

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

% *Judgment pronounced on: May 29, 2015*

+ **BAIL APPLICATION NO. 484/2015**

GAURAV GUPTA Petitioner
Through Mr. Sandeep Sethi, Sr. Adv. with
Mr. Bharat Sharma, Mr. Akshey
Bhatia, Adv.

versus

DIRECTOR OF ENFORCEMENT Respondent
Through Mr. Sanjay Jain, ASG with Mr. Ajay
Digpal, Mr. Akshay Makhija, GHS,
Ms. Prabhsahey Kaur, GP, Ms.
Shreya Sinha, Mr. Akash Nagar,
Ms. Pallavi Shali, Adv.

+ **BAIL APPLICATION NO. 571/2015**

GAGANDEEP SINGH & ANR Petitioners
(IN JUDICIAL CUSTODY)
Through Mr. Saurabh Kirpal, Adv. with
Ms. Deeksha Rao, Adv.

versus

DIRECTOR OF ENFORCEMENT Respondent
(THROUGH ASSTT. DIRECTOR)
Through Mr. Sanjay Jain, ASG with Mr. Ajay
Digpal, Mr. Akshay Makhija, GHS,
Ms. Prabhsahey Kaur, GP, Ms.
Shreya Sinha, Mr. Akash Nagar,
Ms. Pallavi Shali, Adv.

CORAM:

HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. By way of this order, I propose to decide the two applications; one filed by Gaurav Gupta and another one by Gagandeep Singh and Paramdeep Singh (both brothers). All the three petitioners are in custody since 25th September, 2014, who have filed the abovementioned applications under Section 439 read with Section 482 Cr.P.C. for grant of bail under Section 3 of Prevention of Money-Laundering Act, 2002 (hereinafter referred to as the "Act") punishable under Section 4 of the Act.

2. Brief facts as per the case of the respondent are that :

i) The Australian Federal Police (hereinafter referred to as AFP) had conducted an investigation code named 'Operation Zanella' relating to the activities of global money laundering networks who found that certain persons namely Gulshan Kumar, Mandeep Singh, Sanjeev Kumar Sahni and Ravender Pal Singh based in Australia, were providing their services to Australian Organized Crime Groups and were having extensive contacts with their Indian based counterparts who were identified as Gangandeep Singh, Paramdeep Singh and Gaurav Gupta. The AFP identified an extensive Alternate Remittance services network operating from India with significant influence of money laundering activities in Australia and further stated that the transactions were structured in a way that each deposit of money in Australian bank accounts was for a sum less than Australian \$10,000/- to avoid any reporting requirement, who had

also identified the money laundering networks and their operational structure.

ii) On the basis of Mutual Assistant Request (MAR) Note Verbal No.458/2014 dated 27th August, 2014 (Letter of request) was issued by the Austrian Competent Authority regarding involvement of the petitioners in criminal activity.

iii) The Enforcement Directorate on the basis of MAR received from Australian Authorities in the form of Letter of Request found that Gagandeep Singh and Paramdeep Singh from Amritsar and Gaurav Gupta from Delhi were the members of money Laundering Syndicate who were involved in transferring the proceeds of crime generated from drug trafficking of the Organised Crime Groups (OCGs) in Australia. The preliminary inquiry was conducted and it was transpired that Gagandeep Singh and Paramdeep Singh were already charge sheeted in a drug case under Narcotics Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the "NDPS Act") by Special State Operation Cell, Amritsar. The Enforcement Directorate registered an ECIR on the basis of the LR and the case under NDPS Act against the petitioners and searches were conducted on 25th September, 2014.

iv) During the course of searches from the residence as well as from the business premises certain incriminating documents in the form of hard copies, electronic devices were recovered and seized. Indian currency worth Rs. 77 lakh and foreign currency worth Rs. 3 lakh was also recovered and seized. Paramdeep Singh, Gagandeep

Singh and Gaurav Gupta were arrested on 25th September, 2014 under Section 19 of the Act.

v) As per the respondent, during the course of investigation it was found that they were involved in the money laundering and transferred huge amount of proceeds of crime suspected to be proceeds of drug money, through their accounts from one country to another country for the OCG and thus acquired huge money. It was also revealed that they had purchased movable and immovable properties worth crores of rupees. The Directorate identified one such property i.e. House No. 414, Basant Avenue, Amritsar, worth 1.65 Crore of Gagandeep and Paramdeep Singh which had been purchased out of the funds generated through criminal activity and being proceeds of crime the same was been provisionally attached vide Provisional Attachment Order No.1/2014 dated 18th November, 2014 under Section 5(1) of the Act. The Adjudicating Authority by order dated 25th March, 2015 had confirmed the above said Provisional Attachment Order under Section 5(3) of the Act. The identification of other such properties generated through proceeds of crime is in process.

In the meantime Enforcement Directorate had received few documents from Australia in the form of Bank statements and other documents which established the involvement of above accused persons. Based on the investigation conducted and the documents received by Enforcement Directorate, a Criminal Complaint had been filed in the Special Court for money laundering and the court had

already taken the cognizance of the offence of money laundering and the case had been listed for framing of charges on 14th March, 2015.

vi) During the course of investigations it was found that Ms Amandeep Kaur, sister of the petitioners i.e. Gagandeep Singh and Paramdeep Singh has NRI/NRO accounts which are being operated by the Paramdeep Singh. In these NRO/NRI accounts an amount of more than Rs. 3 crore had been deposited which has been frozen under Section 17(1 A) of the Act and thereafter, the Adjudicating Authority has found after hearing the representatives of the petitioners under Section 8(3) as frozen properties were involved in money laundering and liable for confiscation. The Enforcement Directorate summoned Ms Amandeep Singh Kaur through diplomatic channel but she failed to appear or depute someone on her behalf to appear before the IO for the investigation. She has been issued the third summon to appear before the IO.

vii) The Letters of request to Australia, Hong Kong, UK, USA and Canada have been sent under Section 57 of the Act through Special Court on being satisfied, requesting for the details of the accounts and transactions done on behalf of the petitioners and the reply is awaited. As and when the reply is received, the investigation will be completed on top priority and the Supplementary/further complaints in the case shall be filed before Special Court.

3. Case of the petitioners in Bail Application No.571/2015

i) At the time of arrest no property was attached nor any scheduled offence as mentioned under Section 2(x) and (y) of the Act have been registered against accused. The Enforcement Directorate

recorded the statement of the petitioners while they were in the custody under Section 50 of the Act on number of occasions i.e. 27th September, 2014, 28th September, 2014, 29th September, 2014, 30th September, 2014, 7th November, 2014 in the instant case.

- ii) Thereafter on 23rd November, 2014, respondent filed a complaint under Section 45 of the Act before the concerned court against the petitioners.
- iii) There is no evidence against the petitioners which suggests any complicity of the petitioners directly or indirectly in the act of money laundering which is an offence under Section 3 of the Act. The evidence did not substantiate with the allegations against the petitioners, that the petitioners are directly or indirectly attempted to indulge or knowingly assist or is a part or actually involved in process of activities connected with the proceeds of crime.
- iv) As per the allegations schedule offence has been committed by the petitioners in Amritsar and as per Section 44 of the Act the court at New Delhi has no jurisdiction to try the offence and only the court at Amritsar have jurisdiction to try the offence under the Act where the schedule offence has been committed.

The authorities have failed to comply with the rules and documents have not been attested under the Diplomatic and Consular Officers (Oath & Fees) Act 1948 (41 of 1948) for the purpose of sub Section 2 of Section 22 of the Act.

v) There is no evidence which suggests that the petitioners are generating money from drug trafficking dealing with the proceeds of crime or any nexus that the petitioners are involved in any laundering of money or facilitating the other accused persons in laundering of money.

4. The allegations against Gaurav Gupta in Bail Application No.484/2015 are :

- a) That he was involved in an international syndicate of laundering the money generated out of drug trafficking in Australia and other countries. It is also alleged that the proceed of crimes were laundered by the Associates in Australia and were sent to them through an account in Australia to their Bank Account in Hong Kong and made available to the organized crime group in different countries.
- b) That he was in contact with one Bunty Sharma of Germany for money laundering activities. One Ravinder Pal Singh and Gaurav Gupta were in constant contact since April, 2013 with regard to giving money to people in Australia in their Bank Account and collection from OCG members. Mr. Gaurav Gupta was having regular cash/foreign exchange transaction with Gagandeep Singh and Paramdeep Singh for approx. Rs.50 to Rs.60 lacs per month and had arranged substantial amount of foreign currency being proceeds of crime from Bunty Sharma through Billion Trend Forex Pvt. Ltd., Australia and he is running a Jai Durga Forex Pvt. Ltd. in Delhi and was acting as a money changer having bank account with HDFC bank and Axis Bank.

Reply by Gaurav Gupta in Bail Appl. No.484/2015

5. In addition to plea raised by Gagandeep Singh and Paramdeep Singh, it is alleged by him that he has no contact with Bunty Sharma. There is no material on record to suggest that the petitioner is connected to Bunty Sharma or Ravinder Pal Singh regarding drug trafficking or dealing with the proceeds of crime. He has no bank account in Australia nor ever visited Australia and he has never dealt with any tainted money. He is the license holder of money exchange from RBI and do not have any company outside India. He is dealing in accordance with the norms laid down by the RBI and never involved in any illegal activity. He has already shown each and every transaction to the Enforcement Directorate. There is no violation as alleged by the petitioner, the same will come under the purview of FEMA 1999 which is not a scheduled offence. There is no cogent or positive evidence which may involve him in the present crime. The material collected by the respondent does not create any link or show any nexus that he is involved in any laundering of money or facilitating the other accused persons in laundering of money. He has arraigned as accused in the present case on the basis of suspicion.

6. Mr. Sandeep Sethi, learned Senior counsel who is appearing for Gaurav Gupta has argued that there is no material on record against his client whose case is different from Gagandeep Singh and Paramdeep Singh. As far as his client is concerned, his client is not involved in the scheduled offence under Part A of the Schedule, thus he is entitled for bail.

7. Mr. Saurabh Kirpal who is appearing on behalf of petitioners in bail application No.571/2015 submits that every action of putting money in a bank or otherwise introducing it into the white economy is not laundering. It is only when 'dirty money' is laundered that an offence comes into play. The onus, therefore is to establish that the laundered money comes from an illegal source. The scheme of the Act which also requires that the scheduled offence (i.e. the underlying criminal activity) and the offence of money laundering have to be tried together. The impugned order where the trial court has rejected the bail application records that "the connections between transactions being done by the accused persons and it being 'proceeds of crime' may be nebulous, but this in itself cannot be a ground for ignoring the huge amounts of transactions that have been taking place through the accounts of the accused persons."

8. Mr. Kirpal argues that in the present complaint, there is no reference or details given about any underlying scheduled offence. A mere reference has been made to certain alleged offences in Australia, but no details are provided about the same. There is no averment, let alone evidence, linking the petitioners to the scheduled offence or the petitioner alleged generating money from drug trafficking or dealing with the proceeds of crime. Earlier, the petitioners were granted bail for the charge under Section 21/25/29 of NDPS Act and Section 420/467/471 read with Section 120B IPC. He submits that even there is no *prima facie* direct evidence that the petitioners have any nexus with any person or party in Australia who

is involved in drug trafficking or they are facilitating money for that purpose in laundering of money.

9. Mr. Kirpal argues that otherwise even if the prosecution case at this stage is taken as gospel truth the petitioner is in any event entitled to bail as the restrictions contained in Section 45 of the Act do not apply to the petitioners as they are not accused of any scheduled offence under Part A of the Schedule. The normal provisions of the Cr.P.C. would apply to the petitioners.

10. It is argued by him that all the alleged incriminatory statements have been recorded after his arrest and are hence inadmissible in law. It is wrong to allege that officers under the Act and/or NDPS Act are not police officers. This very issue is still pending before a three judge bench of Supreme Court in the case of **Tofan Singh v. State of Tamil Nadu** (2013) 16 SCC 31.

11. Mr. Sanjay Jain, learned ASG has made his submissions which are outlined as under :

a) Mr. Jain, ASG submits that the petitioners are not entitled for bail in view of the nature and gravity of offence, nature of evidence. The conduct of the accused are peculiar. It may be possible that they may influence the witnesses or evidence being tampered with, therefore, they are not entitled to bail. Their offence is covered under Section 45 of the Act. The object of the Act is to prevent money laundering and to provide for confiscated property derived from or involved in money laundering and the matter connected there with in incidental thereto. He argues that the expression "Part A of the schedule", the other provisions

referred by him and the object of the Act has to be read as together. Reliance is placed by Mr. Jain, learned ASG in the case of ***Y.S. Jaganmohan Reddy vs. CBI***, (2013) 7 SCC 439. Furthermore, Section 45 of the Act introduces an additional limitation upon this Court while exercising its discretion to grant or deny bail. Section 45(1) of the Act provides that no person accused of an offence punishable for a term of more than three years under Part A of the schedule shall be released on bail unless the two following conditions are necessarily satisfied :

- i) where the Public Prosecutor has been given an opportunity to oppose the bail application; and
 - ii) bail shall not be granted unless the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.
- b) The next submissions of Mr. Jain, learned ASG is that there are sufficient material on record, which can prove the allegations against the petitioners as the offence of Money Laundering generally comprises of 3 stages i.e. Placement, Layering and Integration, in consonance with the definition of money laundering. The main object of the Act is to punish the person who deals with proceeds of crime as defined under Section 2(1)(u) of the Act.

Mr. Jain, learned ASG submits that the offence of money laundering is of a continuous nature. It is not a single time offence and cannot be said that the offence would stop.

Therefore, the nature of money laundering is of a continuous one. The onus on the accused is therefore not as same as under the Cr.P.C, it is to show that he is not guilty of the offence at all. The rigorous provisions of Section 45 of the Act do not allow bail in cases where the offence is continuous one even otherwise if the court is satisfied while granting bail of such offence which comes under Section 45(1)(b) of the Act, the Court has to keep in mind that the accused is not likely to commit any offence while on bail. Mr. Jain submits that in the present case incriminating documents have been recovered and admissions have been made on the part of the accused.

12. It is also the case of prosecution that during the course of searches from the residence as well as from business premises certain incriminating documents in the form of hard copies, electronic devices were recovered and seized. Indian currency worth Rs.77 lakh and foreign currency worth Rs.2 lakh was also recovered and seized. Paramdeep Singh, Gagandeep Singh and the petitioner were arrested on 25th September, 2014 under Section 19 of the Act.

13. Learned ASG has referred the charge sheet which indicates that during the course of investigation it was found that they were involved in money laundering and transferred huge amount of proceeds of crime suspected to be proceeds of drug money, through their accounts from one country to another country for the OCG and thus acquired huge money. During the course of investigation it was also revealed that they had purchased movable and immovable properties worth crores of rupees. The Directorate identified one

such property bearing House No.414, Basant Avenue, Amritsar, worth Rs.1.65 crores of Gagandeep and Paramdeep Singh which has been purchased out of the funds generated through criminal activity and being proceeds of crime the same has been provisionally attached vide Provisional Attachment Order No.1/2014 dated 18th November, 2014 under Section 5(1) of the Act. The Adjudicating Authority vide order dated 25th March, 2015 has confirmed the above said Provisional Attachment Order under Section 5(3) of the Act. The identification of other such properties generated through proceeds of crime is in the process. A chart showing involvement of the petitioner and the others in the money laundering crime is filed as Annexure A1. In the meantime Enforcement Directorate received few documents from Australia in the form of bank statements and other documents which established the involvement of above accused persons in the crime. Based on the investigation conducted by Enforcement Directorate and the documents received by Enforcement Directorate, a criminal complaint was filed in the Special Court for money laundering and the court has already taken cognizance of the offence of money laundering and the case has been listed for framing of charges on 18th May, 2015.

Charge sheet also disclosed that on investigation, it has been noticed by the investigating agency that Ms. Amandeep Kaur, sister of Gagandeep Singh and Paramdeep Singh, has NRI/NRO accounts, operated by Paramdeep Singh. In these NRO/NRI accounts an amount of more than Rs. 3 crore had been deposited which has been frozen under Section 17(1A) of the Act and thereafter, the

Adjudicating Authority after hearing the representatives of the petitioner, Gagandeep Singh and Paramdeep Singh, under Section 8(3) has found that the frozen properties are bought with proceeds of crime and are liable for confiscation. The Enforcement Directorate summoned Ms. Amandeep Singh Kaur through diplomatic channel but she has failed to appear or depute someone on her behalf to appear before the IO for the investigation. She has been issued a third summon to appear before the IO.

14. In reply, it is submitted by Mr. Kirpal that even if the allegation against the petitioner may be taken as gospel truth, the case of the prosecution falls under the ambit of Section 3 of the Act which is punishable maximum upto 7 years and not less than three years. He has referred the following decisions in support of his submission :

- i) In the case titled as ***H.B. Chaturvedi Vs. CBI*** decided by this Court reported as 2011 I AD (Delhi) 447 has held that "Bail, it has been held in a catena of decisions, is not to be withheld as a punishment. Even assuming that the accused is prima facie guilty of a grave offence, bail cannot be refused in an indirect process of punishing the accused person before he is convicted.
- ii) In the case titled as ***Sanjay Chandra and Ors. vs. C.B.I.***, (2012) 1 SCC 40 the Supreme Court held that the object of bail is neither punitive nor preventative. It was further held that the accused are charged with economic offences of high magnitude. At the same time we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge sheet is already filed. Appellants are entitled to bail.

- iii) In the case of **Suresh Kalmadi vs. C.B.I.**, 187 (2012) DLT 575 this Court held that no doubt the offence punishable under Section 467 is made out on the facts alleged. This is an "issue which will have to be decided by the trial court during trial on appreciation of evidence. It was further held if seriousness of the offence on the basis of punishment provided is the only criteria; the courts would not be balancing the constitutional rights but rather recalibrating the scales of justice. Bail granted.
- iv) It has been held by this Court in the case of **Sushil Ansal vs. CBI**, 1999 III (AD) CrI. Del 195 that "the apprehension of likelihood of tampering with the prosecution evidence can be taken care of by imposing necessary conditions and the breach whereof may expose the Applicant to the consequence/risk of calculation of bail".

15. It is argued by him that as investigation of the case is complete and the trial is going to take considerable period of time before the entire evidence is concluded, therefore continuing incarceration of the petitioner is not going to serve any purpose except to deny the benefit of bail to petitioner by way of punishment.

16. During the hearing, an affidavit of Maan Singh Yadav, Assistant Director, Enforcement Directorate has been filed in the Court in which it was deposed that 6th May, 2015, the officers of the Enforcement Directorate visited the premises of the accused being House No.414, Basant Avenue, Race Course Road, Amritsar under the provision of Section 8(4) of the Act to take possession of the same and during the proceedings, the officers noticed suspicious activity of the wives and

mother of the accused and they insisted to be given one more day for vacating the premises. A search warrant was prepared under Section 17 of the Act for search of the premises and the Enforcement Directorate officers carried out a search of the premises and had recovered 10 kgs of gold from the premises i.e. 10 bars of "1 kilo gold were dug up from the garden of the premises."

17. In reply an affidavit of Parminder Pal Singh S/o Shri Mehar Singh R/o WZ - 87 A, Ram Nagar Choukandi, Tilak Nagar, Delhi was filed in which it was mentioned that the petitioners in bail application No.571/2015 purchased gold bar from M.S. Jewellers, Beadon Pura, Karol Bagh, Delhi on 16th September, 2014 and 18th September, 2014 vide Invoice bearing No. R-010 & R-012 before their arrest as they were arrested on 25th September, 2014 since then they are in custody and after the arrest of the petitioners there was no male member in the family of the petitioners in Amritsar who could take care of the aforementioned gold and the female members were left alone in the family who got panicked and dug up and put the gold in order to protect it from burglars. But this is no ground to deny the bail to the petitioners because all the activities by Enforcement Directorate search and seizure of the aforementioned gold took place when the petitioners were in custody. The act of the family members of the petitioners is bonafide and not intentional.

18. The court is aware about the fact that the court must not undertake meticulous examination of the evidence collected by the police and comment on the same. Such assessment of evidence and premature comments are likely to deprive the accused of a fair trial.

While cancelling bail under Section 439(2) Cr.P.C., the primary considerations which weigh with the court are whether the accused is likely to tamper with the evidence or interfere or attempt to interfere with due course of justice or evade the due course of justice. While considering the bail application, it is also to be kept in mind that individual liberty cannot be accentuated to such an extent or elevated to such a high pedestal which would bring in anarchy or disorder in the society. There can be no arithmetical formula for fixing the parameters in precise exactitude but the adjudication should express not only application of mind but also exercise of jurisdiction on accepted and established norms.

19. Let me now deal with the objection raised by the respondent to grant of relief prayed by the petitioner. In order to arrive at *prima facie* opinion, it is necessary to refer certain provisions of the Act and discussion thereon.

a) The “offence of money laundering” is defined under Section 3 of the Act, which reads as under: -

“3. Offence of money-laundering. – Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.”

b) The meaning of “proceeds of crime” is under clause (u) of Section 2 of the Act, which reads as under : -

“(u) “proceeds of crime” means any property derived or obtained, directly or indirectly, by any person as a result of

criminal activity relating to a scheduled offence or the value of any such property.”

c) Section 24 of the Act stipulates about the ‘burden of proof’ relating to proceeds of crime of the Act, the same reads as under: -

“**24.** In any proceeding relating to proceeds of crime under this Act, -

(a) In the case of a person charged with the offence of money-laundering under Section 3, the Authority or Court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money-laundering; and

(b) In the case of any other person the Authority or Court, may presume that such proceeds of crime are involved in money-laundering.”

d) Section 45 of the Act deals with offences to be cognizable and non-bailable, which reads as under: -

“**45. Offences to be cognizable and non-bailable.** – (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule shall be released on bail or on his own bond unless –

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

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

Provided that a person who is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the special court so directs: Provided further that the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by –

(i) The Director; or

(ii) Any officer of the Central Government or State Government authorized in writing in this behalf by the Central Government by a general or a special order made in this behalf by that Government.

(1A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorized, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.

(2) The limitation on granting of bail specified in sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.”

e) Schedule and Scheduled offence is defined under Section 2

(x) and (y) which is reproduced herein below:

"2(x) "Schedule" means the Schedule to this Act;

(y) "Scheduled offence" means-

(i) the offences specified under Part-A of the Scheduled or

(ii) the offences specified under Part-B of the Schedule if the total value involved in such offences is thirty lakh rupees or more; or ;

(iii) the offences specified under Part-C of the scheduled".

f) Offence of cross border implications has been defined under Section 2 (ra) of the Act which reads as under :

"2 (ra) offence of cross border implications, means-

(i) any conduct by a persons at a place outside India which constitutes an offence at the place and which would have constituted an offence specified in Part A, Part B or Part C of the schedule, had it been committed in India and if such person transfers in any manner the proceeds of such conduct or part thereof to, India; or

(ii) any offence specified in Part A, Part B or Part C of the schedule which has been committed in India and the proceeds of crime or part thereof have been transferred to a place outside India or any attempt has been made to transfer the proceeds of crime, or part thereof, from India to a place outside India.

g) Section 4 defines punishment for money laundering which reads as under :

"Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Provided that where the proceeds of crime involved in money-laundering relates to any offence specified under paragraph 2 of Part A of the Schedule, the provisions of this section shall have effect as if for the words "which may

extend to seven years”, the words “which may extend to ten years” had been substituted.

20. In case, Section 4 of the Act is read in a meaningful manner, it is evident that the punishment of such offence for money laundering is with rigorous imprisonment for a term which shall not be less than three years which may extend to seven years and a fine extend to five years. Under the proviso where the involvement of the accused in money laundering relates to any offence specified under paragraph 2 of Part A of the Schedule then it may extend to ten years.

21. Paragraph 2 of Part A of the Schedule reads as under :

PARAGRAPH 2

Offences under the Narcotic Drugs and Psychotropic Substances Act, 1985

(61 of 1985)

Section	Description of offence
15	Contravention in relation to poppy straw.
16	Contravention in relation to coca plant and coca leaves.
17	Contravention in relation to prepared opium.
18	Contravention in relation to opium poppy and opium.
19	Embezzlement of opium by cultivator.
20	Contravention in relation to cannabis plant and cannabis.
21	Contravention in relation to manufactured drugs and preparations.
22	Contravention in relation to psychotropic substances.
23	Illegal import into India, export from India to transshipment of narcotic drugs and psychotropic substances.
24	External dealings in narcotic drugs and psychotropic substances in contravention of Section 12 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

25-A	Contravention of orders made under Section 9-A of the Narcotic Drugs and Psychotropic Substances Act, 1985.
27-A	Financing illicit traffic and harbouring offenders.
29	Abetment and criminal conspiracy.

22. The petitioners in application No. 571/2015 are already on bail in the FIR No. 29/2011 lodged at Amritsar under Section 21/25/29 of NDPS Act and 420/467/471 read with 120B of IPC and petitioner No. 2 is also already on bail in FIR No.526/2005 lodged at I.P. Estate Police Station, New Delhi.

23. The statements of the petitioner under Section 50 of the Act was recorded after the arrest of the petitioner and the same are inadmissible in evidence being hit by Article 20(3) of the Constitution of India. The petitioners have retracted from the statements recorded during the remand at the first available opportunity.

24. It is the case of the petitioners that they have not committed any offence under Part A of the Schedule nor has been booked in any case or pending trial against the petitioner in India or anywhere.

25. In view of above referred facts and as per material available as of today, *prima facie*, it cannot be established or presumed that the petitioners are involved for any offences involving in money laundering relating to the Paragraph 2 of Part A of the Schedule. Even while rejecting the bail of the petitioners, the trial court has observed that the connections between transactions being done by the accused persons and it being 'proceeds of crime' may be nebulous, but this in itself cannot be a ground for ignoring the huge

amounts of transactions that have been taking place through the accounts of the accused persons.

26. There is no material at this stage to conclude that the laundering money if any has been used for the purpose of drug trafficking or dealing with proceeds of crime of such nature. There is a suspicion that the same might have been used for said purposes. If those allegations are proved no doubt the present case would fall within the meaning of proviso of Section 4 of the Act which is to be read along with Section 45 of the Act wherein it mandates that while considering the application for bail, the Court has to satisfy with the following two conditions:-

- (i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and
- (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

27. The matter does not end here. On behalf of respondent it has been informed that the letters of request to Australia, Hong Kong, UK, USA and Canada have been sent under Section 57 of the Act through Special Court on being satisfied, requesting for the details of the accounts and transactions done on behalf of the petitioner, Gagandeep Singh and Paramdeep Singh and the reply is awaited. Enforcement Directorate has emphasized the need of urgency to the above said countries. As and when the reply is received, the investigation will be completed on top priority and supplementary

charge sheet or fresh complaint would be filed before Special Court. At this stage, the petitioners are not entitled for bail.

28. In ***Shiv Kant Tripathi vs. State of U.P. & Ors. 2013 (6) ADJ 672***, the Apex Court held as under: -

“5. It prima facie appears from the proviso to Section 17(1) and more importantly the proviso to Section 18(1) of the Prevention of Money-Laundering Act, 2002 that the Directorate of Enforcement comes into action in respect of the money laundering allegations only after a charge-sheet is submitted by the police/ agency investigating the question whether any of the “scheduled offences” has been committed. We will assume that even if the police submits a final report, alleging that no scheduled offence has been committed, but the Magistrate does not accept the same and issues process, even then the directorate can initiate investigation into money-laundering allegations. In that view the investigation done by the directorate under the interim orders passed herein, even before a charge-sheet by the police regarding any scheduled offence having been committed, was premature.”

29. After further investigation if evidence would reveal that the petitioners are also involved in the scheduled offence of Part A, then their bail applications have to be examined within the parameter of Section 45 of the Act. Therefore, at this stage, I am not inclined to enlarge them on bail unless the investigation is completed as suggested by learned ASG. It would be appropriate to wait for final report, otherwise the applications would be decided on the basis of existence of material on record without any further delay.

30. Having considered the facts and circumstances of the case in hand, I am of the view that the further investigation in the matter is still on and as per respondent, it may take one and half month to complete. The said statement was made two weeks ago. As the petitioners are in judicial custody, considering the offence serious in nature, thirty days are granted to the respondent to complete the further investigation as last chance. Thereafter, the petitioner would be entitled to move a fresh application for regular bail before trial court and same be decided on urgent basis.

31. In the nature of the present case, without expressing any opinion on the merits of the case and also with regard to the claim of the respondent, the Court is not inclined to grant the relief of releasing the petitioner on bail at present as further investigation may prejudice the case of respondent.

32. Both the applications are accordingly disposed of.

33. Dasti, under the signatures of the Court Master.

(MANMOHAN SINGH)
JUDGE

MAY 29, 2015