

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL MISCELLANEOUS JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

CRM (SB) 93 of 2022

Enforcement Directorate

-vs.-

Shri Debabrata Halder

Mr. Arijit Chakraborty.

...For the applicant/Enforcement Directorate.

Mr. Debasish Roy,
Mr. Soumik Ganguly,
Mr. Dilip Kumar Sadhu.

...For the Opposite Party no.1

Mr. Biswajit Hazra,
Mr. Rajib Mukherjee,
Mr. Archisman Sain.

...For the Opposite Party no.2 & 9

Mr. Sayan De,
Mr. Sayan Kanjilal.

...For the Opposite Party no.3 & 4

Mr. Rakheswar Dey Sarkar.

...For the accused no.5

Ms. Anita Kaunda,
Ms. Anubrata Dutta.

...For the accused no.6

Mr. Manoj Malhotra,
Mr. Ravi Kumar Dubey,
Mr. Samrat Dey Paul.

...For the accused nos.7 & 8

Mr. Ayan Bhattacharjee,
Mr. Aniruddha Bhattacharyya.

...For the accused nos. 10 &11

Reserved on : 23.11.2022

Judgment on : 20.12.2022

Tirthankar Ghosh, J:-

The petitioner has challenged the order dated 12.04.2022 passed by the learned Judge, Special (CBI) Court No.1, Bichar Bhawan, Calcutta and Special Court under the Prevention of Money Laundering Act, 2002 in M.L. Case No. 11 of 2021, arising out of ECIR No.KLZO/03/2018 dated 14.03.2018, thereby praying for cancellation of bail of the opposite party namely, Debabrata Halder.

The genesis of the case relate to ECIR No. KLZO/03/2018 dated 14.03.2018 for alleged offence under the provisions of Prevention of Money Laundering Act, 2002 (hereinafter referred to as 'PMLA, 2002'). The substance of the accusations in brief are as follows:

- (a) On a complaint made by the authorities of National Small Industries Corporation Limited, a Government of India undertaking organisation (hereinafter referred to as 'NSIC') relating to loss of public money to the tune of Rs.173.50/- crore by wrongful invocation of Bank Guarantees/invocation of fake Bank Guarantees issued by various branches of the then United Bank of India (hereinafter referred to as 'UBI'), FIR bearing no.161 dated 26.07.2016 was registered with Bidhannagar North Police Station, Kolkata against the opposite party Debabrata Halder, a middleman, having its office at 29C, Bentick Street, Ground Floor, Room No.-2, Kolkata-700069 and others. The case was thereafter investigated by Anti Cheating & Fraud Section, CID, West Bengal

and charge-sheet no. 60/2018 dated 28.04.2018 was submitted before the competent Court for offences under Section 420/406/408/409/467/468/120B of the Indian Penal Code for diversion of public money to the tune of Rs.173.50/- crore under the garb of availing assistance of Raw Material Assistance Scheme (hereinafter, referred as 'RMA Scheme') to various MSME firms, in connivance with officials of NSIC, UBI and some other persons who acted as middleman.

- (b) On scrutiny of the material which constituted offences punishable under the PMLA, 2002, ECIR No. KLZO/03/2018 dated 14.03.2018 under the PMLA, 2002 was registered for investigation. NSIC, a Government of India Enterprise which arranged for credit support through various Banks to MSME's, under the RMA Scheme. The RMA Scheme was aimed for helping MSME's by way of financing the purchase of essential raw materials which gives an opportunity to MSME's to focus better on their business prospects. In the case of Raw Materials, NSIC makes direct payment to the supplier/manufacturer of the Raw Material on specific request of the concerned MSME's. The assistance under RMA Scheme is provided against 100% security to Bank Guarantee of approved banks.

(c) On an investigation, the modus operandi adopted by the accused for diversion of public money to the tune of Rs.173.50/- crore surfaced which are as follows:

- Dual set of Bank Guarantees, both in original stamp papers, were prepared for providing collateral security to avail credit facility from NSIC under RMA Scheme.
- One Bank Guarantee was submitted to NSIC as collateral security for availing credit facility under RMA Scheme and the other Bank Guarantee was kept with them.
- One of the syndicate members impersonated himself as Mr. K. Banerjee, Deputy Manager, NSIC, who was instrumental in invocation of other set of Bank Guarantee available with them by submitting request with fake invocation letter of NSIC, to the Bank. The proceeds of the invocation of those Bank Guarantees were paid through Pay Order in favouring NSIC.
- In those pay orders prepared by the branch, name of the MSME unit was not mentioned. After preparation of the pay order by invoking the Bank Guarantee the same was delivered to Mr. K. Banerjee by hand.
- Bank never verified the identify of Mr. K. Banerjee either at the time of receiving request of invocation of Bank Guarantee

or at the time of handing over the proceeds of Bank Guarantee in the form of pay order.

- The proceeds of Bank Guarantee in the form of pay order was deposited in the account of other NSIC branch which was not the actual beneficiary of the invoked Bank Guarantee.
- The depositors then confirmed over phone to the respective branch of NSIC, whether the amount deposited in its account was received or not. As the pay orders were deposited in the account of that branch of NSIC, the official of that respective branch used to confirm the same.
- After having confirmation about credit of that amount into the account of that NSIC branch, the depositor then used to identify as proprietor of certain unit against whom payment was due and asked them to credit the said amount in their account to meet up the dues pending against particular unit.
- In this way the proceeds of wrongful invocation of Bank Guarantees were used to repay the dues of units of other branch of NSIC.
- Once the issue of one Bank Guarantee stopped the whole system of routing/movement of funds by issuance of Bank Guarantee, invocation of the same, deposit of the proceeds into the account of another NSIC branch and using the same for settlement of dues of some other units collapsed. To

continue the whole practice of movement of funds, 18 fake Bank Guarantees were prepared by the accused persons and were used to avail credit facilities under RMA Scheme.

(d) During investigation under PMLA, 2002 searches were conducted at the residential premises of Debabrata Halder and his other associates which resulted in seizure of proceeds of crime worth Rs.6.24/- crores, and several incriminating documents were recovered. The accused Debabrata Halder was found to be involved in the commission of offences of money laundering, by indulging in criminal conspiracy with bogus supplier, MSME units of Bank Officials to obtain proceeds of the crime with the aim of converting the illegal money into legitimate money. He was also found to be knowingly involved and a party in the process and activity connected with the proceeds of crime including its concealment, possession, acquisition, use and projecting/claiming the said proceeds of crime as untainted property deriving illegal monetary gains.

In course of investigation it revealed that the accused Debabrata Halder was involved in the process of laundering of proceeds of crime and as such he was arrested under Section 19 of PMLA, 2002 on 17.11.2021 and was produced before the learned Special Court under PMLA, 2002, before the learned Judge, Special (CBI) Court No.1, Bichar Bhawan, Calcutta. The accused/opposite party no.2 was remanded from 17.11.2021 on different dates

till he was granted bail on 12.04.2022. In meantime on 15.01.2022 the Enforcement Directorate/prosecution filed its final report under Section 45 of the PMLA, 2002 against 13 accused persons including the accused Debabrata Halder alleging commission of offence under Section 3 of PMLA, 2002 punishable under Section 4 of the said Act and the learned Judge by an order dated 15.01.2022 was pleased to take cognizance of the offence and issued summons in respect of rest of the accused persons.

The background of the case which weighed to the filing of the application for cancellation of bail was the order dated 12.04.2022 wherein the learned Judge, Special (CBI) Court no.1, Calcutta by the said order granted bail to the accused/opposite party namely Debabrata Halder. It was submitted by the learned Advocate appearing for the petitioner that the learned Special Court by its order dated 12.04.2022 was of the view that as there is no prayer for further investigation and no purpose would be served by keeping the accused in custody for indefinite period, weighed with the Learned Special Court for granting bail to the accused Debabrata Halder. The said order also reflected that the accused was in custody since 17th November, 2021 and the Investigating Authorities on completion of investigation filed complaint under the relevant provisions of the PMLA. While considering the order dated 12.04.2022 this Court noticed the order dated 04.04.2022 wherein all accused persons namely, Sudhangshu Kumar Halder, Gopinath Bhattacharya, Manik Lal Das, Jayanta Das, Kedar Nath Pursty, Pradeep Kumar Gangopadhyay, Manik Mohan Mishra, Pappu Halder, Alope Choudhury, Santosh Singh

appeared/surrendered and prayed for bail. The learned Special Court was of the opinion that as the accused persons has appeared pursuant to the summons and surrendered before the Court thereon they are on a different position/situation than the accused who was arrested in connection with the instant case and as such released the accused persons on bail. As the said order dated 04.04.2022 reflected that the learned Special Court did not take into consideration the provisions of PMLA and the order passed was in the nature of an order under Section 437/439 of the Code of Criminal Procedure this Court by its order dated 28th July, 2022 was pleased to issue show cause as to why their bail should not be cancelled and directed them to appear before this Court. Pursuant to such order the accused persons appeared before this Court and filed their affidavits.

Mr. Arijit Chakraborty, learned Advocate appearing for the Applicant/Enforcement Directorate submitted that the subject matter of the case related to a fraud amounting to a sum of Rs.173.50/- crore in respect of schedule offence and the Anti Cheating and Fraud Section, CID, West Bengal has submitted their charge-sheet before the competent Court for offences under Section 420/406/408/409/467/468/120B of the Indian Penal Code. The Enforcement Directorate considered the offence, the manner in which the proceeds of the crime were assimilated by the accused persons. On completion of initial investigation complaint was filed under Section 45 of the PMLA on 15th January, 2022 before the learned Special Court where the facts and circumstances constituting offence under Section 3 of the Act which is

punishable under Section 4 of the Act so filed against 13 accused persons including the opposite party and the other accused have been set out in detail. In paragraph 21 of the said complaint the Enforcement Directorate craved leave to file supplementary complaint as the investigation is still continuing. The learned Special Court vide its order dated 15.01.2022 in M.L. Case No. 11/2021 took cognizance of the offence. According to the learned Advocate Explanation (ii) to Section 44(1) of PMLA, 2002 explains that complaint shall be deemed to include any subsequent complaint in respect of further investigation that may be conducted to bring any further evidence, oral or documentary against any accused person involved in respect of the offence, for which complaint has already been filed, whether he has been named in the original complaint or not, as such for filing of supplementary/subsequent complaint in the pending case before the learned Trial Judge, no prayer is required by the Investigating Agency. It has also been submitted that the order dated 04.04.2022 would reflect that the bail petition was filed on 24.03.2022 and the trial Court fixed hearing of such bail application on 12.04.2022, while the production of the accused/opposite party Debabrata Halder was fixed on 10.06.2022, thus on 12.04.2022 oral objection was raised on behalf of the Enforcement Directorate to the prayer for bail of the accused. The order dated 15.01.2022 primarily reflect that the learned trial Judge, after dealing with the submissions made on behalf of the Enforcement Directorate observed that the investigation revealed fake agency and there is sufficient material against the present accused and prima facie a case has been made out against him. The

amount of money siphoned is to the tune of Rs.173.50/- Crore. In the subsequent order dated 14.02.2022 the learned trial Court held that in view of the order dated 15.01.2022 there is no further development in favour of the accused thus the bail petition is rejected, subsequently in the order dated 12.04.2022 the learned trial Court according to the applicant erroneously held that there is no prayer for further investigation so the Court can safely say that at this moment there is nothing for further investigation and as such no purpose would be served if the accused is kept in the custody for indefinite period. The applicant/Enforcement Directorate categorically submitted that the learned Trial court failed to consider the mandatory nature of Section 45 of PMLA, 2002 and ignored the decision of the Hon'ble Supreme Court. It has been emphasized that in Ajay Kumar -Vs. - Directorate of Enforcement reported in 2022 SCC OnLine Bom 196 the Hon'ble Bombay High Court held that the twin conditions in Section 45(1) of PMLA, 2002 which was declared unconstitutional by the Hon'ble Supreme Court in the case of Nikesh Tarachand Shah -Vs. - UOI &Ors. reported in (2018) 11 SCC 1 revived in view of the legislative intervention vide Amendment Act 13 of 2018. Reliance was placed on Assistant Director, Enforcement Directorate -Vs. - Dr. V.C. Mohan wherein according to the applicant the mandate of Section 45 of the PMLA was emphasized. The learned Advocate also relied upon Assistant Director, Directorate of Enforcement - Vs. - N. Umashankar & Ors. wherein the Hon'ble Supreme Court was pleased to set aside the order granting bail passed by the Hon'ble High Court of Madras on the ground that the High Court has not dealt

with the relevant aspects of the matter including the statutory bar for grant of bail in cases relating to PMLA. Learned Advocate also relied upon the judgment of the Hon'ble Supreme Court in Vijay Madanlal Choudhury & Ors. -Vs. - Union of India & Ors. which will be dealt with later. According to the learned Advocate for the applicant/Enforcement Directorate the learned trial Judge, enlarged the accused Debabrata Halder on bail without reasoning on the statutory bar under Section 45 of the PMLA Act, as such the said order dated 12.04.2022 is ex-facie bad in law.

Mr. Debasish Roy, learned Advocate appearing for the accused/opposite party submitted that the learned Special Court after conclusion of the investigation and filing of the complaint and keeping in mind the provisions of Section 45 of the PMLA Act granted bail to the opposite party. The plea of the Enforcement Directorate that further investigation process was described in one of the paragraph of the complaint based on which the investigating agency has sought for cancellation of bail of the accused are basically the process which the applicant ought to have exhausted before filing of the complaint in terms of the Act. Mere filing of the complaint after a purported investigation conducted in a slipshod manner to secure the custody of the accused after the expiry of the statutory period, should not suffice the pleadings in the application with regard to continuation of further investigation. The bail so granted on 12.04.2022 was in conformity with the statutory requirement and the approach of the applicant is to venture for a never ending investigation for an indefinite period of time. According to the learned Advocate the

accused/opposite party was arrested on 17.11.2021 and was granted bail on 12.04.2022 while the complaint was filed on 15.01.2022. It has been reiterated that after five months the bail application was allowed by the learned Special Court and the very purpose of filing such an application for cancellation is that the Investigating Agency failed to unearth any admissible evidence in Course of their investigation prior to filing of the complaint and as such sought the prayer for cancellation under the garb of further investigation. Learned Advocate relied upon the judgment of the Hon'ble Supreme in Satender Kumar Antil -Vs. - Central Bureau of Investigation and Anr. reported in 2022 SCC OnLine SC 825.

Mr. Biswajit Hazra, learned Advocate appearing for accused no.2, Sudhangshu Kumar Halder and accused no.9, Pappu Halder, filed show-cause and submitted that the accused persons voluntarily surrendered after receiving the summons and they along with other co-accused persons were granted bail by the order dated 12.04.2022. It was contended that as the applicant/Investigating Agency did not file any application for cancellation of bail of the present accused persons there is no reason to interfere with the order of bail granted to them. Additionally it has been submitted that as the investigating agency did not exercise their powers to arrest in the instant case their bail may not be cancelled. It has also been submitted that the present accused persons are not similarly situated in respect of the alleged offence with Debabrata Halder and the accused no.9 namely, Pappu Halder was not implicated as an accused in the charge-sheet submitted by the CID which has

been considered to be a schedule offence in respect of the investigation carried out by the Enforcement Directorate. Learned Advocate submitted that the accused persons would be prejudiced in case their bail is cancelled after about 8 months.

Mr. Sayan De, learned Advocate appearing for the accused no.3 and 4 submitted that the complicity of the accused persons namely, Gopinath Bhattacharya and Manik Lal Das, if at all did not inspire the Investigating Agency to exercise their powers under Section 19 of the PMLA, 2002 as no incriminating materials in the nature relating to proceeds of crime could be recovered from them. It has been reiterated that the accused persons are law abiding citizens and as such on receipt of the summons they appeared before the learned Special Court and the learned Special Court after considering the materials appearing against them and the issues canvassed by the Enforcement Directorate was pleased to allow them to be released on bail. It has been submitted that so far as the rigors of Section 45 of the PMLA are concerned the same do not apply to the present accused persons and as such their prayer for bail should not be interfered with.

Mr. Rakheswar Dey Sarkar learned Advocate appearing for the accused no.5 Jayanta Das denied the allegations made against the accused no.5 and reiterated the contentions advanced by the learned Advocates for other accused persons. It was submitted that as the Investigating Agency in course of investigation did not invoke the provision of Section 19 of the PMLA or their

powers to arrest, the accused no.5 as such, at this stage should not be sent to custody. Additionally it has been submitted that the complicity of the accused Jayanta Das could not be established by the investigating agency and he has been implicated only on the basis of charge-sheet submitted by the CID, West Bengal. The purpose for which the PMLA, 2002 was brought into force particularly, with regard to the assessment, scrutiny and recovery of proceeds of crime do not apply to the present accused and as such the rigors of Section 45 of the PMLA relating to bail do not apply to the present accused and the learned trial Court keeping in mind the aforesaid provisions of law, the conduct of the accused who appeared in response to the summons without evading the same, granted bail which should not be interfered with.

Ms. Anita Kaunda, learned Advocate appearing for the accused no.6 namely, Kedar Nath Pursty submitted that he was Chief Manager of United Bank of India, Hazra Branch which was no way concerned for issuing fake Bank Guarantee. The accused has been falsely implicated in connection with the instant case and there is nothing on record to suggest that the present accused as a Manager accumulated proceeds of crime or has been beneficiary of the same. In a routine manner without conducting any investigation the Enforcement Directorate inserted the name of Kedar Nath Pursty as an accused in the instant case as he was named by the CID, West Bengal in its charge-sheet, the same is unfortunate. It has also been added that the present accused in response to the summons appeared before the Court by not evading the Investigating Agency or the Court and as such the learned Trial Court after

being satisfied, that the rigors of Section 45 of PMLA is not applicable to the present accused was pleased to grant him bail. Learned Advocate submitted that any interference in the order of bail would seriously prejudice the present accused in view of the fact that the accused was arrested by CID, West Bengal and was in custody for a considerable period of time, while on bail in the instant case for more than 8 months there were no allegations against him that he has misused the liberty granted to him.

Mr. Manoj Malhotra, learned Advocate appearing for the accused no.7 and accused no.8 namely, Pradeep Kumar Gangopadhyay and Manik Mohan Mishra submitted that the accused persons were granted bail as they surrendered before the Special Court on the date fixed for appearance pursuant to the summons being received by them. Neither there is any allegation nor they had attempted to flee away from the process of law or tampered any witness/evidence in the instant case. It has also been pointed out that Pradeep Kumar Gangopadhyay is aged about 68 years, he was Senior Manager of Behala Branch of United Bank of India and has retired on 30th September, 2015. The case registered by the CID, West Bengal was on the basis of a complaint of National Small Industries Corporation Limited which was dated 26th September, 2016. In the said case being Bidhannagar North Police Station Case no. 161 dated 26.07.2016, the accused No.7 was arrested on 27.06.2017 and was in custody for about 93 days after which he was granted bail by the learned ACJM, Bidhannagar. Learned Advocate has submitted that during course of investigation all the documents relating to pre-

retirement savings and post-retirement assets which were available with him along with the source of funds were handed over to the investigating. Learned Advocate submitted that the Investigating Agency in course of investigation did not arrest the accused no.7 and as such his liberty should not be interfered, keeping in mind the fact that he never conducted himself in a manner which would be prejudicial to the investigation, inquiry or trial of the case. So far as the accused no.8 Manik Mohan Mishra is concerned, it has been submitted that the accused was employed with United Bank of India and was suspended due to internal disciplinary proceeding. In connection with Bidhannagar North Police Station case no. 161 dated 26.07.2016 which was initiated by the National Small Industries Corporation he was arrested and was granted bail after 93 days. Learned Advocate submitted that the accused no.8 has informed the petitioner his source of money and cooperated with the investigating agency. According to him by no stretch of imagination the rigors of Section 45 of the PMLA could be made applicable this accused. It has been prayed that having regard to the circumstances appearing in favour of the accused, liberty granted to accused no.8 should not be interfered in view of the fact that he has been cooperating with the Investigating Agency and has never misused the liberty which has been granted to him.

Mr. Ayan Bhattacharjee, learned Advocate appearing for the accused no.10 and 11 being Alope Choudhury and Santosh Singh respectively, submitted that in respect of the present accused persons the Enforcement Directorate did not pray for cancellation of bail. Learned Advocate submitted

that rule/notice which was issued by the Court was for the limited purpose pertaining as to whether the bail which was granted by the learned Special Court was adhering to the conditions relating to Section 45 of the PMLA. It has also been submitted that the Enforcement Directorate did not feel it necessary for advancing any prayer for cancellation of bail for the present accused persons and/or there are any supervening circumstances that calls for interference by this Court. Additionally it has been submitted that by detaining the present accused persons in custody no fruitful purpose would be served as the present accused persons were neither beneficiaries to the proceeds of crime nor they are even alleged to be in possession of such proceeds of crime. In order to substantiate his argument Mr. Bhattacharjee relied upon *Vijay Madanlal Chaudhury & Ors. -Vs. - Union of India & Ors.* reported in 2022 SCC OnLine SC 929; *Pratap Singh -Vs. - State of Jharkhand & Anr.* reported in (2005) 3 SCC 551; *Maru Ram -Vs. - Union of India & Ors.* reported in (1981) 1 SCC 107; *Mohd. Abdul Sufan Laskar & Ors. -Vs. - State of Assam* reported in (2008) 9 SCC 333; *Sukh Ram -Vs. - State of Himachal Pradesh* reported in (2016) 14 SCC 183.

Mr. Bhattacharjee submitted that in this case FIR relating to Bidhannagar (North) police station was registered on 26th July, 2016; conditions of bail enumerated in Section 45 of the PMLA, 2002 were struck down by the Hon'ble Supreme Court in *Nikesh Tarachand Shah -Vs. - Union of India & Anr.* reported in (2018) 11 SCC 1 on 23rd November, 2017; the ECIR was registered in connection with the present case on 14th of March, 2018; the

twin conditions which were earlier struck down were revived by the Parliament vide Act 13 of 2018 with effect from 19th April, 2018; charge-sheet was filed by the police authorities in connection with Bidhannagar (North) P.S. case against 11 accused persons including accused/respondent no.10 and 11 under Section 420/406/408/409/467/468/469 of the Indian Penal Code; pursuant to the summons issued in the ECIR respondent/accused no.10 and 11 appeared/surrendered before the learned Special Court on 4th of April, 2022. According to the learned Advocate the judgment of the Hon'ble Supreme Court in Vijay Madanlal Choudhury & Ors. (supra) cannot have a retrospective operation and the Amendment Act was effective from 19.04.2018 which is prospective in operation. Relying upon Pratap Singh -Vs. State of Jharkhand &Anr. reported in (2005) 3 SCC 551 (Para 88), the learned Advocate submitted that in case of Juvenile Justice (Care and Protection of Children) Act, 2020 it was held that it would come into force on such date by a notification in the official gazette as the Central Government may appoint on 1st April, 2021. The Central Government issued notification and it was held in the reported judgment that "the Act, thus, is prospective in its operation". Learned Advocate reiterated that every statute is presumed to be prospective in operation unless otherwise specified. It was further contended that the respondent/accused no.10 and 11 surrendered before the Court immediately on receipt of summons and they also complied with the notices issued by the Enforcement Directorate on 05.07.2019, 10.12.2021, 11.12.2021, 03.01.2022 and 22.02.2022. The respondent no.10 and 11 were never arrested and as

such the provisions of Section 45 of the PMLA, 2002 will not be applicable to them as Section 19 of the PMLA prescribes the powers of arrest which casts an obligation upon the Investigating Officer to arrest a person in case such officer has reason to believe that such accused is guilty of an offence, which is unlike Section 41 of the Code of Criminal Procedure. Learned Advocate in order to substantiate his contention relied upon *Vijay Madanlal Chaudhury & Ors. –Vs. – Union of India &Ors.* reported in 2022 SCC OnLine SC 929; *Pratap Singh – Vs. – State of Jharkhand &Anr.* reported in (2005) 3 SCC 551; *Maru Ram –Vs. – Union of India &Ors.* reported in (1981) 1 SCC 107 *Mohd. Abdul Sufan Laskar & Ors. –Vs. – State of Assam* reported in (2008) 9 SCC 333; *Sukh Ram – Vs. – State of Himachal Pradesh* reported in (2016) 14 SCC 183; *Reserve Bank of India –Vs. – Peerless General Finance and Investment Co. Ltd.* reported in (1987) 1 SCC 424; *Madhu Limaye & Anr. –Vs. – Ved Murti & Ors.* reported in (1970) 3 SCC 739 and *Union of India –Vs. – K.A. Najeeb* reported in (2021) 3 SCC 713.

Mr. Arijit Chakraborty learned Advocate appearing for the Enforcement Directorate narrated a synopsis of the role attributed by each of the accused persons in commission of the offence, the same are set out as follows:

- (1) **Debabrata Halder (accused no.1):** He is the main architect and conspirator of the whole offence and has enriched himself in the process of financial assistance under RMA scheme of NSIC by way of issuance and invocation of Bank Guarantee from United Bank of India, in collusion with his associates in NSIC as well as United Bank

of India. He by way of creating several non-existent/fake MSME firms which only existed as paper companies through his associates, namely, Utpal Sarkar and Pappu Halder and with Identity cards/personal details of some exploited persons created fake MSME units which were later utilized for availing financial assistance from NSIC under its RMA scheme. The accused attempted to convert such earnings/money by projecting it as agricultural income/income from his various firms/companies, for which he entered into lease agreement of agricultural lands/fake bills regarding business of dry fish etc. His statement under Section 50 of the PMLA, 2002 is self explanatory in modus operandi of the offence and the conversion of money in collusion with others, which includes officials of NSIC and United Bank of India for diversion of funds. The accused was directly involved with the concealment, possession, acquisition, use of proceeds of agreement and projecting them as untainted, for which according to the provisions/Act he has committed the offence under Section 3 of PMLA which is punishable under Section 4 of the said Act.

- (2) **Sudhangshu Kumar Halder (accused No.2):** He was a NSIC Official at Kolkata Branch and was working in RMA section. He had association with accused no.1 Debabrata Halder since 2009-10 and was working as a consultant for processing of RMA proposal of various MSME units. He guided Debabrata Halder about procedure

relating to processing, sanction, disbursement, financial assistance under RMA scheme. He was shown as an accused in the CID case for being involved in financial irregularities in NSIC due to wrongful invocation of Bank Guarantees/ invocation of fake Bank guarantees. He was also associated with many co-conspirators. He was getting monthly remuneration in cash which was arranged through misappropriation of NSIC funds.

(3) **Gopinath Bhattacharya (accused no.3):** He was working as Deputy Manager in NSIC, Kolkata Branch and was associated with Debabrata Halder since his initial days. He was later posted as Manager of NSIC, Kolkata Branch and Salt Lake Branch. His role was assigned for smooth processing of RMA assistance proposal and to take care of any hurdle in this regard. He was paid Rs.15 lacs for each proposal of Rs.3 crores under RMA scheme. He was found to have knowingly assisted in the process/activity connected with the proceeds of crime and thus has committed offence under Section 3 of the PMLA and punishable under Section 4 of the said Act.

(4) **ManikLal Das (accused no.4):** He was an associate of Debabrata Halder who was Manager of Salt Lake and Kolkata Branch of NSIC. His role was similar to that of Gopinath Bhattacharya i.e. processing of RMA assistance proposal, processed in the name of fictitious firms. He also received remuneration of Rs.15 lacs for each RMA proposals of Rs.3 crores. He was found to have indulged in recommendation for

availing post-retirement services of Sudhangshu Kumar Halder for better control over diversion of public money, through RMA proposal in the name of fictitious/non-existent MSME firms. He was found to have committed offence under Section 3 of the PMLA and punishable under Section 4 of the said Act.

(5) **Jayanta Das (Accused No.5):** His main work was to collect proposal of RMA assistance from the MSME firms and inspection of such firms to assess their business viability, existence and other related conditions. He was also instrumental in getting the Bank Guarantee verified from the issuing branch and its regional offices. He was instrumental in preparing appraisal of the loan proposals inspecting the units, submitting his recommendation, based on such inspection it was decided which RMA proposal would be sanctioned. No actual verification was made for ascertaining the existence and business viability of such firms. Payment of Rs.3 lacs per RMA proposal of Rs.3 crores were paid to him in cash on each occasion. He was found to have connection with Debabrata Halder and as such committed the offence under Section 3 of the PMLA.

(6) **Kedar Nath Pursty (Accused No.6):** He was the main associate person who guided Debabrata Halder, about opening of accounts, issuance of Bank Guarantees and invocation of the same. He was known to Debabrata Halder since 2005 and developed close acquaintance with him, during sanctioning of his Cash Credit account

at the branch. Later he decided to explore the possibility of issuance of Bank Guarantee for RMA proposal of NSIC and subsequently, invocation of the same during his posting in Kudghat Branch. The first Bank Guarantee which was issued is in the name of Arunabha Enterprise on 08.01.2010 for an amount of Rs.4 lacs, having validity of one year. Later two Bank Guarantees were also issued each in the name of Gupta Traders and Fashion Track. These Bank Guarantees were invoked within one week of their issuance as he was transferred from Kudghat branch to Jadavpur branch. Payments of Rs.15 lacs were made to him for issuance of Bank Guarantee valued Rs.3 crores favouring NSIC, generally for each unit. Apart from this he was paid Rs.5 lacs for each set of Bank Guarantees valued at Rs.3 crores issued by Pradip Kumar Gangopadhyay and Manik Mohan Mishra. Having assessed his role he was found to be involved in commission of the offence under Section 3 of PMLA.

- (7) **Pradip Kumar Gangopadhyay (Accused No.7):** He was Branch Manager of Jadavpur Vidyapith Branch of United Bank of India and was also associated with Debabrata Halder, in issuance of Bank Guarantee in favour of NSIC and also for wrongful invocation of the same in similar manner as KedarNathPursty. Payment of Rs.10 lacs were made to him for each RMA proposal having Bank Guarantees valued Rs.3 crores for his assistance in issuance of Bank Guarantees favouring NSIC and wrongful invocation thereof. He also received

payments of Rs.1-1.5 lacs for extending his post-retirement services regarding issuance and invocation of Bank Guarantee for each set of Bank Guarantees valued at Rs.3 crores. He was found to be associated with Debabrata Halder and has committed the offence under Section 3 of PMLA.

(8) **Manik Mohan Mishra (Accused No.8):** He was successor of Pradeep Kumar Gangopadhyay in Jadavpur Vidyapeeth Branch of United Bank of India. He carried forward the whole process of issuance of dual Bank Guarantees favouring NSIC and further wrongful invocation thereof by Pradeep Kumar Gangopadhyay. Payment of Rs.10 lacs were also made to him for each set of Bank Guarantees valued Rs.3 crores. About 18 fake Bank Guarantees were also issued by him without entering their details into the software system of United Bank of India. Payment of Rs.17.5 lacs were made to him for issuance of each set of such fake Bank Guarantees of Rs.3 crores. He was found to have committed the offence under Section 3 of PMLA.

(9) **Pappu Halder (Accused No.9):** He was one of the close associates of Debabrata Halder in all activities related to NSIC scam. He is elder son of Sudhangshu Kumar Halder who was working in RMA section in NSIC, Kolkata office and was a close associate of Debabrata Halder. He handled works in connection with processing of various documentation viz. opening bank accounts in the name of various units related to the RMA scheme, arranged non-functional/fictitious

MSME units, availed financial assistance under RMA scheme. He also arranged new units to complete documentation in relation to bank etc. in connection with availing financial assistance under RMA scheme. He arranged about 20 units and total amount of Rs. 1 crore was paid to him. He has committed offence under Section 3 of the PMLA.

(10) **Aloke Choudhury (Accused No.10):** He was working as Chief Manager (credit) in Behala Regional Office of United Bank of India having administrative control over its Jadavpur Vidyapith Branch. He was associated with Debabrata Halder in confirmation of Bank Guarantees issued in favour of NSIC. He also worked as Head of Credit/Advance department in Behala Regional Office and was responsible to look after the activities relating to all credit facilities, extended by the branches under the administrative control of the then Behala Regional Office. Payment of Rs.20-25 lacs were paid to him regarding issuance/confirmation/invoication of Bank Guarantees for each set of Bank Guarantees valued Rs.3 crores issued in favour of NSIC. He has committed the offence under Section 3 of PMLA.

(11) **Santosh Singh (Accused No.11):** He was successor of Aloke Chowdhury and was working as Credit Manager (Credit) in Behala Regional Office of United Bank of India, having administrative control over its Jadavpur Vidyapith Branch. He was actively associated with Debabrata Halder, in confirmation of Bank Guarantees issued in

favour of NSIC, on request of NSIC authorities. He was also functioning as Head of Credit/Advance Department in Behala Regional Office and was responsible to look after the activities relating to all credit facilities extended by the branches under the administrative control over the then Behala Regional Office. It was clearly mentioned in the monthly discretionary power statements of different branches that the Branch Manager of Jadavpur Vidyapith Branch had issued Bank Guarantees much beyond his discretionary power. However, he never recommended any action against such branch manager and always tried to rectify the issuance of those Bank Guarantees. Payment of Rs.20-25 lacs were made to him for extending his services regarding issuance/confirmation/invocation of Bank Guarantee for each set of Bank Guarantees valued Rs.3 crores issued in favour of NSIC. Further, payment of Rs.30 lacs were also separately made for confirmation of 18 fake Bank Guarantees. He has also committed offence under Section 3 of the PMLA.

Learned Advocate appearing for the Enforcement Directorate has relied upon the judgment of Vijay Madanlal Choudhury & Ors. –Vs. – Union of India reported in 2022 SCC OnLine SC 929[para 115 to 136 at page 407 to 450]. Learned Advocate has also relied upon the judgment of the Hon'ble Bombay High Court in Ajay Kumar Chandraprakash Baheti –Vs. – Directorate of Enforcement (through the Assistant Director, Sub-Zonal Office, Nagpur) reported in AIR Online 2021 BOM 5356. Two judgments of the Hon'ble

Supreme Court in The Assistant Director Enforcement Directorate –Vs. – Dr. V.C. Mohan (Criminal Appeal No. 21 of 2022); The Assistant Director, Directorate of Enforcement –Vs. – N. Umashankar & Ors. arising from SLP (Crl) Nos. 7563-7565 of 2021; P. Chidambaram –Vs. – Directorate of Enforcement reported in AIR 2019 SC 4198; Sanjay Agarwal –Vs. – Directorate of Enforcement reported in 2022 CrL.L.J. 2219.

Records of this case reveal that by an order dated 15.01.2022 final report was filed by the complainant Nishant Neeraj of Enforcement Directorate under Section 45 of the PMLA, 2002 against (1) Shri Debabrata Halder, (2) Shri Sudhangshu Kumar Halder, (3) Shri Gopinath Bhattacharya, (4) Shri Manil Lal Das, (5) Shri Jayanta Das, (6) Shri Kedar Nath Pursty, (7) Shri Pradeep Kumar Gangopadhyay, (8) Shri Manik Mohan Mishra, (9) Shri Pappu Halder, (10) Shri Alok Choudhury, (11) Shri Santosh Singh, (12) Shri Utpal Sarkar and (13) Shri Rahul Paul and the learned Court was pleased to take cognizance of the offence as submitted by the Enforcement Directorate against the accused persons and issued summons against the accused persons bearing serial nos. 2 to 11 (as above).

On receipt of the summons the accused nos.2 to 11 surrendered before the learned Special Court on 04.04.2022 and prayed for bail. The learned Special Court proceeded to record, that summons were sent to the accused persons and in response to the same they surrendered before the Court and as such the contention of the learned Advocate appearing for the complainant/Enforcement Directorate that they are similarly placed with

accused no.1/ Debabrata Halder is not correct and accordingly released accused nos.2 to 11 on bail.

It would be pertinent at this stage to quote Section 19 and 45 of PMLA, 2002 which are set out as follows:

“S. 19. Power to arrest.—(1) *If the Director, Deputy Director, Assistant Director or any other officer authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession, reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.*

(2) The Director, Deputy Director, Assistant Director or any other officer shall, immediately after arrest of such person under sub-section (1), forward a copy of the order along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period, as may be prescribed.

(3) Every person arrested under sub-section (1) shall, within twenty-four hours, be taken to a [Special Court or] Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction:

Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the [Special Court or] Magistrate's Court.

S. 45. Offences to be cognizable and non-bailable.—(1) *[Notwithstanding anything contained in the Code of Criminal*

Procedure, 1973 (2 of 1974), no person accused of an offence [under this Act] shall be released on bail or on his own bond unless—]

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

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

Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or 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.

[(1-A) 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.”

Further Rule 6 of reference to the arrest order of the Prevention of Money-Laundering (the Forms and the Manner of Forwarding a Copy of Order of Arrest of a Person along with the Material to the Adjudicating Authority and its period of Retention) Rules, 2005.

“FORM III

[See Rule 6]

Arrest Order

“Whereas, I Director/Deputy Director/ Assistant Director/Officer authorised in this behalf by the Central Government, have reason to believe that.....(name of the person arrested) resident of..... has been guilty of an offence punishable under the provisions of the Prevention of Money-laundering Act, 2002 (15 of 2003);

Now, Therefore, in exercise of the powers conferred on me under sub-section (1) of Section 19 of the Prevention of Money-laundering Act, 2002 (15 of 2003), I hereby arrest the said (name of the person arrested) at..... hours on and he has been informed of the grounds for such arrest.

Dated at on this day of Two thousand

Arresting Officer

(Signature with Seal)

In *Vijay Madanlal Choudhary and Ors. –Vs. –Union of India and Others* reported in 2022 SCC OnLine SC 929, the following paragraphs are relied upon for the purpose of the present case which are set out below:

325. *The safeguards provided in the 2002 Act and the preconditions to be fulfilled by the authorised officer before effecting arrest, as contained in Section 19 of the 2002 Act, are equally stringent and of higher standard. Those safeguards ensure that the authorised officers do not act arbitrarily, but make them accountable for their judgment about the necessity to arrest any person as being involved in the commission of offence of money-laundering even before filing of the complaint before the Special Court under Section 44(1)(b) of the 2002 Act in that regard. If the action of the authorised officer is found to be vexatious, he can be proceeded with and inflicted with punishment specified under Section 62 of the 2002 Act. The safeguards to be adhered to by the jurisdictional police officer before effecting arrest as stipulated in the 1973 Code, are certainly not comparable. Suffice it to observe that this power has been given to the high-ranking officials with further conditions to ensure that there is objectivity and their own accountability in resorting to arrest of a person even before a formal complaint is filed under Section 44(1)(b) of the 2002 Act. Investing of power in the high-ranking officials in this regard has stood the test of reasonableness in *Premium Granites*, wherein the Court restated the position that requirement of giving reasons for exercise of power by itself excludes chances of arbitrariness. Further, in *Sukhwinder Pal Bipan Kumar*, the Court restated the position that where the discretion to apply the provisions of a particular statute is left with the Government or one of the highest officers, it will be presumed that the discretion vested*

in such highest authority will not be abused. Additionally, the Central Government has framed Rules under Section 73 in 2005, regarding the forms and the manner of forwarding a copy of order of arrest of a person along with the material to the Adjudicating Authority and the period of its retention. In yet another decision in Ahmed Noormohmed Bhatti, this Court opined that the provision cannot be held to be unreasonable or arbitrary and, therefore, unconstitutional merely because the authority vested with the power may abuse his authority. (Also see Manzoor Ali Khan).

326. *Considering the above, we have no hesitation in upholding the validity of Section 19 of the 2002 Act. We reject the grounds pressed into service to declare Section 19 of the 2002 Act as unconstitutional. On the other hand, we hold that such a provision has reasonable nexus with the purposes and objects sought to be achieved by the 2002 Act of prevention of money-laundering and confiscation of proceeds of crime involved in money-laundering, including to prosecute persons involved in the process or activity connected with the proceeds of crime so as to ensure that the proceeds of crime are not dealt with in any manner which may result in frustrating any proceedings relating to confiscation thereof.*

400. *It is important to note that the twin conditions provided under Section 45 of the 2002 Act, though restrict the right of the accused to grant of bail, but it cannot be said that the conditions provided under Section 45 impose absolute restraint on the grant of bail. The discretion vests in the Court which is not arbitrary or irrational but judicial, guided by the principles of law as provided under Section 45 of the 2002 Act. While dealing with a similar provision prescribing twin conditions in MCOCA, this Court in Ranjitsing Brahmajeetsing Sharma, held as under:*

“44. The wording of Section 21(4), in our opinion, does not lead to the conclusion that the court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act. If such a construction is placed, the court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the applicant. Such cannot be the intention of the legislature. Section 21(4) of MCOCA, therefore, must be construed reasonably. It must be so construed that the court is able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. Similarly, the Court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in futuro must be an offence under the Act and not any other offence. Since it is difficult to predict the future conduct of an accused, the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence.

45. It is, furthermore, trite that for the purpose of considering an application for grant of bail, although detailed reasons are not necessary to be assigned, the order granting bail must demonstrate application of mind at least in serious cases as to why the applicant has been granted or denied the privilege of bail.

46. The duty of the court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. However, while dealing with a special statute like MCOCA having regard to the provisions contained

in sub-section (4) of Section 21 of the Act, the court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. The findings recorded by the court while granting or refusing bail undoubtedly would be tentative in nature, which may not have any bearing on the merit of the case and the trial court would, thus, be free to decide the case on the basis of evidence adduced at the trial, without in any manner being prejudiced thereby”

(emphasis supplied)

401. *We are in agreement with the observation made by the Court in Ranjitsing Brahmajeetsing Sharma. The Court while dealing with the application for grant of bail need not delve deep into the merits of the case and only a view of the Court based on available material on record is required. The Court will not weigh the evidence to find the guilt of the accused which is, of course, the work of Trial Court. The Court is only required to place its view based on probability on the basis of reasonable material collected during investigation and the said view will not be taken into consideration by the Trial Court in recording its finding of the guilt or acquittal during trial which is based on the evidence adduced during the trial. As explained by this Court in Nimmagadda Prasad, the words used in Section 45 of the 2002 Act are “reasonable grounds for believing” which means the Court has to see only if there is a genuine case against the accused and the prosecution is not required to prove the charge beyond reasonable doubt.*

Relying on the observations made by the Hon’ble Apex Court in the aforesaid judgment it can be stated that the Enforcement Directorate exercised

its discretion and authority under Section 19 of the PMLA, 2002 to arrest a person wherein they found higher standard of evidence relating to proceeds of crime which were available with them and the custodial detention of the accused was thought to be necessary in the background of the object and purpose of the PMLA, 2002. Needless to state that such powers are vested with the superior officers of the Enforcement Directorate and there are rigors on the exercise of the powers which have been thrust on them, so that the authorised officers, arresting officer are to comply with the rules framed under Section 73 of the Act, which warrants the forwarding of a copy of the warrant of arrest of the person along with material to the adjudicating authority and the purpose of detention. Thus, the applicability of the twin conditions under Section 45 of the PMLA, 2002 for granting bail is to be satisfied in case of release of such an accused.

In *Vijay Madanlal Choudhary and Ors.*(supra) the Hon'ble Apex Court was pleased to emphasise on the issue relating to a delicate balance between the merits of appreciation while deciding a case at the stage of acquittal or conviction and an application for bail. For this purpose the phrase "reasonable grounds for believing" was also emphasized in relation to the material collected by the prosecution at the time of considering the bail application.

Be that as it may, there is difference with regard to releasing a person on bail who has appeared in response to summons and a person who was arrested in course of investigation under the PMLA, 2002 by the Investigating Authorities invoking their powers under Section 19 of the Act. The accused nos. 2 to 11

appeared before the learned Special Court pursuant to the summons which were issued to them as such taking into account the provisions of Section 65 of the PMLA, 2002 it can be held that if the learned Special Court intended to exercise its option under Section 88 of the Code of Criminal Procedure the same cannot be interfered with until and unless supervening circumstances are brought on record.

In view of the aforesaid the order dated 04.04.2022 wherein the learned Special Court granted bail to accused nos.2 to 11 and against whom, this Court was pleased to issue show cause by its order dated 28.07.2022 is not interfered with. The order of bail dated 04.04.2022 granted by the learned Special Court to accused nos. 2 to 11 is hereby affirmed.

However, so far as the accused Debabrata Halder is concerned the learned Special Court by its order dated 12.04.2022 was pleased to release the said accused on bail which calls for interference in view of the reasons so assigned by the learned Special Court which is quoted below:

“...It is submitted by the Ld. Advocates for the petitioner that the accused is in custody since 17.11.2021 and after investigation complaint has been filed. Noting is left for investigation. It is also unknown when the trial will be completed. So the ld. Advocate has prayed released of the accused persons on bail on any condition.

On the other hand Ld. Spl P.P. opposed the bail application and submitted that crores of money is involved in this case.

Heard both sides. Perused the materials on case record as well as the prayer portion of complaint. There is no prayer for further investigation so the court can safely say that at this moment there is

nothing for further investigation. No purpose will be served if the accused is kept in the custody for an indefinite period....”

In Y.S. Jagan Mohan Reddy &Ors. –Vs. – CBI reported in (2013) 7 SCC 439 it has been observed by the Hon’ble Supreme Court that economic offences constitute a class apart and need to be visited with different approach in the matter of bail. Paragraph 34 and 35 of the said judgment is relevant for the purpose of consideration of this case, as such the same is set out below:

“34. *Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.*

35. *While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations.”*

Ordinarily, the considerations which weigh with a Court in granting bail in non-bailable offences are the nature and seriousness of the offences; the character of the evidence; circumstances which are peculiar to the accused; a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of witness being tampered with; the larger

interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of the case.

In State of Gujarat –Vs. – Sandip Omprakash Gupta reported in 2022 SCC OnLine SC 1727 the Hon’ble Supreme Court while dealing with the provisions of bail under Section 20(4) of the Gujarat Control of Terrorism and Organised Crime Act, 2015 was pleased to observe as follows:

“34. It is plain from a bare reading of the non-obstante clause in the sub-section that the power to grant bail by the High Court or Court of Sessions is not only subject to the limitations imposed by Section 439 of the Code but is also subject to the limitations placed by Section 20(4) of the 2015 Act. Apart from the grant of opportunity to the Public Prosecutor, the other twin conditions are : the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds. The expression ‘reasonable grounds’ means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provisions requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. Thus, recording of findings under the said provision is a sine qua non for granting bail under the 2015 Act.”

The order of the learned Judge, Special (CBI) Court No.1, Bichar Bhawan, Calcutta dated 12.04.2022 reflects that the Public Prosecutor opposed the prayer for bail and as such it was incumbent upon the learned Special Court to satisfy itself regarding the broad probabilities relating to the existence of reasonable grounds for believing that the accused was not guilty of the offence alleged under the PMLA, 2002 while he was being released on bail. The learned Special Court without adhering to the merits of the case and the provisions of law proceeded to allow the prayer for bail on reasons which are not applicable in respect of the offences under the PMLA, 2002.

The complaint filed by the prosecution itself contained prayer for further investigation but the learned Special Court observed that there was no prayer for further investigation. It would be apposite to state that an investigating agency is not required to pray for permission for further investigation of the case which is a settled principle of law and the same is prerogative of the investigating agency. The duty of the investigating agency is to the extent of informing the Court which the investigating agency in this case has done by informing the Court in the complaint filed before it.

Considering that the order dated 12.04.2022 passed by the Learned Judge, Special (CBI), Court no.1, Calcutta in ML Case No. 11 of 2022 is in violation of the provisions of Section 45 of the PMLA, 2002, I am of the opinion that the said order calls for interference. Accordingly, the order dated 12.04.2022 granting bail to the accused Debabrata Halder is hereby set aside.

The bail granted to the accused Debabrata Halder being cancelled, he is directed to surrender before the Learned Judge, Special (CBI), Court no.1, Calcutta within 72 hours.

Accordingly CRM (SB) 93 of 2022 is allowed.

Pending applications, if any, are consequently disposed of.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent Xerox certified photocopy of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Tirthankar Ghosh, J.)