

UMESH
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 648 OF 2022

WITH

INTERIM APPLICATION NO. 807 OF 2022

WITH

INTERIM APPLICATION NO. 774 OF 2022

(This order is modified vide speaking to the minutes order
dated 15.03.2022 passed at 02.30 pm)
(This order is again modified vide speaking to the minutes order
dated 24.03.2022)

Mohammad Nawab Mohammad Islam Malik
@ Nawab Malik

...Petitioner
/Applicant

Versus

The Directorate of Enforcement
and Ors.

...Respondents

- Mr. Amit Desai, Senior Counsel a/w Mr. Taraq Sayed, Mr. Kushal Mor, Mr. Gopal Krishna Shenoy, Mr. Rohan Dakshini, Ms. Pooja Kothari, Ms. Janaki Garde, Ms. Deepa Shetty, Ms. Arushi Dube, Ms. Urvi Gupte and Mr. Tejas Popat i/by M/s. Rashmikanth and Partners, for the Petitioner – Applicant.
- Mr. Anil Singh, ASG, a/w Mr. Hiten Venegaonkar, Mr. Aditya Thakkar, Mr. Shriram Shirshat, Mr. D.P. Singh, Ms. Smita Thakur, Mr. Pranav Thackur, Mr. Amandeep Singh, Mr. Sourabh Kshirsagar for Respondent No. 1.
- Mr. J.P. Yagnik, APP, for the Respondent – State.

CORAM : PRASANNA B. VARALE &
S. M. MODAK, JJ.

DATE : MARCH 15, 2022.

ORDER:

1. The Petitioner, a person active in social and political life, is before this Court challenging the

action initiated by the Respondent No. 1, firstly of registration of ECIR bearing No. ECIR/MBZO-I/10/2022, and secondly, arrest of the Petitioner effected vide order dated 23rd February, 2022, thirdly, the order passed by the learned Special Judge for PMLA dated 23rd February, 2022 on PMLA Remand Application No. 184 of 2022 and order passed by learned Special Judge thereby granting judicial custody vide order dated 07th March, 2022, and by way of Interim Applications No. 774 of 2022 & 807 of 2022 submitted to this Court as the order of arrest is an illegal *ab-initio*, unsustainable and by way of an interim prayer submitted that the Petitioner be released so as to protect his personal liberty.

2. Mr. Desai, learned Senior Counsel appearing for Petitioner, in his detailed submissions, referred to various factual aspects firstly and then vehemently submitted that as the arrest of the Petitioner is clearly an act of violation of freedom in the nature of personal liberty granted to the Petitioner in the Constitution of India, the present Petition is filed so as to seek issuance of writ of *habeas corpus*. Mr. Desai further submitted that lodging the Petitioner in

custody pursuant to his arrest is an act of illegal custody and incarceration and this Court being termed as protector of the fundamental rights of the citizen, the Petitioner is before this Court for protection under Article 22(1) of the Constitution of India. Mr. Desai further submitted that the Petitioner is in public life for more than two decades and was elected as the representative of the people for as many as five occasions and presently Petitioner is enjoying his fifth terms as a Member of Legislative Assembly. Mr. Desai further submitted that in the early hours of 23rd February, 2022 i.e. nearly at about 06.00 am the officers of Respondent No. 1 reached the house of the Petitioner, effected an arrest of the Petitioner vide order dated 23rd February, 2022 and served a summons upon him on the very day in the morning hours with a plea for recording his statement. The copy of the summons is also placed on record at Exhibit A-1, page 57 and the copy of the arrest order is placed on record at Exhibit A-2, page 58.

3. Mr. Desai then submitted that the Respondent No. 1 acting clearly in undue haste submitted remand

application to the learned Special Judge seeking 14 days custody of the Petitioner. It was further submitted that arrangements were made by the family members of the Petitioner to provide legal assistance to the Petitioner and accordingly, the learned Counsel appearing for the Petitioner opposed the remand application and learned Special Judge on a very day i.e., 23rd February, 2022 allowed the application and the Petitioner was remanded in the custody of Respondent No. 1 till 03rd March, 2022. Mr. Desai further submitted that the Petitioner is still in the judicial custody. Mr. Desai further submitted that the only material on which the Petitioner can lay his hand to submit before this Court as a material against the Petitioner is in the form of arrest order and the remand application. Learned Counsel further submitted that the allegations as reflected in the remand application against the Petitioner is the Petitioner in connivance with the notorious offender namely, Dawood Ibrahim Kaskar and his associates acquired certain property which is the proceeds of crime and till date is in occupation of the said property and using and projecting the said property as untainted property and

as such, the Petitioner has committed an offence under Section 3 of the Prevention of Money-Laundering Act, 2002 (for short '**Act of 2002**').

4. Mr. Desai by inviting our attention to the material placed on record submitted that the property referred to as alleged was purchased by the Petitioner in the year 2005 by complying all the legal formalities and now after lapse of 16 to 17 years the Respondent No. 1 only with an vindictive approach initiated firstly the proceedings against the Petitioner and secondly, effected the arrest of the Petitioner.

5. Mr. Desai advanced his submissions by urging following points:

i) Respondent No. 1 attracting the amended provisions of the Act of 2002 of the year 2013 for the transaction of the year 2003 and 2005 for fastening the criminal liability upon the Petitioner.

Mr. Desai by placing heavy reliance on various judgments submitted that the amendment to the Act would have only prospective effect and extending the Act retrospectively against the Petitioner is not only unsustainable but is clearly illegal.

ii) Mr. Desai further submitted that no reasonable opportunity of hearing was granted to the Petitioner by serving a notice under Section 41-A of the Code of Criminal Procedure.

Mr. Desai submitted that if such notice could have been served upon the Petitioner, the Petitioner could have certainly responded to the notice by placing all the necessary and legal documents before the authority in respect of said property. Mr. Desai further submitted that the documents would show that the property was purchased by a company in which some of the family members of the Petitioner were directors and Petitioner was neither the director of the company nor was a stakeholder in the company and merely, he is in use of certain part of the property cannot be a ground to attract the provision of Act of 2002 against the Petitioner so as to force the Petitioner to face serious consequences namely, depriving of his personal liberty and causing damage to his reputation in public eye. In support of his submissions, Mr. Desai placed heavy reliance on the judgment of the Hon'ble the Apex Court in the matter of Arnesh Kumar Vs. State of Bihar

and Another¹

6. Mr. Desai further submitted that though the Petitioner was brought before the Special Court after effecting arrest and remand application was filed seeking custody of the Petitioner and the Special Court allowed the remand application, it cannot be an impediment for the Petitioner so as to approach this Court by presenting a Petition for *habeas corpus*. In short, it can be said that these are the submission of learned Counsel for Petitioner on the aspect of the maintainability of the Petition.

7. Mr. Desai, by inviting our attention to the copy of the application filed at the instance of Respondent No. 1 whereby the custody of the Petitioner is sought, submitted that the remand application makes a reference to FIR bearing RC-01/2022/NIA/MUM, dated 03.02.2022 registered by NIA against the Dawood Ibrahim Kaskar and it further refers to the act of the notorious offender Dawood Ibrahim Kaskar and his associates. Then the remand application makes a reference to one FIR bearing no. 190/2017. Then it refers to charge-sheet filed against the Iqbal Ibrahim

¹ (2014) 8 SCC 273

Kaskar and other accused. Mr. Desai vehemently submitted that as the Petitioner is not in receipt of any copy of the FIR dated 03.02.2022 or the FIR No. 190/2017 dated 18.09.2017, the Petitioner is unable to make any submissions on these FIR which are used as a material against the Petitioner and non-furnishing the material to the Petitioner, which is against the him, is a breach of principle of natural justice as no opportunity of hearing is granted to the Petitioner. Mr. Desai further submitted that the remand application makes a reference to lodgment of ECIR dated 14.02.2022 on the basis of earlier FIR's. Mr. Desai further submitted that as the copy of ECIR dated 14.02.2022 is also not supplied to the Petitioner even this act is of breach of principle of natural justice.

8. Mr. Desai then invited our attention to paragraph 11 of the remand application and submits that again there is a vague reference under a statement that on the basis of various FIR by Mumbai Police an ECIR was recorded by MBZO-I on 26.09.2019 as ECIR/MBZO-I/08/19 against the Iqbal Mirchi and others. Then there is a reference to the statement of witnesses

who have deposed against the Iqbal Mirchi, Dawood Ibrahim Kaskar, Tiger Memon and some other officials of ISI. Then it is stated that in this case, two prosecution complaints have been filed by ED and attachment of assets around Rs. 800 Crore has been conducted in India and abroad. On request of ED, Red Notice have been issued by interpol against Hajra Memon, Junaid Memon and Asif Memon in this case and trio have been declared as Fugitives under FEOA by the competent Court. In the above mentioned FIR lodged by NIA, Iqbal Mirchi has also been named as member of D-Company and associate of Dawood Ibrahim.

9. Mr. Desai further submitted that as the Petitioner had no concern with these FIRs for the illegal activities of the other accused persons namely, Ibrahim Kaskar, Iqbal Mirchi, Tiger Menon or the officials of ISI, no criminal liability can be fastened against the Petitioner. Mr. Desai then invited our attention to the material in the remand application referred to under caption "PMLA Investigation" and the same reads thus:

13. During the course of investigation, 9 searches have been conducted on the premises

of associates of Dawood Ibrahim and Chhota Shakeel and various incriminating materials have been seized under section 17 of PMLA. Further various statements were recorded under PMLA during the course of Investigation statement of Salim Ahmed Khalil Ahmed alias Salim Patel alias Salim Fruit was recorded under section 50 of PMLA in which he inter alia stated that he is brother in law of Chhota Shakeel; Chhota Shakeel is a known gangster, Supari Killer and used to run extortion racket through his henchmen. Some of them were Faheem Machmach (deceased), Majid Bharuchi, Nasir Kalia (deceased). Chhota Shakeel operates from Pakistan; Chhota Shakeel works in the gang of Dawood Ibrahim; he (Salim Fruit) has also visited the home of Chhota Shakeel in Pakistan 3-4 times; that in 2006, Salim was deported by UAE Government to India and he was arrested in a extortion case related to Chhota Shakeel, in that case, MCOCA was imposed on him and others and he was in prison till 2010; On being asked about Haseena Parkar, he further stated that Haseena Parker is the sister of Dawood Ibrahim and she expired in 2013-14; One Salim Patel was the driver of Haseena Parkar @ Haseena Aapa; he came in contact with him (Salim Patel) from 2018-19 and he used to meet him (Salim Fruit) in social gathering; he (Salim Fruit) was close associate of Aapa; Haseena Aapa used to mediate in disputed properties and through this she used to make money ' Salim Patel used to work for her for settling the disputes, At that time, Haseena Aapa being Dawood's sister used to enjoy the clouts of Dawood. People in the locality used to obey her words out of fear. Some cases of extortion were also got registered by Police against her and Salim Patel; After Dawood left India, Haseena Aapa used to control the properties of Dawood in India and later on several properties of Dawood Ibrahim had been attached by SAFEMA Authorities; Some of these properties held by Haseena Aapa on behalf of Dawood Ibrahim, like property in Pakmodia Street was auctioned by SAFEMA and purchased by Burhani Trust in auction; some of the above facts regarding

Haseena Aapa and Salim Patel were told to him by Salim Patel himself and being residing in the same locality and being brother in law of Chota Shakeel, Some of the above facts regarding them are in his personal knowledge.

14. Statement of Saud Yusuf Tungekar, brother in law of Dawood Ibrahim was also recorded under section 50 of PMLA in which he inter alia stated that Haseena Parkar was the sister of his wife and he was having family relation with her; that she used to do settlement of disputed properties; being sister of Dawood Ibrahim, people used to fear from her; Salim Patel, her driver used to help her ' in this matter; Haseena aapa used to make money out of this work and she ' used to use the name of Dawood for this; he knows these facts because of family relations with Haseena Parkar.

15. Statement of Khalid Usman. -ikh, associate of Iqbal Kaskar was recorded under section 50 of PMLA in which he inter alia stated that he used to visit the house of Iqbal Kaskar; his brother Abdul Samad and Iqbal Kaskar were childhood friends; that Abdul Samad was killed by Arun Gawali in a gangwar; that Salim Patel was known to him; that Salim Patel was driver and close associate of Haseena Parkar; that Salim Patel used to do usurping of properties and to do settlement of disputed properties for Haseena Parkar, these people used to usurp the properties and to do extortion on the name of Dawood - Ibrahim; that the above information was furnished to him by Salim Patel himself.

16. Statement of Alishan Parkar, son of Late Haseena Parkar was also recorded under section 50 of PMLA. In his statement, on being asked about Haseena Parkar, he stated that being sister of Dawood Ibrahim, his mother was a known figure in their society, she used to settle the disputes related to the properties; On being asked about the relation of his mother with Dawood Ibrahim; he stated that they were having cordial relation and they

used to talk & interact very frequently; he further stated that his mother Haseena Parkar till her death was having financial transactions with Dawood Ibrahim; on being asked about Salim Patel, he stated that Salim Patel was one of the associates of his mother Haseena Parkar. Salim Patel used to do trading in onion and also used to nature of the dispute related to this property; on behalf of his mother, Salim Patel used to sit in that office and used: to handle the affairs of Goawata ' Cornpound; later on, his mother Haseena Parkar sold the portion controlled by her to Nawab Malik; he is not aware of the consideration paid by Nawab Malik to his mother & Salim Patel:

17. As Iqbal Kaskar is the prominent member of D-Company and he was found to be involved in the offence of Money Laundering, he was arrested by ED on 18.02.2022 under section 19 of PMLA pursuant to the order of City Session Court, Greater Mumbai. Currently, he is in Custody of ED. During Custodial interrogation, he revealed certain facts about his sister Haseena Parker and her involvement in usurping the high valued properties of innocent citizens in Mumbai by using the clout of D-Company.

18. During the course of investigation; it was revealed that one of such victim of DGang is Munira Plumber whose prime property (having present market value is Rs 300 Crore) was usurped by Nawab Malik through M/s Solidus Investments Pvt. Ltd., a company owned by the family members of Nawab Malik and controlled by Nawab Malik, with active connivance of the members of D-Gang including Haseena Parkar. Accordingly, to ascertain the factual position, statement of the actual owner of the land namely Mrs Munira Plumber was recorded under Section 50 of PMLA, She stated that she owns plot admeasuring approx. 3 acres known as Goawala Compound, LBS Marg, Near Phoenix Market, Survey No.-336, 336/1to 25, 338 of village Kurla -1, Mumbai and the said property was her ancestral property inherited by Mr.

Fazleabbas Goawala from his forefather (Mohamd Ali Goawala). Mr. Fazleabbas Goawala was her father and he died in 1970, at that time, when she was seven years old only. She was the only daughter of her father (Mr. Fazleabbas Goawala). After her father's demise, the said property was divided between her mother and her. as per Islamic law in the ratio 4 is to 7 and her (7/8). Since beginning, her father was taking care of the said property till his demise. After she became adult, she started to take care of the said property with help of her stepbrother namely Mr. Mustafa Rangwala: She appointed one manager Mr. Rahman to collect the rent from tenants of the said property. He collected the rent and paid to her. Her mother Mariyam Goawala died in 2015. After her mother's demise in 2015, she is now sole owner of the said property.

19. She further stated that one Mr. Patel was the owner of M/s. Solidus Industries which was a genuine tenant for two sheds in 'the said property and his manager named Mr. Sheshadn always came to her and hand over the rent cheque. She has no idea regarding the ownership of the M/s. Solidus Industries was transferred from Patel family to the family of Shri Nawab Malik. Consequently, the control on the said property was also transferred to the family of Shri Nawab Malik from Patel Family. She further stated that she never met Nawab Malik and any member of his family. She stated that she know one Mr. Rehman Khan who was collecting rent from the tenants. Then, one Mr. Salim Patel came to her and introduced himself as social worker. Mr. Salim Patel assured her to remove all encroachments from miscreant persons who had occupied illegally and to clear all disputes.

20. Once she gave POA Mr. Salim Patel to remove the encroachment and regularize. She stated that she and her mother named Maryambai Fazleabbas ve my Goawala had not authorized Mr. Sardar hawali Khan and Mr. Salim Patel to sell the property which are situated on CTS NO. 336, 338 A, 336, 336/1 to 5 and 7 to 24,

338, 336/25, Goawala compound and both did not authorise these persons to make the sale agreement in the sale deed between Munira S. Plumber, Maryambai Fazleabbas Goawala & Mr. Sardar Shavali Knan and M/s. Solidus Investments Pvt in sale deed no. 6366/2005 15.09.2005. She further confirmed that the total 183 occupants (72+ 111= 183) mentioned in the document shown above is not correct in the sale deed no 6366/2005 dated 15.09.2005.

21. She further explained that she had not received any amount from Mohammed Salim Patel in by any form as mentioned in sale deed no 6366/2005 dated 15.09.2005. She had given the power of attorney to Mr. Salim Patel with the purpose of removing the encroachment and not to sell the property. It is pertinent to mention that no such deed evidencing payment to Munira is available on record.

22. She explained that she has not sold this property to Shri Nawab Malik. She came to know that the said property has been sold to third party through media reports recently. In the same media reports, it is found that this property was sold to Shri Nawab Malik through one of his company and in his media byte he claimed that she had approached him for sale of this property. She stated that she has never approached him or his family member(s) to sale of this property. He has also not contacted her and she was unaware that her property has been illegally sold to him. She has not received any consideration for this property whatsoever from any person. She is also receiving notices and. correspondences for this property for various Government Departments.

23. She stated that she was not aware that the said property was sold to the third party by Mr. Salim Patel because she has not signed on the Agreement for tenancy transfer to ownership dated 18th July 2003 for the sale of the property. It was in fact she who had made payment of Rs. 5 lakhs to Mr. Salim Patel to remove all encroachments from miscreant

persons who had occupied illegally and to clear all disputes and to cancel illegal titles of tenants. She had never authorized Mr. Salim Patel to sell the said property. Mr. Salim Patel sold the said property illegally and handed over the property to a third party. Later on, she came to know that Mr. Salim Patel was related to under world, that was the reason she did not file any FIR or peruse the matter related to rent payments/encroachment and other issues because life threat to her and her family. From the above documents /Power of Attorney, it is brought to her notice that there no signature of her mother named Maryambai Fazleabbas Goawala on this power of attorney. However, the portions of land owned by her mother have also been sold by Mr. Salim Patel. Mr. Salim committed the fraud and made criminal conspiracy for acquiring the said property. She came to know about sale of this property in 2021 from the media reports. She used to receive letters from Govt. authorities with regard to these properties. In token of the same, she has submitted a copy of one of the said letter. She was under the belief that she is the legal owner of that property.

24. Mrs. Munira Plumber also submitted a copy of complaint dated 12.09.1989 filed before the small causes court regarding threatening by Nawab Malik for usurping the shops in her property namely Goawala Compound.

25. From the documents relating to the sale of property, it came to notice that one Mr. Sardar Shahwali Khan had played an important role in this Sale. Accordingly, Directorate has recorded the statement of one Sardar Shahwali , Khan,. who is one of the accused in 1993 Bombay Bomb Blast Case and currently serving life imprisonment in Aurangabad Jail in the said case under TADA and MCOCA. During his statement before ED in judicial custody, Sardar Khan disclosed that he was in touch with Haseena Parker (sister of Dawood Ibrahim) and Tiger Memon through one Javed Chikna, a conduit of Tiger Memon." .

28. Sardar Shah Wali Khan further submitted in his statement recorded u/s 50 of PMLA that both Nawab Mailk and Haseena Parkar were trying to grab larger pie of the property.; Munira had received some threats and had become totally uninterested in the property and therefore both of them saw an opportunity that the property can be beneficially held by them; Nawab Malik, however had taken over one company namely, Solidus Investments; Solidus' Investments had a tenanted property at the compound for which now Nawab Mailk's family became the leasee; to resolve the issue amicably, several rounds of meetings were held between Nawab Mailk, Aslam Malik and Haseena Parkar, he (Sardar Khan) was also present in at least couple of the meetings; Haseena Parkar and Nawab Malik reached to the agreement that the tenanted property of Solidus Investments will be converted into ownership by using the Power of Attorney given to Salim Patel; In lieu of that, Haseena Parkar will own rest of properties through Salim Patel; as his brother (Refiman) and he himself were the rent collectors for the property, he received a tenanted property in his name of a covered area of around 378 sq metre for leave and licence for around 33 months for a rent of Rs. 1000 per month with Rs. 3000 deposit in 2003; in addition, he had paid one lakh rupees through cheque to Solidus Investments; later on this property was converted into freehold in his name by Salim Patel as agreed above.

Then there is a reference to the statement to one T.N. Sheshadri Iyenger allegedly manager of Solidus Investment and employee of Patel's recorded by Respondent No. 1 and the same reads thus:

30. Later on the Haseena Parkar also transferred her interest in the property held through Mr. Salim Patel for the beneficial interests of Nawab Malik and Nawab Malik paid a

substantial amount (Rs. 55 Lakh) to Haseena Parker, in cash. In this regard, this Directorate has recorded the statement under PMLA of a witness Ahmedullah Sharifuddin Ansari who in his statement stated that that he was working with Iqbal Malik, brother of Nawab Malik; from that connection, he knew Aslam Malik and Faraz Malik well; as they were constructing a building namely "Noor Mahal" near Halav Pool in Kurla; he normally used to be available at this site only; during 2005-06, Aslam Malik came to the site around 2-2:30 PM and told him that they need to go to Bombay as some urgent work is there; on being asked, Aslam told him that they have to buy a property in Goawala Compound and they have to pay the consideration today only & for that they are going; in the way, Faraz Malik was also picked up by him; In the way to Bombay, Faraz Malik and Aslam Malik were talking that they will pay a token amount of Rs 55 lakh in cash and 5 lakh in cheque in lieu of purchase of some property in Goawala Compound; the Cheque and Cash was there in vehicle with Aslam Malik; the vehicle was stopped at Clay Road at the shop of Fazal Travel; after entering in the said shop, he saw the owner of shop and one other person was also there; on introduction; the other person introduced him as Salim Patel; that was the first and last time, he met Salim Patel; After that, Aslam placed the bag of cash on the table and were having chit chat with Salim Patel; After 20 minutes, someone told that "Aapa" has come; then, all of them including him were alerted and he saw Haseena Parker approaching them; after that, they spoke to each other about Goawala Compound and handed over the bag having cash & cheque to Salim Patel at the instructions of Haseena Parker; at the time of delivery, Aslam told Haseena Parkar that deal is over for Rs 55 Lakh and he (Aslam) is giving her (Haseena Parkar) Rs, 55 lakh in cash and Rs.:5 lakh in cheque.

Then Mr. Desai invited our attention to other factual aspects referred to in the remand application

and the same reads thus:

c. Tenancy Transferred ownership dated 18" July 2003 between Mariyabai (widow of Fazleabbas Mohamed Ali 'Goawala) (first: landlady/ owner): & Munira S. Plumber (second landlady/owner) and M/s. Solidus Investments Pvt. Ltd., (purchaser/tenant) for the purpose of transferring the ownership of Survey no.74 and bearing CST No 336/6 and its admeasuring 2826.29 Sq. Yards (having a big structure called shed A having 675 ft long by 41 ft. wide starting from/ behind the shop no. 5,6,7 & 8 of the main Goawala Buiding on LBS Marg. This was signed by Salim Patel on behalf of Mariymabai & Munira.

d. Lease and Licence Agreement dated 18" July on 2003 between M/s. Solidus Investment Pvt. Ltd, Mumbai (called as Licensor) and Mr. Sardar Shavali Khan (in the deed, name corrected mentioned Maryambai and counter signed by Faizal Malik) (called as Licensee). The said Lease and _ Licence Agreement was made for the purpose of extension of lease agreement with M/s. Solidus Investment Pvt. Ltd and Mr. Sardar Shavali Khan.

e. Tenancy Transferred ownership dated 11° December 2003 between Mariyabai (widow of Fazleabbas Mohamed Ali Goawala) (first landlady/ owner) & Munira S. Plumber (second landlady/owner) and Mr. Sardar Shavali Khan for the purpose of transferring the ownership of Survey no. 74 and bearing CST. No 336/25 and its admeasuring 378.5 Sq. mtrs (known as Room no144/3, and shop no-5 situated at Goawala Compound, Mumbai. This was singed by Salim Patel.

f. Indenture dated 15" September, 2005 between 1. Mariyabai widow of Fazleabbas Mohamed Ali Goawala, 2. Munira S. Plumber as one of the hand & 3. Mr. Sardar Shavali Khan and M/s. Solius Investments Pvt. Ltd., on the other, for the purpose the transfer of ownership of the plot admeasuring area 3 acres around at Goawala Compound, LBS Marg, Near Phonenix

Market, Survey No. 336, 336/1 to 25, 338 of Village Kurla -1, Mumbai. This was signed by Salim Patel on behalf of Haseena Parker.

10. Mr. Desai further submitted that on the basis of these material : i) it can clearly be stated that the said property was purchased under the legal documents in the year 2003 and 2005 ii) either at the relevant time or even subsequently, there was no prevention or rider or prohibition for purchase of the said property, iii) the material alleged against the Petitioner is in the form of two statements firstly, one is made to one Salim Patel @ Salim Fruit by one of the accused in the said crime i.e., Saleem Patel, driver and close associate of Haseena Parker, who is deceased now.

11. Mr. Desai vehemently submitted that it would not be only unsafe to rely on a statement of the accused so as to use the material against the Petitioner but statement of accused loses its evidentiary value in the eyes of law and such statement cannot be used against the Petitioner for any purposes. The second statement on which the Respondent No. 1 is placing reliance is of one Munira Begum. Mr. Desai

further submitted that admittedly the property was purchased in the year 2005 and on the backdrop of the admission of Munira Begum that she is not remembering as to whom the property is sold or whether the Petitioner was present at the time of purchase of the property or whether she was aware about the details of the purchaser of the property, in view of all these factors, again it would wholly be unsafe to rely on a statement of Munira Begum so as to use it as the material against the Petitioner. Mr. Desai further submitted that vagueness on the face of the statement itself makes statement unreliable and untrustworthy.

12. Mr. Desai invited our attention to the relevant provision of the Act of 2002 namely, Section 2 U, V, & Y, Section 3 and Section 19. For ready reference, we may quote these sections as under:

2. Definitions:

(u) "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property [or where such property is taken or held outside the country, then the property equivalent in value held within the country [or abroad]].

[Explanation.-For the removal of doubts, it is hereby clarified that "proceeds of

crime" include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence;]

(v) "property" means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and included deeds and instruments evidencing title to, or interest in, such property or assets, wherever located.

[Explanation.-For the removal of doubts, it is hereby clarified that the term "property" included property of any kind used in the commission of an offence under this Act or any of the scheduled offences;

(y) "scheduled offence" means-

(i) the offences specified under Part A of the Schedule; or

[(ii) the offences specified under Part B of the Schedule if the total value involved in such offences is [one crore rupees] or more; or

(iii) the offences specified under Part C of the Schedule;]

3. Offence of money-laundering.-
Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the [proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming] it as untainted property shall be guilty of offence of money-laundering.

19. Power of 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 (that 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 of 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 alongwith 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.

13. Mr. Desai invited our attention to the amended provisions of the Act of 2002. Mr. Desai then on the comparative reading of the provisions vehemently submitted that the Act was amended much later from the date of purchase of the property. Learned Counsel reiterated that the property was purchased in the year 2005 and the amendment came in force in the year 2013 and the Petitioner now in the year 2022 is subjected to

proceedings initiated at the instance of Respondent No. 1. Learned Counsel further submitted that by misleading these factors the Respondent No. 1 is alleging that the Petitioner is committing an act of continuing offence and such submission on behalf of Respondent No. 1 is fallacious and untenable on the face of it. Learned Counsel further submitted that if such a submission is accepted it would lead to further violation that the Petitioner who is use and occupation of property which was purchased in the year 2005 is committing offence every day i.e., from 2005 till 2022 and such submissions cannot be accepted either by reason or by logic.

14. Mr. Desai further submitted that there cannot be any dispute to say that for controlling the serious offences and more particularly as an offence of money-laundering wherein the scope of the offence is not limited to one country but the scope of the offence travels beyond the country limits and there are also other serious aspects attached to the offence, but merely because, the offence is termed as a serious offence by itself it cannot give a permit to the

officers to use it as a weapon with ulterior motive. Learned Counsel further submitted that though Section 19 gives power to Authorised Officer to arrest, the Authorised Officer cannot use this power as per his whims and fancy. Learned Counsel further submitted that the said provision specifies the phraseology that *"..... on the basis of material in his possession, reason to believe (that reasons for such belief to be recorded in writing)"*. Learned Counsel further submitted that in the present matter the arrest order only refers to the statement that the officer has reason to believe that the Petitioner has been found to be guilty of an offence punishable under the Act of 2002.

15. Mr. Desai further submitted that merely quoting the words of provision is not sufficient enough to show the subjective satisfaction of the office. Thus, the submission is, the arrest order fails to comply the object of the provisions. Learned Counsel further submitted that as the Petitioner apprehended that on a plea that after arrest of the Petitioner remand application was filed and by following due procedure the custody of the Petitioner was sought and

now the Petitioner is under custody by legal order the Petition may not be entertained and on submitting said apprehension the Division bench of this Court was pleased to pass an order dated March 2, 2022 and the same reads thus:

1 We have heard this matter for some time. It appears to us that a reasonable opportunity of being heard needs to be given to the State in the matter of the present nature by granting time till 7th March 2022.

2 Put up, therefore, on 7th March 2022 with liberty to mention.

3 In the meanwhile, if any subsequent remand is granted, same shall be without prejudice to the rights and contentions of the parties in both the matters.

16. Mr. Desai further submitted that presently he is canvassing only the legal points before this Court as the other factual aspects in the nature of material submitted to the said Court etc. is not in the knowledge of the Petitioner, and he may advance his submissions at subsequent stage on admission of the Petition. Mr. Desai, on the basis of his submissions vehemently prayed for interim order. Learned Counsel further submitted that as the act of arrest of the Petitioner itself *void-ab-initio* and said act deprives

the Petitioner of his personal liberty, the Petitioner be directed to be released by way of an interim order. Mr. Desai in support of his submissions relied on following judgments: Arun Kumar Mishra Vs. Directorate of Enforcement², P. Chidambaram Vs. Directorate of Enforcement³, Mahipal Singh Vs. CBI and Another⁴, Varinder Singh Vs. State of Punjab and Another⁵, Altaf Ismail Sheikh Vs. The State of Maharashtra and Others⁶, State of Maharashtra Vs. Bharat Shantilal Shah and Others⁷, Gautam Navlakha Vs. NIA⁸, Madhu Limaye and Others⁹, State of Punjab Vs. Davinder Pal Singh Bhullar and Others¹⁰, Special Reference No. 1 of 1964¹¹, Rakesh Manekchand Kothari Vs. Union of India and Others¹², Gurucharan Singh Vs. Union of India and Others¹³, Arnab Manoranjan Goswami Vs. State of Maharashtra and Others¹⁴, Tech Mahindra Limited Vs. Joint Director, Directorate of Enforcement¹⁵, S. Sundaram Pillai and

2 2015 SCC OnLine Del 8658

3 (2019) 9 SCC 24

4 (2014) 11 SCC 282

5 (2014) 3 SCC 151

6 2055 SCC OnLine Bom 420

7 (2008) 133 SCC 5

8 2021 SCC OnLine SC 382

9 1969 (1) SCC 292

10 (2011) 14 SCC 770

11 (1965) 1 SCR 413

12 Special Criminal Application (Habeas Corpus) No. 4247 of 2015 (Gujarat High Court at Ahmedabad)

13 2016 SCC OnLine Del 2493

14 (2021) 2 SCC 427

15 WP.17525 of 2014 dt. 22.12.2014 passed by HC at Hyderabad for the State of Telangana and A.P.

Others Vs. V. R. Pattabiraman and Others¹⁶, Prakash and Others Vs. Phulavati and Others¹⁷, State of Maharashtra Vs. Kaliar Koli Subramaniam Ramaswamy¹⁸.

17. *Per contra*, Mr. Anil Singh, learned ASG appearing for Respondent No. 1 vehemently opposed prayer for interim order. Mr. Anil Singh submitted that offences under Act of 2002 are serious offences and are having a wider ramification i.e., international ramification. In support of his submissions, he invited our attention to the statements of reasons and objects of the Act of 2002 and the same reads thus:

Statement of Objects and Reasons.-

(c) the Financial Action Task Force established at the summit of seven major industrial nations, held in Paris from 14th to 16th July, 1989, to examine the problem of money-laundering has made forty recommendations, which provide the foundation material for comprehensive legislation to combat the problem of money-laundering. The recommendations were classified under various heads. Some of the important heads are—

- (i) declaration of laundering of monies carried through serious crimes a criminal offence;*
- (ii) to work out modalities of disclosure by financial institutions regarding reportable transactions;*
- (iii) confiscation of the proceeds of*

16 (1985) 1 SCC 591

17 (2016) 2 SCC 36

18 (1977) 3 SCC 525

crime;
(iv) declaring money-laundering to be an
extraditable offence; and
(v) promoting international co-operation
in investigation of money-laundering.

18. Mr. Anil Singh then invited our attention to Section 2 (na) – “Definition of Investigation” and submitted that the investigation is in progress and the Petitioner cannot claim the disclosure of the investigation at this stage and he is entitled to ask for the details of the investigation. Mr. Anil Singh also referred to Section 2 (u) to submit that the definition of proceeds of crime is too wide to take scheduled offences in its sweep. Mr. Anil Singh then by referring to Section 3 submitted that the amendment in the Act is in the nature of clarification added to the provision. He further submitted that a person using or in possession of the property is already subjected to the provisions even prior amendment and the Petitioner was in use and possession of the property since the year 2005 till date. Therefore, the continuous possession and enjoyment of the property and projecting the property is an untainted property are the factors so as to initiate an action against the Petitioner. Mr. Anil Singh further submitted that as the Petitioner is

indulged in an act of continuous offence he is not entitled for any relief. Mr. Anil Singh then by inviting our attention to Section 19 and submitted that all the necessary compliance of Section 19 are duly followed. He further submitted that apart from the order of arrest, the Petitioner was served with grounds of reason to believe for arrest. By inviting our attention to the original document i.e., grounds of arrest wherein an endorsement of the Petitioner is obtained, Mr. Anil Singh submitted that there is no requirement of Section 19 that the Authorised Officer is to hand over the copy of grounds of arrest to Petitioner. The requirement is, grounds of arrest are made known to the Petitioner and in the present case not only the grounds of arrest are informed to the Petitioner, but also the Petitioner in turn informed these grounds of arrest to his son and there is an endorsement to that effect of the office copy.

19. At this stage, Mr. Desai submitted that the Authorised Officer is not expected to maintain the copy of arrest with him by only showing it to the Petitioner the object of the provision is that the Petitioner must

be aware of the grounds of arrest so that he can take appropriate steps for legal assistance.

20. Mr. Anil Singh then invited our attention to Section 24 to submit that the Act provided a reverse burden of proof. Mr. Anil Singh also invited our attention to Sections 44 and 45 and the same reads thus:

44. Offences triable by Special Courts.—

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

[(a) an offence punishable under section 4 and any scheduled offence connected to the offence under that section shall be triable by the Special Court constituted for the area in which the offence has been committed:

Provided that the Special Court, trying a scheduled offence before the commencement of this Act, shall continue to try such scheduled offence; or;]

*(b) a Special Court may, 2[***] upon a complaint made by an authority authorised in this behalf under this Act take 3[cognizance of offence under section 3, without the accused being committed to it for trial;].*

[(c) if the court which has taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the complaint of the offence of money-laundering under sub-clause (b), it shall, on an application by the authority authorised to file a complaint under this Act, commit the case relating to the scheduled offence to the Special Court and the Special Court shall,

on receipt of such case proceed to deal with it from the stage at which it is committed;

[(d) a Special Court while trying the scheduled offence or the offence of money-laundering shall hold trial in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), as it applies to a trial before a Court of Session.]

[Explanation. - For the removal of doubts, it is clarified that, -

(i) the jurisdiction of the Special Court while dealing with the offence under this Act, during investigation, enquiry or trial under this Act, shall not be dependent upon any orders passed in respect of the scheduled offence, and the trial of both sets of offences by the same court shall not be construed as joint trial;

(ii) the 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 named in the original complaint or not.]

(2) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973 (2 of 1974) and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to "Magistrate" in that section includes also a reference to a "Special Court" designated under section 43.

45. Offences to be cognizable and non-bailable.—(1) 1[Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence punishable for a

term of imprisonment of more than three years under Part A of the Schedule shall be released on bail or on his own bond unless—]

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

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

Provided that a person who is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the special court so directs: Provided further that the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by—

(i) the Director; or

(ii) any officer of the Central Government or State Government authorised in writing in this behalf by the Central Government by a general or a 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 3[***] 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.

[Explanation. - For the removal of doubts, it is clarified that the

expression "Offences to be cognizable and non-bailable" shall mean and shall be deemed to have always meant that all offences under this Act shall cognizable offences and non-bailable offences notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (2 of 1974), and accordingly the officers authorised under this Act are empowered to arrest an accused without warrant, subject to the fulfilment of conditions under section 19 and subject to the conditions enshrined under this section.]

21. Mr. Anil Singh further submitted that apart from the fact that the offences in the Act of 2002 are serious offences they bear character of special offences and reference to scheduled offences is in the supplementary in nature. Mr. Anil Singh then invited our attention to Section 45 in opposing the prayer for release of the Petitioner. Mr. Anil Singh then invited our attention to Section 48 to submit that the provision refers to independent authorities in the nature of Authorised Officer and there is a strict compliance of Section 48 while initiating proceeding against the Petitioner as well while effect arrest. Then learned Counsel invited our attention to Sections 50, 65 and 71 and the same reads thus:

50. Powers of authorities regarding summons, production of documents and to

give evidence, etc.—(1) The Director shall, for the purposes of section 13, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:—

- (a) discovery and inspection;
- (b) enforcing the attendance of any person, including any officer of a l[reporting entity], and examining him on oath;
- (c) compelling the production of records;
- (d) receiving evidence on affidavits;
- (e) issuing commissions for examination of witnesses and documents; and
- (f) any other matter which may be prescribed.

(2) The Director, Additional Director, Joint Director, Deputy Director or Assistant Director shall have power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this Act.

(3) All the persons so summoned shall be bound to attend in person or through authorised agents, as such officer may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.

(4) Every proceeding under sub-sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 (45 of 1860).

(5) Subject to any rules made in this behalf by the Central Government, any officer referred to in sub-section (2) may impound and retain in his custody for such period, as he thinks fit, any records produced before him in any proceedings under this Act:

Provided that an Assistant Director or a

Deputy Director shall not—

(a) impound any records without recording his reasons for so doing; or

(b) retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the [Joint Director].

65. Code of Criminal Procedure, 1973 to apply.—*The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, insofar as they are not inconsistent with the provisions of this Act, to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under this Act.*

71. Act to have overriding effect.—*The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.*

22. Mr. Anil Singh vehemently submitted that as the arrest of the Petitioner was effected by following all the necessary formalities and pre-requisites of the provisions of the Act and furthermore, the remand application filed at the instance of Respondent No. 1 was allowed, it cannot be said that the personal liberty of the Petitioner was deprived by unlawful means. Thus, the submission is, the Petition filed at the instance of Petitioner, for issuance of writ of *habeas corpus*, is unsustainable and untenable. As such, Mr. Anil Singh opposes the maintainability of the

Petition itself.

23. Mr. Anil Singh further submitted that the Petitioner cannot claim the disclosure of the material in the investigation as such, the disclosure would frustrate investigation. Mr. Anil Singh also submitted that considering the seriousness of the offences and considering the material against the Petitioner custodial interrogation of the Petitioner is necessary. Mr. Anil Singh relied on the judgment in the matter of P. Chidambaram (supra) and invited our attention to paragraphs 78 to 82 and 84.

24. In support of his submissions that under the Act of 2002 there are serious offences and reference to scheduled offence is only supplementary in nature, Mr. Anil Singh relied on the following judgments: Radha Mohan Lakhotia Vs. Deputy Director, PMLA¹⁹, Babulal Verma and Another Vs. Enforcement Directorate and Another²⁰, & The Assistant Director of Enforcement Directorate Vs. Dr. V.C. Mohan²¹.

25. Mr. Anil Singh while opposing the prayer for

19 2010 SCC OnLine Bom 1116

20 2021 SCC OnLine Bom 392

21 Criminal Appeal No. 21 of 2022 (SLP(Crl) No. 8441 of 2021)

quashing the ECIR, submitted that the ECIR is merely a private and internal document of the department and as the document is not flowing from any statute there is no question of quashment of the said document. In support of his submissions, learned Counsel relied on following judgments: Mrs. Charu Kishor Mehtra Vs. State of Maharashtra and Another²², Anandrao Vithoba Adsul Vs. Enforcement of Directorate and Another²³.

26. Mr. Anil Singh then submitted that the learned Special Court by considering the grounds raised in the remand application on its own merit allowed the application. Learned Counsel further submitted that merely because the order is against the Petitioner it cannot be a ground to submit before this Court that the order passed by the Special Court is an illegal. Learned Counsel in support of his submissions that the Petition seeking *habeas corpus* is not maintainable, relied on the judgment in the matter of Chhagan Chandrakant Bhujbal Vs. Union of India and Others²⁴.

27. Mr. Desai, at this stage, vehemently submitted

22 Criminal Writ Petition No. 2961 of 2015 (Bombay High Court)

23 Criminal Writ Petition No. 3418 of 2021 (Bombay High Court)

24 2016 SCC OnLine Bom 9938

that no reliance can be placed in the matter of Chhagan Bhujbal (supra) for the reason that in the matter of Chhagan Bhujbal the Petitioner was not only subjected to two remand orders but also filed an application for grant of bail and that application was rejected and thereafter, the Petitioner had approached this Court. Mr. Desai further submitted that the Petitioner had approached this Court immediately on his arrest and in view of the order passed by the Division bench of this Court dated March 2, 2022, the order of remand is subject to the Petition.

28. Mr. Anil Singh in support of his submission that, the Petitioner can still take steps for protection of his liberty by filling regular bail application, relied on the judgment in the matter of Ankit Ghanshyam Mutha Vs. Union of India and Others²⁵. Mr. Anil Singh, in support of his submissions that the Petitioner is engaged in continuing offences, relied on following judgments: Nitish Thakur Vs. State of Maharashtra and Another²⁶, A.K. Samsuddin Vs. Union of India and Others²⁷, Hari Narayan Rai Vs. Union of India

25 2020 SCC OnLine Bom 121

26 Anticipatory Bail Application No. 823 of 2012 (Bombay High Court)

27 2016 SCC OnLine Ker 24144

and Others²⁸. Mr. Anil Singh also referred to one of the speeches of Hon'ble Finance Minister in the debates on the aspects of explanation being provided by way of an amendment in the Act.

29. Mr. Anil Singh on the submission that Petitioner is in use and possession of property and projecting a property as an untainted property as such, action is initiated against the Petitioner, placed reliance in the matters of Mohan Lal Vs. State of Rajasthan²⁹, Sajjan Singh Vs. State of Punjab³⁰, Ishwar Nagar Cooperative Housing Building Society Vs. Parma Nand Sharma and Others³¹.

30. At this stage, Mr. Desai submitted that the judgment in the case of Mohan Lal (supra) is of no help to Respondent No. 1. Mr. Desai further submitted that very nature of the offences involved in the case of Mohan Lal was the Petitioner was found in possession of contra banned articles. It is further submitted that in the matters relating to the NDPS or in the matter wherein explosive substances are found in possession of

28 2010 SCC OnLine Jhar 1066

29 (2015) 6 SCC 222

30 (1964) 4 SCR 630

31 (2010) 14 SCC 230

the offender the nature of the said substance or explosive itself makes difference. Mr. Desai further submitted that citizen is not expected to possess a contraband article or an explosive substance by the nature of said articles such is not case of a commercial property. Mr. Desai further submitted that in the present matter commercial property was purchased in the year 2005 and there is no prohibition or prevention for a citizen to purchase a commercial property by lawful means and by preparing legal documents. Therefore, judgments relied on by learned ASG are not applicable in the present matter is the submission of Mr. Desai. Mr. Desai further submitted that prospective application and explanation even if provided by way of amendment, it will have a prospective application and not retrospective. In support of his submissions, learned Counsel relied on judgments in the matter of S. Sundaram Pillai and Others Vs. V. R. Pattabiraman and Others (supra) and Prakash and Others Vs. Phulavati and Others (supra).

31. As certain debatable issues including the issue of maintainability are raised in the Petition,

these issues are required to be heard at length. **Rule.**

INTERIM APPLICATIONS NO. 774 OF 2022 & 807 OF 2022.

32. In so far as the interim applications and interim prayer for grant of release of the Petitioner by quashing and setting aside the orders dated 03rd March, 2022 and 07th March, 2022, passed by the Special Court are concerned, though it is vehemently submitted by learned Senior Counsel appearing for Petitioner that the act of the arrest of the Petitioner is an illegal *ab-initio* as such, the Petitioner be released look very attractive at first blush, considering the material placed on record and submissions advanced at the instance of learned ASG on following grounds, we are not inclined to grant prayer for the release of the Applicant – Petitioner.

33. The Petitioner himself admitted that in response to a summons issued by the Respondent No. 1 on 23rd February, 2022 calling upon him to appear before the Authorised Officer, the Petitioner attended the office of the Respondent No. 1. It may not be out of place to state that learned ASG vehemently submitted that all the actions initiated and given effect to are

by Authorised Officer. Now, in the present case, the Petitioner himself in response to the summons attended the office of Respondent No. 1. The Petitioner was then served with the arrest order and the grounds of arrest which are recorded by the Authorised Officers in writing were duly intimated to the Petitioner. As we have observed earlier that the endorsement of the Petitioner admitting that he has been informed the grounds of arrest finds place on the office copy of Respondent No. 1.

34. At the cost of repetition, we state that the further endorsement that the grounds of arrest are also informed by the Petitioner to his son also finds place on the office copy of Respondent No. 1. Then Respondent No. 1 submitted an application seeking custody of the Petitioner before the Special Court. The Petitioner had availed the legal assistance and the remand application was vehemently opposed by the Counsel appearing for Petitioner. Learned Special Judge, on consideration of the grounds submitted in the remand application as well on hearing the Counsel for Petitioner, passed an order of remand.

Taking into consideration all these aspects conjointly, we find merit in the submission of learned ASG that the requirement of Section 19 is duly followed.

35. There is also merit in the submissions of learned ASG that merely because learned Special Court allowed the application, granted the prayer of custody of Petitioner, would not make that order illegal *ipso facto* because the Petitioner is aggrieved. Learned ASG was also justified in submitting before this Court that the order passed by the learned Special Judge granting custody of the Petitioner would not make the Petitioner remediless for raising his grievance against arrest. Learned ASG was also justified in submitting that the Petitioner is entitled to take up appropriate proceedings such as filing of an application for grant of bail.

36. It is also an admitted position that the investigation is initiated recently and at this initial stage, this Court is not expected to assess evidence and record any finding in respect of material collected by Respondent No. 1 in the process of investigation.

Such an observation would not be only premature but also it may adversely affect the rights and contentions of the Petitioner himself who is an accused.

37. Learned ASG was also justified in placing reliance on the judgment of Manubhai Ratilal Patel through Ushaben Vs. State of Gujarat and Others³². We may respectfully state that the common thread revealed from perusal of the observations of the Apex Court judgments relied on by learned ASG is that grant of an interim order in the nature of release of Petitioner wherein the Petitioner is subjected to custody under the orders of the competent Court of jurisdiction, the Court will have to satisfy itself on two tests. Firstly, whether there was a lack of jurisdiction by the Court passing order of custody? and secondly, whether the order passed by the competent Court is patently illegal and shown non application of mind?

In the present case, there is no dispute on the factual aspect that custody order is passed by the competent Court of jurisdiction i.e., the Special Court and secondly, merely because the order is against the Petitioner it cannot be termed as patently illegal or

32 (2013) 1 SCC 314

suffers from non application of mind. In our opinion, this twin test is duly applied in the present matter.

38. It is true that there was an amendment brought by way of substitution in the year 2013 in the provisions of Section 3 and explanation is inserted in the year 2019 to Section 3 of the Act of 2002. There is an emphasis by Senior Advocate Mr. Desai that when Indenture of sale was executed in the year 2005, the above said provisions were not there in the Act and if the above provisions are made applicable, it will amount to retrospective operation. Whereas, according to learned ASGI these provisions have only clarified the position. When we have perused the unamended provisions of Section 3 we may find that "process or activity connected with proceeds of crime" is one of ingredient. Its a wider term. Its constitutional validity is not challenged before us. So *prima facie* we feel that the said contention cannot be accepted at this stage.

39. What we *prima facie* feel that projection/claiming a property as untainted property is the objectionable act forming part of an offence under

Section 3 of the Act of 2002. This has been interpreted in the judgments of A.K. Samsuddin, Hari Narayan Rai as referred above. At this stage, we are not impressed by the arguments of learned Senior Advocate Shri Desai that there is no act attributable to the Petitioner so as to attract the provisions of the Act of 2002.

40. We have not gone into the papers of investigation. Even learned Senior Advocate Shri Desai has argued that he has got reservations if this Court will peruse the investigation papers. So we deem it proper to peruse them once the Petitioner will argue the Petition to the fullest extent.

41. There is an FIR registered by NIA dated 03.02.2022 FIR bearing RC-01/2022/NIA/MUM, and on that basis there is ECIR registered on 14.02.2022. There are also previous FIRs and on that basis separate ECIR in the year 2017 and 2019 were registered. Now the Enforcement agency has merged them and combined investigation is undertaken.

42. Considering all the above referred grounds, we are not inclined to allow the prayers in the said

applications and for the said reasons, the prayer clause (f) of Petition is also rejected. Resultantly, Interim Applications are rejected.

(S. M. MODAK, J.)

(PRASANNA B. VARALE, J.)