IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO.951/2025
(Shri Abdul Jaffer S/o Abdul Sattar Vs. Assistant Director of Enforcement, Directorate of Enforcement, Nagpur)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr. B. Satish Sundar, Mr. Aleefudeen, Mr. S.V. Bhutada, Advocates for the applicant.
Mr. K.N. Shukul, Advocate for the non-applicant.

CORAM: MRS.VRUSHALI V. JOSHI, J.
DATE OF RESERVING THE ORDER: 30.9.2025.
DATE OF PRONOUNCING THE ORDER: 10.10.2025.

By this application, the applicant is seeking bail in Criminal Case No.2/2025 arising out of ECIR/NGSZO/09/2020 for the offence under Sections 3, 4 read with 70 of the Prevention of Money Laundering Act, 2002 (for short "PMLA"). Director of Revenue Intelligence (DRI), Nagpur and Chennai, on the basis of specific intelligence, initiated investigation under Customs Act, 1962 against syndicate led by applicant for smuggling of red sanders to Dubai.

2. The applicant came to be arrested on 22.05.2025 in Chennai and lodged in judicial custody on obtaining transit order from the Chief Metropolitan Magistrate, Egmore, Chennai. The investigation under the provisions of the PMLA was initiated by the Revenue Intelligence Agency, Nagpur under Section 135 of the Customs Act, 1962 and Section 120-B of the Indian Penal Code which are scheduled offences under Part-A of the PMLA.

3. As per case of the prosecution, offender attempted illicit export of concealed red sanders in the form of normal cargo in consignments of sponge iron manufactured by one M/s. Vandana Global Ltd., Raipur through Inland Container Depot (ICD), Nagpur and those

were seized. The consignments of the same were to be received at Dubai by representatives of the syndicate. The illicit exports were orchestrated by the applicant with the aid of Ajay @ Topiwala, Rajesh Subramanian, Pannalal Meena and Senthil. The value of the seized red sanders of 42.115 MTS is estimated at Rs.16.84 crores and the total value of illicit exports is assessed at Rs.63.64 crores.

4. The learned Advocate for the applicant submitted that in absence of any formal charge in the prosecution of three complaints bearing R.C.C. Nos.584, 585 and 2125 of 2018 under Section 135 of the Customs Act, 1962 and Section 120-B of the Indian Penal Code, the applicant cannot be said to have committed those offences.

5. The learned Advocate for the applicant further submitted that admittedly the scheduled offence or crime has not led to the generation of proceeds of crime. Therefore, a charge under Section 3 punishable under Section 4 of the PMLA cannot be made out.

Learned Advocate for the applicant relied on the judgment of the Hon'ble Supreme Court in the case of *Arvind Kejriwal vs. Directorate of Enforcement* reported in **(2024) 05 SC CK 0026** wherein the Court observed that the power vested in the Enforcement Directorate to arrest should not be exercised routinely or whimsically, but only when necessary, and that it must be open to judicial scrutiny.

Further, emphasis was supplied by the learned Advocate for the applicant on the observations made in Writ Petition (Criminal) No.336/2018 (Radhika Agarwal vs Union Of India & Others), decided on 27.02.2025 wherein it was held by the Apex Court that there has to be strong "Reasons to Believe" to be recorded in writing, necessitating arrest has to be satisfied.

6. Mr. Shukul, learned Advocate for the non-applicant, opposed the application. He submitted that the offence under Section 135 of the Customs Act, 1962 and Section 120-B of the I.P.C are scheduled offences under Part-A of the PMLA. The seizure of 42.115 MTS of red sanders valued at Rs.16.84 crores with a total illicit value of Rs.63.64 crores clearly establishes the existence of “proceeds of crime” under Section 2(1)(u) of the PMLA. The deliberate concealment of red sanders within sponge iron consignments and the attempt to export them illegally demonstrate concealment, possession and an effort to project tainted property as legitimate, thereby fulfilling the elements of money laundering under Section 3 of the PMLA.

7. In support of his contention regarding no bar to the independent proceedings during the pendency of predicate offence, learned Advocate for the non-applicant has placed reliance on the judgment of the Hon’ble Supreme Court in the case of *Vijay Madanlal Choudhary v. Union of India* reported in **(2022) 10 SCC 581** wherein it is held that money laundering continues as long as the proceeds of crime are possessed or enjoyed thereby allowing proceedings under the PMLA to run parallel to the predicate offence.

8. Learned Advocate for the non-applicant also emphasized the grave and transnational nature of the offence, involving smuggling of red sanders, an endangered species protected under International and Domestic Environmental laws, which not only causes loss to the public exchequer but also endangers national resources and reputation. Further relying on the judgment of the Supreme Court in *Union of India v. Hassan Ali Khan* reported in **(2011) 10 SCC 235** it is argued that economic offences are inherently serious and involve deep-rooted conspiracies affecting the nation’s economy. Hence, a

stringent approach is warranted and the applicant cannot claim bail as a matter of right. He has further argued that the applicant failed to satisfy the mandatory twin conditions prescribed under Section 45(1) of the PMLA. Considering the scale of the offence, its organized nature and the applicant's central role in orchestrating the illicit exports through a syndicate network involving foreign entities there exist reasonable grounds to believe that he is guilty of the alleged offence. Moreover, the applicant has not demonstrated that he is unlikely to commit an offence while on bail. Therefore, the stringent conditions under Section 45(1) of the said Act squarely apply. Hence, prayed to reject the application.

9. I have heard both sides at length and perused the record.

10. On perusal of the record, it appears that the offence under the provisions of PMLA is registered. As per Section 45(1) of the Act the two conditions need to be complied with while granting bail. Firstly, the Court must be satisfied that there are reasonable grounds to believe that the accused is not guilty of the offence and secondly, it must be satisfied that the accused is not likely to commit any offence while on bail.

11. The syndicate operated with the assistance of several individuals and the applicant has played active role in the transportation and concealment of smuggled red sanders. The other co-accused are absconding. The applicant was not co-operating in the investigation.

12. The applicant's contention is that the allegations are made on the assumptions of Directorate of Revenue Intelligence. The authority conducted search and seizure operation and recovered 92.115 MTS of red sanders worth Rs.16.84 Crores which substantiates the

commission of scheduled offence under Section 135 of the Customs Act. The involvement of the applicant and co-accused in a well organized syndicate, is supported by material evidence under seizure records, statements under Section 50 of PMLA, shipping documents and linkage to M/s. Vandana Global Limited, Raipur. The Enforcement Directorate has conducted an independent investigation. The proceeds of crime to the tune of Rs.63.64 Crores have been identified based on material evidence. At the stage of bail, the existence of a *prima facie* case supported by material evidence is sufficient to invoke an offence under Section 3 of the PMLA.

13. The learned Advocate for the non-applicant has placed reliance on the observations in *Amar S. Mulchandani V/s. Directorate of Enforcement and others* reported in 2024 SCC OnLine Bom 3327 as follows:-

> *"The Enforcement Directorate represented by the Additional Solicitor General Mr Anil Singh urged that investigation of the crime by ED is an independent investigation and once ECIR is registered then the base/predicate/scheduled offence, is no more required for taking it to its logical end under the PMLA and the scheduled offence is necessary only for registration of an offence under PMLA and thereafter whatever may happen to predicate/scheduled offence, is totally irrelevant. It was urged that MPLA is a self-contain statute and the offence registered under it standalone, independent of predicate offence. The learned Single Judge appreciated the said arguments in the backdrop of the scheme of the special enactment, which was connected with the specific object to track and investigate cases of money laundering."*

14. The applicant has given statement under Section 50 of PMLA. It is a settled position of law that the statement recorded under Section 50 of PMLA Act holds evidentiary value and is admissible in

legal proceedings. Reliance is placed on the observations in *Abhishek Banerjee and another V/s. Directorate of Enforcement* reported in (2024) 9 SCC 22 which read as follows:-

> *"21. ... Section 160 which falls under Ch.XII empowers the police officer making an investigation under the said chapter to require any person to attend within the limits of his own or adjoining station who, from the information given or otherwise appears to be acquainted with the facts and circumstances of the case, whereas, the process envisaged by Section 50 PMLA is in the nature of an inquiry against the proceeds of crime and is not "investigation" in strict sense of the term for initiating prosecution; and the authorities referred to in Section 48 PMLA are not the police officers as held in Vijay Madanlal [Vijay Madanlal Choudhary V. Union of India, (2023) 12 SCC 1].*
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> *22. It has been specifically laid down in the said decision that the statements recorded by the authorities under Section 50 PMLA are not hit by Article 20(3) or Article 21 of the Constitution, rather such statements recorded by the authority in the course of inquiry are deemed to be the judicial proceedings in terms of Section 50(4), and are admissible in evidence, whereas the statements made by any person to a police officer in the course of an investigation under Ch.XII of the Code could not be used for any purpose, except for the purpose stated in the proviso to Section 162 of the Code. In view of such glaring inconsistencies between Section 50 PMLA and Sections 160/161CrPC, the provisions of Section 50 PMLA would prevail in terms of Section 71 read with Section 65 thereof."*

15. It is observed by the Hon'ble Apex Court that the authorities referred to in Section 14 of PMLA are not the police officers as held in case of Vijay Madanlal Choudhary and others V/s. Union of India and others reported in (2023) 12 SCC 1

"356. In other words, there is stark distinction between the scheme of the NDPS Act dealt with by this Court in Tofan Singh and that in the provisions of the 2002 Act under consideration. Thus, it must follow that the authorities under the 2002 Act are not police officers. Ex consequenti, the statements recorded by the authorities under the 2002 Act, of persons involved in the commission of the offence of money laundering or the witnesses for the purposes of inquiry/investigation, cannot be hit by the vice of Article 20(3) of the Constitution or for that matter, Article 21 being procedure established by law. In a given case, whether the protection given to the accused who is being prosecuted for the offence of money laundering, of Section 25 of the Evidence Act is available or not, may have to be considered on a case-to-case basis being rule of evidence.

382.8. The offence under Section 3 of the 2002 Act is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence. It is concerning the process or activity connected with such property, which constitutes the offence of money laundering. The authorities under the 2002 Act cannot prosecute any person on notional basis or on the assumption that a scheduled offence has been committed, unless it is so registered with the jurisdictional police and/or pending enquiry/trial including by way of criminal complaint before the competent forum. If the person is finally discharged/acquitted of the scheduled offence or the criminal case against him is quashed by the court of competent jurisdiction, there can be no offence of money laundering against him or any one claiming such property being the property linked to stated scheduled offence through him.

382.20. As regards the prayer for grant of bail, irrespective of the nature of proceedings, including those under Section 438 of the 1973 Code or even upon invoking the jurisdiction of constitutional courts, the underlying principles and rigorous of Section 45 may apply."

16. The main objection raised by the applicant is that the arrest under PMLA is pre-matured due to non-framing of charge in the predicate offence. It appears that the law does not require prior framing of charge for the scheduled offence as a pre-condition for action under Section 19 of the PMLA. The requirement of Section 19 is a formation of a reason to believe, based on material in possession, that the person is guilty of money laundering. This threshold has been made in the present case through evidence gathered during investigation including financial transactions and linkage to proceeds of crime. The pendency of framing of charge in scheduled offence does not dilute the gravity of money-laundering committed thereafter. The assertion that no *prima facie* case exists is not correct. The detailed complaint has been filed before the Special Court after thorough investigation. The arrest was effected under Section 19 of PMLA only after the Competent Officer formed reason to believe, based on material evidence, that the applicant is guilty of the offence of money laundering. The grounds of arrest of the applicant clearly show his active involvement in the concealment, possession and use of proceeds of crime.

17. Considering the involvement of the applicant in the syndicate offence and considering the authorities cited by both the parties, in my opinion, further custody of this applicant is necessary. Hence, the application is rejected.

(MRS.VRUSHALI V.JOSHI, J.)

Tambaskar.

Signed by: MR. N.V. TAMBASKAR
Designation: PS To Honourable Judge
Date: 13/10/2025 16:46:57