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HIGH COURT OF CHHATTISGARH, BILASPUR**M.Cr.C.(A) No.469 of 2020**Order Reserved on : 14.7.2020Order Passed on : 14.8.2020

Anil Tuteja, S/o Late Shri H.L. Tuteja, aged about 58 years, R/o Near Zonal Office, State Bank of India, Baron Bazar, P.S. Civil Lines, Raipur, Tahsil and District Raipur, Chhattisgarh

---- Applicant

versus

1. The Director, Directorate of Enforcement, 6th Floor, Lok Nayak Bhawan, Khan Market, New Delhi – 110003
2. The Special Director, Directorate of Enforcement, Central Region, Delhi MTNL Building, 1st & 2nd Floor, Jawahar Lal Nehru Marg, New Delhi – 110002
3. The Joint Director, Directorate of Enforcement, PJZO, Jeevan Vishwas Building, 1st and 2nd Floor, E.D.C. Complex, Patto Plaza, Panaji, Goa-403001
4. The Deputy Director, Directorate of Enforcement, Raipur Sub-Zonal Office, A-1 Block, Pujari Complex, New Dhamtari Road, Pachpedi Naka, Raipur, Chhattisgarh
5. The Assistant Director, Directorate of Enforcement, Room No.17, 10A, Jam Nagar House, Akbar Road, New Delhi, 110001

---- Respondents

and**M.Cr.C.(A) No.484 of 2020**

Alok Shukla, S/o Late Shri T.C. Shukla, aged 59 years, R/o C-1/4, Officers Colony, Raipur, Chhattisgarh, Currently Posted As Principal Secretary to Government of Chhattisgarh

---- Applicant

versus

1. Directorate of Enforcement, through the Director, 6th Floor, Lok Nayak Bhawan, Khan Market, New Delhi – 110003
2. Directorate of Enforcement, through the Special Director, Central Region, Delhi MTNL Building, 1st and 2nd Floor, Jawahar Lal Nehru Marg, New Delhi – 110002
3. Directorate of Enforcement, through the Joint Director, PJZO, Jeevan Vishwas Building, 1st and 2nd Floor, E.D.C. Complex, Patto Plaza, Panaji, Goa- 403001

4. Directorate of Enforcement, through the Deputy Director, Raipur Sub-Zonal Office, A-1 Block, Pujari Complex, New Dhamtari Road, Pachpedi Naka, Raipur, Chhattisgarh
5. Directorate of Enforcement, through Assistant Director, Room No.17, 10A, Jam Nagar House, Akbar Road, New Delhi - 110001

---- Respondents

For Applicants : Shri Avi Singh and Shri Aayush Bhatia, Advocates

For Respondents : Shri B. Gopa Kumar, Assistant Solicitor General and
Dr. Saurabh Kumar Pande, Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. ORDER

1. Since both the anticipatory bail applications arise out of a common offence and crime/ECIR case registered with the Directorate of Enforcement, they are heard and disposed of together.
2. The instant are first applications for grant of anticipatory bail to the Applicants. They are apprehending their arrest in connection with Crime/ECIR No.ECIR/RPSZO/01/2019 registered with the Directorate of Enforcement, Raipur (now, as submitted by Learned Assistant Solicitor General, said ECIR case has been transferred to the Directorate of Enforcement, New Delhi) for offence punishable under Sections 3 and 4 of the Prevention of Money-Laundering Act, 2002 ('PMLA' for brevity).
3. The case, in brief, is that the Anti Corruption Bureau/Economic Offences Wing (ACB/EOW for short), Raipur had registered First Information Report bearing FIR No.9/2015 dated 12.2.2015 against Shiv Shankar Bhatt and 26 other persons in which both the present Applicants were also roped in for alleged commission of offence punishable under Sections 13(1)(e) and 13(2) of the Prevention of Corruption Act, 1988 and Sections 109 and 120B of

the Indian Penal Code in the supplementary charge-sheet filed by the ACB/EOW on 5.12.2019. It is alleged that at the relevant time Applicant Alok Shukla was working as the Chairman and Applicant Anil Tuteja was working as the Managing Director in the Public Distribution Corporation (Nagrik Apurti Nigam (in short 'NAN')). It is further alleged that both the Applicants involved in corruption and criminal conspiracy in which the ACB/EOW raided few offices and residences and amongst other things a pen drive was also seized from possession of Girish Sharma, P.A. to Applicant Anil Tuteja consisting of details of transactions between government officials, whereby it was found that Applicant Anil Tuteja received an amount of Rs.2,21,94,000 and Applicant Alok Shukla received an amount of Rs.1,51,43,000 illegally during the period from 30.5.2014 to 18.2.2015 and 1.7.2014 to 18.2.2015, respectively. Allegedly, during that period, both the Applicants patronized and developed a system of illegal collection of money. The money was collected as bribe by the NAN officials and Quality Inspectors posted in all the districts of the State of Chhattisgarh for procuring poor quality of rice from rice millers. It is alleged that during the Applicants' tenure, lakhs of quintals of poor quality of rice were procured and a system of regular collection of crores of rupees was developed and systematic accounts of district-wise collection were also maintained and inter-districts transportation was done contrary to government orders. Further case of the Respondents is that statements of Girish Sharma and Jeetram Yadav recorded under Section 50 of PMLA reveal that some expenses like airline tickets, taxi payments, hospital payments, forex exchanges, institute/club payments, LIC payments were also made by Girish

Sharma on behalf of both the Applicants and it also reveals that both the Applicants had allowed movement of rice against the prevalent guidelines of NAN and they had also unauthorisedly allowed Shiv Shankar Bhatt to put up files relating to transportation of rice, whereas M.N. Prasad Rao was authorised to deal with those files. On 13.3.2020, the Directorate of Enforcement issued summons to the Applicants for production of records. Therefore, apprehending their arrest the Applicants have moved the instant applications for their release on anticipatory bail.

4. Learned Counsel appearing for the Applicants jointly submitted that both the Applicants have already been granted anticipatory bail in connection with Crime No.9/2015 registered with ACB/EOW for commission of offence punishable under Sections 109, 120B, 409, 420 of the Indian Penal Code and Section 13(1)(d) read with Sections 13(2) and 11 of the Prevention of Corruption Act. The orders granting anticipatory bail to the Applicants were passed by this Court in M.Cr.C.(A) No.1679 of 2018 (Anil Tuteja v. State of Chhattisgarh) (Annexure A-4) and M.Cr.C.(A) No.788 of 2019 (Alok Shukla v. State of Chhattisgarh) (Annexure A-4) on 29.4.2019 and 16.10.2019, respectively. It was further submitted that trial of predicate offence is at dormant stage by virtue of the order dated 24.9.2019 passed by this Court in Criminal Revision No.730 of 2019 (State of Chhattisgarh v. Shivshankar Bhatt and others) (Annexure A-5). No departmental inquiry has been initiated against any of the Applicants nor has even a show cause notice been issued to them. The Central Government and the State Government have granted sanctions to prosecute the

Applicants on 4.7.2016 and 17.7.2016, respectively. However, having no explained reason, the supplementary charge-sheet was filed on 5.12.2019 when the State was awaiting the results of election. The Directorate of Enforcement registered the ECIR case on 9.1.2019 and summons were received by the Applicants in March, 2020, i.e., after more than 1 year of registration of the ECIR case. The ECIR case was registered by the Directorate of Enforcement in the jurisdiction of sub-zonal office situated at Raipur and the summons dated 13.3.2020 were issued by Respondent No.5. Therefore, by issuing a summons, Respondent No.5, acting in a *mala fide* whimsical manner has chosen his own jurisdiction as per his own convenience boosted and motivated by political vendetta. Respondent No.5, in *mala fide* way, wants to transfer the jurisdiction of the case to Delhi. In predicate offence, the prosecution has cited 212 witnesses, out of which 153 witnesses have already been examined. All the 25 rice millers and all 5 transporters cited as prosecution witnesses have already deposed in the Trial Court that there was no demand of bribe by any person of NAN and they did not give any bribe to any person. Similarly, all 12 field employees of NAN and all 4 headquarter employees of NAN have also denied in their deposition before the Trial Court about collection and distribution of illegal money. It was further submitted that all the allegations are baseless, concocted and devoid of merit. There is no direct evidence against any of the Applicants. The events leading to the NAN scam relate to a period of 4-5 years ago. Therefore, the question of Applicants influencing any witness or tampering with any documentary evidence does not arise. Both the Applicants are

officers of All India Administrative Services and working with the Government of Chhattisgarh. They belong to respected families. They have no criminal antecedent. It was further submitted that during pendency of these bail applications, as directed by this Court, they have fully cooperated with the investigation and during the period of pandemic Covid-19 on being summoned by the Respondents both visited Delhi and the Directorate of Enforcement have interrogated them for 3 days at Delhi and both the Applicants have given their statements before the Directorate of Enforcement. Case of the Respondents is based only on the contents of the pen drive seized from Girish Sharma. There is no direct evidence against any of the Applicants. In the predicate offence also, no recovery was made by the prosecution from the present Applicants. They have fully cooperated with the investigation and their statements have also been recorded and, therefore, their custodial interrogation is not required. Hence, it was submitted that the Applicants may be granted benefit of anticipatory bail.

5. Learned Counsel appearing for the Respondents jointly opposed the anticipatory bail applications. First, referring to the judgment passed by the Allahabad High Court in **Harendra Singh @ Harendra Bahadur v. The State of U.P.** passed in Criminal Act Misc. Application No.6478 of 2019 (Bail), it was argued that the Applicants have preferred the instant bail applications under Section 438 of the Code of Criminal Procedure before this Court directly and they have not assigned any reason why did they not approach to the Court of Session seeking the said relief and, therefore, the present applications moved before this Court are not

maintainable. Further, referring to the judgment in **Mrs. Nalini Chidambaram v. The Directorate of Enforcement** passed by the Madras High Court in Writ Petitions No.32848 and 32849 of 2016 on 24.4.2014, it was submitted by Learned Assistant Solicitor General that the present investigation is being carried out against commission of offence of money laundering under PMLA and the same is nowhere connected with the investigation, inquiry, trial, any outcome of trial of the scheduled offence or any other case. The investigation and the proceedings in both the cases are different and same are not connected with each other by any stretch of imagination. Further, referring to the judgments in **Union of India v. Hassan Ali Khan, (2011) 10 SCC 235** and **Gautam Kundu v. Manoj Kumar, Assistant Director, Eastern Region, Directorate of Enforcement, Criminal Appeal No.1706 of 2015**, it was submitted that under Section 24 of PMLA, the burden of proof to demonstrate non-involvement is upon the person charged with the offence of money laundering. Thus, the duty to prove innocence and not guilty of money laundering is upon the present Applicants. Further, referring to the provisions of Section 45 of PMLA, Learned Assistant Solicitor General submitted that since in the instant case, the money laundering which relates to the Applicants is of more than Rupees One Crore, the Applicants are not entitled to get benefit of anticipatory bail. It was further submitted by Learned Assistant Solicitor General that apart from the statements of Girish Sharma and Jeetram Yadav recorded under Section 50 of PMLA, from the data retrieved from the pen drive and voice transcripts of conversation took between Girish Sharma and Anil Tuteja and his son Yash Tuteja recorded by the

ACB, it is also evident that Girish Sharma delivered a sum of Rupees Twenty Seven Lakhs to Yash Tuteja, the son of Applicant Anil Tuteja in the month of January, 2015 as per the instructions of Applicant Anil Tuteja. Therefore, sufficient material is available against both the Applicants. Learned Assistant Solicitor General further referred to various judgments of the Supreme Court and submitted that granting anticipatory bail is extra ordinary in character and only in exceptional cases wherein it appears that a person is falsely implicated or frivolous case is lodged against him or there are reasonable grounds for holding that a person accused of offence is not likely to abscond or otherwise misuse his liberty while on bail, such power should be exercised. The present case involves laundering of huge money. Therefore, it was prayed that the present applications for grant of anticipatory bail may be rejected. It was also submitted by Learned Assistant Solicitor General that the investigation is at very crucial stage and various entries made in 4 pages and other entries available in pen drive data as also other incriminating evidence are yet to be verified and the same require further investigation to establish role of the present Applicants. Therefore, custodial interrogation of the Applicants is also required. With regard to transfer of the case from the jurisdiction of Raipur to Delhi, it was submitted by Learned Assistant Solicitor General that ECIR is transferred only on the ground of administrative reasons and for this there is no bar.

6. As regards the arguments advanced by Learned Counsel appearing for the Respondents, Learned Counsel appearing for the Applicants submitted as under:

(i)	With regard to the jurisdiction of the Court, relying on the judgments in Barun Chandra Thakur v. Central Bureau of Investigation, (2018) 12 SCC 119, Vinod Kumar v. State of U.P., 2019 SCC OnLine All 4821, Y. Chendrasekhara Rao v. Y.V. Kamala Kumari, 1993 CriLJ 3508, Balan v. State of Kerala, 2004 CriLJ 3427, Mohan Lal v. Prem Chand, AIR 1980 HP 36 (FB) and Mubarik v. State of Uttarakhand, Criminal Writ Petition No.2059 of 2018, judgment dated 2.11.2018 passed by High Court of Uttarakhand, it was submitted that both the High Court and the Sessions Court have concurrent jurisdiction for dealing with an application under Section 438 Cr.P.C. and there is no bar that such an application is required to be first filed before the Court of Session and thereafter before the High Court.
(ii)	With regard to the provision of Section 24 of PMLA, referring to the speech of the then Finance Minister, who had introduced the Prevention of Money-Laundering Bill, 2012 in Rajya Sabha on 17.12.2012 (at pages 435-436), it was submitted that burden of proof shall only be upon the accused when a charge is framed against him. Therefore, there is no substance in the argument advanced in this regard.
(iii)	With regard to the provisions of Section 45 of PMLA, referring to the judgment in Nikesh Tarachand Shah v. Union of India, (2018) 11 SCC 1, it was submitted that Section 45 of PMLA does not apply to Section 438 Cr.P.C. proceedings. Further, referring to the judgment passed by the Supreme Court in Sushila Aggarwal v. State (NCT of Delhi), 2020 SCC OnLine SC 98, it was submitted that even in cases of economic offences grant of anticipatory bail is neither excluded nor it is required to be visited with any different approach.
(iv)	Regarding requirement of custodial interrogation, it was submitted that in the present case, the

	Respondent/Directorate of Enforcement has utterly failed to state even one reason/ground with any cogent material as to why they require custodial interrogation of the Applicants. The investigation of predicate offence has already been completed 5 years back and charge-sheet has already been filed. In that case, no recovery was made from any of the Applicants. Statements of Girish Sharma and Jeetram Yadav have already been recorded. The Applicants have also given their statements before the Directorate of Enforcement. They have fully cooperated with the Respondents during investigation. Now, nothing is left in the matter requiring custodial interrogation of the Applicants. Both the Applicants are officers of the Indian Administrative Services and they are working with the Government of Chhattisgarh. There is no possibility of their absconding. There is also no allegation against them that they ever influenced any of the prosecution witnesses or tampered with any of the evidence. Therefore, the prayer for grant of anticipatory bail to the Applicants was reiterated.
(v)	With regard to Nalini Chidambaram case (supra), referred to by Learned Assistant Solicitor General, it was submitted that validity of the summons issued to the accused under Section 50 of PMLA was challenged in that case and claimed that the case was not related to the provision of Section 438 Cr.P.C. Therefore, that case is not applicable to the present case.

7. I have heard Learned Counsel appearing for the parties and perused the entire material available minutely.
8. As regards the jurisdiction of this Court, there is no doubt that both High Court as well as Court of Session have concurrent jurisdiction for entertaining an application under Section 438

Cr.P.C. Referring to and relying on the judgment in **Mubarik case** (supra), this Court has already held vide **order dated 2.7.2019 passed in M.Cr.C.(A) No.918 of 2019 (Ratnesh Singh Chouhan v. State of Chhattisgarh)** that High Court as well as Sessions Court have concurrent jurisdiction to entertain an application filed under Section 438 Cr.P.C. and no person can be restrained to move an application under Section 438 Cr.P.C. directly before the High Court and an application filed by the Applicant under Section 438 Cr.P.C. directly before the High Court is maintainable.

9. The provisions of Section 24 of the Prevention of Money-Laundering Act, 2002, after substitution by the Prevention of Money-Laundering (Amendment) Act, 2012 (Act 2 of 2013) (Brought into force on 15.2.2013), run thus:

“24. Burden of Proof.—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.”

Section 24, before substitution, stood as under:

“24. Burden of Proof.—When a person is accused of having committed the offence under section 3, the burden of proving that proceeds of crime are untainted property shall be on the accused.”

10. As submitted by Learned Assistant Solicitor General, even after amendment in the provision of Section 24 of PMLA, the burden of proof is on the present Applicants to prove their innocence. Contrary to this, Learned Counsel appearing for the Applicants submitted that burden of proof lies on the Applicants only after framing of a charge against them. In this regard, reliance was placed on the speech of the then Finance Minister, who had introduced the Prevention of Money-Laundering (Amendment) Bill, 2012 in the Rajya Sabha on 17.12.2012 (at pages 435-436), which is extracted below:

“Then, the question was asked that by using the word ‘charged’, whether we are shifting the burden of proof even at the stage of the report under 173(8). The answer is: obviously, no. Under 173(8), what is filed is a report after investigation. The word ‘charge’ occurs for the first time in the Criminal Procedure Code under section 211, “Every charge under this Code shall state the offence with which the accused is charged”. So, we borrow the language of 211 and say, replace the word ‘accused’ and say ‘when a person is charged with an offence, that is when the court frames a charge against him under section 211’. Only at that stage, the burden shifts to him. So, I think, that makes it very clear.”

11. It is well settled law that the speech of the Minister introducing the Bill is a tool of interpreting the legislative intention behind the Bill. Considering the said speech of the Minister, it reveals that according to Section 24 of PMLA, the burden of proof will lie on the Applicants only after framing of a charge against them. Therefore, I find that there is much substance in the argument

advanced by Learned Counsel appearing for the Applicants in this regard.

12. Regarding the provisions of Section 45 of PMLA, in **Nikesh Tarachand Shah case** (supra), the Supreme Court has held thus:

“34. Again, it is quite possible that the person prosecuted for the scheduled offence is different from the person prosecuted for the offence under the 2002 Act. Mr. X may be a person who is liable to be prosecuted for an offence, which is contained in Part A of the Schedule. In perpetrating this offence under Part A of the Schedule, Mr X may have been paid a certain amount of money. This money is ultimately traced to Mr Y, who is charged with the same offence under Part A of the Schedule and is also charged with possession of the proceeds of crime, which he now projects as being untainted. Mr X applies for bail to the Special Court/High Court. Despite the fact that Mr X is not involved in the money laundering offence, but only in the scheduled offence, by virtue of the fact that the two sets of offences are being tried together, Mr X would be denied bail because the money laundering offence is being tried along with the scheduled offence, for which Mr Y alone is being prosecuted. This illustration would show that a person who may have nothing to do with the offence of money laundering may yet be denied bail, because of the twin conditions that have to be satisfied under Section 45(1) of the 2002 Act. Also, Mr A may well be prosecuted for an offence which falls within Part A of the Schedule, but which does not involve money laundering. Such offences would be liable to be tried under the Code of Criminal Procedure, and despite the fact that it may be the very same Part A scheduled offence given in the illustration above, the fact that no prosecution for money laundering along with the said offence is launched, would enable Mr A to

get bail without the rigorous conditions contained in Section 45 of the 2002 Act. All these examples show that manifestly arbitrary, discriminatory and unjust results would arise on the application or non-application of Section 45, and would directly violate Articles 14 and 21, inasmuch as the procedure for bail would become harsh, burdensome, wrongful and discriminatory depending upon whether a person is being tried for an offence which also happens to be an offence under Part A of the Schedule, or an offence under Part A of the Schedule together with an offence under the 2002 Act. Obviously, the grant of bail would depend upon a circumstance which has nothing to do with the offence of money laundering. On this ground alone, Section 45 would have to be struck down as being manifestly arbitrary and providing a procedure which is not fair or just and would, thus, violate both Articles 14 and 21 of the Constitution.

42. Another conundrum that arises is that, unlike the Terrorist and Disruptive Activities (Prevention) Act, 1987, there is no provision in the 2002 Act which excludes grant of anticipatory bail. Anticipatory bail can be granted in circumstances set out in *Siddharam Satlingappa Mhetre v. State of Maharashtra*, (2011) 1 SCC 694 (see paras 109, 112 and 117). Thus, anticipatory bail may be granted to a person who is prosecuted for the offence of money laundering together with an offence under Part A of the Schedule, which may last throughout the trial. Obviously for grant of such bail, Section 45 does not need to be satisfied, as only a person arrested under Section 19 of the Act can only be released on bail after satisfying the conditions of Section 45. But insofar as pre-arrest bail is concerned, Section 45 does not apply on its own terms. This, again, would lead to an extremely anomalous situation. If pre-arrest bail is granted to Mr X, which enures throughout the trial, for an offence

under Part A of the Schedule and Section 4 of the 2002 Act, such person will be out on bail without his having satisfied the twin conditions of Section 45. However, if in an identical situation, Mr Y is prosecuted for the same offences, but happens to be arrested, and then applies for bail, the twin conditions of Section 45 will have first to be met. This again leads to an extremely anomalous situation showing that Section 45 leads to manifestly arbitrary and unjust results and would, therefore, violate Articles 14 and 21 of the Constitution.”

13. Therefore, as held by the Supreme Court in **Nikesh Tarachand Shah case** (supra), the provisions of Section 45 of PMLA do not apply to Section 438 Cr.P.C. proceedings.
14. The Supreme Court, in **Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694**, has held that there is no straitjacket formula for anticipatory bail and it depends upon the facts and circumstances of each case.
15. In **Sushila Aggarwal case** (supra), the Supreme Court has held thus:

“124. Therefore, this Court holds that the view expressed in *Salauddin Abdulsamad Shaikh, K.L. Verma, Nirmal Jeet Jair, Satpal Singh, Adri Dharan Das, HDFC Bank, J.J. Manan and Naresh Kumar Yadav* (supra) about the Court of Session, or the High Court, being obliged to grant anticipatory bail, for a limited duration, or to await the course of investigation, so as the “normal court” not being “bye passed” or that in certain kinds of serious offences, anticipatory bail should not be granted normally—including in economic offences, etc. are not good law. The observations—which indicate that such time related or investigative

event related conditions, should invariably be imposed at the time of grant of anticipatory bail are therefore, overruled. Similarly, the observations in *Mhetre* that *“the courts should not impose restrictions on the ambit and scope of section 438 Cr.P.C. which are not envisaged by the Legislature. The court cannot rewrite the provision of the statute in the garb of interpreting it”* is too wide and cannot be considered good law. It is one thing to say that as a matter of law, ordinarily special conditions (not mentioned in Section 438(2) read with Section 437(3) should not be imposed; *it is an entirely different thing to say that in particular instances, having regard to the nature of the crime, the role of the accused, or some peculiar feature, special conditions should not be imposed.* The judgment in *Sibbia* itself is an authority that such conditions can be imposed, but not in a routine or ordinary manner and that such conditions then become an inflexible “formula” which the courts would have to follow. Therefore, courts and can, use their discretion, having regard to the offence, the peculiar facts, the role of the offender, circumstances relating to him, his likelihood of subverting justice (or a fair investigation), likelihood of evading or fleeing justice-to impose special conditions. Imposing such conditions, would have to be on a case to case basis, and upon exercise of discretion by the court seized of the application under Section 438. In conclusion, it is held that imposing conditions such as those stated in Section 437(2) while granting bail, are normal; equally, the condition that in the event of the police making out a case of a likely discovery under Section 27 of the Evidence Act, person released on bail shall be liable to be taken in police custody for facilitating the discovery. Other conditions, which are restrictive, are not mandatory; nor is there any invariable rule that they should necessarily be imposed or that the anticipatory

bail order would be for a time duration, or be valid till the filing of the FIR, or the recording of any statement under Section 161, Cr.P.C., etc. Other conditions may be imposed, if the facts of the case so warrant.”

16. Having heard the arguments advanced on behalf of the parties, considering the facts and circumstances of the case, from the discussions made hereinabove and after going through the judgments referred to by Learned Counsel appearing for the parties, it is clear that there is concurrent jurisdiction of the High Court and the Court of Session for entertaining an application preferred under Section 438 Cr.P.C. and an application filed by the Applicant under Section 438 Cr.P.C. directly before the High Court is maintainable. As held by the Supreme Court in **Nikesh Tarachand Shah case** (supra), it is also clear that the provisions of Section 45 of PMLA do not apply to Section 438 Cr.P.C. proceedings. From the speech of the then Finance Minister, it is also clear that the provisions of Section 24 of PMLA only apply after framing of a charge against the accused. As held by the Supreme Court in **Sushila Aggarwal case** (supra), it is also clear that there is no bar for grant of anticipatory bail in a case relating to economic offence. In the instant matter, the predicate offence is of the year 2014–2015. In said case, charge-sheet has already been filed and no recovery was made from any of the Applicants. No departmental proceeding has been initiated against any of the Applicants nor has any show cause notice been issued against them. No case regarding acquisition of any disproportionate property has been registered against them. Out of 212, about 153 witnesses have already been examined. Despite the fact that the

Applicants are officers of Indian Administrative Services, there is no allegation levelled against them that they ever influenced any of the witnesses or tampered with any evidence. ECIR case was registered against them in the year 2019. Notice was issued to them for the first time in the ECIR case in the month of March, 2020. The delay in issuance of notice has not been explained. The ECIR case has been registered against them only on the basis of statements of Girish Sharma and Jeetram Yadav. The pen drive has also been seized from Girish Sharma. Statements of both the Applicants have also been recorded and the Directorate of Enforcement has already interrogated the Applicants for about 3 days. Why their custodial interrogation is required has also not been duly explained.

17. Thus, considering the totality of the case, the entire facts and circumstances and the discussions made hereinabove, I am inclined to extend benefit of anticipatory bail to the Applicants. Accordingly, both the applications for grant of anticipatory bail are allowed.
18. It is directed that in the event of arrest of the Applicants in connection with the aforesaid crime/ECIR case, they shall be released on anticipatory bail on each of them furnishing a personal bond in the sum of Rupees Ten Lakhs with two solvent sureties each for a sum of Rupees Five Lakhs to the satisfaction of the Arresting Officer/Presiding Officer of the concerned Trial Court. The Applicants shall fully cooperate with the investigation and shall also abide by all the following terms and conditions:

- (i) They shall not directly or indirectly make any

inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such fact to the Court,

- (ii) They shall not act in any manner which will be prejudicial to fair and expeditious trial, and
- (iii) They shall appear before the Trial Court on each and every date given to them by the said Court till disposal of the trial.

Sd/-

(Arvind Singh Chandel)
JUDGE