

HIGH COURT OF ORISSA: CUTTACK

BLAPL No.2607 OF 2020

(In the matter of an application under Section 439, Criminal Procedure Code,
1973)

MOHAMMAD ARIF **Petitioner**

Versus

**DIRECTORATE OF ENFORCEMENT,
GOVT. OF INDIA** **Opp. Party**

For the Petitioner: M/s. Amar Patnaik, V. Narasingh, B. Mohapatra,
S.K. Jena, B.B. Choudhury and Subhalaxmi Devi,
Advocates.

For the Opp.Party: Mr. Gopal Agarwal, Advocate, Retainer Counsel,
Directorate of Enforcement, Govt. of India

PRESENT

THE HONOURABLE SHRI JUSTICE S.K. PANIGRAHI

Date of Hearing - 10.06.2020

Date of judgment – 13.07.2020

1. The petitioner has approached this court seeking bail in connection with Complaint Case C.M.C. (PMLA) No.47 of 2017 arising out of ECIR/07/2009/BBSR pending before the Ld. Sessions Judge, Khorda-cum-Special Court under PMLA, Khorda at Bhubaneswar under Section 439 of the Code of Criminal Procedure, 1973.

2. A brief factual background of the case demonstrates that a case was registered at Sahadevkhunta Police Station, District – Balasore, Odisha bearing FIR No.118/2009 dated 17/07/2009 U/s. 406/420/468/471/34, I.P.C. and Sections 4, 5 and 6 of Prize Chits and Money Circulation Schemes (Banning) Act, 1978 on the basis of a written complaint dated 17/07/2009 lodged by one Niranjana Sahoo, alleging that he had been cheated and defrauded by alluring to invest Rs.10,000/- in the attractive investment Scheme of M/s. Fine Indisales Pvt. Ltd (hereinafter referred as to M/s. “FIPL”). It is further alleged that he has been the receiving end of such deceptive Scheme once again and deposited of Rs.40,000/- therein. He also introduced 20 other persons to invest in such schemes. But he had neither received the said financial product nor the product voucher as per the agreement with M/s. FIPL and the said M/s. FIPL collected huge amounts of money from the public and ultimately duped huge amount from innocent public by giving false assurance of high return for their deposit of money. Thus, he requested for an investigation regarding the money circulation scheme which culminated into registration of a case by the said police station. Subsequently, the investigation of the aforesaid P.S. Case No.118/2009 dt. 17.07.2009 got transferred to CB, CID of Odisha as per order No.189/CID dated 18.07.2009 by registering CB, CID Case No.17 dated 18.07.2009 against officials of M/s. FIPL under the aforesaid sections.

3. On 12.12.2012, this Court while hearing W.P.(C) No.7693/2011,¹ directed that looking at the massive financial impact in the case, the investigation of the aforesaid case be handed over to the CBI. In compliance with the said direction, the Central Bureau of Investigation (hereinafter referred to as “CBI”)

¹ All India Networkers Welfare Trust and another vs. Superintendent of Police, CID and Others, W.P.(C) No.7693/2011.

took over the investigation. Accordingly, CBI Economic Offence Wing, Kolkata registered a case vide No.-RC 02/E/2013-KOL on 01.03.2013 after duly taking over the FIR of CB, CID, Odisha Case No.17/2009 registered U/s. 406/420/468/471/34 of IPC, read with Secs. 4, 5 & 6 of Prize Chits and Money Circulation Schemes (Banning) Act, 1978 against the officials of the said FIPL.

4. Case corresponding to the original FIR was also recorded by the Enforcement Directorate (ECIR/07/2009/BBSR dated 18.11.2009) on the basis of the aforesaid P.S. Case No.118 dated 17.07.2009 as the said FIR revealed the commission of certain Scheduled Offences under PML Act, 2002 and investigation was taken up under various provisions of The Prevention of Money Laundering Act, 2002 (hereinafter referred as "PML Act").

5. The investigation, thus far, has revealed that M/s. FIPL had floated a fraudulent scheme of their company on 28.08.2008 inviting deposits from public for the said scheme deceitfully and advertised as a "Multi-level marketing scheme" with a terminal ulterior motive to siphon off the funds collected from public. The advertised scheme of FIPL, *ex-facie* appears to be a bodacious Ponzi scheme, inducing the susceptible depositors by way of misrepresentation, promising immediate refund in case of any default and timely payment of return on the part of FIPL. Investigation, therefore, has *prima facie* established that the accused persons connected with M/s. FIPL not only criminally conspired and cheated the depositors but also lured them into the scheme with a rogue mindset. This sort of an economic demonology at the hands of M/s. FIPL, its Directors and Shareholders has been instrumental in making a windfall gain of about Rs.703 crores, as revealed from their own records.

6. Investigation further reveals that the aforesaid sum of money, stained with the sweat, tears and blood of multitudes of innocent people has since been moved around and subjected to Machiavellian layering through a myriad of shell companies and bogus transactions. The money collected from such scheme immediately got transferred to different bank accounts of individuals as well as firms under the management and control of the Promoters/Directors/Shareholders of the said M/s. FIPL which is nothing but an act of sheltering the said “proceeds of crime” as envisaged under Section 2 (u) of the PML Act. The Forensic Audit conducted by the CBI during the course of investigation reveals that the total money invested by the depositors adds up to Rs.703, 50, 00,079/-. The *modus operandi* adopted while transferring such prodigious sum of ill-gotten wealth with the singular intention of concealing the original source of funds and to project the tainted money as untainted *ex facie* constitute the offence of money laundering.

7. Scrutiny of the books of account of FIPL further reveals that about Rs.152 Crores were transferred to one M/s. Eve Industries which were further layered by laundering the same to one M/s. Great Entertainments and further to the accounts of M/s. Lemon Entertainment Ltd. where the petitioner was also a Director at the relevant point of time (financial year 2009-10). In this way, the complicity of the petitioner in the instant case is quite visible. This money was transferred to the Bank A/c No.00421300000134 of M/s. Lemon Entertainment Ltd. whose account was being maintained in DCB Bank, Andheri, Mumbai and A/c. No.020010200044907 maintained in Axis Bank, Lokhandwala Branch, Mumbai. The details of cheques through which the money was transferred

from the accounts of M/s. Great Entertainments to the above accounts of M/s. Lemon Entertainment Ltd. are as under:

Sl. No.	Name of Bank and Branch of M/s. Great Entertainment A/C	A/c. No. of M/s. Great Entertainment	Cheque No.	M/s. Lemon Entertainment Ltd. A/c. No. and Bank	Amount transferred (In INR)
1	IDBI bank, MG rd Kanpur	90102000025045	769457	00421300000134 DCB Bank	3,00,00,000/-
2	IDBI bank, MG rd Kanpur	90102000025045	774188	00421300000134 DCB Bank	50,00,000/-
3	Axis Bank, Mail Rd Kanpur	133010200015075	342608	00421300000134 DCB Bank	3,00,00,000/-
4	Axis Bank, Mail Rd Kanpur	133010200015075	018798	020010200044907 Axis Bank	3,50,00,000/-
5	Axis Bank, Mail Rd Kanpur	133010200015075	018947	020010200044907 Axis Bank	5,00,00,000/-
6	Axis Bank, Mail Rd Kanpur	133010200015075	342652	00421300000134 DCB Bank	3,00,00,000/-
7	Axis Bank, Mail Rd Kanpur	133010200015075	018912	020010200044907 Axis Bank	7,00,00,000/-
Total					25,00,00,000/-

Investigation further reveals that the above amount of Rs.25 crores have been credited to the accounts of M/s. Lemon Entertainment Ltd. on the following dates:

Sl. No.	Date of credit	Name of the Bank	A/c. No. of M/s. Lemon Entertainment Ltd.	Amount (In INR)
1	13/04/2009	DCB Bank	00421300000134	3,00,00,000/-
2	26/05/2009	DCB Bank	00421300000134	50,00,000/-
3	24/04/2009	DCB Bank	00421300000134	3,00,00,000/-
4	26/05/2009	Axis Bank	020010200044907	3,50,00,000/-
5	04/06/2009	Axis Bank	020010200044907	5,00,00,000/-

6	24/04/2009	DCB Bank	00421300000134	3,00,00,000/-
7	27/05/2009	Axis Bank	020010200044907	7,00,00,000/-
Total				25,00,00,000/-

It was also discovered during investigation that the following persons were the Directors of M/s. Lemon Entertainment Ltd. during the relevant time when the transactions of Rs.25 crores took place as mentioned above. The directorship of the accused company has been given hereunder:

Sl. No.	Name of the Director	Period	
		From	To
1	Mohammad Arif	30/09/2008	18/08/2017
2	Wali Mohammad	02/09/2004	24/02/2012
3.	Sameer Ahmed Khan	30/09/2008	Continuing

The said Wali Mohammad was again made a director of M/s. Lemon Entertainment Ltd. on 30.9.2014 and is continuing as such. Similarly, one Nelsan Ekka became a director on 18.08.2017 and is continuing as such. The Petitioner, Mohammad Arif, was also an Additional Director of the company from 10.07.2008 to 30.09.2008 but ceased to be a director seeing the adverse wind. It is thus evident from the above facts that the Petitioner was a director of the said errant company during that point in time when the “proceeds of crime” were laundered into the books of the Company.

8. During the said relevant period, the Petitioner Mohammad Arif and his father Zaheer Ahmed collectively held 934820 shares between themselves out of the total of 945860 subscribed shares of the company, which is virtually the wholeshares of the company. Thus, it is apparent that the present petitioner

Mohammad Arif held around 8.83% of shares and as his father Zaheer Ahmed held around 89.99% of shares of M/s. Lemon Entertainment Ltd. as on 30.09.2009. Thus, the contention of the petitioner in paragraph-6 of the instant application that he was holding only 0.078% of the total shares of M/s. Lemon Entertainment Ltd. is mischievously misleading.

9. Another material fact evident from the records and pertinent for the purpose of consideration of the instant application is that as many as 11 summons have been issued to the petitioner prior to his arrest in connection with this case U/s. 50 of PML Act, 2002 but he appeared only once. The details of summons are given hereunder:

Date of Summons	Date fixed for appearance	Whether appeared	Date of Statement recorded	Summons issued from
06-06-2016	21-06-2016	No	-	Kolkata Zonal Office
12-07-2016	21-07-2016	No	-	Kolkata Zonal Office
10-08-2016	23-08-2016	No	-	Kolkata Zonal Office
08-09-2016	28-09-2016	No	-	Kolkata Zonal Office
18-10-2016	08-11-2016	No	-	Kolkata Zonal Office
27-04-2017	16-05-2017	Yes	17.05.2017	Kolkata Zonal Office
16-11-2017	05-12-2017	No	-	Bhubaneswar Sub-Zonal Office
08-12-2017	04-01-2018	No	-	Bhubaneswar Sub-Zonal Office
12-01-2018	31-01-2018	No	-	Bhubaneswar Sub-Zonal Office
31-01-2018	07-02-2018	No	-	Bhubaneswar Sub-Zonal Office
18-09-2019	14-10-2019	No	-	Bhubaneswar Sub-Zonal Office

10. Ld. Counsel for the Petitioner Shri V. Narsingh submitted that the petitioner is not named as an accused in the Complaint case filed by ED and its investigation was started only after submission of the Prosecution Complaint in the learned Special Court (PMLA). It is only during the further investigation which revealed the involvement of the petitioner and others in the commission of the offence of money laundering. Accordingly, a supplementary complaint was also filed before the learned Special Court (PMLA). The principal contention of the Ld. Counsel for the petitioner is that such a supplementary complaint is not permissible in law. The indictment of present petitioner is made only when Special Court (PMLA) and court of the District and Sessions Judge, Khurda, Bhubaneswar have taken cognizance of case under Section 3 of PMLA, which is impermissible. There ought to be a presumption of innocence of the Petitioner until proved otherwise and any other view of the matter would be violative of Article 21 of the Constitution. He further contended that the present Petitioner had cooperated in investigation as and when he was required. He also submitted that the presence of "knowledge" as prescribed under Section 3 of the Act of the offence having been committed is the *sine qua non* for the culpability of the petitioner.

11. On the other hand, the Ld. Counsel for the Prosecution Shri Agarwal strenuously contended that the investigation thus far reveals the crystal-clear involvement of the petitioner in the "money trail" and in the offence of "money laundering." There is sufficient materials/evidence on record which discloses a prima facie case against the petitioner for commission of offence of "money laundering." The petitioner has played a key role in masking the

tainted money as untainted hence a specific role is attributable to the petitioner herein. Investigation so far has revealed that there is no written agreement between M/s. Great Entertainments and M/s.Lemon Entertainment. The contention of the petitioner that Rs.25 crores was transferred for the purpose of production of a movie and for acquiring a satellite channel named 'Lemon TV' is an afterthought and an imaginary vehicle to cover up the offence of money laundering. He further submitted that petitioner is alleged to have been engaged in sham transfer of shares, which *ex facie* appears to be bogus transactions. Curiously, no money was transferred to the account of the original share holder i.e. Zaheer Ahmed. It appears quite absurd that when the shares held by Zaheer Ahmed were claimed to have been transferred in the name of one Shamshad Alam [Accused No.4 in C.M.C. (PMLA) No.47 of 2017], there was no reason for transfer of monies, therefore, to the account of the company. The said transaction on first blush appears to defy good logic but a closer scrutiny shows that the same is a well hatched conspiracy and an act of symptomatic dishonesty.

Again these 718854 shares have been stated to have been re-transferred to the said Shamshad Alam from the account of Zaheer Ahmed as per resolution dated 31.08.2009 and the entire 718854 shares were allegedly reverted back to Zaheer Ahmed, the father of the present petitioner. However, the most self-defeating and telling aspect of the matter is that the said Shamshad Alam vide his statement dated 17.09.2018 recorded U/s. 50(2) and 50(3) of PMLA, 2002 has admitted that he had never purchased any share from M/s. Lemon Entertainment Ltd. As no share had been transferred in the name of Shamshad Alam to begin with, thus, the question of retransfer of shares to anyone

doesn't arise. The aforementioned statements not only defy common sense but also points towards the culpability of the parties. If their own version is taken to be believed, a reversal of the share purchase had taken place, in that event, the sum of Rs. 2.5 Crores had not been paid back upon such a reversal of the transaction. Instead, the same have been gleefully retained by the company in question. The Ld. Counsel also submitted that the Petitioner has indulged in the offence of "money laundering" which is a distinct and separate offence compared to the "commission of a scheduled offence" under the PML Act. Lastly, he contends that in view of Section 44(d) of the PML Act and Section 173(8) of the Cr.P.C, the prosecution was well within its rights to have filed a subsequent complaint pursuant to further investigation.

12. Heard rival contentions of the parties, perhaps both sides in the argument, who have probably overstated their cases. Yet, this sort of delinquency about which society was almost ignorant or perhaps indifferent deserved a proper factual presentation. It, *prima facie*, appears from a cursory look on the evidence on record that dishonesty, untruth and greed has eroded the faith of common investors. The multiple use of corporate vehicles as mentioned hereinabove have exerted significant influence on the directors of M/s. Lemon Entertainment Ltd. and their relatives, who are running Hamra Samay TV News Network Pvt. Ltd., Ruby Buildwell Pvt. Ltd., Aliff TV Network Pvt. Ltd., Lemon News Media Pvt. Ltd. and BPL Media Ltd. A close scrutiny of the statement of bank account of Axis Bank A/c. No.0200010200044907 of M/s. Lemon Entertainment Ltd. reveals that around Rs.14 crores has been transferred to the accounts of M/s. Hamra Samay TV News Network Pvt. Ltd, which in turn has transferred, approximately Rs.11 crores to the bank account

of M/s. Ruby Buildwell Pvt. Ltd. Further about Rs.2.75 crores have been transferred to the bank account of M/s. Pal News Media Pvt. Ltd. Thus, the amount appears to have been layered further after its placement which constitutes an important stage of money laundering.

13. The bank account statement of M/s. Ruby Buildwell Pvt. Ltd. further reveals that a self cheque bearing No.519851 was issued on 17.05.2010 from A/c No.1579417 of ABN – AMRO Bank (now RBS Bank) and against this cheque, cash of Rs.1.5 Crores was withdrawn under the signature of the petitioner herein. Statements of accounts of M/s. Ruby Buildwell Pvt. Ltd. as well as M/s. Pal News Media Pvt. Ltd also reveals that cash has been withdrawn on several occasions through self cheques under the signatures of the petitioner herein. Another telling aspect of the matter is that the petitioner has stated categorically in a statement that he knew Wali Mohammad since the last 15 to 20 years and that he was earlier working as an Ola Cab Driver and subsequently upon joining the company he ascended to the post of a director. This very statement makes it clear that the offending shell company was virtually owned by the petitioner and his father who were running the show and all the other directors were either sham or fictionalized.

14. The Petitioner, thus, *prima facie* seems to have a direct and active role in laundering the tainted money generated from the aforestated scheduled offence. In this context, the contention of the petitioner stating that there is nothing to show that the accused is involved in either layering or in integration in the offence of money laundering is completely phony, gratuitous and a half-baked afterthought. There is specific and enough evidence as mentioned in the Supplementary Complainant regarding the role

of the petitioner in the offence of money laundering. This court has also taken note of the submission that the above seems to be a tip of the iceberg of laundering of the tainted money, detected thus far. The matter is under further investigation to ferret out the details of the trail of funds for identifying any properties have been acquired out of the “proceeds of crime” or not. The petitioner is projecting himself to be genuine and untainted, by cloaking them under the garb of his cleverly crafted financial deception.

15. The Prevention of Money Laundering Act, 2002 was passed in furtherance of United Nations resolution (June 1998) to curb and deter economic offences. The said Act came into force on 1st July, 2005 which is modeled after the Criminal Justice Act of the United Kingdom, it imposes criminal liability on those who know or suspect that someone is involved in laundering the proceeds of crime and fail to report it. The act money laundering involves the process of placement, layering and integration of “proceeds of crime” as envisaged under Section 2 (u) of the Act, derived from criminal activity into mainstream fiscal markets and transmuted into legitimate assets. It has been realized globally that laundering of tainted money having its origins in large scale economic crimes pose a solemn threat not only to the economic stability of nations but also to their integrity and sovereignty.

16. Two types of offences have been contemplated under the PML Act: **(a)** the actual commission of a scheduled offence which generates tainted wealth or proceeds from the scheduled crime and **(b)** the laundering of the “proceeds of crime” so generated. The Act, is amply clear, that even though a person may not have actually committed a scheduled offence as provided under the Act but upon subsequent participation in the laundering of such monies will

nonetheless render him culpable under the Act. Money Laundering is an independent as well as continuing offence, which can be inferred from its very definition under Section 2(p) of the Act. The offence is treated as continued offence as long as accused remains in possession, causes concealment of the nature of the money or continues to mask the tainted money as untainted. Enforcement Directorate, is not investigating the Scheduled offences but the offence of money laundering which is a distinct and separate offence committed “after the commission” of Scheduled offence and which continues to be committed as long as the possession, acquisition and the projection of tainted money as untainted continues.

17. In the instant case, the petitioner has been in possession of the “proceeds of crime” and it appears that he along with others have attempted to project the same as untainted money by transferring the same to different bank accounts in a bid to camouflage it and project it to be genuine transactions. The contention of the petitioner in so far as the question of being a pre-existing “knowledge” as per Section 3(b) of the Act and in order to be held culpable under Section 4 of the Act, the same deserves to be rejected for the simple reason that the question as to whether the accused had prior knowledge needs to be culled out from the facts and circumstances of the case. Strong reliance was placed by the petitioner on *Joti Parshad v. State of Haryana*² which renders a confirmatory view and fails to aid the petitioner. Even otherwise, the use of the disjunctive “or” in Section 3 makes it clear that presence of knowledge is not the only criteria making the accused culpable under the Act.

²(1993) Supp 2 SCC 497.

18. Section 45 of the PML Act makes the offence of money laundering cognizable and non-bailable and no person accused of an offence under PMLA shall be released on bail or on his own bond unless the geminated conditions therein are satisfied viz. (i) that 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 the accused is not guilty of such offence and the accused is not likely to commit any offence while on bail. In the case of **Gautam Kundu vs. Manoj Kumar**,³ the Supreme Court while dealing with the issue has held as follows:

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

19. While deciding a bail application, the provisions of Section 45 read with Section 24 which reverses the burden of proof and creates presumption of

³(2015) 16 SCC 1.

guilt required to be dislodged by the accused, will mandatorily apply. A similar view of the matter has been reiterated in *Rohit Tandon vs. Directorate of Enforcement*.⁴ It may further be held that the reliance placed by the petitioner on *Nikesh Tarachand Shah vs. Union of India*⁵ is untenable in view of the fact that Section 45 has been amended (by the Amendment Act 13 of 2018) whereby the original expression “imprisonment for a term of more than three years under Part A of the Schedule”(pre-amendment) now stands substituted by the expression “no person accused of an offence under this Act shall be released on bail or on his own bond”. Thus, the contention raised by the petitioner with regard to Section 45 of the Act does not hold good. A similar sentiment has been echoed by the apex court in *P. Chidambaram v. Directorate of Enforcement*.⁶

20. The contention of the petitioner that the prosecution do not have the power to file Supplementary Complaint does not find favour with this Court for the reason that the power to conduct “further investigation” as envisaged in Section 173(8) of Code of Criminal Procedure, 1973 relates to a police investigation under Chapter XII of the Code. The said powers would extend to the investigation of a crime in cases where investigations are conducted under the special law, by any other agency under a special statute like the PML Act. The word ‘investigation’ as defined in Section 2(h) of the Code unambiguously comprehends to include an investigation conducted by “other agencies” under other special statutes, has been succinctly held by the Supreme Court of India in the case of *Directorate of Enforcement vs. Deepak*

4(2018) 11 SCC 46.

5(2018) 10 SCC 753.

6(2019) 9 SCC 24.

*Mahajan*⁷ and *S.R. Sukumar vs. S. Sunaad Raghuram*.⁸ Thus, just like police investigation, a supplementary charge-sheet is submitted after further investigation. Similarly, the investigations under the PML Act, the Enforcement Directorate will be well within its right to file a supplementary complaint in case of fresh or for extracting any incriminating materials during investigation. The power of “investigation” therefore is not limited to the police under the Cr. PC. It is a fundamental feature of the prosecution as found in a host of other special statutes like Foreign Exchange Regulation Act, 1973, Customs Act, Prevention of Food Adulteration Act. In the instant case Enforcement Directorate has been endowed with the said necessary powers. In fact, to bring a quietus to the issue, the Parliament has amended Sub-Section 1 of Section 44(1) of the Act by way of an insertion⁹, the explanation to the inserted reads as under:

“Explanation-*For the removal of doubts, it is clarified that—(i) The jurisdiction of the Special Court while dealing with the offence under this Act, during investigation, enquiry or trial under this Act, shall not be depended upon any orders passed in respect of the scheduled offence, and the trial of both sets of offences by the same court shall not be construed as joint trial;*

(ii) The complaint shall be deemed to include any subsequent complaint in respect of further investigation that may be conducted to bring any further evidence, oral or documentary, against any accused person involved in respect of the offence, for which complaint has already been filed, whether named in the original complaint or not.”

7(1994) 3 SCC 440.

8(2015) 9 SCC 609.

9Finance (No.2) Act 2019 No. 23 of 2019 dated 1.8.2019.

Though this clarificatory explanation has come into force at a subsequent time but it makes the issue clear and any submission to the contrary by the Petitioner cannot be countenanced. In view of the judicial pronouncements and the aforestated amendment to the Act it is clear that this issue is no longer *res intergra*.

21. Another material fact which has been suppressed by the Petitioner herein and which warrants a serious view of the Court is that the he had filed a bail application before the learned Special Court (PMLA) on 25.11.2019 but the District and Sessions Judge, Khurda rejected on 4.12.2019 returning a finding that, materials on record disclose a prima facie case against the Petitioner for commission of the offence of money laundering. The said order dated 4.12.2019 challenged by way of a Special Leave Petition¹⁰ before the Hon'ble Supreme Court of India and suffered dismissal. Subsequently, the petitioner filed another bail application before the learned Special Court (PMLA) on 19.12.2019 and an interim bail application on 23.12.2019. The learned Special Court (PMLA) on 6.01.2020 rejected the interim bail application and on 22.01.2020 rejected the bail application with the finding that the said successive bail application was filed on the health ground of the mother of the Petitioner herein and the said ground was considered and rejected by the learned Special Court (PMLA) in the earlier order dated 6.01.2020. The learned Special Court (PMLA) also rejected yet another successive bail application filed by the petitioner herein vide order dated 18.03.2020. This court takes a serious exception to this and the Petitioner seems to be abusing the process of law by indulging in forum shopping, without any material change in

¹⁰Mohammad Arif v. Directorate of Enforcement SLP (Crl.) No. 804 of 2020.

circumstance, whatsoever, like a lottery ticket. Sometimes, the petitioner takes the ground of the ill health of his mother and on other occasions, as in the instant case, the ill health of his wife.

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 the country but also to the integrity and sovereignty of a nation. The International Monetary Fund estimates that laundered money generates about \$590 billion to \$1.5 trillion per year, which constitutes approximately two to five percent of the world's gross domestic product. The Supreme Court of India has consistently held that economic offences are *sui generis* in nature as they stifle the delicate economic fabric of a society. These offences permeate to human consciousness posing numerous questions on the very integrity of the business world. The offences, such as this, are committed with a deliberate design with an eye on personal profit and often shown to be given scant regard for a sordid residuum left behind to be borne by the unfortunate "starry eyed" petty investors. The perpetrators of such deviant "schemes," including the petitioner herein, who promise utopia to their unsuspecting investors seem to have entered in a proverbial "Faustian bargain" and are grossly unmindful of untold miseries of the faceless multitudes who are left high and dry and consigned to the flames of suffering.

23. The abuse of financial system, like in the instant case, has great potential to negatively impact a country's macro economic performance and may also adversely impact its cross-border externalities. Further, such actions by the petitioner can inflict reputational damage of the country in the world of business and commerce both inside the country and abroad. The act of

money laundering is done in an exotic fashion encompassing a series of actions by the proverbial renting of credibility from the innocent investors. The offenders often target the unsuspecting, rural and economically distressed populations of our state who while hoping for a dreamy return, part with their hard-earned monies. The Apex Court has taken a very serious view in cases involving large scale white collar economic offences such as *State of Bihar vs. Amit Kumar*,¹¹ *Nimmagadda Prasad vs. CBI*¹², *CBI vs. Ramendu Chattopadhyay*,¹³ *Seniors Fraud Investigation Office vs. Nittin Johari*,¹⁴ *Y.S. Jagan Mohan Reddy v. CBI*,¹⁵ *State of Gujarat vs. Mohanlal Jitmalji Porwal*,¹⁶ *CBI vs. V. Vijay Sai Reddy*,¹⁷ *Subrata Chatteraj vs. Union of India*,¹⁸ *Sanjay Chandra vs. CBI*,¹⁹ *Ram Narayan Popli vs. CBI*,²⁰ *Manoranjana Singh vs. CBI*,²¹ *Union of India vs. Hassan Ali Khan*²² which are relied upon.

24. The factors adversely affecting Petitioner's claim are that he has not cooperated with the prosecution and has continuously avoided summons issued to him by the Investigating officer for recording of his statement under Section 50(2) and 50(3) of the PML Action as many as 10 out of 11 times. The prosecution is presently in the process of collation of further evidence in the matter and identification of the proceeds of crime for attachment of the same including the sum of Rs. 25 crores transferred to M/s Lemon Entertainment which is yet to be secured. Considering the past records, the possibility of

11(2017) 13 SCC 751.

12(2013) 7 SCC 466.

13Crl Appeal. No. 1711 of 2019.

14(2019) 9 SCC 165.

15(2013) 7 SCC 439.

16(1987) 2 SCC 364.

172017 (13) SCC 751.

18(2014) 8 SCC 768.

19(2012) 1 SCC 40.

20(2003) 3 SCC 641.

21(2017) 5 SCC 218.

22(2011) 10 SCC 235.

the petitioner fleeing from justice, tampering with the evidence or influencing the other witnesses whose statements are yet to be recorded, cannot be ruled out. The prosecution is of a prima facie view that there is a strong reason based upon cogent evidence in its possession to believe that the above-named petitioner has directly as well as indirectly played a key role in the process/activity connected with the laundering of the proceeds of crime. The petitioner herein has not approached the court with clean hands and has suppressed material facts regarding the rejection of his numerous bail applications earlier by the courts. The alleged offence of money laundering committed by the petitioner is serious in nature and the petitioner's role is not unblemished. Further, the quantum of money involved in this fraud of epic proportions which is designed to be a neo-mercantile swindling by way of siphoning of public deposit in a tyrant fashion.

25. The issue of retrospective application of penal laws/scheduled offences which has been vehemently raised by the petitioner, but for the purposes of the instant application, the said issue need not be gone into, especially in view of the materials on record which point towards prima facie involvement of the petitioner herein and thus at this stage, what is required to be ascertained is the question of the prima facie involvement of the petitioner in the light of Section 24 of the Act.

There is no hard and fast rule regarding grant or refusal to grant bail. Each case has to be considered on its facts and circumstances and on its own merits. However, the discretion of the Court has to be exercised judiciously sans any element of arbitrariness. Even if the "bail is the rule and jail is the exception" the basic bail jurisprudence remains unaltered but in the instant case, the

conduct of the accused even at the stage of pre-arrest summons, have been very evasive and non-cooperative. At this backdrop, the possibility of 'flight risk' and tampering the evidence or influencing/intimidating the witnesses cannot be ruled out.

26. Considering the aforesaid discussion, submissions made and taking into account a holistic view of the facts and circumstances in instant case, this Court is not inclined to release the accused Petitioner on bail. Accordingly, the bail petition filed on behalf of the accused/petitioner stands rejected. It is, however, clarified that the above observations shall not come in the way of a fair trial before the Ld. Trial Court and it will proceed to decide the matter on its own merits, uninfluenced by any of the observation made hereinabove.

The Bail Application under Section 439 Cr.P.C. and the connected I.A. are accordingly dismissed.

[S.K. PANIGRAHI,J.]

Orissa High Court, Cuttack.
The 13th day of July, 2020/AKP.