HC-KAR
NC: 2026:KHC:59898
WP No. 34513 of 2024
CNR: KAHC010734842024

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 34513 OF 2024 (GM-RES)

BETWEEN

MR. SHANKER MAHADEVAN IYER
S/O LATE SHANKER IYER
AGED ABOUT 66 YEARS
R/AT 1/D 15-991/31, LAKSHMI SHANKER
GREEN FIELD LAYOUT,
CHILLMBI MANGALORE,
ASHOK NAGAR (MR), DAKSHINA KANNADA
KARNATAKA-575006.

...PETITIONER

(BY SRI: D.R. RAVISHANKAR., SR. COUNSEL FOR
SRI. ABHISHEK MARLA M J., ADVOCATE)

AND

DEPUTY DIRECTOR
DIRECTORATE OF ENFORCEMENT
MANGALURU SUBZONAL OFFICE
2ND FLOOR, 4-212/16 "VISTAAR"
COMMERCIAL COMPLEX,
AIRPORT ROAD YEYYADI,
KONCHADY
MANGALURU-575008

...RESPONDENT

(BY SMT. ANUPARNA BORDOLOI., ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT, ORDER OR DIRECTION AND QUASH THE IMPUGNED ORDER PASSED BY

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RESPONDENT, DATED 29.10.2024 PASSED IN ECIR/MGSZO/04/2022 (ANNEXURE-A) IN RESPECT OF THE SCHEDULE PROPERTIES AND ETC.

THIS WRIT PETITION COMING ON FOR ORDERS AND HAVING BEEN RESERVED FOR ORDERS ON 29.07.2026, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

CAV ORDER

1. The Petitioner is before this Court seeking for the following reliefs:

> *i) Issue a writ of certiorari or any other appropriate writ, order or direction and quash the impugned order passed by Respondent, dated 29.10.2024 passed in ECIR/MGSZO/04/2022 (Annexure-A) in respect of the schedule properties.*
>
> *ii) Grant such other reliefs as this Hon'ble Court deems fit to grant in the interest of justice and equity.*

2. The Petitioner is aggrieved by the show cause notice dated 30.11.2024 issued under Section 8 of the Prevention of Money Laundering Act, 2002 (for short, 'PMLA, 2002') and in that background the Petitioner has sought for the aforesaid reliefs.

3. The Petitioner claims that he is a proprietor of M/s. S.S.Maritime which was in the business of stevedoring and related activities since the year

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1990. The Petitioner had, on 09.02.2011, paid a sum of Rs.25,00,000/- to one M/s. Hanuman Minerals for supply of high-grade iron ore. In the month of January 2012, M/s. Hanuman Minerals had approached the Petitioner with assurance to return the entire sum of Rs.25,00,000/- but had also suggested that M/s.S.S.Maritime take up stevedoring in respect of 40000 metric tons (MT) of iron ore at Alcon and Maina Jetties situated in Goa. M/s.Hanuman Minerals thereafter is alleged to have paid a sum of Rs.10,00,000/- on 30.01.2012, a sum of Rs.7,00,000/- on 02.02.2012 as a partial repayment of a sum of Rs.25,00,000/-. There being certain contractual dispute between M/s.Hanuman Minerals and M/s.Manipal Global Services Pvt. Ltd (for short, '**M/s.Manipal Global'**) as regards the agreement dated 18.01.2012, M/s.Manipal Global had filed a private complaint in PCR No.23/2017 before the Additional Civil Judge and ACJM, Udupi, which was referred to the Manipal Police Station for investigation. In furtherance of which, Crime No.90/2017 was registered on 02.06.2017 against the Petitioner and 10 others for offences punishable under Sections 120B, 406, 417, 420,

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465, 466, 467, 468, 471, 474 and 34 of the IPC, wherein the Petitioner was arraigned as accused no.11. On completion of investigation, charge sheet has been filed wherein the Petitioner has been arraigned as accused no.3.

4. The aforesaid offences being scheduled offences under paragraph No.1 of Part-A of the Schedule of the PMLA 2002, the Respondent has recorded an ECIR bearing No.ECIR/MGSZO/04/2022 on 28.03.2022. Thereafter, on 29.10.2024 vide Order No. 1/24 the properties belonging to the Petitioner as per the schedule to the petition were attached and, in pursuance thereof, a show cause notice dated 30.11.2024 has been issued, which is under challenge.

5. Sri.D.R.Ravishankar, learned Senior Counsel appearing for the Petitioner, submits that:

5.1. The Respondent has mechanically attached the properties of the Petitioner without there being any basis. There are no proceeds of crime which the Petitioner has received in pursuance of Crime No.90/2017 registered

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against the Petitioner. There are no amounts which have been received by the Petitioner apart from partial repayment of the monies due to the Petitioner. Even the full amount due to the Petitioner has not been paid. It was required for the Respondent to have verified if there were any proceeds of crime, identify the same, and thereafter pass an order of attachment. Not doing so would categorically indicate that there is complete non-application of mind.

5.2. His submission is that there is no crime, much less proceeds of crime. The Petitioner is being falsely harassed by the Respondent. There is no categorical identification as to what is proceeds of crime. Merely because some amount had been paid by M/s.Manipal Global to M/s.Hanuman Minerals, and the Petitioner was part of the transaction as a stevedore, the Petitioner is not responsible for any of the criminal actions, if any, by M/s.Hanuman Minerals and/or M/s.Manipal Global.

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5.3. Petitioner is a third party who has nothing to do with the said transaction. The Petitioner only had stevedored the transaction. His submission is that even according to the Respondent, the transaction with M/s.Hanuman Minerals and subsequently with M/s.Manipal Global occurred in the year 2011-12, where the property of the Petitioner which has been attached is one which had been purchased between 2004 to 2008, which was much prior to the predicate offence, let alone the proceedings initiated by the Respondent.

5.4. The predicate offence being subsequent to the purchase of the property, the purchase of the property cannot be said to be from the proceeds of crime, and as such, the said property of the Petitioner would not be amenable to attachment proceedings, is the submission. This basic issue not being considered by the Respondent, his submission is that it would indicate absolute non-application of mind.

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5.5. His further submission is that the Respondent has, without any cause, rhyme or reason, exercised powers under the PMLA 2002, where the same would not be applicable to the present transaction. His submission is also that merely because certain of the offences which are scheduled to the PMLA 2002 have been invoked against the Petitioner would not *ipso facto* entail that the Respondent is exercising powers under the PMLA 2002 to attach the properties of the Petitioner.

5.6. He refers to Section 2(1)(u) of the PMLA 2002 which is reproduced hereunder for easy reference:

> *(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.*

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5.7. By referring to Section 2(1)(u), his submission is that the proceeds of crime would have to be 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. He again reiterates that the property which has been attached is not derived or obtained directly or indirectly by the Petitioner as a result of any criminal activity relating to any scheduled offence. The purchase of the properties having occurred between 2004 to 2008, the scheduled offence having occurred in the year 2011-12, the proceeds of crime can only be subsequent to the said crime and not prior to. Therefore, he submits that, as Section 2(1)(u) is not applicable, the question of the Respondent exercising any powers to attach the property of the Petitioner would not arise.

5.8. In this regard, he refers to the sale deed under which the property bearing Apartment No.M401 was purchased under a registered sale deed dated 15.12.2004 registered as

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document No.MGC-1-04805-2004-05 stored in CD No.MGCD19 on 15.12.2004 in the office of the Sub-Registrar in Mangalore Town.

5.9. He also refers to the sale deed under which the property, namely non-agricultural immovable property held on Warg Right in Survey No.23-1A2 of Derebail Village of Mangalore City within Mangalore City Sub-Registrar District of DK District, had been purchased under sale deed dated 28.03.2008 registered as Document No.MGC-1-05028-2008-09 stored in CD No.MGCD88 dated 19.01.2009 in the office of Sub Registrar, Mangalore City. Thus, he submits that both the transactions having occurred under registered sale deeds; first the apartment having been purchased under a registered sale deed dated 15.12.2004 and secondly, the non-agricultural property having been purchased under a registered sale deed dated 28.03.2008 were much prior to the predicate offence and were not amenable to the attachment as sought to be contended by the Respondent.

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5.10. In this regard, he relies upon the decision of the Hon'ble Apex Court in the case of ***Pavana Dibbur vs. Directorate of Enforcement*** [(2023) 15 SCC 91], more particularly paragraphs 12, 13, 15, 17, 18, 19, 27, 28, 29 and 31 thereof which are reproduced hereunder for easy reference:

> ***12.*** *On a plain reading of Section 3, unless proceeds of crime exist, there cannot be any money-laundering offence. Clause (u) of sub-section (1) of Section 2 PMLA defines "proceeds of crime", which reads thus:*
>
> *"**2. Definitions**.—(1) In this Act, unless the context otherwise requires.—*
>
> ***
>
> *(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."*
>
> ***13.*** *Clause (v) of sub-section (1) of Section 2 PMLA defines "property" to mean any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible. To constitute any property as proceeds of crime, it must be derived or obtained directly or indirectly by any person as a result of criminal activity relating to a scheduled offence. The Explanation clarifies that the proceeds of crime include property, not only derived or obtained*

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from 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. Clause (u) also clarifies that even the value of any such property will also be the proceeds of crime. Thus, the existence of "proceeds of crime" is sine qua non for the offence under Section 3 PMLA.

15. *The condition precedent for the existence of proceeds of crime is the existence of a scheduled offence. On this aspect, it is necessary to refer to the decision of this Court in Vijay Madanlal Choudhary [Vijay Madanlal Choudhary v. Union of India, (2023) 12 SCC 1] . In para 109 of the said decision [Vijay Madanlal Choudhary v. Union of India, (2023) 12 SCC 1] , this Court held thus : (SCC p. 166)*

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

(emphasis in original and supplied)

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17. *Coming back to Section 3 PMLA, on its plain reading, an offence under Section 3 can be committed after a scheduled offence is committed. For example, let us take the case of a person who is unconnected with the scheduled offence, knowingly assists the concealment of the proceeds of crime or knowingly assists the use of proceeds of crime. In that case, he can be held guilty of committing an offence under Section 3 PMLA. To give a concrete example, the offences under Sections 384 to 389IPC relating to "extortion" are scheduled offences included in Para 1 of the Schedule to PMLA. An accused may commit a crime of extortion covered by Sections 384 to 389IPC and extort money. Subsequently, a person unconnected with the offence of extortion may assist the said accused in the concealment of the proceeds of extortion. In such a case, the person who assists the accused in the scheduled offence for concealing the proceeds of the crime of extortion can be guilty of the offence of money-laundering. Therefore,* ***it is not necessary that a person against whom the offence under Section 3 PMLA is alleged must have been shown as the accused in the scheduled offence****. What is held in para 135 of the decision of this Court in Vijay Madanlal Choudhary [Vijay Madanlal Choudhary v. Union of India, (2023) 12 SCC 1] supports the above conclusion. The conditions precedent for attracting the offence under Section 3 PMLA are that there must be a scheduled offence and that there must be proceeds of crime in relation to the scheduled offence as defined in clause (u) of sub-section (1) of Section 3 PMLA.*

18. *In a given case,* ***if the prosecution for the scheduled offence ends in the acquittal of all the accused or discharge of all the accused or the proceedings of the scheduled offence are quashed in its entirety, the scheduled offence will not exist****, and therefore, no one can be prosecuted for the offence punishable under Section 3 PMLA as there will not be any proceeds of crime. Thus, in such a case, the accused against whom the complaint under Section 3 PMLA is filed will benefit from the scheduled offence ending by acquittal or discharge of all the accused. Similarly, he will get the benefit of quashing the proceedings of the scheduled offence. However, an accused in PMLA case who comes into the picture after the scheduled offence is committed by assisting in the concealment or use of proceeds of crime need not be an accused in the scheduled offence.* ***Such an accused***

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can still be prosecuted under PMLA so long as the scheduled offence exists. *Thus, the second contention raised by the learned Senior Counsel appearing for the appellant on the ground that the appellant was not shown as an accused in the charge-sheets filed in the scheduled offences deserves to be rejected.*

19. *The allegation against the appellant in the complaint is that she purchased the property worth crores, though she did not have the source of income which would generate enough money to buy the subject properties. The allegation against the appellant is that she allowed and facilitated Accused 1 Madhukar Angur, to conceal the siphoned/misappropriated amounts by using her bank account. Another allegation is that she is shown to have purchased the second property from Accused 1, though she did not have the resources to pay the consideration. The allegation is that she allowed Accused 1 to use her bank accounts to facilitate siphoning the proceeds of the crime. Another allegation is that both the first and second properties have been acquired out of the proceeds of crime.* ***The first property, ex facie, cannot be said to have any connection with the proceeds of crime as the acts constituting the scheduled offence took place after its acquisition***. *The case of the appellant is that she possessed a substantial amount, as can be seen from the declaration made by her under the Income Declaration Scheme, 2016 in September 2016 and therefore, at the time of the acquisition of the second property, more than sufficient money was available with her to acquire the second property. The issue of whether the appellant used tainted money to acquire the second property* ***can be decided only after the evidence is adduced***. *This is not a case where any material is placed on record to show that the sale consideration was paid from a particular bank account of the appellant. Therefore, it is not possible to record a finding at this stage that the second property was not acquired by using the proceeds of crime.* ***We also make it clear that we have considered the issue only in the context of the applicability PMLA***. *We have not dealt with the issues of valuation and legality of the sale deeds.*

27. *The penal statutes are required to be strictly construed. It is true that the penal laws must be construed according to the legislative intent as*

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expressed in the enactment. In Chapter 1 of G.P. Singh's Principles of Statutory Interpretation (15th Edn.), it is observed that:

"The intention of the Legislature, thus, assimilates two aspects : In one aspect it carries the concept of "meaning" i.e. what the words mean and in another aspect, it conveys the concept of "purpose and object" or the "reason and spirit" pervading through the statute. The process of construction, therefore, combines both literal and purposive approaches. In other words the legislative intention i.e. the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed." In the words of A. Driedger, The Construction of Statutes, 2nd Edn, 1983:"The words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the Scheme of the Act, the object of the Act, and the intent of Parliament. This formulation later received the approval of the Supreme Court and was called the "cardinal principle of construction"." In both constitutional and statutory interpretation, the court is supposed to exercise discretion in determining the proper relationship between the subjective and objective purposes of the law and help the law achieve its purpose."

(emphasis supplied)

28. *While giving effect to the legislature's intention,* ***if two reasonable interpretations can be given to a particular provision of a penal statute, the Court should generally adopt the interpretation that avoids the imposition of penal consequences****. In other words, a more lenient interpretation of the two needs to be adopted.*

29. *The legislative intent which can be gathered from the definition of "scheduled offence" under clause (y) of sub-section (1) of Section 2 PMLA is that every crime which may generate proceeds of crime need not be a scheduled offence. Therefore, only certain specific offences have been included in the Schedule. Thus, if the submissions of the learned Additional Solicitor General are accepted, the Schedule will become meaningless or redundant. The reason is that even if an*

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offence registered is not a scheduled offence, the provisions of PMLA and, in particular, Section 3 will be invoked by simply applying Section 120-B. If we look at Section 120-B, only because there is a conspiracy to commit an offence, the same does not become an aggravated offence. The object is to punish those involved in conspiracy to commit a crime, though they may not have committed any overt act that constitutes the offence. Conspiracy is an agreement between the accused to commit an offence. If we look at the punishments provided under Section 120-B, it becomes evident that it is not an aggravated offence. It only incorporates the principle of vicarious liability. If no specific punishment is provided in the statute for conspiracy to commit a particular offence, Section 120-B treats a conspirator of the main accused as an abettor for the purposes of imposing the punishment. The interpretation suggested by ED will defeat the legislative object of making only a few selected offences as scheduled offences. If we accept such an interpretation, the statute may attract the vice of unconstitutionality for being manifestly arbitrary. It cannot be the legislature's intention to make every offence not included in the Schedule a scheduled offence by applying Section 120-B. Therefore, in our view, ***the offence under Section 120-BIPC included in Part A of the Schedule will become a scheduled offence only if the criminal conspiracy is to commit any offence already included in Parts A, B or C of the Schedule****. In other words, an offence punishable under Section 120-BIPC will become a scheduled offence only if the conspiracy alleged is of committing an offence which is otherwise a scheduled offence.*

31. *While we reject the first and second submissions canvassed by the learned Senior Counsel appearing for the appellant, the third submission must be upheld. Our conclusions are:*

31.1. It is not necessary that a person against whom the offence under Section 3 PMLA is alleged, must have been shown as the accused in the scheduled offence*;*

31.2. *Even if an accused shown in the complaint under PMLA is not an accused in the scheduled offence, he will benefit from the acquittal of all the accused in the scheduled offence or discharge of all the accused in the*

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scheduled offence. Similarly, he will get the benefit of the order of quashing the proceedings of the scheduled offence;

31.3. *The first property cannot be said to have any connection with the proceeds of the crime as the acts constituting scheduled offence were committed after the property was acquired;*

31.4. *The issue of whether the appellant has used tainted money forming part of the proceeds of crime for acquiring the second property* ***can be decided only at the time of trial****; and*

31.5. *The offence punishable under Section 120-BIPC will become a scheduled offence only if the conspiracy alleged is of committing an offence which is specifically included in the Schedule.*

... Emphasis supplied by this Court

5.11. By relying on ***Pavana Dibbur***, learned Senior Counsel submits that the existence of proceeds of crime is an essential condition for attracting Section 3 of the PMLA. Unless the property in question is derived or obtained, directly or indirectly, from criminal activity relating to a scheduled offence, it cannot be treated as proceeds of crime. Therefore, the existence of a scheduled offence and proceeds of crime arising from such offence are necessary to sustain a prosecution under the PMLA.

5.12. Learned Senior Counsel further submits that the proceedings under the PMLA cannot be

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sustained independently of the scheduled offence. If all the accused in the scheduled offence are acquitted or discharged, or if the proceedings relating to that offence are quashed in their entirety, the scheduled offence ceases to exist in the eye of law. In such circumstances, there can be no prosecution under Section 3 of the PMLA, as the essential basis for alleging the existence of proceeds of crime would no longer remain.

5.13. Learned Senior Counsel also relies upon the finding of the Hon'ble Supreme Court that property acquired before the commission of the acts constituting the scheduled offence cannot be treated as proceeds of crime merely on that account. The prosecution must establish the necessary link between the property and the criminal activity relating to the scheduled offence. The mere acquisition or possession of property, without such a link, would not by itself be sufficient to bring the property within the definition of proceeds of crime.

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5.14. It is further submitted that the provisions of the PMLA, being penal in nature, must be interpreted strictly. Where two reasonable interpretations of a penal provision are possible, the interpretation that avoids the imposition of penal consequences should ordinarily be preferred. The provisions of the Act cannot be extended beyond their plain meaning so as to bring within their scope conduct which the legislature has not expressly included.

5.15. Learned Senior Counsel further submits that an offence of criminal conspiracy punishable under Section 120-B of the Indian Penal Code does not, by itself, become a scheduled offence under the PMLA in every case. Such conspiracy would constitute a scheduled offence only where the alleged conspiracy relates to the commission of an offence specifically included in the Schedule to the PMLA. Any wider interpretation would defeat the legislative intention of including only specified offences in the Schedule.

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5.16. On the strength of the aforesaid decision, learned Senior Counsel submits that the continuation of proceedings under the PMLA must be examined in the light of the existence of a scheduled offence, the alleged proceeds of crime and the connection between such proceeds and the criminal activity in question. Unless these essential requirements are satisfied, the provisions of the PMLA cannot be invoked merely on the basis of suspicion or the existence of property whose source is questioned.

5.17. The learned Senior Counsel relies on the judgment of the Hon'ble High Court of Kerala in the case of ***Satish Motilal Bidri vs. Union of India*** [2024 SCC OnLine, Ker 3410], more particularly paragraphs 13, 14, 15, 16, 17 and 18 thereof, which are reproduced hereunder for easy reference:

> ***13.*** *Section 5 of PMLA authorizes attachment of proceeds of crime. The definition of the term 'proceeds of crime' explicitly states that when the proceeds of a crime is a property, such property must have been obtained or derived as a result of any criminal activity relating to a scheduled offence. No doubt, even if the property was obtained indirectly, it can still be regarded as proceeds of crime. Assuming that a property derived out of a criminal activity mentioned is not available, still, attachment can be*

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effected to the extent of the value of such property. The term 'value' in section 2(1)(u) can only mean ***the monetary worth of the property that was derived from the criminal activity****. If the attachment is to be effected to the extent of the monetary worth of a property which was not derived out of the criminal activity, then PMLA mandates that the property derived out of such criminal activity be taken out of India or is held outside the country. In other words,* ***the only power to proceed against a property of equivalent value, which has no link with the predicate offence is, when the property was taken out or held out of India****. Therefore, except when the property derived out of the criminal activity is not inside the country, can the provisional attachment be effected on a property purchased prior to such criminal activity.*

14. *In this context, it is appropriate to refer to the decision in Seema Garg v. Deputy Director, Directorate of Enforcement (2020 SCC OnLine P&H 738), wherein the High Court of Punjab and Haryana elaborately considered the concept of proceeds of crime and held that property purchased prior to the commission of scheduled offence, does not fall within the ambit of the first limb of the definition of proceeds of crime,* ***though it certainly falls within the purview and ambit of the third limb of the definition****. The Andhra Pradesh High Court has also observed along the same lines in Satyam Computer Services Limited v. Directorate of Enforcement, Government of India (2018 SCC OnLine Hyd 787) wherein it was observed that PMLA being a statute which deals with substantive rights, cannot have a retrospective effect. However, the Delhi High Court had taken a differing stance in The Deputy Director, Directorate of Enforcement, Delhi v. Axis Bank (Crl.A. No. 143/2018), where it was observed that the term value of property must be understood to have been used in the same sense as the third limb. With respects, I am* ***unable to subscribe to the views of the Delhi High Court*** *and on the other hand wholly concur with the views of the High Court of Punjab and Haryana and that of Andhra Pradesh.*

15. *I am further fortified in the above view that I have taken in view of the observations of the Supreme Court as well. In the decision in Vijay Madanlal Choudhary v. Union of India [2022 SCC OnLine SC*

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929], it has been held in paragraph numbers 295 and 296 that "The precondition for being proceeds of crime is that the property has been derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence. ……Be it noted that ***the attachment must be only in respect of property which appears to be proceeds of crime and not all the properties belonging to the concerned person who would eventually face the action of confiscation of proceeds of crime****, including prosecution for offence of money-laundering. As mentioned earlier, the relevant date for initiating action under the 2022 Act - be it of attachment and confiscation or prosecution, is linked to the inclusion of the offence as scheduled offence and of carrying on the process or activity in connection with the proceeds of crime after such date.* ***The pivot moves around the date of carrying on the process and activity connected with the proceeds of crime; and not the date on which the property has been derived or obtained by the person concerned*** *as a result of any criminal activity relating to or relatable to the scheduled offence."*

16. *Apart from the above, in Pavana Dibbur v. Directorate of Enforcement (2023 SCC OnLine SC 1586), it has been observed as follows: "Another allegation is that both the first and second properties have been acquired out of the proceeds of crime. The first property, exfacie cannot be said to have any connection with the proceeds of crime as the acts constituting the scheduled offence took place after its acquisition. ……This is not a case where any material is placed on record to show that the sale consideration was paid from a particular bank account of the appellant. Therefore, it is not possible to record a finding at this stage that the second property was not acquired by using the proceeds of crime."*

(emphasis supplied).

17. *The aforesaid observations indicate that the properties that can be proceeded against, exercising the powers of attachment must be those that have been acquired utilising the proceeds of crime. The contention of the learned counsel for the Respondents that the term proceeds of crime will also include the value of the property which had been acquired even*

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earlier is, according to me, too far-fetched and will not be justifiable in the light of the constitutional provisions of fairness and reasonableness. It is also necessary to observe at this juncture that the purpose of the PMLA is to remove tainted money and also to initiate proceedings against the proceeds of crime which have been transformed or converted into other property or intermingled with legitimate sources and then the value of the intermingled gain will assume the colour of proceeds of crime. Such a provision ***cannot be used to enable the authorities to proceed against properties that are unconnected with any of the criminal activity in question****.*

18. *Viewed in the above perspective, as the provisionally attached immovable property was purchased in 2004 - more than a decade and a half before the predicate offence was allegedly committed, the order attaching the immovable property is* ***ex-facie, ultra vires the powers of the statute*** *and totally illegal and arbitrary to the extent of the said attachment. Since* ***ex facie illegal acts can be interfered with under Article 226 of the Constitution of India, notwithstanding the existence of an alternative remedy****, this Court is of the view that the provisional attachment of the immovable property as seen from schedule A to Exhibit P11 order dated 22.05.2024 is liable to be set aside. However, as relating to the provisional attachment mentioned in schedule B to Exhibit P11, i.e. those relating to the amount in the bank accounts - the Petitioner has* ***an effective alternative remedy provided by the statute****.*

... Emphasis supplied by this Court

5.18. By relying on ***Satish Motilal Bidri***, his submission is that the provisional attachment of the Petitioner's properties is unsustainable, as both the properties were purchased much before the alleged scheduled offence. The

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Petitioner purchased Apartment No. M401 under a registered sale deed dated 15.12.2004 and the non-agricultural immovable property situated in Survey No. 23-1A2 of Derebail Village, Mangalore, under a registered sale deed dated 28.03.2008. The alleged transactions involving M/s. Hanuman Minerals and M/s. Manipal Global relate to the period 2011-12. Therefore, according to learned Senior Counsel, the properties in question could not have been acquired from the proceeds of the alleged criminal activity, which allegedly took place several years after their purchase.

5.19. Learned Senior Counsel further submits that the Respondent has not identified any proceeds of crime received by the Petitioner or placed any material to establish that the properties in question were acquired, directly or indirectly, from such proceeds. The Petitioner's case is that the amounts received from M/s. Hanuman Minerals were only part repayments of the sum of Rs. 25,00,000/- paid by him on 09.02.2011 towards the supply of high-grade iron ore. It is contended

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that the Petitioner was engaged in stevedoring activities and that the mere fact that he was involved in the commercial transactions in question does not establish that the properties acquired by him in 2004 and 2008 constitute proceeds of crime.

5.20. Relying on the observations in ***Satish Motilal Bidri***, learned Senior Counsel submits that the expression 'proceeds of crime' under Section 2(1)(u) of the PMLA cannot be interpreted to permit attachment of any property belonging to the person proceeded against, irrespective of its connection with the alleged criminal activity. The power to attach property of equivalent value, which has no connection with the scheduled offence, is also subject to the conditions specified in the statutory definition. In the present case, the properties were acquired long before the alleged scheduled offence, and the Respondent has not established any link between those properties and the alleged proceeds of crime.

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5.21. It is, therefore, contended that the Respondent, merely on the basis of the registration of Crime No. 90/2017 and the subsequent initiation of proceedings under the PMLA, could not have proceeded to attach the Petitioner's properties without first identifying the alleged proceeds of crime and establishing the necessary connection between those proceeds and the properties sought to be attached. Learned Senior Counsel submits that the failure to consider the dates of acquisition of the properties and the absence of material linking them to the alleged criminal activity demonstrate non-application of mind. On this basis, he seeks interference with the impugned attachment proceedings and the consequential show cause notice dated 30.11.2024.

5.22. The learned Senior Counsel relies on the decision of the Co-ordinate Bench of this Court in the case of ***Jayamma vs. The Directorate of Enforcement*** [WP No.28108/2025 dtd 2.6.2026], more particularly paragraphs 26, 27, 29, 30, 31, 32, 33, 36, 38, 39, 40, 41, 42, 47, 48, 49

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and 50 which are reproduced hereunder for easy reference:

> ***26.*** *Insofar as such contention is concerned, the position of law appears to be well settled and the Apex Court has held that under exceptional circumstances, the available statutory remedies may not be a bar for invocation of jurisdiction under Article 226 of the Constitution of India as observed in Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Others3 (Whirlpool) infra.*
>
> ***27.*** *The Apex Court in Godrej Sara Lee Ltd. v. Excise and Taxation Officer-cum-Assessing Authority and Others4 has observed that the power to issue prerogative writs under Article 226 is plenary in nature and that exercise of power conferred under writ jurisdiction being discretionary and it is for the court to decide as to exercise of such power in appropriate circumstances. The distinction was drawn between the concept of maintainability and entertainability and it was observed that* ***though a writ petition would be maintainable, however, whether the same could be entertained is a matter of judicial discretion*** *and has reiterated the observations in the case of Whirlpool (supra) as well.*
>
> ***29.*** *Hence,* ***it is for the court to decide as to whether it needs to entertain the petition and intervene or allow the proceedings under the statutory scheme to progress to a logical conclusion****.*
>
> ***30.*** *The non-following of the procedure prescribed under the Second Proviso to Section 5(1) of PMLA would be a jurisdictional issue that would warrant interference in exercise of writ jurisdiction as being a recognized exemption for waiving of statutory remedy as made out in the case of Whirlpool [(supra) (see exception (iii) at para-6)].*
>
> ***31.*** *At the outset, it would also be necessary to examine as to whether the statutory scheme does provide for an alternative efficacious remedy of redressal as regards the person aggrieved by not following of the procedure prescribed under second*

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proviso to Section 5 before passing of an order of provisional attachment.

32. *The question of relegating an aggrieved person to avail of statutory remedy would be only when the statutory remedy provides for a forum for redressal of grievance.*

33. *Under the scheme of PMLA, an order of provisional attachment when passed under Section 5 would be followed by forwarding of a copy along with material in possession of the competent Officer to the Adjudicating Authority in terms of Section 5(2).*

36. *In terms of Section 8 of PMLA, the owner of the property which is subject to an order of provisional attachment is: (i) served with a notice calling upon him to indicate sources of his income, earning or assets, out of which or by means of which he has acquired the property attached; (ii) show-cause why all or any of the properties should not be declared to be properties involved in money laundering and confiscated by the Central Government.*

38. *However, the procedure contemplated under Section 8 does not provide for testing the validity of the order of provisional attachment for non-following of the procedural requirement under Second Proviso to Section 5 (1).*

39. *As rightly contended by Sri Jaysham Jayasimha Rao, learned counsel for Petitioner, the procedure prescribed under Section 8 is limited to confirmation of order of attachment, subject to the owner of the property establishing that the acquisition of property which is attached was acquired from sources of his income, earning or assets.*

40. *The procedural safeguard provided under Second Proviso to Section 5 as in the present case cannot be a matter of enquiry before the Adjudicating Authority.*

41. *Though* ***Sections 5, 8 and 26 of PMLA do form a self-contained code****, however, there are certain procedural aspects leading to exercise of power under Second Proviso of Section 5, the breach of which are not aspects that could be a subject matter of proceedings under Section 8. Accordingly,*

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the power under Section 8 does not permit such enquiry as is raised in the present case.

42. *If that were to be so, it cannot be stated that the power conferred under Section 8 could be an efficacious alternative remedy to redress a grievance regarding non-following of restrictions imposed for exercise of power in the context of the Second Proviso to Section 5 of PMLA. Needless to state that, even if it was assumed that there was an alternative remedy in terms of law enunciated in Godrej Sara Lee Ltd. (supra), a writ petition* ***would nevertheless be entertainable though subject to fulfillment of certain criteria****.*

47. *The relevant extract of the statutory provision is as follows:-*

"5. Attachment of property involved in money-laundering.— [(1)Where the Director or any other officer not below the rank of Deputy Director authorised by the Director for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that—

(a) any person is in possession of any proceeds of crime; and

(b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter, he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed:

Provided that no such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974), or a complaint has been filed by a person authorised to investigate the offence mentioned in that Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or a similar report or complaint

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has been made or filed under the corresponding law of any other country:

Provided further that, notwithstanding anything contained in [first proviso], any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act.].

(emphasis supplied)

48. *Admittedly, in the present case, the requirements of the First Proviso are not met insofar as* ***no Final Report has been forwarded to the Magistrate*** *as regards the predicate offence under Section 173 of Cr.P.C., as on the date of passing of the order of provisional attachment and such aspect is not controverted by the other side. However, the power to pass an order of provisional attachment is conferred upon an Officer of the rank of Director or any other Officer not below the rank of Deputy Director authorized by him for the purposes enumerated under Section 5, subject to fulfillment of the following criteria:-*

(i) ***Has reason to believe which is recorded in writing and on the basis of material in his possession****.*

(ii) ***That, if such property involved in money laundering is not attached immediately, the non-attachment of property is likely to frustrate any proceedings under the Act****.*

49. *Undoubtedly, in the present case, it is power exercised under the Second Proviso to Section 5 (1) which is called in question.*

50. *It is necessary to also note that the Respondent has asserted at the time of arguments that Lokayukta Police were still investigating as regards the predicate offences against the other accused as*

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on the date of passing of the provisional order of attachment. It was further submitted by the Respondents that though 'B' Report was filed against some of the accused, i.e. accused Nos.1 to 4, the pending investigation against the other accused as at the relevant point of time has in effect indicated the continuance of investigation and pending such investigation power under the Second Proviso to Section 5 of PMLA was sought to be initiated.

... Emphasis supplied by this Court

5.23. By relying on ***Jayamma***, learned Senior Counsel submits that the availability of an alternative statutory remedy does not, by itself, bar the exercise of jurisdiction under Article 226 of the Constitution of India, particularly where the challenge relates to the failure to comply with the mandatory conditions prescribed under the Second Proviso to Section 5(1) of the PMLA.

5.24. Learned Senior Counsel submits that, in the present case, the Petitioner has challenged the provisional attachment of his properties on the ground that the properties were acquired in the years 2004 and 2008, whereas the alleged transactions forming the basis of the scheduled offence relate to the period 2011-12. It is contended that the

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Respondent invoked the powers under the Second Proviso to Section 5(1) of the PMLA without properly considering the nature of the properties, the dates of their acquisition and the absence of any material establishing their connection with the alleged proceeds of crime.

5.25. Relying on ***Jayamma***, learned Senior Counsel further submits that the exercise of power under the Second Proviso to Section 5(1) is subject to specific conditions, namely, that the authorised officer must have reasons to believe, recorded in writing and based on material in his possession, that the property involved in money laundering is required to be attached immediately and that failure to do so is likely to frustrate proceedings under the PMLA. These conditions are not mere formalities but are restrictions governing the exercise of the power of provisional attachment.

5.26. It is further submitted that the procedure contemplated under Section 8 of the PMLA does not provide an effective remedy for

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examining a grievance relating to non-compliance with the conditions governing the exercise of power under the Second Proviso to Section 5(1). The proceedings under Section 8 are primarily concerned with the confirmation of the provisional attachment and the question whether the attached property has been acquired from legitimate sources. Therefore, according to learned Senior Counsel, relegating the Petitioner to the proceedings under Section 8 would not adequately address his specific grievance regarding the legality of the exercise of power under the Second Proviso to Section 5(1).

5.27. Applying the aforesaid principles to the present case, learned Senior Counsel submits that the Respondent was required to demonstrate, on the basis of material available on record, not only the existence of the requisite grounds for provisional attachment but also the necessity for immediate attachment to prevent the frustration of proceedings under the PMLA. The mere registration of Crime No. 90/2017,

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the subsequent initiation of proceedings under the PMLA or the fact that the Petitioner has been arrayed as an accused in the scheduled offence would not, by themselves, dispense with the statutory requirements governing the exercise of such power.

5.28. It is, therefore, contended that, in view of the specific challenge raised to the exercise of jurisdiction under the Second Proviso to Section 5(1) of the PMLA, the Petitioner is entitled to invoke the writ jurisdiction of this Court under Article 226 of the Constitution of India, notwithstanding the availability of proceedings under Section 8 of the PMLA. Learned Senior Counsel accordingly seeks interference with the impugned provisional attachment and the consequential proceedings initiated against the Petitioner.

5.29. The learned Senior Counsel submits on facts that M/s.Hanuman Minerals and M/s.Phoenix International and their facilitator firm M/s.Sino Podar Trade Ltd. had entered into an agreement with M/s.Manipal Global regarding export of 40,000 metric tons of

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iron ore to a Hong Kong based firm named M/s.Devi Resources Ltd. from Alcon and Maina Jetty of Goa port. The allegation is that the Petitioner had issued two stock certificates to M/s.Manipal Global certifying that his proprietary concern, M/s.S.S.Maritime was holding 40,000 MT iron ore and it is on that basis that M/s.Manipal Global had entered into a transaction with the aforesaid persons. The allegation made by M/s.Manipal Global in PCR No.23/2017, is that the representative M/s.Hanuman Minerals, M/s.Sino Podar Trade Ltd., had on 07.11.2011 visited the office of M/s.Manipal Global and had entered into an agreement on 18.01.2012 as indicated supra.

5.30. Accused no.(2), accused No.(5) and accused No.(7) therein had agreed to supply 40,000 metric tons of iron ore of a Fe quality 50%. Instead of supplying 50% Fe content iron ore, supply was made of 43.9% Fe content iron ore, which according to the complainant resulted in a loss of Rs.9,20,00,000/-. On that basis, alleging the various offences indicated supra, the PCR had been filed. The

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investigation was handed over to CID, Bangalore, who had filed a charge sheet on 30.12.2021.

5.31. His submission is that merely because there was a charge sheet filed in that matter, the Petitioner could not be roped into the offence requiring invocation of Section 5. He again refers to clause (u) of sub-section of section 2 of the PMLA 2002, which has been reproduced hereinabove. His submission is that the proceeds of crime would only apply to property derived or obtained directly or indirectly by any person as a result of criminal activity relating to the scheduled offence.

5.32. As regards the second part of the provision, his submission is that 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 could be said to be proceeds of crime. There is no property held by the Petitioner outside the country or abroad in the second portion of clause (u) of sub-section (1) of

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section 2, as regard to attachment of value of any property would not be applicable. On the above grounds, he submits that the order of attachment suffers from lack of jurisdiction on the part of the Respondent. When the Respondent has no jurisdiction over the particular property attached on account of it not being proceeds of crime, there is no authority or jurisdiction vested with the Respondent to attach a property which does not come within the definition of proceeds of crime under clause (u) of sub-section (1) of section 2. On that ground, he submits there being a lack of foundational jurisdiction, Respondent could not have attached the property of the Petitioner, purchased much prior to the predicate offence, and on that ground, he submits that the writ petition is required to be allowed.

6. Ms.Anuparna Bordoloi, learned counsel for the Respondent submits that:

6.1. There being a charge sheet which had been laid upon investigation by the CID, where the Petitioner was arraigned as an accused, the

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said offences being predicate offences, the Respondent was required to exercise his jurisdiction under Section 5 of the PMLA 2002.

6.2. She relies on Section 5 of the Act which is reproduced hereunder for easy reference:-

> ***5. Attachment of property involved in money-laundering****.—(1)Where the Director or any other officer not below the rank of Deputy Director authorised by the Director for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that—*
>
> *(a) any person is in possession of any proceeds of crime; and*
>
> *(b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter,*
>
> *he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed:*
>
> *Provided that no such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974), or a complaint has been filed by a person authorised to investigate the offence mentioned in that Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or a similar report or complaint has been made or filed under the corresponding law of any other country:*

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Provided further that, notwithstanding anything contained in 1[first proviso], any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act:

Provided also that for the purposes of computing the period of one hundred and eighty days, the period during which the proceedings under this section is stayed by the High Court, shall be excluded and a further period not exceeding thirty days from the date of order of vacation of such stay order shall be counted.

(2) The Director, or any other officer not below the rank of Deputy Director, shall, immediately after attachment under sub-section (1), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed.

(3) Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or on the date of an order made under sub-section (3) of section 8, whichever is earlier.

(4) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment.

Explanation.—For the purposes of this sub-section, "person interested", in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

(5) The Director or any other officer who provisionally attaches any property under sub-section (1) shall,

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within a period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority.

6.3. By referring to Section 5 of the PMLA, learned counsel submits that the authorised officer is empowered to provisionally attach a property where he has reason to believe, on the basis of material in his possession and for reasons recorded in writing, that any person is in possession of proceeds of crime and that such proceeds are likely to be concealed, transferred or dealt with in a manner that may frustrate the proceedings relating to their confiscation.

6.4. The provision further empowers the authorised officer, in the circumstances specified under the Second Proviso to Section 5(1), to attach property immediately where non-attachment is likely to frustrate proceedings under the Act.

6.5. Learned counsel further submits that the object of provisional attachment is to preserve the property during the pendency of proceedings under the PMLA and to prevent

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its disposal, transfer or alienation in a manner that may defeat the eventual proceedings for confiscation. If the property is permitted to be transferred during the pendency of the proceedings, third parties may acquire an interest in the property and may consequently be drawn into further litigation.

6.6. The power of provisional attachment is, therefore, intended to prevent such eventualities and to preserve the property until the proceedings under the Act reach their conclusion.

6.7. It is accordingly contended that the Respondent has exercised the power of provisional attachment to safeguard the property and ensure that the proceedings under the PMLA are not rendered ineffective by any subsequent transfer or alienation. Learned counsel submits that the action of the Respondent is intended to preserve the property pending adjudication and to prevent any act that may frustrate the proceedings

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relating to confiscation of the alleged proceeds of crime.

6.8. She submits that the attachment under Section 5 being provisional in nature, in terms of sub-section (5) of Section 5, the Director or any other officer who provisionally attaches any property is required to, within a period of 30 days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority, which has been done and therefore, she submits that the Petitioner has an alternate efficacious remedy in terms of adjudication under Section 8 and the present writ petition is not maintainable on account thereof.

6.9. The matter pending before the Adjudicating Authority, the Petitioner has been served in those proceedings. It is for the Petitioner to appear before the authority and place his submission before the Adjudicating Authority to consider the same.

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6.10. In this regard, she relies on Section 8 of the PMLA 2002 which is reproduced hereunder for easy reference:

> ***8. Adjudication.***
>
> *(1) On receipt of a complaint under sub-section (5) of section 5, or applications made under sub-section (4) of section 17 or under sub-section (10) of section 18, if the Adjudicating Authority has reason to believe that any person has committed an [offence under section 3 or is in possession of proceeds of crime] [Substituted by Act 21 of 2009, Section 5, for "offence under section 3".], it may serve a notice of not less than thirty days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub-section (1) of section 5, or, seized [or frozen] [Inserted by Act No. 2 OF 2013] under section 17 or section 18, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by the Central Government:*
>
> *Provided that where a notice under this sub-section specifies any property as being held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person:*
>
> *Provided further that where such property is held jointly by more than one person, such notice shall be served to all persons holding such property.*
>
> *(2)The Adjudicating Authority shall, after*
>
> *(a)considering the reply, if any, to the notice issued under sub-section (1);*

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(b)hearing the aggrieved person and the Director or any other officer authorised by him in this behalf; and

(c)taking into account all relevant materials placed on record before him, by an order, record a finding whether all or any of the properties referred to in the notice issued under sub-section (1) are involved in money-laundering:

Provided that if the property is claimed by a person, other than a person to whom the notice had been issued, such person shall also be given an opportunity of being heard to prove that the property is not involved in money-laundering.

(3)Where the Adjudicating Authority decides under sub-section (2) that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property made under sub-section (1) of section 5 or retention of property or [record seized or frozen under section 17 or section 18 and record a finding to that effect, whereupon such attachment or retention or freezing of the seized or frozen property] [Substituted for the words "record seized under section 17 or section 18 and record a finding to that effect, such attachment or retention of the seized property" by Act No. 2 OF 2013] or record shall

(a)continue during [investigation for a period not exceeding [three hundred and sixty-five days] [Inserted by Finance Act, 2018 (Act No. 13 of 2018) dated 29.3.2018.] or] the pendency of the proceedings relating to any [offence under this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case may be; and] [Substituted for the words "scheduled offence before a court; and" by Act No. 2 OF 2013]

(b)[become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of section 8 or section 5 8 B or sub-section (2A) of

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section 60 by the Adjudicating Authority] [Substituted by Act No. 2 OF 2013];

[Explanation. - For the purposes of computing the period of three hundred and sixty-five days under clause (a), the period during which the investigation is stayed by any court under any law for the time being in force shall be excluded.] [Inserted by Finance Act, 2019 (Act No. 7 of 2019) dated 21.2.2019.]

(4)Where the provisional order of attachment made under sub-section (1) of section 5 has been confirmed under sub-section (3), the Director or any other officer authorised by him in this behalf shall forthwith take the [possession of the property attached under section 5 or frozen under sub-section (1A) of section 17, in such manner as may be prescribed: Provided that if it is not practicable to take possession of a property frozen under sub-section (1A) of section 17, the order of confiscation shall have the same effect as if the property had been taken possession of.] [Substituted by Act No. 2 of 2013.]

(5)[Where on conclusion of a trial of an offence under this Act, the Special Court finds that the offence of money-laundering has been committed, it shall order that such property involved in the money-laundering or which has been used for commission of the offence of money-laundering shall stand confiscated to the Central Government.

(6)Where on conclusion of a trial under this Act, the Special Court finds that the offence of money-laundering has not taken place or the property is not involved in money-laundering, it shall order release of such property to the person entitled to receive it.

(7)Where the trial under this Act cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed offender or for any other reason or having commenced but could not be concluded, the Special Court shall, on an application moved by the Director or a person claiming to be

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entitled to possession of a property in respect of which an order has been passed under sub-section (3) of section 8, pass appropriate orders regarding confiscation or release of the property, as the case may be, involved in the offence of money-laundering after having regard to the material before it.] [Substituted by Act No. 2 OF 2013]

6.11. She relies on Section 8 of the PMLA, which prescribes the procedure for adjudication of properties attached under the Act. She submits that, upon receipt of a complaint under Section 5(5), the Adjudicating Authority is required to consider whether there are grounds to proceed against the property alleged to be involved in money laundering.

6.12. Learned counsel submits that the Petitioner has an effective statutory remedy before the Adjudicating Authority and that the present writ petition has been filed without exhausting that remedy. Under Section 8(2), the Adjudicating Authority is required to consider the Petitioner's reply, afford an opportunity of hearing to the concerned parties and examine the relevant material on

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record before determining whether the property specified in the notice is involved in money laundering. The Adjudicating Authority may thereafter confirm the attachment or decline to do so. On this basis, she contends that the writ petition is premature.

6.13. Learned counsel further submits that confirmation of provisional attachment is a step in aid of the eventual confiscation of the property and serves to preserve the property during the pendency of the proceedings. The ultimate question of confiscation is to be determined in accordance with the provisions of the Act. Upon conclusion of the trial, if the Special Court finds that the offence of money laundering has not been committed or that the property is not involved in money laundering, the property is liable to be released in accordance with Section 8(6). Confiscation would follow only in accordance with the statutory provisions where the requisite findings are recorded.

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6.14. She submits that the PMLA, 2002, provides adequate procedural safeguards at the stages of adjudication and trial, and that this Court ought not to interfere at the present stage. According to her, the Petitioner should raise his objections concerning the attachment before the Adjudicating Authority, which is empowered to consider the reply and the material placed on record. She further contends that entertaining the writ petition at this stage would obstruct or derail the ongoing adjudication and investigation. She accordingly seeks dismissal of the petition as premature.

6.15. She submits that proceedings are pending under Section 43 (1) of the PMLA 2002 before the Special Court in Special CC No.53/2025 for offences of money laundering under Section 3 and Section 4 of the PMLA 2002. The Petitioner could also raise the issues raised in the present writ petition and in the said proceedings.

6.16. She submits that a show cause notice has been issued by the Adjudicating Authority

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under Section 8 wherein the Petitioner himself had furnished his reply. The said reply has been considered by the Adjudicating Authority and the Adjudicating Authority has come to a conclusion that the Petitioner has cheated M/s.Manipal Global by issuing bogus stock certificates to M/s.Manipal Global, certifying that the jetties pertaining to his concern located in Alcon and Maina were having 40,000 metric tons of iron ore fines. As regards which he has received a consideration of Rs.17,00,000/-. The Petitioner being arrayed as defendant no.3 in those proceedings. Her submission is that though the property has been purchased in the year 2004 and 2008 not from the proceeds of crime. But it is on account of the proceeds of crime being secreted and not being available, the value equivalent to the same has been attached provisionally under Section 5 and confirmed under Section 8.

6.17. The monies which had been received from M/s.Manipal Global are not available inasmuch as a sum of Rs.2,30,00,000/- was received by M/s.Hanuman Minerals from

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M/s.Manipal, out of which a sum of Rs.53,80,000/- was withdrawn in cash. An amount of Rs.96,00,000/- was transferred to Phoenix International. Out of which Rs.32,55,000/- has been withdrawn in cash. A further sum of Rs.17,00,000/- was transferred to the Petitioner. M/s.Hanuman Minerals, being a proprietary concern of Girish Sangappa, Jaggal, is defendant no.1 in the said proceedings. There are no amounts which are available in the account of defendant no.1. Sri.Rohan Prakash Lotlikar is the proprietor of Phoenix International who is defendant no.2 in the said proceedings.

6.18. Her submission is that in one of the accounts belonging to Phoenix, there is an amount of Rs.1,40,773/- and in another account an amount of Rs.5,162/- which are available. In respect of the other defendants therein, there are partial sums which are available in the account. No amount is available from the original account received by M/s.Hanuman Minerals and transferred to the other accounts.

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6.19. She relies on the judgment of the Co-ordinate Bench of this Court in the case of ***Sri.Krishna K.M., and others vs. The Directorate of Enforcement and others*** [WP No.7155/2026 dated 18.03.2026] more particularly paragraphs 2 (ii) and 4 thereof which are reproduced hereunder for easy reference:

> ***2(ii)*** *The Petitioners' vendor questioned the correctness of the said notification in W.P.No.7102/2023. The said writ petition was allowed and it was held that the Circular dated 14.03.2023 issued by the State Government cannot bar a compromise in O.S.No.348/2020. Accordingly, the endorsement issued by MUDA was set aside. Out of the sites that were identified by MUDA, the owner conveyed one of the sites to the Petitioners in terms of a sale deed dated 19.07.2023. It is contended that this land was mired in a litigation under the provisions of the PMLA and that several proceedings were pending before several authorities and later, only the site allotted to the predecessor of the Petitioners was provisionally attached under Section 5(1) of the PMLA.*
>
> ***4.*** *A perusal of the proceedings initiated against the Petitioners' property shows that it is under Section 5(1) of the PMLA, which is provisional in nature.* ***The right to challenge the order of attachment would arise only after an order is passed under Section 8 of the PMLA. Therefore, this petition is too premature*** *and this Court cannot exercise jurisdiction to set at nought the proceedings for provisional attachment of the property.*
>
> ***... Emphasis supplied by this Court***

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6.20. By relying on ***Sri.Krishna K.M.,*** her submission is that the Co-ordinate Bench of this Court has held that a provisional order of attachment under Section 5(1) of the PMLA is provisional in nature and that the right to challenge the attachment would arise only after an order is passed under Section 8 of the Act.

6.21. By placing reliance on the said decision, learned counsel submits that the present writ petition, which challenges the provisional attachment proceedings before the Adjudicating Authority has passed an order under Section 8, is premature. She therefore contends that this Court ought not to exercise its writ jurisdiction to interfere with the provisional attachment at this stage and that the Petitioner must pursue the statutory proceedings before the Adjudicating Authority.

6.22. She relies on the decision of the Hon'ble Delhi High Court in the case of ***Deputy Director, Directorate of Enforcement of Delhi vs. Axis Bank and others***

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[2019:DHC:1887], more particularly paragraph 171, which is reproduced hereunder for easy reference:

171. *It will be advantageous to summarise the conclusions reached by the above discussion, as under :*

(i) ***The process of attachment (leading to confiscation) of proceeds of crime under the PMLA is in the nature of civil sanction which runs parallel to investigation and criminal action vis-a-vis the offence of money-laundering****.*

(ii) The empowered enforcement officer is expected ***to assess, even if tentatively, the value of proceeds of crime*** *so as to ensure such proceeds or other assets of equivalent value of the offender of money-laundering are subjected to attachment, the evaluation being open to modification in light of evidence gathered during investigation.*

(iii) The empowered enforcement officer has the authority of law in the PMLA to attach not only a "tainted property"—that is to say a property acquired or obtained, directly or indirectly, from proceeds of criminal activity constituting a scheduled offence—but also ***any other asset or property of equivalent value of the offender of money-laundering, the latter not bearing any taint but being alternative attachable property (or deemed tainted property) on account of its link or nexus with the offence (or offender) of money-laundering****.*

(iv) If the "tainted property" respecting which there is evidence available to show the same to have been derived or obtained as a result of criminal activity relating to a scheduled offence ***is not traceable, or the same for some reason cannot be reached, or to the extent found is deficient, the empowered enforcement officer may attach any other asset*** *("the alternative attachable property" or "deemed tainted property") of the person accused of (or charged with) offence of money-laundering* ***provided it is near or equivalent in value to the former****,*

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the order of confiscation being restricted to take over by the Government of illicit gains of crime.

(v) If the person accused of (or charged with) the offence of money- laundering objects to the attachment, his claim being that the property attached was not acquired or obtained (directly or indirectly) from criminal activity, ***the burden of proving facts in support of such claim is to be discharged by him****.*

(vi) The objective of the PMLA being distinct from the purpose of the RDBA, SARFAESI Act and Insolvency Code, the latter three legislations do not prevail over the former.

(vii) The PMLA, by virtue of section 71, has the overriding effect over other existing laws in the matter of dealing with "money-laundering" and "proceeds of crime" relating thereto.

(viii) The PMLA, RDBA, SARFAESI Act and Insolvency Code (or such other laws) must co-exist, each to be construed and enforced in harmony, without one being in derogation of the other with regard to the assets respecting which there is material available to show the same to have been "derived or obtained" as a result of "criminal activity relating to a scheduled offence" and consequently being "proceeds of crime", within the mischief of the PMLA.

(ix) If the property of a person other than the one accused of (or charged with) the offence of money-laundering, i. e., a third party, is sought to be attached and there is evidence available to show that such property before its acquisition was held by the person accused of money- laundering (or his abettor), or it was involved in a transaction which had inter-connection with transactions concerning money-laundering, the burden of proving facts to the contrary so as to seek release of such property from attachment is on the person who so contends.

(x) The charge or encumbrance of a third party in a property attached under the PMLA cannot be treated or declared as "void" unless material is available to show that it was created "to defeat" the said law, such declaration rendering such property available for

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attachment and confiscation under the PMLA, free from such encumbrance.

(xi) A party in order to be considered as a "bona fide third party claimant" for its claim in a property being subjected to attachment under the PMLA to be entertained must show, by cogent evidence, that it had acquired interest in such property lawfully and for adequate consideration, the party itself not being privy to, or complicit in, the offence of money-laundering, and that it has made all compliances with the existing law including, if so required, by having said security interest registered.

(xii) An order of attachment under the PMLA is not illegal only because a secured creditor has a prior secured interest (charge) in the property, within the meaning of the expressions used in the RDBA and SARFAESI Act. Similarly, mere issuance of an order of attachment under the PMLA does not ipso facto render illegal a prior charge or encumbrance of a secured creditor, the claim of the latter for release (or restoration) from the PMLA attachment being dependent on its bona fides.

(xiii) If it is shown by cogent evidence by the bona fide third party claimant (as aforesaid), staking interest in an alternative attachable property (or deemed tainted property), claiming that it had acquired the same at a time around or after the commission of the proscribed criminal activity, in order to establish a legitimate claim for its release from attachment it must additionally prove that it had taken "due diligence" (e. g., taking reasonable precautions and after due inquiry) to ensure that it was not a tainted asset and the transactions indulged in were legitimate at the time of acquisition of such interest.

(xiv) If it is shown by cogent evidence by the bona fide third party claimant (as aforesaid), staking interest in an alternative attachable property (or deemed tainted property) claiming that it had acquired the same at a time anterior to the commission of the proscribed criminal activity, the property to the extent of such interest of the third party will not be subjected to confiscation so long as the charge or encumbrance of such third party subsists, the attachment under the PMLA being valid

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or operative subject to satisfaction of the charge or encumbrance of such third party and restricted to such part of the value of the property as is in excess of the claim of the said third party.

(xv) If the bona fide third party claimant (as aforesaid) is a "secured creditor", pursuing enforcement of "security interest" in the property (secured asset) sought to be attached, it being an alternative attachable property (or deemed tainted property), it having acquired such interest from person(s) accused of (or charged with) the offence of money-laundering (or his abettor), or from any other person through such transaction (or inter-connected transactions) as involve(s) criminal activity relating to a scheduled offence, such third party (secured creditor) having initiated action in accordance with law for enforcement of such interest prior to the order of attachment under the PMLA, the directions of such attachment under the PMLA shall be valid and operative subject to satisfaction of the charge or encumbrance of such third party and restricted to such part of the value of the property as is in excess of the claim of the said third party.

(xvi) In the situations covered by the preceding two sub-paragraphs, the bona fide third party claimant shall be accountable to the enforcement authorities for the "excess" value of the property subjected to the PMLA attachment.

(xvii) If the order confirming the attachment has attained finality, or if the order of confiscation has been passed, or if the trial of a case under section 4 of the PMLA has commenced, the claim of a party asserting to have acted bona fide or having legitimate interest in the nature mentioned above will be inquired into and adjudicated upon only by the special court.

Decision on the appeals.

... Emphasis supplied by this Court

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6.23. By relying on ***Axis Bank***, her submission is that the power of attachment under the PMLA extends not only to property directly or indirectly derived from criminal activity relating to a scheduled offence, but also to other assets of equivalent value belonging to the person accused of money laundering, subject to the principles laid down in the said decision.

6.24. She submits that where the proceeds of crime cannot be traced, are unavailable for attachment, or are insufficient in value, the authorised officer may attach other property of equivalent value belonging to the person accused of money laundering. Such property need not itself have been acquired from the proceeds of crime, provided the statutory requirements governing attachment of equivalent-value property are satisfied.

6.25. Learned counsel further submits that where the person concerned disputes the attachment on the ground that the property was not acquired from criminal activity, the claim must be substantiated by evidence.

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She relies on ***Axis Bank*** to contend that the attachment of property is not rendered invalid merely because the property is not itself tainted, and that the nature of the property, its connection with the person accused of money laundering, and the circumstances in which it was acquired must be considered in determining whether it is amenable to attachment.

6.26. Applying these principles to the present case, learned counsel submits that the mere fact that the Petitioner's properties were acquired before the alleged criminal transactions would not, by itself, conclude the issue of their attachability. According to her, the Petitioner's objections regarding the dates of acquisition and the alleged absence of any direct link between the properties and the proceeds of crime are matters to be considered in the statutory adjudication proceedings, in light of the material on record and the principles governing attachment under the PMLA.

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6.27. On this basis, learned counsel submits that the attachment proceedings are not liable to be interdicted at this stage and that the Petitioner should raise his objections before the Adjudicating Authority, which is competent to examine the relevant material and determine whether the properties are liable to be proceeded against under the Act.

6.28. She relies on the judgment of Hon'ble High Court of Delhi in the case of ***Directorate of Enforcement vs. Prakash Industries Ltd.,*** [2025 SCC OnLine Del 8243] more particularly paragraphs 34, 35, 36, 37, 38, 39 & 40 which are reproduced hereunder for easy reference:

> ***34.*** *In view of the aforesaid, it bears importance that this Bench has previously examined similar questions of law in* ***Prakash Industries-I****, wherein it was conclusively determined that the allocation of a coal block constitutes "property" within the meaning of Section 2(1)(v) of the PMLA. Further, it was also determined that any undue advantage, benefit, or economic gain derived or obtained, directly or indirectly, through utilisation of such property would constitute "proceeds of crime" as defined under Section 2(1)(u) of the PMLA, thereby rendering PIL, prima facie, liable for the offence of money laundering under Section 3 of the PMLA. In order to facilitate a comprehensive understanding of the aforestated legal principles adjudicated by this Bench as also applicable to the present controversy, the relevant paragraphs*

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from ***Prakash Industries-I*** *are reproduced hereinbelow:*

"B. SECTION 2(1)(V) OF THE PMLA : WHETHER THE ALLOCATION LETTER CONSTRUES AS 'PROPERTY'?

31. The word 'property' has been defined under Black's Law Dictionary, as, "one which is peculiar or proper to any person; which belongs exclusively to one; in the strict legal sense, an aggregate of rights which are guaranteed and protected by the government." It also goes on to define it as, "the word commonly used to denote everything which is the subject of ownership, corporeal or incorporeal, tangible or intangible, visible or invisible, real or personal; everything that has an exchangeable value or which goes to make up wealth or estate. It extends to every species of valuable right and interest and includes real and personal property, easements, franchises and incorporeal hereditaments".

32. The definition of 'property' as provided under Section 2(1)(v) of the PMLA, is inclusive and expansive, broadly including every description of asset provided thereunder, in form of a deed or instrument evidencing title or interest in such assets. To put it simply, the definition of 'property' as provided under the PMLA is broad and inclusive in its approach towards what constitutes as property within the contours of the Act. This statutory definition is further supported by the constitutional jurisprudence of India, reiterating the understanding of what constitutes as property in India under Article 300A of the COI, which recognizes property as inclusive of intangible interests and rights created through incorporeal assets.

33. Additionally, it is apposite to note that, in the contemporary world, dominated by a commercial landscape where economic transactions are shaped by intangible rights and digital assets, to construe the definition of 'property' in a narrow or traditional sense, would not only amount to restricting the approach of the Court to the innovative nuances of the modern commercial world but also create an impediment for the judiciary to keep up its pace with the evolving jurisprudence. Therefore, it becomes

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essential to embrace a broader and more dynamic understanding of what constitutes 'property'.

34. In the modern era, as also evidenced by the usage of terms to define property under Section 2(1)(v) of the PMLA, intangible property has assumed immense legal and commercial significance. The evolution of Intellectual Property laws now comprehends rights such as copyrights, trademarks, design rights, patents, licenses, digital assets and contractual entitlements, all of which are firmly recognised as valuable forms of property within the framework of common law.

35. In view of the aforestated, an allocation letter, especially when it confers upon the beneficiary an exclusive right to gain commercial advantage, enabling the beneficiary to derive economic gains, must be examined through this widened legal lens.

39. It is pertinent to note that, the act of allocation, in itself, may not constitute a complete offence; rather, it is the first step in a chain of subsequent events, carrying a cascading effect. These events begin with the procurement of the allocation, which is then followed by the actual extraction of coal, an act, if done on the basis of an unauthorised allocation, constitutes a separate illegal act. The allocation sets in motion the process through which the State Government is expected to act upon the recommendation made by the Central Government and facilitate the formalities flowing therefrom. This process leads to an initiation of series of administrative actions, which, if found to be tainted by criminality at the origin, ultimately results in usurpation of a public resource, which otherwise would rightfully vest in the State as a natural resource belonging to the general public at large."

C. SECTION 2(1)(U) AND SECTION 3 OF THE PMLA : WHETHER MISREPRESENTATION IN ALLOCATION OF COAL BLOCK LEADS TO PROCEEDS OF CRIME MAKING IT AN OFFENCE OF MONEY LAUNDERING?

40. Section 2(1)(u) of the PMLA covers any property derived or obtained, directly or indirectly, by any person as a result of any criminal activity in relation to a scheduled offence and includes within its

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meaning, the 'value of such property'. As explained in the preceding paragraphs under Part B of this judgment, the definition of 'property' is broad, which includes the tangible and intangible property and the property used in the commission of a scheduled offence.

41. Section 3 of the PMLA defines the offence of money laundering as an involvement in any process or activity connected with the proceeds of crime, including concealment, possession, acquisition, use and its projection as untainted or to claim it as untainted. Whereas, explanation (ii) of the said provision highlights that such process or activity connected with the proceeds of crime is a continued activity and continues till such time a person enjoys such proceeds by concealing or being in possession or acquiring or using or projecting or claiming it as an untainted property.

42. The Statement of Objects and Reasons of the PMLA also highlights certain important recommendations made by the Financial Task Force held in Paris in 1989, which also forms the foundation of the present-day legislation of PMLA dealing with offence of money laundering in India, which are:"

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

xxxx xxxx xxxx xxxx xxxx

(iii) confiscation of the proceeds of crime;

43. These two recommendations forming part of the objects of the PMLA when read together, reveal the legislative intent behind the Act. It means that the offence of money laundering as envisaged under Section 3 of the PMLA is a stand-alone offence and not just a byproduct of crimes; rather it is a crime in itself and the illicit financial gains arising from the criminal activities forming a part of money laundering is subject to confiscation. To put it succinctly, the intent of the Act is not only to punish the accused found to be guilty under the offence of money laundering, but also to deprive them of the illegal financial gains. The PMLA not only recognizes the illegal financial gains but also sustainably targets the conduct, in the form of serious economic offences,

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that results in the generation of such illegal financial gains.

44. The aforestated intent of the PMLA is also corroborated with the preamble of the Act, which defines PMLA as, "an Act to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto".

45. Sections 2(1)(u) and 3 of the PMLA, when put together leads us to infer that Section 3 criminalises any process or activity connected with proceeds of crime, which in turn includes property derived or obtained, directly or indirectly, by any person, as a result of criminal activity, relating to a scheduled offence and the value of such property.

46. The aforesaid position has also been rendered by the Supreme Court in ***Vijay Madanlal Chaudhary*** *Judgment and the relevant paragraph is reproduced hereunder:*

382.8. The offence under Section 3 of the 2002 Act is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence. It is concerning the process or activity connected with such property, which constitutes the offence of money-laundering. The Authorities under the 2002 Act cannot prosecute any person ***on notional basis or on the assumption that a scheduled offence has been committed, unless it is so registered with the jurisdictional police and/or pending enquiry/trial*** *including by way of criminal complaint before the competent forum. If the person is finally discharged/acquitted of the scheduled offence or the criminal case against him is quashed by the Court of competent jurisdiction, there can be no offence of money-laundering against him or anyone claiming such property being the property linked to stated scheduled offence through him."*

47. The view taken by the Supreme Court was further reiterated in a recent judgment passed by the Supreme Court in Union of India through the Assistant Director v. Kanhaiya Prasad, and the relevant paragraph is as follows:"

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19. We also do not find any substance in the submission made by learned Senior Advocate Ranjit Kumar for the Respondent that the Respondent has not been shown as an accused in the predicate offence. It is no more res integra that the offence of ***money laundering is an independent offence*** *regarding the process or activity connected with the proceeds of crime, which had been derived or obtained as a result of criminal activity relating to or in relation to a schedule offence. Hence, involvement in any one of such process or activity connected with the Proceeds of Crime would constitute offence of money laundering. This offence otherwise has nothing to do with the criminal activity relating to a schedule offence, except the Proceeds of Crime derived or obtained as a result of that crime. The precise observations made in Vijay Madanlal (supra) in this regard may be reproduced hereunder:—*

"270. *Needless to mention that such process or activity can be indulged in only after the property is derived or obtained as a result of criminal activity (a scheduled offence). It would be an offence of money laundering to indulge in or to assist or being party to the process or activity connected with the proceeds of crime; and such process or activity in a given fact situation may be a continuing offence, irrespective of the date and time of commission of the scheduled offence. In other words, the criminal activity may have been committed before the same had been notified as scheduled offence for the purpose of the 2002 Act, but if a person has indulged in or continues to indulge directly or indirectly in dealing with proceeds of crime, derived or obtained from such criminal activity even after it has been notified as scheduled offence, may be liable to be prosecuted for offence of money laundering under the 2002 Act — for continuing to possess or conceal the proceeds of crime (fully or in part) or retaining possession thereof or uses it in trenches until fully exhausted. The offence of money laundering is not dependent on or linked to the date on which the scheduled offence, or if we may say so, the predicate offence has been committed.* ***The relevant date is the date on which the person indulges in the process or activity connected with such proceeds of crime****. These ingredients are intrinsic in the original provision (Section 3, as amended until 2013 and were in force till 31-7-2019); and the same has been merely*

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explained and clarified by way of Explanation vide Finance (No. 2) Act, 2019. Thus understood, inclusion of clause (ii) in the Explanation inserted in 2019 is of no consequence as it does not alter or enlarge the scope of Section 3 at all.

271 to 405……

406. It was urged that the scheduled offence in a given case may be a non-cognizable offence and yet rigours of Section 45 of the 2002 Act would result in denial of bail even to such accused. This argument is founded on clear misunderstanding of the scheme of the 2002 Act. As we have repeatedly mentioned in the earlier part of this judgment that the offence of money laundering is one wherein a person, 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. The fact that the proceeds of crime have been generated as a result of criminal activity relating to a scheduled offence, which incidentally happens to be a non-cognizable offence, would make no difference. The person is not prosecuted for the scheduled offence by invoking provisions of the 2002 Act, but only when he has derived or obtained property as a result of criminal activity relating to or in relation to a scheduled offence and then indulges in process or activity connected with such proceeds of crime. Suffice it to observe that the argument under consideration is completely misplaced and needs to be rejected.

xxxx xxxx xxxx xxxx xxxx

49. Subsequently, since any process or activity connected with such proceeds of crime including possession, use, concealment, layering, projection or claim as untainted, constitutes money-laundering, the aforesaid proceeds, having been possessed, used, concealed, projected such as untainted property by PIL, brings the case squarely within the scope of the offence of money laundering as defined under Section 3 of the PMLA. Additionally, it is pertinent to note that explanation (ii) to Section 3 of the PMLA clearly states that the process of money laundering is a continuing offence linked to the existence of proceeds of crime.

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50. The Supreme Court in Satyendar Kumar Jain v. Directorate of Enforcement, has clarified that the offence of money laundering is not limited to the final act of integration and remains ongoing as long as the proceeds are being dealt with. Accordingly, the continuing nature of money laundering, sustains the liability arising out of the PMLA for post-enactment activities involving such proceeds."

35. *In substance, this Bench in* ***Prakash Industries-I****, upheld the validity of the PAO, with a finding that the definition of property under Section 2(1)(u) of the PMLA is deliberately wide to include both tangible and intangible assets, including rights and interests resulting into economic value. Accordingly, an allocation letter leading to an exclusive commercial benefit, falls well within the scope of an intangible property and as such constitutes proceeds of crime. Further, the misrepresentation by PIL in order to obtain such an allocation would be rendered as a criminal activity, resultantly generating proceeds of crime under Section 2(1)(u) of the PMLA. Against this backdrop, it was then established that Section 3 of the PMLA criminalises all processes connected with such proceeds, making money laundering a distinct and continuing offence which subsists as long as such illicit gains are possessed or utilized by the accused.*

36. *Application of the aforesaid principles to the present case becomes relevant to the extent that the definition of proceeds of crime under Section 2(1)(u) of the PMLA, not only includes the property derived directly through a criminal activity related to the scheduled offence, rather it also includes any property derived indirectly by such a criminal activity.*

37. *In light of the aforestated, the LSJ, while making an observation that the investigation and chargesheet are confined merely to the aspect of misrepresentation, and therefore, would not extend to the allotment of preferential shares, has based his findings on a fundamental misconception of the nature, scope and legal implications provided within the contours of the offence of money laundering under the PMLA. While it is trite law that the offence under Section 3 of the PMLA is predicated upon the existence of a scheduled offence, it is of equal importance to understand that the offence of money*

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laundering is a distinct and independent offence in itself.

38. *Additionally, the essence of money laundering lies in the proceeds of crime as defined under Section 2(1)(u) of the PMLA, wherein the usage of words "**directly or indirectly" are of crucial importance to demonstrate that the scope of the definition under Section 2(1)(u) extends not only to the immediate consequence of a crime, rather it also includes the subsequent transformation, layers and manifestation of the illicit financial gain**. The usage of the word "indirectly" while defining proceeds of crime under PMLA, establishes the intentional expansive definition provided thereunder, which goes on to establish that once the proceeds are generated through any criminal activity, routing it through multiple channels or transactions, thereby creating layers of ostensible legitimacy does not prevent the accused from escaping liability within the rigours of Section 3 of the PMLA.*

39. *To put it in other words, even if no separate predicate offence is registered in relation to the subsequent act of utilisation of property to acquire funds through a legalised transaction, the classification of the illegal gains used by means of a legal transaction emanating from an illegal means adopted for attaining coal block allocation would still be construed as "proceeds of crime". This is because the proceeds nevertheless are traceable either directly or indirectly, to the original criminal activity relating to a scheduled offence.*

40. *Additionally, **the offence of money laundering being continuing in nature is not confined only to the initial act of criminal acquisition but also extends to every process or activity connected with the proceeds** including layering through multiple transactions, integration into the legitimate economy and projection of the acquired wealth as lawful. For instance, if a public servant receives a bribe, which constitutes an offence under the provisions of the Prevention of Corruption Act, 1988, and thereafter invests that sum in narcotics trade, real estate, preferential shares or any other avenue, the taint of illegality would still continue and the entire corpus shall be liable to be attached irrespective of the subsequent channels through which*

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it has been routed or the forms it assumes subsequently. Similarly, if the sum received as bribe is invested in share market, which later increases or goes beyond and above the value of actual investment owing to market forces or corporate actions, the entire enhanced amount shall constitute as proceeds of crime. Meaning thereby the appreciation in value does not cleanse or purify the tainted origin, more so since the augmented value is inextricably and indirectly derived from the original illicit source of bribe.

... Emphasis supplied by this Court

6.29. By relying on ***Prakash Industries Ltd,*** she submits that the expression "proceeds of crime" under Section 2(1)(u) of the PMLA has a wide ambit and includes property derived or obtained, directly or indirectly, from criminal activity relating to a scheduled offence. Such property may be tangible or intangible and may include economic benefits arising from rights or interests acquired through criminal activity.

6.30. She further submits that the offence of money laundering under Section 3 of the PMLA is distinct from the scheduled offence and extends to processes or activities connected with the proceeds of crime, including their possession, use, concealment,

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layering, acquisition or projection as untainted property. The fact that the proceeds of crime are subsequently routed through legitimate transactions or converted into another form of asset does not, by itself, extinguish their tainted character. Relying on the observations of the Delhi High Court concerning the continuing nature of money laundering, she contends that the subsequent use, investment or appreciation of proceeds of crime does not sever their link with the original criminal activity.

6.31. On the strength of the said decision, learned counsel submits that the Petitioner's contention that the attached properties were acquired before the alleged scheduled offence cannot, by itself, determine their non-attachability. According to her, the question must be considered in the light of the statutory definition of proceeds of crime and the material available concerning the alleged criminal activity and any direct or indirect connection between such activity and the properties sought to be attached.

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6.32. She relies on the judgment of the Hon'ble Delhi High Court in the case of ***Gautam Khaitan and anr., vs. Union of India and anr.,*** [2025 SCC OnLine Del 8434] more particularly paragraphs 18, 19 & 22 which are reproduced hereunder for easy reference:

> ***18.*** *In this context, this Court also deems it necessary to refer to Paragraph No. 12 of the IJ, wherein the LSJ records that, notwithstanding a suggestion made to the Appellants to seek redressal before the Adjudicating Authority in response to the notice issued, the Appellants pressed the Court to examine the material on record to determine whether the AO possessed sufficient material to form a reason to believe for the issuance of the PAO. Consequently, the submission advanced by the learned counsel for the Appellants, that the LSJ ought not to have addressed the merits of the case while dismissing the writ petition on the ground of alternate remedy, is rendered inconsequential.*
>
> ***19.*** *With respect to the argument raised on behalf of the Appellants that the PAO can only be issued subsequent to the filing of a chargesheet under Section 173 of CrPC, this Bench places reliance on its recent decision in* ***LPA 588 of 2022*** *titled Directorate of Enforcement v. Hi-tech Merchantile India Pvt. Ltd. dated 17.10.2025. This Bench in the aforesaid judgment comprehensively examined the scope and exercise of powers of attachment conferred under Section 5 of the PMLA. For sake of clarity and to underscore the principles laid down therein, the relevant paragraphs of the judgment are reproduced hereunder:*
>
> *"58. The contention of PIL with respect to the relevance of the date of allocation, i.e. 04.09.2003 and the findings of the LSJ restricting the actions of the Directorate upto the given date falls short of merit. More specifically, when* ***Section 5 of the***

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PMLA enables the Directorate to proceed with an attachment of the properties of similar value, *whereas first two provisos out of the three provisos to Section 5(1) of the PMLA, highlights the statutory pre-requisite of initiating the attachment. While the first proviso provides for filing of a report under Section 173 of the CrPC or a complaint by an authorised officer for initiation of attachment, the second proviso provides for attachment on account of a "reason to believe" based on the material available.* ***These provisos form a jurisdictional precondition for issuance of the PAO; however, it does not restrict the scope of the Directorate's attachment to the time period covered in the said report or complaint****.*

59. To put it succinctly, the report under Section 173 of the CrPC, ***acts as a gateway triggering the requirement to initiate action under the proviso to Section 5(1) of the PMLA; but does not confine the extent of the inquiry of the Directorate and/or the duration of the proceeds of crime sought to be attached****. Having said the aforestated, it is also important to highlight that* ***there are two provisos attached to section 5(1) of the PMLA, each operating within its own independent domain****. Therefore, it is important to bear in mind that the filing of a report under Section 173 of the CrPC is one of the triggering conditions for initiating attachment under first proviso to Section 5(1) of the PMLA, but not the only one, as under the statute, other conditions may independently warrant the initiation of attachment proceedings."*

In substance, it was observed that while the first proviso to Section 5(1) of the PMLA constitutes a statutory pre-requisite for initiating an attachment, it is not to be construed that the compliance of the said proviso is a sole pre-requisite for issuance of PAO, which if not complied with would render the attachment proceedings invalid or ineffectual.

22. *Keeping in view the above position of law, as well as the facts and circumstances of the present case, this Court does not deem it appropriate to interfere with the Impugned Judgment passed by the learned Single Judge.*

... Emphasis supplied by this Court

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6.33. By relying on ***Gautam Khaitan,*** she submits that the existence of an alternative remedy before the Adjudicating Authority is a relevant consideration while deciding whether this Court should interfere with a provisional attachment order under the PMLA. She points out that, in the said decision, the Delhi High Court declined to interfere with the judgment under challenge, notwithstanding the challenge raised to the provisional attachment order.

6.34. Learned counsel further submits that, as explained in ***Gautam Khaitan***, while the filing of a report under Section 173 of the Code of Criminal Procedure or a complaint, as contemplated under the first proviso to Section 5(1) of the PMLA, constitutes a statutory condition for initiating attachment proceedings under that proviso, it does not restrict the Directorate's inquiry to the period or transactions referred to in such report or complaint.

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6.35. She relies on the decision in ***Directorate of Enforcement v. Hi-Tech Mercantile India Pvt. Ltd.,*** in [LPA 588 of 2022] dated 17.10.2025, referred to therein, to contend that the statutory provisos to Section 5(1) operate within their respective domains and that the filing of such a report or complaint does not, by itself, determine the full scope of the properties that may be considered for attachment.

6.36. Applying these principles to the present case, learned counsel submits that the Petitioner cannot rely solely on the dates on which the properties were acquired or on the period covered by the predicate-offence investigation to contend that the provisional attachment is unsustainable. She contends that the validity of the attachment must be examined in the context of the statutory requirements under Section 5(1), the material available to the authorised officer and the grounds raised by the Petitioner. Accordingly, she submits that no interference with the provisional attachment is warranted at this stage and that the Petitioner ought to

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pursue the remedy available before the Adjudicating Authority.

6.37. She relies on the judgment of Hon'ble High Court of Madras in the case of ***P.Balamurugan and another vs. Directorate of Enforcement, rep by Chennai Zonal Office-II and another*** [2025 SCC OnLine Mad 15158] more particularly paragraphs 13, 14 & 15 which are reproduced hereunder for easy reference:

> ***13.*** *The precondition required to issue the provisional attachment order is* ***the reasonable believe reduced into writing by the competent officer that some person is in possession of the proceeds of crime*** *and the said proceeds of crime are likely to be concealed, transferred or dealt with any manner which may result in frustrating any proceeds related to confiscation of such proceeds of crime under Chapter III of the PMLA.*
>
> ***14.*** *The yet another condition is that the said property must be in relation to scheduled offence reported and forwarded to the Magistrate or a complaint filed by a person authorised to investigate the offence mentioned in the schedule. The order of provisional attachment issued under Section 5(1) of the PMLA will be inforce 180 days. Once the order of provisional attachment is issued based on the reason believe that the property is a proceeds of crime and likely to be concealed transferred etc., a copy of the order along with material in possession to be sent to the Adjudicating Authority in a* ***sealed envelope*** *(emphasis applied) in the manner prescribed. The provisional attachment does not prevent the person interested from enjoying the property. In this case,*

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*the Adjudicating Authority had already informed about the provisional attachment and it is now for the authority to decide whether the provisional attachment order to be confirmed or not. The writ Petitioners **has to participate in the enquiry once they receive notice and substantiate their plea that the property attached is not a proceeds of crime** and they have neither directly nor indirectly aid, assist, use or conceal the said property with knowledge and intention to project it as untainted property.*

***15.** In the light of Section 24 of the Act, which cast **the burden of proof on the person accused on money laundering** and the probability of concealment of the crime proceeds loom large against the Petitioners. The judgment if any which is contrary to the provision of Section 5(1) of the PMLA casting duty on the enforcement authority to issue prior notice before passing provisional order of attachment is to be considered as obitor.*

***Section 8 of PMLA is the answer to the plea of the writ Petitioners regarding opportunity of hearing before the attachment**. The Section 5(1) and Section 8(1) and (2) read together clearly show that the provisional attachment **is only to prevent the attempt of concealment of the crime proceeds to frustrate confiscation. It is a preventive measure to be done immediately, but at the same time only valid for 180 days**. The final order under Section 8 of the PMLA will be passed after affording opportunity to the parties concerned. **No where in the statute either in the Act or Rule, notice to parties prior to the provisional attachment is contemplated**. While so, there cannot be a interpretation contrary to the law. Hence, the writ petition stands dismissed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.*

... Emphasis supplied by this Court

6.38. By relying on ***P.Balamurugan***, her submission is that the provisional attachment

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under Section 5(1) of the PMLA is a preventive measure intended to preserve property and prevent its concealment, transfer or disposal in a manner that may frustrate eventual confiscation. She submits that, where the competent officer has recorded the requisite reasons to believe in writing and the statutory conditions are satisfied, provisional attachment may be effected without prior notice to the person concerned.

6.39. Applying the said principles to the present case, learned counsel submits that the Petitioner's properties were provisionally attached on 29.10.2024 in proceedings arising out of ECIR/MGSZO/04/2022, registered on 28.03.2022, following the registration of Crime No.90/2017 and the filing of the charge sheet in respect of the alleged scheduled offences. She contends that the Petitioner's objections that he merely acted as a stevedore, that the amounts received from M/s Hanuman Minerals were partial repayments of the amount advanced by him, and that the

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properties were acquired in 2004 and 2008, before the alleged transactions of 2011–2012, are matters that can be raised before the Adjudicating Authority.

6.40. Learned counsel further submits that, as explained in ***P. Balamurugan***, the Petitioner has an opportunity under Section 8 of the PMLA to respond to the notice dated 30.11.2024, place the relevant sale deeds and other supporting material on record, and establish that the attached properties are not proceeds of crime or otherwise liable to be treated as properties involved in money laundering. She contends that the Petitioner should participate in those proceedings and substantiate his objections before the Adjudicating Authority, rather than seek interference by this Court at the provisional stage. On that basis, she submits that the writ petition is premature and is liable to be dismissed.

6.41. She also relies on the judgment of Hon'ble Supreme Court in the case of ***Pavana Dibbur vs. Enforcement Directorate***

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[(2023) 15 SCC 91], more particularly paragraph 18 which is reproduced hereunder for easy reference:

> ***18.*** *In a given case,* ***if the prosecution for the scheduled offence ends in the acquittal of all the accused or discharge of all the accused or the proceedings of the scheduled offence are quashed in its entirety, the scheduled offence will not exist****, and therefore, no one can be prosecuted for the offence punishable under Section 3 PMLA as there will not be any proceeds of crime. Thus, in such a case, the accused against whom the complaint under Section 3 PMLA is filed will benefit from the scheduled offence ending by acquittal or discharge of all the accused. Similarly, he will get the benefit of quashing the proceedings of the scheduled offence. However, an accused in PMLA case who comes into the picture after the scheduled offence is committed by assisting in the concealment or use of proceeds of crime need not be an accused in the scheduled offence.* ***Such an accused can still be prosecuted under PMLA so long as the scheduled offence exists****. Thus, the second contention raised by the learned Senior Counsel appearing for the appellant on the ground that the appellant was not shown as an accused in the charge-sheets filed in the scheduled offences deserves to be rejected.*
>
> ***... Emphasis supplied by this Court***

6.42. By relying on ***Pavana Dibbur***, she submits that an accused prosecuted under the PMLA need not necessarily be an accused in the scheduled offence, provided the scheduled offence exists. She submits that a person who becomes involved after the commission

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of the scheduled offence by assisting in the concealment or use of the proceeds of crime can also be proceeded against under the PMLA.

6.43. Applying the said principle to the present case, learned counsel submits that the Petitioner's contention that he merely undertook stevedoring activities and was not responsible for the alleged criminal acts of M/s Manipal Global Services Pvt. Ltd. or M/s Hanuman Minerals does not, by itself, exclude the applicability of the PMLA. She points out that the Petitioner was arrayed as accused No.3 in the charge sheet filed in Crime No.90/2017, which concerns the alleged scheduled offences. She contends that, so long as the scheduled offence exists, the Petitioner's liability under the PMLA must be examined with reference to the alleged proceeds of crime and his alleged involvement in any process or activity connected with them, rather than solely on the basis of whether he committed the scheduled offence himself.

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6.44. Learned counsel accordingly submits that the Petitioner cannot seek to invalidate the attachment merely by asserting that he was engaged in commercial transactions or that his role was limited to stevedoring. She contends that the Petitioner's objections concerning the nature of the transactions, the amounts received from M/s Hanuman Minerals and the absence of a connection between the attached properties and the alleged proceeds of crime must be considered in the statutory adjudication proceedings.

6.45. She also refers to the judgment of the Hon'ble Kerala High Court in ***Satish Motilal Bidri v Union of India*** [2024 SCC OnLine Ker 3410] more particularly paragraphs 13, 14, 15, 16, 17 and 18 thereof, which are reproduced hereunder for easy reference:

> ***13.*** *Section 5 of PMLA authorizes attachment of proceeds of crime. The definition of the term 'proceeds of crime' explicitly states that when the proceeds of a crime is a property, such property must have been obtained or derived as a result of any criminal activity relating to a scheduled offence. No doubt, even if the property was obtained indirectly, it can still be regarded as proceeds of crime. Assuming that a property derived out of a criminal activity mentioned is not available, still, attachment can be*

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effected to the extent of the value of such property. The term 'value' in section 2(1)(u) can only mean ***the monetary worth of the property that was derived from the criminal activity****. If the attachment is to be effected to the extent of the monetary worth of a property which was not derived out of the criminal activity, then PMLA mandates that the property derived out of such criminal activity be taken out of India or is held outside the country. In other words,* ***the only power to proceed against a property of equivalent value, which has no link with the predicate offence is, when the property was taken out or held out of India****. Therefore, except when the property derived out of the criminal activity is not inside the country, can the provisional attachment be effected on a property purchased prior to such criminal activity.*

14. *In this context, it is appropriate to refer to the decision in Seema Garg v. Deputy Director, Directorate of Enforcement (2020 SCC OnLine P&H 738), wherein the High Court of Punjab and Haryana elaborately considered the concept of proceeds of crime and held that property purchased prior to the commission of scheduled offence, does not fall within the ambit of the first limb of the definition of proceeds of crime,* ***though it certainly falls within the purview and ambit of the third limb of the definition****. The Andhra Pradesh High Court has also observed along the same lines in Satyam Computer Services Limited v. Directorate of Enforcement, Government of India (2018 SCC OnLine Hyd 787) wherein it was observed that PMLA being a statute which deals with substantive rights, cannot have a retrospective effect. However, the Delhi High Court had taken a differing stance in The Deputy Director, Directorate of Enforcement, Delhi v. Axis Bank (Crl.A. No. 143/2018), where it was observed that the term value of property must be understood to have been used in the same sense as the third limb. With respects, I am* ***unable to subscribe to the views of the Delhi High Court*** *and on the other hand wholly concur with the views of the High Court of Punjab and Haryana and that of Andhra Pradesh.*

15. *I am further fortified in the above view that I have taken in view of the observations of the Supreme Court as well. In the decision in Vijay Madanlal Choudhary v. Union of India [2022 SCC*

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OnLine SC 929], it has been held in paragraph numbers 295 and 296 that "The precondition for being proceeds of crime is that the property has been derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence. …….Be it noted that ***the attachment must be only in respect of property which appears to be proceeds of crime and not all the properties belonging to the concerned person who would eventually face the action of confiscation of proceeds of crime****, including prosecution for offence of money-laundering. As mentioned earlier, the relevant date for initiating action under the 2022 Act - be it of attachment and confiscation or prosecution, is linked to the inclusion of the offence as scheduled offence and of carrying on the process or activity in connection with the proceeds of crime after such date.* ***The pivot moves around the date of carrying on the process and activity connected with the proceeds of crime; and not the date on which the property has been derived or obtained by the person concerned*** *as a result of any criminal activity relating to or relatable to the scheduled offence."*

16. *Apart from the above, in Pavana Dibbur v. Directorate of Enforcement (2023 SCC OnLine SC 1586), it has been observed as follows:"Another allegation is that both the first and second properties have been acquired out of the proceeds of crime. The first property, exfacie cannot be said to have any connection with the proceeds of crime as the acts constituting the scheduled offence took place after its acquisition. ……This is not a case where any material is placed on record to show that the sale consideration was paid from a particular bank account of the appellant. Therefore, it is not possible to record a finding at this stage that the second property was not acquired by using the proceeds of crime."*

(emphasis supplied).

17. *The aforesaid observations indicate that the properties that can be proceeded against, exercising the powers of attachment must be those that have been acquired utilising the proceeds of crime. The contention of the learned counsel for the Respondents that the term proceeds of crime will also include the value of the property which had been acquired even*

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earlier is, according to me, too far-fetched and will not be justifiable in the light of the constitutional provisions of fairness and reasonableness. It is also necessary to observe at this juncture that the purpose of the PMLA is to remove tainted money and also to initiate proceedings against the proceeds of crime which have been transformed or converted into other property or intermingled with legitimate sources and then the value of the intermingled gain will assume the colour of proceeds of crime. Such a provision ***cannot be used to enable the authorities to proceed against properties that are unconnected with any of the criminal activity in question****.*

18. *Viewed in the above perspective, as the provisionally attached immovable property was purchased in 2004 - more than a decade and a half before the predicate offence was allegedly committed, the order attaching the immovable property is* ***ex-facie, ultra vires the powers of the statute*** *and totally illegal and arbitrary to the extent of the said attachment. Since* ***ex facie illegal acts can be interfered with under Article 226 of the Constitution of India, notwithstanding the existence of an alternative remedy****, this Court is of the view that the provisional attachment of the immovable property as seen from schedule A to Exhibit P11 order dated 22.05.2024 is liable to be set aside. However, as relating to the provisional attachment mentioned in schedule B to Exhibit P11, i.e. those relating to the amount in the bank accounts - the Petitioner has* ***an effective alternative remedy provided by the statute****.*

... Emphasis supplied by this Court

6.46. By referring to ***Satish Motilal Bidri***, she submits that the decision discusses the distinction between property derived or obtained from criminal activity relating to a scheduled offence and property of equivalent

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value, and considers the circumstances in which property acquired before the alleged scheduled offence may be attached. She also refers to the discussion of the decisions in ***Seema Garg v. Deputy Director, Directorate of Enforcement*** [2020 SCC OnLine P&H 738]***, Satyam Computer Services Limited v. Directorate of Enforcement*** [2018 SCC OnLine Hyd 787] and ***Deputy Director, Directorate of Enforcement v. Axis Bank*** [2019:DHC:1887; CRL.A. 143/2018 & Crl.M.A. 2262/2018]***,*** as well as the observations of the Hon'ble Supreme Court in ***Vijay Madanlal Choudhary v. Union of India*** [(2023) 12 SCC 1] and ***Pavana Dibbur v. Directorate of Enforcement*** [(2023) 15 SCC 91].

6.47. In the context of the present case, learned counsel submits that the Petitioner's reliance on the dates of acquisition of the attached properties, Apartment M401, purchased under a registered sale deed dated 15.12.2004, and the non-agricultural immovable property in Survey No.23-1A2,

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Derebail Village, purchased under a registered sale deed dated 28.03.2008, must be considered in the light of the statutory provisions governing attachment and the material available in the proceedings. She contends that the Petitioner's assertion that the properties were acquired before the alleged transactions involving M/s Hanuman Minerals and M/s Manipal Global Services Pvt. Ltd. does not, by itself, conclude the question of their attachability, and that the relevant issues should be examined in the statutory adjudication proceedings.

6.48. Learned counsel accordingly submits that the Petitioner should place his objections and supporting documents before the Adjudicating Authority under Section 8 of the PMLA, which is empowered to determine whether the properties specified in the notice are involved in money laundering. She therefore contends that the writ petition ought not to be entertained at the present stage.

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6.49. She refers to the judgment of the Hon'ble Supreme Court in the case of ***Titaghur Paper Mills Co. Ltd. and another vs. State of Orissa and Others,*** [(1983) 2 SCC 433], more particularly paragraph 6 thereof, which is reproduced hereunder for easy reference:

> ***6.*** *We are constrained to dismiss these petitions on the short ground that the Petitioners have* ***an equally efficacious alternative remedy*** *by way of an appeal to the Prescribed Authority under sub-section (1) of Section 23 of the Act, then a second appeal to the Tribunal under sub-section (3)(a) thereof, and thereafter in the event the Petitioners get no relief, to have the case stated to the High Court under Section 24 of the Act. In Raleigh Investment Company Limited v. Governor-General in Council [AIR 1947 PC 78 : (1947) 74 IA 50 : 231 IC 1] Lord Uthwatt, J. in delivering the judgment of the Board observed that in the provenance of tax where the Act provided for a complete machinery which enabled an assessee to effectively raise in the courts the question of the validity of an assessment denied an alternative jurisdiction to the High Court to interfere. It is true that the decision of the Privy Council in Raleigh Investment Company case [AIR 1947 PC 78 : (1947) 74 IA 50 : 231 IC 1] was in relation to a suit brought for a declaration that an assessment made by the Income Tax Officer was a nullity, and it was held by the Privy Council that an assessment made under the machinery provided by the Act, even if based on a provision subsequently held to be ultra vires, was not a nullity like an order of a court lacking jurisdiction and that Section 67 of the Income Tax Act, 1922 operated as a bar to the maintainability of such a suit. In dealing with the question whether Section 67 operated as a bar to a suit to set aside or modify an assessment made under a provision of the Act which is ultra vires, the Privy Council observed:*

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> *"In construing the section it is pertinent, in their Lordships' opinion, to ascertain whether the Act contains machinery which enables an assessee effectively to raise in the courts the question whether a particular provision of the Income Tax Act bearing on the assessment made is or is not ultra vires. The presence of such machinery, though by no means conclusive, marches with a construction of the section which denies an alternative jurisdiction to inquire into the same subject-matter."*
>
> ***... Emphasis supplied by this Court***

6.50. By relying on ***Titaghur Paper Mills,*** she submits that where a statute provides a complete and efficacious mechanism for redressal of grievances, the High Court ought not ordinarily to exercise its writ jurisdiction under Article 226 of the Constitution of India, thereby bypassing the statutory remedies available to the aggrieved party. She contends that the Petitioner has an effective alternative remedy under Section 8 of the Prevention of Money Laundering Act, 2002, before the Adjudicating Authority, which is competent to consider the Petitioner's objections to the provisional attachment and determine whether the properties in question are involved in money laundering. On that basis, she submits that the present writ

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petition is premature and is liable to be dismissed on the ground of availability of an efficacious alternative remedy.

6.51. She refers to the judgment of Hon'ble Supreme Court in the case of ***Assistant Collector of Central Excise, Chandan Nagar, West Bengal v Dunlop India Ltd., and others*** [(1985) 1 SCC 260], more particularly paragraph 3 thereof, which is reproduced hereunder for easy reference:

> ***3.*** *In Titaghur Paper Mills Co. Ltd. v. State of Orissa A.P. Sen, E.S. Venkataramiah and R.B. Misra, JJ. held that where the statute itself provided the Petitioners with an efficacious alternative remedy by way of an appeal to the Prescribed Authority, a second appeal to the tribunal and thereafter to have the case stated to the High Court, it was not for the High Court to exercise its extraordinary jurisdiction under Article 226 of the Constitution ignoring as it were, the complete statutory machinery. That it has become necessary, even now, for us to repeat this admonition is indeed a matter of tragic concern to us.* ***Article 226 is not meant to short-circuit or circumvent statutory procedures****. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance* ***where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it*** *that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under*

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Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged.

... Emphasis supplied by this Court

6.52. She refers to the judgment of the Hon'ble Supreme Court in ***Bank of India v. Satyawati Tandon and others,*** [(2010) 8 SCC 110], paragraphs 43 and 44 thereof, which are reproduced hereunder for easy reference:

43. *Unfortunately, the High Court overlooked the settled law that* ***the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person*** *and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.*

44. *While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to*

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any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, ***we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution****.*

... Emphasis supplied by this Court

6.53. She refers to the judgment of the Hon'ble Supreme Court in the case of ***Punjab National Bank vs. OC Krishnan and others*** [(2001) 6 SCC 569], more particularly paragraphs 5 and 6 thereof which are reproduced hereunder for easy reference:

5. *In our opinion, the order which was passed by the Tribunal directing sale of mortgaged property was appealable under Section 20 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short "the Act"). The High Court ought not to have exercised its jurisdiction under Article 227 in view of the provision for alternative remedy contained in the Act. We do not propose to go into the correctness of the decision of the High Court and whether the order passed by the Tribunal was correct or not has to be decided before an appropriate forum.*

6. *The Act has been enacted with a view to provide a special procedure for recovery of debts due to the banks and the financial institutions. There is a hierarchy of appeal provided in the Act, namely, filing of an appeal under Section 20 and this fast-track*

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procedure cannot be allowed to be derailed either by taking recourse to proceedings under Articles 226 and 227 of the Constitution or by filing a civil suit, which is expressly barred. ***Even though a provision under an Act cannot expressly oust the jurisdiction of the court under Articles 226 and 227 of the Constitution, nevertheless, when there is an alternative remedy available, judicial prudence demands that the Court refrains from exercising its jurisdiction under the said constitutional provisions****. This was a case where the High Court should not have entertained the petition under Article 227 of the Constitution and should have directed the Respondent to take recourse to the appeal mechanism provided by the Act.*

... Emphasis supplied by this Court

6.54. She relies on judgment of the Hon'ble Supreme Court in the case of ***Raj Kumar Shivhare v Assistant Director, Directorate of Enforcement and another*** [(2010) 4 SCC 772] more particularly paragraphs 31, 32 and 37, which are reproduced hereunder for easy reference:

31. ***When a statutory forum is created by law for redressal of grievance and that too in a fiscal statute, a writ petition should not be entertained ignoring the statutory dispensation****. In this case the High Court is a statutory forum of appeal on a question of law. That should not be abdicated and given a go-by by a litigant for invoking the forum of judicial review of the High Court under writ jurisdiction. The High Court, with great respect, fell into a manifest error by not appreciating this aspect of the matter. It has however dismissed the writ petition on the ground of lack of territorial jurisdiction.*

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> ***32.*** *No reason could be assigned by the appellant's counsel to demonstrate why the appellate jurisdiction of the High Court under Section 35 of FEMA does not provide an efficacious remedy. In fact there could hardly be any reason since the High Court itself is the appellate forum.*
>
> ***37.*** *In view of such consistent opinion of this Court over several decades we are constrained to hold that even if the High Court had territorial jurisdiction it should not have entertained a writ petition which impugns an order of the Tribunal when such an order on a question of law, is appealable before the High Court under Section 35 of FEMA.*
>
> ***... Emphasis supplied by this Court***

6.55. By placing reliance on the aforesaid judgments in ***Dunlop India Ltd., Satyawati Tandon, O.C. Krishnan and Raj Kumar Shivhare,*** she submits that, where a statute provides an efficacious alternative remedy and prescribes a comprehensive mechanism for adjudication and appellate redressal, the High Court ought ordinarily to exercise restraint in entertaining a petition under Article 226 of the Constitution of India. She contends that the availability of an alternative remedy does not oust the constitutional jurisdiction of this Court, but ordinarily warrants its exercise only where exceptional circumstances justify bypassing the statutory mechanism. In the present

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case, the Petitioner can raise his objections to the provisional attachment before the Adjudicating Authority in the proceedings under Section 8 of the Prevention of Money Laundering Act, 2002. If aggrieved by the order passed by the Adjudicating Authority, the Petitioner may prefer an appeal to the Appellate Tribunal under Section 26 of the Act and, thereafter, an appeal to the High Court under Section 42 against the order of the Appellate Tribunal. She therefore submits that the Petitioner ought to pursue the remedies available under the Act and that, in the absence of exceptional circumstances warranting interference, the present writ petition ought not to be entertained.

6.56. She refers to the judgment of Hon'ble Supreme Court in the case of ***Vijay Madanlal Choudhary vs. Union of India*** [(2023) 12 SCC 1] paragraphs 162, 163, 172, 173 and 174, which are reproduced hereunder for easy reference:

> ***162.*** *As a matter of fact, prior to the amendment of 2015, the first proviso acted as an impediment for taking such urgent measure even by the authorised officer, who is no less than the rank of Deputy*

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Director. We must hasten to add that the nuanced distinction must be kept in mind that to initiate "prosecution" for offence under Section 3 PMLA registration of scheduled offence is a prerequisite, but ***for initiating action of "provisional attachment" under Section 5 there need not be a pre-registered criminal case in connection with scheduled offence****. This is because the machinery provisions cannot be construed in a manner which would eventually frustrate the proceedings under the 2002 Act. Such dispensation alone can secure the proceeds of crime including to prevent and regulate the commission of offence of money laundering. The authorised officer would, thus, be expected to and, also in a given case,* ***justified in acting with utmost speed to ensure that the proceeds of crime/property is available for being proceeded with appropriately*** *under the 2002 Act so as not to frustrate any proceedings envisaged by the 2002 Act.*

163. *In case the scheduled offence is not already registered by the jurisdictional police or complaint filed before the Magistrate, it is open to the authorised officer to still proceed under Section 5 of the 2002 Act whilst contemporaneously sending information to the jurisdictional police under Section 66(2) of the 2002 Act for registering FIR in respect of cognizable offence or report regarding non-cognizable offence and if the jurisdictional police fails to respond appropriately to such information, the authorised officer under the 2002 Act can take recourse to appropriate remedy, as may be permissible in law to ensure that the culprits do not go unpunished and the proceeds of crime are secured and dealt with as per the dispensation provided for in the 2002 Act. Suffice it to observe that the amendment effected in 2015 in the second proviso has reasonable nexus with the object sought to be achieved by the 2002 Act.*

172. ***It was also urged before us that the attachment of property must be equivalent in value of the proceeds of crime only if the proceeds of crime are situated outside India****.* ***This argument, in our opinion, is tenuous. For, the definition of "proceeds of crime" is wide enough to not only refer to the property derived or obtained as a result of criminal activity relating to a scheduled offence, but also of the value of any such property****. If the property is taken*

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or held outside the country, even in such a case, the property equivalent in value held within the country or abroad can be proceeded with. ***The definition of "property" as in Section 2(1)(v) is equally wide enough to encompass the value of the property of proceeds of crime****. Such interpretation would further the legislative intent in recovery of the proceeds of crime and vesting it in the Central Government for effective prevention of money laundering.*

173. *We find force in the stand taken by the Union of India that the objectives of enacting the 2002 Act was the attachment and confiscation of proceeds of crime which is the quintessence so as to combat the evil of money laundering. The second proviso, therefore,* ***addresses the broad objectives of the 2002 Act to reach the proceeds of crime in whosoever's name they are kept or by whosoever they are held****. To buttress this argument, reliance has been placed on the dictum in Attorney General for India [Attorney General for India v. Amratlal Prajivandas, (1994) 5 SCC 54 : 1994 SCC (Cri) 1325] and Raman Tech. & Process Engg. Co. v. Solanki Traders [Raman Tech. & Process Engg. Co. v. Solanki Traders, (2008) 2 SCC 302 : (2008) 1 SCC (Civ) 539] .*

174. *The procedural safeguards provided in respect of provisional attachment are effective measures to protect the interest of the person concerned who is being proceeded with under the 2002 Act, in the following manner as rightly indicated by the Union of India:*

174.1. *For invoking the second proviso,* ***the Director or any officer not below the rank of Deputy Director will have to first apply his mind to the materials on record before recording in writing his reasons to believe is certainly a sufficient safeguard*** *to the invocation of the powers under the second proviso to Section 5(1) of the 2002 Act.*

174.2. ***There has to be a satisfaction that if the property involved in money laundering or "proceeds of crime" are not attached "immediately", such non-attachment might frustrate the confiscation proceedings under the 2002 Act****.*

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174.3. *The order passed under Section 5(1) of the 2002 Act is only provisional in nature. The life of this provisional attachment order passed under Section 5(1) of the 2002 Act is only for 180 days, subject to confirmation by an independent Adjudicating Authority.*

174.4. *Under Section 5(2) officer passing provisional attachment order has to immediately forward a copy of this order to the Adjudicating Authority in a sealed envelope.*

174.5. *Under Section 5(5) of the 2002 Act, the officer making such order must file a complaint before the Adjudicating Authority within 30 days of the order of provisional attachment being made.*

174.6. *Section 5(3) of the 2002 Act provides that the provisional attachment order shall cease to have effect on the expiry of the period specified in Section 5(1) i.e. 180 days or on the date when the Adjudicating Authority makes an order under Section 8(2), whichever is earlier.*

174.7. *Under Section 8(1), once the officer making the provisional attachment order files a complaint and if the Adjudicating Authority "has a reason to believe that any person has committed an offence under Section 3 or is in possession of the proceeds of crime", the Adjudicating Authority may serve a show-cause notice of not less than 30 days on such person calling upon him to indicate the sources of his income, earning or assets or by means of which he has acquired the property attached under Section 5(1) of the 2002 Act.*

174.8. *The above SCN would require the noticee to produce evidence on which he relies and other relevant information and particulars to show cause why all or any of the property "should not be declared to be the properties involved in money laundering and confiscated by the Central Government".*

174.9. *Section 8(2) requires the Adjudicating Authority to consider the reply to the SCN issued under Section 8(1) of the 2002 Act. The section further provides to hear the aggrieved person as well as the officer issuing the order of provisional attachment and also take into account "all relevant*

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materials placed on record before the Adjudicating Authority". After following the above procedure, the Adjudicating Authority will record its finding whether all the properties referred to in the SCN are involved in money laundering or not.

174.10. *While passing order under Section 8(2) read with Section 8(3) there are two possibilities which might happen:*

174.10.1. *The Adjudicating Authority may confirm the order of provisional attachment, in which case again, the confirmation will continue only up to*

(i) the period of investigation not exceeding 365 days, or

(ii) till the pendency of any proceedings relating to any offence under the 2002 Act or under the corresponding law of any other country before the competent court of criminal jurisdiction outside India.

174.10.2. *The Adjudicating Authority may disagree and not confirm the provisional attachment, in which case attachment over the property ceases.*

174.11. *Under Section 8(4) of the 2002 Act, upon confirmation of the order of provisional attachment, the Director or other officer authorised by him shall take the possession of property attached.*

174.12. *Under Section 8(5) of the 2002 Act, on the conclusion of a trial for an offence under the 2002 Act if the Special Court finds that the offence of money laundering has been committed it will order that the property involved in money laundering or the property which has been involved in the commission of the offence of money laundering shall stand confiscated to the Central Government.*

174.13. *However, under Section 8(6) if the Special Court on the conclusion of the trial finds that no offence of money laundering has taken place or the property is not involved in money laundering it will release the property which has been attached to the person entitled to receive it.*

174.14. *Under Section 8(7), if the trial before the Special Court cannot be conducted because of the*

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death of the accused or because the accused is declared proclaimed offender, then the Special Court on an application of the Director or a person claiming to be entitled to possession of a property in respect of which an order under Section 8(3) is passed either to confiscate the property or release the property to the claimant, after considering the material before it.

174.15. *Under Section 8(8), when a property is confiscated, the Special Court may direct the Central Government to restore the property to a person with the legitimate interest in the property, who may have suffered a quantifiable loss as a result of money laundering. Provided that the person must not have been involved in money laundering and must have acted in good faith and has suffered a considerable loss despite taking all reasonable precautions.*

174.16. *The order passed by the Adjudicating Authority is also subject to appeal before the Appellate Tribunal which is constituted under Section 25 of the 2002 Act. Thus,* ***the Adjudicating Authority is not the final authority under the 2002 Act as far as the attachment of proceeds of crime or property involved in money laundering is concerned****.*

174.17. ***Any person aggrieved of an order confirming the provisional attachment order can file an appeal before the Appellate Tribunal under Section 26(1) of the 2002 Act****. The Appellate Tribunal on receipt of an appeal after giving the parties an opportunity of being heard will pass an order as it thinks fit either confirming or modifying or setting aside the provisional attachment order appealed against.*

174.18. *Further, the order passed by the Appellate Tribunal is further appealable before the High Court under Section 42 of the 2002 Act* ***on any question of fact or question of law arising out of the order passed by the Appellate Tribunal****.*

... Emphasis supplied by this Court

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6.57. By relying on ***Vijay Madanlal Choudhary***, she submits that the initiation of provisional attachment proceedings under Section 5 of the Prevention of Money Laundering Act, 2002, does not invariably require a criminal case in respect of the scheduled offence to have been registered beforehand, as the authorised officer may act to secure the proceeds of crime and prevent the proceedings under the Act from being frustrated. She further submits that the expression "proceeds of crime" is sufficiently wide to encompass the value of property derived or obtained, directly or indirectly, from criminal activity relating to a scheduled offence, and that the statutory scheme is intended to reach such proceeds irrespective of the person in whose name they are held. She contends that provisional attachment is preventive in nature and is subject to the safeguards prescribed under the Act, including scrutiny by the Adjudicating Authority under Section 8, which considers the noticee's objections and the relevant material to determine whether the properties

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are involved in money laundering. She further points out that an order confirming the provisional attachment is appealable before the Appellate Tribunal under Section 26, with a further appeal to the High Court under Section 42. On this basis, she submits that the Petitioner should raise his objections regarding the source and date of acquisition of the attached properties before the Adjudicating Authority and pursue the statutory remedies available under the Act, rather than seek premature interference under Article 226 of the Constitution of India.

6.58. She relies on the judgment of Hon'ble High Court of Madras in the case of ***Vijayraj Surana vs. Assistant Director, Enforcement Directorate*** [2024 SCC OnLine Mad 8404] more particularly paragraphs 27, 28, 29, 31, 36, 37, 39, 40, 41 and 44, which are reproduced hereunder for easy reference:

> ***27. ECIR is born from FIR, but once the ECIR is born, the umbilical cord that connects the ECIR with FIR losses its relevance and the ECIR becomes an independent document in itself.*** *Consequently, a new life in the form of ECIR emerges, which can breath on its own without the support of*

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FIR. So, the FIR and ECIR become two different documents and both tend to take shape on its own, independent of each other.

28. *"Proceeds of Crime" is the focal point for an ECIR, whereas scheduled offence is dealt with under the FIR. Further reliance is also placed with the aid of judgments delivered by the Hon'ble Supreme Court of India in the case of Vijay Madanlal Choudhary v. Union of India cited supra and Rajinder Singh Chada v. Union of India[3]. Both these judgments have noted the distinction between FIR and ECIR. More so, ECIR is treated as an internal document.*

29. *In Vijay Madanlal's case (supra), the relevant portion to support this contention is as extracted below;*

*"**457.** Suffice it to observe that being a special legislation providing for special mechanism regarding inquiry/investigation of offence of moneylaundering, analogy cannot be drawn from the provisions of 1973 Code, in regard to registration of offence of money-laundering and more so being a complaint procedure prescribed under the 2002 Act. Further, the authorities referred to in Section 48 of the 2002 Act alone are competent to file such complaint. It is a different matter that the materials/evidence collected by the same authorities for the purpose of civil action of attachment of proceeds of crime and confiscation thereof may be used to prosecute the person involved in the process or activity connected with the proceeds of crime for offence of money-laundering. Considering the mechanism of inquiry/investigation for proceeding against the property (being proceeds of crime) under this Act by way of civil action (attachment and confiscation), there is no need to formally register an ECIR, unlike registration of an FIR by the jurisdictional police in respect of cognizable offence under the ordinary law. There is force in the stand taken by the ED that ECIR is an internal document created by the department before initiating penal action or prosecution against the person involved with process or activity connected with proceeds of crime. Thus, ECIR is not a statutory document, nor there is any provision in 2002 Act requiring Authority referred to in Section 48 to record ECIR or to furnish copy thereof to the Accused unlike Section 154 of the 1973 Code. The fact that such ECIR has not been recorded, does*

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not come in the way of the authorities referred to in Section 48 of the 2002 Act to commence inquiry/investigation for initiating civil action of attachment of property being proceeds of crime by following prescribed procedure in that regard."

31. When there are findings arrived at independently in both the FIR and ECIR, can the Court completely disregard those findings and bring the proceedings to an unjustified end just because one of the proceedings was quashed on procedural/technical grounds without due impetus to the substantive grounds? *This question requires an in-depth consideration.*

36. *The Court's observations above hold that where a person is acquitted or absolved of a criminal activity relating to a scheduled offence and on establishing in a Court of law that the crime property is in legitimate ownership, such property cannot be termed as crime property and in consequence the PMLA offences loses its significance. Hence, to warrant a quashing of the ECIR, mere quashing of the FIR on technical grounds by itself does not make the ECIR liable to be quashed. That is not the observations set out in the Vijay Madanlal case.* ***Rather in proceedings pertaining to the quashing of the FIR in a scheduled offence, the Court must have dealt with not mere procedural irregularities, but something more in the nature of substantive grounds.***

37. *The exact wordings of the Court culls out the object. That the accused person should have been acquitted or absolved from the allegations of criminal activity relating to the scheduled offence and that the crime property should be rightfully owned and possessed by him. So the essence of the observations made herein is that the accused person should be exonerated from the charges levelled against him.*

39. *Further, when the PMLA proceedings is set in motion and prima facie findings are already made, including completion of filing of chargesheet, then an FIR quashed after this stage cannot be a viable ground to quash the ECIR also. More so, the PMLA requires the presence of a scheduled offence to initiate proceedings under the Act. So it also becomes a mandate that the grounds on which scheduled*

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offence was quashed is thoroughly examined before rendering the PMLA offence ineffective.

40. *This Court is not venturing into the grounds of quashing an FIR as the principles pertaining to the same has already been laid down elaborately by the Hon'ble Supreme Court. But the rationale here is to cull out the level of bearing that a quashed FIR has on an proceedings challenging the ECIR. This Court feels that* ***all cases where FIR is quashed shall not automatically become a ground for quashing an ECIR****. Instead a case to case analysis is a pre requisite for deciding on the sustenance of an ECIR. To put it in comprehensive terms, When the Court in an FIR quash proceedings has not delved into the merits of the offence, but rather found technical errors on the face of it, then the Court directs the quashing of the said FIR. The accused then goes on to challenge the ECIR by placing reliance on the said FIR Quash order to quash the ECIR also. But a reading of relevant paragraphs in the Vijay Madanlal's case clearly showcases that this is not the object behind the said judgment. The final summarisation, when read in tandem with the observations set out in paragraphs of the judgment and also keeping in line with* ***the explanation to Section 44 of the PMLA, 2002****, this Court comes to the irresistible conclusion that cases where FIR pertaining to the scheduled offence is quashed it does not automate the exoneration of the accused from the predicate offence. Rather FIR quashes on grounds of mere technicalities or procedural irregularities in the FIR, cannot by itself form a basis to grant an automatic quash of ECIR. Also in the aforementioned instance, there needs to be a case to case examination of the offence registered under the PMLA before the offence is rendered ineffectual.*

41. *Hence, the moot point for consideration whether all cases where FIR has been quashed can pave way for quashing of ECIR? This Court feels that each case must be tested on its own, in consonance with the Vijay madanlal judgment and a blanket application of the principle without due regard to the facts of each and every case shall render both the judgment and the object of the PMLA ineffective.*

44. *Due to the above development, since the SFIO was already entrusted with the investigation by the*

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Central Government vide order dated 09.04.2019 on the same set of allegations, the present FIR registered by the CBI was quashed by the High Court citing the aforementioned reason. Hence, it is amply clear that the High Court has quashed the FIR only on the ground that another Investigating Agency is seized off the matter. The Court has not dealt with the allegations nor tested the merits of the offences charged in the FIR. The Court restricted itself only to the ground of want of jurisdiction. Hence the FIR was quashed purely on this ***technical or procedural issue and not on substantive grounds*** *and has not made any findings as to the offences or the prima facie allegations in the FIR. Therefore, the quashing of the FIR shall not warrant an automatic quashing of ECIR. All the more, the predicate offence under Section 447 of the Companies Act, 2013, which is also a scheduled offence under the PMLA still stands good and requires further investigation. Therefore, in view of the above ECIR is not liable to be quashed.*

... Emphasis supplied by this Court

6.59. By relying on ***Vijayraj Surana***, her submission is that the Hon'ble Madras High Court has held that the quashing of an FIR relating to a scheduled offence does not, by itself, automatically warrant the quashing of the corresponding ECIR or termination of proceedings under the Prevention of Money Laundering Act, 2002. She submits that the effect of quashing the FIR would depend upon the grounds on which it was quashed and that a distinction must be drawn between quashing on technical or procedural

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grounds and exoneration on substantive grounds concerning the alleged criminal activity. She further submits that the challenge to the said judgment before the Hon'ble Supreme Court in Diary No. 43775 of 2024 came to be dismissed as withdrawn on 18.12.2024. Relying on this subsequent development, she seeks to support the proposition laid down by the Madras High Court regarding the independent consideration of proceedings under the PMLA.

6.60. She relies on the judgment of the Hon'ble Supreme Court in the case of ***Dr.Manik Bhattacharya vs. Ramesh Malik and others*** [2022 SCC OnLine SC 1465], more particularly paragraph 7 thereof which is reproduced hereunder for easy reference:

> ***7.*** *We cannot hold the arrest of the Petitioner by the Enforcement Directorate illegal as the issue of money-laundering or there being proceeds of crime had not surfaced before the Single Judge or the Division Bench of the High Court. Before us, however, it had been brought to our notice by Mr. Rohatgi in course of hearing on the question of interim order passed in the instant special leave petitions, that the Petitioner had been cooperating with investigation by the Enforcement Directorate and the CBI. While testing the legality of an arrest made by an*

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> *agency otherwise empowered to take into custody a person against whom such agency considers subsistence of prima facie evidence of money-laundering, we do not think a general protective order directed at another investigating agency could have insulated the Petitioner from any coercive action in another proceeding started by a different agency, even if there are factual similarities vis-a-vis the allegations. Under The Prevention of Money-Laundering Act, 2002 ("2002 Act"),* ***money-laundering is an independent offence*** *and in the event there is any allegation of the Enforcement Directorate having acted beyond jurisdiction or their act of arrest is not authorized by law, the Petitioner would be entitled to apply before the appropriate Court of law independently. But that question could not be examined in a Special Leave Petition arising from the proceedings in which the question of Money Laundering were not involved.*
>
> ***... Emphasis supplied by this Court***

6.61. By relying on ***Dr.Manik Bhattacharya***, she submits that the offence of money laundering under the Prevention of Money Laundering Act, 2002, is an independent offence and that proceedings initiated by the Enforcement Directorate are required to be considered independently of proceedings initiated by another investigating agency, even where the allegations in the two proceedings have factual similarities. She further submits that any challenge to the jurisdiction of the

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Enforcement Directorate or the legality of its action under the PMLA must be independently examined in appropriate proceedings and cannot be determined in proceedings arising out of an unrelated matter in which the question of money laundering was not involved. On this basis, she contends that the proceedings initiated by the Enforcement Directorate in the present case must be considered independently in accordance with the provisions of the PMLA.

6.62. She relies on the judgment of Hon'ble High Court of Punjab & Haryana at Chandigarh in the case of ***Surjeet Kumar Bansal vs. Central Bureau of Investigation and another*** [2024:PHHC:045226], dtd 04.04.2024, more particularly paragraphs 15, 16 and 18 which are reproduced here under for easy reference:

> ***15.*** *Learned senior counsel for the Petitioner has also asserted that since the proceedings in the FIR pertaining to the scheduled offence have been stayed by a Division Bench of this Court, the proceedings under PMLA would also have to be kept in abeyance to await the final outcome of the decision of the Division Bench of this Court. However, this plea is bereft of any merit and deserves to be rejected. While the*

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scheduled offence is pivotal to the accusations of money laundering as has been held by Hon'ble the Supreme Court in 23 of 25 Neutral Citation No:=2024:PHHC:045226 2024:PHHC:045226 CRM-M-57266-2023 (O&M) -24- Vijay Madanlal Choudhary's case (supra), ***the proceedings under PMLA are distinct and independent****. Therefore, a stay on criminal proceedings in the FIR initiated by Respondent No.1-CBI would not extend to the proceedings for offences under PMLA, and they would have to await the outcome of the writ petition independently.*

16. *Furthermore, in the case of Sikandar Singh's case (supra) a Division Bench of this Court while relying upon Dr. Manik Bhattacharya's case (supra) concluded that Enforcement Directorate is not bound by the protective orders passed in FIRs of scheduled offences. Hence, in the light of the ratio of law laid down by Hon'ble Supreme the Court and a Division bench of this Court, the case laws relied upon by the learned senior counsel for the Petitioner on this issue would not advance his cause, and this Court respectfully would disagree with those judgments.*

18. *Before parting, it needs to be emphasized that offences under PMLA constitute a category of their own and must be viewed 24 of 25 Neutral Citation No:=2024:PHHC:045226 2024:PHHC:045226 CRM-M-57266-2023 (O&M) -25- with utmost seriousness as such offences not only pose a serious danger to the economic health of the nation but also impede the progress of the country. Such offences are committed with intense planning and calculation, and camouflaged surreptitiously, necessitating the investigating agency to go through the material collected with a fine comb so as to uncover the such scams which, if left unaddressed, would without doubt be fatal to economic health of the country. Thus, the rigors of Section 45 of the PMLA which lay down an exceptionally high yardstick for grant of bail under PMLA, must not be given a go-by.*

... Emphasis supplied by this Court

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6.63. By relying on ***Surjeet Kumar Bansal,*** she submits that proceedings under the Prevention of Money Laundering Act, 2002, are distinct and independent of the proceedings relating to the scheduled offence. She contends that any stay or protective order operating in the proceedings concerning the scheduled offence does not, by itself, extend to or operate as a bar against proceedings initiated by the Enforcement Directorate under the PMLA. She further submits that the proceedings under the PMLA must be considered independently and that the statutory mandate of the Act, having regard to the serious economic consequences of money laundering, cannot be circumvented merely because the proceedings relating to the scheduled offence have been stayed or are pending adjudication. On this basis, she contends that the proceedings initiated against the Petitioner under the PMLA are required to be considered independently, in accordance with the provisions of the Act.

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6.64. Though there are copies of several other judgments which have been produced, learned counsel for Respondent is not adverted to it.

6.65. She concluded by submitting that the petition is required to be dismissed be relegating the Petitioner to the statutory remedies available.

7. Heard Sri D. R. Ravishankar, learned Senior counsel for the Petitioner and Ms. Anuparna Bordoloi, learned counsel for the Respondent and perused papers.

8. The points that would arise for consideration are:

(i) Whether the present writ petition is maintainable and deserves to be entertained under Articles 226 and 227 of the Constitution of India, notwithstanding the statutory proceedings under Section 8 of the Prevention of Money Laundering Act, 2002, and the availability of alternative remedies, particularly when the Petitioner challenges the exercise of power under the Second Proviso to Section 5(1) of the said Act?

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(ii) Whether the provisional attachment of the Petitioner's properties, acquired under registered sale deeds dated 15.12.2004 and 28.03.2008, is sustainable in law when the alleged scheduled offence and the transactions said to have generated the proceeds of crime relate to the period 2011–2012, and whether such properties can be attached as properties of equivalent value under Section 2(1)(u), read with Section 5 of the PMLA, 2002?

(iii) Whether the Respondent has complied with the statutory conditions governing provisional attachment under Section 5(1) of the PMLA, 2002, including the requirement of recording reasons to believe on the basis of material in its possession and, where the Second Proviso is invoked, the requirement that non-attachment of the property immediately is likely to frustrate proceedings under the Act?

(iv) Whether the impugned attachment is vitiated by non-application of mind or want of a demonstrable nexus between the properties sought to be attached and the alleged proceeds of crime, having regard to the Petitioner's contention that the amounts received from M/s. Hanuman Minerals represented partial repayment of monies advanced by him and that the properties were acquired before the alleged scheduled offence?

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(v) Whether the Petitioner is entitled to the relief sought for quashing the impugned attachment order dated 29.10.2024 and the consequential proceedings initiated under Section 8 of the PMLA, 2002?

(vi) What Order?

9. This Court answers the above points as follows:

10. <u>Answer to Point No (i):</u> Whether the present writ petition is maintainable and deserves to be entertained under Articles 226 and 227 of the Constitution of India, notwithstanding the statutory proceedings under Section 8 of the Prevention of Money Laundering Act, 2002, and the availability of alternative remedies, particularly when the Petitioner challenges the exercise of power under the Second Proviso to Section 5(1) of the said Act?

10.1. Sri D.R. Ravishankar, learned Senior Counsel appearing for the Petitioner, submits that the availability of a remedy before the Adjudicating Authority does not, by itself, bar this Court from exercising its jurisdiction under Articles 226 and 227 of the Constitution of India.

10.2. He relies on the decision of the Co-ordinate Bench of this Court in ***Jayamma v. The Directorate of Enforcement,*** [W.P.

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No.28108/2025], decided on 02.06.2026, particularly paragraphs 26, 27, 29, 30, 31, 32, 33, 36, 38 to 42 and 47 to 50. Relying on ***Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Others*** [(1998) 8 SCC 1] and ***Godrej Sara Lee Ltd. v. Excise and Taxation Officer-cum-Assessing Authority and Others,*** [(2023) SCC OnLine SC 95], as discussed in ***Jayamma***, he submits that the existence of an alternative remedy does not oust the constitutional jurisdiction of this Court. Whether a writ petition should be entertained is a matter of judicial discretion.

10.3. Learned Senior Counsel further submits that non-compliance with the Second Proviso to Section 5(1) of the "PMLA" is a jurisdictional defect. Relying on paragraphs 30, 36 and 38 to 42 of ***Jayamma***, he contends that the proceedings under Section 8 are directed at determining whether the attached property is involved in money-laundering and whether the attachment should be confirmed. They do not provide an effective remedy for examining whether the statutory conditions

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for invoking the Second Proviso to Section 5(1) were satisfied. He therefore submits that the Petitioner may invoke Article 226 to challenge the provisional attachment on that ground.

10.4. Applying the principle in ***Jayamma*** to the present case, learned Senior Counsel submits that the two properties were purchased in 2004 and 2008, whereas the alleged transactions relate to 2011–2012. According to him, the Respondent invoked the Second Proviso to Section 5(1) without adequately considering the dates and nature of the properties or identifying material connecting them with the proceeds of crime. He submits that the authorised officer must have reasons to believe, recorded in writing and based on material in his possession, that immediate attachment is necessary because non-attachment is likely to frustrate proceedings under the PMLA. The registration of Crime No.90/2017, the initiation of proceedings under the PMLA or the inclusion of the Petitioner as an accused does not dispense with these statutory requirements.

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10.5. He also relies on ***Satish Motilal Bidri v. Union of India,***[2024 SCC OnLine Ker 3410], particularly paragraph 18, in which the Hon'ble High Court of Kerala set aside an attachment of immovable property acquired in 2004, holding that an attachment which is ex facie beyond the authority of the statute may be challenged under Article 226 notwithstanding an alternative remedy.

10.6. Finally, learned Senior Counsel submits that the properties were acquired long before the alleged predicate offence and were not held outside India. He contends that they do not fall within the definition of "proceeds of crime" under Section 2(1)(u) of the PMLA and that the attachment is therefore without foundational jurisdiction. On these grounds, he seeks interference under Article 226 of the Constitution of India.

10.7. Ms. Anuparna Bordoloi, learned counsel appearing for the Respondent, submits that provisional attachment under Section 5(1) of the PMLA is an interim measure intended to preserve the property pending adjudication.

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Under Section 5(5), the authorised officer must file a complaint before the Adjudicating Authority within thirty days of attachment. She submits that the complaint has been filed, notice has been issued to the Petitioner and the Petitioner must pursue his objections before the Adjudicating Authority.

10.8. Learned counsel explains that, under Section 8, the Adjudicating Authority considers the noticee's reply, hears the parties and examines the relevant material before deciding whether the property is involved in money-laundering. It may confirm the attachment or decline to do so. She further relies on Section 8(6), under which the property is to be released if the trial establishes that no offence of money-laundering has taken place or that the property is not involved in the offence. She submits that these statutory safeguards make the remedy under the PMLA effective and that the Petitioner's objections should be considered through that process.

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10.9. Ms. Bordoloi also refers to the pending proceedings before the Hon'ble Special Court in Special C.C. No.53/2025 under Sections 3 and 4 of the PMLA. She submits that the Petitioner's objections concerning the source and acquisition of the properties, and their alleged connection with the proceeds of crime, should be raised before the appropriate statutory forum. Entertaining the writ petition, she contends, would interrupt the statutory process.

10.10. She relies on ***Sri Krishna K.M. and Others v. The Directorate of Enforcement and Others***, [W.P. No.7155/2026], decided on 18.03.2026, particularly paragraph 4, in which a Co-ordinate Bench observed that a challenge to provisional attachment was premature before an order under Section 8 had been passed. She submits that the Petitioner should follow the statutory procedure prescribed by the PMLA.

10.11. Learned counsel further relies on the following decisions of the Hon'ble Supreme Court:

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10.12. ***Titaghur Paper Mills Co. Ltd. and Another v. State of Orissa and Others***, [(1983) 2 SCC 433], paragraph 6;

10.13. ***Assistant Collector of Central Excise, Chandan Nagar, West Bengal v. Dunlop India Ltd. and Others***, [(1985) 1 SCC 260], paragraph 3;

10.14. ***Bank of India v. Satyawati Tandon and Others***, [(2010) 8 SCC 110], paragraphs 43 and 44;

10.15. ***Punjab National Bank v. O.C. Krishnan and Others***, [(2001) 6 SCC 569], paragraphs 5 and 6; and

10.16. ***Raj Kumar Shivhare v. Assistant Director, Directorate of Enforcement and Another,*** [(2010) 4 SCC 772], paragraphs 31, 32 and 37.

10.17. Relying on these decisions, she submits that where a statute provides an effective remedy through a specialised adjudicatory and appellate mechanism, the High Court should ordinarily decline to entertain a writ petition. Although the existence of an alternative

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remedy does not oust the jurisdiction under Article 226, exceptional circumstances must be shown to justify bypassing the statutory process. In the present case, the Petitioner may raise his objections before the Adjudicating Authority, appeal to the Appellate Tribunal under Section 26 and, thereafter, invoke Section 42 of the PMLA.

10.18. Ms. Bordoloi also relies on ***Vijay Madanlal Choudhary v. Union of India***, [(2023) 12 SCC 1], particularly paragraphs 174.16 onwards, regarding the statutory safeguards and appellate remedies available against provisional attachment. She refers to ***Gautam Khaitan and Another v. Union of India and Another***, [2025 SCC OnLine Del 8434], paragraphs 18, 19 and 22, in support of her submission that the availability of an alternative remedy is a relevant consideration when deciding whether to entertain a writ petition. She also relies on ***P. Balamurugan and Another v. Directorate of Enforcement, represented by Chennai Zonal Office-II and Another***, [2025 SCC OnLine Mad 15158], paragraphs 13 to 15, to

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submit that the Petitioner should participate in the Section 8 proceedings and substantiate his contention that the attached properties are not proceeds of crime.

10.19. This Point requires the Court to consider two distinct questions: first, whether the writ petition is maintainable despite the remedies provided under the PMLA; and second, whether the petition should be entertained at this stage. The challenge concerning compliance with the Second Proviso to Section 5(1) must be considered against the general principles governing alternative remedies.

10.20. The relevant facts are that the Respondent passed Provisional Attachment Order No.01/2024 dated 29.10.2024 in ECIR/MGSZO/04/2022 under Section 5(1) of the PMLA read with Rule 3 of the Prevention of Money-Laundering (Issuance of Provisional Attachment Order) Rules, 2013. The order provisionally attached properties belonging to four persons, including the two properties of the Petitioner, for a period of 180 days. A

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notice under Section 8, bearing OC No.2482/2024 and dated 30.11.2024, was issued by the Registrar of the Adjudicating Authority. The Petitioner is arrayed as defendant No.3 in the notice, which refers to a complaint filed under Section 5(5). Proceedings under Sections 3 and 4 of the PMLA are also pending in Special C.C. No.53/2025.

The statutory scheme

10.21. Section 5(5) of the PMLA provides:

> *"(5) The Director or any other officer who provisionally attaches any property under sub-section (1) shall, within a period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority."*

10.22. Section 8(1) empowers the Adjudicating Authority, upon receipt of the complaint, to issue notice calling upon the person concerned to explain the sources of income, earnings or assets from which the property was acquired, produce supporting evidence and show cause why the property should not be declared involved in money-laundering.

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10.23. Section 8(2) provides that the Adjudicating Authority shall consider the reply, hear the affected person and the authorised officer, and examine the relevant material before recording a finding on whether the property is involved in money-laundering. If the statutory conditions are satisfied, Section 8(3) provides for confirmation of the attachment.

10.24. An order of the Adjudicating Authority may be challenged before the Appellate Tribunal under Section 26(1). Section 26(3) prescribes a period of forty-five days from receipt of the order and permits the Tribunal to entertain a delayed appeal where sufficient cause is shown. Section 26(4) empowers the Tribunal to confirm, modify or set aside the order appealed against. Section 42 provides for a further appeal to the High Court within sixty days on a question of law or fact arising from the Tribunal's decision.

10.25. Section 8(6) also provides for release of the property in the circumstances specified therein if the trial establishes that no offence

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of money-laundering has taken place or that the property is not involved in the offence.

10.26. The PMLA thus provides for provisional attachment, adjudication by the Adjudicating Authority, an appeal to the Appellate Tribunal and a further appeal to the High Court. The existence of this statutory mechanism is central to deciding whether the present petition should be entertained.

Maintainability and entertainability

10.27. Maintainability and entertainability are distinct. The availability of an alternative remedy does not, by itself, exclude the jurisdiction of this Court under Article 226 of the Constitution. It is, however, a relevant consideration when deciding whether that jurisdiction should be exercised.

10.28. In **Jayamma,** (paragraph 27), the Co-ordinate Bench observed that *"though a writ petition would be maintainable, however, whether the same could be entertained is a matter of judicial discretion*" paragraph 29

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further states *"it is for the court to decide as to whether it needs to entertain the petition and intervene or allow the proceedings under the statutory scheme to progress to a logical conclusion."*

10.29. The same principle emerges from the decisions of the Hon'ble Supreme Court relied upon by the Respondent. In ***Punjab National Bank v. O.C. Krishnan*** [(2001) 6 SCC 569] (paragraph 6), the Hon'ble Supreme Court observed *"Even though a provision under an Act cannot expressly oust the jurisdiction of the court under Articles 226 and 227 of the Constitution, nevertheless, when there is an alternative remedy available, judicial prudence demands that the Court refrains from exercising its jurisdiction under the said constitutional provisions."*

10.30. In ***Bank of India v. Satyawati Tandon*** [(2010) 8 SCC 110] (paragraph 44), the Hon'ble Supreme Court recognised the wide scope of the High Court's jurisdiction while emphasizing *"we cannot be oblivious of the*

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rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution."

10.31. This Court therefore holds that the writ petition is maintainable. The question that remains is whether the circumstances justify entertaining it despite the remedies available under the PMLA.

The rule of restraint and the statutory remedy

10.32. In ***Satyawati Tandon*** (paragraph 43), the Hon'ble Supreme Court stated that *"the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person".*

10.33. In ***Assistant Collector of Central Excise v. Dunlop India Ltd.*** [(1985) 1 SCC 260] (paragraph 3), the Hon'ble Supreme Court cautioned that *"Article 226 is not meant to short-circuit or circumvent statutory procedures."*

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10.34. The decisions recognise that interference may nevertheless be warranted in exceptional circumstances, including where the vires of a statute is challenged or where the circumstances provide sufficient reason to bypass the statutory remedy.

10.35. Similarly, ***Titaghur Paper Mills Co. Ltd.*** (paragraph 6) emphasises the need to use an equally efficacious alternative remedy where the statute provides a chain of appeals. In ***Raj Kumar Shivhare*** (paragraph 31), the Hon'ble Supreme Court observed *"When a statutory forum is created by law for redressal of grievance and that too in a fiscal statute, a writ petition should not be entertained ignoring the statutory dispensation."*

10.36. These decisions arose in different statutory contexts, but the general principle applies here: where the legislature has provided an effective adjudicatory and appellate mechanism, that mechanism should ordinarily be followed unless the case falls within a recognised exception.

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10.37. The PMLA itself provides such a mechanism. As noted by the Co-ordinate Bench in ***Jayamma*** (paragraph 41), Sections 5, 8 and 26 form a self-contained statutory scheme. In ***Vijay Madanlal Choudhary***, paragraphs 174.16 to 174.18, the Hon'ble Supreme Court explained that the Adjudicating Authority is not the final authority on attachment; an order confirming provisional attachment may be appealed against before the Appellate Tribunal under Section 26(1), followed by a further appeal to the High Court under Section 42 on a question of law or fact. The safeguards under Section 8 and the appellate remedies are therefore integral to the statutory scheme.

The exceptions relied upon by the Petitioner

10.38. The Petitioner relies principally on three grounds to justify entertaining the writ petition despite the alternative remedy: (i) alleged non-compliance with the Second Proviso to Section 5(1), relying on ***Jayamma***; (ii) ex facie illegality, relying on ***Satish Motilal Bidri***; and (iii) an alleged

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absence of foundational jurisdiction because the properties are said not to fall within Section 2(1)(u) of the PMLA.

The Second Proviso to Section 5(1) and Jayamma

10.39. In **Jayamma**, the Co-ordinate Bench held that a challenge alleging non-compliance with the Second Proviso to Section 5(1) raises a jurisdictional issue (paragraph 30). It further reasoned that the proceedings under Section 8 do not provide a forum to examine that particular objection (paragraphs 38 to 41). Accordingly, the existence of an alternative remedy would not, by itself, prevent a writ petition raising such a jurisdictional challenge from being entertained, subject to the circumstances of the case (paragraph 42).

10.40. This Court accepts the principle that an alleged failure to satisfy a statutory precondition governing the power to attach property may warrant judicial review, even where an alternative remedy exists. Whether

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the exception applies, however, depends on the facts and the applicable statutory provisions.

10.41. In the present case, the Court's conclusion on the applicability of the Second Proviso is based on its consideration of the statutory requirements and the material discussed under Point No. (iii). For the reasons recorded there, the Court concludes that the First Proviso to Section 5(1) was satisfied and that invocation of the Second Proviso was not required in the circumstances of this case. The distinction from ***Jayamma*** is that, in that case, no final report had been forwarded to the Magistrate when the attachment was made, as noted in paragraph 48 of that decision.

10.42. On that basis, the exception founded on the alleged non-compliance with the Second Proviso does not arise for consideration in the manner urged by the Petitioner. The related submission that the Adjudicating Authority cannot examine that particular procedural objection does not, by itself,

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establish a ground for entertaining the present petition.

Ex facie illegality and Satish Motilal Bidri

10.43. In ***Satish Motilal Bidri*** (paragraph 18), the Hon'ble High Court of Kerala set aside the attachment of immovable property after holding that it was *"ex-facie, ultra vires the powers of the statute".* The Court observed that *"ex facie illegal acts can be interfered with under Article 226 of the Constitution of India, notwithstanding the existence of an alternative remedy".*

10.44. The decision therefore recognises that an alternative remedy does not prevent interference where the impugned action is demonstrably beyond the authority conferred by statute. Whether that principle applies here depends on the scope of Section 2(1)(u) and the legal basis on which the Respondent seeks to attach the properties.

10.45. It is not the Respondent's case that the two properties themselves were directly derived or obtained from the alleged criminal activity. Her case, as presented, rests on the value

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limb of the definition of "proceeds of crime". Whether the statutory requirements for such attachment are satisfied, including the availability of the original proceeds and the value that may lawfully be attached, requires consideration of the applicable law and the material relating to the flow of funds. In these circumstances, the attachment cannot, at this stage, be treated as ex facie beyond the statute merely because the properties were acquired before the alleged predicate transactions.

The alleged absence of foundational jurisdiction

10.46. The Petitioner contends that the dates of acquisition place the properties outside Section 2(1)(u) of the PMLA. The Respondent, however, relies on the value limb of that provision rather than asserting that the properties were themselves acquired directly from the alleged criminal activity.

10.47. The question is therefore not resolved solely by the dates of purchase. It also requires consideration of the statutory basis for

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equivalent-value attachment and the material relied upon by the Respondent. For the reasons discussed under Point No. (ii), this Court does not accept that acquisition of the properties before the alleged predicate offence, by itself, establishes that the Respondent lacked jurisdiction to attach them. The Petitioner has consequently not demonstrated, on this ground alone, a clear absence of jurisdiction warranting interference under Article 226 at this stage.

Disputed facts and the appropriate forum

10.48. The Petitioner's remaining objections concern the nature of the amounts received from M/s. Hanuman Minerals, his role as a stevedore, and whether the original proceeds of crime remain traceable or have been exhausted. The parties advance differing positions on these matters, which require examination of the relevant evidence.

10.49. Section 8(1) expressly provides for the person concerned to explain the sources from which the property was acquired and to

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produce supporting evidence. The Adjudicating Authority must consider that material in accordance with Section 8(2). An adverse order may then be challenged before the Appellate Tribunal under Section 26(1), which has the power under Section 26(4) to confirm, modify or set aside the order.

10.50. In these circumstances, the disputed factual questions are appropriately considered through the statutory process rather than determined in the present writ petition.

The other decisions relied upon by the Respondent

10.51. In ***Sri Krishna K.M.*** (paragraph 4), the Co-ordinate Bench observed *"The right to challenge the order of attachment would arise only after an order is passed under Section 8 of the PMLA. Therefore, this petition is too premature".*

10.52. The decision supports the principle that objections to attachment should ordinarily be pursued through the statutory process. The precise stage of the Section 8 proceedings in

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the present case must, however, be determined from the relevant record.

10.53. In ***P. Balamurugan*** (paragraphs 13 to 15), the Hon'ble High Court of Madras emphasised that the affected person *"has to participate in the enquiry once they receive notice and substantiate their plea that the property attached is not a proceeds of crime".* That decision reinforces the importance of placing the relevant evidence before the Adjudicating Authority.

10.54. In ***Gautam Khaitan*** (paragraphs 18, 19 and 22), the Hon'ble High Court of Delhi considered the material placed before it but declined to interfere in view of the alternative remedy. These decisions support the view that the statutory remedy should ordinarily be pursued where the objections require examination of the evidence.

Proceedings before the Special Court

10.55. Ms. Bordoloi submits that the Petitioner may also raise his objections in Special C.C. No.53/2025. Section 8(6) provides for

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release of the property in the circumstances specified therein, and ***Vijay Madanlal Choudhary*** (paragraph 174.13) recognises the role of the Special Court in determining whether the property is involved in money-laundering.

10.56. It is unnecessary in this Point to determine the precise extent to which the Special Court may reconsider an attachment already confirmed by the Adjudicating Authority. The statutory appeal against the Adjudicating Authority's order remains the principal remedy for challenging the confirmation of attachment.

Limitation and the appropriate appellate forum

10.57. Section 26(3) provides forty-five days from receipt of the Adjudicating Authority's order for filing an appeal and permits the Appellate Tribunal to condone delay where sufficient cause is shown. The Petitioner would, however, be entitled to the benefit of Section 14 of the Limitation Act.

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10.58. The submission of Ms. Bordoloi that entertaining the writ petition would derail the adjudication and investigation is not, by itself, a legal bar to the exercise of jurisdiction under Article 226. It is, however, a relevant consideration in deciding whether the Court should permit the statutory process to proceed.

10.59. For the reasons stated above, this Court answers Point No. (i) by holding that the writ petition is maintainable under Articles 226 and 227 of the Constitution of India, since the remedies under Sections 8, 26 and 42 of the PMLA do not oust the constitutional jurisdiction of this Court. However, the Petitioner has not established an exceptional circumstance warranting interference at this stage. The alleged failure to comply with the Second Proviso to Section 5(1) does not, for the reasons recorded under Point No. (iii), warrant intervention in the present case. Nor has the Petitioner established an ex facie want of jurisdiction. The remaining objections substantially concern disputed facts and the application of the PMLA to the properties,

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which should be pursued through the statutory process.

10.60. Accordingly, though the writ petition is maintainable it does not warrant entertainment at this stage, subject to the directions in the operative order.

11. <u>Answer to Point No (ii):</u> Whether the provisional attachment of the Petitioner's properties, acquired under registered sale deeds dated 15.12.2004 and 28.03.2008, is sustainable in law when the alleged scheduled offence and the transactions said to have generated the proceeds of crime relate to the period 2011–2012, and whether such properties can be attached as properties of equivalent value under Section 2(1)(u), read with Section 5 of the PMLA, 2002?

11.1. Sri D.R. Ravishankar, learned Senior Counsel for the Petitioner, submits that Apartment No. M401 was purchased under a registered sale deed dated 15.12.2004 (Document No. MGC-1-04805-2004-05, CD No. MGCD19, Sub-Registrar, Mangalore Town). The non-agricultural immovable property held on Warg Right in Survey No. 23-1A2 of Derebail Village, Mangalore, was purchased under a

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registered sale deed dated 28.03.2008 (Document No. MGC-1-05028-2008-09, CD No. MGCD88 dated 19.01.2009, Sub-Registrar, Mangalore City). The transactions involving M/s. Hanuman Minerals and M/s. Manipal Global took place in 2011–2012. He contends that property acquired before the alleged criminal activity cannot be treated as proceeds of crime arising from that activity.

11.2. Relying on Section 2(1)(u) of the PMLA learned Senior Counsel submits that *"proceeds of crime"* means property derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence, the value of such property, or, where such property is taken or held outside the country, property of equivalent value held within the country or abroad. According to him, neither property was derived or obtained from criminal activity. He further contends that the value limb cannot be invoked because the Petitioner holds no property outside India. The attachment is therefore contended to be without foundational jurisdiction.

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11.3. Learned Senior Counsel also submits that the Petitioner acted only as a stevedore and was a third party to the transactions between M/s. Hanuman Minerals and M/s. Manipal Global. He denies receiving proceeds of crime and maintains that the amounts received from M/s. Hanuman Minerals were part repayments of the sum of Rs.25,00,000 paid by him on 09.02.2011. He contends that the mere invocation of scheduled offences against him does not establish that his properties are liable to attachment under the PMLA. He further submits that the Respondent failed to consider the dates of acquisition and identify material linking the properties to the alleged proceeds of crime.

11.4. He relies on ***Pavana Dibbur v. Directorate of Enforcement,*** [(2023) 15 SCC 91], particularly paragraphs 12, 13, 15, 17, 18, 19, 27, 28, 29 and 31, and advances the following propositions:

11.4.1. The existence of proceeds of crime is a necessary condition for an offence

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under Section 3 of the PMLA (paragraphs 12 and 13).

11.4.2. If all accused in the scheduled offence are acquitted or discharged, or the proceedings concerning the scheduled offence are quashed in their entirety, the scheduled offence ceases to exist for the purposes as explained in paragraph 18. The decision also refers to paragraph 109 of ***Vijay Madanlal Choudhary v. Union of India*** [(2023) 12 SCC 1].

11.4.3. Property acquired before the acts constituting the scheduled offence cannot, merely by reason of its ownership, be treated as proceeds of crime without the necessary connection (paragraphs 19 and 31.3).

11.4.4. Penal statutes must be strictly construed. Where two reasonable interpretations are available, the interpretation avoiding penal consequences should ordinarily be preferred (paragraphs 27 and 28).

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11.4.5. An offence of criminal conspiracy under Section 120-B of the Indian Penal Code is a scheduled offence only where the conspiracy relates to the commission of an offence included in the Schedule (paragraphs 29 and 31.5).

11.4.6. Proceedings under the PMLA must rest on the existence of a scheduled offence and proceeds of crime connected with it; suspicion alone is insufficient.

11.5. Learned Senior Counsel also relies on ***Satish Motilal Bidri v. Union of India***, [2024 SCC OnLine Ker 3410], paragraphs 13 to 18. He submits that the Hon'ble High Court of Kerala held that property acquired before the scheduled offence could not be attached as property of equivalent value where the proceeds of crime had not been taken or held outside India. In paragraph 18, the Hon'ble High Court of Kerala set aside the attachment of immovable property purchased

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in 2004, long before the alleged predicate offence.

11.6. Applying that decision, he contends that the Petitioner's properties, purchased in 2004 and 2008, are not attachable. He further submits that the Respondent has neither identified proceeds of crime received by the Petitioner nor established a link between the properties and such proceeds. He maintains that the failure to consider these matters shows non-application of mind.

11.7. Ms. Anuparna Bordoloi, learned counsel for the Respondent, states that the Respondent does not allege that the properties purchased in 2004 and 2008 were themselves acquired from proceeds of crime. Her submission is that the original proceeds have been secreted or are no longer available and that the properties have therefore been provisionally attached as properties of equivalent value under Section 5 and, according to her, confirmed under Section 8.

11.8. Learned counsel submits that M/s. Hanuman Minerals received Rs.2,30,00,000 from M/s.

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Manipal Global. Of this amount, Rs.53,80,000 was withdrawn in cash and Rs.96,00,000 was transferred to M/s. Phoenix International, from whose accounts Rs.32,55,000 was withdrawn in cash. A further sum of Rs.17,00,000 was transferred to the Petitioner.

11.9. M/s. Hanuman Minerals, a proprietary concern of Girish Sangappa Jaggal, is defendant No.1 in the Section 8 proceedings. Sri Rohan Prakash Lotlikar, proprietor of M/s. Phoenix International, is defendant No.2, and the Petitioner is defendant No.3. Learned counsel submits that no substantial amount remains in the accounts of M/s. Hanuman Minerals or M/s. Phoenix International and that the original funds are no longer available in those accounts.

11.10. Ms. Bordoloi relies on ***Deputy Director, Directorate of Enforcement, Delhi v. Axis Bank and Others,***[2019:DHC:1887], paragraph 171. She submits that the PMLA permits attachment not only of property directly or indirectly derived from criminal

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activity relating to a scheduled offence, but also of other assets of equivalent value where the original proceeds cannot be traced, reached or are deficient. Such alternative property need not itself have been acquired from proceeds of crime. She further submits that the dates of acquisition do not, by themselves, determine whether property of equivalent value may be attached, and that the relevant factual objections should be examined by the Adjudicating Authority.

11.11. She also relies on ***Directorate of Enforcement v. Prakash Industries Ltd.,*** [2025 SCC OnLine Del 8243], paragraphs 34 to 40. She submits that the definition of *"proceeds of crime"* under Section 2(1)(u) is broad and covers property derived or obtained directly or indirectly, whether tangible or intangible. Money-laundering under Section 3 is a distinct and continuing offence that extends to processes or activities connected with the concealment, possession, acquisition or use of proceeds of crime, including their projection as untainted

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property. According to her, the transformation or routing of tainted funds through other transactions does not necessarily remove their tainted character. The date on which the attached property was acquired is therefore not, by itself, decisive.

11.12. Relying on ***Pavana Dibbur*** (paragraph 18), learned counsel submits that a person prosecuted under the PMLA need not also be an accused in the scheduled offence, provided the scheduled offence exists. She further points out that the Petitioner is named as accused No.3 in the charge sheet in Crime No.90/2017. She contends that the Petitioner's claim that he acted only as a stevedore does not, by itself, exclude the applicability of the PMLA.

11.13. She also refers to ***Vijay Madanlal Choudhary*** (paragraphs 172 and 173), which recognises that the definition of *"proceeds of crime"* includes the value of property derived from a scheduled offence and that the statutory scheme seeks to reach

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such proceeds irrespective of the person in whose name they are held.

11.14. Ms. Bordoloi refers to ***Satish Motilal Bidri*** (paragraphs 13 to 18), including its discussion of ***Seema Garg, Satyam Computer Services Limited*** and ***Axis Bank,*** as well as ***Vijay Madanlal Choudhary*** and ***Pavana Dibbur***. She submits that the question of attachment must be decided in accordance with the statutory provisions and the material available in the proceedings.

11.15. Learned counsel also relies on ***Vijayraj Surana v. Assistant Director, Enforcement Directorate,*** [2024 SCC OnLine Mad 8404], paragraphs 27, 28, 29, 31, 36, 37, 39, 40, 41 and 44; ***Dr. Manik Bhattacharya v. Ramesh Malik and Others,*** [2022 SCC OnLine SC 1465], paragraph 7; and ***Surjeet Kumar Bansal v. Central Bureau of Investigation and Another,*** [2024:PHHC:045226], decided on 04.04.2024, paragraphs 15, 16 and 18.

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11.16. Relying on these decisions, she submits that proceedings under the PMLA are independent of proceedings relating to the scheduled offence. In particular, ***Vijayraj Surana*** holds that quashing an FIR on a technical ground does not automatically result in quashing the ECIR. The challenge to that decision before the Hon'ble Supreme Court was dismissed as withdrawn on 18.12.2024. Learned counsel submits that the PMLA proceedings must therefore be considered independently on their own material.

11.17. The issue has two aspects: whether properties acquired in 2004 and 2008 can be attached when the alleged scheduled offence and the transactions said to have generated the proceeds of crime relate to 2011–2012; and whether those properties may be attached as properties of equivalent value under Section 2(1)(u), read with Section 5 of the PMLA.

11.18. The Court must determine the scope of the statutory power. It is not required in this Point to decide disputed questions of fact

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that fall for consideration before the statutory authorities.

The Respondent's case and the statutory provisions

11.19. The Respondent's case, as presented by Ms. Bordoloi, is that the properties were not acquired from proceeds of crime but were attached as properties of equivalent value because the original proceeds are no longer available. The dates of purchase support the distinction between the properties themselves, and the alleged proceeds generated in 2011–2012. The question is whether the PMLA permits attachment of the properties on the alternative basis as advanced by the Respondent.

11.20. Section 2(1)(u) of the PMLA defines "proceeds of crime" as follows:

> *"'**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;"*

11.21. The Explanation to Section 2(1)(u) provides:

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> *"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;"*

11.22. The definition thus addresses property derived or obtained from criminal activity, the value of such property, and property of equivalent value in the circumstances specified in the provision. The Explanation clarifies that the definition also covers property derived or obtained indirectly from criminal activity relating to a scheduled offence.

11.23. Section 2(1)(v) defines "property" broadly as:

> *"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".*

11.24. The two immovable properties in question fall within the general meaning of "property". Whether they are attachable depends on the applicable limb of Section 2(1)(u) and the

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conditions governing attachment under Section 5.

11.25. Section 3 defines the offence of money-laundering as follows:

> *"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."*

11.26. Explanation (ii) to Section 3 states 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."*

11.27. These provisions distinguish the criminal activity that generates proceeds of crime from the subsequent processes or activities connected with those proceeds.

Existence of a scheduled offence

11.28. The Petitioner submits that there is no basis for invoking the PMLA against him. The

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record, however, shows that Crime No.90/2017 was registered on 02.06.2017 and that a charge sheet was filed in which the Petitioner is arrayed as accused No.3. Paragraph 2.2 of the attachment order refers to charge sheet No.08/2021 dated 30.12.2021, filed by the Deputy Superintendent of Police, FIU, CID, Bengaluru, before the Hon'ble Additional Civil Judge and ACJM Court, Udupi, against Sri Girish Jaggal, Sri Rohan Prakash Lotlikar and Sri S. Mahadevan. The order records that the offences fall within paragraph 1 of Part A of the Schedule. Learned Senior Counsel for the Petitioner also accepts that certain scheduled offences have been invoked.

11.29. In ***Pavana Dibbur*** (paragraph 18), the Hon'ble Supreme Court held:

> *"if the prosecution for the scheduled offence ends in the acquittal of all the accused or discharge of all the accused or the proceedings of the scheduled offence are quashed in its entirety, the scheduled offence will not exist"*

11.30. The same paragraph further states:

> *"Such an accused can still be prosecuted under PMLA so long as the scheduled offence exists."*

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11.31. Paragraph 15 of ***Pavana Dibbur***, referring to paragraph 109 of ***Vijay Madanlal Choudhary***, also addresses the requirement that the scheduled offence be registered with the jurisdictional police or be pending inquiry by way of a complaint before the competent forum. Paragraph 382.8 of ***Vijay Madanlal Choudhary***, as reproduced in paragraph 34 of ***Prakash Industries***, states that the authorities cannot proceed:

> *"on notional basis or on the assumption that a scheduled offence has been committed, unless it is so registered with the jurisdictional police and/or pending enquiry/trial".*

11.32. In the present case, the registration of the crime and filing of the charge sheet satisfy that threshold. If the scheduled offence later ends in one of the ways described in ***Pavana Dibbur***, the legal consequences identified in that decision will follow. Nothing in this finding prejudges the outcome of the criminal proceedings.

Independence of proceedings under the PMLA

11.33. The Respondent relies on ***Vijayraj Surana, Dr. Manik Bhattacharya*** and ***Surjeet***

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Kumar Bansal to submit that proceedings under the PMLA are distinct from those concerning the scheduled offence.

11.34. In ***Vijayraj Surana*** (paragraph 27), the Hon'ble High Court of Madras observed:

> *"ECIR is born from FIR, but once the ECIR is born, the umbilical cord that connects the ECIR with FIR losses its relevance and the ECIR becomes an independent document in itself"*

11.35. Paragraph 40 further states:

> *"all cases where FIR is quashed shall not automatically become a ground for quashing an ECIR."*

11.36. Paragraph 29 refers to paragraph 457 of ***Vijay Madanlal Choudhary***, which describes the ECIR as an internal document of the Enforcement Directorate. Paragraph 28 of ***Vijayraj Surana*** also refers to ***Rajinder Singh Chada v. Union of India*** [W.P. (CRL) 562/2023 & CRL.M.A. 5126/2023].

11.37. In ***Dr. Manik Bhattacharya*** (paragraph 7), the Hon'ble Supreme Court stated that:

> *"money-laundering is an independent offence".*

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11.38. In ***Surjeet Kumar Bansal*** (paragraphs 15 and 16), the Hon'ble High Court of Punjab and Haryana held that proceedings under the PMLA are distinct and independent and that the Enforcement Directorate is not bound merely by protective orders passed in proceedings concerning the scheduled offence. Paragraph 18 discusses the seriousness of PMLA offences and Section 45, which is not directly in issue here.

11.39. The challenge to ***Vijayraj Surana*** was dismissed as withdrawn by the Hon'ble Supreme Court. That order does not amount to an affirmation of the reasoning on merits. The decision is considered here for its persuasive value.

11.40. These authorities support the proposition that proceedings under the PMLA must be examined independently on the material relevant to that Act. They do not, by themselves, establish that the Petitioner committed money-laundering or that the properties are liable to attachment. Those

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questions must be determined under the PMLA and on the relevant evidence.

The Petitioner's role and the scheduled offence of conspiracy

11.41. In ***Pavana Dibbur*** (paragraph 17), the Hon'ble Supreme Court held that:

> *"it is not necessary that a person against whom the offence under Section 3 PMLA is alleged must have been shown as the accused in the scheduled offence"*

11.42. Paragraph 18 reiterates the principle that a person need not be an accused in the scheduled offence for proceedings under the PMLA to be maintained, provided the scheduled offence exists.

11.43. The Petitioner is, in any event, arrayed as accused No.3 in the charge sheet. His contention that he acted only as a stevedore and was a stranger to the underlying transactions involves factual questions that cannot be resolved merely on the competing submissions in this writ petition. Whether the material establishes the requisite connection

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with proceeds of crime remains to be considered in the statutory proceedings.

11.44. The Petitioner also relies on ***Pavana Dibbur*** (paragraphs 29 and 31.5) concerning Section 120-B of the Indian Penal Code. The Hon'ble Supreme Court held that:

> *"the offence under Section 120-B IPC included in Part A of the Schedule will become a scheduled offence only if the criminal conspiracy is to commit any offence already included in Parts A, B or C of the Schedule."*

11.45. This proposition is accepted. Paragraph 2.1 of the attachment order records that Crime No.90/2017 was registered under Sections 120-B, 406, 417, 420, 465, 466, 467, 468, 471, 474 and 34 of the Indian Penal Code. Paragraph 2.2 records that the charge sheet invokes Sections 406, 417, 420, 465, 468 and 120-B read with Section 37, as stated in the order. The order identifies Sections 417, 420, 467, 471 and 120-B as scheduled offences under paragraph 1 of Part A of the Schedule.

11.46. Sections 417 and 420, relating to cheating, are included in paragraph 1 of Part A of the

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Schedule. The allegations recorded in the attachment order concern a conspiracy to cheat M/s. Manipal Global. On the face of the order, therefore, the requirement identified in ***Pavana Dibbur*** is met. This finding concerns only the existence of the scheduled offence for the present purpose; it does not determine whether the charge sheet will succeed.

Properties acquired before the alleged criminal activity

11.47. The Petitioner is correct to the extent that property purchased in 2004 or 2008 cannot itself have been derived or obtained from criminal activity alleged to have occurred in 2011–2012.

11.48. In ***Pavana Dibbur*** (paragraph 19), the Hon'ble Supreme Court observed:

> *"The first property, ex facie, cannot be said to have any connection with the proceeds of crime as the acts constituting the scheduled offence took place after its acquisition."*

11.49. Paragraph 31.3 reiterates that conclusion. This Court accepts that principle in relation to

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the first limb of Section 2(1)(u). On the Respondent's own case, the two properties were not acquired from the alleged proceeds generated in 2011–2012.

11.50. That, however, does not conclude the present issue. The Respondent relies on the value limb of the definition and does not claim that the properties themselves were purchased with tainted funds. The question is whether the PMLA permits other property to be attached as property of equivalent value.

11.51. The context of ***Pavana Dibbur*** must also be noted. The Hon'ble Supreme Court considered whether the properties in that case were proceeds of crime and stated in paragraph 19 that it had considered the issue "only in the context of the applicability PMLA". It also held, in relation to the second property, that whether tainted money had been used could be decided only after evidence was adduced (paragraph 19 and paragraph 31.4). Those observations support the distinction between a property's direct derivation from criminal activity and factual

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questions requiring evidence. They do not, by themselves, resolve the separate question of equivalent-value attachment addressed *in* ***Vijay Madanlal Choudhary***.

11.52. The propositions in ***Pavana Dibbur*** (paragraphs 12 and 13) that proceeds of crime are essential to the operation of Section 3 are accepted. The existence and amount of the alleged proceeds, and their connection with the persons concerned, remain matters to be established on the evidence.

The value limb of Section 2(1)(u)

11.53. Sri Ravishankar, learned Senior Counsel, submits that property of equivalent value may be attached only where the proceeds of crime have been taken or held outside India. The Hon'ble Supreme Court considered this argument in ***Vijay Madanlal Choudhary*** (paragraph 172), observing:

> *"It was also urged before us that the attachment of property must be equivalent in value of the proceeds of crime only if the proceeds of crime are situated outside India"*

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11.54. The Hon'ble Supreme Court rejected that submission, holding:

> *"This argument, in our opinion, is tenuous. For, the definition of 'proceeds of crime' is wide enough to not only refer to the property derived or obtained as a result of criminal activity relating to a scheduled offence, but also of the value of any such property."*

11.55. The same paragraph states:

> *"The definition of 'property' as in Section 2(1)(v) is equally wide enough to encompass the value of the property of proceeds of crime."*

11.56. Paragraph 173 further explains that the statutory scheme:

> *"addresses the broad objectives of the 2002 Act to reach the proceeds of crime in whosoever's name they are kept or by whosoever they are held."*

11.57. These observations answer the Petitioner's argument that the value limb can operate only where the original proceeds are held outside India. This Court is bound by the interpretation adopted by the Hon'ble Supreme Court. Accordingly, the absence of property held abroad does not, by itself, exclude attachment of other property of equivalent value under the PMLA.

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11.58. This conclusion does not mean that any property belonging to an accused may be attached without satisfying the statutory requirements. The legal basis for equivalent-value attachment and the conditions governing its exercise must still be established.

Satish Motilal Bidri and Axis Bank

11.59. The Petitioner relies strongly on ***Satish Motilal Bidri*** (paragraphs 13 to 18). In paragraph 13, the Hon'ble High Court of Kerala held that:

> *"the only power to proceed against a property of equivalent value, which has no link with the predicate offence is, when the property was taken out or held out of India".*

11.60. In paragraph 18, it held that the attachment of immovable property purchased in 2004, long before the alleged predicate offence, was:

> *"ex-facie, ultra vires the powers of the statute".*

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11.61. The judgment records that the Hon'ble High Court of Kerala was unable to agree with the view taken by the Hon'ble High Court of Delhi in ***Axis Bank***. The two decisions therefore differ on whether property unconnected with the predicate offence may be attached as property of equivalent value where the proceeds are not held outside India.

11.62. This Court resolves that conflict by applying the interpretation in ***Vijay Madanlal Choudhary*** (paragraph 172). ***Satish Motilal Bidri*** and ***Axis Bank*** are decisions of Hon'ble High Courts and are persuasive. The interpretation of Section 2(1)(u) in paragraph 172 of ***Vijay Madanlal Choudhary***, however, is binding on this Court and directly addresses the argument that equivalent-value attachment is permissible only when the proceeds are outside India. The Hon'ble Supreme Court expressly rejected that restriction.

11.63. Accordingly, this Court does not follow ***Satish Motilal Bidri*** to the extent that it restricts equivalent-value attachment to

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cases where the original proceeds are taken or held outside India. The principle in that decision that the PMLA cannot be used to attach properties unconnected with criminal activity without satisfying the statutory requirements remains relevant. The attachment must still have a lawful basis under the Act and cannot extend indiscriminately to all properties of an accused.

11.64. Paragraphs 295 and 296 of ***Vijay Madanlal Choudhary***, on which ***Satish Motilal Bidri*** also relies, emphasise that:

> *"the attachment must be only in respect of property which appears to be proceeds of crime and not all the properties belonging to the concerned person who would eventually face the action of confiscation of proceeds of crime".*

11.65. That principle is not inconsistent with paragraph 172 of ***Vijay Madanlal Choudhary***. Read together, the provisions do not permit the indiscriminate attachment of all property belonging to an accused. They permit attachment of property falling within the statutory definition, which includes the

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value of proceeds of crime, subject to the applicable requirements.

11.66. The extract from ***Vijay Madanlal Choudhary*** also states:

> *"The pivot moves around the date of carrying on the process and activity connected with the proceeds of crime; and not the date on which the property has been derived or obtained by the person concerned".*

11.67. Similarly, ***Prakash Industries*** (paragraph 34), reproducing the discussion in ***Vijay Madanlal Choudhary*** and ***Union of India through the Assistant Director v. Kanhaiya Prasad***, refers to the relevant date as:

> "The relevant date is the date on which the person indulges in the process or activity connected with such proceeds of crime."

11.68. These observations do not make the date of acquisition irrelevant in every case. They show that the date of purchase alone does not determine whether property may be attached under the value limb of Section 2(1)(u).

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11.69. The discussion of ***Seema Garg*** and ***Satyam Computer Services Limited*** in paragraph 14 of ***Satish Motilal Bidri*** does not require a different conclusion. As described in ***Satish Motilal Bidri***, ***Seema Garg*** held that property acquired before the scheduled offence falls outside the first limb of the definition, while recognising that it may fall within the value limb. That distinction is consistent with the conclusion reached above.

11.70. ***Satyam Computer Services Limited*** holds that the PMLA, being a statute dealing with substantive rights, has no retrospective effect. Retrospective application has not been advanced as a separate ground of challenge in the present case. The attachment was made in 2024, in proceedings arising from an alleged scheduled offence of 2011–2012 and an ECIR of 2022. The issue before this Court is whether the properties may be attached under the statutory provisions applicable to the attachment, not whether a provision has been retrospectively applied. Paragraph 16 of ***Satish Motilal Bidri*** quotes ***Pavana Dibbur***

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(paragraph 19), which has been considered above.

Axis Bank and the limits of equivalent-value attachment

11.71. In ***Axis Bank*** (paragraph 171), the Hon'ble High Court of Delhi described attachment under the PMLA as follows:

> *"The process of attachment (leading to confiscation) of proceeds of crime under the PMLA is in the nature of civil sanction which runs parallel to investigation and criminal action vis-a-vis the offence of money-laundering."*

11.72. Paragraph 171(iii) states that the enforcement officer may attach:

> *"any other asset or property of equivalent value of the offender of money-laundering, the latter not bearing any taint but being alternative attachable property (or deemed tainted property) on account of its link or nexus with the offence (or offender) of money-laundering."*

11.73. Paragraph 171(iv) further provides that where the tainted property:

> *"is not traceable, or the same for some reason cannot be reached, or to the extent found is deficient, the empowered enforcement officer may attach any other asset…of the person accused of offence of money-laundering, provided it is near or equivalent in value to the former".*

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11.74. Paragraph 171(ii) requires the officer:

> *"to assess, even if tentatively, the value of proceeds of crime"*

11.75. Paragraph 171(v) states that:

> *"the burden of proving facts in support of such claim is to be discharged by him."*

11.76. These principles are consistent with the interpretation of Section 2(1)(u) in paragraph 172 of ***Vijay Madanlal Choudhary***. Equivalent-value attachment is permissible where the statutory conditions are met, but it is not an unrestricted power to attach any asset belonging to an accused.

11.77. The Petitioner also relies on the principle of strict construction of penal statutes. In ***Pavana Dibbur*** (paragraph 28), the Hon'ble Supreme Court observed:

> *"if two reasonable interpretations can be given to a particular provision of a penal statute, the Court should generally adopt the interpretation that avoids the imposition of penal consequences."*

11.78. The principle of strict construction stated in paragraph 27 of ***Pavana Dibbur*** is accepted. However, the interpretation advanced by the

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Petitioner, that equivalent-value attachment is available only when the original proceeds are held outside India, cannot be accepted in view of paragraph 172 of ***Vijay Madanlal Choudhary***.

11.79. The remaining clauses of paragraph 171 of ***Axis Bank***, concerning the RDBA, the SARFAESI Act, the Insolvency Code, secured creditors and bona fide third-party claimants, do not arise for decision here. The Petitioner is not claiming as a creditor or as a bona fide purchaser from the accused. He is arrayed as accused No.3 in the scheduled offence and defendant No.3 in the Section 8 proceedings. In any event, the statutory basis and conditions for attachment must be established by the Respondent; the Petitioner's objections must be assessed in accordance with the applicable provisions and the evidence.

Prakash Industries

11.80. The Respondent relies on ***Prakash Industries*** (paragraphs 34 to 40). Paragraph 38 states that the words "directly

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or indirectly" are important because the definition under Section 2(1)(u) extends beyond the immediate consequence of the crime to the subsequent transformation, layering and manifestation of illicit financial gain. Paragraph 40 states that:

> *"the offence of money laundering being continuing in nature is not confined only to the initial act of criminal acquisition but also extends to every process or activity connected with the proceeds".*

11.81. These observations support the broad meaning of property and the continuing nature of processes or activities connected with proceeds of crime. They do not establish that the Petitioner's properties, acquired in 2004 and 2008, are themselves tainted property. The Respondent does not advance that case. The decision is relevant only to the extent that it explains the breadth of the statutory definition and the continuing nature of the processes connected with proceeds of crime.

11.82. Whether the conditions for equivalent-value attachment are satisfied in the present case depends on the material relating to the

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alleged flow of funds and the availability of the original proceeds. Under ***Axis Bank*** (paragraph 171(ii) to (v)), the authorised officer must have a basis to conclude that the tainted property is untraceable, cannot be reached or is deficient, and must make a tentative assessment of its value.

11.83. The Respondent relies on the alleged movement of funds from M/s. Manipal Global to M/s. Hanuman Minerals, M/s. Phoenix International and the Petitioner. The Petitioner, on the other hand, contends that the Rs.17,00,000 received by him represented part repayment of his advance. Whether that amount constitutes proceeds of crime, whether the original proceeds are unavailable, and whether the value of the attached properties is within the value of the alleged proceeds are factual matters to be examined by the Adjudicating Authority and, where appropriate, the Appellate Tribunal.

11.84. Paragraph 3.6 of the attachment order records the Respondent's calculation of the alleged proceeds of crime as Rs.2,20,00,000,

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being an advance of Rs.2,30,00,112 less Rs.10,00,000 repaid. It records that the money was withdrawn in cash or transferred to others and that, as on 28.10.2024, the balances in the accounts of M/s. Hanuman Minerals and M/s. Phoenix International were Rs.70,608.37 and Re.1, respectively. The order records that assets valued at Rs.1,02,02,223 were attached "in lieu of" the alleged proceeds of crime.

11.85. The Petitioner's two properties are valued in the order, at cost price, at Rs.6,97,000 and Rs.10,00,000, respectively, aggregating Rs.16,97,000. The Petitioner has not contended that the value of these properties exceeds the alleged proceeds of crime. The figures recorded in the order show the basis on which the Respondent claims to have invoked the value limb of Section 2(1)(u).

11.86. These figures are recorded as the Respondent's case; this Court does not make a final finding that the amounts, account balances or valuations are correct. Their evidentiary basis and the satisfaction of the

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statutory conditions remain matters for the statutory authorities. The limited conclusion here is that the properties' dates of acquisition and the absence of property held abroad do not, by themselves, place the attachment outside the scope of Sections 2(1)(u) and 5 of the PMLA.

11.87. The provisional attachment of the Petitioner's properties is not unsustainable in law merely because they were purchased under registered sale deeds dated 15.12.2004 and 28.03.2008, before the alleged scheduled offence and the transactions of 2011–2012. The properties cannot themselves be treated as having been derived or obtained from criminal activity that occurred later, and the Respondent does not claim that they were directly acquired from the alleged proceeds of crime.

11.88. However, Section 2(1)(u), read with Section 5 of the PMLA, permits attachment of property of equivalent value where the statutory requirements are satisfied. That interpretation follows from ***Vijay Madanlal***

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Choudhary (paragraphs 172 and 173) and ***Axis Bank*** (paragraph 171). This Court does not follow ***Satish Motilal Bidri*** to the extent that it restricts equivalent-value attachment to cases where the original proceeds of crime are taken or held outside India.

11.89. Whether the original proceeds are unavailable, whether the amounts received by the Petitioner constitute proceeds of crime, and whether the statutory conditions for attachment are otherwise satisfied must be determined on the evidence by the Adjudicating Authority and, subject to the statutory remedies, the Appellate Tribunal.

11.90. Accordingly, this Court answers Point No. (ii) by holding that the dates of acquisition do not, by themselves, invalidate the attachment as one of equivalent value; the factual and statutory conditions for such attachment remain subject to adjudication under the PMLA.

12. <u>Answer to Point No (iii):</u> Whether the Respondent has complied with the statutory conditions governing provisional attachment under Section 5(1) of the PMLA, 2002,

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including the requirement of recording reasons to believe on the basis of material in its possession and, where the Second Proviso is invoked, the requirement that non-attachment of the property immediately is likely to frustrate proceedings under the Act?

12.1. Sri D.R. Ravishankar, learned Senior Counsel for the Petitioner, submits that the Respondent attached the properties mechanically and without sufficient basis. According to him, the Respondent was required to identify the proceeds of crime before attaching any property. Failure to do so, he contends, demonstrates non-application of mind.

12.2. In brief, the learned Senior Counsel submits that the officer must record in writing, on the basis of material in his possession, reasons to believe that failure to attach the property immediately is likely to frustrate proceedings under the Act. These are mandatory conditions and not mere formalities. The registration of Crime No.90/2017, the commencement of proceedings under the PMLA, or the Petitioner's inclusion as an

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accused cannot, by themselves, dispense with these requirements.

12.3. Ms. Anuparna Bordoloi, learned counsel for the Respondent, submits that the CID filed a charge sheet after investigation, arraigning the Petitioner as an accused in respect of scheduled offences. The Respondent was, therefore, entitled to exercise its powers under Section 5 of the PMLA. She relies on Section 5 in support of the attachment.

12.4. Learned counsel submits that an authorised officer may provisionally attach property where, on the basis of material in his possession and for reasons recorded in writing, he has reason to believe that a person possesses proceeds of crime and that those proceeds are likely to be concealed, transferred or otherwise dealt with in a manner that may frustrate confiscation proceedings. The Second Proviso permits immediate attachment where non-attachment is likely to frustrate proceedings under the Act.

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12.5. The purpose of provisional attachment, she submits, is to preserve the property and prevent its transfer or disposal while the proceedings are pending. Otherwise, third parties may acquire interests in the property, complicating subsequent recovery. She further submits that the complaint was filed before the Adjudicating Authority within the period of 30 days prescribed by Section 5(5).

12.6. Learned counsel relies on ***Gautam Khaitan and Another v. Union of India and Another***, [2025 SCC OnLine Del 8434] (paragraphs 18, 19 and 22), which reproduces paragraphs 58 and 59 of ***Directorate of Enforcement v. Hi-Tech Mercantile India Pvt. Ltd.***, [LPA No.588/2022], decided on 17.10.2025. She submits that the First Proviso is a statutory precondition where that proviso applies, but it does not confine the Respondent's inquiry to the period or transactions covered by the report or complaint. The First and Second Provisos operate independently. Accordingly, the dates on which the Petitioner acquired the properties, or the period covered by the

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investigation into the scheduled offence, do not by themselves invalidate the attachment. Its legality must be examined with reference to Section 5(1), the material available to the officer and the grounds raised by the Petitioner.

12.7. Learned counsel also relies on ***P. Balamurugan and Another v. Directorate of Enforcement, represented by Chennai Zonal Office-II and Another***, [2025 SCC OnLine Mad 15158] (paragraphs 13 to 15). She submits that provisional attachment is a preventive measure intended to prevent the concealment, transfer or disposal of property. Where the authorised officer has recorded the requisite reasons to believe and the statutory conditions are satisfied, attachment may be ordered without prior notice. The affected person is afforded an opportunity to respond at the stage of proceedings under Section 8.

12.8. Relying on ***Vijay Madanlal Choudhary v. Union of India,*** [(2023) 12 SCC 1] (paragraphs 162, 163 and 174), learned

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counsel submits that provisional attachment under Section 5 need not invariably await prior registration of a criminal case concerning the scheduled offence. The authorised officer may act to preserve the proceeds of crime and prevent the proceedings from being frustrated. The expression "proceeds of crime" includes the value of property derived from the scheduled offence, and the statutory scheme applies irrespective of the person in whose name such proceeds are held.

12.9. She further submits that provisional attachment is subject to the safeguards under the Act. The Adjudicating Authority considers the objections under Section 8, and an order confirming attachment may be challenged before the Appellate Tribunal under Section 26 and thereafter before this Court under Section 42. The Petitioner can raise his objections concerning the source and date of acquisition of the properties before the Adjudicating Authority.

Scope of this Point

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12.10. Point No. (ii) concerns the nature of property that may be attached. The present Point concerns compliance with the statutory requirements governing the exercise of the power of provisional attachment under Section 5(1).

12.11. The provisional attachment order dated 29.10.2024 (Annexure-A) is on record and has been examined. This Point is decided with reference to that order, the statutory provisions and the submissions of learned counsel.

Statutory requirements

12.12. Section 5(1) of the PMLA reads:

> *"Where the Director or any other officer not below the rank of Deputy Director authorised by the Director for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that— (a) any person is in possession of any proceeds of crime; and (b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter, he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed:"*

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12.13. The First Proviso states:

> *"Provided that no such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974), or a complaint has been filed by a person authorised to investigate the offence mentioned in that Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or a similar report or complaint has been made or filed under the corresponding law of any other country:"*

12.14. The Second Proviso states:

> *"Provided further that, notwithstanding anything contained in first proviso, any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act."*

12.15. These provisions require the authorised officer to act on material in his possession and record in writing reasons to believe that a person is in possession of proceeds of crime and that the statutory conditions for attachment are satisfied. The First Proviso ordinarily requires a report or complaint

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concerning the scheduled offence to have been filed before attachment. The Second Proviso permits attachment notwithstanding that requirement, but only where the officer records the prescribed reasons for believing that non-attachment immediately is likely to frustrate proceedings under the Act.

12.16. Section 5(2) requires the officer, *"immediately after attachment under sub-section (1)"*, to *"forward a copy of the order, along with the material in his possession"* to the Adjudicating Authority in a sealed envelope. Section 5(4) provides that *"Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment."* Section 5(5), considered under Point No. (i), requires the complaint to be filed before the Adjudicating Authority within 30 days.

12.17. The relevant questions are, therefore, whether the order was made by an authorised officer; whether reasons to believe were recorded in writing on the basis

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of material in his possession; whether the statutory conditions under the applicable proviso were met; and whether the procedural requirements were complied with.

The attachment order and the material considered

12.18. The Provisional Attachment Order No.01/2024 is signed by Sri J. Sarveshwaran, Deputy Director, Mangaluru Sub-Zonal Office. It states that the order was made under Section 5(1), pursuant to Notification No. GSR 441(E) dated 01.07.2005 and an authorisation dated 07.02.2007. On its face, therefore, the order identifies the officer and the authority under which he acted.

12.19. The order refers to the FIR, the charge sheet, the ECIR recorded on 28.03.2022, statements recorded under Section 50 of the PMLA, including the Petitioner's statement dated 28.03.2024, the relevant bank accounts and the movement of funds.

12.20. At paragraph 5.1, the officer records that he considered the facts and material placed

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before him by the Investigating Officer and identifies 36 documents. These include the FIR, the charge sheet, stock certificates dated 23.01.2012, statements recorded under Section 50, bank statements, registered documents and encumbrance certificates relating to the Petitioner's properties, and a debtor-based search report dated 26.10.2024.

12.21. The officer records his "reasons to believe" that the accused, including the Petitioner, possess the "value of any such property" in lieu of proceeds of crime. He further records that failure to attach the properties immediately may frustrate confiscation proceedings under Chapter III. The reasons given include the possibility of funds in bank accounts being diverted or withdrawn, the likely duration of the trial and the risk that transfers of properties to third parties could make recovery difficult. The order directs attachment for 180 days and states that it may cease to have effect after that period or upon an order under Section 8(3), whichever is earlier.

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Compliance with the First Proviso

12.22. The record establishes that Crime No.90/2017 was registered on 02.06.2017 and that a charge sheet was subsequently filed, naming the Petitioner as accused No.3.

12.23. Paragraph 2.2 of the attachment order, as well as document No.3 in its list of documents, records that the Deputy Superintendent of Police, FIU, CID, Bengaluru, filed charge sheet No.08/2021 dated 30.12.2021 before the Hon'ble Additional Civil Judge and ACJM Court, Udupi.

12.24. On the material available, the statutory precondition under the First Proviso was satisfied before the attachment order was made.

Applicability of Jayamma and the Second Proviso

12.25. In ***Jayamma v. Directorate of Enforcement*** [W.P. No.28108/2025, decided on 02.06.2026], the Co-ordinate Bench considered the requirements of the Second Proviso in circumstances where "no Final

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Report has been forwarded to the Magistrate" (paragraph 48). It identified the requirements that the officer *"Has reason to believe which is recorded in writing and on the basis of material in his possession"* and that *"if such property involved in money laundering is not attached immediately, the non-attachment of property is likely to frustrate any proceedings under the Act."*

12.26. Paragraph 49 of ***Jayamma*** confirms that the challenge in that case concerned the exercise of power under the Second Proviso. This Court accepts the stated requirements. However, the material circumstance here is different: the charge sheet in the scheduled offence had already been filed before the attachment order was made. The First Proviso was, therefore, satisfied, and the Respondent did not need to rely on the Second Proviso to overcome the absence of a report or complaint.

12.27. The Petitioner's contention that the Respondent invoked the Second Proviso is not borne out by an express reference to that proviso in the attachment order. The order

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refers to Section 5(1), records the filing of the charge sheet and sets out reasons concerning the risk of frustration of confiscation proceedings. The Respondent's case is that the attachment was made after the charge sheet had been filed.

12.28. Even if the order's reference to the need for immediate attachment is treated as an additional reliance on the Second Proviso, it records the relevant belief in writing and identifies the material considered at paragraph 5.1. The order also states why the officer considered attachment necessary to prevent transfers that could impede recovery. On the face of the order, therefore, the requirements identified in ***Jayamma*** have been addressed.

12.29. Paragraph 50 of ***Jayamma***, concerning the investigation by the Lokayukta Police and the 'B' report in respect of certain accused, relates to the facts of that case and does not affect the present analysis. The other paragraphs relied upon by the Petitioner, concerning alternative remedy and the

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scheme of Sections 5 and 8, have been considered under Point No. (i).

Relationship between the two provisos

12.30. The Respondent relies on ***Gautam Khaitan*** (paragraph 19), which reproduces paragraphs 58 and 59 of ***Hi-Tech Mercantile***. The relevant extract states:

> *"These provisos form a jurisdictional precondition for issuance of the PAO; however, it does not restrict the scope of the Directorate's attachment to the time period covered in the said report or complaint."*

12.31. It further states that the report under Section 173 *"acts as a gateway triggering the requirement to initiate action under the proviso to Section 5(1) of the PMLA; but does not confine the extent of the inquiry of the Directorate and/or the duration of the proceeds of crime sought to be attached"* and that *"there are two provisos attached to section 5(1) of the PMLA, each operating within its own independent domain."*

12.32. This Court accepts that the two provisos operate within their respective fields. The First Proviso is satisfied in the present case because the charge sheet had been filed before attachment. Further, neither the date

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on which a property was acquired nor the period covered by the investigation into the scheduled offence, by itself, restricts the Respondent's inquiry or determines the validity of an attachment. As observed in ***Hi-Tech Mercantile***, the Enforcement Directorate may proceed against properties of equivalent value, subject to the statutory requirements discussed under Point No. (ii).

Reasons to believe and material in the officer's possession

12.33. The Petitioner contends that the attachment was mechanical and that the Respondent was required to identify the proceeds of crime before attaching the properties. The question at this stage is whether the officer considered material in his possession and recorded the reasons required by Section 5(1). It is not whether this Court would independently have formed the same belief on that material.

12.34. In ***Vijay Madanlal Choudhary*** (paragraph 174.1), the Hon'ble Supreme Court observed that:

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> *"the Director or any officer not below the rank of Deputy Director will have to first apply his mind to the materials on record before recording in writing his reasons to believe is certainly a sufficient safeguard".*

12.35. Similarly, ***P. Balamurugan*** (paragraph 13) refers to the requirement of:

> *"the reasonable believe reduced into writing by the competent officer that some person is in possession of the proceeds of crime".*

12.36. The attachment order records reasons at paragraphs 3 to 5 and identifies the material considered. The Petitioner has not identified any specific document or fact, apart from the dates of acquisition of the properties, that the officer overlooked. Those dates have been considered under Points Nos. (ii) and (iv).

12.37. The Section 8 notice (Annexure-G) states that a complaint under Section 5(5) was filed against the Petitioner and encloses the reasons recorded under Section 8(1). The notice does not specify the date on which the complaint was filed, and the Petitioner has not contended that it was filed beyond the prescribed 30-day period. On the present

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record, no breach of Section 5(5) is established.

12.38. The Act does not require the officer to reach a final adjudicatory finding on the proceeds of crime before making a provisional attachment. The officer must have the requisite reason to believe, based on material in his possession. As observed in ***Deputy Director, Directorate of Enforcement v. Axis Bank and Others,*** [2019:DHC:1887], (paragraph 171(ii)), the value of the proceeds may be assessed *"even if tentatively".*

12.39. The present question is whether the officer recorded the required reasons on the basis of identified material. The order demonstrates that he did so. This Court finds no jurisdictional defect in the recording of reasons on the material presently available.

Likelihood of frustration of proceedings

12.40. The Petitioner has not separately demonstrated that the requirement in Section 5(1)(b) was ignored. His objection is,

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in substance, that the officer failed to apply his mind to the relevant material.

12.41. In ***Vijay Madanlal Choudhary*** (paragraph 174.2), the Hon'ble Supreme Court explained the requirement of immediacy under the Second Proviso:

> *"There has to be a satisfaction that if the property involved in money laundering or 'proceeds of crime' are not attached 'immediately', such non-attachment might frustrate the confiscation proceedings under the 2002 Act."*

12.42. As already noted, the First Proviso was satisfied in this case, and the Respondent was not required to rely on the Second Proviso to overcome the absence of a report or complaint. In any event, the attachment order records the officer's concern that transfers to third parties could make recovery difficult. Although the reasons concerning withdrawal or diversion of funds in bank accounts do not directly apply to the Petitioner's immovable properties, the stated risk of their transfer to third parties is relevant to those properties.

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12.43. Section 5(4) also preserves the right of a person interested in immovable property to continue enjoying it despite attachment. The provisional attachment therefore does not, by itself, prevent the Petitioner from continuing to use the properties. Having regard to the reasons recorded in the order, this Court cannot conclude that the officer failed altogether to consider the risk of frustration of proceedings.

Requirement of prior notice

12.44. The Petitioner has not separately contended that Section 5(1) required a hearing before provisional attachment.

12.45. In ***P. Balamurugan*** (paragraph 15), the Madras High Court observed *"No where in the statute either in the Act or Rule, notice to parties prior to the provisional attachment is contemplated"* and further held that *"Section 8 of PMLA is the answer to the plea of the writ Petitioners regarding opportunity of hearing before the attachment."*

12.46. Section 5(1) does not provide for prior notice before provisional attachment. The safeguards instead operate through the

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subsequent process: the order and material must be forwarded to the Adjudicating Authority, the complaint must be filed within the prescribed period, and the affected person is given an opportunity to respond in the proceedings under Section 8. The Adjudicating Authority must consider the objections and determine whether the attachment should be confirmed.

12.47. The provisional nature of the attachment, the statutory time limit and the subsequent adjudicatory process are material safeguards. This Court finds no basis to read a requirement of prior hearing into Section 5(1). The final sentence of paragraph 15 of ***P. Balamurugan*****,** concerning decisions said to be contrary to Section 5(1) being obiter, is not necessary for deciding this Point and is not considered.

Effect of paragraphs 162 and 163 of Vijay Madanlal Choudhary

12.48. Paragraph 162 of ***Vijay Madanlal Choudhary*** states that *"for initiating action of 'provisional attachment' under Section 5 there need*

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not be a pre-registered criminal case in connection with scheduled offence" and that the authorised officer may be *"justified in acting with utmost speed to ensure that the proceeds of crime/property is available for being proceeded with appropriately".*

12.49. Paragraph 163 similarly recognises that action under Section 5 may be initiated even before registration of the scheduled offence, subject to the statutory requirements.

12.50. These observations concern the circumstances in which provisional attachment may be initiated before registration of a criminal case. In the present case, a charge sheet had already been filed before attachment. The decisions support the proposition that Section 5 does not require the Respondent to complete the entire investigation or establish the allegations finally before taking provisional measures. They do not, however, dispense with the obligation to record reasons to believe on the basis of material in the officer's possession. As discussed above, the attachment order records those reasons and identifies the material considered.

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12.51. On the material before this Court, the Petitioner has not established that the Respondent failed to comply with the statutory conditions governing provisional attachment under Section 5(1) of the PMLA. The First Proviso was satisfied because the charge sheet in the scheduled offence had been filed before the attachment order was made. The Respondent was, therefore, not required to invoke the Second Proviso to overcome the absence of a report or complaint.

12.52. The attachment order records the reasons to believe in writing and identifies the material considered by the authorised officer. The order also records the perceived risk that transfer of the properties to third parties could impede recovery. The sufficiency and effect of that material on the ultimate merits of the attachment are distinct questions considered under Point No. (iv); they do not, on the present record, establish a jurisdictional defect in the recording of reasons.

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12.53. Section 5(1) does not require a hearing before provisional attachment. The statutory scheme provides for the subsequent consideration of the affected person's objections by the Adjudicating Authority under Section 8.

12.54. Accordingly, this Court answers Point No. (iii) by holding that the Respondent complied with the statutory conditions governing provisional attachment under Section 5(1) of the PMLA, 2002, including the requirement to record reasons to believe on the basis of material in its possession and, the First Proviso being satisfied the Second Proviso was not invoked, hence the requirement that non-attachment of the property immediately is likely to frustrate proceedings under the Act, was not required to be recorded.

13. <u>Answer to Point No (iv):</u> Whether the impugned attachment is vitiated by non-application of mind or want of a demonstrable nexus between the properties sought to be attached and the alleged proceeds of crime, having regard to the

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Petitioner's contention that the amounts received from M/s. Hanuman Minerals represented partial repayment of monies advanced by him and that the properties were acquired before the alleged scheduled offence?

13.1. Sri D.R. Ravishankar, learned Senior Counsel for the Petitioner, submits that the properties have been attached without sufficient basis. He contends that the Petitioner did not receive any proceeds of crime in connection with Crime No.90/2017. The amounts received from M/s. Hanuman Minerals, according to him, were part repayments of money advanced by the Petitioner, which remains unpaid in part. He submits that the Petitioner merely carried on stevedoring activities and cannot be held responsible for the acts of M/s. Hanuman Minerals or M/s. Manipal Global. He further contends that the Respondent has not clearly identified the alleged proceeds of crime or established a connection between those proceeds and the attached properties.

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13.2. Learned Senior Counsel submits that the Respondent failed to consider the dates on which the properties were acquired, demonstrating non-application of mind. Relying on ***Satish Motilal Bidri v. Union of India***, [2024 SCC OnLine Ker 3410] (paragraphs 13 to 18), he argues that no material establishes that the Petitioner received proceeds of crime or acquired the properties from such proceeds. The registration of Crime No.90/2017 and the commencement of PMLA proceedings, he submits, do not by themselves justify attachment. The Respondent must identify the alleged proceeds and establish the legally required nexus.

13.3. On the underlying transactions, learned Senior Counsel submits that M/s. Hanuman Minerals and M/s. Phoenix International, with the assistance of M/s. Sino Podar Trade Ltd., entered into an agreement with M/s. Manipal Global for the export of 40,000 metric tonnes of iron ore to M/s. Devi Resources Ltd., Hong Kong, from Alcon and Maina Jetties in Goa.

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13.4. The allegation in the complaint is that the Petitioner issued two stock certificates stating that his proprietary concern, M/s. S.S. Maritime, held 40,000 metric tonnes of iron ore, on which M/s. Manipal Global relied. According to the complaint in PCR No.23/2017, representatives of M/s. Hanuman Minerals and M/s. Sino Podar Trade Ltd. visited M/s. Manipal Global on 07.11.2011 and entered into the agreement on 18.01.2012. It is further alleged that certain accused agreed to supply 40,000 metric tonnes of iron ore with an iron content of 50% but supplied ore with an iron content of 43.9%, causing an alleged loss of Rs.9,20,00,000. The complaint led to registration of offences under the Indian Penal Code and, after investigation by the CID, a charge sheet was filed on 30.12.2021.

13.5. Learned Senior Counsel submits that the filing of a charge sheet does not, by itself, establish the Petitioner's liability under Section 5 of the PMLA. Relying on ***Pavana Dibbur v. Directorate of Enforcement***, [(2023) 15 SCC 91], he contends that the

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Act cannot be invoked on mere suspicion or simply because the source of property is questioned; the required connection between the alleged proceeds and the criminal activity must be established.

13.6. Ms. Anuparna Bordoloi, learned counsel for the Respondent, relies on the facts and money trail discussed under Point No. (ii). She submits that, after considering the Petitioner's reply to the notice under Section 8, the Adjudicating Authority concluded that the Petitioner had cheated M/s. Manipal Global by issuing false stock certificates stating that 40,000 metric tonnes of iron ore fines were held at the jetties of M/s. S.S. Maritime. According to the Respondent, the Petitioner received Rs.17,00,000 in connection with those transactions. The alleged proceeds are no longer available because the funds were withdrawn in cash or transferred elsewhere.

13.7. Learned counsel submits that the Petitioner's contentions, that he acted only as a stevedore, that the amounts received from

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M/s. Hanuman Minerals were part repayments, and that the properties were acquired in 2004 and 2008, will be considered in the proceedings before the Adjudicating Authority. Relying on ***P. Balamurugan and Another v. Directorate of Enforcement, represented by Chennai Zonal Office-II and Another***, [2025 SCC OnLine Mad 15158] (paragraphs 13 to 15), she submits that the Petitioner must participate in the inquiry.

13.8. She also relies on ***Deputy Director, Directorate of Enforcement v. Axis Bank and Others***, [2019:DHC:1887], (paragraph 171), concerning the assessment of the nature of the property, its connection with the offence or offender, and the circumstances in which it was acquired.

13.9. Learned counsel further relies on ***Directorate of Enforcement v. Prakash Industries Ltd.,*** [2025 SCC OnLine Del 8243] (paragraphs 34 to 40), on the need to examine direct and indirect connections between property and criminal activity under

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the statutory definition of proceeds of crime. Relying on ***Pavana Dibbur*** (paragraph 18), she submits that the Petitioner's claim that he performed only stevedoring work does not, by itself, exclude the application of the PMLA. His alleged liability must be examined with reference to the proceeds of crime and his alleged involvement in the relevant transactions.

13.10. She also relies on ***Dr. Manik Bhattacharya v. Ramesh Malik and Others***, [2022 SCC OnLine SC 1465] (paragraph 7), and ***Surjeet Kumar Bansal v. Central Bureau of Investigation and Another***, [2024:PHHC: 045226], decided on 04.04.2024 (paragraphs 15, 16 and 18), to submit that proceedings under the PMLA must be considered independently on their own facts and material.

Scope of the inquiry

13.11. The question is whether the attachment order is vitiated by non-application of mind or by the absence of the required nexus between the attached properties and the

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alleged proceeds of crime. The effect of the dates on which the properties were acquired has already been considered under Point No. (ii) and need not be repeated.

13.12. In examining non-application of mind, this Court must determine whether the officer acted without material, relied on irrelevant material, or failed to consider a matter that the statute required him to consider. The fact that the Petitioner disputes the officer's conclusion does not, by itself, establish non-application of mind. In writ jurisdiction, this Court examines the legality of the exercise of power; it does not decide disputed factual questions requiring evidence or substitute its assessment for that of the statutory authority.

Whether the purchase dates were overlooked

13.13. The Petitioner relies on the fact that the properties were acquired before the alleged scheduled offence. As held under Point No. (ii), the date of acquisition does not, by itself, exclude property from attachment as property of equivalent value under Section

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2(1)(u) of the PMLA. Failure to treat that date as conclusive, therefore, does not establish non-application of mind.

13.14. The attachment order itself records the dates and particulars of both properties. The schedule refers to registered Document No.4805/2004-05 dated 15.12.2004 and Document No.5028/2008-09 dated 19.01.2009. The list of documents includes the registered documents and encumbrance certificates relating to both properties as documents 30 and 31, and a debtor-based search report concerning the Petitioner dated 26.10.2024 as document 35.

13.15. The order thus shows that the officer had the relevant property records before him. It treats the properties as being attached in lieu of proceeds of crime, rather than as properties directly acquired from those proceeds. The record does not support the contention that the purchase dates were overlooked.

The nexus required for attachment of equivalent-value property

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13.16. The Petitioner relies on ***Satish Motilal Bidri*** (paragraph 17), which states that the provision:

> *"cannot be used to enable the authorities to proceed against properties that are unconnected with any of the criminal activity in question".*

13.17. As explained under Point No. (ii), that observation must be considered alongside paragraph 172 of ***Vijay Madanlal Choudhary v. Union of India*****,** [(2023) 12 SCC 1], which recognises the statutory basis for attaching property of equivalent value. This Court has already addressed the difference between those decisions under Point No. (ii).

13.18. In ***Axis Bank*** (paragraph 171(iii)), the relevant nexus is described as:

> *"its link or nexus with the offence (or offender) of money-laundering."*

13.19. In the case of equivalent-value property, the required connection is not necessarily that the very funds used to purchase the property can be traced to the criminal activity. The authority must, however, establish the statutory basis for treating the property as

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equivalent-value property connected with the alleged proceeds of crime.

13.20. Here, the Respondent relies on the alleged movement of funds from M/s. Manipal Global to M/s. Hanuman Minerals and M/s. Phoenix International, followed by a transfer of Rs.17,00,000 to the account of M/s. S.S. Maritime. The Petitioner is also accused No.3 in the charge sheet and is proceeded against in the Section 8 proceedings. These circumstances form the basis of the Respondent's asserted connection between the Petitioner and the alleged proceeds. Whether that connection is established on the evidence must be determined in the statutory proceedings.

Identification and tracing of the alleged proceeds

13.21. The contention that the Respondent did not identify the alleged proceeds of crime is not borne out by the attachment order.

13.22. At paragraph 3.6, the order records that M/s. Manipal Global paid an advance of

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Rs.2,30,00,112 in three instalments between 28.01.2012 and 02.02.2012. After accounting for repayment of Rs.10,00,000, the order identifies Rs.2,20,00,000 as the alleged proceeds of crime.

13.23. Paragraph 3.4 traces the movement of the funds. It records a cash withdrawal of Rs.53,80,000, a transfer of Rs.96,00,000 to M/s. Phoenix International, of which Rs.32,55,000 was withdrawn in cash, and a transfer of Rs.17,00,000 to the account of M/s. S.S. Maritime. Paragraph 3.5(iii) records the Respondent's allegation that the Petitioner received Rs.17,00,000 as consideration for his alleged collusion in the offence.

13.24. The Petitioner's own account of the transactions identifies payments of Rs.10,00,000 on 30.01.2012 and Rs.7,00,000 on 02.02.2012 from M/s. Hanuman Minerals. He does not deny receiving these amounts. The dispute concerns their character and purpose, not their identification.

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13.25. The Petitioner submits that he paid Rs.25,00,000 to M/s. Hanuman Minerals on 09.02.2011 towards the purchase of iron ore, which was not supplied, and that the amounts received in January and February 2012 were part repayments of that advance. He maintains that the balance remains unpaid.

13.26. The Respondent's case is that the Rs.17,00,000 was consideration for the two stock certificates allegedly issued by the Petitioner to M/s. Manipal Global. The attachment order records the Petitioner's statement dated 28.03.2024 at paragraph 3.3(i). As summarised in the order, the Petitioner stated that he had paid Rs.25,00,000 to Sri Girish Sangappa Jaggal in 2010–11 for iron ore, which was neither supplied nor refunded, and that, at Sri Jaggal's insistence, he issued two stock certificates in January 2012 despite there being no iron ore stock.

13.27. Paragraph 3.4(d) of the order also refers to the certificates as having been issued in

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connection with recovery of the earlier advance. The material therefore records the Petitioner's claim that money was owed to him and that the certificates were issued while the advance remained unpaid. The central dispute is whether the Rs.17,00,000 represented repayment of the Petitioner's own money or consideration for his alleged assistance in cheating M/s. Manipal Global.

13.28. That dispute cannot be resolved in writ jurisdiction without evaluating the relevant documents, bank records and other evidence. This Court does not treat the Petitioner's statement as proof of guilt or decide its admissibility or evidentiary weight. It is relevant here only to show that the officer had material concerning the Petitioner's explanation when forming his belief.

Role of the Adjudicating Authority and the burden of establishing the source of the property

13.29. In ***Pavana Dibbur*** (paragraphs 19 and 31.4), as discussed under Point No. (ii), the

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question whether tainted money was used is one to be determined on the evidence. A writ petition is not the appropriate forum to decide that disputed question in the first instance.

13.30. Section 8(1), considered under Point No. (i), requires the Adjudicating Authority to call upon the person concerned to indicate the source of income, earnings or assets from which the attached property was acquired and to produce the relevant evidence. Section 24 provides:

> *"In any proceeding relating to proceeds of crime under this Act,—*
>
> *(a) in the case of a person charged with the offence of money-laundering under section 3, the Authority or Court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money-laundering; and*
>
> *(b) in the case of any other person the Authority or Court, may presume that such proceeds of crime are involved in money-laundering."*

13.31. The record does not clearly establish whether the Petitioner has been charged under Section 3 in Special C.C. No.53/2025. The Respondent has stated that proceedings for

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offences under Sections 3 and 4 are pending. It is, therefore, unnecessary to decide which limb of Section 24 applies.

13.32. ***Axis Bank*** (paragraph 171(v)) and ***P. Balamurugan*** (paragraph 15), which refers to Section 24 as casting *"the burden of proof on the person accused on money laundering",* recognise the relevance of the affected person's evidence concerning the source and nature of the property. The Petitioner's explanation and supporting documents must be considered in the statutory proceedings. The present writ petition cannot be allowed merely on the basis of his assertion that the amounts were repayments, without resolving the disputed facts through the prescribed process.

Allegation of no crime, harassment and the Petitioner's role as a stevedore

13.33. The Petitioner's submission that there was no crime cannot be accepted as a basis to invalidate the attachment at this stage, for the reasons discussed under Point No. (ii), including the effect of the registered offence,

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the charge sheet, ***Pavana Dibbur*** (paragraph 18) and ***Vijay Madanlal Choudhary*** (paragraph 109). Whether the Petitioner is guilty of the alleged offences is for the competent criminal court to determine.

13.34. The allegation of harassment is unsupported by specific material on record. Likewise, whether the Petitioner merely performed stevedoring work, or knowingly participated in the transactions alleged by the Respondent, is a disputed question of fact. His asserted commercial role does not, by itself, resolve whether the statutory requirements of the PMLA are met.

13.35. The principles in ***Dr. Manik Bhattacharya*** (paragraph 7) and ***Surjeet Kumar Bansal*** (paragraphs 15, 16 and 18), considered under Point No. (ii), require the PMLA proceedings to be examined independently on their own material. They do not establish the Petitioner's guilt; nor do they dispense with the need for the Adjudicating Authority

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to assess the evidence relevant to the attachment.

Whether the attachment rests on mere suspicion

13.36. The Petitioner relies on ***Pavana Dibbur*** to contend that the PMLA cannot be invoked merely on suspicion or because the source of property is questioned. This Court accepts that the statutory requirements cannot be satisfied by suspicion alone.

13.37. However, the attachment order does not rest solely on the fact that the source of the property is disputed. It refers to the registered crime, the charge sheet, the ECIR, statements recorded under Section 50, bank records and the alleged trail of funds. The Respondent also submits that the Adjudicating Authority considered the Petitioner's reply to the Section 8 notice.

13.38. Whether this material ultimately proves the Respondent's allegations is a matter for the statutory authority. ***Prakash Industries*** (paragraphs 34 to 40), relied upon by the

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Respondent, supports examining the alleged direct or indirect connection under the statutory definition; it does not dispense with the requirement to establish that connection on the material available.

Opportunity to establish the Petitioner's case

13.39. In ***P. Balamurugan*** (paragraph 14), the Hon'ble Madras High Court observed that the affected persons:

> *"has to participate in the enquiry once they receive notice and substantiate their plea".*

13.40. The Respondent states that the Petitioner filed a reply to the notice under Section 8. Annexure-G calls upon him to disclose the source of income, earnings or assets from which the attached properties were acquired and to produce supporting evidence. It also requires him to show cause why the attachment should not be confirmed. The notice specified 07.01.2025 for the written reply and 14.02.2025 for the Respondent's rejoinder.

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13.41. The Section 8 proceedings are the appropriate forum for considering the registered sale deeds relating to the properties, the Petitioner's explanation concerning the earlier advance and the nature of the Rs.17,00,000 received. If the Petitioner considers that his reply or supporting documents have not been properly considered, the statutory appellate remedies under Sections 26 and 42 remain available, as discussed under Point No. (i).

13.42. The material on record does not establish that the attachment order is vitiated by non-application of mind. The order records the acquisition particulars of the properties, identifies the alleged proceeds of crime as Rs.2,20,00,000, traces the alleged transfer of Rs.17,00,000 to M/s. S.S. Maritime and lists the material considered by the authorised officer.

13.43. The date of acquisition does not, by itself, invalidate attachment of property as equivalent-value property. The Respondent has set out a case connecting the Petitioner

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to the alleged proceeds. Whether that connection is established, and whether the Rs.17,00,000 received by the Petitioner was repayment of his earlier advance or consideration for the stock certificates, are disputed questions of fact to be determined in the statutory proceedings.

13.44. Accordingly, this Court answers Point No. (iv) by holding that the impugned attachment is not vitiated by non-application of mind or the absence of a demonstrable nexus between the properties attached and the alleged proceeds of crime, the contention that the amounts received from M/s. Hanuman Minerals were part repayments of money advanced by the Petitioner would have to determined during enquiry. Petitioner's right to establish his case before the Adjudicating Authority and pursue the statutory remedies available under the PMLA remains undisturbed.

14. <u>Answer to Point No (v):</u> Whether the Petitioner is entitled to the relief sought for quashing the impugned attachment order dated 29.10.2024 and the consequential

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proceedings initiated under Section 8 of the PMLA, 2002?

14.1. Sri D.R. Ravishankar, learned Senior Counsel for the Petitioner, submits that the provisional attachment order dated 29.10.2024 in ECIR/MGSZO/04/2022 (Annexure-A) is without jurisdiction because the attached properties were acquired long before the alleged scheduled offence. He therefore seeks a writ of certiorari or any other appropriate writ, order or direction quashing the attachment order in respect of the scheduled properties, along with such other relief as this Court considers appropriate in the interests of justice and equity.

14.2. The Petitioner is also aggrieved by the show cause notice dated 30.11.2024 issued under Section 8 of the PMLA. However, the petition does not contain a separate prayer to quash that notice.

14.3. Ms. Anuparna Bordoloi, learned counsel for the Respondent, submits that the writ petition is premature and ought to be

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dismissed in view of the statutory remedies available under the PMLA. Her submissions concerning the alternative remedy, the statutory safeguards and the authorities relied upon have been considered under Points (i) to (iv) and need not be repeated. She further submits that interference at this stage would obstruct the ongoing adjudication and investigation.

14.4. The relief sought under Point (v) depends on the findings under Points (i) to (iv). Those issues need not be reconsidered. This Court must determine the consequences of those findings for the reliefs sought and whether the impugned orders and proceedings can be quashed in this writ petition.

Effect of the provisional attachment order

14.5. Prayer (i) seeks to quash the order dated 29.10.2024 passed under Section 5(1) of the PMLA. Such an order is provisional and is subject to the time limits prescribed by the Act. Section 5(3) provides:

"Every order of attachment made under sub-section (1) shall cease to have effect after the

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expiry of the period specified in that sub-section or on the date of an order made under sub-section (3) of section 8, whichever is earlier."

14.6. The provisional attachment order remains in force for a maximum period of 180 days, unless it ceases earlier upon an order under Section 8(3). The period may exclude the time during which proceedings under Section 5 are stayed by the High Court, together with the further period permitted by the third proviso to Section 5(1) after the stay is vacated.

14.7. The impugned order is dated 29.10.2024 and has been stayed by this Court by an interim order, which continues to remain in force. Accordingly, the period during which the stay operates must be excluded while computing the 180-day period under the third proviso to Section 5(1) of the PMLA, together with any further period permitted by that proviso after the stay is vacated. The provisional attachment cannot, therefore, be held to have lapsed merely on the basis of the passage of 180 days from the date of the order.

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Test for interference under Article 226

14.8. The authorities relied upon by the Petitioner recognise that the High Court may interfere in an appropriate case despite the availability of an alternative remedy. In ***Jayamma v. Directorate of Enforcement*** [W.P. No.28108/2025, decided on 02.06.2026], paragraph 42, the Hon'ble Co-ordinate Bench held that a petition of this nature may be entertained "though subject to fulfillment of certain criteria". The criteria discussed in that decision concern the statutory requirements under the Second Proviso to Section 5(1), as explained in paragraph 30.

14.9. Similarly, in ***Satish Motilal Bidri v. Union of India***, [2024 SCC OnLine Ker 3410], paragraph 18, the Hon'ble High Court of Kerala observed that "*ex facie illegal acts can be interfered with under Article 226 of the Constitution of India, notwithstanding the existence of an alternative remedy*".

14.10. The question, therefore, is whether the impugned attachment suffers from a defect going to the root of the authority's

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jurisdiction or is ex facie illegal. A disputed factual issue, or a question of law on which competing views are possible, does not by itself establish such a defect.

Application of the test to the grounds urged

14.11. The grounds urged by the Petitioner do not establish a defect of that nature.

14.12. As held under Points (i) and (iii), the charge sheet in the scheduled offence had been filed before the impugned attachment order was passed. The First Proviso to Section 5(1) was satisfied. For the reasons already stated, the Second Proviso was not required to sustain the attachment in the circumstances of this case. The decision in ***Jayamma*** is therefore distinguishable.

14.13. The attachment of properties acquired in 2004 and 2008 is defended on the basis of the value of the alleged proceeds of crime. In ***Vijay Madanlal Choudhary v. Union of India,*** [(2023) 12 SCC 1], paragraph 172, the Hon'ble Supreme Court approved the value-based approach recognised in ***Deputy***

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Director, Directorate of Enforcement v. Axis Bank and Others,[2019:DHC:1887], paragraph 171. The fact that the properties were acquired before the alleged scheduled offence, or that no property is held abroad, does not by itself render the attachment ex facie illegal. This also answers the Petitioner's reliance on strict construction of penal provisions, as discussed under Point (ii).

14.14. The scheduled offence remains on record, a charge sheet has been filed, and there is nothing before this Court to show that the proceedings have ended in discharge or acquittal or that the scheduled offence has been quashed. The condition discussed in ***Pavana Dibbur v. Directorate of Enforcement***, [(2023) 15 SCC 91], paragraph 18, for the PMLA proceedings to fall away is therefore not established.

14.15. As held under Point (iii), the attachment order records reasons to believe and refers to the material relied upon. The Petitioner's explanation that the sums received from M/s. Hanuman Minerals were part repayments,

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that he acted only as a stevedore, and that the attached properties have no sufficient nexus with the alleged proceeds of crime raises disputed factual issues. Those issues are required to be appropriately considered by the Adjudicating Authority and, if necessary, the Appellate Tribunal. For the reasons stated under Point (i), the material placed before this Court does not establish a clear absence of foundational jurisdiction. Prayer (i) cannot therefore be granted.

Whether part of the attachment can be set aside

14.16. In ***Satish Motilal Bidri*** (paragraph 18), the Hon'ble High Court of Kerala set aside the attachment of immovable property while leaving the attachment relating to bank accounts to the statutory remedy, noting that an effective alternative remedy was available for the latter.

14.17. In the present case, both properties are immovable properties acquired under

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registered sale deeds, and the same grounds are urged against both. Since those grounds do not justify setting aside either attachment, there is no basis to grant partial relief. The Petitioner has also not contended that the value of the two properties exceeds the value of the proceeds of crime alleged against him. That issue was considered under Point (ii), and no finding on it is called for here.

Show cause notice dated 30.11.2024 and consequential proceedings

14.18. The question also refers to the consequential proceedings under Section 8 of the PMLA. Although the Petitioner expresses grievance against the show cause notice dated 30.11.2024, the petition does not contain a separate prayer seeking its quashing. The challenge to the notice is consequential upon the challenge to the attachment. Since the attachment has not been set aside, the notice cannot be quashed on that basis alone. No independent ground of illegality in the notice has been established.

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14.19. The notice at Annexure-G, bearing O.C. No.2482/2024 and dated 30.11.2024, was issued by the Registrar of the Adjudicating Authority at New Delhi. It names the Petitioner as Defendant No.3, refers to the complaint filed under Section 5(5), encloses the reasons recorded under Section 8(1), and calls upon the Petitioner to explain the source of his income, earnings or assets used to acquire the attached properties and to show cause why the attachment should not be confirmed. It required a reply by 07.01.2025 and bears an endorsement of receipt dated 09.12.2024.

14.20. The notice substantially follows the terms of Section 8(1). The Petitioner has not alleged that the time allowed caused prejudice, and the Respondent submits that he filed a reply. In these circumstances, this Court makes no finding on whether the period allowed for responding complied with Section 8(1).

14.21. If the attachment has since been confirmed, as the Respondent submits, the appropriate remedy against the confirmation order is an

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appeal under Section 26(1) of the PMLA. Since neither the confirmation order nor its date is before this Court, no finding is recorded on its validity. The material before this Court does not justify quashing the proceedings under Section 8.

14.22. The Court recognises that confirmation of attachment may have serious consequences for the Petitioner, including the taking of possession under Section 8(4). The Petitioner is, however, at liberty to approach the Appellate Tribunal and seek such interim protection as may be available in law. This Court expresses no opinion on the merits of any such request.

Availability of an alternative remedy

14.23. The Petitioner is not left without a remedy. Before the appropriate statutory forum, he may raise all contentions, including those based on the registered sale deeds of 2004 and 2008, his explanation for the amounts received from M/s. Hanuman Minerals, and his claim that he acted only as a stevedore. The present decision does not determine

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those disputed matters on their merits. It only holds that the grounds urged do not warrant the relief sought in this writ petition.

14.24. The Petitioner has not established a ground for quashing the provisional attachment order dated 29.10.2024 or the consequential proceedings under Section 8 of the PMLA in this writ petition. The contentions concerning the source of the amounts received, the nexus between the properties and the alleged proceeds of crime, and the validity of any confirmation order remain subject to the remedies available under the Act. Point No. (v) is answered accordingly.

15. Answer to Point No (vi): What Order?

15.1. The answers to Points (i) to (v) lead to one result. The writ petition is maintainable but is not entertained, and no ground has been found for quashing the attachment. In the result, and for the reasons given above, this Court passes the following order:

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ORDER

(i) The writ petition is **dismissed.**

(ii) All remedies available to the Petitioner under the Prevention of Money Laundering Act, 2002 remain undisturbed.

(iii) The authorities shall decide the matter on its own merits, without being influenced by any observation in this judgment, which is confined to the question whether this Court should entertain the writ petition.

(iv) The Petitioner would be entitled to the benefit of Section 14 of the Limitation Act for time spent in prosecuting this Writ Petition.

(v) The benefit of the interim order which has been in force from the year 2024 is extended by a period of 30 days to enable the Petitioner to approach the appropriate authority and seek for interim relief. It is

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made clear that if the Petitioner were not to approach the appropriate authority within 30 days of the receipt of a certified copy of this Order, the above benefit would stand automatically rescinded.

This Court has been assisted by Mr. Sourav, Law Clerk, in the formulation of this Judgment.

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(SURAJ GOVINDARAJ)
JUDGE

PRS
List No.: 1 Sl No.: 66