



AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 402 of 2024

Reserved on : 14.03.2024

Delivered on : 08.04.2024

Sunil Kumar Agrawal, S/o Late Mohan Lal Agrawal, Aged About 52 Years, R/o R-3, Aishwarya Residency, Telibanda, District Raipur, Chhattisgarh.....(Presently In Judicial Custody)

--- Applicant

Versus

Directorate of Enforcement Government of India, Government of India, Through - Assistant Director, Zonal Office, 2nd Floor, A-1 Block, Pujari Chambers, Pachpedi Naka, Raipur, District Raipur (C.G.)

--- Respondent

For Applicant

: Mr. Puneet Bali, Sr. Advocate with Mr. Nikhil Varshney, Mr. Sourabh Dangi, Mr. Aditya Soni, Mr. Anmol Chandan, Mr. Vibhav Jain, Mr. Sajal Kumar Gupta, Mr. Sriharsh Raj, Mr. Tushar Giri & Mr. Kartik Sharma, Advocates.

For Respondent

: Dr. Sourbh Kumar Pande, Advocate.

Hon'ble Shri Justice Narendra Kumar Vyas

CAV ORDER

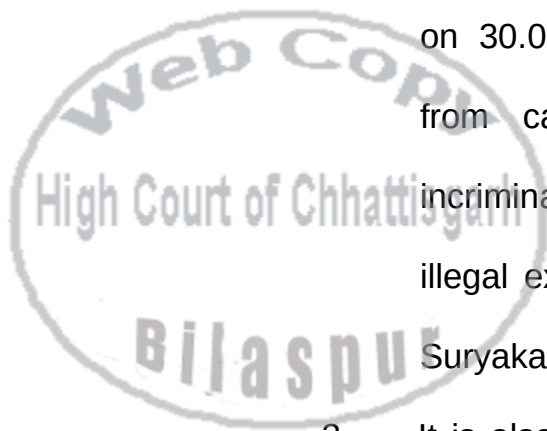
1. This is **second** bail application filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the applicant, who has been arrested on 13.10.2022 in connection with Crime No. ECIR/RPZO/09/2022 dated 29.09.2022 registered at Police Station- Directorate of Enforcement, Zonal



Office, Raipur (C.G.) for the offence punishable under Sections 3 & 4 of the Prevention of Money Laundering Act, 2002 (for short “the PMLA, 2002”).

2. The case of the prosecution, in brief, is that on 12.07.2022, FIR No. 129/2022 was registered by Kadugodi Police Station, Whitefield, Bengaluru under Sections 186, 204, 353 & 120B of IPC against one Suryakant Tiwari & other persons on the basis of complaint filed by Deputy Director of Income Tax, Foreign Assets Investigation Unit-I Bengaluru alleging that as part of conspiracy, during course of search by Income Tax department on 30.06.2022, Suryakant Tiwari had obstructed the officials from carrying their official duties and destroyed crucial incriminating documents and digital evidence about the alleged illegal extortion on Coal Transportation, payments collected by Suryakant Tiwari and his associates.

3. It is also case of the prosecution that on 13.09.2022, OM in F. No. 22-IT was forwarded by Central Board of Direct Taxes (for short “CBDT”) to the Directorate of Enforcement containing the FIR No. 1292022 Police Station- Kadugodi along with a report on the investigation conducted by the Income Tax Department on M/s Jay Ambey Group of Raipur (Suryakant Tiwari Group). In the report, it has been mentioned that during search operations on 30.06.2023 by Income Tax Department on the premises of Suryakant Tiwari and his associates, evidence was gathered related to a syndicated being operated and coordinated by Suryakant Tiwari whereby additional unauthorized cash to the





tune of Rs. 25 per ton of coal was being collected over and above the legal amount against Coal Delivery Orders. It has also been alleged that pursuant to the Order F.No.4138-47/Sankhikiya/Coal bhandaran/N.Kra 2020 dated 15.07.2020 issued by the State Government the dispatch rules of coal mines by authorities have been changed from an online process to introduction of manual verification. The said notification was issued under the signatures of one Sameer Vishnoi, IAS who was the Director, Geology & Mining as well as MD of CMDC. It is also case of the prosecution that it is only after the said notification Suryakant Tiwari in conspiracy with certain other persons started obtaining an illegal levy of Rs. 25 per ton of coal for issuance of delivery order for coal transportation. The handwritten diaries maintained by one Rajnikant Tiwari who is brother of Suryakant Tiwari contained entries of incoming and outgoing amounts of unaccounted cash generated, *inter alia* from illegal levy on coal transport revealed profits of more than Rs. 500 crores in 16 months from different kinds of levies. On 29.09.2022, ECIR/RPZ0/09/2022 was registered by Directorate of Enforcement, Raipur Zonal Office for commission of offence under Sections 120 (B) & 384 of IPC being a part of FIR No. 129/2022.

4. The role of the present applicant is that the present applicant who is promoter of M/s Indermani Group having a close relationship with Suryakant Tiwari. Investigation revealed that the applicant had helped Suryakant Tiwari in acquiring coal



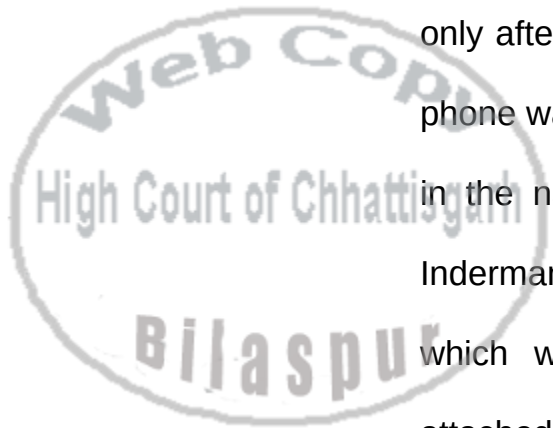


washeries from M/s Indus Udyog & Infrastructure Pvt Ltd. and Ms. Satya Power and Ispat Ltd. These coal washeries were acquired for an amount of Rs. 96 crore, out of which Rs. 34 crore was registered value and was paid through banking channel and rest of the amount was to be paid in cash. Thus, large amount of illegally acquired cash was layered in these transactions. After the IT raids, the applicant made stamp paper transactions to show that he was the owner of these 2 washeries which were nothing but a futile attempt to alienate the ill-gotten proceeds of crime and take them far away from arms of Income Tax Department & Enforcement Directorate and to prevent their attachment and to claim them as untainted assets. The applicant knowingly and willingly participated in these transactions to layer and obfuscate the real ownership of these tainted properties. Despite being a man of means and business standing, he knowingly acted as a benami for Suryakant Tiwari and has assisted in the money laundering process. Apart from the above two washeries, after the income tax raids on Surykant Tiwari and his associates, Indermani Group purchased all the benami properties of Suryakant Tiwari to safeguard the ill-gotten proceeds of crime and to frustrate the efforts of Enforcement Directorate to attach the proceeds of crime in future. All these transactions are sham transactions and in effect applicant's Indermani Group is holding these assets for Suryakant Tiwari and his benamis. It is clear that although the applicant is a wealthy businessman, Enforcement Directorate investigation has





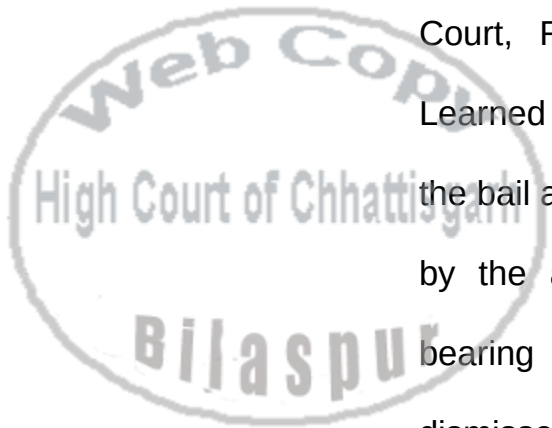
established that for getting personal benefits in terms of share in washery business and for his larger business ambitions in getting close to the Government of the day, he has acted as a benami and is holding these assets for the benefit of Suryakant Tiwari. He has only blocked his capital in these assets and the remaining entire cash transactions were still done by Suryakant Tiwari only. He has also been evasive in his statements regarding his complete financial dealings. In fact, on the day of the search, he was not found at his premises and he joined the search proceedings later on with a brand-new phone, but came only after hiding his regular mobile devices. He claimed that his phone was 'stolen' from his crown farm house. several properties in the names of companies of the applicant herein viz., M/s Indermani Minerals Pvt. Ltd. & M/s KJSL Coal & Power Pvt. Ltd. which were acquired using proceeds of crime have been attached under Section 5(1) of PMLA, 2002, vide PAO Nos. 02/2022 dated 09.12.2022 & 01/2023 dated 29.01.2023 and the same were subsequently confirmed by the learned Adjudicating Authority (PMLA), vide orders dated 01.06.2023 & 17.07.2023 in OC No. 1874/2023 & 1906/2023 respectively. The prosecution complaint under Section 45 of the PMLA, 2002 has been filed before the learned Special PMLA Court, Raipur on 09.12.2022 against the applicant herein, *inter alia*, for committing the offence of money laundering and the learned PMLA Court has taken cognizance of the complaint vide order dated 01.06.2023. In order to money trail the remaining unidentified proceeds of crime





and to question the applicant further, an application was filed before the learned Special PMLA Court, Raipur seeking permission to examine and record the statement of the applicant herein, *inter alia*, in prison. The learned Court vide order dated 08.01.2024 allowed the application and granted 6 days i.e. from 10.01.2024 to 15.01.2024. The statement of the applicant was recorded in the Central Jail, Raipur on 10.01.2024 & 14.01.2024 under Section 50 of the PMLA, 2002.

5. The record of the case would show that the applicant filed an application for grant of regular bail before the learned PMLA Court, Raipur (C.G.) seeking enlargement on regular bail. Learned Special Judge vide order dated 23.11.2022, dismissed the bail application filed by the applicant. This order was assailed by the applicant before this Court by filing bail application bearing MCRC No. 11046/2022. The said bail application was dismissed by the Coordinate Bench of this Court on 21.03.2023 by observing that the manner of transaction made between the applicant and the firms belonging to Suryakant Tiwari, the timing of the transaction, the sale consideration made by the applicant in the process of purchase of the coal washeries from the firms belonging to Suryakant Tiwari, all establishes the nexus between the applicant and Suryakant Tiwari and their involvement in the predict offence. Further, going into the entire materials available in the case records, there seems to be a serious nature of racket involving huge generation of hard cash illegally being collected. Thereafter, the applicant has filed second bail application before





this Court on 12.01.2024 contending that there are changed circumstances as certain germane facts have been transpired after rejection of first bail application approximately ten months ago.

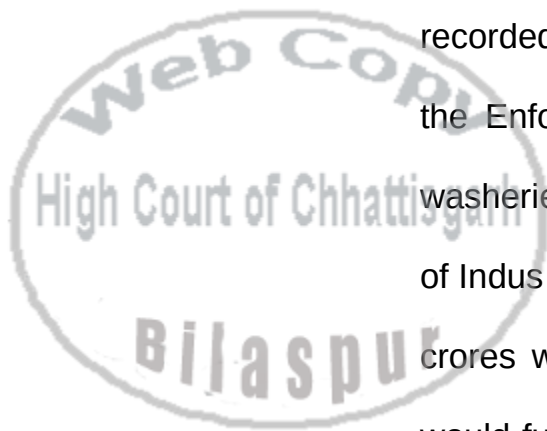
6. Learned Senior counsel for the applicant would submit that the present applicant is a victim of extortion syndicate who has been projected as an accused in fact the applicant was not a part of the extortion syndicate. He would further submit that the applicant tried to erase the evidences related to proceeds of crime and the properties connected by removing all computers and other digital devices from his office and by hiding his mobile phone in an attempt to escape the clutches of law and to frustrate further investigation under the PMLA, 2002 whereas the applicant has always cooperated with Enforcement Directorate and also recorded his statement as provided under Section 50 of the PMLA, 2002. He would further submit that due to thunder lightning in the applicant's office, many electronic devices like air conditioners, camera, DVR, desktop computers, etc. were burnt/damaged, and therefore, the same were in the process of being repaired and would submit that the applicant has already provided cash ledger, sources of funds as demanded by the ED. As such, it cannot be said that the applicant has made any attempt to suppress anything regarding purchase transaction with ED. He would further submit that there is violation of Section 19 of the PMLA, 2002 as this Section provides that arrest should be made on the basis of the "material





in possession", which has to be of sterling quality and unimpeachable character, which is not available in the present case. However, in the instant case, the applicant has been arrested on the basis of the statements of Directors of Indus and Satya Power, but these Directors have not been named as prosecution witness, therefore, the relevancy of statements of these directors is in question. He would further submit that the Enforcement Directorate ought to explain the rationale behind not including these directors in the list of witnesses.

7. He would further submit that Rupesh Garg in his statement recorded under Section 50 of the PMLA, 2002 has stated before the Enforcement Directorate that against the sale of two coal washeries Rs. 21.5 crore was received in cash and the Director of Indus (Ashish Agrawal) in his statement has stated that Rs. 20 crores was to be receivable, but it has not been received. He would further submit that as per the statement made by Rupesh Garg, Rs. 21.5 crores was paid in cash by Suryakant Tiwari then question arises that where is this money. He would further submit that the recovery made by the Enforcement Directorate from Rupesh Garg and Pawan Agrawal is only for Rs. 78,49,000/- and there is no recovery regarding remaining amount. It is imperative to mention that none of the directors of Satya or Indus has stated that the applicant had pressurized them to sell the coal washeries to M/s Maa Madwarani Coal Benefaction Pvt. Ltd. He would further submit that Rupesh Garg and Ashish Agarwal have stated in their statements to





Enforcement Directorate that the coal washeries were sold to Maa Madwarani for Rs. 96 Crores whereas the ground of arrest provides that the coal washeries were sold by them to Maa Madwarani for Rs. 50 crores. He would further submit that from the documents relied upon by the prosecution complaint is that two coal washeries were sold for Rs. 31,50,00,000. Hence, any value attributed to the two coal washeries over an amount of Rs. 31.59 crores approx, is a pure figment of imagination. He would further submit that these two coal washeries were sold by them as per the independent valuation report dated 14.05.2022 and 16.05.2022 which is based upto the value declared by the directors and certified the independent Chartered Accountants. As such, he would submit that the allegation is without any foundation.

8. He would further submit that out of 70 properties attached by the Enforcement Directorate only 9 properties were directly purchased from Suryakant Tiwari. He would further submit that it is not a case of the Enforcement Directorate that the applicant purchased the property using the proceeds of crime or under valued amount prize below the circle rate. He would further submit that the applicant has not purchased these properties in cash but were purchased through banking system, as such the allegation that the applicant has paid huge amount of cash to acquire properties from Suryakant Tiwari is not correct. He would further submit that the applicant has only purchased 4.616 hectare (which comes to 11.40 acres) out of a total of 22 acres





as per agreement of sale dated 20.06.2022 which was executed between by KJSL and Maa Madwarani. He would further submit that the allegation made by the Enforcement Directorate that the sale of coal washeries was only a sham transaction, is not correct as after execution of the agreement of sale, the registry of property was executed and payments were made. He would further submit that before purchasing valuation report was obtained by independent valuer and not by Maa Madwarani and thereafter, the said coal washeries were purchased from Indus at Rs. 31.6 crore. However, the applicant has paid Rs. 35.28 crores approx for acquiring the said washeries which is more than the amount paid by Maa Madwarani to acquire this coal washery.

9. He would further submit that in the first prosecution complaint the Enforcement Directorate has stated that the applicant indulged in sham transactions and that the applicant is holding these assets for Suryakant Tiwari and his benamis. Further, Enforcement Directorate has also stated that no board resolution was passed to purchase these properties, is incorrect submission as there was board Resolution for purchasing these properties passed by the board of M/s Maa Madwarani and M/s KJSL on 01.05.2022 and 15.06 2022 respectively. Further, these properties are not held for Suryakant Tiwari and his benamies and the purpose for which they were purchased in mentioned in the board resolutions. He would further submit that the bank account details of Maa Madwarani would show that there was transfer of amounts in furtherance of payment for consideration





as contemplated under the agreement of sale dated 20.06.2022. Hence, there is no material evidence on record which would even slightly indicate that these transactions are sham transactions. It is the case of Enforcement Directorate that properties belonging to Suryakant Tiwari was purchased by the applicant as benami, as he was a close associate of Suryakant Tiwari. In this regard, it is submitted that the purchase of the said properties can never be a benami transaction since the agreed price was paid by the applicant using its own funds. No loan or external aid was sought to purchase these properties. Hence, all these properties were acquired by legal means. The applicant had paid the purchase consideration for all these properties by cheques and all these properties are registered with the appropriate authorities. The applicant had acquired these properties for its own use as such it cannot be said that it benami property.

10. He would further submit that the allegation made by the Enforcement Directorate that Suryakant Tiwari and other persons liquidated all properties in their names and in the names of their family members to willing associates like the applicant to project the same as untainted assets, though these assets continue to remain in the syndicate's control for all practical purposes, is incorrect fact as there is nothing on record to substantiate this. He would further submit that these properties were purchased by the applicant to fulfill the purpose of acquiring these properties, as mentioned in the board





resolutions passed in this regard. He would further submit that the applicant owned seven coal washeries and is in the business of coal for twenty years. Hence, no question of enriching arises when somebody already has seven coal washeries. He would further submit that the ED has wrongly alleged that the applicant played an active part in layering of the extorted amounts in the purchase of two coal washeries through his company KJSL. Further, ED has also alleged that the applicant, in order to alienate the tainted assets through M/s Indermani which is sham purchase transaction and acquired properties from Suryakant Tiwari, therefore, the allegation of layering qua Sunil Kumar Agrawal cannot survive. Moreover, in terms of Section 3 of PMLA, 2002, the applicant submits that he has neither played role knowingly nor indirectly in layering of the proceeds of crime, and hence, cannot be held liable for money laundering.

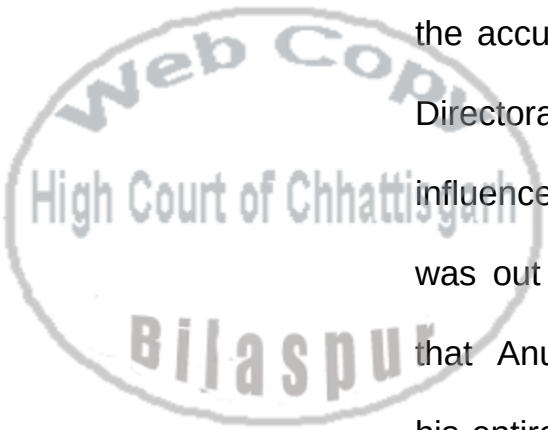
11. He would further submit that new set of arguments taken with respect to arrest, grounds of arrest and remand order could not have been taken by the applicant in its first bail application before this Court or before the learned PMLA Court because the Hon'ble Supreme Court has clarified the law in favour of the accused through later judgments in the case **Pankaj Bansal Vs. Union of India** decided on **03.10.2023** and **V. Senthil Balaji Vs. State** decided on **07.08.2023**, respectively, which is after dismissal of bail application bearing MCRC No. 11046 of 2022 vide order dated 21.03.2023. He would further submit that the last prosecution complaint i.e. second supplementary





prosecution complaint was filed on 18.08.2023, therefore, seven months have passed by and neither the Enforcement Directorate has filed any further complaints nor has called the applicant for any further interrogation, it was only in the first week of January 2024 that Enforcement Directorate sought permission from the learned PMLA Court to interrogate the applicant. Subsequently, interrogation was conducted on 10.01.2014 and 14.01.2014 and only a couple of questions were asked the applicant for namesake. Further, it is important to note that the first prosecution complaint states that the investigation with regard to the accused is complete and it is not the case of Enforcement Directorate that the applicant tampered with the evidence or influenced the witnesses during the period when the applicant was out of jail for medical treatment. He would further submit that Anupp Bansal has submitted in his statement that he sold his entire share (13%) of M/s Maa Madwarani to M/s Indermani in the month of July 2022 at Rs. 14 crore, is entirely false and baseless as no such records exist with the Registrar of Companies, Chhattisgarh. Lastly he would submit that Rajnikant Tiwari's anticipatory bail bearing MCRCA No. 816 of 2023 was dismissed by this Court vide order dated 02.11.2023, but till date he is not arrested by the Enforcement Directorate. He would further submit that the applicant is remained in jail for more than one year and five months whereas maximum sentence which can be imposed upon him is seven years.

12. The applicant has also filed additional documents on record i.e.





the remand order dated 13.10.2022 passed by the learned Special Court, Raipur, copy of remand order dated 05.06.2023 passed by the learned Special Judge (PMLA) Panchkula in case of Pankaj Bansal, copy of extract of financial statements of KJSL Coal and Power Private Ltd. as well as Indermani Mineral India Private Ltd. and statement made by Nikhil Chandrakar before Police Station- Telibandha, Raipur to substantiate that applicant was illegally kept under custody as summon was issued only for 12.10.2022 and he was kept under custody on 13.10.2022 upto 5.30 a.m. whereas the applicant ought to have been released by 11.59 p.m. on 12.10.2022 as summon was issued to the applicant for 12.10.2022 only. Thus, he was kept under wrongful custody and illegally restrained during the period between 12 p.m. to 5.30 a.m. of 13.10.2022, as such, the arrest is nonest and illegal and the alleged ground of arrest was provided to the applicant only at 5.30 a.m. To substantiate this submission, he would refer to the judgment of Punjab and Haryana High Court in case of **Pranav Gupta Vs. Union of India** reported in **(2023) SCC Online P&H 3598**. He would further submit that the respondent has failed to communicate the ground of arrest to the applicant on actual date of arrest on 13.10.2022, as such, it is an arbitrary action and violated the mandate of arrest as provided in Section 19(1) of the PMLA, 2002. To substantiate his submission, he relied upon the judgment of Hon'ble the Supreme Court in case of **Pankaj Bansal Vs. Union of India** reported in **(2023) SCC OnLine 1244**. He would further submit





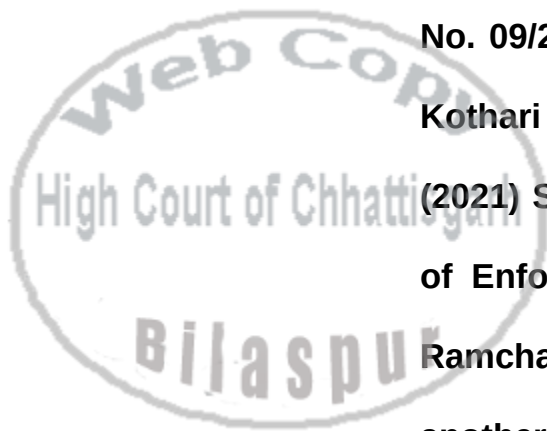
that the statement of Shikhar Agrawal and Shailesh Agrawal as well as statement of the applicant recorded by the respondent cannot be termed as “material” in terms of Section 19(1) of the PMLA, 2002 thus, he would pray for releasing the applicant on bail.

13. To substantiate his submission, learned senior counsel for the applicant would refer to the judgment rendered in case of **Vijay Madanlal Chaudhary & others Vs. Union of India & others**, reported in **2022 SCC OnLine SC 929**, **Assistant Director, Directorate of Enforcement Vs. Pankaj Trivedi [SLP (Crl.) No. 6128/2019]**, **Sanjay Agarwal Vs. Directorate of Enforcement**, reported in **(2022) SCC OnLine SC 1748**, **Sujay U. Desai Vs. Serious Fraud Investigation Office**, reported in **(2022) SCC OnLine SC 1507**, **Jainam Rathod Vs. State of Haryana**, reported in **(2022) SCC OnLine SC 1506**, **Raman Bhuraria Vs. Directorate of Enforcement**, reported in **(2023) SCC OnLine Del 657**, **Benoy Babu Vs. Directorate of Enforcement [SLP (Crl.) Nos. 11644-11645 of 2023]**, **Gurbaksh Singh Sibbia Vs. State of Punjab**, reported in **(1980) 2 SCC 565**, **Sanjay Kumar Tiwari Vs. Union of India [SLP (Crl.) No. 003794/2022]**, **P. Chidambaram Vs. Directorate of Enforcement**, reported in **(2020) 13 SCC 337**, **Sanjay Chandra Vs. Central Bureau of Investigation**, reported in **(2012) 1 SCC 40**, **Manish Sisodia Vs. Central Bureau of Investigation**, reported in **(2023) SCC OnLine SC 1393**, **State of Rajasthan Vs. Balchand**, reported in **(1977) 4 SCC 308**, **Dataram Singh Vs. State of Uttar**





Pradesh, reported in (2018) 3 SCC 133, Arnab Manoranjan Goswami Vs. State of Maharashtra & others, reported in (2021) 2 SCC 427, Y.S. Jagan Mohan Reddy Vs. CBI, reported in (2013) 7 SCC 439, DK Shivkumar Vs. Directorate of Enforcement, reported in (2019) SCC Online Del 10691, Union of India Vs. K.A. Najeeb, reported in (2021) 3 SCC 713, Preeti Chandra Vs. Enforcement Directorate (Bail Application No. 3494/2022) (decided on 14.06.2023) reported in 2023 SCC OnLine Del 3622, Anil Kumar Aggarwal Vs. Enforcement Directorate through its Assistant Director, Jammu [WP(Crl.) No. 09/2024, decided on 15.03.2024], Vijay Narendra Kumar Kothari Vs. Directorate of Enforcement & another reported in (2021) SCC OnLine SC 561, Raj Kumar Goel Vs. Directorate of Enforcement, reported in (2018) SCC OnLine Del 8873, Ramchand Karunakaran Vs. Directorate of Enforcement & another [Criminal Appeal No. 1650 of 2022, decided on 23.09.2022], Sujit Tiwari Vs. State of Gujarat, reported in (2020) 13 SCC 447, Mohammad Salman Hanif Shaikh Vs. State of Gujarat [SLP (Crl.) 5530/2022], Gopal Krishna Patra @ Gopalrusma Vs. Union of India [Criminal Appeal No. 1169 of 2022], Shariful Islam @ Sarif V/s State of West Bengal [SLP (Crl.) No. 4173 of 2022], Nitish Adhikary @ Bapan Vs. State of West Bengal [SLP (Crl.) No. 5769 of 2022], Mohd. Muslim @ Hussain Vs. State (NCT of Delhi), Ajit Bhagwan Tiwde Vs. State of Maharashtra, reported in 2022 SCC Online Bom 4079, Ajay Thakre Vs. State of Maharashtra [Crl. Bail





Application No. 515/2022], Roop Bansal Vs. Union of India [CWP-23005-2023, decided on 31.10.2023], Parvathi Kollur & another Vs. State of Directorate of Enforcement [Crl. Appeal No. 1254/2022, decided on 16.08.2022], Indrani Patnaik Vs. Directorate of Enforcement [WP (C) No. 368 of 2021, decided on 03.11.2022], Adjudicating Authority (PMLA) & others Vs. Shri Ajay Kumar Gupta & others [Crl. Appeal No. 391-392/2018], Directorate of Enforcement Vs. M/s Obulapuram Mining Company Pvt. Ltd. [Crl. Appeal No. 1269/2017, decided on 02.12.2022], M. Nagarajan & another Vs. Directorate of Enforcement & others [SLP (Crl.) 10917/2022, decided on 23.01.2023], Southern Agrifurance Industries Pvt. Ltd. Vs. Asst. Director Directorate of Enforcement [SLP (Crl.) N. 154-155/2023, decided on 10.04.2023], Harish Fabiani Vs. Enforcement Directorate & others, reported in 2022 SCC OnLine Del 3121, Naresh Goyal Vs. Directorate of Enforcement & others [W.P. (Crl.) No. 4037/2022, decided on 23.02.2023], Pusham Appala Naidu & others Vs. Directorate of Enforcement [Crl. OP 2279/2019, decided on 12.09.2022] & Vijay Sai Reddy Vs. Enforcement Directorate [Crl. Petition No. 1216/2021, decided on 08.09.2022].

14. Learned counsel for the applicant would submit that since no schedule offence is levelled against the applicant, therefore, the proceeding under the PMLA, 2002 is not tenable as such also he is entitled to be released on bail. He would further submit that the orders passed by this Court arising out of same ECIR are





also not applicable to the facts of this case and would pray for releasing the applicant on bail.

15. On the other hand, learned counsel for the Enforcement Directorate would refer to the ECIR and would submit that a notification dated 15.07.2020 was issued by Shri Sameer Vishnoi, IAS at the instance of extortion cartel led by Mr. Suryakant Tiwari, modified the pre-existing transparent online process of getting e-permits for transporting coal from mines to users, into a system which made it prone to massive corruption. He would further submit that FIR No. 129/2022 dated 12.07.2022 was registered by Kadugodi Police Station, Whitefield, Bengaluru under Sections 186, 204, 353 & 120 (B) of IPC against Suryakant Tiwari and others on the basis of complaint filed by the Deputy Director of Income Tax, Foreign Assets Investigation Unit-1, Bengaluru, stating that as part of a conspiracy, during the course of search by Income Tax Department on 30.06.2022 at Room No. 664, Hotel Sheraton Grand, Whitefield, Bengaluru, Suryakant Tiwari had obstructed the officials from carrying their official duties and had destroyed crucial incriminating documents and digital evidences which supposedly contained important information about the illegal extortion, payments collected and persons involved. The said FIR is under investigation. Thereafter, vide O.M in F.No. 289/ED/36/2022-IT (Inv.II) dated 13.09.2022, CBDT has forwarded the copy of the above FIR No. 129/2022 dated 12.07.2022 under Sections 186, 204, 353, 384 & 120 (B) of IPC





against Suryakant Tiwari along with a report on the investigation conducted by Income Tax Department on M/s Jay Ambey Group of Raipur (Suryakant Tiwari Group) to the Directorate of Enforcement for initiating money laundering investigation. From perusal of aforementioned O.M, it was learnt that a search and seizure action was carried out by the Income Tax Department at multiple premises of Suryakant Tiwari and his associates. During the course of search and seizure, large number of incriminating evidences were seized which are in the forms of hand written diaries, loose papers and digital devices like mobile phones, laptops etc. These evidences discloses numerous cash transactions relating to an organized syndicate being operated and coordinated by Suryakant Tiwari along with six associates and other persons wherein additional unauthorized cash was being extorted, over and above the legal amount fixed against the Coal Delivery Order issued by SECL (South Eastern Coalfields Limited), from various entities who were lifting and transporting the coal throughout the State of Chhattisgarh. Suryakant Tiwari deployed his following associates in the Coal producing districts and these associates had liaisons with Collectorate Office, Mining officers and other users to collect the illegal coal levy from their employees. He would further submit that once the employees of Suryakant Tiwari, received the illegal amount of Rs. 25/- tonne on coal to be transported, the message was then communicated to the Mining Officer and thereafter the delivery orders (DOs) were cleared for transport by Mining





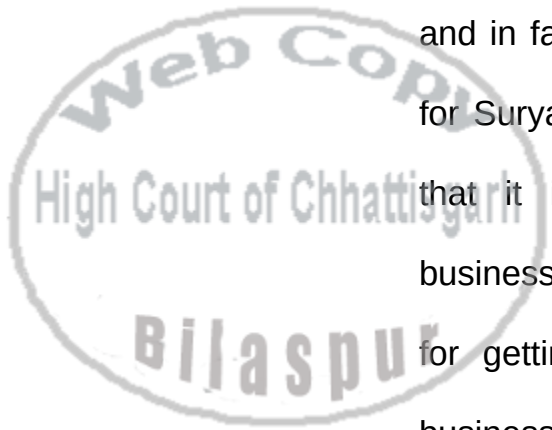
Officers by issue of manual NOC against the delivery orders. During the search operations of Income Tax Department, certain evidences were seized from possession of members of this syndicate and statements of various persons have been recorded by the authorities which will reveal that illegal collection of levy on transport of coal was being done on the direction of Suryakant Tiwari.

16. He would further submit that the present applicant has played specific role and he is kingpin of the offence and would submit that the applicant is promoter of M/s Indermani Group having a close relationship with Suryakant Tiwari. Investigation revealed that the applicant had helped Suryakant Tiwari in acquiring coal washeries from M/s Indus Udyog & Infrastructure Pvt. Ltd. and M/s Satya Power and Ispat Ltd. These coal washeries were acquired for an amount of Rs. 96 Crore, out of which Rs. 34 Crore was the registered value and was paid through banking channel and rest of the amount was to be paid in cash. Thus, large amount of illegally acquired cash was layered in these transactions. After the Income Tax raids, he made sham paper transactions to show that he was the owner of these two washeries. These transactions were nothing but a futile attempt to alienate the ill-gotten proceeds of crime and take them far away from the arms of Income Tax & Enforcement Department and to prevent their attachment and to claim them as untainted assets. The applicant knowingly and willingly participated in these transactions to layer and obfuscate the real ownership of





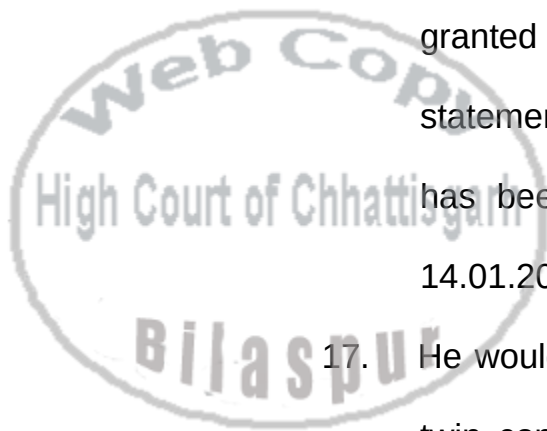
these tainted properties despite being a man of means and business standing, he knowingly acted as a benami for Suryakant Tiwari and has assisted in the money laundering process. He would further submit that apart from the above two washeries, after the income tax raids on Suryakant Tiwari and his associates, Indermani Group purchased all the benami properties of Suryakant Tiwari to safeguard the ill-gotten proceeds of crime and to frustrate the efforts of Enforcement Directorate to attach the proceeds of crime in future. He would further submit that all these transactions are sham transactions and in fact applicant's Indermani Group is holding these assets for Suryakant Tiwari and his benamis. He would further submit that it is clear that although the applicant is a wealthy businessman, the Enforcement Directorate has established that for getting personal benefits in terms of share in washery business and for his larger business ambitions in getting close to the Government of the day, he has acted as a benami and is holding these assets for the benefit of Suryakant Tiwari. He has only blocked his capital in these assets and the remaining entire cash transactions were still done by Suryakant Tiwari only. He has also been evasive in his statements regarding his complete financial dealings. In fact, on the day of the search, he was not found at his premises and he joined the search proceedings later on with a brand-new phone, but came only after hiding his regular mobile devices. He would further submit that the prosecution complaint under Section 45 of the PMLA, 2002 has





been filed before the learned Special PMLA Court, Raipur on 09.12.2022 against the applicant herein, *inter alia*, for committing the offence of money laundering and the learned PMLA Court has taken cognizance of the complaint vide order dated 01.06.2023. He would further submit that in order to money trail the remaining unidentified proceeds of crime and to question the applicant further, an application was filed before the learned Special PMLA Court, Raipur seeking permission to examine and record the statement of the applicant, *inter alia*, in prison. The Court vide order dated 08.01.2024 allowed the application and granted six days i.e. from 10.01.2024 to 15.01.2024. The statement of the applicant under Section 50 of the PMLA, 2002 has been recorded in Central Jail, Raipur on 10.01.2024 & 14.01.2024.

17. He would further submit that the applicant is unable to fulfill the twin conditions of Section 45 of the PMLA, 2002 as from the above factual matrix, it is quite vivid that the possibility of the accused being not guilty of the offence of money laundering is highly impossible. To substantiate the submission, he would refer to paragraph 135 of the the judgment rendered by Hon'ble the Supreme Court in case of **Vijay Madanlal Choudhary (supra)**. He would further submit that the applicant with proceed of crime and having deep roots in the society, is in a position to influence witnesses. To substantiate this submission, he has mentioned certain privilege granted to him by the medical hospitals which normally provided to the prisoners. To substantiate this

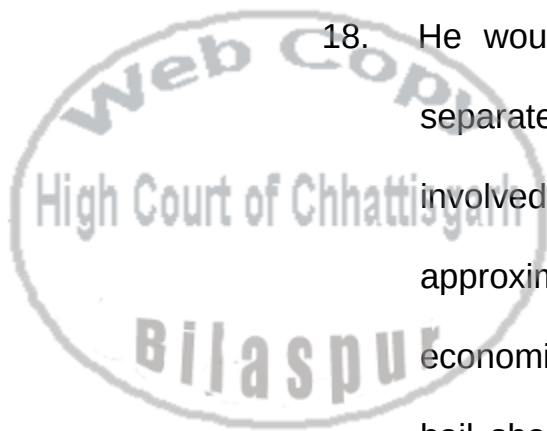




submission, he has referred to the judgment of Hon'ble Allahabad High Court in case of **Pankaj Grover v. ED [Criminal Misc. Anticipatory Bail Application U/S 438 Cr.P.C. No. 7661 of 2021]** wherein Hon'ble the High Court has held that the accused in economic offences/ PMLA cases are in possession of huge proceeds of crime and may use those to influence witnesses. Further the Court also held that since such offences are committed mostly by influential persons, there is a high likelihood of their using influence to tamper with evidence and influence witnesses.

18. He would further submit that economic offence constitute a separate class of offence and in the present case, the amount involved in the offence of money laundering is Rs. 540 crores approximately and in view of well settled position of law that economic offence constitutes a separate class of offence and bail should not normally be granted in such cases and would pray for rejection of bail petition.

19. To substantiate his submission, he would refer to the judgment rendered by Hon'ble the Supreme Court in case of **Nimmagadda Prasad Vs. CBI**, reported in **(2013) 7 SCC 466**, **State of Bihar Vs. Amit Kumar** reported in **(2017) 13 SCC 751**, **Gautam Kundu Vs. Manoj Kumar** reported in **(2015) 16 SCC 1**, **Mohd. Arif Vs. Directorate of Enforcement, Govt. of India**, **BLAPL No. 8882/2021 (decided on 31.05.2022)**, **Soumya Chaurasia Vs. Directorate of Enforcement Special Leave Petition (Crl.) No. 8847/2023**, **Radha Mohan Lakhotia Vs. The**





Deputy Director, PMLA, Department of Revenue reported in **MANU/MH/1011/2010, Anirudh Kamal Shukla Vs. Union of India [Criminal Misc. Anticipatory Bail Application under Section 438 Cr.P.C. No. 307/2022, decided on 21.03.2022], Naib Singh Vs. State of Haryana [CRM-M-29466-2022, decided on 15.11.2022].**

20. I have heard learned counsel for the parties and perused the documents placed on record including ECIR with utmost satisfaction.
21. From the above discussion, the points to be emerged for determination by this Court are :-

Point No. 1 : Whether disclosure of insufficient reason in remand order, alleged illegal custody entitled the applicant to be released on bail under the PMLA, 2002.

Point No. 2 : Whether the applicant fulfills twin conditions of Section 45 of the PMLA, 2002 for grant of bail.

Point No. 1

22. To determine this issue, it is necessary for this Court to examine the relevant provisions of the PMLA, 2002. Chapter-V of the PMLA, 2002 deals with the power of an authority to conduct survey, search and seizure of both a place and a person followed by arrest, if so required. These provisions of step-in-aid in the conduct of the enquiry of investigation. Section 19 of the PMLA, 2002 is reproduced below:-

“Section 19- Power to arrest- (1) If the Director, Deputy Director, Assistant Director or any other officer authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession,





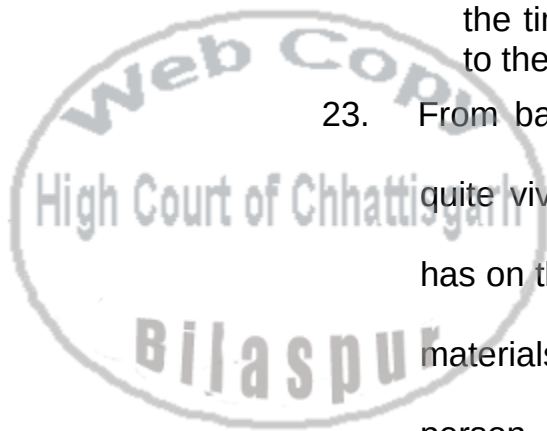
reason to believe (that reason for such belief to be recorded in writing) that any person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

(2) The Director, Deputy Director, Assistant Director or any other officer shall, immediately after arrest of such person under sub-section (1), forward a copy of the order along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority, in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such order and material for such period, as may be prescribed.

(3) Every person arrested under sub-section (1) shall, within twenty-four hours, be taken to a [Special Court or] [Inserted by Finance Act, 2018 (Act No. 13 of 2018) dated 29.3.2018.] Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction:

Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the [Special Court or] Magistrate's Court."

23. From bare perusal of the Section 19 of the PMLA, 2002, it is quite vivid that for arresting any person, any officer authorized has on the basis of material on his possession and through such materials, he is expected to form a reason to believe that a person has been guilty of an offence punishable under the PMLA, 2002, then only, he is at liberty to arrest. This Section further provides that the said exercise has to be followed by way of an information being served on the arrestee of the grounds of arrest. Any non-compliance of the mandate of Section 19(1) of the PMLA, 2002 would vitiate the very arrest itself. Under sub-section (2), the Authorised Officer shall immediately, after the arrest, forward a copy of the order as mandated under sub-section (1) together with the materials in his custody, forming the basis of his belief, to the Adjudicating Authority, in a sealed envelope. Needless to state, compliance of sub-section (2) is





also a solemn function of the arresting authority which brooks no exception.

24. Now this Court has to examine the case of the applicant vice versa case of the Enforcement Directorate whether there is compliance of Section 19 of the PMLA is done by the Enforcement Directorate or not. For considering this issue, it is expedient for this Court to extract the reason to believe dated 13.10.2022 recorded by the Enforcement Directorate. The Enforcement Directorate in his reason to believe has considered at paragraph 17 to 20 as under:-

“17. Searches conducted at the residence and office of the Sunil Kumar Agarwal, associate of Shri Suryakant Tiwari revealed that two washeries located at Korba and Bilaspur were acquired by his company, M/s KJSL Coal & Power Ltd., from M/s Maa Madwarani Coal Beneficiation Pvt. Ltd. (MCBPL) in the month of July/August, 2022 for a total of Rs.35 Crore and that M/s MCBPL belongs to Shri Suryakant Tiwari. It was also found that these two washeries were purchased by M/s MCBPL from M/s Satya Power Ltd (M/s SPIL) and M/s Indus Udyog & Infrastructure P. Ltd. (M/s UIIPL) just two months prior to the sale to the company of Shri Sunil Kumar Agarwal. Large amount of legally acquired cash was layers in these transactions. Also the washery owners were forced and coerced into selling their companies under duress. Their value was forcibly depressed and large amount of the sale consideration was given in cash. Sunil Agarwal actively assisted Suryakant Tiwari in layering of this cash and in the process of claiming the ill gotten wealth as untainted and helping in making investments to conceal the ill gotten cash.

18. Shri Sunil Kumar Agarwal, in his statement dated 12.10.2022 given under Section 50 of PMLA, 2007, has, inter alia, stated that he has known Shri Suryakant Tiwari for the last 15 to 20 years and that he had no business transactions with him. However, in the same statement, he has admitted to the acquisition of two coal washeries from the company of Shri Suryakant Twari, M/s MCBPL, When asked he stated that he did not know that M/s. MCBPL belonged to Shri Suryakant Tiwari, a person he has known for the last 20 years Furthermore, the Directors of M/s SPIL and M/s UIIPL, Shri Shikhar Agarwal and Shri Shailesh





Agarwal respectively, in their statements given under Section 17(1)(f) of PMLA, 2002 have stated that they were forced to sell the washeries to M/s MCBPL and that M/s MCBPL was represented by Shri Suryakant Tiwari and Shri Sunil Kumar Agarwal at the time of sale. When pointed and asked about it, Shri Sunil Kumar Agarwal has denied it and gave evasive replies

19. It was also found that M/s MCBPL was incorporated in February 2022 and within one month of its incorporation, it had acquired two washeries, one each from M/s SPIL and M/s IUIPL, and sold them again to M/s KJSL Coal & Power Ltd. within two months. The very act of acquisition of two washeries for a whopping amount of Rs. 50 Crores approx and its immediate sale to company owned by Shri Sunil Kumar Agarwal clearly shows that Shri Suryakant Tiwari had layered the ill gotten proceeds of crime obtained from illegal levy collected from coal transportation in the manner discussed above in order to project them as untainted properties and that Shri Sunil Kumar Agarwal has knowingly assisted him laundering the proceeds of crime.

20. Also, as could be seen from his statements, Shri Sunil Kumar Agarwal has tried to erase the evidences related to the proceeds of crime and the properties connected by removing all computers and other digital devices from his office and by hiding his mobile phone in an attempt to escape from the clutches of law and to frustrate further investigation under PMLA, 2002. The fact that he did not lodge complaint for his purportedly lost mobile phone indicates his criminal intent in destruction of evidences. He escaped when he became aware about the impending ED searches and has actively hidden computers in his offence and is indulging in destruction of evidence.”

25. Thus, there was reason to believe regarding involvement of the applicant in commission of offence under the PMLA, 2002. Thereafter the arrestee was taken to the Special Court on 13.10.2022 and the learned Special Judge while granting custody to the applicant has recorded its finding as under:-

“अभिलेख के अवलोकन से दर्शित है कि अभियुक्तगण को 24 घंटे के अंदर न्यायालय के समक्ष प्रस्तुत किया जाना दर्शित है। अभियुक्त के कस्टोडियल रिमांड बाबत प्रस्तुत आवेदन पत्र में प्रवर्तन निदेशालय के द्वारा अभियुक्त समीर विश्‍नोई से 47 लाख रूपए, 04 किला सोना एवं हीरा आदि, अभियुक्त लक्ष्मीकांत तिवारी के द्वारा डेढ़ करोड़ रूपए अन्य अभियुक्तों के माध्यम से छुपाने में सहायता करना तथा अभियुक्त सुनील कुमार अग्रवाल के द्वारा कोरबा एवं बिलासपुर में मेसर्स केजेएसएल कोल एण्ड पावर लिमि. से मां माधवा रानी कोल बेनिफिकेशन प्रा.लि. में 35



करोड़ रूपए में क्रय करना एवं दो अन्य कोल वॉशरी को क्रय किया जाना बताया गया है।

अभियुक्त समीर विश्नोई, लक्ष्मीकांत तिवारी, समीर कुमार अग्रवाल के धारा 50 धनशोधन निवारण अधिनियम के तहत कथन लेखबद्ध किया गया है, आगे की विवेचना के लिये अभियुक्तगण की कस्टोडियल रिमांड की मांग की गयी है।

प्रवर्तन निदेशालय की ओर से प्रस्तुत की गयी केस फाईल/केस डायरी से दर्शित है कि अभियुक्त के विरुद्ध भौडयूल अफेंस पंजीबद्ध होने के आधार पर ECIR/RPZO/09/2022 दिनांक 29.09.2022 धारा 3, 4 धनशोधन निवारण अधिनियम का अपराध पंजीबद्ध किया गया है। अभियुक्तगण को दृढ आधारों पर गिरफ्तार किया गया है तथा 24 घंटे के अंदर उसका अन्वेषण पूर्ण किया जाना संभव प्रतीत नहीं होता है। अभियुक्त सुनील कुमार अग्रवाल की ओर से की गयी आपत्तियों पर विचार किया गया। प्रकरण प्रारंभिक स्तर पर है। अभियुक्तगण को गिरफ्तार करने के पश्चात विधिवत समय में न्यायालय के समक्ष उपस्थित किया गया है अतः उसकी ओर से की गयी आपत्ति निरस्त की जाती है तथा परिवादी की ओर से प्रस्तुत आवेदन पत्र स्वीकार कर अभियुक्त समीर वि. नोई, लक्ष्मीकांत तिवारी, सुनील कुमार अग्रवाल को 08 दिवस का अर्थात् दिनांक 21.10.2022 तक कस्टोडियल रिमांड में निम्न भातों के अधीन सौपा जाना न्यायाचित दर्शित होता है:—

(1) अभिरक्षा अवधि के दौरान अभियुक्तगण के मानवाधिकारों की रक्षा का संपूर्ण दायित्व प्रवर्तन निदेशालय के सहायक निदेशक निर्मल झरवार की होगी।

(2) अभिरक्षा अवधि में अभियुक्तगण के साथ दुर्व्यवहार, मारपीट या शारीरिक प्रताड़ना नहीं की जावेगी और अभिरक्षा अवधि समाप्त होने पर पुनः चिकित्सकीय मुलाहिजा कराई जाकर, न्यायालय के समक्ष प्रस्तुत किया जावेगा।

(3) अभियुक्तगण को कोरोना वायरस के संक्रमण से सुरक्षित रखे जाने के संबंध में केन्द्र सरकार, राज्य सरकार के द्वारा जारी दिशानिर्देशों का आवश्यक रूप से पालन करेंगे।”

26. He would further submit that since no reason has been assigned in the remand order, the subsequent continuation of custody, is illegal. To substantiate this submission, he has referred to the judgment of Hon'ble the High Court of Punjab & Haryana in case of **Pranav Gupta (supra)**. This was vehemently objected by the learned counsel for the Enforcement Directorate and would submit that the learned trial Court while ordering for remand has taken consideration the material and assigned the reason as such, the applicant is not entitled to grant bail for this reason.

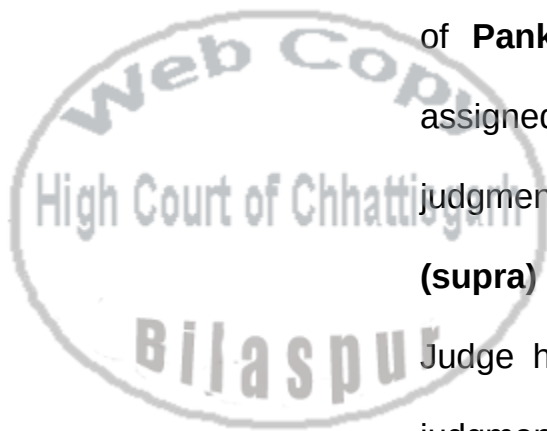
27. From bare perusal of the order dated 13.10.2022 passed by the





learned Special Judge granting remand of the applicant along with other accused has given reason wherein it has specifically stated that the present applicant has purchased coal washeries from M/s KJSL Coas & Power Ltd. to M/s Maa Madwarani Coal Benefaction Pvt. Ltd. at the cost of Rs. 35 crores and other two coal washeries have been purchased and the investigation within 24 hours is not possible, therefore, the custodial remand was ordered. Thus, the learned Special Judge has given some reason. Whereas the order cited by learned Senior counsel for the applicant of the Panchkula Court, it is quite clear that in case of **Pankaj Bansal (supra)**, learned Special Judge has not assigned any reason merely sent them on custodial remand. The judgment of Hon'ble Supreme Court in case of **Pankaj Bansal (supra)** at paragraph 19 has categorically held that the learned Judge has not recorded its satisfaction. Paragraph 19 of the judgment reads as under:-

“19. Viewed in this context, the remand order dated 15.06.2023 passed by the learned Vacation Judge/ Additional Sessions Judge, Panchkula, reflects total failure on his part in discharging his duty as per the expected standard. The learned Judge did not even record a finding that he perused the grounds of arrest to ascertain whether the ED had recorded reasons to believe that the appellants were guilty of an offence under the Act of 2002 and that there was proper compliance with the mandate of Section 19 of the Act of 2002. He merely stated that, keeping in view the seriousness of the offences and the stage of the investigation, he was convinced that custodial interrogation of the accused persons was required in the present case and remanded them to the custody of the ED! The sentence – ‘It is further (*sic*) that all the necessary mandates of law have been complied with’ follows – ‘It is the case of the prosecution....’ and appears to be a continuation thereof, as indicated by the word ‘further’, and is not a recording by the learned Judge of his own





satisfaction to that effect.”

28. Whereas in the present case, the learned Special Judge has categorically recorded its reason and satisfaction while granting the remand of the applicant to the Enforcement Directorate. Thus, there is compliance of Section 19 of the PMLA, 2002 and the order dated 13.10.2022 passed by the learned Special Judge is inconformity with the law laid down by Hon'ble the Supreme Court in case of **Pankaj Bansal (supra)**. Therefore, the contention raised by learned Senior counsel for the applicant that there is non-compliance of Section 19 of the PMLA, 2002 vitiating the entire proceedings, applicant is entitled to be released on bail, deserves to be rejected. Accordingly, it is rejected. Hon'ble the Supreme Court while elaborately discussing the facts in case of **Pankaj Bansal (supra)** has recorded its finding that the way in which Enforcement Directorate recorded second ECIR immediately after the applicant secures anticipatory bail in relation to the first ECIR though the foundational FIR dated 17.04.2023 and then went about summoning them on one pretext and arresting them another within a short span of 24 hours or so manifest completely utter lack of bonafides. This is not the case in hand. The applicant along with the other accused were arrested on 12.10.2022 and thereafter they were produced before the learned Special Judge 13.10.2022 itself. Therefore, the judgment passed by Hon'ble Division Bench of Punjab & Haryana High Court referred by learned Senior counsel for the applicant in





case of **Roop Bansal (supra)** is distinguishable on the facts and circumstances of the case.

29. Further submission of learned Senior counsel for the applicant that the summon was issued for appearance of the applicant for 12.10.2022 which was made effective till 11.59 p.m. on 12.10.2022 and he was arrested at 5.30 a.m. on 13.10.2022 as such, the applicant was remained in wrongful custody and was illegally restrained during the period from 12 a.m. to 5.30 a.m. of 13.10.2022 as such, arrest is nonest and illegal order. This submission has already been repelled by the learned Special Judge by rejecting the same. Even otherwise the submission made by learned Senior counsel for the applicant that he was remained in custody of the Enforcement Directorate from 12.00 a.m. to 5.30 a.m. is a matter of evidence which can be examined when the trial is begun. Even otherwise, law has been well settled by Hon'ble the Supreme Court that while considering the bail application, the Court is not required to weigh the evidence collected by the investigating agency meticulously, nonetheless, the Court should keep in mind the nature of accusation, the nature of evidence collected in support thereof, the severity of the punishment prescribed for the alleged offences, the character of the accused, the circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the time of trial, reasonable apprehension of the witness being tempered with, the large interest of the public/ state etc. Hon'ble the Supreme Court in case of **Saumya**





Chourasiya Vs. Directorate of Enforcement [Criminal Appeal

No. 3840 of 2023, decided on 14.12.2023], wherein Hon'ble the

Supreme Court has held at paragraph 18 & 19 as under:-

“18. The object of the PMLA hardly needs to be delineated. The said Act has been enacted to prevent money laundering and to provide for confiscation of property derived from, or involved in, money laundering and for the matters connected therewith and incidental thereto. As per Section 2(1)(p), “Money Laundering” has the meaning assigned to it in Section 3. The offence of Money Laundering has been defined in Section 3, which is punishable under Section 4 of the said Act. Section 45 makes the offences under the PMLA to be cognizable and non bailable. As regards the twin conditions for the grant of bail contained in Section 45(1), it has been held by the Three-Judge Bench in Vijay Madanlal (supra) that the underlying principles and rigours of Section 45 of the Act must come into play and without exception ought to be reckoned to uphold the objectives of the Act, which is a special legislation providing for stringent regulatory measures for combating the menace of money laundering.

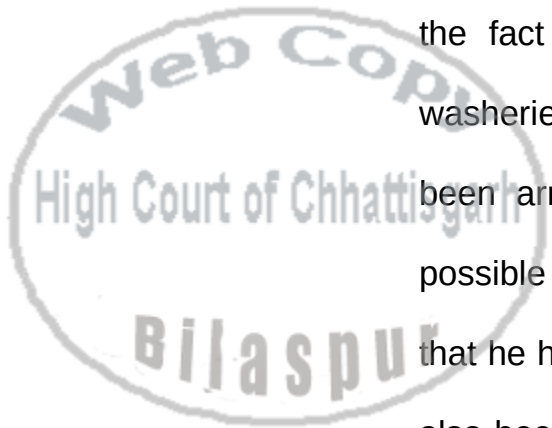
19. Though it is true that the Court while considering an application seeking bail is not required to weigh the evidence collected by the investigating agency meticulously, nonetheless the Court should keep in mind the nature of accusation, the nature of evidence collected in support thereof, the severity of the punishment prescribed for the alleged offences, the character of the accused, the circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the time of trial, reasonable apprehension of the witness being tempered with, the large interest of the public/ state etc. Though the findings recorded by the Court while granting or refusing to grant bail would be tentative in nature, nonetheless the Court is expected to express prima facie opinion while granting or refusing to grant bail which would demonstrate an application of mind, particularly dealing with the serious economic offences.”

30. From bare perusal of the above reason assigned by the learned trial Court and the material which has been considered by the trial Court while ordering for remand, clearly demonstrates that there is sufficient material for passing the impugned order.
31. Further submission of learned counsel for the applicant that the





summon was issued for appearance of the applicant on 12.10.2022 which expired on 12.10.2022 at 12 p.m. thereafter arrest was made on 13.10.2022 upto 5.30 a.m., it was illegal custody, as such, the subsequent order of remand on illegal custody, is *void ab initio* in the light of judgment passed by Hon'ble the Supreme Court in case of **V. Senthil Balaji (supra)**, and deserves to be rejected as in the present facts of the case, while arresting the applicant, reasons have been assigned by the Enforcement Directorate and in the remand order also, the learned trial Court has applied its mind and has also considered the fact that the present applicant has purchased two coal washeries at the cost of Rs. 35 crores and the accused have been arrest on a solid grounds and the investigation is not possible within 24 hours. The objection raised by the applicant that he has not been produced before the learned trial court has also been rejected by it. The submission of the learned counsel for the applicant that his summon for 12.10.2022 and he remained in custody upto 5.30 a.m. cannot be considered as it is a matter of evidence which can be very well taken during the trial. Even the trial Court while granting remand has recorded its finding that within 24 hours of arrest, the applicant has been produced before the Court and there is no material to rebut the said finding recorded by the learned trial Court, as such the contention that the accused was remained in illegal custody from 12 a.m. to 5.30 a.m. deserves to be rejected and accordingly, it is rejected.

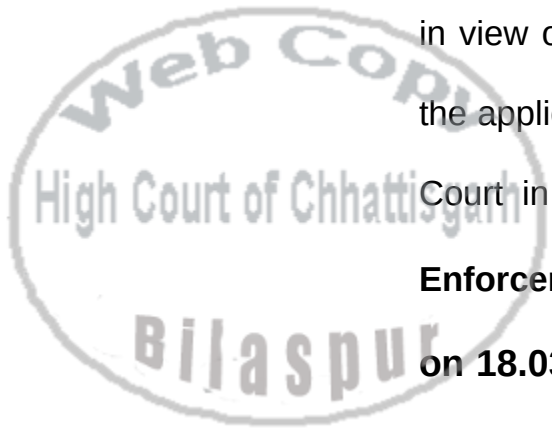




32. The submissions made by learned Senior counsel for the applicant that the coal washeries were purchased after due process getting approval from the Directors of the companies, proper valuation has been done and thereafter the property has been purchased as such, it cannot be said that he was involved in commission of offence of layering the proceeds of crime, are all are his defence, which can be considered during the trial only.
33. Further contention of learned counsel for the applicant that the applicant is remained in custody for one year and five months, therefore, he should be released on bail, cannot be considered in view of the gravity of offence and *prima facie* involvement of the applicant in the commission of offence. Hon'ble the Supreme Court in case of **Satyendar Kumar Jain Vs. Directorate of Enforcement [Criminal Appeal No. 1638 of 2024, decided on 18.03.2024]** wherein it has been held at paragraph 28 to 34 as under:-

“28. From the above stated facts there remains no shadow of doubt that the appellant- Satyendar Kumar Jain had conceptualized idea of accommodation entries against cash and was responsible for the accommodation entries totalling to Rs. 4.81 crores (approx.) received through the Kolkata based entry operators in the bank accounts of the four companies i.e. M/s. Akinchan Developers Pvt. Ltd., M/s. Paryas Infosolution Pvt. Ltd., M/s. Indo Metalimpex Pvt. Ltd. and M/s. Mangalayatan Projects Pvt. Ltd., by paying cash and the said companies were controlled and owned by him and his family. Though it is true that a company is a separate legal entity from its shareholders and directors, the lifting of corporate veil is permissible when such corporate structures have been used for committing fraud or economic offences or have been used as a facade or a sham for carrying out illegal activities.

29. It has also been found that the appellants - Ankush Jain and Vaibhav Jain had assisted the appellant-Satyendar Kumar Jain by making false declarations under the IDS





each of them declaring alleged undisclosed income of Rs.8.26 crores in order to protect Satyendar Kumar Jain. Though it was sought to be submitted by the learned counsel for the appellants that the said declarations under IDS having been held to be “void” in terms of Section 193 of FA, 2016 by the income tax authorities, the same could not be looked into in the present proceedings, the said submission cannot be accepted. The declarations made by the appellants-Ankush Jain and Vaibhav Jain under IDS have not been accepted by the Income Tax authorities on the ground that they had misrepresented the fact that the investments in the said companies belonged to the said appellants, which in fact belonged to Mr. Satyendar Kumar Jain. The appellants could not be permitted to take advantage of their own wrongdoing of filing the false declarations to mislead the Income Tax authorities, and now to submit in the present proceedings under PMLA that the said declarations under the IDS were void. The declarations made by them under the IDS though were held to be void, the observations and proceedings recorded in the said orders passed by the Authorities and by the High Court cannot be brushed aside merely because the said declarations were deemed to be void under Section 193 of the Finance Act, 2016. The said proceedings clearly substantiates the case of the respondent ED as alleged in the Prosecution Complaint under the PMLA.

30. Having regard to the totality of the facts and circumstances of the case, we are of the opinion that the appellants have miserably failed to satisfy us that there are reasonable grounds for believing that they are not guilty of the alleged offences. On the contrary, there is sufficient material collected by the respondent-ED to show that they are *prima facie* guilty of the alleged offences.

31. Though Ms. Arora had faintly sought to submit that the so-called inadvertent mistake committed by the ED with regard to the figures mentioned in the Prosecution Complaint in respect of the role of the appellants Ankush Jain and Vaibhav Jain should not be permitted to be corrected, which otherwise show that the allegations against the appellants were vague in nature, we are not impressed by the said submission. We are satisfied from the explanation put forth in the affidavit filed on behalf of the respondent-ED that it was only an inadvertent mistake in mentioning the figure Rs.1,53,61,166/- in the bracketed portion, which figure was shown by the CBI in its chargesheet. The said inadvertent mistake has no significance in the case alleged against the appellants in the proceedings under the PMLA.

32. From the totality of facts and circumstances of the case, it is not possible to hold that appellants had complied with the twin mandatory conditions laid down in Section 45 of





PMLA. The High Court also in the impugned judgment after discussing the material on record had *prima facie* found the appellants guilty of the alleged offences under the PMLA, which judgment does not suffer from any illegality or infirmity.

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

34. In that view of the matter, all the appeals are dismissed.”

Thus, **Point No. 1** answered against the applicant.

Point No. 2

34. Before advertng to the facts of the case, it is expedient for this Court to extract Section 45 of the PMLA, 2002, which reads as under:-

“Section 45 of PMLA, 2002- Offences to be cognizable and non-bailable.— (1) [Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence [under this Act] shall be released on bail or on his own bond unless—]

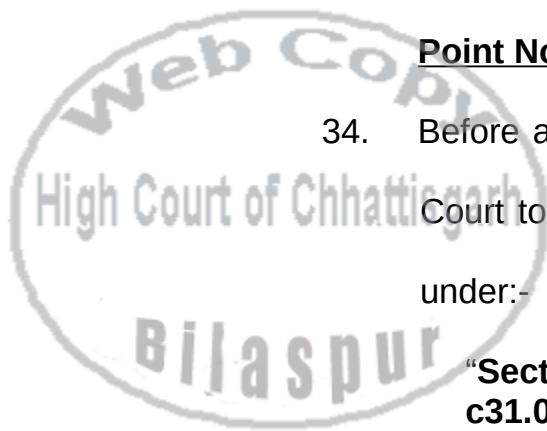
(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm [or is accused either on his own or along with other co-accused of money- laundering a sum of less than one crore rupees], may be released on bail, if the Special Court so directs:

Provided further that the Special Court shall not take cognizance of any offence punishable under Section 4 except upon a complaint in writing made by—

(i) the Director; or





(ii) any officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government.

[(1-A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.]

(2) The limitation on granting of bail specified in [* * *] sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.”

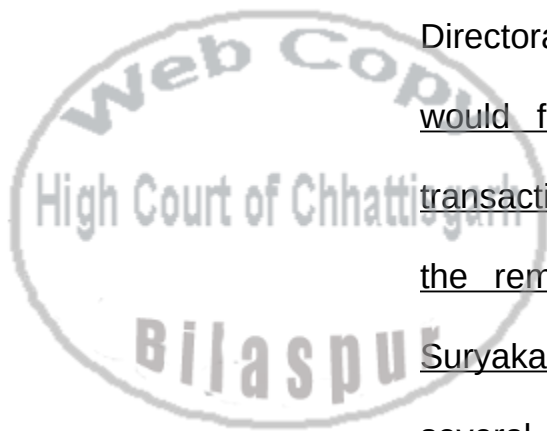
35. From bare perusal of ECIR with regard to the allegations leveled against the present applicant, it is quite vivid that the the present applicant has played specific role and he is kingpin of the offence and is promoter of M/s Indermani Group having a close relationship with Suryakant Tiwari. Investigation revealed that the applicant had helped Surykant Tiwari in acquiring coal washeries from M/s Indus Udyog & Infrastructure Pvt. Ltd. and M/s Satya Power and Ispat Ltd. These coal washeries were acquired for an amount of Rs. 96 crore, out of which Rs. 34 crore was the registered value and was paid through banking channel and rest of the amount was to be paid in cash. Thus, large amount of illegally acquired cash was layered in these transactions. After the Income Tax raids, he made sham paper transactions to show that he was the owner of these two washeries. These transactions were nothing but a futile attempt to alienate the ill-gotten proceeds of crime and take them far away from the arms of Income Tax & Enforcement Department departments and to prevent their attachment and to claim them





as untainted assets. The applicant knowingly and willingly participated in these transactions to layer and obfuscate the real ownership of these tainted properties despite being a man of means and business standing, be knowingly acted as a benami for Suryakant Tiwari and has assisted in the money laundering process. He would further submit that apart from the above two washeries, after the income tax raids on Surykant Tiwari and his associates, Indermani Group purchased all the benami properties of Suryakant Tiwari to safeguard the ill-gotten proceeds of crime and to frustrate the efforts of Enforcement Directorate to attach the proceeds of crime in future. The ECIR would further reflect that all these transactions are sham transactions. He has only blocked his capital in these assets and the remaining entire cash transactions were still done by Suryakant Tiwari only. The record would further reflect that several properties in the names of companies of the applicant herein viz., M/s Indermani Minerals Pvt. Ltd. & M/s KJSL Coal & Power Pvt. Ltd. which were acquired using proceeds of crime have been attached under Section 5(1) of the PMLA, 2002 on 09.12.2022 and 29.01.2023 and the same were subsequently confirmed by the learned Adjudicating Authority (PMLA), vide orders dated 01.06.2023 & 17.07.2023. Thus, the applicant is unable to fulfill the twin condition of Section 45 of the PMLA, 2002.

36. Considering the above stated factual legal matrix, it is quite vivid that the applicant is unable to fulfill twin conditions for grant of





bail as per Section 45 of the PMLA, 2002 and also considering the submission that the applicant has not *prima facie* reversed the burden of proof and dislodged the prosecution case which is mandatory requirement to get bail. Hon'ble the Supreme Court in case of **Directorate of Enforcement Vs. Aditya Tripathi (Criminal Appeal No. 1401/2023) decided on 12.05.2023** has held at paragraph 6 & 7 as under:-

“6. At the outset, it is required to be noted that respective respondent No. 1 – accused are facing the investigation by the Enforcement Directorate for the scheduled offences and for the offences of money laundering under Section 3 of the PML Act punishable under Section 4 of the said Act. An enquiry/investigation is still going on by the Enforcement Directorate for the scheduled offences in connection with FIR No. 12/2019. Once, the enquiry/investigation against respective respondent No. 1 is going on for the offences under the PML Act, 2002, the rigour of Section 45 of the PML Act, 2002 is required to be considered. Section 45 of the PML Act, 2002 reads as under:-

“45. Offences to be cognizable and non-bailable.— (1) [Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence [under this Act] shall be released on bail or on his own bond unless—]

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm [or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees], may be released on bail, if the Special Court so directs:

Provided further that the Special Court shall not take cognizance of any offence punishable under Section 4 except upon a complaint in writing made by—

(i) the Director; or

(ii) any officer of the Central Government or a State Government authorised in writing in this behalf by the





Central Government by a general or special order made in this behalf by that Government.

[(1-A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.]

(2) The limitation on granting of bail specified in [* * *] subsection (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.”

By the impugned judgment(s) and order(s) and while granting bail, the High Court has not considered the rigour of Section 45 of the PML Act, 2002.

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

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

6.3 From the impugned judgment(s) and order(s) passed by the High Court, it appears that what is weighed with the High Court is that chargesheet has been filed against respective respondent No. 1 – accused and therefore, the investigation is completed. However, the High Court has failed to notice and appreciate that the investigation with respect to the scheduled offences under the PML Act, 2002 by the Enforcement Directorate is still going on. Merely because, for the predicated offences the chargesheet might have been filed it cannot be a ground to release the accused on bail in connection with the scheduled offences under the PML Act, 2002. Investigation for the predicated offences and the investigation by the Enforcement Directorate for the scheduled offences under the PML Act are different and distinct. Therefore, the High Court has



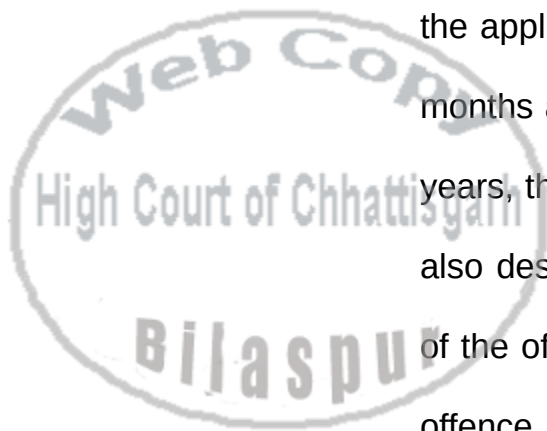


taken into consideration the irrelevant consideration. The investigation by the Enforcement Directorate for the scheduled offences under the PML Act, 2002 is still going on.

7. As observed hereinabove, the High Court has neither considered the rigour of Section 45 of the PML Act, 2002 nor has considered the seriousness of the offences alleged against accused for the scheduled offences under the PML Act, 2002 and the High Court has not at all considered the fact that the investigation by the Enforcement Directorate for the scheduled offences under the PML Act, 2002 is still going on and therefore, the impugned orders passed by the High Court enlarging respective respondent No. 1 on bail are unsustainable and the matters are required to be remitted back to the High Court for afresh decision on the bail applications after taking into consideration the observations made hereinabove.”

37. Learned Senior counsel for the applicant would submit that since the applicant is remained in jail for more than one year and five months and maximum sentence which can be awarded is seven years, therefore, he should be released on bail. This submission also deserves to be rejected looking to gravity and seriousness of the offence and the role played by the applicant and also the offence relates to money laundering which has difference class of offence, the applicant being influenced person as he was granted the facilities when he was remained in hospital, this clearly indicates that he is influential person and may influence the witness or tamper the evidence. As such, he is not entitled to be released on bail on the count that he remained in custody for one year and five months.

38. Considering the ECIR and other material placed on record, which *prima facie* shows involvement of the applicant in crime in question and also considering the judgment of Hon'ble the Supreme Court in case of **Saumya Chourasiya (supra)** &





Satyendar Kumar Jain (supra), it is quite vivid that the applicant is unable to fulfill the twin conditions for grant of bail as provided under Section 45 of the PMLA, 2002. Thus, **Point No. 2** is answered against the applicant.

39. Considering the above stated factual and legal matrix, the role played by the applicant, *prima facie*, the remand and arrest order are in accordance with the provisions of the PMLA, 2002 and also considering the gravity of offence, I am not inclined to enlarge the applicant on bail.

40. Accordingly, the **second** bail application filed under Section 439 of the Cr.P.C. is also liable to be and is hereby rejected.

41. The observation made by this Court is not bearing any effect on the trial of the case. The learned trial court will decide the criminal trial in accordance with evidence, material placed on record, without being influenced by any of the observations made by this Court while deciding the present bail application.

Sd/-
(Narendra Kumar Vyas)
Judge