IN THE HIGH COURT OF JHARKHAND AT RANCHI
B.A. No. 11095 of 2023

Tara Chand, aged about 40 years, Son of Kalyan Sahay, resident of Plot No. 129, Anand Vihar, Vijaypura Road, Agra Road, Jaipur, P.O. and P.S. Jaipur, District-Jaipur.

……. **Petitioner**

Versus

The Union of India though the Enforcement Directorate, Zonal Office, Ranchi **… …….** **Opposite Party**

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD

For the Petitioner :Mr. Nilesh Kumar, Advocate
Mr. Ayush Kumar Verma, Advocate
For the Opp. Party :Mr. Amit Kumar Das, Advocate

C.A.V. on 23/02/2024 ***Pronounced on 01/03/2024***

Prayer

1. The instant application has been filed under Section 439 read with Section 440 of the Code of Criminal Procedure, 1973 praying for grant of bail in ECIR Case No.2 of 2023 (A) arising out of ECIR-RNZO/16/2020 dated 17.09.2020 registered for the offence under Sections 3 and 4 of the Prevention of Money Laundering Act, 2002 with Schedule Offence under Sections 120B of the Indian Penal Code and 7(b) of the Prevention of Corruption (Amendment) Act, 2018, pending in the court of learned Additional Judicial Commissioner-VIII-cum-Special Judge, PML Act, Ranchi.

Facts of the case

2. The prosecution case in brief is that the investigation under the Prevention of Money Laundering Act, 2002 was

initiated by recording the ECIR/RNSZO/16/2020 dated-17.09.2020 against the accused persons on the basis of information received from FIR No. 13/2019 dated-13.11.2019 registered by the ACB, Jamshedpur.

3. Subsequently the Final Report has been filed by the investigating agency bearing no. 01/2020 dated-11.01.2020 under Section 120-B and 201 IPC and under Section 7 (b) of the P.C. Act, 1988 against the accused persons, namely, Alok Ranjan and Suresh Prasad Verma.

4. Further, in course of search proceeding conducted in relation to the instant case at different places under Section 17 PML Act to investigate the role of the accused persons and their close associates, it is found that part of the proceeds of crime acquired in the form of commission/bribe in lieu of allotment of tenders by the accused Veerendra Kumar Ram, a public servant. The said bribe money was getting routed by a Delhi based CA Mukesh Mittal to the bank accounts of family members of Veerendra Kumar Ram with the help of bank accounts of Mukesh Mittal's employees/relatives.

5. It is also ascertained that Veerendra Kumar Ram used to give cash to Mukesh Mittal who with the help of other entry providers used to take entries in the bank accounts of his employees and relatives and then such fund was transferred by Mukesh Mittal into the bank accounts of

the co-accused Rajkumari (wife of Veerendra Kumar Ram) and Genda Ram (father of Veerendra Kumar Ram).

6. Further Investigation disclosed that Mukesh Mittal contacted Ram Parkash Bhatia who is engaged in the illegal business of providing entries in lieu of commission for taking the entries into the bank account of Genda Ram. Subsequently, Ram Parkash Bhatia provided those entries with the help of his associate Neeraj Mittal using the bank accounts of the present petitioner which were opened under a fictitious name.

7. Neeraj Mittal using the bank accounts of the petitioner which also includes accounts opened on the basis of forged documents, provided entries of Rs. 3.52 crores into the bank accounts of relatives/employees of Mukesh Mittal which subsequently reached into the bank accounts of Genda Ram.

8. Further, it was also seen that the bank accounts of Genda Ram received high-valued funds from the bank accounts of Rakesh Kumar Kedia, Manish, and Neha Shrestha (relatives/employees of Mukesh Mittal) which were used in purchasing immovable property in the name of Genda Ram (father of Veerendra Ram). It is further identified that all aforementioned three persons transferred the funds to Genda Ram's bank account after receiving funds from the bank accounts of three

proprietorship firms (M/s Om Traders, M/s Shri Khatushyam Traders & M/s Anil Kumar Govind Ram) of one fictitious person namely Sachin Gupta. It was further ascertained that present petitioner Tara Chand who is an associate of Neeraj Mittal was actually impersonating himself as Sachin Gupta.

9. In connection with aforementioned case the present petitioner was arrested by the E.D. on 25.06.2023. Accordingly, the present petitioner preferred Misc. Cri. Application No. 2942 of 2023 for grant of bail but the same was rejected vide order dated 18.10.2023 passed by the court of, learned Additional Judicial Commissioner-XVIII-cum-Special Judge, PML Act, Ranchi.

10. Hence the present petition has been filed.

Argument advanced by learned counsel for the petitioner:

11. Mr. Nilesh Kumar learned counsel for the petitioner has argued *inter alia* on the following grounds:

(i)It has been contended that there is no allegation said to be committed so as to attract the offence under Section under Section 3 of the PML Act.

(ii) The petitioner namely, Tara Chand, is an employee of C.A., namely, Mukesh Mittal, save and except there is no allegation said to be committed so as to attract the penal offence under PML Act, 2002.

(iii) Learned counsel for the petitioner in order to demonstrate the fact that no offence has been committed has placed the material collected in course of inquiry based upon the ECIR which has been submitted before the competent court of jurisdiction.

(iv) It has also been alleged that petitioner opened the bank account by forging documents in the name of fictitious persons and even if this allegation is taken to be true then also no case is made out against the petitioner as **because it should come under the ambit of money laundering** and it is necessary that the person should knowingly assist or knowingly in a part or is actually involved in any process or activity connected with proceeds of crime.

(v) However, this petitioner has never opened the bank account by forging documents and none of the transactions from the alleged bank accounts which were opened at Delhi was under the knowledge of this petitioner nor the petitioner had any knowledge regarding the existence of the said bank accounts.

(vi) In support of his contention, the learned counsel relied upon the observation made by the Hon'ble Apex Court in the case of ***Vijay Madan Lal Choudhary and others Vs. Union of India and others 2022 SCC online SC 929, Ranjeet Singh Brahmajeet***

Singh Sharma Vs. State of Maharashtra and Anr. 2005 (5) SCC 294, and ***P. Chidambram Vs. Directorate of Enforcement 2020 (13) SCC 791***,

12. Learned counsel for the petitioner based upon the aforesaid grounds has submitted that in the aforesaid view of the matter as per the ground agitated hereinabove, it is a fit case where the petitioner is to be given the benefit of privilege of bail.

Argument advanced by learned counsel for the opposite party-Enforcement Directorate:

13. While on the other hand, Mr. Amit Kumar Das, learned counsel for the opposite party - Enforcement Directorate has seriously opposed the said submission/ground both based upon the fact and the law as referred hereinabove by Mr. Nilesh Kumar learned counsel for the petitioner.

(i) It has been submitted that the twin condition for bail under Section 45 of the Act, 2002 must be made out, i.e., the court is required to be satisfied that there are reasonable grounds to believe that the accused is not guilty of such offence and is not likely to commit offence while on bail.

(ii) Further, it has been submitted by referring to the imputation as has been come in course of investigation conducted against the present petitioner wherein, the

direct involvement of the petitioner has been found in laundering the money which has been acquired by the co-accused person, namely, Veerendra Kumar Ram.

(iii) Learned counsel for the Enforcement Directorate has referred the imputation as has come against the petitioner in the supplementary prosecution complaint dated 20.08.2023 which has been appended with the paper book wherein it is alleged that the accused Tara Chand (petitioner) disclosed during investigation that three bank accounts were opened by him impersonating himself as Sachin Gupta in the name of three proprietorship firms by forging documents on the instruction of co-accused Neeraj Mittal, who also used to operate the bank accounts. Further, no business has been found to be existing in the name of above three proprietorship firms at the address provided to the bank.

(iv) In support of his contention, the learned counsel has also relied upon the judgments rendered by the Hon'ble Apex Court in the case of ***Vijay Madan Lal Choudhary and others Vs. Union of India and others 2022 SCC online SC 929*** *and* ***Rohit Tondon Vs. Directorate of Enforcement (2018) 11 SCC 46.***

14. Learned counsel for the respondent-Enforcement Directorate, based upon the aforesaid grounds, has submitted that it is not a fit case where the prayer for bail is

to be allowed taking into consideration his involvement in dealing with the proceeds of crime of Veerandra Kumar Ram as an associate of Chartered Accountant namely Mukesh Mittal.

Analysis of the submissions made on behalf of parties:

15. Heard the learned counsel for the parties, gone across the pleading available on record as also the finding recorded by learned court.

16. This Court, before appreciating the argument advanced on behalf of the parties, deems it fit and proper to discuss herein some of the provision of law as contained under the Act, 2002 with its object and intent.

17. The Act was enacted to address the urgent need to have a comprehensive legislation *inter alia* for preventing money-laundering, attachment of proceeds of crime, adjudication and confiscation thereof including vesting of it in the Central Government, setting up of agencies and mechanisms for coordinating measures for combating money-laundering and also to prosecute the persons indulging in the process or activity connected with the proceeds of crime. The issues were debated threadbare in the United Nation Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Basle Statement of Principles enunciated in 1989, the FATF established at the summit of seven major industrial nations held in Paris from 14th to 16th July, 1989,

the Political Declaration and Noble Programme of Action adopted by United Nations General Assembly vide its Resolution No. S-17/2 of 23.2.1990, the United Nations in the Special Session on countering World Drug Problem Together concluded on the 8th to the 10th June, 1998, urging the State parties to enact a comprehensive legislation. This is evident from the introduction and Statement of Objects and Reasons accompanying the Bill which became the 2002 Act. The same reads thus:

"INTRODUCTION

Money-laundering poses a serious threat not only to the financial systems of countries, but also to their integrity and sovereignty. To obviate such threats international community has taken some initiatives. It has been felt that to prevent money-laundering and connected activities a comprehensive legislation is urgently needed. To achieve this objective the Prevention of Money-laundering Bill, 1998 was introduced in the Parliament. The Bill was referred to the Standing Committee on Finance, which presented its report on 4th March, 1999 to the Lok Sabha. The Central Government broadly accepted the recommendation of the Standing Committee and incorporated them in the said Bill along with some other desired changes.

STATEMENT OF OBJECTS AND REASONS

It is being realised, world over, that money-laundering poses a serious threat not only to the financial systems of countries, but also to their integrity and sovereignty. Some of the initiatives taken by the international community to obviate such threat are outlined below:—

(a) the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, to which India is a party, calls for prevention of laundering of proceeds of drug crimes and other connected activities and confiscation of proceeds derived from such offence.

(b) the Basle Statement of Principles, enunciated in 1989, outlined basic policies and procedures that banks should follow in order to assist the law enforcement agencies in tackling the problem of money-laundering.

(c) the Financial Action Task Force established at the summit of seven major industrial nations, held in Paris from 14th to 16th July, 1989, to examine the problem of money-laundering has made forty recommendations, which provide the foundation material for comprehensive legislation to combat the problem of money-laundering. The recommendations were classified under various heads. Some of the important heads are—

> *(i) declaration of laundering of monies carried through serious crimes a criminal offence;*
>
> *(ii) to work out modalities of disclosure by financial institutions regarding reportable transactions;*
>
> *(iii) confiscation of the proceeds of crime;*
>
> *(iv) declaring money-laundering to be an extraditable offence; and*
>
> *(v) promoting international co-operation in investigation of money-laundering.*

(d) the Political Declaration and Global Programme of Action adopted by United Nations General Assembly by its Resolution No. S-17/2 of 23rd February, 1990, inter alia, calls upon the member States to develop mechanism to prevent financial institutions from being used for laundering of drug related money and enactment of legislation to prevent such laundering. (e) the United Nations in the Special Session on countering World Drug Problem Together concluded on the 8th to the 10th June, 1998 has made another declaration regarding the need to combat money-laundering. India is a signatory to this declaration."

18. It is thus evident that the Act, 2002 was enacted in order to answer the urgent requirement to have a comprehensive legislation *inter alia* for preventing money-laundering, attachment of proceeds of crime, adjudication and confiscation thereof for combating money-laundering

and also to prosecute the persons indulging in the process or activity connected with the proceeds of crime.

19. It needs to refer herein the definition of "proceeds of crime" as provided under Section 2(1)(u) of the Act, 2002 which reads as under:

> *"2(u)* ***"proceeds of crime"*** *means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property 3[or where such property is taken or held outside the country, then the property equivalent in value held within the country] 4[or abroad]; [Explanation.— For the removal of doubts, it is hereby clarified that "proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence;]"*

20. It is evident from the aforesaid provision that "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad.

21. In the explanation it has been referred that for the removal of doubts, it is hereby clarified that "proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of

any criminal activity relatable to the scheduled offence. The aforesaid explanation has been inserted in the statute book by way of Act 23 of 2019.

22. It is, thus, evident that the reason for giving explanation under Section 2(1)(u) is by way of clarification to the effect that whether as per the substantive provision of Section 2(1)(u), the property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country but by way of explanation the proceeds of crime has been given broader implication by including property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence.

23. The "property" has been defined under Section 2(1)(v) which means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located.

24. The schedule has been defined under Section 2(1)(x) which means schedule to the Prevention of Money

Laundering Act, 2002. The "scheduled offence" has been defined under Section 2(1)(y) which reads as under:

> *"2(y) "scheduled offence" means— (i) the offences specified under Part A of the Schedule; or (ii) the offences specified under Part B of the Schedule if the total value involved in such offences is [one crore rupees] or more; or (iii) the offences specified under Part C of the Schedule."*

25. It is evident that the "scheduled offence" means the offences specified under Part A of the Schedule; or the offences specified under Part B of the Schedule if the total value involved in such offences is [one crore rupees] or more; or the offences specified under Part C of the Schedule.

26. The offence of money laundering has been defined under Section 3 of the Act, 2002 which reads as under:

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

proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.]"

27. It is evident from the aforesaid provision that "offence of money-laundering" means 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 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.

28. It is further evident that the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.

29. The punishment for money laundering has been provided under Section 4 of the Act, 2002. 30. Section 50 of the Act, 2002 confers power upon the authorities regarding summons, production of documents and to give evidence. For ready reference, Section 50 of the Act, 2002 is quoted as under:

"50. Powers of authorities regarding summons, production of documents and to give evidence, etc.—(1) The Director shall, for

the purposes of section 13, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:— (a) discovery and inspection; (b) enforcing the attendance of any person, including any officer of a [reporting entity] and examining him on oath; (c) compelling the production of records; (d) receiving evidence on affidavits; (e) issuing commissions for examination of witnesses and documents; and (f) any other matter which may be prescribed. (2) The Director, Additional Director, Joint Director, Deputy Director or Assistant Director shall have power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this Act. (3) All the persons so summoned shall be bound to attend in person or through authorised agents, as such officer may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required. (4) Every proceeding under sub-sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860). (5) Subject to any rules made in this behalf by the Central Government, any officer referred to in sub-section (2) may impound and retain in his custody for such period, as he thinks fit, any records produced before him in any proceedings under this Act: Provided that an Assistant Director or a Deputy Director shall not— (a) impound any records without recording his reasons for so doing; or (b) retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the [Joint Director].”

30. The various provisions of the Act, 2002 alongwith interpretation of the definition of “***proceeds of crime***” has been dealt with by the Hon’ble Apex Court in the case of ***Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors., (2022) SCC OnLine SC 929*** wherein the

Bench comprising of Three Hon'ble Judges of the Hon'ble Supreme Court have decided the issue by taking into consideration the object and intent of the Act, 2002.

31. The interpretation of the condition which is to be fulfilled while arresting the person involved in the predicate offence has been made as would appear from paragraph 265. For ready reference, relevant paragraphs is being referred as under:

> *"265. To put it differently, the section as it stood prior to 2019 had itself incorporated the expression "including", which is indicative of reference made to the different process or activity connected with the proceeds of crime. Thus, the principal provision (as also the Explanation) predicates that if a person is found to be directly or indirectly involved in any process or activity connected with the proceeds of crime must be held guilty of offence of moneylaundering. If the interpretation set forth by the petitioners was to be accepted, it would follow that it is only upon projecting or claiming the property in question as untainted property, the offence would be complete. This would undermine the efficacy of the legislative intent behind Section 3 of the Act and also will be in disregard of the view expressed by the FATF in connection with the occurrence of the word "and" preceding the expression "projecting or claiming" therein. This Court in Pratap Singh v. State of Jharkhand, enunciated that the international treaties, covenants and conventions although may not be a part of municipal law, the same be referred to and followed by the Courts having regard to the fact that India is a party to the said treaties. This Court went on to observe that the Constitution of India and other ongoing statutes have been read consistently with the rules of international law. It is also observed that the Constitution of India and the enactments made by Parliament must necessarily be understood in the context of the present-day*

scenario and having regard to the international treaties and convention as our constitution takes note of the institutions of the world community which had been created. In Apparel Export Promotion Council v. A.K. Chopra, the Court observed that domestic Courts are under an obligation to give due regard to the international conventions and norms for construing the domestic laws, more so, when there is no inconsistency between them and there is a void in domestic law. This view has been restated in Githa Hariharan, as also in People's Union for Civil Liberties, and National Legal Services Authority v. Union of India."

32. The implication of Section 50 has also been taken into consideration. Relevant paragraph, i.e., paragraphs-422, 424, 425, 431, 434 read as under:

*"**422**. The validity of this provision has been challenged on the ground of being violative of Articles 20(3) and 21 of the Constitution. For, it allows the authorised officer under the 2002 Act to summon any person and record his statement during the course of investigation. Further, the provision mandates that the person should disclose true and correct facts known to his personal knowledge in connection with the subject matter of investigation. The person is also obliged to sign the statement so given with the threat of being punished for the falsity or incorrectness thereof in terms of Section 63 of the 2002 Act. Before we proceed to analyse the matter further, it is apposite to reproduce Section 50 of the 2002 Act, as amended. -----:*

***424**. By this provision, the Director has been empowered to exercise the same powers as are vested in a civil Court under the 1908 Code while trying a suit in respect of matters specified in sub-section (1). This is in reference to Section 13 of the 2002 Act dealing with powers of Director to impose fine in respect of acts of commission and omission by the banking companies, financial institutions and intermediaries. From the setting in which Section 50 has been placed and the expanse of empowering the Director with same powers as are vested in a civil Court for the purposes of imposing*

fine under Section 13, is obviously very specific and not otherwise.

425. *Indeed, sub-section (2) of Section 50 enables the Director, Additional Director, Joint Director, Deputy Director or Assistant Director to issue summon to any person whose attendance he considers necessary for giving evidence or to produce any records during the course of any investigation or proceeding under this Act. We have already highlighted the width of expression "proceeding" in the earlier part of this judgment and held that it applies to proceeding before the Adjudicating Authority or the Special Court, as the case may be. Nevertheless, sub-section (2) empowers the authorised officials to issue summon to any person. We fail to understand as to how Article 20(3) would come into play in respect of process of recording statement pursuant to such summon which is only for the purpose of collecting information or evidence in respect of proceeding under this Act. Indeed, the person so summoned, is bound to attend in person or through authorised agent and to state truth upon any subject concerning which he is being examined or is expected to make statement and produce documents as may be required by virtue of sub-section (3) of Section 50 of the 2002 Act. The criticism is essentially because of subsection (4) which provides that every proceeding under sub-sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the IPC. Even so, the fact remains that Article 20(3) or for that matter Section 25 of the Evidence Act, would come into play only when the person so summoned is an accused of any offence at the relevant time and is being compelled to be a witness against himself. This position is well-established. The Constitution Bench of this Court in M.P. Sharma had dealt with a similar challenge wherein warrants to obtain documents required for investigation were issued by the Magistrate being violative of Article 20(3) of the Constitution. This Court opined that the guarantee in Article 20(3) is against "testimonial compulsion" and is not limited to oral evidence. Not only that, it gets triggered if the person is compelled to be a witness against*

himself, which may not happen merely because of issuance of summons for giving oral evidence or producing documents. Further, to be a witness is nothing more than to furnish evidence and such evidence can be furnished by different modes. The Court went on to observe as follows: "Broadly stated the guarantee in article 20(3) is against "testimonial compulsion". It is suggested that this is confined to the oral evidence of a person standing his trial for an offence when called to the witness-stand. We can see no reason to confine the content of the constitutional guarantee to this barely literal import. So to limit it would be to rob the guarantee of its substantial purpose and to miss the substance for the sound as stated in certain American decisions. The phrase used in Article 20(3) is "to be a witness". A person can "be a witness" not merely by giving oral evidence but also by producing documents or making intelligible gestures as in the case of a dumb witness (See section 119 of the Evidence Act) or the like. "To be a witness" is nothing more than "to furnish evidence", and such evidence can be furnished through the lips or by production of a thing or of a document or in other modes. So far as production of documents is concerned, no doubt Section 139 of the Evidence Act says that a person producing a document on summons is not a witness. But that section is meant to regulate the right of cross examination. It is not a guide to the connotation of the word "witness", which must be understood in its natural sense, i.e., as referring to a person who furnishes evidence. Indeed, every positive volitional act which furnishes evidence is testimony, and testimonial compulsion connotes coercion which procures the positive volitional evidentiary acts of the person, as opposed to the negative attitude of silence or submission on his part. Nor is there any reason to think that the protection in respect of the evidence so procured is confined to what transpires at the trial in the court room. The phrase used in article 20(3) is "to be a witness" and not to "appear as a witness". It follows that the protection afforded to an accused in so far as it is related to the phrase "to be a witness" is not merely in respect of testimonial compulsion in

the court room but may well extend to compelled testimony previously obtained from him. It is available therefore to a person against whom a formal accusation relating to the commission of an offence has been levelled which in the normal course may result in prosecution. Whether it is available to other persons in other situations does not call for decision in this case." (emphasis supplied)

***431**. In the context of the 2002 Act, it must be remembered that the summon is issued by the Authority under Section 50 in connection with the inquiry regarding proceeds of crime which may have been attached and pending adjudication before the Adjudicating Authority. In respect of such action, the designated officials have been empowered to summon any person for collection of information and evidence to be presented before the Adjudicating Authority. It is not necessarily for initiating a prosecution against the noticee as such. The power entrusted to the designated officials under this Act, though couched as investigation in real sense, is to undertake inquiry to ascertain relevant facts to facilitate initiation of or pursuing with an action regarding proceeds of crime, if the situation so warrants and for being presented before the Adjudicating Authority. It is a different matter that the information and evidence so collated during the inquiry made, may disclose commission of offence of money-laundering and the involvement of the person, who has been summoned for making disclosures pursuant to the summons issued by the Authority. At this stage, there would be no formal document indicative of likelihood of involvement of such person as an accused of offence of money laundering. If the statement made by him reveals the offence of money laundering or the existence of proceeds of crime, that becomes actionable under the Act itself. To put it differently, at the stage of recording of statement for the purpose of inquiring into the relevant facts in connection with the property being proceeds of crime is, in that sense, not an investigation for prosecution as such; and in any case, there would be no formal accusation against the noticee. Such summons can be issued even to witnesses in the inquiry so*

conducted by the authorised officials. However, after further inquiry on the basis of other material and evidence, the involvement of such person (noticee) is revealed, the authorised officials can certainly proceed against him for his acts of commission or omission. In such a situation, at the stage of issue of summons, the person cannot claim protection under Article 20(3) of the Constitution. However, if his/her statement is recorded after a formal arrest by the ED official, the consequences of Article 20(3) or Section 25 of the Evidence Act may come into play to urge that the same being in the nature of confession, shall not be proved against him. Further, it would not preclude the prosecution from proceeding against such a person including for consequences under Section 63 of the 2002 Act on the basis of other tangible material to indicate the falsity of his claim. That would be a matter of rule of evidence.

***434**. It is, thus, clear that the power invested in the officials is one for conducting inquiry into the matters relevant for ascertaining existence of proceeds of crime and the involvement of persons in the process or activity connected therewith so as to initiate appropriate action against such person including of seizure, attachment and confiscation of the property eventually vesting in the Central Government.*"

33. It is evident from the observation so made as above that the purposes and objects of the 2002 Act for which it has been enacted, is not limited to punishment for offence of money-laundering, but also to provide measures for prevention of money-laundering. It is also to provide for attachment of proceeds of crime, which are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceeding relating to confiscation of such proceeds under the 2002 Act. This Act is also to compel the banking companies,

financial institutions and intermediaries to maintain records of the transactions, to furnish information of such transactions within the prescribed time in terms of Chapter IV of the 2002 Act.

34. The predicate offence has been considered in the aforesaid judgment wherein by taking into consideration the explanation as inserted by way of Act 23 of 2019 under the definition of the "proceeds of crime" as contained under Section 2(1)(u), whereby and whereunder, it has been clarified for the purpose of removal of doubts that, the "proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence, meaning thereby, the words "any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence" will come under the fold of the proceeds of crime.

35. So far as the purport of Section 45(1)(i)(ii) is concerned, the aforesaid provision starts from the *non-obstante* clause that notwithstanding anything contained in the Code of Criminal Procedure, 1973, 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 a 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.

36. Sub-section (2) thereof puts limitation on granting bail specific in subsection (1) in addition to the limitations under the Code of Criminal Procedure, 1973 or any other law for the time being in force on granting of bail.

37. The explanation is also there as under sub-section (2) thereof which is for the purpose of removal of doubts. A clarification has been inserted that the expression "Offences to be cognizable and non-bailable" shall mean and shall be deemed to have always meant that all offences under this Act shall be cognizable offences and non-bailable offences notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973, and accordingly the officers authorised under this Act are empowered to arrest an accused without warrant, subject to the fulfilment of conditions under section 19 and subject to the conditions enshrined under this section.

38. The fact about the implication of Section 45 has been interpreted by the Hon'ble Apex Court in ***Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors***.*(supra)* at paragraphs-372-374.

39. For ready reference, the said paragraphs are being referred as under:

> *"372. Section 45 has been amended vide Act 20 of 2005, Act 13 of 2018 and Finance (No. 2) Act, 2019. The provision as it obtained prior to 23.11.2017 read somewhat differently. The constitutional validity of Sub-section (1) of Section 45, as it stood then, was considered in Nikesh Tarachand Shah. This Court declared Section 45(1) of the 2002 Act, as it stood then, insofar as it imposed two further conditions for release on bail, to be unconstitutional being violative of Articles 14 and 21 of the Constitution. The two conditions which have been mentioned as twin conditions are: (i) that there are reasonable grounds for believing that he is not guilty of such offence; and (ii) that he is not likely to commit any offence while on bail.*
>
> *373. According to the petitioners, since the twin conditions have been declared to be void and unconstitutional by this Court, the same stood obliterated. To buttress this argument, reliance has been placed on the dictum in State of Manipur.*
>
> *374. The first issue to be answered by us is: whether the twin conditions, in law, continued to remain on the statute book post decision of this Court in Nikesh Tarachand Shah and if yes, in view of the amendment effected to Section 45(1) of the 2002 Act vide Act 13 of 2018, the declaration by this Court will be of no consequence. This argument need not detain us for long. We say so because the observation in State of Manipur in paragraph 29 of the judgment that owing to the declaration by a Court that the statute is unconstitutional obliterates the statute entirely as though it had never been passed, is contextual. In this case, the Court was dealing with the efficacy of the repealing Act. While doing so, the Court had adverted to the repealing Act and made the stated observation in the context of lack of legislative power. In the process of reasoning, it did advert to the exposition in Behram Khurshid Pesikaka and Deep Chand including American jurisprudence expounded in Cooley on Constitutional Limitations and Norton v. Shelby County."*

40. Subsequently, the Hon'ble Apex Court in the case of ***Tarun Kumar vs. Assistant Director Directorate of***

Enforcement, (2023) SCC OnLine SC 1486 by taking into consideration the law laid down by the Larger Bench of the Hon'ble Apex Court in ***Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors***.*(supra),* has laid down that since the conditions specified under Section 45 are mandatory, they need to be complied with. The Court is required to be satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and he is not likely to commit any offence while on bail. It has further been observed that as per the statutory presumption permitted under Section 24 of the Act, the Court or the Authority is entitled to presume unless the contrary is proved, that in any proceedings relating to proceeds of crime under the Act, in the case of a person charged with the offence of money laundering under Section 3, such proceeds of crime are involved in money laundering. Such conditions enumerated in Section 45 of PML Act will have to be complied with even in respect of an application for bail made under Section 439 Cr. P.C. in view of the overriding effect given to the PML Act over the other law for the time being in force, under Section 71 of the PML Act.

41. For ready reference, paragraph-17 of the said judgment is quoted as under:

"17. As well settled by now, the conditions specified under Section 45 are mandatory. They need to be complied with. The Court is required to be satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and he is not likely to commit any offence while on bail. It is needless to say that as per the statutory presumption permitted under Section 24 of the Act, the Court or the Authority is entitled to presume unless the contrary is proved, that in any proceedings relating to proceeds of 17 A.B.A. No. 10671 of 2023 crime under the Act, in the case of a person charged with the offence of money laundering under Section 3, such proceeds of crime are involved in money laundering. Such conditions enumerated in Section 45 of PML Act will have to be complied with even in respect of an application for bail made under Section 439 Cr. P.C. in view of the overriding effect given to the PML Act over the other law for the time being in force, under Section 71 of the PML Act."

42. The Hon'ble Apex Court in the said judgment has further laid down that the twin conditions as to fulfil the requirement of Section 45 of the Act, 2002 before granting the benefit of bail is to be adhered to which has been dealt with by the Hon'ble Apex Court in ***Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors***.*(supra)* wherein it has been observed that the accused is not guilty of the offence and is not likely to commit any offence while on bail.

43. In the judgment rendered by the Hon'ble Apex Court in ***Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors.****(supra)* as under paragraph 284, it has been held that the Authority under the 2002 Act, is to prosecute a person for offence of money-laundering only if

it has reason to believe, which is required to be recorded in writing that the person is in possession of “proceeds of crime”. Only if that belief is further supported by tangible and credible evidence indicative of involvement of the person concerned in any process or activity connected with the proceeds of crime, action under the Act can be taken to forward for attachment and confiscation of proceeds of crime and until vesting thereof in the Central Government, such process initiated would be a standalone process. So far as the issue of grant of bail under Section 45 of the Act, 2002 is concerned, as has been referred hereinabove, at paragraph-412 of the judgment rendered in ***Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors.(supra)*** it has been held therein by making observation that 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.

44. The Hon’ble Apex Court in the case of ***Gautam Kundu vs. Directorate of Enforcement (Prevention of***

Money-Laundering Act), Government of India through Manoj Kumar, Assistant Director, Eastern Region, (2015) 16 SCC 1 has been pleased to hold at paragraph - 30 that the conditions specified under Section 45 of PMLA are mandatory and need to be complied with, which is further strengthened by the provisions of Section 65 and also Section 71 of PMLA. Section 65 requires that the provisions of Cr.P.C shall apply insofar as they are not inconsistent with the provisions of this Act and Section 71 provides that the provisions of 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 CrPC would apply only if they are not inconsistent with the provisions of this Act.

45. 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 CrPC. 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. For ready reference, paragraph-30 of the said judgment reads as under:

"30. The conditions specified under Section 45 of PMLA are mandatory and need to be complied with, which is further strengthened by the provisions of Section 65 and also Section 71 of PMLA. Section 65 requires that the provisions of CrPC shall apply insofar as they are not inconsistent with the provisions of this Act and Section 71 provides that the provisions of 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 CrPC 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 CrPC. 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."

46. Now, after having discussed the judgments passed by the Hon'ble Apex Court on the issue of various provisions of the Act, 2002, this Court, is proceeding to answer the legal grounds as has been raised on behalf of the learned counsel for the petitioner.

47. It needs to refer herein that the co-accused Mukesh Mittal has filed application for grant of pre-arrest bail being A.B.A. No.10671 of 2023.

48. This Court has dealt with the said Anticipatory bail application and has rejected the same vide order dated 16.02.2024. Reason for referring the aforesaid order is that the legal issues have also been taken into consideration in the same regarding the implication of law that if the ECIR

has already been submitted, the case has been converted into a complaint case and hence, at this stage, the public prosecutor appearing for the Enforcement Directorate cannot have jurisdiction to make opposition. Further the stage of Section 19(1) has already been expired the moment the ECIR has been submitted before the concerned court and since there is cooperation of the petitioner in course of conducting the preliminary enquiry converted into the ECIR, as such, at this stage his incarceration will be irrelevant.

49. The aforesaid ground has already been dealt by this Court while rejecting the Anticipatory Bail Application of Mukesh Mittal vide order dated 16.02.2024.

50. Now adverting in to fact of the instant case and the allegation leveled against the present petitioner which according to learned counsel for the petitioner is being said that the same cannot be said to attract the ingredient of Section 3 of PMLA 2022 while on the other hand, the learned counsel appearing for the ED has submitted by referring to various paragraphs of prosecution complaint that the offence is very much available attracting the offence under provision of PML Act.

51. This Court, in order to appreciate the rival submission, is of the view that various paragraphs of supplementary prosecution complaint upon which the

reliance has been placed on behalf of both the parties, needs to be referred herein so as to come to the conclusion as to whether the parameter as fixed under Section 45(ii) of the PMLA is being fulfilled in order to reach to the conclusion that it is a fit case where regular bail is to be granted or not. Relevant paragraphs of supplementary prosecution complaint are quoted herein :

"5.4.2 identification of the source of Funds received in the bank account of Genda Ram

52. *(iii) Thus, it is found that a total of Rs 4.43 crores transferred from bank account of Rakesh Kumar Kedia, Manish Neha Shresttia and Genda Ram (A/c Number 110089477752) into the bank account of Genda Ram (A/c Number 127000628767) and out of this sum of Rs. 4.43 crores, a sum of Rs. 3.39 crores was funded from bank accounts of three proprietorship, namely (1) Shri Khatushyam Traders (079205500560), (ii) Anil Kumar Govind Ram Traders and (082705001671) (iii) Om Traders (0724050017401 & Rs. 13 lakhs from one bank account (675705602113) of Tarachand.*

(iv) Further, it was also found that all these bank accounts of three proprietorship firms are being maintained in ICICI Bank which are all operating under a single proprietor named Sachin Gupta, S/0 Ashrafi Lal Gupta. The proprietor (Sachin Gupta holds three different PAN details (DGRPG9506F, DERPO 1369A and DBJPG3661Q) in three of his aforementioned proprietorship firms (later it was found that Tara Chand (Accused Number-6) had been impersonating himself as Sachin Gupta). Findings of the investigation in this regard has already been explained in detail in the Prosecution Complaint filed before this Hon'ble Court on 21.04.2023 and the same is not repeated for the sake of brevity.

(v) Further, the source of rest Rs. 91 lakhs are as follows: Rs. 48.75 lakhs were transferred through the Canara bank account of Mukesh Mittal (2577101050981), Rs. 18.00 lakhs

transferred from Axis Bank Account (922020004021785) of Jamidara Trading which was also found to be non-existing on field verification, Rs. 10 lakhs transferred from ICICI bank account (425405000759) of Oyecool Technologies (Prop. Harish Yadav-Accused Number-9), Rs 9.99 lakhs from Krishna Enterprise (Equitas Small Finance Bank, 200000747964) and Rs 4.50 lakh from Decent Traders (Equitas Small Finance Bank, 200001383885).

(vii) Further, no business has found to be existing in the name of three proprietorship firms or in the name of their proprietor Sachin Gupta, at the addresses provided to the bank. Business operation of M/s Oyecool Technologies (Prop. Harish Yadav) too found to be non-existence at the given address. Therefore, the absence of any business addresses or its business operation makes it established that the firms were only running on paper, i.e. shell companies (Firms) and such shell firms have been formed only to accommodate banking transactions to launder proceeds of crime in the guise of business transactions.

(viii) Further search u/s 17 of PMLA was conducted at the residence of Tara Chand and it was found that Tara Chand has been impersonating himself as Sachin Gupta and his statement was recorded on 21.02.2023, wherein he stated that he has opened the aforesaid three proprietary firms and subsequently their bank accounts viz(i) Shri Khatushyam Traders (079205500560), (ii) Anil Kumar Govind Ram Traders and (082705001671) (iii) Om Traders 072405001740) were opened by forging documents such as Aadhar and PAN cards, and he stated that such bank accounts are being operated by Neeraj Mittal (accused Number- 7) . Tara Chand (Accused Number 6) has disclosed that photos in all the three PAN/AADHAR cards are his own and also stated that such hank accounts were opened for providing accommodation entries into the bank accounts of those who give cash, and such work is done in lieu of commission. Details of such forged documents and finding of the investigation thereof has been discussed in detail in Prosecution complaint filed before this Hon'ble court on 21/04/2023. So same is not repeated here for the sake of brevity.

(ix) Statement of Tara Chand (Accused Number 6) was also recorded later u/s 50 of PMLA wherein he stated that he used to collect cash from the Ram Parkash Bhatia (to whom Mukesh Mittal used to hand over the cash of Veerendra Kumar Ram) on the instructions of Neeraj Mittal and the total funds of Rs. 3.52 crores that have been transferred to the bank accounts of Rakesh Kumar Kedia, Manish and Neha Shrestha which were provided by Ram Parkash Bhatia (Accused Number 8) and these are only fake business entries given in lieu of commission. He also stated that the aforesaid four bank accounts of himself (Tara Chand) were operated by Harish Yadav (Accused Number 9) on the instruction of Neeraj Mittal). He had further stated that the mobile numbers 8700647152, 8595844694 and 9355775681 linked with the aforesaid bank accounts of firms were in the possession of Harish Yadav (Accused 9) and one mobile number 9911011060 linked with his ICICI bank account 675705602113 was in his (Tara Chand's) possession and Harish used to take OTP from him whenever needed for the purpose of making entry.

(x) -------The whole findings of investigation regarding purchase-sale of crates and transfer of funds in lieu of such transaction will be discussed paras below He also stated that he does not know Rakesh Kumar Kedia, Manish, Neha Shrestha and Genda Ram. He further stated that he used to give a commission of 0.2 to 0.3% to Ram Parkash Bhatia for providing cash. He stated that he used to give him the commission of 0.1% to Tara Chand for the amount that was credited into the bank accounts of Tara Chand. He further stated that he used to give Rs. 25,000/- per month to Harish Yadav to operate the aforesaid bank accounts and make RTGS entries---

(xii) Statement of Harish Yadav (Accused was recorded u/s 50 of PMLA wherein he stated that he used to operate the bank account of three proprietorship firms of Sachin Gupta on the instructions of Tara Chand and Neeraj Mittal. He was also found in possession of mobile numbers linked to the bank accounts of three proprietorship firms of Sachin Gupta during the course of search u/s 17 of PMLA at his premises on 21.02.2023. He further stated that he transferred the funds of

Rs. 3.52 crores in multiple trenches using the bank accounts of three proprietorship firms of Sachin Gupta and one bank account of Tara Chand to the bank accounts of Rakesh Kumar Kedia, Manish and Neha Shrestha. He also stated that the mobile numbers linked with the bank account of Tara Chand (675705602113) was in the possession of Tara Chand himself and he used to get OTP from him whenever required.

(Xiii) ---search was conducted at the residence of Harish Yadav (Accused-9) at D-7/276 2nd floor, sector-6 Rohini Delhi on 21.02.2023 and his statement was recorded on the same day wherein he stated that he transferred the said amount of Rs. 10 lakhs (which is proceeds of crime of V.K. Ram) into the bank secount 127000890839 of Manish (son of driver of Mukesh Mittal) on the instructions of Tara Chand and in return, he received a commission of Rs. 2,000/. He also stated that he transferred such funds without having any business. He also stated that Tara Chand and Sachin Gupta are the same persons and he has known Tara Chand since 2013. He also stated that Tara Chand had introduced him to Neeraj Mittal who was involved in providing entries. It is also stated by Neeraj Mittal that he did not have knowledge of transfer of this Rs. 10 lakha from proprietorship of Harish Yadav, Thus the same was done by Harish Yadav directly on the instruction of Tara Chand.

10.3 *Specific role of the accused in the commission of offence of money laundering by directly or by indirectly attempts to indulge or knowingly assist or knowingly is a party or in involved in concealment/possession/acquisition or use in projecting or claiming Proceeds of Crime as untainted property under Section 3 of PMLA, 2002*

(a) Tara Chand has created a fictitious person namely Sachin Gupta and also opened three bank accounts in the name of three proprietorship viz M/s Om Traders, M/s Shri Khatu Shyam Traders & M/s Anil Kumar Govind Ram, of this fictitious person Sachin Gupta by forged documents. He also opened one bank account in his real name. Further Tara Chand provided these four bank accounts to Neeraj Mittal (Accused no 7) for the purpose of laundering of

Proceeds of crime of Veerendra Kumar Ram. Same bank accounts were also used for routing of other funds.

b) Shri Tara Chand was engaged in the illegal business of money transfer and providing entry, in lieu of commission.

c) Tara Chand on the instructions of Shri Neeraj Mittal used to collect cash from Ram Parkash Bhatia, which was actually the proceeds of crime of Veerendra Kumar Ram.

d) It is also ascertained that credit transaction of Rs 122 crores approximately have taken place from the said four bank accounts of Tara Chand and thus same amount was used for routing of funds, as also discussed above.

e) Tara Chand also played the vital role in this organized structure/process of illegal routing of proceeds of crime.""

53. It is evident from the aforementioned paragraphs that the present petitioner is close associate of accused Harish Yadav and he used to operate the above-said three bank accounts at the instruction of co-accused Neeraj Mittal.

54. Further, it reveals that accused Tara Chand used to collect cash from the Ram Parkash Bhatia (to whom Mukesh Mittal used to hand over the cash of Veerendra Kumar Ram) on the instructions of Neeraj Mittal used to transfer it to the bank accounts of Rakesh Kumar Kedia, Manish and Neha Shrestha provided by Ram Prakash Bhatia.

55. The investigation further disclosed that the petitioner got instructions from Neeraj Mittal to provide him few bank accounts for the purpose of providing RTGS entries, after which he provided the same to Neeraj Mittal,

and such bank accounts were actually operated by Neeraj Mittal with the help of Petitioner and Harish Yadav.

56. It transpires that the present petitioner Tara Chand opened bank accounts by forging documents i.e. Aadhar and PAN Cards in the name of fictitious person and these bank accounts were utilized for providing accommodation entries which after routing in some bank accounts reached to the bank accounts of co-accused Genda Ram. Further, it is also ascertained that some bank accounts opened (at Delhi) on the basis of forged documents was also being used in routing of funds.

57. The accused Tara Chand (petitioner) disclosed during investigation that three bank accounts were opened by him impersonating himself as Sachin Gupta in the name of three proprietorship firms by forging documents on the instruction of co-accused Neeraj Mittal, who also used to operate the bank accounts. Further, no business has been found to be existing in the name of above three proprietorship firms at the address provided to the bank. It is also stated that the accused Tara Chand is close associate of accused Harish Yadav and he also used to operate the above-said three bank accounts at the instruction of co-accused Neeraj Mittal.

58. The accused Harish Yadav is the proprietor of M/s Oyecool Technologies and its business operation too found

to be non-existence at the given address. It is further stated that the mobile numbers linked with the aforesaid bank accounts of firms were in the possession of accused Harish Yadav and one mobile number with his ICICI bank account was in possession of Tara Chand and the accused Harish Yadav used to take OTP from him whenever needed for the purpose of making entry. Further, the investigation disclosed that the prime accused Veerendra Kumar Ram used to give cash to accused Mukesh Mittal who with the help of his above associates used to take entries in the bank accounts and then such fund was transferred by Mukesh Mittal into the bank accounts of the co-accused Rajkumari and Genda Ram by exchanging commission for the said transactions through the above bank accounts which were opened on the basis of the forged documents.

59. It has come that the petitioner was working as a commission agent and whatever money has been deposited by the accused namely Veerandra Kumar Ram in the account of C.A Mukesh Mittal, the said Mukesh Mittal used to transfer the amount through Tara Chand and was found to be involved in managing all the accounts to be operated through Hawala transaction on the basis of commission of 0.1%.

60. Thus, from preceding paragraph, *prima-facie* it appears that the present petitioner namely Tara Chand

has created a fictitious person namely Sachin Gupta and also opened three bank accounts in the name of three proprietorship viz M/s Om Traders, M/s Shri Khatu Shyam Traders & M/s Anil Kumar Govind Ram, of this fictitious person Sachin Gupta by forged documents. He also opened one bank account in his real name. Further Tara Chand provided these four bank accounts to Neeraj Mittal (Accused no 7) for the purpose of laundering of Proceeds of crime of Veerendra Kumar Ram. Same bank accounts were also used for routing of other funds.

61. Thus from the investigation it appears that the present petitioner was engaged in the illegal business of money transfer and providing entry, in lieu of commission and on the instructions of Neeraj Mittal used to collect cash from Ram Parkash Bhatia, which was actually the proceeds of crime of Veerendra Kumar Ram. It has come on record that credit transaction of Rs 122 crores approximately have taken place from the said four bank accounts of Tara Chand and thus same amount was used for routing of funds, as also discussed above.

62. Thus, *prima-facie*, the involvement of the present petitioner in illegal routing of proceeds of crime cannot be denied as he played the vital role in this organized structure/process of illegal routing of proceeds of crime of accused Veerendra Kumar Ram.

63. Now in the light of aforesaid discussion at this juncture this Court thinks fit to revisit the scope of section 45 of the PML Act 2002. As discussed in preceding paragraphs that Section 45 (ii) of the PMLA Act, 2002 provides twin test. First 'reason to believe' is to be there for the purpose of reaching to the conclusion that there is no *prima facie* case and second condition is that the accused is not likely to commit any offence while on bail.

64. Sub-section (1)(ii) of Section 45 of the Act, 2002, provides that if 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, meaning thereby, the parameter which is to be followed by the concerned court that satisfaction is required to be there for believing that such accused person is not guilty of such offence and is not likely to commit of offence while on bail.

65. Section 45(2) provides to consider the limitation for grant of bail which is in addition the limitation under the Code of Criminal Procedure, 1973, i.e., limitation which is to be considered while granting the benefit either in exercise of jurisdiction conferred to this Court under Section 438 or 439 of Cr.P.C. is to be taken into consideration.

66. It is, thus, evident by taking into consideration the provision of Section 19(1), 45(1), 45(2) of PML Act that the conditions provided therein are required to be considered while granting the benefit of regular bail in exercise of power conferred under Section 438 or 439 of Cr.P.C., apart from the twin conditions which has been provided under Section 45(1) of the Act, 2002.

67. Further, it is required to refer herein that the Hon'ble Apex Court in the case of ***Pavana Dibbur vs. The Directorate of Enforcement*** passed in **Criminal Appeal No. 2779 of 2023** has considered the effect of the appellant not being shown as an accused in the predicate offence by taking into consideration Section 3 of the Act, 2002. The Hon'ble Apex Court by interpreting the provision of Section 3 of the Act, 2002 has come out with the finding that on a plain reading of Section 3, unless proceeds of crime exist, there cannot be any money laundering offence.

68. Based upon the definition Clause (u) of sub-section (1) of Section 2 of the Act 2002 which defines “proceeds of crime”, the Hon'ble Apex Court at paragraph-12 has been pleased to observe that clause (v) of sub-section (1) of Section 2 of PMLA defines “property” to mean any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible.

69. To constitute any property as proceeds of crime, it must be derived or obtained directly or indirectly by any person as a result of criminal activity relating to a scheduled offence. The explanation clarifies that the proceeds of crime include property, not only derived or obtained from scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence. Clause (u) also clarifies that even the value of any such property will also be the proceeds of crime.

70. At paragraph-14 of the aforesaid judgment , it has observed by referring the decision rendered by the Hon'ble Apex Court in ***Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors.(supra)*** that the condition precedent for the existence of proceeds of crime is the existence of a scheduled offence. At paragraph-15 the finding has been given therein that on plain reading of Section 3 of the Act, 2002, an offence under Section 3 can be said to be committed after a scheduled offence is committed. By giving an example, it has been clarified that if a person who is unconnected with the scheduled offence, knowingly assists the concealment of the proceeds of crime or knowingly assists the use of proceeds of crime, in that case, he can be held guilty of committing an offence under Section 3 of the PMLA. Therefore, it is not necessary that a

person against whom the offence under Section 3 of the PMLA is alleged must have been shown as the accused in the scheduled offence.

71. This Court, based upon the imputation as has been discovered in course of investigation, is of the view that what has been argued on behalf of the petitioner that proceeds cannot be said to be proceeds of crime but as would appear from the preceding paragraphs, money which has been obtained by the accused person Veerendra Kumar Ram has been routed by this petitioner and he has also withdrawn the money from different fake accounts and transferred it into the account of the accused persons.

72. Now coming in to facts of the present case, it is evident from various paragraphs of the prosecution complaint dated 20.08.2023 that the petitioner is not only involved rather his involvement is direct. Further, it has come that part of the proceeds of crime acquired in the form of commission/bribe in lieu of allotment of tenders by the accused Veerendra Kumar Ram, a public servant and the said bribe money was getting routed by the help of present petitioner and Delhi based CA Mukesh Mittal to the bank accounts of family members of Veerendra Kumar Ram with the help of bank accounts of Mukesh Mittal's employees/ relatives.

73. This Court on the basis of aforesaid discussion factual aspect as also the legal position is of the view that there is no reason to believe by this Court that the petitioner is not involved managing the money said to be proceeds of crime.

74. This Court while considering the prayer for regular bail has taken into consideration that though the Court is not sitting in appeal on the order passed by learned court since this Court is exercising the power of Section 439 Cr.P.C but only for the purpose of considering the view which has been taken by learned court while rejecting the prayer for bail, this Court is also in agreement with the said view based upon the material surfaced in course of investigation, as referred hereinabove.

75. This Court is conscious of this fact that while deciding the issue of grant bail in grave economic offences it is utmost duty of this Court that the nature and gravity of the alleged offence should have been kept in mind because corruption poses a serious threat to our society should be dealt with by iron hand.

76. The Hon'ble Apex Court in the case of ***Central Bureau of Investigation Vs Santosh Krnani and Another, 2023 SCC OnLine SC 427*** has observed that corruption poses a serious threat to our society and must

be dealt with iron hands. The relevant paragraph of the aforesaid judgment is being referred as under:-

> *"31. The nature and gravity of the alleged offence should have been kept in mind by the High Court. Corruption poses a serious threat to our society and must be dealt with iron hands. It not only leads to abysmal loss to the public exchequer but also tramples good governance. The common man stands deprived of the benefits percolating under social welfare schemes and is the worst hit. It is aptly said, "Corruption is a tree whose branches are of an unmeasurable length; they spread everywhere; and the dew that drops from thence, Hath infected some chairs and stools of authority." Hence, the need to be extra conscious."*

77. This Court, in view of the aforesaid material available against the petitioner, is of the view, that in such a grave nature of offence, which is available on the face of the material, applying the principle of grant of bail wherein the principle of having *prima facie* case is to be followed, the nature of allegation since is grave and as such, it is not a fit case of grant of bail.

78. For the foregoing reasons, having regard to facts and circumstances, as have been analysed hereinabove, the petitioner failed to make out a special case for exercise of power to grant bail and considering the facts and parameters, necessary to be considered for adjudication of bail, without commenting on the merits of the case, this Court does not find any exceptional ground to exercise its discretionary jurisdiction to grant bail.

79. Therefore, this Court is of the view that it is not a case where the prayer for bail is to be granted, as such the instant application stands dismissed.

80. It is made clear that the views expressed in this order are *prima-facie* for consideration of matter of bail only.

(Sujit Narayan Prasad, J.)

Alankar/-

A.F.R