



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR
CRIMINAL WRIT PETITION NO. 801 OF 2023**

1. Pankaj S/o Nandlal Agrawal (Mehadia), Aged 48 years, Occupation: Business, Resident of Vighnesh Urtnia, Flat No.201, 2nd Floor, Lendra park, Ramdaspath, Nagpur
2. Balmukund S/o Lalchand Keyal, Aged 55 years, Occupation-Business, Resident of Plot No. 101, Deshpande Layout, Nagpur
3. Premlata Wd/o Nandlal Mehadia, Aged 70 years, Occupation – Household Resident of House No. 464, Golchha Marg, Sadar, Nagpur
4. Lokesh Santosh Jain, Aged about 45 years, Occupation : Business
5. Kartik Santosh Jain, aged about 42 years, Occupation : Business
Both residents of Plot No. 746, Golcha Marg, Sadar, Nagpur, Tahsil and District Nagpur

...Petitioners

// VERSUS //

1. Union of India, through Secretary, Ministry of Finance, New Delhi
2. Directorate of Enforcement Government of India, Block-B, 7th Floor, CGO Complex, Opposite T.V.Tower, Seminary Hills, Nagpur through its Director
3. The State of Maharashtra, through Police Station Officer, Police Station Sitabuldi, Nagpur

... Respondents

Shri S.V.Manohar, Senior Advocate assisted by Shri Anand Daga,
Advocate and Shri Romil Jain, Advocate for the petitioners.
Shri N.S.Deshpande, Deputy Solicitor General of India for the
respondent no. 1.
Shri Nikhil Joshi, APP for the respondent no.3/State.
Shri Sumedh Kadam, Advocate for the intervenor.

**CORAM : SMT. VIBHA KANKANWADI, AND
MRS. VRUSHALI V. JOSHI, JJ.**

DATED : 24th JUNE, 2024.

ORAL JUDGMENT : [PER : SMT. VIBHA KANKANWADI, J.]

Rule. Rule made returnable. Heard finally by consent of the parties.

2. Present petition is filed invoking the constitutional powers of this Court under Section 226 of the Constitution of India read with inherent powers under Section 482 of the Code of Criminal Procedure for quashing of ECIR bearing No. ECIR/NGZO/1/2022 dated 28th March, 2022, registered by the respondent no.2 against the petitioners.

3. Shri S.V.Manohar, learned Senior Advocate assisted by Shri Anand Daga for the petitioners submits that it is not in dispute that the petitioners were facing the proceedings under the Prevention of Money Laundering Act 2002 based on scheduled offences. One complaint was lodged by Shri Ashok Agrawal against the petitioners which was treated as First Information Report and crime no. 509 of 2021 came to be registered under Sections 420, 406, 409, 120-B of the Indian Penal Code and Section 3 of the Maharashtra Protection of Interest of Depositors [In

Financial Establishments] Act, 1999 (hereinafter referred to as “MPID Act”). The offence was investigated and chargesheet was filed before the designated Court i.e. District Judge-15 and Additional Sessions Judge, Nagpur bearing Special Case No. 49 of 2022. The petitioners had filed a Criminal Application No. 745 of 2022 under Section 482 of the Code of Criminal Procedure for quashing the said First Information Report. This Court allowed the said application on 24th August, 2023, thereby the said First Information Report against the petitioners has been quashed and set aside alongwith chargesheet. Even the co-accused had approached this Court and thereupon this Court had allowed the application for quashing the First Information Report and the proceedings against them also. However, in the meantime, it appears that the respondent no.2 registered a ECIR against the petitioners on the similar facts. Those were the offences which were scheduled offences under Part A paragraph 1 of the Schedule appended to the Prevention of Money Laundering Act, 2002 (hereinafter referred to as “PMLA”). However, when both the proceedings were on the basis of same complaint and when the First Information Report is quashed then the further proceedings in respect of ECIR cannot be undertaken and it deserves to be quashed and set aside.

4. He has relied on the decision in Indrani Patnaik Vs. Enforcement Directorate; AIRONLINE 2022 SC 1496, wherein it has been held that when the petitioners stand discharged of the Scheduled Offences, there cannot be a question of prosecution for illegal gain of property as a result of criminal activity relating to a scheduled offence. He also relied on the decision of Division Bench of this Court in Ankur @

Rahul Khanna Vs. Directorate of Enforcement; AIRONLINE 2023 BOM 800, wherein reliance was on *Indrani Patnaik* (supra), on similar facts, the petitions were allowed and ECIR quashed and set aside.

5. Shri N.S.Deshpande, learned Deputy Solicitor General of India for the respondent no.1, Shri Nikhil Joshi, learned Additional Public Prosecutor for the respondent no.3 and also Shri Sumedh Kadam, learned advocate for the intervenor have been heard.

5. The facts are crystal clear in view of the earlier orders passed by this Court. This Court had quashed and set aside the FIR vide CR No. 509 of 2021 against the petitioners by judgment and order dated 24th August, 2023 in Criminal Application No. 745 of 2022 in the exercise of powers under Section 482 of the Code of Criminal Procedure. Though there appears to be some attempt on the part of the respondents to approach to the Hon'ble Apex Court, the fact as on today remains that the said First Information Report is quashed and set aside that means scheduled offence itself has been set aside. Therefore, it would be futile exercise to allow the proceedings under the PMLA to proceed further against the petitioners. Of course in view of the order in *Indrani Patnaik* (supra) as well as *Ankur @ Rahul Khanna* (supra), liberty deserves to be given to the respondent-Directorate of Enforcement to revive the proceedings. Hence, we proceed to pass the following order:

i. The writ petition stands allowed;

ii. Rule is made absolute in terms of prayer clause (B) that means the impugned ECIR bearing No. ECIR/NGZO/1/2022 dated 28th March, 2022 registered by the respondent no.2 against the petitioners is quashed and set aside. The proceedings arising out of, if any, are also quashed and set aside.

iii. However, liberty is granted to the respondent- Directorate of Enforcement to revive the said proceedings under PMLA or arising out of ECIR, if and when any material is found, either the order of this Court in quashing the First Information Report is annulled or if there is any legitimate ground to proceed under PMLA pointed out before the appropriate authority.

[MRS. VRUSHALI V. JOSHI, J.] [SMT. VIBHA KANKANWADI, J.]