

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (BA) NO. 1149 OF 2021

(AJAY KUMAR CHANDRAPARKASH BAHETI
... VERSUS ...

DIRECTORATE OF ENFORCEMENT THR. THE ASSISTANT DIRECTOR,
SUB-ZONAL OFFICE, NAGPUR)

Shri Sunil V. Manohar, Sr. Adv. a/b Shri D.V.Chauhan & Mr. Gaurav S. Gour,
Advocates for the applicant.

Shri Nandesh S. Deshpande, ASGI a/w Shri Kartik N. Shukul & Ms Divya
Gontia, Advocates for Non-applicant.

CORAM : **ANIL S. KILOR, J.**
DATED : **JULY 07 2022**

ORAL ORDER :

1. By the present application filed under Section 439 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “Cr.P.C.”) and Section 65 of the Prevention of Money-Laundering Act, 2002 (hereinafter referred to as PMLA, 2002”), the applicant is praying for grant of regular bail in connection with ECIR bearing ECIR/NGSZO/13/21 registered by the Directorate of Enforcement, Sub-Zonal Office, Nagpur for the offence under Section 3 and punishable under Section 4 of the PMLA, 2002 (hereinafter referred to as “ECIR”).

Brief and relevant facts are as under:

2. An offence was registered at Kuntur Police Station, Nanded under Section 420, 406, 467, 468, 471, 477-A and 120B of Indian Penal Code (hereinafter referred to as "IPC) vide Crime No. 109/2018, dated 19/07/2018 against the present applicant and 18 others, on a report of Assistant Police Inspector, Nanded Police, who had received secrete information that essential commodities of Wheat and Rice is being illegally transported from the godown of Food Corporation of India (FCI) Jawahar Nagar, Tuppa to the company Baheti Group, M/s. India Mega Agro Anaj Limited (hereinafter referred to as "IMAAL"). Thereupon raid was conducted in the premises of IMAAL on 18/07/2018.

3. In further investigation, it was revealed that total 192 trucks of various registrations were constantly ferried to IMAAL during the period 01/01/2018 to 18/07/2018.

4. Thus, it is alleged that the applicant conspired and was involved in illegal transportation of essential commodities of Wheat and Rice from godowns of FCI Jawahar Nagar, Tuppa to the company Baheti

Group Mega Agro Anaj Limited. Accordingly the aforementioned crime was registered.

5. Since, Section 420 and 120(B) of IPC being the scheduled offence, under PMLA 2002, inquiry was initiated under PMLA 2002 against the accused persons. After scrutinizing the F.I.R., Charge-sheet and Bank Account Statement, the Statements of the applicant was recorded under Section 50 of the PMLA 2002.

6. Thereafter, on conducting Forensic Audit, it is alleged that the total amount transferred to various firms from IMAAL is Rs.55,27,43,000/-, without any business rationale and this amount was withdrawn mostly in cash during the period from January 2018 to July 2018.

7. It is further alleged to have revealed that the applicant has no business relations with the said business firms which were indirectly operated by the applicant and he used these fake firms to launder the tainted money received/acquired/obtained/ earned by illegal procurement of food grains from FCI godowns or by selling the end products of his

company IMAAL that were acquired by illegal acquisition of food grains from FCI godown.

8. In the above referred backdrop the Assistant Director, Directorate of Enforcement, Ministry of Finance, Government of India filed a complaint under Section 45 read with Section 44 of the PMLA 2002 for commission of offence defined under Section 3 of PMLA 2002 and punishable under Section 4 of the PMLA 2002 against the applicant and M/s. India Mega Agro Anaj Limited (IMAAL), before the Special Court for PMLA cases.

9. I have heard the learned counsel for the respective parties.

10. Shri S.V.Manohar, learned Senior Advocate argues that the applicant has been falsely implicated in the alleged offence. It is submitted that the applicant is not guilty of the alleged offence.

11. Shri Manohar, learned Senior Advocate has drawn attention of this Court to the various provisions of the PMLA 2002. He submits that an offence which did not form part of the Scheduled Offences would

not attract the provisions of Section 3 of the said Act. He has further contended that whatever be the amount involved and even if the same had been unlawfully procured, the same might attract the offence under any other Act, unless it forms part of the scheduled offence under the PMLA 2002 to attract the provisions of Section 3 of the said Act.

12. Shri Manohar, learned Senior Advocate submits that money laundering is the process of making “dirty money”, to appear as “legitimate” money. He therefore, submits that there are no allegations meeting the above referred requirement to say that the applicant is involved in money laundering.

13. It is submitted that time and again the Hon’ble Apex Court has held that grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. He submits that the applicant is in jail for more than one year and there is no material to show that the alleged proceeds of crime derived or obtained by the applicant directly or indirectly as a result of criminal activity, relating to scheduled offence. He, therefore, submits that Section 3 of the PMLA 2002 will not attract to the case of the applicant.

14. Shri Manohar, learned Senior Advocate submits that the allegations in the ECIR refers to the transactions between the period from January 2018 to July 2018. Whereas, the alleged scheduled offence was registered on 19/07/2018. He, therefore, submits that the alleged proceeds of crime Rs.55,27,43,000/- cannot be said to be the proceeds of crime derived or obtained by the accused as a result of criminal activity relating to the aforesaid scheduled offence.

15. He further submits that all the allegations are against the company namely M/s. India Mega Agro Anaj Limited (IMAAL) and therefore, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability on the part of the applicant as a Managing Director/ Director of the company. It is submitted that no such requisite allegations are made in the ECIR. For this purpose he has placed reliance on the judgment of the Hon'ble Supreme Court of India in the case of *Shiv Kumar Jatia ..vs.. State (NCT of Delhi)*, reported in **(2019) 17 SCC 193**.

16. Shri Manohar, learned Senior Advocate argues on twin conditions in Section 45(1) of the PMLA 2002. He submits that

reasonable ground means something more than *prima-facie* ground. It connotes substantial probable causes for believing that the accused is not guilty of the offence charged and in turn existence of circumstances to justify recording of satisfaction that the accused is not guilty of the offence charged and he is not likely to commit any offence while on bail. For this purpose he has placed reliance on the judgment of Supreme Court of India in the case of *Union of India ..vs.. Mohd.Nawaz Khan, reported in (2021)10 SCC 100*.

17. He, accordingly submits that as no offence is made out against the applicant under Section 3 of the PMLA 2002, the applicant may be released on bail.

18. On the other hand, the learned ASGI Shri Deshpande strongly opposed the application and submits that the prosecution has collected sufficient material against the applicant to *prima facie* show his involvement in the alleged offence.

19. It is submitted that total amount of Rs.55,27,43,000/- as mentioned in the Forensic Audit Report was transferred to fake firms

without any business rationale. He, therefore, submits that the said amount might have been used or acquired from the scheduled offence committed by the accused and therefore, it is proceeds of crime under Section 2(I)(u) of the PMLA 2002.

20. He further submits that further investigation is going on and therefore, at this stage it cannot be said that the proceeds of crime in this case is not relating to scheduled offence.

21. He submits that having registered an ECIR, the prosecution is at absolute liberty to expand the scope of investigation and go into all such illegal acts, transactions and deeds that may be prior to the registration of the predicate crime.

22. Shri Deshpande, learned ASGI submits that Forensic Audit Report is sufficient to show that the prosecution has identified 8 specific companies that have entered into the illegal transactions with IMAAL between January 2018 and July 2018. The report takes into consideration exhaustive material to identify and establish all legal

transactions that have taken place between the accused and various shell companies.

23. The learned ASGI further points out the observations of the Forensic Audit Report, wherein the instances of withdrawal of amount in cash are referred in relation to M/s. Om Sai Satya Sai Traders, M/s. Kapil Trading Company, M/s. Balaji Traders, M/s. Sumeet Traders, M/s. Sanjay Traders, M/s. Shree Laxmi Trading Company, M/s. Dayanand Trading Company and M/s. Vijay Kumar Ganeshlal Pokarna. Thus, he submits that there is direct evidence of illegitimate transactions between January 2018 and July 2018, which is the period when the predicate crime was registered.

24. Shri Deshpande, learned ASGI while opposing the present application has placed reliance on the following judgments of the Hon'ble Supreme Court of India:

- a) *Union of India..vs.. Hassan Ali Khan*, reported in (2011) 10 SCC 235
- b) *Rohit Tandon Vs. Directorate of Enforcement*, reported in (2018) 11 SCC 46,
- c) *Gautam Kundu ..vs.. Directorate of Enforcement*, reported in (2015) 16 SCC 1.

25. To consider the rival submissions, I have perused the charge-sheet, reply of the non-applicant, relevant provisions and judgments.

26. Before examining rival submissions at this stage it is relevant to consider what is money-laundering and how does money-laundering actually take place.

Money-laundering is the process of conversion of such proceeds of crime, “dirty money”, to make it appear as ‘legitimate money’.

27. The process of money-laundering generally involve the following three stages :

- (a) Placement: The money-launderer, who is holding the money generated from criminal activities, introduces the illegal funds into the financial systems. This might be done by breaking up large amount of cash into less conspicuous smaller sums which are deposited directly into a Bank Account or by purchasing a series of instruments such as Cheques, Bank Drafts etc., which are then collected and deposited into one or more accounts at another location.
- (b) Layering : The second stage of Money Laundering is layering. In this stage, the Money Launderer typically

engages in a series of continuous conversions or movements of funds, within the financial or banking system by way of numerous accounts, so as to hide their true origin and to distance them from their criminal source. The Money Launderer may use various channels for movement of funds, like a series of Bank Accounts, sometimes spread across the globe, especially in those jurisdictions which do not cooperate in anti Money Laundering investigations.

- (c) Integration: Having successfully processed his criminal profits through the first two stages of Money Laundering, the Launderer then moves to this third stage in which the funds reach the legitimate economy, after getting inseparably mixed with the legitimate money earned through legal sources of income. The Money Launderer might then choose to invest the funds into real estate, business ventures & luxury assets, etc. so that he can enjoy the laundered money, without any fear of law enforcement agencies.

28. Some times, the above three layering stages may not follow each other. At times, illegal money may be mixed with legitimate money, even prior to placement in the financial system.

29. The Hon'ble Supreme Court of India recently in the case of *J.Sekar @ Sekar Reddy ..vs.. Directorate of Enforcement*, on 5th May 2022 in Criminal Appeal No.738 of 2022, has held that in cases of PMLA, the Court cannot proceed on the basis of preponderance of probabilities. It is further observed that on perusal of the statement of objects and reasons specified in PMLA, it is the stringent law brought by Parliament to check money-laundering. Thus, the allegations must be proved beyond reasonable doubt in the Court. Even otherwise, it is incumbent upon the Court to look into the allegations and the material collected in support thereto and to find out whether the *prima-facie* offence is made out. It is further held that unless the allegations are substantiated by the authorities and proved against a person in the Court of law, the person is innocent.

30. The Delhi High Court in a case of *Directorate of Enforcement..vs.. Gagandeep Singh and others*, passed in Criminal Revision Petition No. 493 of 2017, has observed thus:

“29. The legislation of PMLA had been enacted with the objective to prevent and control money laundering and to confiscate and seize the property obtained from the laundered money. The PMLA is a specific and special enactment to combat the menace of laundering of money, keeping in view the illegal

practices that have been surfacing with respect to transfer and use of tainted money and subsequent acquisition of properties by using the same. The offence of money laundering is threefold including the stages of placement, whereby the criminals place the proceeds of crime to the general and genuine financial system, layering, whereby such proceeds of crime are spread into various transactions within the financial system and finally, integration, where the criminals avail the benefits of crime as untainted money. The offence of money laundering under the PMLA is therefore, layered and multi-fold and includes the stages preceding and succeeding the offence of laundering money as well.

30. The offence of money laundering, however, is not to be appreciated in isolation but is to be read with the complementary provisions, that is, the offences enlisted in the Schedule of the Act. The bare perusal of the abovementioned provisions of the PMLA establishes the pre-requisite relation between the commission of scheduled offences under the PMLA and the subsequent offence of money laundering. The language of Section 3 clearly implies that the money involved in the offence of money laundering is necessarily the proceeds of crime, arising out of a criminal activity in relation to the scheduled offences enlisted in the Schedule of the Act. Hence, the essential ingredients for the offence of Section 3 of the PMLA become, first, the proceeds of crime, second, proceeds of crime arising out of the offences specified in the Schedule of the Act and third, the factum of knowledge while commission of the offence of money laundering. ...”

31. Similarly, the Gujrat High Court in the case of *Jafar Mohammed Hassanfatta ..vs..Deputy Director*, passed in Criminal Revision Application No. 926 of 2016, has observed thus :

“37. A holistic reading of this definition of 'proceeds of crime' and the penal provision under Section 3 of PMLA, which uses conjunctive 'and', makes it luminous that any persons concerned in any process or activity connected with such "proceeds of crime" relating to a ""scheduled offence"" including its concealment, possession, acquisition or use can be guilty of money laundering, only if both of the two prerequisites are satisfied i.e. -

(i) Firstly, if he -

(a) directly or indirectly 'attempts' to indulge,

(b) 'knowingly' either assists or is a party, or

(c) is 'actually involved' in such activity; and

(ii) Secondly, if he also projects or claims it as untainted property.

38. The first of the two prerequisites to attract Section 3 of PMLA shall thus satisfy any of the following necessary ingredients -

A. Re : Direct or Indirect Attempt:

In State of Maharashtra v. Mohd. Yakub, MANU/SC/0239/1980: (1980) 3 SCC 57, [1983 (13) ELT 1637 (S.C.)] the Hon'ble Supreme Court observed that -

"13. Well then, what is an "attempt"? In sum, a person commits the offence of "attempt to commit a particular offence" when (i) he intends to

commit that particular offence, and (ii) he, having made preparations and with the intention to commit the offence, does an act towards its commission; such an act need not be the penultimate act towards the commission of that offence but must be an act during the course of committing that offence."

Thus, an "attempt to indulge" would necessarily require not only a positive "intention" to commit the offence, but also preparation for the same coupled with doing of an act towards commission of such offence with such intention to commit the offence. Respondent failed to produce any material or circumstantial evidence whatsoever, oral or documentary, to show any such 'intention' and 'attempt' on the part of any of the petitioners.

B. Re : Knowingly Assists or knowingly is a party: In Joti Parshad v. State of Haryana, MANU/SC/0161/1993: 1993Supp(2) SCC 497 the Hon'ble Supreme Court has held as follows -

"5. Under the Indian penal law, guilt in respect of almost all the offences is fastened either on the ground of "intention" or "knowledge" or "reason to believe". We are now concerned with the expressions "knowledge" and "reason to believe". "Knowledge" is an awareness on the part of the person concerned indicating his state of mind. "Reason to believe" is another facet of the state of mind. "Reason to believe" is not the same thing as "suspicion" or "doubt" and mere seeing also cannot be equated to believing. "Reason to believe" is a higher level of state of mind. Likewise "knowledge" will be slightly on a higher plane than "reason to believe". A person can be supposed to know where there is a direct appeal to his senses and a person is presumed to have a reason to believe if he has sufficient cause to believe the same."

The same test therefore applies in the instant case where there is absolutely no material or circumstantial evidence whatsoever, oral or documentary, to show that any of the petitioners, 'Knowingly', assisted or was a party to, any offence.

C. Actually involved :

Actually involved would mean actually involved into any process or activity connected with the proceeds of crime and thus "scheduled offence", including its concealment, possession, acquisition or use. There is absolutely no material or circumstantial evidence whatsoever, oral or documentary, to substantiate any such allegation qua the petitioners.

D. Neither any of the petitioners is arraigned as accused in the "scheduled offence's" punishable under Indian Penal Code for direct or indirect involvement, abetment, conspiracy or common intention, nor is any such case made out even on prima facie basis against any of them.

39. The second of the two prerequisites to attract Section 3 of PMLA would be satisfied only if the person also projects or claims proceeds of crime as untainted property. For making such claim or to project 'proceeds of crime' as untainted, the knowledge of tainted nature i.e. the property being 'proceeds of crime' derived or obtained, directly or indirectly, as a result of criminal activity relating to a "scheduled offence", would be utmost necessary, which however is lacking in the instant case.

41. On the basis of the said Section 24 read with Section 3 of PMLA, it was contended on behalf of the respondent that 'knowledge' of the "scheduled offence" or proceeds of crime is not essential under Section 3, and mere assistance in handling

proceeds of crime even without knowledge would attract offence of money laundering, and burden would shift on the accused to prove that he is not involved in money laundering. It was submitted that the petitioners are all adults having knowledge of right and wrong. The bank accounts in which they received payments and made further payments were all in their names and they were the signatories having power to operate the accounts. None of them had the slightest hesitation in allowing their account to be used as a transit point for further transfer of the proceeds of crime. It shall thus be presumed that they have thus knowingly allowed the use of their bank accounts and knowingly involved themselves in this activity having full knowledge of the purpose and intent of the transactions and helped in the process of layering. Thereby they are involved in the process of money-laundering.

42. I find no merit in this stand of the respondent. I am of the view that this amended Section 24 shows legislative intent of attachment and confiscation of proceeds of crime by presuming involvement of proceeds of crime in money laundering irrespective of whether the person concerned is or not charged with the offence of money laundering. Thus, there shall be a legal presumption in any proceeding relating to proceeds of crime under PMLA that such proceeds of crime are involved in money-laundering. Burden would be on the person concerned to show to the contrary. However, as rightly pointed out by the learned Senior Counsel for the petitioners, there is no legal presumption in Section 24 that -

(a) The concerned property is "proceeds of crime",

(b) The person accused has knowledge that the property is "proceeds of crime", and

(c) The person is involved in or is guilty of "money-laundering" merely for possessing or having any concern with the proceeds of crime.

In fact Section 24 clearly indicates that even a person in possession or connected with any proceeds of crime may or may not be charged with the offence of money laundering. Whether a person shall be charged with money laundering or not shall thus depend only upon satisfying the requirements of Section 3 of PMLA as already explained above."

32. From the reading of above enunciation of law, it is evident that, the offence of money-laundering, however, is not to be appreciated in isolation, but is to be read with complementary provisions, i.e., the offences enlisted in the schedule of the Act. The language of Section 3 clearly implies the money involved in the offence of money-laundering is necessarily the proceeds of crime, arising out of a criminal activity in relation to the scheduled offence enlisted in the Schedule of the Act. Hence, the essential ingredients for the offence of Section 3 of the PMLA 2002 become :

- i) The proceeds of crime
- ii) Proceeds of crime arising out of the offences specified in schedule of the Act;
- iii) Factum of offence while committing the offence of money-laundering.

33. Further it is clear that the allegations must be proved beyond reasonable doubt and the Court cannot proceed on the basis of preponderance of probabilities. Unless the allegations are substantiated by the authorities and proved against a person in the Court of law, the person is innocent.

34. Thus, in this case, to consider whether there is any reasonable ground to believe that the applicant is guilty of alleged crime, it is necessary to examine whether the alleged property being proceeds of crime, derived or obtained, directly or indirectly by the applicant as a result of criminal activity relating to a scheduled offence?

35. In this case, the applicant was found involved in illegal acquisition as well as accumulation of food grains from FCI godowns. 10 Trucks filled with food grains amounting to Rs.1.83 Crores were confiscated from the premises of the company IMAAL and thereupon Crime No.109/2018, dated 19/07/2018 came to be registered for the offences punishable under Section 420, 406, 467, 468, 471, 477A and 120B of IPC, against the applicant and 18 other accused persons.

36. Since Section 420 and 120B of IPC are the scheduled offences under the PMLA, inquiries were initiated under PMLA against accused persons.

37. In the scheduled offence, the supplementary charge-sheet filed by CID, revealed that the co-accused, Kapil Bajrang Gupta, with the help of his accomplice friend namely Lalitlal Bijalal Khurana and Raju Pralhad Parshewar, the Government Food grains transport contractors, sent 10 trucks full of food grains to the applicant's godown . The co-accused Kapil Bajrang Gupta of Shri Lambodhar Trading Company handed over to the truck driver some forged documents pretending to be his own Lambodhar Trading Company's food grains. The said co-accused Kapil Bajrang Gupta in accomplice of the Government food grains transport contractors viz. Lalit Raj Brijlal Khurana and Raju Pralhad Parshewar had supplied food grains to the applicant pretending that the foods grains were his own goods and in return he had shown genuine sell to the company IMAAL.

38. The investigation in scheduled offence further shows that M/s. Kapil Trading Company received Rs.80,10,000/- from IMAAL towards supply of grains to IMAAL.

39. As per the charge-sheet No.70 of 2019 filed in scheduled offence, total 192 trucks of various registrations were constantly ferried to IMAAL during the period from 01/01/2018 to 18/07/2018 for conducting illegal acquisition and accumulation of food grains. Thus, it is alleged and considered that, the total amount of Rs.55,27,43,000/- transferred to various firms is the proceeds of crime under Section 2(1)(u) of PMLA.

40. In the investigation under PMLA, the forensic audit was conducted for the period 01/01/2018 to 18/07/2018. In the forensic audit report it was revealed that the total amount transferred to various firms from IMAAL is Rs.55,27,43,000/-. The chart showing the names of the firm and amount transferred to such firms, is given herein below :

(TABLE-D)

Sr. No.	Firms/ Entities	Amount Transferred
1.	M/s. Om Shri Satyasai Traders	Rs.3,01,72,000/-
2.	M/s. Kapil Trading Co.	Rs.80,10,000/-
3.	M/s. Balaji Traders	Rs.1,84,72,000/-
4.	M/s Sumeet Traders	Rs.48,59,000/-
5.	M/s. Sanjay Traders	Rs.2,41,85,000/-
6.	M/s. Shri Laxmi Trading co.	Rs.3,00,76,000/-
7.	M/s. Dayanand Trading co.	Rs.27,70,03,000/-
8.	M/s. Vijay Kumar Ganeshlal Pokarna	Rs.15,99,66,000/-
	TOTAL	Rs.55,27,43,000/-

41. In the Forensic Audit Report observations made as regard the above referred eight firms, are as under:

19. In his statement dated 25.06.2021, the accused, Shri Ajay Chandraprakash Baheti has mentioned that he has business relations with M/s Om Shri Satyasai Traders and they used to supply food grains to M/s India Mega Agro Anaj Ltd. However, the forensic audit report clearly mentions that M/s Om Shri Satyasai Traders received amounts from M/s India Mega Agro Anaj Ltd. with some unidentified receipts. These amounts received have been withdrawn in cash. Also, M/s Om Shri Satyasai Traders did not carry any business relations with M/s India Mega Agro Anaj Ltd. The total amount received from M/s India Mega Agro Anaj Ltd. is Rs.Three crores one lakh seventy-two thousand (Rs.3,01,72,000/-) as per the forensic report.

20. In his statement dated 25.06.2021, the accused has mentioned that he has business relations with M/s Kapil Trading Co. and they used to supply food grains to M/s India Mega Agro Anaj Ltd. However, the forensic audit report clearly mentions that M/s Kapil Trading Co. is a commission agent and a general merchant. M/s Kapil Trading Co. has received amounts from M/s India Mega Agro Anaj Ltd. with some unidentified receipts. These amounts received have been withdrawn in cash. M/s Kapil Trading Co. did not carry any business relations with M/s India Mega Agro Anaj Ltd. and the reasons for such receipts and payments are unidentified. The total amount received from M/s India Mega Agro Anaj Ltd. as per the forensic audit report is Rupees Eighty Lakhs and ten thousand (Rs.80,10,000/-).

21. In his statement dated 25.06.2021, the accused has mentioned that he has business relations with M/s Balaji Traders and they used to supply food grains to

M/s India Mega Agro Anaj Ltd. however, the forensic audit report clearly mentions that M/s Balaji Traders is a commission agent and M/s Balaji Traders has received amounts from M/s India Mega Agro Anaj Ltd. with some unidentified receipts. These amounts received have been withdrawn in cash. M/s Balaji Traders did not carry any business relations with M/s India Mega Agro Anaj Ltd. and the reasons for such receipts and payments are unidentified. The total amount received from M/s India Mega Agro Anaj Ltd as per the forensic audit report is Rupees one crores eighty-four lakhs seventy-two thousand (Rs.1,84,72,000/-).

22. In his statement dated 25.06.2021, the accused has mentioned that he has business relations with M/s Sumeet Traders and they used to supply food grains to M/s India Mega Agro Anaj Ltd. However, the forensic audit report clearly mentions that M/s Sumeet Traders is a commissions agent and M/s Sumeet Traders has received amounts from M/s India Mega Agro Anaj Ltd. with some unidentified receipts. These amounts received has been withdrawn in cash. M/s Sumeet Traders did not carry any business relations with M/s India Mega Agro Anaj Ltd. and the reasons for such receipts and payments are unidentified. The total amount received from M/s India Mega Agro Anaj Ltd as per the forensic audit report is Rupees forty eight lakhs fifty nine thousand (Rs. 48,59,000/-).

23. In his statement dated 25.06.2021, the accused has mentioned that he has business relations with M/s Sanjay Traders and they used to supply food grains to M/s India Mega Agro Anaj Ltd. However, the forensic audit report clearly mentions that M/s Sanjay Traders is a general merchant and commission agent and M/s Sanjay Traders has received amounts from M/s India Mega Agro Anaj Ltd with some unidentified receipts. These amounts received have been withdrawn in cash. M/s Sanjay Traders did not carry any business relations

with M/s India Mega Agro Anaj Ltd. and the reasons for such receipts and payments are unidentified. The total amount received from M/s India Mega Agro Anaj Ltd. as per the forensic audit report is Rupees Two Crores forty one lakhs and eighty five thousand (Rs.2,41,85,000/-).

24. In his statement dated 25.06.2021, the accused has mentioned that he has business relations with M/s Shri Laxmi Trading co. and they used to supply food grains to M/s India Mega Agro Anaj Ltd. However, the forensic audit report clearly mentions that M/s Shri Laxmi Trading co. is a commission agent and M/s Shri Laxmi Trading co. has received amounts from M/s India Mega Agro Anaj Ltd. with some unidentified receipts. These amounts received have been withdrawn in cash. M/s Shri Laxmi Trading co. did not carry any business relations with M/s India Mega Agro Anaj Ltd. and the reasons for such receipts and payments are unidentified. The total amount received from M/s India Mega Agro Anaj Ltd. as per the forensic audit report is Rupees three Crores Seventy Six thousand (Rs.3,00,76,000/-).

25. As per the forensic audit report M/s Dayanand Trading co. has received amounts from M/s India Mega Agro Anaj Ltd. with some unidentified receipts. These amounts received have been withdrawn in cash. The same amount is paid to Shri Ajay Chandraprakash Baheti and some other persons but the purpose behind such payments is unknown. M/s Dayanand Trading co. did not carry any business relations with M/s India Mega Agro Anaj Ltd. and the reasons for such receipts and payments are unidentified. The total amount received from M/s India Mega Agro Anaj Ltd as per the forensic audit report is Rupees Twenty Seven Crores Seventy Lakhs and three thousand (Rs.27,70,03,000/-).

26. In his statement dated 25.06.2021, the accused has mentioned that he has business relations with M/s Vijay Kumar Ganeshlal Pokarna and they used to supply food grains to M/s India Mega Agro Anaj Ltd. However, the forensic audit report clearly mentions that M/s Vijay Kumar Ganeshlal Pokarna is a general agent and a commission agent. M/s Vijay Kumar Ganeshlal Pokarna has received amounts from M/s India Mega Agro Anaj Ltd. with some unidentified receipts. These amounts received have been withdrawn in cash. M/s Vijay Kumar Ganeshlal Pokarna did not carry any business relations with M/s India Mega Agro Anaj Ltd. and the reasons for such receipts and payments are unidentified. The total amount received from M/s India Mega Agro Anaj Ltd. as per the forensic audit report is Rupees Fifteen crores Ninety lakhs Sixty six thousand(Rs.15,99,66,000/-).

42. To sum up the findings of the Forensic Audit Report, the observations are that the aforesaid eight firms received amounts from IMAAL with some unidentified receipts and the amount received have been withdrawn in cash and further, these firms did not carry any business relations with IMAAL.

43. In this case, the scheduled offence was registered on 19/07/2018, whereas, the Forensic Audit Report is for the period January 2018 to July 2018. The findings of the Forensic Audit Report, as referred above, only mention that all the said firms received amount from IMAAL

with some unidentified receipts and they did not carry any business relations with IMAAL.

44. However, there is nothing to show that the proceeds of crime, in this case, is connected with the scheduled offence. All the above transactions appear to have taken place prior to registration of scheduled offence and there are no findings recorded by the Enforcement Directorate that the proceeds of crime are connected with the scheduled offence.

45. The expression “proceeds of crime” is defined under clause (u) of Section 2(1) of the PMLA which makes it clear that 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.

46. In a specific query put to the learned ASGI, to show existence of any direct material to *prima facie* establish that the alleged property derived or obtained directly or indirectly by the applicant as a result of criminal activity relating to a scheduled offence.

Deleted as per
order dated
03/08/2022

47. ~~In reply to the same, the learned ASGI has fairly stated that, presently there is nothing on record to show that the alleged property derived or obtained directly or indirectly by the applicant as a result of criminal activity relating to the scheduled offence.~~

48. He further submits that the further investigation in this regard is going on.

49. The scheduled offence was registered on 19/07/2018. Thereafter, the ECIR was registered by Directorate of Enforcement on 24/05/2021 i.e. after about three years.

50. Thus, till date the period of four years from the date of registration of scheduled offence and more than one year after the ECIR, is lapsed. However, even after a lapse of such a huge period, nothing is produced to show that the proceeds of crime is derived or obtained by the applicant directly or indirectly as a result of criminal activity relating to the scheduled offence in the present case.

51. In this case, the Enforcement Directorate has observed that, "It is presumed that the total amount of Rs.55,27,43,000/- mentioned in

the Forensic Audit Report is transferred to the above referred firms without any business rationale from IMAAL and the amount might have been used or acquired from the scheduled offence”. The above referred observations do not disclose that there was a reasonable ground for the Enforcement Directorate to believe that the applicant is guilty of the alleged crime under PMLA.

52. Having a sizable or any and every unaccounted money, would not *epso facto* indicate the commission of an offence under the PMLA 2002. In other words, in order to prove the offence of money-laundering it has to be established that the money involved are the proceeds of crime and having full knowledge of the same, the person concerned projects it as ‘untainted property’. The process undertaken in doing so amounts to offence of ‘money-laundering’.

53. I have noted herein above in paragraph 26 of this order that the process of money-laundering generally involves three stages. In this case, nothing has been pointed out to *prima-facie* show that the applicant is having any control over the accounts of those eight firms or the applicant was operating the bank accounts of the said firms.

54. As per the case of the prosecution, the above referred eight companies are the fake companies because out of eight companies address of six companies is as of the company of the applicant, namely IMAAL. However, *prima-facie* there is no material except showing that the addresses of some of the companies are same, that the applicant has any control over the said companies or he was operating the bank accounts of the said companies, to connect the proceeds of crime with the predicate offence.

55. It is the case of the prosecution in the predicate offence that the co-accused in the said case Kapil Bajrang Gupta of Shri Lambodhar Trading Company handed over to truck driver some forged documents pretending to be his own Lambodhar Trading Companies food grains. The said accused Kapil Bajrang Gupta in accomplice of the Government food grains transport contractors namely Lalit Raj Brijlal Khurana and Raju Pralhad Arshewar had supplied food grains to the company of the applicant, pretending that the food grains were his own goods.

56. It is the further case of the prosecution that the applicant had paid Rs.80,10,000/- to Kapil Bajrang Gupta towards supply of food

grains. This amount of Rs.80,10,000/- is a part of proceeds of crime i.e. Rs.55,27,43,000/-.

57. If the above referred story of the prosecution is accepted on its face value, it is evident that Kapil Bajrang Gupta created and forged the documents pretending that food grains were his own goods and in return he received Rs.80,10,000/-, in that case. There is no allegation that the applicant had any knowledge that the documents possessed by the driver of Kapil Bajrang Gupta, were forged or created one. There is nothing to *prima facie* show that the applicant had knowledge about the alleged acts of Kapil Bajrang Gupta and his accomplice.

58. Thus, in absence of any allegation that the applicant had any such knowledge as referred herein above, making the payment of Rs.80,10,000/- by the applicant to Kapil Bajrang Gupta, which amount is the part of proceeds of crime, creates doubt about the veracity in respect of allegations as regards transactions with the remaining seven companies and payments made to the said companies, particularly when there is nothing to *prima-facie* show that the applicant is related or having control over the said companies.

59. Moreover, no offence has been registered against any of the above referred eight firms having allegedly derived or obtained property directly or indirectly as a result of criminal activity relating to alleged scheduled offence.

60. The Hon'ble Supreme Court of India in the case of *Union of India ..vs.. Mohd. Nawaz Khan*, reported in **(2021) 10 SCC 100** has held thus :

“22. The standard prescribed for the grant of bail is “reasonable ground to believe” that the person is not guilty of the offence. Interpreting the standard of “reasonable grounds to believe”, a two-judge Bench of this Court in Shiv Shanker Kesari, held that: (SCC pp. 801-02, paras 7-8 & 10-11)

“7. The expression used in Section 37(1)(b)(ii) is “reasonable grounds”. The expression means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence charged and this reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify recording of satisfaction that the accused is not guilty of the offence charged.

8. The word “reasonable” has in law the prima facie meaning of reasonable in regard to those circumstances of which the actor, called on to act reasonably, knows or ought to know. It is difficult to give an exact definition of the word “reasonable”.

“7. ... In Stroud's Judicial Dictionary, 4th Edn., p. 2258 states that it would be unreasonable to expect an exact definition of the word ‘reasonable’. Reason varies in its conclusions according to the idiosyncrasy of the individual, and the times and circumstances in which he thinks. The reasoning which built up the old scholastic logic sounds now like the jingling of a child's toy.”

(See MCD v. Jagan Nath Ashok Kumar SCC p. 504, para 7 and Gujarat Water Supply & Sewerage Board v. Unique Erectors (Gujarat) (P) Ltd.

* * *

10. The word “reasonable” signifies “in accordance with reason”. In the ultimate analysis it is a question of fact, whether a particular act is reasonable or not depends on the circumstances in a given situation. (See Municipal Corpn. of Greater Mumbai v. Kamla Mills Ltd.

11. The court while considering the application for bail with reference to Section 37 of the Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty.”

23. *Based on the above precedent, the test which the High Court and this Court are required to apply while granting bail is whether there are reasonable grounds to believe that the accused has not*

committed an offence and whether he is likely to commit any offence while on bail. Given the seriousness of offences punishable under the NDPS Act and in order to curb the menace of drug-trafficking in the country, stringent parameters for the grant of bail under the NDPS Act have been prescribed.”

61. In the teeth of above referred well settled law, in absence of connected evidence with crime of scheduled offence, in my opinion, there is a reasonable ground to believe that the applicant is not guilty of the alleged offence. Moreover, there is a reasonable ground to believe that the applicant is not likely to commit any such offence while on bail as there are no antecedents to the discredit of the applicant.

62. The judgment of the Hon’ble Supreme Court of India in the case of *Union of India ..vs.. Hassan Ali* (supra) is distinguishable on facts.

63. There is no dispute about the proposition laid down in the judgment of the case of *Rohit Tandon* (supra) that economic offences having deep rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences effecting the economy of the country as a whole and thereby posing serious threat to

the financial health of the country. And further that the burden of proof when the money is not proceeds of crime and were not, therefore, tainted shifts on the accused persons under Section 24 of the PMLA 2002.

64. In the present case, the prosecution has failed to bring on record the foundational facts to show that the proceeds of crime is connected with the scheduled offence.

65. As far as the judgment in the case of *Gautam Kundu* (supra) as regards twin conditions under Section 45 of the PMLA 2002, there is no dispute that the twin conditions are mandatory. I have accordingly recorded my findings on the said twin conditions, herein above.

66. In light of above backdrop, I am of the opinion that the applicant shall be released on bail. Accordingly, I pass the following order:

- i) The application is allowed.
- ii) It is directed that the applicant shall be released on bail in connection with ECIR bearing No. ECIR/NGSZO/13/21, registered by Directorate of Enforcement, Sub-Zonal Office, Nagpur for the offence punishable under Section 3 and 4 of

the Prevention of Money-Laundering Act, 2002, on his furnishing P.R. Bond in the sum of Rupees One Lakh with one or two solvent sureties in the like amount.

- iii) The applicant shall not pressurize the prosecution witnesses or tamper with the prosecution evidence.
- iv) The applicant shall deposit his Passport with the concerned Police Station.
- v) The applicant shall attend the trial before the Sessions Court regularly on every date unless exemption is granted by the Sessions Court.

The Criminal Application is **disposed of** accordingly.

(ANIL S. KILOR, J)