IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-26190-2024 (O&M)
Reserved on: 27.05.2024
Pronounced on: 28.05.2024

Dharam Singh

... Petitioner

Versus

Directorate of Enforcement and another

... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Ashok Aggarwal, Sr. Advocate with
Mr. Mukul Aggarwal, Advocate and
Mr. Shrenik Jain, Advocate and
Mr. Amit Aggarwal, Advocate and
Mr. Haripal, Advocate for the petitioner.

Mr. Zoheb Hossain, Advocate
(Through Video Conferencing) and
Mr. Lokesh Narang, Advocate and
Mr. Manish Jain, Advocate for the respondents-E.D.

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VIKAS BAHL, J.

1. This is the first petition under Section 438 read with Section 482 Cr.P.C. read with Section 45 of the Prevention of Money Laundering Act, 2022 (hereinafter referred to as "PMLA") and all other enabling provisions in this regard, for grant of anticipatory bail to the petitioner in ECIR/GNZO/20/2021 (hereinafter to be referred as "ECIR") dated 16.11.2021.

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BRIEF FACTS OF THE CASE:-

3. Briefly stated, the case of the prosecution is that M/s Sai Aaina Farms Pvt. Ltd. (presently known as M/s Mahira Infratech Pvt. Ltd and hereinafter referred to as "SAFPL") was controlled by Chhoker Family i.e. by the present petitioner and his sons Sikander Singh and Vikas Chhoker and the companies of the Chhoker family are known by the name "Mahira Group" and the said Mahira Group deals majorly in real estate / construction projects and that SAFPL is also one of the several companies under the Mahira group and the said company undertook the project of building flats at Sector 68, Gurugram, under the affordable group housing project and SAFPL applied for licences / permissions to the Department of Town and Country Planning, Haryana and were granted licence no.106/2017 to build around 1500 flats in an area of about 10 acres and the project was required to be completed by 2021-22 and the said licence was granted on the basis of documents / bank guarantees provided to the department. It is further the case of the prosecution that on the basis of the licence/ permission granted,

SAFPL started bookings for the flats and collected around Rs.360 crores from 1500 home buyers, although the construction work was slow paced and promised deadlines had been missed. Initially an FIR no.11 was registered by Sushant Lok Police Station, Gurugram, Haryana on 14.01.2021 under Sections 120B, 406, 420, 467, 468, 471 IPC against SAFPL and other persons which included sons of the petitioner Sikander Singh and Vikas Kumar. The present ECIR dated 16.11.2021 was recorded at the Gurugram Zonal Office of Directorate of Enforcement under the PMLA, on account of the fact that a prima facie case of commission of the offence of money laundering was made out. It was further the case of the prosecution that forged bank guarantees were submitted by SAFPL to the Director, Town and Country Planning with respect to external development charges and internal development work for an amount of Rs.2,63,23,892/- and Rs.1,24,61,000/- respectively and the accused persons had directly / indirectly indulged in criminal conspiracy, cheating, forgery etc. and thus, committed offences which were scheduled offences and generated proceeds of crime and made illegal/ wrongful gains. During the course of investigation, various other FIRs pertaining to commission of scheduled offences by the group companies of Mahira Group including SAFPL were also registered and the said FIRs were also taken on record by the Directorate of Enforcement (hereinafter referred to as "ED") for the purpose of comprehensive investigation. The details of the said FIRs are reproduced herienbelow:-

FIR No.	Police Station	Offences	Remarks
0151 dated 31.05.2023 (P-28) Pg 375	*Rajendra park, Gurugram*	*Section 420, 467, 468, 471 of IPC,1860*	*M/s Mahira Buildtech Private Limited, and others regarding affixing forged and fabricated signatures of landowners for getting licences*
0152 dated 01.06.2023 (P-31) Pg 396	*Rajendra park, Gurugram*	*Section 420, 467, 468, 471 of IPC,1860*	*M/s CZAR Buildwell Pvt. Ltd. and others including petitioner for forgery to obtain licences.*
0151 dated 05.07.2023 (P-29) Pg 386	*Sushant Lok, Gurugram*	*Section 120B, 420, 467, 468, 471 of IPC, 1860*	*M/s Mahira Homes Pvt. Ltd. Its Directors, associate companies and authorized signatory for submitting forged and fabricated building plans*
0175 dated 18.05.2022 and Chargesheet no.1 dated 08.06.2023 (P-30) Pg 393	*Rajendra park, Gurugram*	*Section 10 of the Haryana Development and Regulation of Urban Areas Act, 1975*	*For submission of fake bank guarantees and other documents by SAFPL regarding licence No.106 of 2017.*

4. As per the further case of the ED, after recording of the said ECIR, bank account statement, balance sheet and other relatable documents were received from various offices and statements were recorded under the provisions of Sections 16, 17 and 50 of PMLA to ascertain the proceeds of crime as defined under Sections 2(1)(u) of the PMLA and to decipher the diversion of funds by SAFPL, M/s D S Home Constructions Pvt Ltd.

(hereinafter referred to as “DSHCPL”) and its associated concerns through its directors, ex-directors, key persons etc. and that search was also conducted and the ED filed a Provisional Attachment Order no.01/2024 on 15.02.2024 before the Adjudicating Authority under sub section (1) of Section 5 of the PMLA in order to provisionally attach proceeds of crime identified in respect of SAFPL. It is alleged that the investigation against entire Mahira Group is continuing but in the course of investigation conducted uptill date, it has been found that the 6 companies in which the petitioner has remained as Director were found to be associate concerns of Mahira Group in which M/s Mahira Homes Pvt. Ltd is the holding company of all the project companies i.e., SAFPL, M/s Mahira Buildtech Pvt. Ltd and M/s Mahira Buildwell Pvt. Ltd which were developing projects at Sector 68, Sector 103 and Sector 104 of Gurugram respectively and M/s DSHCPL was the construction company for all the projects of Mahira Group. It was also found that from the bank account of SAFPL, Rs.1,01,00,000/- was transferred in the petitioner's account and the said fact was also clear from the balance sheet of the said company and the said amount was in addition to the amount of Rs.10 lacs transferred into the account of the petitioner and no amount was given by the petitioner to the said company and that the ITRs of the petitioner for the assessment year of 2021-22 would also show that an amount of Rs.20 lacs have been given by DSHCPL to the petitioner which are the funds of home buyers diverted from SAFPL to DSHCPL. It was further found that SAFPL received an amount of Rs.363 crores approximately from the home buyers and further transferred substantial amounts to DSHCPL in the guise of loans and advances which were later on used by the petitioner and other persons for personal use. It is further the case of the prosecution that the petitioner and his sons remained uncooperative and evasive during investigation and accordingly, non-bailable warrants were issued against them.

5. Since FIR no.11 dated 14.01.2021 was registered in pursuance of the orders dated 07.01.2021 passed by the CJM, Gurugram, on an application filed by one Neeraj Chaudhry under Section 156(3) Cr.P.C., Ashok Punia and others (accused in the said FIR) challenged the same by filing CRM-M-3823-2021 which was disposed of vide order dated 05.07.2023 (Annexure P-5) by observing that the order dated 07.01.2021 passed by the Chief Judicial Magistrate was non-speaking and needs to be revisited and direction was given to the CJM to pass a fresh order. The CJM passed a fresh order on 26.10.2023 (Annexure P-9) again allowing the application under Section 156(3) Cr.P.C. and the said order was again challenged by Aditya Beri and another and the Coordinate Bench of this Court vide order dated 16.01.2024 again remanded the matter to the CJM for passing a fresh order and FIR no.11 was stated to be a nullity in view of the earlier remand order. The complainant Neeraj Chaudhary thereafter withdrew the complaint vide order dated 09.02.2024**,** however, as stated hereinabove, 4 other FIRs were registered in the meantime. The petitioner along with other persons had filed CRM-M-37710-2023 in which several prayers were made including quashing of the present ECIR as well as quashing of the orders of the Special Judge issuing non-bailable warrants and also quashing of summons issued to the petitioner. During the course of said proceedings, an application was moved for restraining the ED from

taking any coercive action. The said petition was dismissed vide order dated 26.02.2024 (Annexure P-13) and in the same it was observed that since there were other FIRs also registered in addition to FIR no.11, thus, the proceeds of crime could not be ruled out and it could not be said that no offence of money laundering has been committed. All the arguments raised on behalf of petitioner were rejected. Against the said order, the petitioner filed petition for Special Leave to Appeal (Crl.) no.3867/2024 which was withdrawn vide order dated 06.05.2024. Prior to the withdrawal of the said petition, the ED had moved an application seeking permission to arrest the petitioner. After having withdrawn the SLP, the petitioner filed anticipatory bail under Section 438 Cr.P.C. before the Special Judge, Gurugram on 08.05.2024 and vide order dated 20.05.2024 (Annexure P-26), the said application was dismissed. Aggrieved against the same, the present anticipatory bail petition has been filed. It would be relevant to note that in the present case, since the investigation is still going on, the complaint with respect to ECIR in question has not been filed and the copy of the ECIR has not been given to the petitioner and, therefore, the case of the prosecution has been considered on the basis of averments made in the reply and the applications filed by the respondent before this Court and the accompanying documents and also on the basis of the reply filed by the Enforcement Directorate before the Special Court to the anticipatory bail application filed by the petitioner before the Special Court.

ARGUMENTS ON BEHALF OF THE PETITIONER:-

6. Learned Senior Counsel for the petitioner has submitted that in the present case, the Chief Judicial Magistrate, Gurugram on a complaint

made by one Neeraj Chaudhary vide order dated 07.01.2021 had directed the SHO Police Station Sushant Lok, Gurugram to register an FIR with respect to the complaint given by him and submit compliance report and in pursuance of the said order, FIR No.11 dated 14.01.2021 (Annexure P-3) was registered at Police Station Sushant Lok, Gurugram under Sections 406, 420, 467, 468, 471, 120-B of IPC. It is submitted that in the other complaint filed by Neeraj Chaudhary, a similar order was passed by the Chief Judicial Magistrate, Gurugram and in pursuance of the same, FIR No.10 dated 14.01.2021 (Annexure P-2) was also registered at Police Station Sushant Lok, Gurugram under Sections 406, 420, 467, 468, 471, 120-B of IPC. It is argued that the said order dated 07.01.2021 was challenged by the co-accused of the petitioner i.e. Ashok Punia and another and a Coordinate Bench of this Court vide order dated 27.01.2021 passed in CRM-M-3823-2021 (Annexure P-4) was pleased to issue notice of motion and operation of order dated 07.01.2021 (Annexure P-25) passed by the CJM, Gurugram as well as further proceedings in the consequential FIR No.11 dated 14.01.2021 were stayed qua the petitioners therein and the same was disposed of vide order dated 05.07.2023 (Annexure P-5) and while doing so, the Coordinate Bench of this Court had remanded the matter for fresh decision in accordance with law. It is submitted that when the trial Court had again allowed the application under Section 156(3) Cr.P.C. and had further directed the SHO to conduct proper investigation in the case and had further observed that the file be sent to the Incharge of the concerned Police Station for forming the part of FIR No.11 dated 14.01.2021 vide order dated 26.10.2023 (Annexure P-9), one Aditya Beri along with another person had filed two petitions bearing CRM-M Nos.56495 and 56496 of 2023 challenging the said orders, in which, the Coordinate Bench of this Court vide order dated 16.01.2024 was pleased to observe that since the matter was being remanded thus, consequential FIRs i.e. FIR Nos.10 and 11 were held to be a nullity and the impugned orders dated 26.10.2023 were set aside and further direction was given to the Magistrate to decide the applications made by the complainant under Section 156(3) of the Code afresh. It is submitted that thereafter, the matter was withdrawn by the complainant. It is argued that the abovesaid facts clearly show that for all intents and purposes, FIR Nos.11 and 10 were not in existence and were declared a nullity. It is submitted that the present ECIR, in which the petitioner is seeking anticipatory bail i.e. ECIR/GNZO/20/2021 was registered on 16.11.2021 in pursuance of the FIR No.11 dated 14.01.2021 and that once FIR No.11 dated 14.01.2021 had been declared as a nullity and was not in existence and subsequently, even the complainant on whose complaint, the said FIR had been registered, had withdrawn the complaint, then the present ECIR deserves to be quashed on the said ground alone.

7. Learned Senior Counsel for the petitioner has further argued that the petitioner has fully cooperated with the investigation. Averments made in para 45(iv) of the petition showing that the petitioner had appeared on eight dates before the ED, have been highlighted. It is further submitted that after registration of the said ECIR, the present petitioner along with another person have filed CRM-M-37710-2023 in which case, a miscellaneous application i.e. CRM-42157-2023 was also filed and the Division Bench of this Court vide order dated 05.10.2023 (Annexure P-7)

was pleased to issue notice in the same and had further stayed the arrest warrants till the next date of hearing. Reference has been made to the said order to highlight the fact that the petitioner was directed to appear before the respondent every day till 08.10.2023 with all the relevant documents. It is submitted that the chart reproduced in para 45(iv) of the present petition would show that after passing of the said order, the petitioner had appeared on 07.10.2023, 08.10.2023, 10.10.2023 and 11.10.2023 and had complied with the said interim orders. It is argued that when the petition filed by the petitioner was dismissed by the Division Bench of this Court vide order dated 26.02.2024 (Annexure P-13), the petitioner had filed Special Leave to Appeal (Criminal) No.3867 of 2024 and the Hon'ble Supreme Court vide order dated 10.04.2024 had directed the petitioner to appear before the office of Directorate of Enforcement at New Delhi on 12.04.2024 at 11:00 am. It is submitted that the petitioner had duly complied with the said directions and in order to fortify the said arguments, reference has been made to the order dated 29.04.2024 (Annexure P-19) passed by the Special Judge to highlight the fact that proclamation proceedings against the petitioner were not being pursued as the counsel for the Enforcement Directorate had submitted that the petitioner had joined the investigation as directed by the Hon'ble Supreme Court. It is submitted that the petitioner has in every way cooperated with the Enforcement Directorate and thus, the petitioner deserves the concession of anticipatory bail on the said ground also.

8. Learned Senior Counsel for the petitioner has further submitted that although both the initial FIRs i.e. FIR Nos.10 and 11 were held to be a nullity and complaints regarding the same were withdrawn subsequently but

four other FIRs were registered i.e. FIR No.151 dated 31.05.2023 (Annexure P-28), FIR No.151 dated 05.07.2023 (Annexure P-29), FIR No.175 dated 18.05.2022 (Annexure P-30) and FIR No.152 dated 01.06.2023 (Annexure P-31) and it is the case of the Enforcement Directorate that the said FIRs are also a part of the investigation in the ECIR in question. It is submitted that the petitioner is not an accused in FIR No.151 dated 31.05.2023 and also in FIR No.151 dated 05.07.2023 and that in FIR No.175 dated 18.05.2022, the petitioner was although initially accused but has been found to be innocent in the report under Section 173 Cr.P.C. which has been filed on 08.06.2023.

9. Learned Senior Counsel for the petitioner has further referred to FIR No.152 dated 01.06.2023 registered under Sections 420, 467, 468, 471 of IPC to state that although, the petitioner in the said case has been made an accused but a perusal of the said FIR would show that same relates to some inter se dispute between co-licencees and the complainant(s) in the said case were the persons who were aggrieved of the non-payment of their dues and who had also alleged that 30% share which they were supposed to get under the agreement with respect to the flats in question, had not been paid to them. It is submitted that the said allegations simplicitor cannot bring the case within the parameters of the PMLA and thus, even in case, this FIR against the petitioner is taken into consideration, then also the petitioner cannot be proceeded under the Money Laundering Act and thus, the petitioner deserves the concession of anticipatory bail. It is further submitted that the companies which have been shown as accused in the said FIR are M/s Sai Aaina Farms Private Ltd. presently known as M/s Mahira Infratech Private Limited and M/s Czar Buildwell Private Limited and the petitioner is

neither the MD nor the Director nor the share holder nor an employee of the said two companies nor is in anyway connected with the management or control of the said companies and thus, on the said ground also, the petitioner deserves the concession of anticipatory bail.

10. Learned Senior Counsel for the petitioner has pointed out that even as per the reply filed by the Enforcement Directorate (Annexure P-23) before the Special Judge in the anticipatory bail application filed before the Sessions Judge more so in para 46 of the same, the dates on which the petitioner was Director of several companies have been given. It is submitted that the name of the above two companies does not figure in the said list and even with respect to DS Homes Construction Private Limited, the petitioner had resigned on 10.07.2021 i.e. prior to the registration of the ECIR which was registered on 16.11.2021 and with respect to Mahira Homes Private Limited, the petitioner had resigned on 15.11.2017 i.e. much prior to the grant of licences in questions which were granted on 22.12.2017. It is submitted that the petitioner is a sitting MLA of Haryana Legislative Assembly from Samalkha constituency since the year 2019 and in case the petitioner is granted the concession of anticipatory bail, since he has deep roots in the society, he would not abscond or commit any further offence. It is further submitted that on an earlier occasion when the arrest warrants were stayed, the petitioner never misused the said concession.

ARGUMENTS ON BEHALF OF THE RESPONDENTS

11. Learned counsel appearing for the Enforcement Directorate, on the other hand, has vehemently opposed the present petition for anticipatory bail. It is submitted that prior to the filing of the present anticipatory bail, the

petitioner had filed CRM-M-37710-2023 which was dismissed by the Division Bench of this Court vide order dated 26.02.2024 (Annexure P-13). The said order has been highlighted and reference has been made to the prayers which had been made in the same including the prayer for quashing the orders vide which non-bailable warrants of arrest had been issued against the petitioner in addition to seeking quashing of summons issued to the petitioner. It is submitted that a further prayer was also made for staying the operation and execution of the impugned warrants of arrest, which had been issued against the petitioner and the Division Bench after considering all the arguments, which have been raised before this Court in the present anticipatory bail, had observed that even in case the petitioner was not shown to be an accused in the FIR, he could still be prosecuted under the PMLA so long as the scheduled offences exist, which are not only with respect to FIR nos.10 and 11 dated 14.01.2021 but with respect to other FIRs as well and since there were other FIRs also, generation of proceeds of crime could not be ruled out and it could not be said that no offence of money laundering had been committed. It is submitted that in the light of the above-mentioned findings, the present anticipatory bail deserves to be dismissed inasmuch as, on the basis of the same arguments raised as have been raised in the present petition, the Division Bench had come to the above said conclusion. In light of the same, the question of this Court observing that there are reasonable grounds for believing that the petitioner is not guilty of such offence and he is not likely to commit any offence while on bail, does not arise. Reference has further been made to paragraph 7 sub clause (2) of the said judgment to show that similar arguments as are being raised before this Court, had been raised before the Division Bench as well. Specific reference has also been made to page 212 to show that before the Division Bench, it has been submitted that the petitioner and Vikas Kumar Chhoker remained Directors in one or more companies for a short duration, whereas the arguments in the present case have been taken contrary to the arguments which had been raised before the Division Bench. Specific reference has been made to the findings/ observations of the Division Bench to show that all the said arguments were rejected and the Division Bench had taken note of the fact that apart from the two FIRs no.10 and 11, there were other FIRs which were also there and the same were being investigated vide the present ECIR and thus, the two FIRs no.10 and 11 having been declared a nullity would not make much difference to the case. It is highlighted that the Division Bench had taken note of judgment of the Hon'ble Supreme Court in which it was observed that merely because there was a restraint order in a criminal matter with respect to the FIR, the same would not affect the proceedings under the PMLA moreso, when the Enforcement Directorate was not a party to the said proceedings, since money laundering was an independent offence. Even the arguments to the effect that the petitioner was not the Director of the company in question was rejected in paragraph 16 thereof by the Division Bench and reliance was placed upon the judgment of the Hon'ble Supreme Court in Pavana Dibbur vs. Directorate of Enforcement (Criminal Appeal no.2779 of 2023 decided on 29.11.2023) and it was observed that even in case the petitioner was not shown to be an accused, he could still be prosecuted under the PMLA. It is further pointed out that when the matter was pending before the Division Bench, an application was moved by the petitioner with the prayer that no coercive action be taken, and with the dismissal of the said writ petition, the said application also stands rejected. It is argued that the prayer for restraining the Enforcement Directorate from taking coercive steps / coercive action was in effect seeking anticipatory bail only, which prayer had not been granted and thus, on the said ground also, the present petition for anticipatory bail is not maintainable and deserves to be rejected.

12. It is further submitted that against the above said judgment, the petitioner had filed a Special Leave to Appeal (Crl.) no.3867-2024 and after arguing the matter and realising that the Hon'ble Supreme Court was not inclined to interfere in the matter, the learned senior advocate appearing for the petitioner had withdrawn the Special Leave Petition without seeking any liberty and nor any liberty was granted. Further, it is submitted that the observation regarding the judgment of the Division Bench not to be treated as binding on merits by the Hon'ble Supreme Court had been made in the context that the observation of the Division Bench should not be treated as a binding finding on merits of the case during the course of trial. It is submitted that it is a matter of common practice that the said expression is used while rejecting a bail application as well as while dismissing a petition seeking quashing of the ECIR/FIR so that the case of the accused before the trial Court is not prejudiced. It is submitted that the Hon'ble Supreme Court did not choose to interfere with the observations / findings made by the Division Bench of this Court and did not find that the arguments raised on behalf of the petitioner were weighty. It is argued that a perusal of Section 45 of the 2002 Act shows that bail can only be granted to an accused person

after due satisfaction is recorded by the Court that there are reasonable grounds for believing that he is not guilty of such an offence and he is not likely to commit any offence while on bail. In view of the fact that the Division Bench of this Court found that a prima facie case was made out and did not accept the arguments of learned counsel for the petitioner to the effect that no prima facie case is made out and even the SLP against the same has been dismissed as withdrawn, the same in itself calls for dismissal of the present anticipatory bail. It is highlighted that the Enforcement Directorate had moved an application for seeking permission from the Hon'ble Supreme Court to arrest the petitioner and had annexed sufficient material to show that the petitioner was involved in offence of money laundering and thereafter the petitioner had withdrawn his SLP.

13. Learned counsel has next contended that FIR no.175 dated 18.05.2022 (Annexure P-30) registered under Section 10 of the Haryana Development and Regulation Urban Area Act 1975 has not been annexed by the petitioner in its entirety and the relevant portion of the FIR has purposely been concealed and thus, the petition deserves to be dismissed on the ground of suppression of material facts. It is submitted that in the said FIR, the petitioner is shown as accused no.6 and the subsequent portion of the FIR which has not been produced, would show that it has been alleged in the said FIR that Czar Buildwell Pvt. Ltd. and Mahira Buildtech Pvt. Ltd. are the subsidiary companies of Mahira Homes Pvt. Ltd. and that the FIR was registered on account of collusion of all the directors, share holders / authorised signatories of the said companies and accused persons, who were jointly and severally responsible for submission of forged bank guarantees in

the office of the District Town Planner, on whose complaint the said FIR has been registered. It is submitted that the subsequent part of the FIR which records the connection between the two companies with Mahira Homes Pvt. Ltd., has purposely been withheld in Annexure P-30. Paragraph 46 of the reply filed by the Enforcement Directorate (Annexure P-23) in the bail application filed by the petitioner before the Special Court has further been highlighted to show that the petitioner was the director of the said Mahira Homes Pvt. Ltd and thus, the submission made on behalf of the petitioner to the effect that he has no connection with Czar Buildwell Pvt. Ltd. and Mahira Buildtech Pvt. Ltd. is not correct. It is submitted that the factum of the said companies being associates of M/s Mahira Homes Pvt. Ltd., which was the holding company, has also been specifically mentioned in paragraph 46 of the said reply and the said aspect has not been disputed on behalf of the petitioner. It is further argued that as has been detailed in paragraph 48, the ITR of the petitioner for the assessment year 2021-22 would show that an amount of Rs.20 lacs was given by M/s D S Home Construction Pvt. Ltd. to the petitioner as salary and the same were funds which had been collected from the home buyers and have been diverted from M/s Sai Aaina Farms Pvt. Ltd. (presently known as Mahira Infratech Pvt. Ltd.) to M/s D.S. Home Construction Pvt. Ltd. and that a scrutiny of account statements/transactions of M/s Sai Aaina Farms Pvt. Ltd. would show that Rs.1,01,00,000/- was transferred to the petitioner's bank account and was stated to be a loan and another amount of Rs.10 lacs was also transferred in the account of the petitioner from the account of the said company and no amount was given by the petitioner to the said company and that during the course of investigation, it has further been found that M/s Sai Aaina Farms Pvt. Ltd. had received an amount of Rs. 363 crores approximately from the home buyers and had further transferred an amount of Rs. 48 crores approximately to M/s D S Homes Construction Pvt. Ltd. in the guise of loans and advances, which was later on used by the petitioner and others for their personal gains. It is further argued that as has been averred in paragraph 52 of the said reply, proceeds of crime were generated by Mahira Group in form of advances / payments from home buyers in relation to delivery of flats in proposed projects and the funds were not utilized for construction of the proposed project and the construction of all the projects of Mahira Group has not been completed till date and no flat has been delivered to any home buyer and rather the money has been diverted and siphoned off through the company of which the petitioner was the director. It is submitted that a large number of flat owners have given written complaints on the said aspect. It is submitted that the petitioner along with other accused persons have forged bank guarantees in order to get licences issued and further forged signatures of the farmers / land owners for getting the same issued and also for selling 35% flats which were the share of the said land owners / farmers and various FIRs on the said aspect have been registered. It is submitted that the arguments made on behalf of the petitioner to the effect that two FIRs i.e, FIR no.10 and 11 are not in existence and that the complaint regarding the same was withdrawn on 09.02.2024, also does not further the case of the petitioner in any manner. It is submitted that apart from the fact that the said argument was rejected by the Division Bench of this Court, it is a matter of record that four other FIRs have been registered and are also being investigated in the ECIR in question and out of the said four FIRs, even as per the case of the petitioner, the petitioner is accused even at present in FIR no.152. It is submitted that all the said four FIRs have been registered prior to 09.02.2024 and thus, at the relevant time, the FIRs with respect to the scheduled offences were in existence. It is argued that at any rate, it is a matter of settled law that even if a person is not an accused in an FIR, then also he could be guilty of the offence of money laundering and the said aspect has been considered by the Division Bench in the petition filed by the petitioner.

14. Learned counsel has further referred to the judgment of the Hon'ble Supreme Court in ***Vijay Madanlal Choudhary & Ors. vs. Union of India & Ors.*** reported as ***2022 SCC Online SC 929*** to contend that the rigors of Section 45 of the 2002 Act would also apply in the case of anticipatory bail. Reliance has also been placed upon the judgment of the Hon'ble Supreme Court in the case of ***Delhi Development Authority vs. Skipper Construction Co.(P) Ltd.,*** reported as ***(1996) 4 Supreme Court Cases 622*** to submit that where the corporate facade has been adopted in order to play fraud, then it would be open to the Court to lift the corporate veil so as to render substantial justice between the parties. It is submitted that in the present case the licence was issued for providing affordable houses to home buyers and on account of fraud committed by the petitioner and the other co-accused, money of the home buyers has been siphoned off, thus, the petitioner does not deserve the concession of anticipatory bail.

15. With respect to the application before the Hon'ble Supreme Court seeking permission to arrest the petitioner, learned counsel for the

Enforcement Directorate has submitted that in the said application, it was specifically pleaded that the petitioner had held a position of authority in Companies associated / related with the accused company SAFPL and the other related company which ultimately received the proceeds of crime. It is submitted that a chart was prepared so as to show as to on what dates, the petitioner was holding the office of Director in various companies and has highlighted the fact that the petitioner was a Director in M/s D.S. Homes Construction Pvt. Ltd for two periods and the subsequent period being 02.12.2019 till 10.07.2021. It has further been highlighted that the petitioner was also a Director for some period in Mahira Homes Pvt. Ltd. It is argued that it was specifically averred therein that as per the Forensic Audit Report, SAFPL had diverted an amount to the tune of Rs.31,57,73,653/- belonging to home buyers for other purposes which were not connected with the construction of flats at Sector 68, Gurugram and further as per the Forensic Report dated 22.07.2022 which was got conducted by HRERA in respect of real estate projects, M/s Mahira Buildtech Pvt. Ltd., which company is an accused in FIR no.151 dated 31.05.2023, had collected an amount of Rs.160 crores approximately from 781 allottees and have diverted the total amount of Rs.68 crores to M/s D S Home Construction Pvt. Ltd. of which the petitioner was a director for the relevant period. It is argued that specific reference was made to the balance sheet of M/s Mahira Buildtech Pvt. Ltd. for the financial year 2021-22 and the payments, which have been made to M/s D S Home Construction Ltd., M/s Mahira Home Pvt. Ltd., which is an accused in FIR no.151 dated 05.07.2023 (Annexure P-29) and other companies, were specifically stated and that even the Forensic Audit Report dated 27.06.2022 with respect to the real estate project of M/s Czar Buildwell Pvt. Ltd. would show that an amount of Rs.21 crores have been paid to M/s D S Home Construction Pvt. Ltd. and the balance sheet for the financial year 2021-22 would further show that an amount of Rs.80 crores were paid to the said company. It is submitted that the details of the diversion of funds from various bank accounts were also specifically mentioned in paragraph 5 of the said application and even bogus expenditures and personal expenditures made were also detailed and for the said relevant period, the petitioner along with his sons were also Directors of M/s D S Home Construction Pvt. Ltd and that the petitioner was having control over the said company. It is argued that the petitioner did not fully cooperate with the investigation and the details of non-cooperation have been mentioned in paragraph 6 of the said application. It is submitted that on the basis of the said specific averment, the application was moved for permission to arrest the present petitioner and when the matter came up for argument on the basis of the averments made in the application, the Hon'ble Supreme Court was not inclined to interfere in the matter and thereafter, the petitioner had withdrawn the said SLP.

16. Learned counsel has further referred to the statement of account of M/s Sai Aaina Farms Pvt. Ltd. and has referred to the entry dated 09.03.2018, 20.03.2018 as well as 05.09.2017 to show that from the said account, an amount to the extent of Rs.50 lacs, 20 lacs and 31 lacs, respectively has been transferred in favour of the present petitioner. It is submitted that a total amount of Rs.1,01,00,000/- has been credited to the account of the petitioner from the home buyers money and the said fact has

also been mentioned in the balance sheet of M/s Sai Aaina Pvt. Ltd. for the year ending on 31.03.2018. It is submitted that the licence with respect to Sector 68, Gurugram was granted by the authorities on 22.12.2017 to M/s Sai Aaina Pvt. Ltd. which date is prior to date of said transfer. It is submitted that there is enough record with the Enforcement Directorate to show that money was received from the home buyers prior to the date on which the two transfers of March 2018 were made in favour of the petitioner.

17. Learned counsel for the respondent has further referred to the independent audit report with respect to Company M/s D.S. Home Construction Pvt. Ltd., which has been prepared by Raheja & Company Chartered Accountant and has highlighted that all the documents annexed along with the said report including the statement of profit and loss account, balance sheet etc., have been signed by the petitioner as Director and his son Sikandar Singh also as Director. It is submitted that the same clearly shows that the petitioner was one of the main Directors of the said Company and was actively involved in day to day functioning of the company. It is further submitted that an amount of Rs.40 crores from the RERA account of M/s Sai Aaina Farms Pvt. Ltd. has been transferred into the account of M/s D.S. Home Construction Pvt. Ltd and that the Special Judge, after taking into consideration all the aspects, had rejected the anticipatory bail of the petitioner and had even taken a note of the fact that the balance sheet of M/s D.S. Home Construction Pvt. Ltd. for the year 2020-2021 bore the signatures of the petitioner as a Director and also the fact that the amount was transferred to the account of the said company by M/s Mahira Infratech Pvt. Ltd.) (erstwhile M/s Sai Aaina Farms Pvt. Ltd.). It is submitted that the said

order is legal and valid and does not deserve to be set aside. Learned counsel has further referred to the detailed reply dated 27.05.2024 more so paras 4 to 13 of the said reply to further highlight the role of the petitioner in commission of offence of money laundering. Reference has also been made to the various entries showing that M/s D.S. Homes Construction Private Limited had transferred the loan and advances from M/s SAFPL to various persons/companies who were associated with the present petitioner and it is submitted that the said facts would emanate from a perusal of Annexure R-9 and other documents. It is further submitted that in the present case, a huge amount of money, which as per the case of the Enforcement Directorate has been siphoned off, is involved and the petitioner has not been able to show that the present case is a false or a frivolous one and thus, the present petition deserves to be dismissed. It is submitted that since the investigation/inquiry is still going on, thus, Section 45 of the 2002 Act would be attracted with all its rigors and since the offence in the present case comes within the meaning of economic offences which have impact on society, the petitioner should not be granted the concession of anticipatory bail. In support of the said submissions, learned counsel for the respondent has relied upon the judgment of the Hon'ble Supreme Court in the case of "***Director of Enforcement*** ***Vs***. ***M. Gopal Reddy***, ***in Civil Appeal No.534 of 2023, decided on 24.02.2023*** and also in the judgment of the Hon'ble Supreme Court in the case of "***The Assit. Director Enforcement Directorate Vs. Dr. V.C. Mohan"***, ***reported as (2002) SCC OnLine SC 452***. Further reference has further been made to a judgment of the Hon'ble Supreme Court in case of "***P. Chidambaram Vs. Directorate of Enforcement"***, ***reported as***

2019(9) SCC 24, to contend that inherent jurisdiction to issue directions and interfering with the investigation is exercised only where there is abuse of process or non-compliance of the provisions of Cr.P.C. and that the investigation of a cognizable offence and the various stages thereon including the interrogation of the accused is exclusively reserved for the investigating agency, whose powers are unfettered and that the economic offences stand as a different class in itself and the powers under Section 438 Cr.PC. are to be exercised sparingly, more so, in cases of economic offences. Further reliance has been placed upon a judgment of Hon'ble Supreme Court in case of "***Pavana Dibbur** Vs. **The Directorate of Enforcement** in Criminal Appeal No.2779 of 2023***, ***decided on 29.11.2023***, in which, it has been held that it is not necessary that a person against whom the offence under Section 3 of the PMLA is alleged must have been shown as an accused in the scheduled offence.

18. Learned counsel for the Enforcement Directorate has further submitted that an amount of Rs.141 crores which has been paid by M/s Sai Aaina Pvt. Ltd. to M/s D S Constructions Pvt. Ltd., was under the heading of construction and the amount of Rs.48 crores which as per the case of the Enforcement Directorate has been siphoned off, has been paid by M/s Sai Aaina Pvt. Ltd to M/s D S Construction by giving bogus loans and advances and it was recorded as loan in the books of account. It is further submitted that even though the deadline was extended but not even a single flat has been delivered to the home buyers. It is reiterated that the amount transferred in the account of the petitioner was directly the amount which was the home buyers money. It is submitted that the illegal activities for which the FIR has

been registered, are criminal activities and the same are relating to scheduled offences and thus, the present ECIR has been rightly registered and the case against the petitioner is genuine.

19. Learned counsel has referred to the judgment of the Delhi High Court decided on 24.11.2023 in W.P. (CRL) 562/2023 titled as ***"Rajinder Singh Chadha vs. Union of India Ministry of Home Affairs through its Chief Secretary and Anr.*** to contend that even in a situation where the initial two FIRs were quashed, the ECIR was not quashed on account of a subsequent FIR registered after a period of 4 years of the said ECIR and it was observed that the said FIR which was with respect to the scheduled offences, would legitimise the existence of the ECIR in question.

ARGUMENTS ON BEHALF OF PETITIONER IN REBUTTAL:-

20. Learned Senior Counsel for the petitioner in rebuttal has submitted that as far as the amount of Rs.48 crores having been received by M/s DS Homes Construction Private Limited from M/s Mahira Infratech Private Limited is concerned, it would be relevant to note that there was a construction contract between the said two companies and M/s DS Homes Construction Private Limited was supposed to carry out the construction and had actually carried out the construction and even as per the report dated 03.11.2023 submitted by the Deputy Commissioner, Gurugram (Annexure P-10), it was stated that substantial construction had been done and it has been submitted that the said money which was received, was utilized for carrying out the said construction. Reference has also been made to the affidavit dated 12.10.2023 (Annexure P-8) of Sikandar Singh, son of the petitioner who in para 6 had stated that for completing and delivering the

entire project, a sum of Rs.65-75 crores was required whereas the company still had an unsold inventory of Rs.200 crores. It is submitted that in case the project had moved forward, the construction would have been completed.

21. Learned Senior Counsel for the petitioner has further submitted that the order dated 06.05.2024 passed by the Hon'ble Supreme Court specifically clarifies that the observations made in the judgment of the Division Bench would not be treated as binding findings on merits and thus, it is open to the petitioner to raise all the pleas on merits and the argument raised on behalf of the respondent that the petitioner be estopped from raising the said pleas is misconceived and deserves to be rejected.

ANALYSIS AND FINDINGS:-

22. This Court has heard learned counsel for the parties and has perused the paper book and is of the considered opinion that the petitioner does not deserve the concession of anticipatory bail and the present petition deserves to be dismissed for the reasons detailed hereinafter.

23. As stated hereinabove, the case of the prosecution is that M/s Sai Aaina Farms Pvt. Ltd. (presently M/s Mahira lnfratech Pvt. Ltd.) is controlled by the Chhoker family led by the petitioner and his sons Sikander Singh and Vikas Chhoker and the companies of the Chhoker family are known by the name of Mahira Group, (primarily dealing in Real Estate/Construction projects) and that SAFPL is one of the several companies under the Mahira Group and the said company SAFPL undertook the project of building flats at Sector-68, Gurugram under the Affordable Group Housing Project and applied for relevant licenses to the Department of Town and Country Planning and on the basis of documents/bank

guarantees submitted, was granted license No.106 of 2017 to build around 1500 flats in an area of about 10 acres and the said project was to be completed by 2021-22 and in pursuance of the said licenses, the said company started bookings for the flats and collected around Rs.360 crores from 1500 home buyers but however, the construction work was very slow paced due to which the promised deadlines were missed.

24. FIR No.11 was registered at Police Station Sushant Lok, Haryana on 14.01.2021 under Sections 120-B, 406, 420, 467, 468, 471 of IPC against SAFPL and several other persons including the son of the petitioner, Sikandar Singh. The present ECIR dated 16.11.2021 was recorded at Gurugram Zonal Office of the Directorate of Enforcement under the Prevention of Money Laundering Act, 2002, considering that a prima facie case of commission of the offence of money laundering was made out on the basis of the said FIR having been registered under the Scheduled Offences (Part A in Para 1 of Schedule appended to PMLA).

25. Four other FIRs pertaining to the commission of scheduled offences by the Group companies of Mahira Group including SAFP Limited were registered which were also taken on record by the Directorate of Enforcement for the purpose of comprehensive investigation. The details of the said FIRs are reproduced hereinbelow:-

FIR No.	**Police Station**	**Offences**	**Remarks**

0151 dated 31.05.2023 (P-28) Pg 375	*Rajendra park, Gurugram*	*Section 420, 467, 468, 471 of IPC,1860*	*M/s Mahira Buildtech Private Limited, and others regarding affixing forged and fabricated signatures of landowners for getting licences*
0152 dated 01.06.2023 (P-31) Pg 396	*Rajendra park, Gurugram*	*Section 420, 467, 468, 471 of IPC,1860*	*M/s CZAR Buildwell Pvt. Ltd. and others including petitioner for forgery to obtain licences.*
0151 dated 05.07.2023 (P-29) Pg 386	*Sushant Lok, Gurugram*	*Section 120B, 420, 467, 468, 471 of IPC, 1860*	*M/s Mahira Homes Pvt. Ltd. Its Directors, associate companies and authorized signatory for submitting forged and fabricated building plans*
0175 dated 18.05.2022 and Chargesheet no.1 dated 08.06.2023 (P-30) Pg 393	*Rajendra park, Gurugram*	*Section 10 of the Haryana Development and Regulation of Urban Areas Act, 1975*	*For submission of fake bank guarantees and other documents by SAFPL regarding licence No.106 of 2017.*

26. As per the further case of the prosecution, during the course of investigation, it was found that the petitioner was Director of six companies belonging to "Mahira Group". The details of the same, which have been given in para 46 of the reply filed on behalf of the ED to the anticipatory bail application filed by the petitioner before the Special Judge, are given hereinbelow:-

S.No.	*Company Name*	*Designati*	*Date of*	*Date of*

		on	*appointment at Current Designation*	*cessation (if applicable)*
1.	*DS ESTATES & CONSTRUCTION PRIVATE LIMITED*	*Director*	*02.07.2007*	*30.09.2009*
2.	*MAHIRA HOMES PRIVATE LIMITED*	*Director*	*17.11.2016*	*15.11.2017*
3.	*D S HOME CONSTRUCTION PRIVATE LIMITED*	*Director*	*31.08.2012*	*15.03.2017*
		Director	*02.12.2019*	*10.07.2021*
4.	*DSC ESTATE DEVELOPERS PRIVATE LIMITED*	*Director*	*03.11.2010*	*18.12.2014*
5.	*DS HOMES PRIVATE LIMITED*	*Director*	*04.06.2020*	*10.07.2021*
6.	*MAHIRA BUILDTECH PRIVATE LIMITED*	*Director*	*17.11.2016*	*19.04.2018*

27. It would be relevant to note that during the course of arguments, the abovesaid table has not been disputed on behalf of the petitioner. The respondent has placed on record the Independent Auditor's Report as Annexure R-3 along with CRM-23673-2024 to show that in the Independent Auditor's Report dated 05.09.2020 which has been filed with respect to the company M/s D.S. Home Construction Private Limited, by Raheja & Company, Chartered Accountants, the documents (from pages 42 to 51 of the said Criminal Miscellaneous application) which include the balance sheet and profit and loss account, have been signed by the petitioner-Dharam Singh as Director as also by his son Sikander Singh also as Director. The said signing of the Auditor's Report with respect to the said company by the petitioner would prima facie show that the petitioner was one of the active Directors of the said company.

28. A perusal of the allegations levelled in the abovesaid four FIRs

which are subsisting as on date, would prima facie bring out the commission of scheduled offences by the petitioner and also his sons and other Directors/Office Bearers of the various companies under the Mahira Group of companies. The same would also prima facie show generation of proceeds of crime.

29. FIR No.152 dated 01.06.2023 (Annexure P-31) was got registered on a complaint filed by several landowners, first of whom was Anil Kumar and in the said FIR, the petitioner has been shown as accused No.1 and his sons have been shown as accused Nos.2 and 3 and there are several other accused also in the same. The said FIR has been registered on the allegations that the petitioner along with his sons had approached landowners for developing a project in Gurugram/NCR and had submitted to them that they had made several projects and by making false promises had induced the landowners/complainants to enter into collaboration agreements for an affordable housing project to be made on a total area of 10.443 acre in District Gurugram on the understanding that 65% share would belong to the developers and 35% share would belong to the landowners/complainants. It was stated in the said FIR that the accused persons including the petitioner under a premeditated conspiracy and with an intention to cause loss to the landowners had sold flats of 35% stake belonging to the landowners without their permission and also received advance money from the people and further had even obtained the licence/permit of the said affordable housing project by forging the signatures of the landowners/complainants and further that accused persons including the petitioner had issued cheques worth Rs.20 crores on behalf of M/s Czar Buildwell Company which were

dishonoured by the bank and that accused persons including the petitioner had abused the landowners and the petitioner had stated that he was an MLA and in case the complainants asked for their money then they would be killed. It was further stated in the said FIR that the complainants had come to know from newspaper reports that flat buyers and farmers had also given a lot of complaints against Mahira Group for the illegalities committed by them.

30. FIR No.151 dated 31.05.2023 (Annexure P-28) was got registered by some farmers, first of whom was Sita Ram and in the said FIR, allegations have been made against M/s Mahira Buildtech Private Limited, of which company the petitioner was a Director for a limited time, as is apparent from the chart reproduced hereinabove and the allegations were to the effect that the licences had been obtained by the said company by forging the signatures of the landowners and they had committed misappropriation and cheating/fraud. In the said FIR, reference was also made to the Press Release dated 18.03.2021 issued by the Commissioner of Income Tax, Department of Revenue, Ministry of Finance, New Delhi, as per which, the Mahira Group had claimed bogus expenses on account of building material of around Rs.100 crores and there were allegations of bogus booking of flats in the name of employees/relatives and unidentifiable persons and certain flats had been sold to actual buyers at a premium of Rs.6 to 10 lacs each and cash in crores had not been accounted for in the books and the said money had been siphoned off and that the company had collected Rs.163.41 crores from the flat allottees but the landowners who were poor marginal farmers had been paid a very meagre amount and the

physical progress of the project was only 20% although 87.5% payment of the flat owners had already been received and company M/s Mahira Builtech Private Limited had misused an amount of Rs.104.13 crores. Reference was also made to Forensic Audit Reports dated 22.07.2022/05.12.2022 of the said company as per which all amount from Escrow account of the scheduled bank had been siphoned off and thus, public money had been embezzled. Reference was also made to the FIR No.175 dated 18.05.2022 which was registered by the District Town Planner (Enforcement), Gurugram for submission of forged bank guarantees on behalf of SAFPL (one of the group companies). It was stated that the complainant/applicants were poor marginal farmers having two to four kanals land in their share.

31. FIR No.151 dated 05.07.2023 (Annexure P-29) was registered on the complaint of District Town Planner Enforcement Gurugram against Mahira Homes Private Limited, (of which the petitioner as per the abovesaid chart was a Director for a certain period) and its Directors, Associate Companies and Authorized Signatories for having submitted forged and fabricated plans in respect of two licences i.e. licence No.9 of 2022 and licence No.61 of 2023. In the said FIR, it was alleged that the building plans with respect to the said licences were being considered by the Building Plan Approval Committee for the total area but however, the same was not sanctioned/released and it came to the notice of the Department that Mahira Homes Private Limited had applied for approval of Service Plan Estimates (SPE) for the Affordable Group Housing Colony alongwith its Board Resolution and plans which were forged and fabricated as signatures of the members of the Building Plans Approval Committee were forged and for the

same, it was observed that the Directors of Mahira Homes Private Limited, Associate Companies and Authorized Signatory and the Architect etc. were liable.

32. FIR No.175 dated 18.05.2022 (Annexure P-30) was also registered by the District Town Planner against six persons including the present petitioner and his son Sikander Singh on the allegations that SAFP and the accused persons had got issued licence No.106 of 2017 for setting up of Affordable Group Housing Colony by submitting bank guarantees and it was found that several bank guarantees were fake and upon confirmation made, it was found that the same were never issued by the concerned Bank which had purportedly issued the said bank guarantees. Similar allegations were also made in the FIR with respect to licence No.66 of 2021 dated 07.09.2021. It would be relevant to note that challan in the present case has not been filed against the petitioner and it is the case of the petitioner that he has been declared innocent in the same. At any rate, the said FIR is alive. It would be further relevant to note that it has been submitted on behalf of the respondents that the subsequent portion of the FIR has not been reproduced in the petition and the said portion of the FIR is material as it would show that it has been alleged in the said FIR that Czar Buildwell Pvt. Ltd. and Mahira Buildtech Pvt. Ltd. are the subsidiary companies of Mahira Homes Pvt. Ltd. and that the FIR was registered on account of collusion of all the directors, share holders / authorised signatories of the said company and accused persons, who were jointly and severally responsible for submission of forged bank guarantees in the office of the District Town Planner, on whose complaint the said FIR has been registered. It was pointed out that the

subsequent part of the FIR which records the connection between the two companies with Mahira Homes Pvt. Ltd., has purposely been withheld in Annexure P-30. It would also be relevant to note that licence No.106/2017 was also the subject matter of FIR No.11 dated 14.01.2021, which was one of the first FIRs registered.

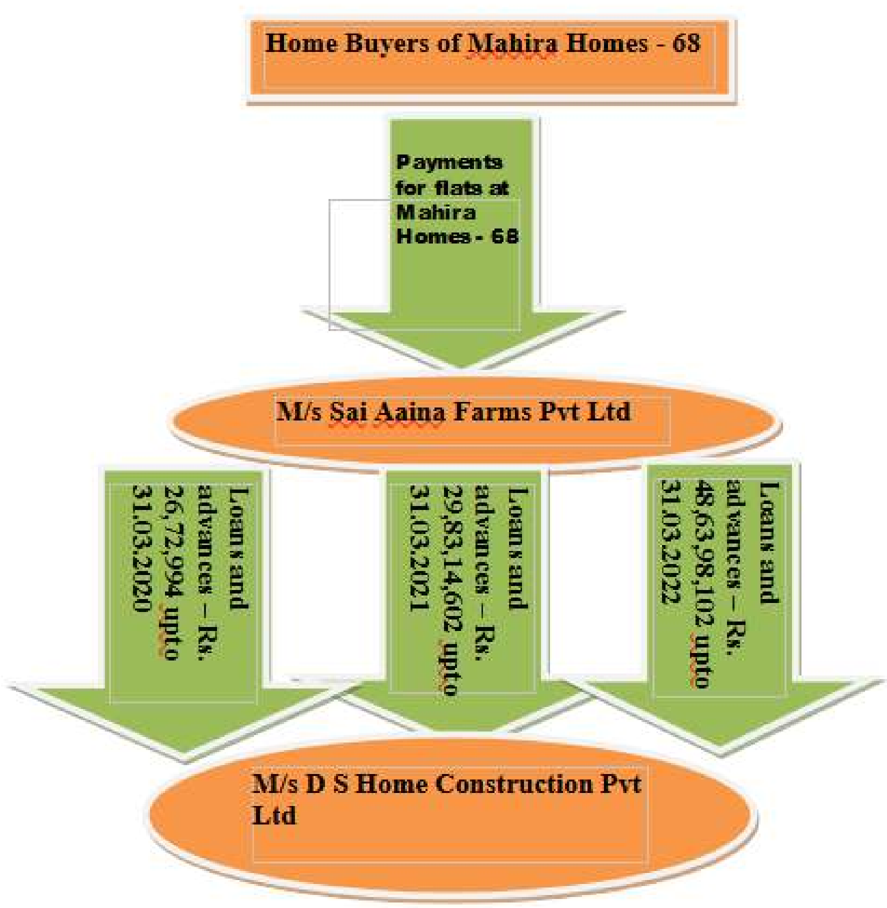
33. It is further the case of the prosecution that during investigation, it has been found that M/s Mahira Homes Private Limited was the holding company of all the project companies being developed by M/s SAFP Limited, M/s Mahira Buildtech Private Limited and M/s Mahira Buildwell Private Limited and M/s DS Homes Construction Private Limited was the construction company of all the projects of Mahira group and that further investigation in the said projects and other projects of the Mahira Group is still continuing. It has not been disputed that the petitioner was a Director in M/s DSHC Private Limited for two terms and the last term was upto 10.07.2021. The respondent has placed on record the statement of account of M/s Sai Aaina Farms Pvt. Ltd. as Annexure R-2 along with CRM-23673-2024 and a perusal of the same would show that on 09.03.2018 i.e. after the date on which licence had been issued to the said company on 22.12.2017, an amount of Rs.50 lacs had been transferred in favour of the petitioner and similarly on 28.03.2018, another amount of Rs.20 lacs had been transferred to the petitioner through RTGS. Further even on 05.12.2017, an amount of Rs.31 lacs had been transferred in favour of the petitioner. From the said bank statement, it is apparent that a total amount of Rs.1,01,00,000/- had been transferred by M/s SAFPL in favour of the petitioner and the same is also apparent from the balance sheet of the said company which has been

annexed as Annexure R-2 along with CRM-23673-2024. It has further specifically been averred in para 48 of reply filed by the ED to the anticipatory bail application filed by the petitioner (Annexure P-23) that as per ITRs of the petitioner for the Assessment Year 2021-22 (Financial Year 2020-21), an amount of Rs.20 lacs had been shown as given by M/s DS Homes Construction Private Limited to the petitioner from the home buyers funds which had been diverted from M/s Sai Aaina Farms Private Limited to M/s DS Homes Construction Private Limited and further, it has been averred in para 50 of the said reply that M/s SAFPL had received an amount of Rs.363 crores approximately from the home buyers and had further transferred substantial amounts to M/s DS Homes Construction Private Limited in the guise of loans and advances which later on had been used by the petitioner and bogus purchases had been generated during the Directorship of the petitioner in M/s DSHC Private Limited and it has been stated in para 52 of the said reply that no flat has been delivered to any home buyers till date, which aspect (non delivering of any flat) could not be disputed by the petitioner, although it was the case of the petitioner that substantial construction had been carried out.

34. The respondents in the reply dated 27.05.2024 have made a reference to the balance sheet of M/s Sai Aaina Farms Private Limited and M/s D.S. Home Construction Private Limited and have given the details of the money trail which has been depicted in the flow chart. Further specific reference has been made to the amount transferred by M/s SAFPL to M/s DSHC Private Limited and from DSHC Private Limited to various persons/companies associated with the petitioner. The details of the purchase

of jewellery and purchase of property have also been given in the said reply. Annexure R-9 has been annexed with the reply to substantiate the money trail. Relevant portion of the said reply bringing out the abovesaid facts is reproduced hereinbelow:-

> *"The Petitioner held position of Director in M/s D S Home Construction Pvt Ltd from **02.12.2019 to 10.07.2021** and in this regard, the balance sheets of M/s Sai Aaina Farms Pvt Ltd and M/s D S Home Construction Pvt Ltd were analyzed for F.Y. 2019-20 to 2021-22 which revealed that the loans and advances were given to M/s D S Home Construction Pvt Ltd from M/s Sai Aaina Farms Pvt Ltd (The company which received home buyer's money). A copy of Balance Sheet is annexed as **Annexure R9** and the money trail is depicted hereinafter-*



> *5. Further, it is submitted that the ITRs of Petitioner for assessment year 2021-22 (F.Y.2020-21) shows that amount of Rs.*

20,00,000/- has been given by M/s D S Home Construction Pvt Ltd to Dharam Singh as Salary from the home buyers funds diverted from M/s Sai Aaina Farms Pvt Ltd to M/s D S Home Construction Pvt. Ltd. Further, Bank accounts of M/s Sai Aaina Farms Pvt Ltd show that the amount of Rs. 1,01,00,000 was transferred to Dharam Singh's bank account. Balance Sheet of M/s Sai Aaina Farms pvt Ltd for F.Y. 2017-18, also shows the above amount of Rs. 1,01,00,000/- as Loans to the Petitioner. In addition to the above, an amount of Rs. 10,00,000/- was transferred in the account of the Petitioner from the accounts of M/s Sai Aaina Farms Pvt Ltd. No amount was given by the Petitioner to M/s Sai Aaina Farms Pvt Ltd earlier. Further, the Petitioner failed to give any supportive documents regarding the above amounts received by the Petitioner from M/s Sai Aaina Farms Pvt Ltd. The above amount taken from M/s Sai Aaina Farms Pvt Ltd is the home buyers money and ***the same is squarely covered within the definition of proceeds of crime on account of Petitioner being beneficiary of the proceeds of crime as defined under section 2(1)(u) of PMLA.***

6. Further, M/s D S Home Construction Pvt Ltd transferred the above mentioned loans and advances to the other companies / persons associated with Shri Dharam Singh Chhoker only. The details of the same are as below:

Name of person / entity	***As on 31.03.2020***	***As on 31.03.2021***	***As on 31.03.2022***
Amit Chhoker, a family member of Dharam Singh, being his nephew	*52,75,000*	*52,75,000*	*11,50,000*
Dharam Singh	*1,27,72,600*	*1,29,36,380*	*1,30,74,213*
Ms. D S Homes Pvt. Ltd		*9,21,50,000*	*9,32,64,200*
Ms. Mahira Fuels, a	*2,48,95,400*	*6,42,57,117*	*9,42,92,405*

prop. concern of Vikas Chhoker			
Sikandar Sir		*5,96,82,146*	*9,31,05,664*
Ms. Neel Mahadev Buildtech Pvt Ltd, a group company of Mahira Group	*1,68,82,000*	*1,73,82,000*	
Praveen Chhoker, a family member of Dharam Singh Chhoker, being his nephew		*21,39,000*	*38,39,000*
Vikas Chhoker, son of Dharam Singh Chhoker	*2,48,95,960*	*3,39,88,743*	*4,49,53,877*
Sikandar Singh Share	*10,89,22,900*		

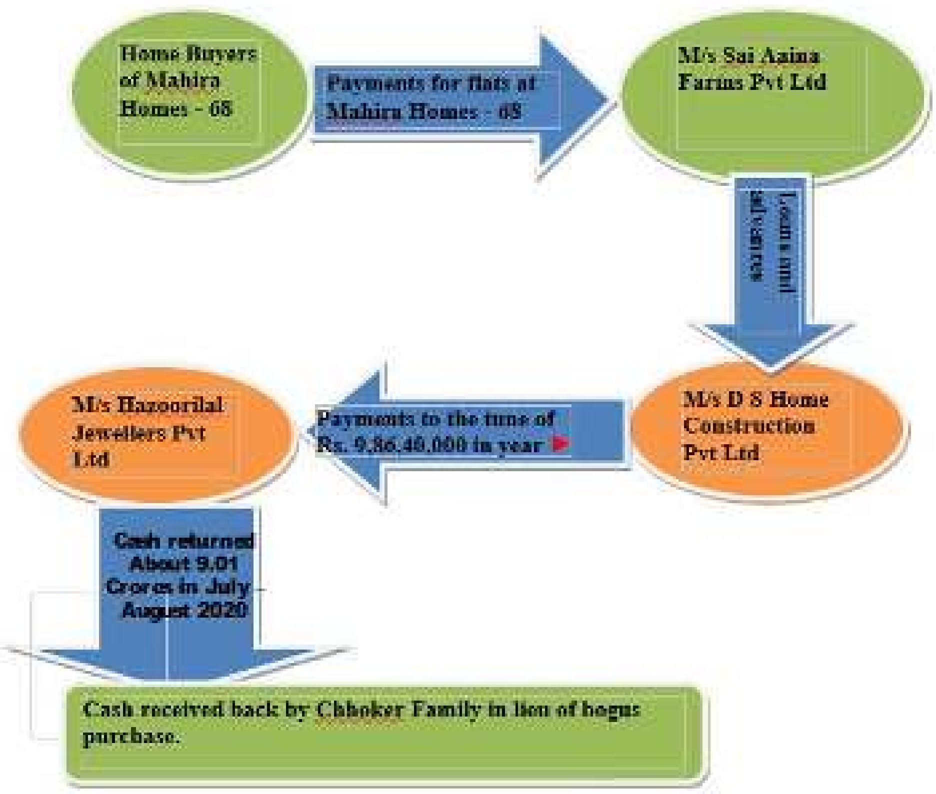
7. It is revealed that M/s CanisMajoris Power Pvt Ltd, is a subsidiary company of M/s D S Home Construction Pvt Ltd. During the course of investigation, it was found that the property situated at (A-67, second and third floor, South Extension - II, New Delhi) was purchased in the name of M/s Canis Majoris Power Pvt Ltd from the home buyers funds during the directorship period of the petitioner. This property was purchased by M/s Canis Majoris Power Pvt Ltd from Indostar Capital Finance Limited vide sale certificate no. 2127 dated 28.05.2020 for a consideration of Rs. 3,26,35,000/-. The above property was provisionally attached vide PAO no. 01/2024 dated 15.02.2024.

8. Further, Shri Dharam Singh Chhoker and his family are residing at A-2/15, DLF Phase – I, Near Qutub Plaza, Gurugram. Further this property was transferred under sale deed no. 11723 dated 16.09.2022 to M/s Dezire Homesquare Pvt Ltd. and the money was homebuyer money siphoned from Sai Aaina Fram Pvt Ltd to DS Homes Construction Pvt Ltd as loan and advances and *thereafter to M/s Dezire Homesquare Pvt Ltd. Therefore, the above property was also provisionally attached vide PAO no. 01/2024 dated 15.02.2024.*

9. It is revealed that the wedding ceremony of the petitioner's daughter Priya Chhoker took place in Hotel Le Meridien and a number of rooms were booked for a number of events between 09.03.2023 to 13.03.2023. Further, it is also revealed that wedding expenses of Priya Chhoker (daughter of Dharam Singh Chhoker) were booked from the accounts of M/s D S Home Construction Pvt Ltd. to the tune of Rs. 5-6 Crore (approx.).

10. Further, it was also revealed that the Petitioner was actively involved in Money Laundering through Bogus Purchases as it was found that number of transactions were made from the accounts of M/s D S Home Construction Pvt Ltd, during the period of 2020, when Petitioner was one of the directors and had significant influence on the affairs of the company. In this regard, the below mentioned payments were made to M/s Hazoorilal Jewellers Pvt Ltd from the account of M/s D S Home Construction Pvt Ltd (Account no. 50200003495224, maintained with HDFC Bank) during the directorship period of Dharam Singh Chhoker:

11. It is further submitted that the bogus purchases were done to the tune of Rs. 56 Crore (approx.) by M/s Sai Aaina Farms Pvt Ltd and M/s D S Home Construction Pvt Ltd after receiving the payments from home buyers for Project Mahira Homes – 67, Gurugram. Wherein the payments were transferred to the entities through banking transactions and further cash amount were received back by Chhoker family.



12. In light of the above stated facts depicting role of the Petitioner, it is to be noted that the instant case involves serious economic offence of siphoning of huge amount of public money and the Petitioner is the beneficiary of proceeds of crime thereby being squarely covered within the ambit of offence of money laundering. Xxx xxx"

35. In addition to the above mentioned material which is against the petitioner, it would also be relevant to take note of the averments made in the application filed by the respondents before the Hon'ble Supreme Court in Special Leave to Appeal (Criminal) No.3867 of 2024 (background of which would be given hereinafter), annexed as Annexure R-1 along with CRM-23673-2024, seeking permission to arrest the petitioner. In addition to the allegations levelled against the petitioner with respect to various periods when the petitioner was Director of various companies of the Mahira Group, specific averments and allegations have been made in paras 4, 5, 6 of the said application to prima facie further establish the involvement of the

petitioner. Paras 4(iv) to (viii), 5 to 6(I) are reproduced hereinbelow:-

"4(iv). Further, analysis of the Bank account transactions revealed that the investors home/buyers' payments were received in master accounts of SAFPL and Forensic Audit dated 19.12.2022 reveals that an amount of Rs.19,26,13,282.91/- and Rs.12,31,60,370.08/- were excessively withdrawn from the 70% RERA Account and 30% Free Account, respectively. Therefore, the above data of Forensic Audit, shows that SAFPL diverted an amount to the tune of Rs.31,57,73,653/- (in excess) belonging to home buyers for other purposes which are not connected with construction of flats at Sector 68, Gurugram. Haryana and thereby siphoning off the public money for personal use of Mahira Group and its family members including Petitioner.

(v) As per the forensic audit report dated 22.07.2022 got conducted by HRERA in respect of real estate project of M/s Mahira Buildtech Pvt Ltd situated at sector 103, Gurugram, the company has collected amount of Rs.160 Crore (approx) from 781 allottees and has completed only 20% of the project work whereas the company has used the total funds lying the meagre balances in the accounts. Further, the forensic audit reveals that the company diverted a total fund of Rs.68 Crore (approx.) after considering the payment for land and legal expenses. ***Further, as per forensic report, an amount of Rs.68 Crore (approx.) was made to M/s DS Home Construction Pvt Ltd.***

(vi) Further, as per the balance sheet ***of M/s Mahira Buildtech Pvt. Ltd. For F.Y. 2021-22,*** *the advance amount paid to its related parties are as under:-*

S. No.	*Name of company (related party)*	*Amount*
1.	***M/s DS Home Construction Pvt. Ltd.***	***31,23,03,604***
2.	***M/s Mahira Homes Pvt. Ltd.***	***33,95,36,021***

3.	*M/s Czar Buildwell Pvt. Ltd.*	*6,91,73,363*
4.	*M/s Neel Mahadev Buildtech Pvt. Ltd.*	*1,32,65,820*
5.	*M/s Neelmahadev Builders Pvt. Ltd.*	*3,86,22,082*

(vii) As per the forensic audit report dated 27.06.2022 in respect of real estate project ***of M/s Czar Buildwell Pvt Ltd.*** *an associate Company, situated at sector 104, Gurugram. the* ***company collected amount of Rs. 90 Crore (approx.)*** *from the home buyers for their project at Sector-104, Gurugram and most of the funds have been utilized by the developer* ***and only 2% of the work has been done. Also, an amount of Rs. 21 Crore has been paid to M/s DS Home Construction Pvt Ltd. Further, as per the balance sheet of M/s Czar Buildwell Pvt Ltd for F.Y. 2021-22, an amount of Rs. 80 Crore (approx.) was paid to M/s DS Home Construction Pvt. Ltd. Alone.***

(viii) Furthermore, during investigation, it is revealed that ***SAFPL undertook*** *the project Mahira Homes-68 of building flats at Sector 68, Gurugram, under the affordable group housing project and had applied for relevant licenses/permissions to Department of Town and Country Planning [DTCP), Haryana. DTCP granted license* ***No.106/2017 to SAFPL in 2017 based on the document/bank guarantees provided by SAFPL, some of which were found fake/forged later on.*** *The license no. 106 of 2017 granted by DTCP to SAFPL was valid till 21.12.2022. The license permission was to build around 1500 flats in an area of about 10 acres. The project was to be completed by 2021-22.* ***Based on the licenses/ permission granted by DTCP, SAFPL started bookings for the flats and collected around Rs.363 crores from 1500 (approx.) home buyers.***

5. That the ongoing investigation has revealed that SAFPL failed in delivering possession primarily due to siphoning of home buyer funds in following ways:

A. xxx xxx xxx xxx

B. Bogus expenditure/ personal expenditure booked in the company accounts to inflate expenditure. Investigations done by the Enforcement Directorate showed that the SAFPL and its associated companies debited several fake/bogus expenditures in the books and siphoned off the home buyers' money for personal gains. ***SAFPL transferred around 189 Crores of home buyers money to M/s DS Home Construction Pvt Ltd. towards contract of constructions related flats at sector 68. Gurugram. The Directors during the relevant period in DHCPL were Sikandar Singh, Dharam Singh Chhoker, Vikas Chhoker,*** *Prince Kumar, Rishi Raj Gupta, Alakh Niranjan etc.* ***The verification of the bank accounts of SAFPL and DHCPL showed payments to various suspicious entities (some of them found fake as Univista Contractor and Bharat Sales Corporation), so as to book bogus expenditure to siphon off the money of home buyers to the tune of Rs. 56 Crore (approx.) and used the said amount for personal gains or for personal expenditure like for personal shoppings etc.***

So far the investigation reveals that the amount was received back in Cash/Jewellery out of the amount spent on fake/bogus expenditure. ***SAFPL also booked several personal expenditure of the promoters and their family members who were totally unconnected with the construction of flats/business purposes utilized the home buyers' money for personal gain.***

6. That, the ongoing investigation has revealed that Shri Dharam Singh Chhoker was one of the directors in M/s DS Home Construction Pvt Ltd during the period from

02.12.2019 to 10.07.2021 and was having control over the affairs of the company.

36. A perusal of the abovementioned averments would show that it was specifically averred that as per the Forensic Audit Report, the Company M/s Mahira Buildtech Private Limited of which the petitioner was a Director for a period of more than one year and five months and which company is accused in FIR No.151 dated 31.05.2023 had diverted a total fund of Rs.68 crores out of an amount of Rs.160 crores received from 781 allottees into the account of M/s DS Homes Construction Private Limited of which the petitioner was a Director for a substantial term as has been given in the abovesaid chart. Even M/s Czar Buildwell Private Limited, which project is the subject matter of FIR No.152 dated 01.06.2023, is stated to have transferred a total amount of Rs.80 crores to M/s DS Homes Construction Private Limited, (of which the petitioner was Director for a substantial time) as per the balance sheet of the year 2021-22. It has been specifically averred that although Rs.90 crores had been received from the home buyers with respect to the said project but only 2% of the work regarding the same had been done. In para 5(B), it has further been specifically averred that the investigation done by the Enforcement Directorate would show that SAFPL and its associated companies had debited several fake bogus expenditures in the books and have siphoned off the home buyers money for personal gains and even transferred an amount of Rs.189 crores of home buyers to M/s DS Homes Construction Private Limited during the period when the petitioner and his sons were Directors. It is the case of the respondent that when the said application containing specific averments was filed before the Hon'ble

Supreme Court in Criminal Appeal filed by the petitioner against the judgment of the Division Bench of this Court the petitioner withdrew his SLP. In view of the above, this Court is of the opinion that the argument raised on behalf of the petitioner that he was not in any way connected with the alleged illegalities committed cannot be accepted at this stage.

37. Further in the reply dated 27.05.2024, specific dates have been mentioned as to when the summons were issued and the dates in which the petitioner was required to appear but he did not appear. Paras 17 and 20 of the said reply which are relevant with respect to above aspect are reproduced hereinbelow:-

> *"17. It is pertinent to highlight the noncooperation of Petitioner during the investigation. When search operation was underway in several premises of the Petitioner (including his residence and office) the Petitioner did not appear before the Enforcement Directorate despite several summons being issued and communicated to him and even thereafter the Petitioner did not deliberately appear before Enforcement Directorate despite several summons, details of which are as follows:*

S.No.	*Date of issue*	*Date of compliance*	*Status of compliance*
1.	*27.07.2023*	*31.07.2023*	*No compliance*
2.	*28.07.2023*	*28.07.2023*	*No compliance*
3.	*29.07.2023*	*29.07.2023*	*No compliance*
4.	*30.07.2023*	*30.07.2023*	*No compliance*
5.	*01.08.2023*	*01.08.2023*	*No compliance*
6.	*04.08.2023*	*05.08.2023*	*No compliance*
7.	*08.08.2023*	*09.08.2023*	*No compliance*
8.	*10.08.2023*	*14.08.2023*	*No compliance*
9.	*17.08.2023*	*21.08.2023*	*No compliance*
10.	*28.08.2023*	*31.08.2023*	*No compliance*

11.	*05.09.2023*	*12.09.2023*	*No compliance*
12.	*21.10.2023*	*23.10.2023*	*No compliance*
13.	*07.05.2024*	*08.05.2024*	*No compliance*
14.	*10.05.2024*	*13.05.2024*	*No compliance*
15.	*17.05.2024*	*21.05.2024*	*No compliance*

20. However, Ld. Sessions Judge-cum-Special Judge, Gurugram considering the facts & circumstances of the case, directed to take more efforts to procure the presence of respondents/accused through warrants of arrest. Hence, following Arrest Warrants were issued against Petitioner- Dharam Singh Chhoker

Date of Arrest Warrant	***Report of this office***	***Date of attempts made by police authorities***
20.03.2024	*Made attempts on 28.03.2024 and 04.04.2024, not found at home as he was not there since 26.02.2024.*	*Report dated 03.04.2024, not found at residence even after multiple attempts.*
06.04.2024	*Made attempts on 13.04.2024, not found at home as he was not there since 26.02.2024.*	*Report dated 14.04.2024, not found at residence even after multiple attempts.*

It is also to be noted that Hon'ble Supreme Court of India directed Petitioner to appear before Respondent Directorate during hearing of ***SLP(Crl) No. 3867 of 2024*** *and the Petitioner appeared only twice in compliance thereof and thereafter deliberately chose not to appear before Respondent Directorate* *upon summons issued to the Petitioner after dismissal of **SLP(Crl) No. 3867 of 2024** on 06.05.2024 and details of such summons are as follows-*

S. NO.	***DATE OF ISSUE***	***DATE OF COMPLIANCE***	***STATUS OF COMPLIANCE***
1	*07.05.2024*	*08.05.2024*	*No Compliance*
2	*10.05.2024*	*13.05.2024*	*No Compliance*
3	*17.05.2024*	*21.05.2024*	*No Compliance*

38. It would also be relevant to note that the petitioner before filing the present petition for anticipatory bail had filed a petition bearing CRM-M-37710-2023 titled as "Dharam Singh Chhoker and another Vs. Directorate of Enforcement and another, in which, the following prayers were made: -

> *1. **Quash the ECIR/GNZO/20/2021** and all consequential proceedings arising therefrom as the same does not sustain the test of law, equity or justice in the sake of the Orders dated 05.07.2023 (Annexure P-13) passed by this Hon'ble Court in CRM-M No.3823 of 2021 thereby setting at naught the directions issued by the Chief Judicial Magistrate, Gurugram on 07.01.2021 in exercise of jurisdiction under Section 156 (3) Cr.P.C. for the registration of FIR (scheduled/predicate offence in the present case) and thereby rendering the said FIR No.11 dated 14.01.2021 (Annexure P-10) under Section 406, 420, 467, 468, 471, 120-B IPC, 1860 registered at Police Station Sushant Lok (i.e. scheduled/predicate offence) to be rendered non-est; terminated and unworthy of being acted upon for any purpose whatsoever;*
>
> *2. **Quash the order dated 29.09.2023 (Annexure P-23) passed by Special Judge, Gurugram in CRM-627-2023, vide which arbitrarily and illegally non bailable warrants of arrest has been issued against the petitioner'***
>
> ***3. Quash the summons dated 28.07.2023 & 08.08.2023 (Annexures P-17 & P-18) and all subsequent summons issued to the petitioner as the same are wholly untenable in law;***

4. Quash and set aside the action of the respondents in carrying out absolutely illegal, unwarranted and unjustified searches and seizures at the residential house etc. of the petitioners at Gurugram;

5. Stay all further proceedings arising out of ECIR/GNZO/20/2021, during the pendency of this Hon'ble Court.

6. Stay the operation and execution of the impugned warrants of arrest issued against the petitioners vide order dated 29.09.2023 (Annexure P-23) passed by Special Judge, Gurugram, during the pendency of this Hon'ble Court;

7. Pass such other order(s) or direction(s) as this Hon'ble Court may deem fit in the peculiar facts and circumstances of the case in favour of the petitioner."

A perusal of the abovementioned would show that the present ECIR along with subsequent proceedings arising therefrom were sought to be challenged and the order of the Special Judge, vide which non-bailable warrants and summons were issued to the petitioner was also challenged in the abovesaid petition.

39. In the said petition, a misc. application was also filed on behalf of the petitioner under Section 482 Cr.P.C for interim/ad-interim relief which included the prayer for directing the respondents not to take coercive action against the petitioners therein, which included the present petitioner. The said application has been annexed as Annexure R-4 with CRM-M-26190-2024. Although, initially notice was issued and an interim order was passed on 05.10.2023 by the Division Bench of this Court, to the effect that till the next date of hearing, the arrest warrant be not implemented, but the said petition was finally dismissed by the Division Bench, vide a detailed judgment dated 26.02.2024. The said judgment has been annexed as Annexure P-13 along with the main petition. A perusal of the said judgment

would show that the arguments which are sought to be raised before this Court for grant of anticipatory bail were also raised before the Division Bench, in which, the prayers which have been reproduced herein above were made. The Division Bench in para 4(i) had noticed that the primary issue raised by the petitioner in the case was to the effect that once the order on the basis of which the FIRs No.10 & 11 were registered had been set aside and the FIRs were no longer in operation, there being no scheduled offence, no offence under the PMLA would remain and in para 7 of the judgment, the arguments in support of the said submissions were also noticed. In Para 7(viii) the arguments of the petitioner to the effect that the petitioner and his son Vikas Kumar Chhoker had remained directors in one or more companies were also noticed and it has been pointed out on behalf of the respondents before this Court that the arguments now sought to be raised on behalf of the petitioner that he was not connected with the company in question were contrary to the arguments raised before the Division Bench. The Division Bench after considering all the said arguments raised on behalf of the petitioner dismissed the petition by observing that the scheduled offences were not only in FIRs No.10 and 11 dated 14.01.2021, but also in other FIRs, (i.e. 4 FIRs referred to in the present order) and further observed that since there were other FIRs also, it could not be said that no offence of money laundering has been committed. The Division Bench in para 12(ii) of the judgment noticed the fact that apart from FIRs No.10 and 11, there were other FIRs which were being investigated in the ECIR in question and observed that although, the said FIRs were registered subsequently, yet the same would not make any difference as they were being investigated in the

ECIR in question and had been taken on record in the said ECIR. Even the arguments to the effect that that the petitioner was never a director in the company in question and thus, no proceedings could have been taken against him in the ECIR, were also rejected in para No.16 of the judgment and it was observed that once there were other FIRs and in one of which the petitioner was an accused, then, it cannot be said that there were no proceeds of crime or that no offence of money laundering under Section 3 of the PMLA was made out. Further reliance was placed upon the judgment of the Hon'ble Supreme Court in "***Pavana Dibbur* versus *Directorate of Enforcement* (Criminal Appeal No.2779 of 2023 decided on 29.11.2023)** and it was observed that even in case the petitioner was not an accused in the predicate offence, then also, he could be prosecuted under the PMLA and thus, the arguments raised before the Division Bench were rejected. The relevant portion of the judgment of the Division Bench is reproduced herein below: -

> ***"16. As regards the argument that petitioner Dharam Singh Chhoker had never been the director and, therefore, no proceedings could have been issued against them, the same is also devoid of merit. The argument that since Dharam Singh Chhoker was not arraigned as an accused in the complaints submitted by Neeraj Chaudhry, no proceedings could have been issued against him is also devoid of merit. Still further, once there were other FIRs pending against the petitioners, it cannot be said that there were no proceeds of crime and, therefore, no offence of money laundering, as defined under Section 3 of the PMLA, can be said to have been committed.***
>
> ***xxx xxx xxx***
>
> ***17. A perusal of the aforesaid judgment shows that even if one of the petitioners was not shown to be an accused, he could be prosecuted under the PMLA so long as the scheduled offence exists. The scheduled offence, as already mentioned in the***

preceding paragraphs, is not only in FIR Nos.10 & 11 dated 14.01.2021 but also in other FIRs referred to therein. It is also clear from a perusal of the aforesaid judgment that since there were other FIRs also, proceeds of crime cannot be ruled out and, therefore, it cannot be said that no offence of money laundering can be said to have been committed. As has been observed in the preceding paragraphs, the case is only at the stage of investigation and nothing can be said conclusively at this stage. The reality would emerge only once the concerned Investigating Agencies conclude the investigation/inquiry.

As a result of the aforesaid discussion and for the reasons recorded hereinbefore, we find the petitions to be devoid of merit and accordingly, the same are dismissed."

40. The SLP filed against the said judgment i.e. Special Leave to Appeal (Crl.) No.3867/2024 by the petitioner was dismissed as withdrawn, vide order dated 06.05.2024 (Annexure P-20). Learned senior counsel for the petitioner has laid much emphasis on the observations of the Hon'ble Supreme Court in the said order to the extent that it had been observed that the observations made in the impugned judgment would not be treated as binding findings on merits and has thus submitted that the petitioner is entitled to re-argue and re-agitate the pleas which had been taken before the Division Bench. Learned counsel for the respondent on the other hand has submitted that immediately prior to the passing of the order dated 06.05.2024, an application (Annexure R-1) was filed by the respondent for arresting the petitioner in CRM-M-26190-2024 and in the said application specific details of the involvement of the petitioner in the offence of money laundering were mentioned and it was thereafter when the Hon'ble Supreme Court was not inclined to interfere in the matter that learned senior counsel appearing on behalf of the petitioner therein withdrew the said petition. It is submitted that the petitioner is thus estopped from raising the said pleas

again as his prayers for quashing of the ECIR as well as for quashing of the arrest warrants and taking of no coercive action had already been rejected by the Division Bench and has been upheld up to the Hon'ble Supreme Court. It is also submitted that at any rate, in the light of the abovementioned orders and findings against the petitioner, this Court possibly cannot opine that it is satisfied that there are reasonable grounds for believing that the petitioner is not guilty of any such offence and that he is not likely to commit any such offence while on bail so as to meet the twin conditions of Section 45 of the PMLA. It is further submitted by the respondents that the observations made by the Hon'ble Supreme Court while permitting the petitioner to withdraw the SLP are generally recorded by every Court while deciding a petition seeking quashing of proceedings or even seeking bail and the same is for the purpose of not prejudicing the case of the accused before the trial Court where the matter has to be finally adjudicated on the basis of the evidence produced before the trial Court and that the same cannot be construed to permit the petitioner to re-agitate the whole matter in the present petition.

41. This Court has considered the submissions of both the parties and observes that apart from having considered the judgment of the Division Bench, this Court has independently considered the material against the petitioner as well as the arguments of the petitioner and finds that even dehors the observations made by the Division Bench of this Court, it is not possible for this Court to opine that there are reasonable grounds for believing that the petitioner is not guilty of the offence and that he is not likely to commit any such offence while on bail and rather, as has been observed hereinabove, there is sufficient material to make out a prime facie

case against the petitioner. Section 45 of the Prevention of Money-Laundering Act, 2002 is reproduced herein below: -

45. Offences to be cognisable and non-bailable.

(1) [Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence [under this Act] [Substituted by Act 20 of 2005, Section 7, for certain words (w.e.f. 1.7.2005).] shall be released on bail or on his own bond unless]

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

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

Provided that a person, who is under the age of sixteen years or is a woman or is sick or infirm [or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees] [Inserted by Finance Act, 2018 (Act No. 13 of 2018) dated 29.3.2018.], may be released on bail, if the Special Court so directs:

Provided further that the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by

(I) the Director; or

(ii) any officer of the Central Government or State Government authorised in writing in this behalf by the Central Government by a general or a special order made in this behalf by that Government.

[(1-A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other provision of this Act, no police officer shall investigate into an offence

under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed;] [Inserted by Act 20 of 2005, Section 7 (w.e.f. 1.7.2005).]

(2) The limitation on granting of bail specified in [***] [The words "clause (b)" omitted by Act 20 of 2005, Section 7 (w.e.f. 1.7.2005).] of sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

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

"

42. The Hon'ble Supreme Court of India in ***Vijay Madanlal Choudhary's case*** (supra) had observed that it would not be logical to disregard the limitations imposed on granting bail under Section 45 of the 2002 Act, in the case of anticipatory bail as well. In the said judgment, reference was also made to the case of "***P. Chidambaram Vs. Directorate of Enforcement"***, ***reported as 2019(9) SCC 24***,, in which, it has been observed that the power under Section 438 Cr.PC. has to be exercised sparingly, more so, in case of economic offences as economic offences stand as a different class as they affect the economic fabric of the society and in a

case of money-laundering where it involves many stages, it requires systematic and analysed investigation and the success in such interrogation would elude if the accused knows that he is protected by a pre-arrest bail order. The relevant portion of the judgment of the Hon'ble Supreme Court in ***Vijay Madanlal Choudhary's case*** (supra) is reproduced hereinbelow:-

> *408. Thus, anticipatory bail is nothing but a bail granted in anticipation of arrest, hence, it has been held in various judgments by this Court that the principles governing the grant of bail in both cases are more or less on the same footing, except that in case of anticipatory bail the investigation is still underway requiring the presence of the accused before investigation authority. Thus, ordinarily, anticipatory bail is granted in exceptional cases where the accused has been falsely implicated in an offence with a view to harass and humiliate him.* ***Therefore, it would not be logical to disregard the limitations imposed on granting bail under Section 45 of the 2002 Act, in the case of anticipatory bail as well.***
>
> *409. In P. Chidambaram, this Court observed that the power of anticipatory bail should be sparingly exercised in economic offences and held thus:*
>
> *"77. After referring to Siddharam Satlingappa Mhetre and other judgments and observing that anticipatory bail can be granted only in exceptional circumstances, in* ***Jai Prakash Singh V. State of Bihar****, the Supreme Court held as under: (SCC p.386, para 19)*
>
> *"19. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefor. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroped in the crime and would*

*not misuse his liberty.(See **<u>D.K. Ganesh Babu v. P.T. Manokaran</u>**, **<u>State of Maharashtra V. Mohd. Sajid Husain Mohd. S. Husain and Union of India v. Padam Narain Aggarwal</u>**)*

Economic Offences

*78. Power under Section 438 CrPC being an extraordinary remedy, has to be exercised sparingly; more so, in cases of economic offences. Economic offences stand as a different class as they affect the economic fabric of the society. In **<u>Directorate of Enforcement V. Ashok Kumar Jain</u>**, it was held that in economic offences, the accused is not entitled to anticipatory bail.*

*** *** ***

83. Grant of anticipatory bail at the stage of investigation may frustrate the investigating agency in interrogating the accused and in collecting the useful information and also the materials which might have been concealed. Success in such interrogation would elude if the accused knows that he is protected by the order of the court. Grant of anticipatory bail, particularly in economic offences 649 (2012) 4 SCC 379 650 (2007) 4 SCC 434 651 (2008) 1 SCC 213 652 Supra at Footnote No.246 653 (1998) 2 SCC 105 would definitely hamper the effective investigation. Having regard to the materials said to have been collected by the respondent Enforcement Directorate and considering the stage of the investigation, we are of the view that it is not a fit case to grant anticipatory bail.

84. In a case of money-laundering where it involves many stages of "placement", "layering i.e. funds moved to other institutions to conceal origin" and "interrogation i.e. funds used to acquire various assets", it requires systematic and analysed investigation which would be of great advantage. *As held in Anil Sharma, success in such* *interrogation would elude if the accused knows that he is protected by a pre-arrest bail order. Section 438 CrPC is to be invoked only in exceptional cases where the case alleged is frivolous or groundless. In the case in hand, there are allegations of laundering the proceeds of the crime. The Enforcement Directorate claims to have certain specific inputs from various sources, including overseas banks. Letter rogatory is also said to have been issued and some response have been received by the Department. Having regard to the nature of allegations and the stage of the investigation, in our view, the investigating agency has to be given sufficient freedom in the process of investigation. Though we do not endorse the approach of the learned Single Judge in extracting the note produced by the Enforcement Directorate, we do not find any ground warranting interference with the impugned order. Considering the facts and circumstances of the case, in our view, grant of anticipatory bail to the appellant will hamper the investigation and this is not a fit case for exercise of discretion to grant anticipatory bail to the appellant."*

(emphasis supplied)

410. Therefore, as noted above, investigation in an economic offence, more so in case of money-laundering, requires a systematic approach. ***Further, it can never be the intention of the Parliament to exclude the operation of Section 45 of 2002 Act in the case of anticipatory bail, otherwise, it will create an unnecessary dichotomy between bail and anticipatory bail which not only will be irrational but also discriminatory and arbitrary. Thus, it is totally misconceived that the rigors of Section 45 of the 2002 Act will not apply in the case of anticipatory bail."***

43. It would also be relevant to note that in para 401 of the said judgment, the Hon'ble Supreme had observed that the Court need not go

deep into the merits of the case and is only required to place its view based on probability on the basis of reasonable material collected during investigation and 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.

> *"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 the 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."***

44. Thus, the rigors of Section 45 of the 2002 Act would also apply to an anticipatory bail and this Court after having considered the observations of the Hon'ble Supreme Court in the above-said judgment is of the opinion that the petitioner in the present case does not meet the twin test as contained in Section 45 of the PMLA to be granted the concession of anticipatory bail.

45. The argument raised on behalf of the petitioner to the effect that the ECIR was registered after the registration of the FIR No.11 dated 14.01.2021 and once the said FIR ultimately does not survive, the ECIR itself does not survive even in case subsequently four FIRs have been taken on record in the said ECIR and are being investigated, is misconceived. In addition to the observations made by the Division Bench of this Court in the order dated 26.02.2024 (which have been reproduced hereinabove), it would be relevant to note that a similar issue arose before the Delhi High Court in ***W.P.(Crl.) No.562/2023*** titled as ***Rajinder Singh Chadha Vs. Union of India and another***" and in the said case, the ECIR had been registered in the year 2019 after FIR No.16 had been registered on 24.01.2018 and the said FIR was compounded on the basis of settlement and even the subsequent FIR dated 12.03.2021 was also quashed on the basis of compromise and it was only in the year 2023 that another FIR was registered which was taken on record in the impugned ECIR of the year 2019 and an argument made on behalf of the accused to the same effect as has been sought to be made before this Court was raised, but the Delhi High Court after placing reliance upon the judgment of the Hon'ble Supreme Court in ***Vijay Madanlal Choudhary (supra)*** observed that the registration of a third FIR with respect to a "scheduled offence", even though much subsequent to the ECIR of the year 2019 gives jurisdiction to the E.D., by taking the said third FIR on record and thus, the said ECIR cannot be stated to be without a predicate offence and it was observed that ECIR could not be quashed as the registration of the subsequent FIR legitimizes the existence of the ECIR. The relevant portion of the said judgment is reproduced herein below:-

"26. For the purpose of adjudication of the present petition, the following dates are relevant:

*i. **24.01.2018** – FIR No. 16/2018 under Sections 420/406/120B of the IPC is registered at PS EOW against the accused persons, including the petitioner.*

*ii. **27.06.2019** – Impugned ECIR/09/HIU/2019 is registered by the departments on the basis of the scheduled offences in FIR No. 16/2018.*

*iii. **19.11.2019** – The learned Trial Court allows an application under Section 320 of the CrPC moved on behalf of the accused persons for compounding of FIR No. 16/2018 registered at PS EOW based on an amicable settlement arrived at between the parties and acquitted the accused persons.*

*iv. **12.03.2021** – FIR No. 49/2021 under Sections 420/406/120B of the IPC is registered at PS EOW against the accused persons, including the petitioner. Consequently, the said FIR is taken on record in the existing ECIR/09/HIU/2019. W.P.(CRL) 562/2023 Page 20 of 28*

*v. **18.11.2022** – The department carries out search and seizure in terms of Section 17(1) of the PMLA.*

*vi. **19.11.2022, 22.11.2022 and 09.12.2022** – The department carries out follow-up searches and seizures.*

*ix. **15.12.2022** – An application under Section 17(4) of the PMLA is moved by the department for retention of records and digital devices seized on 18.11.2022, 19.11.2022, 22.11.2022 and 09.12.2022.*

*x. **21.12.2022** – A show-cause notice under Section 8(1) of the PMLA was issued by the Adjudicating Authority to the petitioner, for filing of a written response to the department's application under Section 17(4) of the PMLA.*

*vii. **22.12.2022** – FIR No. 49/2021 is quashed by a coordinate bench of this Court.*

*viii. **10.07.2023** – FIR No. 55/2023 is registered at PS*

EOW under Sections 409/420/120B of the IPC and taken on record in impugned ECIR/09/HIU/2019.

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*29. **Hon'ble Supreme Court in Vijay Madanlal Choudhary (supra) has held that there is no corresponding provision to Section 154 of the CrPC in the PMLA requiring registration of an offence of money laundering. While observing the same, the Hon'ble Supreme Court held as under:***

"457....there is no need to formally register an ECIR, unlike registration of an FIR by the jurisdictional police in respect of cognizable offence under the ordinary law. There is force in the stand taken by the ED that ECIR is an internal document created by the department before initiating penal action or prosecution against the person involved with process or activity connected with proceeds of crime. Thus, ECIR is not a statutory document, nor there is any provision in 2002 Act requiring Authority referred to in Section 48 to record ECIR or to furnish copy thereof to the accused unlike Section 154 of the 1973 Code.…

(emphasis supplied)

xxx xxx xxx xxx

32. The stand taken by the department in the written submissions filed by learned Special Counsel is that 'The argument of the petitioner that FIR 55/2023 cannot be added to the existing ECIR, and ED should record an additional ECIR is against the scheme of the PMLA Act. In this regard it is submitted that the entire PMLA Act does not even mention the term „ECIR‟, that ECIR is an internal departmental document for administrative purposes'. In view thereof, as stated hereinbefore, the third FIR in the present case relates to the commission of a 'scheduled offence' in respect of the complainant therein, but for the purposes of an investigation *under the PMLA, it would be the part of the same ECIR which related to investigation pertaining to 'proceeds of crime' under the PMLA in the previous FIRs. Needless to state, the Hon'ble Supreme Court, in Vijay Madanlal Choudhary (supra), has categorically held that the offence under PMLA is an independent offence.*

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*33. **The proposition of law laid down in judicial precedents relied upon by learned Senior Counsel for the petitioner is not in dispute. In the said cases, the 'scheduled offence' was quashed or compounded in all respects. In the present case, 'scheduled offences' by way of the third FIR still exist. It is pertinent to note that even in an FIR being investigated by the local police involving multiple complainants, compounding with some of them will not be a ground for quashing of the said FIR. However, partial compounding/quashing is permissible.***

*34. In so far as the submission of learned Senior Counsel with respect to the issue of the 'jurisdictional fact' is concerned, **it is noted that during the pendency of the impugned ECIR, the registration of a third FIR with respect to 'scheduled offences; gives jurisdiction to the department to investigate by taking the said third FIR on record.** The authorities cited by learned Senior Counsel for the petitioner are distinguishable with respect to the facts of the present cases. **For the sake of repetition, it is noted that after the third FIR was taken on record, the impugned ECIR cannot be stated to be without a predicate offence***

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*36. In view of the aforesaid discussion and in the peculiar facts and circumstances of the case, ECIR/09/HIU/2019 dated 27.06.2019 cannot be quashed **in view of registration of FIR No. 55/2023 dated 10.07.2023 under Sections 409/420/120B***

of the IPC at PS EOW as this would constitute 'scheduled offences' legitimizing the existence of the said ECIR."

A perusal of the said judgment would show that a reference had been made to para 457 of the judgment of ***Vijay Madanlal Choudhary (supra)***, in which, it was specifically recorded that there is no need to formally register an ECIR as the ECIR is an internal document created by the department before initiating penal action against a person involved in the process or activity connected with proceeds of crime and thus, ECIR is not a statutory document nor there is any provision in 2002 Act to furnish copy thereof to the accused and is unlike an FIR which is required, to be registered by the jurisdictional police. It would be relevant to note that in the present case, the complaint on the basis of which FIRs No.10 and 11 were registered after the matter had been remanded twice in the proceedings under Section 156(3) was withdrawn on 09.02.2024 and during the interregnum period, the above said four FIRs with respect to the illegalities committed by the petitioner and the Mahira Group of companies and its Directors etc. were registered and were taken on record of the present ECIR thus, legitimising the existence of the present ECIR.

46. Even the argument made on behalf of the petitioner to the effect that the petitioner is not an accused in three of the four surviving FIRs and thus, the ECIR could not survive against him also deserves to be rejected, inasmuch as, it is not in dispute that as far as FIR No.152 dated 01.06.2023 is concerned, the petitioner is still an accused and moreover from the material/averments which have been mentioned herein above the petitioner is prima facie involved in the offence of money laundering, as defined under

Section 3, as the said provision is wide enough to encompass the actions for which the petitioner has been accused by the respondent, regarding which sufficient material has also been produced. Section 3 of the Act is reproduced hereinbelow: -

> ***"3. Offence of money-laundering****. Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the [proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming] it as untainted property shall be guilty of offence of money-laundering.*
>
> *[Explanation.--For the removal of doubts, it is hereby clarified that,--*
>
> *(i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:--*
>
> *(a) concealment; or*
>
> *(b) possession; or*
>
> *(c) acquisition; or*
>
> *(d) use; or*
>
> *(e) projecting as untainted property; or*
>
> *(f) claiming as untainted property,*
>
> *in any manner whatsoever;*
>
> *(ii) 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.]"

47. Further the definition of proceeds of crime, as given in para 2(u), is wide enough to fully cover the actions of the petitioner which have been alleged by the respondents. Section 2(u) of the Act is reproduced hereinbelow: -

> *"2(u) "proceeds of crime" means any property derived or obtained, directly or indirectly,* ***by any person as a result of criminal activity relating to a scheduled offence or the value of any such property*** *[or where such property is taken or held outside the country, then the property equivalent in value held within the country] [or abroad];*
>
> *[Explanation.--For the removal of doubts, it is hereby clarified that "proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence;]"*

48. Moreover, the Hon'ble Supreme Court in ***Pavana Dibbur's case (supra)*** has observed that it is not necessary that a person against whom the offence under Section 3 of the PMLA is alleged, must have been shown as an accused in the scheduled offence and thus, a person who is not an accused in the predicate offence can also be tried under the PMLA. The said proposition of law has been exemplified by the Hon'ble Supreme Court by observing that in case the offence under Sections 384 to 389 IPC, relating to extortion, which is a scheduled offence, is committed, then, a person who has committed the crime of extortion would be accused in the FIR registered under Sections 384 to 389 IPC, but the person who is unconnected with the

offence of extortion but has assisted the said accused in the concealment of the proceeds of extortion could be held guilty of the offence of money laundering. Additionally, it would be relevant to note that the investigation in the present case is still continuing and there is possibility of collection of further material against the petitioner with respect to the offence in question. The Special Judge vide order dated 20.05.2024 (Annexure P-25) had rightly dismissed the anticipatory bail application filed by the petitioner and the said order deserves to be upheld.

49. Keeping in view the above-said facts and circumstances and the law laid down in the above-said judgments, this Court is of the opinion that the petitioner does not deserve the concession of anticipatory bail and accordingly, the present petition is dismissed.

50. It is made clear that the observations made in the present order are for the purpose of adjudicating the present anticipatory bail and should not be considered as a final expression of opinion on the merits of the case and the trial Court would proceed independently in accordance with law and adjudicate the case of the petitioner on the basis of the evidence and material produced before it.

51. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

May 28, 2024 **(VIKAS BAHL)**
naresh.k/pawan/davinder **JUDGE**

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No