



2025:CGHC:8832

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MCRC No. 7311 of 2024

Reserved on : 29.01.2025

Delivered on : 20.02.2025

Nikhil Chandrakar, S/o Shri Laxman Prasad Chandrakar Aged About 42 Years R/o F-15, Sector-2, Avanti Vihar, Telibandha, Raipur, District Raipur, Chhattisgarh

--- Applicant

versus

Directorate of Enforcement Through Its Deputy Director, Raipur Zonal Office, A-1 Block, 2nd Floor, Pujari Chambers, Pachpedi Naka, Raipur, District Raipur, Chhattisgarh

--- Respondent

For Applicant : Mr. Gagan Tiwari, Advocate.

For Respondent : Dr. Sourbh Kumar Pande, Special Public Prosecutor.

Hon'ble Shri Justice Narendra Kumar Vyas

CAV ORDER

1. This is **first** bail application filed under Section 483 of the Bhartiya Nagrik Suraksha Sanhita, 2023 for grant of regular bail to the applicant, who has been arrested on 20.06.2023 in connection with Crime No. ECIR/RPZO/09/2022 dated 29.09.2022 registered at Police Station- Directorate of Enforcement, Zonal Office, Raipur (C.G.) for the offence punishable under Sections 3 & 4 of the Prevention of Money

Laundering Act, 2002 (for short “the PMLA, 2002”).

2. The case of the prosecution, in brief, is that on 12.07.2022, FIR No. 129/2022 was registered by Kadugodi Police Station, Whitefield, Bengaluru under Sections 186, 204, 353 & 120B of IPC against the applicant & other persons on the basis of complaint filed by Deputy Director of Income Tax, Foreign Assets Investigation Unit-I Bengaluru alleging that as part of conspiracy, during course of search by Income Tax department on 30.06.2022, the applicant had obstructed the officials from carrying their official duties and destroyed crucial incriminating documents and digital evidence about the alleged illegal extortion on Coal Transportation, payments collected by the applicant and his associates.
3. It is also case of the prosecution that on 13.09.2022, OM in F. No. 22-IT was forwarded by Central Board of Direct Taxes (for short “CBDT”) to the Directorate of Enforcement containing the FIR No. 1292022 Police Station- Kadugodi along with a report on the investigation conducted by the Income Tax Department on M/s Jay Ambey Group of Raipur (Suryakant Tiwari’s Group). In the report, it has been mentioned that during search operations on 30.06.2023 by Income Tax Department in the premises of the applicant and his associates, evidence was gathered related to a syndicated being operated and coordinated by the applicant whereby additional unauthorized cash to the tune of Rs. 25 per ton of coal was being collected over and above the legal amount against Coal Delivery Orders. It has also

been alleged that pursuant to the Order F.No.4138-47/Sankhikiya/Coal bhandaran/N.Kra 2020 dated 15.07.2020 issued by the State Government the dispatch rules of coal mines by authorities have been changed from an online process to introduction of manual verification. The said notification was issued under the signatures of one Sameer Vishnoi, IAS who was the Director, Geology & Mining as well as MD of CMDC. It is also case of the prosecution that it is only after the said notification the applicant in conspiracy with certain other persons started obtaining an illegal levy of Rs. 25 per ton of coal for issuance of delivery order for coal transportation. The handwritten diaries maintained by one Rajnikant Tiwari who is brother of the applicant contained entries of incoming and outgoing amounts of unaccounted cash generated, *inter alia* from illegal levy on coal transport revealed profits of more than Rs. 500 crores in 16 months from different kinds of levies. On 29.09.2022, ECIR/RPZ0/09/2022 was registered by Directorate of Enforcement, Raipur Zonal Office for commission of offence under Sections 120 (B) & 384 of IPC being a part of FIR No. 129/2022.

Role of the applicant:-

4. The **role** of present applicant is that the applicant is an employee of Suryakant Tiwari who is one of the active members of the coal syndicate. The applicant was actively involved in formation of the syndicate and arranged meetings with coal businessmen, coal transporters etc. He was also actively involved in collection of

illegal cash from businessmen and distribution of illegal cash to different persons on the direction of Suryakant Tiwari. The applicant had played an active role as accountant, treasurer, coordinator, cash collector, cash distributor in the syndicate and was also as representative & personal assistant of Suryakant Tiwari. He used to coordinate with other employees of Suryakant Tiwari posted in different districts & businessmen for illegal cash collection. He used to co-ordinate with Chhattisgarh State Machineries for smooth functioning of the coal syndicate. After receipt of illegal cash by members of the syndicate deployed in coal District, they used to share the collection data of illegal cash over WhatsApp as well as in physical form and illegal cash was collated with the applicant & his colleagues Roshan Kumar Singh & Rajnikant Tiwari at the house of Suryakant Tiwari i.e. 1-34, Anupam Nagar, Raipur. At the said address, Rajnikant Tiwari, the applicant and Roshan Kumar Singh used to maintain consolidated data of this illegal levy collection along with the cash collected. Thereafter, such illegal cash was used for making bribes to Saumya Chaurasia, other senior bureaucrats & politicians for incoming miscellaneous political expenses & election campaign purchasing immovable properties & coal washeries by Suryakant Tiwari & members of coal syndicate, miscellaneous expenses of Suryakant Tiwari and other syndicate members etc. by the applicant, Roshan Singh and Rajnikant Tiwari on the direction of Suryakant Tiwari. The applicant & Rajnikant Tiwari also used to transfer part of collected illegal

cash to house of Rajnikant Tiwari and Laxmikant Tiwari in Mahasamund for safe keeping.

5. The applicant was also looking after layering & projection of illegal cash into acquisition of the properties by Suryakant Tiwari, Saumya Chaurasia etc. A part of proceeds of crime has also traveled to the applicant which was utilized by him for acquisition of properties. In this context, multiple cash entries are mentioned in his name in the seized diaries. He was also a member of various WhatsApp Groups with Suryakant Tiwari, Rajnikant Tiwari, Roshan Kumar Singh wherein multiple entries cash collection & distribution of proceeds of crime are shared for real time update. The applicant had played an important role in generation of proceed of crime. As per available documents, out of total estimated proceeds of crime of Rs. 540 crores, the applicant had assisted in handling an amount of Rs. 200 crores approximately of illegal levy. Thus, he has assisted Suryakant Tiwari in acquisition of proceed of crime. The applicant in his statement recorded under Section 50 of the PMLA, 2002 has admitted that as per instruction of Suryakant Tiwari he had transferred proceeds of crime to Saumya Chaurasia, Ram Gopal Agrawal, Devendra Yadav and others. The applicant also assisted Suryakant Tiwari, Saumya Chaurasia and other members of coal syndicate in purchasing of properties, arranging bank accommodation entries, disposal of proceeds of crime. After Income Tax search, the applicant also withdrew cash amount credited in the accounts of benamidars of Suryakant

Tiwari against sale proceeds of immovable properties and deposited such cash amount safely to prevent from attachment by any Law Enforcement Agency. Thus, he is knowingly a party in layering, concealment, use, projection of proceed of crime and committed offence of Money Laundering.

6. The record of the case would show that the applicant filed an application for grant of regular bail before the learned Special Judge (PMLA Act), Fourth Additional Sessions Judge, Raipur (C.G.) seeking enlargement on regular bail which has been dismissed by the said Court vide order dated 20.08.2024.
7. Learned counsel for the applicant would submit that the applicant is innocent and has been falsely implicated in the crime in question. He would further submit that the applicant is being continued without the existence of a live investigation into the scheduled offence i.e. Section 384 of the IPC. The prosecution under the PMLA, 2002 against the applicant suffers from an inherent defect i.e. the predicate offence forming the basis of initiation of prosecution does not survive. He would further submit that it is well settled that the prosecution under the PMLA, 2002 cannot be sustained in absence of a predicate offence as the same is confirmed by the Order dated 07.08.2024 passed by Hon'ble the Supreme Court in case of **Sunil Kumar Agrawal Vs. Directorate of Enforcement [SLP (Crl.) No. 5890/2024]**. He would further submit that the other co-accused persons namely Deepesh Taunk & Ranu Sahu have already got the bail in the present Crime No. ECIR/RPZO/09/2022 by

Hon'ble the Supreme Court vide order dated 07.08.2024 and accused Kailash Tiwari has been granted anticipatory bail from Hon'ble the Supreme Court and another accused namely Rajesh Chaudhary has been granted bail by this Hon'ble Court. He would further submit that the power to arrest was exercised without due compliance with the safeguards under Section 19 of the PMLA, 2002. On 20.06.2023, there was no reasonable grounds to conclude that the applicant was guilty of the offence of money laundering and there was no live scheduled offence on such date to even sustain a prosecution under the PMLA, 2002 on such date. He would further submit that no grounds of arrest were supplied to the applicant and the applicant was not informed orally of the grounds on which he was being arrested, he was simply taken into custody and forced to sign some blank papers. He would further submit that the evidence and statements relied upon by the Enforcement Directorate to support charges under Sections 3 & 4 of the PMLA, 2002 are a product of coercion/duress and the same are contrary to the fundamental right against self-incrimination guaranteed under Article 20(3) of the Constitution of India. Since statements have been recorded after significant coercion and in violation of basic human and fundamental rights of the applicant, the same cannot be relied on by the Enforcement Directorate to sustain any conviction under Sections 3 and 4 of the PMLA, 2002. The other statements relied upon by the Enforcement Directorate in support of allegations against the applicant cannot form the

basis of any conviction as they are hit by the hearsay rule against evidence. He would further submit that from perusal of material brought on record by the Enforcement Directorate, it is clear that the applicant cannot be convicted under the PMLA, 2002 on the basis of the evidence cited/presented by the applicant. There exists reasonable grounds to believe that the applicant herein is not guilty of the offence of money laundering.

8. He would further submit that the applicant had proffered a bona fide explanation for the source of funds as recorded at page 63 of the prosecution complaint and the Enforcement Directorate has not presented any evidence that the immovable properties acquired by the applicant constituted proceeds of crime within the meaning of Section 2 (u) of the PMLA, 2002. In order to constitute "proceeds of crime", the Enforcement Directorate was bound to disprove the explanation provided by the applicant through cogent evidence as opposed merely disbelieving the same based on self-serving & subjective assumptions. He would further submit that the applicant satisfies the twin conditions stipulated in Section 45 of the PMLA, 2002 for grant of bail. The twin conditions of Section 45 of the PMLA, 2002 must be read in light of the presumption of innocence and the right to fair procedure which forms a part of Article 21 of the Constitution of India. The liberty of the applicant ought not to be interfered with, through denial of bail and prolonged pre-trial incarceration without cogent grounds. He would further submit that it is well settled that bail is the rule and its denial is the exception. The

denial of bail, in the present case would act as a completely disproportionate restriction on the personal liberty of the applicant guaranteed under Article 21 of the Constitution of India. He would further submit that custody of the applicant at trial can be secured by imposing conditions and the extreme measure of pre-trial detention ought not to be resorted in. The applicant is also willing to abide by all reasonable restrictions imposed by this Hon'ble Court for grant of bail. Deprivation of the liberty of the applicant is not necessary for the purposes of ensuring that the applicant would stand trial when called upon to do so. He would further submit that the prosecution complaint clearly establishes that the investigation into the said allegations stands completed at present and the respondent has presently attached the property of the applicant and taken into custody all necessary documents and evidence in relation to such allegations. As such, denial of bail to the applicant would serve no purpose. There is no material on record to show that the custody of the applicant is required for the investigation by the Enforcement Directorate. He would further submit that the applicant is in jail since 20.06.2023 and the trial of the case is likely to take long time for disposal and long detention of 1 year & 7 months without any basis is causing physical & mental health degradation of the present applicant and would pray for releasing the applicant on bail.

9. To substantiate his submission, learned counsel for the applicant would refer to the judgment rendered by Hon'ble the Supreme

Court in case of **Manish Sisodia Vs. Directorate of Enforcement [2024 SCC OnLine SC 1920]**, **Prem Prakash vs. ED [SLP (CrI.) No 5416 of 2024 decided on 28.08.2024]**, **Sunil Kumar Agrawal Vs. ED [SLP (CrI.) No. 5890 of 2024 (decided on 07.08.2024)]**, **Saumya Chaurasia Vs. ED [SLP (CrI.) No. 12494 of 2024 (decided on 25.09.2024)]**, **Laxmikant Tiwari Vs. ED [SLP (CrI.) No. 11141 of 2024 (decided on 04.10.2024)]**, **Deepesh Taunk Vs. ED [SLP (CrI.) N. 3403 of 2024 (decided on 07.08.2024)]**, **Ranu Sahu Vs. ED [SLP (CrI.) No. 6963 of 2024 (decided on 07.08.2024)] & Shiv Shankar Nag Vs. ED [SLP (CrI.) No. 11314 of 2024 (decided on 04.10.2024)]**.

10. On the other hand, learned counsel for the Enforcement Directorate would refer to the ECIR and would submit that the applicant was one of active members of the coal syndicate and confidante of Suryakant Tiwari. The applicant was actively involved in formation of syndicate, arranged meetings with coal businessmen, coal transporters etc., collected illegal cash from businessmen, distribution of illegal cash to different persons on the direction of Suryakant Tiwari. Besides Suryakant Tiwari, the applicant is also the person who is aware about each & every fact of the collection & utilization of proceeds of crime and person involved in the syndicate. The applicant had explained all the cash entries made in seized diaries as well as in WhatsApp Chats. He used to coordinate with other employees of Suryakant Tiwari posted in different districts & businessmen for illegal cash

collection. He also used to coordinate with Chhattisgarh State Machineries for smooth running of coal syndicate. The applicant was also looking after the layering & projection of the illegal cash into acquisition of the properties by Suryakant Tiwari and other members of the syndicate. A part of proceeds of crime has also been traveled to the applicant. In this context, multiple cash entries are mentioned in his name in the seized diaries. He was also a member of various WhatsApp Group with Suryakant Tiwari, Rajnikant Tiwari, Roshan Singh wherein multiple entries of cash collection & distribution of proceeds of crime are shared. He would further submit that the investigation conducted under PMLA, 2002 revealed that the applicant has received cash as salary out of the illegal extortion money as in his statement under Section 50 of PMLA, 2002 has stated that apart from salary he also used to receive bonus in cash from Suryakant Tiwari at regular intervals. Hence, the applicant is in possession of proceeds of crime which have been utilized by him in purchasing immovable properties in his name and in the name of his wife Smt. Talvinder Chandrakar. Thus, he was involved himself in the acquisition of proceeds of crime. He would further submit that the applicant is also involved in concealment, use, claiming and projecting assets acquired out of extortion racket.

11. He would further submit that the applicant is unable to fulfill the twin conditions of Section 45 of the PMLA, 2002 as from the above factual matrix, it is quite vivid that the possibility of the accused being not guilty of the offence of money laundering is

highly impossible. To substantiate the submission, he would refer to paragraph 135 of the the judgment rendered by Hon'ble the Supreme Court in case of **Vijay Madanlal Choudhary & others Vs. Union of India [SLP (Crl.) No. 4634 of 2014 (decided on 27.07.2022)]**. He would further submit that the applicant with proceed of crime and having deep roots in the society, is in a position to influence witnesses. To substantiate this submission, he has referred to the judgment of Hon'ble Allahabad High Court in case of **Pankaj Grover v. ED [Criminal Misc. Anticipatory Bail Application U/S 438 Cr.P.C. No. 7661 of 2021]** wherein Hon'ble the High Court has held that the accused in economic offences/ PMLA cases are in possession of huge proceeds of crime and may use those to influence witnesses. Further the Court also held that since such offences are committed mostly by influential persons, there is a high likelihood of their using influence to tamper with evidence and influence witnesses.

12. He would further submit that economic offence constitute a separate class of offence and in the present case, the amount involved in the offence of money laundering is Rs. 540 crores approximately and in view of well settled position of law that economic offence constitutes a separate class of offence and bail should not be granted in such cases and would pray for rejection of bail application.
13. To substantiate his submission, he would refer to the judgment rendered by Hon'ble the Supreme Court in case of **Nimmagadda Prasad Vs. CBI, [(2013) 7 SCC 466], State of**

Bihar Vs. Amit Kumar [(2017) 13 SCC 751], Gautam Kundu Vs. Manoj Kumar [(2015) 16 SCC 1], Mohd. Arif Vs. Directorate of Enforcement, Govt. of India, BLAPL No. 8882/2021 (decided on 31.05.2022), Soumya Chaurasia Vs. Directorate of Enforcement Special Leave Petition (Crl.) No. 8847/2023, Radha Mohan Lakhotia Vs. The Deputy Director, PMLA, Department of Revenue [MANU/MH/1011/2010], Anirudh Kamal Shukla Vs. Union of India [Criminal Misc. Anticipatory Bail Application under Section 438 Cr.P.C. No. 307/2022, decided on 21.03.2022], Naib Singh Vs. State of Haryana [CRM-M-29466-2022, decided on 15.11.2022].

14. I have heard learned counsel for the parties and perused the documents placed on record including ECIR with utmost satisfaction.
15. From the above discussion, the point to be emerged for determination by this Court is :-

“Whether the applicant fulfills twin conditions of Section 45 of the PMLA, 2002 for grant of bail?”

16. Before adverting to the facts of the case, it is expedient for this Court to extract Section 45 of the PMLA, 2002, which reads as under:-

“Section 45 of PMLA, 2002- Offences to be cognizable and non-bailable.— (1) [Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence [under this Act] shall be released on bail or on his own bond unless—]

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

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for

believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

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

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

(i) the Director; or

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

[(1-A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically 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 [* * *] subsection (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.”

17. From perusal of the ECIR, it is *prima facie* vivid that present applicant with connivance of Saumya Chaurasia, Sameer Vishnoi and other senior bureaucrats and politicians hatched a conspiracy of illegal extortion of Rs. 25/- per tonne on Coal which was transported from SECL mines & other places and the same was being carried out with the active connivance of State Mining Officials, District Officials, by using a wide network of agents which were stationed in the coal belt by maintaining a close liaison with the administration. This coal syndicate had extorted illegal levy of of Rs. 540 crores approximately from Coal businessmen/ transporters and other sectors from July, 2020 to June, 2022. This system of collection of illegal cash was

facilitated/coordinated by the applicant and the system ran with impunity and without any interruption because the applicant had backing of the highest powers in the State and due to his close association with Smt. Saumya Chaurasia and in turn with other senior IAS/IPS officers as well as politicians. The proceeds of crime generated by this syndicate have been utilized for political funding, making bribes to Government Officials, purchasing of properties including coal washeries by the co-accused persons, Smt. Saumya Chaurasia in the name of their benamidars and members of syndicate & their family members. The ECIR further *prima facie* reveals that the present applicant has played specific role in commission of offence.

18. The investigation revealed that the applicant was actively involved in formation of syndicate, arranged meetings with coal businessmen, coal transporters etc., collected illegal cash from businessmen, distribution of illegal cash to different persons on direction of Suryakant Tiwari. Besides Suryakant Tiwari, the applicant is also the person who is aware about each & every fact of the collection & utilization of proceeds of crime and person involved in the syndicate. The applicant had explained all the cash entries made in seized diaries as well as in WhatsApp Chats. He used to coordinate with other employees of Suryakant Tiwari posted in different districts & businessmen for illegal cash collection. He also used to coordinate with Chhattisgarh State Machineries for smooth running of coal syndicate. The applicant was also looking after the layering & projection of the illegal cash

into acquisition of the properties by Suryakant Tiwari and other members of the syndicate. A part of proceeds of crime has also been traveled to the applicant. In this context, multiple cash entries are mentioned in his name in the seized diaries. He was also a member of various WhatsApp Group with Suryakant Tiwari, Rajnikant Tiwari, Roshan Singh wherein multiple entries of cash collection & distribution of proceeds of crime are shared. The investigation conducted under PMLA, 2002 revealed that the applicant has received cash as salary out of the illegal extortion money as in his statement under Section 50 of PMLA, 2002 has stated that apart from salary he also used to receive bonus in cash from Suryakant Tiwari at regular intervals. Hence, the applicant is in possession of proceeds of crime which have been utilized by him in purchasing immovable properties on his name and on the name of his wife Smt. Talvinder Chandrakar. Thus, he was involved himself in the acquisition of proceeds of crime.

19. The record would further reflect that several movable and immovable properties worth Rs. 221.19 crores approximately have been provisionally attached under Section 5 of the PMLA, 2002 vide Provisional Attachment orders dated 09.12.2022, 29.01.2023 & 08.05.2023 and the same were subsequently confirmed by the learned Adjudicating Authority (PMLA), vide orders dated 01.06.2023, 17.07.2023 & 09.10.2023. Thus, the applicant is unable to fulfill the twin condition of Section 45 of the PMLA, 2002.

20. The further submission of learned counsel for the applicant that the other co-accused persons have been granted bail by Hon'ble the Supreme Court on the count of long incarceration, therefore, the applicant is also entitled to be released on bail on this count alone, is being considered by this Court. The applicant has not placed any record before this Court to demonstrate that the trial is delayed on account of negligence or delay tactic adopted by the prosecution, as such, in absence of any record, it cannot be *prima facie* held that the trial is delayed by the prosecution to consider grant of bail to the accused on account of delayed trial. Even otherwise, it is well settled position of law that the delay is always no ground for grant of bail as while granting bail on account of delay, the Court has to consider the gravity of the offence, role played by the accused and whether the delay is attributed to the prosecution or not. In the present case, none of the ingredients is available on record to grant bail to the accused on the count of delay.
21. Learned counsel for the applicant would submit that Hon'ble the Supreme Court has granted bail to the other co-accused person on the count of delay, therefore, the applicant should also be considered for releasing him on bail, deserves to be rejected looking to the role played by the applicant regarding alleged involvement in coordinating with the members of syndicate.
22. Considering the above stated factual legal matrix, it is quite vivid that the applicant is unable to fulfill twin conditions for grant of bail as per Section 45 of the PMLA, 2002 and also considering

the submission that the applicant has not *prima facie* reversed the burden of proof and dislodged the prosecution case which is mandatory requirement to get bail. Hon'ble the Supreme Court in case of **Directorate of Enforcement Vs. Aditya Tripathi (Criminal Appeal No. 1401/2023)** decided on 12.05.2023 has held at paragraph 6 & 7 as under:-

“6. At the outset, it is required to be noted that respective respondent No. 1 – accused are facing the investigation by the Enforcement Directorate for the scheduled offences and for the offences of money laundering under Section 3 of the PML Act punishable under Section 4 of the said Act. An enquiry/investigation is still going on by the Enforcement Directorate for the scheduled offences in connection with FIR No. 12/2019. Once, the enquiry/investigation against respective respondent No. 1 is going on for the offences under the PML Act, 2002, the rigour of Section 45 of the PML Act, 2002 is required to be considered. Section 45 of the PML Act, 2002 reads as under:-

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

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

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

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

(i) the Director; or

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

[(1-A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically 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 [* * *] subsection (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.”

By the impugned judgment(s) and order(s) and while granting bail, the High Court has not considered the rigour of Section 45 of the PML Act, 2002.

6.1 Even otherwise, the High Court has not at all considered the nature of allegations and seriousness of the offences alleged of money laundering and the offences under the PML Act, 2002. Looking to the nature of allegations, it can be said that the same can be said to be very serious allegations of money laundering which are required to be investigated thoroughly.

6.2 Now so far as the submissions on behalf of the respective respondent No. 1 that respective respondent No. 1 were not named in the FIR with respect to the scheduled offence(s) and/or that all the other accused are discharged/acquitted in so far as the predicated offences are concerned, merely because other accused are acquitted/discharged, it cannot be a ground not to continue the investigation in respect of respective respondent No. 1. An enquiry/investigation is going on against respective respondent No. 1 with respect to the scheduled offences. Therefore, the enquiry/investigation for the scheduled offences itself is sufficient at this stage.

6.3 From the impugned judgment(s) and order(s) passed by the High Court, it appears that what is weighed with the High Court is that chargesheet has been filed against respective respondent No. 1 – accused and therefore, the investigation is completed. However, the High Court has failed to notice and appreciate that the investigation with respect to the scheduled offences under the PML Act, 2002 by the Enforcement Directorate is still going on. Merely because, for the predicated offences the chargesheet might have been filed it cannot be a ground to release the accused on bail in connection with the scheduled offences under the PML Act, 2002. Investigation for the predicated offences and the investigation by the Enforcement Directorate for the scheduled offences under the PML Act are different and distinct. Therefore, the High Court has taken into consideration the irrelevant consideration. The investigation by the Enforcement Directorate for the scheduled offences under the PML Act, 2002 is still going

on.

7. As observed hereinabove, the High Court has neither considered the rigour of Section 45 of the PML Act, 2002 nor has considered the seriousness of the offences alleged against accused for the scheduled offences under the PML Act, 2002 and the High Court has not at all considered the fact that the investigation by the Enforcement Directorate for the scheduled offences under the PML Act, 2002 is still going on and therefore, the impugned orders passed by the High Court enlarging respective respondent No. 1 on bail are unsustainable and the matters are required to be remitted back to the High Court for afresh decision on the bail applications after taking into consideration the observations made hereinabove.”

23. Hon’ble the Supreme Court in case of **the Union of India through the Assistant Director Vs. Kanhaiya Prasad [Criminal Appeal No. 728 of 2025, SLP (Crl.) No. 7140 of 2024 (decided on 13.02.2025)] [2025 INSC 210]** has held at paragraph 20 to 23 as under:-

“20. The High Court has utterly failed to consider the mandatory requirements of Section 45 and to record its satisfaction whether any reasonable ground existed for believing that the respondent was not guilty of the alleged offence, and that he was not likely to commit any offence while on bail. Merely because the prosecution complaint had been filed and the cognizance was taken by the court that itself would not be the ground or consideration to release the respondent on bail, when the mandatory requirements as contemplated in Section 45 have not been complied with.

21. As well settled, the offence of money laundering is not an ordinary offence. The PMLA has been enacted to deal with the subject of money laundering activities having transnational impact on financial systems including sovereignty and integrity of the countries. The offence of money laundering has been regarded as an aggravated form of crime world over and the offenders involved in the activity connected with the Proceeds of Crime are treated as a separate class from ordinary criminals. Any casual or cursory approach by the Courts while considering the bail application of the offender involved in the offence of money laundering and granting him bail by passing cryptic orders

without considering the seriousness of the crime and without considering the rigours of Section 45, cannot be vindicated.

22. The impugned order passed by the High Court being in teeth of Section 45 of PMLA and also in the teeth of the settled legal position, we are of the opinion that the impugned order deserves to be set aside, and the matter is required to be remanded to the High Court for fresh consideration. Accordingly, the impugned order is set aside, and the matter is remanded to the High Court for consideration afresh with the request to the Chief Justice to place the matter before the Bench other than the Bench which had passed the impugned order. We may clarify that we have not expressed any opinion on the merits of the case.

23. Though, the learned Senior Counsel Mr. Ranjit Kumar has submitted that the respondent having already been released on bail, the same be continued in a peculiar and piquant situation, we are not inclined to accept the said submission. The impugned order passed by the High Court having been held to be unsustainable and untenable by us, the effect of the same cannot be continued. The respondent shall surrender before the Special Court within one week from today.”

24. Considering the ECIR and other material placed on record, which *prima facie* shows involvement of the applicant in crime in question and also considering the law laid down by Hon'ble the Supreme Court, it is quite vivid that the applicant is unable to fulfill the twin conditions for grant of bail as provided under Section 45 of the PMLA, 2002. Thus, the **Point** is answered against the applicant.
25. Considering the above stated factual and legal matrix, the role played by the applicant, I am not inclined to enlarge the applicant on bail.
26. Accordingly, the bail application filed under Section 483 of the Bhartiya Nagrik Suraksha Sanhita, 2023 is liable to be and is

hereby rejected.

27. The observation made by this Court is not bearing any effect on the trial of the case. The learned trial court will decide the criminal trial in accordance with evidence, material placed on record, without being influenced by any of the observations made by this Court while deciding the present bail application.

**Sd/-
(Narendra Kumar Vyas)
Judge**

Arun