IN THE HIGH COURT OF MANIPUR
AT IMPHAL

A.B. No. 42 of 2020

Okram Ibobi Singh, aged about 72 years old, S/o late O. Angoubi Singh, a resident of Thoubal Athokpam Makha Leikai, P.O. & P.S. Thoubal, Thoubal District, Manipur- 795130.

…….. *Petitioner*

-Versus-

The Directorate of Enforcement with its Headquarter at New Delhi through the Director of Enforcement, 1st and 2nd Floor, MTNL Building, Jawaharlal Nehru Marg, New Delhi-110002.

… *Respondent*

BEFORE
HON'BLE MR. JUSTICE M.V. MURALIDARAN

For the Petitioner	::	Mr. Salman Khurshid, Sr. Advocate Mr. N. Ibotombi, Sr. Advocate, Mr. A. Rommel, Advocate.
For the Respondents	::	Mr. S. Suresh, Asst.SG Mr. S.V. Raju, Addl. SG Mr. Zoheb Hossain, Special Counsel ED Mr. Guntur Pramod Kumar, Adv Mr. A. Venkatesh, Adv Mr. Sairica Raju, Adv Mr. Shaurya Ranjan Rai, Adv Mr. Agni Sen, Adv for Directorate of Enforcement.
Date of Hearing & Reserving Judgment & Order	::	02.12.2020
Date of Judgment & Order	::	**16.12.2020**

JUDGMENT AND ORDER
(CAV)

1. This petition has been filed by the petitioner under Section 438 of Code of Criminal Procedure, 1973 seeking to grant pre-arrest bail in connection with a case to be registered against him under the provisions of the Prevention of Money Laundering Act, 2002 (in short, "*PML Act*") by the respondent.

2. The facts in a nutshell are as follows:

(i) The petitioner is the opposition leader of the Manipur Legislative Assembly and was Ex-Chief Minister of Manipur. It is alleged that one Dr.Th.Munindro Sing, Joint Secretary (Planning), Government of Manipur made a complaint before the Imphal Police Station on 1.19.2016 for registering FIR against the petitioner and others and accordingly, the Officer-in-Charge of Imphal Police Station registered a case in FIR No.244(9)2017 under Sections 420, 406, 120B IPC and Section 13(2) of the Prevention of Corruption Act, 1988. Later the case was

transferred to the CBI, New Delhi and re-numbered as RC-DST-2019-A/011.

(ii) The petitioner filed pre-arrest bail being Anticipatory Bail No.21 of 2017 before the High Court and during the pendency of the anticipatory bail petition, on 22.11.2019, a team of CBI seized a sum of Rs.6 lakhs from the official quarters of the petitioner situate at Babupura, Imphal West. The CBI also found demonetized currency (old) notes for a sum of Rs.61,100/-, however, the same were not seized by the CBI. On the same day, another sum of Rs.4,92,000/- and Rs.10,160/- and demonized currency notes for a sum of Rs.49,000/- were seized from the house of the petitioner situate at Thoubal Athokpam. On 27.2.2020, this Court granted pre-arrest bail in favour of the petitioner.

(iii) It is also alleged that on 12.11.2020, a news item under the caption "*Trouble mounts for former Manipur CM Okram Ibobi Singh, ED all set to file PMLA case*" was published in the online news websites https:/www/timesnownews.com. In the

said news, it is stated that the respondent will soon register case under the PML Act against the petitioner and other serving and retired Government officials. It is also stated in the said news that a sum of Rs.15.47 lakhs in cash and the demonetized currency notes worth Rs.36.49 lakhs were recovered from the official quarters and house of the petitioner. Hence, the petitioner apprehends arrest under the PML Act and filed the petition for anticipatory bail.

3. It is the submission of Mr. Salman Khurshid, learned senior counsel for the petitioner that the sole intention of the present Government in arraying the petitioner as an accused in the case to be registered by the respondent is nothing but to gain political mileage, as if the petitioner, who is Ex-Chief Minister of Manipur, is arrested, then the preset Government would make believe to the people of Manipur that the previous Government was corrupt and the present Government is making all efforts to correct the misdeed done by the previous Government. He would submit that in the online news report, there is no material against the petitioner to

array him as an accused and the allegations in the report are on mere assumption without any cogent material.

4. The learned senior counsel further submitted that the petitioner had not committed any offences as alleged in the report and there is no material to support the report so as to make him as an accused. The report had made a false and fabricated case against the petitioner to wreak political vengeance.

5. The learned senior counsel then submitted that the present allegation/complaint has been made with vested interest by the present Government to crush the political opposition by making a false and fabricated case against the petitioner. Thus, there is an apprehension that as per the report, a criminal case is likely to be registered against the petitioner and that the petitioner might be arrested by the respondent Directorate of Enforcement anytime. He would submit that there is also apprehension that in the prevailing law and order situation of the State, there might be a danger to the life of the petitioner.

6. The learned senior counsel next submitted that in case the petitioner is arrested for no fault of him in connection with the alleged false allegation/complaint, there will be a political vacuum

in the State of Manipur and an irreparable loss and injury will be caused to the opposition political parties and to the people of Manipur and also to the petitioner in person as his reputation will be maligned all over the country. In support of his submissions, the learned counsel relied upon the following decisions:

1) *Barun Chandra Thakur v. Central Bureau of Investigation and others, (2018) 2 SCC 119.*
2) *Sushila Agarwal v. State (NCT of Delhi), (2020) 5 SCC 1.*
3) *Nikesh Tarachand Shah v. Union of India, (2018) 11 SCC 1.*

7. Per contra, Mr. S. Suresh, the learned A.S.G. for the respondent submitted that the respondent Enforcement of Directorate recorded ECIR No.1/GWZO/2019 for initiating investigation under the PML Act for the offence of money laundering committed in relation to the scheduled offences under Sections 420 and 120B of IPC and Section 13(2) of Prevention of Corruption Act, 1988. He would submit that the Government of Manipur, vide notification dated 6.5.2019, accorded sanction to the extension of powers and jurisdiction of the members of the Delhi Special Police Establishment in the whole State of Manipur for carrying out investigation into FIR No.244(9)2017 in connection with the financial irregularities in the MDS, thereby transferring the

case to CBI for investigation. On 22.11.2019, a team of CBI conducted searches in the house, including the official quarters of the petitioner and recovered money and also demonetized currency notes.

8. The learned A.S.G., then submitted that the present application was filed by the petitioner apprehending arrest in connection with the investigation under the PML Act pursuant to the news item published on 12.11.2020. The learned counsel submitted that there is no real apprehension of arrest at this stage in the present case.

9. The learned counsel further submitted that the provision pertaining to anticipatory bail is not applicable to offences under the PML Act and that the petitioner has not approached the Special Court seeking anticipatory bail and filing petition for anticipatory bail before the High Court without approaching the Special Court is liable to be rejected.

10. The further contention of the learned counsel for the respondent is that the economic offences need to be viewed seriously and considered as a class apart and the power to grant anticipatory bail under Section 438 Cr.P.C. being an extraordinary

remedy has to be exercised sparingly more so in cases of economic offences.

11. Mr. S. Suresh, the learned A.S.G., then submitted that the twin conditions for grant of bail under Section 45 of the PML Act have been revived vide 2018 Amendment and that the contention of the petitioner that the twin conditions for the grant of bail specified under Section 45 of the PML Act are struck down is completely untenable. Stating that the present petition is wholly misplaced and premature, the learned counsel prayed for rejection of the petition. In support, the learned A.S.G., placed reliance upon the following judgments:

(1) *Sh. Gurbaksh Singh Sibbia and others v. State of Punjab, (1980) 2 SCC 565.*
(2) *Vinod Kumar v. State of U.P. and another, 2019 SCC OnLine All 4821.*
(3) *Y.S.Jagan Mohan Reddy v. CBI, (2013) 7 SCC 439.*
(4) *Rohit Tandon v. Directorate of Enforcement, (2018) 11 SCC 46.*
(5) *P.Chidambaram v. Directorate of Enforcement, (2019) 9 SCC 24.*
(6) *Nikesh Tarachand Shah v. Union of India and others, (2018) 11 SCC 1.*
(7) *Mohd. Arif v. Government of India, 2020 SCC OnLine Ori 544.*

12. In reply, Mr. Salman Khurshid, the learned senior counsel for the petitioner submitted that the relief of anticipatory bail sought by the petitioner is not premature and that the petitioner's reliance on a news article of a reputed news agency for apprehension of arrest by the respondent cannot tantamount to being speculative.

13. As far as filing of the anticipatory bail before the High Court, the learned counsel for the petitioner reiterated the established principles of concurrent jurisdiction in the matter of anticipatory bail and submitted that it is only a rule of prudence and judicial discipline that High Courts point to exhaust remedy before the Sessions Court. In this regard, by referring to the order passed in A.B.No.21 of 2017, dated 27.2.2020, the learned counsel for the petitioner submitted that this Court on an earlier occasion granted anticipatory bail in respect of the CBI FIR referred and that the present petition is in relation to the same matter and thus, there is sufficient cause for the petitioner in approaching the High Court for anticipatory bail.

14. This Court considered the submissions made by the learned counsel appearing on either side and also perused the materials available on record.

15. Before dealing with the apprehension of the petitioner that the respondent is trying to arrest him on the basis of the news item under the provisions of PML Act, firstly, let us consider the question raised by the respondent **w**hether the petition filed under Section 438 of the Cr.P.C. before the High Court without exhausting remedy before the Court of Sessions Court is maintainable or not.

16. The learned counsel for the respondent vehemently contended that an application seeking anticipatory bail must be preferred before the lower Court and filing anticipatory bail before the High Court straightaway is not maintainable. Reliance in this regard is placed on the judgment of the Gauhati High Court passed in ***Vinod Kumar (supra) and BA.No.3024/2014 (Sri Kwmta Swra Brahma v. State of Assam), decided on 10.4.2015.***

17. In ***Vinod Kumar*** (supra), the Hon'ble Supreme Court held as under:

> *"54. In light of what has been held above, the Court records its conclusions on the questions formulated as under:—*
>
> *A. Section 438 Cr.P.C. on its plain terms does not mandate or require a party to first approach the Sessions Court before applying to the High Court for grant of anticipatory bail. The provision*

as it stands does not require an individual first being relegated to the Court of Sessions before being granted the right of audience before this Court.

B. Notwithstanding concurrent jurisdiction being conferred on the High Court and the Court of Session for grant of anticipatory bail under Section 438 Cr.P.C., strong, cogent, compelling and special circumstances must necessarily be found to exist in justification of the High Court being approached first without the avenue as available before the Court of Sessions being exhausted. Whether those factors are established or found to exist in the facts of a particular case must necessarily be left for the Court to consider in each individual matter.

C. The words "exceptional" or "extraordinary" are understood to mean atypical, rare, out of the ordinary, unusual or uncommon. If the jurisdiction of the Court as conferred by Section 438 Cr.P.C. be circumscribed or be recognised to be moved only in exceptional situations it would again amount to fettering and constricting the discretion otherwise conferred by Section 438 Cr.P.C. Such a construction would be in clear conflict of the statutory mandate. The ratio of Harendra Singh must be recognised to be the

> *requirement of establishing the existence of special, weighty and compelling reasons and circumstances justifying the invocation of the jurisdiction of this Court even though a wholesome avenue of redress was available before the Court of Sessions."*

18. In ***Kwmta Swra*** (supra), the Gauhati High Court held as under:

> *"17. It is therefore necessary that normally a person/accused should file an anticipatory bail application u/s 438 of the CrPC or a bail application u/s 439 of the CrPC before the Sessions Court and thereafter he can approach the High Court. However, this is not an inviolable rule. In exceptional circumstances a person/accused can directly approach the High Court…"*

19. On a plain reading of the provision, it is crystal clear that it confers concurrent jurisdiction on the High Court as well as the Court of Sessions. Wide discretion has been entrusted on the Court of Sessions as well as on the High Court to enlarge such person who comes to the Court, seeking anticipatory bail. Both the Courts have got jurisdiction to enlarge the applicant on anticipatory bail, considering the relevant guidelines in the said provision. By

looking into the above said discussions, it is clear that the party has to approach the Sessions Court first and then he has to approach the High Court which is the normal course. But the Courts have also observed that in an extraordinary circumstances with special reasons, the party can also approach the High Court.

20. The intention of bringing out Section 438 of Cr.P.C. is enabling each and every person in the country if under extraordinary circumstances under exigencies either to approach the Court of Sessions or the High Court which can be concurrently exercised by both the Courts. Though such remedy, cannot be riddled down by imposing any extraordinary condition, but still the Court can refuse to entertain the bail petition and direct the party to approach the Court of Sessions first because Section 438 Cr.P.C. shall not be exercised as a matter of right by the party, though it can be invoked either before the Sessions Court or before the High Court.

21. It is purely the discretionary power of the Court to exercise power depending upon the facts and circumstances of each case. Therefore, the High Court can direct the party to go first before the Court of Sessions and then come to the High Court though there is

no embargo under the statute itself, but the Court can do so on the basis of various factors.

22. It is worth to note here that whenever the concurrent jurisdiction is vested under the statute simultaneously in two Courts of which one is superior to the other, then it is appropriate that the party should apply to the subordinate Court first, because the higher Court would have the advantage of considering the opinion of the Sessions Court. Moreover, the party will get two opportunities to get the remedy either before the Sessions Court or before the High Court, but if once he approaches the High Court, he would run the risk that the other remedy is not available to him if he failed to get the order in the High Court, he cannot go before the Sessions Court for the same remedy. However, vice versa is possible.

23. It is also worth to note here that the Sessions Court and the High Court are concurrently empowered to grant bail under Section 438 of Cr.P.C. The object is that the party who is residing in the remote area can directly approach the Sessions Court which is easily accessible. In order to obviate the very object and purpose, the party has to explain why he did not go to that Court. Otherwise, it amounts to making that provision redundant, so far as the

Sessions Courts are concerned. Even once again re-looking into structure of Section 438 of Cr.P.C., it is purely the discretionary power given to the Court to entertain the petition. It is the discretion given to the Courts to exercise that power. When discretion vests with Court, the party has to explain why he has come to the High Court directly, for the discretionary relief under the said provision.

24. In the instant case, it is stated on behalf of the petitioner that since this Court granted anticipatory bail in A.B.No.21 of 2017, which is a related matter and keeping in view the observations made in the order dated 27.2.2020, the petitioner has filed the present petition for anticipatory bail before the High Court. Since this Court granted anticipatory bail in A.B.No.21 of 2017 on 27.2.2020, which is also a basis giving rise to the instant allegation levelled against the petitioner and also being investigated by the respondent, which was admitted by the respondent Directorate of Enforcement, this Court is of the view that petitioner has explained the special reason for approaching this Court for anticipatory bail. That apart, the news item had received wide coverage in the media and therefore, when the petitioner has directly approached the High Court for grant of anticipatory bail under Section 438 Cr.P.C., that too when the High Court has concurrent jurisdiction, this Court cannot find fault with the action of the petitioner directly

approaching this Court. Thus, the petitioner has made out a valid ground for apprehending arrest by the respondent Directorate Enforcement and also the exceptional circumstances justifying his approaching this Court. In view of the above facts and circumstances, this Court is of the view that the petitioner has explained the reason for rushing to this Court directly for seeking the discretionary relief of anticipatory bail under the provisions of Section 438 of Cr.P.C. and thus, the instant anticipatory bail filed before the High Court is very well maintainable.

25. The background for the allegation of the money laundering alleged by the respondent against the petitioner is admittedly in relation to the CBI case earlier registered against the petitioner and others. Now coming to the CBI FIR bearing RC-DST-2019-A/0011 dated 20.11.2019 (FIR Case No.244(9)2017), Dr.Th.Munindro Singh, Joint Secretary (Planning), Government of Manipur lodged a complaint before the Officer-in-Charge, Imphal Police Station on 01.9.2017 to register a case against (1) Y.Ningthem Singh, former Project Director MDS; (2) D.S.Poonia, IAS, then Chairman MDS; (3) O.Ibobi Singh, the then Chairman of MDS; (v) P.C.Lawmkunga, IAS, the then Chairman of MDS and (5) O.Nabakishore Singh, IAS, the then Chairman of MDS along with one S.Ranjit Singh,

Administrative Officer, MDS alleging cheating, criminal conspiracy and breach of trust, thereby causing loss to the public exchequer. The specific complaint against the petitioner as could be seen from the order in A.B.No.21 of 2017 is as follows:

> *"Being the Chairman of MDS from 1.7.2013 to 31.8.2014, Shri Ob.Ibobi Singh is required to be examined and also record his statement. The projects taken up during his Chairmanship and the transaction done by MDS for various project works of line departments during his tenure needs to be verified and study that no procedural lapses are found and that the prescribed procedures, established norms and extant Rules for implementation of various projects by MDS and other line department are scrupulously observed in public interest.*
>
> *The Chairman of MDS by virtue of his post is the Joint account holder and Joint signatory. The Project Director, MDS alone is not competent to make any transaction, without the knowledge and consent of the Chairman, therefore it is assumed that the Chairman is bound to have knowledge of all transactions of MDS during his tenure of Chairmanship."*

26. It is stated that during the pendency of the said A.B.No.21 of 2017, on 22.11.2019, the personnel of Central Bureau of Investigation conducted searches in the house and the official quarters of the petitioner and seized money, including the demonetized currency notes.

27. According to the petitioner, on 12.11.2020, a news item appeared in the online news website https:///www.timesnownews.com that the respondent will soon register a case under the Prevention of Money Laundering Act against the petitioner and other serving and retired Government officials. The petitioner has also produced the said news item along with the typed set of papers. For better appreciation, the said news item is extracted here under:

> *"Trouble mounts for former Manipur CM Okram Ibobi Singh, ED all set to file PMLA case*
>
> *The ED will also look into the fact that during searches by the CBI last year there was a huge recovery of huge cash including demonetized currency, details of properties and luxury cars purchased.*
>
> *New Delhi: The Enforcement Directorate will soon register a case under the Prevention of*

Money Laundering Act against the former chief minister of Manipur, O Ibobi Singh, serving and retired government officials. The ED had sought documents from the Central Bureau of Investigation, which in last November, had registered a case against Singh.

The ED would take cognizance of the CBI FIR and file a case of money laundering against Singh, Y.Ningthem Singh, former project director Manipur Development Society, DS Poonia retired Indian Administrative Services official and also the former chairman of MDS, PC Lawmuknga, retired IAS and then chairman of MDS and O Nabakishore Singh, retired IAS and ex-chairman MDS."

(emphasis supplied)

28. Highlighting the above said news item dated 12.11.2020 that appeared in the OnLine news captioned *"Trouble mounts for former Manipur CM Okram Ibobi Singh, ED all set to file PMLA case",* the petitioner has filed the instant petition seeking anticipatory bail apprehending arrest in connection with the investigation under the Prevention of Money Laundering Act initiated by the respondent.

29. According to the respondent, there is no valid ground for apprehension of arrest at this stage and the same is premature. It is also the contention of the respondent that no prosecution complaint under the Prevention of Money Laundering Act has been filed by the respondent as on date and that the newspaper reports are merely hearsay and cannot be relied upon by the Courts and therefore, newspaper reports cannot be a basis for a genuine apprehension of arrest for a person seeking anticipatory bail. In support, the learned counsel for the respondent placed reliance upon the decisions in the case of ***Laxmi Raj Shetty and another v. State of Tamil Nadu, (1998) 3 SCC 319 and Quamarul Islam v. S.K.Kanta and others, 1994 Supp (3) SCC 5.***

30. It is argued by the learned counsel for the respondent that the fear of the petitioner that he will be arrested by the respondent based merely on news article is absolutely baseless and a vague apprehension at best and deserves to be rejected. He submits that since the petition for anticipatory bail fails to make out any reasonable belief that the petitioner is likely to be arrested, the same is liable to be dismissed. To fortify his submissions, the learned counsel placed reliance upon the decision in the case of ***Sh. Gurbaksh Singh Sibbia and others v. State of Punjab, (1980) 2 SCC 565.***

31. The learned counsel for the respondent further submitted that the provision pertaining to anticipatory bail is not applicable to offences under the PML Act and that there is absolutely no warrant in law to interfere with the statutory powers of arrest of the Directorate of Enforcement under Section 19 of the Act at this stage. As and when the Directorate of Enforcement forms a reason to believe on the basis of material in its possession that any person has been guilty of an offence punishable under the Act, it may arrest such person.

32. The learned counsel further submitted that a blanket anticipatory bail ought not to be passed during investigation especially under special statutes like Prevention of Money Laundering Act, wherein arrest can take place under Section 19 of the PML Act after formation of a reason to belief on the basis of material in his possession that a person has committed the offence of money laundering.

33. Section 19 of the PML Act deals with the power of the specified officer to arrest. Under sub-section (1) of Section 19 of PML Act, the specified officer viz. the Director, the Deputy Director, Assistant Director or any other officer authorised in this behalf by

the Central Government by general or special order, on the basis of the material in possession, having reason to believe and reasons for such belief be recorded in writing that the person has been guilty of offence punishable under the PMLA, has power to arrest such person. The authorised officer is required to inform the accused the grounds for such arrest at the earliest and in terms of sub- section (3) of Section 19 of the Act, the arrested person is required to be produced to the jurisdictional Judicial Magistrate or Metropolitan Magistrate within 24 hours excluding the journey time from the place of arrest to the Magistrates Court. In order to ensure the safeguards, in exercise of power under Section 73 of the Act, the Central Government has framed "The Prevention of Money-Laundering (The Forms and the Manner of Forwarding a Copy of Order of Arrest of a Person along with the Material to the Adjudicating Authority and its Period of Retention) Rules, 2005". Rule 3 of the said Rules requires the arresting officer to forward a copy of the order of arrest and the material to the Adjudicating Authority in a sealed cover marked confidential and Rule 3 provides for the manner in maintaining the confidentiality of the contents.

34. There is no dispute that the procedure under PML Act for arrest ensures sufficient safeguards viz., (i) only the specified

officers are authorised to arrest; (ii) based on reasons to believe that an offence punishable under the Act has been committed; (iii) the reasons for such belief to be recorded in writing; (iv) evidence and the material submitted to the Adjudicating Authority in sealed envelope in the manner as may be prescribed ensuring the safeguards in maintaining the confidentiality; and (v) every person arrested under PMLA to be produced before the Judicial Magistrate or Metropolitan Magistrate within 24 hours.

35. Section 19 of PML Act provides for the power to arrest to the specified officer on the basis of material in his possession and has reason to believe and the reasons for such belief to be recorded in writing that any person has been guilty of an offence punishable under PML Act. The statutory power has been vested upon the specified officers of higher rank to arrest the person whom the officer has reason to believe that such person has been guilty of an offence punishable under PML Act. In cases of PML Act, in exercising the power to grant anticipatory bail would be to scuttle the statutory power of the specified officers to arrest which is enshrined in the statute with sufficient safeguards.

36. Insofar as the issue of grant of bail is concerned, Section 45 of PML Act starts with non-obstante clause. Section 45 imposes

two conditions for grant of bail to any person accused of any offence punishable for a term of imprisonment of more than three years under Part-A of the Schedule of the PML Act viz., (i) that the prosecutor must be given an opportunity to oppose the application for such bail; (ii) that the court must be satisfied that there are reasonable grounds for believing that the accused persons is not guilty of such offence and that he is not likely to commit any offence while on bail.

37. In ***Nikesh Tarachand Shah*** (supra), the Hon'ble Supreme Court has declared Clause (ii) of sub-Section (1) of Section 45 of PML Act ultra vires Articles 14 and 21 of the Constitution of India.

38. Section 45(1) of the Act, as the same stood, when it was declared ultra vires, read thus:-

> *"45. Offences to be cognizable and non-bailable.-*
> *(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-*
> *(a) every offence punishable under this Act shall be cognizable;*
> *(b) 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 authorised in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government.

(2) The limitation on granting of bail specified in clause (b) of 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."

39. Subsequent to the Hon'ble Supreme Court's decision, in ***Nikesh Tarachand Shah*** (supra), certain amendments were made in various provisions of the PML Act, including Section 45(1). The amending provision, which is relevant for the issue which has arisen in the present matter, reads thus:-

> *"For the words 'punishable for a term of imprisonment of more than three years under Part A of the Schedule', the words 'under this Act' shall be substituted."*

40. Evidently, consequent upon the aforesaid amendment through Finance Act, 2018, Section 45 of the PML Act, as it now stands, reads thus:-

> *"Section 45.- Offences to be cognizable and non-bailable.-*
> *(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence under this Act shall be released on bail or on his own bond unless-*
> *(i) the Public Prosecutor has been given 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 in infirm, or is accused either on his own or along with other co-accused of money laundering a sum of less than one crore rupees may be released on bail, if the Special Court so directs:

Provided further that the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by-

(i) the Director; or

(ii) any officer of the Central Government or State Government authorised in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government. [(1A) Notwithstanding anything contained in the 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 authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.]

> *(2) The limitation on granting of bail specified in clause (b) of 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."*

41. It can be easily deciphered, on comparative reading of Section 45(1) of the PML Act, pre-amendment and post-amendment, that Clause (ii) of sub- Section (1) remained as it stood before amendment.

42. In the aforesaid background, the issue which has arisen in the present matter is as to whether the Hon'ble Supreme Court's decision in case of ***Nikesh Tarachand Shah*** (supra) can be said to have lost its significance because of the aforesaid amendment in Section 45(1) of the PML Act.

43. It is eminent that clause (ii) of sub-Section (1) of Section 45 of the PML Act places two conditions for release of a person accused of an offence under the Act, on bail, if a Public Prosecutor opposes the bail application, namely; the Court is satisfied (i) that there are reasonable grounds for believing that the accused is not guilty of such offence and (ii) that he is not likely to commit any offence while on bail. Whether substitution of the words 'under this

Act' in place of the words 'punishable for a term of imprisonment of more than three years under Part A of the Schedule' in Section 45(1) of the Act, has the impact of meeting with the reasonings and logic incorporated and discussed by the Hon'ble Supreme Court in case of ***Nikesh Tarachand Shah*** (supra) for declaring the Clause (ii) of Sub-section (1) of Section 45 of the Act ultra vires and, therefore, Clause (ii) of sub-Section (1) of Section 45 of the PML Act is in present form should be treated to be valid, despite Hon'ble Supreme Court's decision in case of ***Nikesh Tarachand Shah*** (supra) is the question to be gone into.

44. This petition has been filed under Section 438 of Cr.P.C. for grant of anticipatory bail in connection with ECIR No.1/GWZO/2019 initiated by the respondent which was arising out of RC-DST-2019-A/0011 registered by the CBI, New Delhi for the offences under Sections 420, 406, 120B IPC and Section 13(2) of the Prevention of Corruption Act.

45. As stated supra, the CBI is investigating the case being RC-DST-2019-A/0011, wherein the petitioner was granted anticipatory bail on 27.2.2020 in A.B.No.21 of 2017. While so, on 12.11.2020, a news item published to the effect that the respondent Directorate of Enforcement will soon register a case under the Prevention of

Money Laundering Act against the petitioner. The cause for registering the case under the PML Act against the petitioner is pursuant to the alleged searches conducted by the CBI in the house and the official quarters of the petitioner and seizure of money.

46. The learned counsel for the petitioner submitted that once the provisions have been declared violative of Article 21 of the Constitution of India, the same cannot be said to have revived by introducing amendment of the nature as noted above. He has submitted that the amendment introduced in 2018 in sub- Section (1) of Section 45 of the Act does not amount to reenactment of the provision to the extent it related to imposition of conditions for release on bail, which has been declared ultra vires Articles 14 and 21 of the Constitution of India.

47. Per contra, the learned counsel for the respondent has placed reliance on Hon'ble Supreme Court's decision in case of ***P.Chidambaram*** (supra), which is a judgment subsequent to the aforesaid amendment in Section 45(1) of the PML Act and has submitted that applying the provision under Section 45(1) of the PML Act, the petition for grant of anticipatory bail was rejected in that case.

48. Placing reliance upon the decisions in the cases of ***Y.S.Jagan Mohan Reddy and Rohit Tandon*** (supra), the learned counsel for the respondent submitted that in economic offences, an accused is not entitled for anticipatory bail as gravity of economic offences affects the entire society, and, therefore, constitute a class apart and need to be visited with a different approach in the matter of grant of bail.

49. According to the learned counsel for the respondent, the Hon'ble Supreme Court in the case of ***Nikesh Tarachand Shah*** (supra) declared clause (ii) of Sub-section (1) of Section 45 of the Act ultra vires because of the first part of the provision which controlled the twin conditions, which has been subsequently amended. He has submitted that the prescription of twin-conditions for grant of bail in clause (ii) of Sub-section (1) of Section 45 of the Act has not been held to be ultra vires Articles 14 and 21 of the Constitution of India *per se*. According to the learned counsel, the amended provision of the Act has completely altered the situation.

50. The learned counsel for the respondent argued that with the substitution of the words 'such offences under the Act', now the

conditions for bail apply with respect to an offence of money laundering, which is a heinous economic offence as laid down by the Hon'ble Supreme Court in various cases, including the recent decision in the case of ***P. Chidambaram*** (supra). The learned counsel contended that the twin conditions, mentioned in Section 45(1) of the PML Act, imperative for grant of bail have been declared ultra vires by the Hon'ble Supreme Court in case of ***Nikesh Tarachand Shah*** (supra) not because of any inherent defect in these two conditions in itself, but because of its dependence on the applicability, relatable only to the offences in Part A of the Schedule; for the reason that the offences under Part A of the Schedule are not offences of money laundering rather different predicate offences.

51. The learned counsel for the respondent submitted that the amendment has been introduced with effect from 19.04.2018 after taking note of the decision of the Hon'ble Supreme Court in case of ***Nikesh Tarachand Shah*** (supra) and the defects, which were pointed out in the judgment, have thus been rectified i.e., in place of the term "punishable for a term of imprisonment of more than three years of Part A of the Schedule", "under this Act" has been substituted. He thus submits that the twin-conditions have now become referable and relatable to the offence under the PML Act.

52. To appreciate rival submissions made on behalf of the parties on the question of purpose and effect of the amendment in question in sub-Section (1) of Section 45 of the Act, it would be apt to take note of the purpose of the amendment and the Hon'ble Supreme Court's observation in case of ***Nikesh Tarachand Shah*** (supra) while dealing with various provisions of the Act and considering the challenge to the validity of Section 45(1) of the Act.

53. In ***Y.S.Jagan Mohan Reddy*** (supra), the Hon'ble Supreme Court held:

> *"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."*

In ***Rohit Tandon*** (supra), the Hon'ble Supreme Court held:

> *"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."

54. The statutory history of Section 45 of the PML Act has been elaborately discussed in ***Nikesh Tarachand Shah*** (supra) by the Hon'ble Supreme Court in paragraphs 26 to 30. In fact, the Hon'ble Supreme Court has explained, with illustrations, the effect of the twin conditions imposed for grant of bail, if a person was accused of offence punishable for a term of imprisonment of more than three years under Part A of the Schedule. The Hon'ble Supreme Court observed in paragraph 31 as under:-

"31. ..... The statutory scheme, as originally enacted, with Section 45 in its present avatar, would, therefore, lead to the same offenders in different cases having different results qua bail depending on whether Section 45 does or does not apply. The first would be cases where the

charge would only be of money laundering and nothing else, as would be the case where the scheduled offence in Part A has already been tried, and persons charged under the scheduled offence have or have not been enlarged on bail under the Code of Criminal Procedure and thereafter convicted or acquitted. The proceeds of crime from such scheduled offence may well be discovered much later in the hands of Mr. X, who now becomes charged with the crime of money laundering under the 2002 Act. The predicate or scheduled offence has already been tried and the accused persons convicted/acquitted in this illustration, and Mr. X now applies for bail to the Special Court/High Court. The Special Court/High Court, in this illustration, would grant him bail under Section 439 of the Code of Criminal Procedure the Special Court is deemed to be a Sessions Court and can, thus, enlarge Mr. X on bail, with or without conditions, under Section 439. It is important to note that Mr. X would not have to satisfy the twin conditions mentioned in Section 45 of the 2002 Act in order to be enlarged on bail, pending trial for an offence under the 2002 Act."

55. The second illustration finds place in paragraph 32 of the judgment in the case of ***Nikesh Tarachand Shah*** (supra), in a situation, when a person being charged with an offence in Part A of

the Schedule together with a predicate offence in Part B of the Schedule. The Hon'ble Supreme Court observed in paragraph 32 as under:-

> *"The second illustration would be of Mr. X being charged with an offence under the 2002 Act together with a predicate offence contained in Part B of the Schedule. Both these offences would be tried together. In this case, again, the Special Court/High Court can enlarge Mr. X on bail, with or without conditions, under Section 439 of the Code of Criminal Procedure, as Section 45 of the 2002 Act would not apply."S*

56. Third illustration finds place in paragraph 32 in following terms:-

> *"In a third illustration, Mr. X can be charged under the 2002 Act together with a predicate offence contained in Part A of the Schedule in which the term for imprisonment would be 3 years or less than 3 years (this would apply only post the Amendment Act of 2012 when predicate offences of 3 years and less than 3 years contained in Part B were all lifted into Part A). In this illustration, again, Mr. X would be liable to be enlarged on bail under Section 439 of the Code of Criminal Procedure by the Special Court/High Court, with*

or without conditions, as Section 45 of the 2002 Act would have no application."

57. By way of fourth illustration, the Hon'ble Supreme Court considered a situation where a persons is prosecuted for an offence under the Act and an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule and then discussed the consequences thereof. The Hon'ble Supreme Court observed as under:-

"In this illustration, the Special Court/High Court would enlarge Mr. X on bail only if the conditions specified in Section 45(1) are satisfied and not otherwise. In the fourth illustration, Section 45 would apply in a joint trial of offences under the Act and under Part A of the Schedule because the only thing that is to be seen for the purpose of granting bail, under this Section, is the alleged occurrence of a Part A scheduled offence, which has imprisonment for over three years. The likelihood of Mr. X being enlarged on bail in the first three illustrations is far greater than in the fourth illustration, dependant only upon the circumstance that Mr. X is being prosecuted for a Schedule A offence which has imprisonment for over 3 years, a circumstance which has no nexus with the grant of bail for the offence of money laundering. The mere circumstance that the

offence of money laundering is being tried with the Schedule A offence without more cannot naturally lead to the grant or denial of bail (by applying Section 45(1)) for the offence of money laundering and the predicate offence."

58. The Hon'ble Supreme Court thus noticed anomalies in prescribing conditions for entertaining petition for grant of bail under Section 45(1) of the Act with reference to the Scheduled offences. The Hon'ble Supreme Court, in paragraph 46 of the judgment in case of ***Nikesh Tarachand Shah*** (supra), has held that Section 45 of the PML Act is a drastic provision which makes drastic inroads into the fundamental right of personal liberty guaranteed under Article 21 of the Constitution of India. It was observed that before application of such provision, one must be doubly sure that it furthers a compelling State interest in tackling serious crimes. Absent any such compelling State's interest, indiscriminate application of the provisions of Section 45 will certainly violate Article 21 of the Constitution. The Hon'ble Supreme Court noted that the provisions akin to Section 45 have been upheld on the ground that there was compelling State interest in tackling crimes of an extremely heinous nature. For better appreciation, paragraph 46 in the case of ***Nikesh Tarachand Shah*** (supra) is extracted herein under:

> *"46. We must not forget that Section 45 is a drastic provision which turns on its head the presumption of innocence which is fundamental to a person accused of any offence. Before application of a section which makes drastic inroads into the fundamental right of personal liberty guaranteed by Article 21 of the Constitution of India, we must be doubly sure that such provision furthers a compelling State interest for tackling serious crime. Absent any such compelling State interest, the indiscriminate application of the provisions of Section 45 will certainly violate Article 21 of the Constitution. Provisions akin to Section 45 have only been upheld on the ground that there is a compelling State interest in tackling crimes of an extremely heinous nature."*

59. At this juncture, it is to be noted that the Hon'ble Supreme Court clearly held that indiscriminate application of the provision of Section 45 of the PML Act will certainly violate Article 21 of the Constitution of India.

60. In the aforesaid background, it is to be seen as to whether the amendment introduced in Section 45 of the Act, as noted above, by Act No. 13 of 2018, shall amount to re-framing the entire Section 45 and thereby reviving and resurrecting the requirement

of twin-conditions under sub-Section (1) of Section 45 of the PML Act for grant of bail. In view of clear language used in paragraph 46 of the Hon'ble Supreme Court's decision in case of ***Nikesh Tarachand Shah*** (supra), this Court has no hesitation in reaching a definite conclusion that the amendment in sub-Section (1) of Section 45 of the PML Act introduced after the Hon'ble Supreme Court's decision in case of ***Nikesh Tarachand Shah*** (supra) does not have the effect of reviving the twin-conditions for grant of bail, which have been declared ultra vires Articles 14 and 21 of the Constitution of India.

61. This Court finds no force in the submission made by the learned counsel for the respondent that a different view has been taken in case of ***P.Chidambaram*** (supra) by the Hon'ble Supreme Court than the view taken in case of ***Nikesh Tarachand Shah*** (supra) on the question of constitutional validity of sub-Section (1) of Section 45 of the PML Act. There is no discussion in this regard in ***P.Chidambaram*** (supra). The application for anticipatory bail in the case of ***P.Chidambaram*** (supra) was rejected on merits of the allegation and other materials. Keeping in view the aforesaid decision and the ratio laid down and also on going through the decision of the Hon'ble Supreme Court in the case of

P.Chidambaram (supra), this Court is of the opinion that this Court is not having any difference of opinion with regard to the ratio laid down in the said decision.

62. It is trite law that in case of economic offences, which is having an impact on the society, the Court must be very slow in exercising the discretion under Section 438 of Cr.P.C. But on perusal of the factual matrix of the case on hand, *prima facie*, there is no material to come to the conclusion that the act of the petitioner is having impact on the financial status of the country as a whole and in that light the ratio laid down in ***P.Chidambaram*** (supra) is not applicable to the facts of the present case.

63. Coming to the merits of the case, this Court in the earlier paragraph outlined the allegation leveled against the petitioner through web news/news article. The news item appeared in the online news is captioned as *"Trouble mounts for former Manipur CM Okram Ibobi Singh, ED all set to file PMLA case"*. In the said news, it is stated that the respondent will soon register case under the PML Act against the petitioner and other serving and retired Government officials. It is also stated in the said news that a sum of Rs.15.47 lakhs in cash and the demonetized currency notes

worth Rs.36.49 lakhs were recovered from the official quarters and house of the petitioner.

64. The power under Section 438 of Cr.P.C. is an extraordinary power which was incorporated before other provisions for granting of bail under Section 437 and 439 of Cr.P.C. and judicial discretion is a matter regard and required to be exercised with due care and caution. Grant or refusal of bail is entirely discretionary and discretion should depend upon the facts and circumstances of each case. Certain parameters have to be kept in mind while considering or dealing with the application for anticipatory bail. Those guidelines have been laid down by the Hon'ble Supreme Court in the case of ***Siddharam Satlingappa Mhetre v. State of Maharashtra and others, (2011) 1 SCC 694.*** In paragraph 112, the Hon'ble Supreme Court held as under:-

> *"112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:*
>
> *(i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;*
>
> *(ii) The antecedents of the applicant including the fact as to whether the accused has*

previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(iii) The possibility of the applicant to flee from justice;

(iv) The possibility of the accused's likelihood to repeat similar or other offences;

(v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

(viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck

between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

65. While considering the bail application, the parameters which have to be considered has been stated in the case of ***Siddharam Satlingappa Mhetre*** (supra) have to be kept in view. Keeping in view the said ratio laid down, on perusal of the factual matrix on hand, the allegation leveled against the petitioner has to be considered and appreciated during the course of trial. The only consideration which has to be looked into for the purpose of granting or refusing bail is whether the accused would be readily

available for trial and whether he is likely to abuse the discretion granted in his favour by tampering with evidence. If there is no *prima facie* case, there is no question of considering other circumstances. Even where a *prima facie* case is established, the approach of the Court in the matter of bail is not that the accused should be detained by way of punishment, but whether the presence of the accused would be readily available for trial or that he is likely to abuse the discretion granted in his favour.

66. In ***Bhagirathsinh Judeja v. State of Gujarat, AIR 1984 SC 372,*** the Hon'ble Supreme Court observed as under:-

> *"It is now well-settled by a catena of decision of the Supreme Court that the power to grant bail is not to be exercised as if the punishment before trial is being imposed. The only material considerations in such a situation are whether the accused would be readily available for his trial and whether he is likely to abuse the discretion granted in his favour by tampering with evidence. If there is no prima facie there is no question of considering other circumstances. But even where a prima facie case is established, the approach of the Court in the matter of bail is not that the accused should be detained by way of punishment but whether the presence of the accused would be readily*

available for trial or that he is likely to abuse the discretion granted in his favour by tampering with evidence."

67. In catena of decisions, the law relating to grant of anticipatory bail has been discussed and emphasized that the provisions of anticipatory bail enshrined in Section 438 of Cr.P.C. is conceptualized under Article 21 of the Constitution of India which relates to personal liberty and it shall be given a liberal interpretation. This aspect has also been upheld by the Hon'ble Supreme Court in the case of ***Bhadresh Bipinbhai Sheth v. State of Gujarat and another, (2016) 1 SCC 152,*** wherein it has been observed as under:-

"21. Before we proceed further, we would like to discuss the law relating to grant of anticipatory bail as has been developed through judicial interpretative process. A judgment which needs to be pointed out is a Constitution Bench judgment of this Court in Gurbaksh Singh Sibbiav. State of Punjab [(1980) 2 SCC 565 : 1980 SCC (Cri) 465]. The Constitution Bench in this case emphasised that provision of anticipatory bail enshrined in Section 438 of the Code is conceptualised under Article 21 of the Constitution which relates to personal liberty. Therefore, such a provision calls for liberal interpretation of Section 438 of the

Code in light of Article 21 of the Constitution. The Code explains that an anticipatory bail is a pre-arrest legal process which directs that if the person in whose favour it is issued is thereafter arrested on the accusation in respect of which the direction is issued, he shall be released on bail. The distinction between an ordinary order of bail and an order of anticipatory bail is that whereas the former is granted after arrest and therefore means release from the custody of the police, the latter is granted in anticipation of arrest and is therefore, effective at the very moment of arrest. A direction under Section 438 is therefore intended to confer conditional immunity from the "touch" or confinement contemplated by Section 46 of the Code. The essence of this provision is brought out in the following manner: (Gurbaksh Singh case [(1980) 2 SCC 565 : 1980 SCC (Cri) 465] , SCC p. 586, para 26)

> *"26. We find a great deal of substance in Mr Tarkunde's submission that since denial of bail amounts to deprivation of personal liberty, the court should lean against the imposition of unnecessary restrictions on the scope of Section 438, especially when no such restrictions have been imposed by the legislature in the terms of that section. Section 438 is a procedural provision which is concerned with the personal liberty of the*

> *individual, who is entitled to the benefit of the presumption of innocence since he is not, on the date of his application for anticipatory bail, convicted of the offence in respect of which he seeks bail. An overgenerous infusion of constraints and conditions which are not to be found in Section 438 can make its provisions constitutionally vulnerable since the right to personal freedom cannot be made to depend on compliance with unreasonable restrictions. The beneficent provision contained in Section 438 must be saved, not jettisoned. No doubt can linger after the decision in Maneka Gandhi v. Union of India [(1978) 1 SCC 248],, that in order to meet the challenge of Article 21 of the Constitution, the procedure established by law for depriving a person of his liberty must be fair, just and reasonable. Section 438, in the form in which it is conceived by the legislature, is open to no exception on the ground that it prescribes a procedure which is unjust or unfair. We ought, at all costs, to avoid throwing it open to a Constitutional challenge by reading words in it which are not to be found therein."*

68. Keeping in view the ratio laid down in the aforesaid decision and on perusal of the submissions made on behalf of the parties,

the allegations in the form of news levelled against the petitioner are all the matters which have to be considered and appreciated during the course of trial and it is in the form of document and evidence. If any further information is required, one of the conditions will be that the petitioner has to co-operate with the investigation and the Investigating Officer can investigate by questioning the petitioner in this behalf to extract whatever material which is required for the purpose of investigation.

69. Section 438 Cr.P.C. clearly stipulates in the beginning statement itself that when a person has a reasonable apprehension to believe that they can be arrested on an accusation for commitment of a non-bailable offence, they can move the High Court or the Court of Sessions for grant of an anticipatory bail. The approaching of the petitioner to the High Court has been discussed earlier and held that the petition for anticipatory bail filed before this Court is very well maintainable.

70. The power to grant anticipatory bail must be exercised by the Court in very exceptional cases. The Court must be satisfied that there is a reasonable cause and a reasonable ground for grant of anticipatory bail. Section 438 Cr.P.C. protects the right to life and personal liberty of such persons by providing them with a remedy

against frivolous detention. In a country where rifts and rivalries are common, its citizens should have a remedy which prevents disgracing their right to life and personal liberty.

71. It is the duty of the Court to exercise its jurisdiction to protect the personal liberty of a citizen. The High Court should not foreclose itself from the exercise of the power when a citizen has been arbitrarily deprived of their personal liberty in an excess of state power. If the Courts do not interfere, we are troubling the path on destruction. This proposition of law has been laid down by the Hon'ble Supreme Court in its recent decision in the case of ***Arnab Manoranjan Goswami v. The State of Maharashtra and Others, decided on 11.11.2020***.

72. This Court is also of the view that the PML Act is very silent for granting anticipatory bail, however, when a person's personal liberty is violated, anticipatory bail can be granted. Further, when the Directorate of Enforcement under Section 19 of the PML Act based on the materials available is empowered to arrest a person, the said person is equally entitled to seek anticipatory bail before the Court as per law, as it deals with his personal liberty, which is a fundamental right guaranteed under the Constitution of India.

73. If an application for anticipatory bail is made to the High Court or the Court of Sessions, it must apply its own mind to the question and decide whether a case has been made out for granting such relief. *Prima facie*, in the instant case, the involvement of the petitioner in the alleged money laundering cannot be gone into as the investigation is at the initial stage.

74. In a catena of judgments, the Hon'ble Supreme Court explained the object of Section 438 Cr.P.C. to mean that a person should not be harassed or humiliated in order to satisfy the grudge or personal vendetta of the complainant.

75. It is the specific case of the petitioner that he being the Ex-Chief Minister of Manipur has been falsely implicated in order to gain political mileage and further if the petitioner is arrested, then the present Government would make believe to the people of Manipur that the previous Government was corrupt and the present Government is making all efforts to correct the misdeeds done by the previous Government. This Court does not want to enter into the political thicket, but at the same time, the contention of the petitioner that all the allegations are on mere assumption without any cogent material cannot be ignored.

76. The plea of the respondent Directorate of Enforcement that approximately 64% of the total fund was systematically siphoned off and they will also look into the fact that during search by the CBI last year, there was a huge recovery of cash including demonetized currency notes are all admittedly, requires appreciation of evidence and the same cannot be a ground for refusing to grant anticipatory bail to the petitioner.

77. No flexible guidelines or straitjacket formula can be provided for grant or refusal of the anticipatory bail because all circumstances and situations of future cannot be clearly visualised for the grant or refusal of anticipatory bail. In consonance with legislative intention, the grant or refusal of anticipatory bail should necessarily depend on the facts and circumstances of each case.

78. When a person apprehends arrest and approaches a Court for anticipatory bail, his/her apprehension has to be based on concrete facts relatable to a specific or particular offence. Petition seeking anticipatory bail should contain clear and essential facts relating to the offence, and why the applicant reasonably apprehends his/her arrest, as well as his/her version of the facts.

79. In the present case, the apprehension expressed by the petitioner is based on news item and the respondent also admitted that there was news item and they have initiated investigation under the Prevention of Money Laundering Act against the petitioner.

80. Though the respondent contends that no prosecution complaint under the PML Act has been filed by them against the petitioner, in his written submission, the learned counsel for the respondent categorically stated that the Directorate of Enforcement recorded ECIR No.01/GWZO/2019 for initiating investigation under the Prevention of Money Laundering Act for the offence of money laundering committed in relation to the scheduled offences under Section 420 and 120B of the Indian Penal Code and Section 13(2) of the Prevention of Corruption Act, 1988. Thus, it is clear that the respondent Directorate of Enforcement is trying to initiate and/or register a case against the petitioner for the alleged money laundering. Therefore, as rightly argued by the learned counsel for the petitioner that there is a fear of petitioner that he will be arrested by the respondent based on the aforesaid news article.

81. It is true that antecedents of the accused must be seen while considering the bail application, but at the same time the

allegations levelled by the respondent must also be seen. Court has to put the facts of the case of the respondent and the petitioner into a scale and weigh it to ascertain the truth. This Court is of the considered opinion that in order to ascertain the truth, a fair and unbiased investigation is necessary. In that light, by imposing some stringent conditions, if the petitioner is ordered to be released on anticipatory bail, it would serve both the ends. It would be worth to mention at this stage that as against the anticipatory bail granted in A.B.No.21 of 2017, the CBI has not preferred any appeal and the petitioner is having benefit of anticipatory bail in FIR No244(9)2017.

82. Since the news item appeared in the online news is pursuant to the CBI investigation, in which the petitioner has got anticipatory bail, now the apprehension stated by the petitioner is bona fide and as stated supra, the respondent themselves admitted that they have initiated investigation against the petitioner under the Prevention of Money Laundering Act. Thus, this Court is of the opinion that the apprehension of arrest by the respondent Directorate Enforcement is well founded and reasonable as the petitioner is a public person. This Court cannot lost sight of the fact that the news article had received wide publication/coverage in the media, both electronic and print. In the aforesaid facts and

circumstances of the case, the interest of justice warrants grant of anticipatory bail to the petitioner in the investigation being conducted by the respondent under the Prevention of Money Laundering Act. Further, the petitioner is duty bound to co-operate with the investigation by the respondent at all stages.

83. Before parting, it is apposite to note that the petitioner is the Ex-Chief Minister of the State and it is not as if he will run away from the prosecution, if any, initiated against him. The learned counsel for the petitioner, during the course of the arguments, explicitly stated that the petitioner would extend fullest cooperation if any prosecution is initiated. It is also nowhere the case of the respondent that the petitioner is likely to abscond or avoid participating in the prosecution. This Court finds this to be an acceptable plea on behalf of the petitioner.

84. In the result, the petition is allowed and the petitioner is granted anticipatory bail in connection with the respondent investigation in ECIR No.01/GWZO/2019. In the event of his arrest in the aforementioned investigation, subject to the following conditions:-

i) *The petitioner, namely Okram Ibobi Singh, son of O.Angoubi Singh shall execute a personal bond for Rs.1,00,000/- (Rupees one lakh only) with two sureties for the like sum to the satisfaction of the respondent Directorate of Enforcement.*

ii) *The petitioner shall surrender before the respondent Directorate of Enforcement within fifteen days from today, failing which this order shall automatically stand cancelled.*

iii) *The petitioner shall co-operate with the investigation as and when required by the respondent Directorate of Enforcement.*

iv) *If the petitioner fails to appear despite summons, the respondent is at liberty to approach this Court for cancellation of anticipatory bail.*

v) *The petitioner shall not tamper with the prosecution evidence in any manner.*

vi) *The petitioner shall not leave the country without permission of the respondent Enforcement Directorate.*

vii) The petitioner shall not indulge in similar type of criminal activities in future.

viii) If the petitioner violates any one of the conditions, the bail is liable to be cancelled.

85. Registry is directed to issue copy of this order to both parties through their WhatsApp/E-mail.

JUDGE

FR/NFR

Sushil

Yumkham Rother

Digitally signed by Yumkham Rother
Date: 2020.12.16 12:41:35 +05'30'