



2025:CGHC:2385

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**ORDER RESERVED ON 13.12.2024****ORDER DELIVERED ON 15.01.2025****MCRC No. 6369 of 2024**

1 - Roshan Chandrakar S/o Late Sh. Homendra Chandrakar Aged About 44 Years R/o Sandha Chowk, Sanjay Nagar, Kurud, Distt- Dhamtari, Chhattisgarh.

... Applicant**versus**

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

... Respondent(s)

For Applicant	:	Shri Akshat Gupta, Advocate
For Respondent/ED	:	Dr.Saurabh Pandey, Advocate

(HON'BLE SHRI JUSTICE ARVIND KUMAR VERMA)**C A V ORDER**

The applicant has come up before this Court under Section 483 of the *Bhartiya Nagrik Suraksha Sanhita* [BNSS] 2023 read with Section 45 of the PMLA on behalf of the applicant originating from Case File

bearing No. ECIR/RPZO/04/2023 dated 14.10.2023 registered with Enforcement Directorate Office [ED] for the offence punishable under Section 3 read with Section 4 of the Prevention of Money Laundering Act, 2002.

FACTUAL ASPECTS

2. Facts of the case as revealed against the applicant is that he was engaged in the business of rice milling. On 15.05.2024, the applicant was arrested in the ECIR and was remanded to the police custody of the ED on 21.05.2024 to 27.05.2024 and thereafter the applicant has been remanded to judicial custody and now he is incarcerated in judicial custody at Central Jail, Raipur. Earlier, the applicant had filed application seeking regular bail before the learned Special Judge (PMLA) ASJ-04, Raipur and vide order dated 07.08.2024 dismissed the application. On 18.07.2023, a search operation under Section 132 of the IT Act was carried out by the officials of the Income Tax Department at various premises including the residential premises of the applicant as well as at the premises of firms owned and controlled by the family members of the applicant. However, no incriminating documents or material or any cash was recovered during the search. Thereafter on 21.08.2023, the Income Tax Department filed complaint case through the Deputy Director of Income Tax (Inv.)-II Raipur *inter alia* arraying the applicant as accused No.3 for the alleged commission of offences under Section 277 of the IT Act and under Sections 181,191, 193, 196, 200, 383, 384,417,418,420 and 120-B/34 of the IPC. The applicant along

with seven other accused persons have been made accused in the said IT complaint. As per the prosecution, following three criminal cases are pending against him :

1. Income Tax prosecution complaint dated 21.08.2023 under Section 277 of the Income Tax Act and Sections 181,191,193,417 and 418 of IPC.

2. ECIR/RPZO/04/2023 dated 14.10.2023 under Section 3 read with 4 of the PMLA and was arrested on 15.05.2024 and is in judicial custody. Prosecution Complaint filed on 28.06.2024.

3. FIR bearing No. 01/2024 dated 16.01.2024 (PS-ACB/EOW, Raipur) under Sections 120-B and 409 IPC and Section 13(1)(a) and 13 (2) read with Section 11 of the PC Act, 2018.

3. On 20.10.2023, a search under Section 17 of the PMLA was carried out at the resident of the applicant and two rooms were sealed. Thereafter, summons under Section 50 of the PMLA directing his personal appearance on 20.10.2023 itself was issued and since the applicant was not present in the house, certain documents including the search Panchnama, sealing notice and the summons were affixed outside his resident. Likewise twice the summons were affixed outside his resident for his personal appearance on 25.10.2023, 28.10.2023. The applicant filed reply through his advocate pointing out the reasons for his non availability at his residence at the time of search by the ED on 20.10.2023. The applicant requested for providing copy of the ECIR

and the details of the predicate offence on the basis of which it has been registered.

4. Thereafter on 16.01.2024, the ACB/EOW registered an FIR bearing No. 01/2024 for commission of the offence under Sections 120-B and 409 IPC and Section 13 (1) (a) and Section 13(2) read with Section 11 of the Prevention of Corruption Act, 2018 *inter alia* arraigning the applicant as an accused. On 18.02.2024, the competent court took cognizance of some of the offence alleged against the applicant in the IT Complaint. On 19.04.2024, the ED registered an addendum ECIR based on the FIR No. 01/2024 registered by ACB/EOW, which is turn was registered on the ED's complaint letter dated 09.01.2024. summons were issued to the applicant on 30.04.2024 and the applicant appeared before the Investigating Officer on 30.04.2024, his statement was recorded under Section 50 of the PMLA. The applicant was further directed to appear on 08.05.2024 however, he could not appear on the said date and on 10.05.2024, the ED officials came to the resident of the applicant and summons were served for his appearance on 15.05.2024. On 15.05.2024, the applicant appeared before the ED and he was arrested by the ED and produced before the Special PMLA Court and was remanded to ED custody till 21.05.2024 which was further extended till 27.05.2024.

5. After completion of investigation, the ED filed its complaint in the subject ECIR before the learned PMLA Court, arraigning the applicant as accused No.2 on 28.06.2024. The applicant filed a written retraction

before the PMLA court retracting from the statements and preferred application under Section 439 Cr.P.C. read with Section 45 of the PMLA before the learned trial court seeking grant of regular bail in the subject ECIR. However, the bail application for dismissed on 23.07.2024. Hence constrained by the said order of dismissal, the applicant has come before this Court by filing the instant application under Section 483 of the BNSS read with Section 45 of the PMLA seeking bail.

SUBMISSIONS ON BEHALF OF APPLICANT

6. Contention of Shri Gupta, learned counsel for the applicant is that the case pertains to the alleged custom rice milling levy scam. The allegation is that in the year 2022, the Govt. increased the special incentive for custom milling from Rs. 40/- to Rs. 120/- per quintal. It is alleged that the applicant and co-accused conspired with other office bearers of the State as well as District Rice millers association and hatched a plan to collect illegal kickback amount from rice millers. As per prosecution, this alleged conspiracy comprised of three stages:

- i) Stage 1- In December 2021, a meeting was held wherein an unofficial and illegal diktat was given to all the rice millers to pay kick back amounts of Rs. 40/- per quintal for clearance of their bills by MARKFED.
- ii) Stage 2- Bills of only those rice millers who paid kick back amount were forwarded by the DMOs to Manoj Kumar Soni for clearance.
- lii) Stage 3 – The applicant collected the illegal kick back amount.

Thereafter searched were being conducted by the IT Department from December 2022 to July 2023. The total POC is estimated by the prosecution to be R. 147 crores. This amount has been calculated out of the total special incentive amount of Rs. 439.77 crores disbursed between the said period.

7. It is contended by learned counsel for the applicant that the applicant has suffered long period of pretrial custody and the trial has not yet commenced and is not likely to conclude. He has contended that time and again it has been reiterated by the Hon'ble Apex Court that right to speedy trial is a facet of the Fundamental Right to life of an accused under Article 21 of the Constitution of India. He has referred to the decision of the Apex Court in the matter of **Manish Sisodia Vs. CBI and ED (2023) SCC OnLine SC1393** in para 27 as under:

“27. However, we are also concerned about the prolonged period of incarceration suffered by the appellant – Manish Sisodia. In *P. Chidambaram v. Directorate of Enforcement*⁴⁸, 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, kidnaping for ransom, mass violence, etc. Neither is this a case where 100/1000s of depositors have been defrauded. The allegations have to be established and proven. The right to bail in cases of delay, coupled with incarceration for a long period, depending on the nature of the allegations, should be read into Section 439 of the Code and [Section 45](#) of the PML Act. The reason is that the constitutional mandate is the higher law, and it is the basic right of the person charged of an

offence and not convicted, that he be ensured and given a speedy trial. When the trial is not proceeding for reasons not attributable to the accused, the court, unless there are good reasons, may well be guided to exercise the power to grant bail. This would be truer where the trial would take years.”

8. 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 (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.

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.

9. In another decision of the Apex Court, **Prem Prakash Vs. ED vide order dated 28.08.2024 in SLP (Cri.) No. 5416 of 2024** it has been observed as under:

12. Independently and as has been emphatically reiterated in *Manish Sisodia (II)* (supra) relying on *Ramkripal Meena Vs Directorate of Enforcement* (SLP (Cri.) No. 3205 of 2024 dated 30.07.2024) and *Javed Gulab Nabi Shaikh Vs. State of Maharashtra and Another, 2024 SCC online 1693*, where the accused has already been in custody for a considerable number of months and there being no likelihood of conclusion of trial within a short span, the rigours of [Section 45](#) of PMLA can be suitably relaxed to afford conditional liberty. Further, *Manish Sisodia (II)* (supra) reiterated the holding in [Javed Gulam Nabi Sheikh](#) (Supra), that keeping persons behind the bars for unlimited periods of time in the hope of speedy completion of trial would deprive the fundamental right of persons under [Article 21](#) of the Constitution of India and that prolonged incarceration before being pronounced guilty ought not to be permitted to become the punishment without trial. In fact, *Manish Sisodia (II)* (Supra) reiterated the holding in *Manish Sisodia (I) Vs. Directorate of Enforcement* (judgment dated 30.10.2023 in Criminal Appeal No. 3352 of 2023) where it was held as under:-

“28. Detention or jail before being pronounced guilty of an offence should not become punishment without trial. If the trial gets protracted despite assurances of the prosecution, and it is clear that case will not be decided within a foreseeable time, the prayer for bail may be meritorious. While the prosecution may pertain to an economic offence, yet it may not be proper to equate these cases with those punishable with death, imprisonment for life, ten years or more like offences under the Narcotic Drugs and Psychotropic Substances Act, 1985 murder, cases of rape, dacoity, 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.” It is in this background that Section 45 of PMLA needs to be understood and applied. [Article 21](#) being a higher constitutional right, statutory provisions should align themselves to the said higher constitutional edict.

10. He further contended that time and again it has been reiterated by the Apex Court 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 applied irrespective of the nature of the crime. He has referred to the decision of the Apex Court in the matter of **Javed Gulam Nabi Shaikh Vs. State of Maharashtra, 2024 SCC OnLine SC 1693** 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.”

11. He contended that Section 436-A Cr.P.C. should not be construed as a mandate that an accused should not be granted bail under the PMLA till he has suffered incarceration for the specified period of half of the maximum period of imprisonment. The detention or jail before being pronounced the guilty of an offence should not become punishment without trial. As has been held by the Apex Court in the case of **Manish Sisodia 1, (2023) SCC OnLine 1393**. He submits that under the BNSS, Section 479 has further reduced the period of pre-trial incarceration for eligibility of statutory bail to 1/3rd of maximum period of imprisonment for first time offenders. Acknowledging this as a beneficial provision, the Apex Court in Re: Inhuman conditions in 1382 prisons, order dated 23.08.2024 in W.P (C) No. 4062013 has held that Section 479 of the BNSS will have retrospective applicability.

12. It is next contended that time and again it has been reiterate that the 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. The reason is that the constitutional mandate is the higher law and it is the basis right of the person charged of an offence and not convicted, that he be given a speedy trial. When the trial is not

proceeding for the 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 true where the trial would take years. He contended that the applicant was illegally arrested by the ED on 15.05.2024 and has already undergone more than seven and half months of pre-trial incarceration. The investigation qua the applicant stands concluded and the prosecution complaint has been filed by the ED on 28.06.2024. It is trite law that once the investigation qua an accused is complete and charge sheet has been filed, there is no apprehension of violation of triple test. Hence he may be granted bail. He has placed his reliance in the matter of **Kavalakunta Kavita Vs. ED in SLP (Cri.) No. 10778 of 2024**, wherein it has been observed as under:

10. On perusal of the record, we find that in CBI case charge-sheet has been filed and in ED case complaint has been filed. As such, the custody of the appellant herein is not necessary for the purpose of investigation.

11. The appellant has been behind the bars for the last five months. As observed by us in the case of Manish Sisodia (supra), taking into consideration that there are about 493 witnesses to be examined and the documents to be considered are in the range of about 50,000 pages, the likelihood of the trial being concluded in near future is impossible.

12. Relying on the various pronouncements of this Court, we had observed in the case of Manish Sisodia (supra) that the prolonged incarceration before being pronounced guilty of an offence should not be permitted to become punishment without trial.

13. We had also reiterated the well-established principle that "bail is the rule and refusal is an exception". We had further observed that the

fundamental right of liberty provided under Article 21 of the Constitution is superior to the statutory restrictions.

13. Further in the case of **Krishnan Subramanian Vs. State NCT of Delhi, 20-22 SCC OnLine Del 1384**, it has been observed that :

24. A perusal of record shows that charge sheet has already been filed, all materials have been collected by the investigating authorities and the evidence against the applicant is documentary in nature. In the considered opinion of this Court, the applicant is neither a flight risk, nor can there be any propensity on his part to tamper with any evidence or influence any witness inasmuch as the entire domain of evidence is documentary in nature, which exists as it is from the year 2008 onwards, unhindered, and untampered. The applicant is a permanent resident of Delhi and has clean antecedents. He has been languishing in jail since 8th December 2021. In that background considering the charge sheet, first supplementary charge sheet and second supplementary charge sheet as well as the fact that other co-accused persons having been enlarged on bail by the Coordinate Bench which stand confirmed by the Hon^{ble} Supreme Court; and the facts and circumstances and discussion as aforesaid, this Court is inclined to allow the instant bail application seeking regular bail.”

14. It is contended that there are as many as 17 witnesses cited and about 108 documents relied upon by the ED running into 3,433 pages, the investigation against other persons is still going on and cognizance has been taken recently on 5.10.2024 the documents have to be scrutinized before the trial court and as such the trial is not likely to conclude. He contended that the applicant is entitled for grant of bail on

the ground of delay in trial coupled with long pre-trial incarceration despite the alleged gravity of offences. He has referred to the decisions of **Vijay Nair Vs. ED in SLP (Crl.) No. 8439 of 2024; Manish Sisodia 3 (2-24) SCC OnLine SC920; K.Kavitha Vs. ED in SLP (Crl.) NO. 10778 of 2024; Neeraj Singhal Vs. ED in SLP (Crl.) No. 8439 of 2024; Prem Prakash Vs. ED in SLP (Crl.) NO. 5416 of 2024 and Ramkripal Meena Vs.ED in SLP (Crl.) NO. 3205 of 2024.**

15. He contended that it is well settled that the object of bail is neither punitive nor preventative. The primary purpose of bail in a criminal case is to ensure that the accused will submit 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. He referred to the decision of **Manish Sisodia 3 (2024) SCC Online SC920** wherein it has been observed as under:

“54. In the present case, in the ED matter as well as the CBI matter, 493 witnesses have been named. The case involves thousands of pages of documents and over a lakh pages of digitized documents. It is thus clear that there is not even the remotest possibility of the trial being concluded in the near future. In our view, keeping the appellant behind the bars for an unlimited period of time in the hope of speedy completion of trial would deprive his fundamental right to liberty under [Article 21](#) of the Constitution. As observed time and again, the prolonged incarceration before being pronounced guilty of an offence should not be permitted to become

punishment without trial.

55. As observed by this Court in the case of [Gudikanti Narasimhulu](#) (supra), the objective to keep a person in judicial custody pending trial or disposal of an appeal is to secure the attendance of the prisoner at trial.”

16. He further contended that the existence of a scheduled offence is a *sine qua non* for an offence under PMLA to be made out. The IT complaint itself is not maintainable and liable to be dismissed *inter alia* for the reasons that it has been filed by the Deputy Director of Income Tax, who is not the competent statutory authority to file the complaint. He further submits that the entire case against the applicant is based on extortion and the trial court after considering all the allegations and material on record, did not find any offence under Sections 200/383/384/420/120-B/34 IPC were made out and as such did not take cognizance of these offences. The fact that no cognizance of the alleged offence under Sections 383/384 has been taken which clearly shows that no extortion has been committed in the instant case. Similarly, cognizance of the offence of cheating under Section 420 and 120-B IPC shows that offence of cheating and conspiracy has been committed. He contended that in the FIR by the ACB, the offence of Section 384 IPC was not included at the time of registration of the FIR and was only added later on. Section 409 is not a scheduled offence. Section 120-B IPC cannot be a scheduled offence when it is not linked to another scheduled offence. He has referred to the decision of **Pavana Dibbur Vs. ED 2023 SCC OnLine SC1568**. Further the offence under Section

11 and 13 of the PC Act relates to the public servants and the applicant is not a public servant therefore there is no scheduled offence against the applicant.

17. Next contention of Shri Gupta, learned counsel for the applicant is that a sinister plan to collect illegal kickback amount was allegedly hatched by the applicant and co-accused Manoj Kumar Soni in conspiracy with other office bearers of the State as well as District rice millers association however, they have not been implicated. He contended that the unaccounted money of Rs. 47.60 lacs has been made from the possession of one Manoj Agrawal and Rs. 7.30 lacs from one Sunil Ubhrani however they have not been implicated. Similarly the recovery of diary from the person, wherein the list of collection of extortion money was being done have not been implicated. He has contended that it is a clear case of pick and choose, which is impermissible under the law. He has referred to the decision of **Sanjay Jain Vs. ED (2024) SCC OnLine Del 1656**, in which it has been held that :

“95. There is merit in the contention of the learned Senior Counsel for the petitioner that non-arrest of co-accused is a relevant factor which can be taken into account in addition to other surrounding factors to grant the concession of bail to the petitioner. Reference in this regard may be had to the judgment of this Court in [Dr. Bindu Rana vs. Serious Fraud Investigation Office](#) in BAIL APPLN. 3643/2022 dated 20.01.2023, wherein it was held as under:

—45. The fact is that the complaint has

been filed by the SFIO without feeling the need of any custody of the 53 out of 55 accused persons. The main accused even as per the SFIO has not been arrested, being protected by the order passed by this Court in Writ Petition (Criminal) No. 1242 of 2022. The said writ petition was filed by accused namely Vinod Kumar Dandona' and others including the main accused _Shantanu Prakash' seeking quashing of the order dated 17.08.2018 passed by the MCA under [Section 212\(1\)\(c\)](#) of the Companies Act, which led to the start of investigation into the affairs of ESL.

46. The coordinate bench of this court, considering the facts of the case, by its order dated 26.05.2022, had directed SFIO not to take any coercive steps against the petitioners therein, which includes the main accused Shantanu Prakash'.

47. From the perusal of the complaint, it is apparent that even in relation to the charges which are alleged against the present applicant, there are various other accused persons who have been named as co-accused. The role assigned to them at this stage is no different than the Applicant. However, surprisingly the SFIO did not feel any need or ground to arrest

those co-accused persons and proceeded to file the complaint praying the learned Special Court to take cognizance of the offences.

96. Similarly in *Ramesh Manglani vs. ED*, 2023 SCC OnLine Del 3234, this Court has held as under:-

—56. Insofar as the ED not having arrested similarly placed co-accused persons; and not even having arraigned some other persons evidently connected with the offending transactions as accused in the prosecution complaint, though these aspects would not be dispositive of a bail plea one way or the other, they are also not wholly irrelevant and the „doctrine of parity“ is not immaterial. As held by this court in *Ashish Mittal (supra)* considering the nature of the offence, where the gravamen of the offence is that several persons acting in concert have siphoned-off and laundered' monies, it is manifestly arbitrary for the ED to have made selective arrests and arraignments. It has also been brought to the notice of this court that Sanjay Godhwani, who may be viewed as one of the main accused in this case, has been granted bail by the learned trial court vide order dated 09.05.2023 in Bail Application No. 688/2023 —... on merits as well as on medical grounds...ll. This circumstance must also weigh in favour of the petitioner being granted bail, considering that his role in the allegedly offending transactions is evidently far more peripheral than that of co-accused, Sanjay Godhwani. (emphasis supplied)

97. This being the position, the petitioner is also entitled to the benefit of the fact that the main accused, as well as, some other accused have not been arrested and bail has already been granted to other co-accused.”

18. It has been further contended that there is *prima facie* no evidence against the applicant that he was running an extortion racket and has received huge amounts of extortion money and there is no substantive evidence against the applicant. There is no change in special incentive amount of Rs. 120/- even after the alleged scam has come to light. He contended that there is allegations against the applicant that he received about Rs. 19.39 crores of extortion money out of Rs. 147 crores but despite the allegation, there is no recovery of any such huge amount in cash, jewellery or property. In such a case, the no recovery of unaccounted cash is very relevant factor and this *prima facie* shows a strong possibility of falsity of the case against the applicant. He contended that the recovery of unaccounted money which is a meagre amount of Rs. 47.60 lacs which was recovered from the office bearers ie. Manoj Agrawal and Sunil Ubhrani of Rajnandgaon District Association who are the conspirators but no proceedings have been initiated against them.

19. It is contended that from perusal of the statements of the rice millers and other individuals whose statements are being relied upon by the ED shows that these persons have been tutored by the ED to give identical statements. The documents seized during investigation failed

to disclose any connection of the applicant with the alleged scheme. There is nothing recorded in the diary to show that the said money, after having been received from rice millers was handed over to the applicant and the unaccounted money recovered by the ED was from the possession of two rice millers-Manoj Agrawal and Sunil Ubhrani. He contended that there was a conspiracy hatched by some of the office bearers of State Rice Millers Associations to make the applicant a scape goat in their plan. He submits that it is a settled law that mere diary entries cannot be read into evidence and the same are inadmissible in law, especially without independent evidence of their trustworthiness. He has referred to the decision of the Apex Court in the matter of **Central Bureau of Investigation Vs. V.C.Shukla, 1998 (3) SCC 410**, wherein it has been observed as under:

“32. Now that we have found (in disagreement with the High Court) that entries in MR 71/91 would be admissible under [Section 34](#) of the Act we have to next ascertain their probative value. Mr. Altaf Ahmed took great pains to decode and analyses the entries in the above book and, correlating them with the entries in the other three books and in some of the loose sheets found in the files, submitted that the intrinsic evidence furnished by their internal corroboration and inter-dependence unmistakably demonstrated their authenticity and trustworthiness. According to Mr. Altaf Ahmed the entries reflect such periodicity and regularity as was compatible with the modus operandi of the business of Jain brothers of corrupting public servant including Members of Parliament and Ministers in order to influence their decisions and seek their favours for promotion of their (Jain brothers') economic interests. Besides,

he submitted, the external independent corroboration of those entries as required under Section 34 was also available to the prosecution from the statements made by Shri Jacob Mathai, Danial P. Rambal and P. Ghoshal and Ejaj Ilmi during investigation, in that, they have admitted receipts of the payments as shown against them in MR. 71/91. While on this point, he made a particular reference to those entries in MR 71/91 Which, according to him m if corresponded with the entries in the other books and the enclose sheets would prove the payments to Shri Advani and Shri Shukla. As regard s the proof of authorship of the entries he drew our attention to the statements of Pawan Jain , A. V. Pathak and D.K. Guha who have stated that the entries were made by J. K. Jain and that the Jain Brothers had put their signatures against some of these entries in token of verification thereof. He also drew our attention to the written opinion given by the hand writing expert in this regard.

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39. A conspectus of the above decisions makes it evident that even correct and authentic entries in books of account cannot without independent evidence of their trustworthiness, fix a liability upon a person. Keeping in view the above principles, even if we proceed on the assumption that the entries made in MR 71/91 are correct and the entries in the other books and loose sheets which we have already found to be not admissible in evidence under Section 34) are admissible under [Section 9](#) of the Act to support an inference about the formers' correctness still those entries would not be sufficient to charge Shri Advani and Shri Shukla with the accusations levelled against them for there is not an iota of independent evidence in support thereof. In that view of the matter we need not discuss, delve into or decide upon the contention raised by Mr. Altaf Ahmed in

this regard. Suffice it to say that the statements of the for witnesses, who have admitted receipts of the payments as shown against them in MR 71/91, can at best be proof of reliability of the entries so far they are concerned and not others. In other words, the statements of the above witnesses cannot be independent evidence under Section 34 as against the above two respondents. So far as Shri Advani is concerned Section 34 would not come in aid of the prosecution for another reason also. According to the prosecution case itself his name finds place only in one of the loose sheets (sheet No. 8) and not in MR 71/91. Resultantly, in view of our earlier discussion, section 34 cannot at all be pressed into service against him.”

20. Similarly, in the matter of **L.K.Advani Vs. Central Bureau of Investigation, Cr.Rv. Petition No. 265 of 1996** and **Common Cause Vs.Union of India (1998) 3 SCC 410**, it has been observed as under:

26. In his statements under Section 50 of PMLA dated 06.12.2021 and 07.12.2021, Subhash Agarwal corroborated the fact that he arranged accommodation entries for the applicant and that 06 Kolkata based shell entities did not have any actual business but were involved in sale and purchase of unquoted shares and were essentially paper companies used for laundering POC generated from illegal coal mining. Rabin Kalai in his statement under Section 50 admitted that the ledger entries written by him were on direction of Anup Majee and Bamapada Dey and all of them were related to illegal coal collection and payments. Sanu Mallick in his statement under Section 50 of PMLA stated that he prepared debit/credit/payment vouchers and made entries in them on directions of Bamapada Dey and Rabin Kalai, who used to later verify them. Bamapada Dey in his statement admitted that he knew the applicant as a partner of Anup

Majee and was the one who came to his office for money collection. In his statement under Section 50 of PMLA, Anup Majee admitted that Joydeb Mondal, Naran Nanda and applicant were partners with him in coal business and collectively received money. During confrontation of the applicant with Subhash Agarwal and Sudhir Kumar Jhunjunwala on 01.06.2022, it was revealed that Subhash Agarwal received Rs.26 crores during 2016-2019 on behalf of the applicant for acquiring 13 companies through accommodation entries. In light of the evidence on record, this Court will be unable to come to a satisfaction that there are reasonable grounds for believing that applicant is not guilty of the offence. Statements under Section 50 of PMLA can be considered by the Court at the stage of bail in view of the law [laid down by](#) the Supreme Court in [Rohit Tandon v. Directorate of Enforcement](#), (2018) 11 SCC 46; [Vijay Madanlal Choudhary](#) (supra); and [Satyendar Kumar Jain](#) (supra).

27. With regard to the admissibility of ledgers, loose pages, etc., applicant relies heavily on the judgment in [V.C. Shukla](#) (supra), however, the decision is not applicable to the present case. Complete records seized by the Income Tax Department are part of relied upon documents of the ED. Section 34 of the 1872 Act will not be attracted in view of the presumption in law under [Section 22](#) of PMLA, which provides that where any record or property is found in the possession or control of any person, it shall be presumed that such record or property belongs to such person and the contents are true and in the handwriting of the said person. Rabin Kalai in his statement dated 12.08.2021 acknowledges his handwriting on the ledgers and the vouchers are acknowledged by Sanu Mallick in his statements on 30.09.2021 and 01.10.2021 and there is thus sufficient corroboration of the documents by oral statements.”

21. Next contention of the learned counsel for the applicant is that the applicant fulfills the triple test. The entire material is documentary and is in the custody of the Court. The applicant does not have the propensity to evade the process of law and no such allegation has been made against the applicant seeking police/judicial custody. He contended that in catena of judgments including the recent one of **P.Chidambaram Vs. CBI 2020 13 SCC 337**, that while dealing with the bail application it is not in dispute that 'three factors' or the 'triple test' must be seen /satisfied viz. (I) flight risk; (ii) likelihood of tampering with evidence and (iii) likelihood of influencing witnesses. Pertinently all the three facts are satisfied by the applicant and as such the applicant may be granted bail.

22. The documents have already been seized by the IT department and the copy of the ECIR and the details of predicate offence on the basis of which the ECIR had been registered and summons have been issued to the applicant to which he is cooperating and therefore, as per settled law that mere cooperation of a witness in response to the summons issued under Section 50 of the Act of 2022 would not be enough to render him/her liable to be arrested under Section 19 of the Act and has referred to the decision of the Apex Court in the matter of **Pankaj Bansal Vs. Union of India & Others, 2023 SCC OnLine SC 1244**, in which it has been held as under:

“29. In this regard, we may note that [Article 22\(1\)](#) of the Constitution WP (Crl.) No. 2465 of 2017, decided

on 01.12.2017 = 2017 SCC OnLine Del 12108 2017 Cri LJ (NOC 301) 89 = 2017 (1) AIR Bom R (Cri) 929 provides, inter alia, that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest. This being the fundamental right guaranteed to the arrested person, the mode of conveying information of the grounds of arrest must necessarily be meaningful so as to serve the intended purpose. It may be noted that [Section 45](#) of the Act of 2002 enables the person arrested under [Section 19](#) thereof to seek release on bail but it postulates that unless the twin conditions prescribed thereunder are satisfied, such a person would not be entitled to grant of bail. The twin conditions set out in the provision are that, firstly, the Court must be satisfied, after giving an opportunity to the public prosecutor to oppose the application for release, that there are reasonable grounds to believe that the arrested person is not guilty of the offence and, secondly, that he is not likely to commit any offence while on bail. To meet this requirement, it would be essential for the arrested person to be aware of the grounds on which the authorized officer arrested him/her under [Section 19](#) and the basis for the officer's 'reason to believe' that he/she is guilty of an offence punishable under the Act of 2002. It is only if the arrested person has knowledge of these facts that he/she would be in a position to plead and prove before the Special Court that there are grounds to believe that he/she is not guilty of such offence, so as to avail the relief of bail. Therefore, communication of the grounds of arrest, as mandated by [Article 22\(1\)](#) of the Constitution and [Section 19](#) of the Act of 2002, is meant to serve this higher purpose and must be given due importance.

23. Contention of the learned counsel for the applicant is that the applicant is a businessman and is engaged in the business of rice milling and he is not a flight risk. There is no likelihood of tampering with

evidence or influencing the witnesses. Another paramount consideration for grant of bail is that there is no likelihood of the applicant to tamper with the evidence. He submits that the investigation is concluded and the prosecution complaint has been filed. The allegation that the applicant is intimidating the witnesses in a predicate offence is baseless. Even otherwise, statement of one Ms. Pritika Pooja Kerketta is an extremely weak type of evidence and cannot be treated as substantive evidence against the accused. He has placed his reliance upon the decision of the Apex Court in **Prem Prakash Vs. ED in SLP (Cri.) Bo. 5416 Of 2024** , it has been held as under:

“37. Being a co-accused with the appellant, his statement against the appellant assuming there is anything incriminating against the present appellant will not have the character of substantive evidence. The prosecution cannot start with such a statement to establish its case. We hold that, in such a situation, the law laid down under [Section 30](#) of the Evidence Act by this Court while dealing with the confession of the co-accused will continue to apply.”

24. In the matter of **Haricharan Kurmi Vs. State of Bihar** reported in **AIR 1964 SC1184**, it has been held as under:

“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 Section 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. It must 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.

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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.

25. He further contended that the only material which the ED has placed was relying upon the statement recorded under Section 50 of the PMLA apart from the inadmissible diary entries. It is settled law that the same cannot be considered at this stage of bail in as much as no opportunity to cross-examine is given to the applicant. He has placed his reliance in the matter of **Paras Mal Lodha Vs. Directorate of Enforcement (2017) SCC OnLine Del 8676; Chandra Prakash Khandelwal Vs. Directorate of Enforcement 20223 SCC OnLine Del 1094** and **Sanjay Jain Vs. Directorate of Enforcement, 2024 SCC OnLine Del 1656**. In **Sanjay Jain (supra)**, it has been held that :

“62. Thus, the confessional statement of a co-accused under Section 50 fo the PMLA is not a substantive pice of evidence and can ben used only for the purpose of corroboration in support of other evidence to lend assurance to the Court in arriving a to a conclusion of guilt.”

26. Learned counsel for the applicant contended that *prima facie* the applicant is not guilty of the offence of money laundering and the entire case is circumstantial. He submits that the entire case is based upon the

allegations of extortion and illegal collection of money *inter alia* from the rice millers which is unfounded and baseless. He submits that while the allegations of paying bribes have been made in the FIR, no proceedings under Section 8 of the Prevention of Corruption Act have been initiated against the persons who have allegedly paid bribe/commission in the instant case. He contended that all those persons who have been alleged to have paid the commission to the applicant ought to have been made an accused as per the allegations of the ED and the ACB/EOW. Further it has been contended that the investigation which has been done is unfair, malicious, selective, prejudicial and in a pick and choose manner. All the accused persons namely Kailash Rungta, , Parasmal Chopra, Santosh Agrawal, Amit Agrawal, Prashant Agrawal, Mnoj Soni, and Pritika Pooja Kerkett and others ought to have been made accused as per the case of the ED. Lastly, he submits that the applicant has been suffering from various ailments ie. high blood pressure, diabetes, fatty liver and reduced kidney functioning due to high levels of creatinine. During remand to ED custody the applicant was medically examined and had been referred to Medical College, Raipur where his blood pressure was found high and the blood sugar level was recorded to be over 440 mg/dl. He submits that since the applicant is suffering from health issues, he is a sick person under the proviso to Section 45 of the PMLA and therefore he is entitled to the benefit of the proviso. He submits that without prejudice, even as per ED's case, only Rs. 47.5 lacs of cash money was used to purchase the

immovable properties which is a small amount compared to the alleged Rs. 19.39 crores of cash money alleged to have been flown to the applicant. In connection with the CDRs of the applicant, it is submitted that as per settled law, CDRs can only be used as supporting or corroborative piece of evidence and the evidentiary value of the CDRs can be seen only at the time of trial and not at the stage of consideration of bail. Since there is no substantive evidence against the applicant, even if the CDRs are taken to be true, do not corroborate. He has placed his reliance in the matter of **State (by NCB) Bengaluru Vs. Pallulabid Ahmad Arimuttu & another, (2022) 12 SCC 633, Israil Vs. State of NCT of Delhi, 2024 SCC Online Del 1903**, it has been held that:

“24. Although considerable arguments have been made by Mr Singhal, on the aspect of CDRs' of the petitioner, the same are not being adverted to at this stage. Suffice to say that the CDR's of the petitioner can only be used as supporting or corroborative piece of evidence and cannot form the sole basis of conviction. 2 Likewise, the evidentiary value of the CDRs can be seen only at the time of trial and not at the stage of considering the bail application. Reference may advantageously be had to the decision of the Supreme Court in State (By NCB) Bengaluru v. Pallulabid Ahmad Arimutta 3 , the relevant paragraph of which reads as under:-

"12. ...The CDR details of some of the accused or the allegations of tampering of evidence on the part of one of the respondents is an aspect that will be examined at the stage trial."

27. In the matter of **Azad Vs. State of GNCT of Delhi and Another, 2023 SCC OnLine Del 1769** wherein it has been held that :

44. The other connecting evidence against the accused persons are the recoveries effected from them in pursuant to their disclosure statements. As already noted in para no. 4 of this order, that part of robbed cash amount, both cheque books, two stamps of complainant's firm and one photocopy of Aadhar Card of his wife were recovered from the possession of the accused persons. The accused have failed to explain as to how the stamps, cheque books and photocopy of Aadhar Card of complainant's wife came into their possession which are his (PW-1) personal/private property over which no one else can have access. Not even a suggestion has been put to the witnesses to confront the recoveries effected from the accused persons. The cash recovered from the accused persons have already been released on superdari in favour of PW1 vide order dated 17.07.2017 passed by Ld.MM. The argument of defence counsels that no independent witness has joined the proceedings is without any force as these days no public person CRL.A. 593/2022, CRL.A. 354/2022 & CRL.A. 367/2022 Page 14 Neutral Citation Number: 2023:DHC:2166 wants to join the police or court proceedings may be due to apprehension that they themselves might not get entangled in any criminal case in future.”

28. To this, Shri Pandey, learned counsel for the respondent/Ed submits that an ECIR bearing No. RPZO/04/2023 was recorded on the basis of a prosecution complaint dated 21.08.2023 filed by the Income Tax Department before the Chief Judicial Magistrate, Raipur wherein it

is alleged that Kailesh Rungta, Paras Mal Chopra and the present applicant who are President, Vice President and Treasurer respectively of Chhattisgarh State Rice Millers Association along with co-accused Manoj Soni, the then Managing Director of the CG State Marketing Federation Ltd., Ms. Pritika Pooja Kerketta, DMO, Korba and others have conspired and illegally collected cash from rice millers in the State of CG for clearing their bills at the rate of Rs. 20/- per instalment for each quintal of paddy milled and had committed the offences under Sections 120-B, 384, 417, 418 and 420 IPC. These offences are invoked in the prosecution complaint filed by the IT department and are scheduled offences under PMLA, 2002 and investigation was initiated by recording ECIR/RPZO/04/2023 dated 14.10.2023.

29. During investigation, the ACB/EOW had lodged FIR No.01/2024 dated 16.01.2024 against the applicant and other co-accused persons under sections 120-b and 409 of IPC and 11 and 13 of the Prevention of Corruption Act, 1988. Later on, the ACB had added Section 384 IPC in their ongoing investigation in the aforesaid FIR No. 01/2024 which is also a scheduled offence under the PMLA Act. The instant ECIR was recorded on the basis of said prosecution complaint filed against the applicant for the commission of the offence of money laundering as defined under Section 3 and punishable under Section 4 of the PMLA, 2002.

30. The applicant, the then Treasurer of CG State Rice Millers Association, in active collusion and assistance had come up with a plan to collect extortion amounts illegally @ Rs. 20/- per quintal of paddy and accordingly, issued instructions to the office bearers of all the district rice millers associations and rice millers in the State. From the Investigation, it was revealed that the applicant with the assistance of co-accused Manoj Soni used to keep the bills of rice millers who did not pay the amount pending, got inspection conducted by the Food Department at the premises of those rice millers who denied to pay the extortion amounts. The applicant had collected the amount from the office bearers of District Rice Millers association and sometimes from the rice millers directly. In the investigation, it has also been revealed that the applicant along with co-accused Manoj Soni forbade one Ms. Pritika Pooja Kerketta, the then DMO, Korba to join the investigation and asked her to go absconding and she was financially assisted by him. It has been further revealed in the investigation that the list of Rice Millers who paid extortion amount to the applicant and then then two DMOs, ie. Gajendra Rathore and Smt Priyanka Dewangan. A whatsapp chat was also forwarded to them.

31. Shri Pandey, contended that from the investigation, it has been revealed that the applicant had acquired the proceeds of crime by extorting the rice millers and utilized them for acquiring properties in his name and in the name of his family members, which constitute offence

of money laundering under Section 3 of the PMLA 2002 and punishable under Section 4 of the PMLA, 2002.

32. Further contention of Shri Pandey, learned counsel for the respondent is that during investigation, multiple summons were issued to the applicant under Section 50 of the PMLA however, he remained absconding and did not join the investigation which is a complete disregard to law of the land. It is further contended that since ECIR is not a legal document and merely an internal departmental document, as such the accused persons are not entitled to get a copy of ECIR. It is contended that the the ECIR is legally mandated under PMLA to share information about any offence surfaced during its investigation with such authority who are competent to investigate the offence. Keeping in view this mandate of PMLA, information was shared with the Chhattisgarh Police under Section 66 of the PMLA about commission of offence of extortion from rice millers committed by the applicant and other co-accused persons. It is evidence from the FIR itself that the police had registered the case only after conducting its due diligence and verification of the information shared by the ED. He submits that since the investigation in the FIR lodged by EOW, Raipur is still going on, at this juncture, when the charge sheet has not been filed, the applicant may not be granted bail.

33. Next contention of the learned counsel for the respondent is that since the ECIR is not a statutory document but only an internal

document which was amended so that newly registered FIR by ACB/EOW may be incorporated in the ongoing investigation under PMLA. Further re registration of FIR has been made in compliance of the provisions of law. This was duly upheld by the Apex Court in **Vijay Madanlal Choudhary Vs. Union of India SLP (Cri.) NO. 4634/2014**, wherein it has been held as under:

60. As a matter of fact, prior to amendment of 2015, the first proviso acted as an impediment for taking such urgent measure even by the authorized officer, who is no less than the rank of Deputy Director. We must hasten to add that the nuanced distinction must be kept in mind that to initiate “prosecution” for offence under [Section 3](#) of the Act registration of scheduled offence is a prerequisite, but for initiating action of “provisional attachment” under [Section 5](#) there need not be a pre-registered criminal case in connection with scheduled offence. This is because the machinery provisions cannot be construed in a manner which would eventually frustrate the proceedings under the 2002 Act. Such dispensation alone can secure the proceeds of crime including prevent and regulate the commission of offence of money-laundering. The authorized officer would, thus, be expected to and, also in a given case, justified in acting with utmost speed to ensure that the proceeds of crime/property is available for being proceeded with appropriately under the 2002 Act so as not to frustrate any proceedings envisaged by the 2002 Act. In case the scheduled offence is not already registered by the jurisdictional police or complaint filed before the Magistrate, it is open to the authorized officer to still proceed under [Section 5](#) of the 2002 Act whilst contemporaneously sending information to the jurisdictional police under [Section 66\(2\)](#) of the

2002 Act for registering FIR in respect of cognizable offence or report regarding non-cognizable offence and if the jurisdictional police fails to respond appropriately to such information, the authorized officer under the 2002 Act can take recourse to appropriate remedy, as may be permissible in law to ensure that the culprits do not go unpunished and the proceeds of crime are secured and dealt with as per the dispensation provided for in the 2002 Act. Suffice it to observe that the amendment effected in 2015 in the second proviso has reasonable nexus with the object sought to be achieved by the 2002 Act.

34. He further contended that it has been clearly held that as Section 45 of the PMLA uses a generic expression "Bail" without any specific reference to any kind of bail, no exception can be made with respect of applicability of the rigors of Section 45 to the different kinds of bail. It has been observed in **Vijay Madanlal (supra)** as under:

137. Another incidental issue that had been raised is about the non- application of rigors of [Section 45](#) of the 2002 Act in respect of anticipatory bail filed under Section 438 of the 1973 Code. This submission presumably is linked to the observation in paragraph 42 in the case of Nimesh Tarachand Shah⁶⁴³. Similar argument was considered in The Asst. [Director Enforcement Directorate vs. Dr. V.C. Mohan](#) ⁶⁴⁴. We are in agreement with the observation in this decision that it is one thing to say that [Section 45](#) of the 2002 Act refers to a scheduled offence under the general law, but, as noted earlier, the offence under this Act in terms of [Section 3](#) is specific to involvement in any process or activity connected with the proceeds of crime which is generated as a result of criminal activity relating to a scheduled offence. It is also true that

[Section 45](#) does not make specific reference to Section 438 of the 1973 Code, but it cannot be overlooked that sub-section (1) opens with a non-obstante clause and 643 Supra at Footnote No.3 644 Criminal Appeal No.21 of 2022, decided on 4.1.2022 clearly provides that anything contained in the 1973 Code (2 of 1974), no person accused of an offence under this Act shall be released on bail or on his own bond, unless the stipulations provided therein are fulfilled. On account of the non-obstante clause in [Section 45\(1\)](#) of the 2002 Act, the sweep of that provision must prevail in terms of [Section 71](#) of the 2002 Act. Further, the expression “anticipatory bail” is not used either in the 1973 Code or the 2002 Act. The relief granted in terms of Section 438 of the 1973 Code is one of directing release of the person on “bail” in case of his arrest; and such a relief has been described in judicial pronouncements as anticipatory bail. [Section 45\(1\)](#) uses generic expression “bail” without reference to any provision of the 1973 Code, such as Sections 437, 438 and 439 of the 1973 Code. Concededly, [Section 65](#) of the 2002 Act states that the provisions of the 1973 Code shall apply to the provisions under the Act insofar as they are not inconsistent with the provisions of the 2002 Act. Further, [Section 71](#) of the Act gives overriding effect to the Act. [Section 45](#) of the Act begins with a non-obstante clause, thus excluding the application of the 1973 Code in matters related to “bail”.

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141. As a result, we have no hesitation in observing that in whatever form the relief is couched including the nature of proceedings, be it under Section 438 of the 1973 Code or for that matter, by invoking the jurisdiction of the Constitutional Court, the underlying principles and rigors of [Section 45](#) of the 2002 must come into play and without exception ought to be reckoned to uphold the objectives of the 2002 Act, which is a special legislation providing for stringent regulatory measures for combating the menace of money- laundering.”

35. It is next contended that the economic offences constitute a class apart and need to be visited with different approach therefore in **Y.S.Jagan Mohan Reddy Vs. CBI (2013) 7 SCC 439**, the Apex Court 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 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.”

36. In yet another decision of the Apex Court ie. **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.

36. It is further contended that all the statements of the applicant were recorded in video surveillance without any threat, inducement or coercion to the applicant by the department and all the statements tendered by the applicant were voluntary in nature. The statement of

the applicant was recorded in english language upon his request and before signing the statements he read the same. It is submitted that while his statement was recorded under Section 50 of the PMLA, 2002, on certain dates, he did not objected and had duly signed the statements. When the statements were recorded, the applicant was vague and evasive in his answers therefore in terms of Section 19, the accused was placed under arrest for his involvement in the offence of money laundering and his non-cooperative behaviour through out the investigation.

37. Shri Pandey, learned counsel for the respondent/Ed in reply to the submission of the learned counsel for the applicant that the applicant has been suffering from various ailments and is a sick person under the proviso to Section 45 of the PMLA and therefore he is entitled to the benefit of the proviso, contended that regular medical check up of the accused was conducted during his period of custody and medication was also provide to him as prescribed by the doctor. It thus clearly demonstrates that frivolous allegations have been leveled by the applicant against the ED.

38. It is contended that the action of search under PMLA is merely a tool for investigation and is one of many such tools granted to ED by the Act which are employed to collect evidences during investigation. The possibility of parking the proceeds of crime at a secret place through layering cannot be denied. The applications filed by the applicant to

retract the statements recorded are nothing but a deceptive tactic being employed by the applicant without any evidence to create some sort of defence for himself. The applicant had filed application under Section 439 Cr.P.C. read with Section 45 of the PMLA before the learned trial court seeking grant of regular bail in the subject ECIR. Learned trial court dismissed the bail application which clearly established the role of the applicant in the offence of money laundering. Since the applicant has failed to satisfy the twin conditions as per Section 45 of the PMLS the learned PMLA Court has rightly rejected his bail application.

39. It is contended that the economic crimes are serious offences and have deep rooted conspiracies which had affected the fibre of country's economic structure. These are committed with tool calculation and deliberate design with an eye on personal profit regardless of the consequence of the community. It has serious repercussion on the development of the country as a whole and thereby posing serious threat to the financial health of the country. That is why the legislature has enacted special condition under PMLA to grant of bail in addition to the provision under Cr.P.C. Even the Article 21 of the Constitution allows for curtailing the right of citizen as per provision of law. A person is eligible to be released on bail under the PMLA only if such person satisfies the twin conditions prescribed under Section 45 of the PMLA. It is submitted that the applicant herein has not at all gone through any prolonged incarceration and neither is the trial delayed. Since there are only two accused in prosecution complaint filed before the Court and

both the accused are in judicial custody, the trial is likely to commence very soon and reach finality within a reasonable time. He contended that the conduct of the applicant towards the investigation and legal procedures must be taken into account for consideration of the bail application. The applicant has not only remained absconding for a long time and evaded multiple summons issued to him under Section 50 of the PMLA but also influenced Ms. Pritika Pooja Kerketta, the then DMO to not join the investigation as he knew that her statement would implicate the applicant in the offence of money laundering. The Apex Court in the case of **Gautam Kundu Vs. Directorate of Enforcement (2015) 16 SC 1**, while dealing with the provisions of bail under Section 45 of the PMLA held as under:

8. Before dealing with the application for bail on merit, it is to be considered whether the provisions of Section 45 of the PMLA are binding on the High Court while considering the application for bail under [Section 439](#) of the Code of Criminal Procedure. There is no doubt that PMLA deals with the offence of money laundering and the Parliament has enacted this law as per commitment of the country to the United Nations General Assembly. PMLA is a special statute enacted by the Parliament for dealing with money laundering. [Section 5](#) of the Code of Criminal Procedure, 1973 clearly lays down that the provisions of the [Code of Criminal Procedure](#) will not affect any special statute or any local law. In other words, the provisions of any special statute will prevail over the general provisions of the [Code of Criminal Procedure](#) in case of any conflict.

29. Section 45 of the PMLA starts with a non obstante clause which indicates that the provisions [laid down in](#) Section 45 of the PMLA will have overriding effect on the general provisions of the [Code of Criminal Procedure](#) in case of conflict between them. Section 45 of the PMLA imposes following two conditions for grant of bail to any person accused of an offence punishable for a term of imprisonment of more than three years under Part-A of the Schedule of the PMLA: (i) That the prosecutor must be given an opportunity to oppose the application for bail; and (ii) That the Court must be satisfied that there are reasonable grounds for believing that the accused person is not guilty of such offence and that he is not likely to commit any offence while on bail.

30. The conditions specified under Section 45 of the PMLA are mandatory and needs to be complied with which is further strengthened by the provisions of Section 65 and also Section 71 of the PMLA. Section 65 requires that the provisions of [Cr.P.C.](#) shall apply in so far as they are not inconsistent with the provisions of this Act and Section 71 provides that the provisions of the PMLA shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. PMLA has an overriding effect and the provisions of [Cr.P.C.](#) would apply only if they are not inconsistent with the provisions of this Act. Therefore, the conditions enumerated in Section 45 of PMLA will have to be complied with even in respect of an application for bail made under [Section 439](#) of Cr.P.C. That coupled with the provisions of [Section 24](#) provides that unless the contrary is proved, the Authority or the Court shall presume that proceeds of crime are involved in money laundering and the burden to prove that the proceeds of crime are not involved, lies on the appellant.”

40. From perusal of the Section 45 of PMLA, 2002, it is inferred that the legislature imposed two twin conditions for grant of bail.

a) that there should be reasonable grounds for believing that he is not guilty of such offence and

(b) that he is not likely to commit any offence while on bail.

41. In the light of the above, it is noteworthy that the charges have been framed in the PMLA case which primarily dissatisfies the condition that there are reasonable grounds of believing that the accused is not guilty of the offence of money laundering. It is further submitted that the applicant has to be looked into from the prism of the twin conditions laid down in the statute itself under Section 45 of the PMLA, 2002. It even stands substantiated by the ruling of the Apex Court in **Vijay Madanlal Choudhary Vs. Union of India SLP (Crl.) No. 4634 of 2014**, which is reproduced as under:

133. This Court has been restating this position in several decisions, including Gautam Kundu⁶³⁹ and Amit Kumar⁶⁴⁰. Thus, while considering the application for bail under [Section 45](#) of the 2002 Act, the Court should keep in mind the abovementioned principles governing the grant of bail. The limitations on granting bail as 638 Supra at [Footnote No.255](#) 639 Supra at [Footnote No.207](#) 640 Supra at Footnote No.258 prescribed under [Section 45](#) of the 2002 Act are in addition to the limitations under the 1973 Code.”

42. Further 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.”

43. Similarly, in the matter of **Abdul Gafoor @ Kunhumon Vs. Assistant Director, Directorate of Enforcement in bail application No. 2840 of 2022 decided by the High Court of Kerala on 27.05.2022**, has ordered as follows:

“ I have no hesitation to hold that the twin conditions as amended in Section 45(1) in 2018 have now become referable and reliable to the offences punishable under PMLA and an accused charged with an offence under the Act still has to satisfy the rigours of those conditions notwithstanding the judgment of the Apex Court in Nikes Shah (supra).

The bail application accordingly, stands dismissed.”

44. The submission of the learned counsel for the applicant that till date POC worth Rs. 19 crores out of total 147 crores has been attached till date to which it is submitted by Shri Pandey that the investigation for tracing as well as role of other persons involved in the said offence is going on. It is submitted that the applicant is the key conspirator and beneficiary of this scam and his examination may be required during further investigation. Further it is submitted that the applicant has cited the case of **Sanjay Chandra Vs. CBI (supra)** which is not applicable in

the case of the applicant because in the instant case, the applicant has history of destroying the evidence and influencing the witnesses. The High Court of Chhattisgarh in the matter of **Alok Agrawal Vs. Directorate of Enforcement bearing M.Cr.C. No. 6533 of 2019 decided on 03.01.2021** has discussed about the seriousness of the offence of money laundering and the impact on the economy of the country. It has been stated categorically in the judgment that the allegations in the Enforcement Case Information Report/Prosecution Complaint is a matter of final outcome of the trial but the burden of proof under Section 24 of the PMLA, 2002 is the burden of proving that proceeds of crime are untainted property shall be on the accused.' 45. The relevant para from the above mentioned judgment is produced as under :

It is true that at present there may or may not be direct or indirect attempts to indulge the applicant in any process of activity connected with the proceeds of crime, there is no attempt on the part of the applicant to disclose the source of the large sums of money handled by him. There is no denying the fact that allegations have been made that the said money was the proceeds of crime and by depositing or investing the same in his wife's account and in the business of his wife and brother, the applicant has attempted to project the same as untainted money. The said allegations may be the subject matter of final outcome of the trial, but having been made, the burden of proof that the said money is not the proceeds of crime and, therefore, shifted to the applicant under Section 24 of the PML Act, 2002. For the sake of reference, Sections 3 and 24 of the PML Act are extracted herein below :-

“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 with the 4[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.”

“24. Burden of Proof. - In any proceeding relating to proceeds of crime under this Act, (a) in the case of a person charged with the offence of money-laundering under Section 3, the Authority or Court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money-laundering; and (b) in the case of any other person the Authority or Court, may presume that such proceeds of crime are involved in money-laundering.”

46. Shri Pandey, learned counsel for the respondent submits that the legality of sharing of information by ED to the predicate agencies under Section 66 of the PMLA and taking up investigation by predicate agencies by registering FIR on the basis of information received from ED. The applicant is one of the key conspirator and main beneficiary of the POC extorted from the rice millers.

47. It is further contended that the applicant has been closely associated with the State Government machinery and is familiar with the basic working procedure of law enforcement agencies. It is submitted that plethora of evidences in the form of seized material from search as well as the submissions made under Section 50 of the PMLA has been

collected which squarely proves the guilt of the applicant in the offence of money laundering.

48. It is contended that the Jailor of Central Jail, Raipur has stated that the jail administration had filed an application before the Ld. Special Court (PMLA) and 4th Addl. Sessions Court, Raipur for transferring him from Central Jail, Raipur to Central jail Bilaspur on the ground that the applicant was influencing and instigating the local prisoners, creating factions inside the jail and causing security issues for the jail. There is a larger risk of the witnesses being influenced and prejudicially tutored to oppose the prosecution case. It has been further contended that the applicant by his influence is getting illegal facilities like access to mobile phone, food etc. inside the jail with the help of jail staff.

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

50. The crux of the allegation against the applicant is that he was involved in running an extortion racket by way of Rs. 20+20=Rs. 40/- per quintal of custom milled rice out of the special incentive price of Rs. 120/- payable by the State of Chhattisgarh to the custom rice millers. Hence the offence under Section 383/384 of the IPC has been levelled against the applicant. Similarly, the allegation of cheating under Section 420 IPC has been made against the applicant. Though it has been submitted by the counsel for the applicant that there is no direct or specific evidence against the applicant to suggest that he was involved

in any of the offence as alleged in the subject ECIR or the prosecution complaint.

51. From the investigation of the ED, it has been revealed that the applicant was one of the key conspirator and main beneficiary of the POC extorted from the rice millers. It has also been revealed that the rice milers were forced for payment of the same under threat that their incentive bills would not be cleared from the MARKFED. As per Section 50(4) of the PML Act, the statements recorded under Section 50 of the PMLA has evidentiary value as the proceedings under Section 50(2) and (3) are deemed to be a judicial proceeding within the meaning of Section 193 and 228 of the IPC, 1860.

52. The applicant is closely connected with POC as he had deputed some persons at certain place and the cash was not physically taken by him but it was initially demanded by the applicant and payment, he conveyed it to the rice millers over phone. It has come in the statements of some of the rice millers who have personally handed over the extortion amount as demanded by the applicant. In **Y.S.Jagan Mohan Reddy Vs. Central Bureau of Investigation (2013) 7 SCC 439**, it has been observed that 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 country. In **Union of India Vs.Hassan Ali Khan (2011) 10**

SCC 235, this Court has laid down that what will be the burden of proof when attempt is made to project the proceeds of crime as untainted money. It is held in the said paragraph that allegations may not ultimately be established, but having been made, the burden of proof that the monies were not the proceeds of crime and were not, therefore, tainted shifted on the accused persons Under [Section 24](#) of the PML Act, 2002. The same proposition of law is reiterated and followed by the Orissa High Court in the unreported decision of Smt. Janata Jha v. Assistant Director, Directorate of Enforcement (CRLMC No. 114 of 2011 decided on December 16, 2013). Therefore, taking into account all these propositions of law, we feel that the application for bail of the Appellant should be seen at this stage while the Appellant is involved in the economic offence, in general, and for the offence punishable Under [Section 4](#) of the PMLA, in particular.

53. It has been held by the Apex Court that the term “money laundering” under the PMLA must be read expansively. Under the broadened definition, even if an accused has not attempted to misrepresent the “proceeds of crime” as “untainted”, they can still be implicated for “money laundering.” “Proceeds of crime” refers to the property obtained through the original criminal activity through which the act of money laundering is enabled. The original crime from which black money is generated is called a ‘scheduled offence’ or ‘predicate offence’. The Court upheld wide powers of the ED, such as search and seizure and powers of arrest by reasoning that the ED was not the

police and hence not bound by the Criminal Procedure Code, 1973. It also upheld stringent bail conditions under PMLA, where the accused has the burden of proof to prove that they are not guilty.”

54. The present case related to grant of bail in connection with the offence registered against the applicant by the ED under various provisions of Sections 3 and 4 of the PMLA (ECIR registered by the ED) respectively. In the context of interpretation of Section 45 of the PMLA, held that the twin conditions obligate the Court to arrive at a positive finding that applicant has not committed an offence under the PMLA. A tentative finding should be recorded on the basis of broad probabilities and detailed reasons are not necessary to be assigned, nor evidence be weighed meticulously. It was further observed that the assertion of Rs 19.39 crores out of Rs. Total POC of Rs. 147 crores having been paid as bribe to the applicant as alleged by ED however only properties worth Rs. 19.39 crores has been recovered from the applicant in the form of proceeds of crime as well as under clause ‘value thereof’ as per Section 2(1)(u) of the PMLA.

55. Under PMLA, there is a presumption of guilt on the accused which they have to disprove to get bail. In an older version of the PMLA, the first condition stated that it would be presumed that the accused was guilty of the ‘scheduled offence’, and the reversed burden of proof on the accused was to disprove their involvement in the scheduled offence. In **Nikesh Tarachand Shah Vs. Union of India, Criminal Appeal No. 2014 of 2017, (arising out of SLP (CRL) No.7789 of 2017)**, a division

bench of the court ruled that the first condition was unconstitutional. Right after this in 2018, this condition was amended, and the new version stated that the reversed burden of proof on the accused was now to disprove their involvement in the 'money laundering' offence, and not the 'scheduled offence'.

56. It appears that *prima facie* the prosecution has adopted has acted in a pick and choose manner in the investigation and has specifically chosen not to proceed against several persons ie. the rice millers, office bearers of the District Rice Millers Associations, the current regime involved in rice milling and every person who had taken part in the same. However, learned Counsel for the respondent contended that the investigation is still going on and 3-4 charge sheets are yet to be filed. Be that as it may, the applicant cannot take advantage at this stage because further investigation is going on, the charge sheet has been filed against the applicant spanning about 4,000 pages with 17 witnesses filed by the investigating agency and the investigation is still going on. From the statements of the witnesses, it has been revealed that the applicant and his family members were involved in purchasing properties from the proceeds of the crime. However, Rs. 147 crores of cash money is alleged to have been flown to the applicant and out of which 19.30 crores have been traced out. The details of the whatsapp chats annexed with the prosecution complaint *prima facie* shows the involvement of the applicant in the present case.

57. While considering the prayer for granting bail, a balance has to

be struck between two factors, namely, prejudice to the free, fair and full investigation and prevention of harassment, humiliation and unjustified detention of the accused in jail. A pick and choose manner of investigation raises a doubt on the credibility of evidence, specially where the evidence of similarly placed persons is then relied upon against the other accused. The Pick and Choose policy of ED adopted in arresting the accused depicts the discriminatory practice of ED qua the Applicant. As has been held by the Apex Court, the doctrine of need and necessity to arrest possibly accepts the principle of parity enshrined under Article 14 and held that the ED "should act uniformly, consistent in conduct, confirming one rule for all". Since there is *prima facie* involvement of the Applicant in the commission of the offence and as such, the burden of proof under Section 24 of the PMLA is upon the applicant to demonstrate before the Ld. Special Judge that the money involved does not fall within the proceeds of crime involved in the present ECIR.

58. The Court after examining the entire documents found 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 and he is the key conspirator and beneficiary from the said scam. Thus, the guilt of the accused in the offence of money laundering has been gathered and since, the allegations against the applicant were extremely serious and taking into account, the nature and gravity of the

offence and from perusal of the record and in view of the fact that looking to the special and stringent provision under Section 45(1) of the PMLA for grant of bail, in the considered opinion of this Court, *prima facie* the money trail has been established by the prosecution and therefore, it is not proper to order release of present applicant on regular bail for the reasons mentioned hereinabove.

59. It was further held that with regard to the health issue of the applicant is concerned, as such there is no serious ailment. It is further held that if the authorities are adopting adequate measures to prevent deterioration of the health of the accused during the period of custodial internment, then the Court may not interfere. Referring to the judgment of **Surjeet v. State (NCT of Delhi) 2021 SCC OnLine Del 228**, it has been held that if a good treatment can be offered within the jail premises or at the behest of the jail administration, then grant of bail on medical grounds becomes unwarranted. Thus, even a sick person need not be released on bail, if the jail authorities or prosecuting agency could arrange proper and adequate treatment. The twin conditions under Section 45 of the Act shall cease to apply to such special category of persons. However, merely because there is some ailment the accused is suffering from, does not warrant him to be released on bail, but what must be seen is whether required treatment can be provided by the jail authorities. Only in those specialized cases of sustained treatment, where extreme care is necessary, not otherwise possible in jail, then only the applicant is entitled to the benefit of proviso to Section 45(1).

60. Thus, 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, 2002 for the offences under Section 3 & 4 of the PMLA, 2002, is hereby rejected.

Sd/-
(Arvind Kumar Verma)
Judge