IN THE HIGH COURT OF JHARKHAND AT RANCHI
A.B.A. No. 7842 of 2023

Rajkumari ... ... **Appellant**

Versus

Union of India through Directorate of Enforcement, Ranchi ... ... **Respondent**

with

A.B.A. No. 7821 of 2023

Genda Ram ... ... **Appellant**

Versus

Union of India through Directorate of Enforcement, Ranchi ... ... **Respondent**

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD

For the Petitioner : Mr. Jitendra S. Singh, Advocate
: Mr. Shubhashis Rasik Soren, Advocate
: Ms. Shobha Gloria Lakra, Advocate
For the Opp. Party : Mr. Prashant Vidyarthy, Sr.P.C. UOI

C.A.V. on 22.03.2024 ***Pronounced on 12/04/2024***

Since both these applications are arising out of the common ECIR therefore with the consent of the parties disposed of by this common order.

Prayer

1. The instant applications have been filed under Section 438 of the Code of Criminal Procedure, 1973 praying for grant of pre-arrest bail in ECIR Case No.2 of 2023 arising out of ECIR-RNZO/16/2020 dated 17.09.2020 registered for the offence under Sections 3 punishable under section 4 of the Prevention of Money Laundering Act, 2002, pending in the court of learned Additional Judicial Commissioner-VIII-cum-Special Judge, PML Act, Ranchi.

Case of the Prosecution

2. The prosecution case, in brief, is that the investigation under the Prevention of Money Laundering Act, 2002 was initiated by recording the ECIR/RNSZO/16/2020 dated-17.09.2020 against the accused persons on the basis of information received from FIR No. 13/2019 dated-13.11.2019 registered by the ACB, Jamshedpur.

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

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

5. It is also ascertained that Veerendra Kumar Ram used to give cash to Mukesh Mittal who with the help of other entry providers used to take entries in the bank accounts of his employees and relatives and then such fund was transferred by Mukesh Mittal into the bank accounts of the co-accused Rajkumari (wife of Veerendra Kumar Ram) and Genda Ram (father of Veerendra Kumar Ram). Both are the petitioners herein.

6. Further, it is also ascertained that some bank accounts opened (at Delhi) on the basis of forged documents were also being used in such routing of funds. Therefore, findings related to such routing of funds were shared with the Delhi Police u/s 66(2) of the PMLA by the I.O. Further, on the basis of the information shared U/s 66(2) of PMLA, 2002, an FIR No. 22/2023, was registered by Economic Offence Wing (EOW), Delhi against (i) Veerendra Kumar Ram, (ii) Mukesh Mittal and (iii) unknown Others under Sections 419, 420, 465, 466, 468, 471, 473, 474, 476, 484, and 120-B of IPC, 1860, and Section 7 and 5 of Specified Bank Notes (Cessation of Liabilities) Act; 2017.

7. The prosecution complaint shows that various records, documents, digital devices, cash, jewellery, vehicles were recovered and seized during course of search conducted on 21.02.2023 and during investigation they were found accumulated through proceeds of crime.

8. Accordingly, prosecution has submitted prosecution complaint in the matter and based upon that cognizance has been taken on 29.04.2023 for the offence u/s 3 and u/s 4 of PML Act, 2002 against the present petitioners and others.

9. There are specific allegations against the petitioner/accused namely Rajkumari that she knowingly assisted to her husband who is co-accused to purchase immovable properties at New Delhi in her name and the purchase consideration was paid from the proceeds of crime generated by her husband Veerendra Kumar Ram.

10. Against the petitioner/accused namely Genda Ram there is specific allegation that he knowingly assisted his son Veerendra Kumar Ram who is co-accused to purchase immovable properties at New Delhi in his own name to the tune of Rs 22.5 Crore from the commission/bribe amount, which was acquired by his son Veerendra Kumar Ram. Further, the bank account statements of the said petitioner reflect huge credits to the tune of Rs 4.525 crores.

11. Accordingly, in connection of alleged crime, the present petitioners had preferred Anticipatory Bail petition no. 1551 of 2023 and 1549 of 2023 for grant of pre-arrest bail but the same was rejected vide order dated 22.07.2023 passed by the court of, learned Additional Judicial Commissioner-XVIII-cum-Special Judge, PML Act, Ranchi.

12. Hence the present applications have been filed.

Argument advanced by learned counsel for the petitioners:

13. Mr. Jitendra S. Singh, learned counsel for the petitioners has argued *inter alia* on the following grounds:

I. The petitioners are quite innocent and have falsely been implicated in this case with oblique motive and *mala fide* intention to harass the petitioners.

II. There is no allegation said to be committed so as to attract the offence under Section under Section 3 of the PML Act since there is no allegation of laundering of money against the petitioners.

III. In alternate, submission has been made that even if the allegations leveled against petitioners are accepted then also it would not constitute offence under Section 3/ 4 of the PML Act inasmuch as the allegations fall short of the essential ingredients for offence of money laundering.

IV. That the Enforcement Directorate has exceeded its jurisdiction in arraigning the petitioners as an accused in the present case when they cannot even be remotely linked to the predicate offence which in the present case is FIR No. 13/2019 dated 13.11.2019 registered by ACB.

V. FIR No. 13/2019 dated 13.11.2019 registered by ACB was registered subsequent to a trap laid down against Mr. Suresh Prasad Verma and the aforesaid FIR entails investigation arising out of the said cause of action. Therefore, FIR no. 13/2019 dated 13.11.2019 is not emanating from a cause of action purportedly connected with the petitioner's husband. Therefore, the petitioners do not even have a purported connection to the predicate offence of the present ECIR.

VI. The Petitioners are not involved in laundering of money as they have disclosed their wealth to the Income Tax Department which is apparent from the records.

VII. It is the settled assumption that person having/dealing with financial transactions cannot know at the outset that the funds involved in the financial transaction are proceeds of crime and the petitioners are the wife and father of that accused hence, it does not lead to an automatic inference that the money given by that accused are proceeds of crime. However, in the instant case Veerendra Kumar Ram (accused no.1) and the petitioners themselves are not even accused in predicate offence.

VIII. That the twin conditions of section 45 PMLA are not applicable to the petitioner namely Rajkumari as she is a woman and falls within the proviso to section

45(1) of the PMLA which appears to further the constitutional mandate of Article 15(3) of the Constitution of India which enables framing of laws for the benefit of women and children.

IX. In the aforesaid context reliance is placed by the learned counsel for the petitioners on the judgment of the Delhi High Court rendered in **Devki Nandan Garg v. Directorate of Enforcement, (2022) 6 HCC (Del) 67** and it has been contended that the proviso to Section 45(1) has been incorporated as relaxation for persons below sixteen years of age; a woman; or one who is sick or infirm.

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

<u>Argument advanced by learned counsel for the opposite party-Enforcement Directorate:</u>

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

(I) So far as subsequent FIR is concerned, submission has been made that it is incorrect on the part of the petitioner to take the ground that since the first FIR is dated 13.11.2019 and subsequent thereto it was found that the money was being routed in Delhi then the second FIR was instituted on 03.03.2023. Hence, there is no illegality since as per the allegation made in the complaint that the first FIR which is against Alok Ranjan who has informed to be the custodian of the money which was being illegally given by the co-accused Veerendra Kumar Ram. While the second FIR being FIR No. 22/2023 is for investigating the routing of the said money illegally procured by the said Veerendra Kumar Ram. Then in such circumstances, the complaint has been instituted by the Enforcement Directorate, which cannot be said to suffer from any illegality.

(II) Further, it has been submitted by referring to the imputation as has come in course of investigation conducted against the present petitioners wherein, the direct involvement of the petitioners have been found in laundering the money.

(III) Learned counsel for the Enforcement Directorate has referred the imputation as has come against the petitioners in the prosecution complaint wherein it is alleged that the accused Veerendra Kumar Ram was actively and directly indulged in the process of acquisition, possession and concealment of proceeds of crime to the tune of Rs. 48,94,10,877/- and he arranged the bogus entries of Rs. 9.3 crores into the bank account of his wife Rajkumari and of Rs. 4.535 into the bank account of his father Genda Ram and the amount was utilized for purchasing vehicles, other properties and living a luxurious life.

(IV) Learned counsel for the respondent-ED has further submitted that regular bail petition of co-accused Tara Chand and Harish Yadav has been rejected by this Court vide order dated 01.03.2024 passed in B.A. No. 11095 of 2023 and BA No. 9734 of 2023 respectively and anticipatory bail petition of co-accused, Mukesh Mittal has also been rejected by this Court vide order dated 16.02.2024 passed in ABA No. 10671 of 2023, looking into the gravity of offence and applying the rigours of Section 45 of PML Act, 2002.

(V) The Petitioners have directly indulged in the process of possession, concealment, & use of proceeds of crime and also knowingly assisted

Veerendra Kumar Ram (Accused no 1) in projecting the same as untainted, hence, the present petitioners have committed the offence of Money Laundering as defined under section 3 of PML Act 2002.

(VI) The provisions of the PMLA are an independent offence as the PMLA is a different special statute. The investigation conducted by the Enforcement Directorate under the PMLA,2002 is triggered after committing, the commission of a scheduled offence, out of which proceeds have been generated. During investigation, active involvement of the Petitioners in the layering, transfer and use of proceeds of crime has surfaced.

(VII) Further during the investigation, the petitioners have never divulged the actual source of their income during their statements recorded u/s 50 of PMLA, 2002. Further, the petitioners namely Rajkumari has only submitted a copy of Form No. BA as well as the notices that were issued to her by the Income Tax Department. However, in the said petition itself, she has not disclosed the source of funds/income used in investment in shares and securities as well as investment in jewelry, gold and silver bullion and in business which clearly established that the said credits were acquired out of Proceeds of Crime generated through commission of criminal activities.

(VIII) Further, without prejudice to the arguments raised above, it is submitted that merely declaring income and paying tax without providing a source does not absolve the charges of money laundering. It is an admitted fact that the Petitioner's husband is involved in huge corruption which is base of all the properties acquired by the Petitioner or family members.

(IX) Petitioner namely Rajkumari, during her statement u/s 50 of PMLA, has inter alia stated that source of all the funds received in her bank accounts would be explained by husband Veerendra Kumar Ram, and Veerendra Kumar Ram in his statement u/s 50 of PMLA has stated that aforesaid credits are out of the entries received in the said accounts against cash, the source of which was the commission received by Veerendra Kumar Ram which clearly established that the said credits were acquired out of Proceeds of Crime generated through commission of criminal activities.

(X) Hence, the averments raised by the Petitioner do not hold any merit, and there are documentary evidence and statement of witnesses to corroborate or substantiate the charges on the Petitioner.

(XI) Further the learned counsel for the respondent put his reliance on the judgment rendered by the Hon'ble Apex Court in **Rohit Tandon v. Directorate of Enforcement, (2018) 11 SCC 46** wherein the Hon'ble Supreme Court observed that the provisions Section 24 of the PMLA provide 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 Petitioner.

(XII) It is submitted that the contention of the learned counsel for the petitioner that the proviso to section 45 cannot be attracted in the present case only on account of the Applicant being a woman is totally misplaced. The learned counsel for the respondent ED put his reliance upon the judgment as rendered by the Delhi High Court in **Shivani Rajiv Saxena v. Directorate of Enforcement & Anr**. vide order dated 15.09.2017 in Bail Appln.1518/2017 wherein bail was denied to the accused, who was a woman, as the court observed that the application of discretion described in proviso to section 45(1) has to be applied consider the unique circumstances surrounding specific groups of individuals, rather than being applied universally as a standard rule that all those categories of people in the said proviso must be granted bail.

(XIII) Further, drawing an analogy with Section 437(1) Cr.P.C. and also relying upon the judgment of Delhi High Court in **Meenu Dewan v. State in Bail Appl. No.736/2008** wherein it was held that there is no absolute or unconditional rule that bail should be granted if the accused is a woman, but the nature and gravity of the offence and heinousness of such offence also has to be considered and the same varies from circumstance to circumstance.

(XIV) it is submitted that the Hon'ble Supreme Court has not passed a blanket order to give anticipatory bail to the accused if not arrested during the course of the investigation and in **Sanjay Chandra v. CBI (2012) 1 SCC 40**, Hon'ble Supreme Court has observed that the seriousness of charges shall be considered before considering the bail of the accused.

16. Learned counsel for the respondent-Enforcement Directorate, based upon the aforesaid grounds, has submitted that it is not a fit case where the prayer for pre-arrest bail is to be allowed taking into consideration their involvement in directly acquiring the proceeds of crime.

Analysis of the submissions made on behalf of parties:

17. This Court has heard the learned counsel for the parties, gone across the pleading available on record as also the finding recorded by learned court.

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

19. The Act was enacted to address the urgent need to have a comprehensive legislation *inter alia* for preventing money-laundering, attachment of proceeds of crime, adjudication and confiscation thereof including vesting of it in the Central Government, setting up of agencies and mechanisms for coordinating measures for combating money-laundering and also to prosecute the persons indulging in the process or activity connected with the proceeds of crime.

20. The issues were debated threadbare in the United Nation Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Basle Statement of Principles enunciated in 1989, the FATF established at the summit of seven major industrial nations held in Paris from 14th to 16th July, 1989, the Political Declaration and Noble Programme of Action adopted by United Nations General Assembly vide its Resolution No. S-17/2 of 23.2.1990, the United Nations in the Special Session on countering World Drug Problem Together concluded on the 8th to the 10th June, 1998, urging the State parties to enact a comprehensive legislation. This is evident from the introduction and Statement of Objects and Reasons accompanying the Bill which became the 2002 Act. The same reads thus:

"INTRODUCTION

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

STATEMENT OF OBJECTS AND REASONS

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

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

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

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

(i) declaration of laundering of monies carried through serious crimes a criminal offence;

(ii) to work out modalities of disclosure by financial institutions regarding reportable transactions;

(iii) confiscation of the proceeds of crime;

(iv) declaring money-laundering to be an extraditable offence; and

(v) promoting international co-operation in investigation of money-laundering.

(d) the Political Declaration and Global Programme of Action adopted by United Nations General Assembly by its Resolution No. S-17/2 of 23rd February, 1990, inter alia, calls upon the member States to develop mechanism to prevent financial institutions from being used for laundering of drug related money and enactment of legislation to prevent such laundering.

(e) the United Nations in the Special Session on countering World Drug Problem Together concluded on the 8th to the 10th June, 1998 has made another declaration regarding the need to combat money-laundering. India is a signatory to this declaration.

21. It is thus evident that the Act 2002 was enacted to answer the urgent requirement to have a comprehensive legislation *inter alia* for preventing money-laundering, attachment of proceeds of crime, adjudication and confiscation thereof for combating money-laundering and also to prosecute the persons indulging in the process or activity connected with the proceeds of crime.

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

*"**2(u)** "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value*

of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad;

[Explanation.—For the removal of doubts, it is hereby clarified that "proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence;]"

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

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

The aforesaid explanation has been inserted in the statute book by way of Act 23 of 2019.

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

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

26. The schedule has been defined under Section 2(1)(x) which means schedule to the Prevention of Money Laundering Act, 2002. The "scheduled offence" has been defined under Section 2(1)(y) which reads as under:

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

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

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

> ***"3. Offence of money-laundering.—****Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the [proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming] it as untainted property shall be guilty of offence of money-laundering.*
>
> *[Explanation.— For the removal of doubts, it is hereby clarified that,—*
>
> *(i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:—*
>
> *(a) concealment; or*
> *(b) possession; or*
> *(c) acquisition; or*
> *(d) use; or*
> *(e) projecting as untainted property; or*
> *(f) claiming as untainted property,*
> *in any manner whatsoever;*
>
> *(ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use*

or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.]"

29. It is evident from the aforesaid provision that "offence of money-laundering" means whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.

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

31. The punishment for money laundering has been provided under Section 4 of the Act, 2002.

32. Section 50 of the Act, 2002 confers power upon the authorities regarding summons, production of documents and to give evidence. For ready reference, Section 50 of the Act, 2002 reads as under:

"50. Powers of authorities regarding summons, production of documents and to give evidence, etc.—

(1) The Director shall, for the purposes of section 13, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:—

(a) discovery and inspection;

(b) enforcing the attendance of any person, including any officer of a [reporting entity] and examining him on oath;

(c) compelling the production of records;

(d) receiving evidence on affidavits;

(e) issuing commissions for examination of witnesses and documents; and

(f) any other matter which may be prescribed.

(2) The Director, Additional Director, Joint Director, Deputy Director or Assistant Director shall have power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this Act.

(3) All the persons so summoned shall be bound to attend in person or through authorised agents, as such officer may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.

(4) Every proceeding under sub-sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860).

(5) Subject to any rules made in this behalf by the Central Government, any officer referred to in sub-section (2) may impound and retain in his custody for such period, as he thinks fit, any records produced before him in any proceedings under this Act:

Provided that an Assistant Director or a Deputy Director shall not—

> *(a) impound any records without recording his reasons for so doing; or*
>
> *(b) retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the [Joint Director]."*

33. The various provisions of the Act, 2002 alongwith interpretation of the definition of "proceeds of crime" has been dealt with by the Hon'ble Apex Court in the case of ***Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors., (2022) SCC OnLine SC 929*** wherein the Bench comprising of three Hon'ble Judges of the Hon'ble Supreme Court has decided the issue by taking into consideration the object and intent of the Act, 2002. The definition of "proceeds of crime" as under paragraph-251.

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

> ***"265.*** *To put it differently, the section as it stood prior to 2019 had itself incorporated the expression "including", which is indicative of reference made to the different process or activity connected with the proceeds of crime. Thus, the principal provision (as also the Explanation) predicates that if a person is found to be directly or indirectly involved in any process or activity connected with the proceeds of crime must be held guilty of offence of money-laundering. If the interpretation set forth by the petitioners was to be accepted, it would follow that it is only upon projecting or claiming the property in question as*

untainted property, the offence would be complete. This would undermine the efficacy of the legislative intent behind Section 3 of the Act and also will be in disregard of the view expressed by the FATF in connection with the occurrence of the word "and" preceding the expression "projecting or claiming" therein. This Court in Pratap Singh v. State of Jharkhand, enunciated that the international treaties, covenants and conventions although may not be a part of municipal law, the same be referred to and followed by the Courts having regard to the fact that India is a party to the said treaties. This Court went on to observe that the Constitution of India and other ongoing statutes have been read consistently with the rules of international law. It is also observed that the Constitution of India and the enactments made by Parliament must necessarily be understood in the context of the present-day scenario and having regard to the international treaties and convention as our constitution takes note of the institutions of the world community which had been created. In Apparel Export Promotion Council v. A.K. Chopra, the Court observed that domestic Courts are under an obligation to give due regard to the international conventions and norms for construing the domestic laws, more so, when there is no inconsistency between them and there is a void in domestic law. This view has been restated in Githa Hariharan, as also in People's Union for Civil Liberties, and National Legal Services Authority v. Union of India."

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

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

424. *By this provision, the Director has been empowered to exercise the same powers as are vested in a civil Court under the 1908 Code while trying a suit in respect of matters specified in sub-section (1). This is in reference to Section 13 of the 2002 Act dealing with powers of Director to impose fine in respect of acts of commission and omission by the banking companies, financial institutions and intermediaries. From the setting in which Section 50 has been placed and the expanse of empowering the Director with same powers as are vested in a civil Court for the purposes of imposing fine under Section 13, is obviously very specific and not otherwise.*

425. *Indeed, sub-section (2) of Section 50 enables the Director, Additional Director, Joint Director, Deputy Director or Assistant Director to issue summon to any person whose attendance he considers necessary for giving evidence or to produce any records during the course of any investigation or proceeding under this Act. We have already highlighted the width of expression "proceeding" in the earlier part of this judgment and held that it applies to proceeding before the Adjudicating Authority or the Special Court, as the case may be. Nevertheless, sub-section (2) empowers the authorised officials to issue summon to any person. We fail to understand as to how Article 20(3) would come into play in respect of process of recording statement pursuant to such summon which is only for the purpose of collecting information or evidence in respect of proceeding under this Act. Indeed, the person so summoned, is bound to attend in person or through authorised agent and to state truth upon any subject concerning which he is being examined or is expected to make statement and produce documents as* *may be required by virtue of sub-section (3) of Section 50 of the 2002 Act. The criticism is essentially because of subsection (4) which provides that every proceeding under sub-sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the IPC. Even so, the fact remains that Article 20(3) or for that matter Section 25 of the Evidence Act, would come into play only when the person so summoned is an accused of any offence at the relevant time and is being compelled to be a witness against himself. This position is well-established. The Constitution Bench of this Court in M.P. Sharma had dealt with a similar challenge wherein warrants to obtain documents required for investigation were issued by the Magistrate being violative of Article 20(3) of the Constitution. This Court opined that the guarantee in Article 20(3) is against "testimonial compulsion" and is not limited to oral evidence. Not only that, it gets triggered if the person is compelled to be a witness against himself, which may not happen merely because of issuance of summons for giving oral evidence or producing documents. Further, to be a witness is nothing more than to furnish evidence and such evidence can be furnished by different modes. The Court went on to observe as follows:*

"Broadly stated the guarantee in article 20(3) is against "testimonial compulsion". It is suggested that this is confined to the oral evidence of a person standing his trial for an offence when called to the witness-stand. We can see no reason to confine the content of the constitutional guarantee to this barely literal import. So to limit it would be to rob the guarantee of its substantial purpose and to miss the substance for the sound as stated in certain American decisions. The phrase used in Article 20(3) is "to be a witness". A person can "be a witness" not merely by giving oral evidence but also by producing documents or making intelligible gestures as in the case of a dumb witness (See section 119 of the Evidence Act) or the like. "To be a witness" is nothing more than "to furnish

evidence", and such evidence can be furnished through the lips or by production of a thing or of a document or in other modes. So far as production of documents is concerned, no doubt Section 139 of the Evidence Act says that a person producing a document on summons is not a witness. But that section is meant to regulate the right of cross-examination. It is not a guide to the connotation of the word "witness", which must be understood in its natural sense, i.e., as referring to a person who furnishes evidence. Indeed, every positive volitional act which furnishes evidence is testimony, and testimonial compulsion connotes coercion which procures the positive volitional evidentiary acts of the person, as opposed to the negative attitude of silence or submission on his part. Nor is there any reason to think that the protection in respect of the evidence so procured is confined to what transpires at the trial in the court room. The phrase used in article 20(3) is "to be a witness" and not to "appear as a witness". It follows that the protection afforded to an accused in so far as it is related to the phrase "to be a witness" is not merely in respect of testimonial compulsion in the court room but may well extend to compelled testimony previously obtained from him. ***It is available therefore to a person against whom a formal accusation relating to the commission of an offence has been levelled which in the normal course may result in prosecution.*** *Whether it is available to other persons in other situations does not call for decision in this case."*

(emphasis supplied)

431. *In the context of the 2002 Act, it must be remembered that the summon is issued by the Authority under Section 50 in connection with the inquiry regarding proceeds of crime which may have been attached and pending adjudication before the Adjudicating Authority. In respect of such action, the designated officials have been empowered to summon any person for collection of information and evidence to be presented before the Adjudicating Authority. It is not necessarily for initiating a* *prosecution against the noticee as such. The power entrusted to the designated officials under this Act, though couched as investigation in real sense, is to undertake inquiry to ascertain relevant facts to facilitate initiation of or pursuing with an action regarding proceeds of crime, if the situation so warrants and for being presented before the Adjudicating Authority. It is a different matter that the information and evidence so collated during the inquiry made, may disclose commission of offence of money-laundering and the involvement of the person, who has been summoned for making disclosures pursuant to the summons issued by the Authority. At this stage, there would be no formal document indicative of likelihood of involvement of such person as an accused of offence of money-laundering. If the statement made by him reveals the offence of money-laundering or the existence of proceeds of crime, that becomes actionable under the Act itself. To put it differently, at the stage of recording of statement for the purpose of inquiring into the relevant facts in connection with the property being proceeds of crime is, in that sense, not an investigation for prosecution as such; and in any case, there would be no formal accusation against the noticee. Such summons can be issued even to witnesses in the inquiry so conducted by the authorised officials. However, after further inquiry on the basis of other material and evidence, the involvement of such person (noticee) is revealed, the authorised officials can certainly proceed against him for his acts of commission or omission. In such a situation, at the stage of issue of summons, the person cannot claim protection under Article 20(3) of the Constitution. However, if his/her statement is recorded after a formal arrest by the ED official, the consequences of Article 20(3) or Section 25 of the Evidence Act may come into play to urge that the same being in the nature of confession, shall not be proved against him. Further, it would not preclude the prosecution from proceeding against such a person including for consequences under Section 63 of the 2002 Act on the*

> *basis of other tangible material to indicate the falsity of his claim. That would be a matter of rule of evidence.*
>
> ***434.*** *It is, thus, clear that the power invested in the officials is one for conducting inquiry into the matters relevant for ascertaining existence of proceeds of crime and the involvement of persons in the process or activity connected therewith so as to initiate appropriate action against such person including of seizure, attachment and confiscation of the property eventually vesting in the Central Government.*

36. It is evident from the observation so made as above that the purposes and objects of the 2002 Act for which it has been enacted, is not limited to punishment for offence of money-laundering, but also to provide measures for prevention of money-laundering. <u>It is also to provide for attachment of proceeds of crime, which are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceeding relating to confiscation of such proceeds under the 2002 Act. This Act is also to compel the banking companies, financial institutions and intermediaries to maintain records of the transactions, to furnish information of such transactions within the prescribed time in terms of Chapter IV of the 2002 Act.</u>

37. The predicate offence has been considered in the aforesaid judgment wherein by taking into consideration the explanation as inserted by way of Act 23 of 2019 under the definition of the "proceeds of crime" as contained under

Section 2(1)(u), whereby and whereunder, it has been clarified for the purpose of removal of doubts that, the "proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence, meaning thereby, the words *"any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence"* will come under the fold of the proceeds of crime.

38. So far as the purport of Section 45(1)(i)(ii) is concerned, the aforesaid provision starts from the non-obstante clause that notwithstanding anything contained in the Code of Criminal Procedure, 1973, no person accused of an offence under this Act shall be released on bail or on his own bond unless –

(i) the Public Prosecutor has been given 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

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

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

39. The implication of Section 45 has been interpreted by the Hon'ble Apex Court in ***Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors.***(supra) at paragraphs-371-374. For ready reference, the said paragraphs are being referred as under:

> ***"371.*** *The relevant provisions regarding bail in the 2002 Act can be traced to Sections 44(2), 45 and 46 in Chapter VII concerning the offence under this Act. The principal grievance is about the twin conditions specified in Section 45 of the 2002 Act. Before we elaborate further, it would be apposite to reproduce Section 45, as amended. The same reads thus:*

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

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

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

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

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

(i) the Director; or

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

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

(2) The limitation on granting of bail specified in [***] sub-section (1) is in addition to the limitations under the Criminal Procedure Code, 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 Criminal Procedure Code, 1973 (2 of 1974), and accordingly the officers authorised under this Act are empowered to arrest an accused without warrant, subject to the fulfilment of conditions under section 19 and subject to the conditions enshrined under this section.]"

372. *Section 45 has been amended vide Act 20 of 2005, Act 13 of 2018 and Finance (No. 2) Act, 2019. The provision as it obtained prior to 23.11.2017 read somewhat differently. The constitutional validity of Sub-section (1) of Section 45, as it stood then, was considered in Nikesh Tarachand Shah. This Court declared Section 45(1) of the 2002 Act, as it stood then, insofar as it imposed two further conditions for release on bail, to be unconstitutional being violative of Articles 14 and 21 of the Constitution. The two conditions which have been mentioned as twin conditions are:*

(i) that there are reasonable grounds for believing that he is not guilty of such offence; and

(ii) that he is not likely to commit any offence while on bail.

373. *According to the petitioners, since the twin conditions have been declared to be void and unconstitutional by this Court, the same stood obliterated. To buttress this argument, reliance has been placed on the dictum in State of Manipur.*

374. *The first issue to be answered by us is: whether the twin conditions, in law, continued to remain on the statute book post decision of this Court in Nikesh Tarachand Shah and if yes, in view of the amendment effected to Section 45(1) of the 2002 Act vide Act 13 of 2018, the declaration by this Court will be of no consequence. This argument need not detain us for long. We say so because the* *observation in State of Manipur in paragraph 29 of the judgment that owing to the declaration by a Court that the statute is unconstitutional obliterates the statute entirely as though it had never been passed, is contextual. In this case, the Court was dealing with the efficacy of the repealing Act. While doing so, the Court had adverted to the repealing Act and made the stated observation in the context of lack of legislative power. In the process of reasoning, it did advert to the exposition in Behram Khurshid Pesikaka and Deep Chand[7] including American jurisprudence expounded in Cooley on Constitutional Limitations and Norton v. Shelby County."*

40. Subsequently, the Hon'ble Apex Court in the case of ***Tarun Kumar vs. Assistant Director Directorate of Enforcement, (2023) SCC OnLine SC 1486*** by taking into consideration the law laid down by the Larger Bench of the Hon'ble Apex Court in ***Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors.***(supra), has laid down that since the conditions specified under Section 45 are mandatory, they need to be complied with. The Court is required to be satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and he is not likely to commit any offence while on bail.

It has further been observed that as per the statutory presumption permitted under Section 24 of the Act, the Court or the Authority is entitled to presume unless the contrary is proved, that in any proceedings relating to proceeds of crime under the Act, in the case of a person charged with the offence of money laundering under Section

3, such proceeds of crime are involved in money laundering. Such conditions enumerated in Section 45 of PML Act will have to be complied with even in respect of an application for bail made under Section 439 Cr. P.C. in view of the overriding effect given to the PML Act over the other law for the time being in force, under Section 71 of the PML Act. For ready reference, paragraph-17 of the said judgment reads as under:

> "**17.** As well settled by now, the conditions specified under Section 45 are mandatory. They need to be complied with. The Court is required to be satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and he is not likely to commit any offence while on bail. It is needless to say that as per the statutory presumption permitted under Section 24 of the Act, the Court or the Authority is entitled to presume unless the contrary is proved, that in any proceedings relating to proceeds of crime under the Act, in the case of a person charged with the offence of money laundering under Section 3, such proceeds of crime are involved in money laundering. Such conditions enumerated in Section 45 of PML Act will have to be complied with even in respect of an application for bail made under Section 439 Cr. P.C. in view of the overriding effect given to the PML Act over the other law for the time being in force, under Section 71 of the PML Act."

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

42. In the judgment rendered by the Hon'ble Apex Court in ***Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors.***(supra) as under paragraph-284 thereof, it has been held that the Authority under the 2002 Act, is to prosecute a person for offence of money-laundering only if it has reason to believe, which is required to be recorded in writing that the person is in possession of "proceeds of crime". Only if that belief is further supported by tangible and credible evidence indicative of involvement of the person concerned in any process or activity connected with the proceeds of crime, action under the Act can be taken forward for attachment and confiscation of proceeds of crime and until vesting thereof in the Central Government, such process initiated would be a standalone process.

So far as the issue of grant of bail under Section 45 of the Act, 2002 is concerned, as has been referred hereinabove, at paragraph-412 of the judgment rendered in ***Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors.***(supra) it has been held therein by making observation that whatever form the relief is couched including the nature of proceedings, be it under Section 438 of the 1973 Code or for that matter, by invoking the jurisdiction of the Constitutional Court, the underlying principles and rigors of Section 45 of the 2002 must come into play and without exception ought to be reckoned to uphold the objectives of the 2002 Act, which is a special legislation providing for stringent regulatory measures for combating the menace of money-laundering.

43. The Hon'ble Apex Court in the case of ***Gautam Kundu vs. Directorate of Enforcement (Prevention of Money-Laundering Act), Government of India through Manoj Kumar, Assistant Director, Eastern Region, (2015) 16 SCC 1*** has been pleased to hold at paragraph -30 that the conditions specified under Section 45 of PMLA are mandatory and need to be complied with, which is further strengthened by the provisions of Section 65 and also Section 71 of PMLA. Section 65 requires that the provisions of CrPC shall apply insofar as they are not inconsistent with the provisions of this Act and Section 71 provides that the provisions of PMLA shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. PMLA has an overriding effect and the provisions of CrPC would apply only if they are not inconsistent with the provisions of this Act. Therefore, the conditions enumerated in Section 45 of PMLA will have to be complied with even in respect of an application for bail made under Section 439 CrPC. That coupled with the provisions of Section 24 provides that unless the contrary is proved, the authority or the Court shall presume that proceeds of crime are involved in money-laundering and the burden to prove that the proceeds of crime are not involved, lies on the appellant. For ready reference, paragraph-30 of the said judgment reads as under:

> "**30.** The conditions specified under Section 45 of PMLA are mandatory and need to be complied with, which is further strengthened by the provisions of Section 65 and also Section 71 of PMLA. Section 65 requires that the provisions of CrPC shall apply insofar as they are not inconsistent with the provisions of this Act and Section 71 provides that the provisions of PMLA shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. PMLA has an overriding effect and the provisions of CrPC would apply only if they are not inconsistent with the provisions of this Act. Therefore, the conditions enumerated in Section 45 of PMLA will have to be complied with even in respect of an application for bail made under Section 439 CrPC. That coupled with the provisions of Section 24 provides that unless the contrary is proved, the authority or the Court shall presume that proceeds of crime are involved in money-laundering and the burden to prove that the proceeds of crime are not involved, lies on the appellant."

44. Now adverting into fact of the instant case and the allegation leveled against the present petitioner which according to learned counsel for the petitioner is being said that the same cannot be said to attract the ingredient of

Section 3 of PMLA 2022 while on the other hand, the learned counsel appearing for the ED has submitted by referring to various paragraphs of prosecution complaint that the offence is very much available attracting the offence under provision of PML Act.

45. This Court, in order to appreciate the rival submission, deems it fit and proper to refer various paragraphs of prosecution complaint upon which the reliance has been placed on behalf of both the parties, needs to be referred herein so as to come to the conclusion as to whether the parameter as fixed under Section 45(ii) of the PMLA is being fulfilled in order to reach to the conclusion that whether it is a fit case where anticipatory bail is to be granted or not. Relevant paragraphs of prosecution complaint are referred herein :

> ***2.3*** *As per case diary 3941459 dt. 24.12.2019, Suresh Prasad Verma in his statement before ACE claimed that the cash amount seized belonged to Veerendra Kumar Ram, then Chief Engineer, Subernrekha project and that his wife Rajkumari used to visit the rented-out premises of Alok Ranjan. Later, Alok Ranjan in his written submission to the Superintendent of Police, ACB, Jamshedpur vide Letter no 3929 dt 30.12.2019 issued by Jail Superintendent, Chaibasa, W. Singhbhum, Alok Ranjan stated that he used to stay alone as a tenant in the first floor room rented out by Smt. Pushpa Verma at the premises located at Dev Hari Kunj, Anand Vihar Colony, Road No. 11. PS M.G.M., Jamshedpur and the room was furnished by Sh. S.P. Verma including almirah from where the cash of Rs 2.67 crores was seized and Alok Ranjan also claimed that the*

said cash amount seized belonged to S.P. Verma since he used to visit Alok's rented premises at times and used Almirah with the key in Verma's possession as and when he needed. As per Alok Ranjan, the Almirah was even accessed by SP Verma in Alok absence and on objecting, S.P. Verma used to say that his personal belongings were kept in the said almirah. Alok further claimed that he only used the bed and kept his belongings in the trunk.

2.4 *However, S.P. Verma and his family members claimed that the said cash belongs to Veerendra Kumar Ram and alleged that Veerendra Kumar Ram himself and his wife Rajkumari used to visit Alok Ranjan at the rented premises and Alok Ranjan is cousin of Veerendra Kumar Ram.*

4.1.2 *During the course of investigation, Suresh Prasad Verma had also submitted a call recording vide email dated 31.01.2022 between Kapil Dev Yadav, Pushpa Verma and son of Suresh Prasad Verma In the said call recording, Kapil Dev Yadav was confronted by Pushpa Verma several times with the fact that Kapil Dev Yadav brought Alok Ranjan, Veerendra Kumar Ram, Rajkumari (wife of Veerendra Kumar Ram) and others for taking the said portion of house at 1st floor on rent. Kapil Dev Yadav did not deny the said fact in the said call recording.*

7.1 EVIDENCES GATHERED DURING THE COURSE OF SEARCH PROCEEDING U/S 17 OF THE PMLA WHICH ESTABLISHES ALOK RANJAN'S ASSOCIATION WITH VEERENDRA KUMAR RAMAND HIS INVOLVEMENT IN THE PROCESS OF MONEY LAUNDERING

In fact, during the course of post search investigation under the PMLA, it is ascertained that Alok Ranjan used to go to Delhi with Veerendra Kumar Ram during the year 2019. Veerendra Kumar Ram himself in his statement dated 15.04.2023 has accepted that he used to go to Delhi during 2019 for the purpose of giving cash to one CA Mukesh Mittal who used to provide him the entries in his bank account held jointly with his wife Rajkumari and such cash *was acquired by Veerendra Kumar Ram from the commission amount received by him in lieu of allotment of tenders.*

It is also gathered that many train tickets of Alok Ranjan and VEERENDRA KUMAR RAM from Ranchi to Delhi, were booked by Veerendra Kumar Ram through one travel agent and the payment for which was done in cash by Veerendra Kumar Ram.

Further statement of one contractor Rajesh Kumar, director of M/s Rajesh Kumar construction Pvt Ltd and M/s Parmanand Singh Builders Private limited was also recorded u/s 50 of PMLA on 07.04.2023 wherein he stated that on the day of search i.e. on 15.11.2019 conducted by ACB Jamshedpur at the rented flat of Alok Ranjan, (house owned by Pushpa Verma, wife of S.P. Verma), Veerendra Kumar Ram called him and asked him to go to flat of Alok Ranjan and also stated that his (Veerendra Kumar Ram's) cash was kept at the flat of Alok Ranjan, but he could not enter the flat as the police were there.

All such evidences, which will also be discussed in detail in paras below, proves that Rs 2.67 crores found and seized by ACB Jamshedpur from the possession of Alok Ranjan was the ill earned money of Veerendra Kumar Ram only.

7.1.1 Other evidences and findings of the investigation are discussed below

The bank account statement of account no. 11008836933 in the name of Veerendra Kumar Ram (Accused no.1) maintained with state bank of India was analyzed-----

When Alok Ranjan was asked to explain the source of such cash deposited by him, he stated in his statement dated 24.02.2023, that this cash was handed over to him by Veerendra Kumar Ram for depositing in the above-mentioned bank account.

When Alok Ranjan was asked how many times and how much cash has been given to him by Veerendra Kumar Ram, he stated in his statement dated 24.02.2023, that he has not received cash from Veerendra Kumar Ram apart *from the cash received by him for depositing the above-mentioned account.-------*

PROCEEDS OF CRIME IN POSSESSION OF ALOK RANJAN

7.1.9 *During the course of analysis of mobile phone (iPhone 13 pro max with no 9431117311) of Veerendra Kumar Ram, it was found that he had a chat with one contractor Shri Anup Kumar Rai (9431301759) dated 03.02.2020 wherein Anoop Kumar Rai has sent Veerendra Kumar Ram one message that "3 crore taken away by Bablu Singh by fortuner" and also sent two vehicle detail one of Innova JH 05 CC 1000 and other of Toyota Fortuner bearing Registration no. JH0SCM1000, to Veerendra Kumar Ram through WhatsApp. Further Anoop Kumar Rai was summoned and statement of Anoop Kumar Rai, one of the contractors for mechanical works, was recorded u/s 50 on 07.04.2023 wherein he was asked to explain the context of said messages and, in reply to which, he stated that he sent details of these two vehicles because he has not seen any previous Chief Engineer using such high-end vehicles so he just asked Veerendra Kumar Ram to be cautious. Anup Kumar Rai further stated in his statement dated 05.04.2023 that he is aware of the fact that Veerendra Kumar Ram used to keep money at the premises of Alok Ranjan where the search was conducted on 15.11 2019 by ACB. He further stated in his statement dated 07.04.2023 that there was a discussion in the office of WRD Chandil Complex that Bablu (Rajesh Kumar was found near the search premises on the date of the search ie on 15.11.2019 conducted by ACB Jamshedpur at the rented premise of Alok Ranjan and he had also taken away two bags full of money from there. It is pertinent to mention that both the said vehicles were found in the possession of Veerendra Kumar Ram on the day of search ie. 21/02/2023 and both these vehicles were frozen u/s 17(1-A) of the PMLA, 2002.*

<u>7.2 GENERATION OF PROCEEDS OF CRIME BY VEERENDRA KUMAR RAM</u>

7.2.2 *Veerendra Kumar Ram was arrested on 23.02.2023 u/s 19 of PMLA for the commission of the offence of money laundering as defined u/s 3 of PMLA and punishable u/s 4 of PMLA. Later he was sent to Judicial custody and currently is languishing in Hotwar Jail, Ranchi. During his custodial interrogation, he disclosed that he was taking bribes in the name of commission against the allotment of tenders from the contractors. He further disclosed in his statement dated 14.04.2023 that the commission amount taken from the contractors is 3.2% of the total tender value and that his share was 0.3% of the total tender value which at some postings was higher than 0.3%. However, given the total Proceeds of crime acquired by him, it is believed that his percentage (%) in the commission bribe must have been higher, as he himself stated in his statement dated 15.04.2023 that his commission varied from 03% to 1% of the tender value.*

7.2.3 *During the course of search on 21.02.2023 at the residential premises of Veerendra Kumar Ram located at 447/A, 2nd Floor, Road No. 4, Ashok Nagar, Ranchi cash amounting to Rs 7,82,500 was recovered and seized and when Veerendra Kumar Ram was asked to explain the source of the said cash, he stated in his statement dated 15.04.2023 that the said cash was the commission received by him in lieu of allotment of tenders.*

7.2.4 *During the course of search on 21.02.2023 at the Government residential premises of Sh. Veerendra Kumar Ram, Bungalow No.CE/1. Road No. 7, CH. Area East, Near Jubilee Park, Bistupur, Jamshedpur 831001, one Toyota Innova Car having registration number JH-05-CC-1000 having registered owner M/s Rajesh Kumar Constructions Pvt. Ltd (Director-Rajesh Kumar, as also discussed above was recovered. Further, during the course of the search at the residential premises of Smt Rajkumarı located at 4th Floor, C-334, Opposite Dabra Park, Block C, Defence Colony, New Delhi, one Toyota Fortuner Car having registration number JHOSCM1000 and registered owner M/s Parmanand Singh Builders Pvt Ltd was recovered. Mr.*

Rajesh Kumar is the director in both the companies namely M/s Rajesh Kumar Constructions Pvt. Ltd and M/s Parmanand Singh Builders Pvt Ltd. In this regard, Veerendra Kumar Ram in his statement dated 24.02.2023 stated that during Covid period he was avoided travel via flights and trains and so he required a four-wheeler to reach Delhi. Therefore, he contacted Rajesh Kumar (one of the contractors) who provided him the above-mentioned Toyota Fortuner He further stated that since he returned by train, therefore, the said vehicle remained in Delhi. Thus, Fortuner was intentionally left in Delhi and story in relation to avoid covid is afterthought to justify the act and such vehicles were provided by Rajesh Kumar to Veerendra Kumar Ram as Veerendra Kumar Ram has allotted many tenders to the companies/firm of Rajesh Kumar, which he later himself has disclosed in his statement dated 07.04.2023. Further, Veerendra Kumar Ram could not explain the reason for using the above- mentioned Toyota Innova for 2 years and stated that he was using this vehicle for his official duty and he had even allotted a tender to the company of Rajesh Kumar recently.

7.3.3 *During further investigation it has also been found that huge amounts have been received at the bank accounts of wife and father of Veerendra Kumar Ram, first in the joint account (2577257010412) of Rajkumari & Veerendra Kumar Ram to the tune of Rs. 9.30 crore approximately during the period FY 2014-15 to FY 2018-19, and then by the account of his father Genda Ram to the tune of Rs. 4.5 crores in a span of 31-32 days from 21/12/22 till 23/01/23, all these huge sums were transferred from account of the employees/relatives of one Delhi based CA Mukesh Mittal, these accounts are only opened for accommodating the funds and laundering the illicit money of V K Ram.*

7.4.3 *As it is evident from the above analysis of the account statement that the majority of the funds were credited into the joint bank account of Veerendra Kumar Ram and Raj Kumari, from the two firms named RK*

Investments and Consultancy and RP Investment and Consultancy Search u/s 17 of the PMLA was conducted at the residence of Rakesh Kumar Kedia and Reena Pal and the Statements of Reena Pal and Rakesh Kumar Kedia were recorded u/s 17 of PMLA on 21.02.2023 wherein Beena Pal denied having any firm existing in her name or any bank account operating in the name of such firm. She simply stated that her husband Vijay Pal handles all her financial dealings whereas Rakesh Kumar Kedia in his statement dated 21.02.2023stated that Mukesh Mittal, his relative, is handling all his financial dealings Rakesh Kumar Kedia further stated that he is not aware about existence of any firm in his name and simply stated that he was paid an amount in lieu of giving consent to operate his account. Vijay Pal, an employee of CA Mukesh Mittal, further stated in his statement dated 29.03.2023 that he helped Rakesh Kumar Kedia to open two bank accounts in his name and also opened a/c in the name of his wife Reena Pal. He also stated that he opened the firm M/s RP Investment and Consultancy and bank account in its name at the instruction of Mukesh Mittal such bank accounts were used by CA Mukesh Mittal and not by the respective account holders. He also stated that he knows Veerendra Kumar Ram as his men used to bring cash to the office of Mukesh Mittal.

FUND RECEIVED IN THE BANK ACCOUNTIA/C-127000628767) OF GENDA RAM (DOB 04.05.1941, PAN ACNPR4525L)

7.4.10 *during scrutiny of the bank accounts of Rakesh Kumar Kedia, the aforementioned bank account of Genda Ram (father of Veerendra Kumar Ram and also uncle of accused Alok Ranjan) surfaced which we opened on 12.12.2022 and the account received high valued funds As the bank accounts of Rakesh Kumar Kedia. Further investigation revealed that huge wars has been received in the thank account of Genda Ram recently in 30 days anil same was used in purchasing an immovable property at Land measuring 2 bigha, 8 biswa comprised to Khasra No*

770 Min (1-06)778 Min (1-2) with all the amenities situated in village satbari known as E-8 Satbari Ansal, Tehsil Saket, New Delhi.

***7.4.12*-----**

Thus, it is found that a total of Rs 4.435 crores, transferred from bank account of Rakesh Kumar Kedia, Manish, Neha Shrestha and Genda Ram a/ no 110089477752) into the bank a/c of Genda Ram 127000628767) and out of this sum of Rs. 4.43 crores, a sum of Rs. 3.39 crores was funded from three proprietorship bank accounts, namely (i) Shri Khatushyam Traders (079205500560), (ii) Anil Kumar Govind Ram Traders and (082705001671) (iii) Om Traders (072405001740) & Rs 13 lakhs from one bank account of Tarachand. All these bank a/c of three proprietorship are being maintained in ICICI Bank which are all operating under a single proprietor named, Sachin Gupta, s/o Ashrafi Lal Gupta Strangely enough, the proprietor Sachin Gupta has submitted three different PAN details in these three of his proprietorship firms and never filed Income Tas Return till date (later in was found that Tara Chand and Sachin Gupta are the same person). The rest source of Rs. 91 lakhs are as follows Rs. 48.75 lakhs were transferred through the Canara bank account of Mukesh Mittal (2577101050981), Rs. 18:00 lakhs transferred from Axis Bank Account (922020004021785) of Jamidara Trading which was also found to be non-existing on field verification, Rs. 10 lakhs transferred from ICICI bank account (425405000759) of Oyecool Technologies (Prop. Harish Yadav) a/c ICICI Bank 425405000759, Rs9.99 lakhs from Krishna Enterprise (Equitas Small Finance Bank, 200000747964) and Rs 45 lakh from Decent Traders (Equitas Small Finance Bank, 200001383885).

8. Brief detail of persons examined Under Section 17 & 50 of PMLA:

During the course of search and investigation, statements of several persons were recorded under the provisions of PMLA. The gist of the statements relevant to this investigation is as under: -

8.1 Veerendra Kumar Ram (Accused No. 1):

Veerendra Kumar Ram (Accused No. 1) is a chief engineer in Rural Department Special Zone and also in an additional charge of Rural Works Department. In his statement recorded u/s 50 of PMLA during custodial interrogation and in judicial custody on different dates wherein he interalia accepted that commission was taken in lieu of allotment of tenders and that the total commission was 3.2% of tender value and that his share of commission was 0.3% of the total tender amount which varies from 0.3% to 1%. He admitted that he acquired two immovable properties in Delhi in the name of his wife Rajkumari and one immovable property in Delhi in the name of his father Genda Ram out of the commission amount against allotment of tenders. He and his family were also found in the possession of jewellery worth Rs. 1,51,60,982/-, expenses incurred on overseas education of his children were Rs. 1.25 crores and cash of Rs. 19,45,100/- which were also acquired from the commission amount. He was also found in the possession of three vehicles in the name of contractors/companies which were under the use of Veerendra Kumar Ram and his family about which he could not explain satisfactorily. He along with his family were having lavish lifestyle and he accepted that all the expenses have been incurred by him through commission amount received by him against allotment of tenders. Further, in his statement he accepted that the cash deposits in his bank accounts and in the bank accounts of his family members, 3 immovable properties in Delhi, 4 luxury cars, jewellery, cash seized from him and his family members during the course of search of 21.02.2023 are out *of the commission received by him against allotment of tenders.*

8.2 Genda Ram (Accused No. 4): *Genda Ram is father of Veerendra Kumar Ram who is a retired school teacher and is aged about more than 82 years. Statement of Genda Ram was recorded u/s 17 of PMLA on 21.02.2023 wherein he stated that his son could explain the transactions executed in his Canara Bank account and he was unaware of any properties purchased in his name. However, his signatures were found on all the cheques that were used to purchase the property located at E-8, SatbariAnsal, New Delhi.*

8.3 Ayush Rapson*: Ayush Rapson is son of Veerendra Kumar Ram and his statement was recorded u/s 50 on 31.03.2023 and 01.04.2023 wherein he stated that Rs. 56.21 lakhs cash deposit in his bank account 017101527226 since last 5 financial years was made by his father. He also has one Audi and one Fortuner in his name but he could not explain the source of such income. He has also stated that his father Veerendra Kumar Ram has arranged payment of a sum of Rs. 13,51,958/- for him.*

8.4 Mukesh Mittal*: Mukesh Mittal is a Delhi based Chartered Accountant of Veerendra Kumar Ram who managed to provide the fake business entries in the bank account of Genda Ram. His statement was recorded u/s 17 on 21.02.2023 and u/s 50 on 29.03.2023 and 30.03.2023 wherein he stated that Veerendra Kumar Ram approached him around 6 months ago to route his ancestral money which was actually the commission money of about Rs. 5 crores to the account of his father Genda Ram to purchase a farm house in Delhi. Later, Mukesh Mittal later arranged the routing of the said Rs. 5 crores into the bank account of Genda Ram.*

11. Role of Accused in offence of money laundering under Section 3 of PMLA, 2002

11.1 Accused No. 1-Veerendra Kumar Ram

A) Shri Veerendra Kumar Ram is a Government Employee posted as Chief Engineer in Rural development Special

Zone and Rural Works Department, both under Govt. of Jharkhand.

b) He acquired huge movable and immovable assets by misusing his official position. He used to take commission for every tender work allotted thereby directly involved in generation of proceeds of crime.

c) He acquired the ill-gotten funds or the proceeds of crime and arranged routing to the bank accounts of his family members and further used those funds in acquiring immovable and movable properties in their name thus projecting untainted money as tainted.

d) Veerendra Kumar Ram and his family is also found to be living a luxurious lifestyle which is not possible with the salary income of Veerendra Kumar Ram who was the only the earning member of his family. Although, his father gets pension that is in no way can support even part of the lavish lifestyle their family was having. Therefore, he was directly involved in the use, possession and the acquisition of proceeds of crime generated by the commission.

e) During investigation, the claim of Veerendra Kumar Ram as his fixed commission percentage of 0.3% was found misleading and alter in his own statement he admitted that his commission varied from 0.3% to 1% of tender value. A contractor named Mahendra Gope stated that he usually had a percentage of 10%, a contractor Rajesh Kumar stated that he had paid him commission not below 3% of the tender amount and further one contractor stated that he had to pay commission of 14% to Veerendra Kumar Ram. Apart from the commission, Veerendra Kumar Ram and his wife Rajkumari also availed various facilities and vehicles from the contractors which was further proved from the three vehicles frozen registered in the name of contractors/companies. Various contractors have stated that they frequently receive calls from the Rajkumari and Veerendra Kumar Ram to provide vehicles and other facilities to her.

f) The claim of Veerendra Kumar Ram with regard to securing loan from contractors named Rajesh Kumar

Megotia, MahendraGope and Ajeet Singh was also found misleading as two of these contractors have simply denied of giving loans to him and even one contractor Mahendra Gope stated that he used to safekeep the commission money on the instructions of Veerendra Kumar Ram.

g) Therefore, Accused No. 1 i.e. Veerendra Kumar Ram has directly indulged in the process of acquisition, possession, use and concealment to the tune of at least Rs 48,94,10,877/- by receiving the said Rs 48,94,10,877 crores from the Commission/ bribe amount by misusing his post while working and posted in different capacity at Rural Development (Special Zone) and Rural Works Department, Government of Jharkhand. He was also found to be directly indulged in projecting the Delhi based immovable properties (mentioned at Sr no 1 of table of para 9) to the tune of Rs.38.8 crores and his 3 vehicles (mentioned at Sr no 2 of table of para 9) in the name of his wife Rajkumari and son Ayush Rapson to the tune of Rs1.27 crores approx., as untainted property by routing the same from Delhi based accounts. Further he also projected cash deposits in the bank accounts of his family members as untainted by filing ITRs and showing income from cash sales of vegetables etc. which found to be just a tool to project his tainted money as untainted.

h) Hence, Veerendra Kumar Ram had directly indulged, knowingly is as party and 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 u/s 3 of PMLA, 2002. Therefore, Veerendra Kumar Ram is guilty of the offence of money laundering u/s 3 of PMLA, 2002 and punishable under section 4 of PMLA.

11.3 Accused No. 3- Rajkumari (wife of Veerendra Kumar Ram)

On perusal bank account statements of Rajkumari bearing account number 2577101052100, it is seen that there is credit of Rs 9.90,000 from M/s RP Investment and Consultancy and Re 4,00,000 from Manoj Kumar Singh.

Further, it is also seen from the statement of bank account no 2577257010412 in her name that there are credits of Rs 5,70,49,910.00 from M/s RK Investment and consultancy and Rs 3,59,72,230.00 from M/s RP Investment and Consultancy, Veerendra Kumar Ram has admitted in his statement that these credits are out of the entries received in the sand accounts against cash, the source of which was the commission received by Veerendra Kumar Ram. Out of this sum credit of Rs.9.3 crores approx. in her bank a/c (2577257010412) Rajkumari purchased immovable properties at Saket, New Delhi and another one in Defence Colony, New Delhi in her name to the tune of Rs 1.72 Crores (additional cash of Rs.3.2 crores and Rs. 5 crores (additional cash of Rs.6.3 crores respectively which was actually the proceeds of crime generated by Veerendra Kumar Ram which subsequently were routed to her bank account and further paid through the banking channel to the respective first part thereby projecting the untainted money as tainted. She also used to live a lavish lifestyle which also got confirmed from the statements of various contractors. It was also established that Rs. 3.28 crores and Rs. 6.3 crores were directly given in cash for the afore stated properties

(b) Hence, Rajkumari has directly indulged in the process of possession, concealment, & use of proceeds of crime to the tune of at least Rs 19.02 crores and also knowingly assisted Veerendra Kumar Ram in projecting the same as untainted. Hence, the accused person Rajkumari has committed the offence of Money Laundering as defined under section 3 of PMLA and is, therefore, liable to be punished under section 4 of PMLA, 2002.

11.4 ***Accused No. 4 - Genda Ram***

a) Genda Eam is father of Veerendra Kumar Ram and is a retired school teacher who receives pension to the tune of less than Rs. 25,000/- per month. He knowingly assisted his son to purchase immovable properties at Chhatarpur, New Delhi in his own name Le. Genda Ram to the tune of Rs 22.5 Crore (Rs 4 crore from bank channel and Rs.18.5 *crores cash from the commission/bribe amount, which was acquired by his son Veerendra Kumar Ram (accused number 1). He used to sign the blank cheques which subsequently reached Mukesh Mittal through Alok Ranjan (Accused No. 4) which were later used in crediting the funds into the bank accounts of Preeti Singh thereby knowingly assisting in the process or activity connected with the proceeds of crime. Further, he had only used around Rs. 4.5 crores through banking channel and rest were paid directly in cash to the first party thereby is directly a party in concealment of proceeds of crime.*

b) *From the bank account statements of Gerda Ram maintained with Canara Bank as explained above, it is seen that there are credits to the tune of Rs 4.525 crores and Veerendra Kumur Ram has admitted in his statement that the same are out of the commission received by him.*

c) *Hence, Genda Ram has directly indulged in the process or activities of possess, concealment, & use of proceeds of crime to the tune of at least Rs 22.5 crores. Hence, the accused person Genda Ram has committed the offence of Muney Laundering as defined under section 3 of PMLA and is, therefore, liable to be punished under section 4 of PMLA, 2002.*

46. It is evident from the prosecution complaint that the petitioner namely, Rajkumari, is the wife of prime accused Veerendra Kumar Ram and on perusal bank account statements of the petitioner it is seen that there are huge credits in her bank accounts from M/s RP Investment and Consultancy, Manoj Kumar Singh and M/s RK Investment & Consultancy. The co-accused Veerendra Kumar Ram has admitted in his statement that these credits are out of the entries received in the said accounts against cash, the source of which was the commission received by Veerendra Kumar Ram. The petitioner has purchased immovable properties at Saket and Defence Colony, New Delhi, in her name and the purchase consideration is paid from the proceeds of crime generated by the co-accused Veerendra Kumar Ram. The petitioner knowingly tried to directly conceal the proceeds of crime acquired by her husband and claimed it to be untainted in the guise of taking entries in her bank accounts from the companies providing entries by charging commission.

47. Thus, it *prima-facie* appears that the petitioner knowingly assisted to her husband who is co-accused to purchase immovable properties at New Delhi in her name and the purchase consideration was paid from the proceeds of crime generated by her husband Veerendra Kumar Ram. The petitioner knowingly tried to directly conceal the proceeds of crime acquired by her husband and claimed it to be untainted in the guise of taking entries in her bank accounts from the companies providing entries by charging commission. The materials on record reflects that bank account statements of the petitioner, there are huge credits from M/s RP Investment and Consultancy, Manoj Kumar Singh and M/s RK Investment & Consultancy. The co-accused Veerendra Kumar Ram has admitted in his statement under section 50 of PML Act 2002 that these credits are out of the entries received in the said accounts against cash, the source of which was the commission received to him. There are materials against the present petitioner regarding her specific role in the offence which is mentioned at Para-11.3 of the prosecution complaint that she committed the offence of money laundering with respect to the proceeds of crime.

48. The petitioner namely Genda Ram is the father of prime accused Veerendra Kumar Ram and he knowingly assisted his son to purchase immovable properties at Chhatarpur, New Delhi in his own name i.e. Genda Ram, to the tune of Rs 22.5 Crore from the commission/bribe amount, which was acquired by his son Veerendra Kumar Ram (A-1). Further, the bank account statements of the petitioner it is seen that there are huge credits in his bank accounts to the tune of Rs 4.525 crores and the co-accused Veerendra Kumar Ram has admitted in his statement that these credits are out of the entries received in the said accounts against cash, the source of which was the commission received by Veerendra Kumar Ram. It is submitted that the petitioner knowingly tried to directly conceal the proceeds of crime acquired by his son and claimed it to be untainted in the guise of taking entries from the companies providing entries by charging commission.

49. Thus, *prima-facie*, it appears that the petitioner knowingly assisted his son who is co-accused to purchase immovable properties at New Delhi in his own name to the tune of Rs 22.5 Crore from the commission/bribe amount, which was acquired by his son Veerendra Kumar Ram. Further, the bank account statements of the petitioner reflect huge credits to the tune of Rs 4.525 crores. There are materials against the petitioner regarding his specific role in the offence which is mentioned in Para-11.4 of the prosecution complaint that he committed the offence of money laundering with respect to the proceeds of crime.

50. It is pertinent to mention here that this Court is dealing herein with the petition of pre-arrest bail which is to be granted in exercise of power conferred under Section 438 of Cr.P.C. The law is well settled so far as the consideration of the prayer of the pre-arrest bail is concerned, what is the requirement to be looked into for the purpose of granting the said benefit.

51. It has been settled by Hon'ble Apex Court time and again in its various pronouncements that the powers under Section 438 Cr.P.C., is of extra-ordinary character and must be exercised sparingly in exceptional cases only and therefore, the anticipatory bail can be granted only in exceptional circumstances where the court is *prima facie* of the view that the applicant has falsely been implicated in the crime, as grant of anticipatory bail to some extent, is interference in the sphere of investigation of an offence and hence, the court must be cautious while exercising such powers.

52. It is also settled connotation of law that the grant or refusal of the application should necessarily depend on the facts and circumstance of each case and there is no hard and fast rule and no inflexible principles governing such exercise by the Court.

53. It is pertinent to mention here that the law on grant of anticipatory bail has been summed up by the Hon'ble Apex Court in ***Siddharam Satlinappa Mhetre vs. state of Maharashtra & Ors. reported in (2011)1 SCC 694*** after due deliberation on the parameters as evolved by the Constitution Bench in ***Gurubaksh Singh Sibbia vs. State of Punjab reported in (1980) 2 SCC 565***. The relevant paragraphs of the said judgment as rendered by the Hon'ble Apex Court is being quoted hereunder:-

> "**111.** No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail. We are clearly of the view that no attempt should be made to provide rigid and inflexible guidelines in this respect because all circumstances and situations of future cannot be clearly visualised for the grant or refusal of anticipatory bail. In consonance with the legislative intention the grant or refusal of anticipatory bail should necessarily depend on the facts and circumstances of each case. As aptly observed in the Constitution Bench

decision in Sibbia case [(1980) 2 SCC 565 : 1980 SCC (Cri) 465] that the High Court or the Court of Session has to exercise their jurisdiction under Section 438 CrPC by a wise and careful use of their discretion which by their long training and experience they are ideally suited to do. In any event, this is the legislative mandate which we are bound to respect and honour.

112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

(i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(iii) The possibility of the applicant to flee from justice;

(iv) The possibility of the accused's likelihood to repeat similar or other offences;

(v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because overimplication in the cases is a matter of common knowledge and concern;

(viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

114. These are some of the factors which should be taken into consideration while deciding the anticipatory bail applications. These factors are by no means exhaustive but they are only illustrative in nature because it is difficult to clearly visualise all situations and circumstances in which a person may pray for anticipatory bail. If a wise discretion is exercised by the Judge concerned, after consideration of the entire material on record then most of the grievances in favour of grant of or refusal of bail will be taken care of. The legislature in its wisdom has entrusted the power to exercise this jurisdiction only to the Judges of the superior courts. In consonance with the legislative intention we should accept the fact that the discretion would be properly exercised. In any event, the option of approaching the superior court against the Court of Session or the High Court is always available."

54. In ***Sushila Aggarwal v. State (NCT of Delhi) reported in (2020) 5 SCC 1*** the Constitution Bench of the Hon'ble Apex Court has reiterated that while deciding applications for anticipatory bail, Courts should be guided by factors like the nature and gravity of the offences and the role attributed to the applicant and the facts of the case.

55. The Hon'ble Supreme Court, in catena of decisions, has categorically held that the judicial discretion of the Court while considering the anticipatory bail shall be guided by various relevant factors and largely it will depend upon the facts and circumstances of each case. Reference in this regard may be taken from the judgment rendered by the Hon'ble Apex Court in the case of ***Central Bureau of Investigation Vs Santosh Krnani and Another reported in 2023 SCC OnLine SC 427.*** For ready reference the relevant paragraph of the aforesaid judgment is being quoted herein under:

> "**24.** The time-tested principles are that no straitjacket formula can be applied for grant or refusal of anticipatory bail. The judicial discretion of the Court shall be guided by various relevant factors and largely it will depend upon the facts and circumstances of each case. The Court must draw a delicate balance between liberty of an individual as guaranteed under Article 21 of the Constitution and the need for a fair and free investigation, which must be taken to its logical conclusion. Arrest has devastating and irreversible social stigma, humiliation, insult, mental pain and other fearful consequences. Regardless thereto, when the Court, on consideration of material information gathered by the Investigating Agency, is prima facie satisfied that there is something more than a mere needle of suspicion against the accused, it cannot jeopardise the investigation, more so when the allegations are grave in nature."

56. Further, it is evident by taking into consideration the provision of Section 19(1), 45(1), 45(2), the conditions which is required to be considered while granting the benefit of bail in exercise of power conferred under Section 438 or 439 of Cr.P.C., apart from the twin conditions which has been provided under Section 45(1) of the Act, 2002, the conditions or the requirement which has been followed while granting the bail under Section 439 or 438, as the case may be, is required to be considered.

57. The Larger Bench of the Hon'ble Apex Court in ***Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors.***(supra) has taken into consideration while dealing with the issue of anticipatory bail by taking aid of the judgement rendered by the Hon'ble Apex Court in ***P. Chidambaram vs. Directorate of Enforcement, (2019) 9 SCC 24*** wherein it has been observed at paragraph-409 which reads as under:

> "**409.** In P. Chidambaram, this Court observed that the power of anticipatory bail should be sparingly exercised in economic offences and held thus:
>
> "**77**. After referring to Siddharam Satlingappa Mhetre and other judgments and observing that anticipatory bail can be granted only in exceptional circumstances, in Jai Prakash Singh v. State of Bihar, the Supreme Court held as under : (SCC p.386, para 19)
>
> "19. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons

therefor. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroped in the crime and would not misuse his liberty. (See D.K. Ganesh Babu v. P.T. Manokaran, State of Maharashtra v. Mohd. Sajid Husain Mohd. S. Husain and Union of India v. Padam Narain Aggarwal)

Economic Offences

78. Power under Section 438 CrPC being an extraordinary remedy, has to be exercised sparingly; more so, in cases of economic offences. Economic offences stand as a different class as they affect the economic fabric of the society. In Directorate of Enforcement v. Ashok Kumar Jain, it was held that in economic offences, the accused is not entitled to anticipatory bail.

83. **Grant of anticipatory bail at the stage of investigation may frustrate the investigating agency in interrogating the accused and in collecting the useful information and also the materials which might have been concealed. Success in such interrogation would elude if the accused knows that he is protected by the order of the court. Grant of anticipatory bail, particularly in economic offences would definitely hamper the effective investigation**. Having regard to the materials said to have been collected by the respondent Enforcement Directorate and considering the stage of the investigation, we are of the view that it is not a fit case to grant anticipatory bail.

84. **In a case of money-laundering where it involves many stages of "placement", "layering i.e. funds moved to other institutions to conceal origin" and "interrogation i.e. funds used to acquire various assets", it requires systematic and analysed investigation which would be of great advantage. As held in Anil Sharma, success in such interrogation would elude if the accused knows that he is protected by a pre-arrest bail order. Section 438 CrPC is to be**

> **invoked only in exceptional cases where the case alleged is frivolous or groundless**. In the case in hand, there are allegations of laundering the proceeds of the crime. The Enforcement Directorate claims to have certain specific inputs from various sources, including overseas banks. Letter rogatory is also said to have been issued and some response have been received by the Department. Having regard to the nature of allegations and the stage of the investigation, in our view, the investigating agency has to be given sufficient freedom in the process of investigation. Though we do not endorse the approach of the learned Single Judge in extracting the note produced by the Enforcement Directorate, we do not find any ground warranting interference with the impugned order. Considering the facts and circumstances of the case, in our view, grant of anticipatory bail to the appellant will hamper the investigation and this is not a fit case for exercise of discretion to grant anticipatory bail to the appellant." (emphasis supplied)

58. It is evident from the reference so made in the case of ***P. Chidambaram vs. Directorate of Enforcement*** (supra) which has been taken note by the Hon'ble Apex Court in ***Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors.*** (supra) taking the principle to be applied for consideration of pre-arrest bail under Section 438 of Cr.P.C. in the matter of economic offence has also been dealt with at paragraph-84 of the aforesaid judgment. The specific condition has been made in the case of money laundering where it involves many stages of "placement", "layering i.e. funds moved to other institutions to conceal origin" and "interrogation i.e. funds used to acquire various assets", it requires systematic and analysed investigation which would be of great advantage.

59. The Hon'ble Apex Court by making reference of the judgment rendered by the Hon'ble Apex Court in ***State rep. by the CBI vs. Anil Sharma, (1997) 7 SCC 187***, has been pleased to hold that success in such interrogation would elude if the accused knows that he is protected by a pre-arrest bail order. Section 438 CrPC is to be invoked only in exceptional cases where the case alleged is frivolous or groundless.

60. Now coming to the facts of instant case, this Court, based upon the imputations as referred in preceding paragraphs which has been discovered in course of investigation, is of *prima-facie* view that what has been argued on behalf of the learned counsel for the petitioner that proceeds cannot be said to be proceeds of crime but as would appear from the imputations , money which has been obtained by the accused person Veerendra Kumar Ram has been obtained in the form of the commission and same was utilized and concealed by the petitioners despite knowing that it is the proceeds of crime.

61. The foremost argument as made by the learned counsel for the petitioners that according to the proviso to section 45(1) PMLA, the twin conditions of section 45 PMLA are not applicable to the petitioners as one of the petitioners namely Rajkumari is a woman and another petitioner namely Genda Ram is the sick person.

62. In the aforesaid context it will be profitable to discuss the first proviso to Section 45 of the PMLA, which reads as under:—

> **"45. Offences to be cognizable and non-bailable. -** (1) ....
>
> 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:"

63. From bare perusal of the aforesaid proviso, it is evident that the use of the expression *"may be"* in the first proviso to Section 45 clearly indicates that the benefit of the said proviso to the category of persons mentioned therein may be extended at the discretion of the Court after considering the facts and circumstances of each case, and could not be construed as a mandatory or obligatory on the part of the Court to release them. There is no doubt that the courts should be more sensitive and sympathetic towards the category of persons included in the first proviso to Section 45 and similar provisions in the other Acts but the extent of involvement of the persons falling in such category in the alleged offences, the nature of evidence collected by the investigating agency etc., would be material considerations.

64. It is pertinent to mention here that the similar provision for granting bail to the category of persons below the age of sixteen years, women, sick or infirm has been stipulated in Section 437 of Criminal Procedure Code and many other special enactments also, but if such provision be construed as an obligatory or mandatory in nature, then all serious offences under such special Acts would be committed involving women and persons of tender age below 16 years.

65. Recently, a Three-Judge Bench of the Hon'ble Apex court in the case of **Enforcement Directorate v. Preeti Chandra** has observed in the order dated 04.08.2023 in **SLP (Crl.) No. 7409 of 2023** 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 Criminal Procedure Code, 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. (See Prahlad Singh Bhati v. NCT, Delhi (2001) 4 SCC 280)."*

66. Further, the Hon'ble Apex Court in the case of ***Saumya Chaurasia v. Director of Enforcement, 2023 SCC OnLine 1674*** has categorically held that first proviso to Section 45 clearly indicates that the benefit of the said proviso to the category of persons mentioned therein may be extended at the discretion of the Court considering the facts and circumstances of each case, and could not be construed as a mandatory or obligatory on the part of the Court to release them. For ready reference the relevant paragraph of aforesaid judgment is quoted as under:

> "24. The use of the expression "may be" in the first proviso to Section 45 clearly indicates that the benefit of the said proviso to the category of persons mentioned therein may be extended at the discretion of the Court considering the facts and circumstances of each case, and could not be construed as a mandatory or obligatory on the part of the Court to release them. Similar benevolent provision for granting bail to the category of persons below the age of sixteen years, women, sick or infirm has been made in Section 437 Cr. P.C. and many other special enactments also, however by no stretch of imagination could such provision be construed as obligatory or mandatory in nature, otherwise all serious offences under such special Acts would be committed involving women and persons of tender age below 16 years. No doubt the courts need to be more sensitive and sympathetic towards the category of persons included in the first proviso to Section 45 and similar provisions in the other Acts, as the persons of tender age and women who are likely to be more vulnerable, may sometimes be misused by the unscrupulous elements and made scapegoats for committing such Crimes, nonetheless, the courts also should not be oblivious to the fact that nowadays the educated and well placed women in the society engage themselves in the commercial ventures and enterprises, and advertently or inadvertently engage themselves in the illegal activities. In essence, the courts should exercise the discretion judiciously using their prudence, while granting the benefit of the first proviso to Section 45 PMLA to the category of persons mentioned therein. The extent of involvement of the persons falling in such category in the alleged offences, the nature of

evidence collected by the investigating agency etc., would be material considerations.

67. In the instant case as discussed hereinabove, there is sufficient evidence collected by the respondent Enforcement Directorate to *prima facie* come to the conclusion that the petitioners were actively involved in the offence of Money Laundering as defined in Section 3 of the PMLA. As against that there is nothing on record to satisfy the conscience of the Court that the petitioners are not guilty of the said offence and the special benefit as contemplated in the proviso to Section 45 should be granted to the petitioners who are the lady and sick person respectively.

68. Thus, on the basis of aforesaid discussion the Court does not find any substance in the submission of the learned counsel for the petitioners.

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

70. Accordingly, based upon the aforesaid discussion, this Court is of the view that the instant applications are fit to be dismissed and as such, stand dismissed.

71. Consequently, pending interlocutory application(s), if any, also stand(s) disposed of.

72. However, it is made clear that the aforesaid findings are restricted only for the purpose of grant of anticipatory bail to the appellants and the trial court shall not be influenced by these observations during trial.

(Sujit Narayan Prasad, J.)

Birendra/**A.F.R.**