2025:CGHC:9256

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

ORDER RESERVED ON 06.02.2025

ORDER DELIVERED ON 21.02.2025

MCRC No. 8961 of 2024

1 - Anil Tuteja S/o Late H.L.Tuteja Aged About 61 Years R/o House No. 35/1396 Beside Farishta Nursing Home Katora Talab Civil Lines Raipur (C.G.)

... Applicant

versus

1 - Directorate Of Enforcement Through Assistant Director E.D. Raipur Zonal Office Raipur District - Raipur (C.G.)

... Respondent(s)

For Petitioner(s)	:	Shri Arshdeep Khurana, Advocate through VC assisted by Shri Sourabh Dangi and Shri Sajal Kumar Gupta, Advocates
For Respondent(s)	:	Dr.Saurabh Kumar Pandey, ED

(Hon'ble Shri Justice Arvind Kumar Verma)

C A V Order

By way of present application under Section 483 of the *Bhartiya Nagrik Suraksha Sanhita,* 2023 ('BNSS') read with Section 45 of the PMLA on behalf of the applicant herein, is seeking grant of regular bail in ECIR/RPZO/04/2024 dated 11.04.2024 for the alleged offence under Sections 3 and 4 of the PMLA. The applicant was arrested in

pursuance of ECIR/RPZO/04/2024 of 2024 registered with Raipur Zone dated 11.04.2024 by the Directorate of Enforcement. The applicant has been involved in the same which involves laundering of proceeds of crime of more than 2000 crores approximately. As such the accused in involved in a grave and heinous financial crime.

FACTUAL ASPECTS

2. Facts of the case relevant for adjudication of the instant bail application are as follows:

The applicant is a retired officer of the Indian Administrative Services with a distinguished and unblemished service record. He retired as Joint Secretary in the Department of Commerce and Industry, Chhattisgarh in May 2023. The ECIR is a second ECIR and the first being ECIR/RPZO/11/2022 which was quashed by the Hon'ble Supreme Court vide order dated 08.04.2021 with a categorical finding that no scheduled offence is made out and there were no proceeds of crime in relation to ECIR 11 and the Prosecution Complaint filed therein. The said ECIR was registered merely 3 days after the quashing of the first ECIR on the same alleged liquor scam making the same allegations arising out of the same transactions.

3. Chhattisgarh State police registered FIR bearing No. 04/2024 dated 17.01.2024 at EOW/ACB, Raipur under Sections for the offence punishable under Sections 120-B, 420,467,468,471 of IPC and Section 7 & 12 of the Prevention of Corruption Act against Mr. Anil Tuteja (retired IAS) then Joint Secretary in CG State, Anwar Dhebar, Mr. Arunpati Tripathi (ITS) then Special Secretary, Government of Commerce and industry Department and MD CG State Marketing Corporation Ltd. Mr. Vikas Agarwal @ Subbu, Mr. Sanjay Diwan and Others for collecting

commissions and supplying unaccounted liquor to government liquor shops resulting in an approximate loss of Rs. 2161 crores to the government.

4. The manufacturers of country liquor in Chhattisgarh namely CG Distilleries Ltd., M/s. Bhatia Wine Merchant Private ltd. And Welcome Distilleries Pvt. Ltd. Are licensed to supply country liquor in the State. It is alleged that Co-accused Anwar Dhebar took advantage of his political influence and family relations with Anil Tuteja and in association with Arunpathi Tripathi, the Managing Director of CSMCL lead to increase in the rate of liquor production and supply and in return gained illegal commissions amounting to lakhs of rupees from the distillery owners which is called Part -A.

5. Similarly, a new system which ran parallel to the existing system of selling country liquor through government shops was created without any records from distillery operators, which involved constructing duplicate holograms and selling them separately through government liquor shops. The illegal sale of these duplicate holograms resulted in earning worth crores of rupees in which several individuals were implicated including distillery owners, bottle supplier agencies, duplicate hologram supplying agencies, agencies involved in the collection of money. These illicit sale took place during the years 2019-20,2020-21 and 2021-22 and is called Part-B.

6. Additionally, the collection of bribes from foreign liquor manufacturers FL-10A license was implemented, which was granted to three favoured firms of Anwar Dhebar. The license FL-10A was granted to Mr. Sanjay Mishra and Manish Mishra of M/s. Nexgen power Engitech Pvt. Ltd. , Mr. Atul Kumar Singh and Mr. Mukesh Manchanda

of M/s. Om Sai Beverage Pvt. Ltd. And Mr. Ashish Saurabh Kedia of M/s. Dishita Ventures Pvt. Ltd. These license holders were granted tender for the supply of foreign liquor through a conspiracy. All the three licence holding firms procured liquor from foreign liquor manufacturing Companies and made it available to the State government, making a profit of 10%. Out of this profit, 60% was given to the syndicate and the remaining 40% was received by the license holders.

7. The liquor syndicate of the present applicant Mr. Anil Tuteja, Arun Pati Tripathi and Anwar Dhebar was working under the aegis of retired Indian Administrative officer Mr. Vivek Dhand who was also the beneficiary of the scam. The syndicate received commission from the distillery owners by increasing, parallel manufacturing and supplying duplicate liquor through the FL-10A license between February 2019 to June 2022 by making illegal earning of Rs. 2161 crores.

8. The FIR for the predicate offence as discussed above is registered by ACB/EOW, Raipur Chhattisgarh under Sections 120-B, 420,467 and 471 IPC and Sections 7 & 12 of the P?C Act which are scheduled offence included in Part A of the schedule to PMLA ,2002 as defined under Section 2(1)(y) of the Act. Enquiries were initiated under PMLA against the suspected persons after recording brief facts of the scheduled offence and initiating money laundering investigation in file No. ECIR/RPZO/04/2024 on 11.04.2024 by the officials of the Directorate of Enforcement, Raipur.

9. The respondent/ED has analyzed the predicate offence FIR, documents including the statements recorded under Section 50 of the PMLA, 2002 shared by the Assistant Director, Prosecution Complaint filed by IT and the date shared by the Income Tax Department. During

the investigation, statement of Distillers, FL-10A licenses, manpower supplier agencies and others were recorded under Section 50 of the PMLA, 2002 and it has been established that a well planned systematic conspiracy was executed by the syndicate to earn illegal commission in the sale and licensing of liquor in the State of Chhattisgarh.

10. The excise policy in the State of Chhattisgarh was amended in the year 2017 The excise policy in the State of Chhattisgarh was amended in the year 2017 and CSMCL in February, 2017, was thus created with the responsibility to exclusively retail liquor in the State of Chhattisgarh through its stores. The CSMCL was established with the vision to provide genuine liquor, to stop sale of illegal Liquor, to provide liquor on MRP. It established its own stores to retail the liquor/beer/wine/country liquor after procuring liquor from manufacturers directly and IMFL from another State PSU CSBCL.

11. It has also been revealed that with the advent of new policy in the State, CSMCL was incorporated and it established its own stores to retain the liquor/beer/wine/country liquor after procuring country liquor directly from manufacturers and IMFL was procured from suppliers and stored in warehouses of another State Public Sector Undertaking, Chhattsigarh State Beverage Corporation Limited (CSBCL). The shops were supposed to be run by outsourced staff and cash collected was to be done by private vendors/Bank representatives.

12. Liquor was divided into two categories namely Country liquor and Indian Manufactured Foreign Liquor (IMFL). Country Liquor was produced in the State of Chhattisgarh through three distilleries :

I) M/s. Chhattisgarh Distilleries Ltd.

ii) M/s. Bhatia Wines and Merchants Pvt. Ltd.

iii) M/s. Welcome Distilleries Pvt. Ltd.

The CSMCL became the tool in the hands of the syndicate which was used by it to enforce a parallel excise department. The syndicate comprises of senior bureaucrats of State, politicians and officials of excise department. In February 2019, Arun Pati Tripathi (ITS Offier) was chosen by the syndicate to lead the CSMCL and later on he was made the Managing Director of the organization at the behest of accused Anwar Dhebar.

13. It is submitted that the as part of the conspiracy, Arun Pati Tripathi was assigned with the task to maximize the bribe commission collected on liquor procured by M/s.CSMCL and to make necessary arrangement for sale of non-duty paid liquor in the CSMCL run shops. Arun Pati Tripathi was supported by Anwar Dhebar and Senior IAS Officer in this operation. In furtherance of his plans, Anwar Dhebar gave the task of cash collecting to Vikas Agrawal @ Subbu and the logistics were set to be the responsibility of the present applicant - Arvind Singh.

14. In the investigation, it has been established that it has come that massive corruption has taken place in the Excise Department since 2019 to 2023 in multiple ways. The total extortion amount is around Rs. 2000 crores. This amount is nothing but rightful amount which should have gone to the State Exchequer and have been taxed and yielded revenue for Central and State government. Thus this is the proceeds of crime which ED is investigating and trying to establish money trial and trace the assets created out of these proceeds of crime.

SUBMISSION ON BEHALF OF THE APPLICANT

15. Contention of Shri Khurana, learned counsel for the applicant is that the application of the applicant has been erroneously dismissed by

the learned Special Judge under Section 438 of the BNSS. Apart from the recording of arguments made on behalf of the applicant, bail has been frivolously denied on the seriousness of the alleged offence and allegations against him. It has also been stated that the applicant may repeat the alleged offence while on bail as well as the mere apprehension that the applicant may influence the witnesses, as one of the reasons for rejecting his application for bail. He contended that even if the allegation is one of the grave economic offence, it is not a rule that bail should be denied in every case. Ultimately, the consideration has to be made on a case to case basis on the facts. The primary object is to secure the presence of the acused to stand trial. He has placed his reliance in the matter of **P.Chidambaram Vs. Ed (2020) 13 SCC 791.**

16. Next contention of learned counsel for the applicant is that the investigation against the applicant is over, the applicant has suffered a long period of incarceration and therefore, there is no reason to keep the applicant in further custody. It is a trite law that once the investigation against an accused is complete and there is no apprehension of violation of the triple test, the applicant is entitled to be released on bail. If bail is denied at this stage, the applicant will remain in custody for an indefinite period. He has relied upon the judgment in the matter of **Satendra Kumar Antil Vs. CBI SLP No. 5191 /2021; Krishnan Subramanian Vs.State NCT of Delhi 2022 SCC Online Del 1384.**

17. He contended that even a Prosecution Complaint in the instant case has been filed by the ED on 19.06.2024 wherein the applicant has been arraigned as accused. The investigation against the applicant is

concluded and the custody of the applicant is no longer required for the purpose of investigation. The applicant has not been question even once after his ED custody was over and no new material has been relied upon by the ED.

18. He contended that the trial in the said ECIR is likely to take time and the applicant cannot be kept in custody for the entire period of trial. It has time and against reiterated by the Apex court that the Right to ? Speedy Trial is a facet of the Fundamental Right to life of an accused under Article 21 of the Constitution of India. The Apex Court in the matter of **Manish Sisodia Vs. CBI and ED (2023) SCC OnLine SC1393** has held that :

> "27. However, we are also concerned about the prolonged period of incarceration suffered by the appellant – Manish Sisodia. In P. Chidambaram v. Directorate of Enforcement48, the appellant therein was granted bail after being kept in custody for around 49 days, relying on the Constitution Bench in Shri Gurbaksh Singh Sibbia and Others v. State of Punjab, (1980) 2 SCC 565. and Sanjay Chandra v. Central Bureau of Investigation, (2012) 1 SCC 40 that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case. Ultimately, the consideration has to be made on a case to case basis, on the facts. The primary object is to secure the presence of the accused to stand trial. The argument that the appellant therein was a flight risk or that there was a possibility of tampering with the evidence or influencing the witnesses, was rejected by the Court. Again, in Satender Kumar Antil v. Central Bureau of Investigation and Another, (2022) 10 SCC 51 this Court referred to Surinder Singh Alias Shingara Singh v. State of Punjab (2005) 7 SCC 387 and Kashmira Singh v. State of Punjab, (1977) 4 SCC 291 to emphasize that the right to speedy trial is a fundamental right within the broad scope of Article 21 of the Constitution. In

Vijay Madanlal Choudhary (supra), this Court while highlighting the evil of economic offences like money laundering, and its adverse impact on the society and citizens, observed that arrest infringes the fundamental right to life.

49 In P. Chidambaram v. Central Bureau of Investigation, (2020) 13 SCC 337, the appellant therein was granted bail after being kept in custody for around 62 days.

This Court referred to Section 19 of the PML Act, for the in-built safeguards to be adhered to by the authorized officers to ensure fairness, objectivity and accountability. Vijay Madanlal Choudhary (supra), also held that Section 436A of the Code can apply to offences under the PML Act, as it effectuates the right to speedy trial, a facet of the right to life, except for a valid ground such as where the trial is delayed at the instance of the accused himself.

In our opinion, Section 436A should not be construed as a mandate that an accused should not be granted bail under the PML Act till he has suffered incarceration for the specified period. This Court, in Arnab Manoranjan Goswami v. State of Maharashtra and Others (2021) 2 SCC 427, held that while ensuring proper enforcement of criminal law on one hand, the court must be conscious that liberty across human eras is as tenacious as tenacious can be.

29. Detention or jail before being pronounced guilty of an offence should not become punishment without trial. If the trial gets protracted despite assurances of the prosecution, and it is clear that case will not be decided within a foreseeable time, the prayer for bail may be meritorious. While the prosecution may pertain to an economic offence, yet it may not be proper to equate these cases with those punishable with death, imprisonment for life, ten years or more like offences under the Narcotic Drugs and Psychotropic Substances Act, 1985, murder, cases of rape, dacoity, kidnapping for ransom, mass violence, etc. Neither is this a case where 100/1000s of depositors have been defrauded. The allegations have to be established and proven. The right to bail in cases of delay, coupled with incarceration for a long period,

> depending on the nature of the allegations, should be read into Section 439 of the Code and Section 45 of the PML Act. The reason is that the constitutional mandate is the higher law, and it is the basic right of the person charged of an offence and not convicted, that he be ensured and given a speedy trial. When the trial is not proceeding for reasons not attributable to the accused, the court, unless there are good reasons, may well be guided to exercise the power to grant bail. This would be truer where the trial would take years."

19. Further he has relied upon the decisions of **Satender Kumar Antil Vs. Central Bureau of Investigation (2002) 10 SCC 561; Surinder Singh Alias Shingara Singh Vs. State of Punjab (2005)7 SCC387 and Kashmira Singh Vs. State of Punjab (1977) 4 SCC 291**. In the matter of **Manish Sisodia Vs. ED and CBI (supra),** it has been held that :

> 37. Insofar as the contention of the learned ASG that since the conditions as provided under Section 45 of the PMLA are not satisfied, the appellant is not entitled to grant of bail is concerned, it will be apposite to refer to the first order of this Court. No doubt that this Court in its first order in paragraph 25, after recapitulating in paragraph 24 as to what was stated in the charge-sheet filed by the CBI against the appellant, observed that, in view of the aforesaid discussion, the Court was not inclined to accept the prayer for grant of bail at that stage. However, certain paragraphs of the said order cannot be read in isolation from the other paragraphs. The order will have to be read in its entirety. In paragraph 28 of the said order, this Court observed that the right to bail in cases of delay, coupled with incarceration for a long period, depending on the nature of the allegations, should be read into Section 439 Cr.P.C. and Section 45 of the PMLA.
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> The Court held that the constitutional mandate is the higher law, and it is the basic right of the

person charged of an offence and not convicted that he be ensured and given a speedy trial. It further observed that when the trial is not proceeding for reasons not attributable to the accused, the court, unless there are good reasons, would be guided to exercise the power to grant bail. The Court specifically observed that this would be true where the trial would take years. It could thus clearly be seen that this Court, in the first round of litigation between the parties, has specifically observed that in case of delay coupled with incarceration for a long period and depending on the nature of the allegations, the right to bail will have to be read into Section 45 of PMLA.

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39. A Division Bench of this Court in the case of Ramkripal Meena v. Directorate of Enforcement5 was considering an application of the petitioner therein who was SLP(Crl.) No. 3205 of 2024 dated 30.07.2024 to receive a bribe of rupees five crore and from whom, an amount of Rs.46,00,000/- was already recovered. In the said case, the petitioner was arrested on 26th January 2022 in connection with FIR No. 402/2021 registered against him for the offences punishable under Sections 406, 420, 120B of IPC and Section 4/6 of the Rajasthan Public Examination (Prevention of Unfair Means) Act, 1992. He was released on bail by this Court vide order dated 18th January 2023. Thereafter, the petitioner was arrested by the ED on 21st June 2023. The Court observed thus:

> “7. Adverting to the prayer for grant of bail in the instant case, it is pointed out by learned counsel for ED that the complaint case is at the stage of framing of charges and 24 witnesses are proposed to be examined. The conclusion of proceedings, thus, will take some reasonable time. The petitioner has already been in custody for more than a year. Taking into consideration the period spent in custody and there being no likelihood of conclusion of trial within a short span, coupled with the fact that the petitioner

> is already on bail in the predicate offence, and keeping in view the peculiar facts and circumstances of this case, it seems to us that the rigours of Section 45 of the Act can be suitably relaxed to afford conditional liberty to the petitioner. Ordered accordingly."

> 44. The learned Special Judge and the learned Single Judge of the High Court have considered the applications on merits as well as on the grounds of delay and denial of right to speedy trial. We see no error in the judgments and orders of the learned Special Judge as well as the High Court in considering the merits of the matter. In view of the observations made by this Court in the first order, they were entitled to consider the same. However, the question that arises is as to whether the trial court and the High Court have correctly considered the observations made by this Court with regard to right to speedy trial and prolonged period of incarceration. The courts below have rejected the claim of the appellant applying the triple test as contemplated under Section 45 of the PMLA. In our view, this is in ignorance of the observations made by this Court in paragraph 28 of the first order wherein this Court specifically observed that right to bail in cases of delay coupled with incarceration for a long period should be read into Section 439 Cr.P.C. and Section 45 of the PMLA.

20. Further it has been reiterated that in cases where the fundamental right to speedy trial of the accused is violated, the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime. He has referred to the judgment of **Gulam Nabi shaikh Vs. State of Maharastra, 2024 SCC OnLine SC1693,** wherein it has been observed that :

> "19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or

> protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime."

21. It is well settled that the object of bail is neither punitive nor preventive. The primary purpose of bail in a criminal case is to ensure that the accused will submit tot the jurisdiction of the court and be in attendance whenever his presence is required. Deprivation of liberty must be considered punishment unless it can be required to ensure that an accused person will stand trial when called upon. Punishment can only begin after conviction and necessity is the operative test. in the matter of **Manish Sisodia 3 (2024) SCC OnLine SC920,** it has been held as under:

> "54. In the present case, the appellant is having deep roots in the society. There is no possibility of him fleeing away from the country and not being available for facing the trial. In any case, conditions can be imposed to address the concern of the State.
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> 55. Insofar as the apprehension given by the learned ASG regarding the possibility of tampering the evidence is concerned, it is to be noted that the case largely depends on documentary evidence which is already seized by the prosecution. As such, there is no possibility of tampering with the evidence. Insofar as the concern with regard to influencing the witnesses is concerned, the said concern can be addressed by imposing stringent conditions upon the appellant."

22. In the matter of **Gudikanti Narasimhulu Vs. Public Prosecutor, High Court of Andhra Pradesh (1978) 1 SCC 240** it has been held as under:

> The significance and sweep of Art. 21 make the deprivation of liberty 'a matter of grave concern and permissible only when the law authorizing it is reasonable, even-handed and geared to the goals of community good and State necessity spelt out in Art. 19. Indeed, the considerations I have set out as criteria are germane to the constitutional proposition I have deduced. Reasonableness postulates intelligent care and predicates that deprivation of freedom- by refusal of bail is not for punitive purpose but for the bi-focal interests of justice- to the individual involved and society affected."

23. Next contention of the learned counsel for the applicant is that the applicant shall be severely prejudiced and prejudged if he is continually remanded to custody. It is imperative for the proper and effective defence of the applicant and as a step to ensure the fair trial of the applicant that he be released on bail unless there are overwhelming considerations otherwise. He contended that over 70 witnesses have been named in the prosecution complaint itself filed by the ED. As per settled law, since the further investigation is going on in the instant case, no charges can be framed and the trial cannot commence in the near future because as per the submission of the investigating agency, in the scheduled offence at least 3-4 chare sheets are yet to be filed.

24. Another contention of the learned counsel for the applicant is that the arrest of the applicant is completely malafide and cannot be continued in custody. The only material available with the ED was the material collecting during an illegal investigation which has been quashed by the Apex Court on 08,04.2024. The grounds of arrest recorded and served upon the applicant as well as a comparison of the summary of investigation conducted by the ED as outlined in the Prosecution Complaint dated 04.07.2023 in the first ECIR and the

Prosecution Complaint dated 19.06.2024 in the second ECIR. He further contended that none of the statements which formed the basis of the said ECIR has been recorded by the investigating officer in his presence at the time of his arrest. There was no independent application of mind by the investigating officer in the said ECIR informing his grounds of arrest which contained no new facts. He submits that the arrest under the PMLA can be effected only when an accused/individual is considered to be guilty of the offence under Section 3 of the PMLA and guilt can only be established on admissible material. No search and seizure operation under Section 17 of the PMLA has been carried out by the officers of ED in relation to the said ECIR nor has any summons been sent to any person whose statements are being relied upon by the ED now in the said ECIR.

25. He contended that the ED has been acting in a vindictive manner and trying to implicate the applicant without any admissible material. There is no recovery of any unaccounted money, incriminating material, illegal liquor bottles or counterfeit holograms from the applicant and thus the entire case of the ED is based on completely inadmissible material. There is absolutely no material to show any proximity of the applicant with the erstwhile Chief Minister of Chhattisgarh or any role played by him in the working or appointment of any individual either at CSMCL or in the Excise Department or any involvement in the liquor trade in the State of Chhattisgarh. He submits that the very individuals who gave incriminating statements against the applicant have retracted solely for the reason that the same were coerced out of them by the ED. It is submitted that the alleged chats being relied upon by the ED, it is submitted that the same has been derived from the devices which have

been accessed by various authorities at various instances without any intimation to the applicant and without due process and thus the possibility of tampering with the same cannot be denied.

26. He further contended that the applicant satisfies the twin conditions for grant of bail in terms of Section 45 of the PMLA. In terms of Section 45 of the PMLA, two conditions are to be satisfied before a person is granted bail for offence under Section 3 of the PMLA ie. firstly the public prosecution is given an opportunity to oppose the application and second if public prosecutor opposes it, the court is satisfied that there are reasonable grounds for believing that he is not guilty of offence of money laundering. The applicant unequivocally and stoutly refutes all allegations levelled against him. The applicant is not involved in the commission of or in any activity relating to the alleged offences. The applicant was never posted in the Excise Department and has never processed any filed or dealt with any matter related to excise/liquor. Since he was not involved in the functioning of the Department he cannot be involved in any such scam and therefore cannot be a recipient of any “proceeds of crime”.

27. He submits that on the departmental enquiry being conducted by the Commercial Tax (Excise) Department which examined specific allegations of payment of bribe to certain government officials, illegal sale of liquor in the State of Chahttisgarh and loss to the Public Exchequer on account of the same and the following findings have been come:

> I) Sale of liquor in the State of Chhattisgarh has been conducted in accordance with the applicable rules.
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> (ii) the liquor shops of Chhattisgarh State Marketing Corporation Ltd. are audited every month by

professional chartered accountants and no irregularities have been reported by them. The same is also supervised by the Comptroller and Auditor General of India.
(iii) the stock, sale and cash registers are regularly updated and maintained and all liquor shops of CSMCL are under constant CCTV surveillance.

(iv) the purchase and sale of liquor by the SCMCL are conducted exclusively through the Track and Trace portal developed by NIC.

(v) there has been no discrepancy/illegality in the allotment of any tender in relation to the liquor trade in the State of Chhattisgarh.

(vi) The ED has recorded coerced statements from various officials of the Excise Department.

28. He submits that according to the statement of the erstwhile Secretary of the Excise Department, no loss has ben caused to the Government Exchequer and the liquor trade had taken place in compliance of law. In fact the profits have been unprecedented, as also recorded in the Departmental Enquiry Report. The revenue in the year 2019-20 was higher than the revenue in the financial year 2018-19 of rs. 3900 crores. The allegation that the applicant had a key role to play in the increase in price of liquor is completely false and that the prices were in fact increased at the request of the Distillers themselves. It is well settled law that the statement of co-accused person is an extremely weak piece of evidence and cannot be treated as substantive evidence against the other co-accused persons. Therefore all the statements under Section 50 of the PMLA sought to be relied upon by the ED to substantiate its allegations against the applicant are inadmissible and does not form the basis for denial of bail. He has relied upon the

judgment of **Haricharan Kurmi Vs. State of Bihar, AIR 1964 SC 1184,**

wherein it has been held that:

> “13. As we have already indicated. this question has been considered on several occasions by judicial decisions and it has been consistently held that a confession cannot be treated as evidence which is substantive evidence against a co-accused person. in dealing with a criminal case where the prosecution relies upon the confession of one accused person against another accused person, the proper approach to adopt is to consider the other evidence against such an accused person, and if the said evidence appears to be satisfactory and the court is inclined to hold that the said evidence may sustain the charge framed against the said accused person, the court turns to the confession with a view to assure itself that the conclusion which it is inclined to draw from the other evidence is right. As was observed by Sir Lawrence Jenkins in Emperor v. Lalit Mohan Chuckerbutty(1) a confession can only be used to "lend assurance to other evidence against a co-accused". In In re. Peryaswami Noopan,(2) Reilly J. observed that the provision of s. 30 goes not further than this : "where there is evidence against the co-accused sufficient, if,. believed, to support his conviction, then the kind of confession described in s. 30 may be thrown into the scale as an additional reason for believing that evidence." In Bhuboni Sahu v. King(1) the Privy Council has expressed the same view. Sir. John Beaumont who spoke for the Board observed that a confession of a co-accused is obviously evidence of a very weak type. It does not indeed come within the definition of "evidence" contained in s. 3 of the Evidence Act. It is not required to be given on oath, nor in the presence of the accused, and it cannot be tested by cross-examination. It is a much weaker type of evidence than the evidence of an approver, which is not subject to any of those infirmities. Section 30, however, provides that the Court may take the confession into consideration and thereby, no doubt, makes it evidence on which the court may act; but the section does not say that the confession is to amount to proof. Clearly

there must be other evidence. The confession is only one element in the consideration of all the facts proved in the case, it can be put into the scale and weighed with the other evidence." It would be noticed that as a result of the provisions contained in s. 30, the confession has no doubt to be regarded as amounting to evidence in a general way, because whatever is considered by the court is evidence; circumstances which are considered by the court as well as probabilities do amount to evidence in that generic sense. Thus, though confession may be regarded as evidence in that generic sense because of the provisions of s. 30, the fact remains that it is not evidence as defined by s. 3 of the Act. The result, therefore, is that in dealing with a case against an accused person, the court cannot start with the confession of a co-accused person; it must (1) (1911) I.L.R. 38 Cal. 559 at p. 588. begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence. That, briefly stated, is the effect of the provisions contained in s. 30. The same view has been expressed by this Court in Kashmira Singh v. State of Madhya Pradesh(1) where the decision of the Privy Council in Bhuboni Sahu's(2) case has been cited with approval.

16. Considering the evidence from this point of view, we must first decide whether the evidence other than the confessional statements of the co-accused persons, particularly Ram Surat, on whose confession the High Court has substantially relied, is satisfactory and tends to prove the prosecution case. It is only if the said evidence is satisfactory and is treated as sufficient by us to hold the charge proved against the two appellants, that an occasion may arise to seek for an assurance for our conclusion from the said confession. Thus considered, there can be no doubt that the evidence about the discovery of blood stains on which the prosecution relies is entirely insufficient to justify the prosecution charge against both the appellants. In our opinion,

> it is impossible to accede to the argument urged before us by Mr. Singh that the said evidence can be said to prove the prosecution case. In fact, the judgment of the High Court shows that it made a finding against the appellants substantially because it thought that the confessions of the co-accused persons could be first considered and the rest of the evidence could be treated as corroborating the said confessions. We are, therefore, satisfied that the High Court was not right in confirming the conviction of the two appellants under S. 396 ,of the Indian Penal Code."

29. Next submission on behalf of the applicant is that the applicant was not posted in the Excise Department and there is no material to suggest that the applicant had any role to paly in the functioning of the Excise Department or that the applicant had received any monetary benefit from the so called liquor syndicate. The applicant had neither interfered in any policy matter of the Excise Department nor provided any kind of favour to any stake holder related to liquor trade in the State of Chhattisgarh. He submits that the applicant had no role in the appointment of Arun Pati Tripathi as Commissioner, Secretary or any other individual in the Excise Department or CSMCL and had no relation to the Excise Department or the liquor trade.

30. It is next submitted by the learned counsel for the applicant that the ED has been conducting the investigation in a pick and choose manner. The ED has proceeded in a selective and pick and choose manner in its investigation which clearly shows the targeted nature of the investigation conducted by it. He submits that no attempt has been made to initiate any legal action against the distillers including registering any FIR *inter alia* under Section 8 of the Prevention of Corruption Act. In relation to these distillers, it appears that no

information has been shared with other departments ie. the Income Tax Department, GST etc. for collection of tax and duty on the alleged large scale unaccounted sale of liquor allegedly undertaken by these distillers and businessmen. He submits that none of the District Excise officers have been made accused in the instant case. Various other stake holders are being protected by the different prosecuting agencies with the aim and hope of extracting false statements implicated inter alia from them which clearly shows the mala fide and pick and choose manner of investigation being conducted by the Prosecuting Agency. He submits that while the allegations of a multi crore syndicate has caused loss of the State exchequer in the State of Chhattisgarh, neither any change has been brought about to the existing liquor policy nor any license of any hologram manufacturer/distiller/cash collection agency etc. has been cancelled. No action under Section 8 of the Prevention of Corruption Act has taken against these individuals by the prosecuting agency and the liquor trade has been continuing as usual. He submits that even otherwise, any apprehension regarding the applicant being a flight risk or tampering with evidence or influencing witnesses can be taken care of by imposing suitable conditions on the applicant while granting bail. He contended that the there is no material on record to suggest that the applicant does not satisfy the triple test as there is no allegation that he would either tamper with any evidence or influence any witness if granted bail. Mere apprehension of the investigating agency without any substantial basis for the same cannot be a ground for denying bail to the applicant. In the matter of **P. Chidambaram Vs. Central Bureau of Investigation (2020) 13 SCC 337,** wherein it has been observed as under:

“31. It is to be pointed out that the respondent - CBI has filed remand applications seeking remand of the appellant on various dates viz. 22.08.2019, 26.08.2019, 30.08.2019, 02.09.2019, 05.09.2019 and 19.09.2019 etc. In these applications, there were no allegations that the appellant was trying to influence the witnesses and that any material witnesses (accused) have been approached not to disclose information about the appellant and his son. In the absence of any contemporaneous materials, no weight could be attached to the allegation that the appellant has been influencing the witnesses by approaching the witnesses. The conclusion of the learned Single Judge “…that it cannot be ruled out that the petitioner will not influence the witnesses directly or indirectly……” is not substantiated by any materials and is only a generalized apprehension and appears to be speculative. Mere averments that the appellant approached the witnesses and the assertion that the appellant would further pressurize the witnesses, without any material basis cannot be the reason to deny regular bail to the appellant; more so, when the appellant has been in custody for nearly two months, co-operated with the investigating agency and the charge sheet is also filed.

32. The appellant is not a “flight risk” and in view of the conditions imposed, there is no possibility of his abscondence from the trial. Statement of the prosecution that the appellant has influenced the witnesses and there is likelihood of his further influencing the witnesses cannot be the ground to deny bail to the appellant particularly, when there is no such whisper in the six remand applications filed by the prosecution. The charge sheet has been filed against the appellant and other co-accused on 18.10.2019. The appellant is in custody from 21.08.2019 for about two months. The co-accused were already granted bail. The appellant is said to be aged 74 years and is also said to be suffering from age related health problems. Considering the above factors and the facts and circumstances of the case, we are of the view that the appellant is entitled to be granted bail.”

31. It is submitted that the applicant is a senior citizen suffering various medical ailments including osteoarthritis, liver disorder, raised GGTP, hyponatremia, hypertension, hypothyroidism, anxiety and prolonged custody will have deleterious effect on his health. He has also filed certain documents to this effect. As per settled law, no case under the PMLA can continue without an underlying scheduled offence and therefore prays that the applicant may be granted regular bail in ECIR/RPZO/04/2024 dated 11.04.2024 registered by the Enforcement Directorate under Sections 3 & 4 of the Prevention of Money Laundering Act, 2002.

SUBMISSION ON BEHALF OF THE RESPONDENT/ED

32. It has been contended by Dr. Saurabh Pandey, learned counsel for the respondent/ED that the applicant was a promotee IAS officer who retired in the year June 2023. He was the most powerful bureaucrat in Chhattisgarh, wielding enough power to control the police, mining, environment and liquor departments by placing the individuals of his choice in key position. The applicant was the chief architect of the liquor scam. He was strongly associated with co-accused Anwar Dhebar, the main perpetrator of the illegal collection. From the strong support of the State executives for extortion of money from the liquor manufacturers, the applicant controlled the postings of all the IAS-IPS and other government officials. From the investigation it has bee revealed that he was the one who placed Arunpati Tripathi as the MD of CSMCL. The real power which allowed Anwar Dhebar to run this extortion syndicate was the present applicant’s undue and over arching influence. Investigation has also revealed that the applicant was casting his influence in the excise department in multiple manner. Several hats

were recovered from his mobile phone wherein he was indulged in effecting transfers of excise officers, selection of top level officials in excise department, final approval of draft response to various complaints received in relation to excise department. The applicant was fully aware of Part-B liquor sale and part-C scheme of liquor syndicate. He was also aware of the Part C mode of collecting commission/bribe by the liquor syndicate.

33. He submits that from the investigation it has been revealed that he used his influence to scuttle investigation into Part-B liquor sale when seizure of such liquor was made by the police he made it vanish. The presence of the applicant was crucial in allowing the liquor scam to continue unabated for such a long period. He was influencing the police personnel to favour persons involved in the liquor scam; preparing replies to counter the allegations of the previous hologram suppliers, tackling the distillers regarding dispute in market share. It was because of this pivotal role played by the applicant, he had a substantial share in the illegal earning generated out of supply of Part-B liquor. It has been revealed that about Rs. 300 per case was the share of the duo (Anil Tuteja and Anwar Dhebar) out of the illegal sale proceeds of the unaccounted liquor. Asper the distillers they have supplied a total of Rs. 40.67 lacs cases of Part-B liquor which is about 120 crores approximately. Thus, Mr Anil Tuteja had received proceeds of crime worth Rs. 14.41 crores from Anwar Dhebar through Mr. Nitesh Purohit.

34. It has been evidence from the fact that the family members of the applicant have been recipient of the funds indirectly from the FL-10A license companies on the directions of Anwar Dhebar. The properties worth Rs. 15.82 crores acquired by the accused and his family

members, during the period of the scam, have already been attached vide PAO bearing No. 04/2024 dated 02.05.2024. It is by this way the applicant has actively and willingly participated in the liquor scam and generated proceeds of crime owing to the role played by him. He had acquired the proceeds of crime and is involved in their concealment, layering and use of the proceeds of crime and ha committed the offence of money laundering as defined under Section 3 of the PMLA, 2002 punishable under Section 4 of the PMLA, 2002.

35. Next contention of learned counsel for the respondent/ED is that the mandatory provisions of Section 45 of the PMLA are not being satisfied. One of the conditions prescribed by the Section pertains to a finding by the Court that the accused is “not guilty of the offence of Money Laundering” and that he is not likely to commit any offence while on bail. Thus, in view of the facts putforth, the possibility of the applicant being “not guilty of the offence of Money Laundering” is highly unlikely. In the light of the judgment of the Apex Court in the in **Vijay Madanlal Chouhdary and Others Vs. Union of India and Others Special leave Petitioner (Criminal) No. 4634 of 2014** has held that it is no longer *res integra* that the twin conditions under Section 45 of the PMLA have to be met before grant of bail under PMLA. The relevant observation of the Hon’ble Court is as under:

> “135. We are conscious of the fact that in paragraph 53 of the Nikesh Tarachand Shah642, the Court noted that it had struck down Section 45 of the 2002 as a whole. However, in paragraph 54, the declaration is only in respect of further (two) conditions for release on bail as contained in Section 45(1), being unconstitutional as the same violated

> Articles 14 and 21 of the Constitution. Be that as it may, nothing would remain in that observation or for that matter, the declaration as the defect in the provision [Section 45(1)], as existed then, and noticed by this Court has been cured by the Parliament by enacting amendment Act 13 of 2018 which has come into force with effect from 19.4.2018. We, therefore, confined ourselves to the challenge to the twin conditions in the provision, as it stands to this date post amendment of 2018 and which, on analysis of the decisions referred to above dealing with concerned enactments having similar twin conditions as valid, we must reject the challenge. Instead, we hold that the provision in the form of Section 45 of the 2002 Act, as applicable post amendment of 2018, is reasonable and has direct nexus with the purposes and objects sought to be achieved by the 2002 Act to combat the menace of money-laundering having transnational consequences including impacting the financial systems and sovereignty and integrity of the countries."

36. It is submitted that the accused with proceeds of crime and deep roots in the society is in a position to influence witness. Allahabad high Court in the matter of **Pankaj Grover V. ED** Criminal Misc. Anticipatory Bail application under Section 438 Cr.P.C. No. 7661 of 2021, has clearly held that the accused in economic offences/PMLa cases are in possession huge proceeds of crime and may use those to influence witnesses. Further the Court also held that since such offences are committed mostly by influential persons, there is a high likelihood of their using influence to tamper with evidence and influence witnesses.

Relevant observation is as under:

> “38…. Crimes are now committed by influential persons belonging to upper class in organized manner after well planning by use of modern gadgets in course of performance of their official, professional, business activities in which they have expertise. Criminal Acts committed by professionals, businessmen and public servants, it is very difficult to identify whether sober and civilized activity was committed or criminal act was committed. Such criminals have o criminal self image, further by societal members there is no labelling which affect seriously pursuits to cope with crime and criminality,. Economic offenders are only concerned with their personal gain even at the cost of irreparable and serious loss to society.
>
> “40…. Criminal acts committed by such persons are creating a serious challenge before criminal justice system; It is difficult to identify whether crime was committed, when it is identified that crime was committed, it is difficult to find out clues and thereby evidences; when evidences are available, nature of evidences is completely different as not possible to be collected by simple investigating presented by prosecution agency and ultimately to convict and sentence; when sentenced simple sentence is not effective to deal with such modern criminals and their criminality. A criminal of such modern criminality are respected and influential persons with position, status, standing and means thereby they are always in situation to influence proceeding in investigation and prosecution, taper with the evidences and pressurize witnesses.
>
> 42. …. Usually socio economic offenders abscond to some other country and after that it becomes difficult to bring them back and complete the criminal

> proceeding against them. Further, their monetary sound condition particularly proceed of crime obtained not by honest working but by deceiving others causes more prone situation for influencing witnesses and other evidences. Furthermore, status and position of offender provides opportunity to influence investigation and prosecution."

37. It is contended by the learned counsel for the respondent/ED that bail should not be granted in the present case as the present case pertains to the offence of Money laundering to the tune of more than Rs. 2100 crores approximately. In catena of judgments it has been held that economic offences constitute a separate class of offences and bail should normally not be granted in such cases. Orissa High Court in the matter of **Mohd. Arif Vs. ED BLAPL No. 2606 of 2020** has observed that the impact of the offence of money laundering is an act of financial terrorism not only posing a serious threat to the financial system of the country but also to the integrity and sovereignty of a nation and has observed as under:

> "22. the offence of money laundering is nothing but an act of financial terrorism that poses a serious threat not only to the financial system of country but also the integrity and sovereignty of a nation. The International Monetary Fund estimates that laundered money generates about $590 billion to $1.5 trillion per year, which constitutes approximately two to five percent of the world's gross domestic product. The Supreme Court of India has consistently held that economic offences are *sui generis* in nature as they stifle the delicate economic fabric of a society. These offences permeate to human consciousness posing

> numerous questions on the very integrity of the business world. The offences, such as this, are committed with a deliberate design with an eye on personal profit and often shown to be given scant regard for a sordid residuum left behind to be borne by the unfortunate “starry eyed” petty investors. The perpetrators of such deviant “schemes” including the petitioner herein, who promise utopia to their unsuspecting investors seem to have entered in a proverbial “faustian bargain” and are grossly unmindful of untold miseries of the faceless multitudes who are left high and dry and consigned to the flames of suffering.”

38. In yet another decision, ie. in the case of **Y.S. Jagan Mohan Reddy Vs. Central Bureau of Investigation; (2013) 7 SCC 439,** wherein Hon’ble the Apex Court in paragraphs 34 & 35 has held as under:-

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

39. Next contention of the counsel for the applicant is that the investigation conducted by the ED is *mala fide* and fictitious. The right to fair trial and investigation is a facet of the right to life and liberty under Article 21 of the Constitution of India. This right can be taken away by procedure established by law which must be just, fair and reasonable. He has referred to **Babubhai Vs. State of Gujarat and Others (2010) 12 SCC 254 and Gangadhar Vs. State of Madhya Pradesh (2020) 9 SCC 202.**

40. The Apex Court in the matter of **State of Gujarat Vs. Mohanlal Jitamalji Porwal & Others, (1987) 2 SCC 364,** it has been specifically held that :

> "...5. The Community or the State is not a person-non-grata whose cause may be treated with disdain. 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.

41. Dr. Pandey, learned counsel for the respondent/Ed submits that the contention of the applicant regarding long incarceration of the applicant is concerned, he denied the submission and submits that the guilt of the applicant in commission of the offence of money laundering is established. The applicant does not qualify the conditions mentioned in Section 436A of the Code of Criminal Procedure, 1973 and therefore cannot take the benefit of the said Section. The applicant has been arrested in the present case on 21.04.2024 and he has been arraigned as accused in the Prosecution Complaint dated 19.06.2024 filed by the

Enforcement Directorate. The applicant has to satisfy the conditions provided in Section 45 of the PMLA prior to grant of bail and it is highly likely that if the applicant is granted bail, he would further launder or alienate the proceeds of crime which would frustrate the further proceedings. He submits that satisfaction of triple test is not sufficient for persons arrested under PMLA, 2002 as this triple test stage will come when the applicant satisfy the twin conditions given under Section 45 of the PMLA, 2002.

42. The contention of the applicant that there is long delay in trial is misconceived and therefore it has been denied by the counsel for the respondent. He submits that the Prosecution Complaint has been filed against the applicant on 19.06.2024 and cognizance has been taken by the Special Court on 5.10.2024 and ED had demonstrated complete *modus operandi* adopted by the applicant for omission of the offence of money laundering and investigation against the applicant is complete but the investigation on money trial and identification of remaining proceeds of crime and the persons involved therein. It has been submitted that the trial in the PMLA is at appearance Stage and the next date of hearing is scheduled for 22.03.2025. the delay in trial is no ground for claiming bail. It is submitted that there are only 35 witnesses in the Prosecution Complaint filed by the Directorate and since there are less witnesses it would considerably take less time during trial.

43. Another contention of the applicant that the arrest of the applicant is completely malafide and ill founded, to this it is submitted by the ED that the applicant was the chief architect of liquor scam in the State of Chhattisgarh. During investigation, it has been gathered that Rs. 14.41

crores has been received by the applicant out of proceeds of crime. In the matter of **Sajjan Kumar Vs. Directorate of Enforcement, MANU/DE/2155/2022,** it has been held that “in matter of regular bail, the Court must consider aspects, including but not limited to, the larger interest of the State or public-another factor relevant would be the gravity of alleged offence and /or nature of allegations levelled - Economic offences constitute a class apart and need to be visited with a different approach, given their severity and magnitude.”

44. It is submitted that there is no iota of doubt that the Right to Speedy Trial is a foundational facet of the Right to life and Personal Liberty given under Article 21 of the Constitution of India. However, it is humbly submitted that if the accused is enlarged on bail, then being such an influential person, there would be a chance that he would induce the witnesses and tamper with the evidences. In the matter of **State of Bihar Vs. Amit Kumar reported in (2017) 13 SCC 751,** it has been held that:

> “11. Although there is no quarrel with respect to the legal propositions canvassed by the learned counsels, it should be noted that there is no straight jacket formula for consideration of grant of bail to an accused. It all depends upon the facts and circumstances of each case. The Government's interest in preventing crime by arrestees is both legitimate and compelling. So also is the cherished right of personal liberty envisaged under Article 21 of the Constitution. Section 439 of The Code of Criminal Procedure, 1973, which is the bail provision, places responsibility upon the courts to uphold procedural fairness before a person’s liberty is abridged. Although ‘bail is the rule and jail is an exception’ is well established in our jurisprudence, we have to measure competing forces present in facts and circumstances of each case before enlarging a

> person on bail.
> 14. Further we cannot lose sight of the fact that the investigating agency is going to file additional charge sheet. Therefore, the respondent's presence in the custody may be necessary for further investigation. Furthermore we cannot approve the order of the High Court, in directing the concerned investigating authority to file the charge sheet within a month, as the case involves almost 32 accused and a complex *modus operandi.*"

45. So far as the submission on behalf of the applicant that he had filed Special leave petition (SLP) No.12124/2024 against the order dated 20.08.2024 passed by this Court, the petitioner had raised several points including illegal arrest, the illegality of the ECIRs, malafide investigation etc. before the Apex Court however, the same was withdrawn by the applicant on 6.12.2024. Thus, from the perusal of the material on record, the arrest and subsequent order of remand passed by the learned Magistrate or the Special Judge is non-violative of any of the provisions of the PMLA Act or the Cr.P.C. The Apex Court in the matter of **State of Orissa Vs. Mahimanda Mishra 2018 (10) SCC 516,** has held that

> "It is by now well settled that at the time of considering an application for ail, the Court must take into account certain factors such as the existence of a *prima facie* case against the accused, the gravity of the allegations, position and status of the accused, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of tampering with the witnesses and obstructing the courts as well as the criminal antecedents of the accused. It is also well settled that the Court must not go into deep into merits of the matter while considering an application for bail. All that needs to be established from the record is the existence of a *prima facie* case against the accused."

46. Lastly, it is submitted that grant of bail on medical ground is concerned, as per the law laid down in the matter of **Amrutbhai Bholidasbhai Patel Vs. State of Gujarat, 2000 SCC Online Guj 299,** it has been held as under

> 21. It is true that under trial prisoners shall be dealt with sympathy and court's approach should be humane towards them but the sympathy does not mean that by showing misplaced sympathy the Court should bud in need.
>
> 22. The whole prosecution case is at the threshold. Though medical certificates would indicate that the petitioner is suffering from health problem the record shows that he has been provided with medical aid by Superintendent of Central Prison, Sabarmati, Ahmedabad as and when necessary. The petitioner has not given concrete data as to when he proposes to undergo angioplasty or bypass surgery. Though the petitioner states that he has been advised angioplasty, the petitioner is not able to state as to when he wants to undergo angioplasty. It may be stated that facility of angioplasty is now available in Ahmedabad at Krishna Heart Institute and Rajasthan Hospital, etc. In case of need the petitioner can always be referred to any of these institutes by the Superintendent of Central Prison, Sabarmati, Ahmedabad, after obtaining necessary certificate from the Civil Hospital or U.N. Mehta Institute of Cardiology and Research Centre. The record of the case does not show that proper medical aid is not available to the petitioner while he is in judicial custody. Affidavit filed by the wife of the petitioner on September 22, 2000 would show that as per the medical advise surgery of prostate is to be performed after the petitioner undergoes angioplasty and surgery for heart ailment. Therefore, grant of bail on the ground of need for surgery of prostate at this stage need not be

> considered. Moreover, in view of what is stated in para 6 of her affidavit, no doubt, possibility of cancer of prostate is raised but no specific diagnosis about the cancer of prostate is made.
>
> 24. The attempt of the petitioner is to get bail for unspecified period on medical ground which cannot be entertained in view of the serious charges made against him and well-founded possibility of tampering with the evidence."

47. Another contention is that the averments made by the counsel for the applicant that the grounds of arrest and the reasons to believe do not meet the threshold of Section 19 of the PMLA an are grossly insufficient and there an be no necessity of arrest in the case is strongly denied by the learned counsel for the respondent and it is submitted that role of the applicant in the offence of money laundering is clearly established. The applicant was found to have committed the criminal activities related to the scheduled offence and thereby generating and possessing the proceeds of crime as defined under Section 2 (i)(u) of PMLA, 2002. The IO had reasons to believe on the basis of matter in his possession that the applicant was involved in money laundering activity and had acquired proceeds of crime in relation to liquor scam and the investigating officer deemed his arrest necessary on multiple counts which includes:

> i) to prevent the destruction of evidence
> ii) to confront him with various persons who are involved in these activities.
> Iii) to trace out proceeds of crime acquired by him during his custodial interrogation.
> iv) to prevent him from influencing the witnesses.
> v) to identify other persons involved in the syndicate during his custodial interrogation

48. It is thus, contended by the learned counsel for the respondent/ED that the ED has substantive evidences to prove the guilt of the accused in the trial and *prima facie* in the investigation, the applicant is actually involved in all the activities connected with the offence of money laundering ie. use or acquisition possession, concealment and projecting or claiming as untainted property as defined under Section 3 of the PMLA, 2002 and therefore the applicant is guilty of the offence of money laundering under Section 3 of the PMLA, 2002 and punishable under Section 4 of the PMLA.

ANALYSIS

49. Heard learned counsel for the parties at length and perused the records as well as the documents annexed with utmost circumspection.

50. In the instant case, there are nearly 70 accused persons while charge sheet has only been filed against 11 persons. There are 457 witnesses in the scheduled offence and the trial is not likely to conclude. However, the ED has submitted that at least 3 to 4 charge sheets are yet to be filed in the scheduled offence. It appears that the applicant was involved in the criminal acts of the syndicate and is in possession of the proceeds of crime and that he received commission from the liquor suppliers. The applicant was the key player in the syndicate. However, no recovery of unaccounted money has been made in this regard. P*rima facie,* the involvement of the applicant in the present case has been established as massive corruption had taken place in the Excise Department by way of extorting amount of Rs. 2000 crores approximately and causing huge loss to the State Exchequer which

otherwise would have yielded revenue for Central and State government.

51. However,the Apex Court has held that the power of ED to arrest must be based on objective and fair consideration of material against a person. Under the PMLA, ED officers can arrest a person if they have reasons to believe based on the material in their possession that the individual is guilty. It has been held by the Apex Court that PMLA allowed arrests on the subjective opinion of ED officer, the court said an officer's "reasons to believe" that a person was guilty an deserved arrest should not be based on mere suspicion. "Suspicion requires a lower degree of satisfaction and does not amount to belief. Belief is beyond speculation or doubt…. Existence and validity of the 'reasons to believe' goes to the root of the power to arrest. The subjective opinion of the arresting officer must be founded and based upon fair and objective consideration of the material, as available with them on the date of arrest.

52. The judiciary's interpretative role in shaping due process within the PMLA represents a significant stride. Emphasizing the written communication of arrest grounds is vital for transparency and accountability. However, this positive development raises practical questions for the ED. The nuanced compromise between oral communication and subsequent provision of written grounds reflects the judiciary's understanding of law enforcement challenges.

53. An analysis of section 19 of the PMLA unveils a delicate interplay between legal principles, enforcement challenges, and evolving due

process standards. The judiciary's commitment to balancing prompt law enforcement with the protection of individual rights, particularly the right to receive timely notification of arrest grounds, not only adds value but also amplifies the ongoing conversation about the equitable consideration of security and justice in the context of any crime, whether financial or otherwise. On perusal of the records, I found that the ED has shown the reason to believe that the applicant is guilty of the proceeds of crime. On the basis of statements recorded under Section 50 of the PMLA however, retraction statement is made by the co-accused persons namely Arun Pati Tripathi, Nitesh Purohit and Arvind Singh.

54. The confessional statement of a co-accused under Section 50 of the PMLA is otherwise, not a substantive piece of evidence and can be used only for the purpose of corroboration in support of other evidence to impart assurance to the Court in arriving at a conclusion of guilt.It is expedient for this Court to extract Section 45 of the PML Act, 2002, which reads as under:-

> "Section 45 of PMLA, 2002- 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 [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 authorized, 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."

55. The Apex Court in the matter of **Directorate of Enforcement Vs. Aditya Tripathi (Criminal Appeal No. 1401/2023)** decided on 12.05.2023 has held as under:-

6. At the outset, it is required to be noted that respective respondent No. 1 – accused are facing the investigation by the Enforcement Directorate for the scheduled offences and for

the offences of money laundering under Section 3 of the PML Act punishable under Section 4 of the said Act. An enquiry/investigation is still going on by the Enforcement Directorate for the scheduled offences in connection with FIR No. 12/2019. Once, the enquiry/investigation against respective respondent No. 1 is going on for the offences under the PML Act, 2002, the rigour of Section 45 of the PML Act, 2002 is required to be considered. Section 45 of the PML Act, 2002 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 [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 authorized 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 authorized, 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." By the impugned judgment(s) and order(s) and while granting bail, the High Court has not considered the rigour of Section 45 of the PML Act, 2002he Supreme Court on July 12 held that the power to arrest under the Prevention of Money Laundering Act (PMLA) cannot be exercised on the "whims and fancies" of Directorate of Enforcement (ED) officers.

6.1 Even otherwise, the High Court has not at all considered the nature of allegations and seriousness of the offences alleged of money laundering and the offences under the PML Act, 2002. Looking to the nature of allegations, it can be said that the same can be said to be very serious allegations of money laundering which are required to be investigated thoroughly.

6.2 Now so far as the submissions on behalf of the respective respondent No. 1 that respective respondent No. 1 were not named in the FIR with respect to the scheduled offence(s) and/or that all the other accused are discharged/acquitted in so far as the predicated offences are concerned, merely because other accused are acquitted/discharged, it cannot be a ground not to continue the investigation in respect of respective respondent No. 1. An enquiry/investigation is going on against respective respondent No. 1 with respect to the scheduled offences. Therefore, the enquiry/investigation for the scheduled offences itself is sufficient at this stage. 6.3 From the impugned judgment(s) and

> order(s) passed by the High Court, it appears that what is weighed with the High Court is that charge sheet has been filed against respective respondent No. 1 – accused and therefore, the investigation is completed. However, the High Court has failed to notice and appreciate that the investigation with respect to the scheduled offences under the PML Act, 2002 by the Enforcement Directorate is still going on. Merely because, for the predicated offences the charge sheet might have been filed it cannot be a ground to release the accused on bail in connection with the scheduled offences under the PML Act, 2002. Investigation for the predicated offences and the investigation by the Enforcement Directorate for the scheduled offences under the PML Act are different and distinct. Therefore, the High Court has taken into consideration the irrelevant consideration. The investigation by the Enforcement
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> Directorate for the scheduled offences under the PML Act, 2002 is till going on.
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> 7. As observed hereinabove, the High Court has neither considered the rigour of Section 45 of the PML Act, 2002 nor has considered the seriousness of the offences alleged against accused for the scheduled offences under the PML Act, 2002 and the High Court has not at all considered the fact that the investigation by the Enforcement Directorate for the scheduled offences under the PML Act, 2002 is still going on and therefore, the impugned orders passed by the High Court enlarging respective respondent No. 1 on bail are unsustainable and the matters are required to be remitted back to the High Court for afresh decision on the bail applications after taking into consideration the observations made hereinabove."

56. The Apex Court has held that the power to arrest under the Prevention of Money Laundering Act (PMLA) cannot be exercised on the "whims and fancies" of Directorate of Enforcement (ED) officers. The court wondered if the ED even had a consistent, uniform and "one-rule-for-all" policy on when they should arrest people. It said the ED's

power to arrest must be based on objective and fair consideration of material against the accused.

CONCLUSION

57. From the documents and submissions of the counsel for the applicant, it appears that there is no attachment of property against accused persons being distillers despite quantifying the same at over 200 crores and no proceedings under Section 8 of the PC Act has been initiated against them. The distillers, Excise officers, Siddarth Singhania and FL-10A license holders have not been made accused which shows that there is pick and choose manner in the investigation. It has been revealed that the utilization of the proceeds of crime in purchase of assets by the applicant cannot be ruled out. The fact that the applicant had actively participated in the commission of predicate offence; had acquired proceeds of crime and had substantial share in proceeds of unaccounted liquor cannot be ignored. It is also true that the applicant has suffered long period of incarceration and the trial has not yet commenced and is not likely to conclude but the right to bail in cases of delay, coupled with incarceration for a long period, depending on the nature of the allegations, should be read into Section 439 of the Code of Criminal Procedure and Section 45 of the PML Act.

58. Thus, it is held that after examining the entire documents, it is revealed that there is substantial material indicating a strong nexus between the applicant and the other accused persons in the commission of the crime. There were documents and evidences that reflected the involvement of the applicant who is the key conspirator and beneficiary from the said scam. Records show that the grounds of

arrest was communicated to the applicant by the ED in writing. Thus, without giving any observation as to whether the statement recorded under Section 50 of the PMLA are admissible in evidence, but their thorough consideration should be reserved for the trial court. It emphasized that at the bail stage, these statements can be examined to ascertain whether there are reasonable grounds to believe that the applicant is not guilty. There is a difference between the admissibility of a statement of an accused recorded under Section 50 of the Prevention of Money Laundering Act (PMLA) and its evidentiary value.

59. In the specific facts and circumstances (where there was prima facie material against the applicant) came to the conclusion that mere possession of proceeds of crime and upholding such proceeds as untainted would be sufficient to invoke the provisions of PMLA, however, the ratio of the said judgment may have the potential to have an unintended fallout in a different set of facts.

60. It is *prima facie* clear that on the one hand, it is claimed that the matter is of a huge economic loss to the State Exchequer and the offence is of highly serious nature and on the other hand, the distillers who are allegedly supplying illegal liquor causing huge financial loss to the State exchequer, have not been made accused despite the fact that their names have been mentioned in the complaint made by the ED as member of the syndicate. It has also been revealed that the assets purchased in the name of entities controlled by the applicant and in the name of his family member during the relevant period were procured out of the proceed of crime. The digital evidence, flow of funds and statements of multiple entities under Section 50 of the PMLA, 2002

collected during the course of investigation clearly establishes the role of the applicant. Undoubtedly, the offence of money- laundering relates to the process or activity connected with the proceeds of the crime including its concealment possession, acquisition etcetra and 'proceeds of crime' would mean any property derived or obtained directly or indirectly as a result of criminal activity relating to scheduled offence. Once Section 120-B is held to be a distinct, independent and stand alone offence and is one of the scheduled offences under PMLA, any property derived or obtained by any person directly or indirectly as a result of criminal activity relating to the offence of conspiracy would come within the definition of 'proceeds of crime'. A fortiori, any process or activity connected with 'proceeds of crime' including its concealment, possession, acquisition etcetra as untainted property, shall come within the purview of offence of money-laundering as defined under Section 3 of PMLA.

61. After going through the records and the rival submissions on behalf of the parties, *prima facie* it appears that in the investigation conducted during the predicate office, the applicant had a key role in the liquor syndicate and was involved in money laundering and proceeds of crime along with other co-accused therefore, the entitlement of the applicant to get bail under PMLA, 2002, is not acceptable and considering the entirety of the matter, this Court is of the opinion that the applicant is unable to satisfy twin conditions for grant of bail under Section 45 of the PMLA, 2002, as such, it is not a fit case for grant of bail to the applicant for the reasons mentioned hereinabove.

62. Accordingly, the prayer for bail made by the applicant under Section 483 of the Bhartiya *Nagrik Suraksha Sanhita,* 2023 ('BNSS') read with Section 45 of the PMLA, for the alleged offence punishable under Sections 3 & 4 of the PMLA, 2002 is hereby rejected.

Sd/-

(Arvind Kumar Verma)

Judge