Form No.J(1)

IN THE HIGH COURT AT CALCUTTA
CRIMINAL MISCELLENEOUS JURISDICTION

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

CRM (SB) 180 of 2023

Partha Chatterjee.
-vs.-
Enforcement Directorate.

For the Petitioner : Mr. Sandipan Ganguly
Mr. Ayan Poddar
Ms. Manaswita Mukherjee
Mr. Soham Dutt
Mr. Soumen Paul.

For the E.D. : Mr. Phiroze Edulji
Ms. Anamika Pandey.

Heard On : 01.04.2024, 18.04.2024 & 23.04.2024.

Judgement On : 30.04.2024

Tirthankar Ghosh, J. :

Petitioner has prayed for bail in connection with M.L. Case No. 13 of 2022 pending before the learned Special Judge, (CBI-I), Court, City Sessions Court, Calcutta arising out of ECIR No. KLZO-II/19/2022 dated 24.06.2022 under Section 3 & 4 of the Prevention of Money Laundering Act, 2002.

The genesis of the present case relate to an order dated 08.06.2022 passed in WPA No. 9979 of 2022 (in the matter of Soumen Nandy –Vs. – The State of West Bengal & Ors.), wherein the CBI, ACB, Kolkata registered FIR being no. RC102022A0006 dated 09.06.2022 for offences punishable under sections 7, 7A & 8 of Prevention of Corruption Act, 1988 and Sections 120B, 420, 467, 468, 471 & 34 of Indian Penal Code, 1860 against Chandan Mondal @ Ranjan, unknown office bearers of West Bengal Board of Primary Education and others for the alleged offences committed by unknown office bearers of West Bengal Board of Primary Education in conducting the selection process of Assistant teachers.

As sections 7, 7A & 8 of the Prevention of Corruption Act, 1988 fall under Paragraph 8 part 'A' of the schedule to the PMLA, 2002 and Sections 120B, 420, 467 & 471 of Indian Penal Code, 1860 1988 fall under Paragraph 1 part 'A' of the schedule to the PMLA, 2002 are the Scheduled Offence in terms of Section 2(1) (y) of PMLA, 2002, enquiries were initiated under PMLA, 2002 against the accused persons and their associates after recording ECIR /KLZO-II/19/2022 dated 24.06.2022 against Chandan Mondal @ Ranjan, unknown office bearers of West Bengal Board of Primary Education and others.

It was alleged that the various orders of the Hon'ble High Court of Calcutta make it clear that the entire process of recruitment of assistant primary teachers were done illegally and for extraneous considerations. The role of all the influential persons were put under scrutiny by the Hon'ble High

Court and accordingly a SIT of CBI was constituted by it for unearthing the corruption which is writ large in the entire selection process.

That the entire sequence of events pointed to a large-scale public scam wherein eligible and meritorious candidates were denied the opportunity of being appointed as school teachers and ineligible, below- ranked and even failed candidates were wrongly recommended and illegally appointed as teachers.

During the course of investigation, search and seizures were conducted at various places/premises. The searches conducted at the residential premises of Ms. Arpita Mukherjee situated at Tower-2, Flat No-1, Diamond City South, 58, Mahatma Gandhi Road, Karunamoyi, Tollygunge, Kolkata-700041, led to the seizure of cash amounting to Rs. 21.90 crores and gold jewellery worth 76,97,100/-Further, on the basis of the interrogation of the accused Ms. Arpita Mukherjee and scrutiny of the documents, a search dated 27/28.07.2022 was conducted which led to a further recovery and seizure of a huge and unprecedented cash amount of Rs. 27.90 crores and gold valued at Rs. 4.31 crores from the premises of Ms. Arpita Mukherjee situated at Flat-8A, Block-5, Club town heights, 14 B.T Road, Belghoria, Kolkata. It was also noticed that a company closely linked with the family members of the accused i.e. Shri Partha Chatterjee is registered at this very premises, from where the haul of huge cash of Rs. 27.90 crores and gold amounting to Rs. 4.31 crores have been seized.

The aforesaid searches led to seizure of incriminating documents pertaining to this case.

The search conducted at the residential premises of Shri. Partha Chatterjee led to the seizure of incriminating digital devices and documents/records which pointed towards his active involvement in the illegal appointment of teachers. Further, property documents belonging to Ms. Arpita Mukherjee and her company were also seized from the residential premises of Shri. Partha Chatterjee. This pointed towards the close association of Shri Partha Chatterjee and Ms. Arpita Chatterjee.

Further, the searches yielded incriminating documents pointing towards acquisition, possession, concealment, use, projection as well as claim of large-scale proceeds of crime by the accused persons through the use of various dummy companies and a number of bank accounts.

Shri Partha Chatterjee and Ms. Arpita Mukherjee were found involved in the commission of the offence of money laundering, by indulging in criminal conspiracy for illegally giving jobs for the post of Asst teachers in primary schools against bribe amount and generating huge proceeds of crime and for having knowingly indulged, assisted, involved and being a party in the process and activity connected to the proceeds of crime including its concealment, possession, acquisition, use, projecting as well as claiming the said proceeds of crime as untainted property deriving illegal monetary gains. The accused Shri Partha Chatterjee and Ms. Arpita Mukherjee were arrested for the offence of

Money Laundering on 23.07.022 on reasons to believe that they were involved in the offence of Money Laundering. Shri Partha Chatterjee and Ms. Arpita Mukherjee were arrested on 23.07.2022 from their residential premises situated at 9/4A, Khanpur Road, Naktala, Kolkata-700047 and Diamond City South, Tower-2, Flat-1, 58 MG Road, Karunamoyee, Tollygunge, Kolkata-41 respectively under section 19 of the PMLA, 2002 after observing all legal safeguards.

Details of Movable property seized:

Sl. No.	Description of moveable property	Value (in Rs.)
1.	Gold Jewellery recovered and seized from the premises of Ms. Arpita Mukherjee, [Diamond City South, Tower-2, Flat-1, 58, Mahatma Gandhi Road, Tollygunge, Karunamoyee, Kolkata- 700041] on 22/23.07.2022	76,97,100/-(Seventy-Six Lakhs and Ninety-Seven Thousand and One Hundred only)
2.	Indian Currency recovered and seized from the premises of Ms. Arpita Mukherjee, Diamond City South, Tower-2, Flat-1, 58, Mahatma Gandhi Road, Tollygunge, Karunamoyee, Kolkata- 700041 on 22/23.07.2022	21,90,00,000/- (Twenty-One crores And Ninety Lakhs only)
3.	Indian Currency recovered and seized from the premises of Ms. Arpita Mukherjee, Club Town Heights, 14 B.T. Road, Block 5, Flat, Kolkata on 27/28.07.2022	27,90,00,000/- (Twenty-Seven crores And Ninety Lakhs only)
4.	Gold Jewellery and other precious metal items recovered and seized from the premises of Ms. Arpita Mukherjee, Club Town Heights, 14 B.T.	4,31,79,300/- (Four Crores Thirty-One Lakhs Seventy-Nine

	Road, Block 5, Flat, Kolkata on 27/28.07.2022	Thousand and Three Hundred only)
5.	One Rado Wrist watch seized from the premises of Ms. Arpita Mukherjee, Club Town Heights, 14 B.T. Road, Block 5, Flat, Kolkata on 27/28.07.2022	
	Total	54,88,76,400/-

The details Foreign Currency recovered and seized from the premises of Ms. Arpita Mukherjee at Diamond City South, Tower-2, Flat-1, 58, Mahatma Gandhi Road, Tollygunge, Karunamoyee, Kolkata- 700041 on 22/23.07.2022.

Sl. No	Description of Foreign Currency	Denomination	No. of Currency Notes
1.	Nepal Rashtra Bank (Rupee)	1000	01
2.	Nepal Rashtra Bank (Rupee)	100	07
3.	Nepal Rashtra Bank (Rupee)	50	01
4.	Nepal Rashtra Bank (Rupee)	20	03
5.	Nepal Rashtra Bank (Rupee)	10	03
6.	Thailand (Baht)	20	09
7.	Thailand (Baht)	50	01
8.	Thailand (Baht)	500	01
9.	Thailand (Baht)	1000	03
10.	Bank Negara Malaysia (Ringgit)	50	01
11.	Hong Kong Dollars	20	01
12.	Hong Kong Dollars	10	01
13.	Bangladesh Bank Taka	100	01
14.	Bangladesh Bank Taka	50	01
15.	Singapore Dollar	2	36

16.	Singapore Dollar	5	12
17.	Singapore Dollar	10	31
18.	Singapore Dollar	50	45
19.	Singapore Dollar	100	11
20.	Singapore Dollar	1000	02
21.	Singapore Cents (coins)	20	01
22.	Singapore Cents (coins)	50	01
23	The United State of America Dollars	01	12
24.	The United State of America Dollars	05	01
25.	The United State of America Dollars	10	11

Details of immovable property worth Rs.40,33,48,082/- (including BCM International School).

In the prosecution complaint a brief summary of the specific role of the petitioner was assigned, which is set out as follows:

S.No	Name of the Accused	Role in the case
1.	Shri Partha Chatterjee (A- 1) D.O.B -06.10.1952, son of Late Shri Bijay Krishna Chatterjee, R/o 9/4A, Khanpur Road, Naktala, Kolkata- 700047,	A company namely M/s Ananta Texfab Pvt. Ltd. controlled by Shri Partha Chatterjee and found closely linked with the family members of the accused Shri Partha Chatterjee was registered at that very premises from where the haul of huge cash of Rs. 27.90 crores and gold amounting to Rs. 4.31 crores was seized. Shri Partha Chatterjee had made dummy

		directors in the said company under his control namely M/s Ananta Texfab Pvt Ltd., M/s Symbiosis Merchants Pvt. Ltd., M/s Viewmore Highrise Pvt. Ltd. etc. Under priviledged people having meagre means of living were exploited and made directors by Shri Partha Chatterjee and thereafter made to sign on the papers of the company without their consent or knowledge and even without showing them any contents of the documents. The said companies were floated with the sole aim of laundering the tainted funds acquired from the criminal activity of selling jobs in lieu of money. That a huge cash amount of Rs. 27.90 crores was found at the registered address of this company and the "purported directors on paper" had no knowledge of it. Investigation conducted under PMLA has revealed that the cash seized from the premises of Ms Arpita Mukherjee belongs to Shri Partha Chatterjee, as has been categorically accepted by Ms Arpita Mukherjee in her statement dated 04.08.2022. She even made an application before the Investigating Officer for a true disclosure in this regard.
		As discussed in above paras, Shri Partha

		Chatterjee used his influence and power to subdue people by directing them to arrange for dummy directors and proxies for companies/firms controlled by him. That he purchased a number of properties through these companies and Ms. Arpita Mukherjee. Investigation conducted under PMLA has revealed that he provided a huge cash sum of around Rs. 15 cores for constructing a school in the name of his Late wife Smt. Babli Chatterjee. That he used proxies for buying such land and managing construction thereon using cash amount through his son-in-law Shri Kalyanmoy Bhattacharya. Investigation conducted under PMLA has revealed that he acquired huge cash through criminal activities and concealed it in the premises in the name of Ms. Arpita Mukherjee out of which Rs. 49.8 crores subsequently recovered & seized from the two premises situated at Club Town Heights, Kolkata and Diamond City South, Kolkata. Investigation conducted under PMLA has revealed that Shri Partha Chatterjee was found using mobile no. 8910649614 which is in the name of one Ms. Jyoti Khandelwal. That he used this particular

		no. for making all his communication with his associates. That he deliberately used the number issued in the name of some proxies. Investigation conducted under PMLA has revealed that Shri Partha Chatterjee had also instructed the dummy directors to work under Ms Arpita Mukherjee, who was his close associate in laundering the funds generated through the criminal activities relating to the schedule offence. M/s Sentry engineering Pvt. Ltd. and M/s. Echhay Entertainment pvt. Ltd. were also formed for the purpose of laundering the funds by way of depositing the cash in the accounts maintained in the name of companies and subsequently purchasing immovable properties in the name of companies. These companies were also under the control of Shri partha Chatterjee and his close associate Ms Arpita Mukherjee. Investigation revealed that though Partha Chatterjee was not a director in the companies namely M/s Ananta Texfab Pvt. Ltd., M/s Symbiosis Merchants Pvt. Ltd., M/s Viewmore Highrise Pvt. Ltd., M/s Echhay Entertainment Pvt. Ltd. and M/s Sentry

		Engineering Pvt. Ltd. at the time of contravention of the provisions of PMLA, 2002 but he was incharge and responsible for the day to day affairs and-conduct of the business of the said companies. He was in de-facto control of the companies as is evident from the statement of Ms Arpita Mukherjee, Shri Snehamoy Dutta, Shri Manoj Kumar Kathotia, Shri Kamal Singh Bhutoria, Shri Mrinmoy Malakar, Shri Ranesh Kumar Singh, Shri Debasis Debnath, Shri Antim Goswami, Shri Biswajit Roy and Ashok Panja. Shri Partha Chatterjee had appointed dummy persons as directors of the companies only on paper whereas he was actually the brain behind not only in day to day affairs of the company but in all acts concerning the contravention of PMLA, 2002. The 31 Nos of LIC insurance policies in the name of Ms Arpita Mukherjee in which the nominee is Shri Partha Chatterjee as uncle/others also proves the close association of Shri Partha Chatterjee and Ms Arpita Mukherjee. Properties were also purchased in the joint name of Shri Partha Chatterjee and Ms Arpita Mukherjee and in the name of

		M/s APA Utilites services, which was a partnership Firm of Shri Partha Chatterjee and Ms Arpita Mukherjee incorporated on 01.11.2011. As discussed above, he was involved in various processes or activities in relation to proceeds of crime including acquisition, use, possession, concealment, projection etc. with the assistance and involvement of other accused persons and entities. Thus, the accused person has committed the offence of Money Laundering as defined under section 3 of PMLA and is, therefore, liable to be punished under section 4 of PMLA, 2002. Aforesaid acts committed by accused person are covered by the definition of offence of money-laundering. In addition to that, Explanation to Section 3 of PMLA also provides 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". As revealed from the facts

		of the case, accused person continued to be involved in processes and activities connected with said proceeds of crime and continued to be in possession and use of the said proceeds of crime obtained or derived by him. In view of the facts and aforesaid legal explanation, it is noticed that accused person continued to commit offence of money laundering as per Section 3 of PMLA and therefore liable to be punished under Section 4 of PMLA for such continuing activity.
3.	M/s Echhay Entertainment Pvt. Ltd. (A-3)	M/s Echhay Entertainment Pvt. Ltd. was formed for the purpose of laundering the funds by way of depositing the cash in the accounts maintained in the name of the company and subsequently purchasing immovable properties in the name of company. This company was also under the control of Shri Partha Chatterjee and his close associate Ms Arpita Mukhejee. This corporate entity was solely used in the acquisition, use, possession, and concealment of proceeds of crime with the assistance of other accused persons and entities. Thus, it has committed the offence of Money Laundering as defined under section 3 read with section 70 of

		PMLA, 2002 and is, therefore, liable to be punished under section 4 of PMLA, 2002. In addition to that, Explanation to Section 3 of PMLA also provides 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". As revealed from the facts of the case, it continued to be involved in processes and activities connected with said proceeds of crime and continued to be holding and projecting the said proceeds of crime as untainted money. In view of the facts and aforesaid legal explanation, it is noticed that it continued to commit offence of money laundering as per Section 3 of PMLA and therefore liable to be punished under Section 4 of PMLA for such continuing activity.
4.	M/s Ananta Texfab Pvt. Ltd. (A-4)	This is a company controlled by Shri Partha Chatterjee and is used as a conduit to propel funds from shell companies to Viewmore Highrise Pvt Ltd.

		for the purpose of purchasing immovable properties by way of siphoning of the funds. Dummy directors were made in this company and there was no business activities in this company. This corporate entity was solely used in the acquisition, use, possession, and concealment of proceeds of crime with the assistance of other accused persons and entities. Thus, it has committed the offence of Money Laundering as defined under section 3 read with section 70 of PMLA, 2002 and is, therefore, liable to be punished under section 4 of PMLA, 2002. In addition to that, Explanation to Section 3 of PMLA also provides 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". As revealed from the facts of the case, it continued to be involved in processes and activities connected with said proceeds of crime and continued to be holding and

		projecting the said proceeds of crime as untainted money. In view of the facts and aforesaid legal explanation, it is noticed that it continued to commit offence of money laundering as per Section 3 of PMLA and therefore liable to be punished under Section 4 of PMLA for such continuing activity.
5.	M/s Symbiosis Merchants Pvt. Ltd. (A-5)	This is a company controlled by Shri Partha Chatterjee and is used for the purpose of laundering the funds generated through the criminal activities and subsequently purchasing immovable properties in the name of company by way of siphoning of the funds. Dummy directors were made in this company and there was no business activities in this company. This corporate entity was solely used in the acquisition, use, possession, and concealment of proceeds of crime with the assistance of other accused persons and entities. Thus, it has committed the offence of Money Laundering as defined under section 3 read with section 70 of PMLA, 2002 and is, therefore, liable to be punished under section 4 of PMLA, 2002. In addition to that, Explanation to Section 3 of PMLA also provides 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". As revealed from the facts of the case, it continued to be involved in processes and activities connected with said proceeds of crime and continued to be holding and projecting the said proceeds of crime as untainted money. In view of the facts and aforesaid legal explanation, it is noticed that it continued to commit offence of money laundering as per Section 3 of PMLA and therefore liable to be punished under Section 4 of PMLA for such continuing activity.
6.	M/s Sentry Engineering Pvt. Ltd. (A-6)	M/s Sentry engineering Pvt. Ltd. was formed for the purpose of laundering the funds by way of depositing the cash in the accounts maintained in the name of Companies and subsequently purchasing immovable properties in the name of companies. This company was also under the control of Shri partha Chatterjee and his close associate Ms

		Arpita Mukhejee. This corporate entity was solely used in the acquisition, use, possession, and concealment of proceeds of crime with the assistance of other accused persons and entities. Thus, it has committed the offence of Money Laundering as defined under section 3 read with section 70 of PMLA, 2002 and is, therefore, liable to be punished under section 4 of PMLA, 2002. In addition to that, Explanation to Section 3 of PMLA also provides 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". As revealed from the facts of the case, it continued to be involved in processes and activities connected with said proceeds of crime and continued to be holding and projecting the said proceeds of crime as untainted money. In view of the facts and aforesaid legal explanation, it is noticed that it continued to commit

		offence of money laundering as per Section 3 of PMLA and therefore liable to be punished under Section 4 of PMLA for such continuing activity.
7.	M/s Viewmore Highrise Pvt. Ltd. (A-7)	This is a company controlled by Shri Partha Chatterjee and is used for the purpose of laundering the funds generated through the criminal activities and subsequently purchasing immovable properties in the name of company by way of siphoning of the funds. Dummy directors were made in this company and there was no business activities in this company. This corporate entity was solely used in the acquisition, use, possession, and concealment of proceeds of crime with the assistance of other accused persons and entities. Thus, it has committed the offence of Money Laundering as defined under section 3 read with section 70 of PMLA, 2002 and is, therefore, liable to be punished under section 4 of PMLA, 2002. In addition to that, Explanation to Section 3 of PMLA also provides 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". As revealed from the facts of the case, it continued to be involved in processes and activities connected with said proceeds of crime and continued to be holding and projecting the said proceeds of crime as untainted money. In view of the facts and aforesaid legal explanation, it is noticed that it continued to commit offence of money laundering as per Section 3 of PMLA and therefore liable to be punished under Section 4 of PMLA for such continuing activity.
8.	M/s APA Utility Services (A-8)	This is a partnership firm formed on 01.11.2011 with Shri Partha Chatterjee and Ms. Arpita Mukherjee as equal partners and powers to act on behalf of the other. There was no business activity in this firm and it was solely made with the purpose of buying properties from the proceeds derived out of the criminal activities related to scheduled offences. Immovable property were purchased in cash in the name of this partnership firm.

		Thus entity was also used in the acquisition, use, possession, and concealment of proceeds of crime. Thus, it has committed the offence of Money Laundering as defined under section 3 of PMLA and is, therefore, liable to be punished under section 4 of PMLA, 2002. In addition to that, Explanation to Section 3 of PMLA also provides 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". As revealed from the facts of the case, it continued to be involved in processes and activities connected with said proceeds of crime and continued to be holding and projecting the said proceeds of crime as untainted money. In view of the facts and aforesaid legal explanation, it is noticed that it continued to commit offence of money laundering as per Section 3 of PMLA and therefore liable to be punished under Section 4 of PMLA for

		such continuing activity.

Mr. Sandipan Ganguly, learned Senior Advocate appearing on behalf of the petitioner submitted that the petitioner is in custody for about one year nine months, he is aged about 72 years and is suffering from multiple diseases including the Type –II Diabetes, chronic kidney disease, hypertension, hypothyroidism, osteoarthritis, prostatomegaly, dyslipidemia etc. along with swelling of both feet. Learned senior advocate submits that the petitioner was not named in the first R.C. Case No.6 dated 09.06.2022, nor has he been made an accused in the supplementary charge-sheet filed in connection with the said case. ECIR has also not named the petitioner as accused.

It has been contended that the present ECIR which arises out of the FIR of R.C. Case No.6 relates to incidents which took place subsequent to 23.12.2020 when the notification for recruitment of primary teachers were published and the cogent materials against the petitioner are of the year 2012, and do not relate to the period between 2014 to 2021. The notification for recruitment of primary teachers were published on 23.12.2020 while the petitioner was shifted from the post of Minister-in-Charge, Education Department, Government of West Bengal towards the end of March, 2021. The properties which have been allegedly seized and has been related to the petitioner are of the year 2012, when the petitioner was not even Minister-in-Charge, Education Department, Government of West Bengal.

In respect of the seizures which were effected, it has been contended on behalf of the petitioner that the documents recovered and seized from the premises of the petitioner on 22.07.2022 relate to copies of deeds of sale purchased by Ms. Arpita Mukherjee, M/s. Echhay Entertainment Pvt. Ltd and M/s. Sentry Engineering Pvt. Ltd. The recoveries do not relate to the present petitioner. Referring to some of the documents relied upon by the prosecution, learned senior advocate fortifies his argument by submitting that in question no.12 of the statement dated 02.08.2022 the said Ms. Arpita Mukherjee stated that the properties were either in her name or in the name of her company and all the properties were in her possession. It was explained that since she knew the petitioner so the said documents/photocopies were kept in the premises of the petitioner. So far as the other documents which are being recovered, the same do not relate to R.C. Case No.6 and relates to appointment of Group 'D' staff and in respect of upper primary teachers. Reliance upon the documents were only to impress upon the Court that the present petitioner is involved in the commission of offence arising out of R.C. Case No.6 and the proceeds of crime were generated through commission of such offence. Learned senior advocate appearing for the petitioner also argued on the issue relating to the prosecution having unnecessarily projected the relationship and/or proximity between the petitioner and another co-accused, namely, Ms. Arpita Mukherjee. To this aspect learned senior advocate submitted that although the petitioner do not deny the proximity with the co-accused, however, the subsequent inference that the prosecution wishes the Court to lead to , that the amount so

seized from the flat of Ms. Arpita Mukherjee is of the petitioner is not a plausible one and the petitioner has consistently denied the same, as the materials so seized were from the co-accused Ms. Arpita Mukherjee and the petitioner has nothing to do with the same. The finding of the prosecution that the relationship or the proximity of the petitioner and co-accused Ms. Arpita Mukherjee cannot impose a penal liability and the same would be forfeited by drawing a conclusion.

The documents relied upon by the prosecution are to create a relationship which includes the letter dated 28.7.2022 for adopting the child, the LIC policies of Arpita Mukherjee, which were seized and the name of the petitioner appeared to be as a nominee in the capacity as an *uncle*/others and the statement of Snehamoy Dutta, wherein he stated that the petitioner has purportedly directed him to take care of Aripta Mukherjee when they travelled to Thailand and Goa together. Thus, according to the ld. Senior advocate without any substance it cannot be a cause of implicating the petitioner in an offence under the PMLA.

It is also argued that a Diary of the Department of School Education, Department of High Education, Government of West Bengal which have been relied upon by the prosecution do not indicate any generation of proceeds of crime and the envelope which was also seized printed as 'Minister-in-Charge, Department of Higher Education, School Education, Parliamentary Affairs,

Government of West Bengal" containing Rs.5 lakhs in cash do not establish any proof beyond doubt to connect the seizures with the present petitioner.

It has been reiterated that no cash and/or jewellery was seized from the possession of the present petitioner and the aforesaid documents have been relied upon to falsely implicate the petitioner in connection with the instant case.

While referring to the statement of Arpita Mukherjee which was recorded under section 50 of the PMLA in respect of the cash, jewellery and the properties, ld. Advocate for the petitioner emphasizes that the statement of a co-accused do not add any importance to the evidence, which can be a sole testimony for implicating the petitioner.

There were other statements of said Arpita Mukherjee, which do exonerate the petitioner. However, the prosecution has not emphasized on the same and only highlighted on a single piece of such statement to establish its case of proceeds of crime, which dilutes the case against the present petitioner as the same is based on surmises and conjectures.

Ld. Senior advocate for the petitioner has also dealt with the properties in the name of M/s. APA Utility Services and rebutted the same by addressing the court that the property is located at 348/52, NSC Bose Road, PS-Jadavpur, Kolkata-700047, which is in the name of one Rajib Dey and the said Rajib Dey has not been examined as a witness in this case.

So far as the infusion of cash in BCM International School is concerned, the prosecution has relied upon the statement of Krishna Chandra Adhikary and Kalyanmoy Bhattacharya to assert that the petitioner infused cash to the tune of Rs.15 crore in the construction of BCM International School.

It has been submitted that the said Kalyanmoy Bhattacharya has not been made a witness in the present case, although, his statement, which has been relied upon, reflects that for a definite period of time, he acted as a Chairman and apart from him there were other relations, who were trustees, and were inducted as per his instructions.

Krishna Chandra Adhikakry happens to be also an *uncle* of said Kalyanmoy Bhattacharya, who was in the helm of the affairs of Babli Chatterjee Foundation and BCM International School.

Thus, the story regarding the infusion of cash is based only on oral assertions and the same is devoid of any support from documentary evidence.

So far as the issue relating to creation of shell-companies of the petitioner, except the statement of Manoj Kathotia and Kamal Singh Bhutoria, there are nothing on record to show that the oral statements and/or assertions can be relied upon.

Learned senior advocate for the petitioner has also referred to the statement of other witnesses so relied upon by the Enforcement Directorate and submitted that if the statement of the said persons are accepted to be

true, they are also to be impleaded in the instant case and cannot be exonerated from the charges under the PMLA.

Lastly, learned senior advocate submitted that having regard to the period of detention of the present petitioner which is almost one year nine months and the prosecution has relied upon 183 witnesses and 442 documents to prove its case when the charges are yet to be framed and there is no scope of the trial commencing soon, the petitioner should be released on bail as further custodial detention would amount to pre-trial conviction.

In order to substantiate his argument, Mr. Ganguly, learned senior advocate has relied upon a series of judgements.

With reference to the period of custody which has been suffered and the quantum of punishment which can be imposed in a case whether the trial would take considerable time to be completed, paragraphs 6, 7 & 8 of Sanjay Agarwal –vs- Directorate of Enforcement reported in 2022 SCC OnLine SC 1748 have been relied upon and the above-mentioned paragraphs are set out below:

> ***"6.*** *At this stage, we need not go into the submissions raised on behalf of either side. The fact of the matter is that for an offence where the maximum sentence could be punishable with imprisonment for seven years, the appellant has undergone custody for about a year.*
>
> ***7.*** *It further appears that the investigation is still pending and the matter is not ripe for trial on merits before the appropriate Court.*

8. *Considering the entirety of the circumstances on record and in the peculiar facts, in our view, the appellant is entitled to the relief of bail. We, therefore, proceed to pass following directions:*

(a) The appellant shall be produced before the concerned Court within three days and the concerned Court shall release the appellant on bail subject to such conditions as the Court may deem it appropriate to impose.

(b) Such conditions shall include following stipulations-

(i) that the appellant shall swear an affidavit as to the details of the passport(s) held by him, which along with affidavit, shall be tendered before the Enforcement Directorate.

(c) The appellant upon being released on bail shall mark his presence in the office of the Enforcement Directorate every Monday between 11.00 am to 1.00 pm.

(d) The appellant shall not in any way hamper the investigation and/or seek to influence the course of investigation or the witnesses. Any such attempt or infraction in that behalf shall entail in cancellation of the relief granted vide this Order."

On similar issue, paragraphs 11 and 13 of Krishna Mohan Tripathi vs- State through Enforcement Directorate reported in 2021 SCC OnLine SC 597 has been relied upon. The relevant paragraphs of which are set out as follows:-

11. *The High Court, in the impugned order dated 25.11.2020, declined the bail at the given stage but directed the Trial Court to proceed with the trial on day-to-day basis and also gave liberty to the appellant to apply for bail afresh, if trial did not conclude within six months from the date of production of copy of its order. The fact remains that this*

appeal is being considered today by this Court only after six months from the date of order of the High Court but, what to say of conclusion, the trial is practically at the very initial stage with even the statement of the first prosecution witness remaining incomplete. Looking to the nature of case and the witnesses to be examined, the trial and is bound to take time. On the other hand, the appellant is said to be in custody since 27.11.2019.

13. *In view of above, this appeal is allowed in the manner that while setting aside the impugned order dated 25.11.2020, the appellant is ordered to be released on bail on such terms and conditions as deemed fit and necessary by the Trial Court, which shall include the conditions that the appellant will not attempt to alienate any of his properties without permission of the Trial Court and will render all cooperation in expeditious proceedings of the trial.*"

On the issue relating to the statement of an accused in custody and using the same as evidence against another co-accused it was emphasized by the learned senior advocate that the same is the weakest piece of evidence and to that effect reliance was placed on Surinder Kumar Khanna –vs- Directorate of Revenue Intelligence reported in (2018) 8 SCC 271. Emphasis was made on paragraph 13 which is as follows :-

"13. *In the present case it is accepted that apart from the aforesaid statements of co-accused there is no material suggesting involvement of the appellant in the crime in question. We are thus left with only one piece of material that is the confessional statements of the co-accused as stated above. On the touchstone of law laid down by this Court, such a confessional statement of a co-accused cannot by itself be taken*

as a substantive piece of evidence against another co-accused and can at best be used or utilised in order to lend assurance to the Court."

Substantiating the arguments that when an accused is not involved in the predicate offence he should be granted bail, learned senior advocate relied upon Jai Narayan Sharma –vs- Assistant Director, Directorate of Enforcement in Criminal Appeal No. 2726 of 2023. Reliance was placed on paragraphs 5 and 6 of the said judgement which are set out below :-

*"**5.** Considering the role ascribed to the appellant, following are the peculiar facts which persuade us to consider the prayer made by the appellant for grant of bail:*

(a) The appellant is not shown as an accused in the predicate offence;

(b) The only allegation against the appellant is that he allowed the principal accused to invest the proceeds of the crime in the share capital of a bank of which he was the Vice Chairman;

(c) Though it is alleged that close associates/relatives of the main accused were made members and they were not entitled to become members, it is not the case of the prosecution that the share holders are fictitious persons; and

(d) The appellant has undergone incarceration for a period of 1 year and 9 months and there is no possibility of the trial commencing in the near future. Conclusion of trial will take a very long time.

***6.** Accordingly, in view of the facts of the case, we direct that the appellant shall be produced before the competent Court within a period of one week from today. The competent Court shall enlarge the appellant on bail on appropriate terms and conditions. However, the respondent shall be heard before fixing the terms and conditions."*

Mr. Ganguly, learned senior advocate has also referred to the tripod test, which was applied by a Division Bench of this court in CRM (DB) 4100 of 2023 (Re: Dr. Kalyanmoy Ganguly). Reference has been drawn to paragraphs 9 to 14 of the said judgement which are as follows:-

> ***"9.*** *In this backdrop this Court has applied the tripod test to the facts to determine whether continued detention of the petitioner is justified.*
>
> ***10.*** *Firstly, we note petitioner is a superannuated individual. He is a septuagenarian and is suffering from frail health. He has strong roots in society. During investigation he responded to the summons issued by the Investigating Agency and was interrogated till the agency considered his custodial interrogation imperative for progress of investigation. These facts lead to the irresistible conclusion that there is no chance of abscondence or evasion of the process of law by the petitioner.*
>
> ***11.*** *Second comes the issue of commission of similar offences. Allegations involve abuse of the official position which the petitioner no longer holds. Accordingly, it is out of question that the petitioner would be in a position to commit similar offences.*
>
> ***12.*** *Third relates to interference with investigation by intimidating witnesses and/or tampering evidence. Investigation in the present case has continued for more than a year. It centers around alleged fake appointment/recommendation letters which have already been seized. Two charge sheets have been filed and it is submitted at the Bar that the third and final charge sheet would be filed shortly in deference to the directions of the Hon'ble Apex Court. Evidence in the present case relates to documents already in the possession of the Investigating Agency and/or statements of public servants. There is remote chance of the petitioner influencing or intimidating such witnesses. In this backdrop it is highly improbable that release of the petitioner on bail*

would in any way interfere with the progress of investigation and/or intimidate witnesses.

***13.** It may also be relevant to note that in the opposition filed on behalf of the CBI, apart from stressing on the nature and gravity of the offence, there is no whisper that the petitioner would intimidate witnesses or tamper with evidence.*

***14.** In light of the tripod test, we are of the view the petitioner is entitled to be released on bail."*

Addressing the issue relating to influential persons having held high positions can be granted bail if there was no possibility of tampering with evidence or influencing or intimidating the witnesses the learned senior advocate has relied upon P. Chidambaram –vs- Directorate of Enforcement reported in (2020) 13 SCC 791. The attention of this court has been drawn to paragraphs 23 and 30 which are set out as follows:-

***"23.** Thus, from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of "grave offence" and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made*

against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provide so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case-to-case basis on the facts involved therein and securing the presence of the accused to stand trial.

30. *Further, it is noticed that one of the co-accused has been granted bail by the High Court while the other co-accused is enjoying interim protection from arrest. The appellant is aged about 74 years and as noted by the High Court itself in its order, the appellant has already suffered two bouts of illness during incarceration and was put on antibiotics and has been advised to take steroids of maximum strength. In that circumstance, the availability of the appellant for further investigation, interrogation and facing trial is not jeopardised and he is already held to be not a "flight risk" and there is no possibility of tampering with the evidence or influencing/intimidating the witnesses. Taking these and all other facts and circumstances including the duration of custody into consideration the appellant in our considered view is entitled to be granted bail. It is made clear that the observations contained touching upon the merits either in the order of*

*the High Court or in this order shall not be construed as an opinion expressed on merits and all contentions are left open to be considered during the course of trial.***"**

Reliance was also placed by the petitioner upon Anil Vasantrao Deshmukh –vs State of Maharashtra reported in 2022 SCC Online Bom 3150 on the issue of apparently influential persons who have been in high post have been impleaded on the statement of co-accused under Section 50 of PMLA additionally suffering on health can be granted bail. Additionally on suffering from health issues bail can be granted, paragraphs 62, 65, 79, 80, 81, 85, 88, 89, 93 and 96 of Anil Vasantrao Deshmukh (supra) have been relied upon which are set out as follows :

"62. *Primary reliance appears to be on the statement of Mr. Sachin Waze recorded under Section 50 of the PMLA and the confession in the CBI Case, recorded before the learned Magistrate. A brief resume of the statements may be necessary:*

65. *In the confession before the learned Magistrate, in CBI Case, Mr. Waze stated that, post Diwali 2020, the Applicant had told him that there were 1750 bars in Mumbai and on an average Rs. 3 Lakhs per bar should be collected and given to him. On his disinclination, the Applicant threatened to suspend him again. Immediately, thereafter, he informed the said fact to Mr. Param Bir Singh, the then Commissioner of Police. Upon insistence of the Applicant, Mr. Waze claimed to have had a meeting with the representatives of the bar owners in mid December, 2020 and asked them to collect money and hand it over to him to be paid to 'No. 1', a code word for the Applicant. Initially a good luck amount of Rs. 40 Lakhs was paid by the bar owners namely Mahesh Shetty and Jaya Poojari. Only after the collections in the*

months of January and February, 2021, he had given the cash, so collected, to the Applicant through Mr. Shinde, the co-accused. The first installment was in the last week of January 2021, of about 1.70 Crores. Mr. Shinde had called him near Sahyadri Guest House and the bags containing cash were transferred from the car of Mr. Waze to that of Mr. Shinde. The second was of Rs. 3 Crores which were again handed over, after Mr. Shinde called him near Raj Bhavan signal square.

79. *In the aforesaid view of the matter, the credibility of accusation entirely hinges on the statements of Mr. Sachin Waze, the co-accused, on both the points, as to at whose instance the money was collected and to whom the money, so collected, was allegedly delivered. The latter aspect, it appears, solely rests on the claim of Mr. Sachin Waze.*

80. *During the course of the submissions, on instructions, the Court was informed that Mr. Sachin Waze has been declared an approver by the CBI in the predicate offences, and in instant case also, an application has been preferred by Mr. Sachin Waze to declare him as an approver and the ED has given its no objection to the grant of the said prayer.*

81. *As of now, the status of Mr. Sachin Waze is a co-accused. The statements of Mr. Sachin Waze, banked upon by the prosecution, are but statements of a co-accused. To what extent, even at this stage, the statements of co-accused can be used against another, may warrant consideration. Even if it is assumed that the confession of a co-accused can be used against another co-accused, in the event of a joint trial, under Section 30 of the Evidence Act, 1872, or for that matter in the event of grant of pardon, the co-accused Mr. Sachin Waze deposes as an approver in favour of the prosecution, the question of reliability may arise in the light of the well recognized principles of law. Undoubtedly,*

that would be a matter for trial. But the character in which the statements are made by Mr. Sachin Waze and credibility of accusation therein qua the Applicant, in the light of the material on record, does bear upon the exercise of discretion while considering the prayer for bail.

85. *Without delving into the aspect of the alleged inconsistent statements made by Mr. Sachin Waze before the other forums including Justice Chandiwal Commission of Enquiry, where Mr. Sachin Waze, allegedly disowned everything, in my view, the aforesaid material, prima facie, renders it unsafe to place reliance on the statement of Mr. Sachin Waze, a co-accused, that cash amount was collected and delivered to Mr. Kundan Shinde at the instructions of the Applicant.*

88. *The aforesaid consideration impels me to hold that the Applicant has succeeded in crossing the first hurdle. Satisfaction regarding the Applicant not committing the offence, while on bail, can be legitimately arrived at on the basis of the fact that there are no antecedents to the credit of the Applicant. Secondly, the substratum of the prosecution case is that it was the office of the Home Minister, which the Applicant abused to indulge in predicate offences. The Applicant has long been divested of the said office.*

89. *There is another facet which deserves consideration. Inviting the attention of the Court to the medical record, Mr. Chaudhary submitted that the Applicant is even otherwise entitled to be released on bail by invoking the first proviso to Section 45 of the PMLA. Mr. Anil Singh, learned ASG endeavoured to resist the prayer on the count that the Application is not preferred on medical grounds. I am afraid, it may not be proper to construe the first proviso to Section 45 in such a constricted way. The proviso can be taken into account even when the Court is considering the Application for bail on merits and not*

necessarily only when the accused seeks bail on the grounds mentioned in the proviso.

93. *In the case at hand, pursuant to the directions of the Court, the Chief Medical Officer, Mumbai Central Prison, Mumbai submitted a report on 8th July, 2022 wherein the Applicant was diagnosed to be suffering from:*

> *"Irritable Bowel with accelerated hypertension I known case of ischemic heart disease with bradycardia, chronic obstructive pulmonary disease, hyperlipidaemia, psoriasis, insomnia, recurrent bilateral shoulder dislocation and right lower limb radiculopathy."*

96. *The material on record does indicate that the Applicant has been suffering from multiple ailments. He is 73 years of age. Few of the ailments may classified as de-generative. The medical reports/certificates also show that the Applicant is suffering from chronic ailments, as well. In the light of the material on record, it would be audacious to observe that the Applicant is not a sick person.*"

On the issue relating to bail may be granted on medical grounds, learned senior advocate relied upon Kewal Krishan Kumar Vs. Enforcement Directorate reported in 2023 SCC OnLine Del 1547. Reference was made to paragraphs 52 to 60 which are as follows :

"52. *The aforesaid shows that the Senior Medical Officer on 13.02.2023 has opined that the Applicant needs an attendant on a regular basis for timely medicines. He has suffered multiple episodes of seizures. The Medical Board has stated that the Applicant is stable with the medication.*

53. *The logical inference drawn from the above is that the Applicant is not in a position to take his regular dosage of medicines which is a condition precedent for his survival from the ailments. The attendant is required as the applicant has had multiple episodes of seizures and in event of a seizure, timely medication is of primary importance.*

54. *In the present case, it is observed that the medical report of the Applicant dated 28.01.2023 has stated as under:*

"The inmate patient submitted photocopies of document related to Seizure disorder from Deep Chand Bandhu govt. Hospital/ Bhagwan Mahavir Govt. Hospital/ Chawla Nursing Home and Dr. Praveen Bhatia (Ganga Ram Hospital) and ***Medical document shows that he has suffered Episodes of convulsion outside the jail (period of interim bail). MRI suggestive of defused age related cerebral atrophy with white matter ischemic demyelination.*** *(Copy enclosed-3)"*

(emphasis supplied)

55. *In view of the aforesaid, a perusal of the medical records of the Applicant shows that his seizures have become more frequent than before, that makes him more vulnerable to injuries such as hemorrhage, and for which the dosage of medication has been increased.*

56. *Thus, the aforementioned infirmities in a senile stage combined with constant 'attendant' support as noted in the report dated 13.02.2023 coupled with frequent seizures and abnormal behavioural disorder make the Applicant 'infirm' under the proviso to section 45(1) PMLA.*

57. *In Devki Nandan Garg (supra), I have held as under:*

*"**35.** Thus, the proviso to Section 45(1) of the PMLA carves out an exception from the rigours of Section 45 for persons who are sick or infirm. Once a person falls within the proviso of Section 45(1), he need not satisfy the twin conditions under Section 45(1) as elucidated in the dicta of Gautam Kundu case [Gautam Kundu v. Directorate of Enforcement, (2015) 16 SCC 1 : (2016) 3 SCC (Cri) 603]."*

58. *Once the Applicant falls in the exception clause of section 45(1) proviso, as in the present case by virtue being 'infirm', the Applicant need not satisfy the twin test of section 45(1) PMLA. However, the Applicant needs to satisfy the triple test under Section 437/439 CrPC:*

i. Flight risk.

ii. Influencing any witness.

iii. Tampering with evidence.

59. *In the present case, the Applicant has been in custody for over 18 months. Investigation qua the Applicant is complete but no chargesheet has been filed yet. The Applicant was released on interim bail for a period of one month and after expiry of the same, he surrendered and there is no allegation of misuse of liberty by him while on bail.*

60. *In view of the above observations, the Applicant is entitled to grant of bail.***"**

Reliance was also placed upon Chandra Prakash Khandelwal Vs. Directorate of Enforcement reported in 2023 SCC OnLine Del 1094 for emphasizing on the issue relating to the delay caused in trial or where trial is

at the infant stage, bail should be granted by the Court. To that effect, reference was made to paragraphs 34 and 35 which are set out as follows:

> ***"34.*** *Considering the submission of the petitioner, viz. the petitioner's claim he did not have knowledge if the funds of M/s. PACL were tainted in any manner on account of an order dated 28.11.2003 of Rajasthan High Court in PACL India Ltd. v. Union of India as also an order dated 26.02.2013 in SEBI v. PACL India Ltd. in CA 6753-54/2004 wherein, the Hon'ble Supreme Court refused to classify M/s. PACL as CIS but had only directed the SEBI on 22.08.2014 to look into its affairs and that there was no embargo for 18 years upon M/s. PACL on its operation. Admittedly the petitioner was a downstream investor of funds hence his submission he did not knowingly became a party to money laundering cannot be brushed aside lightly. Even otherwise he allegedly was a nominee non-executive director since 11.09.2012 in M/s. DDPL and M/s. Unicorn and prior to 11.09.2012 had nothing to do with these companies; further substantial amount received in the companies of petitioner was returned in the manner alleged above and even Gurmeet Singh's statement would show the petitioner represented the 25 companies were not associated with M/s. PACL. What weigh the statements under Section 50 of PMLA would carry at the end of trial cannot be tested at the stage of bail, more importantly when the intermediary companies were never made an accused in the present ECIR. The ultimate effect of their non-inclusion would be seen at the conclusion of trial. Further considering the order dated 03.09.2020 wherein all remaining co-accused in this ECIR were admitted to bail, this Court has every reason to say the petitioner has passed the test of broad probabilities. Admittedly twin conditions of Section 45 (supra) does not put an absolute restraint on grant of bail or require a positive finding qua guilt.*

> ***35.*** *Thus considering his period of custody of about 08 months and the broad probabilities discussed above; I admit the petitioner herein on bail on his executing a personal bond of Rs. 25.00 lacs with one surety of like amount to the satisfaction of the learned Trial Court. The applicant shall surrender his passport before the learned Trial Court; the applicant shall not leave the country without permission of the learned Trial Court; shall ordinarily reside in his place of residence and immediately inform change of address if any to the Investigating Officer; the applicant shall furnish to the Investigating Officer a cell phone number on which the applicant may be contacted at any reasonable time and shall ensure the number is kept active; the applicant shall cooperate in any further investigation, as and when required; the applicant shall not, directly or indirectly, contact or visit or offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of the case and; the applicants shall not tamper with evidence nor try to prejudice the proceedings in the matter in any manner.*"

Learned senior advocate after addressing the Court on several issues which touched the merits of the case, delay in trial of the case, medical grounds, age of the petitioner and complicity of the present petitioner prays that the totality of the circumstances at this stage, after one year nine months, do make out a case for releasing the petitioner on bail as *prima facie* the petitioner has satisfied the conditions both under Article 21 of the Constitution of India as well as under Section 45 of the PMLA.

Rebutting the contentions of the learned senior advocate for the petitioner, Mr. Phiroze Edulji, learned advocate appearing for the Enforcement Directorate initially referred to the following documents:

(a) An undertaking of the petitioner along with his no objection for Arpita Mukherjee adopting a child and to take all responsibilities of the child in case there is any misfortune.

(b) Insurance document where the 'customer name' appears as 'Arpita Mukherjee' and the 'nominee name' is of 'Partha Chatterjee' – relationship Uncle/others.

The bank particulars of the savings bank and the maturity payment were also relied upon which also reflects that Partha Chatterjee happens to be the nominee in case of the customer name Arpita Mukherjee.

Learned advocate for the Enforcement Directorate thereafter referred to the statements of Manoj Kumar Kathotia, Snehamoy Dutta, Kamal Singh Bhutoria, Mrinmoy Malakar, Debasish Debnath, Kalyanmoy Bhattacharya and Arpita Mukherjee to establish the control and dominion of the petitioner Partha Chatterjee in M/s Ananta Textab Pvt. Ltd., M/s. Echhay Entertainment Pvt. Ltd., Ms. Symbiosis Merchants Pvt. Ltd, Ms. Sentry Engineering Pvt. Ltd., M/s Viewmore Highrise Pvt. Ltd., M/s. APA Utility Services and other companies as well as the huge immovable assets/properties which were acquired.

In order to emphasise regarding the recovered cash and jewelleries, the Enforcement Directorate relied upon the statement under Section 50 of PMLA of Ms. Arpita Mukherjee. Attention of the Court was drawn to question no.11 and answer made in the statement under Section 50 of PMLA dated 4.08.2022. The said question no.11 and the answer are set out as follows:

> "Q.11 So far you have repeatedly refused to own the seized cash amounting to Rs.49.80 crores and gold/jewellery valued at more than five crores from the premises situated at Flat No.1A, 1st Floor, Diamond South City, Kolkata and Flat No.8A, 8th floor, Block-5, Clubtown Heights, 14 B.T. Road, Belghoria, Kolkata-700056. You are hereby again asked to make true disclosure of the real ownership of the seized cash and gold/jewellery. Does it belong to you? If not, who does it belongs to?
>
> Ans. It is true that so far I have repeatedly refused to disclose the real ownership of seized cash amounting to Rs.49.80 crores and gold/jewellery valued at more than five crores from my premises situated at Flat No.1A, 1st Floor, Diamond South City, Kolkata and Flat No.8A, 8th floor, Block-5, Clubtown Heights, 14 B.T. Road, Belghoria, Kolkata-700056. It is to state that I have not made true disclosure due to fear of my personal security and that of my mother but now I want to disclose the true facts. It is to state that the real ownership of seized cash amounting to Rs.49.80 crores and gold/jewellery valued at more than five crores from the premises situated at Flat No.1A, 1st Floor, Diamond South City, Kolkata and Flat No.8A, 8th floor, Block-5, Clubtown Heights,

14 B.T. Road, Belghoria, Kolkata-700056 can only be explained by Sir Shri Partha Chatterjee as the seized cash and gold/jewellery belongs to him."

It has been strenuously argued that the petitioner was a Cabinet Minister and an influential person who has amassed and acquired huge amount of assets which has been concealed and layered by various means, the said movable and immovable assets are proceeds of crime which was obtained by withholding the office enjoyed by the petitioner in connection with the recruitment of the primary teachers recruitment scam. According to the Enforcement Directorate, petitioner under no circumstances has been able to overcome the twin conditions under Section 45 of PMLA and as such, is not entitled to be released on bail.

Learned advocate for the Enforcement Directorate in order to substantiate his argument with relation to bail in economic offences relied upon series of judgments. In Y.S. Jagan Mohan Reddy v. CBI, (2013) 7 SCC 439 reference was made to paragraphs 34 to 36 which are set out as follows:

> ***34.*** *Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.*
>
> ***35.*** *While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of*

the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations.

***36.** Taking note of all these facts and the huge magnitude of the case and also the request of CBI asking for further time for completion of the investigation in filing the charge-sheet(s), without expressing any opinion on the merits, we are of the opinion that the release of the appellant at this stage may hamper the investigation. However, we direct CBI to complete the investigation and file the charge-sheet(s) within a period of 4 months from today. Thereafter, as observed in the earlier order dated 5-10-2012 [Y.S. Jagan Mohan Reddy v. CBI, (2013) 7 SCC 450, the appellant is free to renew his prayer for bail before the trial court and if any such petition is filed, the trial court is free to consider the prayer for bail independently on its own merits without being influenced by dismissal of the present appeal.*"

The Enforcement Directorate has also relied upon Rohit Tandon v. Directorate of Enforcement, (2018) 11 SCC 46 and referred to paragraphs 19 to 24 which are set out as follows:

***19.** The sweep of Section 45 of the 2002 Act is no more res intergra. In a recent decision of this Court in Gautam Kundu v. Directorate of Enforcement [Gautam Kundu v. Directorate of Enforcement, (2015) 16 SCC 1 : (2016) 3 SCC (Cri) 603] , this Court has had an occasion to examine it in paras 28-30. It will be useful to advert to paras 28 to 30 of this decision which read thus : (SCC pp. 14-15)*

"28. Before dealing with the application for bail on merit, it is to be considered whether the provisions of Section 45 of PMLA are binding on the High Court while considering the application for bail under

Section 439 of the Code of Criminal Procedure. There is no doubt that PMLA deals with the offence of money laundering and Parliament has enacted this law as per commitment of the country to the United Nations General Assembly. PMLA is a special statute enacted by Parliament for dealing with money laundering. Section 5 of the Code of Criminal Procedure, 1973 clearly lays down that the provisions of the Code of Criminal Procedure will not affect any special statute or any local law. In other words, the provisions of any special statute will prevail over the general provisions of the Code of Criminal Procedure in case of any conflict.

29. Section 45 of PMLA starts with a non obstante clause which indicates that the provisions laid down in Section 45 of PMLA will have overriding effect on the general provisions of the Code of Criminal Procedure in case of conflict between them. Section 45 of PMLA imposes the following two conditions for grant of bail to any person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule of PMLA:

(i) That the prosecutor must be given an opportunity to oppose the application for bail; and

(ii) That the court must be satisfied that there are reasonable grounds for believing that the accused person is not guilty of such offence and that he is not likely to commit any offence while on bail.

30. The conditions specified under Section 45 of PMLA are mandatory and needs 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."

(emphasis supplied)

20. *In para 34, this Court reiterated as follows : (Gautam Kundu case [Gautam Kundu v. Directorate of Enforcement, (2015) 16 SCC 1 : (2016) 3 SCC (Cri) 603] , SCC p. 16)*

"34. … We have noted that Section 45 of PMLA will have overriding effect on the general provisions of the Code of Criminal Procedure in case of conflict between them. As mentioned earlier, Section 45 of PMLA imposes two conditions for grant of bail, specified under the said Act. We have not missed the proviso to Section 45 of the said Act which indicates that the legislature has carved out an exception for grant of bail by a Special Court when any person is under the age of 16 years or is a woman or is sick or infirm. Therefore, there is no doubt that the conditions laid down under Section 45-A of PMLA, would bind the High Court as the provisions of special law having overriding effect on the provisions of Section 439 of the Code of Criminal Procedure for grant of bail to any person accused of committing offence punishable under Section 4 of PMLA, even when the application for bail is considered under Section 439 of the Code of Criminal Procedure."

The decisions of this Court in Subrata Chattoraj v. Union of India [Subrata Chattoraj v. Union of India, (2014) 8 SCC 768 : (2014) 6

SCC (Cri) 116] , Y.S. Jagan Mohan Reddy v. CBI [Y.S. Jagan Mohan Reddy v. CBI, (2013) 7 SCC 439 : (2013) 3 SCC (Cri) 552] and Union of India v. Hassan Ali Khan [Union of India v. Hassan Ali Khan, (2011) 10 SCC 235 : (2012) 1 SCC (Cri) 256] have been noticed in the aforesaid decision.

21. *The consistent view taken by this Court is that economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country. Further, when attempt is made to project the proceeds of crime as untainted money and also that the allegations may not ultimately be established, but having been made, the burden of proof that the monies were not the proceeds of crime and were not, therefore, tainted shifts on the accused persons under Section 24 of the 2002 Act.*

22. *It is not necessary to multiply the authorities on the sweep of Section 45 of the 2002 Act which, as aforementioned, is no more res integra. The decision in Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra [Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra, (2005) 5 SCC 294 : (2005) SCC (Cri) 1057] and State of Maharashtra v. Vishwanath Maranna Shetty [State of Maharashtra v. Vishwanath Maranna Shetty, (2012) 10 SCC 561 : (2013) 1 SCC (Cri) 105] dealt with an analogous provision in the Maharashtra Control of Organised Crime Act, 1999. It has been expounded that the Court at the stage of considering the application for grant of bail, shall consider the question from the angle as to whether the accused was possessed of the requisite mens rea. The Court is not required to record a positive finding that the accused had not committed an offence under the Act. The Court ought to maintain a delicate balance between a judgment of acquittal and conviction and*

an order granting bail much before commencement of trial. The duty of the Court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. Further, the Court is required to record a finding as to the possibility of the accused committing a crime which is an offence under the Act after grant of bail.

23. *In Ranjitsing Brahmajeetsing Sharma [Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra, (2005) 5 SCC 294 : (2005) SCC (Cri) 1057] , in paras 44 to 46 of the said decision, this Court observed thus : (SCC pp. 318-19)*

> *"44. The wording of Section 21(4), in our opinion, does not lead to the conclusion that the court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act. If such a construction is placed, the court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the applicant. Such cannot be the intention of the legislature. Section 21(4) of MCOCA, therefore, must be construed reasonably. It must be so construed that the court is able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. Similarly, the court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in futuro must be an offence under the Act and not any other offence. Since it is difficult to predict the future conduct of an accused, the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence.*
>
> *45. It is, furthermore, trite that for the purpose of considering an application for grant of bail, although detailed reasons are not*

necessary to be assigned, the order granting bail must demonstrate application of mind at least in serious cases as to why the applicant has been granted or denied the privilege of bail.

46. The duty of the court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. However, while dealing with a special statute like MCOCA having regard to the provisions contained in sub-section (4) of Section 21 of the Act, the court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. The findings recorded by the court while granting or refusing bail undoubtedly would be tentative in nature, which may not have any bearing on the merit of the case and the trial court would, thus, be free to decide the case on the basis of evidence adduced at the trial, without in any manner being prejudiced thereby."

24.** Reverting to the decision in Manoranjana Sinh v. CBI [Manoranjana Sinh v. CBI, (2017) 5 SCC 218 : (2017) 2 SCC (Cri) 520] , we hold that the same is on the facts of that case. Even in the said decision, the Court has noted that the grant or denial of bail is regulated to a large extent by the facts and circumstances of each case. In Sanjay Chandra v. CBI [Sanjay Chandra v. CBI, (2012) 1 SCC 40 : (2012) 1 SCC (Cri) 26 : (2012) 2 SCC (L&S) 397] the Court was not called upon to consider the efficacy of Section 45 of the 2002 Act which is a special enactment.**"

Attention was also drawn to Anil Kumar Yadav v. State (NCT of Delhi), (2018) 12 SCC 129. For the purposes of the conditions available in heinous offences for granting bail, attention was drawn to paragraphs 19 to 24 of the said judgment which held as follows:

19. *The test to be applied for grant of bail was also considered in Jayendra Saraswathi Swamigal v. State of T.N. [Jayendra Saraswathi Swamigal v. State of T.N., (2005) 2 SCC 13 : 2005 SCC (Cri) 481] , wherein it was held as under : (SCC pp. 21-22, para 16)*

> *"16. … The considerations which normally weigh with the court in granting bail in non-bailable offences have been explained by this Court in State v. Jagjit Singh [State v. Jagjit Singh, (1962) 3 SCR 622 : AIR 1962 SC 253 : (1962) 1 Cri LJ 215] and Gurcharan Singh v. State (NCT of Delhi) [Gurcharan Singh v. State (NCT of Delhi), (1978) 1 SCC 118 : 1978 SCC (Cri) 41] and basically they are — the nature and seriousness of the offence; the character of the evidence; circumstances which are peculiar to the accused; a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of witnesses being tampered with; the larger interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of the case."*

20. *In the present case, accused Anil Kumar Yadav was granted bail by the Sessions Court mainly on the grounds : (i) as per CCTV footage deciphered by the investigating officer, no role could be attributed to Anil Kumar Yadav that he inflicted injuries on Rohit Bansal as well as to deceased Rupesh Tanwar and the photographs do not show the presence of the accused Anil Kumar Yadav; (ii) CCTV footage do not corroborate the statement of the witnesses that the accused along with their cars were blocking the road; and (iii) accused Anil Kumar Yadav has been in custody since 31-10-2015. The Sessions Court pointed out that possibly no role could be attributed to accused Anil Kumar Yadav and observed as under:*

> *"… Admittedly, the crux of the CCTV footage is deciphered by the IO in the charge-sheet as mentioned above and in the said crux no role*

of accused Anil Kumar Yadav is found. Furthermore, there are other discrepancies pointed out by the counsel as discussed above which though could not be considered for the purpose of charge but could be considered as ground of bail….”

21. *The Sessions Court though repeatedly observed that the court ought not to go into the merits of the prosecution case actually the court appears to have gone into the merits of the matter, in particular the CCTV footage to hold that Anil Kumar Yadav could not have been present at the place of occurrence or participated in the incident. Further, the Sessions Court had also gone into the discrepancies of the statement of the witnesses. The probability or improbability of the prosecution version has to be judged based on the materials available to the court at the time when bail is considered and not on the basis of discrepancies.*

22. *While considering the correctness of the above findings, the learned Judge of the High Court viewed the CCTV footage and observed that the camera installed at the place of occurrence was a revolving camera moving horizontally and vertically and further observed that the "CCTV footage possibly could not capture the whole instance from all angles at the same time". After personally viewing CCTV footage, the learned Judge had given graphic description of the various slots/points and the relevant portion of the High Court judgment [Rohit Bansal v. State, 2017 SCC OnLine Del 8766] reads as under : (Rohit Bansal case [Rohit Bansal v. State, 2017 SCC OnLine Del 8766] , SCC OnLine Del paras 17-18)*

"17. … I have examined/viewed the CCTV footage/CD provided by the learned counsel for the respondent in the computer in chamber. Seemingly, the footage recorded in the CCTV did not cover the entire place of occurrence. It was a revolving camera moving horizontally and vertically. Possibly, it could not capture the whole incident from

all angles at the same time. In the CCTV footage, Mercedes car is seen to have arrived at the spot at 1 : 30 : 26. It remained at the spot subsequent to it. At 1 : 39 : 34, the Mercedes is seen leaving the spot by reversing it. The respondent is seen entering into the Mercedes. It is, however, not clear as to when the said individual (the respondent) had come out of the said Mercedes. The petitioner has also placed on record photographs developed from the footage recorded in the CCTV. In Photographs 1, 2 and 4, the respondent is indicated inflicting injuries to the victim along with others at 1 : 37 : 30; 1 : 37 : 31; and 1 : 37 : 31 respectively.

18. In Photograph 3, Mercedes is seen at the spot at 1 : 34 : 49. In Photograph 5 the respondent is seen entering the Mercedes at 1 : 38 : 29. It belies the respondent's contention that the Mercedes entered for the first time in the lane of the occurrence only at 1 : 37 : 56. In photos Mark 'A' and 'B' the respondent's car is seen at the spot at 1 : 30 : 41 and 1 : 31 : 50 too."

23. *The High Court had gone into the details of CCTV footage and noted the presence of accused Anil Kumar Yadav at the scene of occurrence that "he was seen entering into the Mercedes". The Sessions Court was not right in raising doubts about the presence of accused Anil Kumar Yadav and his role in inflicting injuries to deceased Rupesh Tanwar as well as to the injured Rohit Bansal at the present stage. Since the Sessions Court proceeded to grant bail on erroneous footing and also going into the merits of the materials collected, the High Court, in our view, rightly set aside the order granting bail to the accused Anil Kumar Yadav.*

24. *As pointed out earlier, one of the grounds for grant of bail to the appellant Anil Kumar Yadav by the Sessions Court was that he was in custody for more than one year. In crimes like murder, the mere fact that the accused was in custody for more than one year, may not be a*

relevant consideration. In Gobarbhai Naranbhai case [Gobarbhai Naranbhai Singala v. State of Gujarat, (2008) 3 SCC 775 : (2008) 2 SCC (Cri) 743] , it was observed that the period of incarceration by itself would not entitle the accused to be enlarged on bail. The same was reiterated in Ram Govind Upadhyay v. Sudarshan Singh [Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598 : 2002 SCC (Cri) 688]."

Reliance was also placed in Gautam Kundu V. Directorate of Enforcement reported in (2015) 16 SCC 1 and attention was drawn to paragraph 37 of the said judgment which reads as follows:

> ***37.*** *We do not intend to further state the other facts excepting the fact that admittedly the complaint was filed against the appellant on the allegation of committing offence punishable under Section 4 of PMLA. The contention made on behalf of the appellant that no offence under Section 24 of the SEBI Act is made out against the appellant, which is a scheduled offence under PMLA, needs to be considered from the material collected during the investigation and further to be considered by the competent court of law. We do not intend to express ourselves at this stage with regard to the same as it may cause prejudice to the case of the parties in other proceedings. We are sure that it is not expected at this stage that the guilt of the accused has to be established beyond reasonable doubt through evidence. We have noted that in Y.S. Jagan Mohan Reddy v. CBI [Y.S. Jagan Mohan Reddy v. CBI, (2013) 7 SCC 439 : (2013) 3 SCC (Cri) 552] , this Court has observed that: (SCC p. 449, para 34)*
>
> *"34. … The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as*

a whole and thereby posing serious threat to the financial health of the country."

In Union of India v. Hassan Ali Khan [Union of India v. Hassan Ali Khan, (2011) 10 SCC 235 : (2012) 1 SCC (Cri) 256] , this Court has laid down that what will be the burden of proof when attempt is made to project the proceeds of crime as untainted money. It is held in the said paragraph that allegations may not ultimately be established, but having been made, the burden of proof that the monies were not the proceeds of crime and were not, therefore, tainted shifted on the accused persons under Section 24 of the PML Act, 2002. The same proposition of law is reiterated and followed by the Orissa High Court in the unreported decision of Janata Jha v. Directorate of Enforcement [Janata Jha v. Directorate of Enforcement, Criminal Misc. Case No. 114 of 2011, decided on 16-12-2013 (Ori)] . Therefore, taking into account all these propositions of law, we feel that the application for bail of the appellant should be seen at this stage while the appellant is involved in the economic offence, in general, and for the offence punishable under Section 4 of PMLA, in particular."

In order to emphasise on the issues relating to twin conditions reliance was placed to paragraphs 44 to 46 of Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra (2005) 5 SCC 294 which read as follows:

"44. *The wording of Section 21(4), in our opinion, does not lead to the conclusion that the court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act. If such a construction is placed, the court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the applicant. Such cannot be the intention of the*

legislature. Section 21(4) of MCOCA, therefore, must be construed reasonably. It must be so construed that the court is able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. Similarly, the court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in futuro must be an offence under the Act and not any other offence. Since it is difficult to predict the future conduct of an accused, the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence.

45. *It is, furthermore, trite that for the purpose of considering an application for grant of bail, although detailed reasons are not necessary to be assigned, the order granting bail must demonstrate application of mind at least in serious cases as to why the applicant has been granted or denied the privilege of bail.*

46. *The duty of the court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. However, while dealing with a special statute like MCOCA having regard to the provisions contained in sub-section (4) of Section 21 of the Act, the court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. The findings recorded by the court while granting or refusing bail undoubtedly would be tentative in nature, which may not have any bearing on the merit of the case and the trial court would, thus, be free to decide the case on the basis of evidence adduced at the trial, without in any manner being prejudiced thereby.*”

Learned advocate has also drawn the attention of the Court to a Division Bench Judgment of this Court in Dr. Subires Bhattacharyya reported in 2022 SCC OnLine Cal 4307 and referred to paragraphs 12 and 13 which are set out as follows:

> ***"12.*** *Grant of bail to public servants who indulge in corruption are to be considered on a different parameter. The reason is obvious. Acts of corruption by public servants not only affect the immediate victims but cause severe dent on the faith and confidence of society in fair and impartial public administration.*
>
> ***13.*** *Judged from such perspective, mere attendance during the course of investigation or severity of punishment cannot be the sole criteria for consideration of a bail prayer in the present factual matrix. Other weighty parameters like gravity of offence involving institutionalized corruption in matters of public employment need to be taken into consideration. Impact of the crime on society and the fate of innumerable victims viz., aspiring candidates in particular and students of the Government and Government aided school in general who stand deprived of quality education due to wrongful appointment also requires to be borne in mind."*

Reference was also made to the judgment reported in 2023 SCC Online Cal 23 (Anubrata Mondal –vs- CBI)]. The attention is drawn to paragraphs 7 to 10 of the said judgment, which is as follows:

> ***"7.*** *Grant of bail to an undertrial requires a fine balance between the right to liberty and presumption of innocence of an accused on one hand and public interest in the discharge of sovereign duty of the State to investigate, prosecute and punish an offender on the other hand.*

Detention of an undertrial is not to punish him even before he is pronounced guilty. The purpose of detention pending trial is to ensure smooth and proper administration of criminal justice.

8. *To decide whether an undertrial ought to be granted or denied liberty, the Court is required to consider the following relevant factors:—*

(i) Gravity and seriousness of the accusation;

(ii) Materials collected in support of the accusation;

(iii) Possibility of the accused committing similar offences while on bail;

(iv) Chance of abscondence;

(v) Possibility of the accused influencing witnesses or tampering evidence;

(vi) Character, behaviour and standing of the accused and the circumstances which are peculiar to the accused;

(vii) Impact of the release of the accused on society in general and the victims/ witnesses in particular.

Consideration of the bail plea of the petitioner in the light of the aforesaid parameters:—

(i) Gravity of seriousness of the accusation:—

9. *In Satender Kumar Antil v. CBI, (2020) 10 SCC 51 the Apex Court laid down broad guidelines in the matter of grant of bail. It classified offences in the following four categories:—*

(i) Category A (offences punishable upto seven years),

(ii) Category B (other offences),

(iii) Category C (offences under Special Acts wherein restrictions on bail are imposed) and

(iv) Category D (economic offences).

10. *The gist of the accusation in the present case discloses an organized crime racket to smuggle cattle across international border by bribing BSF and custom officials. The nature of the accusation involves corrupt practices and falls in Category D, i.e., economic offences. Carving out a higher benchmark for bail in such cases, the Bench in Satender Kumar Antil (supra) held period of sentence is not the sole determining factor to assess the seriousness of the accusation. The gravity of the offence, the object of the law and other attending circumstances are relevant. In P. Chidambaram v. Directorate of Enforcement the Apex Court after referring to a catena of decisions held as follows:—*

"19. … Perusal of the cited decision would indicate that this Court had held that economic offences are also of grave nature, being a class apart which arises out of a deep-rooted conspiracies and effect on the community as a whole is also to be kept in view, while consideration for bail is made.""

Ld. Advocate for the Directorate of Enforcement has also relied upon the authoritative pronouncements and interpretations in respect of the judgment of the Hon'ble Supreme Court reported in [2022 SCC OnLine SC 929 *Vijay Madanlal Choudhary & Ors. –vs.- Union of India & Ors.*].

Reference was also made to the judgment reported in [(2023) SCC OnLine SC 934 (*V. Senthil Balaji V. State, represented by Deputy Director and others*] to emphasize on the issues relating to bail in economic offences, right of the accused under section 21 of the Constitution of India and on the proposition that mere delay having no effect without the provision under Section 45 of the PMLA is satisfied.

I have taken into account the materials available in the instant case, particularly, the seizures, which were effected both in respect of the movable and immoveable assets, the consistent version of the witnesses under section 50 of the PMLA as well as the corroborating materials which establishes the relationship between Partha Chatterjee and Aripta Mukherjee, which demonstrates trust, faith and confidence from both the sides, as the petitioner is the nominee in the bank account and insurance policies and the immoveable properties which have been purchased through different companies were in the name of Ms. Arpita Mukherjee. Thus the statement which points to the cash seizures and jewelleries from the two flats do not at this stage create any circumstance in favour of the petitioner to overcome the twin conditions under Section 45 of PMLA.

So far as the contentions relating to admissibility of section 50 of the PMLA as emphasized by the petitioner, it would be worthwhile to set out paragraphs 22 and 23 of the judgment of the Hon'ble Supreme Court reported

in Satyendar Kumar Jain vs. Directorate of Enforcement, 2024 SCC Online SC 317. The relevant paragraphs are set out as follows:

> ***"22.*** *So far as the facts of the present case are concerned, the respondent ED has placed heavy reliance on the statements of witnesses recorded and the documents produced by them under Section 50 of the said Act, to prima facie show the involvement of all the three appellants in the alleged offence of money laundering under Section 3 thereof. In Rohit Tandon v. Directorate of Enforcement, a three Judge Bench has held that the statements of witnesses recorded by Prosecution - ED are admissible in evidence in view of Section 50. Such statements may make out a formidable case about the involvement of the accused in the commission of the offence of money laundering.*
>
> ***23.*** *Again, the three Judge Bench in Vijay Madanlal Choudhary (supra) while examining the validity of the provisions contained in Section 50 held as under:—*
>
> > *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."

On the aspect of period of detention of the petitioner which has been canvassed by the ld. Senior Advocate, I am of the view that as it has been held in Manish Sisodia –vs.-Central Bureau of Investigation, 2023 SCC Online SC 1393 and in Satyendar Kumar Jain (supra) that right to speedy trial and access to justice is a valuable right as enshrined in the Constitution of India and the provisions of section 436A of the Cr.P.C. both applies to cases under the provisions of the PMLA, 2002 subject to the provisions and the explanations provided therein. The petitioner would definitely be entitled to involve state right under the relevant provisions when the conditions of the said provisions are satisfied.

In view of the observations made above, I am not inclined to enlarge the petitioner on bail at this stage. Accordingly, the prayer for bail of the present petitioner is **rejected**.

Thus, the application for bail being CRM (SB) 180 of 2023 is dismissed.

All concerned parties are to act in terms of a copy of this order duly downloaded from the official website of this court.

Urgent Photostat certified copy of this judgement, if applied for, be given to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)