

**IN THE COURT OF VIKAS DHULL, SPECIAL JUDGE
(PC ACT) (CBI)-23 (MPs/MLAs Cases), ROUSE AVENUE
DISTRICT COURTS, NEW DELHI**

ECIR No. DLZO-1/43/2021
U/s.3 r.w. Section 4 of the Prevention of Money Laundering Act,
2002

In the matter of :

Directorate of Enforcement Vs. Amarendra Dhari Singh

Date of filing the application: 11.06.2021

Date on which reserved for order: 19.06.2021

Date on which order announced: 23.06.2021

ORDER

1. Vide this order, I shall dispose of an application filed by applicant/accused Amarendra Dhari Singh under Section 45 of the Prevention of Money Laundering Act, 2002 (**hereinafter referred to as PMLA**) read with Section 439 of the Code of Criminal Procedure, 1973 (**hereinafter referred to as Cr.P.C.**) for grant of regular bail.

2. The brief facts which are relevant for deciding the bail application are that a CBI case was registered vide RC 221/2021/E/0009 on 17.05.2021 U/s 120B, 420 IPC and Sec. 13(1)(d) r/w Sec. 13(2) of the Prevention of Corruption Act, 1988 (**hereinafter referred to as PC Act**) against the present accused and other accused persons. The present accused was

a Senior Vice President of M/s Jyoti Trading Corporation, at the relevant time. The accused persons named in the CBI case entered into a criminal conspiracy during 2007 to 2014 and cheated and defrauded IFFCO and Indian Potash Limited (IPL), the share holders of those entities and the Government of India by fraudulently importing fertilizers and other materials for fertilizer production at inflated prices and claimed higher subsidy from Government of India causing loss of several crores of rupees. They allegedly siphoned off the commission received from the suppliers through a complex web of fake commercial transactions through multiple companies owned by the accused persons, registered outside India in order to camouflage the fraudulent transactions. It is claimed that IFFCO set up its 100% subsidiary namely M/s Kisan International Trading FZE in Dubai for importing fertilizers and other raw materials from foreign companies. Bills were raised by the suppliers in favour of M/s Kisan International Trading at inflated rates to cover up the bribe money to be paid to the accused persons and similar modus was adopted in respect of other manufacturers/suppliers. Money was paid through hawala operators and intermediaries. Group companies of co accused Rajeev Saxena, who is an accused in Augusta Westland Case also, were used for receipt of commission from supplier of fertilizers and other products to IFFCO and IPL. During the commission of crime, sham consultancy agreements and fake invoices for consultancy services were prepared without providing any such services and thus commission was

received by group companies of Rajeev Saxena without any genuine transaction and that money was actually illegal commission generated out of import of fertilizers and raw material.

3. It is claimed that the present accused acted as intermediary along with other accused for channelizing the ill gotten money through different firms and companies. It is claimed that in this manner, Rs. 685 Crores approximately were received in the bank accounts of the group companies and individual account of Rajeev Saxena and other accused including the present accused Amarendra Dhari Singh. It is claimed that the fertilizers were imported fraudulently at inflated rates and the money was diverted abroad also through complex transactions. It is also the case of ED that in order to provide relief to the farmers, Government of India has been providing subsidies on different types of fertilizers and in calculating subsidy, the cost price of imported fertilizer is important and as such, due to the crime of accused persons, a huge loss also occurred to the public exchequer. It is also claimed that the present accused had companies namely Lake Village Assets Corp. and Summerpark Cor., which were used for transferring money to another company owned by co-accused. Money lying in the account of the companies of the accused abroad were used for making real estate investments.
4. Notice of the said application was issued to ED, who had filed a detailed reply.

5. I have heard Sh. Nitesh Rana, Ld.SPP and Special Ld.counsel Sh.Zoheb Hossain for ED and Sh.Siddharth Aggarwal, Senior Advocate and Sh.Madhav Khurana, Ld.counsel for applicant/accused Amarendra Dhari Singh. I have also carefully perused the police file and the judgments relied upon by respective parties.
6. It was submitted by Ld.Senior Counsel for accused that although accused has filed the present bail application under Section 45 of the PMLA but the twin conditions mentioned in Section 45 of PMLA are not required to be considered, being inapplicable.
7. It was submitted that prior to the amendment of Section 45 of PMLA, the twin conditions mentioned in Section 45 of PMLA were struck down by the Hon'ble Supreme Court of India in the matter of **Nikesh Tarachand Shah Vs. Union of India and another, (2018) 11 SCC 1** wherein it was held that "twin conditions mentioned in Section 45 of PMLA are arbitrary and hence, held to be unconstitutional and were struck down".
8. It was further submitted that thereafter, Section 45 of PMLA was amended and the twin conditions were again revived in amended Section 45 of PMLA. It was further submitted that the twin conditions mentioned in the amended Section 45 of PMLA came into consideration before the various Hon'ble

High Courts and they have taken a consistent view that twin conditions as mentioned in amended Section 45 of PMLA do not stand revived pursuant to the amendment and hence, are not applicable while deciding the bail application. In support of his submission, Ld.Senior Counsel for accused has relied upon the following judgments: **(1) Sai Chandrasekhar Vs. Directorate of Enforcement, 2021 SCC Online Del 1081;** **(2) Upendra Rai Vs. Directorate of Enforcement, 2019 SCC Online Del 9086;** **(3) Dr.Vinod Bhandari Vs. Assistant Director, 2018 SCC Online MP 1559;** and **(4) Chhagan Chandrakant Bhujbal Vs. Assistant Director, Directorate of Enforcement and ors., MANU/MH/2444/2018.**

9. It was further submitted that if twin conditions mentioned in amended Section 45 of PMLA are not applied, then the present application has to be considered on the basis of general provisions governing the grant of bail and if considered in that light, a case for grant of bail is made out.
10. It was further submitted that in case, it is assumed that twin conditions mentioned in Section 45 of PMLA stand revived by way of amendment, then in the alternative accused prays for grant of bail as per proviso to Section 45 of PMLA. It was submitted that as per proviso to Section 45 of PMLA, a person, under the age of sixteen years, or a woman or sick or infirm person, may be released on bail, if the Special Court so directs.

- 11.** It was submitted that since accused is a sick person undergoing treatment for lymphatic cancer since 2002 and having regard to his heart ailment, accused does not deserve to be remain incarcerated as the same will have an adverse impact on his health. Accordingly, it was prayed that as per proviso to Section 45 of PMLA, a case for grant of bail is made out on the ground of accused being sick and infirm.
- 12.** It was further submitted that another relevant factor to be considered, at the stage of bail is the past conduct of the accused. It was submitted in this regard that accused is a sitting Rajya Sabha MP and is a law abiding citizen. It was submitted that during the past around seven to eight years, accused has travelled to foreign countries on 90 occasions for the purpose of health, business and leisure and on each occasion, he returned to India. Therefore, there is no question of his fleeing from justice.
- 13.** It was further submitted that whenever it has come to the notice of accused that some legal proceedings have been initiated against him by the Income Tax Department or by the CBI, then he has travelled to foreign countries only after taking due permission of the Hon'ble High Court of Delhi. Therefore, there is no question of accused fleeing from this country and accused undertakes that as and when he intends to travel to foreign countries, on account of his health check

up or for any other exigency, then he will only go after taking due permission from the court.

14. It was further submitted that there is no chance of accused fleeing from this country if released on bail as he has got deep roots in the society. It was submitted in this regard that accused is a sitting Rajya Sabha Member of Parliament and is unmarried. It was further submitted that accused's sister and brother in law are very much settled in India. Therefore, there is no question of accused making himself not available to stand trial in the present case.
15. It was further submitted that gravity of allegations is not a ground to deny bail. In support of his submission, Ld. Senior Counsel for accused has relied upon the following judgments: **(1) Prabhakar Tiwari Vs. State of Uttar Pradesh and anr., (2020) 11 SC 648; (2) Anil Mahajan Vs. Commissioner of Customs and Anr., (2000) 53 DRJ 501; and (3) H.B.Chaturvedi Vs. CBI, 2010 SCC OnLine Del 2155.**
16. It was submitted that in the present case, first complaint was made to the CBI in 2013 and the case has been registered in 2021 only i.e. after eight years of the alleged offence. It was further submitted that in economic offences, evidence is generally of documentary nature and there is no chance of same being tempered with.

17. It was further submitted that two main accused in the CBI case, who are public servants, have approached the Hon'ble High Court of Delhi for quashing of FIR registered against them under the PC Act and their arrest has been stayed till further orders. Therefore, there is no reason to keep the accused in incarceration, who had a much lesser role in the alleged offence as compared to the main accused. Accordingly, a prayer was made to release the accused on bail.
18. On the other hand, it was submitted by the Ld. Special Counsel for ED that Section 45 of PMLA has been amended and pursuant to the amendment, twin conditions mentioned in Section 45 of PMLA stand revived.
19. It was further submitted that the judgment of the Hon'ble High Court of Delhi delivered in **Upendra Rai's case (supra)** has been stayed by the Hon'ble Supreme Court of India vide order dated 03.06.2020 passed in SLP (Crl.) Dy. No. 5150/2020.
20. It was further submitted that in another case titled as **Dr. Shivendra Mohan Singh Vs. Directorate of Enforcement 2020 SCC OnLine Del 766**, the Hon'ble High Court of Delhi had given a similar finding that twin conditions mentioned in Section 45 of PMLA are not revived pursuant to the amendment and even the said judgment was challenged before the Hon'ble Supreme Court of India and vide order

dated 31.07.2020 passed in SLP (Crl.) No. 3474/2020, the Hon'ble Supreme Court of India not only stayed the judgment of the Hon'ble High Court of Delhi but also directed that the said judgment will not be quoted as a precedent in other cases.

21. It was further submitted that since the Hon'ble Supreme Court of India has specifically directed that the finding of the Hon'ble High Court of Delhi "that twin conditions of amended Section 45 of PMLA stand revived" will not be quoted as a judicial precedent, therefore, other judgments of the various Hon'ble High Courts based on the similar issue cannot be considered in the light of directions passed by the Hon'ble Supreme Court of India.

22. It was further submitted that there are judgments of the other Hon'ble High Courts to the effect that twin conditions mentioned in amended Section 45 of PMLA stand revived and are required to be applied while dealing with the bail application under the PMLA. In support of his submission, Ld.Special Counsel for ED has relied upon the following judgments: (1) **Mohammed Arif vs. Directorate of Enforcement 2020 SCC OnLine Ori 544**; and (2) **Vidyut Kumar Sarkar vs. The State of Bihar and Ors. MANU/BH/0297/2020**.

23. It was further submitted that accused has himself filed the present bail application under Section 45 of PMLA being

fully aware of the twin conditions mentioned in Section 45 of PMLA. Therefore, he cannot take the plea that the same are not applicable.

24. It was further submitted that twin conditions in amended Section 45 of PMLA are not declared to be constitutionally invalid till date by any court. Therefore, Section 45 of PMLA will be applicable to the present bail application.

25. Secondly, it was submitted that even as per proviso to Section 45 of PMLA, accused does not deserve the discretionary relief of bail on the ground of he being sick and infirm. It was submitted that accused is not suffering from any disease which is life threatening and as per his own admission made in the interim application for house arrest, the malignancy of lymphatic cancer is controlled and he has to visit U.S.A. for a regular follow up only.

26. It was further submitted that even with regard to heart ailment, no medical document has been filed on record to show that any kind of medical intervention is required or heart ailment is of serious concern. It was further submitted that whatever ailments accused is suffering from are manageable and by his incarceration his health will not further deteriorate.

27. It was further submitted that as per the submission made by Ld.Senior Counsel for accused, accused has travelled to

foreign countries on around 90 occasions during the past eight years, on account of health, leisure and business purposes. Therefore, if accused is fit enough to travel to foreign country about 9-10 times in a year and that too for business and leisure purposes, apart from health check up, then it can be said with certainty that accused is not a sick person whose health is going to deteriorate due to continued incarceration.

- 28.** It was further submitted that if a person is sick, then he will not be able to undertake foreign travels at such a great frequency and that too for leisure and business purposes. Therefore, on the strength of proviso to Section 45 of PMLA, accused does not deserve to be enlarged on bail.
- 29.** It was further submitted that allegations against present accused are serious and grave in nature and release of accused, at this stage, will hamper the evidence.
- 30.** It was further submitted that the Hon'ble Supreme Court of India in catena of cases has held that economic offences are required to be viewed seriously and accused does not deserve to be released on bail in case of serious economic offences.
- 31.** It was further submitted that in the present case, accused has committed the predicate offence of cheating and criminal conspiracy with other co-accused persons whereby the Government of India has been cheated to the tune of Rs.700 Crores during the period between 2007 to 2014.

32. It was further submitted that with regard to the offence of money laundering, the investigation so far has revealed that accused is involved in laundering of proceeds of crime to the extent of around Rs.40 Crores. It was further submitted that the offence of money laundering has been committed using web of companies, some of which are based in foreign countries. Therefore, during the course of further investigation, further money trail would be traced out.
33. It was further submitted that till the investigation conducted so far, accused has not co-operated in the investigation. It was further submitted that accused is an influential person as he is a sitting Rajya Sabha MP and is also a member of Parliamentary Standing Committee of Fertilizers and as such, he may influence witnesses, if released on bail.
34. It was further submitted that investigation of this case is at a crucial stage and if accused is released on bail, then it might hamper the investigation. Accordingly, a prayer was made to dismiss the bail application. In support of his submission, Ld.Special Counsel for ED has relied upon the following judgments: **(1) State of Gujarat Vs. Mohanlal Jitmalji Porwal, (1987) 2 SCC 364; (2) State of Bihar Vs. Amit Kumar, (2017) 13 SCC 751 ; (3) Nimmagadda Prasad Vs. CBI, (2013) 7 SCC 466 ; (4) Central Bureau of Investigation Vs. Ramendu Chattopadhyay, Criminal Appeal No. 1711 Of 2019; (5) Serious Fraud Investigation**

Office Vs. Nittin Johari, (2019) 9 SCC 165; (6) Y.S. Jagan Mohan Reddy v. CBI, (2013) 7 SCC 439; (7) Anil Kumar Yadav v. State (NCT of Delhi), (2018) 12 SCC 129; (8) Kalyan Chandra Sarkar Vs. Rajesh Ranjan, (2004) 7 SCC 528,; (9) Gautam Kundu Vs. Directorate of Enforcement (Prevention of Money-Laundering Act), (2015) 16 SCC 1 ; (10) Sunil Dahiya Vs. State (Govt. of NCT of Delhi), 2016 SCC OnLine Del 5566 ; and (11) Rohit Tandon Vs. Directorate of Enforcement, (2018) 11 SCC 46.

35. In rebuttal, Ld. Senior Counsel for accused has submitted that mere grant of stay by the Hon'ble Supreme Court of India regarding the judgments delivered by the Hon'ble High Court of Delhi in **Dr. Shivendra Mohan Singh' case (supra)** and **Upendra Rai's case (supra)** will not take away the precedential value of these judgments as well as the judgment passed by Hon'ble High court of Madhya Pradesh and Bombay.

36. It was submitted that when the superior court stays the operation of the impugned judgment, then the stay operates between the parties to the Lis but the precedential value of the judgment does not get eroded by the operation of the stay. Therefore, the judgment of the Hon'ble High Court of Delhi delivered in **Upendra Rai's case (supra)**, **judgment of the Hon'ble Madhya Pradesh High Court delivered in Dr. Vinod Bhandari' case (supra)** and that of Bombay High Court delivered in **Chhagan Chandrakant Bhujbal'**

case (supra) do hold their precedential value and are required to be followed till the time they are not set aside by the Hon'ble Supreme Court of India. In support of his submission, he has relied upon the following judgments: **(1) Shree Chamundi Mopeds Ltd.Vs.Church of South India Trust Association, (1992) 3 SCC 1; (2) Pijush Kanti Chowdhury Vs. State of West Bengal and Ors., 2007 SCC OnLine Cal 267; (3) Amrit Jal Ventures Pvt.Ltd. Vs. Srei Infrastructure Finance Ltd., 2016 SCC OnLine Cal 4245; and (4) Principal Commissioner of C.Ex.,Delhi-I Vs. Space Telelink Ltd., MANU/DE/4724/2017.**

37. It was further submitted that accused has co-operated during the course of investigation and whenever, he was summoned by any authority i.e. Income Tax Department, CBI, he had obeyed the summons and had joined the investigation.

38. It was again reiterated that in economic offences like money laundering, the nature of evidence to be collected by the investigating officer is documentary and the same cannot be tempered with even if accused is released on bail. It was further submitted that in order to ensure that investigation proceeds unhampered, this court can impose any condition upon the accused while granting him bail to ensure that material witnesses or evidence of this case are not tempered with in any manner and accused makes him available for the purpose of interrogation as and when it is required by the

investigating officer. Accordingly, it was again prayed that application for grant of bail be allowed.

39. I have considered the rival submissions of respective parties and have carefully perused the judgments relied upon by respective counsels. I have also summoned the case file at my house and have carefully perused the same.

40. The first point which is required to be dealt with while deciding the present bail application is that whether the twin conditions mentioned in Section 45 of PMLA are to be applied or not in the present case?

41. It is true that the Hon'ble Supreme Court of India in the matter of **Nikesh Tarachand Shah's case (supra)** had held that the twin conditions in the un-amended Section 45 of PMLA were unconstitutional as they were violative of Article 14 of the Constitution of India, being arbitrary. The Hon'ble Supreme Court of India had declared twin conditions to be unconstitutional as Section 45 of PMLA did not make a reasonable classification for applicability of twin conditions while deciding the bail application. As per the un-amended Section 45 of PMLA, the twin conditions were to be applied to those offences mentioned in Schedule A of PMLA which were having more than three years imprisonment. This classification for applicability of twin conditions was found by the Hon'ble Supreme Court of India to be arbitrary and violative of Article 14 of the Constitution of India and hence, was struck down being unconstitutional. However, after the

amendment of Section 45 of PMLA, the amended Section 45 of PMLA now makes the twin conditions applicable to every offence under the PMLA.

42. The issue of applicability of twin conditions of amended Section 45 of PMLA has arisen before the various Hon'ble High Courts of this country and divergent view has come across. The Hon'ble High Court of Delhi in the matter of **Upendra Rai's case (supra)** and **Dr. Shivendra Mohan Singh's case (supra)**, the Hon'ble Madhya Pradesh High Court in the matter of **Dr. Vinod Bhandari's case (supra)** and the Hon'ble Bombay High Court in the matter of **Chhagan Chandrakant Bhujbal's case (supra)** have taken a view that post amendment of Section 45 of PMLA, twin conditions do not get revived and hence, are inapplicable to the bail application filed under the PMLA. However, a contrary view has been taken by the Hon'ble High Court of Orissa at Cuttack in the matter of **Mohammad Arif's case (supra)** and by the Hon'ble High Court of Patna in the matter of **Vidyut Kumar Sarkar's case (supra)**. Further, till date, no court has declared the twin conditions mentioned in the amended Section 45 of PMLA to be unconstitutional on the ground of it being violative of Article 14 of the Constitution of India.

43. Further, the Hon'ble Supreme Court of India has stayed the operation of the judgment of the Hon'ble High Court of Delhi delivered in the matter of **Upendra Rai's case (supra)** vide

order dated 03.06.2020 passed in **SLP (Crl.) No. 5150/2020** and has also stayed the operation of the judgment delivered in **Dr. Shivendra Mohan Singh's case (supra)** and has further held vide order dated 31.07.2020 in **SLP (Crl.) No. 3474/2020** that this case will not be quoted as precedent in other cases. These directions passed by the Hon'ble Supreme Court of India in SLP (Crl.) No. 3474/2020 directing not to treat the judgment of the Hon'ble Delhi High Court delivered in **Dr. Shivendra Mohan Singh' case (supra)** as precedent, has to be treated as a direction not to treat any other case as a precedent where any other Hon'ble High Court has taken a similar view to that of the Hon'ble High Court of Delhi. Further, as of today, the view expressed by the Hon'ble High Court of Orissa at Cuttack in the matter of **Mohammad Arif's case (supra)** and by the Hon'ble High Court of Patna in the matter of **Vidyut Kumar Sarkar's case (supra)** holding that twin conditions of Section 45 of PMLA stand revived pursuant to amendment, has neither been stayed nor set aside by the Hon'ble Supreme Court of India.

- 44.** Further, having regard to the fact that twin conditions in the amended Section 45 of the PMLA have not been struck down being unconstitutional till date by any court in India, therefore, twin conditions as mentioned in Section 45 of the PMLA are required to be made applicable to the present bail application.

45. In the present case, allegations in brief as per ECIR are that during the period from 2007 to 2014, 100% subsidiary of IFFCO i.e. M/s. Kisan International Trading Company was set up in Dubai for importing fertilizers and other raw materials from foreign companies/ firms. It is alleged that one foreign company by the name of M/s. Uralkali Trading Ltd. has supplied the fertilizers at an exorbitant rate to IFFCO and illegal commission was paid to the group companies of Rajiv Saxena. Sh. Rajiv Saxena, in order to justify the illegal commission, had entered into an agreement of consultancy services with M/s. Uralkali Trading Ltd. and against the consultancy services, huge ill gotten commission to the tune of Rs.685 Crores was received in a company by the name of Midas Metal International. It is further alleged that an amount of Rs.481 Crores have been channelized to Rare Earth Group of co-accused Pankaj Jain and remaining amount of Rs.204 Crores was received by other co-accused in the accounts of the firm/companies owned by them or in cash. It is also alleged that Rajiv Saxena, Sanjay Jain, Pankaj Jain and present accused and one Sushil Kumar Pachisia assisted to channelize ill gotten money through various companies and firms registered in their names and thereby huge loss was caused to the Government exchequer.

46. During the course of investigation, statement of Rajiv Saxena was recorded under Section 50 of PMLA and in his statement, he has stated that his company, namely, Midas Metal International and M/s. Pacific International were receiving

funds from Uralkali General Trading, Gibraltar and Gulf Marine, Dubai on account of Sanjay Jain, Pankaj Jain and present accused. He further told that the payment being received was commission and the same was being shown in the form of consultancy services. He further stated that there was no agreement with Uralkali General Trading, Gibraltar and Gulf Marine, Dubai with regard to consultancy work and the entire payment being received in the companies of Rajiv Saxena belonged to Sanjay Jain, Pankaj Jain and the present accused. The statement of Rajiv Saxena is corroborated by the bank statement of Midas Metal International of RAK Bank showing the receipt of payment from M/s.Uralkali General Trading, Gibraltar.

47. Further, investigation also reflects that two companies by the name of Summerpark Corporation and Lake Village Assets Corp. registered in the Republic of Panama were the entities owned by the present accused (as disclosed by Rajiv Saxena when confronted with present accused during recording of his statement under Section 50 of PMLA) and had transferred around 11 million US Dollars in the year 2013 from their bank account at Banque Heritage based in Geneva, Switzerland to Rajiv Saxena, for the purpose of real estate investments. This fact is further supported by the email dated 30.11.2013 of Lake Village Assets Corp. addressed to Rajiv Saxena confirming the transfer of 1 million US dollar on 29.04.2013 and the email dated 30.11.2013 of Summerpark Corporation addressed to Rajiv Saxena confirming the

transfer of 9,750,000/- US Dollar (around 10 million) during the period from 16.11.2012 to 21.06.2013. Both these transfers were made from the bank account maintained at Banque Heritage at Geneva.

- 48.** It has also come during the course of investigation that the present accused had formed a Trust by the name of Bonus Capital Trust and he was the first beneficiary of that trust and on his death, second beneficiary was his sister and other family members. The said Trust was also formed in 2014.
- 49.** The accused in his statement made on 03.07.2019 before the Income Tax Authorities had given an evasive reply as to what properties were transferred to the aforementioned trust.
- 50.** The ED has also placed on record statement recorded of Sh.Sushil Kumar Pachisia under the Income Tax Act on 02.07.2019 and in the said statement, he has stated that M/s. Ferrtide DMCC was the company owned by co-accused Pankaj Jain and he joined the said company in the year 2017 as the Chief Operating Officer and prior to that he was working with Rare Earth Commodities from 2006 to 2016 as Manager having its office in Dubai. He further stated that two companies by the name of M/s. Jyoti Trading Corporation and S.A Trading, Delhi used to do consultancy and marketing work in India and they used to be paid payment. However, he could not provide any document with regard to the work done M/s. Jyoti Trading Corporation and S.A Trading Corporation.

Further as per the statement of accused under Section 50 of PMLA, both the said entities were owned by him.

51. The ED has also recorded statement of Sh. Sunil Kumar Gupta, Chartered Accountant in the Alankit Group of Companies belonging to one Alok Kumar Aggarwal and Sh.Ankit Aggarwal. As per his statement recorded under Section 50 of PMLA, bank transfer in the account of Alankit Ltd. was to the tune of around Rs.15 Crores and out of the said amount, payment was made in cash on behalf of present accused running into several crores to Sh.Faizal Ali and an amount of Rs.5 Crores was transferred to present accused through RTGS from Pratishta Images Pvt.Ltd. (Group Company of Alankit) and an another amount of Rs.90 Lacs was also paid to him in cash. The said payment was made between the period from 01.03.2019 till 22.04.2019.

52. It is further stated in his statement that several payments running into crores were paid on behalf of present accused in cash to Faizal Ali, Sanjeev jain, Sh.Chandraji from September, 2018 till November, 2018.

53. From the aforementioned investigation conducted so far, it is apparent that accused played a major role by getting the illegal commission transferred from M/s. Uralkali General Trading, Gibraltar and Gulf Marine, Dubai into the account of entities owned by Rajiv Saxena and from there, the said

commission was transferred as per his instructions and that of co-accused Pankaj Jain and Sanjay Jain.

54. It has also come in the statement of Rajiv Saxena that Pankaj Jain, Sanjay Jain and present accused were known to each other and had also met him in Dubai with regard to transfer of funds.

55. Further, from the statement of Sunil Kumar, it is apparent that accused had received a large amount running into several crores in cash either himself or on his behalf, it was received by Faizal Ali, Chandraji and Sanjeev Jain. Further, the amount received by present accused in his two companies i.e. M/s. Jyoti Trading Corporation and S.A Trading, Delhi is without there being any real business as accused failed to show any document regarding the business while his statement was recorded under Section 50 of PMLA and, therefore, the said entities indulged in sham transactions.

56. Further, as per statement of Rajiv Saxena, two companies by the name of Summerpark Corporation and Lake Village Assets Corp. were also owned by the present accused and from these two companies, around 11 million U.S. Dollars were transferred by accused to Rajiv Saxena.

57. The accused in his statement under Section 50 of PMLA has not been able to give the source of such huge funds received by him in cash or in the entities owned by him. Therefore, there is a prima facie material to hold that accused is involved

in the offence of money laundering and since the Ld.Special Counsel for the ED has opposed the grant of bail, therefore, as per Section 45 of PMLA, accused is not entitled to bail.

58. The accused is also not entitled to bail as per proviso to Section 45 of the PMLA on the ground of he being a sick and infirm person as there is nothing on record to suggest that accused is sick to that extent that in case he remains incarcerated, then his health condition will further deteriorate.

59. No doubt that accused was suffering from lymphatic cancer since 2002 but in the another application filed by accused seeking interim house arrest, accused had himself made an admission that malignance of lymphatic cancer is now controlled due to regular treatment and follow-up in U.S.A. Further, no documents were filed on record by accused to show that any kind of complication had arisen in India due to lymphatic cancer and required hospitalization or any other kind of medical intervention.

60. Even with regard to heart ailment, accused prior to his arrest was examined at AIIMS Hospital and even after his arrest, he was examined at GB Pant Hospital and RML Hospital and various tests like ECG, Echo have been got conducted but none of these tests reveal any kind of cardiac problem which requires medical intervention or constant supervision. Therefore, the ailments from which accused is suffering are

manageable and there is nothing on record to show that medical facilities being provided to accused are inadequate.

61. Another factor which shows that accused is not sick or infirm to that extent that he deserves to be enlarged on bail is the submission made by Ld.Senior Counsel for accused during the course of arguments regarding foreign travels undertaken by accused on ninety different occasions during the past seven-eight years.

62. Further, as per the submission made by Ld.Senior Counsel for accused, these foreign travels were not only made for medical check up / treatment but also done for leisure and business purposes and it further demonstrates the fact that accused is not sick. A person, who is fit enough to travel to foreign country on nine-ten occasions in a year, for the purpose of health, business and leisure is definitely not a sick person and even if he is sick, then his sickness is of manageable level which allows him to take foreign travels. Therefore, this submission made by Ld.Senior Counsel for accused also shows that sickness of the accused is not that serious which might affect his health due to continued incarceration. Therefore, accused does not deserve to be enlarged on bail as per proviso to Section 45 of PMLA.

63. Even assuming that twin conditions as mentioned in amended Section 45 of PMLA are not applicable, then also accused is not entitled to bail.

64. It is a well settled principle of law that while dealing with the application for grant of bail, the court has to take into consideration certain factors like (1) nature of accusation and severity of punishment; (2) reasonable apprehension of tampering with the witness; (3) prima facie satisfaction of the court in support of the charge; (4) likelihood of the accused fleeing from justice; (5) Character, behavior, means, position and standing of the accused; and (6) likelihood of the offence being repeated.

65. If the aforementioned factors are considered, then the accusation against accused are serious in nature as he is an accused, who is involved in money laundering of around Rs.685 Crores. Further, the offence of money laundering is a serious economic offence and the view of the Hon'ble Supreme Court of India with regard to economic offences is that they constitute a class apart and need to be visited with a different approach in the matter of bail. The Hon'ble Supreme Court of India has held that "the economic offences have deep rooted conspiracies and involve huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country." **[Reliance is made in this regard to the judgment of the Hon'ble Supreme Court of India delivered in Nimmagadda Prasad's case (supra) and Rohit Tandon's case (supra)].**

- 66.** Secondly, accused is a sitting Rajya Sabha MP and is also a member of Parliamentary Standing Committee of Fertilizers. The present offence pertains to generation of proceeds of crime while committing the offence in the import of fertilizers. Therefore, there is a likelihood that accused being a powerful person, may influence certain witnesses, who are working with different entities involved in the import of fertilizers.
- 67.** Further, statement of various witnesses to whom cash was paid on behalf of accused is yet to be recorded and if accused is released on bail, then there is a possibility of him influencing those witnesses.
- 68.** Thirdly, in the present case, accused was arrested on 02.06.2021 and the investigation is at the initial stage. Further, investigation is at the stage of collection of evidence regarding identification of proceeds of crime and finding of trail of remaining ill gotten money, which in the case of money laundering is generally routed through a complex web of companies. Therefore, taking into account the above mentioned factors, even if twin conditions mentioned in Section 45 of PMLA are ignored, then also having regard to the serious economic offence committed by accused wherein the alleged amount of Rs.685 Crores has been laundered, the possibility of tempering with the witnesses, the accused being an influential person and the investigation being at an initial stage, the court is not inclined to release the accused on bail,

even as per Section 439 Cr.P.C. **Hence, the bail application filed by accused Amarendra Dhari Singh is dismissed.**

**Announced through VC
Dated: 23.06.2021**

**(Vikas Dhull)
Spl.Judge (PC ACT): CBI-23
Rouse Avenue District Court
New Delhi**