IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO.505 OF 2025

Directorate of Enforcement,
through Assistant Director,
CGO Complex, 7th floor, A-Wing,
Enforcement Directorate Sub Zonal
Office, Seminary Hills, Nagpur-
440006. ..... **Petitioner.**

:: **V E R S U S** ::

1. Shri Tapas s/o Nandulal Ghosh,
r/o flat No.101, Tina Palace, 41
Friends Colony, Katol Road,
Nagpur-440 013.

2. State of Maharashtra,
through Sitabuldi P.S.
Nagpur. ..... **Respondents**.

Shri K.N.Shukul, Counsel for the Petitioner.
None for Respondent No.1.
Shri C.A.Lokhande, Addl.P.P. for Respondent No.2/State.

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 20/08/2025
PRONOUNCED ON : 11/09/2025

JUDGMENT

1. Heard learned counsel Shri K.N.Shukul for the petitioner and learned Additional Public Prosecutor Shri C.A.Lokhande for the State. None appeared for respondent No.1. **Rule**. Heard finally by consent.

2. By this petition, the petitioner has challenged order dated 20.2.2025 passed by learned Principal District and Sessions Judge, Nagpur in Criminal Misc. Application No.21/2025 transferring Criminal Case No.1/2023 from the Court of District Judge-2 and Additional Sessions Judge, Nagpur to the Court of District Judge-1 and Additional Sessions Judge, Nagpur.

3. The petitioner has not allegedly made party to the application filed by the accused seeking transfer of Criminal Case No.1/2023 arising out of Crime No.505/2020. The crime was registered at the Sitabuldi Police Station, Nagpur against accused Tapas Nandulal

Ghosh under Sections 409, 420, 467, 468, 470, and 471 read with 34 of the IPC on allegations that he along with his wife had conspired and is engaged in siphoning of money from the employer of accused Tapas by transferring sum of Rs.1,74,33,961/- to their personal accounts through series of fraudulent transaction thereby misappropriating the funds for personal gain. Considering the nature of allegations and involvement of scheduled offences under the Prevention of Money Laundering Act (PMLA), 2002 (the PMLA). The matter was taken by the Directorate of Enforcement (the ED) on 10.12.2020 for a detailed investigation. Accordingly, Enforcement Case Information Report (ECIR) was lodged on 14.12.2020 and after completion of investigation, chargesheet was submitted accused Tapas Ghosh.

4. Upon completion of the enquiry, a prosecution complaint bearing No.2/2023 under Sections 3 and 4 of the PMLA was filed before the Special Court constituted under Section 43 of the PMLA at Nagpur. The proceedings before the special court was thus initiated against accused Tapas Ghosh for offences under the PMLA.

5. While the complaint under the PMLA was pending before the Special Court, the case arising out of FIR No.505/2020 bearing RCC No.1033/2022 was pending before learned CJM at Nagpur for the scheduled offences under the IPC. Thus, simultaneous proceedings were pending under the PMLA and other before learned CJM for predicate offences. These parallel proceedings, though distinct in their scope and jurisdiction, were linked as allegations in both the prosecution were similar. The ED, through Assistant Director by invoking the

provisions under Section 44(1)(c) of the PMLA, filed an application before learned CJM seeking committal of scheduled offence to the Designated Special Court under the PMLA. The application was for seeking transfer of RCC No.1033/2022 to the Special Court, designated under the PMLA. Though the accused strongly resisted the committal by filing reply, learned CJM allowed the application by examining the scope of Section 44(1)(c) of the PMLA and and committed the case to the Designated Special Court under the PMLA. Upon committal, regular trial proceeding commenced before the Designated Special Court in both the matters and the accused filed an application seeking transfer of Criminal Case No.1/2023 arising out of Crime No.505/2020 from the Court of District Judge-2 and Additional Sessions Judge, Nagpur to the Court of District Judge-1 and Additional Sessions Judge, Nagpur. Initially, the application was filed before learned District Judge-2, but the same was rejected as he was not having jurisdiction to transfer the matters. Therefore, the accused approached learned Principal District and Sessions Judge seeking transfer by filing Application No.240/2025. The said application was filed by the accused without adding the ED as necessary party and without issuing notice to the ED and without hearing the petitioner, learned Principal District and Sessions Judge by order dated 20.2.2025 allowed the transfer of the case.

Hence, writ petition.

6. Heard learned counsel Shri K.N.Shukul for the petitioner and learned Additional Public Prosecutor Shri C.A.Lokhande for the State. Though served, none appeared for respondent No.1.

7. Learned counsel for the petitioner submitted that the petitioner being prosecuting agency under the PMLA applied for committal of the scheduled offence in view of Section 44(1)(c) of the PMLA and the matter was committed to the Special Court. Learned Principal District Judge disregarding the petitioner's crucial role, without hearing the petitioner, transferred the case of the Special Court to the Court of learned District Judge-1 and Additional Sessions Judge. In fact, the petitioner was necessary party to such transfer application. The legislative intent behind introduction of Section 44(1)(c) of the PMLA was ignored by learned Principal District and Sessions Judge. He invited my attention to Sections 43 and 44 of the PMLA and submitted that Section 44(1)(c) of the PMLA, even if read in isolation, and without reading it in conjunction with Section 43 of the PMLA, would render the impugned order void and liable to be set aside.

The impugned order allowing the transfer of the case disregards the statutory framework of the PMLA, particularly Section 44(1)(c) which explicitly requires that when a court, other than the Special Court, court has taken cognizance of the scheduled offence, it shall, upon an application by the appropriate authority, commit the case to the Special Court.

8. The petitioner being the authority under the PMLA, had invoked this provision to ensure that the scheduled offence case is to be committed from the court of CJM to the Designated Special Court which is exclusively empowered under Section 43 of the PMLA to try offences financial nature under the PMLA. The Designated Special Court entrusted with jurisdiction to handle such matters. The accused sought transfer on the ground of alleged biased against learned District Judge-2,

which is not available as the concerned Presiding Officers already have been transferred.

9. In support of his contentions, learned counsel for the petitioner placed reliance on **Writ Petition (Criminal) No.12/2023 (Rana Ayyub vs. Directorate of Enforcement, thr.its Assistant Director) decided by the Hon'ble Apex Court on 7.2.2023.**

10. *Per contra*, learned Additional Public Prosecutor for the State supported the order impugned in the petition.

11. By this petition, the petitioner has challenged order of transfer of Criminal Case No.1/2023 from the Court of District Judge-2 and Additional Sessions Judge, Nagpur to the Court of District Judge-1 and Additional Sessions Judge, Nagpur. The submissions of learned counsel for the petitioner is that Crime No.505/2020 was

registered at Sitabuldi Police Station, Nagpur against accused Tapas Nandulal Ghosh along with his wife under Sections 409, 420, 467, 468, 470, and 471 read with 34 of the IPC and after investigation, chargesheet was filed bearing RCC No.1033/2022. In the meantime, considering the allegations and involvement of the scheduled offences under the PMLA, the ED has taken up the matter and carried out a detailed investigation and ECIR was filed. Upon completion of the enquiry, complaint bearing No.2/2023 was filed under Sections 3 and 4 of the PMLA before the Special Court constituted under Section 43 of the PMLA detailing the manner in which the accused laundered illicit proceedings and various transactions. The proceedings before the Special Court were thus initiated to bring the accused under the Penal Provisions under Sections 3 and 4 of the PMLA to adjudicate in accordance with statutory framework of the

PMLA. At the same time, RCC No.1033/2022 with the similar allegation was pending before CJM at Nagpur for the predicate offence.

12. Thus, in parallel proceedings, allegations of similar nature were levelled and, therefore, the petitioner approached learned CJM with a request to commit the case before the Special Court. After considering the scope under Section 44(1)(c) of the PMLA, learned CJM committed the case to the Designated Special Court which was registered as Criminal Case No.1/2023. When the Special Court was holding charge of the cases, the accused filed an application before the Special Court for transfer of the case. Learned District Judge-2 and Additional Sessions Judge shown his inability to transfer by saying that it has no jurisdiction to transfer the case and, thereafter, the accused approached learned Principal

District and Sessions Judge and the Sessions Judge has allowed the application by observing that District Judge-1, Nagpur has already heard both the sides in the matter and aware about the facts of the case and it would be of general convenience of the parties and transferred Criminal Case No.1/2023. This order is challenged mainly on the ground that the ED was necessary party to the said transfer application. The accused has not made the petitioner as party and learned Principal District and Sessions Judge ignored the provisions of Section 44(1)(c) of the PMLA. Learned Principal District and Sessions Judge also ignored the fact that RCC No.1033/2022 which was subsequently registered as Criminal Case No.1/2023 was committed on the application of the petitioner to learned CJM and learned CJM after going through the scope of Section 44(1)(c) of the PMLA, committed the case to the Special Court.

13. Before considering the impugned order as to whether any error is committed by learned Principal District and Sessions Judge, it is necessary to refer Section 43 of the PMLA.

> "**43**. Special Courts. (1) The Central Government, in consultation with the Chief Justice of the High Court, shall, for trial of offence punishable under section 4 by notification designate one or more Courts of Session as Special Court or Special Courts for such area or areas or for such case or class or group of cases as may be specified in the notification.
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> Explanation. In this sub-section, High Court means the High Court of the State in which a Sessions Court designated as Special Court was functioning immediately before such designation.

(2) While trying an offence under this Act, a Special Court shall also try an offence, other than an offence referred to in sub-section (1), with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial".

14. Section 44 of the PMLA deals with offence triable by the special court, which is reproduced below for the reference:

"Section 44. Offences triable by Special Courts.
(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),--

[(a) an offence punishable under section 4 and any scheduled offence connected to the offence under that section shall be triable by the Special Court constituted for the area in which the offence has been committed:

Provided that the Special Court, trying a scheduled offence before the commencement of this Act, shall continue to try such scheduled offence; or];

(b) a Special Court may, upon a complaint made by an authority authorized in this behalf under this Act take [3][cognizance of offence under section 3, without the accused being committed to it for trial];

[(c) if the court which has taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the complaint of the offence of money-laundering under sub-clause *(b)*, it shall, on an application by the authority authorized to file a complaint under this Act, commit the case relating to the scheduled offence to the Special Court and the Special Court shall, on receipt of such case proceed to deal with it from the stage at which it is committed.

(d) a Special Court while trying the scheduled offence or the offence of money-laundering shall hold trial in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) as it applies to a trial before a Court of Session.]

[*Explanation.*--For the removal of doubts, it is clarified that,--

(i) the jurisdiction of the Special Court while dealing with the offence under this Act, during investigation, enquiry or trial under this Act, shall not be dependent upon any orders passed in respect of the scheduled offence, and the trial of both sets of offences by the same court shall not be construed as joint trial;

(ii) the complaint shall be deemed to include any subsequent complaint in respect of further investigation that may be conducted to bring any further evidence, oral or documentary, against any accused person involved in respect of the

> offence, for which complaint has already been filed, whether named in the original complaint or not.]
>
> (2) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973 (2 of 1974) and the High Court may exercise such powers including the power under clause *(b)* of sub-section *(1)* of that section as if the reference to "Magistrate" in that section includes also a reference to a Special Court designated under section 43.

15. Section 44(1)(c) of the PMLA states that if the court which has taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the complaint of the offence of money-laundering under sub-clause (b), it shall, on an application by the authority authorized to file a complaint

under this Act, commit the case relating to the scheduled offence to the Special Court and the Special Court shall, on receipt of such case proceed to deal with it from the stage at which it is committed.

16. Under Section 44(1) of the PMLA and offence punishable under the Act shall be triable only the Special Court constituted for the area in which the offences have been committed. Under the Scheme of the Act, the complaint of money laundering should follow the complaint in respect of the scheduled offence. A Special Court is constituted under Section 43(1) of the PMLA primary for the purpose of trying an offence punishable under Section 4. Sub section (2) of Section 43 confers an additional jurisdiction upon such Special Court to try any other offence with which the accused may be charged at the same trial.

17. Section 44 of the PMLA deals with question of territorial jurisdiction of the Special Court and Section 44(1) of the PMLA considers contingencies namely; (i) cases where the scheduled offence as well as the offence of money laundering are committed within the territorial jurisdiction of the same Special Court constituted under Section 43(1); and (ii) cases where the Court which has taken cognizance of the scheduled offence, is other than the Special Court which has taken cognizance of the complaint of the offence of money laundering.

18. In the case of **Rana Ayyub vs. Directorate of Enforcement** *supra,* the Hon'ble Apex Court was considering two questions (1) whether the trial of the offence of money-laundering should follow the trial of the scheduled/predicate offence or vice versa; and (ii) whether the Court of the Special Judge can be said to

have exercised extra-territorial jurisdiction, even though the offence alleged, was not committed within the jurisdiction of the said Court. While answering these questions, the Hon'ble Apex Court held that, "what is dealt with by Section 44(1)(a) is a situation where there is no complication. Section 44(1)(a) lays down the most fundamental rule relating to territorial jurisdiction, by providing that an offence punishable under Section 4 of the PMLA and any scheduled offence connected to the same shall be triable by the Special Court constituted for the area in which the offence has been committed. It is relevant to note that Section 44(1)(a) uses the expression "offence" in three places in contradistinction to the expression "scheduled offence" used only once. This usage is not without significance. In all three places where the word "offence" alone is used, it connotes the offence of money-laundering. The place where the expression “scheduled offence” is used, it connotes the predicate offence. By prescribing that an offence punishable under Section 4 of the PMLA and any scheduled offence connected to the same shall be triable by the Special Court constituted for the area in which “the offence” has been committed, Section 44(1)(a) makes it crystal clear that it is the Special Court constituted under Section 44(1), which will be empowered to try even the scheduled offence connected to the same.

It is further held that the Act then proceeds to deal with a more complicated situation in Section 44(1(c). The question as to what happens if the Court which has taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the offence of money-laundering, is what is sought to be answered by clause (c) of sub-section (1) of Section. If the Court which has taken cognizance of the scheduled offence is different from the Special Court which has taken cognizance of the offence of money laundering, then the authority authorized to file a complaint under PMLA should make an application to the Court which has taken cognizance of the scheduled offence. On the application so filed, the Court which has taken cognizance of the scheduled offence, should commit the case relating to the scheduled offence to the Special Court which has taken cognizance of the complaint of money- laundering. Since the Act contemplates the trial of the scheduled offence and the trial of the offence of money-laundering to take place only before the Special Court constituted under Section 43(1), a doubt is prone to arise as to whether all the offences are to be tried together. This doubt is sought to be removed by Explanation (i) to Section 44(1). Explanation (i) clarifies that the trial of both sets of offences by the same Court shall not be construed as joint trial.

19. Thus, it is clear by the observations of the Hon'ble Apex Court that the trial of the scheduled offence should take place in the Special Court which has taken cognizance of the office of money laundering. In other words, the trial of the scheduled offence, insofar as the question of territorial jurisdiction is concerned, should follow the trial of the offence of money laundering and not vice versa.

20. Since the Act contemplates the trial of the scheduled offence and the trial of the offence of money-laundering to take place only before the Special Court constituted under Section 43(1), a doubt is prone to arise as to whether all the offences are to be tried together. This doubt is sought to be removed by Explanation (i) to

Section 44(1). Explanation (i) clarifies that the trial of both sets of offences by the same Court shall not be construed as joint trial.

21. It has been further held by the Hon'ble Apex Court that, "a careful dissection of clauses (a) and (c) of sub-section (1) of Section 44 shows that they confer primacy upon the Special Court constituted under Section 44 43(1) of the PMLA. These two clauses contain two Rules, namely, (i) that the offence punishable under the PMLA as well as a scheduled offence connected to the same shall be triable by the Special Court constituted for the area in which the offence of money-laundering has been committed; and (ii) that if cognizance has been taken by one Court, in respect of the scheduled offence and cognizance has been taken in respect of the offence of money-laundering by the Special Court, the Court trying

the scheduled offence shall commit it to the Special Court trying the offence of money- laundering.

It is only because of the Special Court constituted under Section 43(1) being conferred primacy that Section 44(1) begins with the words "notwithstanding anything contained in the Code of Criminal Procedure". Though the PMLA contains a non-obstante clause in relation to the Cr.P.C. both in Section 44(1) and in Section 45(1), there are two other provisions where the Code of Criminal Procedure is specifically declared to apply to the proceedings before a Special Court. Section 46(1) specifically makes the provisions of the Cr.P.C. applicable to proceedings before a Special Court. Similarly, Section 65 of the PMLA makes the provisions of Cr.P.C. apply to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under the Act.

Therefore, it is clear that the provisions of the Cr.P.C. are applicable to all proceedings under the Act including proceedings before the Special Court, except to the extent they are specifically excluded. Hence, Section 71 of the PMLA providing an overriding effect, has to be construed in tune with Section 46(1) and Section 65.

22. In view of the above observations of the Hon'ble Apex Court, admittedly, learned Principal District and Sessions Judge, while considering the application for transfer, ignored the provisions of the PMLA and without giving an opportunity to the petitioner passed the order and, therefore, the order impugned deserves to be quashed and set aside and Criminal Case No.1/2023 requires to be re-transferred to the Special Court

designated under the PMLA. Hence, I proceed to pass following order:

ORDER

(1) The Criminal Writ Petition is **allowed**.

(2) The order dated 20.2.2025 passed by learned Principal District and Sessions Judge, Nagpur in Criminal Misc. Application No.21/2025 transferring Criminal Case No.1/2023 from the Court of District Judge-2 and Additional Sessions Judge, Nagpur to the Court of District Judge-1 and Additional Sessions Judge, Nagpur is hereby quashed and set aside.

(3) Criminal Case No.1/2023 (State of Maharashtra vs. Tapas Ghosh) transferred to learned District Judge-1 and Additional Sessions Judge, Nagpur is hereby withdrawn

and transferred to the Court of District Judge-2 and Additional Sessions Judge, Nagpur for disposal.

Rules is made absolute in the aforesaid terms. Petition stands **disposed of**.

(**URMILA JOSHI-PHALKE, J.**)

!! BrWankhede !!