IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.71296 of 2021

Arising Out of PS. Case No.-8 Year-2014 Thana- GOVERNMENT OFFICIAL COMP. District- Patna

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Anil Kumar @ Anil Kumar Singh, S/o Late Chatboo Chaudharary @ Late Chathoo Chaudary, (Managing Director of M/S Patlipura Builders Limited), Resident of 601, Maharaja Kameshwar Comlex- Frazer Road. P.S.- Kotwali, District- Panta.-800001.

... ... Petitioner/s

Versus

The Union of India through Endorsement Directorate of India, Bank Road, Chandpura Place, PATNA- 800001.

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Y. B. Giri, Senior Advocate.
		Mr. Ansuman Singh, Advocate
		Mr. Ashish Giri, Advocate
		Mr. Vinay Prakash, Advocate.
For the Opposite Party/s	:	Mr.K.N.Singh (A.D.S.G)
		Mr. Manoj Kumar Singh, CGC
		Mr. Praktritika Sharma, Advocate AC to ASG
		Mr. Adarsh Kumar Bhardwaj, (ADV), JC to ASG
		Mr. Abhijit Gautam, JC to ASG
For the Victim		Mr. Bimal Kr. Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE A. M. BADAR

CAV ORDER

8 06-05-2022 By this application under Section 439 of the Cr.P.C., applicant/accused in Special Trial (PMLA) No.07 of 2021 dated 01.11.2021 arising out of ECIR No. PTZO/08/2014 dated 13.05.2014 and ECIR No. PTZO/07/2021 dated 13.09.2021 pending on the file of the learned Special Judge, Patna for the offences punishable under Section 3, punishable under Section 4 and Paragraph 1 of Part "A" of the Schedule to the Prevention of Money Laundering Act, 2002 (PLMA for the sake of convenience), is seeking his release on bail during pencendy of

the trial.

2. Heard the learned counsel appearing for the applicant/accused at sufficient length of time. By taking me through the predicate offences leading to the registration of both the ECIR, it is argued that all the three schedule offences/ predicate offences vide FIR Nos. 30 of 2013, 52 of 2013 and 311 of 2011 have ultimately yielded in acquittal of the applicant/accused by the competent criminal court. In fact the applicant is a reputed Builder, who has constructed approximately 300 flats and the commercial dispute ultimately arose in respect of few of those flats which subsequently culminated into registration of the criminal cases due to filing of the FIR's. All those criminal cases resulted in acquittal of the applicant/accused. The commercial dispute were compromised between the parties by either return of the deposits or registration of the property after receipt of the balance amount of consideration.

3. It is further argued by the learned Senior counsel appearing for the applicant/accused that in respect of FIR Nos. 30/2013, 52/2013 and 311/2011, there is no investigation under the PLMA and there cannot be any proceeds of crime in respect of those three offences which ultimately yielded in acquittal of the applicant even prior to his arrest in the subject criminal case under the PLMA. On 07.09.2021 when the applicant came to be arrested, no schedule offence existed and only ECIR was registered vide ECIR No. PTZO 08/2014 on 13.05.2014. Therefore, arrest of the applicant on 07.09.2021 was illegal. It is further argued that post amendment of Section 24 in 2013, Section 24 of the PLMA is applicable only after framing of charges and therefore, arrest of the applicant on 07.09.2021 is illegal.

4. The learned Senior counsel appearing for the applicant argued that the last predicate offence vide FIR No. 316 of 2019 dated 21.05.2014 which has yielded in registration of the ECIR No. PTZO/07/2021 dated 13.09.2021, was registered on account of private commercial dispute regarding wrong payment of salary to the workers of some other company and the first informant had intentionally ignored payments made by the applicant under the directions of this Court in various proceedings.

5. According to the learned Senior counsel, immovable properties of the value of Rs. 1,67,29,640/- and Rs.94,90,970/- at Ranchi belonging to the applicant came to be attached illegally. With this, it is further argued that on the basis of the various judicial pronouncement, after Judgment of the

Hon'ble Apex Court in the matter of **Nikesh Tarachand Shah Versus Union of India and Ors reported in MANU/SC/1480/2017,** twin limitations contained in Section 45(1) of the PLMA are held to be unconstitutional and therefore, now the cases under the PLMA are to be decided without application of the twin conditions contained in that Section. As such on the basis of several judicial pronouncement including that in the matter of **Ahilya Devi Versus The State of Bihar and Ors reported in MANU/BH/0245/2020,** the applicant is entitled for bail.

6. As against this, the learned Additional Solicitor General appearing for the respondents vehemently opposed the application by contending that the applicant is habitual offender and many cases have been lodged against him in various police stations in Bihar including that of cheating, fraud, dishonestly, grabbing public money etc. The applicant is guilty of the offence of money laundering under the PLMA and the twin conditions set out in Section 45(1) of the PLMA have not been satisfied and therefore, the applicant is not entitled for bail. Reliance is placed on the decisions of the Hon'ble Supreme Court in **Rohit Tandan Versus Directorate of Enforcement (2018) 11 SCC 46** for contending that the PLMA has an overriding effect and the provisions of the Cr.P.C. would apply only if they are not inconsistent with the PLMA. Unless the contrary is proved, the Court has to presume that proceeds of crime are involved in the money laundering as per provisions Section 24 of the PLMA. By relying on the Judgment in the matter of **the Assistant Director (Enforcement Directorate) Versus Dr. V.C. Mohan dated 04.01.2022 in SLP (Crl.) No. 8441 of 2021,** it is argued that it is for the court to examine the jurisdictional facts including the mandate of Section 45 of the PLMA. The learned Additional Solicitor General has argued that even after the verdict of Nikesh Tarachand Shah (supra), the rigor of Section 45 of the PLMA would attract while dealing with the bail application. The learned Additional Solicitor General placed reliance on Judgment of **Telengana High Court in Criminal Petition Nos. 1073 and others of 2021 in the matter of M/S Jagati Publication Ltd. Versus The Enforcement Directorate delivered on 10the August, 2021**, on **Criminal Application (BA) No. 1146 of 2021 in the matter of Ajay Kumar Versus Directorate of Enforcement** decided by the Bombay High Court on 28.01.2022 for contending that the twin conditions of Section 45(1) of the PLMA would revive and operate by virtue of the Amending Act of the year 2018. With this, it is argued that the investigation under the PLMA is not dependent upon the finality of the Schedule offence mentioned in the FIR. The offence under the PLMA is an independent offence wherein commission of Schedule offence is only a triggering point for commencement of action under the PMLA. It is argued that because of revival of the twin conditions because of amendment introduced with effect from 19.04.2018 in the PMLA, the applicant is not entitled for bail.

7. I have also heard the learned counsel appearing for the alleged victim of the crime in question. By adopting the arguments of the learned Additional Solicitor General, it is argued by him that the amount due and payable to the employees is not yet finalized, as seen from the Judgment of the Letters Patent Appeal.

8. I have considered the submissions so advanced and also perused the material placed before me. I have carefully gone through the Judgments relying by both the parties.

9. At the outset, let up put on record the facts of the prosecution case which has resulted in registration of the Special Trial (PMLA) No.07 of 2021 for the offence punishable under Section 3, punishable under Section 4 and paragraph 1 of Part "A" of the Schedule to the PLMA. It is alleged by complainant-Deputy Director of the Enforcement Directorate that the complainant has reasonable belief that certain movable and immovable properties have been acquired out of proceeds of crime by the present applicant, who happens to be the Managing Director of M/S Patliputgra Builders Limited and therefore, the properties valued at Rs.2,62,20,610/- are provisionally attached. According to the complainant, FIR No. 30 of 2013 came to be registered against the applicant at the Police Station, Kotwali for the offence punishable under Sections 420 and 406 r/w Section 34 of the Indian Penal Code with an accusation that he received an amount of Rs.10,00,000/- as advance for booking but had not allotted the flat or returned the money the the first informant Anurag Kumar Choudhary. It is further averred that FIR No. 311 of 2011 came to be registered against the applicant on 30.06.2011 at the Police Station, Kotwali for the offence punishable under Sections 420 and 406 r/w Section 34 of the Indian Penal Code with an accusation that the applicant took advance of Rs. 4.60 lacks for allotment of three flats from first informant Shailandra Kumar. The applicant did not return the booking advance and cancelled the allotment. The complainant further averred that the FIR No. 52 of 2013 came to be registered on 07.02.2013 against the applicant at

Alamganj Police Station, Patna by first informant Lalmati Devi. It is averred in the said FIR that the applicant attempted to grab the plot of land at Mauja Sandalpur and demanded ransom from Ashutosh for construction work on his plot. The offence under Section 484 of the Indian Penal Code was registered accordingly. These offences according to the complainant are covered as Schedule offences under paragraph 1 of Part "A" of the Schedule and accordingly, ECIR No. PTZO/08/2014 dated 13.05.2014 came to be registered against the applicant.

10. It is further averred in the said complaint that ECIR No. PTZO/07/2021 came to be registered on 13.09.2021 after arrest of the applicant which took place on 07.09.2021, on the basis of Schedule offence vide FIR No. 316 of 2014 dated 21.05.2014 which was for offences punishable under Sections 419, 420, 467 and 471 of the Indian Penal Code. The complainant averred that the present applicant had entered into a Tripartite Development Agreement with The Newspapers and Publication Limited and its employees on 31.03.2002. That agreement was executed on 10.09.2002. As per the FIR in the same case, 45% built-up area of the assets of The Newspaper and Publication Limited were not to be sold unless and until full payment of amount due to the employees is made. However the applicant made a forged document regarding minutes of the Board of Directors of the Newspaper and Publications Limited on 24.12.2004 for showing that he had been authorized to sale office, flats and shops. On the basis of such forged documents he effected sale deeds. It is further averred that as per the said agreement, the Bank account was to be opened in the name of The Newspapers and Publications Limited and the applicant being the Director of the M/S Patliputra Builders Limited had to issue four postdated cheques for total value of Rs.5.82 Crores. Those cheques were to be deposited in the account for effecting payment to the employees of the Newspapers and Publications Limited. However though the applicant had issued four cheques amounting to Rs. 5.82 Crores, as part of conspiracy those cheques were not presented to the designated Bank for making corresponding payments.

11. It is averred by the complainant that the applicant had not cooperated the authorities of the PMLA despite issuance of summons. With this, it is prayed in the said complaint that the applicant be convicted of the offence punishable under Section 4 of the PMLA and to confiscate the properties involved in the said offence.

12. Indisputably the applicant has been arrested in the subject criminal complaint case on 07.09.2021, i.e., prior to registration of ECIR No. PTZO/07/2021 dated 13.09.2021 in respect of predicate offence vide FIR No. 316 of 2014 dated 21.05.2014. It is not in dispute that the applicant was acquitted by the competent court exercising criminal jurisdiction in all three predicate offences vide FIR No. 30 of 2013, FIR No. 52 of 2013 and FIR No. 311 of 2011 prior to his arrest on 07.09.2021. As such no Schedule offence was existing at the time of arrest of the applicant on 07.09.2021 and what was registered against the applicant at that time was only ECIR No. PTZO/08/2014 dated 13.05.2014. The applicant came to be acquitted on 22.12.2014 in the criminal case registered in pursuance to the FIR No. 30 of 2013 for the offences punishable under Sections 420 and 406 r/w Section 34 of the Indian Penal Code. Indisputably the applicant came to be acquitted by the court of competent jurisdiction on 02.04.2016 in respect of the offences alleged against him in the criminal case registered in pursuance to the FIR No. 52 of 2013 at the Police Station, Alamganj. The applicant came to be acquitted on 20.08.2011 in the criminal case for the offences punishable under Sections 420 and 406 r/w Section 34 of the Indian Penal Code registered on the basis of the charge sheet filed after investigation in FIR No. 311 of 2011 registered with

Kotwali Police Station. This aspect is relevant for deciding the instant bail application.

13. So far as predicate offence vide FIR No. 316 of 2014 dated 21.05.2014 is concerned, it needs to mention here that the applicant who was accused in that case was granted Anticipatory Bail by the learned Additional Sessions Judge, Patna on 21.12.2015. While granting pre-arrest bail in that FIR No. 316 of 2014 to the applicant, the learned Additional Sessions Judge, Patna observed that from the orders of this Court it is apparent that the upper limit of liability of the applicant was only up to Rs.8.50 crores which has been substantially fulfilled by him. It was noted by the learned Additional Sessions Judge while granting pre-arrest bail to the applicant in FIR No. 316 of 2014 that from the orders of this Court passed on 11.07.2006 in MJC No. 816 of 2006 r/w C.W.J.C. No. 6544 of 2004, it transpires that the applicant had already paid Rs.5,68,07,108/- towards discharge of his obligation on account of liability of the workman and remaining sum of Rs.2,21,92,982/- had to be paid out of which Rs.1,90,00000/- had been paid to the Provident Fund Authority by the applicant towards the liability of the workman. The learned Additional Sessions Judge had noted the order passed by this Court on 09.11.2012 in C.W.J.C. No. 21633 of 2011. The applicant has placed on record all these relevant documents evidencing payment.

14. With this factual aspects, let us now advert to the relevant provisions of the PMLA. The Supreme Court in the matter of Nikesh Tarachand Shah (supra), on 23rd November 2017 has declared Clause (II) of Sub-section 1 of Section 45 of the PMLA ultra vires articles 14 and 21 of the Constitution of India. The Supreme Court has observed while declaring the said provision unconstitutional in paragraphs 38 and 45 has observed thus:-

> **"Para 38- We must not forget that Section 45 is a drastic provision which turns on its head the presumption of inocence 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 compelling State interest for tackling serious crime. Absent any such compelling State interest, the in-discriminate 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 is tackling crimes**

of an extremely heinous nature.

Para 45- Regard being had to the above, We declare section 45(1) of PMLA is so far as it imposes two further conditions for release on bail to be unconstitutional as it violates Article 14 and 21 of the Constitution of India."

15. Subsequent to the decisions of the Supreme Court in the matter of Nikesh Tarachand Shah (supra), amendment came to be introduced with effect from 19.04.2018 in the PMLA and the effect of post amended Section 45 of the PMLA was considered by this Court in the matter of Ahilya Devi (supra). This Court in paragraphs 23 and 24 has held thus:-

"23. 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 Act for grant of bail.

24. In my opinion, in view of the clear language used in paragraph 46 of the Supreme Court's decision in the case of Nikesh Tarachand Shah (supra), I have no hesitation in reaching a definite conclusion that the amendment in sub-Section (1) of Section 45 of the Act

introduced after 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."

Thus, after considering the amendment to the PMLA vide Act No. 13 of 2018, this Court has already held in the matter of Ahilya Devi (supra) that the amendment introduced vide Act No. 13 of 2018 does not have effect of reviving the twin conditions for granting of bail.

16. At this juncture, it is apposite to quote observations of the Delhi High Court in the matter of **Rajeev Sharma Versus Directorate of Enforcement reported in MANU/DE/0076/2022** found in paragraph 15 which reads thus:-

" 15. In Nikesh Tarachand Shah (supra), the Hon'ble Supreme Court struck down the twin conditions mentioned in Section 45 of the PMLA. The amendment in Section 45 by the Finance Act 2018 is only with respect to substituting the term 'offence punishable for 3 years' with 'offence under this Act'. The said amendment does not revived the twin conditions already struck down by the aforesaid judgment as held by this Court in Bail appln. 249/2019 ti-

tled as Upendra Rai Vs. Directorate of Enforcement. The twin conditions under Section 45 of the PMLA not being applicable, the triple test is required to be applied so as to consider grant of bail to the petitioner. Though learned Additional Solicitor General has strenuously argued that since the petitioner has connection with Chinese handlers and intelligence agencies, he is a serous flight risk, however, the petitioner is an Indian Citizen, his wife is also an Indian Citizen employed in JNU and thus, has roots in society. There is no allegation against the petitioner that after being released on default bail in FIR No. 230/2020 registered at Special Cell on 4th December 2020 till Ist July 2021, the petitioner either tempered with evidence or influenced any witness. The petitioner joined the investigation as and when directed prior to Ist July 2021 before arrest. "

These observations are based on the Judgment of the Delhi High Court in the matter of **Upendra Rai Vs. Directorate of Enforcement reported in MANU/DE/2194/2019.** It is also relevant to quote the relevant paragraphs of this Judgment. Paragraphs 17 to 23 of the said Judgment read thus:

"17. The decision relied upon by the respondent in the case of Gautam Kundu (supra) has no application to the facts of the case as the said decision was rendered prior to the Supreme Court passed the judgment

reported as (2018) 11 SCC 1 Nikesh Tarachand Shah Vs. Union of India & Anr. declaring Section 45 (1) of the PMLA in so far as it imposes two further conditions for release on bail to be unconstitutional as it violates Article 14 and 21 of the Constitution of India. Reliance of the learned counsel for the respondent on the decision in Kalyan Chandra Sarkar (supra) is also misconceived as the said decision was rendered under Section 437 (1) Cr.P.C. wherein the offence punishable is with death or imprisonment for life. In the present ECIR the maximum punishment which can be awarded after trial to the petitioner would be imprisonment for a period of 7 years out of which more than 1 year has already elapsed for the petitioner being in custody and no charge could be framed for the purported reason that the respondent claims that their investigation is in progress. Contention of learned counsel for the respondent that with the amendment in Section 45 of PMLA in the year 2018 wherein the words "under this Act" have been used have been dealt by two different High Courts i.e. Bombay High Court and Madhya Pradesh High Court, which clearly note that the amendment does not revive or resurrect the original Section 45(1) (ii). Section 24 of the PMLA has no application to the facts of the present case for the reason no charge has been framed on the petitioner and thus Section 24 does not come into play. Despite the respondent expressing his apprehension of tampering with the evidence or witnesses, there is no material placed on

record to show that the petitioner has ever tampered the evidence. In the two predicate offences where the punishment prescribed is more than the present ECIR, the petitioner has already been released on bail, hence he be released on bail.

18. Before proceeding on the facts of the case it would be appropriate to deal with the amendment under Section 45 of PMLA. Section 45 of PMLA with the amendment of 2018 reads as under:

> **"45. Offences to be cognizable and non-bailable.**
> **(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence 77 under this Act shall be released on bail or on his own bond unless--**
>
> > **(i) the Public Prosecutor has been given a 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, 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 a 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 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."

19. By virtue of the amendment in the year 2018 the words "under this Act" have been inserted in sub-Section 1 of Section 45, as noted above. In Nikesh Tarachand Shah (supra) while dealing with the constitutional validity of the twin condition imposed under Section 45(1), the Supreme Court held:

"54. Regard being had to the above, we declare Section 45(1) of the Prevention of Money-Laundering Act, 2002, insofar as it imposes two further conditions for release on bail, to be unconstitutional as it violates Articles 14 and 21 of the Constitution of India. All the matters before us in which bail has been denied, because of the presence of the twin conditions contained in Section 45, will now go back to the respective courts which denied bail. All such orders are set aside, and the cases remanded to the respective courts to be heard on merits, without application of the twin conditions contained in Section 45 of the 2002 Act. Considering that the persons are languishing in jail and that personal liberty is involved, all these matters are to be taken up at

the earliest by the respective courts for fresh decision. The writ petitions and the appeals are disposed of accordingly."

20. A bare perusal of the amended Section 45 would reveal that the introduction of the words "under this Act" would not revive the twin conditions as imposed in Section 45(1) PMLA which view has also been expressed by two other High Courts. In Bail Application No. 286/2018 Sameer M. Bhujbal Vs. Assistant Director, Directorate of Enforcement & Anr., the Bombay High Court held:

> **"9. It is to be noted here that, after effecting amendment to Section 45(1) of the PMLA Act the words "under this Act" are added to Sub Section (1) of Section 45 of the PMLA Act. However, the original Section 45(1)(ii) has not been revived or resurrected by the said Amending Act. The learned counsel appearing for the applicant and the learned Additional Solicitor General of India are not disputing about the said fact situation and in fact have conceded to the same. It is further to be noted here that, even Notification dated 29.3.2018 thereby amending Section 45(1) of the PMLA Act which came into effect from 19.4.2018, is silent about its retrospective applicability. In view thereof, the contention advanced by the learned A.S.G. cannot be accepted. It is to be further noted here that, the original Sub-section 45(1)(ii) has therefore neither revived nor resurrected by the Amending Act and therefore, as of today there is no rigor of said two further conditions under original Section 45(1)(ii) of PMLA Act for releasing the accused on bail under the said Act."**

21. Similar view was expressed by the Madhya

Pradesh High Court in M.Cr.C. No. 34201/2018 titled as Vinod Bhandari Vs. Assistant Director, Directorate of Enforcement decided on 29th August, 2018. This Court finds no reason to disagree with the two views expressed.

22. Learned counsel for the respondent also relied upon Section 24 of the PMLA. Section 24 of the PMLA read as under:

> **"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."**

23. A bare perusal of Section 24 reveals that in the case of a person charged with the offence of money laundering, the authority or the Court shall presume that such proceeds of crime are involved in money laundering unless the contrary is proved. The stage of raising the presumption or for the accused to rebut the said presumption would be during the course of trial. Even if assuming that at the stage of bail this Court is required to consider that the accused is prima facie required to rebut the presumption, the same would not have to be beyond reasonable doubt but on the basis of broad probabilities."

17. So far as Judgment of a Bombay High Court in

Ajay Kumar Versus Directorate of Enforcement dated 28.01.2022 is concerned, the same arose out of reference regarding statutory jurisdiction and not constitutional jurisdiction and the Bombay High Court had observed in the said Judgment that unless there is proper challenge and pleadings, the issue of constitutional validity cannot be undertaken.

18. In this view of the matter, this Court would have to go by the law laid down in Judgment of this Court in the matter of Ahilya Devi (supra). The application in hand is therefore required to be considered without advertising to the twin conditions for grant of bail which have been declared ultra vires Articles 14 and 21 of the Constitution of India.

19. In the matter of Jagati Publication Ltd. (supra), it is held by the Telangana High Court that investigation of the offence under Section 3 of the PMLA is not dependent upon the ultimate result of the predicate/ Schedule offence. It is a totally independent investigation as defined and contemplated under Section 2(na) of the PMLA. However in the instant case, acquittal of the applicant in the criminal case arising out of FIR No. 30/2013, 52/2013 and 311/2011 is relevant so far as the question of grant of bail to the applicant is concerned. In all these three predicate offences indisputably, the applicant was acquitted even prior to registration of ECIR No. PTZO/07/2021 dated 13.09.2021 and at the time of arrest of the applicant on 07.09.2021 in fact no Schedule offence was pending against him. The applicant has made substantial payments in pursuance to the tripartite agreement which has been given birth to FIR No 316 of 2014 which is still pending adjudication. Alleged victim of that crime have filed counter affidavit making submissions on merits of that predicate offence and it was argued on behalf of them that no evidence of payment is produced by the applicant and the due amount is to be calculated by the competent authority as per the verdict in the Letters Patent Appeal. However the fact remains that the applicant was granted anticipatory bail in that predicate offence considering the payment made by him in pursuance to the tripartite agreement. In fact the aggrieved employees were not the employees of the applicant or his company but those were the employees of the Newspapers and Publication Private Limited and the payment was to be effected by their employers towards their statutory dues. The Letters Patent Appeal came to be disposed of by this Court with the findings that the amount is not yet final.

20. Way back in the year 1978, in **Gurucharan Singh versus State (Delhi Administration) reported in 1978(1) SCC 118**, the Supreme Court has laid down the law on the subject of bail to the accused pending the trial by narrating the factors to be considered while deciding the bail applications. In the matter of **Sanjay Chandra Vs. CBI reported in MANU/SC/1375/2011**, the Supreme Court has held that after investigation, presence of the accused in the custody is not necessary. In the matter of **State of Kerala Vs. Respondent: Raneef reported in MANU/SC/0001/2011,** the Supreme Court has observed that in deciding the bail applications, an important factor which should be taken into consideration is the delay in concluding the trial. The trial often takes several years and if the accused is denied bail but is ultimately acquitted, no one can restore so many years of his life spent in custody.

21. In the case in hand, the applicant is behind bars from 07.09.2021. The complaint filed by the respondent is still pending adjudication and no progress in that matter is pointed out to this Court by the respondents herein. The respondent in its counter affidavit has expressed apprehension regarding tempering of witnesses and documents by the applicant. However it needs to mention here that in all 23 witnesses are cited by the prosecution out of which almost all are high ranking official witnesses. How the applicant would influence them is not explained by the respondents. The documentary evidence is already on the file of the learned Special Judge with the record of the complaint case. The applicant is having deep roots in the society and there is no material to infer that he would not be available for trial if he is released on bail.

22. In this view of the matter, I see no reason to authorize further pretrial detention of the applicant when the complaint against him is pending before the competent court for adjudication. The application as such is allowed with the following orders:-

i. The applicant/accused in Special Trial(PMLA) Case No. 07 of 2021 pending on the file of the Sessions Judge/Special Judge, Patna, be released on bail on executing P.R. bond of Rs.1,00,000/- (Rupees One Lac) on furnishing two sureties of the like amount to the satisfaction of the trial court with the following conditions: -

(I) The applicant/accused should not extend any threat, promise of inducement to the persons acquainted with the facts of the accusation against him so as to dissuade him from disclosing such facts to the Court or to any officer of the respondent department.

(II) The applicant/accused should cooperate the trail court in expeditious disposal of the trial against him.

(III) The applicant/accused should not contact the members of the prosecuting party as well as witnesses in this case in any manner till conclusion of the trial.

(IV) The applicant should not repeat commission of similar offence in future.

(V) The applicant should surrender his passport if any before the learned trial court.

The applicant to remove all office objections forthwith and the Registry to issue the certified copy of this order only after removal of office objections by the appellant/accused.

Bhardwaj/-

(A. M. Badar, J)

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