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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 29th July, 2024*

\+ BAIL APPLN. 1869/2022, CRL.M.(BAIL) 421/2024, CRL.M.As. 18435/2023 AND 5877/2024

MOHD ENAMUL HAQUE THROUGH HIS PAIROKAR ABDUL HANNAN ..... Petitioner

Through: Mr. Siddharth Aggarwal, Senior Advocate with Mr. Gaurav Kakkar, Mr. Himanshu Panwar and Mr. Ayush, Advocates.

versus

DIRECTORATE OF ENFORCEMENT THROUGH ASSISTANT DIRECTOR ..... Respondent

Through: Mr. Anupam S. Sharrma, Special Counsel with Mr. Prakarsh Airan, Ms. Harpreet Kalsi, Mr. Ripudaman Sharma, Mr. Abhishek Batra, Mr. Vashisht Rao and Mr. Syamantak Modgill, Advocates.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J.

1. Present bail application has been preferred on behalf of Mohd. Enamul Haque S/o late Haji Abdul Hussain under Section 439 Cr.P.C. through his brother and *pairokar* Abdul Hannan, seeking regular bail in CC No. 13/2022 arising out of ECIR/KLZO/41/2020 registered by Directorate of Enforcement ('ED') under Sections 3 and 4 of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as 'PMLA').

2. Status report has been filed on behalf of ED. Case of the prosecution is that Central Bureau of Investigation ('CBI'), Kolkata registered an FIR No. RC0102020A0019 dated 21.09.2020 against Satish Kumar, the then Commandant, 36 Battalion, BSF and Md. Enamul Haque (applicant herein), Md. Anarul SK, Md. Golam Mustafa and other unknown officials of the Border Security Forces (hereinafter referred to as "BSF") and Indian Customs Department and some unknown private persons, for commission of offences under Section 120B IPC and Sections 7, 11 and 12 of the Prevention of Corruption Act, 1988 (hereinafter referred to as "PC Act") at PS: ACB, Kolkata. FIR disclosed commission of scheduled offence and generation of Proceeds of Crime ('PoC') and thus, present ECIR was registered by Kolkata Zonal Office of ED on 25.09.2020 to trace the PoC and investigate possible money laundering by the applicant and others under provisions of PMLA. ECIR was later transferred to the Headquarter Investigation Unit ('HIU') of ED with the approval of Director, ED on 09.12.2020. Subsequently, prosecution complaint was filed in the Court of Special Judge, PMLA, Rouse Avenue Courts, against the applicant and others under Sections 44 and 45 of PMLA.

3. The allegations in the complaint were that Satish Kumar, the then Commandant, 36 Battalion, BSF, the applicant, Md. Anarul SK, Md. Golam Mustafa and some other unknown public servants and private persons were involved in illegal activities relating to cattle smuggling, through which they generated and acquired PoC. Applicant, Md. Anarul SK, Md. Golam Mustafa, used to purchase the seized cattle at a very low price with the help and connivance of BSF and Custom Officials. The cattle were then shown as

auctioned at a local market but in fact, they were illegally smuggled across Indo-Bangladesh Border. CBI filed charge sheet under Section 173 Cr.P.C. followed by supplementary charge sheet before the Court of Special Judge, Asansol, Paschim Bardhaman (West Bengal).

4. It is stated that in the first charge sheet dated 06.02.2021, applicant, Md. Anarul SK, Md. Golam Mustafa, Badal Krishna Sanyal, Rasheeda Bibi and Tania Sanyal were arrayed as accused, alleging that applicant had arranged to deposit around Rs.12.8 Crores in cash, in the joint bank account of Badal Krishna Sanyal (father-in-law of co-accused Satish Kumar) and Tania Sanyal (wife of Satish Kumar), through his employee/handler Manoj Sana. This money was given as bribe by the applicant to Satish Kumar for providing protection and patronage in cattle smuggling in the area under the command of his Battalion at Malda and Murshidabad. During investigation, sufficient evidence has come on record establishing that Manoj Sana was working for the applicant.

5. It is stated that supplementary charge sheet dated 24.02.2021 was filed by CBI alleging that between December, 2016 to March, 2017, a total amount of Rs.6.1 Crores was paid by the applicant to Vinay Mishra and his brother Vikas Mishra through Manoj Sana in cash, on four different occasions. Investigations led to recovery of a diary of Manoj Sana in which there were entries pertaining to cash entrusted to him by the applicant, which were PoC obtained from cattle smuggling by the applicant. Analysis of entries reflected that Rs.3.45 Crores were deposited in cash in the joint bank account of Badal Krishna Sanyal and Tania Sanyal maintained with Axis Bank, mainly through Manoj Sana. Cash deposit slips collected from the

Bank, diary of Manoj Sana, statements of his brother Babla Sana, Neeraj Kumar Aggarwal and Sanjay Jaiswal revealed that Manoj Sana was a cash handler of the applicant and his three nephews, who were promoters of JHM Group of Companies and Manoj Sana was working on their directions.

6. It is stated that applicant and promoters of JHM Group of Companies initially worked together and were engaged in the trade of import and export of rice, stone chips, agro-commodities etc. and the business was carried on in the same building i.e. MK Point, 27-Bentinek Street, Kolkata. Applicant and his nephew Jehangir Alam were involved in cattle auction by the customs. As per statement of Sanjay Jaiswal, Biswajit Malakar, Accountant and Director of JHM Group used to seek accommodation entries on behalf of both JHM Group and Hoque Group. Documents seized during FEMA raid established that both the Groups and the applicant were involved in *hawala* transactions and were part of the same parcel though showing themselves to be different. Cash deposit slips collected from Axis Bank, A/c. No. 916010061149024, pertaining to joint account of Badal Krishna Sanyal and Tania Sanyal with regard to Income Tax Declaration Scheme, 2016 made by Badal Krishna Sanyal regarding his undisclosed income, further revealed that cash deposits were made by Manoj Sana on the same date as the date of entries against the name of Satish Kumar mentioned in the diary. Despite the fact that Manoj Sana deposited Rs.12 Crores in the joint account of Tania Sanyal and her father, she did not disclose any financial relationship of Manoj Sana either with her or her father.

7. It is stated that son of Satish Kumar was employed with one of the companies of the applicant i.e. M/s. Hoque Industries Pvt. Ltd. (‘HIPL’) and

applicant took services of the same Chartered Accountant Rajan Poddar. Wife of the applicant namely, Rasheeda Bibi as well as Badal Sanyal had disclosed undeclared income under the same Scheme following the same procedure taking help of a common Chartered Accountant. Rasheeda Bibi and Tania Sanyal had business premises in Kolkata in the same building. Details of cash entries mentioned in the diary of Manoj Sana relating to Satish Kumar are tabulated in the status report as follows:-

Entries in the name of Shri Satish Kumar in the, diary of Shri Manoj Sana

Particulars	Amount
C O Satish 22/10 expenditure	5,00,000/-
24/10 Satish Bank Credit	50,00,000/-
26/10/16 expenditure CEO Satish Bank Credit	70,00,000/-
27/10 Satish CEO	30,00,000/-
28/10/16 Satish CEO Bank Credit	30,00,000/-
Satish Bank	60,00,000/-
1/11/16 Bank Satish	60,00,000/-
3/11/16 Satish Bank	40,00,000/-
Total	3,45,00,000/-

8. Badal Krishna Sanyal and Tania Sanyal could not explain the source of income for Rs.12.8 Crores deposited in their joint account. Diary seized from Manoj Sana corroborated the deposit of Rs.3.45 Crores in the said joint account. Out of the Rs.12.8 Crores, deposit slips for Rs.12 Crores were signed by Manoj Sana and in view of Section 23 of PMLA, it can be presumed that all deposits were inter-connected and the money was nothing but PoC. The fund of Rs.12.8 Crores was actually a bribe given by the

applicant and promoters of JHM Group to Satish Kumar for providing protection in cattle smuggling in the area under his command at Malda and Murshidabad in West Bengal. Huge amount of Rs.12.8 Crores was thus generated and laundered.

9. It is stated that several other entries in the diary of Manoj Sana revealed that Vinay Mishra and his brother had received PoC of Rs.6.1 Crores between December, 2016 and March, 2017 from Manoj Sana on different dates. M/s. Hoque Mercantile Pvt. Ltd. ('HMPL'), one of the group companies, controlled and managed by the applicant, incorporated on 07.10.2015, with an initial capital of Rs.1 lac showed exponential growth in turnover from Nil in Financial Year 2015-16 to Rs.18.58 Crores in Financial Year 2016-17 and Rs.173.75 Crores in Financial Year 2017-18, which was only possible with huge cash generation from cattle smuggling. The company attempted to show the source and growth in its turnover on account of export of agri-products but statements of Sanjay Jaiswal and Shreeprakash Jaiswal revealed that they provided bogus bills for purchase of export products like rice. During further investigation, it came to light that during Financial Year 2016-17, HMPL and JHM Group exported fabrics to Dubai, which was investigated into by Customs Department on account of claim of bogus duty drawback by the said companies. Analysis of the documents collected from HMPL and Commissioner of Customs, revealed that HMPL had received Rs.6.1 Crores as remittances for export of fabrics to Dubai, however, the documents showed that value of export declared at Dubai Customs was less than 2% of the total value of exports declared at Indian Customs and Rs.6.1 Crores was received by HMPL, which was

nothing but PoC generated from scheduled offence and was laundered in the guise of export remittances by the company, controlled and managed by the applicant.

10. In 2017, Vinay Mishra and Vikas Mishra along with other family members acquired residential premises being 1, Dharamdas Row, Kolkata by acquiring shareholding of M/s. Anant Tradecom Pvt. Ltd. by laundering the aforementioned Rs.6.1 Crores through various shell companies namely, M/s. Nu Ruchi Barter Pvt. Ltd. and M/s. Manak Estates Pvt. Ltd., arranged by Prateek Diwan and Vikas Aggarwal. This cash was received from Manoj Sana from December, 2016 to March, 2017 on four occasions and routed through the shell companies. These shell companies were found to be conducting no actual business activities and were used solely for booking accommodation entries. This position was accepted by Vikas Aggarwal. A complete money trail was revealed through the statement of Harinder Kaur Sethi, ex-Director of M/s. Anant Tradecom Pvt. Ltd. made under Section 17 of PMLA showing utilization of funds by Mishra family to procure 12,500 shares of M/s. Anant Tradecom Pvt. Ltd. for a total consideration of Rs.3.5 Crores, which were PoC. Monies utilized by the Mishra family were sent to them by Manoj Sana, who had in turn received the same from the applicant.

11. Applicant is stated to have purchased property bearing No. I-1779, 3rd Floor, Chitranjan Park, New Delhi (hereinafter referred to as 'CR Park Property') in the name of HIPL, beneficially owned by him and his family members. The entire payment of Rs.5.19 Crores for purchase of CR Park Property was made from ICICI Bank Account No. 000605031638 and perusal of the bank statement showed Rs.5.7 Crores was received from

HIPL during the period 18.09.2018 to 15.10.2018, which account was opened on 23.04.2018 i.e. just a few months before purchase of the CR Park Property. Further, cash deposit of Rs.1.32 Crores was made in Bank of Baroda from 23.04.2018 to 23.10.2018. Investigation showed that cash deposits were transferred to the aforesaid ICICI Bank account of HIPL, which were used for acquiring CR Park Property.

SUBMISSIONS ON BEHALF OF THE APPLICANT

12. Applicant is innocent and has been falsely implicated in the present case. In order to constitute an offence under Section 3 of PMLA, two steps are required to be proved by the prosecution. Firstly, there must be generation of PoC and secondly, there must be an effort to conceal PoC as untainted money. 'PoC' as defined under Section 2(u) of the PMLA means money/property, which is directly/indirectly generated from the commission of a scheduled offence. A bare perusal of the complaint makes it apparent that PoC are not identified against the applicant by the ED and further, ED has failed to disclose how the money belonging to the applicant is generated from the scheduled offence.

13. Prosecution complaint as a whole is based on a mere presumption under Section 23 of PMLA that money of the applicant is PoC/tainted money, without first establishing that the money constitutes PoC and/or showcasing how the applicant has committed the scheduled offence. ED has skipped the essential first stage of establishing PoC under Section 3 of PMLA and simply jumped to the second stage to investigate in what manner PoC is untainted money. Investigating Agency cannot give up its statutory obligation to investigate by taking recourse to Section 24 of PMLA as held

in by the Supreme Court in ***State of Maharashtra v. Dnyaneshwar Laxman Rao Wankhede, (2009) 15 SCC 200; Anand Kumar v. State of Madhya Pradesh, (2009) 3 SCC 799; Babu v. State of Kerala, (2010) 9 SCC 189;*** and by the Calcutta High Court in ***Sahid Hossain Biswas v. State of West Bengal, 2017 SCC OnLine Cal 5023***.

14. Applicant was arrested by CBI on 04.03.2018 in case bearing RC No. RC1(A)/2018/CBI/ACB/Cochin under Sections 7, 13(2) read with Section 13(1)(a) and (d) of the PC Act and was produced before the concerned Court on 07.03.2018 and remanded to custody. Applicant was granted statutory bail by the Special Court at Thiruvananthapuram on 07.05.2018. By order dated 07.07.2018, the Court directed to de-freeze three bank accounts of the applicant out of the 26 bank accounts frozen by the CBI. Thereafter, on a petition filed by the applicant for de-freezing all his bank accounts being Crl. Misc. Case No. 2141/2019, Kerala High Court vide order dated 20.03.2019 directed de-freezing of all accounts after CBI conceded that forensic audit was over, meaning thereby that no tainted money was ever deposited in the bank accounts of the applicant or his companies. Special Judge, CBI permitted the applicant to travel abroad on numerous occasions and applicant never misused the concession/liberty granted.

15. On 21.09.2020, new RC was registered by CBI, Kolkata in which the allegations against the applicant are similar to the RC registered by the CBI, Cochin. One charge sheet and two supplementary charge sheets have been filed by CBI, Kolkata in the matter and significantly, the Supreme Court granted bail to the applicant in SLP (Crl.) No. 9463/2021 vide order dated 24.01.2022, observing that continued incarceration of the applicant was not

required in the facts of the case and there was no ground for continuous custody. Charge sheet and supplementary charge sheets have been filed and no reason has been put forth as to why even after one year, custody of the applicant is required. Despite registration of ECIR in September, 2020, applicant was never asked to join investigation nor was any application filed for custodial interrogation.

16. Applicant purchased 6,680 cattle during the years 2015-2016 through an open auction organized by Customs Department, Jangipur, Murshidabad and cattle were thereafter sold by the applicant at Mallick Haat, Hiyatnagar, Birbhum. These sales were legal and made in the ordinary course of applicant's legitimate business and the purchases and sales were duly reflected in the income tax returns filed for the Assessment Year 2016-17. Likewise, in the Financial Year 2016-17, applicant purchased 9,735 cattle in open auctions and the sales/purchases were reflected in the income tax returns filed for the Assessment Year 2017-18. Balance-sheets placed on record and the IT returns seized by the CBI during search and seizure operation, substantiate the aforesaid stance of the applicant.

17. As per the case of ED, applicant along with JHM Group arranged to deposit Rs.12.8 Crores in cash, in the joint bank account of Badal Krishna Sanyal and Tania Sanyal through his employee Manoj Sana. This money was allegedly given as bribe to Satish Kumar for providing protection and patronage in the predicate offence of cattle smuggling. It is also alleged that applicant through his staff gave Rs.6.1 Crores to Vinay Mishra and Vikas Mishra as bribe for providing ease in cattle smuggling as Vinay Mishra was allegedly closely associated with the political regime of West Bengal. It is

also alleged that applicant along with his nephews and other *hawala* operators laundered illegal PoC amounting to Rs.6.1 Crores generated through cattle smuggling by way of receiving remittance from Dubai on account of export of fabric. This amount was allegedly received in the account of HMPL and thereafter routed through various bank accounts to HIPL and was used to purchase the CR Park Property. Therefore, allegedly, PoC were generated in 3 different ways. With respect to Rs.12.8 Crores deposited in the joint bank account of Badal Krishna Sanyal and Tania Sanyal and Rs.6.1 Crores allegedly given to Vinay and Vikas Mishra as bribe, ED heavily relies on the handwritten diary of Manoj Sana seized by CBI in the predicate offence. However, both ED and CBI have failed to prove any relation between applicant and Manoj Sana. The latter is not an employee of the applicant nor the applicant ever instructed Manoj Sana to enter into any transactions or acts alleged. ED has neither examined Manoj Sana to prove the contents of the diary nor produced any expert opinion to show that the entries are in the handwriting of Manoj Sana, so as to conclude that the diary belongs to him. The handwritten diary is thus not admissible in evidence, in the absence of corroborative evidence. Reliance was placed on the judgment of the Supreme Court in ***Central Bureau of Investigation v. V.C. Shukla and Others, (1998) 3 SCC 410*** and judgment of this Court in ***L.K. Advani v. Central Bureau of Investigation, 1997 SCC OnLine Del 382,*** to contend that diary entries cannot be relied on at this stage. Manoj Sana is neither an accused nor witness in the criminal prosecution under PMLA and the predicate offence. It is only in the second supplementary charge sheet filed by the CBI that he has been named as a witness. Babla

Sana, brother of Manoj Sana, categorically stated that he has not met the applicant and was not aware whether Manoj Sana worked for the applicant. In a statement before CBI, Cochin, Manoj Sana stated that he was a property dealer by profession.

18. Prosecution has failed to show any nexus between the predicate offence of cattle smuggling and the alleged PoC attributed to the applicant in the present ECIR and mere possession of 'unaccounted wealth' in the hands of a person does not constitute PoC or justify prosecution under PMLA. Prosecution has also failed to carry out any independent investigation to trace the funds to the scheduled offence, which is essential for the determination of these funds to be 'proceeds of crime' warranting prosecution under PMLA. The only basis for ED to link the turnover of HMPL to the predicate offence is the huge turnover of the company in the same period as the period of alleged offence and there is no independent material to indicate that the turnover/profits of HMPL had any connection, direct or indirect with the alleged cattle smuggling and the stand of the applicant is vindicated by CBI's own forensic audit where no suspicious transactions are shown in these accounts. The Kerala High Court directed de-freezing of all 26 bank accounts of the applicant. Statements of Sanjay Jaiswal and Shreeprakash Jaiswal recorded under Section 50 of PMLA relied upon by the prosecution in this regard, cannot be looked into at this stage while considering an application for grant of bail and can only be tested during trial. To support, heavy reliance was placed on the judgment of the Supreme Court in ***Vijay Madanlal Choudhary and Others v. Union of India and Others, 2022 SCC OnLine SC 929,*** more particularly, the

following paragraph:-

> ***"31**. The "proceeds of crime" being the core of the ingredients constituting the offence of money-laundering, that expression needs to be construed strictly. In that, all properties recovered or attached by the investigating agency in connection with the criminal activity relating to a scheduled offence under the general law cannot be regarded as proceeds of crime. There may be cases where the property involved in the commission of scheduled offence attached by the investigating agency dealing with that offence, cannot be wholly or partly regarded as proceeds of crime within the meaning of section 2(1)(u) of the 2002 Act—so long as the whole or some portion of the property has been derived or obtained by any person "as a result of" criminal activity relating to the stated scheduled offence. To be proceeds of crime, therefore, the property must be derived or obtained, directly or indirectly, "as a result of" criminal activity relating to a scheduled offence. To put it differently, the vehicle used in commission of scheduled offence may be attached as property in the concerned case (crime), it may still not be proceeds of crime within the meaning of section 2(1)(u) of the 2002 Act. Similarly, possession of unaccounted property acquired by legal means may be actionable for tax violation and yet, will not be regarded as proceeds of crime unless the concerned tax legislation prescribes such violation as an offence and such offence is included in the Schedule of the 2002 Act. For being regarded as proceeds of crime, the property associated with the scheduled offence must have been derived or obtained by a person "as a result of" criminal activity relating to the concerned scheduled offence. This distinction must be borne in mind while reckoning any property referred to in the scheduled offence as proceeds of crime for the purpose of the 2002 Act. Dealing with proceeds of crime by way of any process or activity constitutes offence of money-laundering under section 3 of the Act."*

19. As per ED, Commissioner of Customs, Chennai investigated bogus duty drawback claims by HMPL revealing that Rs.6.1 Crores were received as remittances for export of fabrics, whereas the value of export declared at Dubai Customs was less than 2% of value of export declared with Indian customs and this was the PoC generated from cattle smuggling. This presumption is entirely misconceived. No material has been produced to substantiate a link between the revenue of Rs.6.1 Crores and alleged cattle smuggling. Commissioner of Customs, Chennai had passed an order

imposing penalties on HMPL for claiming duty drawback on bogus export of fabrics to Dubai but the allegation did not even remotely suggest that export revenue was generated from alleged cattle smuggling.

20. Bhuvan Bhaskar, son of Satish Kumar, was employed at HIPL from May, 2017 but applicant was unaware that he was the son of Satish Kumar. Moreover, the period of employment commenced from May, 2017 whereas the period of alleged offence ended in April, 2017. Statement of Bhuvan Bhaskar in this context is relevant that he had applied for a job in the company basis an open advertisement and his selection was on merit after successfully clearing the interview.

21. The Supreme Court in ***Vijay Madanlal (supra)*** has laid down that primary consideration at the stage of bail under PMLA is whether there is any material to indicate that the accused possessed the requisite *mens rea* and the Court need not meticulously examine evidence but only record a finding on the basis of broad probabilities. Section 19 of PMLA provides higher threshold in comparison to Section 41A Cr.P.C. for curtailing the liberty of an accused inasmuch as Section 41A Cr.P.C. enables the investigating agencies to arrest an accused on ground of suspicion whereas Section 19 of PMLA ordains the investigating authority to arrest an accused only on the ground that he is guilty of an offence under Section 3 of PMLA and ED has failed to establish that applicant is *prima facie* guilty of the alleged offence. Prosecution has failed to establish any nexus between the transactions in question and the alleged PoC generated from the predicate offence of cattle smuggling and ED is acting only on a presumption that once the applicant is an accused in the predicate offence, all funds in his

hands are tainted. In light of this, applicant meets the test of 'broad probabilities' laid down by the Supreme Court in ***Vijay Madanlal (supra),*** since the case against the applicant rests primarily on diary entries made by one Manoj Sana, the contents of which, ED has failed to corroborate by any independent evidence.

22. Applicant was granted bail in the predicate offence by the Supreme Court but is continuing in judicial custody since 26.02.2022 because of the present case and has already suffered long incarceration. Investigation *qua* the applicant is complete and charge sheet and supplementary charge sheets have been filed and thus no fruitful purpose will be served by keeping the applicant in custody indefinitely. In this context, reliance is placed on the judgments of the Supreme Court in ***Moti Ram and Others v. State of Madhya Pradesh (1978) 4 SCC 47; Sanjay Chandra v. Central Bureau of Investigation, (2012) 1 SCC 40; P. Chidambaram v. Directorate of Enforcement, 2019 SCC OnLine SC 1549; P. Chidambaram v. Central Bureau of Investigation, 2019 SCC OnLine SC 1380*** and of this Court in ***D.K. Shivakumar v. Directorate of Enforcement, 2019 SCC OnLine Del 10691.*** Furthermore, present case involves voluminous records and numerous witnesses and there is no doubt that conclusion of trial will take a long time and if the applicant is not released on bail till conclusion of the trial, grave injustice and hardship shall be caused and incarceration will be contrary to the judgment of the Supreme Court in ***State of Kerala v. Raneef, (2011) 1 SCC 784.*** Whatever be the nature of the offence, general principles of bail cannot be overshadowed, especially that bail is the rule and jail is an exception. Applicant has deep roots in the society and his family

permanently resides in India. Applicant has businesses in Kolkata for the last several years and there is no possibility of his escaping the rigours of law or not being available for trial. ***[Ref. Ashok Sagar v. State (NCT of Delhi), 2018 SCC OnLine Del 9548.]***

23. It is imperative that applicant is released on bail so that he is able to properly and effectively prepare his defence, which is a step towards fair trial. While in custody, applicant will not be able to effectively instruct his counsel and judicial custody will prejudice his defence in the trial. ***[Ref. Shri Gurbaksh Singh Sibbia and Others v. State of Punjab, (1980) 2 SCC 565].***

24. Applicant is suffering from various medical ailments such as diabetes, hemorrhoids, lower back ache, painful defecation, and hyperlipidemia, which is fortified by the Jail Medical Report dated 05.07.2023 and is thus entitled to the benefit of Proviso to Section 45 of PMLA, which carves out an exception to the applicability of the twin conditions for a person who is sick, infirm or a woman. Reliance is placed on the judgments of this Court in ***Devki Nandan Garg v. Directorate of Enforcement, 2022 SCC OnLine Del 3086; P. Sarath Chandra Reddy v. Directorate of Enforcement, 2023 SCC OnLine Del 2635;*** and ***Kewal Krishan Kumar v. Directorate of Enforcement, 2023 SCC OnLine Del 1547***.

SUBMISSIONS ON BEHALF OF THE ED

25. CBI registered FIR/RC dated 21.09.2020 against Satish Kumar, the then Commandant, 36 Battalion, BSF as well as against other accused and the applicant for commission of offences under Section 120B IPC and provisions of the PC Act. Since commission of scheduled offence and

generation of PoC were disclosed, present case was registered to trace the PoC and investigate possible money laundering under provisions of PMLA against the applicant and others. Applicant was indulging in cattle smuggling activities and *hawala* business in border areas. PoC generated from scheduled offence were concealed by acquisition of properties and the monies were thus not untainted, as claimed by the applicant. Applicant resorted to complex and multi-layered transactions through multiple persons, sham companies and other means to conceal the PoC. *Albeit* Section 45 of PMLA does not impose an absolute restraint on grant of bail, applicant will have to cross the threshold of the mandatory twin conditions laid down in the said provision and at this stage, the Court has to be only *prima facie* satisfied that there are reasonable grounds for believing that the applicant is not guilty of the alleged offence under the PMLA and is not likely to commit any offence before taking a decision to grant bail. Reliance was placed on the judgments of the Supreme Court in ***Vijay Madanlal (supra)***; ***Gautam Kundu v. Directorate of Enforcement (Prevention of Money-Laundering Act), Government of India, Through Manoj Kumar, Assistant Director, AIR 2016 SC 106***; and of this Court in ***Gautam Thapar v. Directorate of Enforcement, 2022 SCC OnLine Del 642***; ***Satyendar Kumar Jain v. Directorate of Enforcement, 2023 SCC OnLine Del 1953***; ***Benoy Babu v. Directorate of Enforcement 2023 SCC Online Del 3771***; ***Tarun Kumar v. Assistant Director, Directorate of Enforcement, 2023 SCC OnLine Del 4173***.

26. There is ample evidence on record to link the applicant to the commission of offence of money laundering and his release on bail will

hamper the on-going investigation to unearth the deep-rooted multi-layered conspiracy. Emphasizing on the role played by the applicant in money laundering, it was brought forth that: -

(a) Applicant alongwith his nephews Md. Jehangir Alam, Md. Humayun Kabir and Md. Mehedi Hassan deposited around Rs.12.8 Crores in cash into the joint bank account of Badal Krishna Sanyal and Mrs. Tania Sanyal through his staff mainly Manoj Sana as a bribe to Satish Kumar, the then Commandant, 36 Battalion, BSF for providing protection and patronage in the predicate offence of cattle smuggling. The primary evidence in the case are the cash deposit slips signed by Manoj Sana and the diary entries are corroborated by the cash deposit slips, which reflect deposit of a sum of Rs.3.45 Crores, in the name of Satish Kumar by Manoj Sana in the joint bank account of Badal Krishna Sanyal and Tania Sanyal. Furthermore, in view of Section 23 of PMLA it can be presumed that all deposits are inter-connected and the amounts so deposited totalling to Rs.12.8 Crores are PoC.

(b) Investigation revealed that during May 2017, Vinay Mishra along with Vikas Mishra and other family members purchased residential premises at 1-Dharamdas Row, Kolkata by acquiring the shareholding of M/s Anant Tradecom Pvt. Ltd. through laundering of Rs.6.1 Crores through various shell companies namely, M/s Nu Ruchi Barter Pvt. Ltd. and M/s Manak Estates Pvt. Ltd., arranged by Prateek Diwan and Vikas Agarwal. Cash to the tune of Rs.6.1 Crores was received from Manoj Sana between December, 2016 to March, 2017 on four occasions, which was routed through various shell companies, controlled and managed by Prateek Deewan into the account of M/s Nu Ruchi and Manak Estate Pvt. Ltd., which were managed and controlled by Vikas Aggarwal. Thereafter, in the guise of unsecured loans an amount of approximately Rs.3.5 Crores was transferred to the various individual accounts of Mishra Family. Verification into the status and affairs of M/s. Nu Ruchi Barter and M/s. Manak Estate Pvt. Ltd. by CBI as well as ED revealed that they were shell companies with no actual business activities and were used solely for booking of accommodation entries. Vikas Kumar Agarwal in his statement under Section 50 of PMLA accepted that these companies were managed and controlled by him and he, with the help and directions of Prateek Diwan, provided accommodation entries of approximately Rs.3.5 Crores to the family members of Mishra family (including the applicant), by reflecting these as unsecured loans in the books of M/s. Nu Ruchi Barter Pvt. Ltd. and M/s. Manak Estate Pvt. Ltd. Vivek Kumar, the Director of these companies has also confirmed that he was a dummy director appointed by Vikas Kumar Aggarwal. Mishra family then utilized these funds to procure 12,500 shares of M/s. Anant Tradecom Pvt. Ltd. for a total consideration of Rs.3.5 Crores as revealed by Smt. Harinder Kaur Sethi, the ex-Director of M/s. Anant Tradecom Pvt. Ltd. during her statement recorded under Section 17 of PMLA.

(c) HMPL, one of the group companies controlled and managed by the applicant and his close family members was incorporated on

07.10.2015 with an initial capital of Rs.1 lac but showed an exponential growth in its turnover from Rs. Nil in Financial Year 2015-16 to Rs.18.58 Crores in Financial Year 2016-17 and further to Rs.173.75 Crores in Financial Year 2017-18. This huge jump matches with the cash generation from cattle smuggling under the patronage of Satish Kumar. Company attempted to show the source of the growth in turnover from the export of agri-products, however, statements of Sanjay Jaiswal and Shreeprakash Jaiswal revealed that they had provided bogus bills for purchase of export products such as rice.

(d) Applicant purchased CR Park Property in the name of one of his companies HIPL, which is beneficially owned by him and his family members. The fund for acquiring this property was routed in the bank accounts of HIPL from various other bank accounts of HIPL and HMPL (another group company of the applicant and his close family members). It was revealed that these funds were PoC generated from illegal cattle smuggling, which have been routed back in the guise of fake remittance received from Dubai on account of export of fabrics. Investigation further revealed that the PoC travelled to New Delhi, which was used to purchase the CR Park Property. The entire payment of Rs.5.19 Crores for purchase of the CR Park Property in the name of HIPL has been made from ICICI Bank A/c No. 000605031638. On perusal of the bank statement of HIPL, it was further revealed that Rs.5.7 Crores were received from another account of HIPL (Bank of Baroda, A/c No. 00260200001751) between the period from 18.09.2018 to 15.10.2018 and this account was opened on 23.04.2018, few months before purchase of the above-mentioned property. Further cash deposits worth Rs.1.32 Crores were made in Bank of Baroda from 23.04.2018 to 23.10.2018. It was also revealed that the said cash deposits were transferred to the ICICI bank account of HIPL and the money was used for paying consideration towards purchase of CR Park Property.

(e) During investigation, it was revealed that in the Financial Year 2016-17, HMPL, JHM Logistics Pvt. Ltd. and JHM Overseas Pvt. Ltd. had exported fabrics to Dubai, which was investigated into by Customs Department, due to claim of bogus duty drawback by the said companies. Information was collected from HMPL and Commissioner of Customs, Chennai-IV and on analysis of documents received, it was revealed that HMPL had received Rs.6.1 Crores as remittances for export of fabrics to Dubai but the value of export declared at Dubai Customs was less than 2% of the total value of export declared with the Indian Customs. Rs.6.1 Crores were actually the PoC generated from the scheduled offence, which was laundered in the guise of export remittances by the company, controlled and managed by the applicant. The applicant though was involved in export of agri-commodities as claimed by him, showed export of fabric consignments after receiving the fabric from various traders through bills which were stated to be fake by Sanjay Jaiswal and in fact, the vehicles stated to be used for transporting the goods, never existed.

27. Claim of the applicant that he purchased cattle through legal auction channels facilitated by Customs Department and sold the cattle at Mallick Pashu Haat is totally false. Applicant used his contacts in the State Administration, including with officers of West Bengal Police and formed an organised syndicate of cattle smuggling at Murshidabad after stopping the individual level cattle smuggling. Those who protested were either employed by the applicant or implicated in false NDPS cases. After the posting of Satish Kumar as Commandant, BSF, applicant had direct access to him, who in turn directed Company Commanders under his command to deal with minute details such as the breed, category and prices of the cattle involved in the smuggling by the applicant. On realising the need of having documents pertaining to the cattle procured by him through auction by Customs Department, applicant approached one Aftabuddin Mallick, Haat owner for arranging fake bills, showing sale of cattle on various dates at the Haat by the applicant from 2016 onwards. Plea of the applicant that the sales and the proceeds were reflected in the income tax returns does not aid him inasmuch as the Income Tax Authorities are not concerned with the source of income and are only to ascertain whether or not tax has been paid on the income generated. In essence, in the tax regime, legality of transactions generating profit or loss is inconsequential and this view is reiterated by the Supreme Court in ***Puneet Sabharwal v. CBI, 2024 SCC OnLine SC 324; Vishwanath Chaturvedi v. Union of India and Others, AIR 2007 SC (Supp) 163;*** and ***State of Karnataka v. J. Jayalalitha and Others, (2017) 6 SCC 263.*** In any case, declaration in the IT returns does not extricate the applicant from absence of legitimacy of the source of said funds.

28. Much has been argued on behalf of the applicant that the allegations pertaining to deposit of Rs.12.8 Crores and Rs.6.1 Crores in respect of Mishra family rest on the alleged handwritten diary entries of Manoj Sana, which are not corroborated by any independent evidence, which is wholly incorrect. Out of Rs.12.8 Crores, a sum of Rs.12 Crores was deposited by Manoj Sana in the joint bank account of Badal Krishna Sanyal and Tania Sanyal and deposit of Rs.3.45 Crores out of the said amount is substantiated by the diary entries which clearly map with the entries in the cash deposit slips, signed by Manoj Sana and significantly, the signatures stand verified by the forensic report rendered by the CFSL on 24.11.2021. The remaining amount was deposited by Azizhullah Haque Molla and Biswajit Malakar which is proved by the cash deposit slips, duly signed by them respectively and the signatures are verified through forensic examination. Manoj Sana is an employee of the applicant and it is clear that the deposits made by him were at the instance of the applicant as a bribe to Satish Kumar, for providing patronage to the applicant in cattle smuggling.

29. With regard to admissibility of the diary entries, applicant relied on the decision of the Supreme Court in ***V.C. Shukla (supra),*** however, the decision is not applicable to the facts of the present case, as the diary which was maintained by Manoj Sana in the course of his business was in his possession and control and was produced by him and therefore, presumption arises under Section 22 of PMLA that the diary belonged to him and the contents were true and in his handwriting, bearing his signatures.

30. In his statement under Section 50 of PMLA, Babla Sana, brother of Manoj Sana, stated that he had seen applicant with his brother and knew that

Manoj Sana worked for JHM Group, comprising of JHM Import and Export Ltd. and JHM Logistics Pvt. Ltd. and that JHM Group of Companies was involved in some illegal work of cattle smuggling. Sanjay Jaiswal in his statement dated 25.03.2022 under Section 50 of PMLA stated that he was asked by Biswajit Malakar, a promoter of JHM Group to provide bogus bills for fabrics and accordingly, he requested Shreeprakash Jaiswal to provide bogus bills. He also stated that promoters of JHM Group and Hoque Group of companies were working together and all the work came from Biswajit Malakar. Shreeprakash Jaiswal in his statement dated 24.03.2022 under Section 50 of PMLA stated that M/s. M Singh, M/s. Santwana Syndicate and M/s. Mannat Traders are bogus firms, which were constituted for the purpose of providing bogus bills. Apart from providing bogus bills to JHM Group and Hoque Group of Companies, he never rendered any other services to them. These statements under Section 50 of PMLA can be considered by the Court at this stage of bail in view of the law laid down by the Supreme Court in ***Rohit Tandon v. Directorate of Enforcement, (2018) 11 SCC 46; Vijay Madanlal (supra);*** and recently reaffirmed in ***Satyendar Kumar Jain v. Directorate of Enforcement, 2024 SCC OnLine SC 317.***

31. Significantly, Bhuvan Bhaskar who is the son of Satish Kumar was employed by the applicant and was subsequently appointed as a Director of HIPL, without any experience and was paid between Rs.30,000/- to Rs.40,000/- per month, as an indirect method to bribe Satish Kumar. A feeble attempt is made by the applicant to distance himself from Satish Kumar but unsuccessfully. There is overwhelming evidence to establish the nexus and proximity between the applicant, co-accused Satish Kumar and

his family members. Prior to his employment with the applicant, Bhuvan Bhaskar used to check the work of loading and unloading in fuel tanks in Reliance Industries and suddenly without any experience, he was appointed as Director within one month of his employment with the applicant. There is evidence to show a close link between the applicant, Satish Kumar and Tania Sanyal and therefore, it cannot be said that it is a mere chance that Bhuvan Bhaskar got an employment and the stand that this was through an open advertisement is wholly fallacious. Further, the address of proprietorship firm of Tania Sanyal i.e. wife of Satish was the same as applicant's firm i.e. M/s. Naj Trading Company.

32. I have heard learned Senior Counsel for the Petitioner and learned Special Counsel for ED and examined their rival contentions.

ANALYSIS AND FINDINGS:

33. There is no gainsaying that Article 21 of the Constitution of India guarantees right to personal liberty to every individual and that bail is the rule and jail is an exception. This Court is also conscious of the fact that in the present case charge sheet has been filed against the applicant *albeit* as stated in the status report considering the nature of offence, multi-layered transactions and the nation-wide nexus, further investigation is on-going. In ***Prasanta Kumar Sarkar v. Ashis Chatterjee and Another, (2010) 14 SCC 496,*** the Supreme Court elucidated the factors to be considered while deciding a bail application, which are as follows:-

> *"**9.** We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the*

basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

> *(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
> *(ii) nature and gravity of the accusation;*
> *(iii) severity of the punishment in the event of conviction;*
> *(iv) danger of the accused absconding or fleeing, if released on bail;*
> *(v) character, behaviour, means, position and standing of the accused;*
> *(vi) likelihood of the offence being repeated;*
> *(vii) reasonable apprehension of the witnesses being influenced; and*
> *(viii) danger, of course, of justice being thwarted by grant of bail.*

[See State of U.P. v. Amarmani Tripathi [(2005) 8 SCC 21 : 2005 SCC (Cri) 1960 (2)] (SCC p. 31, para 18), Prahlad Singh Bhati v. NCT of Delhi [(2001) 4 SCC 280 : 2001 SCC (Cri) 674] , and Ram Govind Upadhyay v. Sudarshan Singh [(2002) 3 SCC 598 : 2002 SCC (Cri) 688].]"

34. It would be apposite to refer to the judgment of the Supreme Court in ***Masroor v. State of Uttar Pradesh and Another, 2009 SCC OnLine SC 903,*** where the Supreme Court observed that while deciding the question of bail, Courts must strike a balance between the valuable right of liberty of an individual and the larger interest of the society. Relevant passage is as follows:-

*"**15.** There is no denying the fact that the liberty of an individual is precious and is to be zealously protected by the courts. Nonetheless, such a protection cannot be absolute in every situation. The valuable right of liberty of an individual and the interest of the society in general has to be balanced. Liberty of a person accused of an offence would depend upon the exigencies of the case. It is possible that in a given situation, the collective interest of the community may outweigh the right of personal liberty of the individual concerned. In this context, the following observations of this Court in Shahzad Hasan Khan v. Ishtiaq Hasan Khan [(1987) 2 SCC 684 : 1987 SCC (Cri) 415] are quite apposite : (SCC p. 691, para 6)*

> *"6. ... Liberty is to be secured through process of law, which is administered keeping in mind the interests of the accused, the near and dear of the victim who lost his life and who feel helpless and*

believe that there is no justice in the world as also the collective interest of the community so that parties do not lose faith in the institution and indulge in private retribution."

35. Before embarking on the journey to examine the facts of the present case and the applicable provisions of law, it would be imperative and relevant to recapitulate some observations of the Supreme Court and position of law on grant of bail in respect of economic offences. In this context, I may first refer to ***State of Gujarat v. Mohanlal Jitamalji Porwal and Another, (1987) 2 SCC 364***, wherein the Supreme Court observed as under:

"5. .....The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest....."

36. In ***Y.S. Jagan Mohan Reddy v. Central Bureau of Investigation, (2013) 7 SCC 439,*** the Supreme Court observed:-

"34. *Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.*

35. *While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension* *of the witnesses being tampered with, the larger interests of the public/State and other similar considerations.*

36. *Taking note of all these facts and the huge magnitude of the case and also the request of CBI asking for further time for completion of the investigation in filing the charge-sheet(s), without expressing any opinion on the merits, we are of the opinion that the release of the appellant at this stage may hamper the investigation. However, we direct CBI to complete the investigation and file the charge-sheet(s) within a period of 4 months from today. Thereafter, as observed in the earlier order dated 5-10-2012 [Y.S. Jagan Mohan Reddy v. CBI, (2013) 7 SCC 450. For text of the order see also para 17, below.], the appellant is free to renew his prayer for bail before the trial court and if any such petition is filed, the trial court is free to consider the prayer for bail independently on its own merits without being influenced by dismissal of the present appeal."*

37. In ***Nimmagadda Prasad v. Central Bureau of Investigation, (2013) 7 SCC 466,*** it was *inter alia* held as under:-

"25. *Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep-rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as a grave offence affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country."*

38. This position of law was restated and reaffirmed by the Supreme Court in ***Tarun Kumar v. Assistant Director, Directorate of Enforcement***, ***2023 SCC OnLine SC 1486,*** relevant passages of which are as under:-

*"**22.** Lastly, it may be noted that as held in catena of decisions, the economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country. Undoubtedly, economic offences have serious repercussions on the development of the country as a whole. To cite a few judgments in this regard are Y.S. Jagan Mohan Reddy v. Central Bureau of Investigation, Nimmagadda Prasad v. Central Bureau of Investigation, Gautam Kundu v. Directorate of Enforcement (supra), State of Bihar v. Amit Kumar alias Bachcha Rai. This court taking a serious*

note with regard to the economic offences had observed as back as in 1987 in case of State of Gujarat v. Mohanlal Jitamalji Porwal as under:—

> *"5… The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to books. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the National Economy and National Interest…*

23. *With the advancement of technology and Artificial Intelligence, the economic offences like money laundering have become a real threat to the functioning of the financial system of the country and have become a great challenge for the investigating agencies to detect and comprehend the intricate nature of transactions, as also the role of the persons involved therein. Lot of minute exercise is expected to be undertaken by the Investigating Agency to see that no innocent person is wrongly booked and that no culprit escapes from the clutches of the law. When the detention of the accused is continued by the Court, the courts are also expected to conclude the trials within a reasonable time, further ensuring the right of speedy trial guaranteed by Article 21 of the Constitution."*

39. Before adverting to the facts, it would be important to refer to Section 45 of PMLA, the provision which requires examination for deciding the present application and the same is as follows:-

"45. <u>Offences to be cognizable and non-bailable</u>. *— (1) Notwithstanding anything contained in the Criminal Procedure Code, 1973 (2 of 1974), no person accused of an offence [under this Act] 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 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 undersection 4 except upon a complaint in writing made by—

(i) the Director; or

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

(1A) Notwithstanding anything contained in the Criminal Procedure Code, 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.

(2) The limitation on granting of bail specified in sub-section (1) is in addition to the limitations under the Criminal Procedure Code, 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 Criminal Procedure Code, 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."

40. In ***Saumya Chaurasia v. Directorate of Enforcement, 2023 SCC OnLine SC 1674,*** the Supreme Court highlighted the object of PMLA, enacted to prevent money laundering and to provide for confiscation of property derived from or involved in money laundering and for matters connected therewith and incidental thereto. Plain reading of Section 45(1) of PMLA shows that the accused is required to cross the threshold of the twin conditions mentioned therein: (a) public prosecutor shall be given an

opportunity to oppose the application for release of the accused; and (b) the Court should be satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and is not likely to commit any offence while on bail at the time of seeking bail. It is no longer *res integra* that the twin conditions are mandatory and the limitations imposed are in addition to those under Section 439 Cr.P.C. In ***Gautam Kundu (supra)***, the Supreme Court highlighted that the conditions postulated under Section 45 of PMLA are mandatory and need to be complied with and that provisions of the Section 45 will have an overriding effect on the general provisions of the Criminal Procedure Code in case of conflict between them. For ready reference, relevant passages are as follows:-

> *"**30.** The conditions specified under Section 45 of PMLA are mandatory and need to be complied with, which is further strengthened by the provisions of Section 65 and also Section 71 of PMLA. Section 65 requires that the provisions of CrPC shall apply insofar as they are not inconsistent with the provisions of this Act and Section 71 provides that the provisions of PMLA shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. PMLA has an overriding effect and the provisions of CrPC would apply only if they are not inconsistent with the provisions of this Act. Therefore, the conditions enumerated in Section 45 of PMLA will have to be complied with even in respect of an application for bail made under Section 439 CrPC. That coupled with the provisions of Section 24 provides that unless the contrary is proved, the authority or the Court shall presume that proceeds of crime are involved in money-laundering and the burden to prove that the proceeds of crime are not involved, lies on the appellant.*
>
> *xxx xxx xxx*
>
> ***34.** We note that admittedly the complaint is filed against the appellant on the allegations of committing the offence punishable under Section 4 of PMLA. The contention raised on behalf of the appellant that no offence under Section 24 of the SEBI Act is made out against the appellant, which is a scheduled offence under PMLA, needs to be considered from the materials collected during the investigation by the respondents. There is no order as yet passed by a competent court of law, holding that no offence is made out against the appellant under Section 24 of the SEBI Act*

and it would be noteworthy that a criminal revision praying for quashing the proceedings initiated against the appellant under Section 24 of the SEBI Act is still pending for hearing before the High Court. We have noted that Section 45 of PMLA will have overriding effect on the general provisions of the Code of Criminal Procedure in case of conflict between them. As mentioned earlier, Section 45 of PMLA imposes two conditions for grant of bail, specified under the said Act. We have not missed the proviso to Section 45 of the said Act which indicates that the legislature has carved out an exception for grant of bail by a Special Court when any person is under the age of 16 years or is a woman or is sick or infirm. Therefore, there is no doubt that the conditions laid down under Section 45-A of PMLA, would bind the High Court as the provisions of special law having overriding effect on the provisions of Section 439 of the Code of Criminal Procedure for grant of bail to any person accused of committing offence punishable under Section 4 of PMLA, even when the application for bail is considered under Section 439 of the Code of Criminal Procedure."

41. In ***Vijay Madanlal (supra),*** a three Judge Bench of the Supreme Court upheld the validity of Section 45 of PMLA and observed as under:-

"387. Having said thus, we must now address the challenge to the twin conditions as applicable post amendment of 2018. That challenge will have to be tested on its own merits and not in reference to the reasons weighed with this Court in declaring the provision, (as it existed at the relevant time), applicable only to offences punishable for a term of imprisonment of more than three years under Part A of the Schedule to the 2002 Act. Now, the provision (Section 45) including twin conditions would apply to the offence(s) under the 2002 Act itself. The provision post 2018 amendment, is in the nature of no bail in relation to the offence of money-laundering unless the twin conditions are fulfilled. The twin conditions are that there are reasonable grounds for believing that the accused is not guilty of offence of money-laundering and that he is not likely to commit any offence while on bail. Considering the purposes and objects of the legislation in the form of 2002 Act and the background in which it had been enacted owing to the commitment made to the international bodies and on their recommendations, it is plainly clear that it is a special legislation to deal with the subject of money-laundering activities having transnational impact on the financial systems including sovereignty and integrity of the countries. This is not an ordinary offence. To deal with such serious offence, stringent measures are provided in the 2002 Act for prevention of money-laundering and combating menace of money-laundering, including for attachment and confiscation of proceeds of crime

and to prosecute persons involved in the process or activity connected with the proceeds of crime. In view of the gravity of the fallout of money-laundering activities having transnational impact, a special procedural law for prevention and regulation, including to prosecute the person involved, has been enacted, grouping the offenders involved in the process or activity connected with the proceeds of crime as a separate class from ordinary criminals. The offence of money-laundering has been regarded as an aggravated form of crime "world over". It is, therefore, a separate class of offence requiring effective and stringent measures to combat the menace of money-laundering.

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400. It is important to note that the twin conditions provided under section 45 of the 2002 Act, though restrict the right of the accused to grant of bail, but it cannot be said that the conditions provided under section 45 impose absolute restraint on the grant of bail. The discretion vests in the court which is not arbitrary or irrational but judicial, guided by the principles of law as provided under section 45 of the 2002 Act. While dealing with a similar provision prescribing twin conditions in MCOCA, this court in Ranjitsing Brahmajeetsing Sharma (supra), held as under:

> *"**44. The wording of section 21(4), in our opinion, does not lead to the conclusion that the court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act.** If such a construction is placed, the court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the applicant. Such cannot be the intention of the Legislature. **Section 21(4) of the MCOCA, therefore, must be construed reasonably. It must be so construed that the court is able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial.** Similarly, the court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in futuro must be an offence under the Act and not any other offence. Since it is difficult to predict the future conduct of an accused, the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence.*
>
> ***45. It is, furthermore, trite that for the purpose of considering an application for grant of bail, although detailed reasons are not necessary to be assigned, the order granting bail must demonstrate application of mind at least in serious cases as to why the applicant***

has been granted or denied the privilege of bail.

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

(emphasis supplied)

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404. As aforementioned, similar twin conditions have been provided in several other special legislations validity whereof has been upheld by this court being reasonable and having nexus with the purposes and objects sought to be achieved by the concerned special legislations. Besides the special legislation, even the provisions in the general law, such as 1973 Code stipulate compliance of pre-conditions before releasing the accused on bail. The grant of bail, even though regarded as an important right of the accused, is not a mechanical order to be passed by the courts. The prayer for grant of bail even in respect of general offences, have to be considered on the basis of objective discernible judicial parameters as delineated by this court from time-to-time, on case-to-case basis.

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406. It was urged that the scheduled offence in a given case may be a non- cognizable offence and yet rigours of section 45 of the 2002 Act would result in denial of bail even to such accused. This argument is founded on clear misunderstanding of the scheme of the 2002 Act. As we have repeatedly mentioned in the earlier part of this judgment that the offence of money-laundering is one wherein a person, 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. The fact that the proceeds of crime have been generated as a result of criminal activity relating to a scheduled offence, which incidentally happens to be a non-cognizable offence, would make no difference. The person is not prosecuted for the scheduled offence by invoking provisions of the 2002 Act, but only when he has derived or *obtained property as a result of criminal activity relating to or in relation to a scheduled offence and then indulges in process or activity connected with such proceeds of crime. Suffice it to observe that the argument under consideration is completely misplaced and needs to be rejected."*

42. In this context, it would be useful to allude to the following observations of the Supreme Court in ***Tarun Kumar (supra)***:-

"17. As well settled by now, the conditions specified under Section 45 are mandatory. They need to be complied with. ***The Court is required to be satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and he is not likely to commit any offence while on bail.*** *It is needless to say that as per the statutory presumption permitted under Section 24 of the Act, the Court or the Authority is entitled to presume unless the contrary is proved, that in any proceedings relating to proceeds of crime under the Act, in the case of a person charged with the offence of money laundering under Section 3, such proceeds of crime are involved in money laundering. Such conditions enumerated in Section 45 of PML Act will have to be complied with even in respect of an application for bail made under Section 439 Cr. P.C. in view of the overriding effect given to the PML Act over the other law for the time being in force, under Section 71 of the PML Act."*

(emphasis supplied)

43. In a recent judgment in ***Satyendar Kumar Jain (supra)***, the Supreme Court reiterated that the twin conditions in Section 45(1) of PMLA are mandatory and examined the bail application of the appellant therein on the touchstone of the twin conditions under Section 45 of PMLA.

44. Coming to other relevant provision under the PMLA, 'Offence of money laundering' is defined in Section 3 of PMLA, which reads as under:-

"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.]"

45. Expression 'proceeds of crime' is defined under Section 2(u) of PMLA as follows:-

"2. Definitions.—(1) In this Act, unless the context otherwise requires,—
xxx xxx xxx

(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];"

46. The scope and ambit of Section 3 of PMLA came up for consideration before the Supreme Court in ***Vijay Madanlal (supra)*** and the Supreme Court held as under:-

"263. Coming to section 3 of the 2002 Act, the same defines the offence of money-laundering. The expression "money-laundering", ordinarily, means the process or activity of placement, layering and finally integrating the tainted property in the formal economy of the country. However, section 3 has a wider reach. The offence, as defined, captures every process and activity in dealing with the proceeds of crime, directly or indirectly, and not limited to the happening of the final act of integration of tainted property in the formal economy to constitute an act of money-laundering. This is amply clear from the original provision, which has been further clarified by insertion of Explanation vide Finance (No. 2) Act, 2019. Section 3, as amended, reads thus:

*"**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."

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265. To put it differently, the section as it stood prior to 2019 had itself incorporated the expression "including", which is indicative of reference made to the different process or activity connected with the proceeds of crime. Thus, the principal provision (as also the Explanation) predicates that if a person is found to be directly or indirectly involved in any process or activity connected with the proceeds of crime must be held guilty of offence of money-laundering. If the interpretation set forth by the petitioners was to be accepted, it would follow that it is only upon projecting or claiming the property in question as untainted property, the offence would be complete. This would undermine the efficacy of the legislative intent behind section 3 of the Act and also will be in disregard of the view expressed by the FATF in connection with the occurrence of the word "and" preceding the expression "projecting or claiming" therein.

This court in Pratap Singh v. State of Jharkhand, enunciated that the international treaties, covenants and conventions although may not be a part of municipal law, the same be referred to and followed by the courts having regard to the fact that India is a party to the said treaties. This court went on to observe that the Constitution of India and other ongoing statutes have been read consistently with the rules of international law. It is also observed that the Constitution of India and the enactments made by Parliament must necessarily be understood in the context of the present-day scenario and having regard to the international treaties and convention as our constitution takes note of the institutions of the world community which had been created. In Apparel Export Promotion Council v. A. K. Chopra, the court observed that domestic courts are under an obligation to give due regard to the international conventions and norms for construing the domestic laws, more so, when there is no inconsistency between them and there is a void in domestic law. This view has been restated in Ms. Githa Hariharan (supra), as also in People's Union for Civil Liberties (supra) and National Legal Services Authority v. Union of India.

266. In the Core Recommendations of the FATF referred to above, the same clearly mention that the word "and" in section 3 of the 2002 Act would not be fully in line with the Vienna and Palermo Conventions. This doubt has been ably responded and elucidated by India to the international body by referring to the jurisprudence as evolved in India to interpret the word "and" as "or" in the context of the legislative intent—to reckon any (every) process or activity connected with the proceeds of crime constituting offence of money-laundering. To buttress the stand taken by India before the FATF, reliance has been justly placed on reported decisions of this court amongst other Sanjay Dutt (supra), which had occasion to deal with the expression "arms and ammunition" occurring in section 5 of the TADA Act. The court noted that if it is to be read conjunctively because of word "and", the object of prohibiting unauthorised possession of the forbidden arms and ammunition would be easily frustrated by the simple device of one person carrying the forbidden arms and his accomplice carrying its ammunition so that neither is covered under section 5 when any one of them carrying more would be so liable. The principle underlying this analysis by the Constitution Bench must apply proprio vigore to the interpretation of section 3 of the 2002 Act. To the same end, this court in the case of Ishwar Singh Bindra v. State of U. P., Joint Director of Mines Safety (supra) and Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd., interpreted the word "and" in the concerned legislation(s) as word "or" to give full effect to the legislative intent.

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273. On a bare reading of section 3, we find no difficulty in encapsulating the true ambit, given the various arguments advanced. Thus, in the conspectus of things it must follow that the interpretation put forth by the respondent will further the purposes and objectives behind the 2002 Act and also adequately address the recommendations and doubts of the international body whilst keeping in mind the constitutional limits. It would, therefore, be just to sustain the argument that the amendment by way of the Explanation has been brought about only to clarify the already present words, "any" and "including" which manifests the true meaning of the definition and clarifies the mist around its true nature."

47. From a conspectus of the aforesaid judgements, it is clear that the present bail application will have to be considered on the touchstone and anvil of the twin conditions under Section 45 of PMLA and Court will have to arrive at a *prima facie* satisfaction that the applicant crosses the threshold. With this in the backdrop, I may advert briefly to the chronology of events relating to registration of present ECIR against the applicant under Section 3 of PMLA, punishable under Section 4 of PMLA. On 31.01.2018, CBI, Cochin registered an RC under Sections 7, 13(2) read with 13(1)(a) and (d) of PC Act against one J.D. Mathew. Applicant was arrested on 04.03.2018 in the said case. On 06.04.2018, Preliminary Inquiry was initiated against Satish Kumar. On 07.05.2018, Special Court at Thiruvananthapuram granted statutory bail to the applicant. On 21.09.2020, CBI Kolkata registered another RC under Sections 120B and 420 IPC read with Sections 7, 11 and 12 of PC Act. Based on this, on 25.09.2020, ED, Kolkata Zone registered the present ECIR against the applicant under Section 3 of PMLA. On 11.12.2020, applicant surrendered before the Special Judge, Asansol and was sent to judicial custody. On 24.01.2022, applicant was granted bail by the Supreme Court and was released on 28.01.2022. Notice was served on the applicant under Section 50 of PMLA to appear before the investigating

authorities. While the applicant urges that he was appearing before the authorities and co-operating, as and when called for, the stand of ED is that *albeit* the applicant appeared for interrogation but he gave evasive, misleading and false replies to the questions put forth to him. On 19.02.2022, applicant appeared before the Special Court, Delhi and was remanded to police custody till 26.02.2022, whereafter he was sent to judicial custody on the same day. On 18.04.2022, prosecution complaint was filed under Sections 45 read with 44 of PMLA for alleged offences under Section 3 read with Section 70 punishable under Section 4 of PMLA before learned Special Judge (PC Act) (CBI), Rouse Avenue Courts. On 19.04.2022, cognisance was taken by the Court and on 06.05.2022, applicant filed a bail application under Section 439 Cr.P.C. seeking regular bail in complaint case No. 13/2022, which was dismissed vide order dated 30.05.2022.

48. Be it noted that supplementary charge sheets have been filed and a conjoint reading of the charge sheets brings out that since 2015, cattle auction at Lalgola Custom House, Domkal Custom Office, Jangipur Custom Office and Aurangabad Custom Office was being managed by the applicant, his associates i.e. promoters of JHM Group and several other persons. As the profit on selling the auction cattle in the nearby areas was meagre, they started indulging in cross-border smuggling of the cattle to Bangladesh. The auction was taking place at the Custom House only for namesake. Apart from the auctioned cattle, the cattle were also procured from different local Haats. Abdul Latif was responsible for procurement of cattle from the Haat at Birbhum and he largely managed the business of procurement and

transportation of cattle from Birbhum District to Sonar Bangla Office, Omarpur, Murshidabad. Cattle procured from each market were loaded in trucks and sent to 'Sonar Bangla Office' of the applicant and JHM brothers. Sonar Bangla was a hotel owned by JHM brothers and investigation revealed that under the cover of a marble shop this was the main hub of cattle smuggling activities. All truck drivers transporting the cattle of this syndicate were given a PAD (Token), which was an identification so that there was no hindrance by local administration or police authorities during transportation. Cross-border movement was facilitated by Satish Kumar and most cattle crossed between 11.00 PM to 3.00 AM in night. Applicant and Abdul Latif were in direct contact with one Sehegal Hossain, a Constable in the West Bengal Police, who was working as personal security guard to one of the political leaders since 2011. He facilitated the cattle smuggling business by providing protection and patronage to the applicant and his associates.

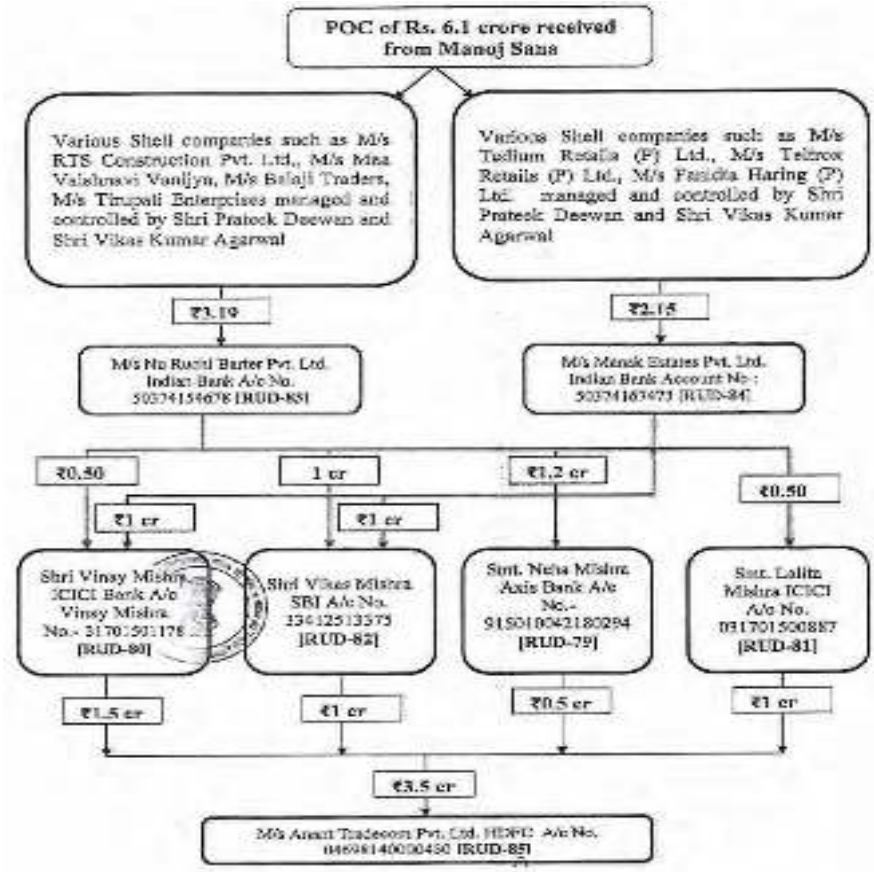
49. Based on the evidence disclosed in the predicate offence, present ECIR was registered against the applicant. Conscious of the settled legal position that at the stage of considering a bail application this Court is not to enter into a meticulous examination of the statements of the witnesses or hold a mini-trial, I am examining the case set up by the ED and the defence set up by the applicant only to satisfy whether there are reasonable grounds for believing that the applicant is not guilty of the alleged offence under the PMLA and that he is not likely to commit any offence while on bail as required by Section 45 of PMLA. Coming to the allegations, the first relates to the allegation that applicant along with his nephews Md. Jehangir Alam,

Md. Humayun Kabir and Md. Mehdi Hasan deposited around Rs.12.8 Crores in cash into the joint bank account of Badal Krishna Sanyal and Tania Sanyal mainly through Manoj Sana as a bribe to Satish Kumar, the then Commandant, 36 Battalion, BSF, for providing protection and patronage in the predicate offence of cattle smuggling. The entries in the diary of Manoj Sana, produced by him in the predicate offence, are corroborated by the cash deposit slips, whereby Rs.3.45 Crores in the name of Satish Kumar, was deposited by Manoj Sana in the joint bank account of father-in-law and wife of Satish Kumar. Deposit slips are signed by Manoj Sana and as per the case of ED, signatures are proved through forensic examination by the CFSL report dated 24.11.2021. Cash deposit slips collected from the Axis Bank of Badal Krishna Sanyal and Tania Sanyal with regard to Income-tax Declaration Scheme, 2016, pertaining to the undisclosed income by Badal Krishna Sanyal, revealed that cash deposits were made by Manoj Sana on the same day as the date of entries against the name of Satish Kumar, mentioned in the diary. This according to ED is the bribe amount given by the applicant and promoters of JHM Group to Satish Kumar for providing protection and patronage in cattle smuggling in the area under the command of his Battalion at Malda and Murshidabad in West Bengal and thus the PoC of Rs.12.8 Crores was generated and laundered.

50. As for Rs.6.1 Crores, complaint contains allegations that there were other entries in the same diary of Manoj Sana which revealed that Vinay Mishra and his brother had received PoC of Rs.6.1 Crores during December, 2016 to March, 2017 from Manoj Sana, who was the cash handler of the applicant and his three nephews i.e. promoters of JHM Group of Companies.

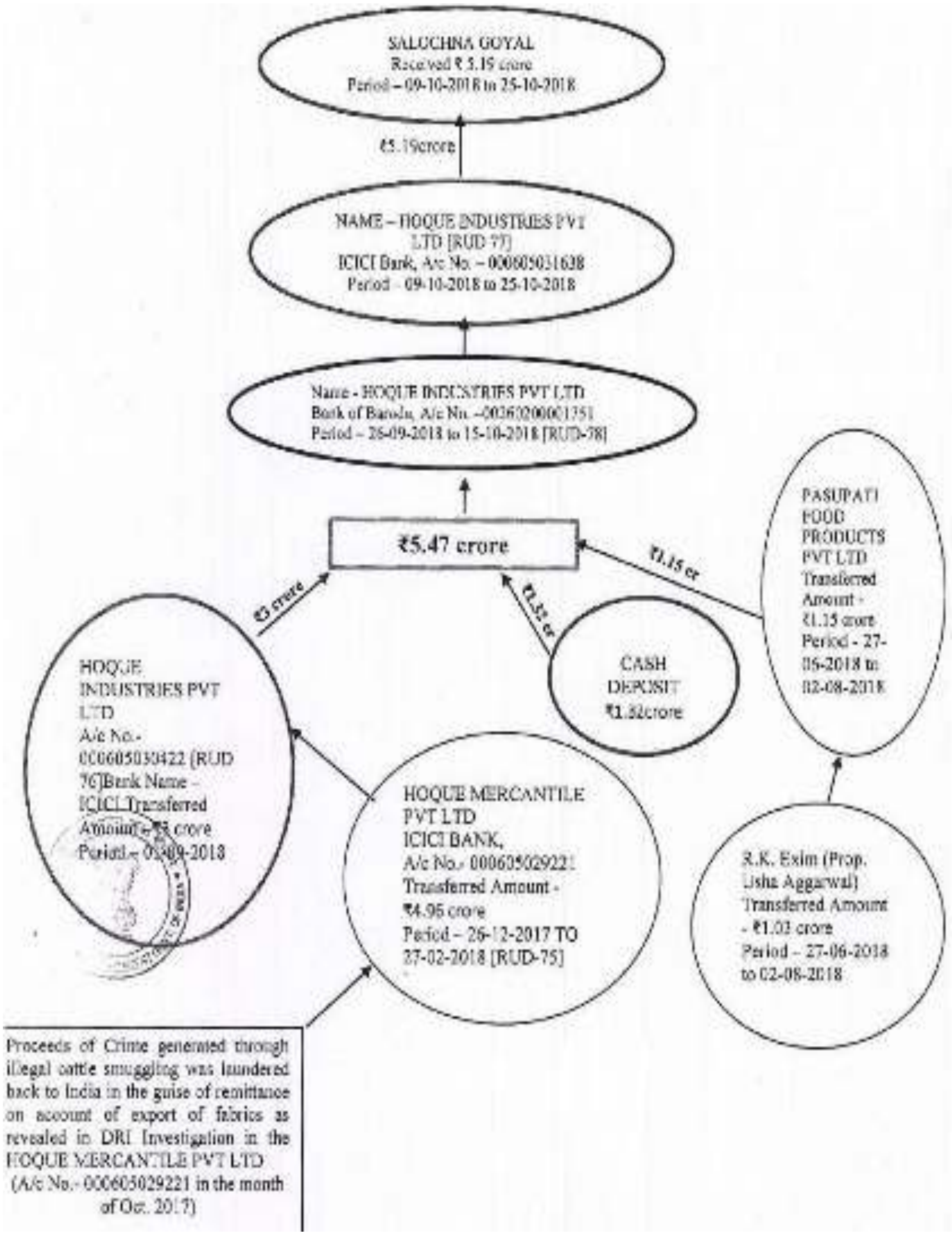
Manoj Sana delivered Rs.6.1 Crore on four different occasions i.e. Rs.10,00,000/- on 20.12.2016; Rs.50,00,000/- on 29.12.2016; Rs. 2,50,00,000/- on 19.01.2017; and Rs.3,00,00,000/- on 20.03.2017 to Vinay Mishra and his brother, which were part of PoC generated from cattle smuggling, the predicate offence. Investigation revealed that during May, 2017, Vinay Mishra along with Vikas Mishra and other family members acquired their residential premise at 1, Dharamdas Row, Kolkata by acquiring shareholding of M/s. Anant Tradecom Pvt. Ltd. by laundering these Rs.6.1 Crores through various shell companies namely, M/s. Nu Ruchi Barter Pvt. Ltd. and M/s Manak Estates Pvt. Ltd. arranged by Prateek Diwan and Vikas Aggarwal. Thereafter, in the guise of unsecured loans, an amount of approximately Rs.3.5 Crores was transferred to various individual accounts of Mishra family. Both CBI and ED carried out investigation and found that these were shell companies with no actual business and used solely for booking of accommodation entries. Vikas Kumar Agarwal in his statement under Section 50 of PMLA on 08.04.2021 *inter alia* stated that both these companies were engaged in the business of accommodation entries in which he had contributed some amount through RTGS etc. The accommodation entries were provided to Vikas and Vinay Mishra, Neha and Lalita Mishra, on request of Prateek Diwan, the Chartered Accountant. Vikas Aggarwal furnished the details of the amounts involved as well as the period of the accommodation entries in a tabular form. To connect the dots, Vivek Kumar was also interrogated and he stated that he was made the Director in these companies and other companies of Vikas Agarwal in 2019 but had not done any work in these companies and merely received

Rs.10,000/- as remuneration each month. It is further alleged that Mishra family utilised these funds to procure 12,500 shares of M/s. Anant Tradecom Pvt. Ltd. for a total consideration of Rs.3.5 Crores which is revealed also by Harinder Kaur Sethi, ex-Director of M/s. Anant Tradecom Pvt. Ltd. during her statement under Section 17 of PMLA. As per the ED, the fund trail is as follows:-



51. In respect of role of HMPL and HIPL, it is stated in the complaint that PoC generated from the predicate offence of cattle smuggling was laundered by showing them as genuine remittances on account of export of fabrics to the tune of Rs.6.1 Crores by HMPL. This remittance was received in full consideration of export of fabrics in the ICICI Bank EEFC Account No.

000606000425 of HMPL and thereafter transferred to another ICICI Bank Account No. 000605029221 of HMPL. Part of this remittance was routed through various bank accounts of HIPL to purchase the entire 3rd floor with roof rights of CR Park Property. Flow chart presented in the complaint to explain the transactions is as under:-



52. It is stated in the complaint that HMPL, one of the group companies controlled and managed by the applicant, incorporated on 07.10.2015 with an initial capital of Rs.1 lac had shown exponential growth in its turnover from Nil in Financial Year 2015-16 to Rs.18.58 Crores in Financial Year 2016-17 and Rs.173.75 Crores in Financial Year 2017-18. This huge jump matches with period of cash generation from cattle smuggling under protection and patronage of Satish Kumar. Company attempted to show source and growth in the turnover on account of export of agri-products, however, investigation revealed through statements of Sanjay and Shreeprakash Jaiswal under Section 50 of PMLA that they had provided bogus bills for purchase of export products like rice etc. which disproves the legal source of turnover claimed by the company. Investigation also revealed that during Financial Year 2016-17, HMPL, JHM Logistics Pvt. Ltd. and JHM Overseas Pvt. Ltd. had exported fabrics to Dubai. This export was investigated by Custom Department due to claim of bogus duty drawback by the companies and documents collected from HMPL as well as information from Commissioner of Customs, Chennai-IV revealed that HMPL had received Rs.6.1 Crore as remittance for export of fabrics to Dubai. The documents collected however revealed that the value of export declared at Dubai Customs was less than 2% of the total value of export declared with Indian Customs. Total value of export consideration i.e. Rs.6.1 Crores declared with Indian Customs was received by HMPL, which was allegedly PoC generated from scheduled offence, laundered in the guise of export remittances by the Company, controlled and managed by the applicant. The evidence relied on by the ED in the aforesaid context is in the form of

statements of Sanjay Jaiswal and Shreeprakash Jaiswal. Sanjay Jaiswal stated that he was asked by Biswajit Malakar, one of the Directors of JHM Group of Companies to provide bogus bills for fabrics and he accordingly requested Shreeprakash Jaiswal to provide them, which he did. He further stated that when he met Biswajit Malakar in 2016 and started working for promoter of JHM Group of companies and promoter of Hoque Group of Companies, they were working together and all the work orders related to the two came from Biswajit Malakar. Shreeprakash Jaiswal stated that apart from providing bogus bills to the two groups of companies, he never rendered any other services.

53. ED has also relied on the statement of Babla Sana recorded under Section 50 of PMLA on 08.02.2022, who is a brother of Manoj Sana and allegedly a close aide of the applicant. Babla Sana stated that Manoj Sana used to work for JHM group which had two companies namely, JHM Import and Export Pvt. Ltd. and JHM Logistics Pvt. Ltd. and Md. Jehangir Alam, Md. Humayn Kabir and Md. Mehdi Hasan were Directors of the former company. He stated that his brother was involved in account transactions with various persons/companies as per instructions of Directors of JHM Group and that he knew that JHM Group companies were involved in some illegal work of cattle smuggling also. He further stated that he has seen the applicant with his brother one or two times and had business relationships with JHM Group and Mehdi Hasan. Additionally, ED also relies on the investigation, which revealed that Bhaskar Bhuvan son of Satish Kumar was employed in the company of the applicant for a few months and thereafter appointed as a Director of HIPL, without any experience as an

indirect illegal gratification to Satish Kumar for patronage to the predicate offence.

54. Having regard to the totality of facts and circumstances emerging from the complaint, charge sheet, supplementary charge sheets, statements of witnesses under Section 50 of PMLA, documents in the form of diary entries, cash deposit slips, CFSL report etc., in my considered view, there is *prima facie* sufficient material to show the involvement of the applicant in the alleged offence of money laundering and/or connecting the monies involved in the various transactions to the predicate offence as 'proceeds of crime', under Section 3 of PMLA. This Court is *prima facie* unable to agree with the applicant at this stage that the monies generated from cattle smuggling and concealed through various transactions, purchases and shell companies formed only for accommodation entries were not from criminal activities relating to scheduled offence. As held in ***Tarun Kumar (supra),*** as per the statutory presumption permitted under Section 24 of PMLA, the Court or the Authority is entitled to presume, unless the contrary is proved, that in any proceedings relating to PoC under PMLA, in the case of a person charged with the offence of money laundering under Section 3 of PMLA, such PoC are involved in money laundering. In view of the above, more particularly, the role ascribed to the applicant, he has failed to meet and satisfy the test of twin conditions under Section 45(1) of PMLA for this Court to come to a *prima facie* conclusion that there are reasonable grounds for believing that the applicant is not guilty of the alleged offence.

55. Learned Senior Counsel for the applicant emphatically argued that the applicant purchased cattle through legal auction channels facilitated by the

Customs Department and then sold the cattle at Mallick Pashu Haat and that the applicant provided bills to the CBI in support of the legitimate transactions and that these transactions were reflected in the IT returns for Financial Years 2016-17 and 2017-18. The contention was rebutted by the ED. It is their case that upon realising the need for documents to show that the cattle were procured through auction to cover up the crime, applicant approached one Aftabbudin Mallick, *haat* owner of Mallick Pashu Haat for arranging fake bills showing sale of cattle on various dates from 2016 onwards. Accordingly, huge number of fake bills were prepared. ED has taken a categorical stand that they identified the bill writers used by Aftabbudin Mallick for creation of fake bills, who had not only written the contents but had also appended their signatures. Knowingly, they affixed their own thumb impressions in such bills as impressions of sellers. It is the case of the ED that applicant had good contacts with Administrative Authorities including officers of West Bengal Police and utilised these contacts and formed an organised syndicate for cattle smuggling in Murshidabad. After Satish Kumar was posted, applicant had direct access to him, who in turn being the Commandant directed his Company Commanders to facilitate in identifying the breed and category of cattle as well as deciding the price etc. With respect to the IT returns, in my *prima facie* view, ED is correct in arguing that income tax authorities are not concerned with the source of income and as held by the Supreme Court in ***Puneet Sabharwal (supra)*** in the tax regime, legality or illegality of transactions generating profit or loss is inconsequential and assessment proceedings are directed only to quantify the taxable income.

56. It is incorrect for the applicant to urge that the allegations with respect to deposit of Rs.12.8 Crores rest entirely on the diary of Manoj Sana. *Prima facie*, ED has corroborated the diary entries by the cash deposit slips, whereby Rs.3.45 Crores has been deposited in the name of Satish Kumar by Manoj Sana in the joint account of Badal Krishna Sanyal and Tania Sanyal. These cash deposit slips are signed by Manoj Sana and his signatures have been verified by CFSL Report dated 24.11.2021. As far as the diary of Manoj Sana is concerned, ED has rightly argued that the same was maintained by Manoj Sana in his ordinary course of business and was recovered from his possession and produced by him and therefore, there is a presumption under Section 22 of PMLA that the diary belongs to him; the contents of the diary are true and in his handwriting, bearing his signatures.

57. Insofar as admissibility of statements under Section 50 of PMLA is concerned, in ***Rohit Tandon (supra),*** the Supreme Court held that Section 50 statements are admissible in evidence and may make out a formidable case about the involvement of the accused in the commission of offence of money laundering and relevant extract from paragraph 31 is as follows:-

> *"**31.** ....The prosecution is relying on statements of 26 witnesses/ accused already recorded, out of which 7 were considered by the Delhi High Court. These statements are admissible in evidence, in view of Section 50 of the 2002 Act. The same makes out a formidable case about the involvement of the appellant in commission of a serious offence of money laundering. It is, therefore, not possible for us to record satisfaction that there are reasonable grounds for believing that the appellant is not guilty of such offence....."*

58. In ***Tarun Kumar (supra),*** the Supreme Court reiterated that statements under Section 50 of PMLA are admissible at the stage of bail. In a recent judgment in ***Satyendar Kumar Jain (supra),*** the Supreme Court

examined the statements of the witnesses recorded and documents produced by them under Section 50 of PMLA as one of the evidence while testing the impugned common judgment passed by this Court rejecting the bail applications. Reference was made by the Supreme Court to the earlier decision in ***Rohit Tandon (supra)*** and ***Vijay Madanlal (supra)*** on the question of probative value of statements under Section 50 of PMLA at the stage of grant of bail. Following the aforesaid judgments, this Court in ***Kalvakuntla Kavitha v. Central Bureau of Investigation, 2024 SCC OnLine Del 4459,*** rejected the application for regular bail *inter alia* relying on statements under Section 50 of PMLA and observing that prior to the commencement of the trial and during the stage where investigation is yet not concluded, it will be the statements of witnesses under Section 50 of PMLA including those under Sections 161 and 164 Cr.P.C. which will form the basis of deciding whether there are sufficient reasons and sufficient material to either grant or reject bail to the accused.

59. The next plank of argument on behalf of the applicant that investigation *qua* the applicant is complete and trial is likely to take long and therefore, applicant ought not to be incarcerated indefinitely, cannot be accepted in view of the finding in the earlier part of the judgment that applicant has failed to cross the threshold of the twin conditions in Section 45 of PMLA. This exact contention was raised in ***Tarun Kumar (supra)*** and the observations of the Supreme Court, rejecting the contention on the ground that if the applicant does not cross the threshold in Section 45 of PMLA i.e. fails to *prima facie* prove that he is not guilty of the alleged offence and is not likely to commit any offence while on bail, merely

because there is long incarceration or investigation is on-going cannot be a ground to grant bail, are as follows:-

> ***"20.*** *It is also difficult to countenance the submission of learned Counsel Mr. Luthra that the investigation qua the appellant is complete and the trial of the cases likely to take long time. According to him the appellant ought not to be incarcerated indefinitely merely because the investigation is kept open with regard to the other accused. In this regard, it may be noted that the appellant has not been able to overcome the threshold stipulations contemplated in Section 45 namely he has failed to prima facie prove that he is not guilty of the alleged offence and is not likely to commit any offence while on bail. It cannot be gainsaid that the burden of proof lies on the accused for the purpose of the condition set out in the Section 45 that he is not guilty of such offence. Of course, such discharge of burden could be on the probabilities, nonetheless in the instant case there being sufficient material on record adduced by the respondent showing the thick involvement of the appellant in the alleged offence of money laundering under Section 3 of the said Act, the Court is not inclined to grant bail to the appellant.*
>
> ***21.*** *The apprehension of the learned counsel for the appellant that the trial is likely to take long time and the appellant would be incarcerated for indefinite period, is also not well founded in view of the observations made by this Court in case of Vijay Madanlal (supra). On the application of Section 436A of the Criminal Procedure Code, 1973, it has been categorically held therein that:—*
>
>> *"**419.** Section 436A of the 1973 Code, is a wholesome beneficial provision, which is for effectuating the right of speedy trial guaranteed by Article 21 of the Constitution and which merely specifies the outer limits within which the trial is expected to be concluded, failing which, the accused ought not to be detained further. Indeed, Section 436A of the 1973 Code also contemplates that the relief under this provision cannot be granted mechanically. It is still within the discretion of the Court, unlike the default bail under Section 167 of the 1973 Code. Under Section 436A of the 1973 Code, however, the Court is required to consider the relief on case-to-case basis. As the proviso therein itself recognises that, in a given case, the detention can be continued by the Court even longer than one-half of the period, for which, reasons are to be recorded by it in writing and also by imposing such terms and conditions so as to ensure that after release, the accused makes himself/herself available for expeditious completion of the trial."*

22. Lastly, it may be noted that as held in catena of decisions, the economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country. Undoubtedly, economic offences have serious repercussions on the development of the country as a whole. To cite a few judgments in this regard are Y.S. Jagan Mohan Reddy v. Central Bureau of Investigation, Nimmagadda Prasad v. Central Bureau of Investigation, Gautam Kundu v. Directorate of Enforcement (supra), State of Bihar v. Amit Kumar alias Bachcha Rai. This court taking a serious note with regard to the economic offences had observed as back as in 1987 in case of State of Gujarat v. Mohanlal Jitamalji Porwal as under:—

> *"5… The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to books. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the National Economy and National Interest…"*

60. It was also urged on behalf of the applicant that he has been granted bail by the Supreme Court in the predicate offence on the sole ground that charge sheet has been filed and investigation is complete and therefore there is no reason why his incarceration should continue in the present case, where also charge sheet has been filed. Merely filing of the charge sheet and/or grant of bail in the predicate offence, cannot be the ground to grant bail in the present case where the offence alleged is under PMLA and also because the investigation is on-going. The Supreme Court in ***Directorate of Enforcement v. Aditya Tripathi, 2023 SCC OnLine SC 619,*** observed as under:-

> *"**15**. From the impugned judgment(s) and order(s) passed by the High Court, it appears that what is weighed with the High Court is that chargesheet has been filed against respective respondent No. 1 - accused and therefore, the investigation is completed. However, the High Court has failed to notice and appreciate that the investigation with respect to the scheduled offences under the PML Act, 2002 by the Enforcement Directorate is still going on. Merely because, for the predicated offences the chargesheet might have been filed it cannot be a ground to release the accused on bail in connection with the scheduled offences under the PML Act, 2002. Investigation for the predicated offences and the investigation by the Enforcement Directorate for the scheduled offences under the PML Act are different and distinct. Therefore, the High Court has taken into consideration the irrelevant consideration. The investigation by the Enforcement Directorate for the scheduled offences under the PML Act, 2002 is till going on.*
>
> ***16.*** *As observed hereinabove, the High Court has neither considered the rigour of Section 45 of the PML Act, 2002 nor has considered the seriousness of the offences alleged against accused for the scheduled offences under the PML Act, 2002 and the High Court has not at all considered the fact that the investigation by the Enforcement Directorate for the scheduled offences under the PML Act, 2002 is still going on and therefore, the impugned orders passed by the High Court enlarging respective respondent No. 1 on bail are unsustainable and the matters are required to be remitted back to the High Court for afresh decision on the bail applications after taking into consideration the observations made hereinabove."*

61. It would be apposite to also refer to the judgment in ***Satyendar Kumar Jain (supra),*** wherein the Supreme Court before beginning to examine the rival contentions of the parties observed that the Court was conscious of the fact that charge sheet had been filed in the predicate offence and cognisance had been taken by the concerned Court. The Supreme Court also observed that the examination would be confined to deciding whether Appellants therein had been able to satisfy the twin conditions in Section 45 of PMLA implying thereby that filing of charge sheet cannot itself be a ground to grant bail in an offence under PMLA and the considerations in the

latter case would be if the accused had discharged the onus that he satisfies the twin conditions under Section 45 of PMLA.

62. As far as the second part of the twin conditions of Section 45(1) of PMLA is concerned i.e. propensity of the applicant to commit crime, if released on bail is concerned, ED has brought forth that applicant has been running the organised syndicate of cattle smuggling to Bangladesh from the very initial days and made attempts to oust those who were involved in individual cattle smuggling and those who protested were implicated in false NDPS cases using his contacts with local police authorities. Applicant is alleged to have been involved in paying regular illegal gratification to custom officials and those who did not accede to his designs, were terrorised. In a nutshell, the applicant is stated to be part of a larger syndicate engaged for years in smuggling from which PoC are generated and therefore, at this stage, it cannot be said that the applicant will not commit the alleged crime if released on bail. Moreover, the stand of the ED that the applicant is well connected politically in the State of West Bengal and has connects at all levels from Administrative Authorities to the Police personnel, Customs Officials, etc. cannot be overlooked and in this background, the chances of the applicant tampering with evidence and/or influencing and intimidating witnesses with his clout, who also happen to be in the State of West Bengal cannot be ruled out. Last but not the least, it was urged on behalf of the applicant that he suffers from multiple medical ailments and is entitled to bail under Proviso to Section 45 of PMLA. This Court is unable to discern from any medical document placed on record that the applicant suffers from such medical ailments, which would entitle him to

the benefit of the proviso. Most of the medical issues raised by the applicant are such which can in the normal course be treated by the Doctors in the jail hospital and/or the referral hospitals.

63. The Bombay High Court in ***Mahendra Manilal Shah v. Rashmikant Mansukhlal Shah, 2009 SCC OnLine Bom 2095,*** held that the nature of the sickness needs to be seen as to whether the accused can be treated in the government hospitals and custody. The relevant portion of the judgment is reproduced hereunder:

> *"47. ... (1) Pawan v. Ram Prakash Pandey [Pawan v. Ram Prakash Pandey, (2002) 9 SCC 166 : 2003 SCC (Cri) 1110 : AIR 2002 SC 2224] , in this case the Hon'ble Supreme Court has set aside the order of the Allahabad High Court granting bail to the accused inter alia on the ground that the allegation of ailment of the applicant is not specifically denied. The Hon'ble Supreme Court was of the view that the ailment of the accused was not of such a nature as to require him to be released on bail. It was observed that the accused can always apply to the jail authorities to see that he gets the required treatment. It was observed that in the application, the applicant had not stated that he still needs medical treatment or that he has not received proper medical treatment from the jail authorities.*
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> *50. As observed in the various judgments cited above, mere admission of an accused to a hospital for medical treatment does not entitle an accused to obtain bail under the proviso to Section 437(1)CrPC. In fact as observed earlier the said proviso cannot be resorted to in all cases of sickness. The court must assess the nature of sickness and whether the sickness can be treated whilst in the custody or in government hospitals. The court should also be satisfied that a case is made out by the respondent-accused by himself or through the doctors attending to him that the treatment required to be administered to the respondent-accused, considering the nature of his ailment cannot be adequately or efficiently be administrated in the hospital in which he is at present and that he needs a better equipped or a speciality hospital...."*

64. In the bail application, applicant has not set out a case that the medical ailments, from which he allegedly suffers, are such that they are not being

treated or cannot be treated either in the Jail hospital or the referral hospitals and therefore, benefit of Proviso to Section 45 of PMLA cannot accrue to the applicant on this ground.

65. For all the aforesaid reasons, the bail application is dismissed. Pending applications also stand disposed of.

JYOTI SINGH, J

JULY __29__, 2024/*shivam/BSR*