

**IN THE COURT OF SH. NAVEEN KUMAR KASHYAP
ADDITIONAL SESSIONS JUDGE-04: CENTRAL:
TIS HAZARI COURTS: DELHI**

**Bail applications of Rashpal Singh Todd /Accused no. 3
Vaibhav Sharma / Accused No-4
And Mandhir Singh / Accused No.-5**

CC NO: 01/21

Directorate of Enforcement

Vs.

M/s. Zenica Cars India Pvt. Ltd. & Ors.

**/s: 3 & 4 r/w Section 70 of Prevention of Money Laundering
Act, 2002**

13.01.2022

*In view of directions of Hon'ble High Court vide
Endst no. 42060-42220/Rules Gaz/2021 dated 31.12.2021,
case is taken up through VC.*

Present: None for ED.

Sh. P.K. Dubey, Sr. Advocate alongwith Mr. Samarjit Pattnaik and Mr. Puneet Relan for accused/applicant through VC.

1. Arguments at length already heard on more than one occasion from Mohd. Faraz, Ld. Spl. PP for ED/complainant as well as from learned Senior Counsel Sh. P.K. Dubey assisted by Sh. Puneet Relan for the accused/applicants Accused no. 3, 4 and 5 on the regular separate Bail applications filed by such three accused /applicants i.e. Rashpal Singh Todd, Vaibhav Sharma and Mandhir Singh respectively. Thereafter, today case was fixed for orders on regular bail application filed by such applicants/accused No-3, 4 and 5 in the present criminal

complaint case.

As facts and legal arguments are common in such regular separate bail applications filed by such three accused /applicants, vide this common order all are disposed off.

2. In nutshell, it is argued by learned Senior counsel for applicant/accused that present complaint invoking section 44 and 45 of the Prevention of Money Laundering Act, 2002 (PMLA) alleging commission of offence of money laundering as contemplated by section 3 r/w section 70 of PMLA has been filed by Directorate of Enforcement/complainant. It is further argued that present applicants deserves regular bail on the ground that during investigation they were never arrested. It is further argued that this court vide its order dated 11.06.2021 has categorically held that there does not exist any material on record that applicants are likely to threaten the witness or tamper with evidence or that there is possibility that their presence will not be secured for trial. It is further argued that applicants joined the investigation as and when called by investigating authority. It is further argued that even on merit, prima facie it is clear that no case is made out. It is further argued that case of present applicants is completely covered by the recent judgment of Hon'ble Supreme Court, in the case of *Siddharth v. State of U.P. ((2021) SCC Online SC 615)* and *Aman Preet Singh v. CBI (Crl. Appeal no. 929 of 2021 dated 02.09.2021* , as chargesheet is filed in present case also without arresting the accused persons.

2.1. It is further argued that EOW earlier registered an FIR bearing no. 172/2018 u/s 406, 420,471,468 and 120B IPC and

thereafter EOW illegally arrested the applicants. It is further argued that Hon'ble High Court pleased to grant regular bail to the applicants, in view of settlement with the HDFC bank and such order of granting regular bail was not interfered by Hon'ble Supreme Court and in fact same was confirmed.

2.2. It is further argued that the applicant/accused received various notices/ summons from investigating agency relating to present case which was registered on 07.09.2018 by ED in view of such above mentioned FIR 172/2018 by EOW. It is further argued that on 02.09.2019, a provisional attachment order is already passed by concerned authority.

Thereafter cognizance of offence was taken and B/W were issued against present applicant which was stayed by this court on 17.04.2021 on appearance of accused/applicant.

2.3. It is further argued that thereafter, applicant preferred an anticipatory bail application u/s 438 Cr.P.C. which was dismissed by this court vide order dated 11.06.2021 by a reasoned order making certain observation in para-25 and 26 of such order dated 11.06.2021.

2.4. It is further argued by learned senior counsel for applicant that Hon'ble Supreme Court made certain observation in the case of *Sanjay Chandra v. CBI ((2012) 1 SCC 40)*, which are mentioned in para-12 of present bail application.

2.5. It is further argued that applicant/accused has roots in society. It is further argued that applicant has no criminal antecedents. It is further argued that no useful purpose would be served by arresting the accused at this stage. It is further argued that accused/applicant is ready to abide by any terms

and condition imposed by this court while granting regular bail.

2.6. It is further argued by learned senior counsel that in any case accused appeared voluntarily before this court without any coercive action. It is further argued that in the case of ***Dalip Singh Mann and Anr. v. ED (CRM No.M-28490/2015 decided on 01.10.2015, Hon'ble High Court of Punjab and Haryana*** held that accused was not arrested by ED in exercise of its power u/s 19 of the Act. It was further held by the Hon'ble High Court that it further appears that rigorous of section 45(1) (ii) of the Act would be attracted only when considering the bail plea of accused who has been arrested by ED under section 19 of the Act.

It is further argued by learned counsel for accused that such judgment of ***Dalip Singh Mann (supra)*** was relied by another Division Bench of Hon'ble Punjab and Haryana Court in the case of ***Arun Sharma v. UOI & Others ((2016) SCC online P&H 5954)***. It is further argued on behalf of accused that Hon'ble Supreme Court held that there is no ground for interference in such order of Hon'ble High Court of Punjab and Haryana in such case of ***Arun Sharma (supra)***, as is held in SLP (Crl. no. 5978/2016 decided on 12.08.2016).

As such, it is further argued that law is settled that question of applicability of conditions mentioned under section 45 of PMLA do not arise at all in case accused is not arrested by the complainant/ED during investigation/before filing the complaint, as in present case.

2.7. Learned senior counsel for accused further relied upon the case of ***D.K. Shiv Kumar v. ED ((2019) SCC Online DEL***

10691) and the case of *Sai Chandarsekhar v. ED ((2021) SCC Online DEL 1081)*, both passed by Hon'ble High Court of Delhi in support of his argument. In fact, it is further argued that in the case of Sai Chandarsekhar (supra) Hon'ble High Court of Delhi held that twin conditions mentioned in Section 45 of PMLA continued to be struck down as being unconstitutional in view of the judgment of Apex Court in the case of *Nikesh Tarachand Shah v. Union of India ((2018) 11 SCC 1)*.

It is argued that it was further held by Hon'ble High Court that amendment in 2018 in Section 45 of PMLA does not revive the twin condition already struck down by the judgment of **Nikesh Tarachand (supra)**. It is further argued by learned senior counsel for accused that as such, in any case as of today, there is no rigor of said two conditions under original section 45 (1) (ii) of PMLA for release of accused on bail and only provision of section 439 Cr.P.C. and condition therein will apply in the case of present applicant for grant of regular bail.

2.8. Learned senior counsel for accused further relied upon certain bail orders passed by learned Special Judge, PC Act, at Rouse Avenue District Courts in support of his contentions dated 04.10.2021 and 18.09.2020 in the case of *ED v. Tejinder Pal Singh* and *ED v. M/s. Bhushan Power Pvt. Ltd.* respectively, in support of his arguments.

2.9. As such, it is prayed that accused persons be granted regular bail.

3. On the other hand, learned Special PP for ED argued in detail vehemently opposing the present regular bail

applications.

4.1. It is argued by learned Spl. PP for ED that in present case after considering facts and circumstances of the present case, the court was pleased to issue Bailable Warrants and not summons against present accused/applicant. It is further argued that even the application for anticipatory bail u/s 438 Cr.P.C., filed by present applicant/accused was dismissed vide a detailed reasoned order dated 11.06.2021. It is further argued that in any case there is difference in criteria law relating to anticipatory bail and regular bail and such anticipatory bail was rejected based on such criteria relating to anticipatory bail.

4.2. It is further argued by learned Spl.PP for ED that it is held in the case of *P.Chidambaram v. ED ((2019) 9 SCC 24)*, that PMLA is a special enactment. It was further argued that section 71 of PMLA gives overriding effect to the provision of PMLA on the provision of all other act's applicability. The provision of PMLA itself prevail over the contrary provision of other acts. It is further vehemently argued that section 65 of PMLA states that provision of Cr.P.C., including Section 439 Cr.P.C. shall apply to the offence under PMLA in so far as they are not inconsistent with the provision of PMLA. It is further argued by learned Spl.PP for ED that bare reading of para-37, 38 and 40 of such judgment of **P. Chidambaram (supra)** shows that twin condition of section 45 are held to be still applicable by Hon'ble Supreme Court.

4.3. It is further argued by learned Spl.PP for ED that in *SLP (Criminal) 5150 of 2020 titled as ED v. Upender Rai order dated 03.06.2020*, operation of the impugned order passed by

Hon'ble High Court of Delhi in Bail Application no. 249/2019 dated 09.07.2019 was stayed by Hon'ble Supreme Court and matter is still pending.

It is further argued that in *SLP (Criminal) 6813 of 2021 titled as ED v. Sai Chandrasekhar order dated 20.09.2021*, although SLP was dismissed, but question of law was left opened. It was further pointed out that such SLP was against the bail order dated 05.03.2021 in bail application no. 3791/2020 passed by Hon'ble Delhi High court in the case titled as **Sai Chandrasekhar (supra)** relied by Ld. counsel for accused/applicant.

It is further argued that Hon'ble High Court of Delhi in the case of *Bimal Kumar Jain v. ED, Bail application no. 112/2021 decided on 30.07.2021* by a detailed order held that twin conditions of section 45 of PMLA were cured by the legislature by amendment in 2018 and as such, such section 45(1) was revived. It is further argued by Ld. Spl. PP for ED that in fact Hon'ble High Court of Delhi in such case relied upon the judgment of Hon'ble Supreme Court in case **P. Chidambaram (supra)** and *Mohd. Arif v. Govt. of India ((2020) SCC online Ori 544)*.

It is further argued by Ld. Spl. PP that application moved u/s 482 Cr.P.C. to recall the observation made in para-19 and 20 by Hon'ble High Court in such case of **Bimal Kumar (supra)** was not entertained and disposed of vide subsequent order dated 14.09.2021.

4.4. Ld. Spl PP for ED further relied upon the judgment of *ED v. Parkash Gurbaxani (SLP No. 7666/2021 decided on*

20.10.2021) by Hon'ble Supreme Court in which observation was made by Hon'ble Supreme Court that it was in agreement with grievance that the Hon'ble High Court has not dealt with the mandatory twin requirements (under section 45 PMLA).

4.5. Ld. Spl. PP for ED further relied upon the judgment of **Rohit Tandon v. ED ((2018) 11 SCC 46)** decided by Hon'ble Supreme Court). Based on such judgment, it is further argued by learned Spl. PP that present application is wrongly filed only under the provision of Cr.P.C. u/s 439, and not under the special provision of PMLA, despite the facts that there are sections like 65, 70 and 71 of PMLA as already pointed out above.

It is further argued that it is the consistent view of Hon'ble Higher courts that economic offences having deep rooted conspiracy and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economic of the country as a whole. It was further argued that at the stage of bail, concerned court shall consider the question from the angle as to whether the accused was possessed of requisite mensrea and at this stage of bail court is not required to record a positive finding that accused has not committed under PMLA and court has to arrive at a finding on a basis of broad probabilities.

4.6. Like the Ld. Sr. Counsel for accused persons, even learned Spl. PP for ED relied upon certain orders passed by learned Sessions court/Special Judge(PC Act), Rouse Avenue court dated 29.10.2021 in bail application no. 147/2021 and bail order dated 18.11.2021 in bail application number 186/2021.

4.7. Further, Ld. Spl.PP for ED relied upon the order of Hon'ble Supreme Court 07.10.2021 in SLP CrI. 5191/2021 in the case titled as "**Satender Kumar Antil v. CBI**".

On the basis of such order by Hon'ble Supreme Court, it is further argued by learned Spl PP for ED that Hon'ble Supreme court in fact made different categories of offences i.e. category of A, B, C and D.

It is further argued and pointed out specifically that such categories for granting regular bail is made in case of accused not arrested during investigation and fully cooperated with the investigation, as is the best case on the side of accused in present case.

It is further argued that general offences under IPC punishable upto seven years or otherwise are dealt separately in **category A and B**. Whereas **category C** specifically deals with offenced punishable under Special Acts containing stringent provisions for bail like NDPS section 37, PMLA section 45, UAPA section 43 D (5) etc.

It is further argued that such order of Hon'ble Supreme Court even referred to judgment of **Sanjay Chandra (supra)**. In any case, it is argued that in case of category C dealing with offence under Special Act like PMLA, there is additional condition for compliance of section 45 PMLA, even if accused was not arrested during investigation stage.

As such, it is further argued that law as on date has to be followed.

4.8. It is further argued by Ld. Spl. PP for ED that in the case of **Assistant Director, ED v. V.C. Mohan, CrI.Appeal no.**

21/2022 dated 04.01.2022 i.e. about one week before only, Hon'ble Supreme Court again observed that in case of granting anticipatory bail to accused in offence under the PMLA, it is duty of the court concerned to examine jurisdictional fact including the mandate of section 45 of PMLA.

4.9. It is further argued that in the case of *V. Hansprakash v. State bail application no. 1097/2020* decided by Hon'ble High Court of Delhi on 01.12.2020, reference is made to earlier judgments of *Lt. Gen. Tejinder Singh v. CBI ((2014) SCC online Delhi 4560)*, *P. Chidambaram (supra)*, *Sanjay Chandra (supra)*, *court on its own motion v. CBI (109 (2003) DLT 4944)* and still held that the concerned court dealing with bail application of the accused still has discretion to decide the bail on merit.

4.10. It is further argued that the present case is a complaint case and not a case in which police has filed the chargesheet. Thus, section 170 Cr.P.C. is not even applicable. It is further argued that PMLA is a Special Act and a criminal complaint is made hereunder in present case and not a police report.

4.11. It is further vehemently argued that even in the order dated 16.12.2021 by Hon'ble Supreme Court in the case of **Satender Kumar Antil (supra)**, the Hon'ble Supreme Court observed that amendment to section 45 PMLA is pending challenge before such court/Hon'ble SC before a different bench and that would be a matter to be considered by that bench. As such, it is further argued that Hon'ble Supreme Court in such case also did not give any finding that twin condition of section 45 are not applicable in offences covered under

category C.

4.12. Even otherwise, it is argued by Ld. Spl. PP that in a well planned conspiracy as a white collar crime, present economic offence is committed by the accused persons. In fact, they even failed to comply with the terms of settlement arrived with complainant bank. It is further argued that a provisional attachment order is already passed in the present case, which also prima facie indicates involvement of all the accused including the present applicant in the present case.

4.13. As such, it is submitted by Ld. Spl PP for ED that present accused/applicant do not deserve the benefit of regular bail and accordingly present application for regular bail be rejected.

5. In rebuttal, it is argued/clarified by learned senior counsel for accused that around 150-200 matters are pending before Hon'ble Supreme Court at present regarding the issue of applicability of twin condition of Section 45 as it stands today after amendment. It is further argued that as such, such question of law is yet to be decided.

It is further argued by learned Senior counsel that in fact it is also settled law that gravity of offence is not the only factor to be considered while deciding regular bail application.

It is further argued that recently vide order dated 04.12.2021 in complaint case no. 8/2020, another learned Special court (PC Act) dealt with all such case laws and granted bail to the accused of such case in similar facts and circumstances.

It is further argued that in fact in subsequent order dated

16.12.2021, Hon'ble Supreme Court in case of **Satinder Kumar Antil(supra)** clarified that earlier order dated 07.10.2021 was passed with intend to ease process of bail and not to restrict it. It is further argued that Hon'ble Supreme Court clarified that in **category C** inadvertently section 45 of PMLA has been mentioned which has been struck down by Hon'ble Supreme Court. It is further clarified by Hon'ble Supreme Court that merely because a chargesheet is filed, would not be an *ipso facto* caused to arrest the petitioner/applicant, which aspect in general clarified in another matter titled **Siddharth (supra)**.

It is further argued that arguments by ED side that section 45 twin conditions are still to be satisfied, is without any legal force at present.

It is further argued that there is no proceed of crime and properties of accused side whose value is about 100 crore is already under attachment.

It is further pointed out by learned Senior counsel that clarifications given by Hon'ble Supreme Court in the case of **Satinder Antil (supra)** vide order dated 16.12.2021 is not considered in the case of **Dr.V.C. Mohan (supra)** relied by ED, as such, same should not be considered.

It is further argued that as present case is a complaint case, thus invite even more lenient view for the purpose of present application.

6. This court has have heard both the sides and have gone through the record. It ought to be noted that learned counsel for both sides argued very well their respective case and assisted

the court ably including with the case law on the issue under consideration exhaustively.

7. On perusal of record, it is not in dispute that present criminal complaint u/s 3, 4 r/w 70 of PMLA is filed against accused persons including the present applicants without arrest.

At this stage, it would be fruitful to reproduce the relevant section 19 and 45 of PMLA for ready reference:

"19. Power to arrest.—(1) If the Director, Deputy Director, Assistant Director, or any other officer authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession reason to believe (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....."

“.....45. Offences to be cognizable and non-bailable.—

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence under this Act *shall be released on bail* or on his own bond unless—

(i) the Public Prosecutor has been given 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:

8. On a bare reading of section 19 (1) PMLA it can be noted

that concerned officer of investigation agency may arrest *i.e. has a discretion to arrest or not* for the offences punishable under PMLA.

9. Further, on bare reading of section 45(1) PMLA as it stands today it can be noted that it contains the phrase “*shall be released on bail*”. As such, for the section 45 PMLA to come into operation/get activated, a person has to be arrested first, as there cannot be any occasion *to release* without there being accused under arrest.

Further, such provision/power of arrest as noted above, is under section 19 PMLA. In the present case, admittedly none of the accused including the present applicant was arrested by concerned official of ED . Present complaint case is filed without their arrest.

Thus despite having right/power under section 19 of PMLA ,for reasons best known to them(which are not under challenge in any case), the concerned official of ED chose not to exercise their power under section 19 of PMLA. In this regard it can be noted that not taking a decision ,is also a decision. And same was taken by concerned official of ED in present case qua the present applicant by not arresting them.

9. Under these facts and circumstances of the present case,when the concerned official of ED chose not to exercise their power u/s 19 of PMLA to arrest, this court is of the considered view that provision of section 45 PMLA and therefore, related case laws relied by the parties thereto, are not relevant to decide the present regular bail application.

Consequently, it is held on the facts of present case ,

there is no need to discuss the controversy,(i) whether twin condition of section 45 are still applicable or not,(ii) what is the effect of amendment made thereto by the Act of 2018,and (iii) out of the case laws(particularly of binding force i.e. of Hon'ble HC of Delhi and Hon'ble SC) relied by both the parties, which of the case law is to be followed by this subordinate ,including having regard to *law of precedents /Doctrine of stare decisis*.

10. Having held so, in the considered view of this court, it is to kept in mind that PMLA is a special Act and the objective to enact such . Same is dealt with in the case of **Rohit Tandon(Supra)** also, which is relied by Ld Sp PP for ED.

11. Further there is specific provision which deal with overriding effect of PMLA over other Acts i.e. Section 65 and 71 of PMLA and same reproduced below for ready reference:

65. Code of Criminal Procedure, 1973 to apply.—The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, *in so far as they are not inconsistent with the provisions of this Act, to arrest, search and seizure, attachment, confiscation investigation, prosecution and all other proceedings under this Act.*

“71. Act to have overriding effect.—The provisions of *this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law* for the time being in force...”

12. Thus, it is clear that *provision of this Special PMLA Act and consequently the interpretation of the same by Hon’ble Higher Courts particularly, Hon’ble High Court of Delhi and*

Hon'ble Supreme Court ,to whom this court is subordinate court, would have overriding effect over the general provisions of other Acts including the interpretation thereof by Hon'ble Higher Courts, including interpretation of bail criteria and condition under Cr.P.C.

13. Further, it is held time and again by Hon'ble Supreme Court and by our Hon'ble High Court of Delhi, as also rightly pointed out by learned Special PP for ED, as also noted above in the case laws relied by ED, that white collar crime/economic offences, bail matters are to be considered on a different footing. Further, in fact in the case of **Satender Kumar Antil (supra)**, Hon'ble Supreme Court specifically dealt with issue/criteria/guidelines for granting/refusal of bail in case accused is not arrested during investigation, that too, particularly in relation to offences under Special Acts, apart from dealing with criteria for granting bail in offences under General Laws/IPC .

It may also be noted that criteria for granting bail in offences under General Law/IPC, is also dealt in other case laws, which are relied by learned Senior counsel for accused.

It may further be noted that even in the order dated 16.12.2021 in the case of **Satender Kumar Antil (supra)** Hon'ble Supreme Court clarified, on pointing out by learned Additional Solicitor General that amendment was made to section 45 PMLA and same is pending challenge before a different Bench of Hon'ble Supreme Court, that such aspect was not dealt on such account only by Hon'ble Supreme Court in the case of **Satender Kumar Antil (supra)** observing that

same would be matter to be considered by concerned other Hon'ble Bench.

14. In this background, it may further be noted there consistent view taken by Hon'ble Higher courts that economic offences stands on a different footing than other offences, therefore, in the considered view of this court, same view cannot be taken in case, a case is filed by the concerned agency without arrest in Special Act vis-a-vis under a General Act/IPC. In this regard, the ratio guidelines by Hon'ble Supreme Court including in the case of **Satender Kumar (supra)** is to be kept in mind, which consciously made offences under Special Act a different category, from other general/IPC offences.

Further, bare reading of such order in **Satender Kumar (supra)**, it is clear that although a liberal approach is advocated in general offences, particularly if the same is punishable upto seven years. But same is not the criteria/guidelines in cases of offences under Special Acts/economic offences and offences dealing with security of State.

15. Further, certain observation were made by this court in para-17 at page no. 14 in order dated 11.06.2021 while deciding the application under section 438 Cr.P.C. filed by the present accused. Same can be reproduced here for ready reference:

“...17. But situation, legal aspect is something else (,and one can say that same is of a subsequent stage side), and which appears to be not the issue or covered in reference before the Hon'ble HC in these two above cases of 2004 and 2017 and even in third one of 2018 i.e. *whether the trial court has lost its discretion u/s*

437/439 Cr P C. , by such prior action of IO of not to arrest so far , even if trial court is of the view that due to fundamentally important and relevant factors/ grounds (which are consistently upheld by Hon'ble HC and SC as the factors in deciding bail application under these sections 437/439 Cr P C) like accused likely to temper with evidence , threaten the witnesses (many of which can be known to the accused in a particular case, particularly of present nature of economic offence), or that at present stage of the case (i.e. stage after filing of complaint/chargesheet), the court finds that his presence may not be secured for trial, and as such he should not be granted bail , still just because the IO chose not to arrest at a previous stage in his own bonafide discretion/wisdom , therefore at such subsequent stage and/or because of in independent view of the court ,and despite such factor exists necessitating accused arrest now ,still the court is powerless and victim/witness is remediless and as such still bail is to be compulsorily given to the accused.....”

16. As far as the case law of **V.C. Mohan(supra)** relied by Ld. Sp. PP for ED is concerned, it can be noted that there can be broadly three situations in relation to issue under consideration i.e.:

- i) IO/concerned agency wants to arrest *and* in fact arrested the accused /applicant, exercising its power/right under section 19 of the PMLA. In this situation, accused has to move application u/s 45 of PMLA r/w section 439 Cr.P.C.
- ii) IO/concerned agency wants to arrest the accused /applicant but so far not able to arrest. As such fearing such apprehension of arrest, as per law the accused can move an application u/s 438 read with u/s 45 of PMLA. This is the situation which the Hon'ble SC appears to

dealing with in this case of **V.C. Mohan(supra)**. Of course, as also held by Hon'ble SC in such case law, in such situation the court concerned has to keep in mind the parameters of section 45 PMLA, as it stands as on date, as the IO /ED chose to exercise its power under section 19 of the PMLA. Thus resultantly criteria of section 45 PMLA gets activated.

iii) IO/concerned agency itself does not want to arrest the accused /applicant at all *and* as such it chose not to exercise its power under section 19 of the PMLA , like in present case. Thus resultantly criteria of section 45 PMLA itself *do not* gets activated at all.

16.1. Having regard to the facts of present case, same falls under situation/category -(iii), just mentioned above. As such, is it held that reliance by ED on such judgment of **V.C. Mohan (supra)**, in the facts of present case, is misplaced.

17. Further at this stage, it is also to be noted that the personal liberty is a priceless treasure for a human being. It is founded on the bed rock of constitutional right and accentuated further on human rights principle. The sanctity of liberty is the fulcrum of any civilized society. Deprivation of liberty of a person has enormous impact on his mind as well as body. Further article 21 Of the Constitution mandates that no person shall be deprived of his life or personal liberty except according to procedure established by law. Further India is a signatory to the International Covenant On Civil And Political Rights, 1966 and, therefore, Article 21 of the Constitution has to be understood in the light of the International Covenant On Civil

And Political Rights, 1966. Further Presumption of innocence is a human right. Article 21 in view of its expansive meaning not only protects life and liberty ,but also envisages a fair procedure. Liberty of a person should not ordinarily be interfered with unless there exist cogent grounds therefor. The fundamental principle of our system of justice is that a person should not be deprived of his liberty except for a distinct breach of law. If there is no substantial risk of the accused fleeing the course of justice, there is no reason why he should be imprisoned during the period of his trial. The basic rule is to release him on bail unless there are circumstances suggesting the possibility of his fleeing from justice or thwarting the course of justice. When bail is refused, it is a restriction on personal liberty of the individual guaranteed by Article 21 of the Constitution.

18. Further it has been laid down from the earliest time that the object of Bail is to secure the appearance of the accused person at his trial by reasonable amount of Bail. The object of Bail is neither punitive nor preventive. Deprivation of liberty must be considered a punishment unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after convictions, and that every man is deemed to be innocent until duly tried and duly found guilty. From the earlier times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to

secure their attendance at the trial ,but in such case 'necessity' is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty under Article 21 of the Constitution upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as mark of disapproval of former conduct. Whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson. While considering an application for bail.

19. But, the liberty of an individual is not absolute. The Society by its collective wisdom through process of law can withdraw the liberty that it has sanctioned to an individual when an individual becomes a danger to the societal order. A society expects responsibility and accountability from the member, and it desires that the citizens should obey the law, respecting it as a cherished social norm. Therefore, when an individual behaves in a disharmonious manner ushering in disorderly thing which the society disapproves, the legal consequences are bound to follow.

20. Further discretionary jurisdiction of courts for granting

bail, particularly for offences alleged under Special Acts ,like the present one under PMLA, should be exercised carefully and cautiously by balancing the rights of the accused and interests of the society. Court must indicate brief reasons for granting or refusing bail. Bail order passed by the court must be reasoned one.

21. Further at this stage it can be noted that interpreting the provisions of bail including for economic offences , the Hon'ble Supreme Court in its various judgments has laid down various considerations for grant or refusal of bail to an accused in a non-bailable offence like:

- i. Whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- ii. Nature of accusation and evidence therefor,
- iii. Gravity of the offence and punishment which the conviction will entail,
- iv. Reasonable possibility of securing presence of the accused at trial and danger of his absconding or fleeing if released on bail,
- v. Character and behavior of the accused,
- vi. Means, position and standing of the accused in the Society,
- vii. Likelihood of the offence being repeated,
- viii. Reasonable apprehension of the witnesses being tampered with,
- ix. Danger, of course, of justice being thwarted by grant of bail,
- x. Balance between the rights of the accused and the larger

interest of the Society/State,

xi. Any other factor relevant and peculiar to the accused.

22. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, but if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused.

23. Furthermore, it is settled law that there is no hard and fast rule and no inflexible principle governing the exercise of such discretion by the courts. It was further held that there cannot be any inexorable formula in the matter of granting bail. Facts and circumstances of each case will govern the exercise of judicial discretion in granting or refusing bail. Same depends upon a variety of circumstances, cumulative effect of which must enter into the judicial verdict.

24. As far as, particular facts of present case is concerned, it is to be noted that such accused is already granted regular bail in the case registered by EOW under the provision of IPC. Further, it is not disputed by the ED itself that provisional order of attachment of properties of the accused side is already passed. It further appears from the orders of Hon'ble High Court in connected proceeding in WP(C) 10242/2019 that properties worth about 100 crores are under attachment and subject matter of such writ petition and other proceedings. Further, it is rightly pointed out by learned Senior counsel for accused that accused/applicants appeared before this court and

undertakes to continuously so appear in future during trial. Further, most of the evidence is documentary in nature, and in any case no material is placed on record by the ED that accused side is tampering with evidence or threatening the witnesses. It further appears from the record that accused has roots in the society. Thus there is reasonable possibility of securing presence of the accused persons at trial and danger of their absconding or fleeing if released on bail does not appear at present. It further appears that accused cooperated with ED till the time of filing present criminal complaint without arrest.

In above facts and circumstances, all the present Accused persons/Applicants application is allowed and they are granted regular bail in the present case , subject to furnishing of personal bond in the sum of **Rs. 50,000/- with two sound sureties of like amount**, subject to the satisfaction of this court and the following additional conditions:

- i) That he will appear before the investigating agency/ Court as and when called as per law.*
- ii) He will not indulge in any kind of activities which are alleged against him in the present case.*
- iii) That he will not leave India without permission of the Court.*
- iv) He will not threaten the witness or tampering with evidence.*

25. It is clarified that in case if the applicant/ accused is found to be violating any of the above conditions, the same shall be a ground for cancellation of bail and the State shall be at liberty to move an application for cancellation of bail.

26. Before parting with this order, it can be observed that Orders passed from time to time by my Ld. Brothers/sisters presiding over the concerned courts of Additional Session Judges dealing with similar jurisdictions/matters are in fact relied and cited by both sides in present bail applications. In this respect it is most humbly and respectfully submitted, that like the present court such other court of Addl. Session also are not *court of record*, unlike Hon'ble High courts and Hon'ble S.C.

Further there are binding case laws, many of which are cited by Ld. Counsel for both sides during the course of arguments , as already noted above. It may further be noted that most of such case laws are of our Hon'ble High Court and Hon'ble Supreme Court , which are *court of record* as well as has binding force on this subordinate court under them .

As such, such practice of citing trial court orders/judgment also, particularly when there is case laws of Hon'ble HC and SC on the same issue/point , is not of much use and same only unnecessarily consumes the judicial time.

27. *The observations made in the present bail application order are for the purpose of deciding of present applications and do not affect the factual matrix of the present case which is separate issue as per law.*

28. *Learned counsel for both sides are at liberty to collect the order through electronic mode.*

(Naveen Kumar Kashyap)
Additional Sessions Judge-04
Central/THC/Delhi/13/01/2022