2025:CGHC:804

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

ORDER RESERVED ON 16.12.2024

ORDER DELIVERED ON 06.01.2025

MCRC No. 7284 of 2024

1 - Trilok Singh Dhillon S/o Lt. Mr. Surta Singh Dhillon Aged About 60 Years R/o Block 12 Plot No. 123 Nehru Nagar East , Bhilai, Dist Durg, Chhattisgarh.

... Applicant

versus

1 - directorate of enforcement GOI, Raipur Zonal Office, A-1 block, 2nd floor , Pujari Chambers, Pachpedinaka, Raipur, Chhattisgarh

... Respondent

For Applicant	:	Shri Harshwardhan Parganiha, Advocate
For Respondent/ED	:	Dr. Saurabh Kumar Pandey, Advocate

(HON'BLE SHRI JUSTICE ARVIND KUMAR VERMA)

Order on Board

The applicant is seeking release on regular bail under section 483 of the *Bhartiya Nagrik Surksha Sanhita*, 2023 read with Section 45 of the PMLA 2002 in connection with ECIR No. RPZO/04/2024 dated 11.04.2024 registered by the Directorate of Enforcement, Raipur, Zonal

Office (ED), for the offences under Sections 03 and 04 of the PMLA, 2002.

FACTUAL ASPECTS

2. Chhattisgarh State Police had registered FIR bearing No. 04/2024 dated 17.01.2024 at EOW/ACB, Raipur under Section 420,467,471 and 120-B IPC and Sections 7 & 12 of the Prevention of Corruption Act,1988 against the accused persons for illegally collecting commissions and supplying unaccounted liquor to the government liquor shops causing loss of Rs. 2161 crores to the State Government.

3. The FIR for the predicate offence as mentioned above is registered by the ACB/EOW, Raipur, Chhattisgarh under Sections 120-B, 420, 467 and 47 IPC and Sections 7 & 12 of the PC Act, which are schedule offences in para 1 & 8 of the Part A of Schedule to PMLA,2002 as defined under Section 2(1)(y) of the Act. The inquiries were initiated under PMLA against the suspected persons after recording the brief facts of scheduled offence and initiating money laundering investigation in ECIR/RPZO/04/2023 on 11.04.2024 by the officials of the Directorate of Enforcement, Raipur Zonal Office.

4. The Directorate has filed total 3 prosecution complaints dated 19.06.2024, 30.08.2024 and 5.10.2024 in the present case. The investigation has revealed that the applicant has knowingly participated in the criminal acts of the syndicate and is in possession of Proceeds of Crime. He was involved with the syndicate for safekeeping and

concealment of the illegal commission collected for which he received large amount of Part A commission from the liquor suppliers in his FDR bank account. He is in possession of proceeds of crime through his company M/s. Petrosun Bio Refineries Pvt. Ltd. which was utilized by the syndicate for resolving the problems of the distillers for arranging cash for payment of Part A commission. The distillers would take their raw material from their regular suppliers but through M/s. Petrosun Bio Refineries Pvt. Ltd. for which the regular suppliers used to pay the actual rate but the M/s. Petrosun Bio Refineries inflated the invoices by 20-40% and charge the distillers. These excess amount of 20-40% was kept with the company and remit the remaining routine rate to the actual routine suppliers.

5. In his statement recorded under Section 50 of the PMLA, the applicant has admitted that he was engaged in grain trading for the distillers and the FDR bank accounts and invoices generated in the name of this entity have been analyzed by the ED which shows a huge earnings. The mechanism has been set up for showing excess profit in his company and it is nothing but illegal commission/bribe which was being paid in this manner. The applicant had assisted the co-accused Anwar Dhebar in receiving part-A bribe payments via FDR bank accounts.

6. Another company of the applicant ie. Ms. Dhillon City Mall Pvt.Ltd. was utilized by the syndicate to park the illegal funds received from the FL-10(A) licensees. These FL-10(A) licenses had to pay 60% share of the profits earned to the syndicate member Vikas Agrawal @ Subbu. As

part of payment of this profit share, the amount was remitted to the company of the applicant ie. M/s. Dhillon City Mall Pvt. Ltd. It has thus been revealed that the Company of the applicant had received unsecured loan of Rs.12.52 crores from various firms/companies. Thus, the proceeds of crime to the tune of Rs. 28,13,66,989/- related to the applicant have been attached vide PAO dated 02.05.2024.

7. In nutshell, the case of the prosecution is that a large scale syndicate was operating in the State of Chhattisgarh by extorting illegal commission from the unaccounted sale of liquor and acting as a conduit in the systematic extortion resulting in generation of huge proceeds of crime. The role of the applicant was that he was safely keeping the proceeds of crime acquired by the syndicate members through his companies for which he received a huge sum of money. Hence the applicant has preferred the instant bail application under Section 483 of the BNSS, 2023 read with Section 45 and 65 of the PMLA Act, 2002.

SUBMISSIONS

8. Contention of Shri Parganiha, learned counsel for the applicant is that the allegations levelled against the applicant in the first supplementary prosecution complaint dated 30.08.2024 filed in the ECIR No RPZO/04/2024 are as follows:

> a. The bank account of M/s. Dhillon City Mall Pvt Limited was used by the syndicate to park the Proceeds of Crime.
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> b. The money received from FL-10A licensees

operating in the State of Chhattisgarh has been shown to be unsecured loans in the accounts which was the commission paid by the FL-10A licensees to the syndicate.

c. The alleged proceeds of crime thus infused in the bank account of M/s. Dhillon City mall has ben utilized to make various fixed deposits.

d. another company of the applicant namely Petrosun Bio Refineries Pvt. Ltd. got Part -A commission from the Distillers by over invoicing the distillers by 20% purchase of rice.

9. Contention of learned counsel for the applicant is that the respondent has misused its power to arrest with a *malafide* intention to defeat the fundamental rights of the applicant enshrined under Article 21 of the Constitution of India. He submits that on the same set of allegations and alleged transactions in relation to ECIR No. RPZO/11/2022, wherein the prosecution complaint against the present applicant came to be filed. The predicate FIR No. 04/2024 dated 17.01.2024 registered by the EOW/ACT itself has been registered at the behest of the ED with an intent to circumvent the orders passed by the Apex Court in W.P.(Crl.) No. 153/2023 (Yash Tuteja and Another Vs. Union of India and others) and other connected matters.

10. It is next contended that the mere power to arrest simply does not give rise to the necessity to arrest. He has relied upon the judgment of the Apex Court in the matter of **Arvind Kejriwal Vs. Directorate of Enforcement, 2024 SCC OnLine SC1703** wherein it has been

observed as under:

> "67. It has been strenuously urged on behalf of Arvind Kejriwal that the arrest would falter on the ground that the "reasons to believe" do not mention and record reasons for "necessity to arrest". The term "necessity to arrest" is not mentioned in Section 19(1) of the PML Act. However, this expression has been given judicial recognition in Arnesh Kumar v. State of Bihar,57 which lays down that "necessity to arrest" must be considered by an officer before arresting a person. This Court observed that the officer must ask himself the questions – why arrest?; is it really necessary to arrest?; what purpose would it serve?; and what object would it achieve?
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> 69. In Joginder Kumar Vs. State of Uttar Pradesh, 59 the distinction between the power to arrest and the necessity and need to arrest, is explained in the following terms:
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> > "20…No arrest can be made because it is lawful for the police officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The police officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a police officer in the interest of protection of the constitutional rights of

> a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and *bona fides* of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter. The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. A person is not liable to arrest merely on the (2014) 8 SCC 273, (2022) SCC OnLine SC 897 (1994) 4 SCC 260.

Necessity to arrest is not a precondition and safeguard mentioned in Section 19 of the PML Act, albeit treated as a part of the general law and exercise of the power to arrest. The legislature being aware of this interpretation has not excluded the application of this principle in Section 19 of the PML Act. suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if a police officer issues notice to person to attend the Station House and not to leave the Station without permission would do."

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81. The proportionality test is more precise and sophisticated than other traditional grounds of review. The court is required to assess the balance struck by the decision maker, not merely whether it is within the range of rational or reasonable decisions. In this manner, proportionality goes further than the traditional grounds of review as it requires attention to the relative weight according to interest and considerations. State of Uttar

> Pradesh Vs. Lal, (2006) 3 SCC 276 which refers to several other cases, states that the proportionality test safeguards fundamental rights of citizens to ensure a fair balance between individual rights and public interest. It requires the court to judge whether the action taken was really needed and whether it was within the range of courses of action which could be reasonably followed. Proportionality is more concerned with the aims and intentions of the decision maker and whether the decision maker has achieved more or less the correct balance or equilibrium."

11. It is contended by the learned counsel for the applicant that the material on the basis of which the applicant was arrested and taken into custody in the present ECIR No. RPZO/04/2024 is exactly the same as that in the ECIR No. RPZO/11/2022. The first arrest of co-accused has been effectuated by the respondent/ED in the present ECIR for which the prosecution complaint was filed before the learned Special Judge (PMLA), Raipur on 19.06.2024.

12. It is further contended that the custodial detention is no longer necessary. The first supplementary prosecution complaint against the applicant has been filed on 30.08.2024 before the learned Special Court (PMLA), Raipur and as such the investigation against him stands complete. The applicant has already spend a period of more than five months as pre-trial incarceration. The trial is yet to commence and is not likely to conclude in the near future. The first supplementary complaint dated 30.08.2024 arraigns 6 accused persons and is relied upon 77 documents running into about 4,671 pages. He has relied upon the

judgment of the Apex Court in the matter of **Javed Gulam Nabi Sheikh Vs. State of Maharashtra and Anr. , 2024 SC OnLine SC1963** wherein it has been observed that while considering the bail aplciation of an accused prosecuted under the UAPA, 1967 (a much serious offence) observed thus:

> "19. If the State or any prosecuting agency including the court concerned has no wherewithalto provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applied irrespective of the nature of the crime."

13. In catena of decisions, the Apex Court, while considering the period spent in the custody and there being so likelihood of conclusion of trial within a short span has been pleased to enlarge the accused on bail. He has further relied upon the decision reported in **SLP (Crl.) No. 3205/2024, Ramkripal Meena Vs. Directorate of Enforcement** and **SLP (Crl.) No. 8781/2024, Manish Sisodia Vs. Directorate of Enforcement** wherein it has been observed that :

> "7. Adverting to the prayer for grant of bail in the instant case, it is pointed out by the learned counsel for the ED that the complaint case is at the stage of framing of charges and 24 witnesses are proposed to been examined. The conclusion of proceedings thus, will take some reasonable time.

> The petitioner has already been in custody for more than a year. Taking into consideration the period spent in custody and there being no likelihood of conclusion of trial within a sport span, coupled with the fact that the petitioner is already on bail in the predicate offence, and keeping in view the peculiar facts and circumstances of the case, it seems to us that the rigours of Section 45 of the Act can be suitably relaxed to afford conditional liberty to the petitioner. Ordered accordingly.

14. It has been further submitted that the Apex Court in the matter of **SLP (Crl.) No. 8781/2024, Manish Sisodia Vs. Directorate of Enforcement** has held that due to the voluminous documents running into thousands of pages and the huge magnitude of the documents involved, the accused cannot be denied the right to fair trial and cannot be denied the right to have inspection of the documents including the "un relied upon documents."

> "49. We find that, on account of a long period of incarceration running for around 17 months and the trial even not having been commenced, the appellant has been deprived of his right to speedy trial.
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> 50. As observed by this Court, the right to speedy trial and the right to liberty are sacrosanct rights. On denial of these rights, the trial court as well as the High Court ought to have given due weightage to this factor.
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> 51. Recently, this Court had an occasion to consider an application for bail in the case of Javed Gulam Nabi Shaikh Vs, State of Maharashtra and Another 2024 SCCOnLine SC 1693 wherein the accused was prosecuted under the provisions of the Unlawful

> Activities (Prevention) Act, 1967. This Court surveyed the entire law right from the judgment of this Court in the cases of Gudikanti Narasimhulu and others Vs. Public Prosecutor, High Court of Andhra Pradesh (1978) 1 SCC 240 Shri Gubaksh Singh Sibbia and Others Vs. State of Punjab (1980) 2 SCC 565, Hussainara Khatoon and Others (1)v. Home Secretary, State of Bihar, CRIMINAL APPEAL NO. 98 of 2021[Arising out of Special Leave Petition (Crl.) No. 11616 of 2019], Union of India Vs. K.A. Najeeb (2021) 3 SCC 713 and Satender Kumar Antil Vs. Central Bureau of Investigation and Another (2022) 10 SCC 51. The Court observed thus:
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> > "19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime."

15. Further contention of the counsel for the applicant is that the status of the trial in predicate offence (FIR No.04/2024), four accused persons have been arraigned and 146 documents have been relied which runs into thousands of pages citing 295 witnesses. The first supplementary charge sheet was filed against three accused persons on 27.09.2024 and the second charge sheet was filed on 17.11.2024 arraigning three more accused persons. It is contended by the counsel for the applicant that the further investigation is going on and the learned Special Court (PC Act) Raipur is yet to frame the charges,

therefore even the trial in the predicate offence is not likely to conclude early. He has referred to the judgment of the Apex Court in the matter of **V. Sentil Balaji Vs. Deputy Director, Directorate of Enforcement, Criminal Appeal No. 4011/2024,** wherein it has been observed as under:

> "21. …….The existence of proceeds of crime at thetime of trial of the offence under Section 3 of PMLA can be proved only if the scheduled offence is established in the prosecution of the Scheduled offence. Therefore, even if the trial of the case under the PMLA proceeds, it cannot be finally decided unless the trial of scheduled offences concludes….."

16. Next contention of the counsel for the applicant is that the allegation of over invoicing the distillers for supply of rice, the ED has failed to produce any material on record to demonstrate that the commission/bribe was paid for the benefit of the syndicate. He contended that the applicant has not played any active role in the alleged syndicate and his legitimate business transactions are being unjustly misrepresented as illegal activities with the intention of falsely implicating him in the allege crime. He contends that at the stage of considering bail application, the Court ought not enter into a meticulous examination of merits of the case by delving into the statements of witnesses and/or documents produced in evidence and conduct a mini trial. He has placed his reliance on the decision of the Apex Court in the matter of **Vijay Madanlal Choudhary Vs. Union of India, 2022 SCC OnLine SC 929,** wherein it has been held as under:

> “388. The successive decisions of this Court dealing with analogus provision have stated that the Court at the stage of considering the application for grant of bail, is expected to consider the question from the angle as to whether the accused was possessed of the requisite *mens rea*. The Court is not required to record a positive finding that the accused had not committed an offence under the Act. The Court ought to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. The duty of the Court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. Further, the Court is required to record a finding as to the possibility of the accused committing a crime which is an offence under the Act after grant of bail.”

17. It is contended by the learned counsel for the applicant that vide order dated 27.11.2024, the Apex Court in Criminal Appeal No. 4844/2024 @ SLP (Crl.) No. 14697/2024 has directed the applicant shall be enlarged on bail by producing him before the trial court on 15th January 2025. The Trial court shall enlarge the applicant on bail on appropriate stringent terms including the conditions *ie.* the applicant shall regularly and punctually attend the trial court and cooperate with trial court for completion of trial at all stages.

18. He contended that even otherwise the applicant has a strong case on merits to satisfy the twin test under Section 45 of the PMLA, 2002. The reminder letters sent by M/s. Dishita Ventures Pvt. Ltd. the then FL-10A licensee to M/s. Dhillon City Mall Pvt. Ltd. as well as payment of interest component established bolsters that the money infused were

actual unsecured loans. The alleged over invoicing to the distillers are legitimate business transaction. He contended that the applicant had already undergone incarceration of 94 days on the same set of facts and allegations. The role attributed to the applicant in the present ECIR by the respondent is identical to that in the prosecution complaint dated 04.07.2023 filed by the non-applicant in ECIR No. RPZO/11/2022 before the learned Special Court (PMLA) Raipur. The applicant was arrested on 11.05.2023 in connection with the aforesaid ECIR and was released on ad-interim bail vide order dated 14.08.2023 passed by the High Court in M.Cr.C. No. 5056/2023. He contended that the extension of custody of the applicant would act against the constitutional guarantee of personal liberty guaranteed under Article 21 of the Constitution of India as has been held by the Apex Court in the matter of **Union of India Vs. K.A.Najeeb, (2021) 3 SCC 713** and **Criminal Appeal No. 4011/2024 V. Senthil Balaji Vs. The Deputy Director, Directorate of Enforcement.** The Apex Court ha already elucidated in the matter of **P. Chidambaram Vs. Directorate of Enforcement** that the parameters for bail to no change in the economic offences and held that “it is not a rule that bail (with appropriate conditions) cannot be granted in cases of such offences.” Ex facie, the allegations are grave, the punishment is severe and it cannot be said that there are no materials on record at all. In the matter of **P. Chidambaram Vs. Directorate of Enforcement”** reported in **(2020) 13 SCC 791**, wherein Hon'ble Apex Court held as hereunder:

“Thus from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial.

However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of “grave offence” and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provides so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case to case basis on the facts

> involved therein and securing the presence of the accused to stand trial."

19. He further contended that the applicant has satisfied the triple test ie. flight risk, influencing witnesses and tampering evidence. The applicant has his business setup and is a permanent resident of State of Chhattisgarh. The applicant has complied with all the summons issued by the ED in connection with the ECIR/RPZO/11/2022 and after being released on interim bail in ECIR No. RPZO/11/2022 by this Court, the applicant did not misuse his liberty and has cooperated in the investigation in FIR No. 04/2024 dated 17.01.2024 as well as the investigation in the present ECIR No. RPZO/04/2024. He has placed his reliance upon the decision reported in the matter of **Preeti Chandra Vs. Directorate Of Enforcement , 2023 SC OnLine Del. 3622** and the said decision of the High Court of Delhi has been upheld by the Apex Court in SLP (Crl.) No. 7409/2023 and it has been observed as under:

> "The proviso to Section 45 of the Prevention of Money Laundering Act, 2002 confers a discretion on the Court to grant bail where the accused is a woman. Similar provisions of Section 437 of the Code of Criminal Procedure, 1973 have been interpreted by this Court to mean that the statutory provision does not mean that person specified in the first proviso to sub-section (1) of Section 437 should necessarily be released on bail."

20. It is further submitted that there has been no instance of influencing any witness because even after registration of the subject ECIR the applicant was not arrested for about 3 months. It is a settled

law that apprehension of influencing the witnesses and tampering of evidence is required to be based on tangible evidence and mere allegation cannot be taken at face value on the asking of the investigating agency.

21. It is contended that it is trite law that the gravity or seriousness of the offence is to be determined from the severity of the punishment. The offence of money laundering under Section 3 and 4 of the PMLA is not a serious or grave offence since the maximum imprisonment is for a term not exceeding 7 years. He has placed his reliance in the matter of **Sanjay Chandra Vs. CBI (2012) 1 SCC 40** wherein it has been held that the purpose of bail or the denial of bail is neither punitive nor preventive. He has emphasized upon the judgment of the Hon'ble Supreme Court in the matter of **Kalyan Chandra Sarkar Vs.Rajesh Ranjan (2004) and Sanjay Chandra Vs. CBI (2012)** that bail is the rule and jail is the exception. The applicant has no criminal antecedent and there is no chance of his fleeing from justice or tampering with the evidence. The provisions of Cr.P.C. confer discretionary jurisdiction on Criminal Courts to grant bail to accused pending trial or in appeal against convictions, since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing valuable right of liberty of an individual and the interest of the society in general. If such power is recognized, then it may lead to chaotic situation and would jeopardize the personal liberty of an individual. In **Kalyan Chandra Sarkar Vs. Rajesh Ranjan (2005) 2 SCC 42,** it has been observed that:

“18. It is trite law that personal liberty cannot be taken away except in accordance with the procedure established by law. Personal liberty is a constitutional guarantee. However, Article 21 which guarantees the above right also contemplates deprivation of personal liberty by procedure established by law. Under the criminal laws of this country, a person accused of offences which are non bailable is liable to be detained in custody during the pendency of trial unless he is enlarged on bail in accordance with law. Such detention cannot be questioned as being violative of Article 21 since the same is authorized by law. But even persons accused of non bailable offences are entitled for bail if the court concerned comes to the conclusion that the prosecution has failed to establish a prima facie case against him and/or if the court is satisfied for reasons to be recorded that in spite of the existence of prima facie case there is a need to release such persons on bail where fact situations require it to do so. In that process a person whose application for enlargement on bail is once rejected is not precluded from filing a subsequent application for grant of bail if there is a change in the fact situation. In such cases if the circumstances then prevailing requires that such persons to be released on bail, in spite of his earlier applications being rejected, the courts can do so.

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20. The decisions given by a superior forum, undoubtedly, is binding on the subordinate fora on the same issue even in bail matters unless of course, there is a material change in the fact situation calling for a different view being taken. Therefore, even though there is room for filing a subsequent bail application in cases where earlier applications have been rejected, the same

> can be done if there is a change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete. This is the limited area in which an accused who has been denied bail earlier, can move a subsequent application. Therefore, we are not in agreement with the argument of learned counsel for the accused that in view the guaranty conferred on a person under Article 21 of the Constitution of India, it is open to the aggrieved person to make successive bail applications even on a ground already rejected by courts earlier including the Apex Court of the country."

22. Further in the matter of **Sanjay Chandra Vs.CBI (2012) 1 SCC 40,** it has been observed as under:

> 10) Shri. Haren P. Raval, the learned Additional Solicitor General, in his reply, would submit that the offences that are being charged, are of the nature that the economic fabric of the country is brought at stake. Further, the learned ASG would state that the quantum of punishment could not be the only determinative factor for the magnitude of an offence. He would state that one of the relevant considerations for the grant of bail is the interest of the society at large as opposed to the personal liberty of the accused, and that the Court must not lose sight of the former. He would submit that in the changing circumstances and scenario, it was in the interest of the society for the Court to decline bail to the appellants. Shri. Raval would further urge that consistency is the norm of this Court and that there was no reason or change in circumstance as to why this Court should take a different view from the order of 20th June 2011 in Sharad Kumar Etc. v. Central Bureau of Investigation [in SLP (Crl) No. 4584-4585 of 2011] rejecting bail to some of the co-accused in the same case. Shri. Raval would

further state that the investigation in these cases is monitored by this Court and the trial is proceeding on a day-to-day basis and that there is absolutely no delay on behalf of the prosecuting agency in completing the trial.

Further, he would submit that the appellants, having cooperated with the investigation, is no ground for grant of bail, as they were expected to cooperate with the investigation as provided by the law. He would further submit that the test to enlarge an accused on bail is whether there is a reasonable apprehension of tampering with the evidence, and that there is an apprehension of threat to some of the witnesses.

The learned ASG would further submit that there is more reason now for the accused not to be enlarged on bail, as they now have the knowledge of the identity of the witnesses, who are the employees of the accused, and there is an apprehension that the witnesses may be tampered with. The learned ASG would state that Section 437 of the Cr.P.C. uses the word "appears", and, therefore, that the argument of the learned senior counsel for the appellants that the power of the trial Judge with regard to a person summoned under Section 87 is controlled by Section 88 is incorrect. Shri. Raval also made references to the United Nations Convention on Corruption and the Report on the Reforms in the Criminal Justice System by Justice Malimath, which, we do not think, is necessary to go into.

The learned ASG also relied on a few decisions of this Court, and the same will be dealt with in the course of the judgment. On a query from the Bench, the learned ASG would submit that in his opinion, bail should be denied in all cases of corruption which pose a threat to the economic fabric of the country, and that the balance should tilt in favour of the public interest.

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14. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon.

The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un-convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, `necessity' is the operative test.

In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson.

15) In the instant case, as we have already noticed that the "pointing finger of accusation"

against the appellants is `the seriousness of the charge'. The offences alleged are economic offences which has resulted in loss to the State exchequer. Though, they contend that there is possibility of the appellants tampering witnesses, they have not placed any material in support of the allegation. In our view, seriousness of the charge is, no doubt, one of the relevant considerations while considering bail applications but that is not the only test or the factor : The other factor that also requires to be taken note of is the punishment that could be imposed after trial and conviction, both under the Indian Penal Code and Prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the Constitutional Rights but rather "recalibration of the scales of justice." The provisions of Cr.P.C. confer discretionary jurisdiction on Criminal Courts to grant bail to accused pending trial or in appeal against convictions, since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing valuable right of liberty of an individual and the interest of the society in general. In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, a denial of the whole basis of our system of law and normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent until he is found guilty.

If such power is recognized, then it may lead to chaotic situation and would jeopardize the personal liberty of an individual. This Court, in Kalyan Chandra Sarkar Vs. Rajesh Ranjan- (2005) 2 SCC 42, observed that "under the criminal laws of this country, a person accused of offences which are non-bailable, is liable to be detained in custody during the pendency of trial unless he is enlarged on bail in accordance with law. Such detention cannot be questioned as

> being violative of Article 21 of the Constitution, since the same is authorized by law. But even persons accused of non- bailable offences are entitled to bail if the Court concerned comes to the conclusion that the prosecution has failed to establish a prima facie case against him and/or if the Court is satisfied by reasons to be recorded that in spite of the existence of prima facie case, there is need to release such accused on bail, where fact situations require it to do so."

23. Time and again, Hon'ble Supreme Court has stated that bail is the rule and committal to jail an exception. It is also observed that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution. In the matter of **Manoranja Sinha Vs. Central Bureau of Investigation (2017) 5 SCC 218,** it has been observed as under:

> 16. This Court in Sanjay Chandra Vs. CBI, also involving an economic offence of formidable magnitude, while dealing with the issue of grant of bail had observed that derivation of liberty must be considered a punishment unless it is required to ensure that an accused person would stand his trial when call upon and that the courts owe more than verbal respect to the principle that punishment begins after conviction and that every man is deemed to be innocent until duly tried and found guilty. It was underlined that the object of bail is neither punitive nor preventive. This Court sounded a caveat that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of a conduct whether an accused has been convicted for it or not or to refuse bail to an un convicted person for the purpose of giving him

> a taste of imprisonment as a lesson. It was enunciated that since the jurisdiction to grant bail to an accused pending trial or in appeal against conviction is discretionary in nature, it has to be exercised with care and caution by balancing the valuable right of liberty ofan individual and the interest of the society in general. It was elucidated that the seriousness of the charge is no doubt one of the relevant considerations while examining the application of bail but it was not only the test or the factor and that grant or denial of such privilege,is regulated to a large extent by the facts and circumstances of each particular case. That detention in custody of under trial prisoners for an indefinite period would amount to violation of Article 21 of the Constitution was highlighted."

24. Lastly, he contended that the applicant is a 60 year old man having age related ailments ie. diabetes and blood pressure. He was also diagnosed with blockage in the heart and due to the prolonged incarceration, the health of the applicant is deteriorating and therefore on the medical ground, he may be enlarged on bail.

25. Per contra, Dr. Saurabh Kumar Pandey, learned counsel appearing for the ED contended that the Chhattsigarh State Police registered an FIR bearing No. 04/2024 dated 17.01.2024 at EOW/ACB, Raipur under Sections 420,467,471 and 120-B of IPC and Sections 7 & 12 of the PC Act, 1988 against Anil Tuteja (retired IAS) the then Joint Secretary in the State of CG, Mr. Anwar Dehbar, Mr. Arun Pati Tripathi (ITS) then Special Secretary, Government of Commerce and Industries Department and MD, CG State Marketing Corporation ltd., Mr. Vikas

Agrawal @ Subbu, Mr. Sanjay Diwan and others for collecting commissions and supplying unaccounted liquor to government liquor shops, resulting loss of Rs. 2161 crores to the government of Chhattisgarh.

26. The FIR for the predicate offence is registered by ACB/EOW, Raipur, Chhattisgarh under Sections 120-B,420, 467 and 471 IPC and 7 & 12 of the P Act which are scheduled offences included in paragraphs 1 & 8 of Part A of the Schedule to PMLA, 2002 as defined under Section 2(1)(y) of the Act and accordingly, the enquiries were initiated under PMLA against the suspected persons after recording brief facts of the scheduled offence and initiating money laundering investigation in file No. ECIR/RPZO/04/2024 on 11.04.2024 by the officials of the ED, Raipur Zonal Office. The Directorate has filed total three prosecution complaints dated 19.06.2024, 30.08.2024 and 5.10.2024 in thepresent case. One PAO 02/2024 dated 02.05.2024 was issued whereby the properties to the tune of about Rs. 205 crores have been attached and subsequently the same has been confirmed by the learned adjudicating authority vide its order dated 7.10.2024 in OC No. 2318/2024.

27. It is contended by Shri Pandey that the applicant was safe keeping the proceeds of crime acquired by the syndicate members using his associated companies. He received Rs. 10.50 crores from the FL-10A license which was shown as loan and invested in FDR by him. The original plan was to show these payments as share application money and forfeit the proceeds of crime in his companies. The plan was

made in the office of co-accused Anwar Dhebar in his presence. The applicant had used the method of invoicing goods and keeping the margin in his company by doing paper transaction in the name of his company M/s.Petrosun Bio Refineries Pvt. Ltd. whereas this payment was actually the commission generated from the distillers. The applicant had shown unsecured loan from various agro based companies in M/s. Dhillon City Mall Pvt. Ltd. whereas in reality these were the entries against cash that was generated out of funds generated by the syndicate. He submits that the investigation has clearly proven that the agro base companies were just dummy companies and all the unsecured loans provided by them were just bank entries arranged against cash.

28. Contention of Shri Pandey, learned counsel for the ED is that the possession of proceeds of crime by the applicant is as under:

> 1) As per the statements of the distillers by ED under Section 50 of the PMLA, it has been categorically admitted that in order to pay huge amount of Part-A commission, generated to cash in association with co-accused Anwar Dhebar by way of over invoicing the bills for purchase of husk/coal/grains in the name of the firms suggested by the liquor syndicate. The *modus operandi* for this was:
>
> - the distillers were taking their raw material from their regular suppliers.
>
> - co-accused Anwar Dhebar introduced few companies who would pretend to be raw material traders

- the actual suppliers of distillers sold the raw material to these dummy companies at routine rats.

- the dummy companies would inflate the invoices by 20-40% and charge the distillers.

- the dummy company would keep the excess 20-40% excess amount and remit the remaining routine rate to the actual routine suppliers.

-thus, the access amount paid to the dummy companies would be treated as successfully delivered commission.

29. Further it has been contended that the applicant was identified to be one such entity. M/s. Petrosun Bio Refineries Pvt. Limited which had no role in supply of grains would keep the excess share of 15-30% on behalf of the syndicate which is nothing but illegal commission which was being paid in this manner. The company of the applicant had made the fixed deposits in its bank account of the illegal commission received which is estimated to Rs. 1,26,00,000/-, 1,99,00,000/- and 1,30,00,000/-.

30. In another company of the applicant ie. M/s. Dhillon City Mall Pvt. Ltd. was utilized by the syndicate for parking of its illegal earning. The profit share of 60% of the FL-10A Licensee was given to one of the syndicate member namely Vikas Agrawal @ Subbu. As part of payment of this profit share, the licensees remitted the amount to this company of the applicant and the fund trail investigations, the payments received from the FL-10A licensees in his FDR bank accounts are Rs. 5,01,42,258/-, 5,01,42,259/-,5,01,42,258/-, 5,01,42,258/- *and Rs.*

3,00,85,356-.

31. The balance sheets of M/s. Dhillon City Mall Pvt. Ltd. revealed that the company had received unsecured loan of Rs. 12.52 crores from various firms/companies. Learned counsel for the respondent contended that this amount of Rs. 12.52 crores is part of the Proceeds of Crime. He contends that the source of funds for creation of the five freezed FDRs amounting to Rs. 23 crores was actually the funds received from the FL-10A licencees viz. M/s. Om Sai Beverages Ltd. and M/s. Dishita Ventures Pvt. Ltd. and entry against the cash providers viz. M/s. AK Agro, M/s. Pitambra Trades, M/s. Saraswati Corporation, M/s. Shree EkVira Agro Products and others. Thus, from the above submissions it is clear that the applicant is in possession of the Proceeds of Crime to the tune of Rs. 27.2 crores approximately. He submits that the entities from whom these funds were received have categorically admitted that excess funds or unsecured loans were given to the applicant at the behest of the syndicate. He has placed his reliance in the matter of **Gautam Kundi Vs. Directorate of Enforcement (2015) 16 SCC 1.** It is also not out of place to mention that the applicant is involved in money laundering of huge sum of money amounting to Rs.28,13,66,989/-(approximately). The Enforcement Directorate has also produced reports and documents as to how the applicant tried to coerce with the co-accused (members of the syndicate) for extortion of money and wrongful gain.

32. Shri Pandey, learned counsel for the respondent/Ed submits that

from the investigation, it has been revealed that the applicant has knowingly participated in the criminal acts of the syndicate and is in possession of the Proceeds of Crime. The applicant was also involved in safe keeping and concealment of the illegal commission collected. The applicant had received big amount of Part-A commission from the liquor suppliers in his FDR bank account. It is further contended that the company of the applicant was utilized by the syndicate to arrange the cash for payment of Part-A commission. The *modus operandi* for this was that the distillers would take their raw material from their regular suppliers but through M/s. Petrosun Bio Refineries Pvt. Ltd. the regular suppliers paid the actual rate and the company of the applicant inflate the invoices by 20-40% and charge the distillers. These excess amount was kept by him and the remaining routine rate was remitted to the actual suppliers.

33. It is contended that the very intention of the applicant was to retain these funds received from the FL-10A licensees as this was the commission which was supposed to be paid by these companies. Further, the balance sheets of M/s. Dhillon City Mall Pvt. Ltd. revealed that the company had received unsecured loan of Rs. 12.52 crores from various firms/companies. Lastly, it has been submitted that the applicant is actually involved in all the activities connected with the offence of money laundering ie. use or acquisition, possession, concealment and projecting or claiming as untainted property as defined under Section 3 of the PMLA 2002, thus, he is guilty of the offence of

money laundering under Section 3 of the PMLA 2002 and punishable under Section 4 of the PMLA. He submits that the applicant is involved in the activities connected with the offence of money laundering ie. acquisition, possession, concealment and projecting or claiming as untainted property as defined under Section 3 of the PMLA , 2002. Thus, while considering the application for bail under Section 45 of the PMLA, 2002 the Court should keep in mind the abovementioned principles governing the grant of bial. The limitations on granting bail as prescribed under Section 45 of the Act are in addition to the limitations under the 1973 Code. In the judgment dated 27.07.2022, Hon'ble Supreme Court in Vi**jay Madanlal Chouhdary and Others Vs. Union of India and Others Special leave Petitioner (Criminal) No. 4634 of 2014** has held that it is no longer *res integra* that the twin conditions under Section 45 of the PMLA have to be met before grant of bail under PMLA. The relevant observation of the Hon'ble Court is as under:

> "135. We are conscious of the fact that in paragraph 53 of the Nikesh Tarachand Shah 642, the Court noted that it had struck down Section 45 of the 2002 as a whole. However, in paragraph 54, the declaration is only in respect of further (two) conditions for release on bail as contained in Section 45(1), being unconstitutional as the same violated Articles 14 and 21 of the Constitution. Be that as it may, nothing would remain in that observation or for that matter, the declaration as the defect in the provision [Section 45(1)], as existed then,and noticed by this Court has been cured by the Parliament by enacting amendment Act 13 of 2018 which has come into force with effect from 19.4.2018. We, therefore, confined ourselves to the challenge to the twin

> conditions in the provision, as it stands to this date post amendment of 2018 and which, on analysis of the decisions referred to above dealing with concerned enactments having similar twin conditions as valid, we must reject the challenge. Instead, we hold that the provision in the form of Section 45 of the 2002 Act, as applicable post amendment of 2018, is reasonable and has direct nexus with the purposes and objects sought to be achieved by the 2002 Act to combat the menace of money-laundering having transnational consequences including impacting the financial systems and sovereignty and integrity of the countries."

34. Further, the High Court of Delhi in **Sajjan Kumar Vs. Directorate of Enforcement (MANU/DE/2155/2022)** has held that in matter of regular bail, the Court must consider aspects including but not limited to the larger interest of the State or public-Another factor relevant would be gravity of the alleged offence and/or nature of allegation levelled-Economic offences constitute a class apart and need to be visited with a different approach given their severity and magnitude.

35. It is submitted that Section 45 of the PMLA starts with non-obstante clause and for deciding the bail in PMLA case, the conditions envisaged in Section 45 are invariably satisfied. It is further submitted that Section 37 of the NDPS is akin to Section 45 PMLA and Hon'ble Supreme Court while interpreting Section 37 in the case of **State of Kerala Vs. Rajesh (2020) 12 SCC 122** held as under:

> "19.The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 of the CrPC, but is also subject to the limitation placed by Section 37 which commences with non-obstante

> clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.

36. It is further submitted that the economic offences falls in the category of Offences which travel far ahead of personal or private wrongs having the potential to usher in economic crisis. It is expected to be on guard to these kinds of adroit moves with its principal duty should be to scan the entire fact to find out the trust and the veracity of allegations in the present criminal proceedings against the applicant who is an accused under the Scheduled offence case. In the matter of **Alok Agrawal Vs. Directorate of Enforcement bearing MCRC No. 6533 of 2019**, it has been discussed about the seriousness of the offences of money laundering and their impact on the economy of the country. The allegations in the Enforcement Case Information Report/Prosecution Complaint is a matter of final outcome of the trial but the burden of proof under Section 24 of the PMLA 2002 with regard to the said money is not proceeds of crime and is always on the accused person.

> "….6. It is true that at present there may or may not be direct or indirect attempts to indulge the applicant in any process of activity connected with the proceeds of crime, there is no attempt

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

"3. Offence of money-laundering.-

Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the [proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming] it as untainted property shall be guilty of offence of money-laundering."

"24. Burden of Proof. - In any proceeding relating to proceeds of crime under this Act, -7.
(a) in the case of a person charged with the offence of money-laundering under Section 3, the Authority or Court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money-laundering; and
(b) in the case of any other person the Authority or Court, may presume that such proceeds of crime are involved in money-laundering."

37. He has further submitted that the Apex Court has observed that money laundering is a serious threat to the national economy and national interest. Orissa High Court in the matter of **Mohd. Arif Vs. ED**

BLAPL No. 2606 of 2020 has observed that the impact of the offence of money laundering is an act of financial terrorism not only posing a serious threat to the financial system of the country but also to the integrity and sovereignty of a nation and has observed as under:

> "22. the offence of money laundering is nothing but an act of financial terrorism that poses a serious threat not only to the financial system of country but also the integrity and sovereignty of a nation. The International Monetary Fund estimates that laundered money generates about $590 billion to $1.5 trillion per year, which constitutes approximately two to five percent of the world's gross domestic product. The Supreme Court of India has consistently held that economic offences are *sui generis* in nature as they stifle the delicate economic fabirc of a society. These offences permeate to human consciousness posing numerous questions on the very integrity of the business world. The offences, such as this, are committed with a deliberate design with an eye on personal profit and often shown to be given scant regard for a sordid residuum left behind to be borne by the unfortunate "starry eyed" petty investors. The perpetrators of such deviant "schemes" including the petitioner herein, who promise utopia to their unsuspecting investors seem to have entered in a proverbial "faustian bargain" and are grossly unmindful of untold miseries of the faceless multitudes who are left high and dry and consigned to the flames of suffering."

38. It is contended by the learned counsel for the respondent that the economic offences constitute a class apart and need to be visited with different approach. In this regard, it is pertinent to refer to the following observations of this Court in **Y.S. Jagan Mohan Reddy:**

> "34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.
> 35. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations."
> This Court has adopted this position in several decisions, including Gautam Kundu v. Directorate of Enforcement and State of Bihar v. Amit Kumar. Thus, it is evident that the above factors must be taken into account while determining whether bail should be granted in cases involving grave economic offences."

39. He has further placed his reliance in the matter of the Apex Court in State of **State of Gujarat v. Mohanlal Jitamalji Porwal : (1987) 2 SCC 364 : AIR 1987 SC 1321**). Economic offences have serious repercussions on the development of the society as a whole. The entire community would be aggrieved if the economic offenders, who ruin the economy of the State, are not brought to book in a proper manner. It has observed that :

> "5…. The community or the State is not *persona-non-grata* whose cause may be treated with disdain.

> The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to books. A murder may be committed in the heat of moment upon passion being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community…."

40. It is submitted that the applicant being an influential businessman he is in a position to be able to influence the witnesses and if released on bail, thee is a hight likelihood that the applicant would seek to frustrate the proceedings under the Act. He has placed his reliance in the matter of **neeru Yadav Vs. State of UP and Another, AIR (SC) (CRI) 2015 (0) 412** wherein following observation has been made:

> " it is well settled principle of law that while dealing with an application for grant of bail, it is the duty of the Court to take into consideration certain factors and they basically are:
>
> (i) the nature of accusation and the severity of punishment in cases of conviction and the nature of supporting evidence,
>
> (ii) reasonable apprehension of tampering with the witnesses for apprehension of threat to the complainant and
>
> (iii) *Prima facie* satisfaction of the court in support of the charge."

41. The gravity or seriousness of the offence cannot merely be seen from the severity of punishment and in fact the nature of the offence would also be relevant as the amount of proceeds of the crime in the

present case is more than Rs. 2000 crores. In this regard, he has relied upon the judgment of the Apex Court in **State of UP Vs. Gayatri Prasad Prajapati AIR 2020 SC 5014,** wherein certain guidelines have been laid down vix-a-vis the present facts whereby, the Apex Court while dismissing the bail application has observed that humane treatment to all including an accused is requirement of law. A prisoner, who is suffering from an ailment has to be given due treatment and care while in prison and if the due medical care is being taken of the accused, bail cannot be granted.

42. Shri Pandey, further submits that the twin conditions as mentioned in Section 45 of the PMLA, 2002 is to be satisfied before an accused is released on bail. Provision is mandatory in nature. Unless the Court comes to the satisfaction that there are no reasonable grounds for believing that the applicant-accused is guilty and he is not likely to commit any offence only then the applicant-accused may be enlarged on bail. It is submitted that voluminous evidence has been collected which shows that the applicant is involved in money laundering which is proceeds of crime. In view of the same, may not be granted bail and the application may be dismissed.

ANALYSIS AND OPINION

43. Heard learned counsel for the parties and perused the documents on record.

44. In the present case, the applicant was involved in the criminal acts of the syndicate and that he received commission from the liquor

suppliers. However, no recovery of unaccounted money has been made in this regard and as per the investigating agency, the investigation is pending, hence, a conclusive determination of their role is yet to be made. On perusal of the records, it appears that the co-accused Trilok Singh Dhillon was a liquor contractor and he received commission from the liquor suppliers in his FDR bank account and he is not a member of the syndicate but has facilitated the payment of bribes to the syndicates in collusion with other co-accused. The relevant provisions of PMLA, 2002 and Rules thereunder which is to be looked into by the Court for considering the arguments for grant of bail is quoted as under:

> *Section -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 [1][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.*
>
> *MCRC-19929-2024 Section 2(1)(u) in The Prevention of Money-Laundering Act, 2002 "proceeds of crime" which 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 county, then the property equivalent in value held within the country or abroad.*

45. Considering that the present is a bail application for the offence under Section 45 of PMLA, the twin conditions mentioned thereof become relevant. Section 45(1) of PMLA reads as under:

> “45. Offences to be cognizable and non-bailable. (1)Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence [under this Act] shall be released on bail or on his own bond unless- (i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:
> Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees, may be released on bail, if the Special Court so directs:
> Provided further that the Special Court shall not take cognizance of any offence punishable under Section 4 except upon a complaint in writing made by-
> (i) the Director; or
>
> (ii) any officer of the Central Government or a State Government authorized in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government.”

46. In the case in hand, considering the fact that the charges levelled against the applicant are grave and a serious threat to societal harmony. On perusal of the aforesaid provisions of law and judgment passed by the Apex Court in the matter of **Vijay Madanlal Choudhary Vs. Union of India and Others (2022) SCC OnLine SC 929**, it is clear that the offence under PMLA, 2002 is a separate and distinct offence. PMLA 2002 deals with the proceeds of crime which has been obtained by the

accused by committing schedule offences. Accused possess, conceals and acquire tainted property or money claiming it to be untainted and use the proceeds of crime. Said act of accused in dealing with ill gotten money or property constitutes separate and distinct offence from earlier offence committed to acquire money. The applicant was arrested on 17.01.2024 in connection with ECIR No. RPZO/04/2024 dated 11.04.2024 registered by the Directorate of Enforcement for the offence under Sections 3 and 4 of the PMLA, 2002. It has been alleged that the applicant was involved in the activities connected with the offence of money laundering and proceeds of crime to the tune of Rs. 28,13,66,989/-. In **Vijay Madanlal Choudhary (Supra)**, the Apex Court has held as under:-

> "269269. From the bare language of Section 3 of the 2002 Act, it is amply clear that the offence of money-laundering is an independent offence regarding the process or activity connected with the proceeds of crime which had been derived or obtained as a result of criminal activity relating to or in relation to a scheduled offence. The process or activity can be in any form -- be it one of concealment, possession, acquisition, use of proceeds of crime as much as projecting it as untainted property or claiming it to be so. Thus, involvement in any one of such process or activity connected with the proceeds of crime would constitute offence of money-laundering. This offence otherwise has nothing to do with the criminal activity relating to a scheduled offence --

except the proceeds of crime derived or obtained as a result of that crime.

XXXX XXXX XXXX

295. As aforesaid, in this backdrop the amendment Act 2 of 2013 came into being. Considering the purport of the amended provisions and the experience of implementing/enforcement agencies, further changes became necessary to strengthen the mechanism regarding prevention of money-laundering. It is not right in assuming that the attachment of property (provisional) under the second proviso, as amended, has no link with the scheduled offence. Inasmuch as Section 5(1) envisages that such an action can be initiated only on the basis of material in possession of the authorised officer indicative of any person being in possession of proceeds of crime. The precondition for being proceeds of crime is that the property has been derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence. The sweep of Section 5(1) is not limited to the accused named in the criminal activity relating to a scheduled offence. It would apply to any person (not necessarily being accused in the scheduled offence), if he is involved in any process or activity connected with the proceeds of crime. Such a person besides facing the consequence of

provisional attachment order, may end up in being named as accused in the complaint to be filed by the authorised officer concerning offence under Section 3 of the 2002 Act.

XXXX XXXX XXXX

387. Having said thus, we must now address the challenge to the twin conditions as applicable post amendment of 2018. That challenge will have to be tested on its own merits and not in reference to the reasons weighed with this Court in declaring the provision, (as it existed at the relevant time), applicable only to offences punishable for a term of imprisonment of more than three years under Part A of the Schedule to the 2002 Act. Now, the provision (Section 45) including twin conditions would apply to the offence(s) under the 2002 Act itself. The provision post 2018 amendment, is in the nature of no bail in relation to the offence of money-laundering unless the twin conditions are fulfilled. The twin conditions are that there are reasonable grounds for believing that the accused is not guilty of offence of money-laundering and that he is not likely to commit any offence while on bail. Considering the purposes and objects of the legislation in the form of 2002 Act and the background in which it had been enacted owing to the commitment made to the international bodies and on their recommendations, it is plainly clear that it is a special legislation to deal with the subject of money-laundering activities having transnational impact on the financial systems

> including sovereignty and integrity of the countries. This is not an ordinary offence. To deal with such serious offence, stringent measures are provided in the 2002 Act for prevention of money-laundering and combating menace of money-laundering, including for attachment and confiscation of proceeds of crime and to prosecute persons involved in the process or activity connected with the proceeds of crime. In view of the gravity of the fallout of money-laundering activities having transnational impact, a special procedural law for prevention and regulation, including to prosecute the person involved, has been enacted, grouping the offenders involved in the process or activity connected with the proceeds of crime as a separate class from ordinary criminals. The offence of money-laundering has been regarded as an aggravated form of crime "world over". It is, therefore, a separate class of offence requiring effective and stringent measures to combat the menace of money-laundering."

47. It is important to note that the twin conditions provided under Section 45 of the 2002 Act, though restrict the right of the accused to grant of bail, but it cannot be said that the conditions provided under Section 45 impose absolute restraint on the grant of bail. The discretion vests in the Court which is not arbitrary or irrational but judicial, guided by the principles of law as provided under Section 45 of the Act, 2002. While dealing with a similar provision prescribing twin conditions in

MCOCA, this Court in Ranjitsing Brahmajeetsing Sharma(2005) 5 SCC 294, held as under:

> "44. The wording of Section 21(4), in our opinion, does not lead to the conclusion that the court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act. If such a construction is placed, the court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the applicant. Such cannot be the intention of the legislature. Section 21(4) of MCOCA, therefore, must be construed reasonably. It must be so construed that the court is able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. Similarly, the Court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in futuro must be an offence under the Act and not any other offence. Since it is difficult to predict the future conduct of an accused, the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence."

48. In view of the aforementioned factual background, the arguments made by the learned counsel for the parties and further keeping in mind the binding observations of their Lordships of the Apex Court that the offence of money laundering not only relates to generation of such proceeds of crime but it also includes any activity directly or indirectly

relating to concealment or possession or acquisition or use amongst others. The said definition is very wide and inclusive, thus, the fact that directly or indirectly if any person is in possession or use of such proceeds of crime, knowingly assists or knowingly is a party or actually involved or in any activity connected with proceeds of crime relating to concealment possession acquisition or use or projecting the property as untainted property or claiming as untainted property in any manner whatsoever would be liable for commissioning of any offence under the PMLA. Economic offences are grave offence affecting the economy of the country as a whole and serious repercussions on the development of the country and corruption is really a human rights violation specially right to life, liberty, equality and non discrimination, and it is an enormous obstacle to the realization of all human rights and the charges alleged against the applicant are extremely serious and have been committed in the State of Chhattisgarh and from perusal of the record and in view of the fact that looking to the special and stringent provision under Section 45(1) of the PMLA for grant of bail, in the considered opinion of this Court, prima facie the money trail has been established by the prosecution and therefore, it is not proper to order release of present applicant on regular bail for the reasons mentioned hereinabove.

49. The contention of the applicant that vide order dated 27.11.2024, the Apex Court in Criminal Appeal No. 4844/2024 @ SLP (Crl.) No. 14697/2024 has directed the applicant shall be enlarged on bail by

producing him before the trial court on 15th January 2025 directing the trial court to impose stringent terms including the conditions.

So far as the case of the applicant in the said case is related FIR No.04/2024 dated 17.01.2024 (arrested on 25.04.2024) registered by the EOW/ACB, Chhatisgarh for commission of offences punishable under Sections 420,467, 471 & 120(B) of the IPC and Sections 7 and 12 of the Prevention of Corruption Act and the present is a case of money laundering under Section 3 & 4 of the PMLA,2002. Hence, the ground taken by the applicant cannot be considered at this stage.

50. What is required is to *prima facie*, consider the material available on record to satisfy itself and to enable it to reasonably form an opinion, to believe, that the applicant is not guilty of the offence and that he is not likely to commit any offence on bail as enshrined in Section 45 of the PMLA. It is also required to consider the nature and gravity of the accusation, severity of the punishment in the event of conviction, danger of the accused absconding or fleeing, character, behaviour means, position and standing of the accused, the likelihood and reasonable apprehension of the witnesses being influenced and danger, of course, of justice being defeated by grant of bail.

Thus, from the above foregoing discussion, it is clear that the balance sheets of the company of applicant ie. M/s. Dhillon City Mall Pvt. Ltd. had received unsecured loan of Rs. 12.52 crores from various companies and it has also been revealed that these firms are bogus and only entries against cash has been provided to them by the company of

the applicant. This amount of Rs. 12.52 crores is part of the Proceeds of Crime which was parked in the said company of the applicant. However, there is no written loan agreement for unsecured loans and there are no collaterals or the purpose has been mentioned in taking these loans and he had claimed that he is paying interest on these loans at 8% from the last two years but is keeping these amounts in FDs at the interest rate of 7%. It is thus clear from the above detailed discussion that the applicant is in possession of the Proceeds of Crime of about 27.2 crores which was used in creation of various Fixed Deposits of principal amount totalling to Rs. 27.2 crores in the name of his companies ie. M/s. Petrosun Bio Refineries Pvt. Ltd. and M/s. Dhillon City Mall Pvt. Ltd. It is in the aforesaid backdrop, considering the material available on record including the money transactions in the FDR accounts of the applicant and its use by the applicant through his firms/companies, for all the reasons aforesaid, this Court is unable to persuade itself to form a *prima facie*, satisfaction in terms of Section 45 of the PMLA, at this stage, and further that the prosecution complaint has been filed against the applicant, this Court is not inclined to grant regular bail to the applicant.

51. So far as the ground of age relating multiple ailments stating that he is suffering from diabetes, high blood pressure and blockage in the heart are concerned, there is no such serious ailments and therefore, the applicant in the present case cannot claim for grant of bail on this ground.

52. In view of the aforesaid circumstances, the prayer for bail made by the applicant under Section 483 of the Bhartiya *Nagrik Suraksha Sanhita,* 2023 ('BNSS') read with Section 45 of the PMLA, 2002 for the offences under Section 3 & 4 of the PMLA, 2002, is hereby rejected.

Sd/-

(Arvind Kumar Verma)
Judge