IN THE HIGH COURT OF JHARKHAND AT RANCHI

A.B.A. No. 10671 of 2023

Mukesh Mittal aged about 65 years, son of Late Mr. Babu Lal Mittal having its address at E-265, Naraina Vihar, P.O. & P.S. Naraina, District & State-New Delhi

… … Petitioner

Versus

Union of India through Directorate of Enforcement, represented by its Assistant Director (PMLA)

… … Opposite Party

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD

For the Petitioner : Mr. Indrajit Sinha, Advocate
Mr. Shailesh Poddar, Advocate
For the Opp. Party : Mr. Amit Kumar Das, Advocate
Mr. Saurav Kumar, Advocate

C.A.V. on 02nd February, 2024 **Pronounced on 16/02/2024**

1. The instant application has been filed under Section 438 read with 440 of the Code of Criminal Procedure, 1973 praying for grant of anticipatory bail in ECIR Case No.2 of 2023 arising out of ECIR-RNZO/16/2020 read with its addendum dated 05.04.2023 (arising out of FIR No.22 of 2023 registered with the Economic Offence Wing, Delhi under Sections 120B, 420, 471, 473, 476 and 484 of IPC) alleging offences committed under Section 3 read with Section 70 of the Prevention of Money Laundering Act, 2002, hereinafter referred to as the Act, 2002.

2. The prosecution story in brief as per the allegation made in the instant ECIR/complaint reads as under:

ECIR bearing No. ECIR/RNSZO/16/2020 was recorded on 17.09.2020 based on the FIR bearing No. 13/2019 dated 13.11.2019, registered by ACB Jamshedpur, under section 7(a) of the Prevention of Corruption Act, (amended as on 2018) and Chargesheet dated 11.01.2020 filed by ACB against (i) Suresh Prasad Verma and Alok Ranjan under section 7 (b) of PC Act, 2018 and u/s 120B & 201 of IPC for investigation of offence under the provisions of the PMLA, 2002 as Sections 120B of IPC, 1860 and 7 (b) of PC Act, 2018 are scheduled offences under Part-A, Paragraph 1 of the Prevention of Money Laundering Act (PMLA), 2002.

During the course of investigation on Veerendra Kumar Ram and his close associates, several searches were conducted at various places across India and it was found that part of the Proceeds of crime acquired in the form of taking commission/bribe in lieu of allotment of tenders by Veerendra Kumar Ram, Chief Engineer in Rural work Department, Jharkhand was getting routed by a Delhi based CA Mukesh Mittal (Present Petitioner) to the bank accounts of family members of Veerendra Kumar Ram with the help of bank accounts of Mukesh Mittal's employees/relatives.

It is also alleged that Veerendra Kumar Ram used to give cash to the present petitioner who with the help of entry providers used to make entries in the bank accounts of his employees and relatives and then such fund was transferred by present petitioner into the bank accounts of Rajkumari (Wife of Veerendra Ram) and Shri Genda Ram (Father of Shri V K Ram).

Further, it is also alleged that some bank accounts opened (at Delhi) on the basis of forged documents were also being used in such routing of funds. Therefore, information related to the same was shared with the Delhi Police under Section 66(2) of the PMLA.

Further on the basis of the information shared under Section 66(2) of PMLA, 2002 to Commissioner of Police, Delhi, Police Head Quarter, an FIR No. 22/2023 was registered by Economic Offence Wing(EOW), Delhi on 03.03.2023 against (i) Shri Veerendra Kumar Ram, (ii) Mukesh Mittal (present petitioner), and (iii) unknown Others under Section 419, 420, 465, 466, 468, 471, 473, 474, 476, 484, and 120 B of IPC, 1860, and Section 7 and 5 of Specified Bank Notes (Cessation of Liabilities) Act, 2017.

In light of the additional facts emerging out of the investigation, FIR No. 22/2023 registered by EOW, Delhi was merged with the investigation of present ECIR No. RNSZO/16/2020. Accordingly, an addendum was issued on 05.04.2023 and vide the same addendum, FIR No. 22/2023 was merged with the investigation of present ECIR No. RNSZO/16/2020.

A supplementary prosecution complaint under Section 45 of PMLA, 2002 is filed before the Learned Special Court (PMLA), Ranchi on 20.08.2023 against the present petitioner, Mukesh Mittal and the cognizance of the same is taken on 22.08.2023. Hence, the instant anticipatory bail application has been filed.

Argument on behalf of the learned counsel for the petitioner:

3. Mr. Indrajit Sinha, learned counsel for the petitioner has argued inter alia on the following grounds:

   i. The investigation is complete and as such, is not at the stage of Section 19(1) of the Act, 2002.

   ii. The Section 19(1) of the Act, 2002 confers power and jurisdiction to the Enforcement Directorate to take any person who is said to commit predicate offence directly or indirectly for the purpose of laundering the money is to be arrested by showing the cause of such arrest.

   iii. Herein, the investigation has already been completed based upon the charge sheet submitted, as such, the stage of Section 19(1) has already crossed and hence, there is no need of taking the petitioner in custody and in that view of the matter, the prayer of the petitioner for grant of pre-arrest bail ought to have been allowed.

   iv. Since the ECIR has already been submitted after conclusion of the preliminary enquiry and as such, now there is no occasion for the Enforcement Directorate to have an opportunity to make opposition for grant of pre-arrest bail as required under Section 45(1)(i)(ii) of the Act, 2002.

   v. The reference of the judgment rendered by the Hon'ble Apex Court in ***Satender Kumar Antil vs. CBI and Anr., (2022) 10 SCC 51*** has also been made on the background of the fact that when the petitioner has already cooperated in the investigation based upon which the ECIR has been prepared and submitted to the concerned court then why the arrest of the petitioner at such a stage.

4. So far as the issue on merit is concerned, the ground has been taken that the petitioner has been taken into custody in connection with the first information report instituted within the territorial jurisdiction of the State of Jharkhand wherein there is no allegation of commission of any predicate offence rather on the basis of the case instituted at Delhi of the economic offence the conduct of the petitioner said to have caused in the territorial jurisdiction of Delhi is being connected with the instant FIR and based upon the same, the petitioner has been implicated in the instant case.

5. The petitioner is having the profession of Chartered Accountant and in case of his professional work merely because he has given financial suggestion, the petitioner has been implicated in the instant case in the garb of commission of predicate offence.

6. Learned counsel for the petitioner based upon the aforesaid ground has submitted that the learned court while considering the prayer for pre-arrest bail ought to have taken into consideration all these aspects of the matter both legal and factual but having not done so, serious error has been committed.

7. Further submission has been made in the aforesaid view of the matter as per the ground agitated that it is a fit case where the petitioner is to be given the benefit of pre-arrest bail.

Argument on behalf of the learned counsel for the respondent:

8. While on the other hand, Mr. Amit Kumar Das, learned counsel for the respondent-Enforcement Directorate has seriously opposed the said submission/ground both based upon the fact and the law as referred hereinabove by Mr. Indrajit Sinha, learned counsel for the petitioner.

9. It has been submitted that it is incorrect on the part of the petitioner to take the ground that the stage of Section 19(1) has crossed merely because the ECIR has been prepared and submitted. It has been submitted that the submission of ECIR cannot be said to be submission of charge sheet in view of the provision of Section 173(2) of the Cr.P.C. rather on the basis of the ECIR, a complaint is to be registered by the concerned competent court of criminal jurisdiction and the same is to be dealt with by way of complaint case where there is no requirement of submission of charge sheet said to be submitted in view of the provision of Section 173(2) of the Cr.P.C.

10. The argument regarding the stage of Section 19(1) having been crossed as has been agitated as a ground on behalf of the petitioner the same is absolutely incorrect interpretation of Section 19(1). According to Mr. Das, Section 19(1) speaks by conferring power and jurisdiction to arrest the person concerned who has been directly or indirectly found to be involved in predicate offence.

11. There is no reference of any stage under Section 19(1) of the Act, 2002 rather only reference of arrest is there giving therein the requirement to be fulfilled before arresting the person who has been found to be involved in the predicate offence.

12. The argument so far as it relates to the provision of Section 45(1)(i)(ii) whereby and whereunder the opportunity is to be given to the Enforcement Directorate before granting the benefit of regular or pre-arrest bail, the same cannot be said to be washed away merely because the ECIR has been submitted rather the aforesaid provision makes it explicit that before passing order by the court, either by allowing the prayer for regular bail or anticipatory bail, the opportunity to make opposition is to be given to the Enforcement Directorate and if the competent court has reason to believe that the allegation what has been levelled is prima facie untrue then the said prayer can be allowed.

13. The submission has been made that the twin condition for bail under Section 45 of the Act, 2002 must be made, i.e., the court is required to be satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and is not likely to commit offence while on bail.

14. Mr. Das, learned counsel for the respondent has submitted by referring to the imputation as has been come in course of preliminary enquiry conducted against the present petitioner in Delhi by instituting a case of laundering therein, wherein, the serious involvement of the petitioner has been found in laundering the money which has been acquired by the co-accused person, namely, Veerendra Kumar Ram.

15. Mr. Das, learned counsel for the Enforcement Directorate has referred the imputation as has come against the petitioner in the ECIR which has been appended with the paper book.

16. Learned counsel for the respondent-Enforcement Directorate, based upon the aforesaid ground, has submitted that it is not a fit case where the prayer for pre-arrest bail is to be granted.

Analysis:

17. We have heard the learned counsel for the parties, gone across the ECIR.

18. This Court before appreciating the argument advanced on behalf of the parties, deems it fit and proper to discuss herein some of the provision of law as contained under the Act, 2002 with its object and intent.

The Act was enacted to address the urgent need to have a comprehensive legislation *inter alia* for preventing money-laundering,

attachment of proceeds of crime, adjudication and confiscation thereof including vesting of it in the Central Government, setting up of agencies and mechanisms for coordinating measures for combating money-laundering and also to prosecute the persons indulging in the process or activity connected with the proceeds of crime.

The issues were debated threadbare in the United Nation Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Basle Statement of Principles enunciated in 1989, the FATF established at the summit of seven major industrial nations held in Paris from 14th to 16th July, 1989, the Political Declaration and Noble Programme of Action adopted by United Nations General Assembly vide its Resolution No. S-17/2 of 23.2.1990, the United Nations in the Special Session on countering World Drug Problem Together concluded on the 8th to the 10th June, 1998, urging the State parties to enact a comprehensive legislation. This is evident from the introduction and Statement of Objects and Reasons accompanying the Bill which became the 2002 Act. The same reads thus:

> *"**INTRODUCTION***
>
> ***Money-laundering poses a serious threat not only to the financial systems of countries, but also to their integrity and sovereignty**. To obviate such threats international community has taken some initiatives. It has been felt that to prevent money-laundering and connected activities a comprehensive legislation is urgently needed. To achieve this objective the Prevention of Money-laundering Bill, 1998 was introduced in the Parliament. The Bill was referred to the Standing Committee on Finance, which presented its report on 4th March, 1999 to the Lok Sabha. The Central Government broadly accepted the recommendation of the Standing Committee and incorporated them in the said Bill along with some other desired changes.*
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> ***STATEMENT OF OBJECTS AND REASONS***
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> ***It is being realised, world over, that money-laundering poses a serious threat not only to the financial systems of countries, but also to their integrity and sovereignty**. Some of the initiatives taken by the international community to obviate such threat are outlined below:—*
>
> *(a)* ***the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, to which India is a party, calls for prevention of laundering of proceeds of drug crimes and other connected activities and confiscation of proceeds derived from such offence**.*
>
> *(b)* ***the Basle Statement of Principles, enunciated in 1989, outlined basic policies and procedures that banks should follow in order to assist the law enforcement agencies in tackling the problem of money-laundering**.*
>
> *(c)* ***the Financial Action Task Force established at the summit of seven major industrial nations, held in Paris from 14th to 16th July, 1989, to examine the problem of money-laundering has made forty recommendations, which provide the foundation material for***

comprehensive legislation to combat the problem of money-laundering. The recommendations were classified under various heads. Some of the important heads are—

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

(ii) to work out modalities of disclosure by financial institutions regarding reportable transactions;

(iii) confiscation of the proceeds of crime;

(iv) declaring money-laundering to be an extraditable offence; and

(v) promoting international co-operation in investigation of money-laundering.

(d) ***the Political Declaration and Global Programme of Action adopted by United Nations General Assembly by its Resolution No. S-17/2 of 23rd February, 1990, inter alia, calls upon the member States to develop mechanism to prevent financial institutions from being used for laundering of drug related money and enactment of legislation to prevent such laundering***.

(e) ***the United Nations in the Special Session on countering World Drug Problem Together concluded on the 8th to the 10th June, 1998 has made another declaration regarding the need to combat money-laundering. India is a signatory to this declaration***.

19. It is thus evident that the Act 2002 was enacted in order to answer the urgent requirement to have a comprehensive legislation *inter alia* for preventing money-laundering, attachment of proceeds of crime, adjudication and confiscation thereof for combating money-laundering and also to prosecute the persons indulging in the process or activity connected with the proceeds of crime.

20. It needs to refer herein the definition of "proceeds of crime" as provided under Section 2(1)(u) of the Act, 2002 which reads as under:

> *"**2(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 3[or where such property is taken or held outside the country, then the property equivalent in value held within the country] 4[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;]"*

21. It is evident from the aforesaid provision by which the "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad.

In the explanation it has been referred that for 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.

The aforesaid explanation has been inserted in the statute book by way of Act 23 of 2019.

22. It is, thus, evident that the reason for giving explanation under Section 2(1)(u) is by way of clarification to the effect that whether as per the substantive provision of Section 2(1)(u), the property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country but by way of explanation the proceeds of crime has been given broader implication by including property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence.

23. The “property” has been defined under Section 2(1)(v) which means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located.

24. The schedule has been defined under Section 2(1)(x) which means schedule to the Prevention of Money Laundering Act, 2002. The “scheduled offence” has been defined under Section 2(1)(y) which reads as under:

> *“**2(y)** “scheduled offence” means—*
>
> *(i) the offences specified under Part A of the Schedule; or*
>
> *(ii) the offences specified under Part B of the Schedule if the total value involved in such offences is [one crore rupees] or more; or*
>
> *(iii) the offences specified under Part C of the Schedule.”*

25. It is evident that the “scheduled offence” means the offences specified under Part A of the Schedule; or the offences specified under Part B of the Schedule if the total value involved in such offences is [one crore rupees] or more; or the offences specified under Part C of the Schedule.

26. The offence of money laundering has been defined under Section 3 of the Act, 2002 which reads as under:

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

27. It is evident from the aforesaid provision that "offence of money-laundering" means whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.

28. It is further evident that the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.

29. The punishment for money laundering has been provided under Section 4 of the Act, 2002.

30. Section 50 of the Act, 2002 confers power upon the authorities regarding summons, production of documents and to give evidence. For ready reference, Section 50 of the Act, 2002 reads as under:

> ***"50. Powers of authorities regarding summons, production of documents and to give evidence, etc.—****(1) The Director shall, for the purposes of section 13, have the same powers as are vested in a civil court under the Code of Civil*

Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:—

(a) discovery and inspection;

(b) enforcing the attendance of any person, including any officer of a [reporting entity] and examining him on oath;

(c) compelling the production of records;

(d) receiving evidence on affidavits;

(e) issuing commissions for examination of witnesses and documents; and

(f) any other matter which may be prescribed.

(2) The Director, Additional Director, Joint Director, Deputy Director or Assistant Director shall have power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this Act.

(3) All the persons so summoned shall be bound to attend in person or through authorised agents, as such officer may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.

(4) Every proceeding under sub-sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860).

(5) Subject to any rules made in this behalf by the Central Government, any officer referred to in sub-section (2) may impound and retain in his custody for such period, as he thinks fit, any records produced before him in any proceedings under this Act:

Provided that an Assistant Director or a Deputy Director shall not—

(a) impound any records without recording his reasons for so doing; or

(b) retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the [Joint Director].”

31. The various provisions of the Act, 2002 alongwith interpretation of the definition of “proceeds of crime” has been dealt with by the Hon’ble Apex Court in the case of ***Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors., (2022) SCC OnLine SC 929*** wherein the Bench comprising of three Hon’ble Judges of the Hon’ble Supreme Court have decided the issue by taking into consideration the object and intent of the Act, 2002. The definition of “proceeds of crime” as under paragraph-251.

32. The interpretation of the condition which is to be fulfilled while arresting the person involved in the predicate offence has been made as would appear from paragraph-265. For ready reference, relevant paragraphs are being referred as under:

“265. *To put it differently, the section as it stood prior to 2019 had itself incorporated the expression “including”, which is indicative of reference made to the different process or activity connected with the proceeds of crime. Thus, the principal provision (as also the Explanation) predicates that if a person is found to be directly or indirectly involved in any process or activity connected with the proceeds of crime must be held guilty of offence of money-laundering. If the interpretation set forth by the petitioners was to be accepted, it would follow that it is only upon projecting or claiming the*

property in question as untainted property, the offence would be complete. This would undermine the efficacy of the legislative intent behind Section 3 of the Act and also will be in disregard of the view expressed by the FATF in connection with the occurrence of the word "and" preceding the expression "projecting or claiming" therein. This Court in Pratap Singh *v. State of Jharkhand, enunciated that the international treaties, covenants and conventions although may not be a part of municipal law, the same be referred to and followed by the Courts having regard to the fact that India is a party to the said treaties. This Court went on to observe that the Constitution of India and other ongoing statutes have been read consistently with the rules of international law. It is also observed that the Constitution of India and the enactments made by Parliament must necessarily be understood in the context of the present-day scenario and having regard to the international treaties and convention as our constitution takes note of the institutions of the world community which had been created. In Apparel Export Promotion Council v. A.K. Chopra, the Court observed that domestic Courts are under an obligation to give due regard to the international conventions and norms for construing the domestic laws, more so, when there is no inconsistency between them and there is a void in domestic law. This view has been restated in Githa Hariharan, as also in People's Union for Civil Liberties, and National Legal Services Authority v. Union of India."*

33. The implication of Section 50 has also been taken into consideration. Relevant paragraph, i.e., paragraphs-422, 424, 425, 431, 434 reads as under:

"422. *The validity of this provision has been challenged on the ground of being violative of Articles 20(3) and 21 of the Constitution. For, it allows the authorised officer under the 2002 Act to summon any person and record his statement during the course of investigation. Further, the provision mandates that the person should disclose true and correct facts known to his personal knowledge in connection with the subject matter of investigation. The person is also obliged to sign the statement so given with the threat of being punished for the falsity or incorrectness thereof in terms of Section 63 of the 2002 Act. Before we proceed to analyse the matter further, it is apposite to reproduce Section 50 of the 2002 Act, as amended. -----:*

424. *By this provision, the Director has been empowered to exercise the same powers as are vested in a civil Court under the 1908 Code while trying a suit in respect of matters specified in sub-section (1). This is in reference to Section 13 of the 2002 Act dealing with powers of Director to impose fine in respect of acts of commission and omission by the banking companies, financial institutions and intermediaries. From the setting in which Section 50 has been placed and the expanse of empowering the Director with same powers as are vested in a civil Court for the purposes of imposing fine under Section 13, is obviously very specific and not otherwise.*

425. *Indeed, sub-section (2) of Section 50 enables the Director, Additional Director, Joint Director, Deputy Director or Assistant Director to issue summon to any person whose attendance he considers necessary for giving evidence or to produce any records during the course of any investigation or proceeding under this Act. We have already highlighted the width of expression "proceeding" in the earlier part of this judgment and held that it applies to proceeding before the Adjudicating Authority or the Special Court, as the case may be. Nevertheless, sub-section (2) empowers the authorised officials to issue summon to any person. We fail to understand as to how Article 20(3) would come into play in respect of process of recording statement pursuant to such summon which is only for the purpose of collecting information or evidence in respect of proceeding under this Act. Indeed, the person so summoned, is bound to attend in person or through authorised agent and to state truth upon any subject concerning which he is being examined or is expected to make statement and produce documents as may be required by virtue of sub-section (3) of Section 50 of the 2002 Act. The*

criticism is essentially because of subsection (4) which provides that every proceeding under sub-sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the IPC. Even so, the fact remains that Article 20(3) or for that matter Section 25 of the Evidence Act, would come into play only when the person so summoned is an accused of any offence at the relevant time and is being compelled to be a witness against himself. This position is well-established. The Constitution Bench of this Court in M.P. Sharma had dealt with a similar challenge wherein warrants to obtain documents required for investigation were issued by the Magistrate being violative of Article 20(3) of the Constitution. This Court opined that the guarantee in Article 20(3) is against "testimonial compulsion" and is not limited to oral evidence. Not only that, it gets triggered if the person is compelled to be a witness against himself, which may not happen merely because of issuance of summons for giving oral evidence or producing documents. Further, to be a witness is nothing more than to furnish evidence and such evidence can be furnished by different modes. The Court went on to observe as follows:

> *"Broadly stated the guarantee in article 20(3) is against "testimonial compulsion". It is suggested that this is confined to the oral evidence of a person standing his trial for an offence when called to the witness-stand. We can see no reason to confine the content of the constitutional guarantee to this barely literal import. So to limit it would be to rob the guarantee of its substantial purpose and to miss the substance for the sound as stated in certain American decisions. The phrase used in Article 20(3) is "to be a witness". A person can "be a witness" not merely by giving oral evidence but also by producing documents or making intelligible gestures as in the case of a dumb witness (See section 119 of the Evidence Act) or the like. "To be a witness" is nothing more than "to furnish evidence", and such evidence can be furnished through the lips or by production of a thing or of a document or in other modes. So far as production of documents is concerned, no doubt Section 139 of the Evidence Act says that a person producing a document on summons is not a witness. But that section is meant to regulate the right of cross-examination. It is not a guide to the connotation of the word "witness", which must be understood in its natural sense, i.e., as referring to a person who furnishes evidence. Indeed, every positive volitional act which furnishes evidence is testimony, and testimonial compulsion connotes coercion which procures the positive volitional evidentiary acts of the person, as opposed to the negative attitude of silence or submission on his part. Nor is there any reason to think that the protection in respect of the evidence so procured is confined to what transpires at the trial in the court room. The phrase used in article 20(3) is "to be a witness" and not to "appear as a witness". It follows that the protection afforded to an accused in so far as it is related to the phrase "to be a witness" is not merely in respect of testimonial compulsion in the court room but may well extend to compelled testimony previously obtained from him.* ***It is available therefore to a person against whom a formal accusation relating to the commission of an offence has been levelled which in the normal course may result in prosecution.*** *Whether it is available to other persons in other situations does not call for decision in this case."*
>
> *(emphasis supplied)*

431. *In the context of the 2002 Act, it must be remembered that the summon is issued by the Authority under Section 50 in connection with the inquiry regarding proceeds of crime which may have been attached and pending adjudication before the Adjudicating Authority. In respect of such action, the designated officials have been empowered to summon any person for collection of information and evidence to be presented before the Adjudicating Authority. It is not necessarily for initiating a prosecution against the noticee as such. The power entrusted to the designated officials under this Act, though couched as investigation in real sense, is to undertake inquiry to ascertain*

relevant facts to facilitate initiation of or pursuing with an action regarding proceeds of crime, if the situation so warrants and for being presented before the Adjudicating Authority. It is a different matter that the information and evidence so collated during the inquiry made, may disclose commission of offence of money-laundering and the involvement of the person, who has been summoned for making disclosures pursuant to the summons issued by the Authority. At this stage, there would be no formal document indicative of likelihood of involvement of such person as an accused of offence of money-laundering. If the statement made by him reveals the offence of money-laundering or the existence of proceeds of crime, that becomes actionable under the Act itself. To put it differently, at the stage of recording of statement for the purpose of inquiring into the relevant facts in connection with the property being proceeds of crime is, in that sense, not an investigation for prosecution as such; and in any case, there would be no formal accusation against the noticee. Such summons can be issued even to witnesses in the inquiry so conducted by the authorised officials. However, after further inquiry on the basis of other material and evidence, the involvement of such person (noticee) is revealed, the authorised officials can certainly proceed against him for his acts of commission or omission. In such a situation, at the stage of issue of summons, the person cannot claim protection under Article 20(3) of the Constitution. However, if his/her statement is recorded after a formal arrest by the ED official, the consequences of Article 20(3) or Section 25 of the Evidence Act may come into play to urge that the same being in the nature of confession, shall not be proved against him. Further, it would not preclude the prosecution from proceeding against such a person including for consequences under Section 63 of the 2002 Act on the basis of other tangible material to indicate the falsity of his claim. That would be a matter of rule of evidence.

434. *It is, thus, clear that the power invested in the officials is one for conducting inquiry into the matters relevant for ascertaining existence of proceeds of crime and the involvement of persons in the process or activity connected therewith so as to initiate appropriate action against such person including of seizure, attachment and confiscation of the property eventually vesting in the Central Government.*

34. It is evident from the observation so made as above that the purposes and objects of the 2002 Act for which it has been enacted, is not limited to punishment for offence of money-laundering, but also to provide measures for prevention of money-laundering. It is also to provide for attachment of proceeds of crime, which are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceeding relating to confiscation of such proceeds under the 2002 Act. This Act is also to compel the banking companies, financial institutions and intermediaries to maintain records of the transactions, to furnish information of such transactions within the prescribed time in terms of Chapter IV of the 2002 Act.

35. The predicate offence has been considered in the aforesaid judgment wherein by taking into consideration the explanation as inserted by way of Act 23 of 2019 under the definition of the “proceeds of crime” as contained under Section 2(1)(u), whereby and whereunder, it has been clarified for the purpose of removal of doubts that, the "proceeds of crime" include property not only

derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence, meaning thereby, the words *"any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence"* will come under the fold of the proceeds of crime.

36. So far as the purport of Section 45(1)(i)(ii) is concerned, the aforesaid provision starts from the non-obstante clause that notwithstanding anything contained in the Code of Criminal Procedure, 1973, no person accused of an offence under this Act shall be released on bail or on his own bond unless –

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

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail

Sub-section (2) thereof puts limitation on granting bail specific in sub-section (1) in addition to the limitations under the Code of Criminal Procedure, 1973 or any other law for the time being in force on granting of bail.

The explanation is also there as under sub-section (2) thereof which is for the purpose of removal of doubts, a clarification has been inserted that the expression "Offences to be cognizable and non-bailable" shall mean and shall be deemed to have always meant that all offences under this Act shall be cognizable offences and non-bailable offences notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973, and accordingly the officers authorised under this Act are empowered to arrest an accused without warrant, subject to the fulfilment of conditions under section 19 and subject to the conditions enshrined under this section.

37. The fact about the implication of Section 45 has been interpreted by the Hon'ble Apex Court in ***Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors.***(supra) at paragraphs-371-374. For ready reference, the said paragraphs are being referred as under:

"371. *The relevant provisions regarding bail in the 2002 Act can be traced to Sections 44(2), 45 and 46 in Chapter VII concerning the offence under this Act. The principal grievance is about the twin conditions specified in Section 45 of the 2002 Act. Before we elaborate further, it would be apposite to reproduce Section 45, as amended. The same reads thus:*

> *"**45. Offences to be cognizable and non-bailable.**—(1) [Notwithstanding anything contained in the Criminal Procedure Code, 1973 (2 of 1974), no person accused of an offence [under this Act] shall be released on bail or on his own bond unless']*
>
> *(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and*
>
> *(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:*
>
> *Provided that a person who is under the age of sixteen years, or is a woman or is sick or infirm, [or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees], may be released on bail, if the Special Court so directs:*
>
> *Provided further that the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by—*
>
> *(i) the Director; or*
>
> *(ii) any officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government.*
>
> *[(1A) Notwithstanding anything contained in the Criminal Procedure Code, 1973 (2 of 1974), or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.]*
>
> *(2) The limitation on granting of bail specified in [***] sub-section (1) is in addition to the limitations under the Criminal Procedure Code, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.*
>
> *[Explanation.—For the removal of doubts, it is clarified that the expression "Offences to be cognizable and non-bailable" shall mean and shall be deemed to have always meant that all offences under this Act shall be cognizable offences and non-bailable offences notwithstanding anything to the contrary contained in the Criminal Procedure Code, 1973 (2 of 1974), and accordingly the officers authorised under this Act are empowered to arrest an accused without warrant, subject to the fulfilment of conditions under section 19 and subject to the conditions enshrined under this section.]"*

372. *Section 45 has been amended vide Act 20 of 2005, Act 13 of 2018 and Finance (No. 2) Act, 2019. The provision as it obtained prior to 23.11.2017 read somewhat differently. The constitutional validity of Sub-section (1) of Section 45, as it stood then, was considered in Nikesh Tarachand Shah. This Court declared Section 45(1) of the 2002 Act, as it stood then, insofar as it imposed two further conditions for release on bail, to be unconstitutional being violative of Articles 14 and 21 of the Constitution. The two conditions which have been mentioned as twin conditions are:*

(i) that there are reasonable grounds for believing that he is not guilty of such offence; and

(ii) that he is not likely to commit any offence while on bail.

> ***373.*** *According to the petitioners, since the twin conditions have been declared to be void and unconstitutional by this Court, the same stood obliterated. To buttress this argument, reliance has been placed on the dictum in State of Manipur.*
>
> ***374.*** *The first issue to be answered by us is: whether the twin conditions, in law, continued to remain on the statute book post decision of this Court in Nikesh Tarachand Shah and if yes, in view of the amendment effected to Section 45(1) of the 2002 Act vide Act 13 of 2018, the declaration by this Court will be of no consequence. This argument need not detain us for long. We say so because the observation in State of Manipur in paragraph 29 of the judgment that owing to the declaration by a Court that the statute is unconstitutional obliterates the statute entirely as though it had never been passed, is contextual. In this case, the Court was dealing with the efficacy of the repealing Act. While doing so, the Court had adverted to the repealing Act and made the stated observation in the context of lack of legislative power. In the process of reasoning, it did advert to the exposition in Behram Khurshid Pesikaka and Deep Chand*[7] *including American jurisprudence expounded in Cooley on Constitutional Limitations and Norton v. Shelby County."*

38. Subsequently, the Hon'ble Apex Court in the case of ***Tarun Kumar vs. Assistant Director Directorate of Enforcement, (2023) SCC OnLine SC 1486*** by taking into consideration the law laid down by the Larger Bench of the Hon'ble Apex Court in ***Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors.***(supra), the law has been laid down that since the conditions specified under Section 45 are mandatory, they need to be complied with. The Court is required to be satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and he is not likely to commit any offence while on bail.

It has further been observed that as per the statutory presumption permitted under Section 24 of the Act, the Court or the Authority is entitled to presume unless the contrary is proved, that in any proceedings relating to proceeds of crime under the Act, in the case of a person charged with the offence of money laundering under Section 3, such proceeds of crime are involved in money laundering. Such conditions enumerated in Section 45 of PML Act will have to be complied with even in respect of an application for bail made under Section 439 Cr. P.C. in view of the overriding effect given to the PML Act over the other law for the time being in force, under Section 71 of the PML Act. For ready reference, paragraph-17 of the said judgment reads as under:

> ***"17.*** *As well settled by now, the conditions specified under Section 45 are mandatory. They need to be complied with. The Court is required to be satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and he is not likely to commit any offence while on bail. It is needless to say that as per the statutory presumption permitted under Section 24 of the Act, the Court or the Authority is entitled to presume unless the contrary is proved, that in any proceedings relating to proceeds of*

> *crime under the Act, in the case of a person charged with the offence of money laundering under Section 3, such proceeds of crime are involved in money laundering. Such conditions enumerated in Section 45 of PML Act will have to be complied with even in respect of an application for bail made under Section 439 Cr. P.C. in view of the overriding effect given to the PML Act over the other law for the time being in force, under Section 71 of the PML Act."*

39. The Hon'ble Apex Court in the said judgment has further laid down that the twin conditions as to fulfil the requirement of Section 45 of the Act, 2002 before granting the benefit of bail is to be adhered to which has been dealt with by the Hon'ble Apex Court in ***Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors.***(supra) wherein it has been observed that the accused is not guilty of the offence and is not likely to commit any offence while on bail.

40. In the judgment rendered by the Hon'ble Apex Court in ***Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors.***(supra) as under paragraph-284, it has been held that the Authority under the 2002 Act, is to prosecute a person for offence of money-laundering only if it has reason to believe, which is required to be recorded in writing that the person is in possession of "proceeds of crime". Only if that belief is further supported by tangible and credible evidence indicative of involvement of the person concerned in any process or activity connected with the proceeds of crime, action under the Act can be taken forward for attachment and confiscation of proceeds of crime and until vesting thereof in the Central Government, such process initiated would be a standalone process.

So far as the issue of grant of bail under Section 45 of the Act, 2002 is concerned, as has been referred hereinabove, at paragraph-412 of the judgment rendered in ***Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors.***(supra) it has been held therein by making observation that whatever form the relief is couched including the nature of proceedings, be it under Section 438 of the 1973 Code or for that matter, by invoking the jurisdiction of the Constitutional Court, the underlying principles and rigors of Section 45 of the 2002 must come into play and without exception ought to be reckoned to uphold the objectives of the 2002 Act, which is a special legislation providing for stringent regulatory measures for combating the menace of money-laundering.

41. The Hon'ble Apex Court in the case of ***Gautam Kundu vs. Directorate of Enforcement (Prevention of Money-Laundering Act), Government of India through Manoj Kumar, Assistant Director, Eastern Region, (2015) 16 SCC 1*** has been pleased to hold at paragraph -30 that the conditions specified under Section 45 of PMLA are mandatory and need to be complied with, which is further strengthened by the provisions of Section 65 and also Section 71 of PMLA. Section 65 requires that the provisions of CrPC shall apply insofar as they are not inconsistent with the provisions of this Act and Section 71 provides that the provisions of PMLA shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. PMLA has an overriding effect and the provisions of CrPC would apply only if they are not inconsistent with the provisions of this Act.

Therefore, the conditions enumerated in Section 45 of PMLA will have to be complied with even in respect of an application for bail made under Section 439 CrPC. That coupled with the provisions of Section 24 provides that unless the contrary is proved, the authority or the Court shall presume that proceeds of crime are involved in money-laundering and the burden to prove that the proceeds of crime are not involved, lies on the appellant. For ready reference, paragraph-30 of the said judgment reads as under:

> *"**30.** The conditions specified under Section 45 of PMLA are mandatory and need to be complied with, which is further strengthened by the provisions of Section 65 and also Section 71 of PMLA. Section 65 requires that the provisions of CrPC shall apply insofar as they are not inconsistent with the provisions of this Act and Section 71 provides that the provisions of PMLA shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. PMLA has an overriding effect and the provisions of CrPC would apply only if they are not inconsistent with the provisions of this Act. Therefore, the conditions enumerated in Section 45 of PMLA will have to be complied with even in respect of an application for bail made under Section 439 CrPC. That coupled with the provisions of Section 24 provides that unless the contrary is proved, the authority or the Court shall presume that proceeds of crime are involved in money-laundering and the burden to prove that the proceeds of crime are not involved, lies on the appellant."*

42. The Hon'ble Apex Court in the case of ***Tarun Kumar vs. Assistant Director Directorate of Enforcement*** (supra) has again reiterated the implication of Sections 45 and the principle of parity at paragraphs-17 and 18. The issue of parity has been considered by the Hon'ble Apex Court at paragraph-18 by making observation therein that parity is not the law. While applying the

principle of parity, the Court is required to focus upon the role attached to the accused whose application is under consideration. For ready reference, paragraph-17 and 18 read as under:

> ***"17.*** *As well settled by now, the conditions specified under Section 45 are mandatory. They need to be complied with. The Court is required to be satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and he is not likely to commit any offence while on bail. It is needless to say that as per the statutory presumption permitted under Section 24 of the Act, the Court or the Authority is entitled to presume unless the contrary is proved, that in any proceedings relating to proceeds of crime under the Act, in the case of a person charged with the offence of money laundering under Section 3, such proceeds of crime are involved in money laundering. Such conditions enumerated in Section 45 of PML Act will have to be complied with even in respect of an application for bail made under Section 439 Cr. P.C. in view of the overriding effect given to the PML Act over the other law for the time being in force, under Section 71 of the PML Act.*
>
> ***18.*** *The submission of learned Counsel Mr. Luthra to grant bail to the appellant on the ground that the other co-accused who were similarly situated as the appellant, have been granted bail, also cannot be accepted. It may be noted that parity is not the law. While applying the principle of parity, the Court is required to focus upon the role attached to the accused whose application is under consideration. It is not disputed in that the main accused Sh. Kewal Krishan Kumar, Managing Director of SBFL, and KMP of group companies and the other accused Devki Nandan Garg, owner/operator/controller of various shell companies were granted bail on the ground of infirmity and medical grounds. The co-accused Raman Bhuraria, who was the internal auditor of SBFL has been granted bail by the High Court, however the said order of High Court has been challenged by the respondent before this Court by filing being SLP (Crl.) No. 9047 of 2023 and the same is pending under consideration. In the instant case, the High Court in the impugned order while repelling the said submission made on behalf of the appellant, had distinguished the case of Raman Bhuraria and had observed that unlike Raman Bhuraria who was an internal auditor of SBFL (for a brief period statutory auditor of SBFL), the applicant was the Vice President of Purchases and as a Vice President, he was responsible for the day-to-day operations of the company. It was also observed that the appellant's role was made out from the financials, where direct loan funds have been siphoned off to the sister concerns of SBFL, where the appellant was either a shareholder or director. In any case, the order granting bail to Raman Bhuraria being under consideration before the coordinate bench of this Court, it would not be appropriate for us to make any observation with regard to the said order passed by the High Court."*

43. Now, after having discussed the judgments passed by the Hon'ble Apex Court on the issue of various provisions of the Act, 2002, this Court, is proceeding to answer the legal grounds as has been raised on behalf of the learned counsel for the petitioner.

44. The first ground is that the ECIR has already been submitted, the case has been converted into a complaint case and hence, at this stage, the public prosecutor appearing for the Enforcement Directorate cannot have jurisdiction to make opposition. According to the learned counsel for the petitioner such conferment of right upon the Enforcement Directorate is at the stage of seeking bail under Section 19(1) and now the complaint has already been

registered in which the summons has been issued and now in it in between the Court and the accused person, hence, the Enforcement Directorate has got no occasion to make opposition in the light of the provision of Section 45(1)(i)(ii) of the Act, 2002.

The second ground has been taken that the stage of Section 19(1) has already been expired the moment the ECIR has been submitted before the concerned court and the ground has been that since there is cooperation of the petitioner in course of conducting the preliminary enquiry converted into the ECIR, as such, at this stage his incarceration will be irrelevant and the reliance has also been placed on the judgment rendered by the Hon'ble Apex Court in the case of ***Satender Kumar Antil vs. CBI and Anr.*** (supra)**.**

45. The ground of stage of Section 19(1) has been taken that the same is not available the moment the ECIR has been prepared.

This Court is not impressed with such argument due to the reason that the provision of Section 19(1) of the Act, 2002 if will be considered there is no stage of applying the stipulation so made in Section 19(1) rather the same is only the conferment of power for making arrest if there is reason to believe that the reason for such belief to be recorded in writing that any person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

The aforesaid provision specifies that the power of arrest has been conferred at any stage even after completion of ECIR since there is no stipulation to that effect that after completion of ECIR, the power to make arrest under Section 19(1) of the Act, 2002 cannot be exercised rather while arresting such person, the conditions is required to be followed, i.e., the reason to believe that any person has been guilty of an offence punishable under this Act and the aforesaid reason is to be recorded in writing, as soon as may be, inform him of the grounds for such arrest.

The aforesaid provision of communicating the grounds for arrest recording its time frame as to what time the same is to be communicated has been laid down by the Hon'ble Apex Court in the case of ***Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors.***(supra) .

Subsequent to the aforesaid judgment, the Division Bench in the case of ***Pankaj Bansal vs. Union of India and Ors., 2023 SCC OnLine SC 1244***

the law has been laid down therein that the reason for such arrest is to be communicated henceforth prior to making arrest. Relevant paragraph of the said judgment reads as under:

> ***"39.*** *On the above analysis, to give true meaning and purpose to the constitutional and the statutory mandate of Section 19(1) of the Act of 2002 of informing the arrested person of the grounds of arrest, we hold that it would be necessary, henceforth, that a copy of such written grounds of arrest is furnished to the arrested person as a matter of course and without exception. The decisions of the Delhi High Court in Moin Akhtar Qureshi (supra) and the Bombay High Court in Chhagan Chandrakant Bhujbal (supra), which hold to the contrary, do not lay down the correct law. In the case on hand, the admitted position is that the ED's Investigating Officer merely read out or permitted reading of the grounds of arrest of the appellants and left it at that, which is also disputed by the appellants. As this form of communication is not found to be adequate to fulfil compliance with the mandate of Article 22(1) of the Constitution and Section 19(1) of the Act of 2002, we have no hesitation in holding that their arrest was not in keeping with the provisions of Section 19(1) of the Act of 2002. Further, as already noted supra, the clandestine conduct of the ED in proceeding against the appellants, by recording the second ECIR immediately after they secured interim protection in relation to the first ECIR, does not commend acceptance as it reeks of arbitrary exercise of power. In effect, the arrest of the appellants and, in consequence, their remand to the custody of the ED and, thereafter, to judicial custody, cannot be sustained."*

Subsequently, in the case of ***Ram Kishor Arora vs. Directorate of Enforcement, 2023 SCC OnLine SC 1682***, the same has been taken into consideration wherein the petitioner has taken the plea that the judgment rendered by the Hon'ble Apex Court in the case of ***Pankaj Bansal vs. Union of India and Ors.*** (supra) has not been followed since there is no written communication said to be served informing the reason for arrest prior to such arrest and as such, the prayer for bail has been sought for. But the Hon'ble Apex Court going to the facts of the said case wherein the petitioner was arrested in the month of June, 2023 while the judgment of ***Pankaj Bansal vs. Union of India and Ors.*** (supra) has come in the month of October, 2023, hence, relying upon the law laid down by the larger bench of the Hon'ble Apex Court since the reason was communicated to the petitioner within 24 hours and hence, the prayer for regular bail of the petitioner was rejected.

Thus, it is evident that Section 19(1) of the Act, 2002 does not carve out any bifurcation by carving out the stages by restricting the power of the authorities not to arrest. For granting bail, the twin conditions as per the law laid down by the Hon'ble Apex Court in the case of ***Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors.*** (supra) followed in the case of ***Tarun Kumar vs. Assistant Director Directorate of Enforcement*** (supra) is the fulfilment of twin conditions, i.e.,

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

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

46. Further, Section 45(2) provides to consider the limitation for grant of bail which is in addition the limitation under the Code of Criminal Procedure, 1973, i.e., limitation which is to be considered while granting the benefit either in exercise of jurisdiction conferred to this Court under Section 438 or 439 of Cr.P.C. is to be taken into consideration.

47. We are dealing herein with the petition of pre-arrest bail which is to be granted in exercise of power conferred under Section 438 of Cr.P.C. The law is well settled so far as the consideration of the prayer of the pre-arrest bail is concerned, what is the requirement to be looked into for the purpose of granting the said benefit.

48. It has been settled by Hon'ble Apex Court time and again in its various pronouncements that the powers under Section 438 Cr.P.C., is in extra-ordinary character and must be exercised sparingly in exceptional cases only and therefore, the anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been implicated in the crime, as grant of anticipatory bail to some extent, is interference in the sphere of investigation of an offence and hence, the court must be cautious while exercising such powers.

49. It is also settled connotation of law that the grant or refusal of the application should necessarily depend on the facts and circumstance of each case and there is no hard and fast rule and no inflexible principles governing such exercise by the Court.

50. It is pertinent to mention here that the law on grant of anticipatory bail has been summed up by the Hon'ble Apex Court in ***Siddharam Satlinappa Mhetre vs. state of Maharashtra & Ors. reported in (2011)1 SCC 694*** after due deliberation on the parameters as evolved by the Constitution Bench in ***Gurubaksh Singh Sibbia vs. State of Punjab reported in (1980) 2 SCC 565***.

The relevant paragraphs of the said judgment as rendered by the Hon'ble Apex Court is being quoted hereunder:-

> *"**111.** No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail. We are clearly of the view that no attempt should be made to provide rigid and inflexible guidelines in this respect because all circumstances and situations of future cannot be clearly visualised for the grant or refusal of anticipatory bail. In consonance with the legislative intention the grant or refusal of anticipatory bail should necessarily depend on the facts and circumstances of each case. As aptly observed in the Constitution Bench decision in Sibbia case [(1980) 2 SCC 565 : 1980 SCC (Cri) 465] that the High Court or the Court of Session has to exercise their jurisdiction under Section 438 CrPC by a wise and careful use of their discretion which by their long training and experience they are ideally suited to do. In any event, this is the legislative mandate which we are bound to respect and honour.*
>
> ***112.** The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:*
>
> *(i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;*
>
> *(ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;*
>
> *(iii) The possibility of the applicant to flee from justice;*
>
> *(iv) The possibility of the accused's likelihood to repeat similar or other offences;*
>
> *(v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;*
>
> *(vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;*
>
> *(vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because overimplication in the cases is a matter of common knowledge and concern;*
>
> *(viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;*
>
> *(ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;*
>
> *(x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.*
>
> ***114.** These are some of the factors which should be taken into consideration while deciding the anticipatory bail applications. These factors are by no means exhaustive but they are only illustrative in nature because it is difficult to clearly visualise all situations and circumstances in which a person may pray for anticipatory bail. If a wise discretion is exercised by the Judge concerned, after consideration of the entire material on record then most of the grievances in favour of grant of or refusal of bail will be taken care of.*

> *The legislature in its wisdom has entrusted the power to exercise this jurisdiction only to the Judges of the superior courts. In consonance with the legislative intention we should accept the fact that the discretion would be properly exercised. In any event, the option of approaching the superior court against the Court of Session or the High Court is always available."*

51. In ***Sushila Aggarwal v. State (NCT of Delhi) reported in (2020) 5 SCC 1*** the Constitution Bench of the Hon'ble Apex Court has reiterated that while deciding applications for anticipatory bail, Courts should be guided by factors like the nature and gravity of the offences and the role attributed to the applicant and the facts of the case.

52. The Hon'ble Supreme Court, in catena of decisions, has categorically held that the judicial discretion of the Court while considering the anticipatory bail shall be guided by various relevant factors and largely it will depend upon the facts and circumstances of each case. Reference in this regard may be taken from the judgment rendered by the Hon'ble Apex Court in the case of ***Central Bureau of Investigation Vs Santosh Krnani and Another reported in 2023 SCC OnLine SC 427.*** For ready reference the relevant paragraph of the aforesaid judgment is being quoted herein under:

> *"**24.** The time-tested principles are that no straitjacket formula can be applied for grant or refusal of anticipatory bail. The judicial discretion of the Court shall be guided by various relevant factors and largely it will depend upon the facts and circumstances of each case. The Court must draw a delicate balance between liberty of an individual as guaranteed under Article 21 of the Constitution and the need for a fair and free investigation, which must be taken to its logical conclusion. Arrest has devastating and irreversible social stigma, humiliation, insult, mental pain and other fearful consequences. Regardless thereto, when the Court, on consideration of material information gathered by the Investigating Agency, is prima facie satisfied that there is something more than a mere needle of suspicion against the accused, it cannot jeopardise the investigation, more so when the allegations are grave in nature."*

53. It is, evident by taking into consideration the provision of Section 19(1), 45(1), 45(2), the conditions which are required to be considered while granting the benefit of regular bail in exercise of power conferred under Section 438 or 439 of Cr.P.C., i.e., pre-arrest bail apart from the twin conditions which has been provided under Section 45(1) of the Act, 2002, the conditions or the requirement which has been followed while granting the bail under Section 439 or 438, as the case may be.

Therefore, this Court is of the view that since there is no bifurcation of the stages under Section 19(1) that after submission of the ECIR, the authority seizes its power to arrest rather the same depends upon the nature of gravity of the offence as per the general principle.

So far as the contention that the public prosecutor appearing for the Enforcement Directorate has got no occasion to make opposition once the ECIR has been prepared and submitted to the Court but this Court, after going through the provision of Section 45(1), is of the view that there is no reference to that effect that once the ECIR has been submitted the public prosecutor appearing for the Enforcement Directorate will have no occasion to make opposition for grant of bail of pre-arrest bail rather the Section 45(1) of the Act, 2002 provide occasion as under 45(1)(i)(ii), i.e., to provide an opportunity to the public prosecutor before passing an order either under Section 439 or 438 of Cr.P.C.

54. Sub-section (1)(ii) of Section 45 of the Act, 2002, provides that if the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail, meaning thereby, the parameter which is to be followed by the concerned court that satisfaction is required to be there for believing that such accused person is not guilty of such offence and is not likely to commit of offence while on bail.

55. The aforesaid fact can only be ascertained from the material surfaced in course of enquiry based upon which the ECIR is to be prepared. The curtailment of the power of public prosecutor appearing for the Enforcement Directorate cannot be said to be acceptable since the same is on the basis of the cardinal principle to provide an opportunity to the public prosecutor to make opposition.

The further purpose of such opportunity is that the Court may come to a conclusive finding after hearing the accused and the public prosecutor.

56. The law is well settled that there cannot be an insertion of word or law cannot be interpreted on its own way if the law suffers from no ambiguity. Reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in ***R.S. Nayak vs. A.R. Antulay, (1984) 2 SCC 183*** wherein at paragraph-18 it has been observed which reads as under:

> ***"18.****Re. (a): The 1947 Act was enacted, as its long title shows, to make more effective provision for the prevention of bribery and corruption. Indisputably, therefore, the provisions of the Act must receive such construction at the hands of the court as would advance the object and purpose underlying the Act and at any rate not defeat it. If the words of the statute are clear and unambiguous, it is the plainest duty of the court to give effect to the natural meaning of the words used in the provision. The question of construction*

> *arises only in the event of an ambiguity or the plain meaning of the words used in the statute would be self-defeating. The court is entitled to ascertain the intention of the legislature to remove the ambiguity by construing the provision of the statute as a whole keeping in view what was the mischief when the statute was enacted and to remove which the legislature enacted the statute. This rule of construction is so universally accepted that it need not be supported by precedents. Adopting this rule of construction, whenever a question of construction arises upon ambiguity or where two views are possible of a provision, it would be the duty of the court to adopt that construction which would advance the object underlying the Act namely, to make effective provision for the prevention of bribery and corruption and at any rate not defeat it."*

Further, in the case of ***Dr. (Major) Meeta Sahai vs. State of Bihar and Ors., (2019) 20 SCC 17***, it has been held as observed at paragraph-20 which reads as under:

> ***"20.*** *It is a settled canon of statutory interpretation that as a first step, the courts ought to interpret the text of the provision and construct it literally. Provisions in a statute must be read in their original grammatical meaning to give its words a common textual meaning. However, this tool of interpretation can only be applied in cases where the text of the enactment is susceptible to only one meaning. [Nathi Devi v. Radha Devi Gupta, (2005) 2 SCC 271, para 13.] Nevertheless, in a situation where there is ambiguity in the meaning of the text, the courts must also give due regard to the consequences of the interpretation taken."*

57. Such settled law is for the purpose that if the act provides a thing to be done, the same is to be done in accordance with the provision. Reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in ***State of Uttar Pradesh vs. Singhara Singh and Ors., reported in AIR (1964) SC 358***, wherein, it has been held at paragraph-8 as under:

> *8. "....its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted...."*

In the case of ***Babu Verghese and Ors. vs. Bar Council of Kerala and Ors., reported in (1999) 3 SCC 422***, wherein, it has been held at paragraph nos. 31 & 32 as under:

> *"31. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor v. Taylor which was followed by Lord Roche in Nazir Ahmad v. King Emperor who stated as under:*
>
> > *"[W]here a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all."*
>
> *32. This rule has since been approved by this Court in Rao Shiv Bahadur Singh v. State of V.P. and again in Deep Chand v. State of Rajasthan. These cases were considered by a three-judge bench of this Court in State of U.P. v.*

Singhara Singh and the rule laid down in Nazir Ahmad case was again upheld. This rule has since been applied to the exercise of jurisdiction by courts and has also been recognized as a statutory principle of administrative law."

Further, in the case of ***Commissioner of Income Tax, Mumbai vs. Anjum M.H. Ghaswala & Ors., reported in (2002) 1 SCC 633***, wherein, it has been held at paragraph 27 as under:

"..... it is a normal rule of consideration that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself...."

Likewise, in the case of ***State of Jharkhand & Ors. vs. Ambay Cements & Anr., reported in (2005) 1 SCC 368***, wherein, it has been held at paragraph 26 as under:

"....it is the cardinal rule of interpretation that where a statute provides that a particular thing should be done, it should be done in the manner prescribed and not in any other way. It is [15] also settled rule of interpretation that where a statute is penal in character, it must be strictly construed and followed....."

58. Therefore, this Court is of the view that what has been contended on behalf of the learned counsel for the petitioner that the moment the ECIR has been submitted, the public prosecutor will have no occasion to make opposition, is having no substance.

59. This Court, after discussing the aforesaid legal issues, is of the view that the case is to be tested on the basis of the ground that the fulfilment of twin conditions as provided under Section 45 of the Act, 2002, i.e., the Public Prosecutor has been given an opportunity to oppose the application for such release; and where the Public Prosecutor opposes the application, whether the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

60. This Court, in order to come to a conclusive finding as to whether the petitioner is fulfilling these criteria/grounds, needs to refer herein the evidence collected in course of preparation of ECIR which are as followed:

*"**5. <u>Investigation of the offence involved under PMLA</u>:***

5.2 During investigation, while tracing the illicit funds acquired by V K Ram during his tenure, it has been found that huge amounts have been received in the bank accounts of the wife and father of Veerendra Kumar Ram, firstly in the joint account (2577257010412) of Rajkumari & Veerendra Kumar Ram to the tune of Rs. 9.30 crore approximately during the period FY 2014-15 to FY 2018-19, and then in the account of his father Genda Ram to the tune of Rs.

4.5 crores in a span of 31- 32 days from 21.12.22 till 23.01.23, said amount was transferred from the bank accounts of the employees/relatives of one Delhi-based CA Mukesh Mittal (accused). Such dummy bank accounts (belonging to the relative and employee of Mukesh Mittal), transferred the funds into the bank accounts of Genda Ram after receiving the funds from some fake bank accounts or bank accounts of fictitious persons.

5.3.2 Investigation regarding source of funds:

(i) Analysis of the account opening form, KYC documents and bank account statements of both RP Investment and Consultancy (Prop. Reena Pal) and RK Investment and Consultancy (Prop. Rakesh Kumar Kedia) have been done. Further, statements of the proprietors of these firms were also recorded wherein it was revealed that Reena Pal is the wife of Vijay Kumar Pal and Proprietor of M/s RP Investment and Consultancy, and Vijay Pal is an employee of Mukesh Mittal. It is worth noting that, on field verification, none of the business addresses, o. RP Investment Consultancy were found to be running such business operations. Vijay Pal has disclosed in his statement that he opened such bank account in the name of M/s RP Investment and Consultancy (Prop: Reena Pal) on the instruction of Mukesh Mittal (Accused Number5) and such bank account was operated by Mukesh Mittal only. Search u/s 17 of PMLA was also conducted at Reena Pal and Vijay Pal's residence wherein Reena Pal in her statement recorded u/s 17 of PMLA denied having knowledge of any firm existing in her name or any bank account operating in the name of such firm. She simply stated that her husband Vijay Pal used to handle all her financial dealings. Further, business operations in the name of RK Investment and Consultancy could not be traced during the field inquiry. Search operation u/s 17 of PMLA was conducted at the residential premises of Rakesh Kumar Kedia, and he in his statement recorded u/s 17 of PMLA revealed that his bank account is being controlled by his relative Mukesh Mittal and he does not know about any firm existing in his name. Rakesh Kumar Kedia's proprietorship firm, M/s RK Investments and Consultancy has bank account number 2577214000002 being maintained in Canara Bank, and in its account opening form, Mukesh Mittal's mobile number, 7011929771 is found to be registered, which indicates that the high-value online banking transfers which were carried through this account were actually done by Mukesh Mittal. Thus, it is very much clear that RK Investment and Consultancy and RP Investment and Consultancy are just dummy entities with no business existence in their names and their bank accounts were controlled and used by Mukesh Mittal for laundering of money to integrate the proceeds of crime earned by Veerendra Kumar Ram into the bank accounts of Rajkumari.

(ii) Veerendra Kumar Ram (Accused Number 1) in his statement recorded under section 50 of PMLA 2002 stated that he used to carry cash to Delhi by train in a lot of Rs 25-50 lakhs from 2015 to 2020 and give it to Mukesh Mittal (Accused Number5) who after deducting his commission transferred the remaining amount in his aforesaid joint bank account held with his wife Rajkumari (Accused Number3). Against the said cash, Mukesh Mittal (Accused Number5) used to arrange the entries in the bank account of his wife Rajkumari. Shri V.K. Ram also stated that the said money was the commission received by him from various contractors against the allocation of tenders. Further, during the aforesaid period, it is seen that Veerendra Kumar Ram has travelled to Delhi multiple times.

(iii) During PMLA investigation, Veerendra Kumar Ram stated u/s 50 of PMLA that in 2013-14, one Mr. Tiwari, CA introduced him to CA Mittal; He further stated that Mr. Tiwari was then working under CA Mittal; Further, he stated that Jawahar Lal Singh, Assistant Engineer who was working under him, his son Ajeet Singh, introduced him to Mr. Tiwari; He later stated that Ajeet Singh is very close to him. During the investigation, it became clear that Mr. Tiwari, CA is Hirdya Nand Tiwari and Mr. Mittal, CA is Mukesh Mittal.

(iv) Mukesh Mittal in his statement dated 11.07.2023 stated that Hirdya Nand Tiwari (Accused Number10) brought Ajeet Singh and Veerendra Kumar Ram

(Accused Number1)into his office and introduced them (for the purpose of laundering of Proceeds of Crime of V.K. Ram). Further Mukesh Mittal in his statement dated 29.03.2023 recorded u/s 50 of PMLA stated that the bank accounts of Rajkumari and Genda Ram (Accused Number4) were handled by one Hridya Nand Tiwari (Accused Number10) from Jharkhand, who later became a partner in his firm M. Mittal & Co. He also stated that Hridya Nand Tiwari worked at the said firm till 2019. From the bank account of Rajkumari bearing number 2577257010412 with Canara Bank, it is seen that a payment of Rs 5 lakhs has been made to Hridya Nand Tiwari on 05.04.2019.

(v) During further investigation, the statement of Hirdya Nand Tiwari (Accused Number10) was recorded u/s 50 of PMLA 2002 on 11.07.2023 and 12.07.2023, wherein he inter alia stated that he started working in M. Mittal & Co. in February 2010 and became a partner with 10% shareholding since March 2010. He left M. Mittal & Co. in March 2020. He further stated that he introduced his friend Ajeet Singh and Veerendra Kumar Ram to Mukesh Mittal in the year 2014 to file income tax returns and to arrange RTGS entries against the cash amount of Veerendra Kumar Ram. He stated that he knows Veerendra Kumar Ram through his close friend Ajeet Singh. Ajeet Singh had told him that Veerendra Kumar Ram is his uncle and works as an engineer in Jharkhand. He also stated that Mukesh Mittal, made RTGS entries in respect of Veerendra Kumar Ram as per his requirement after a meeting held amongst them and the commission for providing entries was decided at 1.5%. He also stated that Mukesh Mittal along with his father late Babu Lal Mittal used to operate the bank account of M/s R P Investment and Consultancy (Prop Reena Pal) which was used to provide entries to Veerendra Kumar Ram. He also stated that Veerendra Kumar Ram and/or his person used to deliver cash in lots of Rs. 10 to 15 lakhs at the office of M Mittal & Co. which was received by late Babu Lal Mittal (father of Mukesh Mittal)/Mukesh Mittal or by Vijay Pal (husband of Reena Pal) in their absence. The entries were provided through the bank accounts of M/s R K Investment and Consultancy, Prop Rakesh Kedia, a relative of Mukesh Mittal and bank a/c of M/s RP Investment and Consultancy, prop Reena Pal, wife of employee of Mukesh Mittal.

...

*(xiv) **Fund Received From Bank Account Of Manish:***

During the course of investigation, it is ascertained that from the Canara bank account no 127000590839 of Manish, fund to the tune of Rs. 1,87 crores has been transferred in the bank account of Genda Ram, which was utilised for the purpose of purchasing property at Satbari, Saket, New Delhi by Genda Ram F/o VK Ram. He had also transferred Rs 5 lakhs from his account to Genda Ram's another bank account bearing number 110089477752. Search was conducted at the residence of Manish who was found to be the son of Mukesh Mittal's driver namely Kishan. He in his statement recorded u/s 17 of PMLA on 21.02.2023 inter alia stated that he is the student of B. Com 3rd year; his father is driver of Mukesh Mittal; he is unaware of any of his such bank accounts at Canara Bank he signed some documents pertaining to bank accounts; also signed some blank cheques whenever his father asked him to do so, his father was acting on the instruction of Mukesh Mittal. He further stated that his ITR was filed by Mukesh Mittal, however he doesn't have any income; he does not know Genda Ram.

5.5 POC received by Mukesh Mittal from Veerendra Kumar Ram, in the forum of commission:

5.5.3 Thus, in total, Mukesh Mittal received Rs. 05 crores in cash i.e. proceeds of crime from Veerendra Kumar Ram, out of which Rs. 4.59 crores were credited (accommodation entries) into the two bank accounts of Genda Ram, Rs. 2 lakhs were paid to Hirdya Nand Tiwari and Rs. 4.5 lakhs were paid to Ram Parkash Bhatia as commission. Out of the remaining Rs. 34.5 lakhs, Rs. 50 thousand was paid to Ravi Wadhwani, Rs. 16 lakhs were returned by Mukesh Mittal and the same was collected by one person of Veerendra Kumar Ram and finally Rs. 18 lakhs remained with Mukesh Mittal. Further, out of Rs.

4.59 crores credited into the bank accounts of Genda Ram, Rs. 04 lakhs were also transferred to the bank account of M. Mittal and Co. from the bank account 127000628767 of Genda Ram on 19.01.2023. Hence, Mukesh Mittal alone got Rs. 22 lakhs from Veerendra Kumar Ram which is actually the proceeds of crime.

5.5.4 Vijay Pal, an employee of Mukesh Mittal, in his statement dated 29.02.2023 recorded u/s 50 of PMLA stated that he helped Veerendra Kumar Ram to open two bank accounts in the name of Genda Ram and he also helped to open bank accounts of Rakesh Kumar @ Rakesh Kumar Kedia and one bank account of Manish. He also stated that after confirmation of RTGS transactions made in the bank account of Rakesh Kumar, Neha Shrestha and Manish from the end of Ram Parkash Bhatia, he used to further credit the amount in the bank account of Genda Ram.

5.5.5 Thus, Mukesh Mittal got Rs. 14 lakhs from the deal of Rs. 9.4 crores and Rs. 22 lakhs from the deal of Rs. 4.59 crores. Further, summarising the statements of Hirdya Nand Tiwari, Mukesh Mittal and his associates, it is established that Mukesh Mittal received a commission of Rs. 36 lakhs which he obtained/acquired from Veerendra Kumar Ram for providing his services and the same is proceeds of crime.

5.5.6 Further, to attach the proceeds of crime received by Mukesh Mittal from Veerendra Kumar Ram, his (Mukesh Mittall assets worth Rs 35,77,117.94/-as detailed below were attached provisionally by this Directorate vide Provisional Attachment Order Number 04/2023 on 03.08.2023 under Section 5 (1) of PMLA, 2002 and this directorate prays for the confiscation of the same u/s 8(5) of the PMLA, 2002.

S. No.	***Description of Property***	***Value***	***Name of Owner***
1.	*Rs.32,62,187/- of Term Deposit in the name of Mukesh Mittal bearing account no.140080982035 maintained with Canara Bank.*	*Rs. 32,62,187/-*	*Mukesh Mittal*
2.	*Rs.1,94,363.27/- in the account of Mukesh Mittal bearing account no.50100084763092 maintained with Canara Bank.*	*Rs. 1,94,363.27/-*	*Mukesh Mittal*
3.	*Rs.1,20,567.67/- in the account of Mukesh Mittal bearing account no.4138132000001 maintained with Canara Bank.*	*Rs. 1,20,567.67/-*	*Mukesh Mittal*
Total		*Rs.35,77,117.94/-*	

9.2 <u>Presumption in inter connected transactions</u>:

b) In this case, it is established that Mukesh Mittal, has provided entry of Rs 4.59 crores into the bank accounts of Genda Ram, which was actually the proceeds of crime accumulated by Veerendra Kumar Ram by way of collecting commission for allotment of tenders. Mukesh Mittal in his statement u/s 50 stated that he has given around Rs. 4.75 crores in cash, to Ram Parkash Bhatia for entry and the same was the ill- gotten money of Veerendra Kumar Ram. However, Ram Parkash Bhatia has accepted that he had

received cash of Rs. 4 crores only for providing accommodation entries between the period December 2022 to January 2023 from Mukesh Mittal for entries to the bank accounts provided by Mukesh Mittal. Thus, in view of Section 23 of PMLA, it is presumed that Ram Parkash Bhatia had provided the whole entries of Rs. 4.545 crores (except cash deposit of Rs4.5 lakhs) into the bank accounts of Rakesh Kumar Kedia, Manish and Neha Shrestha which ultimately reached into the bank accounts of Genda Ram, father of Veerendra Kumar Ram.

c) Further, it is to state that, out of Rs. 4.59 crores, laundering of Rs. 3.52 crores were done from the four bank accounts of Tara Chand, for V.K.Ram & his family members and from these four bank accounts, a of total Rs. 122 crores were routed. Therefore, for rest of POC having amount of Rs118.48 crores (122-3.52), presumption under section 23 of PMLA is applicable.

11. <u>CONDUCT OF ACCUSED</u> :-

11.1 Accused Number 5 (Mukesh Mittal):

During the course of search proceedings, conducted by the Directorate of Enforcement on 21.02.2023 at the residential premises of the accused person, Shri Mukesh Mittal showed non-cooperation, by not divulging the facts about 9.31 crore which are the Proceeds of Crime acquired by Veerendra Kumar Ram. He also opened bank accounts in the name of Genda Ram by creating forged Rent agreement between himself and Genda Ram, to use the same as address proof for opening of bank account. He also asked his employee Vijay Pal to opened bank accounts in the name of dummy entities viz R K Investment & Consultancy & RP Investment & consultancy, accounts of which were use for laundering of PoC of V.K.Ram. Thus he is in habit of forgery and using such act for laundering of money."

61. It is evident from the aforesaid material which has been surfaced in course of preparation of ECIR that the petitioner is not only involved rather his involvement is direct. Further, it has come that part of the proceeds of crime acquired in the form of commission/bribe in lieu of allotment of tenders by the accused Veerendra Kumar Ram, a public servant and the said bribe money was getting routed by a Delhi based CA Mukesh Mittal (petitioner) to the bank accounts of family members of Veerendra Kumar Ram with the help of bank accounts of Mukesh Mittal's employees/ relatives.

It is further evident that Veerendra Kumar Ram used to give cash to the present petitioner who with the help of other entry provider used to take entries in the bank accounts of his employees and relatives and then such fund was transferred by the petitioner (Mukesh Mittal), into the bank accounts of the co-accused Rajkumari (wife of Veerendra Kumar Ram) and Genda Ram (father of Veerendra Kumar Ram).

Further, it is also evident that some bank accounts opened (at Delhi) on the basis of forged documents were also being used in such routing of funds. It reveals that accused Tara Chand used to collect cash from the Ram Parkash Bhatia (to whom petitioner used to hand over the cash of Veerendra Kumar Ram) on the instructions of Neeraj Mittal used to transfer it to the

bank accounts of Rakesh Kumar Kedia, Manish and Neha Shrestha provided by Ram Prakash Bhatia.

Further, it transpires that the another accused Tara Chand opened bank accounts by forging documents i.e. Aadhar and PAN Cards in the name of fictitious person and these bank accounts were utilized for providing accommodation entries which after routing in some bank accounts reached to the bank accounts of co-accused Genda Ram.

62. After considering the evidence available on record in its entirety, prima-facie it is evident that there are specific allegations against the petitioner that the petitioner knowingly assisted Veerendra Kumar Ram who is accused in the first prosecution complaint for laundering of bribed money which was accumulated by him from the commission/bribe amount being a public servant.

The said money was getting routed by the petitioner who is Delhi based CA, to the bank accounts of family members of Veerendra Kumar Ram with the help of bank accounts of petitioner's employees/relatives.

Further it appear that Veerendra Kumar Ram used to give cash to the petitioner who with the help of other entry provider used to take entries in the bank accounts of his employees and relatives and then such fund was transferred by him into the bank accounts of the co-accused Rajkumari (wife of Veerendra Kumar Ram) and Genda Ram (father of Veerendra Kumar Ram). Further, it is also revealed that some bank accounts opened (at Delhi) on the basis of forged documents were also being used in such routing of funds.

63. As per the para 5.2 of the prosecution complaint various records, documents, digital devices, cash, jewellery, vehicles were recovered and seized during course of search conducted on 21.02.2023. The case record depicts that it was the petitioner who assisted the prime accused, Veerendra Kumar Ram, in the commission of the offence of money laundering with the help of his employees by depositing the crime proceeds in different bank accounts opened by fake names or companies, and later on the transfer of money to the prime accused in the bank accounts of his relatives to remove the taint. The material collected by the Enforcement Directorate had also not been rebutted, which prima facie reflected the involvement of the petitioner in the alleged

offence. It is evident that the petitioner happens to be a Chartered Accountant and he used to divert the money which has been obtained by way of illegal means.

64. The ground has been taken that once the investigation has been completed, then why the petitioner is to be arrested. In order to strengthen his argument, reference of the judgement rendered by the Hon'ble Apex Court in ***Satender Kumar Antil vs. CBI and Anr.*** (supra) has been made.

65. The Larger Bench of the Hon'ble Apex Court in ***Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors.***(supra) has taken into consideration while dealing with the issue of anticipatory bail by taking aid of the judgement rendered by the Hon'ble Apex Court in ***P. Chidambaram vs. Directorate of Enforcement, (2019) 9 SCC 24*** wherein it has been observed at paragraph-409 which reads as under:

> ***"409.*** *In P. Chidambaram, this Court observed that the power of anticipatory bail should be sparingly exercised in economic offences and held thus:*
>
> *"**77**. After referring to Siddharam Satlingappa Mhetre and other judgments and observing that anticipatory bail can be granted only in exceptional circumstances, in Jai Prakash Singh v. State of Bihar, the Supreme Court held as under : (SCC p.386, para 19)*
>
> *"19. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefor. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroped in the crime and would not misuse his liberty. (See D.K. Ganesh Babu v. P.T. Manokaran, State of Maharashtra v. Mohd. Sajid Husain Mohd. S. Husain and Union of India v. Padam Narain Aggarwal)*
>
> ***Economic Offences***
>
> ***78**. Power under Section 438 CrPC being an extraordinary remedy, has to be exercised sparingly; more so, in cases of economic offences. Economic offences stand as a different class as they affect the economic fabric of the society. In Directorate of Enforcement v. Ashok Kumar Jain, it was held that in economic offences, the accused is not entitled to anticipatory bail.*
>
> ***83**. **Grant of anticipatory bail at the stage of investigation may frustrate the investigating agency in interrogating the accused and in collecting the useful information and also the materials which might have been concealed. Success in such interrogation would elude if the accused knows that he is protected by the order of the court. Grant of anticipatory bail, particularly in economic offences would definitely hamper the effective investigation**. Having regard to the materials said to have been collected by the respondent Enforcement Directorate and considering the stage of the investigation, we are of the view that it is not a fit case to grant anticipatory bail.*
>
> ***84**. **In a case of money-laundering where it involves many stages of "placement", "layering i.e. funds moved to other institutions to conceal origin" and "interrogation i.e. funds used to acquire various assets", it requires systematic and analysed investigation which would be of great advantage. As held in Anil Sharma, success in such interrogation would***

> ***elude if the accused knows that he is protected by a pre-arrest bail order. Section 438 CrPC is to be invoked only in exceptional cases where the case alleged is frivolous or groundless****. In the case in hand, there are allegations of laundering the proceeds of the crime. The Enforcement Directorate claims to have certain specific inputs from various sources, including overseas banks. Letter rogatory is also said to have been issued and some response have been received by the Department. Having regard to the nature of allegations and the stage of the investigation, in our view, the investigating agency has to be given sufficient freedom in the process of investigation. Though we do not endorse the approach of the learned Single Judge in extracting the note produced by the Enforcement Directorate, we do not find any ground warranting interference with the impugned order. Considering the facts and circumstances of the case, in our view, grant of anticipatory bail to the appellant will hamper the investigation and this is not a fit case for exercise of discretion to grant anticipatory bail to the appellant."*
>
> *(emphasis supplied)*

66. It is evident from the reference so made in the case of ***P. Chidambaram vs. Directorate of Enforcement*** (supra) which has been taken note by the Hon'ble Apex Court in ***Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors.***(supra) taking the principle to be applied for consideration of pre-arrest bail under Section 438 of Cr.P.C. in the matter of economic offence has also been dealt with at paragraph-84 of the aforesaid judgment. The specific condition has been made in the case of money laundering where it involves many stages of "placement", "layering i.e. funds moved to other institutions to conceal origin" and "interrogation i.e. funds used to acquire various assets", it requires systematic and analysed investigation which would be of great advantage.

The Hon'ble Apex Court by making reference of the judgment rendered by the Hon'ble Apex Court in ***State rep. by the CBI vs. Anil Sharma, (1997) 7 SCC 187***, has been pleased to hold that success in such interrogation would elude if the accused knows that he is protected by a pre-arrest bail order.

Section 438 CrPC is to be invoked only in exceptional cases where the case alleged is frivolous or groundless. Reference may be made to the paragraphs-83 and 84 of the judgment rendered in ***P. Chidambaram vs. Directorate of Enforcement*** (supra) as quoted and referred above.

67. Further, it is required to refer herein that the Hon'ble Apex Court in the case of ***Pavana Dibbur vs. The Directorate of Enforcement*** passed in ***Criminal Appeal No. 2779 of 2023*** has considered the effect of the appellant not being shown as an accused in the predicate offence by taking into consideration the Section 3 of the Act, 2002.

68. The Hon'ble Apex Court by interpreting the provision of Section 3 of the Act, 2002 has come out with the finding that on a plain reading of Section 3, unless proceeds of crime exist, there cannot be any money laundering offence.

Based upon the definition Clause (u) of sub-section (1) of Section 2 of the Act 2002 which defines “proceeds of crime”, the Hon'ble Apex Court at paragraph-12 has been pleased to observe that clause (v) of sub-section (1) of Section 2 of 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 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 of the PMLA.

At paragraph-13, it has observed that Clause (x) of subsection (1) of Section 2 of the PMLA defines “schedule”. Clause (y) thereof defines “scheduled offence”, which have been quoted and referred above.

At paragraph-14, it has observed by referring the decision rendered by the Hon'ble Apex Court in ***Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors.***(supra) that the condition precedent for the existence of proceeds of crime is the existence of a scheduled offence.

At paragraph-15 the finding has been given therein that on plain reading of Section 3 of the Act, 2002, an offence under Section 3 can be committed after a scheduled offence is committed. By giving an example, it has been clarified that if 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 of the PMLA.

The Hon'ble Apex Court has further clarified by giving an example that the offences under Sections 384 to 389 of the IPC relating to “extortion” are scheduled offences included in Paragraph 1 of the Schedule to the PMLA.

An accused may commit a crime of extortion covered by Sections 384 to 389 of IPC 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 of the PMLA is alleged must have been shown as the accused in the scheduled offence. What is held in paragraph 270 of the decision of this Court in the case of Vijay Madanlal Choudhary supports the above conclusion. The conditions precedent for attracting the offence under Section 3 of the 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 of the PMLA.

For ready reference, paragraphs-12, 13, 14, 15 of the judgment rendered in the case of ***Pavana Dibbur vs. The Directorate of Enforcement*** (supra) read as under:

> *"**12.** Clause (v) of subsection (1) of Section 2 of the 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 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 of the PMLA.*
>
> ***13.** Clause (x) of subsection (1) of Section 2 of the PMLA defines "schedule". Clause (y) thereof defines "scheduled offence", which reads thus:*
>
> > ***"2. Definition –** (1) In this Act, unless the context otherwise requires,*
> >
> > .. ..
> >
> > *(y) "scheduled offence" means—*
> >
> > (i) *the offences specified under Part Aof the Schedule; or*
> >
> > (ii) *the offences specified under Part Bof the Schedule if the total value involved in such offences is one crore rupees or more; or*
> >
> > (iii) *the offences specified under PartC of the Schedule.**"***
>
> ***14.** 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 the case of ***Vijay Madanlal Choudhary****. In paragraph 253 of the said decision, this Court held thus:*

> ***"253.*** *Tersely put, it is only such property which is derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence can be regarded as proceeds of crime. The authorities under the 2002 Act cannot resort to action against any person for moneylaundering 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 moneylaundering 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.***"***
>
> *(underline supplied)*

In paragraphs 269 and 270, this Court held thus:

> ***"269.*** *From the bare language of Section 3 of the 2002 Act, it is amply clear that the offence of moneylaundering 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 scheduled offence. The process or activity can be in any form — be it one of concealment, possession, acquisition, use of proceeds of crime as much as projecting it as untainted property or claiming it to be so. Thus, involvement in any one of such process or activity connected with the proceeds of crime would constitute offence of moneylaundering. This offence otherwise has nothing to do with the criminal activity relating to a scheduled offence — except the proceeds of crime derived or obtained as a result of that crime.*
>
> ***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 moneylaundering 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 moneylaundering 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 moneylaundering 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 explained and clarified by way of Explanation vide Finance (No. 2) Act,*

> *2019. Thus understood, inclusion of Clause (ii) in Explanation inserted in 2019 is of no consequence as it does not alter or enlarge the scope of Section 3 at all.***"**
>
> *(underline supplied)*

> ***15.*** *Coming back to Section 3 of the 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 of the PMLA. To give a concrete example, the offences under Sections 384 to 389 of the IPC relating to "extortion" are scheduled offences included in Paragraph 1 of the Schedule to the PMLA. An accused may commit a crime of extortion covered by Sections 384 to 389 of IPC 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 of the PMLA is alleged must have been shown as the accused in the scheduled offence. What is held in paragraph 270 of the decision of this Court in the case of* ***Vijay Madanlal Choudhary*** *supports the above conclusion. The conditions precedent for attracting the offence under Section 3 of the 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 subsection (1) of Section 3 of the PMLA.*

69. At paragraph-18 of the aforesaid judgment the Hon'ble Apex Court, on the basis of the argument advanced on behalf of the counsel based on the interpretation of the Schedule, has been pleased to note that in the case of ***Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors.***(supra), even the validity of the Schedule was under challenge. A perusal of the said decision shows that this Court was not called upon to interpret any entry in the Schedule and, in particular, entry of Section 120B in the Schedule. The challenge to the Schedule is dealt with in paragraphs 453, 454 and 455 of the said decision. The contention before this Court was that even minor offences have been included in the Schedule, and even compoundable offences form part of the Schedule. It was submitted that the offences which do not have cross-border implications have been included in the Schedule.

At paragraph-19, definition of "criminal conspiracy" as defined under Section 120-A of IPC has been taken note thereof.

At paragraph-20, it has been observed that many of the offences, which may generate proceeds of crime, have not been included in the Schedule and for illustrating the same, some of offences have been referred therein, which are as follows:

a. Section 263A of IPC, which deals with the offence of making or possessing fictitious stamps is not a part of the Schedule;

b. Though offences punishable under Sections 392 to 402 regarding robbery and dacoity have been included in part A of the Schedule, the offence punishable under Section 379 of committing theft and the offence punishable under Section 380 of theft in a dwelling house are not made a part of parts A and B of the Schedule. The theft of both categories can be of a very large amount running into crores. The said two offences become scheduled offences by virtue of clause (3) of part C of the Schedule only if the offences have cross-border implications;

c. The offence punishable under Section 403 of dishonest misappropriation of property does not form part of the Schedule. The said offence becomes a scheduled offence by virtue of clause (3) of part C of the Schedule only if the offence has cross-border implications;

d. The offence under Section 405 of criminal breach of trust, which is punishable under Section 406, is not a part of the Schedule The said offence becomes a scheduled offence by virtue of clause (3) of part C of the Schedule only if the offence has cross-border implications;

e. Though the offence under Section 417 of cheating has been made a scheduled offence, the more stringent crime of forgery for the purposes of cheating under Section 468 is not a part of the Schedule, and

f. Though the offences under Sections 489A to 489C regarding forging or counterfeiting currency notes are part of the Schedule, the offence under Section 489D of making or possessing instruments or materials for forging or counterfeiting currency notes is not a part of the Schedule.

At paragraph-21, it has been observed by coming to Part-B of the Schedule that it includes only one offence under Section 132 of the Customs Act, 1962. The offence under Section 132 of the Customs Act of making a false declaration, etc., becomes a scheduled offence in view of sub-clause (ii) of Clause (y) of subsection (1) of Section 2 of the PMLA only if the total value involved in the offence is Rs.1 crore or more. Part C of the Schedule provides that any offence specified in Part A having cross-border implications becomes a part of Part C. More importantly, all the offences against the property under Chapter XVII of IPC having cross-border implications become

scheduled offences. As pointed out earlier, the offences punishable under Sections 379 (theft), 380 (theft in dwelling house), 403 (dishonest misappropriation of property) and 405 (criminal breach of trust) are part of Chapter XVII. Though the said offences are not included in Part A, they become scheduled offences by virtue of Part C only if they have cross-border implications. Thus, it can be said that many offences capable of generating proceeds of crime do not form a part of the schedule.

At paragraph-22, it has been observed on the argument advanced on behalf of the learned Additional Solicitor General that as Section 120B of IPC is included in Part A to the Schedule, even if the allegation is of making a criminal conspiracy to commit an offence which is not a part of the Schedule, the offence becomes a scheduled offence, that many offences under Chapter XVII of IPC are not included in Parts A and B. They become scheduled offences only if the same have cross-border implications. Thus, the offences of dishonest misappropriation of property or criminal breach of trust or theft can become a scheduled offence, provided they have cross-border implications.

At paragraph-23, it has been observed that penal statutes are required to strictly construed and penal laws must be construed according to the legislative intent as expressed in the enactment.

At paragraph-24, it has been observed that 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.

At paragraph-25, it has been observed that the legislative intent which can be gathered from the definition of the scheduled offence under clause (y) of sub-section (1) of Section 2 of the 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.

For ready reference, paragraphs-18, 19, 20, 21, 22, 23, 24 and 25 of the judgment rendered in ***Pavana Dibbur vs. The Directorate of Enforcement*** (supra) reads as under:

"18. *Now, we come to the third argument made by the learned senior counsel appearing for the appellant based on the interpretation of the Schedule. It must be noted here that in the case of* ***Vijay Madanlal Choudhary****, even the validity of the Schedule was under challenge. A perusal of the said decision shows that this Court was not called upon to interpret any entry in the Schedule and, in particular, entry of Section 120B in the Schedule. The challenge to the Schedule is dealt with in paragraphs 453, 454 and 455 of the said decision. The contention before this Court was that even minor offences have been included in the Schedule, and even compoundable offences form part of the Schedule. It was submitted that the offences which do not have crossborder implications have been included in the Schedule. In paragraphs 454 and 455 of the said decision, this Court held thus:*

> ***"454.*** *This Schedule has been amended by Act 21 of 2009, Act 2 of 2013, Act 22 of 2015, Act 13 of 2018 and Act 16 of 2018, thereby inserting new offences to be regarded as scheduled offence. The challenge is not on the basis of legislative competence in respect of enactment of Schedule and the amendments thereto from time to time. However, it had been urged before us that there is no consistency in the approach as it includes even minor offences as scheduled offence for the purposes of offence of moneylaundering, more so even offences which have no transborder implications and are compoundable between the parties. The classification or grouping of offences for treating the same as relevant for constituting offence of moneylaundering is a matter of legislative policy. The Parliament in its wisdom has regarded the property derived or obtained as a result of specified criminal activity, being an offence under the concerned legislation mentioned in the Schedule. The fact that some of the offences may be noncognizable offences under the concerned legislation or regarded as minor and compoundable offences, yet, the Parliament in its wisdom having perceived the cumulative effect of the process or activity concerning the proceeds of crime generated from such criminal activities as being likely to pose threat to the economic stability, sovereignty and integrity of the country and thus, grouped them together for reckoning it as an offence of moneylaundering, is a matter of legislative policy. It is not open to the Court to have a second guess at such a policy.*
>
> ***455.*** *Needless to underscore that the 2002 Act is intended to initiate action in respect of moneylaundering activity which necessarily is associated with the property derived or obtained by any person, directly or indirectly, as a result of specified criminal activity. The prosecution under this Act is not in relation to the criminal activity per se but limited to property derived or obtained from specified criminal activity. Resultantly, the inclusion of criminal activity which has been regarded as noncognizable, compoundable or minor offence under the concerned legislation, should have no bearing to answer the matter in issue. In that, the offence of moneylaundering is an independent offence and the persons involved in the commission of such offence are grouped together as offenders under this Act. There is no reason to make distinction between them insofar as the offence of moneylaundering is concerned. In our opinion, therefore, there is no merit in the argument under consideration.****"***

In this case, we are not called upon to decide the validity of the Schedule or any part thereof. The question is whether the offence under Section 120B of IPC, included in Paragraph 1 of the Schedule, can be treated as a scheduled offence even if the criminal conspiracy alleged is to commit an offence which is not a part of the Schedule. This issue did not arise for consideration in the case of ***Vijay Madanlal Choudhary[1].***

> ***19.*** *Section 120A of IPC defines "criminal conspiracy", which reads thus:*
>
> ***"120A. Definition of criminal conspiracy.—****When two or more persons agree to do, or cause to be done,—*

(1) *an illegal act, or*

(2) *an act which is not illegal by illegalmeans, such an agreement is*

designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such

agreement in pursuance thereof.

*Explanation.—It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.***"**

Section 120B of IPC provides for punishment for a criminal conspiracy which reads thus:

"120B. Punishment of criminal conspiracy.— *(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.*

*(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.***"**

20. *Now, we turn to the Schedule to the PMLA. We find that many offences, which may generate proceeds of crime, have not been included in the Schedule. We are referring to only a few of such offences only by way of illustration:*

a. *Section 263A of IPC, which deals with the offence of making or possessing fictitious stamps is not a part of the Schedule;*

b. *Though offences punishable under Sections 392 to 402 regarding robbery and dacoity have been included in part A of the Schedule, the offence punishable under Section 379 of committing theft and the offence punishable under Section 380 of theft in a dwelling house are not made a part of parts A and B of the Schedule. The theft of both categories can be of a very large amount running into crores. The said two offences become scheduled offences by virtue of clause (3) of part C of the Schedule only if the offences have crossborder implications;*

c. *The offence punishable under Section 403 of dishonest misappropriation of property does not form part of the Schedule. The said offence becomes a scheduled offence by virtue of clause (3) of part C of the Schedule only if the offence has crossborder implications;*

d. *The offence under Section 405 of criminal breach of trust, which is punishable under Section 406, is not a part of the Schedule The said offence becomes a scheduled offence by virtue of clause (3)*

of part C of the Schedule only if the offence has crossborder implications;

e. *Though the offence under Section 417 of cheating has been made a scheduled offence, the more stringent crime of forgery for the purposes of cheating under Section 468 is not a part of the*

Schedule, and

f. Though the offences under Sections 489A to 489C regarding forging or counterfeiting currency notes are part of the Schedule, the offence under Section 489D of making or possessing instruments or materials for forging or counterfeiting currency notes is not a part of the Schedule.

21. *Now, coming to Part B of the Schedule, it includes only one offence under Section 132 of the Customs Act, 1962. The offence under Section 132 of the Customs Act of making a false declaration, etc., becomes a scheduled offence in view of subclause (ii) of Clause (y) of subsection (1) of Section 2 of the PMLA only if the total value involved in the offence is Rs.1 crore or more. Part C of the Schedule provides that any offence specified in Part A having crossborder implications becomes a part of Part C. More importantly, all the offences against the property under Chapter XVII of IPC having crossborder implications become scheduled offences. As pointed out earlier, the offences punishable under Sections 379 (theft), 380 (theft in dwelling house), 403 (dishonest misappropriation of property) and 405 (criminal breach of trust) are part of Chapter XVII. Though the said offences are not included in Part A, they become scheduled offences by virtue of Part C only if they have crossborder implications. Thus, it can be said that many offences capable of generating proceeds of crime do not form a part of the schedule.*

22. *The learned Additional Solicitor General argued that as Section 120B of IPC is included in Part A to the Schedule, even if the allegation is of making a criminal conspiracy to commit an offence which is not a part of the Schedule, the offence becomes a scheduled offence. As stated earlier, many offences under Chapter XVII of IPC are not included in Parts A and B. They become scheduled offences only if the same have crossborder implications. Thus, the offences of dishonest misappropriation of property or criminal breach of trust or theft can become a scheduled offence, provided they have crossborder implications. If the argument of the learned Additional Solicitor General is accepted, if there is a conspiracy to commit offences under Section 403 or Section 405, though the same have no crossborder implications, the offence under Section 120B of conspiracy to commit offences under Sections 403 and 405 will become a scheduled offence. Thus, if any offence is not included in Parts A, B and C of the Schedule but if the conspiracy to commit the offence is alleged, the same will become a scheduled offence. A crime punishable under Section 132 of the Customs Act is made a scheduled offence under Part B, provided the value involved in the offence is Rupees One Crore or more. But if Section 120B of IPC is applied, one who commits such an offence having a value of even Rs.1 lac can be brought within the purview of the PMLA. By that logic, a conspiracy to commit any offence under any penal law which is capable of generating proceeds, can be converted into a scheduled offence by applying Section 120B of the IPC, though the offence is not a part of the Schedule. This cannot be the intention of the legislature.*

23. *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 expressed in the enactment. In Chapter 1 of GP Singh's Principles of Statutory Interpretation (15th Edition), 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, Construction of Statute, 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 the 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 added)*

24. *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.*

25. *The legislative intent which can be gathered from the definition of the scheduled offence under clause (y) of subSection (1) of Section 2 of the 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 offence registered is not a scheduled offence, the provisions of the PMLA and, in particular, Section 3 will be invoked by simply applying Section 120B. If we look at Section 120B, 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 120B, 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 120B treats a conspirator of the main accused as an abettor for the purposes of imposing the punishment. The interpretation suggested by the 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 120B. Therefore, in our view, the offence under Section 120B of 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. In other words, an offence punishable under Section 120B of IPC will become a scheduled offence only if the conspiracy alleged is of committing an offence which is otherwise a scheduled offence."*

The conclusion has been arrived at paragraph-27 which reads as under:

> ***"27.*** *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:*
>
> *a. It is not necessary that a person against whom the offence under Section 3 of the PMLA is alleged, must have been shown as the accused in the scheduled offence;*
>
> *b. Even if an accused shown in the complaint under the 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 scheduled offence. Similarly, he will get the benefit of the order of quashing the proceedings of the scheduled offence;*

c. *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;*

d. *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*

e. *The offence punishable under Section 120B of the IPC will become a scheduled offence only if the conspiracy alleged is of committing an offence which is specifically included in the Schedule."*

70. This Court, in view of the judgment rendered by the Hon'ble Apex Court in ***Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors.***(supra) and ***Pavana Dibbur vs. The Directorate of Enforcement*** (supra) wherein it is evident from paragraph-16 therefrom that 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 of the PMLA as there will not be any proceeds of crime.

Thus, in such a case, the accused against whom the complaint under Section 3 of the 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 the 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.

71. It is further evident from the discussion so made in both the judgments as would appear from paragraph-27 of the judgment rendered in ***Pavana Dibbur vs. The Directorate of Enforcement*** (supra) that 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.

72. The offence becomes schedule offence by virtue of clause-3 of Part-C of the Schedule if the offence has crossed border implication as per the offence included in Part-A and B of the Schedule while the offences referred in Part-C of the Schedule will be said to be punishable under Section 3 of the Act, 2002 if the offences has crossed border implication. It needs to refer herein, the judgment rendered by the Hon'ble Apex Court in ***Pavana Dibbur vs. The***

Directorate of Enforcement (supra) is with respect to quashing of the proceeding filed by the concerned accused person invoking the inherent jurisdiction of the High Court under Section 482 of Cr.P.C. The aforesaid judgment therefore, has examined the availability of the ingredient of offence said to be committed under the Act, 2002 wherein the aforesaid judgment has been pleased taking note of the penal provision of the Act, 2002 as contained under Section 3 of the Act, 2002 and the offences enumerated under the Schedule thereof.

Conclusion:

73. We are dealing herein the issue of grant of anticipatory bail and hence, applying the principle to consider the application for pre-arrest bail is required to be considered by passing an order for grant of pre-arrest bail if *prima facie* case is not made out.

74. The Hon'ble Apex Court in the case of ***Central Bureau of Investigation Vs Santosh Krnani and Another, 2023 SCC OnLine SC 427*** has observed that corruption poses a serious threat to our society and must be dealt with iron hands. The relevant paragraph of the aforesaid judgment is being referred as under:-

> *"**31.** The nature and gravity of the alleged offence should have been kept in mind by the High Court. Corruption poses a serious threat to our society and must be dealt with iron hands. It not only leads to abysmal loss to the public exchequer but also tramples good governance. The common man stands deprived of the benefits percolating under social welfare schemes and is the worst hit. It is aptly said, "Corruption is a tree whose branches are of an unmeasurable length; they spread everywhere; and the dew that drops from thence, Hath infected some chairs and stools of authority." Hence, the need to be extra conscious."*

75. This Court, based upon the aforesaid imputation as has been discovered in course of investigation, is of the view that what has been argued on behalf of the petitioner that proceeds cannot be said to be proceeds of crime but as would appear from the preceding paragraphs, money which has been obtained by the accused person Veerendra Kumar Ram has been invested by this petitioner in the capacity of chartered accountant not only that he has also withdrawn the money from different fake accounts and transferred it into the account of the accused persons.

76. Here, in the instant case, prima-facie it appears that the present petitioner is involved in concealment and diversification of the property/money of

Veerendra Kumar Ram as would appear from the ECIR which is having cross-border implication since the money was concealed and diversified in Delhi which has been procured by Veerendra Kumar Ram while working as Engineer in Jamshedpur in the State of Jharkhand.

77. This Court, in view of the aforesaid material available against the petitioner, is of the view, that in such a grave nature of offence, which is available on the face of the material, applying the principle of grant of anticipatory bail wherein the principle of having prima facie case is to be followed, the nature of allegation since is grave and as such, it is not a fit case of grant of anticipatory bail.

78. For the foregoing reasons, having regard to facts and circumstances, as have been analysed hereinabove, the applicant failed to make out a special case for exercise of power to grant bail and considering the facts and parameters, necessary to be considered for adjudication of anticipatory bail, without commenting on the merits of the case, this Court does not find any exceptional ground to exercise its discretionary jurisdiction under Section 438 of the Code of Criminal Procedure to grant anticipatory bail. Therefore, this Court is of the view that the anticipatory bail applications are liable to be rejected.

79. It is made clear that this Court has not delved into the merits of the matter and views expressed in this order are prima-facie only.

80. Accordingly, based upon the aforesaid discussion, this Court is of the view that the instant application is fit to be dismissed and as such, stands dismissed.

81. Pending interlocutory application(s), if any, also stands disposed of.

(Sujit Narayan Prasad, J.)

Jharkhand High Court, Ranchi
Dated: 16/02/2024
Saurabh /**A.F.R.**