Crl.O.P.No.3158 of 2024

C.V.KARTHIKEYAN, J.

The petitioner who is arrayed as A1 in Spl.C.C.No.1 of 2022 now pending before the XIII Additional Special Judge for CBI cases, Chennai, seeks bail.

2.The petitioner, claims to be a man of repute, but however, the facts would put to test his own imagination of himself.

3.The case of the prosecution is that a complaint had been filed against the petitioner herein for the offences under Sections 3 and 70 of the Prevention of Money Laundering Act and Section 4 of the said Act.

4.The learned Senior Counsel for the petitioner had taken this Court through the various applications filed by the petitioner seeking bail. They reveal that he had kept on filing petitions and thereafter, claiming that a petition is pending, protracting trial and inviting delay in investigation on himself.

5.Originally, FIR had been filed by the CBI/EO-III, New Delhi, in RC 221/2018/E0003 on 22.01.2018 under Section 120B r/w 420 IPC and Section 13(2) r/w 13(1)(d) of PC Act. It had been stated that the respondent received information about commission of offences including criminal conspiracy, cheating and criminal mis-conduct by this accused and unknown public servants between the years 2011-12 till 2014-15 at India, Dubai, Indonesia and other places. This petitioner, who was termed as promoter, M/s Coastal Energy Private Limited, Chennai was shown as A1. There were also unnamed officials of National Thermal Power Corporation, unnamed officials of Metals and Minerals Trading Corporation and unknown officials of Aravali Power Company Private Limited, who had also been included as accused.

6.The said First Information report had been registered on information being received that unknown officials of National of the afore mentioned three public sector units along with this petitioner had entered into a criminal conspiracy to cheat the Government of India in the matter relating to import of coal from Indonesia by camouflaging inferior quality of coal as superior quality of coal. This import was between the years 2011-12 and 2014-15. It had been stated that this petitioner was said to control and manage several firms/companies floated in Dubai, Singapore and Indonesia. The names of those companies had also been listed in the first information report. It had been stated that the modus operandi was to import coals of inferior specification, of lower Gross Calorific value (GCV) and pass it off as coal of superior specifications and higher value to the public sector units mentioned above.

7.It had been further stated that this petitioner in his capacity as promoter of CEPL, which is M/s.Coastal Energy Private Limited at Chennai was the successful bidder in a contract for supply of coal to the aforementioned public sector units. Agreements had been entered into with its sister concerns at Dubai for supply of coal to the public sector units. Whenever the other main supplier namely MMTC, was the successful bidder, they entered into a tripartite agreements with CEPL of which the petitioner was the promoter and the other public sector units prescribing the same technical specifications and further agreements had been entered into with coal exporters to supply them to CEPL, to inturn supply the coal to the public sector units. Thus, this petitioner had wound an extraordinary web to monopolize the supply of coal to the aforementioned three public sector units. The specific allegation is that the coal which was supplied was of inferior quality but passed off as being of superior quality. As could be gleaned from these allegations, they are issues which can be determined only on analysis of evidence.

8.The learned Senior Counsel appearing on behalf of the petitioner stated that coal which is imported will have to be tested at the Port of origin, the Port at which the coals are actually imported and will have to pass through the customs clearance and thereafter, also tested at the time when they are actually downloaded at the public sector units. But when unnamed officials of the public sector units are also accused of the offences, there is an element of criminal conspiracy. Such testing, even if the tests show that the coals were not of inferior quality pale into insignificance, since investigation will have to be done about the monopolization of import of coal.

9.The learned Senior Counsel further stated that the coals which had been imported had also been utilized by the public sector units. This will be a case of utilization of inferior quality coal with intention to screen further investigation regarding their quality.

10.All these allegations will have to be investigated and the evidence collected will have to be tested only during the course of trial. At this stage, once there is a prima facie allegation of substantial quantity of inferior coal had been imported, prosecution will have to be given necessary opportunity to investigate into those allegations and their evidence being tested during the course of trial.

11.After the CBI had registered their First Information Report, the respondent herein had registered their ECIR on 31.01.2018. In the ECIR, the respondents pointed out the allegations stated in the First Information Report filed by the CBI and instead Sections 120(b) r/w 420 IPC and Sections 13(2) r/w 13(1)(d) of PC Act are schedule offences under Section 2(1)(y) of Prevention of Money Laundering Act (hereinafter called as PML Act) and that the proceeds of crime involved is Rs.487/- crores.

12.The learned Senior Counsel for the petitioner stated that the Central Bureau of Investigation, after having filed the FIR had not yet filed their final report and therefore, contended that this categorization "proceeds of crime" was not correct, since the predicate offence had not yet been made out and therefore, argued that there cannot be an offence registered or enquired into under the PML Act.

13.That statement by the learned Senior Counsel may not withstand judicial scrutiny. It is sufficient that the predicate offence is a schedule offence under the PML Act. Thereafter, once there is an element of tainted money being sourced or laundered then trial is the answer. If the predicate offence is one which is a schedule offence under the PML Act, then an ECIR can always be registered to examine the trail of money and where it had been screened by the accused, in this case, by the petitioner. Therefore, since the FIR has stipulated details of the offences, the further investigation under the PML Act is lawful.

14. But the investigation had not proceeds smoothly. There is an application filed before the Delhi High Court seeking to quash the proceedings which is still pending and final orders has not yet been pronounced. The petitioner herein had originally filed an application before the trial Court seeking bail and that was rejected. Thereafter, the petitioner had filed an application seeking bail before this Court in Crl.O.P.No.12324 of 2022 and that was dismissed as withdrawn. Thereafter, the petitioner filed a Special Leave Petition before the Hon'ble Supreme Court and it was disposed of directing the respondent to complete the investigation within a period of three months and that the petitioner can file a fresh application seeking bail before the appropriate Court. The petitioner then went back to the trial Court by filing a second bail application. That again was dismissed by the trial Court. The petitioner then filed yet another application before this Court in Crl.O.P.No.10035 of 2023 before the Vacation Court and finally, on 18.07.2023, that was also dismissed as withdrawn. A fourth application was then filed on 26.07.2023 by the petitioner herein before the trial Court and

that had a very interesting passage. Arguments were heard on several dates and orders were reserved for several dates but not pronounced and when pronounced, only a docket order was recorded by the learned Sessions Judge. This was noted down by the respondent, who made an urgent mention before a learned Single Judge of this Court that a docket order was passed without any reason. The order was put on hold and stayed. Thereafter, a detailed order was uploaded by the Sessions Judge after about 4 days from the date of the docket order. I really wonder as to the conduct of that particular Sessions Judge in writing his opinion on the docket without formulating any reasons for such opinion. But the ambit of this Court is not to examine that particular conduct of that Sessions Judge and therefore, let me skip over that but only mention it as a fact. Thereafter, a further application was filed and on 13.09.2023, the application filed by the Directorate of Enforcement was allowed by the learned Single Judge of this Court and the order granting bail by the trial Court was set aside.

15.The learned Single Judge had opined that the learned Sessions Judge had not given any opinion as required under Section 45(2) PML Act which requires reasonable grounds to be recorded that there are possibilities of the petitioner being found not guilty on conclusion of trial. The other two stipulations are that the prosecutor must be served and must be given an opportunity of being heard and that there must be no possibility of the petitioner committing similar offence once again.

16.This order again went before the Hon'ble Supreme Court and by order dated 13.10.2023, the Hon'ble Supreme Court dismissed the said petition. Thereafter, yet another application was preferred before the trial Court on 30.11.2023, and the learned trial Judge, at this point of time, taking a very safe route, stated that the Hon'ble Supreme Court had mentioned that the petitioner should file an application before the 'appropriate Court' and was of the opinion that the 'appropriate Court' was the High Court and not the Sessions Court. Thus this petition has now been filed before this Court.

17.The learned Senior Counsel for the petitioner further pointed out that an application had also been filed by the respondent to split up the case as against this petitioner to try it separately and that the said application is still pending before the trial Court.

18.On this issue, the learned Special Public Prosecutor appearing on behalf of the respondent raised a point stating that the petitioner had objected for such splitting up and that is one major reason why the respondent could not proceed further with the trial or show any further progress before the trial Court. It is stated that all the other accused are companies who are having registered offices outside the Country and service of summons is an arduous task and therefore, the respondent, to facilitate the allegations against the petitioner to be examined, had filed an application seeking to split up the case against the petitioner. But this application had been resisted on all fours by the petitioner. It is therefore contended that the petitioner himself is the reason for the delay of the prosecution in not proceeding further in the case before the trial Court.

19.This fact cannot be denied since application for splitting up the case and the counter thereto are records available. It is thus seen that the petitioner has an affinity of moving around in circles without permitting the respondent to move forward. Probably, he wants to dry out to the respondent and complain that he has been suffering incarceration for a considerable period of time.

20.With respect to that particular proposition that the petitioner should not suffer continued incarceration, and that his fundamental right under Article 21 of Constitution of India must taken into consideration, the learned Senior Counsel relies on parallel judgment under the NDPS Act, wherein, the Hon'ble Supreme Court had observed that continuous incarceration would affect the fundamental right of the accused for speedy trial.

21.In this case, the trial could not commence only because of the conduct of the petitioner. When the respondent wanted to split up the case against the petitioner, the petitioner had filed a counter and has contested the same. Either he has to get the benefit of speedy trial by being tried independently and separately or he must wait in the line till all the other accused are served and thereafter, join with them and face trial. He cannot blow hot and cold.

22.In ***2023 SCC Online SC 346 (Union of India Vs. Ajay Kumar Singh @ Pappu),*** *t*he Appellant/Union of India, had preferred an appeal before the Hon'ble Supreme Court, questioning an order of the High Court of Allahabad, allowing an application for bail and directing release of the respondent-accused. It had been stated that the Allahabad High Court had released the respondent therein who was charged with offences under the NDPS Act, keeping in mind the larger mandate of Article 21 of the Constitution of India and keeping in mind the ratio of the decision of the Supreme Court in ***Satender Kumar Antil Vs Central Bureau of***

Investigation, reported in ***2022 SCC Online SC 825.*** Thus, the Hon'ble Supreme Court had an occasion to examine the effect of a Special Act which provides stringent conditions for grant of bail vis-a-vis Article 21 of the Constitution of India. The Hon'ble Supreme Court, in that particular judgment, had set aside the judgment of the Allahabad High Court and stated that when there is a special enactment and there is are specific provisions laid down to be examined before considering bail of the accused then other considerations pale into insignificance. It had been very specifically held that bail for an offence under NDPS Act, dealing with what could be called as commercial quantity of contraband, should be only in terms of that particular enactment namely Section 37 of the NDPS Act.

23. That principle applies to this case also. The lamentations by the learned Senior Counsel that the petitioner has been in incarceration for a considerable period of time, are made only to draw sympathy, which sympathy is rejected by this Court. The long period of incarceration is a making of this petitioner alone. He is responsible for the same. He has prevented the respondent from splitting up the case. He could have accepted to that particular proposition of the respondent and faced trial, if in his opinion, he can establish his innocence in the manner known to law.

However, on the one hand, he had objected for such application and continued in incarceration and thereafter, is crying hoarse that he is in continuous incarceration. I hold that the petitioner lacks bonafide. Infact his intentions are malafide in nature.

24.The learned Senior Counsel for the petitioner then took the Courts to the various facts of the case. It was pointed out that the FIR registered by the CBI is still pending and therefore, it is contended that the ECIR which had been registered by the respondent, on very similar grounds, should also be considered on the same line and there being no progress, the petitioner should be granted bail.

25.As stated, the respondent had come forward to conduct trial against the petitioner, but it is the petitioner who had put spokes in that effort of the respondent.

26.If according to the respondent, the imported coals were of inferior quality but passed on as superior quality by various test reports that itself would show that there is criminal conspiracy and it is an issue which will have to be investigated and investigated very deeply and carefully.

27.Therefore, at this stage, I cannot express any opinion about the testing of the coals which had been imported or of the fact that the customs had cleared those import consignments.

28.It is also stated by the learned Senior Counsel that the contract had been audited and that there are no adverse reports found during the course of auditing.

29.This is an issue about the quality of the coal which had been imported and the respondent must be given an opportunity to substantiate their allegations. It is also stated that the documents are available which would reflect the gross calorific value. I must point out that this Court cannot enter into a mini trial, examining each and every document and scrutinizing them to find points to the advantage of the petitioner herein. It is the respondent who will have to present the documents before the trial Court and it is for the petitioner to question the veracity of the documents produced by the respondent during the course of trial. No opinion can be observed by this Court. That would have a direct effect on the decision making process of the trial Court.

30.It had also been stated that properties had also been attached by the respondent. But, I wonder as to what advantage is gained by the petitioner in that regard. Strictly, if he has permitted the properties to continue under attachment and accepts such attachment, it would only indirectly imply that he had admitted that there is monies due, for the Government to recover, through sale of attached properties. If he is to admit that monies are due to the Government, then he has to also indirectly admit to the offences alleged against him. Therefore, these arguments, do not take the petitioner anywhere.

31.The further allegation that the properties had been purchased much earlier in the years 2008, 2009 and 2010, whereas the contracts had been entered in the years 2011-14 and therefore, since the properties have been purchased earlier, they cannot be the subject matter of attachment, is an argument which has to be advanced before the Court which had actually directed attachment of the properties.

32.The learned Senior Counsel then proclaimed innocence on the part of the petitioner because he cooperated with the investigation. He had stated that he had appeared whenever called for by the respondent.

33.Appearance by the petitioner before the respondent is not a gratuitous act. He has a duty to appear when issued with summons. He has an obligation which is mandated by law. He is not extending a benevolent arm to the respondent by entering their office and appearing before them. He stands before them charged as an accused and he must understand that his role as an accused makes him obligatory and directory to appear before the respondent. Therefore, merely because he had appeared, does not give any advantage to the petitioner herein.

34.The learned Senior Counsel had a letter of the petitioner, it does not make him innocent of the offences. This letter does not materially alter that particular position. It is stated that since he has been co-operating with the investigation, look out notices have also been withdrawn because of that particular reason. But that does not put the petitioner in better light.

35.The learned Senior Counsel also stated that the Court can also impose a condition to deposit the passport of the petitioner.

36.It is made clear that this Court is not a depository of the documents of the petitioner. The petitioner had earlier been a non-resident Indian and later, has become a citizen of this Country, but that he is prepared to surrender his passport is an issue to be answered by the trial Court.

37.Let me not enter into any further details of allegation against the petitioner.

38.The learned Senior Counsel then relied on the order of the Delhi High Court in ***Bail Application No.2919 of 2022 and Crl.M.Bail No.1188 of 2022 (Chitra Ramkrishna Vs. Assistant Director, Enforcement Directorate).*** A learned Single Judge of the Delhi High Court, had thought that the petitioner therein was entitled for bail.

39.The learned Senior Counsel particularly referred to paragraph Nos.34, 35, 39, 43 and 46, which are as follows:

"34.It was further asserted that the impugned action of the respondent is in clear contravention of Section 8(3) of the Act. It was contended that the record would establish that the complaint under Section 45 came to be lodged on 17 July 2018 and thus evidently prior to the passing of the impugned order on 29 November 2018. It was submitted that as would be evident from a perusal of the order passed by the Special Judge on 17 July 2018 itself, the complaint came to be lodged late in the evening on the said date and only to circumvent the rigors of Section 8. According to learned counsel, the order of the Special Judge itself records and bears testimony to the above.

35.The challenge based on Section 8(3) proceeds on the following lines. According to Mr. Chawla, Section 8(3)(a) as it stood at the relevant time contemplated the Adjudicating Authority confirming an attachment and which was to not exceed 90 days. This position prevailed prior to Section 8(3)(a) being amended in terms of the Finance Act, 2018 which came into force on 29 March 2018. Mr. Chawla would submit that as per Section 5, the validity of a PAO could not *have exceeded 180 days. That order, in terms of Section 8(3)(a) as it stood prior to its amendment in 2018, would have to be necessarily confirmed within a period of 90 days. The cumulative period of 270 days when computed from the date of the passing of the PAO would thus expire on 26 August 2019. It was submitted that even if the amended Section 8(3)(a) were to be assumed to apply, the maximum period for which the PAO could have operated would be 180 days + 365 days. Mr. Chawla submitted that viewed in that light, the provisional attachment could have continued only for a period of 545 days [180 + 365 days] and thus expire on 27 May 2022. Mr. Chawla essentially submitted that the filing of the complaint was clearly mala fide and clearly amounts to a fraud upon the statute. It was contented that the complaint came to be preferred and instituted at a time when a final report recommending closure had already been submitted by the CBI and even prior to the submission of a chargesheet which admittedly came to be filed before the competent court on 17 November 2021. According to learned counsel, the aforesaid facts would clearly establish that the action of the ED was wholly arbitrary and illegal.*

39. It was also pointed out that the chargesheet submitted by CBI ultimately and clearly establishes that not only did the petitioner misrepresent the net worth of the company, a larger conspiracy was hatched from the inception *to induce the Union Government to allot the coal block. It was submitted that the petitioner had in furtherance of the aforesaid design acted along with various other individuals petitioner had in furtherance of the aforesaid design acted along with various other individuals including those who were posted at that time in the Ministry of Coal. It was submitted that not only had the petitioner made a series of misrepresentations with regard to its net worth, it had also deceived and misled the Union Government with respect to the total land available for the project, civil constructions, orders for plant and machinery and environmental clearance. It was pointed out that the petitioner had falsely alleged that it was in possession of 505.89 acres of land when in fact an integrated steel plant had already been set up thereon and, therefore, the entire parcel of land was not available for establishment of a 500 MW captive power plant. Mr. Hossain argued that the misinformation with respect to arrangements relating to availability of water as well as environmental clearance are apparent from the facts recorded by the CBI in paras 16.48 and 16.63 of the chargesheet. It was further contended that the statement made on behalf of the petitioner that it had already invested Rs.1150 crores and that the balance amount would be arranged through equity and borrowings from banks and financial institutions was also ultimately found to be false. The misrepresentations, according to Mr. Hossain, were taken* *notice and cognisance of by the Special Judge in the order of 10 February 2022. According to Mr. Hossain, the aforesaid facts would clearly justify the provisional attachment as affected by the ED.*

43. Mr. Hossain further submitted that the power of the ED to undertake further investigation in terms of Section 44(2) of the PMLA has been recognised as a wholesome provision by the Supreme Court in ***Vijay Madanlal Choudhary & Ors. vs. Union of India & Ors.*** *and in acknowledgment of the statutory position of it being empowered to file subsequent complaints. According to learned counsel, all additional or subsequent complaints would be deemed to be a part of the original complaint that had been lodged. Mr. Hossain further submitted that merely because in the perception of the petitioner the investigation by ED remains either incomplete, ongoing or cognizance on the chargesheet having not been taken by the court, would not deprive it of the right to proceed under the Act. It was submitted that Section 8(3)(a) unambiguously stipulates and prescribes that a PAO will continue to remain in operation till proceedings are pending in any court. In view of the above, it was submitted that it cannot possibly be said that the attachment was illegal. It was further urged by Mr. Hossain that the interim order of the Supreme Court which has merely stayed further proceedings before the Special Judge would not* *efface or wipe out the factum of a scheduled offence having been committed or proceeds of crime having been derived and obtained.*

46.The FIR then goes on to assert that the petitioners in their application form had declared their net worth as on 31 March 2006 to be Rs.532 crore. However, and it is so alleged in the FIR, on due inquiry and investigation it has been found that the net worth of the petitioner as on that date was actually Rs. (-) 144.16 crores. The FIR then proceeds to allege that despite these facts existing on the record, the Screening Committee proceeded to rest its recommendation in favour of the petitioner solely on the self-declarations made by it and failed to even consider the same being examined independently by financial experts. Based on the recommendations of the Screening Committee, the Fatehpur Coal Block ultimately came to be allocated to the petitioner formally on 06 February 2008."

40.In paragraph No.35, the learned Single Judge of the Delhi High Court had expressed an opinion that there was no complaints from the National Stock Exchange or from any employee of the National Stock Exchange that the petitioner therein had cheated the National Stock Exchange or its employees. A parallel is drawn that even in this case there was no complaint from the Public Sector Units or from any employee of the Public

Sector Units. The said argument is rejected. The employees of the public sector units are also accused in the FIR registered by the CBI. Therefore, they will not come around and give a complaint against the petitioner, since they themselves stand as accused. The opinion of the learned Single Judge is restricted to the facts of that particular case and cannot be expanded to this case. Therefore, that particular opinion is irrelevant so far as the facts of this case is concerned.

41.The learned Senior Counsel for the petitioner placed reliance on the judgment of the Hon'ble Supreme Court in ***S.L.P.(Crl).No.915 of 2023 (Mohammed Muslim Vs. State (NCT of Delhi)*** dated 28.03.2023. That was a case under the provisions of the NDPS Act. No doubt, Section 37(2) of NDPS Act and Section 45(2) of PML Act are pari materia.

42.In that case, it was held that the Court should record reasonable grounds that the accused would not be held guilty of the offences on conclusion of the trial. In the instant case, there are more than sufficient documents which had been collected to give opportunity to both the CBI and to the respondent to press the charges against the petitioner.

43.Let me now examine the documents relied by the CBI.

44.In the FIR, it had been stated that the imports of coal from the

Republic of Indonesia would be granted concessional rate of duty on thermal grade coal. The certificate of origin issued by a Government authority of the exporting country was required. It is also stated that the quality aspect of the coal has to be determined by several parameters and those parameters had also been given. It had also been stated that customs duty exemptions were sought for importing coal of Indonesian origin. Thereafter, even in the agreement, it had been very specifically stated that the company which the petitioner was the promoter namely CEPL and the Public Sector Units, should avail customs duty exemptions and pass the benefits to the power generation companies. It had been very specifically stated that CEPL did not avail the required exemptions. The object was to hide the actual value of import. It had also been stated that the test reports which were relied on have been obtained from private parties and it had been very specifically alleged that they have been manipulated to show the quality as required in the contract agreements, but as a matter of fact, the quality suffered and they were of inferior quality. It had also been stated that the Directorate of Revenue Intelligence (DRI), Mumbai, had investigated a case of over valuation and issued notices to CEPL, MMTC and others under the provisions of the Customs Act, 1962. It had also been stated that this fraudulent modus operandi had resulted in supply of coal of inferior quality.

45.All these statements are on the basis of documents. This has also been admitted by the learned Senior Counsel who stated that since the documents alonel have to be examined during the course of the trial, there is no question of the petitioner influencing anybody if let out on bail. But the authors of these documents will also have to be called upon as witnesses before the documents are made admissible. When it is alleged that a private party had given a test report, the witness who has to speak in support of such test report can always be influenced. Therefore, it does not lie in the mouth of the petitioner to state that there are no reasonable grounds to hold that the petitioner would be held gulity. There are reasonable grounds. The petitioner has invited these observations from this Court by filing this application seeking bail. Even in the order of the earlier bail application, very specifically a learned Single Judge had entered into a discussion of all these aspects.

46.Therefore, the observations of the learned Senior Counsel that since the provisions under Section 37 (2) of the NDPS Act is pari materia with Section 45(2) of PML Act and therefore, there are no reasonable grounds to hold that the petitioner would be found guilty has to be rejected. The respondent will have to be given an opportunity to test their documents before the trial Court. There is every possibility of the petitioner tampering with the documents and influencing the witnesses to speak otherwise on the said documents. That threat is real and that possibility is real.

47.The learned Senior Counsel for the petitioner then placed reliance on the judgment of the Hon'ble Supreme Court in ***Special Leave to Appeal in Crl.No.4169 of 2023 (Rabi Prakash Vs. State of Odisha)*** dated 13.07.2023. The learned SC particularly referred to paragraph Nos.3 and 4, which are as follows:

> *"3.We informed that the trial has commenced but only 1 out of the 19 witnesses has been examined. The conclusion of trial will, thus, take some more time.*
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> *4.As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent – State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the*

Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act."

48.It is to be stated that the Hon'ble Supreme Court in ***Union of India Vs. Ajay Kumar Singh @ Pappu,*** reported in ***2023 SCC Online SC 346***, had also observed that when there is a specific provision given under the Special Act, that provision must be kept in mind. That specific provision would prevail.

49.The learned Senior Counsel then relied on the judgment of the Hon'ble Supreme Court in the case of ***Sanjay Raghunath Agarwal Vs. Directorate of Enforcement***, reported in ***2023 SCC Online SC 455*** and particularly referred to paragraph No.14, which is as follows:

"14.Keeping in mind the specific role attributed to the appellant, let us now revert back to the facts pleaded and arguments advanced. At the outset, there is no controversy about the following facts:

(i) that the registration of the ECIR and the lodging of the prosecution complaint in the year 2022 were a sequel to the registration of the FIR for the predicate offence, way back in the year 2013, at the instance of one M.Srinivas Reddy, Managing Director, Farmax and also a sequel to the order

passed by SEBI in the year 2020;

(ii) that no final report has been filed in the FIR for the predicate offence, for the past nine years;

(iii)that even M.Srinivas Reddy, the defacto complainant in the FIR for the predicate offence, was sought to be arrested as an accused in connection with the ECIR, but the application of the Enforcement Directorate for remand was rejected;

(iv) that the appellant is a Chartered Accountant by profession and has been in jail from 26.09.2022; and

(v)that the relevant portion of paragraph 8 of the prosecution complaint filed by the Enforcement Directorate, which we have extracted in the preceding paragraph, gives room for a valid argument that the second condition found in Clause (ii) of sub-section (1) of Section 45 of PMLA is satisfied qua the appellant."

50.In that particular case, an examination was done about the ECIR filed by the respondent /Enforcement Directorate and on examination of the facts of that particular case, the Hon'ble Supreme Court came to an opinion that continued incarceration was not justified. But in the instant case, when the respondent had filed an application to split the case against the petitioner to proceed further with the trial against the petitioner independently, the petitioner had filed his objections and is resisting that particular application.

Therefore, his incarceration is out of his own volition.

51.In the order rejecting bail on the earlier occasion, a learned Single Judge of this Court had observed as follows:

> ***26.*** *The documents relied by the prosecution and the petitioner/accused perused. After examining the earlier order of this Court, the order of the Hon'ble Supreme Court on appeal and trial Court orders passed subsequently, this Court is constrained to interfere in the bail order for the following reasons:-*
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> *(i) The trial Court patently erred in passing a docket order on 16.08.2023 and thereafter, the detailed order which was made ready to the parties only on 21.08.2023.*
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> *(ii) On 17.08.2023, the learned Special Public Prosecutor moved this Court for stay of the bail order and reported certain irregularities. This submission prompted the Court to issue oral direction to the Registrar (Vigilance) of the High Court to bring records from the trial Court (which is hardly two km away from the High Court Campus). The case bundle secured and produced to the shock of this Court did not contain the detail order, neither the docket order indicated that a detailed order passed separately. The enquiry made in the trial Court by the Registrar (Vigilance) revealed that the learned Judge had not made ready the detailed order. While so, the grant of bail in haste without*

making the detail order throw suspicion over the conduct of the trial Court.

(iii) However, this Court is not dwelling upon that aspect since this matter is for the High Court administrative side to take note and proceed. Except to reinforce the view of the Hon'ble Supreme Court in ***Registrar General, High Court of Karnataka and others vs. Narasimma Prasad reported in 2023 SCC Online SC 376,*** *which had observed that a judicial officer cannot pronounce the concluding portion of its judgement in open Court without the entire text of the judgement being prepared which dictated. In this case, the material collected immediately on the next day of pronouncing the order of granting bail, there was no prepared text of detailed order.*

(iv) The detail order made available on 21.08.2023 though runs to several pages, it does not contain the reasons for satisfaction of the twin condition imposed under Section 45 of PML Act. The allegation against this accused is that out of 169 consignments of coal, the accused has supplied totally 77 consignments through MMTC, 5 consignments directly by its offshore entities DNO, DMCC, Dubai and remaining 87 consignments were supplied by his Company M/s.Coastal Energyen Private Limited to the public sector undertaking in India and the over all inflation of price that is the difference between the inferior quality

coal and the superior quality coal is arrived at Rs.564.58 Crores. Out of which 557.28 Crores had been diverted through his company M/s.Coastal Energyen Private limited and CNO groups of entities. The materials placed indicates at this juncture the accused cannot be presumed to be not guilty.

(v) The gravity of offence, the length and breath of crime committed has forced the Enforcement Directorate to request the trial Court to issue letter of rogatory and the trial Court had issued letter of request on 03.10.2022 to two countries. The responses from those countries are awaited. While so, it is incorrect to say that the Enforcement Directorate has not taken any steps to proceed with its investigation in respect of offshore entities.

(vi) The delay in completing the investigation by the CBI, Delhi cannot be a ground to presume that accused is not guilty of money laundering offence. Closure of investigation in a similar case also cannot be a reason to presume that the present case will also end in closure report. Ifs and buts cannot be an adequate reason to hold this petitioner, not prima facie guilty of the alleged offence. No doubt personal liberty is a fundamental right of a person, yet, subject to reasonable restriction. Prolonged trial or incarceration pending trial is antithesis to fundamental right.

However, the reasonable restriction and the interest of nation cannot be ignored while taking note of the fundamental right of individual.

(vii) This Court is conscious of the dictum that, it is not the expectation of law that Court must arrive at a positive finding that applicant for bail has not committed an offence under PML Act and if such is the expectation, it will be impossible for an applicant to establish that he has not committed the offence. However, in this case, records reveal that about 169 consignments with inflated price being encashed fraudulently by this petitioner through his Company and the money has gone out of the country. The provisional attachment of the property by efflux of time had lost its enforceability and therefore if the petitioner is enlarged on bail, apart from repeating similar crime by floating new Company, the danger of he fleeing from the hands of justice also cannot be ruled out."

52.The same circumstances prevail. There is no change in circumstances. The observations still hold. No arguments had been advanced that after particular date on 13.09.2023, there has been a substantial change in circumstance. The petitioner is resisting the application seeking to split the case against him and thereby preventing the respondent from proceeding against him independently.

53.I am not in agreement with the arguments advanced. This Criminal Original Petition stands dismissed.

08.03.2024

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C.V.KARTHIKEYAN, J.

vkr

Crl.O.P.No.3158 of 2024

08.03.2024