Hon'ble Supreme Court grants them bail. The Board Members felt that this is an appropriate matter wherein Lawyers Against Malicious Prosecution could file a PIL in the Hon'ble Supreme Court of India to clarify Position in trial courts when prosecution complaint is filed as to whether the accused who is not arrested during investigation is to be summoned vide a NBW and thereafter sent to judicial custody on appearance. After due deliberations, the Board of Directors hereby resolves as follows:

"Resolved that Lawyers Against Malicious Prosecution shall file a PIL in the Hon'ble Supreme Court of India clarify Position in trial courts when prosecution complaint is filed as to whether the accused who is not arrested during investigation is to be summoned vide a NBW and thereafter sent to judicial custody on appearance.

Resolved further that Mr. Shaffi Mather, Director, be and are hereby authorized to sign, execute, and submit vakalathnama and all documents required in connection with filing the said PIL in the Hon'ble Supreme Court of India.

For Lawyers Against Malicious Prosecution

Secretary
31.08.2021