2025:PHHC:043170

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

205 **CRM M-41138-2024**
Date of Decision: 28.01.2025

Gurpreet Singh Sabharwal ... Petitioner

Versus

Directorate of Enforcement … Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Vikram Chaudhari, Sr. Advocate with
Mr. Rahul Bhargava, Advocate
Ms. Hargun Sandhu, Advocate and
Ms. Diya Bhagwan, Advocate, for the petitioner.

Mr. Satya Pal Jain, Additional Solicitor General of India
with Ms. Megna Malik, Advocate and
Ms. Sushmita Srivastava, Advocate, for the respondent.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 438 of Cr.P.C. with a prayer to direct the release of the petitioner on pre-arrest bail in a case ECIR/CDZO-II/11/2022 dated 18.10.2022 under Sections 3/4 of the Prevention of Money Laundering Act, 2002 (hereinafter to be referred as **'the PMLA'**) filed by the Directorate of Enforcement/respondent (hereinafter to be referred as **'the ED').**

2. Learned senior counsel appearing on behalf of the petitioner has vehemently argued that the petitioner is an entrepreneur, belonging to a respectful family and had no criminal antecedents. M/s Tirpuati Roadways, firm of the petitioner

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participated in an e-auction for obtaining mining contract of mineral mine, namely, Rattewali Block/PKL B-10 for extraction of boulder, gravel and sand having a tentative area of 45.00 hectares against the reserve price of Rs.8,18,00,000/- and had offered the bid of Rs.11,72,50,000/- per annum against the said reserve price. The LOI dated 16.6.2017 (Annexure P-1) was issued in favour of the firm of the petitioner by the Director, Mines & Geology, Haryana. The firm submitted an online proposal for grant of Terms of Reference (Annexure P-2) with the Ministry of Environment. Finally, on 30.07.2018, the "No Objection Certificate" (Annexure P-3) was granted to the firm of the petitioner by Senior Town Planner, Panchkula. Accordingly, a contract dated 04.12.2018 (Annexure P-4) was entered into between the firm of the petitionr and the Director, Mines and Geology Department, Haryana. Finally, the environmental clearance was also granted to the firm on 21.02.2020 (Annexure P-5) for a period of 07 years with specific and standard conditions. The Haryana State Pollution Control Board granted "Consent to Establish" to the firm of the petitioner as per norms fixed by the Board. Learned senior counsel further argued that after completion of the statutory requirements, the work of mining commenced w.e.f. 21.03.2020 in a lawful manner. He further contended that on 11.05.2022, a team of the State Vigilance Bureau, Haryana carried out a surprise check at the mining site and allegedly got excavation of boulder, gravel and sand from the mining site measured in respect of volume by a team of

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HARSAC, Gurugram. As per the one sided report, it was reported that during the period from 05.05.2022 to 11.05.2022, a total number of 1886 trucks/dumpers were found to have been taken out the excavated material, whereas the bills mentioning GST and royality etc., were issued only for 518 trucks. Further, as per the report received from HARSAC, Gurugram, total volume extracted from the above said mine was 47.66 LTPA, whereas as per the specific conditions of environmental clearance letter issued to the firm of the petitioner, the permissible mining of river bed material was limited to only 8.39 LTPA from an effective mineable area of 24.25 hectare with a maximum mineable depth of 1.33 meters from the original ground level. Thus, it was alleged that the volume of material extracted by the owner of the firm M/s Tirupati Roadways, Rattewali, from the mine was six times more than the permissible limit in a year and a loss of Rs.35 crores of revenue had been caused to the Government of Haryana by the owner of the firm.

3. Learned senior counsel further vehemently argued that on the basis of such an arbitrary and one sided inquiry, which was prepared without even calling the petitioner or the firm, the Vigilance Bureau registered FIR No. 9 dated 28.8.2022 under Sections 379/414/480 IPC & 4/21 of Mines And Minerals (Development & Regulation) Act, 1987 & 13(2)/13(1)(a) of the Prevention of Corruption Act, 1988 at P.S. SVB Panchkula (Annexure P-10). Learned senior counsel further argued that the gravamen of the

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accusations levelled in the FIR was that the total volume of material extracted by the owner of the firm M/s Tirupati Roadways, Rattewali, was 5/6 times more than the permissible limit in a year and a huge loss of Rs. 35 crores has been caused to the Government of Haryana by the said firm. The petitioner received a notice from the Vigilance Bureau and a detailed reply dated 10.10.2012 (Annexure P-11) was submitted by him. In the meantime, on the basis of the FIR (Annexure P-10) by treating the offences in the FIR as scheduled offences, ECIR/CDZO-II/11/2022 dated 18.10.2022 (Annexure P-13) was registered against M/s Tirupati Roadways, Rattewali and its owners, unknown officials of Mines and Geology Department, Haryana and other accused. Even, in the ECIR, it was shown that volume of material extracted by the accused from the mine at Rattewali village was six times more than the permissible limit in a year and a huge loss of Rs.35 crores had been caused to the Government of Haryana.

4. Learned senior counsel further argued that for more than one year, the ECIR was kept pending and no action was taken against the petitioner or his firm. However, on 09.01.2024 and 10.01.2024, the officials of ED carried out various searches under Section 17 of the PMLA at the various premises of the petitioner and the firm and documents, cash, articles, digital devices and ornaments etc., were seized and a Panchnama (Annexure P-15) was prepared in this regard. On 17.01.2024, the petitioner received summons under Section 50 of the PMLA Act to appear before the ED “in person” on 23.01.2024

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"to give evidence and to produce documents". On 23.01.2024, the petitioner appeared before the respondent and got his statement recorded under Section 50 of the PMLA. In the meantime, on 01.02.2024, one OA 1119 of 2024 was filed by the respondent under Section 17(4) of PMLA before the Adjudicating Authority seeking retention of the seized articles. Against the said action, the petitioner approached this Court by way of CWP No. 5359 of 2024, wherein, vide order dated 06.03.2024, this Court restrained the Adjudicating Authority from passing final order. Even, the firm of the petitioner approached this Court vide CRM-M-4430 of 2024 raising several issues and prayed for quashing of the FIR (Annexure P-10). Notice has already been issued in the same petition and the same is stated to be pending before this Court.

5. Learned senior counsel further argued that the main allegation levelled in the aforesaid FIR (Annexure P-10) was that during the period from 05.05.2022 to 11.05.2022, a total number of 1868 trucks/dumpers were found to have been taken out the excavated material, whereas the bills mentioning the GST and royalty etc. of only 518 trucks/dumpers were found to have been issued. In fact, while excavating boulders, minerals and sand, there are layers of mud/clay constituting the top layer of the soil and the mud/soil found over the river bed material has to be removed first and then the actual river bed material is extracted. He further contended that the trucks/dumpers were used to dump the above mentioned clay/mud

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free of cost to the agriculturists and other parties, as per the requirement as the petitioner did not have any area to dump the same. He further contended that in case the petitioner had any malafide intentions with regard to concealing the extraction of materials beyond the permissible limits, the truck numbers and other details would not have been mentioned in the register maintained by the petitioner. He further contended that even it has not been mentioned by HARSAC, Gurugram in its report as to how the measurement was done and to which level, the mining was done. Learned senior counsel further argued that now the quashing petition is pending before this Court for consideration and the FIR (Annexure P-10) was wrongly registered against him.

6. Learned senior counsel further contended that the petitioner was illegally arrested on 11.04.2024 by the Vigilance Bureau, Haryana. However, this Court granted him the concession of bail on 26.04.2024 vide order annexure P-22. This Court ordered the release of the petitioner on bail in the FIR (Annexure P-10) by imposing certain conditions. During the period, when the petitioner was in custody, the respondent never applied for obtaining custodial interrogation of the present petitioner. After the petitioner was released on 26.04.2024, the respondent issued summons on 05.07.2024 to the petitioner under Section 50 of the PMLA "to appear in person" and "give evidence" before the ED on 19.07.2024.

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7. In the meantime, the petitioner approached this Court vide CRM-M-34235-2024, seeking reading down and/or reading into Section 50 of the PMLA in the light of fundamental right and constitutional guarantee under Article 20(3) of the Constitution. The said petition was disposed off by a Division Bench of this Court on 23.07.2024 vide order (Annexure p-24) and the relevant observations are as follows:-

> *"12. Thus, this petition need not to be kept pending and is, therefore, disposed of with a direction that though it is incumbent upon the petitioner to cooperate in the investigation in terms of the summons issued under Section 50(2) of the Prevention of Money Laundering Act, 2002 but the Investigating Agency, so long as the petitioner is an accused in the said offence, cannot compel him or his authorized agent to make incriminating statement against himself in terms of the protection granted under Article 20(3) of the Constitution of India".*

8. The petitioner sent various representations requesting the ED to offer him an opportunity to appear before it through his authorized agent vide request letter (Annexure P-25). However, the respondent neither reverted to the e-mails sent by the counsel of the petitioner and on the other hand, proceeded to issue notices/summons under Section 50 of the PMLA to the petitioner to appear in person

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before the ED. The petitioner sent his authorized agent at about 09.50 a.m. on 06.08.2024. However, he was not permitted to join the investigation. Learned senior counsel vehemently argued that the investigation under PMLA had commenced on 18.10.2022 after registration of the aforesaid FIR No. 9 against the petitioner and others on 25.08.2022. Even, the searches were conducted at the premises of the petitioner and documents/cash, jewelry, digital devices etc., were seized by the respondent. The petitioner and others were summoned by the ED in exercise of power under Section 50 of the PMLA and the petitioner had appeared on several occasions before the respondent. Learned senior counsel further submitted that the petitioner had already appeared before the ED and had handed over all the documentary evidence to the respondent and also answered the possible questions raised by the ED. Further, as per the procedure established by law, the ED is bound to act in a purely transparent, objective and impartial manner. However, the summons were being issued to the petitioner without informing him as to the capacity in which he was being summoned. Still further, pursuant to the registration of the FIR, in connection with the scheduled/predicate offence, the petitioner was taken in custody and was granted regular bail by this Court. Now, the liberty of the petitioner is being threatened by forcing him to appear “in person” without complying with the spirit and sanctity of the order dated 23.07.2024 passed by a Division Bench of this Court. Ultimately, on 06.08.2024, the

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respondent again summoned the petitioner by observing that the requests mentioned in the e-mails and the letters had not been considered and the petitioner was directed to appear before the respondent on 06.08.2024. Learned senior counsel further argued that by summoning the petitioner and issuing the notices under Section 50 of the PMLA Act, forcing the petitioner to “appear in person’, the petitioner is sought to be arrested by the ED to take away his liberty in an illegal manner. Learned senior counsel further argued that even any summon issued under Section 50 of the PMLA Act to “a person accused of any offence” ought not to compel his attendance “in person” as the same would violate the fundamental right of the petitioner, vested upon such a person under Article 20(3) of the Constitution. Learned senior counsel further argued that the impugned summon received by the petitioner is arbitrary and unsustainable in law and does not provide any details to for what purpose, the petitioner was called by the ED. Thus, it was prayed that the petition may be allowed and the petitioner may be granted the concession of anticipatory bail by this Court.

9. On the other hand, learned senior counsel appearing on behalf of respondent-Directorate vehemently opposed the submissions made by the petitioner by alleging that the petitioner was issued notices by the ED. Even during his statement, he has submitted some details, but he had failed to submit certain key/crucial documents, which were required for the purpose of on going investigation and the

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details of the key information/documents which the petitioner had failed to submit was as under:-

Sr. No.	Date of Statement	Documents/details asked	Remarks
1.	01.11.2024	Copy of Sale Deed and details of source of funds in respect of property at No. 14, Block 1, The Madelaine, Sector 82, SAS Nagar, Mohali, Punjab.	Not submitted till date
2.	01.11.2024	Copy of Sale Agreement, Sale Deed and details of source of funds in respect of property at Plot No. 1051, Sector 82, IT City, Alpha SAS Nagar, Mohali, Punjab.	Not submitted till date
3.	01.11.2024	Details of source of funds in respect of property at SCO plot in Project Orris Gateway in Revenue Estate of Village Sikhopur, Sector 82-A, Gurugram.	Not submitted till date
4.	01.11.2024	Details of source of funds for purchase of lands at Kishangarh, Ajmer Rajasthan by M/s Darsh Minerals Private Limited.	Not submitted till date
5.	01.11.2024	Details of bank accounts in which business receipts is received by Smt. Ravneet Sabharwal for paying stamp duty of Rs.1,95,249/- for purchase of property 1 & 2, basement, Sadashiv Property, Kataras Road, Dhanbad.	Not submitted till date
6.	01.11.2024	Details of bank accounts in which business receipts received by Mrs Ravneet Sabharwal and payment of Rs. 1,35,259/- was done for stamp duty for property Shop no. 3, Ground floor, Sadashiv Properties, Kataras Road, Dhanbad.	Not submitted till date
7.	01.11.2024	Details of bank accounts in which business receipts received by Mrs Ravneet Sabharwal and payment of Rs. 1,35,259/- was done for stamp duty for property Shop no. 3, Ground floor,	Not submitted till date

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		Sadashiv Properties, Kataras Road, Dhanbad.	
8.	01.11.2024	Details of bank accounts from which loan of Rs. 2.50 Crore has been repaid and source of funds for repayment of the said home loan in respect of Flat No. 1101, Sector 28, IFFCO Chowk, Gurugram.	Not submitted till date
9.	01.11.2024	Documentary evidences of source of funds in respect of insurance policies of Rs. 1.08 Crore of the petitioner and his family members	Not submitted till date
10.	01.11.2024	Complete details of source of funds of investments of Rs. 9,89,950/- & Rs. 6,09,696/- in till date. mutual funds by Mrs. Ravneet Sabharwal and Tripta Sabharwal respectively along with documentary evidences.	Not submitted till date
11.	01.11.2024	GST Bills and Royalty Challans in respect of seizure of cash amounting to Rs. 1.80 Crore from residence of petitioner who has claimed that the seizure is out of cash sale receipts from his mining site at Rattewali, Panchkula.	Not submitted till date
12.	02.11.2024	Documentary evidences in respect of funds of Rs. 19.24 Crore received by M/s Tirupati Roadways from M/s Tirupati Earth and Project Works Private Limited during financial year 2020-21, 2021-22, 2023-24.	Not submitted till date
13.	07.11.2024	Details of funds of Rs. 17 lakhs received by petitioner on 22.04.2022 from Sh. Kawaljeet Singh Batra.	Not submitted till date
14.	07.11.2024	Details of funds of Rs.39 lakhs received by the petitioner on 22.04.2022 from Sh. Neeraj Sharma as loan.	Not submitted till date
15.	08.11.2024	Attendance register of employee's being Not submitted maintained at Mining site at	Not submitted till date

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		Rattewali Village, Panchkula.	
16.	08.11.2024	Complete details of parties from whom machines have been hired and to whom machines have been sublet by Sh. Gurpreet Singh Sabharwal, M/s GS Sabharwal and Sons (HUF) and Smt. Ravneet Sabharwal.	Not submitted till date
17.	08.11.2024	Ledger account of parties from whom machines have been hired and from whom machines have been sublet in the books of account of Sh. Lakhmir Singh Sabharwal, alongwith contact details i.e., complete address, mobile number of all the parties.	Not submitted till date
18.	08.11.2024	Ledger account of parties from whom machines have been hired and to whom machines have been sublet in the books of account of M/s LS Sabharwal and Sons HUF, alongwith contact details i.e., complete address, mobile number of all the parties.	Not submitted till date

10. Still further, even though the petitioner had appeared and recorded his statements on 01.11.2024, 02.11.2024, 04.11.2024, 05.11.2024, 06.11.2024, 07.11.2024 and 08.11.2024. Still, he did not cooperate with the Investigating Officer by not submitting key documents/details, which were of paramount importance for the purposes of investigation. Still further, he did not give response to most of the questions and his answers to the other questions were evasive. Even, he had blatantly denied having any knowledge of daily cash book seized from the mining site, which also contained the reference of various properties owned by him, mining sites owned by

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him and the persons and entities associated with the petitioner. Even, he did not provide the details of the persons responsible for handling of cash at the mining site of M/s Tirupati Roadways at Rattewali village, Panchkula. Still further, it was argued that the custodial interrogation of the petitioner was required and he was likely to tamper with the witnesses and hamper the investigation in the present case.

11. In response to the submissions made by learned counsel appearing on behalf of the ED, learned senior counsel appearing on behalf of the petitioner submitted that in compliance of the interim orders passed by this Court, the petitioner had appeared before the ED and had answered all the questions and 122 documents running into 3470 pages were submitted and details are as follows:-

Sr. No.	**Date of Summons**	**Date of Appearances**	**Events**
1.	29.10.2024	01.11.2024 02.11.2024 04.11.2024	01.11.2024 Total 61 questions were asked and 37 documents were sought; 02.11.2024 19 questions were asked: 04.11.2024 31 questions were asked and 17 documents running into 1181 pages were submitted to the ED;
2.	04.11.2024	05.11.2024 06.11.2024 07.11.2024 08.11.2024	05.11.2024 35 questions were asked and 9 documents running into 124 pages were submitted to the ED; 06.11.2024 48 questions were asked and 9 documents running into 46 pages were submitted to the ED;

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			07.11.2024 23 questions were asked and 15 documents running into 61 pages were submitted to the ED; 08.11.2024 23 questions were asked and 30 documents running into 44 pages were submitted to the ED; 09.11.2024 12 documents running into 34 pages were submitted; 11.11.2024 4 documents running into 127 pages were submitted; 13.11.2024 3 documents running into 539 pages were submitted.
3.	02.12.2024	05.12.2024	05.12.2024 8 documents running into 328 pages submitted. 06.12.2024 15 documents running into 328 pages submitted.
Total		**122 documents running into 3470 pages submitted.**	

12. Still further, the petitioner had cooperated with the IO in the present case and had provided all the information/documents to the officials of the ED. Even, the ED wanted to fabricate evidence against the petitioner by calling different persons and by conducting shoddy investigation. To counter the contents of the reply, the petitioner furnished the list of the documents, which were sought to be referred by the ED, in the following manner:-

Sr. No.	Date of statement	Document/Details asked	Remarks	Answer
1.	01.11.2024	Copy of Sale Deed and details of Source of funds in respect of property at No. 14, Block 1, The Sector	Not submitted till date	Registry of the property is pending, However the copy of allotment letter & agreement for purchase has been submitted vide submission

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		Nagar, Punjab Madelaine, 82, SAS Mohali		dated 04.11.2024 An per Annexture-1. Source of funds also submitted vide letter dated 6.12.2024 (Annexure 2). Copy of the letter dated 4.11.2024 & 6.12.2024 acknowledging the said submission is annexed as ANNEXURE P-37 & P-38.
2.	01.11.2024	Copy of Agreement, Sale Sale Deed and details of till date source of funds in respect of property at Plot No. 1051, Sector 82, IT City, Alpha SAS Nagar, Mohali, Punjab.	Not submitted till date	Registry of the property is pending, However the copy of allotment letter has been submitted vide submission dated 04.11.2024 as per Annexture-2. Source of funds also submitted vide letter dated 6.12.2024 (Annexure 2). Copy of the letter dated 4.11.2024 & 6.12.2024 acknowledging the said submission is already annexed as Annexure P-36 & P-37.
3.	01.11.2024	Details of source of funds in respect of property at SCO plot in Project Orris Gateway in Revenue Estate of Sikhopur, Village Sector 82-A, Gurugram	Not submitted till date	Registry of the property is pending, However the copy of agreement of purchase has been submitted submission vide dated 04.11.2024 as per Annexture-3. Source of funds also submitted vide letter dated 6.12.2024 (Annexure 2). Copy of the letter dated 4.11.2024 & 06.12.2024 acknowledging the said submission is already annexed as Annexures P-36- & P-37.
4.	01.11.2024	Details of source of funds for purchase of lands at Kishangarh, Ajmer Rajasthan by Mis Darsh Minerals Private Limited.	Not submitted till date	We had submitted copy of sale deed of Kishangarh land only in annexure-4 dt. 4.11.2024. Source of funds also submitted vide letter dated 6.12.2024 (Annexure 3). Copy of the letter dated 4.11.2024 & 6.12.024 acknowledging the said submission is already annexed as Annexure P-36 & P-37.
5.	01.11.2024	Details of bank accounts in which business receipts is received by Smt. Ravneet Sabharwal for paying stamp duty	Not submitted till date	The registration of the said land has been executed as on 09.09.2020. The said payment has been paid out of business income letting out of machinery. The detailed reply

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		Rs.1,96,249/-purchase property of for of 1 & 2, basement, Sadashiv Property. Kataras Dhanbad. Road,		for the same has been submitted as on 06.11.2024 (Annexure 3). Also vide letter dated 6.12.2034, it has been duly explained that the said amount was received in cash. Copy of the letter dated 6.11.2024 acknowledging the said submission is annexed as ANNEXURE P-39.
6.	01.11.2024	Details of bank accounts which business receipts received by Mrs Ravneet Sabharwal and payment of Rs. 1,35,2591- was done for stamp duty for property Shop no. 3, Ground floor, Sadashiv Properties, Katras Road, Dhanbad	Not submitted till date	The registration of the said land has been executed as on 09.09.2020. The said payment has been paid out of business income letting out of machinery. The detailed reply for the same has been submitted as on 06.11.2024 (Annexure 3). Also vide letter dated 6.12.2024, it has been duly explained that the said amount was received in cash. Copy of the letter dated 6.11.2024 acknowledging the said submission is already annexed as Annexure P-38.
7.	01.11.2024	Details of business from which business receipts received by Mrs. Ravneet Sabharwal along with bank accounts details for payment of Rs. 26,78,816/- for purchase of 1 Floor, Sadashiv property, Katras Road, Dhanbad	Not submitted till date	The desired details have already been submitted as per Annexure-I of the submission dated 05.02.2024, wherein it was categorically stated that the sale proceeds of Punjab land, Zirakpur were utilised in the purchase of said property and the copy of sale deed of Punjab land was provided as per Annexure-4 of submission dated 06.11.2024. Pertinently, amount of Rs. 21 Lacs was already explained submissions vide dated 5.2.2024 which wore further explained vide submissions dated 6.11.2024 and were duly accepted by the ED as the question this time pertained to entries of Rs 3,70,000/- and Rs. 1,77,470/-. The said two entries also stand explained vide submission dated 6.12.2024. Copy of the letter dated 6.11.2024 &

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				6.12.2024 acknowledging the said submission is already annexed as Annexure P-38 & P-39.
8	01.11.2024	Details of bank accounts from which loan of Rs 2.50 Crore has been repaid and source of funds for repayment of the said home loan in respect of Flat No. 1101, Sector 28, IFFCO Chowk, Gurugram	Not submitted till date	Vide submissions dated 5.11.2024 Bank Loan Statement was submitted as Annexure 4. Vide submissions dated 6.12.2024 (Annexure 4) Source of funds for repayment also stands submitted. Copy of the letter dated 5.11.2024 acknowledging the said submission is annexed as ANNEXURE P-40.
9	01.11.2024	Documentary evidences source of funds on respect of insurance policies of Rs.1.08 Crore of the petitioner and his members.	Not submitted till date	The sources of the payments for insurance policies along with details of insurance policies as were submitted vide Annexure 10 of letter dated 06.11.2024 and had submitted soft copy of Bank statement on 05.02.2024 through Pen-Drive. Copy of the letter dated 6.11.2024 acknowledging the said submission is already annexed as Annexure P-39.
10.	01.11.2024	Complete details of source of funds of investments of Rs. 9,89,9501-& Rs.6,09,696/- in mutual funds by Mrs. Ravneet Sabharwal and Tripta Sabharwal respectively along with documentary evidences	Not submitted till date	Petitioner had submitted details along with mutual fund statement source of fund and in Annexure-16 of letter dated 04.11.2024 and Annexure 8 of letter dated 06.11.2024. Copy of the letters dated 4.11.2024 & 5.11.2024 acknowledging the said submission is already annexed as Annexure P-37 & P-40.
11.	01.11.2024	GST Bills and Not Royalty Challans in respect seizure of of cash amounting to Rs. 1.80 Crore from residence petitioner of who has claimed that the seizure is out of cash sale receipts from his mining site at Rattewali, Panchkula.	Not submitted till date	Petitioner had submitted GST sale Summery for the FY 23-24 of all companies out of which 1.80 Cr. has been seized in Annexure 4 of letter 07.11.2024. Copy of the letter dated 7.11.2024 acknowledging the said submission in annexed as ANNEXURE P-41.
12.	02.11.2024	Documentary	Not	The reply in response to the

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		evidences in respect of funds of Rs. Crore 19.24 received by Mis Tirupati Roadways from MIs Tirupati Earth and Project Works Private during Limited financial year 2020-21, 2021-22, 2023-24.	submitted till date	said enquiry has been duly submitted as per Annexure submission -1 of dated 08.11.2024, in which it has been mentioned that M/s Tirupati Roadwaya has received sum of Rs 14.14 crores instead of Ra 10.24 crores from Tirupati Earth & Project Works Pvt Ltd during the financial year 2020-21, to 2023-24 Further, a soft copy of Bank statement was submitted on 05.02.2024 through Pen-Drive. Further, vide submissions dated 6.12.2024 (Annexure 5), petitioner has also submitted detailed ledger account of the company as well as schedule of balance sheet of the company. Copy of the letter dated 8.11.2024 acknowledging the said submission is annexed as ANNEXURE P-42.
13.	07.11.2024	Details of funds of Rs. 17 lakhs received petitioner on 22.04.2022 from Sh. Kawaljeet Singh Batra.	Not submitted till date	Initially, the IO had just asked for the sum of Rs 17 lakhs received from Sh. Kawaljeet Singh Batra only without mentioning any further details and in response to the same petitioner had submitted ledger from Tirupati Earth & Project Works Pvt Ltd against Sand purchase as per Annexure - 6 of letter dated 09.11.2024. Further vide submissions dated 6.12.2024 ledger of the other company was also submitted. Copy of the letter dated 9.11.2024 acknowledging the said submission is annexed as ANNEXURE P-43.
14.	07.11.2024	Details of funds of Rs.39 lakhs received by the petitioner 22.04.2022 on from Sh. Neeraj Sharma as Loan.	Not submitted till date	Initially, the 10 has just asked for the sum of Rs 39 lakhs received from Sh. Neeraj Sharma only without mentioning any further details and in response to the same We had submitted ledger from Tirupati Earth & Project Works Pvt Ltd against Loan as per

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				Annexure 6 of letter dated 09.11.2024. Vide submission dated 6.12.2024 yet again copy of ledger account of the company has been submitted. Copy of the letter dated 0.11.2024 acknowledging the said submission is already annexed as Annexure P-42.
15.	08.11.2024	Attendance register employee's being maintained at Mining site at Rattewali Village Panchkula.	Not submitted till date	After the raid conducted by ED, most of the internal records of the concerns had got misplaced and are being located.
16.	08.11.2024	Complete details of parties from whom machines have been hired and to whom machines have been sublet by Sh. Singh Gurpreet Sabharwal M/s GS Sabharwal and Sons (HUF) and Smt. Ravneet Sabharwal.	Not submitted till date	Petitioner had submitted details of hire & sublet bills in Annexure 8 of letter dated 11.11.2024 & Annexure 7, 8 dated 13.11.2024. Copies of the letter dated 11.11.2024, 13.11.2024 & 10.12.2024 acknowledging the said submission is annexed as ANNEXURE P-44 to P-46.
17.	08.11.2024	Ledger account of parties from whom machines have been from hired and from whom machines have been sublet the books in of account of Sh. Lakhmir Singh Sabharwal, along with contact details i.e., address, complete mobile number of all the parties.	Not submitted till date	No hiring bills raised in the books of Lakhmir Singh Sabharwal
18.	08.11.2024	Ledger account of parties from whom machines have been hired and to whom machines have been sublet in the books of account of M/s LS Sabharwal Sons and HUF, alongwith contact details i.e., complete address, mobile number of all the parties.	Not submitted till date	Petitioner had submitted details of hire & sublet bills in annexure-8 dated 14.11.2024. Copy of the letter dated 14.11.2024 acknowledging the said submission is already annexed as Annexure P-44.

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13. Learned senior counsel for the petitioner submitted that the petitioner had provided all the documentary evidence, which was in his possession to the ED and the ED illegally wanted to arrest the petitioner to create evidence against him. Learned senior counsel has referred to the law laid down by the Hon'ble Supreme Court in the matter of ***Vijay Madanlal Choudhary and others Vs. UOI and others 2022 SCC Online SC 929,*** wherein, the Hon'ble Apex Court has held as follows:-

> *"322.Section 19 of the 2002 Act postulates the manner in which arrest of person involved in money-laundering can be effected. Sub- section (1) of Section 19 envisages that the Director, Deputy Director, Assistant Director, or any other officer authorised in this behalf by the Central Government, if has material in his possession giving rise to reason to believe that any person has been guilty of an offence punishable under the 2002 Act, he* ***may*** *arrest such person. Besides the power being invested in high-ranking officials, Section 19 provides for inbuilt safeguards to be adhered to by the authorised officers, such as of* ***recording reasons for the belief regarding the involvement*** *of person in the offence of money-laundering. That has to be recorded in writing and while effecting arrest of the person, the grounds for such arrest are informed to that person. Further, the*

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authorised officer has to forward a copy of the order, along with the material in his possession, in a sealed cover to the Adjudicating Authority, who in turn is obliged to preserve the same for the prescribed period as per the Rules. This safeguard is to ensure fairness, objectivity and accountability of the authorised officer in ***forming opinion as recorded in writing regarding the necessity to arrest*** *the person being involved in offence of money-laundering…….”*

325 The safeguards provided in the 2002 Act and the preconditions to be fulfilled by the authorised officer before effecting arrest, as contained in Section 19 of the 2002 Act, are equally stringent and of higher standard. Those safeguards ensure that the authorised officers do not act arbitrarily, but make them accountable for their judgment about the necessity to arrest any person as being involved in the commission of offence of money-laundering even before filing of the complaint before the Special Court under Section 44(1)(b) of the 2002 Act in that regard. If the action of the authorised officer is found to be vexatious, he can be proceeded with and inflicted with punishment specified under Section 62 of the 2002 Act. The safeguards to be adhered to by the jurisdictional police officer before effecting arrest as

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stipulated in the 1973 Code, are certainly not comparable. Suffice it to observe that this power has been given to the high-ranking officials with further conditions to ensure that there is objectivity and their own accountability in resorting to arrest of a person even before a formal complaint is filed under Section 44(1)(b) of the 2002 Act. Investing of power in the high-ranking officials in this regard has stood the test of reasonableness in ***Premium Granites*** *wherein the Court restated the position that requirement of giving reasons for exercise of power by itself excludes chances of arbitrariness…..*

14. Learned senior counsel has also referred to the law laid down by the Hon'ble Supreme Court in the matter of matter of ***V. Senthil Balaji Vs. Enforcement Directorate, 2023 SCC Online SC 934 ,*** wherein, the Hon'ble Apex Court has held as follows:-

"29. ***In a case where the mandate of Section 167CrPC, 1973 and Section 19 of the PMLA, 2002 are totally ignored by a cryptic order, a writ of habeas corpus may be entertained, provided a challenge is specifically made.*** *However, an order passed by a Magistrate giving reasons for a remand can only be tested in the manner provided under the statute and not by invoking Article 226 of the Constitution of India…*

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30. Suffice it is to state that when reasons are found, a remedy over an order of remand lies elsewhere. Similarly, no such writ would be maintainable when there is no express challenge to a remand order passed in exercise of a judicial function by a Magistrate. State Maharashtra v. Tasneem Siddiquee [State Maharashtra v. Tasneem of Rizwan of Rizwan Siddiquee, (2018) 9 SCC 745: (2019) 1 SCC (Cri) 386]: (SCC p. 751, para 10)

"10.The question as to whether a writ of habeas corpus could be maintained in respect of a person who is in police custody pursuant to a remand order passed by the jurisdictional Magistrate in connection with the offence under Investigation. This issue has been considered in Saurabh Kumar v. Jailor, Koneila Jail (Saurabh Kumar v. Jailor. Konella Jail. (2014) 13. SCC 430: (2014) 6 SCC (Cri) 702) and Manubhal Ratilal Patel v. State of Gujarat (Manubhai Ratilal Patel v. State of Gujarat, (2013) 1 SCC 314 (2013) 1 SCC (Cri) 475). It is no more res integra. In the present case, admittedly, when the writ petition for issuance of a writ of habeas corpus was filed by the respondent on 10-3-2018/19-3-2018 and decided by the High Court on 21-3-2018 (Tasneem Rizwan Siddiquee v. Stato of Maharashtra, 2018 SCC Online Bom 2712] her husband Rizwan Alam Siddiquee was in

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police custody pursuant to an order passed by the Magistrate granting his police custody in connection with FIR No. 1-31 vide order dated 17-3-2018 and which police remand was to enure till 23-3-2018. Further, without challenging the stated order of the Magistrate, a writ petition was filed limited to the relief of habeas corpus. In that view of the matter, it was not a case of continued illegal detention but the incumbent was in judicial custody by virtue of an order passed by the jurisdictional Magistrate. which was in force, granting police remand during investigation of a criminal case. Resultantly, no writ of habeas corpus could be issued.

40. To effect an arrest, an officer authorised has to assess and evaluate the materials in his possession. Through such materials, he is expected to form a reason to believe that a person has been guilty of an offence punishable under the PMLA, 2002. Thereafter, he is at liberty to arrest, while performing his mandatory duty of recording the reasons. The said exercise has to be followed by way of an information being served on the arrestee of the grounds of arrest. ***Any non-compliance of the mandate of Section 19(1) of the PMLA, 2002 would vitiate the very arrest itself. Under sub-section 2), the authorised officer shall immediately, after the arrest, forward a***

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> ***copy of the order as mandated under sub-section (1) together with the materials in his custody, forming the basis of his belief, to the adjudicating authority, in a sealed envelope.*** *Needless to state, compliance of sub-section (2) is also a* **solemn function** *of the arresting authority which brooks no exception.*
>
> *42.* ***The conclusion thus arrived is that the legislature in its wisdom has consciously created the necessary safeguards for an arrestee, keeping in mind his liberty, and the need for an external approval and supervision. This provision is in compliance with Articles 21 and 22(2) of the Constitution of India."***

15. Still further, learned senior counsel submitted that the petitioner had responded to all the questions, which were put to the petitioner by the ED and had supplied all the documents to the ED. However, even otherwise, the Hon'ble Supreme Court has held in the matter of ***Pankaj Bansal Vs. Union of India & others, Criminal Appeal No. 3051-3052 of 2023 dated 03.10.2023*** that the failure of the accused to respond to the questions put to them by the ED would not be sufficient in itself for the IO to opine that they were liable to be arrested under Section 19 of the PMLA as that provision specifically requires him to find the reasons to believe that they were guilty of an offence under the provisions of PMLA. Even, non-cooperation of a witness in response to the summons issued under Section 50 of the

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PMLA would not be enough to render him/her liable to be arrested under Section 19 of the PMLA and the Hon'ble Apex Court has held as follows:-

> *"Though the appellants did not challenge the constitutional validity of Section 19 of the Act of 2002 in their writ petitions and had only sought 'reading down' and/or 'reading into' the provisions thereof in the light of the judgment of this Court in* ***Vijay Madanlal Choudhary and others vs. Union of India and others,*** *the Division Bench of the Punjab & Haryana High Court failed to note this distinction and disallowed their prayer under the mistaken impression that they were challenging the constitutional validity of the provision. The finer connotations and nuances of the language used in Section 19 of the Act of 2002,* ***to the extent left uncharted*** *by this Court in Vijay Madanlal Choudhray (supra), were still open to interpretation and resolution and. therefore, the High Court would have been well within its right to undertake that exercise. Be that as it may.*
>
> *14….The only issue for consideration presently is* ***whether the arrest of the appellants under Section 19 of the Act of 2002 was valid and lawful and whether the impugned orders of remand passed by the***

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<u>Judge/Additional learned Sessions Vacation Judge, Panchkula, measure up. In that context. we may also make it clear that the mere passing of an order of remand would not be sufficient in itself to validate the appellants' arrests, if such arrests are not in conformity with the requirements of Section 19 of the Act of 2002.</u> *Though judgments were cited by the ED which held to the effect that legality of the arrest would be rendered immaterial once the competent Court passes a remand order, those cases primarily dealt with the issue of a writ of habeas corpus being sought after an order of remand was passed by the jurisdictional Court and that ratio has no role to play here. <u>The understanding of the ED and its misplaced reliance upon that case law begs the question as to whether there was proper compliance with Section 19(1) of the Act of 2002 and as to whether the learned Vacation Judge/Additional Sessions Judge, Panchkula, correctly considered that issue while passing the remand orders. Therefore, as the very validity of the remand orders is under challenge on that ground, the issue as to whether the arrest of the appellants was lawful in its inception may also be open for consideration.</u>*

17. In terms of Section 19(3) of the Act of 2002 and the law laid down in the above decisions, Section 167

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Cr.P.C. would necessarily have to be complied with once an arrest is made under Section 10 of the Act of 2002. <u>The Court seized of the exercise under Section 167 Cr.P.C. of remanding the person arrested by the ED under Section 10(1) of the Act of 2002 has a duty to verify and ensure that the conditions in Section 10 are duly satisfied and that the arrest is valid and lawful. In the event the Court fails to discharge this duty in right earnest and with the proper perspective, as pointed out hereinbefore. the order of remand would have to fail on that ground and the same cannot, by any stretch of imagination. validate an unlawful arrest made under Section 19 of the Act of 2002.</u>

18. ***In the matter of Madhu Limaye and others*** *was a 3-Judge Bench decision of this Court wherein it was observed that it would be necessary for the State to establish that, at the stage of remand, the Magistrate directed detention in jail custody after applying his mind to all relevant matters and if the arrest suffered on the ground of violation of Article 22(1) of the Constitution, the order of remand would not cure the constitutional infirmities attaching to such arrest.*

21. This chronology of events speaks volumes and reflects rather poorly, if not negatively, on the ED's style

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of functioning. Being a premier investigating agency, charged with the onerous responsibility of curbing the debilitating economic offence of money laundering in our country, every action of the ED in the course of such exercise is expected to be transparent, above board and conforming to pristine standards of fair play in action. The ED, mantled with far-reaching powers under the stringent Act of 2002, is not expected to be vindictive in its conduct and must be seen to be acting with utmost probity and with the highest degree of dispassion and fairness. In the case on hand, the facts demonstrate that the ED failed to discharge its functions and exercise its powers as per these parameters.

28. We may also note that the failure of the appellants to respond to the questions put to them by the ED would not be sufficient in itself for the Investigating Officer to opine that they were liable to be arrested under Section 19, as that provision specifically requires him to find reason to believe that they were guilty of an offence under the Act of 2002. More non-cooperation of a witness in response to the summons issued under Section 50 of the Act of 2002 would not be enough to render him/her liable to be arrested under Section 19. *As per its replies, it is the claim of the ED that Pankaj*

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Bansal was evasive in providing relevant information. It was however not brought out as to why Pankaj Bansal's replies were categorized as 'evasive' and that record is not placed before us for verification. ***In any event, it is not open to the ED to expect an admission of guilt from the person summoned for interrogation and assert that anything short of such admission would be an 'evasive reply'.*** *In* ***Santosh S/o Dwarkadas Fafat vs. State of Maharashtra,*** *this Court noted that custodial interrogation is not for the purpose of 'confession' as the right against self-incrimination is provided by Article 20(3) of the Constitution. It was held that merely because an accused did not confess, it cannot be said that he was not co-operating with the investigation. Similarly, the absence of either or both of the appellants during the search operations, when their presence was not insisted upon, cannot be held against them.*

32. In this regard, we may note that Article 22(1) of the Constitution provides, inter alia, that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest. This being the fundamental right guaranteed to the arrested person, the mode of conveying information of the grounds of arrest must necessarily be meaningful

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so as to serve the intended purpose. It may be noted that Section 45 of the Act of 2002 enables the person arrested under Section 19 thereof to seek release on bail but it postulates that unless the twin conditions prescribed thereunder are satisfied, such a person would not be entitled to grant of bail. The twin conditions set out in the provision are that, firstly, the Court must be satisfied, after giving an opportunity to the public prosecutor to oppose the application for release, that there are reasonable grounds to believe that the arrested person is not guilty of the offence and, secondly, that he is not likely to commit any offence while on bail. To meet this requirement, it would be essential for the arrested person to be aware of the grounds on which the authorized officer arrested him/her under Section 19 and the basis for the officer's 'reason to believe' that he/she is guilty of an offence punishable under the Act of 2002. It is only if the arrested person has knowledge of these facts that he/she would be in a position to plead and prove before the Special Court that there are grounds to believe that he/she is not guilty of such offence, so as to avail the relief of bail. Therefore, communication of the grounds of arrest, as mandated by Article 22(1) of the Constitution

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and Section 19 of the Act of 2002, is meant to serve this higher purpose and must be given due importance.

33.We may also note that the language of Section 19 of the Act of 2002 puts it beyond doubt that the authorized officer has to record in writing the reasons for forming the belief that the person proposed to be arrested is guilty of an offence punishable under the Act of 2002. Section 19(2) requires the authorized officer to forward a copy of the arrest order along with the material in his possession, referred to in Section 19(1), to the Adjudicating Authority in a sealed envelope. Though it is not necessary for the arrested person to be supplied with all the material that is forwarded to the Adjudicating Authority under Section 19(2), he/she has a constitutional and statutory right to be 'informed' of the grounds of arrest, which are compulsorily recorded in writing by the authorized officer in keeping with the mandate of Section 19(1) of the Act of 2002. As already noted hereinbefore, It seems that the mode of informing this to the persons arrested is left to the option of the ED's authorized officers in different parts of the country, i.e., to either furnish such grounds of arrest in writing or to allow such grounds to be read by the arrested person or be read over and explained to such person.

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34. That apart, <u>Rule 6 of the Prevention of Money Laundering (The Forms and the Manner of Forwarding a Copy of Order of Arrest of a Person along with the Material to the Adjudicating Authority and its Period of Retention) Rules, 2005. titled 'Forms of records', provides to the effect that the arresting officer while exercising powers under Section 19(1) of the Act of 2002, shall sign the Arrest Order in Form III appended to those Rules.</u> Form III, being the prescribed format of the Arrest Order, reads as under: -

Needless to state, this format would be followed all over the country by the authorized officers who exercise the power of arrest under Section 19(1) of the Act of 2002 but, in certain parts of the country, the authorized officer would inform the arrested person of the grounds of arrest by furnishing the same in writing, while in other parts of the country, on the basis of the very same prescribed format, the authorized officer would only read out or permit reading of the contents of the grounds of arrest. This dual and disparate procedure to convey the grounds of arrest to the arrested person cannot be countenanced on the strength of the very same arrest order, in the aforestated prescribed format.

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*39. On the above analysis, **<u>to give true meaning and purpose to the constitutional and the statutory mandate of Section 19(1) of the Act of 2002 of informing the arrested person of the grounds of arrest, we hold that it would be necessary, henceforth, that a copy of such written grounds of arrest is furnished to the arrested person as a matter of course and without exception.</u>** The decisions of the Delhi High Court in **Moin Akhtar Qureshi (supra)** and the Bombay High Court in **Chhagan Chandrakant Bhujbal (supra),** which hold to the contrary, do not lay down the correct law. **<u>In the case on hand, the admitted position is that the ED's Investigating Officer merely read out or permitted reading of the grounds of arrest of the appellants and left it at that, which is also disputed by the appellants. As this form of communication is not found to be adequate to fulfil compliance with the mandate of Article 22(1) of the Constitution and Section 19(1) of the Act of 2002. we have no hesitation in holding that their arrest was not in keeping with the provisions of Section 19(1) of the Act of 2002. Further, as already noted supra, the clandestine conduct of the ED in proceeding against the appellants, by recording the second ECIR immediately after they secured interim</u>***

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> ***protection in relation to the first ECIR, does not commend acceptance as it reeks of arbitrary exercise of power. In effect, the arrest of the appellants and, in consequence, their remand to the custody of the ED and, thereafter, to judicial custody, cannot be sustained.",*** *their remand to the custody of the ED and, thereafter, to judicial custody, cannot be sustained".*

16. I have heard the rival submissions made by learned counsel for the parties and perused the record carefully. Even, I have carefully perused the affidavits filed by the parties.

17. In the present case, the present petitioner is being prosecuted under Section 4 of the PMLA. However, as per Section 65 of the PMLA, the provisions of the Code of Criminal Procedure shall apply, in so far as they are not inconsistent with the provisions of this Act, to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under this Act. Even as per the mandate of Articles 21 and 22 of the Constitution of India, the powers under the PMLA have to be governed by the Code of Criminal Procedure, if the said provisions of the Cr.P.C. are not repugnant to the provisions of PMLA.

18. Still further, the question of applicability of the provisions of the Code of Criminal Procedure to the PMLA had been dealt by the Hon'ble Supreme Court in the matter of ***Ashok Munilal***

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Jain v. Directorate of Enforcement, reported in (2018) 16 SCC 158 and held as follows:

> *"3. We have gone through the orders passed by the trial court as well as by the High Court. We may state at the outset that insofar as the High Court is concerned, it has not given any reasons in support of its aforesaid view except endorsing the view of the trial court to the effect that the provisions of Section 167(2) CrPC are not applicable to the cases under the PMLA Act. This position in law stated by the trial court does not appear to be correct and even the learned Attorney General appearing for the respondent could not dispute the same. We may record that as per the provisions of Section 4(2) CrPC, the procedure contained therein applies in respect of special statutes as well unless the applicability of the provisions is expressly barred. Moreover, Sections 44 to 46 of the PMLA Act specifically incorporate the provisions of CrPC to the trials under the PMLA Act. Thus, not only that there is no provision in the PMLA Act excluding the applicability of CrPC, on the contrary, provisions of CrPC are incorporated by specific inclusion. Even Section 65 of the PMLA Act itself settles the controversy beyond any doubt in this behalf which reads as under:*

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> *"65. Code of Criminal Procedure, 1973 to apply.-The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, insofar as they are not inconsistent with the provisions of this Act, to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under this Act."*

19. Still further, even in a landmark judgment delivered by the Hon'ble Supreme Court in the matter of ***Vijay Madanlal Choudhary and others Vs. Union of India and others 2022 SCC Online SC 929,*** the Hon'ble Supreme Court has held that this Court is expected to record sound reasons, while exercising its discretionary power to enlarge the accused on pre-arrest bail. Still further, the provisions of the PMLA contained an embargo against the grant of bail to a person accused of an offence under the PMLA, unless the public prosecutor has been given an opportunity to oppose the application and the Court is satisfied that there are reasonable grounds for believing that such person is not guilty of such offence and that if released on bail, he is not likely to commit any offence, while on bail. The learned senior counsel appearing on behalf of the petitioner as well as for the ED had relied upon the law laid down by the Hon'ble Supreme Court in the matter of ***Vijay Madanlal Choudhary and others Vs. Union of India and others (supra).*** The relevant extract of the said judgment has been reproduced below:-

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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 Ranjitsingh Sharma (supra) held as under:

44.….

45.….

46.….(extracted above).

401. We are in agreement with the observations made by the Court in Ranjitsing Sharma (supra). The Court while dealing with the application for grant of bail need not delve deep into the merits of the case and only a view of the Court based on available material on record is required. The Court will not weight the evidence to find the guilt of the accused which is, of course, the work of trial Court. The Court is only required to place its view based on probability on the basis of reasonable material

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collected during investigation and the said view will not be taken into consideration by the Trial Court in recording its finding of the guilt or acquittal during trial which is based on the evidence adduced during the trial. As explained by this Court in Nimmagadda Prasad, the words used in Section 45 of the 2002 Act are "reasonable grounds for believing" which means the Court has to see only if there is a genuine case against the accused and the prosecution is not required to prove the charge beyond reasonable doubt."

Therefore, there is no doubt that the restrictions in the matter of grant of bail are required to be considered reasonably. If the Court having regard to the material brought on record is satisfied that, in all probability, the accused may not be ultimately convicted, an order granting bail may be passed. Conversely, it is not a mandatory requirement that the Court must arrive at a positive finding that the Petitioner has not committed an offence under the Act. This view has also been followed by the Hon'ble High Court of Bombay in ***Anil Vasantrao Deshmukh v. State of Maharashtra and Anr. vide it's judgment and order dated 4.10.2022 in Bail Application No. 1021 of 2022,*** *which has in turn attained finality after Special Leave Petition (Crl.) Diary No. 32078 of*

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2022 filed against aforesaid order dated 4.10.2022 which was disposed of by the Hon'ble Supreme Court recently vide it's order dated 11.10.2022".

20. Therefore, this Court has no hesitation to hold that the restrictions, while considering the matter of bail, are required to be construed reasonably. If the Court comes to the conclusion that after considering the material collected against the petitioner, in all probabilities, the accused may not be convicted ultimately by the trial Court; an order of grant of bail may be passed. Still further, conversely, it is not a mandatory requirement that the Court must arrive at a positive finding that the petitioner had not committed an offence under the PMLA.

21. Now adverting to the facts of the present case, the primary allegation on the basis of the FIR (Annexure P-10) is that the volume of material extracted by M/s Tirupati Roadways, i.e., the firm of the petitioner from the mine was six times more than the permissible limit in a year and huge loss of about 35 crores has been caused to the Government of Haryana by the owner of the firm and based on such allegation, FIR No. 9 dated 28.8.2022 under Sections 379/414/480 IPC & 4/21 of Mines And Minerals (Development & Regulation) Act, 1987 & 13(2)/13(1)(a) of the Prevention of Corruption Act, 1988 at P.S. SVB Panchkula (Annexure P-10) was ordered to be registered against the firm of the petitioner and others. Even, after about a period of 02 months of registration of the FIR

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(Annexure P-10), ECIR/CDZO-II/11/2022 dated 18.10.2022 (Annexure P-13) registered by the ED against the firm of the petitioner on similar allegations by treating the offences in the FIR (Annexure P-10) as scheduled offences.

22. In the present case, the substratum of the allegations with regard to the predicate offences seems to be one of illegal mining. On the one hand, the ED and Vigilance Bureau had alleged that the firm of the petitioner had extracted the material from the mine beyond the permissible limits and had caused loss to the State exchequer to the tune of Rs. 35 crores whereas, on the other hand, the petitioner submitted that there was no irregularity or illegality committed in the mining operation and the firm of the petitioner got an exhaustive survey conducted from a reputed team of qualified mining professionals of extensive national and international experience based at Gandhi Nagar, India, namely, Mining 360 Services. The survey report (Annexure P-12) extensively depicted true and correct picture of the state of affairs and an exhaustive survey report was prepared to calculate the total excavated value of river bed mineral between March 2022 to September 2022. Apart from that, the allegations levelled in the FIR (Annexure P-10) were countered by the petitioner by submitting that while excavating minerals and sand, there are layers of mud/clay constituting the top layer of the soil and the mud soil found over the river bed material has to be removed first and the actual river bed material extracted comes around 20% and 40%.

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Furthermore, the trucks/boulders were used to dump the above mentioned clay/mud free of cost to the agriculturist or other parties as per their requirements as the petitioner did not have any area to dump the same.

23. Still further, the main contention raised by learned senior counsel appearing on behalf of the petitioner is that at no stage, the petitioner was taken into custody and in any case no formal arrest had been affected. Even though, the Vigilance Buearu had taken the petitioner in custody on 11.04.2024 and was granted the concession of bail by this Court in CRM M-18491 of 2024 on 26.04.2024, but the respondent had never formally applied for taking the custody of the petitioner. The moment, the petitioner was allowed the concession of bail by this Court on 26.04.2024, the ED issued summons to the petitioner on 05.07.2024, calling upon him "to appear in person" and "to give evidence" on 19.07.2024.

24. Still further, from the above discussion and from the analysis of various judgments passed by the Hon'ble Supreme Court, it is apparent that even though the petitioner has never been "formally arrested" by the ED, but has been remanded to their custody for the purpose of investigation. Even, on earlier occasions, when the ECIR/CDZO-II/11/2022 (Annexure P-13) was registered on 18.10.2022 and the petitioner was arrested by the Vigilance Bureau on 11.04.2024 and was released on bail on 26.04.2024, the officials of the ED chose not to exercise their discretionary power "to formally

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arrest" the petitioner as they did not feel the need to do so. Even, when the petitioner was in custody in connection with the case registered by the Vigilance Bureau, he was never taken on remand for interrogation by the respondent, rather the moment he was granted the bail by this Court in the matter registered by the Vigilance Bureau, notices were repeatedly issued to him by the ED. Even, it appears that the present petitioner had cooperated with the ED and had answered on all the questions, which were put to him and had supplied the majority of the documents. Moreover, the firm of the petitioner has already filed CRM M-4430 of 2024 before this Court, *inter alia,* praying for quashing of FIR in the scheduled offences, i.e., FIR No. 9 dated 28.8.2022 under Sections 379/414/480 IPC & 4/21 of Mines And Minerals (Development & Regulation) Act, 1987 & 13(2)/13(1) (a) of the Prevention of Corruption Act, 1988 at P.S. SVB Panchkula (Annexure P-10) and all consequential proceedings arising therefrom. The said petition is now pending before this Court for adjudication. Apart from that, it is also clear that the present petitioner was never involved in any criminal activity in the past and is a businessman. The petitioner was granted the concession of regular bail by this Court on 26.04.2022 and, thereafter, he has not committed any offence. Even, the respondent-ED has failed to produce any material before this Court, which may suggest that there is any possibility of the petitioner of being involved in any criminal activity in the future.

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25. Even though, the ED claims that the investigation in the present case is continuing and the custodial interrogation of the petitioner was required and had also mentioned certain documents in the affidavit filed on behalf of the ED, however, at this juncture, this Court has noticed that the investigation in the present case had progressed to a substantial extent and in the opinion of the Court, the petitioner has already supplied the required documents and has answered to all the queries raised by the ED. Even, this Court had seen the record of the present case and the custodial interrogation several years after the institution of the case does not stand to any legal reason and justification. Even, the documentary evidence has already been collected by the ED and there is no material to suggest that the petitioner is in a position to influence the witnesses of the prosecution or may abscond from the process of law or may hamper the investigation in any manner.

26. As observed above, in view of the provisions contained in Section 65 of the PMLA, the provisions of Cr.P.C. shall apply, insofar as they are not inconsistent with the provisions of the PMLA to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under this Act. Even, in view of the mandate of Articles 21 and 22 of the Constitution of India, power under the PMLA in relation to the offences under the PMLA, have to be governed by the Cr.P.C., if not expressly provided for alternatively in the PMLA and the said position is expressly recognized and

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acknowledged by Section 65 PMLA. Even, in the matters pertaining to the bail, the Hon'ble Supreme Court has held in the matter of ***Satender Kumar Antil v. Central Bureau of Investigation reported in (2022) SCC Online SC 825*** as follows:

> *"Liberty is one of the most essential requirements of the modern man. It is said to be the delicate fruit of a mature civilization. It is the very quintessence of civilized existence and essential requirement of a modern man."*

27. Still further, the Hon'ble Supreme Court in the matter of ***Sanjay Chandra v. CBI, (2012) 1 SCC 40,*** has observed as under:

> *"21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.*
>
> *22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be*

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a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson."

28. In view of the above discussion, this Court finds it a fit case to grant the concession of anticipatory bail to the petitioner and accordingly, it is directed that the petitioner may be released on bail,

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in the event of his arrest by the officials of the respondent-ED, in connection with ECIR/CDZO-II/11/2022 dated 18.10.2022 subject to the following conditions:-

> *(i) The petitioner shall appear before the ED and fully cooperate with the Investigating Officer of the present case.*
>
> *(ii) The petitioner shall not make any attempt whatsoever to tamper with or destroy the prosecution evidence.*
>
> *(iii) While on anticipatory bail, the petitioner shall not make any attempt whatsoever to threaten, influence, and induce any prosecution witness.*
>
> *(iv) The petitioner shall not leave the country under any circumstances and shall surrender his passport, with the respondent-ED, if not already surrendered.*
>
> *(v) The petitioner shall provide his address and mobile number to the ED and in case of any change, the next shall be provided to the respondent-ED.*
>
> *(vi) In case the petitioner violates any of the above conditions, the concession of bail granted to the petitioner shall be liable to be cancelled.*

29. It is made clear that the above observations have been made only for the limited purpose of disposal of the present bail

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application and shall not be construed as an expression of opinion on the merits of the present case.

28.01.2025 **(N.S.SHEKHAWAT)**
amit rana **JUDGE**

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

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