

IN THE HIGH COURT OF JHARKHAND, RANCHI

Cr.M.P. No. 1827 of 2022

Sanjay Kumar Agarwal, aged about 51 years, son of late Jagdish Prasad Agarwal, having his place of work at Martin Burn House, 2nd Floor, R.N.243, 1 R.N. Mookerjee Road, P.O. Kolkata, G.P.O., P.S. Hare Street, District Kolkata, West Bengal -700001 Petitioner

-- Versus --

Directorate of Enforcement, (Government of India) represented by Dr. Rathin Biswas, Assistant Director (PMLA), Kolkata Zonal Office-I, C.G.O Complex, 3rd MSO Building, 6th Floor, DF Block Salt Lake, P.O and P.S. Bidhannagar, Kolkata PIN 700064, West Bengal (State)... Opposite Party

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner	:- Mr. S.D. Sanjay, Senior Advocate Mr. Sumeet Gadodia, Advocate Mr. Ritesh Kumar Gupta, Advocate
For the Opp.Party (Enforcement Directorate)	:- Mr. Amit Kumar Das, Advocate Mrs. Swati Shalini, Advocate Mr. Shivam Utkarsh, Advocate Mr. Saurav Kumar, Advocate Mr. Sahay Gaurav Piyush, Advocate

C.A.V. On 26.09.2022

Pronounced On : 11th October, 2022

The argument was heard on behalf of the petitioner which was argued by Mr. S.D.Sanjay, the learned Senior counsel assisted by Mr. Sumeet Gadodia, the learned counsel and Mr. Ritesh Kumar Gupta, the learned vice counsel and on behalf of the Opposite Party-Enforcement Directorate (ED) Mr. Amit Kumar Das, the learned counsel assisted by Mrs. Swati Shalini, Mr. Shivam Utkarsh, Mr. Saurav Kumar, and Mr. Sahay Gaurav Piyush, the learned counsels and after hearing at length on that

day i.e. on 26.09.2022, the judgment was reserved.

2. This petition has been filed for quashing the order dated 09.05.2022 passed in Misc. Criminal Application No.362 of 2022 by learned Additional Judicial Commissioner-XVIII-cum-Special Judge, Prevention of Money Laundering Act, Ranchi whereby the petition filed by the petitioner under Section 205 of the Code of Criminal Procedure (Cr.P.C.) for dispensing with the personal appearance of the petitioner has been rejected in connection with ECIR 05/2021, corresponding to CNR-JHRN01-002561-2022, pending in the same learned court.

3. The complaint was filed under sections 44 and 45 of the Prevention of Money Laundering Act, 2002 [hereinafter to be referred to as PMLA Act, 2002, for short] alleging therein that (i) the complaint case under the PMLA Act, 2002 has been initiated against the petitioner on the basis of the F.I.R. registered by the C.B.I., A.C.B., Dhanbad being RC1(A)/2020-D dated 10.02.2020, (ii) that it is stated that the aforementioned F.I.R. by the C.B.I., A.C.B., Dhanbad was registered against the petitioner on the basis of one complaint filed by Amit Sarawgi alleging, inter alia, that the petitioner being 'Insolvency Professional' demanded a bribe of Rs.2 lacs per month from Amit Sarawgi for showing leniency in the insolvency resolution process for extending corporate insolvency resolution process from 9 months to two years and also demanded one time bribe of Rs.20 lacs from Amit Sarawgi for obtaining favourable forensic audit/valuation report from identified forensic auditor/valuer and for helping in repossession of plant/company by Amit Sarawgi and (iii) the C.B.I., A.C.B., Dhanbad after investigation of the matter filed a charge sheet on 31.12.2020 under Section 7 of the P.C.Act and therefore, the present complaint under Section 44 and 45 of the PMLA Act, 2002 was initiated against the petitioner.

4. Mr. S.D.Sanjay, the learned Senior counsel appearing on

behalf of the petitioner submitted that the investigation under the PMLA Act was initiated vide ECIR No.KLZO/13/2020, which was based on the F.I.R No.RC1(A) of 2020 dated 10.02.2020 filed by the C.B.I., Dhanbad under section 7 of the P.C.Act against the petitioner allegedly for accepting bribe by misusing his position as a public servant. According to him, in the present case, the substantive offence is section 7 of P.C.Act which is a scheduled offence under section 2(1)(y) of the PMLA Act. He submitted that the petitioner is a Chartered Accountant by profession and after passing the examination, he became eligible to be appointed as an Insolvency Professional by the Committee of Creditors under Section 3(19) of IBC, 2016 for handling the companies under liquidation. According to him, during the course of investigation, the statement of the petitioner was recorded under section 50 of the PMLA Act summoning the petitioner and the petitioner fully cooperated during the investigation. He further submitted that on 03.06.2019 the petitioner consented to act as an IRP on the request of the State Bank of India. On 22.11.2019, NCLT, Kolkata, initially appointed the petitioner as an Interim Resolution Personnel (IRP) for Adi Ispat Pvt. Ltd. On 21.12.2019 the petitioner after having worked satisfactorily as per the perception of the COC, was appointed as Resolution Personnel (R.P) by the Committee of Creditors (COC). On 24.12.2019, Amit Sarawagi withdrew Rs.10 lacs cash illegally from Andhra Bank, Giridih Branch. He did not even inform the petitioner that the company had maintained a bank account in Andhra Bank. On 09.01.2020 the petitioner came to know about the illegal withdrawal of money by the complainant. The petitioner raised the issue before Amit Sarawagi and asked him to return the money for being deposited in the account of the company otherwise, legal action will be taken against him. Thereafter, on 03.02.2020, the complaint was lodged before the C.B.I by Sri Amit Sarawagi, ex-Director of Adi Ispat Pvt. Ltd. On 10.02.2020, the

F.I.R was lodged by the C.B.I. giving rise to RC1(A)/2020. On 11.02.2020 the petitioner visited the office of N.Khetadas Machine Tools Works Pvt. Ltd., Giridih, where the petitioner was arrested by C.B.I for allegedly accepting bribe from Amit Sarawagi. The petitioner did not receive or possess any money even as per the allegation as the money was seized by the CBI and FIR was registered. He submitted that merely on the allegation in R.C case that a sum of Rs.3 lakhs allegedly bribe money was seized an ECIR was registered by ED and the investigation started. He submitted that neither any proceeds of crime was found or possessed by the petitioner nor any proceeds of crime was projected to be untainted money by the petitioner. The C.B.I submitted the charge-sheet under section 7 of the P.C.Act on 31.12.2020. The statement of the petitioner was recorded under section 50 of the PMLA Act on 10.08.2021 and the cognizance was taken by order dated 22.12.2021 under sections 3 and 4 of the PMLA Act and thereafter, the petitioner filed a petition under section 205 of the Cr.P.C. before the Special Judge, PMLA Act but the same was rejected vide order dated 09.05.2022. On these grounds, he submitted that the matter was taken up by this Court on 18.7.2022 and in the light of the submission of the learned counsel for the Enforcement Directorate (ED) that in view of rigors of section 45 of the PMLA Act, 2002, the same is required to be decided by this Court and the Court directed the Enforcement Directorate (ED) to file a counter affidavit. He submitted that rigors of section 45 of PMLA Act for grant of bail is not applicable in the manner of the case as it is covered by exception as the alleged amount is only Rs.3 lakhs or Rs.5 lakhs and does not exceed Rupees One Crore for the applicability of the twin test. He submitted that the petitioner is a resident of Kolkata where he is residing for work for gain as a Chartered Accountant and will have to leave his work in his office to come from Kolkata to Ranchi. He submitted that the petitioner is

not keeping well. He suffered from Covid-19 twice and is still has multiple post Covid-19 problems. He submitted that the petitioner has filed a petition in which he has given undertaking before the learned court that he will be represented through his Advocate on all the dates of hearing and in that manner there will be no difficulty or delay in the trial. He submitted that the undertaking to the effect that the petitioner will not dispute his identity during trial was also disclosed in the petition. He submitted that there is undertaking to the effect that the petitioner will not challenge the proceeding on the ground that his trial has been held in his absence or witnesses were deposed in his absence. He further elaborated his argument by way of submitting that the offence under section 4 of the PMLA Act is punishable for imprisonment for 7 years which is less than the punishment prescribed under sections 409, 420, 467 and 468 IPC. He further submitted that in such cases, the courts have extended the benefits to the accused under section 205 Cr.P.C to be represented by Advocate in appropriate cases. He submitted that whether the petitioner has asked for bribe from the Managing Director of the defaulter company is required to be decided in the trial. The petitioner has fully cooperated the E.D during investigation and has made statement under section 50 of the PMLA Act. He submitted that the petitioner remained in custody for more than two months in the case of scheduled offence of being arrested by the CBI, thus for the same case the denial of the relief will amount to sending the petitioner again to jail even though he has been granted bail for the scheduled offence. The E.D has already filed its complaint after completing the investigation and hence there is no requirement of any interrogation much less custodial interrogation. He submitted that the petitioner undertakes to submit any personal bond for securing his physical presence as and when required by the learned trial court. In these backgrounds, he submitted that the

learned trial court has not taken into consideration the spirit of section 205 Cr.P.C in its right direction. He relied in the case of ***Puneet Dalmia v. Central Bureau of Investigation, Hyderabad, (2020) 12 SCC 695***, particularly paragraph nos.2, 2.1, 2.2. 4.3 and 5 of the said judgment which are quoted as under:

"2. That the appellant is Accused 3 in the case pertaining to the charge-sheet bearing CC No. 12 of 2013 pending before the learned Principal Special Judge for CBI Cases, Hyderabad. That the appellant was summoned by the learned trial court vide order dated 13-5-2013 for the offences punishable under Sections 120-B read with Sections 420, 409 IPC and Sections 9, 12, 13(2) read with Sections 13(1)(c) and (d) of the Prevention of Corruption Act, 1988. That, by an order dated 7-6-2019, the appellant has been granted the bail. However, pursuant to the directions issued by the High Court, the appellant is required to attend the learned trial court on every Friday. It is the case on behalf of the appellant-original Accused 3 that since 2013, the appellant has been remaining present before the learned trial court on every Friday.

2.1. That the appellant submitted an application before the learned trial court under Section 205 CrPC for dispensing with his personal appearance/attendance. It was submitted on behalf of the appellant that he is the Director on the Boards of several companies and is preoccupied with the management and attending day-to-day affairs on account of business exigencies of the companies. It was also submitted on behalf of the appellant that for attending the learned trial court on every Friday, he is required to travel from Delhi to Hyderabad spending not less than two days. Therefore, it was the case on behalf of the appellant that on account of posting the case on every Friday, he has been facing undue hardship in meeting his business commitments, in addition to continuous financial loss being caused to him. Therefore, it was prayed to dispense with his appearance permitting his counsel Shri Bharadwaj Reddy to appear on his behalf.

2.2. The said application was opposed by the respondent CBI. It was submitted on behalf of CBI that the grounds on which the appellant has requested to dispense with his appearance before the learned trial court are not germane and cannot be a ground to dispense with his appearance before the learned trial court under Section 205 CrPC. It was also contended on behalf of CBI that the appellant is facing very serious charges/offences. The learned Principal Special Judge for CBI Cases, Hyderabad dismissed the said application. Aggrieved by the order passed by the learned trial court, the appellant preferred a petition before the High Court. By the impugned judgment [PuneethDalmia v. State, 2018 SCC OnLineHyd 1903] and order, the High Court has dismissed the said

petition and has confirmed the order passed by the learned trial court rejecting the application submitted by the appellant and has refused the exemption from personal appearance of the appellant before the learned trial court. Hence, the present appeal.

4.3. *Now, so far as the reliance placed by the learned counsel appearing on behalf of the appellant upon the decisions of this Court in Bhaskar Industries Ltd. [Bhaskar Industries Ltd. v. Bhiwani Denim & Apparels Ltd., (2001) 7 SCC 401 : 2001 SCC (Cri) 1254] and Rameshwar Yadav [Rameshwar Yadav v. State of Bihar, (2018) 4 SCC 608 : (2018) 2 SCC (Cri) 585] is concerned, it is submitted by the learned Additional Solicitor General that the said decisions shall not be applicable to the facts of the case on hand looking to the graveness and seriousness of the offences involved. It is submitted that in Bhaskar Industries Ltd. [Bhaskar Industries Ltd. v. Bhiwani Denim & Apparels Ltd., (2001) 7 SCC 401 : 2001 SCC (Cri) 1254], it was a case for the offence under Section 138 of the Negotiable Instruments Act and in Rameshwar Yadav [Rameshwar Yadav v. State of Bihar, (2018) 4 SCC 608 : (2018) 2 SCC (Cri) 585], it was a case for the offences under Section 498-A IPC and Section 4 of the Dowry Prohibition Act. It is submitted that, in the present case, the allegations against the appellant are for the offences punishable under Section 120-B read with Sections 420 and 409 IPC and Sections 9, 12, 13(2) read with Sections 13(1)(c) and (d) of the Prevention of Corruption Act. Therefore, it is prayed to dismiss the present appeal.*

5. *Heard the learned counsel appearing on behalf of the respective parties at length. At the outset, it is required to be noted that the appellant is required to appear before the learned trial court on every Friday and the appellant as such is appearing before the learned trial court on each and every Friday since 2013. Nothing is on record that at any point of time the appellant has tried to delay the trial. The appellant is represented through his counsel. The appellant is a permanent resident of Delhi. He is the Director on the Boards of several companies. The distance between Delhi and Hyderabad is approximately 1500 km. Therefore, the appellant sought for exemption from personal appearance before the learned trial court on each and every Friday and submitted the application under Section 205 CrPC and submitted that on all dates of adjournments, his counsel Shri Bharadwaj Reddy shall appear and no adjournment shall be asked for on his behalf. In Bhaskar Industries Ltd. [Bhaskar Industries Ltd. v. Bhiwani Denim & Apparels Ltd., (2001) 7 SCC 401 : 2001 SCC (Cri) 1254] and Rameshwar Yadav [Rameshwar Yadav v. State of Bihar, (2018) 4 SCC 608 : (2018) 2 SCC (Cri) 585], this Court had the occasion to consider the scope and ambit of the application under Section 205 CrPC. In Bhaskar Industries Ltd. [Bhaskar Industries Ltd. v. Bhiwani Denim & Apparels Ltd., (2001) 7 SCC 401 : 2001 SCC (Cri) 1254], this Court has observed that if a court is satisfied that in the interest of justice the personal attendance of an accused before it need not be insisted on, then the court has*

the power to dispense with the attendance of the accused. It is further observed by this Court in the aforesaid decision that if a court feels that insisting on the personal attendance of an accused in a peculiar case would be too harsh on account of a variety of reasons, the court can grant relief to such an accused in the matter of facing the prosecution proceedings. It is observed and held by this Court in the aforesaid decision that the normal rule is that the evidence shall be taken in the presence of the accused. However, even in the absence of the accused, such evidence can be taken but then his counsel must be present in the court, provided he has been granted exemption from attending the court.

5. He submitted that the case of ***Bhaskar Industries Ltd. v. Bhiwani Denim and Apparels Ltd. and Others, (2001) 7 SCC 401***, was considered in the case of ***Puneet Dalmia(supra)***, wherein true spirit of section 205 Cr.P.C has been explained by the Hon'ble Supreme Court. He further submitted that identical was the situation before the Kerala High Court in the case of ***Moosa Pattupara v. the State of Kerala, 2022 SCC OnLine Ker 915*** and ***Arun Baby v. The State of Kerala, 2021 SCC OnLine Ker 2415***. Further he relied in the case of ***Riaz Khan Faridi v. The State of Jharkhand through Central Bureau of Investigation and analogous case in Cr.M.P.No.2557 of 2016*** and ***Cr.Revision No.1422 of 2016*** decided by the judgment dated 09.08.2017 and submitted that after considering the judgments, the case arising under section P.C. Act registered by the C.B.I, the coordinate Bench of this Court quashed the order rejecting the petition under section 205 Cr.P.C. Referring to this judgment, he submitted that the petitioner has already filed the petition before the learned Court and giving the undertaking that he will not dispute his presence through lawyer and will also not hide his identity and the liberty was required to be provided by the learned court in light of the above ratio of the judgment passed under section 205 Cr.P.C.

6. Per contra, Mr. Amit Kumar Das, the learned counsel appearing on behalf of the Enforcement Directorate (E.D) submitted that

the investigation under the PMLA Act was initiated by recording ECIR No.KLZO/13/2020 dated 31.03.2020 against the petitioner on the basis of the information received from F.I.R. No.RC1(A)/2020-D dated 10.02.2020 filed by the CBI/SPE/ACB/Dhanbad under section 7 of the P.C.(Amendment) Act, 2018. A prima facie case for an offence of money laundering under section 3 of the PMLA Act punishable under section 4 of the PMLA Act have been made out, since the offences punishable under section 7, P.C.Act as mentioned in the CBI, FIR were covered by the definition of scheduled offence in terms of section 2(1)(y) of PMLA Act. He submitted that the allegation against the petitioner is demanding bribe. He submitted that the petitioner has not only acquired the illegal gratification from Shri Amit Sarawgi to the tune of Rs.5 lakh but also came in possession of such proceeds of crime. He himself admitted in the statements recorded under section 50 of the PMLA Act that he acquired money from Amit Sarawgi. He submitted that the process or activity connected with the proceeds is a continuing activity and continues till such time a person is directly or indirectly enjoys the proceeds of crime. By way of referring section 45 of the PMLA Act he submitted that there are certain conditions for release on bail under the PMLA Act. He submitted that the case is of serious nature and this petition is fit to be dismissed. According to him, section 205 Cr.P.C can be applied only in trivial and minor cases. He further submitted that section 45 of the PMLA Act was recently considered by the Hon'ble Supreme Court in the case of ***Vijay Madanlal Choudhary and Others v. Union of India and Others, 2020 SCC OnLine SC 929*** while upholding the various provisions of the PMLA Act including section 45 of the PMLA Act held that the provision in the form of section 45 of the PMLA Act as applicable post amendment of 2018, is reasonable and has direct nexus with the purposes and object sought to be achieved by the 2002 Act and does not

suffer from any vice of arbitrariness or unreasonableness. He submitted that for exemption of appearance before the court under section 205 Cr.P.C, moreso, in view of allegation and the materials on the basis of which the prima facie case is found to be made out against the petitioner, he is otherwise not entitled for privilege of bail and there is no question of allowing the petition under section 205 Cr.P.C. On this ground, he submitted that the petition is fit to be dismissed.

7. In view of the above submissions of the learned counsels appearing on behalf of the parties, the Court has gone through the materials on record. Admittedly, the petitioner has been summoned by the learned court in ECIR 05/2021 in which the petition in the nature of Misc. Criminal Application No.362 of 2022 was filed under section 205 Cr.P.C which was rejected by the learned court by order dated 09.05.2022. For correct appreciation of section 45 of the PMLA Act, 2002, it is quoted hereinbelow:

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) *Director; or*
- (ii) *Any officer of the Central Government or 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.*

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

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

[Explanation.- For the removal of doubts, it is clarified that the expression "offences to be cognizable and non-bailable" shall mean and shall be deemed to have always meant that all offences under this Act shall be cognizable offences and non-bailable offences notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (2 of 1974), and accordingly the officers authorized under this Act are empowered to arrest an accused without warrant, subject to the fulfillment of conditions under section 19 and subject to the conditions enshrined under this section.]

8. On perusal of the proviso of section 45 of the PMLA Act, it transpires that if the allegation is of money laundering of a sum of rupees less than rupees one crore, the learned special court can release on bail if the person is of age of 16 years or a woman or sick or infirm. In the case in hand, it has been submitted that the petitioner has suffered from Covid-19 twice and he is having ailments and on that ground, he has filed a petition before the learned court. In the petition filed under

section 205 Cr.P.C before the learned court and certified copy of which is on the record, it has been disclosed in paragraph no.12 that the petitioner undertakes in it that he will not dispute his identify during trial if he is allowed exemption. The undertaking in that particular paragraph is also there to the effect that he will appear in person as and when deemed fit by the learned court. It has been stated that the petitioner will not hide his identity or dispute the same. In the petition here it has been disclosed that the petitioner will also not challenge the proceeding on the ground that his trial has been held in his absence or witnesses were deposed in his absence. There is no doubt that the principles for grant of exemption has been discussed by the Hon'ble Supreme Court in the case of ***Bhaskar Industries Ltd.(supra)*** can be made applicable to the facts and circumstances of each case. On the record, there is nothing to suggest that due to the petitioner at any point of time, the investigation has been delayed. It has been disclosed that the petitioner has cooperated under section 50 of the PMLA Act. Admittedly, the allegation against the petitioner is of taking bribe of Rs.5 lakhs and proviso to section 45 of the PMLA Act speaks of that if the proceed is less than of rupees one crore, the bail can be granted. The law is well settled that as per sub-section 1 of section 205 Cr.P.C., whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused and permit him to appear by his pleader. As per sub-section 2 of section 205 of the Cr.P.C, the Magistrate in inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in a manner hereinbefore provided. Thus, the learned Magistrate has a discretion to dispense with the personal attendance of the accused and to permit him to appear by the pleader. If he sees the reason so to do express reason so to do is not

applicable to the extent that the reason should be good or sufficient, the requirement of law is that if the Magistrate sees the reason, he may dispense with the personal attendance of the accused. There is no doubt that he is empowered thereafter to direct personal attendance of the accused at any stage of the proceedings. In the case of ***Bhaskar Industries Ltd.(supra)*** the Hon'ble Supreme Court has considered about recording of the evidence in presence of the accused at paragraph no.14 of the said judgment, and after referring to section 205 Cr.P.C., the Hon'ble Supreme Court has held that it is within the powers of the learned magistrate and in his judicial discretion to dispense with the personal appearance of an accused either throughout or at any particular stage of such proceedings in a summons case, if the magistrate finds that insistence of his personal presence would itself inflict enormous suffering or tribulations to him, and the comparative advantage would be less: paragraph no.14 of the said judgment is quoted hereinbelow:

14. The normal rule is that the evidence shall be taken in the presence of the accused. However, even in the absence of the accused such evidence can be taken but then his counsel must be present in the court, provided he has been granted exemption from attending the court. The concern of the criminal court should primarily be the administration of criminal justice. For that purpose the proceedings of the court in the case should register progress. Presence of the accused in the court is not for marking his attendance just for the sake of seeing him in the court. It is to enable the court to proceed with the trial. If the progress of the trial can be achieved even in the absence of the accused the court can certainly take into account the magnitude of the sufferings which a particular accused person may have to bear with in order to make himself present in the court in that particular case.

9. The purpose of exemption under section 205 Cr.P.C is that the order of the learned magistrate should be such which does not make any unnecessary harassment to the accused and at the same time does not cause any prejudice to the complainant and the learned court is

required to ensure that exemption from personal appearance granted to the accused is not an abuse or delay the trial. The coordinate Bench of this Court in the case of ***Riaz Khan Faridi v. The State of Jharkhand through Central Bureau of Investigation and analogous case(supra)*** has also considered the petition under section 205 Cr.P.C which arose pursuant to the F.I.R registered by the C.B.I. under the various sections of the IPC as well as the P.C.Act.

10. In view of the above facts and the reasons and the analysis and also considering the facts and circumstances of the present case, order dated 09.05.2022 passed in Misc. Criminal Application No.362 of 2022 by learned Additional Judicial Commissioner-XVIII-cum-Special Judge, Prevention of Money Laundering Act, Ranchi whereby the petition filed by the petitioner under Section 205 of the Code of Criminal Procedure (Cr.P.C.) for dispensing with the personal appearance of the petitioner has been rejected in connection with ECIR 05/2021, corresponding to CNR-JHRN01-002561-2022, pending in the same learned court is set-aside.

11. Consequently, the application submitted by the petitioner to dispense with the personal appearance before the learned court on all the dates and adjournment and permitting his counsel to appear on his behalf is, hereby, allowed on the following conditions:

- (i) The petitioner shall give an undertaking to the learned trial court that he will not dispute his identity in his case and that the name of the learned Advocate representing him before the learned court will be disclosed before the learned court and he will be permitted to represent the petitioner and would appear before the learned trial court on his behalf on each and every date of hearing and that he shall not object recording of evidence in his absence and no adjournment shall be asked on behalf of the petitioner or his Advocate who will represent the petitioner;
- (ii) The petitioner shall appear before the learned court for the

purpose framing of charge and also on the hearing dates whenever the learned trial court insists for his appearance;

- (iii) There will not be failure on the part of the Advocate of the petitioner who will represent the petitioner either to appear before the learned court on each adjournment or any adjournment sought on behalf of the petitioner and if the learned trial court comes to the conclusion that the petitioner or his advocate is trying to delay the trial in that case, it would be upon the learned court to exercise its power under sub section 2 of section 205 Cr.P.C and direct the appearance of the petitioner on each and every date of adjournment; and
 - (iv) The petitioner is directed to file a fresh petition on affidavit in light of the above directions before the learned trial court forthwith.
- 12. Cr.M.P. No.1827 of 2022 stands allowed and disposed of.
 - 13. I.A. if any stands disposed of.

(Sanjay Kumar Dwivedi, J.)

Jharkhand High Court, at Ranchi,
Dated: 11th October, 2022
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