

THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-57266-2023 (O&M)
Reserved on : 19.03.2024
Pronounced on: 04.04.2024

Surjeet Kumar BansalPetitioner

Versus

Central Bureau of Investigation and anotherRespondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by : Mr. Vikram Chaudhri, Senior Advocate with
Mr. Keshavam Chaudhri, Mr. Digvijay Singh and
Mr. Rishab Tewari, Advocates for the petitioner.

Mr. Gagandeep S. Wasu, Spl. Public Prosecutor
for respondent No.1-CBI.

Mr. Shobhit Phutela, Sr. Panel Counsel, UOI with
Ms. Bhawna Gandhi & Mr. Vivek Singh, Advocates
for respondent No.2-ED.

MANJARI NEHRU KAUL, J.

1. The petitioner has filed the instant petition under Section 439 of the Cr.P.C. for calling the records of FIR RCBDI/2021/E/0010 dated 29.12.2021 registered under Sections 406, 420, 467, 468, 471 and 120 B of the IPC and Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 by CBI BSFB, New Delhi as well as ECIR CDZO-1/01/2022 dated 06.01.2022 under Sections 3 and 4 of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as 'PMLA') and upon perusal thereof for grant of regular bail to the petitioner in PMLA case arising out of ECIR CDZO-1/01/2022 dated 06.01.2022 under Sections 3 and 4 of the PMLA.

2. Learned senior counsel has filed written arguments which are taken on record subject to all just exceptions.

Further, submissions made by learned senior counsel for the petitioner are as follows:-

2 (a). That the arrest of the petitioner was carried out in flagrant violation of the mandatory provisions outlined in Section 19 of the PMLA. Given the absence of any incriminating material in the possession of the Investigating Officer indicating the petitioner's guilt under Section 4 of the PMLA, there was no legal basis for his arrest. Upon scrutiny of the Grounds of Arrest (Annexure P-10), it is evident that the Arresting Officer lacked any substantial material to conclude the guilt of the petitioner of an offence under Section 4 of the PMLA. Instead, the “reasons to believe” as recorded in the Grounds of Arrest are founded merely on the subjective views and beliefs of the Investigating Officer, rather than any cogent evidence pointing towards the guilt of the petitioner.

2 (b). That the requirement of the “necessity to arrest” is indispensable for apprehending a person under the PMLA. However, neither the Grounds of Arrest nor the remand application (Annexure P-11) submitted before the learned Illaqa Magistrate demonstrate any such necessity. Mere non-cooperation or failure to comply with the summons issued by the Arresting Officer does not warrant arrest under any circumstances. In case of non-cooperation, Section 63 of the PMLA would be applicable, and not Section 19(1) of the PMLA.

2 (c). That despite glaring irregularities while arresting the petitioner, learned Magistrate functioned merely as a post office for the

prosecution by mechanically issuing the remand order. Courts of law are entrusted with safeguarding individual rights and must ensure strict compliance with the legislative provisions delineated in Section 19 of the PMLA to prevent the abuse of powers of arrest.

2 (d). That the petitioner has not been named as an accused in the FIR registered by respondent No.1-Central Bureau of Investigation (hereinafter referred to as 'CBI'), to date. Therefore, without being implicated in the predicate offence, proceedings under the PMLA could not be initiated against him in the absence of evidence suggesting his guilt. Furthermore, the Grounds of Arrest (Annexure P-10) contain glaring errors, including a false statement asserting that the FIR of the predicate offences has been registered against M/s Parabolic Drugs Limited (hereinafter referred to as 'accused company'), Vineet Gupta and "the petitioner" which stands contradicted by the absence of the petitioner's name in the list of accused/suspects in the FIR (Annexure P-1).

2 (e). That the primary accusations against the petitioner encompass:

2 (e) (i). That the petitioner and his firm, serving as a statutory auditor of the accused company, issued various certificates that facilitated the extension of loans/credit facilities to the accused company by a consortium of banks;

2 (e) (ii). That the petitioner intentionally failed to disclose in the audit report the fact that bank funds were being illicitly transferred and diverted through the utilisation of shell companies.

2 (e) (iii). That the petitioner provided assistance by issuing false Chartered Accountant (CA) certificates to accused company, which were used to obtain loans from a consortium of banks.

2 (e) (iv). That the petitioner wilfully omitted to report the diversion layering and siphoning off, of proceeds of crime through Parabolic Group Companies and various shell entities in his audit reports.

2 (f). That the aforestated accusations are devoid of any merit and are based on a deliberate misunderstanding of the role and responsibilities of the CA/statutory auditor. When acting as a statutory auditor of a company, the CA is tasked with auditing the accounts of the company based on information and material provided by the management and other officials of the company; audit report is subsequently prepared by the CA/statutory auditor who is obligated to express a true and fair view of the status of the company based on the provided information and documents. In the present case, the petitioner thus, just fulfilled his duty. Furthermore, being just a statutory auditor, the petitioner, was not involved in the day to day operations of the accused company nor did he have any control over them. Therefore, the notion that he, as a statutory auditor, assisted in the generation of proceeds of crime simply by providing audit reports, was unfounded as whatever the petitioner did was on the basis of the material supplied to him by the accused company.

2 (g). That the grant of credit facilities by the banks is regulated by RBI circulars, notifications, and there own lending policies established under various schemes. Therefore, it cannot be said that the

loans were solely extended based on the certificates issued by the statutory auditor i.e. the petitioner, in the instant case.

2 (h). That there was no obligation to report any diversion, layering, or siphoning off of proceeds of crime into the shell entities in the audit report. The petitioner disclosed all financial transactions in the audit report and even as per the Grounds of Arrest there are no allegations that any information provided in the audit report submitted by the petitioner was inaccurate or misleading. Additionally, there are no accusations against the petitioner regarding benefitting from alleged illicit funds. Thus, it is evident that the petitioner did not receive any proceeds of crime beyond his professional fees from the accused company.

2 (i). That the petitioner's family trust "S.K. Bansal Trust" held shares in "Parabolic Infrastructure Pvt. Ltd.", a sister concern of the accused company. However, prior to the enactment of Section 141(3)(d) of the Companies Act, 2013, which came into effect on 26.03.2014, there were no restrictions on obtaining share holdings in an entity related to a company where one was serving as a statutory auditor.

2 (j). That in the petition i.e. CWP-3210-2022 filed by the primary accused in the FIR pertaining to the predicate offence (Annexure P-1), a Division Bench of this Court, vide the order dated 26.02.2024, has stayed further proceedings in the impugned FIR. Consequently, the stay on proceedings under the FIR of the predicate offence, which serves as the basis for initiation of proceedings by respondent No.1-CBI would essentially put on hold the proceedings initiated under the PMLA by respondent No.2-Enforcement Directorate

(hereinafter referred to as 'ED'). During the period of stay of proceedings in the FIR pertaining to the predicate offence, respondent No.2-ED cannot proceed further and must await the outcome of such proceedings before initiating any further action under the PMLA. If the predicate offence is ultimately quashed by this Court, then the question of any offence under the PMLA; in other words if the foundation is removed, the super structure would necessarily collapse. However, if the prayer for quashing is declined, then respondent No.2-ED would be free to proceed further. Therefore, even the proceedings under the PMLA should remain stayed awaiting the final outcome of the aforementioned writ petition. Consequently, during such a period, prolonged incarceration of the petitioner would be futile and he deserves to be granted the concession of bail. In support, learned senior counsel has placed reliance upon ***Vijay Madanlal Choudhary and others Vs. Union of India : 2022 SCC Online SC 929; B. Shanmugam Vs. Karthik Dasari, Deputy Director of Enforcement : 2022 SCC Online Mad 4417; Mantri Developers Pvt. Ltd. and others Vs. Directorate of Enforcement and another (Writ Petition No.20713/2022 decided on 14.12.2022) and WP(Crl) No.9/2024 titled as 'Anil Kumar Aggarwal Vs. Enforcement Directorate through its Assistant Director, Jammu' decided on 15.03.2024 (J&K HC).***

2 (k). That despite the fact that vide order dated 07.12.2023 the arrest of the principal accused has been declared void and they have been released from judicial custody by this Court in CWP-24787-2023 and CWP-25048-2023, albeit due to lapses on the part of respondent No.2-ED, the petitioner, who played no role in the alleged offence, has

been in custody for more than five months having been arrested on 27.10.2023. Surprisingly, respondent No.2-ED took nearly three months to effectively challenge the bail granted to the principal accused before Hon'ble the Supreme Court, indicating potential clandestine activities where the petitioner is being made to unjustly suffer.

Petitioner's arguments on medical grounds:

2 (l). That in addition to the merits of the case, the petitioner is also suffering from a myriad of ailments in his advanced age of 74 years. In support, learned senior counsel has drawn the attention of this Court to the medical record of the petitioner.

2 (m). That the proviso of Section 45 of the PMLA carves out an exception to the rigours of twin conditions under Section 45 of the PMLA-(1) the determination of whether the petitioner would fall “sick and infirm”, need not necessarily entail an inquiry into whether the ailments petitioner is suffering from are life threatening or not. Learned counsel submits that no doubt provisions provide medical facilities, however, such facilities cannot be reasonably compared with facilities available at a private hospital. The general medical set up of the jail would not be adequate to treat the petitioner who is suffering from a range of serious illnesses and requires regular follow up. In support, learned counsel has placed reliance upon ***Devki Nandan Garg Vs. Directorate of Enforcement : 2022 SCC OnLine Del 3086.***

2 (n). That additionally, aside from the aforementioned submissions, the petitioner's wife is battling breast cancer and has undergone three cycles of chemotherapy. She is scheduled for mastectomy and requires support and care during this challenging time

for her healthy recovery. Moreover, considering that there is no risk of the petitioner absconding the process of law, and he is willing to comply with any stringent conditions imposed, he be extended the concession of bail.

3. **Submissions made by learned counsel for respondent**

No.1-CBI are as follows:-

3 (a). The respondent No.1-CBI has opposed the prayer of the learned senior counsel for the petitioner by highlighting the grave and serious allegations against him of facilitating a financial fraud amounting to Rs.1626.7 crores, however, the respondent-CBI has acknowledged that the name of the petitioner does not figure in the column of the names of the accused/suspected persons as also that the proceedings related to the predicate offence have been stayed vide order dated 26.02.2024 passed in CWP-3210-2022.

4. Learned counsel for respondent No.2-ED has filed written submissions which are taken on record subject to all just exceptions.

Further, submissions made by learned counsel for respondent No.2-ED:-

4 (a). That the petitioner was duly arrested by the Arresting Officer in accordance with law, with no violation of Section 19 of the PMLA in the instant case; the guilt of the petitioner is evident from the material collected by the Arresting Officer, indicating his active involvement in concealing fund diversions and other deliberate shortcomings in the audit reports. The grounds for suspecting the guilt

of the petitioner were duly recorded in the Grounds of Arrest, which in turn were promptly provided to the petitioner. At the time of the arresting a person, there is no obligation to furnish the accused person with evidence in the possession of the Arresting Officer; the Arresting Officer is only required to justify the arrest based on available evidence, a requirement that has been fully complied with, in this case.

4 (b). That upon a thorough examination of the Grounds of Arrest, it is evident that the petitioner is guilty of offences under Section 4 of the PMLA. Despite receiving summons for joining investigation, the petitioner failed to appear and due to his non-cooperation, his arrest was necessitated. These facts are clearly outlined in the Grounds of Arrest and the remand application, justifying the detention of the petitioner by the respondent-ED, and hence, the remand order cannot be faulted with.

4 (b). It is well established principle of law that a person accused of an offence under the PMLA need not be named as an accused in the FIR and the predicate offence, therefore, the petitioner cannot benefit from the fact that he was not named as an accused in the FIR registered by the respondent-CBI.

4 (c). That the investigation conducted so far has revealed the active involvement of the petitioner in aiding other accused persons in generating proceeds of crime through various means, including layering, accusations, concealment and utilisation of ill-gotten funds. Additionally, the petitioner actively assisted the accused company in converting loan funds from liabilities to assets through circuitous transactions involving Parabolic Group of Companies. It was on

account of the complicity of the petitioner that the banks were defrauded to the tune of Rs.1626.7 crores.

4 (d). That it is inconceivable for a statutory auditor, affiliated with the accused company since the year 1996, to remain ignorant of the true financial health and status of the company. Despite being aware of illicit transactions and fund diversions, the petitioner allegedly omitted to disclose the fact that bank funds were being layered and siphoned off through shell companies in audit reports. Additionally, the petitioner issued fraudulent CA certificates without physically verifying records, leading to the inflation of the accused company's books and consequent huge bank fraud amounting to Rs.1626.7 crores. This is clearly indicative of the active involvement of the petitioner in obtaining the proceeds of crime through deceptive means, further routed through various companies including shell companies to obtain additional loans from banks.

4 (e). That the prosecution complaint delineates the commission of the alleged offence by the petitioner under Section 4 of the PMLA, implying that due to the gravity of the crime committed, the petitioner is not entitled to any relief.

4 (f). That the petitioner has also failed to satisfy the mandatory criteria laid down in Section 45 of the PMLA as he could not prima facie prove his innocence in the alleged offences or that he was unlikely not to commit any offence while on bail. Moreover, in view of the investigation still underway in the present case, and the high probability and risk of tampering with evidence, precludes him from being eligible for the grant of bail, especially at this juncture.

4 (g). That the medical condition of the petitioner does not qualify for relief under proviso to Section 45 of the PMLA as his ailments, as confirmed by a Medical Board from PGIMER, Chandigarh do not pose life threatening risk. The jail authorities are providing him with adequate medical care, and his condition can be managed with oral medication.

4 (h). That the grant of bail to the Directors and Promoters of the accused company was based on technicalities, not on merits, thus, the petitioner cannot claim parity with them nor can their bail be a consideration for deciding the instant petition.

4 (i). That the stay of investigation into the predicate offence does not affect proceedings under the PMLA, as both are distinct and independent. Offences under Section 4 of the PMLA are stand alone offences and are unaffected by the stay on investigation in the predicate offence. The order of stay cannot extend to PMLA proceedings, as respondent No.2-ED was not party to the proceedings and the investigation into the predicate offences did not refer to any proceedings under the PMLA. In support, learned counsel has placed reliance upon ***Dr. Manik Bhattacharya Vs. Ramesh Malik and others : 2022 SCC Online SC 1465 (SC); Sikandar Singh Vs. Directorate of Enforcement and another (CRM-M-51250-2023 decided on 26.02.2024); Suresh Gupta Vs. Government of India, Criminal Petition No.5196 of 2019 decided on 23.02.2022 and Smt. Soodamani Dorai Vs. Joint Director of Enforcement Directorate, Writ Petition No.8383 and 8384 of 2013 decided on 04.10.2018.***

4 (j). That while considering the plea of an accused for grant of bail under Section 439 of the Cr.P.C. the Courts are precluded from delving into appreciation and detailed examination of the evidence and other material collected by the investigating agency; a prayer for bail under Section 439 of the Cr.P.C. hinges on a prima facie case, and not an exhaustive analysis of the evidence collected by the investigating agency.

4 (k). That the petitioner's contention does not meet the parameters laid down by Hon'ble the Supreme Court and various High Courts to avail the benefit of proviso to Section 45 of the PMLA.

4 (l). That in the medical report dated 06.03.2024 by the Medical Board constituted by PGIMER, Chandigarh, it has been categorically observed that the petitioner is not suffering from any life threatening diseases and his ailments can be managed with medication and regular follow ups. Moreover, as evident from the medical record of the petitioner, the petitioner is being taken for medical check up as and when required. Reliance has been placed on ***Kewal Krishan Kumar Vs. Enforcement Directorate : 2023 SCC OnLine Del 1547.***

4 (m). That the wife of the petitioner admittedly is undergoing treatment for cancer, however, the petitioner cannot be granted bail on the said ground as she is being taken care of by the doctors and her family members.

Findings of this Court

5. I have heard learned counsel for the parties and perused the relevant material on record.

6. The petitioner initially sought the concession of bail on medical grounds stating that he was a 74 year old man suffering from various life threatening diseases, necessitating constant medical attention and monitoring that he purportedly lacked access to, within the confines of the jail. Learned senior counsel for the petitioner argued that given the severity of the following “life threatening diseases”, the case of the petitioner qualified for bail under the proviso to Section 45 of the PMLA:-

Sr. No.	Diseases
1.	Cervical Compressive Myelopath
2.	NAFLD (Non-Alcoholic Fatty Liver Disease)
3.	Subclinical Hypothyroidism
4.	Hashimoto's Thyroiditis.
5.	Senile Gynecomastia
6.	Accelerated Hypertension
7.	Grade II Prostatomegaly

7. Taking note of the aforesaid submissions made by learned senior counsel for the petitioner, this Court vide order dated 12.02.2024 requested the PGIMER, Chandigarh to constitute a Medical Board to evaluate the health condition of the petitioner and send a report accordingly. In compliance of the order of this Court, the Medical Board constituted by the PGIMER, Chandigarh sent the following report. Relevant portion of the report is reproduced hereinbelow:-

“Impression: As per the assessment and the complaints given by the patient, the medical board is of the opinion that the patient is suffering from multiple diseases as Diabetes mellitus with neuropathy, Hypertension, Benign prostate hyperplasia, hypothyroidism, cervical spondylitis with spondylotic myelopathy. The mentioned diseases are not life threatening and needs regular treatment, already optimized by the panel of doctors and requires follow-up.

In wake of two episodes of loss of consciousness in the past one year and complaints of chest pain. Cardiology opinion was sought and Computed Tomography Coronary Angiography was advised. Computed Tomography Coronary Angiography could not be done due to high calcium score. There is suspicion of Coronary Artery Disease which can be life threatening. This requires further evaluation with Invasive Contrast Angiography for which the patient did not give his consent.”

8. Thus, as per the aforesaid report though the petitioner was stated to be suffering from multiple ailments, however, none of them were deemed life threatening by the Medical Board. It had further been mentioned by the Board that there was suspicion of coronary artery disease which necessitated further evaluation with invasive contrast angiography, however, the petitioner had not given his consent for it. On 22.02.2024 when, this case was taken up for hearing by this Court, the daughter and nephew of the petitioner appeared in person and stated that the petitioner had declined to give consent for invasive contrast angiography due to the absence of his family members; the petitioner would, however, be willing to undergo the said test if one of his family members was permitted to remain present with him during the angiography. Accordingly, respondent No.2-ED was directed vide order dated 22.02.2024 to get an appointment in the Cardio Department of PGIMER, Chandigarh and get invasive contrast angiography of the petitioner done in the presence of one of his family members. In compliance of the above order, angiography was carried upon the petitioner. The doctors' opinion affirmed that the petitioner's coronary arteries showed *insignificant blockage and his echo cardiography displayed normal heart function*. Underlying insignificant heart

condition, diagnosed through angiography, was deemed manageable with medication and did not require any surgical intervention. The relevant portion of the report of the Medical Board is reproduced hereinbelow:-

“.....He is known case of diabetes mellitus and hypertension. Invasive coronary angiography performed on 4th March 2024 showed insignificant blockage of coronary arteries (Detailed report and angiography CD give to the patient), which needs the medical treatment and does not require any operation like angioplasty or bypass surgery. His echocardiography showed normal heart functions. He has been discharged on 5th March 2024 in satisfactory condition. The underlying, insignificant heart disease as diagnosed by angiography is not life threatening at present and to be managed with medicines which has been prescribed to him.”

9. Given the above findings in the report submitted by the PGIMER, Chandigarh, it is evident that the petitioner's health condition does not post any life threatening risk and can be managed with medication and regular check ups. Moreover, the petitioner is receiving adequate medical care at GMCH, Sector 32, Chandigarh, a premier Government Medical Institute, as and when required. In the circumstances, the case of the petitioner would not fall under the proviso to Section 45 of the PMLA.

10. The first ground raised by the learned senior counsel for the petitioner is that his arrest violates Section 19 of the PMLA. However, upon meticulous examination, this Court does not find any merit in the said assertion. An analysis of the Grounds of Arrest (Annexure P-10) elucidates that the Arresting Officer explicitly delineated that, based on the investigation, the directors and promoters of the accused company, with the active aid and assistance of the

petitioner, perpetrated a bank fraud through forged documents. It is documented that the petitioner aided the directors and promoters of the accused company, in altering the loan funds from liabilities to assets via circuitous transactions involving Parabolic Group of Companies. Additionally, the petitioner deliberately omitted to disclose the funneling of bank funds through shell companies in his audit report. Furthermore, the investigation allegedly uncovered that the petitioner and his accountancy company namely, 'S.K. Bansal and Company', knowingly facilitated the generation and acquisition of proceeds of crime by co-accused Pranav Gupta and Vineet Gupta. The petitioner issued false CA certificates to the accused company, facilitating loans from consortium of banks and wilfully omitted to report the diversion, layering, and siphoning off of proceeds of crime through Parabolic Group of Companies and various shell entities in his audit report. Thus, it is evident that the Arresting Officer comprehensively outlined the involvement of the petitioner in the crime in question, elucidating the modus operandi, to apprise him of the accusations against him.

11. Further, it has been explicitly stated that, based on the material in possession, the Arresting Officer had valid reasons to believe that the petitioner is guilty of money laundering under Sections 3 and 4 of the PMLA, as the petitioner was directly involved in criminal activities and process related to money laundering, including generation, acquisition, possession, and proceeds of crime. Substantial documentary evidence was collected during investigation and searches conducted under Section 17 of the PMLA. Therefore, the Grounds of Arrest (Annexure P-10) provided a comprehensive overview of the case

and the accusations against the petitioner, and the belief regarding the petitioner's guilt was founded on the material collected during the course of investigation. The law does not mandate the Arresting Officer to enumerate such material in possession in the Grounds of Arrest or furnish a copy thereof to the arrestee. The necessity for the petitioner's arrest is further evident from the Grounds of Arrest, wherein it was categorically stated that his custody was required to trace the money trail and locate the entire proceeds of crime concealed through various channels, within the petitioner's exclusive knowledge. Moreover, there was a foreseeable risk of proceeds of crime and evidence being tampered with or transferred. Additionally, it is a matter of record that the petitioner neither appeared nor participated in the investigation despite issuance of summons on 20.07.2022, thereby justifying his arrest to effectively conclude the investigation. Furthermore, it is not even the case of the petitioner that the Grounds of Arrest were not supplied to him much less within reasonable time. Hence, under these circumstances, neither the arrest of the petitioner can be deemed a violation of Section 19 of the PMLA nor can the remand order be regarded as illegal or mechanical in nature.

12. It is documented and conceded by the learned counsel for respondent No.1-CBI that the petitioner is not implicated in the FIR related to the scheduled offence, however, it would not preclude respondent No.2-ED from initiating proceedings under the PMLA. It is well settled law that a person accused of an offence under Section 3 of the PMLA need not necessarily be accused of the scheduled offence.

13. It would be relevant to reproduce the relevant portion of the prosecution complaint dated 26.12.2023 wherein role of the petitioner has been detailed:-

“13.4 Role of Surjeet Kumar Bansal (Accused No.4) in generation, layering, placement, integration and utilization of Proceeds of Crime:

i. During the course of investigation, it has been revealed that accused Surjeet Kumar Bansal was actively involved in assisting the Promoter Directors of PDL in the commission of offence of money laundering by way of

a) That, he audited the books of accounts of PDL and its Group Companies in the capacity of Independent Auditor without disclosing the fact that S.K Bansal Family Trust was holding shares of one of the Group Company of PDL namely M/s. Parabolic Infrastructure Private Limited, as per Annual Return AGM dated 28.09.2006.

b) That he had issued CA Certificates without physically verifying the records and books of account and stock of the M/s. PDL.

c) That he was aware that Promoter Directors of the Company were indulging in malpractices of siphoning off the loan amounts but the same were not pointed out in the audit reports because he was told not to mention the same in the audit reports by Promoter Directors of M/s. PDL.

d) As a statutory auditor of PDL, it was binding upon S.K. Bansal to point out the major discrepancies/ apparent dubious transactions in his report, however, he turned blind eye to the same and continued to issue certificates on the basis of which the lender Banks continued to issue fresh loans or enhance existing limits granted to PDL. Some of the major questionable transactions which were not commented upon/ pointed out by S.K. Bansal in the Audit Reports are as below: -

- PDL had showed debt of Rs. 63 Crores towards CMSL. However, the debt was written off in the year 2013-14 without offering any reasonable rationale. It is also pertinent to note here that PDL had filed a civil suit against CMSL for the recovery of Rs. 2.65 Crores only and agreed to settle for payment of Rs. 2.40 Crores and there was no note from Statutory auditor as to when Rs. 63 Crores were receivables from CMSL and as to why suit for only Rs. 2.65 Crore was filed.*

- *It was within the knowledge of Statutory Auditor that PNG was non-functional and did not had the capacity to offer corporate guarantee to PDL. However, the auditor in his audit report for FY 2019-20 reported that PNG had stood as Corporate Guarantor for PDL to the extent of Rs. 943.75 Crores.*
- *Devaluation of Stock of Work In Progress (WIP) of PDL-*

While the Stock of WIP was reported at Rs. 302.21 Crores on 31.03.2015, it dramatically decreased to Rs. 32.22 Crores as on 31.03.16. The absence of quantitative details in the balance sheet and the unavailability of stock statements after 31.01.2015 raised suspicion as depicted in the Table No. 8 above, which is reproduced below:-

<i>S. No.</i>	<i>Particulars</i>	<i>Amt (Rs in Crores)</i>
<i>1.</i>	<i>Opening Stock as on 31.03.15</i>	<i>315.38</i>
	<i>i. Stock of WIP</i>	<i>302.21</i>
	<i>ii. Raw Material</i>	<i>11.79</i>
	<i>iii. Store and Spares</i>	<i>0.438</i>
	<i>iv. Inventory in Finished Goods</i>	<i>0.932</i>
<i>2.</i>	<i>Amt. of Purchases of Raw material during 2015-16</i>	<i>53.17</i>
<i>3.</i>	<i>Amt. of Sales during the year</i>	<i>(83.10)</i>
<i>4.</i>	<i>Closing Stock Supposed to be left as on 31.03.2016</i>	<i>285.45</i>
<i>5.</i>	<i>Closing Stock shown by the company as on 31.03.16</i>	<i>40.10</i>
	<i>vii. Stock of WIP</i>	<i>32.22</i>
	<i>viii. Raw Material</i>	<i>7.26</i>
	<i>ix. Inventory in Finished Goods</i>	<i>0.61</i>

- *That, it is also noteworthy to mention that during 2015-16, the sales of the Company were very less, as such, it cannot be claimed by the Company that stock had been sold, rather it was majorly devalued in 2015-16 by more than 85%.*
- *That, the above conduct of the Directors of the Company in connivance with Statutory Auditor (Accused S.K Bansal) also strengthens the possibility that actual purchase was not made only loan amount was siphoned through bogus*

expenditures. Over a period of time, over-valuation of Stock was reflected in the books of the Company and in the Financial Year 2015-16, it was sharply reduced by 85%.

- *That, the Statutory Auditor by not disclosing the correct facts and aspects in the books of accounts enabled the Company to enhance its credit facilities with the sole intention to divert the same thereby causing wrongful loss to consortium banks and others.*

ii. That, the company PDL has applied for Corporate Debt Restructuring under the CDR system which was approved vide XCR NO. 1192/2012-13 letter dated 23.03.2013 and Master Restructuring Agreement has been executed dated 28.8.2013. One of the terms of the Restructuring package as sanctioned to the company under CDR, required the promoters to infuse funds in the company in the form of instruments (equity and convertible debt). In order to enable the company to comply the aforesaid terms of the restructuring package and issue /allot the shares to promoters, the authorized capital of the company is required to be increased.

In this regard, the board of Directors in the meeting held on 10.08.2013 has approved the enhancement of Authorized Share Capital of the company from 62 Crores to 72 Crores divided into 7,20,000/- equity shares of Rs. 10 each.

On perusal of the Balance Sheet of F.Y. 2012-13, 2013-14 & 2014-15 of PDL, it has been found that there is no increase in the Share capital of the Company which is as follows:-

- *Share capital in the F.Y. 2012-13 was Rs. 61.89 Crores*
- *Share capital in the F.Y 2013-14 was Rs. 61.89 Crore.*
- *Share capital in the F.Y 2014-15 was Rs. 61.89 Crore.*

The Statutory Auditor of the company has never informed in the forthcoming Financial Years that the company has not induced capital through share application money.

iii. On the behest of State Bank of India, Stock Audit of PDL was conducted by Independent Auditor M/s. Parveen Singia & Associates, Chartered Accountants wherein the said Auditor has pointed out certain observations/

discrepancies and on the basis of which, the State Bank of India has reduced the Drawing power of Cash Credit Loan by Rs. 50 Crores. The accused (S.K Bansal) Statutory Auditor of PDL had never pointed out/ reported any such discrepancy in the Audit Reports of PDL for any Financial Year.

iv. During the course of his statement dated 28.10.2023, recorded under the provisions of PMLA, 2002, S.K. Bansal, had stated that he was getting remuneration of Rs. 3-4 lakhs per annum and that beside this he had received audit fee from the group companies of PDL for conducting the audits of the said companies. In this regard, it is pertinent to mention here that being Statutory Auditor of the company, S.K. Bansal should have received audit fee from the company, however, he had also received annual remuneration as well, which contradicts the claim of being independent from the company, which is a prerequisite for being the Statutory Auditor of a company. In essence, it has resulted in him betraying the very essence of independence mandated for auditing financial accounts. This blatant conflict of interest raises serious questions about the credibility of the audit process. It is quite apparent that S.K. Bansal, even though was Statutory Auditor of the company, was entangled in a web of financial benefits emanating from the very entity supposed to be under impartial examination. In view of the same, it is quite apparent that S. K. Bansal had acted at the whims and fancies of the Promoter Directors of M/s PDL, assisting them in ultimately defrauding Banks to the tune of Hundreds of Crores.

v. Accused Surjeet Kumar Bansal, thus, involved in money laundering as defined under Section 3 r/w 4 of the PMLA, 2002. Thus, he actively involved himself in the offence of money laundering and based on the investigation conducted he was arrested on 28.10.2023 under the provisions of Section 19 of the PMLA, 2002 for his role in money laundering in the present case. He, therefore, was an active participant in assisting Promoter Directors of PDL in generation of proceeds of crime and actually involved in the laundering of the said proceeds of crime as defined under Section 3 of PMLA, 2002.

vi. Surjeet Kumar Bansal has knowingly assisted and was actually involved, in collusion with other accused persons, in generation of Proceeds of Crime [as a result of criminal activity related to the Scheduled Offence as defined in section 2(1)(u) of PMLA) in the form of movable/ immovable properties [as defined in Section 2(1)(v) of PMLA). Thus, it is evident that Surjeet Kumar Bansal had indulged in generation, layering, acquisition, concealment and utilization of proceeds of crime by his

active involvement in the criminal activities related to the scheduled offences defined u/s 2(1)(x) & 2(1)(y) of PMLA and; thus, committed the offence of money laundering as defined u/s 3 of PMLA which is punishable u/s 4 of PMLA.”

14. Upon careful examination of the above allegations against the petitioner, it is evident at first glance that he was prima facie actively involved in the crime in question. As the statutory director of the accused company, the petitioner and his firm failed to red flag the huge diversion and siphoning off, of funds. Instead he purportedly aided the accused company in obtaining loans by issuing certificates that did not accurately depict its financial status. Allegedly, these certificates and audit reports misrepresented the true financial position and were intentionally issued by the petitioner to facilitate loan procurement by the accused company. It is the specific case of respondent No.2-ED that without these certificates, the banks would not have extended loans of such magnitude to the accused company. The petitioner has admittedly been associated with the accused company since the year 1996 and has been responsible for auditing its accounts since then. Consequently, it is hard to believe and digest that throughout this period, he was merely acting upon false information provided by the officials of the accused company, and remained oblivious to any wrongdoing. Furthermore, the FIR registered under the scheduled offence also makes note of the following:-

S.No.	Diversion and Siphoning off	Remarks
1.	XXX	XXX
2.	Diversion observed from tax audit report 31.03.2016	Payments made to related parties
3.	XXX	XXX

4.	XXX	XXX
5.	XXX	XXX

Indisputably, the said tax audit report has been prepared by the petitioner as per the FIR in question. Upon a perusal of the tax audit report prepared by the petitioner, which admittedly reveals funds diversion, this Court finds it perplexing that a seasoned professional with over 40 years of experience, failed to detect discrepancies in the accounts of the accused company and raise concerns at any time. Whether the petitioner was aware of the fund diversions, layering, or discrepancies in the accounts remains a matter of trial, requiring presentation of evidence in the said regard. The petitioner would get ample opportunity during trial to demonstrate his innocence by proving that he was unaware of all the alleged irregularities. The petitioner has not satisfied the conditions outlined in Section 45 of the PMLA for being eligible for the concession of bail. The bail granted to co-accused Pranav Gupta and Vineet Gupta on technical grounds rather than on merits, holds no relevance to the present petition filed by the petitioner under Section 439 of the Cr.P.C.

15. Learned senior counsel for the petitioner has also asserted that since the proceedings in the FIR pertaining to the scheduled offence have been stayed by a Division Bench of this Court, the proceedings under PMLA would also have to be kept in abeyance to await the final outcome of the decision of the Division Bench of this Court. However, this plea is bereft of any merit and deserves to be rejected. While the scheduled offence is pivotal to the accusations of money laundering as has been held by Hon'ble the Supreme Court in

Vijay Madanlal Choudhary's case (supra), the proceedings under PMLA are distinct and independent. Therefore, a stay on criminal proceedings in the FIR initiated by respondent No.1-CBI would not extend to the proceedings for offences under PMLA, and they would have to await the outcome of the writ petition independently.

16. Furthermore, in the case of ***Sikandar Singh's case (supra)*** a Division Bench of this Court while relying upon ***Dr. Manik Bhattacharya's case (supra)*** concluded that Enforcement Directorate is not bound by the protective orders passed in FIRs of scheduled offences. Hence, in the light of the ratio of law laid down by Hon'ble Supreme the Court and a Division bench of this Court, the case laws relied upon by the learned senior counsel for the petitioner on this issue would not advance his cause, and this Court respectfully would disagree with those judgments.

17. A prayer has also been made by learned senior counsel for the petitioner for taking a compassionate view by extending the concession of regular bail to the petitioner since his wife is suffering from carcinoma of breast and is scheduled for mastectomy on 28.03.2024 in Bombay, therefore, the presence of the petitioner would be required for her care. Learned senior counsel for the petitioner has, however, fairly admitted that there are other family members who are taking care of his wife, negating the necessity for his release at this stage. This Court, therefore, does not deem it fit to extend the concession of bail to the petitioner.

18. Before parting, it needs to be emphasized that offences under PMLA constitute a category of their own and must be viewed

with utmost seriousness as such offences not only pose a serious danger to the economic health of the nation but also impede the progress of the country. Such offences are committed with intense planning and calculation, and camouflaged surreptitiously, necessitating the investigating agency to go through the material collected with a fine comb so as to uncover the such scams which, if left unaddressed, would without doubt be fatal to economic health of the country. Thus, the rigors of Section 45 of the PMLA which lay down an exceptionally high yardstick for grant of bail under PMLA, must not be given a go-by.

19. Given the gravity of the allegations against the petitioner involving a huge financial fraud amounting to Rs.1626.7 crores, no ground has been made out to release him on bail at this stage. Accordingly, the instant petition is hereby dismissed.

20. Pending applications, if any, stand disposed of.

21. It is clarified that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

04.04.2024

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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