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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: December 13, 2023

Decided on: January 11, 2024

+ **BAIL APPLN. 2073/2023**

AMIT AGGARWAL

..... Petitioner

**Through: Mr. Priyadarshi Manish,
Ms. Anjali Jha Manish,
Ms. Saksham Garg and
Mr. Anmol Arya, Advocates.**

V

DIRECTORATE OF ENFORCEMENT Respondent

**Through: Mr. Ravi Prakash, CGSC
with Mr. Aman Rewaria,
Mr. Yasharth Shukla,
Mr. Ayushman, Mr. Astu
Khandelwal and Mr. Ali
Khan, Advocates along with
Mr. Deepanshu Trivedi,
Investigating Officer.**

CORAM

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

J U D G M E N T

1. The present bail application is filed under section 438 of The Code of Criminal Procedure, 1973 (hereinafter referred to as “**the Code**”) on behalf of the petitioner Amit Aggarwal for grant of



anticipatory bail in ECIR/DLZO-II/24/2022 registered under sections 3 and 4 of The Prevention of Money Laundering Act, 2002 (hereinafter referred to as “**PMLA**”).

2. The factual background of the case is that FIR bearing no. 0045/2022 was got registered under sections 420/467/468/471/120B of The Indian Penal Code, 1860 (hereinafter referred to as “**IPC**”) at Economic Offences Wing (EOW) on the basis of complaint dated 03.12.2021 made by Vikash Mohpal s/o Late Prakash Mohpal (hereinafter referred to as “**the complaint**”) in respect of cheating, fraud, forgery stated to be committed by M/s Kinzal Freight Forwarding (OPC) Private Limited, M/s Shree Shyam International, M/s Wentorz Logistics Private Limited, M/s Balaji International, M/s Mizta Tradex Private Limited, Ravi Mehra and other unknown parties.

2.1 The complainant stated that he is a practicing Chartered Accountant and engaged in the profession through partnership firm under the name and style of M/s Mohpal & Associates and his CA membership number is 505939. The complainant on 03.08.2020 received an email from ICICI Bank, Nehru Place Branch informing



that CA firm M/s Mohpal & Associates has issued 15CB certificates to M/s Shree Shyam International. ICICI Bank also requested for due diligence with regard to the said 15CB certificates. The complainant informed ICICI Bank that he never issued 15 CB certificate to M/s Shree Shyam International. The certificate on Form 15CB issued by a Chartered Accountant in terms of Rule 37BB of the Income Tax Rules is required to be submitted to the bank at the time of effecting a foreign remittance by the parties making foreign remittance. The complainant was also summoned by ED, Zonal Office-II, Delhi on 16.09.2021 and was informed by Sanjeet Kumar Sahu, Assistant Director that 15CA/CB certificates issued by using credentials of the complainant have been used and submitted to banks by M/s Kinzal Freight Forwarding (OPC) Private Limited, M/s Balaji International, M/s Shree Shyam International, and M/s Wentorz Logistics Private Limited, etc. for effecting outward remittances of approximate Rs.300 crores towards freight payment from the respective bank accounts maintained with ICICI Bank. The complainant, after examination of the documents shown to him by the ED officials realized that those certificates have been forged with



mala fide intention to remit the funds abroad by using forged and fabricated documents and by making wrong declaration regarding the purpose of remittance. The complainant also noticed various discrepancies in the Form 15CA/CB as detailed in FIR to show that those documents were fabricated.

2.2 The complainant on examination found that details used by the subject companies for using forged Form 15CB, have been obtained from the certificates issued by him on 11.03.2019 to M/s Wentorz Logistics Private Limited using UDIN no. 19505939AAAAA18327 and the said certificate has been illegally edited again and again for several foreign remittances. The certificate also indicated that for the purpose of criminal conspiracy, cheating and forgery, several entities were being run by common set of persons. The complainant also stated that he was in contact with Ravi Mehra (Mobile No. 9625978806 and 9354279653) of M/s Wentorz Logistics Private Limited and was having email ID wentorzlogistics@gmail.com and said Ravi Mehra used to coordinate with the complainant for the certificates for outward remittances. The complainant tried to contact Ravi Mehra but he was neither reachable over mobile, nor available



at the address of M/s Wentorz Logistics Private Limited. The complainant also stated that 07 certificates on Form 15CB issued to M/s Wentorz Logistics Private Limited on the basis of documents presented to him were submitted with DBS Bank Ltd., Connaught Place Branch, New Delhi and further remittances may be made in the same fraudulent manner. UDIN number has to be checked and verified by the bank officials before approving the foreign payments and the same can be verified from the UDIN portal which has not been done by ICICI Branch. The foreign remittances have been effected fraudulently with connivance of officials of ICICI Bank during the relevant time. M/s Kinzal Freight Forwarding (OPC) Private Limited, M/s Shree Shyam International, M/s Wentorz Logistics Private Limited, Ravi Mehra, M/s Balaji International, M/s Mizta Tradex Private Limited, the officials of ICICI Bank and other banks and unknown persons and parties have remitted crores of rupees by using his name in edited Form 15CB and also forged the Form 15CA with *mala fide* intentions to remit the funds abroad which otherwise could not have been possible.



2.3 The respondent/ED on the basis of information/documents submitted by the complainant found that a *prima facie* case for an offence of money laundering as per section 3 of PMLA punishable under section 4 of PMLA has been made out. Accordingly, ECIR bearing no. DLZO-II/24/2022 dated 28.03.2022 was got recorded and investigation under the provisions of PMLA was initiated.

3. The respondent/ED during investigation after examination of documents of ICICI Bank, accounts of the entities i.e. M/s Mizta Tradex Private Limited, M/s Kinzal Freight Forwarding (OPC) Private Limited, M/s Shree Shyam International, M/s Wentorz Logistics Private Limited and M/s Balaji International which are named in FIR noticed that CA's certificate on Form 15CB (as required under Rule 37BB of the Income Tax Rules) issued by the complainant had been submitted as documentation. The complainant during inquiry disclosed that he had issued only around 07 certificates on Form 15CB to M/s Wentorz Logistics Private Limited. The complainant in the complaint made to EOW stated that details used by the subject companies for issuing forged Form 15 CB have been obtained from the certificate issued by him on 11.03.2019 to



M/s Wentorz Logistics Private Limited using UDIN no. 19505939AAAAA18327. It was also revealed that above mentioned 05 entities are connected with one another and are being run by the same set of persons.

3.1 The investigation further revealed that the entities as named in FIR bearing no. 0045/2022 i.e. M/s Mizta Tradex Private Limited, M/s Kinzal Freight Forwarding (OPC) Private Limited, M/s Shree Shyam International, M/s Wentorz Logistics Private Limited and M/s Balaji International have fraudulently effected heavy remittances of more than Rs.464 Crores in equivalent foreign exchange (US Dollars) to entities based in Singapore and Hong Kong after arranging funds into the bank accounts in India via RTGS/NEFT without any other corresponding business activity. The Directors/Proprietor/Partners in the bank accounts of the above said entities used for fraudulent outward forex remittances were not traceable at their addresses given in KYC documents to the banks and it was suspected that the KYC/identity documents used were forged and the names of the Director(s)/Proprietor(s) were pseudonymous.



3.2 It was noticed during the investigation that 07 entities apart from 05 entities named in police FIR were also found to be connected in similar transactions in similar manner where RTGS/Funds were arranged and foreign remittances were fraudulently effected to common entities in Singapore and Hong Kong. It was further revealed that during the period between 25.07.2019 to 16.07.2021, foreign exchange worth USD 93,575,185.53 (equivalent to Rs.696,69,27,962.27/-) has been fraudulently remitted by the Indian entities to 16 companies/entities of Hong Kong and Singapore. It was also revealed that bogus shell entities were operated for short time periods by employing bogus Director(s)/Proprietor(s) mostly on forged IDs in cases where the quantum of amounts involved was large. The photographs in KYC documents were found to be original but the identity documents were found to be forged. There was layering between the operators of Indian entities and the operators who arranged and made the funds available abroad. The funds were introduced by way of RTGS/NEFT/other modes into the bank accounts of shell/bogus entities and thereafter, they were transferred abroad to various entities. During the investigation, 16 companies in



Hong Kong and Singapore were identified where foreign exchange worth USD 93,575,185.53 (equivalent to Rs.696,69,27,962.27/-) has been fraudulently remitted by the shell/bogus Indian entities.

3.3 The persons operating the Indian entities were pseudonyms/not traceable, as such efforts were made to seek data from regulatory sites in Hong Kong and Singapore. The data available on internet site of the ‘Centre of the Integrated Companies Registry Information System’ (ICRIS), Hong Kong and ‘The Accounting and Corporate Regulatory Authority’ (ACRA), Singapore revealed that one Navin Kejriwal, an Indian national with address at Delhi was the Director of KK Overseas Limited, Hong Kong and Speedtec Global Services Pte Ltd. Singapore.

3.4 Navin Kejriwal was found to be associated with one Manpreet Singh Talwar and searches as per section 17(1) of PMLA were conducted on 21-22.09.2022 at their residential/business premises and recoveries were made. Navin Kejriwal evaded investigation and non bailable warrants were ordered to be issued against him on 14.02.2023. The respondent/ED also recovered data from the mobile phone of Manpreet Singh Talwar which was consisting of



incriminating material regarding one 'Infiniti Futures Pte Ltd.', Singapore including the bank account details, User ID, etc. The fraudulently remitted foreign exchange from India was being received in bank account of 'Infiniti Futures Pte Ltd.' which included remittances from ICICI Bank account of M/s Wentorz Logistics Private Limited and a total of USD 7,68,470.80 (Rs.5,46,69,093.92/-) was fraudulently remitted in 06 tranches during October 2019. The investigation also revealed that from 18 Indian entities maintaining bank accounts in ICICI Bank, USD 12,578,993.08 (equivalent to INR 104,05,97,228.54/-) was remitted into the bank account of Infiniti Futures Pte Ltd., Singapore. Data of one 'KK Overseas Limited', Hong Kong was also recovered and USD 31,669,688 (equivalent to INR 233,46,35,282.60/-) were fraudulently remitted from India during the period between 12.03.2020 and 24.08.2020 from 07 bank accounts maintained in the bogus/shell entities.

3.5 A pseudonymous person 'Rashmi Dwivedi' was found to be Director in M/s Mizta Tradex Private Limited and M/s Truzel Tradex Private Limited which were managing funds in its bank accounts *via* RTGS/NEFT, etc. and then fraudulently making outward foreign



remittances to Hong Kong and Singapore. M/s Mizta Tradex Private Limited and M/s Truzel Tradex Private Limited were maintaining accounts in ICICI Bank. It was revealed that ‘Rashmi Dwivedi’ was actually ‘Chitra Pandey’ who could be traced by the officers of the respondent/ED. The respondent/ED searched the residence of Chitra Pandey @ Rashmi Dwivedi on 25-26.11.2022 as per section 17(1) of PMLA and incriminating recoveries were made.

3.6 Chitra Pandey @ Rashmi Dwivedi during investigation, disclosed/deposed about the role of Amit Aggarwal (hereafter referred to as the “**petitioner**”) in the commission of offences and stated that the petitioner used to meet people by the nickname ‘Ravi Mehra’ and had incorporated bogus/shell companies for effecting fraudulent remittances. Chitra Pandey @ Rashmi Dwivedi also admitted about forged IDs i.e. Voter ID Card, PAN Card, Aadhaar Card of the staff working under the petitioner and his associate Rahul Kumar whereon the real pictures were used with fake names. The employees were made Directors of the bogus/shell entities used for foreign outward remittances. The petitioner and Rahul Kumar incorporated and operated the companies by using forged IDs for



illegal transfer of forex to Hong Kong and Singapore. Chitra Pandey @ Rashmi Dwivedi also disclosed that one Gaurav Sharma was working as an Accountant who used to book the rate for forex transfer and also upload the documents related to export over internet banking on instructions of the petitioner and Rahul Kumar.

3.7 The statement of Gaurav Sharma was also recorded under section 50 of the PMLA wherein he disclosed that he joined the petitioner as accountant and was made Director in the name of Sarmod Kumar in M/s Wentorz Logistics Pvt. Ltd. by using forged KYC documents by Rahul Kumar and the petitioner for a commission of 5 paise per dollar. M/s Wentorz Logistics Pvt. Ltd. was being used for illegal forex transfer and forged documents i.e. Airway Bill, Invoice, A2 Form, Form 15CA and Form 15CB were prepared by the petitioner and on instructions of the petitioner, he used to upload the documents for effecting outward remittances.

3.8 The statement of Rahul Kumar was also recorded under section 17(1) and section 50(2) and (3) of PMLA wherein he stated that he and the petitioner purchased two companies, namely, M/s Truzel Tradex Private Limited and M/s Mizta Tradex Private



Limited from Chetan who was a Company Secretary wherein Chitra Pandey, Varun Rana and Mohammed Raza were the directors with names of Rashmi Dwivedi, Manab Chaudhary and Rahil. The fake IDs were created to camouflage the real identities of the Directors. He along with the petitioner used to pay a commission of 20 paise per dollar for arranging fake KYC documents and also used to arrange RTGS entries through various Hawala entry operators based at Karol Bagh and Ghaziabad.

3.9 The documents/evidence collected during the search, investigation and information received from the banks clearly indicates active indulgence of the petitioner in effecting fraudulent outward foreign remittance using bogus/shell companies. The respondent/ED issued various summons under section 50(2) and (3) of PMLA to the petitioner to join investigation but the petitioner evaded the summons and did not join the investigation. The petitioner along with his associates was found to be instrumental in the commission of offence of forgery, fraud and thereby offence of money laundering was committed and was liable to be examined. The petitioner was summoned to appear on 03.01.2023 and his short



statement was recorded. The petitioner also appeared on 04.01.2023 but due to medical condition, the petitioner was allowed to leave. The petitioner in the statement recorded on 03.01.2023 admitted that he was involved in illegal remittance of forex but he failed to explain the source of funds remitted abroad and is actual beneficiary. The petitioner did not disclose the details of the RTGS and counter party details and other plausible information. The petitioner was not cooperating in the investigation. The investigation qua the petitioner is still pending due to his non-appearance and the prosecution complaint qua the petitioner is yet to be filed. The petitioner was found to be the main accused for the offence of money laundering under investigation and has failed to cooperate in the investigation. The petitioner due to non-cooperation in the investigation has not been arrayed as accused either in the prosecution complaint or in the supplementary prosecution complaint. The petitioner has been named in the FIR registered at EOW as 'Ravi Mehra'.

4. The petitioner filed a bail application bearing no. 54/2023 titled as **Amit Aggarwal V ED**, which was dismissed vide order dated 06.06.2023 passed by the court of Sh. Babru Bhan, ASJ-03,



North-West District, Rohini Courts, Delhi. The relevant portion of the said order is reproduced as under: -

16. It is settled proportion of law that court is not supposed to enter into the merits of the case or to weigh the evidence at the state of hearing of bail application. So, the argument put-forth by Ld. Counsel for the petitioner that the investigating agency has not elaborated about the generation of proceeds of crime is not of much relevance at this stage. Even otherwise, Ld. SPP for the respondent has satisfactorily explained that a forged CA Certificate was used by some shell companies to effect fraudulent foreign remittance. It has come on record that these companies were being run by fake directors appointed on forged identities. The evidence collected so far indicates that the entire process of foreign remittance was based upon fraud and forgery. Thus, this argument relating to the proceeds of crime is liable to be rejected.

17. As far as role of the petitioner is concerned, accused Chitra, Rahul Kumar and Gaurav Sharma have elaborated the role of the petitioner in the entire series of transactions. As has already been discussed, these statements were recorded u/s 50 of PMLA and same are admissible piece of evidence.

18. Further, Ld. SPP for the respondent has produced a complete chart containing the details of the notices issued to the petitioner to join the investigation but he refused to join the same on one pretext or another. The details of the notices given to the petitioner indicate that he is deliberately evading the process of law.

19. Taking note of the huge amount of money involved, role of the petitioner and his conduct during the investigation, this court is not inclined to grant anticipatory bail to the petitioner.

20. *The application is dismissed.*



5. The petitioner in the present bail application filed under section 438 of the Code stated that the petitioner was a partner in a firm styled as M/s Krishna Lighting and engaged in business of LED lights. The petitioner in the month of December, 2022, retired from the said firm and is now doing individual business but he is not able to continue with the business presently due to bad health. The petitioner was not concerned with the entities as named in FIR bearing no. 0045/2022. The petitioner is not named in FIR and no covert act is also attributed to the petitioner.

5.1 The respondent/ED registered the present ECIR DLZO-II/24/2022 dated 28.03.2022 and commenced the investigation for the offence punishable under sections 3/4 of PMLA with allegations that the companies remitted crores of rupees using complainant's credentials in edited 15CB certificate and forged Form 15CA with *mala fide* intention to remit funds abroad which otherwise could not have been possible. The respondent/ED conducted a search on 01.12.2022 at the residential address of the petitioner and also seized five electronic articles. The petitioner further stated that one Rahul Kumar was arrested on 02.12.2022 in reference to present



ECIR and his statement was also recorded under force and coercion. Manpreet Singh Talwar was also arrested on 22.11.2022 and was remanded to judicial custody on 05.12.2022 and his statement was also recorded during police remand under force and coercion. The notices under section 50 of PMLA were also issued against the petitioner and the petitioner on some occasions could not appear before the issuing authority due to the reasons as forwarded to the respondent. The petitioner appeared before the authority on 03.01.2023 and his statement was partially recorded, however, the petitioner was physically assaulted by the respondent. The petitioner was taken to Ram Manohar Lohia Hospital on 03.01.2023. The petitioner again appeared before the authority on 04.01.2023 and was pressurized by the respondent for recording of the statement as per the dictates of the officers of the respondent and on refusal, he was again physically assaulted. The petitioner was again taken to the hospital. The petitioner also filed a complaint before NHRC about the inhuman treatment besides making a complaint to the Director of the respondent. The respondent, against the seizure of documents and electronic gadgets, filed an application before the adjudicating



authority under section 17(4) of PMLA with the prayer for retention of these documents on 23.12.2022 which was allowed vide order dated 10.05.2023 passed by the adjudicating authority. The respondent filed a complaint under sections 44 and 45 of PMLA on 21.01.2023 and supplementary complaint on 31.01.2023 wherein the petitioner has been arrayed as an accused. The High Court of Delhi has already granted default bail to Rahul Kumar vide order dated 28.04.2023. The petitioner also filed an application for grant of anticipatory bail on 25.05.2023 before the Additional Sessions Judge-03, North-West District, Rohini Courts, Delhi wherein he alleged that no proceeds of crime have been discovered attributed or found in the hands of the petitioner.

5.2 The petitioner sought anticipatory bail on the grounds that the case of the respondent/ED is based on statements of the co-accused and there is no incriminating material or evidence which can connect the petitioner with the present case. The respondent/ED has failed to disclose how the petitioner is connected with the alleged foreign remittance as he was neither the Director nor employee or any other person, who was involved in other illegal forex remittance. The



petitioner has neither been named in the FIR nor has any covert act been attributed to the petitioner. The petitioner has never held any post in the companies as named in the FIR bearing no. 0045/2022. There is no material against the petitioner except the statements made by the persons who were holding the posts in the company as named in the FIR. No proceeds of crime have ever been recovered attributed to or traced against the petitioner. The petitioner has cooperated in the investigation by participating on 03.01.2023 and 04.01.2023. The petitioner has undergone three kidney operations. There is no single document which can impute any criminality on the petitioner. No incriminating material was recovered by the respondent/ED during the raid conducted at the premises of the petitioner. The statements given by other persons wherein the petitioner was implicated have no evidentiary value. Accordingly, the petitioner prayed for grant of anticipatory bail.

6. The respondent/ED filed a Status Report wherein it mentioned the factual background of the case and the investigation conducted by the respondent as detailed hereinabove. The Status Report stated that the non bailable warrants issued against the petitioner by the court of



Additional Sessions Judge-03, North-West District, Rohini Courts, Delhi could not be executed and he was never found at his residence despite being advised for rest. The presence of the petitioner is required as he is the key person involved in the entire transaction/crime. The petitioner may tamper with the evidence. The petitioner is required to satisfy the twin conditions as imposed under section 45 of the PMLA which are not satisfied in the present application. The economic offences are grave offences causing loss and damage to the economic health of the country. The present bail application is liable to be dismissed.

7. It is reflecting that the complainant is a Chartered Accountant and made a complaint to Economic Offences Wing after receiving an email from the ICICI Bank wherein it was alleged that the Form 15CB has been forged on a certificate issued by him on 11.03.2019 to M/s Wentorz Logistics Private Limited using UDIN no. 19505939AAAAA18327. The forged Form 15CA/CB certificates allegedly issued by using credentials of the complainant were submitted to the banks by the entities as named in FIR i.e. M/s Kinzal Freight Forwarding (OPC) Private Limited; M/s Balaji International;



M/s Shree Shyam International and M/s Wentorz Logistics Private Limited, etc. for effecting onward remittance of more than Rs.300 crores. EOW, Delhi Police on the basis of complaint made by the complainant registered FIR bearing no. 0045/2022 dated 16.03.2022 for offences punishable under sections 420/467/438/471/120B IPC against M/s Kinzal Freight Forwarding (OPC) Private Limited and others. Subsequently, the respondent/ED also recorded ECIR bearing no. DLZO-II/24/2022 dated 28.03.2022 as the offences complained of in FIR bearing no. 0045/2022 are scheduled offences.

7.1 It was revealed during the investigation that the complainant issued only 07 certificates on Form 15CB to M/s Wentorz Logistics Private Limited and the details which were mentioned on 07 certificates on Form 15CB issued to M/s Wentorz Logistics Private Limited were used by the subject companies/entities for forging Form 15CB. It was also revealed that the 05 entities as named in FIR were connected with one another and were being run by the same set of persons. It was further revealed that the entities as named in FIR have effected remittance of more than Rs.464 crores to the entities based in Singapore and Hong Kong fraudulently and the funds were



arranged into the bank accounts in India by RTGS and NEFT without any corresponding business activities. It was also revealed during investigation that the Directors/Proprietors/Partners as mentioned in the bank accounts of the entities named in the FIR could not be traced at the addresses given in KYC documents. It was also revealed that apart from 05 entities mentioned in FIR, 07 entities were found to be connected in a similar manner in similar transactions i.e. the remittance to common entities in Hong Kong and Singapore fraudulently. The respondent/ED could not trace the identity of the persons operating the Indian entities but came to know during subsequent investigation that Navin Kejriwal was the Director of foreign companies, namely, KK Overseas Limited, Hong Kong and Speedtec Global Services Pte Ltd., Singapore. Navin Kejriwal was also found to be associated with Manpreet Singh Talwar and accordingly, their residence/business premises were raided on 21-22.09.2022 under section 17(1) of PMLA. Data was recovered from the mobile phone of Manpreet Singh Talwar and incriminating material regarding one Infiniti Futures Pte Ltd., Singapore was also recovered besides bank account details, user ID, etc. It was found



that the Infiniti Futures Pte Ltd. also received fraudulently remitted foreign exchange from India including remittances from ICICI Bank from the account of Indian entities as named in the FIR.

7.2 Rashmi Dwivedi who was stated to be the Director in M/s Mizta Tradex Private Limited and Truzel Tradex Private Limited, was found to be involved into managing funds into their bank accounts *via* RTGS and NEFT and then making the outward forex remittance fraudulently to Hong Kong and Singapore. Rashmi Dwivedi was actually found to be Chitra Pandey and was traced by the officials of the respondent/ED. The statements of the complainant i.e. Vikash Mohpal, Rahul Kumar (co-accused) and Chitra Pandey were recorded under section 17(2) and section 50 of PMLA during investigation.

7.3 The complainant in the statement recorded on 04.12.2022 stated that Ravi Mehra who was identified by the complainant as the petitioner used to contact him for using his service for obtaining Form 15CB certificates. Ravi Mehra obtained 18 certificates from the complainant during the period from February, 2019 to April, 2019 and out of which, 07 certificates were in the name of M/s



Wentorz Logistics Private Limited. The complainant on being shown the photograph of the petitioner identified/recognized him as Ravi Mehra.

7.4 The co-accused Rahul Kumar in the statement recorded on 02.12.2022 stated that M/s Mizta Tradex Private Limited and M/s Truzel Tradex Private Limited were managed by him along with the petitioner and the petitioner used to operate as Ravi Mehra. The co-accused Rahul Kumar also stated that he met with the petitioner through his friend Vishal Gupta in the year 2017 and subsequently, he became the partner with the father of the petitioner in a firm which used to run under the name and style of M/s Shri Venkatsaya Impex. The co-accused Rahul Kumar and the petitioner in the year 2019 purchased two companies i.e. M/s Truzel Tradex Private Limited and M/s Mizta Tradex Private Limited from one Company Secretary, namely, Chetan for total consideration of Rs.50,000/-. The co-accused Rahul Kumar also stated that Chitra Pandey, Varun Rana and Mohammad Raza were the Directors in these companies in the name of Rashmi Dwivedi, Manab Chaudhary and Rahil. Fake identities were created to camouflage the real identity of the directors, which



were arranged by Bijender Kumar Jain. Kumar Pritam who was the husband of Chitra Pandey @ Rashmi Dwivedi used to arrange fake IDs through Bijender Kumar Jain and was paid 20 paise per dollar. Rahul Kumar and the applicant used to arrange RTGS entries from Karol Bagh and Ghaziabad through various Hawala entry operators. Navin Kejriwal was the beneficiary of M/s KK Overseas Limited, Hong Kong and Speedtec Global Services Pte Ltd., Singapore. Rahul Kumar and the petitioner used to pay commission in cash for smooth processing of transaction. Rahul Kumar and the petitioner were getting 30-35 paise per dollar in every transaction. Rahul Kumar in statement recorded on 12.12.2022 regarding the role of the petitioner stated that all the cash transactions in lieu of RTGS were handled by the petitioner besides handling of custom related work with regard to directed import. Rahul Kumar could not state about the involvement of the petitioner in the payment towards the freight payments but stated that the petitioner forged 15CB certificates and met Chartered Accountant for obtaining 15CA/CB certificates for M/s Wentorz Logistics Private Limited.



7.5 Chitra Pandey @ Rashmi Dwivedi in the statement recorded on 26.11.2022 stated that the petitioner was the main person who used to give directions for all transactions and he along with Rahul Kumar also used to give directions for dealing with bankers and getting signatures on pre-filled applications for effecting foreign remittances. Chitra Pandey @ Rashmi Dwivedi also stated that in the statement recorded on 26.11.2022 stated that M/s Mizta Tradex Private Limited and M/s Truzel Tradex Private Limited were used for illegal transfer of forex to Hong Kong and Singapore and the petitioner was the mastermind in the illegal transaction. The petitioner along with others, used to incorporate company by using forged KYC documents i.e. the Voter ID Card, PAN Card, Aadhaar Card.

7.6 The statement of Gaurav Sharma was also recorded during investigation who disclosed that he was employed by the petitioner as an Accountant and was made Director in M/s Wentorz Logistics Private Limited by using forged KYC documents and was paid commission of 5 paise per dollar. The company M/s Wentorz Logistics Private Limited was being used for illegal forex transfer



and the petitioner used to prepare forged document i.e. Airway Bill, Invoice, A2 Form, Form 15CA and Form 15CB and thereafter, Gaurav Sharma on instructions of the petitioner used to upload documents for effecting outward remittances.

7.7 The respondent issued various summons to the petitioner and the petitioner has joined the investigation only on 03.01.2023 and 04.01.2023. The respondent has already filed prosecution complaint dated 20.01.2023 and supplementary prosecution complaint dated 31.01.2023 under sections 44 and 45 of the PMLA.

8. The counsel for the petitioner advanced oral arguments and also submitted written submissions wherein besides mentioning the factual position, he also raised multiple arguments in support of bail application. The counsel for the petitioner argued that initially the respondent/ED conducted enquiry under the Foreign Exchange Management Act, 1999 (FEMA) qua the outward remittance by some companies using credentials of the complainant and his statement was recorded on 16.09.2021. FIR bearing no. 0045/2022 was got registered after a period of 03 months under sections 420/467/468/471/120B of IPC. The respondent/ED issued the



summons for investigation and then the present ECIR was got registered. The counsel for the petitioner referred statement of Ajay Kumar, employee of ICICI Bank recorded on 25.11.2022 recognized Chitra Pandey @ Rashmi Dwivedi and her husband Kumar Pritam and on 06.12.2022 stated that the accounts of M/s Mizta Tradex Private Limited and M/s Wentorz Logistics Private Limited were opened on the direction of Kumar Pritam and Dheeraj Khetarpal. Chitra Pandey @ Rashmi Dwivedi in her statement recorded on 26.11.2022 also disclosed the role of Kumar Pritam in the illegal forex transaction and also stated that Kumar Pritam introduced the Banker of ICICI Bank to facilitate smooth transaction for M/s Wentorz Logistics Private Limited. The counsel for the petitioner also referred the statement of Kirti Yadav recorded on 30.11.2022. The co-accused Rahul Kumar has already been admitted on default bail. The respondent/ED has not produced any documentary evidence which can make out a *prima facie* case against the petitioner or show his involvement in the alleged offence.

8.1 The counsel for the petitioner further argued that the petitioner appeared before the respondent/ED on 03.01.2023 and 04.01.2023



but he was physically assaulted by the officers of the respondent/ED and as a result of which he was taken to Ram Manohar Lohia Hospital for treatment. The petitioner also made a complaint at NHRC and had already undergone three separate operations related to kidney at Max Healthcare on 10.01.2023, 06.02.2023 and 04.04.2023.

8.2 The counsel for the petitioner argued that in the present case neither any ‘proceeds of crime’ were generated from the scheduled offence nor does the alleged offence fall in the category of scheduled offences. The alleged offence, pertaining to the unauthorized outward remittance by placing the forged 15CB Form, has not fulfilled the ingredients of the offence of money laundering as there are no ‘proceeds of crime’ being generated from the scheduled offence i.e. fabrication of 15CB Form. The ‘proceeds of the crime’ is the core of the ingredients constituting the offence of money laundering and all the properties recovered and attached by the investigating agency in connection with offence of the criminal activity relating to the scheduled offence under the general law cannot be regarded as ‘proceeds of crime’. The counsel for the



petitioner placed reliance on **Vijay Madanlal Chaudhary V Union of India**, 2022 SCC OnLine SC 929. The respondent/ED has not alleged that the money which was remitted outward was itself generated from some scheduled offence and was tainted money and/or 'proceeds of crime'.

8.3 The counsel for the petitioner also argued that the remittance of the money out of India can in itself, constitute an offence under sections 3 and 4 of the FEMA and is to be dealt with as per section 37A and section 13(1C) of the said Act.

8.4 It was also argued that the twin conditions as per section 45 of PMLA are not applicable as the petitioner is a sick and infirm person and has already undergone repeated kidney surgeries and requires constant medical supervision and has also developed further complications. The counsel for the petitioner relied upon **Kewal Krishan Kumar V Enforcement Directorate**, 2023 SCC OnLine Del 1547 and **Sameer Mahendru V Directorate of Enforcement**, 2023:DHC:4155.

8.5 The counsel for the petitioner also argued that the respondent/ED merely relied upon the statements of the co-accused



which cannot be considered against the petitioner at the stage of consideration of the bail application and referred **Surender Kumar Khanna V Directorate of Revenue Intelligence**, (2018) 8 SCC 201, **Hari Charan Kurmi & Jogia Hajam V State of Bihar**, (1964) 6 SCR 623. The confessional statement or statement of co-accused cannot be taken as substantial piece of evidence against the co-accused and relied upon **Commissioner of Custom Preventive, Lucknow V Shakil Ahmed Khan**, 2019 (366) ELT 634 (All). The counsel for the petitioner also referred **Vijay Agarwal V Directorate of Enforcement**, 2023 SCC OnLine Del 3176 and **Basant Bansal V State & Others** (Bail Application bearing no. 2030/2023) wherein it was observed that the evidentiary value of the statement recorded under section 50 of PMLA has to be tested at the end of the trial and not at the stage of granting bail. Chitra Pandey @ Rashmi Dwivedi in the statement recorded on 26.11.2022 has not made any specific allegation against the petitioner but made Rahul Kumar responsible for every work and only stated that the petitioner was an accomplice to him.



8.6 The petitioner has joined the investigation on two occasions but was physically assaulted by the officers of the respondent/ED. The petitioner has replied all the notices issued to him by the respondent/ED and the custodial interrogation of the petitioner is not required. The counsel for the petitioner prayed that the petitioner be granted anticipatory bail.

9. Mr. Ravi Prakash, Central Government Standing Counsel (CGSC) advanced oral arguments and also submitted written submissions. The CGSC argued that FIR bearing no. 0045/2022 registered under sections 420/467/468/471/120B IPC discloses the commission of scheduled offence and generation of ‘proceeds of crime’ within the meaning of section 2(1)(y) of PMLA.

9.1 The CGSC further argued that ‘Rashmi Dwivedi’ who was later on identified as Chitra Pandey was the Director in M/s Mizta Tradex Private Limited and M/s Truzel Tradex Private Limited and these companies were involved in managing funds into its bank accounts *via* RTGS and NEFT and then fraudulently making outward forex remittance to Hong Kong and Singapore. Chitra Pandey @ Rashmi Dwivedi in the statement recorded under section 50 of



PMLA deposed about the role of the petitioner in commission of the offence subject matter of the present litigation. The co-accused Rahul Kumar in statement, also admitted that he was working with the petitioner and they have purchased two companies i.e. M/s Truzel Tradex Private Limited and M/s Mizta Tradex Private Limited from one Company Secretary, namely, Chetan and also stated that the fake identities were created to camouflage the real identity of the Directors and he along with petitioner used to pay commission of 20 paise per dollar for arranging fake KYC documents. The complainant in statement under section 50 of PMLA also identified the petitioner as Ravi Mehra who used to meet him for obtaining 15CA/CB Certificates. The CGSC relied upon **Tarun Kumar V Enforcement Directorate**, 2023 SCC OnLine SC 1486.

9.2 The CGSC also argued that the counsel for the petitioner has not advanced arguments regarding section 45 of PMLA and placed reliance on para no. 412 of **Vijay Madanlal Choudhary** (*supra*).

9.3 The CGSC also argued that the petitioner was avoiding the process of law as such, he is not entitled for grant of bail and besides mentioning the details of the summons issued to the petitioner, also



referred **Monu Kapoor V Directorate of Revenue**, 2019 SCC OnLine Del 11829. The custodial interrogation of the petitioner is necessary as the money laundering related to the present case, involves multiple layers of placement layering and integration and relied upon **P. Chidambaram V Directorate of Enforcement**, (2019) 9 SCC 24. He also argued that the purpose of the investigation would be defeated if the petitioner is protected by pre-arrest bail. Accordingly, the CGSC prayed that the present anticipatory bail application be dismissed.

10. It is reflecting at this stage that the prime incriminating evidence collected during investigation by the respondent/ED are statements of Chitra Pandey @ Rashmi Dwivedi and Rahul Kumar. The CGSC as mentioned hereinabove argued that statements of witnesses/accused recorded under section 50 of PMLA are admissible evidence and can be relied on against the petitioner. The CGSC relied on **Tarun Kumar (supra)** and **Rohit Tandon V Directorate of Enforcement**, (2018) 11 SCC 46. The Supreme Court in **Tarun Kumar (supra)** after referring to **Rohit Tandon (supra)** observed that the statements of witnesses/accused are admissible in



evidence in view of Section 50 of the said Act and such statements may make out a formidable case about the involvement of the accused in the commission of a serious offence of money laundering. The Supreme Court in **Rohit Tandon** (*supra*) observed that that the prosecution has relied on statements of 26 witnesses/accused which have already been recorded and the High Court has relied on 07 witnesses which are admissible in view of section 50 of PMLA. It was further observed that these statements made formidable case about involvement of the appellant therein in the commission of serious offence of money laundering.

10.1 The counsel for the petitioner as mentioned hereinabove argued that the statements of the co-accused cannot be considered against the petitioner which are not substantial piece of evidence and their evidentiary value has to be tested at the end of the trial and not at the stage of granting bail. This Court in **Vijay Agrawal through Parokar V Directorate of Enforcement**, 2023 SCC OnLine Del 3176 relied on by the counsel for the petitioner observed that the evidentiary value of the statement recorded under section 50 of PMLA has to be tested at the end of trial and not at the stage of bail.



Similar view was also taken by another Coordinate Bench of this Court in **Basant Bansal V State (Govt. of NCT of Delhi) and Others**, Bail Application bearing no.2030/2023 decided on 09.06.2023 after referring to **Vijay Agrawal (supra)**. It was observed that the evidentiary value of the statement recorded under section 50 of PMLA has to be tested at the end of the trial and not at the stage of bail. The legal position which is emerging from above referred decision is that statements of witnesses/accused recorded under section 50 of PMLA are admissible in evidence and can make formidable case against the accused regarding his involvement in commission of offence of money laundering but their exact evidentiary value has to be tested at the end of trial and not at the stage of bail.

11. The CGSC for the respondent/ED argued that the counsel for the petitioner has not advanced arguments regarding lifting of bar of section 45 of PMLA. He further argued that rigour of section 45 of PMLA has to be satisfied before granting bail under section 438 of the Code and referred **Vijay Madanlal Choudhary (supra)**.



11.1 Section 45 of PMLA provides that the offences punishable under PMLA are cognizable and non-bailable offences. Section 45 reads as under:-

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

- (i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and**
- (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:**

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

11.2 The Supreme Court in **Vijay Madanlal Choudhary** (*supra*) referred by the CGSC, regarding applicability of section 45 of PMLA in grant of anticipatory bail under section 438 of the Code, observed as under:-

407. Another incidental issue that had been raised is about the non-application of rigors of Section 45 of the 2002 Act in respect of anticipatory bail filed under Section 438 of the 1973 Code. This submission presumably is linked to the observation in paragraph 42 in the case of *Nikesh Tarachand Shah* (2018) 11 SCC 1. Similar argument was considered in *The Asst. Director Enforcement Directorate vs.*



Dr. V.C. Mohan (Criminal Appeal No.21 of 2022, decided on 04.01.2022). We are in agreement with the observation in this decision that it is one thing to say that Section 45 of the 2002 Act refers to a scheduled offence under the general law, but, as noted earlier, the offence under this Act in terms of Section 3 is specific to involvement in any process or activity connected with the proceeds of crime which is generated as a result of criminal activity relating to a scheduled offence. It is also true that Section 45 does not make specific reference to Section 438 of the 1973 Code, but it cannot be overlooked that sub-section (1) opens with a non-obstante clause and clearly provides that anything contained in the 1973 Code (2 of 1974), no person accused of an offence under this Act shall be released on bail or on his own bond, unless the stipulations provided therein are fulfilled. On account of the non-obstante clause in Section 45(1) of the 2002 Act, the sweep of that provision must prevail in terms of Section 71 of the 2002 Act. Further, the expression “anticipatory bail” is not used either in the 1973 Code or the 2002 Act. The relief granted in terms of Section 438 of the 1973 Code is one of directing release of the person on “bail” in case of his arrest; and such a relief has been described in judicial pronouncements as anticipatory bail. Section 45(1) uses generic expression “bail” without reference to any provision of the 1973 Code, such as Sections 437, 438 and 439 of the 1973 Code. Concededly, Section 65 of the 2002 Act states that the provisions of the 1973 Code shall apply to the provisions under the Act insofar as they are not inconsistent with the provisions of the 2002 Act. Further, Section 71 of the Act gives overriding effect to the Act. Section 45 of the Act begins with a non-obstante clause, thus excluding the application of the 1973 Code in matters related to “bail”. The word “anticipatory bail” has not been defined under the 1973 Code...

408. Thus, anticipatory bail is nothing but a bail granted in anticipation of arrest, hence, it has been held in various judgments by this Court that the principles governing the



grant of bail in both cases are more or less on the same footing, except that in case of anticipatory bail the investigation is still underway requiring the presence of the accused before investigation authority. Thus, ordinarily, anticipatory bail is granted in exceptional cases where the accused has been falsely implicated in an offence with a view to harass and humiliate him. Therefore, it would not be logical to disregard the limitations imposed on granting bail under Section 45 of the 2002 Act, in the case of anticipatory bail as well.

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410. Therefore, as noted above, investigation in an economic offence, more so in case of money-laundering, requires a systematic approach. Further, it can never be the intention of the Parliament to exclude the operation of Section 45 of 2002 Act in the case of anticipatory bail, otherwise, it will create an unnecessary dichotomy between bail and anticipatory bail which not only will be irrational but also discriminatory and arbitrary. Thus, it is totally misconceived that the rigors of Section 45 of the 2002 Act will not apply in the case of anticipatory bail.

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412. As a result, we have no hesitation in observing that in 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.

11.3 A Coordinate Bench of this Court in **Vijay Agrawal** (*supra*) observed that as per **Vijay Madanlal Choudhary** (*supra*), though the twin conditions provided under Section 45 of PMLA restrict the



right of accused to grant of bail but it cannot be said that the conditions provided under Section 45 impose absolute restraint on the grant of bail. It is a settled proposition that the discretion vested in the Court has to be exercised in accordance with the law and has to be guided by the principles of law. The observation in **Vijay Agrawal** (*supra*) was followed by another Coordinate Bench of this Court in **Basant Bansal** (*supra*). It was also observed in **Vijay Agrawal** (*supra*) as under:-

30. The jurisprudence of the bail positively lays down that a liberty of a person should not ordinarily been interfered with unless there exist cogent grounds. Despite, the twin conditions, it is not necessary that at the stage of bail, the Court has to come to the conclusion that the petitioner is not guilty for such an offence. The Court is at the stage of has to examine the case on the scale of broad probabilities. The Court at this stage is required to record an objective finding on the basis of material available on record and no other purpose.

12. The counsel for the petitioner argued that the alleged offence i.e. unauthorized outward remittance by placing the forged 15CB form has not fulfilled the ingredients of the offence of money laundering as there is no “proceeds of crime” being generated from the scheduled offence i.e. fabrication of 15CB form. The counsel for the petitioner relied on observations made in **Vijay Madanlal**



Choudhary (*supra*). The Supreme Court in **Vijay Madanlal**

Choudhary (*supra*) observed as under:-

250. The other relevant definition is “proceeds of crime” in Section 2(1)(w) of the 2002. Act. This definition is common to all actions under the Act, namely, attachment, adjudication and confiscation being civil in nature as well as prosecution or criminal action. The original provision prior to amendment vide Finance Act, 2015 and Finance (No. 2) Act, 2019, took within its sweep any property (mentioned in Section 2(1)(v) of the Act) derived or obtained, directly or indirectly, by any person “as a result of” criminal activity “relating to” a scheduled offence (mentioned in Section 20(1)(y) read with Schedule to the Act) or the value of any such property. Vide Finance Act, 2015, it further included such property (being proceeds of crime) which is taken or held outside the country, then the property equivalent in value held within the country and by further amendment vide Act 13 of 2018, it also added property which is abroad. By further amendment vide Finance (No. 2) Act, 2019, Explanation has been added which is obviously a clarificatory amendment. That is evident from the plain language of the inserted Explanation itself. The fact that it also includes any property which may, directly or indirectly, be derived as a result of any criminal activity relatable to scheduled offence does not transcend beyond the original provision. In that, the word “relating to” (associated with/has to do with) used in the main provision is a present participle of word “relate” and the word “relatable” is only an adjective. The thrust of the original provision itself is to indicate that any property is derived or obtained, directly or indirectly, as a result of criminal activity concerning the scheduled offence, the same be regarded as proceeds of crime. In other words, property in whatever form mentioned in Section 2(1)(v), is or can be linked to criminal activity relating to or relatable to scheduled offence, must be regarded as proceeds of



crime for the purpose of the 2002 Act. It must follow that the Explanation inserted in 2019 is merely clarificatory and restatement of the position emerging from the principal provision [i.e., Section 2(1)(w)].

251. The “proceeds of crime” being the core of the ingredients constituting the offence of money-laundering, that expression needs to be construed strictly. In that, all properties recovered or attached by the investigating agency in connection with the criminal activity relating to a scheduled offence under the general law cannot be regarded as proceeds of crime. There may be cases where the property involved in the commission of scheduled offence attached by the investigating agency dealing with that offence, cannot be wholly or partly regarded as proceeds of crime within the meaning of Section 2(1)(w) of the 2002 Act - so long as the whole or some portion of the property has been derived or obtained by any person “as a result of” criminal activity relating to the stated scheduled offence. To be proceeds of crime, therefore, the property must be derived or obtained, directly or indirectly, “as a result of” criminal activity relating to a scheduled offence. To put it differently, the vehicle used in commission of scheduled offence may be attached as property in the concerned case (crime), it may still not be proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act. Similarly, possession of unaccounted property acquired by legal means may be actionable for tax violation and yet, will not be regarded as proceeds of crime unless the concerned tax legislation prescribes such violation as an offence and such offence is included in the Schedule of the 2002 Act. For being regarded as proceeds of crime, the property associated with the scheduled offence must have been derived or obtained by a person “as a result of” criminal activity relating to the concerned scheduled offence. This distinction must be borne in mind while reckoning any property referred to in the scheduled offence as proceeds of crime for the purpose of the 2002 Act. Dealing with proceeds of crime by way of any process or activity



constitutes offence of money-laundering under Section 3 of the Act.

252. Be it noted that the definition clause includes any property derived or obtained “indirectly” as well. This would include property derived or obtained from the sale proceeds or in a given case in lieu of or in exchange of the “property” which had been directly derived or obtained as a result of criminal activity relating to a scheduled offence. In the context of Explanation added in 2019 to the definition of expression “proceeds of crime”, it would inevitably include other property which may not have been derived or obtained as a result of any criminal activity relatable to the scheduled offence. As noticed from the definition, it essentially refers to “any property” including abroad derived or obtained directly or indirectly. The Explanation added in 2019 in no way travels beyond that intent of tracking and reaching upto the property derived or obtained directly or indirectly as a result of criminal activity relating to a scheduled offence. Therefore, the Explanation is in the nature of clarification and not to increase the width of the main definition “proceeds of crime”. The definition of “property” also contains Explanation which is for the removal of doubts and to clarify that the term property includes property of any kind used in the commission of an offence under the 2002 Act or any of the scheduled offences. In the earlier part of this judgment, we have already noted that every crime property need not be termed as proceeds of crime but the converse may be true. Additionally, some other property is purchased or derived from the proceeds of crime even such subsequently acquired property must be regarded as tainted property and actionable under the Act. For, it would become property for the purpose of taking action under the 2002 Act which is being used in the commission of offence of money-laundering. Such purposive interpretation would be necessary to uphold the purposes and objects for enactment of 2002 Act.



253. Tersely put, it is only such property which is derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence can be regarded as proceeds of crime. The authorities under the 2002 Act cannot resort to action against any person for money-laundering on an assumption that the property recovered by them must be proceeds of crime and that a scheduled offence has been committed, unless the same is registered with the jurisdictional police or pending inquiry by way of complaint before the competent forum. For, the expression “derived or obtained” is indicative of criminal activity relating to a scheduled offence already accomplished. Similarly, in the event the person named in the criminal activity relating to a scheduled offence is finally absolved by a Court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of the criminal case (scheduled offence) against him/her, there can be no action for money laundering against such a person or person claiming through him in relation to the property linked to the stated scheduled offence. This interpretation alone can be countenanced on the basis of the provisions of the 2002 Act, in particular Section 2(1)(u) read with Section 3. Taking any other view would be rewriting of these provisions and disregarding the express language of definition clause “proceeds of crime”, as it obtains as of now.

12.1 Another Coordinate Bench of this Court in **Vijay Agrawal** (*supra*) in view of above observations in **Vijay Madanlal Choudhary** (*supra*) observed as under:-

25. The bare perusal of these paragraphs would indicate that any property which is derived or obtained directly or indirectly as a result of criminal activity concerning the scheduled offence, is regarded as proceeds of crime. If any property which can be linked to criminal activity relating to



or relatable to the scheduled offence, it has to be regarded as proceeds of crime. However, It has also been stated that all properties recovered or attached by the investigating agency in connection with the criminal activity relating to a scheduled offence under the general law cannot be regarded as proceeds of crime. The property which has been derived must be directly or indirectly related to the criminal activity relating to the concerned scheduled offence. It is not necessary that the property must have been directly acquired or derived, if the property has been derived in lieu of or in exchange of the 'property' which had been directly derived or obtained as a result of criminal activity relating to a scheduled offence, such property would also fall within the definition of 'proceeds of crime.' It has also been inter alia held in *Vijay Madanlal Choudhary* (supra) that even at the stage of bail, the court is expected to consider the question from the angle as to whether the accused possessed the requisite mens rea.

12.2 In the present case main allegation of the respondent/ED against the petitioner is that he was instrumental in outward remittance of huge amount in the account of foreign entities on the basis of forged Form 15CB Certificates. However, in the present case, there is no property which is derived or obtained directly or indirectly as a result of criminal activity concerning the scheduled offence which can be regarded as 'proceeds of crime'. There is legal force in the arguments advanced by the counsel for the petitioner that the unauthorized outward remittance by forged Form 15CB Certificates does not amount to 'proceeds of crime' being generated



from the scheduled offence i.e. fabrication of Form 15CB Certificates.

13. The counsel for the petitioner also argued that the twin conditions as per section 45 of PMLA are not applicable as the petitioner is a sick and infirm person and has already undergone repeated kidney surgeries and requires constant medical supervision and primarily relied upon **Kewal Krishan Kumar** (*supra*). The medical records/documents submitted by the petitioner reflect that the petitioner is suffering from various ailments including renal problem which requires constant medical treatment. This court in **Kewal Krishan Kumar** (*supra*) has granted bail on ground of sickness and infirmity of the accused.

14. The CGSC also argued that the petitioner is avoiding investigation and his custodial investigation is required as the offence of money laundering involves multiple layers of placement, layering and integration. It is further argued that summons were issued to the petitioner to join investigation but the petitioner only joined investigation on 03.01.2023 and 04.01.2023 and subsequently avoided investigation. The CGSC also referred details of summons



issued to the petitioner. The petitioner joined investigation on 03.01.2023 and 04.01.2023 and gave reasons for not joining investigation. The petitioner neither appears to be a flight risk, nor is he likely to influence any witness and tamper with the evidence.

15. This court in **Vijay Agrawal** (*supra*) also observed as under:-

22. The jurisprudence regarding bail is by now very well settled that rule has always been bail and its exception jail. It has also been stated time and again that such a principle has to be followed strictly. Right to bail is also essential for the reason that it provides the accused with an opportunity of securing fair trial. The right to bail is linked to Article 21 of the Constitution of India, which confers right to live with freedom and dignity. However, while protecting the right of an individual of freedom and liberty the court also has to consider the right of the society at large as well as the prosecuting agency. This is the reason that the gravity of the offence is required to be taken into account. The gravity of the offence is gathered from the attendant facts and circumstances of the case. It is a settled proposition that economic offences fall within the category of 'grave offences.' While dealing with the economic offence cases, the court has to be sensitive to the nature of allegation made against the accused. Such economic offences normally involve the public exchequer and money of the honest tax payer. The offence of money laundering in itself is a very serious offence. The money laundering not only is a threat to the financial health of the country but it may also adversely impact its integrity and sovereignty. Moreover, the act of money laundering can even lead to the collapse of the economic system.



16. In view of the above discussion and after considering all facts, including incriminating material against the petitioner which are the statements made by co-accused/witness under section 50 of PMLA and the fact that their evidentiary value can be tested at the stage of trial, no generation of 'proceeds of crime' from criminal activity and the petitioner being a sick and infirm person, the present anticipatory bail application is allowed. The petitioner, in case of arrest, shall be released on bail on furnishing personal bond in the sum of Rs.1,00,000/- with one surety of the like amount to the satisfaction of the concerned Investigating Officer or any other authorized person subject to following conditions:-

- i. The petitioner shall join investigation as and when directed by the Investigating Officer and shall provide necessary information and documents as required for the purpose of investigation to the satisfaction of the Investigating Officer.**
- ii. The petitioner shall surrender his passport before the concerned trial court within fifteen (15) days and shall not leave country in any circumstance without prior permission of the concerned trial court.**
- iii. The petitioner shall mark his presence before the Investigating Officer on the fourth Friday of each English Calendar Month till the completion of investigation qua him.**
- iv. The petitioner shall not, in any manner, make any inducement to the witnesses directly and indirectly.**



v. The petitioner shall provide his operational mobile number within seven (7) days so that he can be contacted by the Investigating Officer as and when required. The petitioner shall also intimate any change in his residential address immediately to the Investigating Officer.

17. The present bail application stands disposed of. However, it is made clear that no observation made in this judgment shall be taken as an opinion on the merit of the case.

18. *Dasti.*

**DR. SUDHIR KUMAR JAIN
(JUDGE)**

JANUARY 11, 2024

N/AM