Court of Yogesh Kumar, AJC-I cum Special Judge , PMLA, Ranchi

Misc. Criminal Application 2447/2025
ECIR.Case No. 06/2023
CNR No. JHRN01-013826-2025

Hemant Soren ..……..…….... **Accused/Petitioner**.

Vs.

The State through ED …..……...……..…….**O.P.**

Ld. Counsel for petitioner– Miss Meenakshi Arora, Sr. Adv.
Mr. Abhir Datt, Adv.
Mr. Debayan Gangopadhyay
Sri Pradeep Chandra, Advocate

Ld. Counsel for the ED - Mr. Zoheb Hossain, Adv.
Sri Ramit Satender, Spl. P.P.

Date of Filing : 05.12.2025

Date on which order reserved : 03.06.2026

Date of Order : 08.06.2026

ORDER

1. The petitioner **Hemant Soren (A-2)** arrayed as an accused in ECIR Case No. 06/2024 has filed this petition u/s 227 of the Cr.P.C with the prayer to discharge him from this case. Copy of the petition has been served to learned Spl. P.P appearing on behalf of ED. Reply has also been filed by ED.

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2. The prosecution case in brief is that on the basis of information shared with Jharkhand Government under section 66(2) PMLA, 2002,

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an FIR bearing No. Sadar PS case No. 272/2023 dated 01.06.2023 was registered against one Bhanu Pratap Prasad, Revenue Sub-Inspector under section 465/467/468/469/476/420/379/474 of IPC on the written complaint of Manoj Kumar, Circle Officer, Baragai Anchal. Since Sections 467/476 and 420 of IPC out of Sections 465/467/468/469/476/420/379/474 of IPC in the FIR No. 272/2023 dated 01.06.2023 were the scheduled offences under the Prevention of Money Laundering Act, Enforcement Directorate registered ECIR RNZO/25/2023 and conducted investigation under PMLA, 2002. The investigation culminated in the submission of first prosecution complaint under the PMLA, 2002 against the present petitioner (A-2), Bhanu Pratap Prasad, Raj Kumar Pahan, Hilariyas Kachhap and Binod Singh, which resulted in the institution of ECIR Court Case No. 06/2023.

3. The background for sharing information u/s 66(2) of the PMLA, 2002 was the investigation by Enforcement Directorate in another case being ECIR RNZO/18/2022 into the matter of fraudulent acquisition of land, which was in possession of Ministry of Defence, Government of India, having area 4.45 acres at Morabadi, Ranchi. During the

investigation of that case, it came to light that a group of private persons in connivance with government officials including the Ex-Deputy Commissioner, Ranchi, Chhavi Ranjan and Bhanu Pratap Prasad (Revenue Sub-Inspector, Circle Office, Baragain, Ranchi) were part of a land grabbing syndicate and were involved in corrupt practices, which included acquiring properties on the basis of false deeds, falsification of Government records, tampering with original revenue documents etc. in order to facilitate private persons to acquire landed properties in a fraudulent manner. During investigation, it is stated that a survey was conducted at Circle Office, Baragain, Ranchi on 09.02.2023, in which, few original records kept in custody of Bhanu Pratap Prasad were verified and falsification and tampering in the registers were identified. It has been alleged that Bhanu Pratap Prasad was involved in corrupt practices and had been a party with several persons involved in the acquisition of properties and on a raid conducted at several premises including the rented premises of Bhanu Pratap Prasad, eleven trunks of voluminous property documents along with seventeen original registers (Register-II) were seized from his possession. Since the matter was related to forgery with the revenue records by a government official, the

information was shared with the Chief Secretary, Jharkhand and accordingly, Sadar P.S. Case No. 272/2023 was registered on a written complaint of Manoj Kumar, Circle Officer, Baragain Anchal. It has been alleged that the registers contained reference to several properties, which have been acquired in an illegal manner including the reference of properties measuring 8.86 acres at Shanti Nagar, Baragain, Bariatu Road (Near Lalu Khatal) illegally acquired and possessed by the petitioner.

4. The prosecution complaint under the PMLA, 2002 further reveals that the seventeen registers seized from Bhanu Pratap Prasad were examined and explanation u/s 50 PLMA, 2002 was sought from Bhanu Pratap Prasad, which further led to the identification of tampering in the said original records aimed at extending illegal benefits to other persons. It is stated that during searches on 13.04.2023 in connection with ECIR/RNZO/18/2022, handwritten diaries were also seized from the possession of other persons namely, Md. Saddam Hussain, Imtiaz Ahmad and others, who were associates of Bhanu Pratap Prasad. In the diaries cash payment to Bhanu Pratap Prasad was mentioned by his associates and in the cash transactions details in respect of property

measuring 4.83 acres situated at Plot Nos. 31, 32, 33, 35, 36, 38, 72 and 73, Khata No. 53, Mouza Gari, Baragain Anchal, Ranchi, two false deeds- one of the year 1940 and the other of the year 1974 were found to have been prepared by the associates of Bhanu Pratap Prasad. It has been stated that the land measuring 4.83 acres is a portion of 37.10 acres of land, which was purchased from Catholic Credit Cooperative Society by Mangal Mahto and Kaila Mahto in the year 1939 executed at the office of the District Sub-Registrar, Ranchi. It was revealed during investigation that the said properties are entered in Register-II at Page No. 53 of Volume-I of Gari Mouza. The land belongs to the Mahtos, which could not be sold or transferred to the persons belonging to the General Category. However, Bhanu Pratap Prasad in connivance with his accomplices entered the property measuring 4.83 acres in the name of Samrendra Chandra Ghoshal at Page no. 139 of Register-II, Volume-I. This page was earlier opened in the name of a raiyat, namely, Jitya Bhokta, Son of Tetar Bhokta. The name of Jitya Bhokta as well as Tetar Bhokta were encircled in red ink and the name of one Samrendra Chandra Ghoshal and Jitendra Chandra Ghoshal were written in place of Jitya Bhokta and Tetar Bhokta respectively thereby making this property

as a general property which became saleable. On being confronted with the said facts while recording statement u/s 50 PMLA, 2002, Bhanu Pratap Prasad had admitted about his involvement. The Circle Officer, Baragain was requested to provide a fresh certified copy of the concerned page but he, vide letter dated 19.03.2024, informed that the said page was torn and destroyed by someone, hence, the same could not be made available. It was therefore, implied that the records and evidence associated with the forgery committed by Bhanu Pratap Prasad and others are being destroyed and there are other persons involved, who is/are acting on behalf of Bhanu Pratap Prasad and others.

5. It has been alleged that Bhanu Pratap Prasad was a member of a syndicate, which was involved in acquiring lands by fraudulent means, which included tampering with original government registers, falsification of government records and manufacturing false documents. The accused Bhanu Pratap Prasad was directly involved in hatching conspiracies with other persons to acquire and dispose properties in illegal manner and was an accomplice to several persons including A-2, which is corroborated from the seizure of an image recovered from his mobile phone, which contained the details of a cluster of landed

properties situated adjacently on twelve plots at Baragain Anchal, the total area of which was around 8.86 acres. The property was acquired in an illegal and unauthorized manner by the accused A-2 and he had been in continuous possession of the property since 2010-11.

6. In course of investigation, searches were conducted u/s 17 PMLA, 2002 and during search on 29.01.2024, cash amounting to Rs. 36,34,500/-, one BMW Car along with certain documents/records were seized from the premises under the use and occupation of the accused A-2. It has been alleged that in the first survey conducted u/s 16 of the PMLA, 2002 on 20.04.2023 in respect of 8.86 acres of land in presence of the Circle Officer, Circle Inspector, Circle Aamin, Baijnath Munda, Shyam Lal Pahan, Bhanu Pratap Prasad and the officials of the Directorate of Enforcement, Ranchi Zonal Office, it was seen that there was a big chunk of land bounded by stone walls with a temporary settlement in which a family consisting of five persons were residing and on inquiry about the ownership of the land, one lady (name withheld) residing and available there stated that the owner of the said 8.86 acres of the land was A-2. In the course of inquiry, one Santosh Munda had stated that the land belonged to *Mantri Ji* i.e. the accused

herein. On further inquiry, Santosh Munda had stated that the land was in custody of A-2, Chief Minister of Jharkhand, which was noted by all persons present during the survey proceedings by putting their signatures on the paper drawn for that purpose. In the second survey conducted on 10.02.2024, the land measuring 8.86 acres was confirmed by the officials of the Circle Office present there that the said land is situated in the locality of Lalu Khatal. An image of a plan of a Banquet Hall was retrieved from the mobile phone of Binod Singh, a close accomplice of A-2, in which, the locality of the proposed construction of a Banquet Hall was mentioned as "Lalu Khatal, Bariatu Road, Ranchi". It was also checked during the survey that no other big parcel of land was vacant in the vicinity, where the proposed Banquet Hall could be constructed. Some people were seen living in a settlement inside the boundary wall, who identified themselves as family members of Santosh Munda but they could not identify accused Raj Kumar Pahan, who claimed possession and occupation over the said land occupied by A-2. They had stated that they have been living in the said land for several years but they have never come across anyone called Raj Kumar Pahan. "During survey, an "Indotech" made Electric Meter connection was seen

in the room situated inside the boundary wall and in the Meter, the name of "Hilariyas Kachhap, Diwakar Nagar, Bariatu Sadar" was written. The name of the accused Hilariyas Kachhap also surfaced during investigation, where the witnesses have stated under Section 50 PMLA, 2002 that he used to be personally involved in the verification work done by Bhanu Pratap Prasad. Further he was also instrumental in the construction of boundary wall over the 8.86 acres of land by accused A-2.

7. It has also come in the course of investigation that after the first summon was issued to the accused A-2, an application was immediately filed by Raj Kumar Pahan, an accomplice of A-2 before Deputy Commissioner, Ranchi, which was registered as SAR Case No. 81/2023-24 and vide order dated 29.01.2024, the SAR Court had cancelled the jamabandis of the earlier occupants thereby enabling the accused Raj Kumar Pahan to acquire the property on paper in order to distance A-2 from the illegal occupation and possession of the subject property. The entire exercise by the SAR Court proves that the accused A-2 misused his position and created parallel false evidence in order to

camouflage his possession on the property and to project the said property i.e. the "proceeds of crime" as untainted property.

Arguments advanced on behalf of petitioner to support the plea of A-2 for his discharge from this case:

8. Ld. counsel appearing on behalf of petitioner A-2 has submitted that there is NO LINK OF THE IDENTIFIED 'PROCEEDS OF CRIME' WITH THE SCHEDULED OFFENCE IN THE PRESENT CASE. It has been submitted that the land identified as the 'proceeds of crime' qua **(A-2)** i.e., the land ad-measuring 8.86 acres situated at Bariyatu Road, Ranchi, has no link whatsoever with the scheduled offence of cheating and forgery in the present case, and therefore, the basic ingredients of Section 3 of the Prevention of Money Laundering Act, 2002 ("PMLA") are not fulfilled in the present case. There are actually two separate issues and conspiracies identified in the PC - (i) One relating to recovery of documents from A-1 Bhanu Pratap Prasad, and the forgery of revenue documents and deeds to acquire title; and (ii) the allegation relating to A-2 being in possession of a property ad-measuring 8.86 acres in the year 2010-11. It is submitted that both these issues are entirely distinct and separate and there is no material to show

any connection between these two alleged acts. It is evident that only the first alleged conspiracy is the subject-matter of the scheduled offence. As per the case of prosecution/ED - the registers allegedly recovered from the possession of A-1 (Bhanu Pratap Prasad) fall within the definition of "property" as defined under Section 2(i)(v) PMLA (@Para 10.6 at pg. 87). It has been submitted that if the registers are property under Section 2(1)(v) PMLA, then reading this with Section 2(1)(u) PMLA would imply that the 'proceeds of crime' would be the deriving or obtaining of these registers, as a result of criminal activity. These registers have neither been derived nor obtained by A-2, and it is also not the case that the same were kept with A-1 at the behest of A-2. A-1's possession of the "properties" i.e., the registers under Section 2(1)(v) PMLA, is not linked to A-2 in any manner. It is not the allegation that it was A-2, who allowed A-1 to acquire or retain these registers or that A-1 was put on this post by A-2 for his own benefit. It is the case of the prosecution that because of timely action of the ED, forgery with respect to this property i.e the land at Bariyatu could not be done (i.e., cheating or forgery) (@Para 10.2 at pg. 85 and Para 10.19 at pg. 103). There is no material to show any connection of A-2 with the alleged forgery of

property being the revenue records seized from A-1. It is an admitted position that no forgery of records with relation to the identified piece of land ad-measuring 8.86 acres has been carried out. The Bariyatu property is an ancestral property of A-3 (Raj Kumar Pahan) and has been held by his family for several generations and is still registered and possessed by him. Even if one were to take the case of the prosecution beyond the allegations in the PC and to an extreme end the 'proceeds of crime' may be any property derived or obtained from the registers, or from forging of the registers or part of them, here again the case of the prosecution must fail because no title ever passed in favour of A-2 after A-1 took custody of the registers.

9. It has been submitted that for Section 3 PMLA to be attracted, accused has to acquire or possess or conceal, etc, such a property that has been directly or indirectly derived or obtained from a scheduled offence but there is no material to suggest that A-2 has either derived or obtained the Bariyatu property from any such criminal activity of forgery or cheating. The Bariyatu property continues to be registered in the name of the rightful owner, i.e., A-3. It is not the case of the ED that the register has been manipulated to record the name of A-3 as

registered owner and the rightful owner is somebody else. It is not the case of the ED that A-3 has transferred the Bariyatu property to A-2 nor is there any evidence in this regard. In fact, there is no evidence to link A-2 with A-3. There is no evidence of alleged illegal possession of the Bariyatu property by A-2. On the contrary, registered deeds of lease and electricity bills incontrovertibly establish that A-4 was in occupation and possession of the Bariyatu property under A-3. There is no evidence to link A-4 with A-2. In any event, the issue of possession is irrelevant, and outside the purview of the offence under Section 3 PMLA. The alleged illegal possession of A-2 has nothing to do with the alleged scheduled offence in the present case. It is alleged by ED that it has stopped the conspiracy to fructify and that there was some conspiracy in place to forge records in the name of A-2, however,

a) There is no material to suggest that any such conspiracy existed with the involvement of A-2;

b) There is also no material to show that any forgery/cheating was going to take place to get the land in the name of A-2 and the Court cannot be asked to assume such conspiracy. It has been submitted that till such time the alleged conspiracy culminates in the predicate offence of

falsification of register by incorporation of A-2's name as owner of the Bariyatu property instead of A-3, the said property cannot be proceeds of crime to attract the provisions of the PMLA. Further, there cannot be any offence of projecting the said property as untainted by A-2 because as per the case of the ED, the said property would have been allegedly registered in the name of A-2.

c) There is no evidence of any meeting of minds or any meetings at all. There are no CDRs, no whatsapp chats. No witness sees A-2 with A-1 who is supposed to be his conduit, or any of the other alleged middlemen such as Raj Kumar Pahan, Hilariyas Kachhap. None of the purported witnesses who were allegedly conduits between A-2 and A-1 have given any statement that A-2 directed them to communicate with A-1 on his behalf.

d) There must be some material to show any link between accused persons or overt acts from which a conspiracy can be inferred. It is submitted that the same cannot be assumed by the Hon'ble Court. Reliance in this regard is placed on the judgments of the Hon'ble Supreme Court in P.K. Narayan v. State of Kerala, (1995) 1 SCC 142 (Para 10 at pg. 7 of Judgment Compilation); Vijayan v. State of Kerala,

(1999) 3 SCC 54 (Para 11 at pg. 16 of the Judgement Compilation); and Ram Sharan Chaturvedi v. State of Madhya Pradesh, (2022) 16 SCC 166.

e) The law is found well established that conspiracy cannot be proved merely on the basis of inferences. The inferences have to be backed by evidence. Reliance is placed on Dr. Satyavir Singh vs State of UP, 2015 SCC OnLine All 8989 (Para 80 at pg. 52 of the Judgement Compilation).

f) It is consistently alleged that at the instance of and on directions of A-2, A-1 conducted verification of the property. However, there is nothing on record to show the significance of the said verification and how it was conducted and in what manner the same benefited A-2. The said verification, even if accepted as true, does not add anything to the case of the prosecution and ED has overlooks that as an officer of the Circle Office, it is part of A-1's official duty to verify the status of properties.

10. Ld Counsel for accused has submitted that the period of the alleged offence of acquiring/possessing the property by A-2 is alleged to have taken in the year 2010-11 as evident from Para 3.9, 8.3, 8.18, 10.28 of the Prosecution Complaint and that the scheduled offence in the

present case is admittedly arising out of activities conducted by a "land grabbing syndicate", led by Bhanu Pratap Prasad, who were involved in acquiring properties through false deeds, falsification of government records, tampering with original revenue documents, etc. to facilitate private persons to acquire landed properties in fraudulent manner. It has been submitted that as per the statement of A-1 Bhanu Pratap Prasad, he was posted in Ranchi as a revenue sub-inspector in 2019 and therefore, the case of the prosecution falls since acquisition of the 'proceeds of crime' identified in the present case (whether it is the land ad-measuring 8.86 acres or the registers recovered from the possession of A-1), cannot precede the scheduled offence. Ld. Counsel has submitted that the 'proceeds of crime' must flow from or derived or obtained from the scheduled offence and as such, the alleged possession of the land, which is alleged to have been taken in 2010-11, could not be an activity resulting from the commission of offences mentioned in the scheduled offence.

11. Ld. Counsel has further submitted that THERE IS NO EVIDENCE THAT A-2 WAS IN POSSESSION OF THE LAND AD-MEASURING 8.86 ACRES as the only material relied upon by the

prosecution to show that the property has any relation with A-2 are hearsay statements of witnesses stating that they have heard from someone or that it is in their knowledge that the property belongs to A-2. With respect to witnesses namely **Baijnath Munda (RUD-57) and Santosh Munda (RUD 58-59), it** has been submitted that both these persons were allegedly found during the survey dated 20.04.2023 conducted by the ED and Baijnath Munda (RUD-57) stated that he was the owner of a portion of the land ad-measuring 8.86 acres, which was his ancestral land and that the same was taken over by family members of then CM, Shibu Soren sometime around 2010 but he has not stated as to how he came to the knowledge that the land was possessed by Sorens. That he stated that one 'Kachhap' used to watch over the land and said that the boundary on the land was gotten constructed by CM Sahab (which is hearsay and cannot be used to show possession in the hands of A-2). It has further been submitted that Hilariyas Kacchap in his statement (RUD-17) does not corroborate the version of Baijnath Munda and there is no link shown between Baijnath Munda and A-2 or Hilariyas Kacchap and A-2 and therefore, the aforesaid version appears doubtful as in all these years since 2010, Baijnath Munda has not filed

any complaint or launched any civil proceedings with respect to the possession of the land. The said statement cannot be used to establish possession in the hands of A-2. Referring to the statement of Santosh Munda (RUD 58-59), it has been submitted that he was a resident of the land ad-measuring 8.86 acres since the past 14-15 years as a caretaker and had done some work in the making of the boundary wall and was then hired as a caretaker. Ld. Counsel submitted that even if his statement is believed that A-2 visited the spot twice, the same does not make out a case of possession against A-2. The same in no manner shows constructive possession of said land in the hands of A-2. That he does not state how he knows that the land belonged to A-2. His statement is vague that and states, without any additional information, that the land belongs to A-2. It is submitted that the same is not sufficient to show possession in hands of A-2. It has further been submitted that there is no material to show who paid the said Rs. 4000 Rs. 5,000 to Santosh Munda, leave alone any material to show that the same was paid by A-2 or on his behalf. There is no link established between A-2 and Santosh Munda. The witness's belief that A-2 was in

possession of the land is irrelevant and cannot be used to establish possession in the hands of A-2.

12. i. Manoj Kumar, Circle Officer (RUD 49-52 & pg. 68/PC): He states that he received instructions from Uday Shankar, PPS to the media advisor of A-2 to conduct verification of the land measuring 8.86 acres and accordingly instructed A-1 to conduct the said verification. He further states that he had heard that the land belonged to A-2 (hearsay).

ii. Uday Shankar (RUD-60 & pg. 69/PC): states that he received instructions from Abhishek Prasad @ Pintu, media advisor to A-2, to conduct verification of the said land. He also stated that he had come to know that the land belonged to A-2 (hearsay). Importantly, the said witness stated that he had directed for verification of the said, amongst several other lands, showing that the verification, if at all was conducted, was done in a routine manner and not to benefit A-2.

iii. Abhishek Prasad @ Pintu (RUD-56 & pg. 69/PC): claims to have received instructions from A-2 for conducting verification of the said property amongst many other properties but clearly states that he had no knowledge that the land belonged to A-2 Relevant portion of his statement can be found at pg. no. 4177/RUD-56 for ready reference.

iv. Bhanu Pratap Prasad (RUD-40): The only statement of A-1 relevant for allegations qua A-2 is the statement dated 20.04.2023 recorded under Section 50 PMLA. In the said statement, he states that he had received instructions for verification of the land admeasuring 8.86 acres and that he heard that the land belonged to "boss" which usually referred to the Chief Minister of the state. The same is not only entirely hearsay, but it also shows that A-1 did not have any direct or indirect contact with A-2 for there to be a possibility of existence of a conspiracy between them.

13. Without prejudice to the above submissions, it has been submitted that the statement of A-1 Bhanu Prasad Pratap dated 20.04.2023 was admittedly recorded after he was taken into custody and the same is therefore, inadmissible in evidence, despite having been recorded under Section 50 PMLA. Reliance is placed on the judgment of the Hon'ble Supreme Court in **Prem Prakash vs. Union of India, 2024 SCC OnLine SC 2270**, wherein the Hon'ble Supreme Court held that any statement of a person in the custody of ED, which is incriminating against the maker, would be inadmissible in evidence even if recorded under Section 50 PMLA, as it cannot be safely said that such statement

has been made with a 'free mind, given the 'vulnerable position' of the accused and the 'dominating position' of the Investigating Agency during interrogation.

14. While referring to the evidence collected by ED **Related to alleged verification in 2020,** Ld. Counsel has mentioned to the statements of following witnesses and response of A-2 on their evidence:

i. **Shailesh Kumar, Circle Officer (RUD-53 & pg. 76/PC):** He states that he received instructions from one Chhavi Ranjan, the then DC to do verification of the land and provide a report. Accordingly, he instructed A-1 to conduct the verification. That it came to his knowledge that the land was in occupation of A-2 (hearsay).

ii. **Chhavi Ranjan (RUD-42 & pg. 77/PC):** He states that he may or may not have passed such instructions to Sailesh Kumar. He was not aware of A-2 having been in possession of the land (not damaging or relevant).

iii. **Shashinder Mahto (RUD-54 & pg. 36/PC):** He allegedly stated that he was working as an ameen and accompanied A-1 to verify the

said land. He stated that he came to know that A-2 was in occupation of the land (hearsay).

15. Referring to statements of Ganesh Pahan (RUD-80), Koka Pahan (RUD-81), Makhan Pahan (RUD-79), Manoj Pahan (RUD-67), Sajjad Khan (RUD-82), it has been submitted that all these persons stated that they were possession of parts of the land ad-measuring 8.86 acres and did agricultural activities on the same. They stated that they were evicted from the land by Shibu Soren & A-2 in 2010-11 and that certain persons being Kachhap and Raj Pahan held the land as a front for A-2 (@pg. 79/PC). Further submitted that none of them stated as to how they came to know that the land was in possession of A-2. Nor has explained as to how despite having sold the land to Jaiswals, Singhs and Bhagats in 1986-88, they were still in possession in 2010. Further submitted that none of them stated that they ever saw A-2 on the land having any constructive possession and i**n effect, these statements cannot be used to show possession in the hands of A-2.**

16. Referring to the **statements of** Shankar Pahan (RUD-69); Anil Munda Pahan (RUD-70); Parasnath Pahan (RUD-71); Alok Pahan (RUD-72) Sudhir Pahan (RUD-75); Birender Pahan (RUD-73);

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Dhananjay Pahan (RUD-74), it has been submitted that their statements (gist @pg. 75/PC) is not to the effect that they were aware of their ownership over the land ad-measuring 8.86 acres and they made signatures on the application of Raj Kumar Pahan dated 16.08.2023, only on the instructions of Raj Kumar Pahan. None of these witnesses have named A-2 or have said that A-2 was in possession of the land or that the application was filed as part of a conspiracy as alleged. It has been submitted that **Ravi Pahan (RUD-68)** has stated that he has been in possession of portion of the land since a long time. He said that he came to know from Raj Kumar Pahan that certain persons were trying to usurp the land and accordingly, signed on the application dated 16.08.2023 and therefore, the said statement corroborated the version of A-3 Raj Kumar Pahan and what transpired in the SAR Proceedings - showing that the land in fact had nothing to do with A-2 and the dispute if any, was between the Pahans and the Jaiswals, Singhs, etc.

17. On behalf of A-2, it has been submitted that during the survey conducted by ED on 20.04.2023, it was specifically noted that the ownership of the said property appeared to be a civil dispute and is out of the scope of proceedings under the PMLA (can be found at pg. no.

451/RUD-10). The registers had been seized by ED from the custody of A-1 on 13.04.2023. No new material whatsoever was obtained by ED after 20.04.2023 for the ED to change its stand that the said property was proceeds of crime to attract the provisions of the PMLA. There is no material whatsoever to suggest how A-2, in the middle of this civil dispute, was eventually going to acquire the property in his name as part of a conspiracy.

18. Ld. Counsel has referred statement of **Ashok Jaiswal (RUD 61-62),** wherein he states that he bought a portion of the land ad-measuring 8.86 acres in 1985 and that they were in joint possession of the land along with Pahans till 2008, at which point certain persons came and started constructing a boundary wall and ousted them from the property. He states that he was told by these people that the land now belonged to A-2 (hearsay). Similar statements as above have also been recorded of witnesses Shashi Bhushan Singh (RUD 63-64) and Bishnu Kumar Bhagat (RUD 65-66), whose ancestors' names find mentioned as owners in the registers. It has been submitted that it is relevant to note that these persons originally ousted tribal from Buinhari land in 1985-88 and were themselves in illegal possession of the land. None of these witnesses

claim to have seen A-2 in possession of the said property. The statements of these witnesses who claim to have lost possession in 2008 to A-2 is not believable as none of them have even lodged a complaint for over 14 years. It is relevant to note that A-2 was elected CM only in 2019 and the State was under BJP rule from 2014 till 2019.

19. It has been further submitted that pertinently, statement of Hilariyas Kachhap recorded under Section 17 PMLA (RUD-17) also shows that portion of the land was in use of Raj Kumar Pahan and his family since a long time, and the same was being used by Kachhap for agricultural activities. The same continued even after 2010-11, when it is alleged that A-2 took over the property. There is direct documentary material in the form of registered lease deeds and electricity bills contradicting the case sought to be made out by the ED on the basis of unsubstantiated oral statements, which are all hearsay and of no probative value whatsoever.

20. Ld. Counsel has further submitted that FORGED DEED NO. 3985/1940 IS NOT EVIDENCE OF CONSPIRACY QUA A-2 AND IS IN FACT MATERIAL SUGGESTING ABSENCE OF INVOLVEMENT OF A-2 IN ANY CONSPIRACY. Ld. counsel

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submitted that ED has alleged in the supplementary complaint (@Para 3.11 at pg. 20) that a forged deed of 1940 was recovered from the possession of accused Saddam Hussain, for a land ad-measuring 6.34 acres at Mauja Baragain, Ranchi, between one Balka Pahan and one Asghar Hussain and that a portion of the said 6.34 acres, ad-measuring 0.84 acres (Plot Nos. 989 and 996 of Khewat No. 10), forms part of the 8.86 acres of land allegedly in the possession of A-2. It has been submitted that if the above version is believed, then it is evidence against a conspiracy involving A-2. The above clearly shows that there was an attempt to forge the title of a portion of the said land in the name of Asghar Hussain, who has no connection with A-2, and for a land in which A-2 is allegedly interested. The said Saddam Hussain or Afshar Ali do not name A-2 in any manner in their statements recorded under Section 50 PMLA (@pg. 81, 82, SPC) (RUD 31-36 for Saddam Hussain and RUD 10-14 for Afshar Ali). Nor does A-1 Bhanu Pratap Prasad name A-2 in respect of this conspiracy (at pg. 64-66/PC and RUD No. 31-41). In fact, a perusal of the statement of Afshar Ali (RUD-10/Q.4-5) would show that when he is asked about this deed, he said that he entered the information and conducted the forgery as per instructions of

Saddam Hussain. When Saddam Hussain is specifically questioned about this deed and the land (RUD-32, Q. 3-4), he denies having any knowledge of A-2 having any possession of the land and further mentions other persons who were supposed to acquire this land. This further proves that the alleged conspiracy did not involve A-2 in any manner. Interestingly, ED has not conducted any enquiry against the persons named by Saddam Hussain as the same would reveal the truth and destroy the false case made out by ED to implicate A-2. Hence, the allegation of the ED that the said deed was prepared and forged to benefit A-2 (@Para 9.24 at pg.50/SPC) has no substance. The same shows that there is large-scale illegal acquisition of land being carried out by an identified syndicate, and that none of the deeds have been forged in the name of A-2 till date. The same is also evident from a perusal of the diagrammatic representation of this alleged conspiracy shown by the ED in the 1st Supplementary Complaint dated 07.01.2024 (@Pg. 51) which clearly shows that the alleged conspiracy would have stood as is, and there is no involvement of A-2. A-2 has been clearly put in the middle of an existing scam, and is being falsely implicated.

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21. Ld. Counsel has submitted that APPLICATION OF RAJ KUMAR PAHAN AND PROCEEDINGS BEFORE THE SAR COURT ALSO DOES NOT MAKE OUT ANY CASE AGAINST A-2 as there is no material to support the allegation that A-3 Raj Kumar Pahan is a front for A-2 or that A-2 used him in an attempt to conceal the true nature of the property. There is no connection shown between A-2 and A-3 with no meetings, calls, messages, etc. In the absence of any evidence showing conspiracy, the same cannot be assumed. The Order passed by the Ld. SAR Court is final as the same was never challenged by any of the parties. The Presiding Officer of the SAR Court was not an accused or a witness and has never been examined by the ED. In fact, the material on record suggests that the proceedings before the SAR Court took place after following all necessary rules and regulations, and there was no illegality in the passing of the order dated 29.01.2024 by the SAR Court. Statement of Manoj Kumar, then Circle Officer (RUD-51 at pg. 3956-3957) shows that after the filing of the application by Raj Kumar Pahan, notices were issued to all parties and thereafter, an advertisement regarding the same was also published. Inspections of the land was also conducted and it was found that the same was bhuinhari

land and was illegally mutated in the names of non-tribals. It was only after giving all opportunities to all parties involved was the order passed in favour of the Pahan family in accordance with the provisions of the CNT Act, 1908. The relevant portion can be found at RUD-51 at pg. 3956-3957 for ready reference. The said witness Manoj Kumar is not an accused and his statement is sought to be relied on by the prosecution, which clearly demolishes their case. There is direct evidence to show that the order was passed in accordance with law. And on the other hand, there is no material whatsoever to show that the process was conducted in a faulty manner to favour a specific party. The said allegation is based entirely on the say-so of the prosecution in the Prosecution Complaint. In this regard, it is relevant to note that that there is no evidence to show that the case and the quick decision of SAR Court was unheard of and never happened in other cases. There is no evidence to show any of this or that any these proceedings took place in this manner because of some influence exerted by A-2. The same cannot be assumed. The judgment of the SAR Court confirms the title of A-3 and his family members as owners of the said property. This judgment has not been challenged by Jaiswal, Munda or Bhagat, all of whom

claim to be owners of part of the said property in the statements given to ED. It is further submitted that on one hand, the ED argued that A-2 was in a conspiracy to get the property in his name while on the other, it is argued that A-2 used people like Raj Kumar Pahan to conceal his ownership. It is submitted that A-2 could not have attempted to simultaneously acquire the property in his name, and to also conceal the true nature of property. Both narratives cannot co-exist.

22. On the RELIANCE OF ED ON ALLEGED RECOVERY OF BROWN-COLOURED FILES (ALLEGEDLY RECOVERED ON 06.03.2024) FROM THE CIRCLE OFFICE, BARAGAIN HAVING THE WRITTEN "CMO PINTU URGENT" AND "CMO BADAGAAI BHUIHARI", it has been submitted that this recovery of files also does not make out a case against A-2. Ld. Counsel submitted that the said documents also do not show that the land measuring 8.86 acres was in the name of A-2. The allegations of the ED that the said records were kept intentionally to add names of other beneficiaries such as A-2, is based on conjecture alone (@pg. 103/PC). The allegations in relation to seizure of documents on 06.03.2024 (@Para 10.12, Pg. 93/PC), wherein notes allegedly containing "CMO PINTU URGENT and "CM Badagaai

Bhuihar also do not make out a case against A-2. Pertinently, the investigation of the present case is stated to have been ongoing since the past year and the Circle Office, Ranchi had already been searched by the Respondent-ED on 09.02.2023 (@Para 1.2, Pg. 6, PC), at which point, no such documents were found. "Pintu", who is allegedly witness Abhishek Prasad @ Pintu (RUD-56) states that he has no knowledge regarding these notes containing his name (at pg. no. 4178). There is no evidence or investigation as to who wrote the said writings on the files and when were they written. Pertinently, a scanned copy of one of documents found on 06.03.2024 was already found on the phone of A-1 on 20.04.2023 @pg. 98/PC. The said documents, and the words written on them, have been manipulated and planted and therefore, recovered much later, post the arrest of A-2. These documents in any case do not show that the A-2 or any of his proxies was ever in possession of the land measuring 8.86 acres. The conclusion of the ED in this regard (@pg. 104/PC) - clearly shows that the same is bereft of any documentary evidence to show that A-2 was in fact in possession/control of the property measuring 8.86 acres.

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23. It is alleged that upon recovery and search of mobile phone of A-5 Binod Singh, certain chats were found between A-5 and A-2 and that the same led to the identification of a plan/map of one proposed banquet hall, which was shared by A-5 with A-2 on 06.04.2021 (@pg. 112/PC). It is alleged that the location of the proposed banquet mentioned on the said plan matches with the said 8.86 acres of land, which is allegedly acquired and possessed by A-2. The plan bears the name of "grids consultants" which is a firm belonging to A-5. It is further alleged that the said plan of a banquet hall was also sent by A-5 to his associate, one Pranav Mandal, who in his statement under Section 50 PMLA (RUD-55) does not name A-2 and merely says that this was a plan that was shared by his employer (A-5).

24. Ld. Counsel contended that the aforesaid banquet hall plan does not bear the name of A-2 or any entities associated with A-2. The allegation that the said banquet hall bearing address of Bariyatu, Ranchi could only be made on the said property is an assumption. There is no actual proof of any such plan being in motion or being executed in any manner. A-5, in his statements under Section 50 PMLA (RUD 43-44) states that Grid Consultants was his firm and that he prepared several

such plans. He states that he does not remember the purpose of sharing the said plan with A-2. The said statements do not affect the case against A-2 at all. It is further submitted that Binod Singh is not an unknown or unrelated person and it is the case of the prosecution itself that Binod Singh and A-2 are friends since a long time. Hence, no suspicion can be placed on A-2 and no adverse inference can be drawn for simply being in touch with Binod Singh. The said evidence, even if uncontroverted, does not in any manner show that A-2 was in possession of the land.

25. Placing Reliance on the judgments of **Yogesh @ Sachin Jagdish Joshi, (2008) 10 SCC 394, Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4 and c. Sajjan Kumar v. CBI, (2010) 9 SCC 369,** It has been submitted that AT THE STAGE OF CHARGE, WHEN TWO VIEWS ARE POSSIBLE, THE ONE FAVOURING THE ACCUSED MUST BE ADOPTED. Ld Counsel submitted that in **Yogesh @ Sachin Jagdish Joshi**, the Hon'ble Supreme Court held as follows:

"15. It is trite that the words "not sufficient ground for proceeding against the accused" appearing in the Section postulate exercise of judicial mind on the part of the Judge to the facts of the case in order to determine whether a case for trial

has been made out by the prosecution. However, in assessing this fact, the Judge has the power to sift and weigh the material for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine a prima facie case depends upon the facts of each case and in this regard it is neither feasible nor desirable to lay down a rule of universal application. By and large, however, if two views are equally possible and the Judge is satisfied that the evidence produced before him gives rise to suspicion only as distinguished from grave suspicion, he will be fully within his right to discharge the accused. At this stage, he is not to see as to whether the trial will end in conviction or not. The broad test to be applied is whether the materials on record, if unrebutted, makes a conviction reasonably possible."

26. It has been submitted that the alleged recovery of the BMW car and cash amounting to Rs. 36 Lakhs from a premises rented by the State of Jharkhand at Delhi does not make out a case of money laundering as even if the recovery is admitted, the said BMW car and the cash has no bearing with the scheduled offence and it is not even an allegation of the

ED that the same has any nexus with the scheduled offence or was derived from the scheduled offence or has anything to do with forgery of government records or cheating. The said properties cannot be termed as proceeds of crime. Reliance is again placed on the judgment of the Hon'ble Supreme Court in **Vijay Madanlal Choudhary v. Union of India & Ors.**

27. That ED has relied on Section 24 PMLA to submit that there is a presumption against A-2 and it is the burden of A-2 to disprove that he did not commit the offence of money-laundering. Placing reliance upon the Judgment of Vijay Madanlal Choudhary vs Union of India (Paras 237-239 at pg. no. 412 of the Judgment), it has been submitted that the said submission is pre-mature and does not apply in the present case. It is submitted that such legal presumption arises only after the foundational facts are first shown i.e., that a scheduled offence has been committed and that the accused is in possession/ownership etc. of any 'proceeds of crime' arising out of the said scheduled offence. As shown above, the same has not even been prima-facie proved. In the absence of the same, no presumption arises.

28. Ld counsel submitted that there was a lease agreement between one Ranjit Singh on one hand and Chandrika Pahan, Birsa Pahan and others on the other, in relation to a property situated at Plot No. 2626, Khata No. 236, and that the said land was adjoining the land ad-measuring 8.86 acres and it has been alleged that the said Ranjit Singh had executed a partnership deed with the wife of A-2, and hence, A-2 was in control of all the said adjoining land using Ranjit Singh as a front. It is submitted that the said land for which a lease agreement was executed is not part of the "proceeds of crime" and is some other independent land, having nothing to do with the scheduled offence. The said circumstance in fact further demolishes the case of the prosecution because if the intention of A-2 was to acquire the land ad-measuring 8.86 acres along with adjoining land, it is inconceivable as to why a boundary wall was constructed only around the land ad-measuring 8.86 acres, if A-2 actually wanted to acquire both the lands, the boundary wall would have covered the said Plot No. 2626 at Khata No. 236. It has been submitted that the partnership deed was for setting up a petrol pump, which never fructified. Further submitted that the Court is again being asked to assume that because an adjoining land was allegedly

under the control of A-2, that the land ad-measuring 8.86 acres which is a separate land altogether, was also under his control. The said circumstance, therefore, does not make out a case of money laundering against A-2 in any manner.

29. In view of the aforesaid facts, circumstances, submissions, documents and settled principles of law, it has been prayed that this Court may graciously be pleased to discharge the petitioner/accused Hemant Soren from the present complaint u/s 227 Cr.P.C. r/w section 250 BNSS, 2023.

Arguments advanced on behalf of Enforcement Directorate resisting the plea of A-2 for his discharge from this case:

30. By filing reply of the discharge petition, ED has submitted that at the very outset, it is most respectfully submitted that the present discharge Petition filed by the Petitioner/Accused Hemant Soren is wholly misconceived, legally untenable, and devoid of any merit. By way of the present application, the applicant/accused no. 2 (**Hemant Soren)** is inviting this Court to adopt a procedure unknown to law and beyond the limited scope of proceedings contemplated at the stage of charge. The applicant, in effect, seeks to convert the present stage into a

mini trial, which has been consistently and repeatedly discouraged by the Hon'ble Supreme Court as well as various High Courts. It has been submitted that the Hon'ble Supreme Court has repeatedly held that if on the basis of material on record, the court could form an opinion that the accused might have committed an offence, it can frame the charge and at this stage, there is no requirement to arrive at a conclusion that the accused has committed the offence. Ld. Counsel for the ED regarding above contention has relied upon the para 10 of the judgment passed by Hon'ble Supreme Court in ***Soma Chakravarty vs. State (2007) 5 SCC 403***. It has been submitted that following propositions are well settled and squarely applicable at the present stage:

a) At the time of framing of charges, the probative value of the material on record cannot be gone into and the material brought on record by the prosecution has to be accepted as true at that stage.

b) Whether in fact the accused has committed the offence can only be decided at trial.

c) In a case praying for quashing of the charge, the principle to be adopted is that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not. Ld. Counsel for the

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ED regarding above contention has relied upon para 12 of the judgment passed by Hon'ble Supreme Court in State of Maharashtra v Salman Khan, (2004) 1 SCC 525.

d) The truthfulness, sufficiency and acceptability of the material produced cannot be gone into at the time of framing of charge, which can only be done at the stage of trial. The Hon'ble Supreme Court in Omesh Kumar v. State of Andhra Pradesh (2013) 10 SCC 591, at Para 30, reiterated the principles laid down in State of Maharashtra v. Salman Salim Khan.

e) At the initial stage, if there is strong suspicion which led the Court to come to the finding that there is ground for presuming that the accused has committed an offence, then as per the requirement of section 227 CrPC now 250 BNSS, it cannot be said that there is no sufficient ground for proceeding against the accused.

31. It is further submitted that this court has to note the following well-settled propositions of law which are the guiding factors at the stage of framing of charges:

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a) At the stage of framing of charges, the Court must confine itself to a *prima facie* examination of the material on record and cannot conduct a mini trial;

b) The credibility of witness testimonies cannot be questioned at the stage of framing of charges, and the Court must proceed on the basis that the prosecution evidence is true. Reliance is place on the para 24 of the Judgment passed by Hon'ble Supreme court in Sajjan Kumar v CBI, (2010) 9 SCC 368.

c) All prosecution material must be accepted as true at the stage of framing of charge, and its probative value cannot be assessed at this preliminary stage. Reliance is place on the para 30-32 of the Judgment passed by Hon'ble Supreme court in State of Maharashtra v Som Nath (1996) 4 SCC 659.

d) Conspiracy, by its very nature, is hatched in secrecy and need not be proved by direct evidence of meetings or cash transactions, it can and must be inferred from surrounding facts and circumstances; and

e) At the preliminary stage of framing of charges, even uncorroborated testimony, if it discloses commission of offence, is sufficient to frame charges. Reliance is place on the para 11 of the Judgment passed by

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Hon'ble Supreme court in State of Maharashtra vs. Priya Sharan Maharaj (1997) 4 SCC 393, para 14 of the Judgment passed by Hon'ble Supreme court in Aryan Bajpai vs. State of NCT of Delhi (2025) SCC Online Del 9294 and para 3 & 4 of the Judgment passed by Hon'ble Supreme court in Mohd. Akbar Dar v. State of J & K, 1981 Supp SCC 80.

32. It has been further stated that the central argument of the accused A-2 is that the land ad-measuring 8.86 acres is not proceeds of crime because there is no forgery in relation to these lands in the name of A-2. This argument has nothing to do with the prosecution case presented in the prosecution complaint and argued by the PP as it is an undisputed fact that the scheduled offence in this case includes sections 120-B along with the following scheduled offences namely sections 467, 471 and 420 of the IPC in the charge sheet filed in FIR 272/2023. Investigation revealed that the 8.86 acres of land which was in possession of A-2, namely, Sh. Hemant Soren form part of the original revenue records being the 17 original Registers seized from the possession of Bhanu Pratap Prasad, which was concealed and secreted by him at his home. The properties measuring 8.86 acres was reflected

in Register-II as enumerated at Table -2 at page 15 of the Prosecution complaint nececiating the sharing of information regarding the aforesaid seizure by way of a letter under Section 66(2) by the ED to the State police which led to registration of the scheduled offence. It has been submitted that Accused no. 1 Bhanu Pratap Prasad had physically inspected the said land on two occasions, i.e., first in December, 2020 and second in January, 2023 and further investigation revealed that associates of Bhanu Pratap Prasad had created a fake deed no. 3985 of the year 1940 between Balka Pahan (seller) and Asgar Hussain (purchaser). This fake deed consisted of several plots including two plots falling within the area of 8.86 acres, which is found in absolute possession of A-2 Hemant Soren. This deed was also seized during searches in the residential premise of Mohd. Saddam Hussain and information to that effect shared under section 66(2) of the PMLA with the State Government.

33. It has been submitted that the question is not whether the forgery of this very land was accomplished in the name of Hemant Soren or not as if the forgery was complete then the object of the conspiracy would be achieved. Conspiracy by its very definition is an agreement between

two or more persons to commit an illegal act, whether or not such illegal act is in fact completed. Ld. Counsel for ED has relied upon on several judgments to demonstrate the position of law that Conspiracy is an independent offence and the parties to such an illegal agreement will be guilty of criminal conspiracy even though the illegal act agreed to be done has not been done. It has been submitted that it is not an ingredient of the offence that all the parties should have agreed to do a single illegal act as it may comprise of the commission of a number of acts. Reliance has been placed upon para 113 to 116 of Judgment passed by Hon'ble Supreme Court in (i) Sudhir Santilal Mehta v CBI, (2009) 8 SCC 1 (ii) Para 25 of Judgment passed by Hon'ble Supreme Court in Yogesh alias Sachin Jagdish Joshi vs. State of Maharashtra (2008) 10 SCC 394.

34. Ld. counsel further submitted that for an offence punishable under section 120B of IPC, the prosecution need not necessarily prove that the perpetrators expressly agreed to do or caused to be done an illegal act, rather the agreement may be proved by necessary implication. To buttress this contention, reliance has been placed in observation made in Para 17-27 of Mohd. Khalid vs. W.B. (2002) 7 SCC 334. Further

submitted that the existence of an offence of conspiracy punishable u/s 120-B of IPC does not even require any overt act by any of the accused. [Nazir Khan & Others Vs. State of Delhi (2003) 8 SCC 461]. What is required to be considered to infer a conspiracy is the circumstances before, during and after the occurrence. [ibid.]

35. Ld. Counsel further submitted that the fact that there was forgery in relation to the two plots which form part and parcel of the 8.86 acres land in possession of Hemant Soren clearly makes the said land fall within the definition of the offence of money laundering as provided under section 3 of the PMLA i.e., "*property derived or obtained, directly or indirectly....as a result of criminal activity relating to a scheduled offence*". Placing Reliance upon para 29 & 31 of the judgment passed by Hon'ble Supreme Court in Pavana Dibbur; 2023 SCC OnLine SC 1586, it has been submitted that it was also demonstrated that a criminal conspiracy to commit a scheduled offence would attract the offence of money laundering. Therefore, the criminal conspiracy to commit the scheduled offence of forgery and cheating entered into between all the accused persons named in the prosecution complaint and supplementary PC to enable A-2 (Mr. Hemant Soren) to

become the de-jure owner of the 8.86 acres of land over which he already had de-facto possession, would show that each one of them were assigned distinct role and function in the conspiracy.

36. It is equally sell settled that there may be many devices adopted to achieve the common role of the conspiracy and there may be division of performances in the chain of actions with one object to achieve the real end. Sometimes, the plurality of means adopted to achieve the object may even be unknown to one another, amongst the conspirators. Reliance is placed upon para 28 of the Judgment passed by the Hon'ble Supreme Court in Firozuddin Basheeruddin vs. State of Kerala; (2001) 7 SCC 596. The *actus reas* involved in the conspiracy has been demonstrated, and the *mens rea* is always a matter of trial. Reliance is placed upon the para-61 of Judgment passed by the Hon'ble Supreme Court in a) Bholu Ram vs. State of Punjab (2008) 9 SCC 140 b) para 26-27 of Anoop Bartaria v. Directorate of Enforcement 2023 SCC OnLine SC 477 c) para 45 of State of Gujarat v. Afroz Mohammed Hasanfatta, (2019) 20 SCC 539, d) para 6-7 of Suresh Sahu v. State of Jharkhand, 2021 SCC OnLine Jhar 544 and e) para 7 of Upendra Nath Verma v. State of Jharkhand, 2023 SCC OnLine Jhar 1349.

37. Ld Counsel submitted that it is well settled that the investigation in the offence of money laundering is not restricted to the investigation in the predicate offence. If the argument of the accused is accepted that the ED is bound by and limited to the scope of investigation conducted by the predicate agency, it would amount to nothing short of rewriting the PMLA, which clearly confers an independent and expansive power of investigation upon the ED. A plain language of Section 3 of the PMLA which defines the offence of Money Laundering and begins with the expression "whosoever", which denotes that 'whosoever' need not only be the main accused person, rather, it can be any number of persons who may directly or indirectly attempt to indulge or knowingly assist or knowingly are a party or are actually involved in any process or activity connected with the proceeds of crime. Reliance is place upon para 15 of the judgment passed by Hon'ble Supreme Court in Pavana Dibbur v DOE, 2023 SCC Online SC 1586.

38. It has been submitted that Section 44; Explanation (i) states as hereunder

"[Explanation.--For the removal of doubts, it is clarified that,--

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(i) ***the jurisdiction of the Special Court while dealing with the offence under this Act, during investigation, enquiry or trial under this Act, shall not be dependent upon any orders passed in respect of the scheduled offence****, and the trial of both sets of offences by the same court shall not be construed as joint trial;*"

39. Ld. Lawyer contended that the legislature could have easily said that money laundering is an activity but the conscious and careful choice of the expression 'process or activity' in the definition of money laundering as it is the understanding of the legislature that money-laundering can happen either as a one-time activity or as a process. So, when the allegations against the present applicant will be tested, it would reveal that his acts fall under the expression 'process', as envisaged in the definition of Money Laundering. Multiple people can be involved in the process of Money Laundering. The language of the Act clearly states that any person who directly or indirectly attempts to indulge, knowingly assists, or knowingly becomes a party to or is actually involved in any process or activity connected with the proceeds of crime, including any such connection with the proceeds of crime, constitutes an ingredient of the offence of money laundering. Whatever

follows the term 'including' serves as an illustration provided by the legislature, such as concealment, possession, acquisition, use, projection, or claiming it as untainted property, all of which shall render a person guilty of the offence of money laundering. Furthermore, the explanation provided with the definition serves as a clarification that these elements are disjunctive. A person shall be guilty of the offence of money laundering if such a person is found to have directly or indirectly attempted to indulge in, knowingly assisted, or knowingly becomes a party to one or more of the following processes or activities. It is essential to emphasise that it is not merely an activity but also a process.

40. **Ld** Counsel has further submitted that the 'processes or activities' mentioned from (a) to (f) in the explanation to Section 3 of the PMLA are wide enough to cover all processes of activities but still the Legislature has consciously chosen to further add the expression ***'in any manner whatsoever'***, so the provision can be construed in its widest ambit. Reliance in this regard is placed upon the para 97 of the Judgment of the Hon'ble Supreme Court in the case of Y. Balaji v. Karthik Desari, reported in 2023 SCC OnLine SC 645 (2JB).

41. That the term "proceeds of crime" is defined u/s 2(1)(u) of the PMLA which means "any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property..." It is submitted that the legislature could have simply defined it by saying as a result of any scheduled offence. However, the legislature chose to expand the scope of the definition by adding the words activity relating to a scheduled offence'. It is a salutary principle of interpretation of statutes that the legislature doesn't use words which are redundant or surplusage and each word has to therefore be assigned its proper meaning, Reliance is placed upon the para 26 of Judgment passed by the Hon'ble Supreme Court in Aswini Kumar Ghose v. Arabinda Bose, (1952) 2 SCC 237: AIR 1952 SC 369. Also Reliance is placed upon the para 41 of Judgment passed by the Hon'ble Supreme Court in Hardeep Singh v. State of Punjab, (2014) 2 SCR 1.

42. **Ld. Counsel** submitted that furthermore, in the year 2019 an explanation was added to this definition, which reads that for the removal of doubts, it is hereby clarified that "proceeds of crime" include property **not only** derived or obtained from the scheduled offence but

also any property which may directly or indirectly be derived or obtained as a result of any criminal activity **relatable to** the scheduled offence. It is clear from the explanation introduced through an amendment that Parliament intended to cover not just the scheduled offence but also any criminal activity related to a scheduled offence. Furthermore, any property derived not only from the scheduled offence but also from the criminal activity related to a scheduled offence is proceeds of crime, thereby attracting the offence under Section 3 of the PMLA which is a jurisdictional trigger for the ED to step in and investigate the offence. It is further submitted that if the argument of the opposite side is to be accepted it would amount to rewriting the definition of both proceeds of crime and the offence of money laundering provided in the act. When an explanation is added by an amendment it becomes the last of the will of the legislature.

43. It has been submitted that **t**he conclusion which can be derived by reading the language of section 2(1)(u) and Section 3 is that the legislature intended every property derived from any criminal activity, which is relatable with the scheduled offense to fall within the ambit of money laundering. The said argument is also strengthened by the fact

that legislature does not come with explanations to a section which is otherwise clear, it is only when confusions are arise in the interpretation of a section an explanation is added to make the intent of the Parliament even more apparent. There is no other reason as to why would the legislature bring in this kind of an explanation if the intent is to be restricted only to transactions mentioned in the FIR. **Ld.** Counsel further contended that the expression "relating to" has a vide connotation and is expansive. Reliance is place upon the para 50 of the judgment passed by the Hon'ble Supreme Court in Doypack Systems Pvt. Ltd. vs Union of India & Ors. (1988 AIR 782). A similar argument that ED cannot quantify the proceeds of crime over and above what the scheduled offence or agency investigating the scheduled offence has mentioned in its complaint or chargesheet, was rejected by the Hon'ble Supreme Court in the case of **Satyendar Kumar Jain v. Enforcement Directorate, (2024) 6 SCC 715 (para 6.4 & 18)**. One of the arguments on behalf of the accused therein was that there is discrepancy in the amount of proceeds of crime calculated by the ED and the amount mentioned in the charge-sheet. **That a**fter culling out section 2 (1)(u) and sec. 3 of the PMLA in Paras 19.3 and 19.5 respectively, the Hon'ble

Supreme Court ultimately rejected the bail by holding Rs 4,81,16,435 as the total proceeds of crime determined by the ED is valid. Hence, the argument that the ED is confined to the figures and facts determined by the predicate agency was rejected by the Supreme Court. The Court relied on the definition under Section 2(1)(u) of the PMLA and held that Section 3 has a 'wider reach' and if the ED, through formidable evidence, including materials gathered under Section 50, can establish that larger sums of money are involved, it is fully empowered to proceed under the PMLA, irrespective of the figures mentioned in the predicate agency's case. Reliance is further placed upon the para 49, 50 & 60 of the Judgment of the Hon'ble Delhi High Court in the case of Enforcement Directorate v. Hi-Tech Mercantile India (P) Ltd., 2025 SCC OnLine Del 6524.

44. Ld. Counsel has contended that Section 3 of the PMLA includes within its fold the offence where a person directly or indirectly attempts to indulge or attempts to knowingly assist in any process or activity connected with proceeds of crime. The 8.86 acres of land which is the proceeds of crime in this case is derived from the criminal conspiracy to commit scheduled offence of forgery and cheating. Apart from the

above submissions that A-2 is in possession of the aforesaid proceeds of crime, there is also an attempt to indulge in the process or activity connected with the proceeds of crime wherein there is an attempt to become the de-jure owner, which would fall within the process of the 'acquisition'. In other words, attempt to acquire the proceeds of crime would also fall within the meaning of the offence of money laundering under section 3. An "attempt" to commit an act need not have consummated into the Act. Reliance is placed upon para 10 of the judgment of the Hon'ble Supreme Court in Koppula Venkat Rao v. State of A.P., (2004) 3 SCC 602. It has been submitted that the attempt to commit an offence begins when the accused commences to do an act with the necessary intention. Reliance is placed upon para 9 of the judgment of the Hon'ble Supreme Court in Chaitu Lal vs. State of Uttarakhand (2019) 20 SCC 272 and has referred to the illustrations provided u/s 511 IPC/ Now S. 62 BSA which deal with the attempt the commit an offence, and reads as follows:-

"Illustrations

(a) A makes an attempt to steal some jewels by breaking open a box, and finds after so opening the box, that there is no jewel in it. He has

done an act towards the commission of theft, and therefore is guilty under this section.

(b) A makes an attempt to pick the pocket of Z by thrusting his hand into Z's pocket. A fails in the attempt in consequence of Z's having nothing in his pocket. A is guilty under this Section.

45. It is further submitted by the Ld. Counsel appearing on behalf of ED regarding admissibility of statements recorded u/s 50 fo PMLA that Section 50 statements are admissible in evidence and cannot be discarded as hearsay or unreliable at the stage of framing of charge. Reliance is placed upon para 31 of the judgment of the Hon'ble Supreme Court in a) Rohit Tandon vs. Directorate of Enforcement (2018) 11 SCC 46, b) para 15 of the judgment of the Hon'ble Supreme Court in Tarun Kumar vs Directorate of Enforcement, 2023 SCC OnLine 1486, c) para 23-24 of the judgment of the Hon'ble Supreme Court in Satyendar Kumar Jain v. Directorate of Enforcement (2024) SCC 6 715 and d) para 30 of Amanatullah Khan v. Enforcement Directorate, 2024 SCC OnLine Del 1658.

46. Ld. counsel has also mentioned the relevant portion of Section 50 statements of Manoj Kumar, Circle Officer Bargain (RUD 52), Uday

Shankar, PPS to the Press Advisor to the CM (RUD 60), Santosh Munda, Caretaker of the land admeasuring 8.86 acres (RUD 58), Baijnath Munda, Victim/Complainant belonging to the Munda Community (RUD 57) and Sajjad Khan, also was a care taker of the property (RUD 82) to counter the argument made on behalf of accused/petitioner **that** there is no evidence that the alleged conspiracy was to acquire property in A-2's name, and was underway from 2010 continued till the time when A-1 Bhanu Pratap was transferred to Ranchi in 2019.

47. It has been submitted that in the matter of the 8.86-acre property, Bhanu Pratap Prasad's role has surfaced in facilitating Hemant Soren's conspiracy and efforts to legalize the property by an attempt to falsify government records. Section 3 of the PMLA, 2002 deals with the process or activity connected with the proceeds of crime and is a continuing activity. While Hemant Soren has remained in continuous unauthorized possession of the 8.86-acre property since 2010-11, criminality persists for him as long as he or any person acting directly or indirectly on his behalf is enjoying the land which is proceeds of crime in this case by its concealment, possession, acquisition, use, or

projection as untainted property. Bhanu Pratap Prasad's Role in falsifying records and involvement with the 8.86-acre property is not predicated on his presence initially when in 2010 property was acquisition by Hemant Soren. Rather, it starts from his actions as Revenue Sub-Inspector, including his attempts to legalize and indulgence in attempt to regularize Hemant Soren's possession during his tenure after joining in 2019. This is corroborated by the physical inspections of the said 8.86-acre land conducted by him on two occasions during his posting, in December 2020 and January 2023. These inspections were done on instructions from the Chief Minister's Office. The related file, marked "CMO Urgent," was seized from his chamber in 2024. Bhanu Pratap Prasad thus acted as a facilitator in official capacity within a larger land-grabbing syndicate that included Md. Saddam Hussain and Afshar Ali.

48. In response to the argument the POC are the forged land registers recovered from Bhanu Pratap and therefore, for A-2 to be implicated, the registers or title must be forged in A-2's name, or found with A-2, or found with A-1 in conspiracy with A-2, it has been submitted that the argument is wrong, having no merit as there is a chain

of events, which establishes criminal nexus between A-1 and A-2. This argument incorrectly limits Proceeds of Crime to the forged registers. The PC also states that the 8.86-acre property along with the said registers are the proceeds of crime. The argument that the property records must be found with A-1 (Bhanu Pratap Prasad) in conspiracy with A-2 is although not necessary but still met in this case through several evidence which include- the directions to verify and facilitate Hemant Soren's interest in the 8.86-acre land from CMO through media advisor of the accused Hemant Soren i.e Abhishek Prasad @ Pintu to revenue officials, the file exclusively related 8.86 acre land which is POC was seized from A-1 chamber, marked with sticky notes labeled "C.M. Bhuinhari Baragain" and "CMO URGENT PINTU" and that Md. Saddam Hussain, a close accomplice of A-1, and the syndicate manufactured fake deed no. 3985 of 1940 specifically so A-1 (Bhanu Pratap) could perform necessary falsification in official registers for the benefit of Hemant Soren.

49. While the registers were found with A-1, a volume of relied-upon documents which contained a statement of Bhanu Pratap Prasad (A-1)

recorded under PMLA in regard to the said 8.86 acre property was seized from A-2's New Delhi residence during a search on 29.01.2024. This seizure establishes that A-2 was closely monitoring the investigation into his accomplice and keeping stock of the disclosures made regarding the 8.86-acre property. With regard to the argument on the absence of A-2's name on the title, it is stated that A-2 used fronts/proxies like Rajkumar Pahan and Hilariyas Kachhap to acquire, hide and manage his ownership. The ongoing conspiracy involved attempt to manufacture fake deeds to create a fictitious chain of ownership that would eventually allow A-1 to enter Soren's name or his proxies into the official Register II. Following the start of the investigation, A-2 allegedly used his front persons to file restoration cases in the SAR Court to distance himself from the property and create a ruse in court that the land belonged to his front persons.

50. In response to the argument made on behalf of petitioner that A-1 has neither derived nor obtained any property from the scheduled offence and that there is no whisper in the PC that A-2 enabled A-1 to acquire or retain the registers, or that A-1 was placed in his post for any benefit to A-2, it has been submitted that A-1 derived Proceeds of Crime

by way of compensatory cash payments (bribes), which were found in the handwritten diaries seized from the residence of Md. Saddam Hussain (A-6). One specific sum of Rs. 5 lakh was mentioned in the diary, paid to A-1 at Saddam Hussain's residence for his work in making fraudulent entries in land registers. Further, the Registers themselves are "Property" and "Proceeds of Crime" which has been mentioned in the PC. The 17 original registers seized from A-1's private residence comes under the definition of property because they were the instruments used to commit the forgery and other offences. There are ample evidence in the PC that A-2 worked for A-1 in a concealed manner and thereby assisted A-1 after instructions were passed from the CMO.

51. Responding to the argument made on behalf of petitioner that the prosecution's own case in Paras 10.2 and 10.9 of the PC is that timely ED intervention stopped forgery in A-2's name and this directly contradicts any charge that a conspiracy to forge was completed, it has been submitted that the offence of money laundering was already complete through illegal possession, use, and concealment, regardless of whether the title was finalized in Hemant Soren's name. Para 10.2 explicitly states that while ED intervention stopped the materialization

of illegal acquisition on paper, the property was already in illegal occupation and possession of Hemant Soren. The same is reproduced below-

Rest was in process of illegal acquisition on paper which were already under illegal occupation and possession. Timely action by ED could prevent the materialization of illegal acquisition of properties by forging and fabricating government records which was already in illegal occupation and possession of the accused person Hemant Soren.

52. It has been submitted that **t**he offence was complete because Hemant Soren had already used the land (POC) by building boundary walls and preparing construction plans for a banquet hall between 2018 and 2022. While the final entry in A-2's name was stopped due to action by ED, many other criminal acts essential to the conspiracy and the projection of tainted property as untainted were already finished which were as follows-

a. Manufacture of Fake Deeds: The syndicate had already manufactured fake deed no. 3985 of 1940, which included plots in Hemant Soren's possession (Plot Nos. 989 and 996).

b. Concealment of Registers: Bhanu Pratap Prasad (A-1) had already concealed the official register-II at his residence to cause the forgery and to assist the syndicate.

53. Ld. Counsel for ED has further contended that the argument that the conspiracy was incomplete has been directly addressed in Para 10.19 of the PC. It explains that the blank page of Register II (for Plot No. 986) seized from A-1 was intentionally kept to add the name of other raiyats for the benefit of the accused Hemant Soren. The PC clearly states that the presence of this page, alongside a file marked "CMO URGENT", proves the conspiracy was not just a plan but an active, ongoing criminal process that was only foiled in its very final step of registration. Thus, the timely intervention mentioned in Paras 10.2 and 10.19 refers to stopping the syndicate from creating a permanent false official record that would have legalized the fraud. It does not negate the fact that the Proceeds of Crime, which is the 8.86-acre land was already in acquisition and the Beneficiary (A-2) was already in possession and enjoying the POC.

54. **In** rebuttal of the petitioner's contention that the alleged money laundering predates the scheduled offence and that the proceed of crime

cannot be said to have 'derived' from an offence that had not yet occurred, it has been submitted that Under Section 3, money laundering is not limited to the initial in moment of acquisition but persists as long as an individual is directly or indirectly enjoying the proceeds of crime through its concealment, possession, acquisition, or use. The 8.86-acre property is itself identified as the Proceeds of Crime because it was acquired illegally through the unauthorized eviction of original owners around 2010-11. The Act clarifies that POC includes property derived not only from a scheduled offence but also any property obtained as a result of any criminal activity relatable to the scheduled offence. Thus, Hemant Soren's continued possession and active use of the land such as erecting boundary walls and commissioning banquet hall plans between 2018 and 2022 constitutes an ongoing offence of money laundering. Furthermore, the scheduled offence of forgery which began around 2019-20 was the essential criminal process and activities undertaken to project the already tainted property as untainted. Bhanu Pratap Prasad, as an active member of the syndicate, used his official position upon his joining the office to provide assistance to Hemant Soren in a concealed manner so that the property could be legalized in official records. By

manufacturing fake deeds (like Deed No. 3985 of 1940) and concealing the related official registers, the parties indulged in the above stated processes and activities of concealment and acquisition.

55. On behalf of ED, it has been contended that a complete chain of events starting from recovery of the image of the property of Hemant Soren to the statements and other corroborative statements and recovery of images from the mobile phones are sufficient to show that petitioner's contention has no merit that there is no CDR, no witness, and no document showing any communication or meeting between A-1 and A-2.

56. The prosecution has submitted that the petitioner's contention about hearsay account of A-2's connection to the land is also meritless as the statement of the witnesses is supported by direct evidence of possession and documentary evidence seized from the premises of Bhanu Pratap, who was the facilitator. The statement of Santosh Munda is not based on mere belief but on his direct experience as a laborer involved in the construction of the boundary wall on the land and his subsequent tenure as the property's caretaker for 14-15 years (PC Page 67, Para 8.4). He clearly stated that he met Hemant Soren when he

visited the land on two to three occasions (PC Page 68, Para 8.4; Page 115). Furthermore, the connection is established through statement of Hemant Soren's own staff and associates Abhishek Prasad @ Pintu, who is also Hemant Soren's press advisor. He has also admitted in his Section 50 statement that he instructed the verification of the 8.86-acre property on the directions of Hemant Soren (PC Page 69, Para 8.7). The prosecution complaint is based on other evidences also that includes incriminating WhatsApp chats between A-2 and Binod Singh containing banquet hall construction plan located at the said 8.86-acre site at Lalu Khatal (PC Page 66, Para 8.2(vi); Page 112, Para 10.28). Further, the seizure of a volume of relied-upon document which contain the statement of Bhanu Pratap Prasad related to the said 8.86 acre property from Hemant Soren's New Delhi residence on 29.01.2024 proves that he was a party with a vested interest who was actively monitoring the investigation into his land-grabbing syndicate (PC Page 20, Para 4; Page 64, Para 8.2(iii); Page 65, Para 8.2(iv)).

57. In rebuttal of the petitioner's contention A-2's no connection with the forged deed of 19.40 acres, recovered from Saddam Hussain and executed in favour of Asgar Hussain, it has been submitted that there is

no mention of a "19.40 acre property" in the Prosecution Complaint (PC) dated 30.03.2024 or the Supplementary Prosecution Complaint (SPC) dated 07.06.2024. The figure "19.40" appears to be a confusion in the argument, likely mixing the year 1940 (the date of the forged deed) with area of the property. A forged deed in the name of a non-bhuihari (Bhuihari land are non salable land) third party is a standard criminal tactic for camouflaging the true nature of land and making it appear as a sellable land which is utilized by the syndicate to hide the true ownership or to dispute the original ownership and take that benefit as an opportunity to acquire any land. The said 8.86 acre property being a big land consisting of land falling under several khatas and plot was being acquired in phases one of which was through manufacturing Fake deed no. 3985 of 1940 (ad-measuring 6.34 acres) by Md. Saddam Hussain (A-6) and Afshar Ali (A-7) both close accomplices of Bhanu Pratap Prasad to create a fraudulent title for land already in the possession of Hemant Soren (A-2) in relation to two specific plots Plot No. 989 (0.84 acres) and Plot No. 996 (0.32 acres) which are integral parts of the 8.86-acre property situated in Mauja Baragain. Other parcels were also ready to be forged which is corroborated by the seizure of a

blank page of Register II (for Plot No. 986) from Bhanu Pratap Prasad's chamber, which was intentionally kept to add the name of... Hemant Soren to create a permanent official record of his possession (PC Page 103, Para 10.19). Thus, the name "Asgar Hussain" was a deliberate way to show the property a general property so that the record of the same can be permanently created in favour of Hemant Soren.

58. Ld. counsel for ED has contended that Abhishek Prasad @ Pintu, admitted in his statement recorded under Section 50 of the PMLA on 18th March 2024 that he instructed PPS Uday Shankar to get information and verification of the said 8.86-acre property. In addition to this, he also gave two more properties for verification to Uday Shankar, which belonged to Hemant Soren and his family. This fact also aids the fact that this 8.86 acre property belong to Hemant Soren as it was also being given for enquiry simultaneously with two other properties of Hemant Soren and family.

59. In reply to the contention of petitioner that the ED has not explained why two verification were needed when, on its own case, A-2 was openly in possession, it has been submitted that although this is best known to the accused, but the 2023 verification, in particular, was the

precursor to the final stage of the conspiracy to manufacture a permanent official record for Hemant Soren. This is evidenced by the brown file seized from A-1's chamber on 06.03.2024, which was exclusively related to the 8.86-acre property and prominently marked "CMO URGENT PINTU" and "C.M. Bhuinhari Baragain.

60. Ld. counsel for ED has submitted that the SAR proceedings was a deliberate and designed legal way to create parallel false evidence to distance Hemant Soren (A-2) from the property once the investigation became public. The haste is itself established by the chronology and facts that out of 103 cases filed before the SAR Court in the financial year 2023-24, only 4 cases were disposed of, and Rajkumar Pahan's application (Case No. 81/23-24) was given such preferential and urgent treatment that it was concluded in just 20 days (between 09.01.2024 and 29.01.2024). This process concluded with an order passed on the exact same day (29.01.2024) that the ED was conducting searches at A-2's Delhi residence. The SAR Court cancelled Jamabandis for land falling under Khewat Nos. 10/5 and 10/11, despite the fact that Rajkumar Pahan's application was only related to Khewat Nos. 10/1 and 10/2, and no person from the other Khewats had even applied for cancellation.

The SAR Court failed to call the complainants to verify their claims. In statements recorded under Section 50 of the PMLA, several applicants admitted they did not know its contents and had no possession of the 8.86-acre property.

61. Ld. Sp. PP for ED has submitted that in view of the detailed factual and legal submissions, and the overwhelming documentary evidence placed on record, this court may graciously be pleased to dismiss the Discharge Application filed by the Petitioner/Accused No. 2 Hemant Soren, as being wholly devoid of merit and legally misconceived and Proceed to frame charges against him for the substantive offense of Money Laundering u/s 3, punishable u/s 4 of the PML Act, 2002.

Analysis

62. This Court, before appreciating the argument advanced on behalf of the parties deems it fit and proper to discuss herein some of the provisions of law as contained under the Act, 2002 with its object and intent. The Act 2002 was enacted to address the urgent need to have a comprehensive legislation *inter alia* for preventing money-laundering,

attachment of proceeds of crime, adjudication and confiscation thereof including vesting of it in the Central Government, setting up of agencies and mechanisms for coordinating measures for combating money laundering and also to prosecute the persons indulging in the process or activity connected with the proceeds of crime. It is, thus, evident that PMLA, 2002 was enacted in order to answer the urgent requirement to have a comprehensive legislation *inter alia* for preventing money-laundering, attachment of proceeds of crime, adjudication and confiscation thereof, for combating money-laundering and also to prosecute the persons indulging in the process or activity connected with the proceeds of crime. It needs to refer herein the definition of "proceeds of crime" as provided under Section 2(1)(u) of the Act, 2002 which reads as under:

> *"2 (1) (u) "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad;*
>
> *Explanation—For the removal of doubts, it is hereby clarified that "proceeds of crime" include property not only derived or*

obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence;"

63. It is evident from the aforesaid provision that "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad. In the explanation, it has been referred that for removal of doubts, it is hereby clarified that "proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property, which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence. The aforesaid explanation has been inserted in the statute book by way of Act 23 of 2019. It is, thus, evident that the reason for giving explanation under Section 2(1)(u) is by way of clarification to the effect that whether as per the substantive provision of Section 2(1)(u), the property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the

country but by way of explanation the proceeds of crime has been given broader implication by including property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence. The “property” has been defined under Section 2(1)(v) which means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located. The schedule has been defined under Section 2(1)(x) which means schedule to the Prevention of Money Laundering Act, 2002. The “scheduled offence” has been defined under Section 2(1)(y) which reads as under: “2(1)(y) “scheduled offence” means— (i) the offences specified under Part A of the Schedule; or (ii) the offences specified under Part B of the Schedule if the total value involved in such offences is [one crore rupees] or more; or (iii) the offences specified under Part C of the Schedule.” It is evident that the “scheduled offence” means the offences specified under Part A of the Schedule; or the offences specified under Part B of the Schedule if the total value involved in such offences is

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[one crore rupees] or more; or the offences specified under Part C of the Schedule. The offence of money laundering has been defined under Section 3 of the Act, 2002, which reads as under:

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

64. It is evident from the aforesaid provision that "offence of money laundering" means whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering. It is further evident that the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever. The punishment for money laundering has been provided under Section 4 of the Act, 2002. The various provisions of the Act, 2002 along with interpretation of the definition of "proceeds of crime" has been dealt with by the Hon'ble Apex Court in the case of ***Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors., (2022) SCC OnLine SC 929,*** wherein the Bench comprising of three Hon'ble Judges of the Hon'ble Supreme Court has decided the issue by taking into consideration the object and intent of the Act, 2002. It is evident

that the purposes and objects of the 2002 Act for which it has been enacted, is not limited to punishment for offence of money laundering, but also to provide measures for prevention of money laundering. It is also to provide for attachment of proceeds of crime, which are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceeding relating to confiscation of such proceeds under the 2002 Act. This Act is also to compel the banking companies, financial institutions and intermediaries to maintain records of the transactions, to furnish information of such transactions within the prescribed time in terms of Chapter IV of the 2002 Act. The predicate offence has been considered in the aforesaid judgment wherein by taking into consideration the explanation as inserted by way of Act 23 of 2019 under the definition of the “proceeds of crime” as contained under Section 2(1)(u), whereby and whereunder, it has been clarified for the purpose of removal of doubts that, the "proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence, meaning thereby, the words “any property which may directly

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

65. Now, after having discussed the judgments passed by the Hon'ble Apex Court on the issue of various provisions of the Act, 2002, this Court, is proceeding to discuss the principle governing discharge and framing of charge. Section 250 of Bharatiya Nagarik Suraksha Sanhita,

2023 ('BNSS' for brevity) provides for discharge in sessions cases, which reads as follows:

"250.Discharge (1) The accused may prefer an application for discharge within a period of sixty days from the date of commitment of the case under section 232 (BNSS). (2) If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for doing so."

66. The issue of discharge was the subject matter before the Hon'ble Supreme Court in the case of ***State of Tamilnadu, by Inspector of Police in Vigilance and Anti-Corruption v. N. Suresh Rajan, (2014) 11 SCC 709,*** wherein, at paragraphs no. 29, 32.4, 33 and 34, the Hon'ble Apex Court has observed as under:—

> *"29. We have bestowed our consideration to the rival submissions and the submissions made by Mr. Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the*

court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.

32.4. While passing the impugned orders [N. Suresh Rajan v. Inspector of Police, Criminal Revision Case (MD) No. 528 22 of 2009, order dated 10-12-2010 (Mad)], [State v. K. Ponmudi, (2007) 1 Mad LJ (Cri) 100], the court has not sifted the materials for the purpose of finding out whether or not there is sufficient ground for proceeding against the accused but whether that would warrant a conviction. We are of the opinion that this was not the stage where the court should have appraised the evidence and discharged the accused as if it was passing an order of acquittal. Further, defect in investigation itself cannot be a ground for discharge. In our opinion, the order impugned [N. Suresh Rajan v. Inspector of Police,

> *Criminal Revision Case (MD) No. 528 of 2009, order dated 10-12-2010 (Mad)] suffers from grave error and calls for rectification.*
>
> *33. Any observation made by us in this judgment is for the purpose of disposal of these appeals and shall have no bearing on the trial. The surviving respondents are directed to appear before the respective courts on 3-2-2014. The Court shall proceed with the trial from the stage of charge in accordance with law and make endeavour to dispose of the same expeditiously.*
>
> *34. In the result, we allow these appeals and set aside the order of discharge with the aforesaid observations.*

67. It is further settled position of law that defence on merit is not to be considered at the time of stage of framing of charge and that cannot be a ground of discharge. A reference may be made to the judgment as rendered by the Hon'ble Apex Court in ***State of Rajasthan v. Ashok Kumar Kashyap, (2021) 11 SCC 191***. For ready reference, paragraph no. 11 of the said judgment is being quoted herein below: —

> *"11. While considering the legality of the impugned judgment [Ashok Kumar Kashyap v. State of Rajasthan, 2018 SCC OnLine Raj 3468] and order passed by the High Court, the law on the subject and few decisions of this Court are required to be referred to.*

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11.1 In P. Vijayan [P. Vijayan v. State of Kerala, (2010) 2 SCC 398 : (2010) 1 SCC (Cri) 1488], this Court had an occasion to consider Section 227 CrPC What is required to be considered at the time of framing of the charge and/or considering the discharge application has been considered elaborately in the said decision. It is observed and held that at the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. It is observed that in other words, the sufficiency of grounds would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him. It is further observed that if the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228 CrPC, if not, he will discharge the accused. It is further observed that while exercising its judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts.

11.2 In the recent decision of this Court in M.R. Hiremath [State of Karnataka v. M.R. Hiremath, (2019) 7 SCC 515 : (2019) 3 SCC (Cri) 109 : (2019) 2 SCC (L&S) 380], one of us (D.Y. Chandrachud, J.) speaking for the Bench has observed and held in para 25 as under : (SCC p. 526) "25. The High Court [M.R. Hiremath v. State, 2017 SCC OnLine Kar 4970] ought to have

been cognizant of the fact that the trial court was dealing with an application for discharge under the provisions of Section 239 CrPC. The parameters which govern the exercise of this jurisdiction have found expression in several decisions of this Court. It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. In State of T.N. v. N. Suresh Rajan [State of T.N. v. N. Suresh Rajan, (2014) 11 SCC 709 : (2014) 3 SCC (Cri) 529 : (2014) 2 SCC (L&S) 721], adverting to the earlier decisions on the subject, this Court held : (SCC pp. 721-22, para 29)

'29. … At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage."

68. The Hon'ble Apex Court in ***State of Maharashtra v. Som Nath Thapa (1996) 4 SCC 659*** referred to the meaning of the word "presume" while relying upon Black's Law Dictionary. It was defined to mean "to believe or accept upon probable evidence"; "to take as proved until evidence to the contrary is forthcoming". In other words, the truth of the matter has to come out when the prosecution evidence is led, the witnesses are cross-examined by the defence, the incriminating material and evidence is put to the accused in terms of Section 313 of the Code and then the accused is provided an opportunity to lead defence, if any. It is only upon completion of such steps that the trial concludes with the court forming its final opinion and delivering its judgment. Thus, it is evident that the law regarding the approach to be adopted by the Court while considering an application for discharge of the accused person the Court has to form a definite opinion, upon consideration of the record of the case and the documents submitted therewith, that there is not sufficient ground for proceeding against the accused. The Hon'ble Apex Court has further dealt with the proper basis for framing of charge in the case of ***Onkar Nath Mishra v. State (NCT of Delhi)*** wherein, at paragraphs 11, 12 and 14, it has been held as under:

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"11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.

12. In State of Karnataka v. L. Muniswamy [(1977) 2 SCC 699 : 1977 SCC (Cri) 404], a three-Judge Bench of this Court had observed that at the stage of framing the charge, the Court has to apply its mind to the question whether or not there is any ground for presuming the commission of the offence by the accused. As framing of charge affects a person's liberty substantially, need for proper consideration of material warranting such order was emphasised.

14. In a later decision in State of M.P. v. Mohanlal Soni [(2000) 6 SCC 338 : 2000 SCC (Cri) 1110] this Court, referring to several previous decisions held that : (SCC p. 342, para 7)

"7. The crystallised judicial view is that at the stage of framing charge, the court has to prima facie consider whether there is

sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused."

The Hon'ble Apex Court in the case of Palwinder Singh v. Balvinder Singh, (2009) 2 SCC (Cri) 850 has been pleased to hold that charges can also be framed on the basis of strong suspicion. Marshaling and appreciation of the evidence is not in the domain of the court at that point of time. 52. In the judgment passed by the Hon'ble Supreme court in the case of Sajjan Kumar v. CBI, reported in (2010) 9 SCC 368, the Hon'ble Supreme Court has considered the scope of Sections 227 and 228 CrPC. The principles which emerged therefrom have been taken note of in para 21 as under:

"21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge: (i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving

enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.

69. In the judgment passed by the Hon'ble Supreme court in the case of ***M.E. Shivalingamurthy v. CBI, reported in (2020) 2 SCC 768***, the above principles have been reiterated in para 17, 18, 28 to 31 and the Hon'ble supreme court has explained as to how the matters of grave

suspicion are to be dealt with. The aforesaid paragraphs are being quoted as under:

"17. This is an area covered by a large body of case law. We refer to a recent judgment which has referred to the earlier decisions viz. P. Vijayan v. State of Kerala and discern the following principles:

17.1 If two views are possible and one of them gives rise to suspicion only as distinguished from grave suspicion, the trial Judge would be empowered to discharge the accused.

17.2 The trial Judge is not a mere post office to frame the charge at the instance of the prosecution.

17.3 The Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding. Evidence would consist of the statements recorded by the police or the documents produced before the Court.

17.4 If the evidence, which the Prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, "cannot show that the accused committed offence, then, there will be no sufficient ground for proceeding with the trial".

17.5 It is open to the accused to explain away the materials giving rise to the grave suspicion.

17.6 The court has to consider the broad probabilities, the total effect of the evidence and the documents produced before the court, any basic infirmities appearing in the case and so on. This, however, would not entitle the court to make a roving inquiry into the pros and cons.

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17.7 At the time of framing of the charges, the probative value of the material on record cannot be gone into, and the material brought on the record by the prosecution, has to be accepted as true.

17.8 There must exist some materials for entertaining the strong suspicion which can form the basis for drawing up a charge and refusing to discharge the accused.

18. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged under Section 227 CrPC (see State of J&K v. Sudershan Chakkar). The expression, "the record of the case", used in Section 227 CrPC, is to be understood as the documents and the articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. At the stage of framing of the charge, the submission of the accused is to be confined to the material produced by the police (see State of Orissa v. Debendra Nath Padhi).

28. It is here that again it becomes necessary that we remind ourselves of the contours of the jurisdiction under Section 227 CrPC. The principle established is to take the materials produced by the prosecution, both in the form of oral statements and also documentary material, and act upon it without it been subjected to questioning through cross-examination and everything assumed in favour of the prosecution, if a scenario emerges where no offence, as alleged, is made out against the accused, it, undoubtedly, would ensure to the benefit of the accused warranting the trial court to discharge the accused.

29. It is not open to the accused to rely on the material by way of defence and persuade the court to discharge him.

30. However, what is the meaning of the expression "materials on the basis of which grave suspicion is aroused in the mind of the court's", which is not explained away? Can the accused explain away the material only with

reference to the materials produced by the prosecution? Can the accused rely upon material which he chooses to produce at the stage?

31. In view of the decisions of this Court that the accused can only rely on the materials which are produced by the prosecution, it must be understood that the grave suspicion, if it is established on the materials, should be explained away only in terms of the materials made available by the prosecution. No doubt, the accused may appeal to the broad probabilities to the case to persuade the court to discharge him."

70. It has been further held in the case of ***Asim Shariff v. National Investigation Agency, (2019) 7 SCC 148***, that mini trial is not expected by the trial court for the purpose of marshalling the evidence on record at the time of framing of charge, wherein, it has been held at paragraph no.18 of the said judgment as under:—

"18. Taking note of the exposition of law on the subject laid down by this Court, it is settled that the Judge while considering the question of framing charge under Section 227 CrPC in sessions cases (which is akin to Section 239 CrPC pertaining to warrant cases) has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the material placed before the court discloses grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing the charge; by and large if two views are possible and one of them giving rise to suspicion only, as distinguished from grave suspicion against the accused, the trial Judge will be justified in discharging him. It is thus clear that while examining the discharge application filed under Section 227 CrPC, it is expected from the trial Judge to exercise its judicial mind to

determine as to whether a case for trial has been made out or not. It is true that in such proceedings, the court is not supposed to hold a mini trial by marshalling the evidence on record."

71. In the case of ***Asim Shariff v. NIA, (supra),*** it has been held by the Hon'ble Apex Court that the words 'not sufficient ground for proceeding against the accused' clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really his function after the trial starts. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. The sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him. Thus, from aforesaid legal propositions it can be safely inferred that if, upon consideration of the record of the case and the

documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for doing so and if, after such consideration and hearing as aforesaid, the Judge is of the opinion that there is ground for presuming that the accused has committed an offence, the trial Court shall frame the charge. However, the defence of the accused cannot be looked into at the stage of discharge. The accused has no right to produce any document at that stage. The application for discharge has to be considered on the premise that the materials brought on record by the prosecution are true. Thus, at the time of considering an application for discharge, the Court is required to consider the limited extent to find out whether there is prima facie evidence against the accused to believe that he has committed any offence as alleged by the prosecution; if prima facie evidence is available against the accused, then there cannot be an order of discharge. Therefore, the stage of discharge is a stage prior to framing of the charge and once the Court rejects the discharge application, it would proceed to framing of charge. At the stage of discharge, the Judge has

merely to sift and weigh the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused and in other words, the sufficiency of grounds would take within its fold the nature of the evidence recorded by the prosecution or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame the charge against him and after that if the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge and, if not, he will discharge the accused.

72. While exercising its judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution, it is not necessary for the Court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts. It is considered view that at this stage of the instant case, the Court was only required to consider whether a prima facie case has been made out or not and whether the accused is required to be further tried or not because at the stage of framing of the charge and / or considering the discharge application, the mini trial is not permissible. It requires to

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refer herein that the purpose of framing a charge is to provide the accused with detailed information about the allegations against him. Framing of proper charge is one of the basic requirements of a fair trial. Charge is of great significance in a criminal trial as it helps not only the accused in knowing the accusation against him but also helps him in the preparation of his defence. In a criminal trial the charge is the foundation of the accusation and every care must be taken to see that it is not only properly framed. At the initial stage of framing a charge, the truth, veracity and effect of the evidence which the prosecution proposes to adduce are not to be considered meticulously. It is settled position of law that the accused is entitled in law to know with precision what is the law on which they are put to trial. Charges are framed against the accused only when the Court finds that the accused is not entitled to discharge under the relevant provision of CrPC/BNSS. In Sessions case the Court shall frame a charge in writing against the accused when the Court is of the opinion that there is ground for presuming that the accused has committed an offence as can be seen from Section 252 of the BNSS. In warrant cases, a charge shall be framed when a prima facie case has been made out against the accused as is evident from

sections 263 and 269 of BNSS. The Hon'ble Supreme Court of India in ***State of Maharastra vs. Som Nath Thapa, (1996) 4 SCC 659*** has been pleased to hold that if the Court were to think that the accused might have committed the offence, it can frame the charge, though for conviction the conclusion is required to be that the accused had committed the offence. It was further held that at the stage of framing of charge the Court cannot look into the probative value of the materials on record. Further, while considering the question of framing a charge, the Court has the undoubted power to sift and weigh the materials for the limited purpose for finding out whether or not a prima facie case against the accused has been made out. In exercising the power, the Court cannot act merely as a post office or a mouthpiece of the prosecution. The test to determine a prima facie case against the accused would naturally depend on the facts of each case and it is difficult to lay down the rule of universal application and if the material placed before the Court discloses grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing the charge and proceeding with the trial.

73. In ***Kanti Bhadra Shah vs. State of West Bengal, (2000) 1 SCC 722***, the Hon'ble Supreme Court held that whenever the trial Court decides to frame charges, it is not necessary to record reasons or to do discuss evidence in detail. In ***State of Andhra Pradesh vs. Golconda Linga Swamy, (2004) 6 SCC 522***, the Hon'ble Supreme Court held that at the stage of framing of charge, evidence cannot be gone into meticulously. It was held that it is immaterial whether the case is based on direct or circumstantial evidence and a charge can be framed if there are materials showing possibility about commission of the offence by the accused as against certainty. It needs to refer herein that Sections 215 and 464 CrPC ensure that technicalities do not defeat justice. Both the sections lay that irregularity or error in framing a charge is not fatal unless the accused is able to show that prejudice is caused to him as result of such irregularity or omission. The object of section 238 BNSS is to prevent failure of justice on account of irregularity in framing of charge. In judging a question of prejudice, as of guilt, the Court must act with a broader vision and look to the substance and not to the technicalities, and its main concern should be to see whether the accused had a fair trial, whether he knew what he was being tried for, whether

the main facts sought to be established against him were explained to him fairly and clearly and whether he had a full and fair chance to defend himself. In State of ***Uttar Pradesh vs. Paras Nathi Singh, 2009 INSC 669,*** the Hon'ble Supreme Court after considering the language of Section 464 Cr.P.C. held that the burden is on the accused to show that a failure of justice has been occasioned on account of error, omission or irregularity of the charge. Thus, framing of charge is not a mere empty formality. Every endeavour must be made in a criminal trial to ensure that appropriate charge is framed against the accused. Even though mere omission, error or irregularity in framing charges does not ipso facto vitiate trial, the accused should be made fully aware of the specific accusations against him in order to defend himself properly. Apart from safeguarding the interests of the accused, framing of proper charge also ensures that the interests of the victims and the society at large are safeguarded and no guilty person goes unpunished only on account of error in framing the charge. The Hon'ble Supreme Court of India in ***Dipakbhai Jagdhish chandra Patel vs. State of Gujarat, (2009) 16 SCC 547*** has been pleased to hold that:

"21. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the Court is expected to do is, it does not act as a mere post office. The Court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting of material before the Court is not to be meticulous in the sense that Court dons the mantle of the trial Judge hearing arguments after the entire evidence has been adduced after a full fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the Court must be satisfied that with the materials available, a case is made our for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material."

74. Thus, from the aforesaid judicial pronouncements, it is evident that at the stage of framing charges, trial court is not to examine and assess in detail the material placed on record by the prosecution nor is it for the court to consider the sufficiency of the materials to establish the offence alleged against the accused persons. Marshalling of facts and appreciation of evidence at the time of framing of charge is not in the

domain of the court. Charge can be framed even on the basis of strong suspicion founded upon materials before the court which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged against the accused. It needs to refer herein that ingredients of offences should be seen in the material produced before the court for framing of charges and duty of court at the stage of framing of charges is to see whether the ingredients of offences are available in the material produced before the court. Contradictions in the statements of witnesses or sufficiency or truthfulness of the material placed before the court cannot be examined at the stage of framing of the charge. For this limited purpose, the court may sift the evidence. Court has to consider material only with a view to find out if there is ground for presuming that the accused has committed an offense and not for the purpose of arriving at a definite conclusion. "Presume" means if on the basis of materials on record, court can come to the conclusion that commission of the offense is a probable consequence, then a case for framing of charge exists. Thus, it is well settled that at the time of framing of charge, meticulous examination of evidence is not required, however the evidence can be sifted or weighed at least for

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the purpose of recording a satisfaction that a prima facie case is made out for framing charge to proceed in the case. Further the trial Court is not required to discuss the evidence for the purpose of conducting a trial but the discussion of the materials on record is required to reflect the application of judicial mind for finding that a prima-facie case is made out against the petitioner. It is settled connotation of law that at the stage of framing of charge, the probable defence of the accused is not to be considered and the materials, which are relevant for consideration, are the allegations made in the First Information Report/complaint, the statement of the witnesses recorded in course of investigation, the documents on which the prosecution relies and the report of investigation submitted by the prosecuting agency. The probative value of the defence is to be tested at the stage of trial and not at the stage of framing of charge and at the stage of framing of charge minute scrutiny of the evidence is not to be made and even on a very strong suspicion, charges can be framed. Further, it is settled position of law that at the stage of framing the charge, the trial Court is not required to meticulously examine and marshal the material available on record as to whether there is sufficient material against the accused which would

ultimately result in conviction. The Court is prima facie required to consider whether there is sufficient material against the accused to presume the commission of the offence. Even strong suspicion about commission of offence is sufficient for framing the charge, the guilt or innocence of the accused has to be determined at the time of conclusion of the trial after evidence is adduced and not at the stage of framing the charge and, therefore, at the stage of framing the charge, the Court is not required to undertake an elaborate inquiry for the purpose of sifting and weighing the material. Recently, the Full Bench of the Hon'ble Apex Court in the case of ***Ghulam Hassan Beigh v. Mohd. Maqbool Magrey, (2022) 12 SCC 657*** has elaborately discussed the issue of framing of charge and has held at paragraph-27 which reads as under:

> "27. Thus from the aforesaid, it is evident that the trial court is enjoined with the duty to apply its mind at the time of framing of charge and should not act as a mere post office. The endorsement on the charge-sheet presented by the police as it is without applying its mind and without recording brief reasons in support of its opinion is not countenanced by law. However, the material which is required to be evaluated by the court at the time of framing charge should be the material which is produced and relied upon by the prosecution. The sifting of such material is not to be so meticulous as would render the exercise a mini

> trial to find out the guilt or otherwise of the accused. All that is required at this stage is that the court must be satisfied that the evidence collected by the prosecution is sufficient to presume that the accused has committed an offence. Even a strong suspicion would suffice. Undoubtedly, apart from the material that is placed before the court by the prosecution in the shape of final report in terms of Section 173 CrPC, the court may also rely upon any other evidence or material which is of sterling quality and has direct bearing on the charge laid before it by the prosecution."

75. Thus, from aforesaid legal propositions it can be safely inferred that if, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for doing so and if, after such consideration and hearing as aforesaid, the Judge is of the opinion that there is ground for presuming that the accused has committed an offence, the trial Court shall frame the charge. Therefore, the stage of discharge is a stage prior to framing of the charge and once the Court rejects the discharge application, it would proceed for framing of charge. At the stage of discharge, the Judge has merely to sift and weigh

the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused and in other words, the sufficiency of grounds would take within its fold the nature of the evidence recorded by the prosecution or the documents produced before the court which *ex-facie* disclose that there are suspicious circumstances against the accused so as to frame the charge against him and after that if the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge and, if not, he will discharge the accused. While exercising its judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution, it is not necessary for the Court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts. It is the considered view that at this stage of the instant case, the Court was only required to consider whether a *prima facie* case has been made out or not and whether the accused is required to be further tried or not because at the stage of framing of the charge and/or considering the discharge application, the mini-trial is not permissible. In the backdrop of aforesaid case laws and judicial deduction, this Court is

now proceeding to examine the fact so as to come to the conclusion, "as to whether the evidence which has been collected in course of investigation and has been brought on record, as would be available in the impugned order, *prima facie* case against the petitioner is made out or not?"

76. In the judgment passed by the Hon'ble Supreme court in the case of **Sajjan Kumar v. CBI, reported in (2010) 9 SCC 368**, the Hon'ble Supreme Court has considered the scope of Sections 227 and 228 CrPC. The principles which emerged therefrom have been taken note of in para 21 as under:

"21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:
(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.
(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.
(iii) The court cannot act merely as a post office or a mouthpiece of the

prosecution but has to consider the broad probabilities of the case,the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

77. Thus, from aforesaid legal propositions, it can be safely inferred that if, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for doing so and if, after such consideration and hearing as aforesaid, the Judge is of the opinion that there is ground for presuming that the accused has committed an offence, the trial Court shall frame the charge. However, the defence of the accused cannot be looked into at the stage of discharge. The accused has no right to produce any document at that stage. The application for discharge has to be considered on the premise that the materials brought on record by the prosecution are true. Thus, at the time of considering an application for discharge, the Court is required to consider the material to the limited extent to find out whether there is *prima-facie* evidence against the accused to believe that he has committed any offence as alleged by the prosecution; if *prima facie* evidence is available against the accused, then there cannot be an order of discharge. While exercising its judicial mind to the facts of the case in order to determine

whether a case for trial has been made out by the prosecution, it is not necessary for the Court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts. It is considered view that at this stage of the instant case, the Court is only required to consider whether a *prima facie* case has been made out or not and whether the accused is required to be further tried or not because at the stage of framing of the charge and/or considering the discharge application, the mini trial is not permissible.

78. In view of the contentions raised on behalf of both the parties, I would first like to mention that under the prevention of Money Laundering Act, 2002 (PMLA), the expression "proceeds of Crime" is defined under section 2(1)(u) as "Any Property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence." The 2019 Explanation widened the scope by clarifying that proceeds of crime include not only property generated from the scheduled offence itself, but also property derived from "any criminal activity relatable to the scheduled offence." I find that the expression “any criminal activity relating to schedule offence”

in Section 2(1)(u) of PMLA, 2002 finds very importance because it allows the enforcement directorate (ED) to examine transactions, concealment, possession, use, acquisition, or projection of property connected with the criminal activity surrounding the scheduled offence.

79. The scope and applicability of the provision of "Proceeds of Crime' defined in section 2(1)(u) PMLA, have been succinctly dealt with by the Hon'ble Supreme Court in para 250 in the case of **Vijay Madanlal Choudhary VS Union of India 2022 SCC Online 922** in the following manner:

"250. The other relevant definition is “proceeds of crime” in Section 2(1)(u) 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 the Finance Act, 2015 and Finance (No. 2) Act, 2019, took within its sweep any property mentioned in Section 2(1)(v) PMLA derived or obtained, directly or indirectly, by any person “as a result of” criminal activity “relating to” a scheduled offence mentioned in Section 2(1)(y) read with Schedule to the Act or the value of any such property. Vide the Finance Act, 2015, it further included such property

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(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)(u)]."

80. The contention of the defence is that the prosecution case itself is that the alleged forged deed was manufactured in the year 2019-20 to justify or protect possession of land allegedly held since 2010-11 and if that is so, then forgery and conspiracy may be scheduled offences, but the prosecution must still demonstrate that the land was obtained or derived because of those offences. To counter this contention, Ed has contended that the land was retained and enjoyed because of the conspiracy in such a manner that the unlawful benefit itself constitutes property obtained through criminal activity. ED has contended that possession was secured illegally by unlawful eviction of rightful owners and thereafter, forged deed was prepared in relation to part of the land and records were also manipulated and SAR proceedings were allegedly used to legitimize possession. These activities therefore, show that the property itself is not merely connected with the crime, rather, the property is the very benefit obtained through criminal activity.

81. Before proceeding further, it is important to mention that for deciding discharge prayer, the court is not required to conclusively

determine whether the land is proceeds of crime. At this stage, the court only examines whether there is material showing (i) criminal activity relatable to a scheduled offence; (ii) a *prima facie* nexus between that activity and the land; and (iii) Circumstances suggesting that the land may have been obtained, retained, enjoyed, or projected through such criminal activity. If such material exist, discharge would ordinarily be refused and the issue left for trial.

82. Viewed with this perspective, I find that the materials placed before this court in the shape of prosecution complaint and all relied upon document *prima facie* supports the argument made on behalf of ED that the property was first grabbed and then attempt was made to make to make it lawfully acquired through illegal acts which shall constitute the scheduled offences or an attempt to commit the scheduled offences. Post 2019 Amendment through explanation to Section 3, the Act clarifies that the offence of money laundering continues so long as a person is directly or indirectly enjoying the proceeds of crime. The circumstances of the case makes the said property of 8.86 acres land as "proceeds of crime", even though criminal acts were committed at later point of time, when A-2 assisted by A-1 and other land grabbing

syndicate member found an opportune moment to indulge in criminal activity relatable to schedule offence.

83. The argument made on behalf of Directorate of Enforcement finds substantial statutory support after 2019 amendment and the interpretation adopted in **Vijay Madan Lal Choudhary vs. Union of India** that even if the original illegal acquisition/possession began around 2010-11, subsequent acts of forgery, fabrication of deeds, manipulation of revenue records and continued enjoyment of property constitutes continuing laundering activity.

84. In this case, this property is categorized as indirectly derived property as its acquisition or retention is linked through a chain of criminal activities. The mere fact that FIR was registered later does not necessarily mean that the criminal activity began later. A criminal conspiracy may originate earlier and continues over years but may come to light only subsequently. I find that the forged deed and attempted manipulation in revenue records were not isolated offences, rather they were *prima facie* steps to protect earlier illegal possession/acquisition. Hence, later forgery and earlier unlawful possession formed part of one continuing criminal design.

85. Learned counsel for ED has further contended that the investigation conducted by ED has cogently established that A-2 was in unlawful possession of the property since 2010-11 and thus there is sufficient evidence to *prima facie* show that the *actus rea* was involved in the conspiracy and so far as *mens rea* is concerned, it is always a matter of trial. Reliance has been placed on the judgment of **Bhola Ram v. State of Punjab (2008) 9 SCC 140,** wherein in para-61 the Hon'ble Supreme Court held that *mens rea* can only be decided at the time of trial.

86. Having heard both the sides on this point, I find that delayed registration of FIR is not fatal, rather it is a question to be decided at the trial as to whether there was actually continuing conspiracy. It is a matter of trial, where ED will have to prove continuity of criminal design, the continuity of concealment and conscious acts to legitimize tainted possession.

87. Under the Prevention of Money Laundering Act, 2002, immovable property including land can constitute "proceeds of crime" if it is obtained, retained, controlled or enjoyed through criminal activity connected to a scheduled offence. The Hon'ble Supreme Court in the

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case of **Vijay Madan Lal Choudhary vs. Union of India** held that property obtained from criminal activity relatable to a scheduled offence falls within Section 2(1)(u). Here in this case, there is material to suggest that unlawful possession of the land was attempted to be justified and there was criminal conspiracy with the revenue officials, who were found in possession of original revenue records being the 17 original registers seized from the possession of A-1 Bhanu Pratap Prasad. The property measuring 8.86 acres are reflected in Register-II and this fact has been enumerated at table-2 at page 50 of the prosecution complaint. There is evidence of A-1 Bhanu Pratap Prasad having physically inspected the said land on two occasions -1st in December 20020 and 2nd in Jan. 2023. The connection of A-2 with said land and his attempt to justify his unlawful possession in connivance with A-1 also *prima facie* gets established through the statement of A-2's staff and associates Abhishek Prasad @ Pintu, who is also A-2's press advisor. Abhishek Prasad @ Pintu in his statement u/s 50 PMLA has admitted that he had instructed the verification of 8.86 acres property on the instruction and direction of A-2. Therefore, there is material to suggest that inspection

and verification of the land in Jan. 2023 by Bhanu Pratap Prasad has been done on the instruction and direction of A-2.

88. The materials placed by ED in the shape of prosecution complaint along with relied upon document further *prima facie* goes to show that the direction to verify 8.86 acres land from CMO (Chief Minister Office) through Media Advisor of A-2 was with a view to facilitate A-2's interest on the land. Apart from it, seizure of file exclusively relatable to 8.86 acres land marked with sticky notes levelled "CM Bhuinhari Bargain" and "CMO URGENT PINTU" from the chamber of A-1 and verification done by A-1 in 2023 at the instance of Media Advisor of A-2 gives strength to the contention of Enforcement Directorate that these activities were the precursor to the final stage of the conspiracy to manufacture a permanent official record for A-2.

89. I further find that the background of the registration of predicate offence case i.e Sadar P.S. Case No. 272/23 dated 01.06.23 is the sharing of information by the Enforcement Directorate with the Jharkhand Government u/s 66(2) of PMLA. This sharing of information appears to have been found essential by Enforcement Directorate as during the investigation in another case bearing ECIR No. RNZO/18/2022 into the

matter of fraudulent acquisition of land, 11 trunks of voluminous property document along with 17 original registers were recovered from the possession of Bhanu Pratap Prasad. It is a case of Enforcement Directorate that on the scrutiny of the seized original registers, forgery was identified in those registers and such forgery were aimed at acquiring property in deceitful manner. It is further case of Enforcement Directorate that the above registers contained references to several properties which have been acquired in illegal manner including the reference of property ad-measuring 8.86 acres at Shanti Nagar, Bargain Bariatu Road (near Lalu Khatal) allegedly illegally acquired and possessed by A-2.

90. It is also not a disputed fact that the scheduled offence in this case includes Section 120B along with other scheduled offence namely Section 467, 471 & 420 of the IPC as per the charge sheet filed in FIR Sadar P.S. Case No. 272/23. This FIR itself has been registered on the basis of sharing of information by Enforcement Directorate u/s 66(2) of PMLA, 2002, when upon the scrutiny of the original registers forgery was identified in those registers and it was found that all such forgery were aimed to acquire property in deceitful manner. The registers

contained references to several properties including land ad-measuring 8.86 acres, inspection and verification of which was done by Bhanu Pratap Prasad on the direction and instruction of A-2. One fake deed no. 3985 of the year 1940 also appears to have been created, consisted of several plots including two plots falling within the area of 8.86 acres, which is allegedly found in control and possession of A-2.

91. Therefore, there is no dispute that there was an FIR with a scheduled offence with respect to the act of criminal conspiracy to forge documents on the basis of sharing of information by ED u/s 66(2) PMLA, 2002. This triggered Enforcement Directorate to register another ECIR and initiate inquiry/investigation. It appears that during that inquiry, it was revealed that one another property's unlawful possession was being justified by someone with connivance of revenue officers. Learned counsel for A-2 has contended that there is no reference of this property to any criminal activity in the scheduled offence and as such is not part of the investigation of the predicate offence. In such facts and circumstances, I find that on behalf of A-2, issue has been raised as to whether the 2nd property discovered during investigation though not

originally part of predicate offence/FIR can still be treated as “proceeds of crime”.

92. As discussed earlier, the explanation added in 2019 expands the definition of proceeds of crime to include any property derived or obtained from any criminal activity relatable to the schedule offence. Thus, the scope is intentionally broad and not confined only to exact property especially mentioned in the FIR or the charge sheet. Once a scheduled offence exists and ECIR is validly registered, the ED is empowered to investigate the entire chain of laundering activity connected with the criminal activity relatable to the scheduled offence. Therefore, if during investigation, it is found that there is another property, illegal possession of which is being protected through forged documents and attempted manipulation in revenue records in conspiracy with public official, from whose possession large volume of original registers have been seized, then that property also constitutes proceeds of crime even not initially found mentioned in the FIR.

93. Here it is important to mention that proceeds of crime are not limited to exact property identified at the inception of the investigation as laundering investigation often uncovers layered or connected

property. Section 66 PMLA authorizes sharing information with other authorities where commission of another offence appears. Hence, sharing information with police u/s 66(2) suggest that Enforcement Directorate believed that further predicate offence or connected criminal act existed concerning the 2nd property.

94. ED's argument regarding criminal conspiracy is based on the premise that conspiracy u/s 120B IPC is itself a scheduled offence and a foundation capable of supporting PMLA proceeding. ED has submitted that forgery concerning the land may not have been fully completed or directly attributable to every accused, but there is sufficient and cogent material to support ED's argument regarding criminal conspiracy as the materials collected during investigation *prima facie* show that there was agreement and coordinated acts undertaken to legalize or conceal tainted property. Ld. Counsel for ED has contended that question is not whether the forgery with respect to this very land was accomplished as offence of criminal conspiracy is complete once there is a agreement to commit any illegal act.

95. Therefore, the ED's reasoning appears to be that the land was already illegally possessed and those acquired the status of tainted

property and thereafter, the network of person conspired to legitimize that possession and even the public officials were assisting in concealment of the nature of possession by trying to legitimize the said possession. In such facts and circumstances of the case, the ED's reasoning is that even if every illegal act was not completed, conspiracy itself constituted criminal activity, with the aid of which property was continued to be enjoyed or projected as untainted property.

96. Further, Learned counsel for ED has relied upon the judgment of **Sudhir Shanti Lal Mehta vs. CBI (2009)8 SCC 1, State of Kerala vs. P. Sugathan and another (2000) 8 SCC 203 and case of Yogesh @ Sachin Jagdish Joshi vs. State of Maharashtra reported in (2008) 10 SCC 294** to contend that Section 120B of the IPC is a standalone offence and renders the mere agreement to commit an offence punishable even if an offence does not take place pursuant to illegal agreement. Ld. Counsel for ED during argument has placed on record copies of certified copy of prosecution sanction order passed by the competent authority granting prosecution sanction for the trial of accused Bhanu Pratap Prasad in a case concerning Sadar P.S. Case No. 272/23, in which charge sheet has been submitted against the accused

Bhanu Pratap Prasad in Vigilance Court, Ranchi for his trial for the offence u/s 409, 465, 466, 467, 468, 469, 471, 420, 379, 474/120B IPC and u/s 13(1) (a)/13(2) of PC Act. Copy of charge sheet no. 444/23 submitted in Sadar P.S. Case No. 272/23 has also been placed on record on behalf of prosecution/ED to substantiate the fact that though FIR was not registered u/s 120B IPC but after the investigation of the predicate offence, the investigating officer found sufficient material to charge sheet accused Bhanu Pratap Prasad for committing the offence u/s 120B IPC and hence, in the charge sheet the offence of criminal conspiracy was also added.

97. In view of the contentions raised on behalf of ED with respect to the offence of criminal conspiracy. It is important to first discuss the law related to the offence u/s 120B IPC. In para 113 of the judgment of **Sudhir Shanti Lal Mehta vs. CBI, the** Hon'ble Apex Court observed that criminal conspiracy is an independent offence and is punishable independent of other offences; its ingredients being :

(i) An agreement between two or more persons

(ii) An agreement must relate to doing or causing to be done either

(a) An illegal act;

(b) An act which is not illegal in itself but is done by illegal means.

The Court further observed that it is well settled that a conspiracy ordinary is hatched in secrecy and therefore, the court for the purpose of arriving at a finding as to whether the said offence has been committed or not, may take into consideration the circumstantial evidence.

98. In the case of **Yogesh @ Sachin Jagdish Joshi vs. State of Maharashtra**, the Hon'ble Apex Court held :

" 25. Thus, it is manifest that the meeting of minds of two or more persons for doing any illegal act or an act by illegal means is *sine qua non* of the criminal conspiracy but it may not be possible to prove the agreement between them by direct proof. Nevertheless, existence of the conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. But the incriminating circumstances must form a chain of events from which a conclusion about the guilt of the accused could be drawn. It is well settled that the offence of conspiracy is a substantive offence and renders the mere agreement to commit an offence punishable even if an offence does not take place pursuant to the illegal agreement."

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99. In para 31 in the judgment of **Major E.G. Barsay vs. State of Bombay AIR 1961 SC 1762**, the Hon'ble Apex Court held

" 31. ……The gist of the offence is an agreement to break the law. The party to such an agreement will be guilty of criminal conspiracy, though illegal act agreed to be done has not been done. So too, it is not an ingredient of offence that all the parties should agree to do a single illegal act, it may comprise the commission of number of act".

100. Therefore, in view of the law relating to an offence u/s 120B IPC discussed above, I find that it is established principle of law that the agreement amongst the conspirators can be inferred by necessary implication. Conspiracy consist of the scheme or adjustment between two or more persons, which may be express or implied or partly express or partly implied. Here in this case, if the story unfolded by the prosecution through several witnesses and through materials collected during investigation is taken to its logical conclusion, the facts which emerge from the acts of cheating and forgery allegedly done by Bhanu Pratap Prasad including his attempts to legalize and indulge in an attempt to regularize A-2's possession during his tenure, that all such acts were purely for the benefit of A-2. This fact *prima facie* gets

corroboration by his physical inspection of said 8.86 acres land on two occasions during his posting on the instruction from the Chief Minister's Office. One file related to this land of 8.86 acres marked "CMO URGENT PINTU" seized from the chamber of Bhanu Pratap Prasad *prima facie* also goes to show that he was a facilitator in official capacity involved in larger conspiracy to regularize the possession of A-2. Para 10.19 of the prosecution complaint mentions that the brown file with endorsement "CM Bhunhari Bargain" written on it and seized from the chamber of A-2 Bhanu Pratap Prasad contained an image of blank page of Register-II, which according to ED might have been intentionally kept to add the names of other raiyats for the benefit of accused A-2 and the presence of this page along with a file marked "CMO URGENT PINTU" proves that the conspiracy was not just a plan but an active, ongoing criminal process. Therefore, there is material to *prima facie* show that there was nexus between the conspiracy and property i.e. 8.86 acres land and all subsequent acts committed or attempted to be committed by Bhanu Pratap Prasad and members of land grabbing syndicate namely Md. Saddam Hussain and Afsar Ali, were not isolated irregularities but part of a continuing design to legitimize tainted possession of A-2.

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Since, laundering is a continuing offence, illegal possession, subsequent forgery and manipulation of record and continued use of land are treated as one continuous chain of the process and activity of concealment and projection. The act of accused Bhanu Pratap Prasad of inspecting the entire chunk of land 8.86 acres within a common boundary and keeping the documents related with this land in one file in a concealed manner substantiate the prosecution case of his meeting of mind and conscious participation in the illegal design to legitimize the possession of A-2.

101. Learned counsel for A-2 has submitted that neither the investigating agency responsible for the investigation of the predicate offence case i.e. Sadar P.S. Case No. 272/23 nor the Directorate of Enforcement in the investigation of this ECIR case has found any material to connect A-2 with the offence of forgery or criminal conspiracy in the predicate offence case and therefore, the whole prosecution case against A-2 is based on assumption of his involvement in the criminal conspiracy of grabbing land. With respect to this contentions raised on behalf of A-2, here it is important to mention that for prosecuting a person involved in committing the offence u/s 3 PMLA, the precondition is that there must be a scheduled offence and

there must be a "proceeds of crime" in relation to scheduled offence. In view of interpretation of Section 3 by the Hon'ble Apex Court in the case of **Vijay Madan Lal Choudhary vs. Union of India** and in the judgment of **Pavana Dibbur Vs. Directorate of Enforcement 2023 SCC Online SC 1596**, now it is well established that it is not necessary that a person against whom the offence u/s 3 of the PMLA is alleged must have been shown as the accused in the scheduled offence.

102. It is settled position of law that at the stage of framing the charge, the trial Court is not required to meticulously examine and marshal the material available on record as to whether there is sufficient material against the accused which would ultimately result in conviction. The Court is *prima facie* required to consider whether there is sufficient material against the accused to presume the commission of the offence. Even strong suspicion about commission of offence is sufficient for framing the charge, the guilt or innocence of the accused has to be determined at the time of conclusion of the trial after evidence is adduced and not at the stage of framing the charge and, therefore, at the stage of framing the charge, the Court is not required to undertake an elaborate inquiry for the purpose of sifting and weighing the material.

103. In the backdrop of aforesaid established legal principles with respect to the matters needed to be considered at the stage of framing of charge, now this court will proceed to examine the materials placed by ED in various paragraphs of the prosecution complaints and the statements recorded by ED u/s 50 PMLA to see as to whether evidence has been collected in the course of investigation by ED that A-2 has been in illegal possession of the land, which is PoC in this case.

104. Learned counsel appearing for A-2 has contended that there is no evidence that A-2 was or has ever been in possession of the land ad-measuring 8.86 acres and that only material relied upon by the prosecution to show that the property has any relation with A-2 are hearsay statements of the witnesses stating in their statements that they have heard from someone or that it is in their knowledge that the property belongs to A-2. Referring to the statements recorded u/s 50 of PMLA of Santosh Munda, Manoj Kumar Circle Officer, Bhanu Pratap Prasad, Shailesh Kumar Circle Officer, Shashinder Mahto, Ameen, who had accompanied Bhanu Pratap Prasad during the verification of the land, it has been claimed by learned counsel that their statements regarding their belief that A-2 was in possession of the land is irrelevant

and cannot be used to establish possession at the hands of A-2. On the other hand, learned counsel for ED has submitted that chain of circumstantial evidence like the statements of the witnesses regarding exercise of control and occupation by A-2 over the land by actually visiting the land repeatedly, construction activity of erection of boundary wall enclosing the entire chunk of land of 8.86 acres within a common boundary, inspection and direction for inspection and verification of the land at his instance by his media advisor, recovery of brown coloured file concerning only 8.86 acres property with endorsement "CMO URGENT PINTU" are the circumstantial evidence relied upon by ED to *prima facie* prove the conscious possession, control and beneficial enjoyment of the land by the accused.

105. In view of the above contentions raised on behalf of the accused and prosecution, I would like to first mention that at the stage of discharge, the court is not deciding whether the accused is guilty beyond reasonable doubt. Rather, the test is much narrower. The court has to see as to whether there is sufficient material to presume that the accused may have committed the offence or that whether the material relied upon by ED creates a *prima facie* nexus between the accused and allegedly

tainted property. Since the defence has referred the statements of the witnesses, whose statements were recorded u/s 50 PMLA for contending that their statement regarding possession of land cannot be used to *prima facie* establish possession or control of A-2 over the land, I would like to first mention the relevant portion of the statements given by different witnesses during their statement u/s 50 PMLA.

106. So far as admissibility of statement recorded u/s 50 of PMLA is concerned, it is important to mention that in the case of **Rohit Tandon vs. Directorate of Enforcement (2018) 11 SCC 46**, the Hon'ble Apex Court held that the statements of witnesses recorded by the prosecution/ED are admissible in evidence and such statements may make out a formidable case about the involvement of the accused in the offence of Money Laundering. Again in the case of **Abhishek Banarjee and another vs. Enforcement Directorate (2024) 9 SCC 22**, the Hon'ble Apex Court held that statements recorded u/s 50 of PMLA are admissible in legal proceeding. The Hon'ble Supreme Court while emphasizing the legal sanctity of such statements, observed that they constitute valid material upon which reliance can be placed to sustain allegation under the PMLA. Statement of Santosh Munda, caretaker of

land ad-measuring 8.86 acres is RUD 58. In his statement, he has stated that he has been living on his plot as caretaker for the last 14 to 15 years and has also worked as a labour in the construction of the boundary wall. He has stated that the plot belongs to Chief Minister Hemant Soren and he had occasion to meet Hemant Soren, when he visited the plots on two occasions. He also stated that wife of Chief Minister had also come on the plot on some occasions. Upon scrutiny of the statement of Santosh Munda, whose presence at the land appears to be as a caretaker, I find that his statement is to the effect that he worked as caretaker as also labourer having participated in the construction of boundary wall enclosing the entire land of 8.86 acres within one common boundary and he also appears to have seen A-2 and his wife visiting the property many times. Therefore, his statement is suggestive of the fact that A-2 was seen exercising control over the land. This witness appears to have spoken from his direct experience on the basis of his ocular observation regarding possession and control exercised by A-2 over the property.

107. ED has further relied upon the statement of Bhanu Pratap Prasad (A-1), Abhishek Prasad @ Pintu, media advisor of A-2 and his PPS Udai Shankar. Bhanu Pratap Prasad in his statement u/s 50 of PMLA stated

that he received instruction for verification of the land ad-measuring 8.86 acres and he heard that the land belonged to "Boss" which he usually referred to the the Chief Minister of the State. Udai Shankar in his statement u/s 50 of PMLA stated that he received instruction from Abhishek Prasad @ Pintu, media advisor of A-2, to conduct verification of the said land and he came to know that the land belonged to A-2. Statement of Abhishek Prasad @ Pintu is also to the effect he received instruction from A-2 for conducting verification of the said property among many other properties. Manoj Kumar, the then Circle Officer in his statement u/s 50 of PMLA stated that he received instruction from Udai Shankar, PPS to media advisor of A-2, to conduct verification of the land measuring 8.86 acres and accordingly, he instructed Bhanu Pratap Prasad (A-1) to conduct the said verification. Upon the perusal of the statement of these officials, staff/associate of A-2, it is evident that the verification of land was carried out under the direction of accused A-2. The statements of these important witnesses, if accepted at their face value, *prima facie* connects the accused A-2 with the property.

108. Apart from statement referred above, statement of Baijnath Munda (RUD 57), Ganesh Pahan (RUD 81), Koka Pahan (RUD 81),

Makhan Pahan (RUD 79), Manoj Pahan (RUD 67), Sajjad Khan (RUD 82) *prima facie* also supports the contention of ED that A-2 came in illegal possession of the land by forcefully evicting these persons in the year 2010-11. Ashok Jaiswal (RUD 61-62) in his statement stated that he had purchased a portion of the land ad-measuring 8.86 acres in the year 1985 and was in possession of the land along with Pahans till 2008, at which point certain persons came and started constructing a boundary wall stating that the land belonged to A-2.

109. ED has also relied upon the recovery of brown file concerning only 8.86 acres property marking/with endorsement “CMO URGENT PINTU” from the chamber of co-accused Bhanu Pratap Prasad (A-1). The file also contained blank page sheet of Register-II. I find that the recovery of file indicates active monitoring and efforts to create or secure official records regarding to the property.

110. Materials summarized above gives strength to ED’s contention that these materials though not really directed to prove legal ownership of A-2 over 8.86 acres land but are sufficient to *prima facie* establish A-2’s conscious possession, control and beneficial enjoyment of the land, which is sufficient to attract Section 3 PMLA as the land is "proceeds of

crime". I think that at this stage these materials are sufficient because the court has only to examine whether there is grave suspicion or *prima facie* material. The defence argument regarding hearsay version, reliability of witnesses and about the accused having no connection with the alleged forgery of document, are triable issues and not relevant for consideration at the stage of discharge. ED's plea is legally structured around circumstantial evidence of dominion, control and beneficial enjoyment and not on the proof of title. Section 50 statements of Abhishek Prasad @ Pintu, Manoj Kumar C.O. and Bhanu Pratap Prasad (A-1), the verification of land, the recovery of property specific file with endorsement "CM URGENT PINTU" and "CM Bhunhari", witnesses accounts of supervision and construction constitute principle basis on which ED seeks finding of *prima facie* possession.

111. Learned counsel for A-2 has contended that there is no evidence connecting A-2 with SAR proceeding initiated by Raj Kumar Pahan. Contrary to this ED's argument is that SAR proceedings themselves were part of the conspiracy to legitimize and conceal true nature of 8.86 acres property.

112. Learned counsel for A-2 in this connection has raised two principle arguments: (i) that there is no evidence of conspiracy between A-2 and A-3 and the (ii) that the SAR order has attained finality as the same has not been challenged. It has been submitted that a judicial order cannot be treated as part of the criminal conspiracy merely because the prosecution disagrees with it. It has been submitted that there is no evidence of any meeting, any telephone call, any WhatsApp Chat between accused A-2 and Raj Kumar Pahan and even no witness has spoken about any agreement between A-2 and Raj Kumar Pahan. It has further been argued that since no allegation of criminality has been alleged against the Presiding Officer, who passed order in the SAR proceeding, the allegation that judicial proceedings were manipulated is solely based on conjectures and surmises. On the other hand, ED's response to this contention is that Enforcement Directorate does not attempt to prove conspiracy through direct evidence. Instead it relies upon circumstantial evidence and chronology of events having taken to legitimize illegal possession of A-2 over 8.86 acres land. It has been submitted SAR proceedings were allegedly designed to create a parallel title and the said proceedings were not genuine litigation but a device to

create documentary legitimacy for possession of the land. According to ED, Raj Kumar Pahan's claim emerged after the land investigation became public and the sole objective was to distance A-2 from the property. It has been submitted that the entire record concerning SAR Case No. 81 of 2023-24 initiated u/s 71A to restore possession of applicant Raj Kumar Pahan over the land area 8.86 acres of different plots in Khata no. 210, 221, 223, 234 & 235 has been collected during investigation of this case by ED and is relied upon document No. 9 in this case. It has been submitted that the proceeding was initiated on the application on 09.01.24 and was disposed on 29.01.24 in extraordinary urgency and this unusual speed itself suggest manipulation. The haste in which this particular case was taken up and disposed is also a circumstance indicating collusion and is a relevant circumstance to establish conspiracy.

113. In view of this contention of extraordinary urgency and unusual speed to dispose this particular SAR giving it preferential treatment during ED's investigation, when this Court perused RUD-9, it appears that a proceeding for the restoration of land under the provision of Section 71A CNT Act was initiated on the application of Raj Kumar

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Pahan (A-3) on 09.01.24 and the case was fixed for the appearance of 17 named opposite parties in the application on 16.01.24. On the next date of hearing on 16.01.24, on non-appearance of any opposite party, order of substituted service of notice to the opposite parties through publication of the notice in local newspaper was passed fixing the next date as 19.01.24. On 19.01.24, the satisfaction about the publication of notice in the local newspaper was recorded and the case was adjourned for hearing on 24.01.24, on which date an order for *ex-parte* proceeding against opposite parties was passed and the case was adjourned for further hearing on 29.01.24. It appears that on 29.01.24 final order for the restoration of land was passed. This court is not required at this stage, to examine the legality, correctness or propriety of the passed in SAR proceedings. The said order shall be considered by the competent forum in accordance with law, if so challenged. For the limited purpose of the present proceedings, this Court only notes that the chronology of events relied upon by the prosecution forms part of the circumstances sought to be relied upon by it. The evidentiary value and effect of such circumstances shall be determined during trial. ED has also relied upon the statement of other claimants, the descendants of the common

ancestor besides Raj Kumar Pahan that they had not given consent to the application and they were not in possession of the property. The evidence collected by ED on its face value, substantiate the argument of ED that the supposed litigants other than Raj Kumar Pahan, allegedly the front man of A-2, themselves lacked genuine interest, suggesting that they were being used as fronts.

114. During investigation, WhatsApp Chat with A-2's mobile no. 9431106949 with accused Binod Singh on his mobile no. 9835156276 contained sharing of a proposed Banquet Hall map by Binod Singh to A-2 containing the description "Lalu Khatal" and a contention of ED is that the witnesses have identified disputed land as Lalu Khatal and as such 8.86 acres property is commonly known as "Lalu Khatal property", and from all these evidence, inference of possession and intended commercial use can be drawn. It has been submitted that this evidence collected during investigation established that A-2 was aware of the project and being interested in the property was involved in planning its development by exercising beneficial control over the land. It has been submitted that this becomes relevant to Section 3 PMLA because

possession, use and enjoyment of alleged proceeds of crime are relied upon by the prosecution.

115. This court finds that the inference drawn by ED has some probative value because the expression "Lalu Khatal" appears from two different sources:- (i) From the Banquet Hall Map shared by accused Binod Singh with A-2 on his WhatsApp and from the witnesses testimony, who have referred that the property 8.86 acres is commonly known as "Lalu Khatal land" and "Lalu Khatal property". The map is therefore, not being relied upon in isolation, rather the Banquet Hall Plan becomes one link in a larger chain of circumstantial evidence relied upon by ED to show that A-2 has been in illegal possession of the land and has been exercising all control and supervision over the land. At the discharge stage, courts generally do not ask “does this conclusively prove ownership?” Instead they ask “is this a circumstance capable of supporting the prosecution theory?” Viewed in that limited manner, the sharing of map of Banquet Hall between accused Binod Singh and A-2 mentioning Lalu Khatal in the map and the witness identifying the disputed property by the same name create a circumstance from which a

reasonable inference may be drawn that the map was related to the disputed land.

116. The Banquet Hall map though does not by itself establish ownership or possession. However, it is a relevant circumstance and when read with other materials relied upon by ED, it contributes to a *prima facie* inference of knowledge, interest, and possible beneficial enjoyment of the land. The map alone would be insufficient to sustain a prosecution, but in conjunction with other evidence collected by ED, it is capable of supporting a finding of **grave suspicion** and therefore, has relevancy at the stage of deciding a discharge application.

117. Upon the consideration of the contentions raised on behalf of both the parties, I find that discharge jurisprudence favours the prosecution **where circumstances cumulatively create gave suspicion**. At this stage, ED is not required to prove actual conspiracy, actual manipulation and actual guilt. Rather, it only needs to show the reasonable *prima facie* inference, ED's cumulative circumstances relied upon to show reasonable *prima facie* inference are the disputed land under investigation, emergence of SAR proceedings, unusual urgency for order that too co-incidence with ED investigation and broader evidence linking

A-2 to the possession of the property, his interest and intention to develop commercially exploit the land, viewed together seems sufficient to proceed to trial.

118. The law regarding discharge is well settled. At this stage, the court is not required to determine whether the prosecution will ultimately succeed in proving its case beyond doubt. The court is only required to examine whether the material on record discloses sufficient grounds for proceeding against the accused and whether a grave suspicion arises regarding his involvement in the alleged offences. The probative value of evidence and its ultimate reliability are matters for trial. In the present case, materials collected by the prosecution includes statements of persons associated with the property who have spoken about the presence, visits and supervision exercised by A-2 over the land. The prosecution has also relied upon statements of Abhishek Prasad @ Pintu recorded u/s 50 of PMLA, where he is stated to have admitted that verification of 8.86 acres property was undertaken at the instance of A-2. The prosecution further relies upon the documentary material recovered during searches including documents relating specifically to the said property.

119. The contention of the defence that the witnesses are unreliable or that there statements are hearsay cannot be conclusively adjudicated at this stage. Whether such witnesses are trustworthy and whether their statements withstand cross-examination are matters to be examined during trial. At the stage of discharge, the court is required to assume the prosecution material to be true for the limited purpose of determining whether the *prima facie* case exist.

120. As regards the argument that there is no direct evidence of conspiracy between A-2 and Raj Kumar Pahan, it is noteworthy that conspiracy is generally proved through circumstantial evidence. Direct evidence of an unlawful agreement is seldom available. The prosecution has relied upon the chronology of events, the conduct of the parties, the proceedings before the SAR Court, the timing of such proceedings and other surrounding circumstances. Whether these circumstances ultimately establish conspiracy is a matter of trial. However, at this stage, they cannot be said to be wholly incapable giving rise to an inference requiring adjudication.

121. That the prosecution has specifically alleged that the SAR proceedings were utilized as a mechanism to create documentary

legitimacy regarding the property and to distance A-2 from it. Though the defence has strongly contended that the SAR proceedings were genuine and unconnected with any criminal activity. Nevertheless, the material presently relied upon by the prosecution cannot be brushed aside as entirely speculative so as to warrant discharge.

122. This court is conscious that proof of ownership is distinct from proof of possession, control or beneficial enjoyment. The prosecution case is not confined to formal title but extends to alleged possession, use and projection of the property. The cumulative circumstances relied upon by the prosecution are sufficient to raise strong suspicion requiring adjudication through evidence.

123. Upon overall consideration of the complaint, supplementary complaint, statements u/s 50 of PMLA, documentary evidence and surrounding circumstances relied upon the prosecution, this court is on the opinion that material on record discloses more than a mere suspicion and raises a *prima facie* case against A-2. At this stage, the court cannot undertake a detailed appreciation of evidence or record finding on disputed questions of fact. The defence contention raised involve matters requiring examination during trial.

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124. Hence, in such facts and circumstances, this court finds that there is no ground to discharge the accused. Accordingly, the prayer of discharge of this accused is hereby rejected.

MCA No. 2447/25 stands dismissed.

Dictated

YOGESH KUMAR Digitally signed by YOGESH KUMAR

(Yogesh Kumar)
A.J.C. I- cum Spl. Judge,
PMLA, Ranchi.