

Form No.J(1)

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

Present:

The Hon'ble Justice Tirthankar Ghosh

C. R. M. (SB) 134 of 2023

***Satarupa Bhattacharya*
versus
Enforcement Directorate**

In Re : An application for bail under Section 439 read with Section 88 of the Code of Criminal Procedure, 1973 and Sections 44,47 & 65 of the Prevention of Money Laundering Act, 2002 filed in connection with M. L. Case No. 13 of 2022 arising out of ECIR No. KLZO-II/19/2022 dated 24.06.2022 under Section 3 read with Section 70 and Section 4 of the Prevention of Money Laundering Act, 2002(as amended).

For the Appellant : Mr. Jishu Saha, Sr. Advocate
Mr. Kumarpal R. Chopra, Adv,
Mr. Pawan Kumar Gupta, Adv,
Ms. Sofai Nesar, Adv,
Mr. Santanu Sett, Adv,
....for the petitioner

For the State : Mr. Phiroze Edulji, Adv,
Ms. Anamika Pandey, Adv,

Heard On : 11.07.2023, 26.07.2023 & 04.08.2023 &
07.08.2023.

Judgement On : **07.08.2023**

Tirthankar Ghosh, J. :

The present application for bail has been preferred in connection with M. L. Case No. 13 of 2022 arising out of ECIR No. KLZO-

II/19/2022 dated June, 24, 2022 under Section 3 read with Section 70 punishable under Section 4 of the Prevention of Money Laundering Act, 2002.

The allegations as set out in the complaint against the petitioner is as follows:-

“Smt. Satarupa Bhattacharya is the wife of Shri Manik Bhattacharya who are knowingly assisted Shri Manik Bhattacharya in the process of concealing and laundering the proceeds of crime acquired by Shri Manik Bhattacharya through criminal activity relating to the scheduled offences. Investigation conducted under PMLA revealed that Smt. Satarupa Bhattacharya and Sri Manik Bhattacharya in conspiracy with themselves and other induced their family members and relatives and pursuant to that conspiracy opened a number of joint bank accounts with those induced persons without informing them the purpose of opening the such joint bank accounts in her control, occupation and operation. Investigation further revealed that one of the joint bank accounts opened with Late Shri Mrityunjay Chatterjee who passed away in the year 2016 itself but Shri Satarupa Bhattacharya updated the KYC of the said bank accounts by showing the said expired Late Shri Mrityunjay Chatterjee as out of station. Further, she also infused huge sum in that bank accounts recently after the death of the said Mrityunjay Chatterjee and from there the same were used for making FD jointly in the name of herself and her relative Shri Pannalal Bhattacharya. Further, Shri Satarupa Bhattacharya operated

those accounts by showing herself as secondary holder but the said bank accounts was completely under her control and use.

That the investigation conducted under PMLA revealed that she is a housewife and totally dependent on her husband Shri Manik Bhattacharya which means that the amount as well as the bank accounts being maintained singly in her name is nothing but the proceeds of crime generated by Shri Manik Bhattacharya out of criminal activity relating to the scheduled offences under PMLA, 2002.

As such, it is clearly established that she was involved in the acquisition, use, possession and concealment of proceeds of crime with the assistance of other accused persons and entities. Thus, the accused person has committed the offence of Money Laundering as defined under Section 3 of the PMLA and is, therefore, liable to be punished under Section 4 of the PMLA, 2002.

Aforesaid acts committed by her are covered by the definition of offence of money-laundering. IN addition to that, Explanation to Section 3 of PMLA also provides that “the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in

any manner whatsoever". As revealed from the facts of the case, she continued to be involved from the facts of the case, she continued to be involved in processes and activities connected with said proceeds of crime and continued to be in possession and use of the said proceeds of crime. In view of the facts and aforesaid legal explanation, it is noticed that she continued to commit offence of money laundering as per Section 3 of PMLA and therefore liable to be punished under Section 4 of PMLA for such continuing activity".

Mr. Saha, learned senior advocate appearing on behalf of the petitioner submits that at the stage of filing of the complaint, the Investigating Agency/prosecution prayed for issuance of process against the accused persons which included the present petitioner.

Learned advocate submitted that at the time when the complaint was filed before the learned special court on 7th December, 2022, the learned court was pleased to take cognizance of the offence under Section 3 read with Section 70 and punishable under Section 4 of the PMLA Act, 2002.

The accused persons who are named in the supplementary complaint referred to the present petitioner as accused no.11. Learned senior advocate also pointed out to the order dated 07.12.2022 that the accused persons who are in custody, there is no question of issuing any process against them, but in respect of other 11 accused who are

companies necessary order for issuance of summons will be issued at a later stage. However, there is nothing reflected in the order sheet to show that summons were issued against the petitioner, the petitioner was served with a summon signed by the learned Judge, Special Court CBI No.1, Calcutta and Special Court under PMLA Act wherein she was required to appear on 07.01.2023. In response to the said summons, the present petitioner appeared on 07.01.2023 and she prayed for bail after physically appearing in court. On behalf of the Enforcement Directorate a submission was advanced that they should be permitted to file written objection and for that, time be granted to them. Accordingly, the learned Special Court granted time to the E.D. and further observed that the objection should be filed and counter affidavit be exchanged by 07.02.2023 and she was allowed to return back to her home, pursuant to the order passed by the learned Special Court. On 07.02.2023, an accommodation was sought for on behalf of the petitioner as it was submitted that in the morning hours only she received the written objection. The learned court as such granted another two weeks' time fixing 22.02.2023 for hearing of the bail application in respect of the present petitioner. The said bail application was finally heard on 22.02.2023 and after hearing both the parties, the learned trial court by

its order dated 22.02.2023 was pleased to reject the application for bail which is set out as follows :

“In the instant case the custodial interrogation of the accused persons might not have been required but that does not mean that the prima facie case against the accused persons and their involvement in such a serious offence should be ignored or over looked while deciding their prayer for bail. In the above noted paragraph I have taken down the role of the instant accused persons as revealed during investigation. There is very strong prima face case against them. As per the observation of the Hon’ble Apex Court in the judgment of the case of Vijay Madanlal Chaudhari and others, the involvement of the instant accused persons in the predicate offence is irrelevant so far their involvement with the offence of money laundering as define under Section 3 of 2002 Act is apparent on the face of the materials available before this Court. Strong possibility of their involvement in the offence of money laundering is already made out and accordingly, considering the nature and gravity of the offence as well as the role played by the instant accused persons in the process of concealment of the proceeds of crime and projecting as also claiming it is untainted property, I am not inclined to allow the prayer for bail for the accused persons.”

Learned advocate for the petitioner submitted that in the meantime petitioner preferred a revisional application challenging the order passed by the learned special court and the said revisional

application was heard on several dates. However, subsequently, the revisional application was not pressed. In the meantime, the petitioner on or about 22nd March, 2023 preferred an application under Section 88 of the Code of Criminal Procedure and the same was also rejected by the learned special court. The said order of rejection was challenged before this Court. However, the learned advocate for the petitioner submitted that bereft of every details the manner in which the proceeding should have been conducted because of mistaken legal advice it remains that the petitioner is in custody till date.

Learned advocate has relied upon the judgment of this Court in the case of Enforcement Directorate Vs. Shri Debabrata Halder reported in 2022 SCC OnLine Cal 409 and drawn the attention of this Court to paragraph 23 which is set out as follows:

“23. Be that as it may, there is difference with regard to releasing a person on bail who has appeared in response to summons and a person who was arrested in course of investigation under the PMLA, 2002 by the Investigating Authorities invoking their powers under Section 19 of the Act. The accused Nos.2 to 11 appeared before the learned Special Court pursuant to the summons which were issued to them as such taking into account the provisions of Section 65 of the PMLA, 2002 it can be held that if the learned Special Court intended to exercise its option under Section 88 of the Code of Criminal Procedure the same cannot be interfered with until and unless supervening circumstances are brought on record.”

Learned advocate appearing for the ED has taken a preliminary objection regarding the maintainability of the bail application in view of the order which has been challenged being 22nd March, 2023 not being an order of rejection of bail or the bail application being moved before the learned special court. Learned advocate has emphasized also on the issue that the petitioner attempted to obtain an order of bail by way of preferring a revisional application and the said revisional application was pending when the present application for bail was preferred. According to him, the present application must be dismissed in limine.

The E.D. has also filed its Affidavit-in-opposition wherein the merits of the case was demonstrated, the complicity of the present petitioner in respect of the alleged offence and, to that effect, Learned Advocate has preferred to rely upon the statement of Hiralal Bhattacharya, Sanchita Bhattacharya, Pannalal Bhattacharya being the relations. It was submitted that the son, husband and the present petitioner i.e. whole family was involved in the offence and they used the three persons' namely, Hiralal Bhattachaya, Pannalal Bhattacharya and Sanchita Bhattacharya for the purposes of concealing, possession and acquiring the proceeds of crime, which were generated in course of the recruitment scam.

Learned Advocate for the E.D. has taken this Court to the chart, which is part and parcel of the prosecution's Report, wherein according to him there were deposit of cash, which were stacked in the accounts credited in the name of these three family memebtrs jointly with the relations and finally, it proceeded through the name of one dead person, being Mrityunjoy Chatterjee, wherein the joint-holder was the present petitioner. There were fixed deposits made in the name of the present petitioner with one of her relatives, which was to the tune of Rs.1,45,000,00/- (Rupees One Crore Forty Five Lakhs).

Learned Advocate for the E.D. submitted that the present petitioner consciously submitted documents before the Bank Authorities in the name of one Mrityunjay Chatterjee, wherein it reflects that KYC, EPIC Card, which was submitted, was in respect of a person, who was dead and the same was for the purposes of concealing the funds which were available in the said account.

Learned Advocate for the E.D. repeatedly tried to draw the attention of this Court in respect of the heinousness of the offence involved particularly that the scam related to recruitment, where competent people were deprived in lieu of money and recruitments were granted by people, who held high offices.

Learned Advocate tried to emphasise on the particular word “*supervening*” in paragraph 23 in *Debabrata Halder (supra)* to stress that the rural youth of West Bengal have been deprived of their rightful employment, wherein people in power have sold the employment. In order to substantiate his argument, learned advocate relied upon the following judgments:

1. Y.S. Jagan Mohan Reddy –Vs. CBI (2013) 7 SCC 439;
2. Rohit Tandon Vs. Directorate of Enforcement (2018) 11 SCC 46;
3. Anil Kumar Yadav Vs. State (NCT of Delhi), (2018) 12 SCC 129;
4. Gautam Kundu Vs. Directorate of Enforcement (Prevention of Money-Laundering Act), (2015) 16 SCC 1;
5. Ranjitsing Brahmajeetsing Sharma V. State of Maharashtra (2005) 5 SCC 294;
6. Subires Bhattacharyya, in re, 2022 SCC OnLine Cal 4307;
7. Anubrata Mondal V. CBI, 2023 SCC OnLine Cal 23;
8. AIR 2018 SCC 1155 Pankaj Jain vs. Union of India and another;
9. Satender Kuman Antil Vs. CBI, (2022) 10 SCC 51;
10. Directorate of Enforcement Vs. Debabrata Halder, 2022 SCC OnLine Cal 4095.

Another argument which has been lastly canvassed by Mr. Edulji was that the petitioner made foreign trips by using the said money which were illegal proceeds of crime.

I have considered the submissions advanced on behalf of the petitioner as well as on behalf of the ED. Certain facts in this case are admitted. Firstly, the total quantum for which the petitioner has been charged is Rs. 1.96 crores; secondly, there are no evidence against the present petitioner that any examinee or any person for that purpose has directly handed over any money to the present petitioner for the purposes of employment. The petitioner happens to be the wife of Manik Bhattacharya who at the relevant point of time was the President of the West Bengal Board of Primary Education.

The petitioner was summoned by the Enforcement Directorate in course of the investigation and she responded to the said summons under Section 50 of the PMLA Act, 2002 on 24th November, 2022.

In this case several persons were arrested, however the Investigating Agency did not exercise their powers under Section 19 of the PMLA Act, 2002 against the present petitioner. Petitioner received summons and consequently appeared before the learned special court on 7th January, 2023 and applied for bail. The learned special court

allowed the petitioner to return back home thereby granting time to the Enforcement Directorate to file their written objection.

Subsequently, her application for bail was heard on 22nd March, 2023 when she was taken into custody. The first issue which has cropped up before this court is that when the petitioner in response to a summons appeared before the special court which was acting as an original court and the original court thought it fit and proper to keep the bail application with the record (pending) for affording the prosecution to file their written objection, in that case two options were available before the original court. Firstly, to take the petitioner into custody or in the alternative to grant at least an ad interim bail. There is no provision in the Code of Criminal Procedure which empowers an original court, when an accused in a cognizable and non-bailable offence appears in response to a summons to allow him or her to go back to home without declaring her locus in respect of the case so far as his or her release or detention is concerned.

The legality in the order of the learned court would be dealt with later. The other aspect which assumes importance in this case is regarding the exercise of powers under Section 19 of the PMLA Act, 2002. The issue relating to the constitutional validity of Section 19 of the PMLA Act, 2002 was called in question so far the power relating to

arrest is concerned before the Hon'ble Supreme Court in Vijay Madanlal Choudhary and Others –Vs.- Union of India and Others reported in 2002 SCC OnLine SC 929. The Hon'ble Supreme Court was pleased to observe as follows :-

“322. *Section 19 of the 2002 Act postulates the manner in which arrest of person involved in money-laundering can be effected. Subsection (1) of Section 19 envisages that the Director, Deputy Director, Assistant Director, or any other officer authorised in this behalf by the Central Government, if has material in his possession giving rise to reason to believe that any person has been guilty of an offence punishable under the 2002 Act, he may arrest such person. Besides the power being invested in high-ranking officials, Section 19 provides for inbuilt safeguards to be adhered to by the authorised officers, such as of recording reasons for the belief regarding the involvement of person in the offence of money-laundering. That has to be recorded in writing and while effecting arrest of the person, the grounds for such arrest are informed to that person. Further, the authorised officer has to forward a copy of the order, along with the material in his possession, in a sealed cover to the Adjudicating Authority, who in turn is obliged to preserve the same for the prescribed period as per the Rules. This safeguard is to ensure fairness, objectivity and accountability of the authorised officer in forming opinion as recorded in writing regarding the necessity to*

arrest the person being involved in offence of money-laundering. Not only that, it is also the obligation of the authorised officer to produce the person so arrested before the Special Court or Judicial Magistrate or a Metropolitan Magistrate, as the case may be, within twenty-four hours. This production is also to comply with the requirement of Section 167 of the 1973 Code. There is nothing in Section 19, which is contrary to the requirement of production under Section 167 of the 1973 Code, but being an express statutory requirement under the 2002 Act in terms of Section 19(3), it has to be complied by the authorised officer. Section 19, as amended from time to time, reads thus:

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

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

Adjudicating Authority shall keep such order and material for such period, as may be prescribed.

(3) Every person arrested under sub-section (1) shall, within twenty-four hours, be taken to a [530](#)[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 [531](#)[Special Court or] Magistrate's Court."

324. *This argument clearly overlooks the overall scheme of the 2002 Act. As noticed earlier, it is a comprehensive legislation, not limited to provide for prosecution of person involved in the offence of money-laundering, but mainly intended to prevent money-laundering activity and confiscate the proceeds of crime involved in money-laundering. It also provides for prosecuting the person involved in such activity constituting offence of money-laundering. In other words, this legislation is an amalgam of different facets including setting up of agencies and mechanisms for coordinating measures for combating money-laundering. Chapter III is a provision to effectuate these purposes and objectives by attachment, adjudication and confiscation. The adjudication is done by the Adjudicating Authority to confirm the order of provisional attachment in respect of proceeds of crime involved in money-laundering. For accomplishing that objective, the authorities appointed*

under Chapter VIII have been authorised to make inquiry into all matters by way of survey, searches and seizures of records and property. These provisions in no way invest power in the Authorities referred to in Chapter VIII of the 2002 Act to maintain law and order or for that matter, purely investigating into a criminal offence. The inquiry preceding filing of the complaint by the authorities under the 2002 Act, may have the semblance of an investigation conducted by them. However, it is essentially an inquiry to collect evidence to facilitate the Adjudicating Authority to decide on the confirmation of provisional attachment order, including to pass order of confiscation, as a result of which, the proceeds of crime would vest in the Central Government in terms of Section 9 of the 2002 Act. In other words, the role of the Authorities appointed under Chapter VIII of the 2002 Act is such that they are tasked with dual role of conducting inquiry and collect evidence to facilitate adjudication proceedings before the Adjudicating Authority in exercise of powers conferred upon them under Chapters III and V of the 2002 Act and also to use the same materials to bolster the allegation against the person concerned by way of a formal complaint to be filed for offence of money-laundering under the 2002 Act before the Special Court, if the fact situation so warrant. It is not as if after every inquiry prosecution is launched against all persons found to be involved in the commission of offence of money-laundering. It is also not unusual to provide for

arrest of a person during such inquiry before filing of a complaint for indulging in alleged criminal activity. The respondent has rightly adverted to somewhat similar provisions in other legislations, such as Section 35 of FERA and Section 102 of Customs Act including the decisions of this Court upholding such power of arrest at the inquiry stage bestowed in the Authorities in the respective legislations. In Romesh Chandra Mehta⁵³², the Constitution Bench of this Court enunciated that Section 104 of the Customs Act confers power to arrest upon the Custom Officer if he has reason to believe that any person in India or within the Indian Customs waters has been guilty of an offence punishable under Section 135 of that Act. Again, in the case of Padam Narain Aggarwal⁵³³, while dealing with the provisions of the Customs Act, it noted that the term “arrest” has neither been defined in the 1973 Code nor in the Penal Code, 1860 nor in any other enactment dealing with offences. This word has been derived from the French word “arrater” meaning “to stop or stay”. It signifies a restraint of a person. It is, thus, obliging the person to be obedient to law. Further, arrest may be defined as “the execution of the command of a court of law or of a duly authorised officer”. Even, this decision recognises the power of the authorised officer to cause arrest during the inquiry to be conducted under the concerned legislations. While adverting to the safeguards provided under that

legislation before effecting such arrest, the Court noted as follows:

“Safeguards against abuse of power

36. From the above discussion, it is amply clear that power to arrest a person by a Customs Officer is statutory in character and cannot be interfered with. Such power of arrest can be exercised only in those cases where the Customs Officer has “reason to believe” that a person has been guilty of an offence punishable under Sections 132, 133, 135, 135-A or 136 of the Act. Thus, the power must be exercised on objective facts of commission of an offence enumerated and the Customs Officer has reason to believe that a person sought to be arrested has been guilty of commission of such offence. The power to arrest thus is circumscribed by objective considerations and cannot be exercised on whims, caprice or fancy of the officer.

37. The section⁵³⁴ also obliges the Customs Officer to inform the person arrested of the grounds of arrest as soon as may be. The law requires such person to be produced before a Magistrate without unnecessary delay.

38. The law thus, on the one hand, allows a Customs Officer to exercise power to arrest a person who has committed certain offences, and on the other hand, takes due care to ensure individual

freedom and liberty by laying down norms and providing safeguards so that the power of arrest is not abused or misused by the authorities.”

(emphasis supplied)

325. *The safeguards provided in the 2002 Act and the preconditions to be fulfilled by the authorised officer before effecting arrest, as contained in Section 19 of the 2002 Act, are equally stringent and of higher standard. Those safeguards ensure that the authorised officers do not act arbitrarily, but make them accountable for their judgment about the necessity to arrest any person as being involved in the commission of offence of money-laundering even before filing of the complaint before the Special Court under Section 44(1)(b) of the 2002 Act in that regard. If the action of the authorised officer is found to be vexatious, he can be proceeded with and inflicted with punishment specified under Section 62 of the 2002 Act. The safeguards to be adhered to by the jurisdictional police officer before effecting arrest as stipulated in the 1973 Code, are certainly not comparable. Suffice it to observe that this power has been given to the high-ranking officials with further conditions to ensure that there is objectivity and their own accountability in resorting to arrest of a person even before a formal complaint is filed under Section 44(1)(b) of the 2002 Act. Investing of power in the high-ranking officials in this regard has stood the test of reasonableness in Premium Granites⁵³⁵, wherein the Court restated the position that*

requirement of giving reasons for exercise of power by itself excludes chances of arbitrariness. Further, in Sukhwinder Pal Bipan Kumar⁵³⁶, the Court restated the position that where the discretion to apply the provisions of a particular statute is left with the Government or one of the highest officers, it will be presumed that the discretion vested in such highest authority will not be abused. Additionally, the Central Government has framed Rules under Section 73 in 2005, regarding the forms and the manner of forwarding a copy of order of arrest of a person along with the material to the Adjudicating Authority and the period of its retention. In yet another decision in Ahmed Noormohmed Bhatti⁵³⁷, this Court opined that the provision cannot be held to be unreasonable or arbitrary and, therefore, unconstitutional merely because the authority vested with the power may abuse his authority. (Also see Manzoor Ali Khan⁵³⁸)”.

While upholding such validity of the powers of arrest, it was observed by the Hon’ble Apex Court that the provisions were enacted and they have reasonable nexus with the purposes and object sought to be achieved by 2002 Act for the purposes of money laundering and confiscation of proceeds of crime involved in money laundering including to prosecute persons involved in the process of activity connected with the proceeds of crime. With reference to the observations or findings of the Hon’ble Apex Court wherein it has been held that the powers have

been invested with high ranking officials and there are in-built safeguards to be adhered to by the authorised officers. There are safeguards against the abuse of such powers which obviously would include due care to ensure individual freedom and liberty so that the power of arrest is not misused by the authorities.

In this case, what I find that the petitioner was in no way associated with the West Bengal Board of Primary Education. However, her husband Manik Bhattacharya was the President of West Bengal Board of Primary Education. Section 2 (u) of the PMLA Act includes within its ambit 'proceeds of crime' which relate to any property derived or obtained directly or indirectly by any person as a result of criminal activity relating to a schedule offence and Section 3 of the PMLA Act which defines the offences of money laundering includes within its ambit, the persons who directly or indirectly indulge or knowingly assists or is a party or is actually involved in any process or activity connected along with the concealment, possession, acquisition and use of proceeds of crime. Thus, a distinction has been created in the statute itself regarding a person who is involved in the criminal activity or generation of ill-gotten money and the person who conceals, possesses, acquires or uses the same from the person who generates it, although both are offences.

Having regard to the fact that the high officials of the Enforcement Directorate did not exercise their powers of arrest at any point of time when the investigation continued till the submission of the complaint, I am of the view that a distinction has already been created between the person who was in office and had the capacity to generate the money by illegal means and the person who concealed or possessed or used the property which was acquired by that means. Further, there was no prayer before the learned trial court when the complaint was filed under Section 87 of the Code of Criminal Procedure that the warrant be issued at the first instance.

What was prayed before the learned special court was for issuance of process. There was no allegation also in the prayer of the complaint that there is any possibility of the present petitioner absconding or fleeing away from justice. Petitioner also in response to the summons appeared on the first day before the court and prayed for bail. Learned court under Section 45 of the PMLA took cognizance of the offence but did not decide the issue of bail and also did not take the petitioner in custody. I am of the opinion impliedly the petitioner was granted bail on 7th January, 2023. The subsequent written objection which was filed is in the nature of an application for cancellation of bail or cancellation of liberty granted to the petitioner on 7th January, 2023

which was considered on 22nd February, 2023 and her bail was cancelled and she was taken into custody. The series of act which happened before the learned special court are very disturbing and the legal steps which were taken subsequently by the petitioner were far more disturbing but even then there is no dispute regarding the fact that the petitioner is in custody till date. The law relating to consideration of bail under Section 439 of the Code of Criminal Procedure has already been considered by the Hon'ble Supreme Court in Sundeep Kumar Bafna vs. State of Maharashtra reported in (2014) 16 SCC 623 which relate to the High Court directly considering the application for bail in certain circumstances.

In this case, if the provisions of Section 45 of PMLA Act strictly has to be considered the twin condition may be dealt with as follows:

Firstly, there being nothing on evidence in this case so far as the present petitioner is concerned that she has accepted or some individual has handed over her money for the purpose of recruitment, I am of the view that no case is made out against her to the extent that if she is released on bail in future, there is any possibility of repeating the offence. So far as the other part is concerned regarding the guilt of the petitioner in Ranjitsing Brahmajeet Singh Sharma -Vs- State of

Maharashtra reported in 2005(5) SCC 294 in paragraphs 44, 45 and 46 it has been observed as follows:

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

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

46. The duty of the Court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad

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

The aforesaid observations were approved in Vijay Madan Lal Chowdhury (supra) in paragraph 401 which is set out as follows:

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

and the prosecution is not required to prove the charge beyond reasonable doubt.”

Thus, it remains that the court while dealing with the application for grant of bail, need not delve deep into the merits of the case and the consideration must on broad probabilities. It has been reiterated by the Hon'ble Supreme Court that the word guilt appearing in Section 45 of the PMLA is not to be considered as the finding of guilt or acquittal at the end of the trial after the evidence is adduced before the court.

Having considered the nature of blame worthiness or culpability of the present petitioner and the fact that she appeared in response to the summons before the learned special court/trial court and that she is in custody for more than 5 months, I am of the opinion that further detention of the petitioner is unwarranted in the facts and circumstances of the present case.

Hence, the prayer for bail of the petitioner is **Allowed**.

Accordingly, the petitioner viz, Satarupa Bhattacharya, shall be released on bail upon furnishing bond of Rs.1,00,000/- (Rupees One lakh only), with two sureties of Rs. 50,000/- each, one of whom must be local, to the satisfaction of the Learned Special Court, PML Act/Learned CMM Court.

If on bail, the petitioner after being released shall immediately surrender her Passport with the Learned Special Court. The petitioner at any time before leaving the State of West Bengal would inform the Learned Special Court.

Accordingly, CRM(SB) 134 of 2023 is allowed.

Pending application(s), if any, is also disposed of.

Parties to act on a server copy of this order duly collected from the official website of the Hon'ble High Court, Calcutta.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Tirthankar Ghosh, J.)