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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Reserved on: 03.11.2023***
Pronounced on: 17.11.2023

\+ **W.P.(CRL) 947/2023 & CRL.M.A. 28645/2023**

MOLOY GHATAK ..... Petitioner

Through: Mr. Vikas Pahwa, Senior Advocate with Mr. Suhaan Mukerji, Mr. Syed Arham Masud, Mr. S.P. Singh, Mr. Wasif Naushad, Mr. Sahil Saraswat, Mr. Tanmay Sinha and Mr. Sayandeep Pahari, Advocates

versus

DIRECTORATE OF ENFORCEMENT ..... Respondent

Through: Mr. S.V. Raju, ASG with Mr. Padmesh Mishra, Special Counsel for ED and Mr. Pankaj Kumar, IO/Assistant Director

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The instant petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (*'Cr.P.C.'*) has been filed on behalf of petitioner seeking issuance of a writ of certiorari and/or any other appropriate writ, order or

direction for quashing and/or seeking setting aside the ECIR/17/HIU/2020 and the summons dated 21.03.2023 issued by the respondent summoning the petitioner to appear at New Delhi on 29.03.2023 under Section 50 of the Prevention of Money Laundering Act, 2002 (*'PMLA'*) and further directing and issuing an appropriate writ, order or direction to not summon the petitioner to New Delhi in case arising out of ECIR/17/HIU/2020 registered by the respondent on 28.11.2020.

BACKGROUND FACTS: THE PROSECUTION'S CASE

2. The case of the prosecution, in brief, is that the FIR/RC bearing no. RC0102020A0022 dated 27.11.2020 was registered by Central Bureau of Investigation (*'CBI'*), ACB, Kolkata for the commission of offences under Sections 120B/409 of Indian Penal Code, 1860 ('*IPC'*) and Section 13(2) read with 13(1)(a) of the Prevention of Corruption Act, 1988 (*'PC Act'*) for illegal excavation and theft of coal from the leasehold area of Eastern Coalfield Ltd. (*'ECL'*) in active connivance with officials of ECL, CISF, Indian Railways and concerned other departments, against the following accused persons: (a) Anup Majee @ Lala, (b) Amit Kumar Dhar, the then GM, Kunustoria Area, ECL (Eastern Coalfield Ltd), (c) Jayesh Chandra Rai, General Manager, ECL, Kajora Area, (d) Tamnay Das, Chief of Security, ECL, Asansol, (e) Dhananjay Rai, Area Security Inspector, Kunustoria, ECL (f) Debashish Mukherjee, Security-in-charge, Kajora Area, (g) Other public servants and private persons.

3. It is stated that since the offences mentioned in the said FIR/RC were scheduled offences under PMLA, therefore, the present ECIR i.e. ECIR/17/HIU/2020 was recorded by respondent-Directorate of Enforcement on 28.11.2020 against Anup Majee and other accused persons for the commission of offences under PMLA. It is stated that during the course of investigation conducted by Directorate of Enforcement, one Vikas Mishra was arrested on 16.03.2021 and Ashok Kumar Mishra was arrested on 03.04.2021. Upon completion of investigation, prosecution complaint was filed by Directorate of Enforcement on 13.05.2021 before the Court concerned i.e. Special Judge (PMLA), Rouse Avenue Courts, New Delhi against Vikas Mishra and Ashok Kumar Mishra. It is stated that in the scheduled offence i.e. RC0102020A0022, the CBI, ACB had filed a Report under Section 173 of Cr.P.C. on 19.07.2022 against Anup Majee @ Lala and 40 other accused persons before the Court of learned Special Judge (CBI), Asansol, West Bengal. A supplementary prosecution complaint was also filed by the Directorate of Enforcement on 24.07.2022 before the concerned Special Judge (PMLA), Rouse Avenue Courts, New Delhi. In the course of investigation in the present ECIR, certain documents/digital evidences were shared by Income Tax Department, which had been seized during the course of search conducted by them at various premises of Anup Majee and his close associates. As per prosecution, an analysis of the said documents/digital evidences revealed that one Niraj Singh used to maintain records of proceeds of crime generated by accused persons from the criminal activity in the scheduled

offence viz. illegal excavation and theft of coal from the leasehold area of ECL. Similarly, records seized from several premises of Anup Majee reflected that from July, 2018 to March, 2020 (within 21 months), proceeds of crime to the tune of Rs. 2742.32 crores were generated from the illegal coal mining business from various parties/entities/persons.

4. It is also stated in the reply filed by respondent that in the course of investigation, it was deemed necessary that Moloy Ghatak i.e. petitioner herein be examined. As such, for further investigation, petitioner was summoned by Directorate of Enforcement to appear on 09 dates i.e. 14.09.2021, 23.09.2021, 11.10.2021, 28.10.2021, 02.02.2022, 08.02.2022, 07.04.2022, 15.07.2022 & 29.03.2023. However, he had appeared before the agency only once on 28.10.2021.

PETITIONER'S GRIEVANCE

5. The grievance of petitioner is that respondent agency, i.e. Directorate of Enforcement has issued the impugned summons to the petitioner in a *mala-fide* manner intending to harass him. It is his case that the impugned summons have been issued in complete violation of the established and fundamental principles of Cr.P.C., PMLA and the Constitution of India. Furthermore, the respondent has acted in a completely arbitrary and high-handed manner while repeatedly summoning the Petitioner to appear in New Delhi despite having a fully functional zonal office in Kolkata, West Bengal.

6. It is stated that the 67 years old petitioner is a permanent resident of Asansol, Paschim Bardhaman, West Bengal, and a Member of the West Bengal Legislative Assembly, and is serving as the Cabinet Law Minister in the Government of West Bengal. It is stated that evidently, the respondent has embarked on a fishing and roving enquiry and is trying their level best to create a false case against the petitioner by taking him to New Delhi even though the respondent has a fully functional office in Kolkata and their officers have conducted various searches and seizures in and around Kolkata in the course of the investigation. It is stated that the petitioner has expressed his desire to cooperate with the investigation and that the officers of the respondent can interrogate him at their Kolkata Zonal Office.

7. In such circumstances, the petitioner apprehends – which apprehension as per him is real, genuine, and proper – that if he appears before the officers of the respondent at New Delhi, he will be subjected to mental and psychic torture, coercion, threats, and intimidation and be compelled to be witnesses against himself and would be further compelled to give incriminating statements against himself and others.

8. Having such apprehensions, the petitioner being aggrieved of summons, has approached this Court.

ARGUMENTS ADDRESSED ON BEHALF OF PETITIONER

9. Learned Senior Counsel for the petitioner argues that impugned summons issued to the petitioner by the respondent is ex

facie illegal, being contrary to the provisions of law. It is stated that repeated issuance of summonses to the Petitioner who is a permanent resident of West Bengal, by the Head Investigative Unit (HIU) of the Directorate of Enforcement seeking his repeated presence at New Delhi under the threat of penalty or prosecution, is malicious and arbitrary. It is argued that petitioner herein has not been named in the aforementioned FIR/RC which forms the predicate offence in the instant case. It is stated that prior to the completion of the investigation in the scheduled offence, the respondent agency has filed its complaint under Section 45 PMLA, wherein also the petitioner has not been named as an accused person. It is stated that respondent has repeatedly summoned the Petitioner without supplying a copy of the ECIR and without specifying whether he is being summoned as a witness or accused person or indicating the scope of the investigation being carried out and further enabling the petitioner to avail his remedies. It is stated that respondent cannot issue Section 50 PMLA notices to compel the presence of persons it has identified as accused persons, and further compel them to give statements and hand over documents under a coercive process. It is stated that officers of the respondent agency have sought voluminous material from the petitioner, whom they are identifying as accused person, which is contrary to the law. It is stated that since the scheduled offences are alleged to have been committed in West Bengal, the investigation in respect of the same is ongoing in West Bengal, and the accused persons named in the RC/FIR registered by the CBI are residents of West Bengal, therefore, there exists no

jurisdiction of the Head Investigative Unit of the respondent agency to assume investigative powers in respect of any allegations of money laundering arising in respect of the scheduled offence as the same could only have been investigated into by the concerned zonal office at Kolkata. It is submitted that it is clear from a perusal of Section 44(1)(a) that offences under the Act can only be tried by the Special Court that has been constituted for the area in which the offence has been committed. It is stated that as the entire cause of action arose within the state of West Bengal, the instant case under the provisions of the PMLA cannot be maintained in New Delhi and the same is nothing but an oblique way to bring persons from West Bengal to New Delhi and to threaten, intimidate and coerce them in an unfamiliar environment and extort statements from them and falsely implicate them with the offence of money laundering. It is also argued that petitioner cannot be compelled to appear before the office of respondent in Delhi in view of Section 160 of Cr.P.C. and interim orders passed in case of ***Abhishek Banerjee & Anr. v. Directorate of Enforcement*** *SLP Crl. No.2806-2807/2022*. Therefore, it is argued that present petition be allowed.

ARGUMENTS ADDRESSED ON BEHALF OF RESPONDENT

10. Learned Special Counsel for Directorate of Enforcement submits that for the purpose of investigation under PMLA, the petitioner need not be arraigned as an accused in the schedule offence and the proceedings under Section 50 of PMLA are for the purpose of collecting information or evidence and are not for the purpose of

initiating prosecution against the noticee. It is stated that respondent has not filed any prosecution complaint against the petitioner and, therefore, it cannot be said that the petitioner is either an accused in the present ECIR or that the respondent is identifying petitioner as an accused. It is argued that respondent is well within its powers to summon the petitioner for the purposes of proceedings under PMLA and to seek supply of documents, irrespective of the volume of the same. As regards the argument that the cause of action has arisen in the State of West Bengal, it is argued that the averments made in the prosecution complaints clearly establish the jurisdiction of Special Court at Delhi since it was revealed during investigation that around Rs. 37.80 crores out of the proceeds of crime had travelled to Delhi. It is further argued that that out of 09 times, the petitioner has appeared before the respondent only once for the purpose of recording his statement. It is also argued that since the petitioner, as of now, is not an accused in the present ECIR, he has no locus to seek the relief of quashing of ECIR. It is also submitted that despite the directions of this Court *vide* order dated 10.05.2023, the petitioner had not appeared before the respondent on 21.06.2023, 26.06.2023 and 25.07.2023 so as to scuttle the investigative process. It is also argued that ECIR is an internal document created by the respondent agency and the petitioner is not entitled to get a copy of the same. It is further argued that interim order passed in case of ***Abhishek Banerjee & Anr. v. Directorate of Enforcement*** *SLP Crl. No.2806-2807/2022*by the Hon'ble Apex Court has no applicability in the facts

of present case. Therefore, it is prayed that present petition be dismissed.

11. This Court has heard arguments addressed by learned Senior Counsel for the petitioner as well as learned Special Counsel for the Directorate of Enforcement and has perused the material placed on record.

ANALYSIS AND FINDINGS

12. In the present case, the main grievance of the petitioner is that he has been repeatedly summoned by the Directorate of Enforcement directing him to appear for questioning at the New Delhi office in connection with present ECIR, though he resides in Kolkata, West Bengal and the respondent has a zonal office in Kolkata. It was also his grievance when the present petition was filed that despite being not an accused in the predicate offence, he is being repeatedly summoned without being informed as to whether he is being called to join investigation as an accused or as a witness.

13. As per records, the petitioner herein **had been summoned on nine occasions by the respondent and on eight occasions, he had not appeared before the officers concerned and had conveyed his inability to appear on the concerned date to the respondent. The petitioner had only appeared once i.e. on 28.10.2021**, pursuant to issuance of fourth summons dated 23.10.2023 when his statement under Section 50 was recorded.

14. Aggrieved by issuance of ninth summons dated 21.03.2023, the petitioner had approached this Court on 29.03.2023 by way of

present petition, seeking quashing of the ECIR and the said impugned summon issued by the respondent, and for issuance of a direction to the respondent to refrain from issuing any further summons to the petitioner for appearing in their New Delhi office.

15. Before proceeding further, it will be useful to refer to previous orders passed in the present case by the learned Predecessor of this Court. Vide order dated **10.05.2023**, this Court, while listing the case on 10.08.2023, had directed the respondent that in case it feels necessity of issuing summons to the petitioner, it may do so by giving a notice of at least 15 days and also take into account the schedule of the petitioner since he is Minister and a public functionary. The relevant portion of order dated 10.05.2023 passed by learned Predecessor of this Court (corrected vide order dated 29.05.2023), reads as under:

> "…In the meantime, if ED feels necessity of issuing summons against the petitioner, at least 15 days prior notice shall be given to the petitioner. The petitioner being a Minister and a public functionary, the ED will take into account any important events scheduled and may not summon the petitioner on those dates.
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> Mr. S. V. Raju, learned ASG has graciously submitted that the petitioner may indicate the dates on which he is busy so such dates may not be given.
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> Mr. S. V. Raju, learned ASG has also very fairly submitted that ED will not take any action in respect of the summons which have already been issued.
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> List on 10.08.2023…"

16. It is the case of respondent now that pursuant to order dated 10.05.2023, the respondent had issued summons to the petitioner on 31.05.2023 for 21.06.2023, on 21.06.2023 for 26.06.2023 and on

04.07.2023 for 25.07.2023, however, the petitioner again failed to appear on these dates. To the contrary, the petitioner submits that he had written to the respondent on 19.06.2023 requesting that petitioner may be called on any date after 11.07.2023 in view of upcoming Panchayat Elections in West Bengal. Thereafter, a similar request was again made by petitioner with respect to summons dated 21.06.2023. Further, the petitioner had written a letter dated 21.07.2023 to the respondent stating that he would not be able to appear before the respondent agency on 25.07.2023 due to a scheduled Cabinet meeting and upcoming Assembly Session.

17. Thereafter, *vide* order dated 05.09.2023, the learned Predecessor of this Court had issued the following directions:

> "…3. However, without going into the merits of the case and taking into account the age of the petitioner and his health condition as stated at BAR by the learned senior counsel for the petitioner, the following directions are issued:
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> a. It shall be open to the Enforcement of Directorate to require the attendance of the petitioner in its office situated at Kolkata by giving at least 24 hours notice;
> b. Simultaneously, notices shall also be issued to the Commissioner of Police, Kolkata and Chief Secretary, State of West Bengal so that adequate police protection is afforded to the person seeking to examine or interrogate the petitioner.
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> E.D. officer shall ensure that if required, the appropriate medical aid is provided during the examination…"

18. In this background, this Court now proceeds to advert to the merits of the case.

(i) Section 50 of PMLA and Quashing of Impugned Summons

19. Since the first relief sought by the petitioner in the present writ petition relates to quashing of impugned summons dated 21.03.2023, it shall be crucial to analyse the powers of summoning of the Directorate of Enforcement under the scheme of PMLA. At the outset, this Court deems it appropriate to reproduce Section 50 of PMLA, which reads as under:

> "**50. Powers of authorities regarding summons, production of documents and to give evidence, etc**.—
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> (1) The Director shall, for the purposes of section 13, have the same powers as are vested in a civil court under the Civil Procedure Code, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:—
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> (a) discovery and inspection;
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> (b) enforcing the attendance of any person, including any officer of a reporting entity, and examining him on oath;
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> (c) compelling the production of records;
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> (d) receiving evidence on affidavits;
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> (e) issuing commissions for examination of witnesses and documents; and
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> (f) any other matter which may be prescribed.
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> (2) The Director, Additional Director, Joint Director, Deputy Director or Assistant Director shall have power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this Act.
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> (3) All the persons so summoned shall be bound to attend in person or through authorised agents, as such officer may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.
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> (4) Every proceeding under sub-sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Penal Code, 1860 (45 of 1860).

> (5) Subject to any rules made in this behalf by the Central Government, any officer referred to in sub-section (2) may impound and retain in his custody for such period, as he thinks fit, any records produced before him in any proceedings under this Act:
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> Provided that an Assistant Director or a Deputy Director shall not—
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> (a) impound any records without recording his reasons for so doing; or
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> (b) retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the Joint Director."

20. In ***Vijay Madanlal Choudhary v. Union of India*** *2022 SCC OnLine SC 929*, the Hon'ble Apex Court had discussed the scope of Section 50 and the power to issue summons therein, by way of following observations:

> "425. Indeed, sub-section (2) of Section 50 enables the Director, Additional Director, Joint Director, Deputy Director or Assistant Director to issue summon to any person whose attendance he considers necessary for giving evidence or to produce any records during the course of any investigation or proceeding under this Act. We have already highlighted the width of expression "proceeding" in the earlier part of this judgment and held that it applies to proceeding before the Adjudicating Authority or the Special Court, as the case may be. Nevertheless, sub-section (2) empowers the authorised officials to issue summon to any person. We fail to understand as to how Article 20(3) would come into play in respect of process of recording statement pursuant to such summon which is only for the purpose of collecting information or evidence in respect of proceeding under this Act. Indeed, the person so summoned, is bound to attend in person or through authorised agent and to state truth upon any subject concerning which he is being examined or is expected to make statement and produce documents as may be required by virtue of sub-section (3) of Section 50 of the 2002 Act. The criticism is essentially because of subsection (4) which provides that every proceeding under sub-sections

(2) and (3) shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the IPC. Even so, the fact remains that Article 20(3) or for that matter Section 25 of the Evidence Act, would come into play only when the person so summoned is an accused of any offence at the relevant time and is being compelled to be a witness against himself. This position is well-established.

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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."

21. It is apparent from the reading of Section 50 of PMLA as well as decision in ***Vijay Madanlal Choudhary*** *(supra)* that the power conferred upon the authorities by virtue of Section 50 of PMLA empower them to summon 'any person' whose attendance may be crucial either to give some evidence or to produce any records during the course of investigation or proceedings under PMLA. The persons so summoned are also bound to attend in person or through authorised agent and are required to state truth upon any subject concerning which such person is being examined or is expected to make statement and produce documents as may be required in a case.

22. While considering the prayer for quashing of summons issued under Section 50 of PMLA, this Court also takes note of decision of Hon'ble Apex Court in case of ***Kirit Shrimankar v. Union of India & Ors.*** *W.P.(Crl.) No. 109/2013*, wherein the writ petitions had been filed on the ground of apprehension of getting arrested under provisions of Customs Act, 1962 because the officers concerned had conducted a search at the residence of ex-wife of petitioner therein. Though the writ petitions therein were dismissed as withdrawn, it was observed by the Hon'ble Apex Court that the petition was highly

premature based on averments which in no way could be termed as *prima facie* apprehension of arrest. Relevant observations of the Hon'ble Apex Court are extracted hereunder:

> "...In fact, when we perused the averments contained in the Writ Petition the provocation for the petitioner to file this writ petition was the so-called search conducted in the residential premises of the petitioner's ex-wife on 11.06.2013, who was residing at C-103, Gokul Divine, James Wadi, Irla, Ville Parle (West), Mumbai-400 056 and nothing incriminating was detected in the said search. It was further averred therein that the Officers threatened that the petitioner would be arrested, incarcerated in jail and would face dire consequence if he would not submit to their dictates. On that basis the writ petition came to be filed in this Court under Article 32 of the Constitution of India. We, therefore, expressed that it was highly premature for the petitioner to seek for extraordinary constitutional remedy under Article 32 of the Constitution of India based on such flimsy averments contained in the writ petition, inasmuch as such averments cannot form the basis for a prima facie apprehension of arrest. We, therefore, also expressed that the writ petition does not merit any consideration to be dealt with on the various issues raised, inasmuch as it will be for the petitioner to work out his remedy as and when any appropriate positive action is taken against the petitioner. In the course of hearing, learned Senior Counsel appearing for the petitioner now seeks to withdraw the writ petition reserving petitioner's liberty to work out his remedy in future, if any such situation arises..."

23. Similarly, in case of ***Commissioner of Customs, Calcutta v. M.M. Exports*** *(2010) 15 SCC 647*, the Hon'ble Apex Court, while dealing with a case of issuance of summons under Section 108 of Customs Act, had expressed that except in exceptional cases, High Courts should not interfere at the stage of issuance of summons. The relevant observations read as under:

> "1. By consent the impugned order is set aside. However, we wish to make it clear that as far as possible the High Court should not interfere at the stage when the Department has issued the summons. This is not one of those exceptional cases where the High Court should have interfered at the stage of issuance of the summons..."

24. In ***Virbhadra Singh v. Enforcement Directorate*** *2017 SCC OnLine Del 8930*, a Co-ordinate Bench of this Court had refused to quash the summons issued under Section 50 of PMLA, and had made the following observations:

> "141. The Enforcement officers empowered by PMLA to make investigation into the offences under the said law are not to be equated with police officers. The law confers upon them requisite powers to carry out investigation and collect evidence. The said power includes the power to issue summons to "any person" whose attendance is considered "necessary" and compelling his attendance, whether to "give evidence" or to "produce any records" and to examine him "on oath", in terms of Section 50(2) and (3), or to put any person under arrest (without warrant) upon satisfaction as to his complicity. These powers necessary for investigation do not render the authorities under PMLA same as police. The general guidelines governing the arrest procedure, as envisaged in the Code of Criminal Procedure or in terms of judicial dicta, control the exercise of such power by them. The fundamental rights relating to criminal prosecutions, in general, and against self-incrimination, in particular, are not denied here. Similarly, the rights guaranteed to an arrestee including for authorization for continued detention as per the general criminal law continue to regulate and, for this purpose, Section 167 Cr.P.C. continues to apply mutatis mutandis, all references pertaining to the police or their procedure for investigation to be read appropriately modified in relation to officers empowered by PMLA to investigate.
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> 143. It is clear from the above discussion that the Prevention of Money-Laundering Act, 2002 is a complete Code which overrides the general criminal law to the extent of inconsistency. This law establishes its own enforcement

> machinery and other authorities with adjudicatory powers and jurisdiction. The enforcement machinery is conferred with the power and jurisdiction for investigation, such powers being quite exhaustive to assure effective investigation and with built-in safeguards to ensure fairness, transparency and accountability at all stages. The powers conferred on the enforcement officers for purposes of complete and effective investigation include the power to summon and examine "any person". The law declares that every such person who is summoned is bound to state the truth. At the time of such investigative process, the person summoned is not an accused. Mere registration of ECIR does not make a person an accused. He may eventually turn out to be an accused upon being arrested or upon being prosecuted. No person is entitled in law to evade the command of the summons issued under Section 50 PMLA on the ground that there is a possibility that he may be prosecuted in the future. The law declared in Nandini Satpathy (supra) concerning the statements under Section 161 Cr.P.C. recorded by the police, and in other pronouncements concerning similar powers of officers of the Customs Department, as noted earlier, provide a complete answer to the apprehensions that have been expressed.
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> 146. There is nothing shown to the court from which it could be inferred that the issuance of summons by the respondents to the petitioners for investigation into the ECIR, in exercise of statutory powers, has caused, or has the effect of causing, any prejudice to any of them..."

25. The investigation in the present ECIR is still continuing and the petitioner has only been summoned to appear and submit certain documents. Even otherwise, this Court has taken note of the order dated 10.05.2023 wherein the learned ASG had fairly submitted that the respondent will not take any action in respect of summons which have already been issued to the petitioner herein i.e. the nine summons issued to the petitioner till 21.03.2023, out of which the

petitioner had appeared and got his statement recorded on one occasion.

26. Thus, having gone through the contents of present petition and in view of the judicial precedents discussed above, this Court finds no ground to quash the summons issued under Section 50 of PMLA to the petitioner.

(ii) Quashing of ECIR

27. As regards the prayer in the present petition seeking quashing of ECIR, this Court notes that the petitioner himself is not aware as to whether he is being summoned under Section 50 of PMLA as an accused or as a witness. It is also important to take note of the contents of the status report and the written submissions filed by respondent, i.e. Directorate of Enforcement in which it has been clearly stated that as of now, the respondent has not filed any prosecution complaint against the petitioner and he is yet not an accused in the present ECIR and it cannot be said that respondent is identifying the petitioner as an accused, in absence of any formal accusation to this effect.

28. Furthermore, neither the petitioner herein has filed the copy of ECIR before this Court nor he is in possession of the same, as stated in the present petition. Therefore, following important points are to be considered by this Court:

i. The copy of ECIR in question, which is sought to be quashed, has not been placed on record before this Court so as to enable

this Court to examine the contents of the same

ii. The petitioner is himself not aware whether he is an accused or not in the ECIR and states that he apprehends his implication in the case merely because he is being repeatedly summoned

iii. It is also not mandatory for the Directorate of Enforcement to furnish a copy of ECIR to the person who is under investigation, as held by Hon'ble Apex Court in ***Vijay Madanlal Choudhary*** *(supra),* and the petitioner herein has only been summoned under Section 50 of PMLA.

iv. The respondent has submitted before this Court that as of now, the petitioner is not an accused for offence under PMLA and he is only being summoned under Section 50 of PMLA for the purpose of collecting information or evidence in respect of proceedings under PMLA and not necessarily for the purpose of initiating prosecution against him.

29. This Court has also considered the decision of Hon'ble Apex Court in case of ***Hukum Chand Garg & Ors. v. The State of Uttar Pradesh & Ors.*** *SLP(Crl.) No. 762/2020* in which it was held that a person who is named in the ECIR cannot seek its quashing. The relevant portion of the decision reads as under:

> "...It is not in dispute that the petitioners have not If the been named as accused in the said crime. petitioners have not been named as accused in the said crime, the question of quashing of stated FIR or the case the Central Bureau of now under investigation by Investigation (CBI) arising from the said crime, does not arise as the petitioners will have no locus to seek such a relief..."

30. Thus, in such facts and circumstances, as mentioned above, this Court is of the opinion that the prayer for quashing of ECIR is premature and without any merit and there are no grounds to quash the same.

31. Since this Court is of the opinion that the petitioner's prayer for quashing of ECIR itself is premature as the status of the petitioner herein is not yet identified in the ECIR, thus, the contentions regarding cause of action in this case having arisen in State of West Bengal and prosecution complaints in ECIR being filed in New Delhi being illegal and without any jurisdiction, cannot be dealt with at this stage.

32. As regards one of the arguments raised on behalf of the petitioner that respondent cannot coerce persons to become witness against themselves in violation of Article 20(3) of Indian Constitution, this Court is of the opinion that mere issuance of summons under Section 50 of PMLA for the purpose of giving information or evidence whether oral or documentary will not attract the protection guaranteed by the Indian Constitution under Article 20(3), as the argument in itself is contradictory since on the one hand, the petitioner himself states that he does not know whether he is accused or witness, on the other hand, he wants protection as an accused and a direction that he cannot be a witness against himself.

33. As observed in preceding paragraph, the petitioner herein is yet not an accused in the present ECIR and the protection under Article 20(3) is available to a person who is 'accused of any offence'. In this regard, a reference can also be made to a decision of Hon'ble Apex

Court in case of ***Vijay Madanlal Choudhary*** *(supra)* wherein it was observed as under:

> "425. …**We fail to understand as to how Article 20(3) would come into play in respect of process of recording statement pursuant to such summon which is only for the purpose of collecting information or evidence in respect of proceeding under this Act.** Indeed, the person so summoned, is bound to attend in person or through authorised agent and to state truth upon any subject concerning which he is being examined or is expected to make statement and produce documents as may be required by virtue of sub-section (3) of Section 50 of the 2002 Act. The criticism is essentially because of subsection (4) which provides that every proceeding under sub-sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the IPC. **Even so, the fact remains that Article 20(3) or for that matter Section 25 of the Evidence Act, would come into play only when the person so summoned is an accused of any offence at the relevant time and is being compelled to be a witness against himself**. This position is well-established…."
>
> (emphasis supplied)

(iii) Interim Order of No Coercive Steps

34. This Court notes than an application was also moved on behalf of the petitioner seeking an interim order of no coercive steps in relation to present ECIR on the grounds that *firstly*, the petitioner is a public functionary and serving as a Cabinet Minister in Government of West Bengal, *secondly*, that he is suffering from several medical ailments and *thirdly*, that he is being repeatedly summoned by the respondent without being informed as to whether he is being summoned as a witness or as a prospective accused.

35. Though the aforesaid direction was sought as an interim relief during the pendency of present petition and this judgment disposes of the main writ petition filed by the petitioner alongwith all pending application, this Court deems it appropriate to note in this regard that the petitioner herein was first summoned in September, 2021 and since then, he has not been arrested till date despite the accused not appearing on eight occasions out of the nine, when he was summoned. The petitioner had also appeared only once before the respondent in October, 2021 where his statement under Section 50 of PMLA was recorded. It is also not in dispute that the petitioner has not been named as an accused and arrested by the CBI in the FIR/RC pertaining to predicate offence, and till date, as per the submissions made on behalf of respondent, he has not been named as an accused in the present ECIR.

36. Further, in recent decision titled ***Amit Katyal v. Directorate of Enforcement*** *2023 SCC OnLine Del 7119,* this Bench while rejecting a similar prayer seeking direction of no coercive steps, while taking note of the fact that an application seeking anticipatory bail may be preferred by an individual if he apprehends arrest in an ECIR, had observed as under:

> "39. The third prayer of the petitioner relates to directing the Directorate of Enforcement to not take any coercive steps against the petitioner in the present ECIR.
>
> 40. In this regard, this Court notes that the petitioner herein in the past has been summoned by the Directorate of Enforcement on about six occasions, as per the own case of petitioner, and has not been arrested till date. It is also not in dispute that the petitioner has also not been arrested by the

CBI in the RC pertaining to predicate offence. Merely because once again a summon has been issued under Section 50 of PMLA, no case for grant of no-coercive steps can be made out. It is also clear as per the scheme of PMLA that power to issue summons under Section 50 of PMLA is different from the power to arrest under Section 19 of PMLA, and the issuance of summons to join investigation and give some evidence or document to the investigation agency cannot be presumed to culminate into the arrest of person being so summoned. By the decisions of Hon'ble Apex Court in cases of ***Vijay Madanlal Choudhary*** *(supra),* ***V. Senthil Balaji v. State*** *2023 SCC OnLine SC 934* and ***Pankaj Bansal v. Union of India*** *2023 SCC OnLine SC 1244*, the law on exercise of power under Section 19 and the inherent safeguards therein and the duty of the concerned authority/officer to comply with the mandate of the Act also stands settled.

41. While adjudicating upon such a prayer, this Court deems it appropriate to refer to the decision of the Hon'ble Apex Court in case of ***Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra & Ors.*** *2021 SCC OnLine SC 315,* whereby the Hon'ble Apex Court had cautioned the High Courts to not pass order of 'no-coercive steps' in petitions filed under Article 226 of Constitution of India or Section 482 of Cr.P.C. since the same essentially reduces such proceedings to the nature of anticipatory bails. The observations of the Hon'ble Apex Court in this regard read as under:

> "67. This Court in the case of Habib Abdullah Jeelani (supra), as such, deprecated such practice/orders passed by the High Courts, directing police not to arrest, even while declining to interfere with the quashing petition in exercise of powers under Section 482 Cr. P.C. In the aforesaid case before this Court, the High Court dismissed the petition filed under Section 482 Cr. P.C. for quashing the FIR. However, while dismissing the quashing petition, the High Court directed the police not to arrest the petitioners during the pendency of the investigation. While setting aside such order, it is observed by this Court that such direction amounts to an order under Section 438 Cr. P.C., albeit without satisfaction of the conditions of the said provision and the same is legally unacceptable. In the aforesaid decision, it is specifically observed and held by this

> Court that "it is absolutely inconceivable and unthinkable to pass an order directing the police not to arrest till the investigation is completed while declining to interfere or expressing opinion that it is not appropriate to stay the investigation". It is further observed that this kind of order is really inappropriate and unseemly and it has no sanction in law. It is further observed that the courts should oust and obstruct unscrupulous litigants from invoking the inherent jurisdiction of the Court on the drop of a hat to file an application for quashing of launching an FIR or investigation and then seek relief by an interim order. It is further observed that it is the obligation of the court to keep such unprincipled and unethical litigants at bay.
>
> ***
>
> 71. Thus, it has been found that despite absolute proposition of law laid down by this Court in the case of Habib Abdullah Jeelani (supra) that such a blanket order of not to arrest till the investigation is completed and the final report is filed, passed while declining to quash the criminal proceedings in exercise of powers under Section 482 Cr. P.C., as observed hereinabove, the High Courts have continued to pass such orders. Therefore, we again reiterate the law laid down by this Court in the case of Habib Abdullah Jeelani (supra) and we direct all the High Courts to scrupulously follow the law laid down by this Court in the case of Habib Abdullah Jeelani (supra) and the law laid down by this Court in the present case, which otherwise the High Courts are bound to follow. We caution the High Courts again against passing such orders of not to arrest or "no coercive steps to be taken" till the investigation is completed and the final report is filed, while not entertaining quashing petitions under Section 482 Cr. P.C. and/or Article 226 of the Constitution of India.

42. A similar prayer seeking no-coercive steps upon issuance of summons under Section 50 of PMLA was sought by the petitioner in ***Ashish Mittal v. Directorate of Enforcement*** *2023 SCC OnLine Del 6678* and while declining to grant such a relief, the Co-ordinate Bench had observed that since the remedy under Section 438 of Cr.P.C. i.e. anticipatory bail was available to the petitioner in case he apprehended any arrest in the ECIR, the question of granting any interim relief of no-coercive steps did not arise. The relevant observations

are reproduced hereunder for reference:

> "46. In the opinion of this court, section 438 Cr. P.C. does not require a formal accusation and the word 'may' preceding the words 'be arrested' and 'on accusation' signifies that both the arrest and accusation are anticipatory. That is to that, firstly, an application under section 438 can only be filed by a person who is yet to be arrested. Secondly, an application under section 438 can be filed irrespective of whether there is a formal accusation (e.g. FIR), which in a case under the PMLA would mean whether or not there is a prosecution complaint.
>
> 47. Though a person can seek protection under Article 20(3) of the Constitution of India only ex-post i.e., only after formally being made an accused, on the other hand a person can seek relief under section 438 Cr. P.C. ex-ante i.e., prior to both arrest and accusation. To interpret the provisions of section 438 differently in the context of PMLA would be contrary to two Constitution Bench decisions of the Supreme Court in Gurbaksh Singh Sibbia (supra) and Sushila Aggarwal (supra), which expressly lay-down that the filing of an FIR, viz. formal accusation, is not a condition precedent for filing an application under section 438 Cr. P.C.
>
> 48. For completeness, it may also be noticed that section 65 of the PMLA makes the provisions of the Cr. P.C. applicable inter-alia to an arrest made under PMLA "… insofar as they are not inconsistent with the provisions …" of the PMLA. To be sure, though section 71 of the PMLA contains a non-obstante clause, there is nothing in the PMLA which restricts the court from granting relief under section 438 Cr. P.C. in an appropriate case. The only rider being that the twin conditions in section 45 of the PMLA will also have to be satisfied. In the opinion of this court therefore, there is no requirement in law for a prosecution complaint to have been filed for a person to maintain an application under section 438 Cr.P.C. Save for the stringent twin-conditions contained in section 45 PMLA, there is no provision in the PMLA which modifies the provisions of section 438 Cr. P.C.
>
> 49. In fact it is the respondent's stand that the petition is not maintainable since the petitioner has no locus

> standi to seek quashing of an ECIR or the prosecution complaint in which he is not an accused. The Satpathy v. PL Dani, (1978) 2 SCC 424 at para 21 respondent has also said that there is an alternate, efficacious remedy available to the petitioner, by way of an application seeking anticipatory bail under section 438 Cr. P.C., which remedy he would be entitled to seek at the appropriate stage..."
>
> 43. Therefore, considering the law laid down by the Hon'ble Apex Court and the facts of the present case, no case is made out for directing the respondent to not take any coercive steps against the petitioner…"

37. Thus, in such circumstances, there are no grounds for directing the respondent to not take any coercive steps against the petitioner herein.

CONCLUSION

38. In view of the aforesaid facts and circumstances and the reasons recorded in preceding paragraphs, this Court finds no ground to either quash the impugned summons or the ECIR registered by the respondent.

39. However, before parting with the case, this Court notes that vide order dated 05.09.2023, the Predecessor of this Court had *inter alia* directed that considering the age of petitioner and his medical status, the respondent may summon the petitioner at its Kolkata office by giving at least 24 hours' notice. This direction was passed in view of a similar relief given by the Hon'ble Apex Court in case of ***Abhishek Banerjee & Anr. v. Directorate of Enforcement*** *SLP Crl. No.2806-2807/2022*.

40. This Court, however, is not deciding any question of law as to whether a man aged above 65 years can be summoned by the Directorate of Enforcement under Section 50 of PMLA at any place and whether the same will be in contravention of Section 160 of Cr.P.C., since the controversy involving applicability of Section 160 of Cr.P.C. to Section 50 of PMLA is pending adjudication before the Hon'ble Apex Court in case of ***Nalini Chidambaram v. Directorate of Enforcement*** *SLP(C) 19275-19276/2018* and other tagged matters. The judgment passed by the Coordinate Bench of this Court in case of ***Abhishek Banerjee & Anr. v. Directorate of Enforcement*** *2022 SCC OnLine Del 747* holding that Section 160 of Cr.P.C. will have no applicability in cases of issuance of summons under Section 50 of PMLA has also been stayed by the Hon'ble Apex Court in case of ***Abhishek Banerjee & Anr. v. Directorate of Enforcement*** *SLP Crl. No.2806-2807/2022*.

41. Therefore, in these circumstances, it is directed that in the present case, the respondent will be at liberty to require the attendance of the petitioner herein (aged about 67 years) in its office situated at Kolkata by giving at least 24 hours' notice. Notices shall also be issued to the Commissioner of Police, Kolkata and the Chief Secretary, State of West Bengal so that adequate police protection is afforded to the persons seeking to examine or interrogate the petitioners and to avoid any difficulty or obstruction or interference with the officers of Directorate of Enforcement. The petitioner being the Law Minister of the State of West Bengal itself where he wants to be examined will also ensure that no harm is caused to the officers of

Directorate of Enforcement examining him at Kolkata as this relief is being granted to him at his request only.

42. Further, the petitioner had made request and **not appeared** before Directorate of Enforcement on eleven out of twelve occasions i.e.:

S. No.	*Summons*	*Date of appearance*
1.	First	14.09.2021
2.	Second	23.09.2021
3.	Third	11.10.2021
4.	Fifth	02.02.2022
5.	Sixth	08.02.2022
6.	Seventh	07.04.2022
7.	Eighth	15.07.2022
8.	Ninth	29.03.2023
9.	Tenth	21.06.2023
10.	Eleventh	26.06.2023
11.	Twelfth	25.07.2023

43. The petitioner had argued that he was being sent repeated summons and the Directorate of Enforcement be restrained from sending summons in future. In view of the above discussion, it is rather surprising that the petitioner himself has not appeared before the Directorate of Enforcement on eleven occasions out of twelve to give information that they are seeking. In such circumstances, when he himself has not appeared before Directorate of Enforcement except once, such relief cannot even be considered by this Court, at this stage.

44. Accordingly, the present petition alongwith pending applications, stands disposed of, in above terms.

45. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

NOVEMBER 17, 2023/zp