

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.24980 of 2021**

Arising Out of PS. Case No.-5 Year-2016 Thana- GOVERNMENT OFFICIAL COMP.  
District- Patna

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Pankaj Goel, Son of Late J.P. Gupta, Director M/s Sanjog Steels Pvt. Ltd.,  
resident of Flat No 306, Akshat Enclave, Kanti Chand Road, Bani Park, P.S.-  
Sindhi Camp, Town and District-Jaipur (Rajasthan).

... .. Petitioner.

Versus

The Union of India, the Directorate of Enforcement Through Assistant  
Director, Patna (Bihar).

... .. Opposite Party.

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**Appearance :**

|                          |   |                                  |
|--------------------------|---|----------------------------------|
| For the Petitioner/s     | : | Mr. S.D. Sanjay, Senior Advocate |
|                          |   | Mr. Mohit Agarwal, Advocate      |
| For the Opposite Party/s | : | Mr. K.N.Singh, A.D.S.G.          |
|                          |   | Mr. Tuhin Shankar, Advocate      |

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**CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN**  
**C.A.V. ORDER**

5      11-03-2022                      Heard Mr. S.D. Sanjay, learned Senior Advocate

assisted by Mr. Mohit Agarwal, learned Advocate and Dr.

K.N. Singh, learned Additional Solicitor General of India

assisted by Mr. Tuhin Shankar, learned C.G.C. through

virtual Court proceedings.

**2.** Learned counsel for the petitioner

undertakes to remove the defects within four weeks. In

the eventuality of non-removal of defects within

undertaken period, the office will place the matter before

the Bench.

**3.** The petitioner apprehends his arrest in



connection with Special Trial (PMLA) No.01/2020 in 2<sup>nd</sup> Supplementary Complaint date 29.04.2020 in Complaint Case No.02 of 2018 in which cognizance was taken under Sections 3 & 4 of the Prevention of Money Laundering Act, 2002 (hereinafter in short referred to as 'PMLA').

**4.** The prosecution case, in nutshell, is that one Shri Shashi Kumar and Shri Rajesh Kumar lodged a case bearing Civil Line P.S. Case No.339/2016 and Civil Lines P.S. Case No.340/2016 under Sections 419, 420, 467, 468, 469, 471 and 120B of the Indian Penal Code against the Chief Manager and other officials of Bank of India, G.B. Road Branch, Gaya as well as others. A copy of the same were also forwarded to the Superintendent of Police, Economic Offence Unit (EOU), Patna. It reveals that bank account in their names or in the name of their firms M/s. Shiva Agro Enterprises and their family members held with Bank of India, G.B. Road Branch, Gaya were misutilized in connivance with the bank officials and huge amount of cash was deposited and



transferred to other bank accounts without their knowledge and consent.

**5.** Earlier Complaint No.2 of 2018, in the instant case, had been filed against ten accused persons including officials of Bank of India, G.B. Road, Gaya and further investigation was in progress. First supplementary complaint no.11 of 2018 had been filed against four accused persons and on further investigation this supplementary complaint filed by the Assistant Director, Directorate of Enforcement under Section 45 of PMLA and the cognizance has been taken on 05.06.2020 for the offence punishable under Section 4 of PMLA against twelve accused including the present petitioner.

**6.** The accusation against the petitioner is that during the investigation it revealed that on 21.10.2016, cash of Rs.50 lakhs was deposited in the account of M/s Shiva Agro Enterprises, which was transferred on the same day to the bank account of M/s Radha Trading Company, Delhi. Out of this an amount of Rs.10 lakhs was transferred to the account of M/s



Sanjog Steels Pvt. Ltd., Jaipur. Similarly on 25.10.2016 cash of Rs.25 lakhs was deposited in the account in the name of M/s M.T.I. Cotton Mills Pvt. Ltd. and on the same day it was transferred to the account of M/s Radha Trading Company, Delhi and out of this an amount of Rs.10 lakhs was transferred in the account of M/s Sanjog Steels Pvt. Ltd., Jaipur. Thus, proceeds of crime amounting to Rs.25 lakhs originated from bank account held with Bank of India, G.B. Road Branch, Gaya have merged in the bank account of M/s Sanjog Steels Pvt. Ltd., Jaipur after being layered through the bank account of fake and non-existent firms.

**7.** It is further alleged that the petitioner, who claimed to have received sale proceeds of sale of the product of his factory but either the petitioner or his representative failed to produce documents justifying the transactions of sale and purchase between the petitioner and M/s Radha Trading Company, Delhi. The petitioner could not produce purchase/sale orders in respect of these transactions with M/s Radha Trading Company. It



is also alleged that the petitioner was not in possession of telephone/mobile number of M/s Radha Trading Company and he could also not produce reliable documents in support of the claim that he received Rs.20 lakhs against supply of the goods.

**8.** Mr. S.D. Sanjay, learned Senior Advocate appearing on behalf of the petitioner, submits that the petitioner is quite innocent and has not committed any offence much less the offence as alleged in the present case. He has been wrongly roped in the present case under some confusion of facts without any actual basis. The petitioner is the Managing Director of M/s. Sanjog Steels Pvt. Ltd., Jaipur, which is a company incorporated under the Companies Act, 1956, having an industrial unit situated in Bagru industrial area Bagru, Jaipur in the State of Rajasthan. This company is engaged in manufacturing of MS TMT BAR and Billets since 2008. The produce manufactured by the petitioner has got ISI and ISO specification. It sells its manufactured products in the name of SANJOG SONA TMT. It is registered with



the Department of Central Excise, VAT etc. and now with the Department of GST. The petitioner also manufactures in other branch with whom it entered into tie-ups. The company is also a member of Rajasthan Steel Chamber and Steel Merchant Association.

**9.** He further submitted that the said company namely M/s Sanjog Steels Pvt. Ltd. get orders for supply of its products telephonically without maintaining any written purchase orders either directly or through brokers of this trade from across the country. On getting the orders, it supplies its products along with statutory and transport documents through the transporters. All the transactions of sale and purchase are ordinarily made through bank transactions. This fact can be corroborated by the certificates issued by the Steel Merchants Association and Rajasthan Steel Chamber.

**10.** It is submitted that in the present case the allegation has been made against the company in which the petitioner is the Director that it accepted



payment from a fake and non-existent firm of Delhi, namely, M/s Radha Trading Company and, therefore, connivance has been attributed against the company of the petitioner with Radha Trading Company by alleging that the petitioner could not produce written order for supply from Radha Trading Company and the petitioner could not inform the mobile number of the firm M/s Radha Trading Company.

**11.** Learned counsel for the petitioner submitted that in the present case summons under Section 50 of the PMLA was sent in the name of the company and in response to the summons the representative of the company of the petitioner appeared on 12.02.2018 before the Investigating Officer being the Assistant Director of Enforcement Directorate and produced all the documents before the investigating officer.

**12.** It is submitted that the company of the petitioner is dealing through a broker namely Sri Nirmal Sharma who has business relationship with number of



producers in steel business with different brand names. Numbers of brands are having tie-ups with Nirmal Sharma. The company of the petitioner was also getting orders for supply of MS TMT BAR in different quantities to different parties within the State of Rajasthan and out of the State of Rajasthan including Delhi.

**13.** It is further submitted that in August, 2016 the petitioner got orders for supply of MS TMT BAR through Sri Nirmal Sharma and the company of the petitioner was intimated by Sri Nirmal Sharma that the supplies of different sizes of MS TMT BAR was to be made to M/s Radha Trading Company of Shop No.2712, Gali Patti Wah, Naya Bazar, Delhi-6. The said Radha Trading was also registered dealer with the Delhi Trade Tax Department (VAT Department) and also with the Income Tax Department having its Permanent Account Number.

**14.** It is further submitted that no *prima facie* case of money laundering has been made out against the petitioner as the ED has not brought any



positive evidence much less any evidence against the petitioner. The ED has not been able to even *prima facie* establish the legitimacy of the business transaction of the petitioner. The ED has also failed to show any material that the petitioner had any knowledge about the firm M/s Radha Trading Company having indulged in any financial irregularities or the alleged offence of money laundering. The ED has not been able to show any connection of the petitioner with the bank accounts in Gaya, where the money was transferred to the account of M/s Radha Trading in Delhi or to show any cash transaction or unaccounted transaction between the petitioner and M/s Radha Trading. The ED has alleged that the amount of Rs.10 lakhs each was transferred from the account of M/s Radha Trading Company to the account of M/s Sanjog Steels, twice, after allegedly tainted amounts were received on the same day, i.e., 21.10.2016 and 25.10.2016 from the accounts of M/s Shiva Agro and M/s MTI Cotton Mills respectively.

**15.** It is further submitted that the ED,



during the course of investigation, has already called the representatives of M/s Sanjog Steels Pvt. Ltd. and obtained all the documents relating to the business transactions and never required custodial interrogation. It is also submitted that the twin conditions under Section 45(1) of the PMLA is not applicable in the case of the petitioner as the amount alleged to be laundered by the petitioner is only to the tune of Rs.20 lakhs, which is less than Rs.1 crore. It was also clarified that the requirement of Rs.1 crore as per proviso to Section 45(1) of the PMLA is with respect to one person against whom allegation of laundering is made either individually or as a group.

**16.** It is further submitted that in the trade and industry, written order for purchase of goods are not required and transaction worth rupees several crores entered into by the telephonic orders. The petitioner has enclosed the delivery challans of the transporters namely Nitin Cargo Carriers, Alwar Golden Transport Company and other statutory documents that is way bill under the



Rajasthan VAT Act and Delhi Trade Tax Act.

**17.** It is further submitted that the name of the petitioner has been introduced before submission of the second supplementary complaint (charge sheet). The petitioner was never required to be taken into custody and now it is only in the second supplementary complaint dated 29.04.2020, certain allegations have been levelled against the petitioner merely on suspicion and surmises, therefore, it is prayed that it is a fit case for granting anticipatory bail to the petitioner.

**18.** The twin conditions under Section 45 (1) of the PML Act is not applicable in the case of the petitioner as the amount alleged to be laundered by the petitioner is only to the tune of Rs.20 lakhs, which is less than Rs.1 crore. It was also clarified that the requirement of Rs.1 crore as per the proviso to Section 45 (1) of the PML Act is with respect to one person against the allegation of laundering is made, either individually or a group.

**19.** In buttress of his submission, learned



Senior Counsel has relied upon the judgments in the case of **Pasumarthi Venkata Satyanarayana Sarma Vs. The Assistant Director, ED (2021) 4 GLR 2944**), **Rajeev Sharma Vs. ED (Bail Appl. No.3156 of 2021)**] Pg. 104 to 110, [**M. Sivasankar Vs. The Union of India (2021) 164 SCL 487 (Ker)**]. In all the three cases, in spite of total amount of money alleged to be laundered being more than Rs.1 Crore, as the allegation against two singular bail applicant was less than Rs.1 Crore. the proviso to Section 45(1) was held to be applicable and the twin conditions were held to be not applicable.

**20.** Learned senior counsel for the petitioner has also relied upon the judgment of the Hon'ble Apex Court in the case of **Aman Preet Singh Vs. CBI** in 2021 SCC online 941 and **Siddharth Vs. State of U.P.** in 2021 SCC online SC 615 has held that after submission of charge-sheet no interrogation of accused is required, hence it can be granted anticipatory bail. There is no assertion against the petitioner of fly by night as the



petitioner has got an established industrial unit at Jaipur with huge investment and he stays with his entire family there. He is permanent resident of Jaipur and there is no charge of running out from the country.

**21.** *Per contra*, Mr. K.N. Singh, learned Additional Solicitor General of India vehemently opposing the prayer for anticipatory bail has submitted that one Motilal, in connivance with the bank officials of Bank of India, GB Road Branch, Gaya mis-utilized the bank account held in his name/firm/ family member/relatives/in the name of complainants Shashi Kumar and Rajesh Kumar and their firm/brothers/wife, inasmuch as substantial cash deposits illegally were made in the bank accounts. The cash deposits were dishonestly and fraudulently transferred to the bank accounts of different other entities without the knowledge and consent of the account holders by way of forging documents. Consequently, FIR bearing numbers 339/16 and 340/16, both dated 13.12.2016 were lodged with the police authorities at Gaya for commission of



scheduled offences punishable under Sections 419, 420, 467, 471 and 120B IPC. The cash so deposited and transferred become proceeds of crime and its transfer to other accounts clearly represents the process of integration of the proceeds of crime with the mainstream. During the course of investigation conducted under the PMLA, scrutiny of the bank account number 447520110000742 in the name of M/s Shiva Agro Enterprises held with Bank of India, GB Road Branch, Gaya revealed that cash Rs.50 lakhs was deposited on 21.10.2016 and the same was transferred on 21.10.2016 to the bank account number 113805501035 in the name of M/s Radha Trading Company held with ICICI Bank, Fatehpuri, Delhi. Out of the said credit in the account of M/s Radha Trading Company, an amount of Rs.10 lakhs was transferred to the bank account number 75105078737 in the name of M/s Sanjog Steels Pvt. Ltd., Jaipur held with Standard Chartered Bank, Jaipur.

**22.** It is further submitted that scrutiny of



the bank account number 441020110000014 in the name of M/s MTI Cotton Mills Pvt. Ltd. held with Bank of India, GB Road Branch, Gaya revealed that cash Rs.25 lakhs was deposited on 25.10.2016 and the same was transferred, on 25.10.2016, to the bank account number 113805501035 in the name of M/s Radha Trading Company held with ICICI Bank, Fatehpuri, Delhi. Out of the said credit in the account of M/s Radha Trading Company, an amount of Rs.10 lakhs was transferred to the bank account number 75105078737 in the name of M/s Sanjog Steels Pvt. Ltd., Jaipur held with Standard Chartered Bank, Jaipur.

**23.** It is submitted that thus, proceeds of crime amounting to Rs.20 lakhs originating from bank accounts held with Bank of India, GB Road Branch, Gaya have merged in the bank account number 75105078737 of M/s Sanjog Steels Pvt. Ltd., Jaipur held with Standard Chartered Bank, Jaipur during the month of October, 2016.

**24.** It is further submitted that during



investigation, it was found that firms namely M/s Radha Trading Company, Delhi, M/s Shree Ram Overseas, M/s Shree Ganesh Overseas, M/s Sandeep Traders, M/s Rajesh Trading Company, M/s Sunil Trading Company and M/s Azad Singh Manoj Kumar are fake and fictitious firms and have not been operating from the addresses as mentioned in their bank accounts or in the sales invoices of appellant.

**25.** The enquiries revealed that they do not exist at given address. It is submitted that in this manner, Rs.20 lakhs cash after deposit in these accounts was transferred to the bank accounts of M/s Sanjog Steels Pvt. Ltd., Jaipur after being layered through the bank accounts of fake and non-existent firms. Hence, transactions through these firms are involved in money laundering in terms of Section 23 of PMLA.

**26.** M/s Sanjog Steels Pvt. Ltd., Jaipur has created false evidence by issuing sale invoices and other documents in the name of M/s Radha Trading Company, Delhi, whereas it has been found during investigation



that the said firm is fake and non-existent.

**27.** It is submitted that Sri Nirmal Kumar Sharma, broker of Jaipur vide his statement dated 01.02.2021 recorded under Section 50 of the PMLA stated that he had received a call from the representative of M/s Sanjog Steels Pvt. Ltd., Jaipur, who has enquired about the credential of M/s Radha Trading Company, Delhi and its operator Bimal Jain. Accordingly, he has enquired about the same from his acquaintance Govind Gopalji (Proprietor of M/s Saty Trading Company, Jaipur) and they have stated that Parimal Jain (operator of firm, namely, Radha Trading Company, Delhi) is fine man and there is no risk of default of payment in case of goods delivered to him. He had conveyed the same to the representative of M/S Sanjog Steels Pvt. Ltd., Jaipur and M/s Radha Trading Company, Delhi as he had not received any brokerage for the said transactions.

**28.** The Assistant Commissioner, Ward-29, Trade and Tax Department, Government of NCT of Delhi vide its letter dated 10.04.2018 had intimated that "M/s



*Radha Trading Company (TIN 07647109245) got himself registered online system provisionally with VAT Department on 15.02.2016 had downloaded provisionally certificate. The dealer was never issued Original Registration Certificate by this Department as he did not submit hard copy of requisite documents. Notice under Section 59 (2) for the period from last quarter of 2015-16 and all quarter of 2016-17 has been issued to the dealer on 04.04.2018. Action to be taken on due course of time."*

**29.** It is submitted that it is logical to conclude that M/s Sanjog Steels Pvt. Ltd., Jaipur (petitioner's firm) is not involved in any genuine business transaction in respect of Rs.20 lakhs received in its bank accounts mentioned above. Regarding receipt of Rs.20 lakhs during October, 2016, in the bank account of his firm M/s Sanjog Steels Pvt. Ltd., Jaipur, Shri Tanul Goel had not credible/verifiable explanation. Thus, M/s Sanjog Steels Pvt. Ltd., Jaipur is consciously and knowingly involved in concealment, transfer and acquisition of



proceeds of crime and is in possession of property involved in money laundering.

**30.** It is submitted that during investigation, the proceeds of crime originating from bank accounts held with Bank of India, Gaya and merging in the bank account number 75105078737 of M/s Sanjog Steels Pvt. Ltd., Jaipur have been found to Rs.20 lakhs which has been concealed in the business of M/s Sanjog Steels Pvt. Ltd., Jaipur and is not available. Further, Tanul Goel, the authorized representative of M/s Sanjog Steels Pvt. Ltd., Jaipur, has failed to discharge the burden of proof cast upon his company under Section 24 of the PMLA as he or his company could not produce the physical copy of purchase orders (made online/offline) in respect of transaction made with the firm M/s Radha Trading Company Delhi, does not know these firms personally and does not have the mobile numbers of the firm M/s Radha Trading Company, Delhi, failed to produce any reliable documents in support of his claim that his firm had not paid the freight for delivery of goods to this firm



as the goods were dispatched on 'to pay' basis, failed to produce any documents in support of his claim that his firm did not collect delivery challans/acknowledgment from these firms in respect of goods sold to them because his firm had sold the goods on Ex-Works basis. M/s Sanjog Steels Pvt. Ltd., Jaipur has created false evidence by issuing fabricated sale invoices and other documents in the name of M/s Radha Trading Company, Delhi whereas it has been found during investigation that the said firm is fake and non-existent, failed to produce any reliable documents in support of his claim that credit of Rs.20 lakhs were received against the goods (TMT Bars) sold to non-existent company M/s Radha Trading Company, Delhi and M/s Sanjog Steels Pvt. Ltd., Jaipur had business transaction with these firms during September, 2016 to November, 2016 but no business has been done with this firm since February, 2017 (i.e. after initiation of investigation under PMLA).

**31.** It is further submitted with reference to the Supreme Court's decisions in the case of



**Directorate of Enforcement v. Ashok Kumar Jain**, reported in **(1998) 2 SCC 105**; **State of Gujarat v. Mohanlal Jitamalji Porwal and Others**, reported in **(1987) 2 SCC 364**; and **Y.S. Jagan Mohan Reddy v. C.B.I.**, reported in **(2013) 7 SCC 439**, 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 name of grant of bail.

**32.** He further contended that similar provisions under the Narcotics Drugs and Psychotropic Substances Act, 1985, and Terrorist and Disruptive Activities (Prevention) Act, 1987, as also Maharashtra Control of Organized Crime Act, 1999, have been upheld. He has referred to the decisions rendered by the Supreme Court in case of **Kartar Singh vs. State of Punjab**, reported in **(1994) 3 SCC 569**, whereby constitutional validity of Section 20(8) of Terrorist and Disruptive Activities (Prevention) Act, 1987, containing



similar restrictions on grant of bail has been upheld. According to him, the Supreme Court in case of **Nikesh Tarachand Shah vs. Union of India and Another**, reported in **(2018) 11 SCC 1** 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.

**33.** 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 him, the amended provision of the Act has completely altered the situation. He has 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 Supreme Court in various cases including the recent decision in the case of **P. Chidambaram vs. Directorate of**



**Enforcement**, reported in **(2019) 9 SCC 24**. He has contended that the twin conditions, mentioned in Section 45(1) of the Act, imperative for grant of bail have been declared *ultra vires* by the Supreme Court in case of **Nikesh Tarachand Shah (supra)** not 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.

**34.** It is further submitted that the amendment has been introduced w.e.f. 19.04.2018, after taking note of the decision of the Supreme Court in case of **Nikesh Tarachand Shah (supra)** and the defects, which were pointed out in the judgment, have thus been rectified, for, 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.

**35.** Accordingly, he submitted that the twin



conditions have not become referable and relatable to the offence under the Act of 2002. The discrepancy, as pointed out by the Supreme Court, according to him, has thus been removed in the statute book, he contends. He has submitted that decision of the High Court of Delhi dated 9<sup>th</sup> of July, 2019 in case of Upendra Rai vs. Directorate of Enforcement (Bail Application No.249 of 2019) and that of the High Court of Judicature at Bombay its decision rendered on 6<sup>th</sup> June, 2018 in Bail Application No.286 of 2018 in the case of Sameer M. Bhujbal vs. Assistant Director, Directorate of Enforcement and Another cannot be relied upon, which have not noticed, in correct perspective, the situation emerging out of the aforesaid amendment in sub-section (1) of Section 45 of the Act.

**36.** Learned A.S.G. submitted that the judgments cited by the petitioner such as Pasumarthi Venkatasatyanarayana Sarma Vs. The Assistant Director, ED (2021) 4 GLR 2944, Rajeev Sharma Vs. ED (Bail Appeal No.3156 of 2021), M. Sivasankar Vs. The Union



of India (2021) 164 SCL 487 (Ker), the above cited cases are not applicable to the facts of the present case. The said cases relate to regular bail the accused persons while the present is anticipatory bail and Section 45 (1) of the PMLA does not speak or envisage pre-arrest bail. He has lastly submitted that several similarly situated co-accused have been denied anticipatory as also the regular bail by this Hon'ble Court.

**37.** Having heard rival submissions of the parties, in my considered opinion, it would be just and proper first to deal with the 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 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.

**38.** The twin conditions of section 45 of the PMLA Act still remain in the Statute Book, in that eventuality also the observations of the Supreme Court



do not get obliterated. The Schedules attached to the PMLA Act still continue. The insertion of the words "under this Act" by deleting "offence punishable for a term of imprisonment of more than three years under Part A of the Schedule" only makes an ostensible change. The offence of money laundering as stipulated under Section 3 of the PMLA Act stems out of the offences prescribed in the Schedules. The defects which the Supreme Court had pointed out while invalidating the existing law are not substantially removed by the amendment. The Supreme Court has asserted that, the twin conditions prescribed in Section 45 of the PMLA Act would have no nexus whatsoever with a bail application which concerns itself with the offence of money laundering, for if Section 45 of the PMLA Act is to apply, the Court does not apply its mind to whether the person prosecuted is guilty of the offence of money laundering, but instead applies its mind to whether such person is guilty of the scheduled or predicate offence. It is observed that Section 45 of the PMLA Act is a drastic



provision which affects the fundamental right of personal liberty granted by Article 21 of the Constitution of India and turns on its head the presumption of innocence which is fundamental to a person accused of any offence. The Supreme Court has held that "that merely reading down the two conditions would not get rid of the vice of manifest arbitrariness and discrimination". Such observations facilitate the Courts to realize and interpret the legal effect of the twin conditions attached to Section 45 of the PMLA Act.

**39.** Finally, the Supreme Court has directed all the concerned courts to decide the matter on merits without application of the twin conditions contained in Section 45 of the PMLA Act as they are declared unconstitutional. The twin conditions still continue. Unquestionably, the Amendment Act of 2018, which introduces the expression "under this Act" to Section 45 of the PMLA Act, in no uncertain terms can obliterate or dilute the directions issued by the highest court of land. The same is not written safe from judicial



dismemberment. The law declared by the Supreme Court is the law of the land and it is the precedent for itself and for all the Courts/Tribunals and the Authorities of India. In wake of the aforesaid directions of the Apex Court, this Court cannot genuflect before the impact of the twin conditions even if they stand firm.

**40.** Reverting to the rigor of the twin test under Section 45 of the PMLA, it has to be considered whether the applicant would qualify to get bail. There is no doubt about the complicity of the applicant and there are no reasonable grounds to believe that he is not guilty. However, it should also be considered whether there is a likelihood of the applicant committing any offence while on bail.

**41.** In a recent judgment passed by the Hon'ble Apex Court in the case of Assistant Director, Directorate of Enforcement Vs. V.C. Mohan in Special Leave to Appeal (Crl.) No (s).8441/2021 dated 04.01.2022, their Lordships have been pleased to hold that the duty of the Court to examine the jurisdictional



facts including the mandate of Section 45 of the PMLA Act must be kept in mind.

**42.** Now, coming to the judgments relied upon by Mr. S.D. Sanjay, learned Senior Counsel appearing on behalf of the petitioner, in buttress of his submissions. Having gone through the judgments aforesaid, in my view, they are not applicable in the facts and circumstances of the present case.

**43.** After going through the facts of the present case, it is not in dispute that proceeds of crime amounting to Rs.20,00,000/- (Rupees Twenty Lakh) originating from bank accounts held with Bank of India, G.B. Road, Gaya have merged in the bank account no.75105078737 of M/s Sanjog Steels Pvt. Ltd. Jaipur (petitioner's firm). During investigation, it was also found that firms, namely, M/s Radha Trading Company, Delhi, M/s Shree Ram Overseas, M/s Shree Ganesh Overseas, M/s Sandeep Traders, M/s Rajesh Trading Company, M/s Sunil Trading Company and M/s Azad Singh and Manoj Kumar are fake and fictitious firms and have not been



operating from the addresses as mentioned in their bank accounts or in the sales invoices. It also revealed that they do not exist at given address. In this manner, Rs.20 lakh cash after deposit in these accounts was transferred to the bank accounts of M/s Sanjog Steel Pvt. Ltd., Jaipur after being layered through the bank accounts of fake and none-existent firms. Hence, the transactions, through these firms, are involved in money laundering in terms of Section 23 of the PMLA.

**44.** The entire community is aggrieved if the economic offenders, who ruin the economy of the State are not brought to book. A murder may be committed in the hit of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even handed manner without fear of



criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the National Economy and National Interest.

**45.** Having heard the parties at length, considering their rival submissions, gone through the material available on record and for the reasons as stated in the foregoing paragraphs, I am not inclined to enlarge the petitioner on anticipatory bail.

**46.** The prayer for anticipatory bail of the petitioner is hereby rejected.

**(Anjani Kumar Sharan, J.)**

Trivedi/-

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