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

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Pronounced on: 20th August, 2025

\+ **CRL.M.C. 4038/2022, CRL.M.A. 16679/2022**

JASMINDER PAL SINGH
S/o Late Harbhajan Singh
R/o K-18 Rajouri Garden,
New Delhi – 110027 .....Petitioner

Through: Mr. Siddharth Aggarwal, Senior Advocate with Ms. Supriya Juneja, Mr. Satyam Thareja, Ms. Vasundhara Nagrath, Mr. Vishwajeet Bhti and Mr. Shikhar Yadav, Advocates.

versus

ENFORCEMENT DIRECTORATE
Through Assistant Director (PMLA)
Government of India
Delhi Zonal Office,
1st Floor, MTNL Building
JL Nehru Marg, Delhi ....Respondent

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

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Petition under Section 482 Criminal Procedure Code, 1973 has been filed against the impugned Order dated 01.08.2022 *vide* which the Ld. Special Judge, New Delhi dismissed the *Application under Section 91 Cr.P.C* filed on behalf of the Accused.

2. ***Briefly stated***, Petitioner is an accused facing trial before the Ld. Trial Court and is also Director-Owner of *M/s Sweka Powertech Engineers Pvt. Ltd.* (accused No. 3 before the Ld. Trial Court), which is a Company registered under the Companies Act, 1956. *M/s Sweka* was awarded the Work of up-gradation of the street lighting of roads admeasuring 101.56 kms in Delhi under the jurisdiction of MCD (Phase-I) during the year 2008, under the territorial jurisdiction of MCD. The work was to be carried out in different phases.

3. The Work under ***Phase I*** was awarded to the Petitioner *vide* Work Order No. D/EEE-V/TC/08-09/07 dated 01.07.2008 (hereinafter referred to as 'Phase I Work Order') for the contractual amount of Rs. 34,53,68,925/-. The terms and conditions of the Work were incorporated in Agreement No. 7/EE-V executed on 09.07.2008.

4. On the basis of a Letter No. 010/MCD/023-74225 dated 10.02.2010 by Ms. Mamta Upadhyay Director, Central Vigilance Commission, an FIR, being ***RC No. DAI 2010-A- 0026/2010*** dated 16.06.2010 was registered by the CBI under Section ***Sections 120-B IPC read with Section 420,468,471 IPC and Section 13(2) read with Section 13(1) (d) Prevention of Corruption Act, 1988.***

5. As per allegation in the FIR, *M/s Sweka Powertech Engineers Pvt. Ltd.* and other officials of MCD, entered into a criminal conspiracy and manipulated the Tender documents of *M/s Sweka*, which resulted in an undue pecuniary loss of Rs. 3.62 crores to the Government and corresponding undue pecuniary gain to *M/s Sweka*.

6. After investigations, ***Chargesheet was filed under Section 173(2) Cr.P.C on 28.07.2011 and trial was conducted.*** The Ld. Special Judge in ***CC No. 18/2011*** *vide* Judgement & Order dated 31.08.2015 convicted the Petitioner & other Accused persons for alleged pecuniary loss of Rs. 1.15 crores.

7. The Petitioner challenged the Judgment & Order dated 31.08.2015 before this Hon'ble Court in Crl. Appeal No. 975 / 2015. ***The Petitioner was released on bail during the pendency of this Criminal Appeal, vide Order dated 23.11.2015.***

8. It is stated herein, without prejudice to the contention of the Petitioner, that the Prosecution has accepted the Judgment of the Trial Court and has not challenged the same. Therefore, *qua* the Prosecution, the alleged pecuniary loss of Rs. 1,15,00,000/- has been accepted.

9. On the basis of the abovementioned FIR, the Respondent/ED registered ***ECIRJ09IDZ/2013 dated 15.05.2013***, (from which the present proceedings emanate) essentially relying on the same allegation referred to in the CBI FIR, alleging wrongful loss of Rs. 3.62 Crores.

10. After investigations, Respondent filed a ***Complaint under Sections 44 & 45 of the Prevention of Money Laundering Act, 2002*** before the Ld. Trial Court, alleging the following against the Petitioner, *"... M/s Sweka Powertech Engineers Pvt. Ltd, through its Managing Director Sh. T.P. Singh, Sh. J.P. Singh, had received payments of approx. Rs 20 Cr. and the* *same has been used / spent to pay the Suppliers as well as day to day affairs of the Company. Therefore, this amount including POC of Rs 1,42,83,000/-, has been acquired and integrated into mainstream economy and is dissipated by Sh. TP Singh and Sh. JP Singh....”*

11. During investigation, the Respondent/ED through Deputy Director wrote Letters dated 19.01.2018, 29.03.2019 & 16.04.2019 to Supdt. Engineer (EDMC) in relation to withholding of amount of Rs 3.62 Crores. However, these documents have not been placed before the Ld. Trial Court along with the Complaint.

12. Consequently, the Petitioner moved an Application under Section 91 Cr.P.C, on 09.02.2022, seeking directions *qua* these Letters dated 19.01.2018, 29.03.2019 & 16.04.2019. The same was dismissed by the Ld. Trial Court on 01.08.2022.

13. Aggrieved by the dismissal, the Petitioner has preferred the present Petition.

14. The ***impugned Order has been challenged on the grounds*** that the Ld. Trial Court has erred in not appreciating the facts and law in its correct perspective. It has not been considered that Section 91 Cr.P.C. empowers the Court to summon a document / thing if this Hon'ble Court considers that production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceedings under the Code.

15. The Ld. Trial Court has failed to consider that the case of the prosecution, as per its own Complaint, is that the *proceeds of crime* have already been received by the accused persons, and dissipated in the mainstream economy. Therefore, there was a need to attach the properties equivalent to the said amount. However, the Letters dated 19.01.2018, 29.03.2019 & 16.04.2019 addressed by Enforcement Directorate (Deputy Director) to Supdt. Engineer (EDMC), show that the Respondent had ensured that a sum of Rs 3.62 Crores is not released to *M/s Sweka*. Therefore, it is the case of the Respondent itself that this property of Rs 3.62 Crores has not come in the hands of *M/s Sweka and* thus, this property of Rs 3.62 Crores has not yet been derived or obtained.

16. These Letters sought to be brought on record by way of the Application under Section 91 Cr.P.C, make it amply clear that to the knowledge of the Prosecution itself, the alleged *proceeds of crime* have not yet been received by the accused persons.

17. It is submitted that the observations made by Ld. Special Judge, are not in consonance with the observations of the Co-ordinate Bench of this Court in the case of *CBI vs. INX Media Pvt. Ltd. & Others* (2021) 284 DLT 496.

18. Similarly, the Ld. Trial Court has failed to consider the judgement of the Apex Court in Suo Motu W.P. (Crl.) No.1 / 2017 titled *"In Re: To Issue Certain Guidelines Regarding Inadequacies and Deficiencies in Criminal Trials v. State of Andhra Pradesh & Ors."* decided on 20.04.2021.

19. It is submitted that the Ld. Trial Court has erred in not appreciating the judgment of Apex Court in *Nitya Dharmananda @ K Lenin @ Am. vs. Sri Gopal Sheelum Reddu* Crl. Appeal No. 2114 of 2017 decided on 07.12.2017, *Rukmini Narvekar vs. Vijaya Satardekar*, (2008) 14 SCC 1, and

<u>Vijay Madanlal Choudhary & Ors vs. Union of India & Ors</u>, 2022 SCC OnLine SC 929.

20. *Thus, it is prayed that impugned Order dated 01.08.2022 be set aside* and the Respondent be directed to produce/file the Letters and the Court be directed to consider the said letters at the time *of arguments on Charge.*

21. ***The Respondent in its Reply*** has denied the averments made by the Petitioner and has briefly reiterated the facts of the case.

22. It is stated that RC no. 26(A)/2010 was registered by CBI on 16.06.2010 on the basis of information received from the CVC, which revealed that the Accused Persons entered into a criminal conspiracy in awarding contract worth *Rs. 34,53,68,925/-* by manipulating the Tender documents of *M/s Sweka* causing undue pecuniary loss of Rs. 3.62 crores to the ex-chequer.

23. Since the offences mentioned in the FIR/RC were Scheduled Offences, **ECIR No. ECIR/09/DZ/2013** was registered on 15.05.2013 against *M/s Sweka* & others for Offences under Sections 3/4 PMLA.

24. During the investigations, it was revealed that ***proceeds of crime to the tune of Rs.1,42,83,001/-*** *were acquired by the accused persons*, including Petitioner herein. Petitioner/J.P. Singh and co-accused/T.P. Singh, in their *Statements u/s 50 PMLA* revealed that a payment of Rs. 20 crores (approx.) was received by *M/s Sweka* which was used / spent to pay Suppliers as well as for the day-to-day affairs of the Company. This amount, including an amount of Rs. 1,42,83,000/-, was then integrated into the mainstream economy and dissipated by the accused persons and as such, was not available for attachment.

25. An equivalent value of property bearing Plot No. 88, admeasuring 2100 sq. mtrs. at Roz-ka-Meo Industrial Area, Tehsil Nuh District Mewat, Haryana with building constructed thereon, purchased at price of Rs. 83,20,000/- (as on 30.10.2008) and an amount of Rs. 59,63,000/-, **as** part of FD Account No. 003040300010150 in the name of *M/s Sweka*, of total amount of Rs. 3 crores, were attached by the Competent Authority, under PMLA *vide Provisional Attachment Order No. 06/2019 dated 17.07.2019.*

26. Prosecution Complaint u/s 45 PMLA was filed by Respondent-Directorate of Enforcement before the Special Judge, PMLA, on 29.05.2020.

27. *Ld. Special Judge* took *Cognizance of the offences* and summoned the accused persons on the Prosecution Complaint, including the Petitioner herein, to face trial for Offences u/s 3/4 PMLA.

28. An Application u/S. 91 Cr.P.C. dated 09.02.2022 was preferred by the Accused/Petitioner, which was dismissed by the Ld. Special Judge, *vide* impugned Order dated 09.02.2022.

29. It is submitted that it is trite law that at the stage of framing of Charge, there can only be limited evaluation of materials and documents on record. The sifting of evidence is limited to prima facie find out whether sufficient grounds exist for proceeding further with the trial. It is not the case that the *proceeds of crime* had not been received by the Accused persons, but the same was stopped by the Respondent by way of Letters dated 19.01.2018, 29.03.2019, & 16.04.2019.

30. The present Petition is not maintainable at the stage of arguments on Charge.

31. It is submitted that the *Twin Test* under Section 91 requires the Court to satisfy itself that the documents so required are ***'necessary'*** and '***desirable'*** for the adjudication, as it is settled position of law that there cannot be a mini-trial before Charge is framed.

32. Furthermore, the documents sought to be brought on record under S.91 Cr.P.C, are already in the possession of the Petitioner and have in fact, been annexed to the Application by the Petitioner himself. It is neither the case of the Petitioner that he is not aware of the contents of the said Letters nor that the Letters have been concealed from him.

33. In this regard, reliance is placed on *State of Orissa vs. Debendra Nath Padhi* AIR 2005 SC 359 and *Nitya Dharmananda alias K. Lenin and Anr. vs. Sri Gopal Sheelum Reddy and Anr.* AIR 2017 SC 5846b which bars the Court from looking into documents which are in the possession of the accused, at the stage of framing of Charge.

34. It is asserted that law does not empower an accused to take recourse to Section 91 Cr.P.C. to seek the production of any document and/or material at the stage of arguments on Charge.

35. *Therefore, it is submitted that the Petition be dismissed.*

Submissions Heard and record perused.

36. To briefly narrate the backdrop in which the present Application has been filed, is that the *Complaint under Section 2 (P) and under Section 3 PMLA Act* has been filed against the Petitioner, on the allegations that he is one of the Director of *M/s Sweka Powertech Engineers Pvt. Ltd*., which

Company is beneficiary of proceeds of crime acquired from the criminal activities related to schedule offence. The financial bid of L1 i.e. *M/s Sweka*, had been tampered and after opening the bid in order to increase the quoted amount to the rates of various items were tampered resulting in a loss to the State.

37. It was claimed that the Petitioner/Mr. Jasminder Pal Singh had wilfully participated in the criminal conspiracy with a common object to increase the quoted rates in the Tender document thereby causing undue pecuniary loss to the MCD and corresponding pecuniary gain to the Accused, *M/s Sweka*. It was further stated that the Petitioner had received payment of approximately Rs.20 Crores for the execution of Tender, which has been used to pay the suppliers, as well as, day-to-day affairs of the Company. **This amount included proceeds of crime of Rs.1,42,83,000/-** that had been acquired and integrated into mainstream economy and is decapitated by the Applicant along with the co-accused, Mr. T.P. Singh.

38. While initially, the estimated amount was about Rs.3.62 Crores, the **Chargesheet by CBI was filed in respect of Rs.1.42 Crores** as being the proceeds of crime and in final Judgment, the proceeds of crime have been assessed as Rs.1.15 Crores.

39. It is not disputed that property bearing Plot No.88 admeasuring 2100 mtrs. At Roz-ka-Meo Industrial Area, Tehsil Nuh District Mewat, Haryana, with a building constructed thereon which was purchased at the value of Rs.83,20,000/- (as on 30.10.2008), which was claimed to have been purchased from part-proceeds of crime, as already been attached. Furthermore, it is the case of the Respondent itself that an amount of

Rs.59,63,000/-, has been attached from the FD in the name of *M/s Sweka* for a total sum of Rs.3 Crores *vide* Provisional Attachment Order No. 06/2019 dated 17.07.2019. It is the case of the Respondent itself that in the CBI Case, the proceeds of crime were determined as Rs.1.5 Crores instead of Rs.1.42 Crores. In the present Complaint, the property worth Rs.1.42 Crores being termed as proceeds of crime, already stands attached.

40. Initially, since the expected amount was estimated as Rs.3.62 Crores, ED during the investigations had written three Letters dated 19.01.2018, 29.03.2019 and 16.04.2019, addressed to the Superintendent, MCD for non-disbursement of the said amount from the amount due to be paid to *M/s Sweka* on account of work executed by the said Firm.

41. It is pertinent to note here that the amount of Rs.3.62 Crores though under investigation but was never found to be the proceeds of crime, which was limited to Rs.1.42 Crores in respect of which the Attachment Order has already been made. The property/money worth Rs.1.42 Crores, therefore, stands attached. The present Compliant is also only in respect of Rs.1.42 Crores and Rs.1.42 Crores have already been attached.

42. Though, during the investigations, further amounts may have been examined but that is not the subject matter of the present Complaint under Section 3 PMLA. The Letters dated 19.01.2018; 29.03.2019 and 16.04.2019 are therefore, of little significance for the purpose of the present Complaint.

43. Be as it may, it may be further considered whether the Petitioner can seek the unrelied documents i.e. these three Letters under Section 91 Cr.P.C. at the stage of framing of Charge. Section 173 (2) of Cr.P.C. provides that as soon as the investigation is completed, SHO shall forward to the Court, empowered to take cognizance of the offence, Police Report in prescribed Form stating all the details as provided in sub-Section 2 of Section 173 Cr.PC.

44. This Section makes it incumbent on the Investigating or Agency to transmit to the Court concerned all the documents, etc. on which the prosecution proposes to rely in the course of the trial. Upon filing of the Charge-Sheet, the Court on the basis of the material and the statements placed along with the Chargesheet considers whether the cognizance is to be taken and summons directed to be accused for appearance. Thereafter, on the appearance of the Accused, the Court is bound to give to the Accused copy of Police Report along with all the documents under Section 207 Cr.PC.

45. In *Nelson Motis vs. Union of India* 1992 (4) SCC 7 111 and in *Hardeep Singh vs. State of Punjab* AIR 2014 SC 1400, it was held that the purpose of Section 207 Cr.P.C. is to give an adequate Notice to the accused of the material to be used against him during trial and therefore, all such documents must be provided to the accused.

46. Similar observations have been made by Division Bench of this Court in *Dharambir vs. CBI* ILR (2008) 2 Del. 842 and *Dinesh Puri vs. State* 2016 SCC OnLine Del 5551.

47. In this regard observations made by the Supreme Court in the case of *Siddharth Vashisth @ Manu Sharma vs. State* AIR 2010 SC 2352 are of relevance. While explaining the expression '*due process of law*', it was stated that it shall deem *fairness to trial*. This constitutional mandate and statutory right given to the accused, places an implied obligation upon the

Prosecution to make fair disclosure which would take within its ambit furnishing of documents on which the Prosecution intends to rely, whether filed in the Court or not. The documents should essentially be furnished to the accused which are obtained during the investigations *bona fide* by the Investigating Agency and in the opinion of the Prosecutor is relevant and would help in arriving at the truth. Section 207 has a material bearing on this aspect. It requires that the Court should provide copies of the Police Report, statements, confessional statements and the documents free of cost to the accused, as contemplated under Section 173 (5) and (6) Cr.P.C. The documents submitted to the Magistrate along with the Report under Section 173(5) would be deemed to be included as documents which have been sent to the Magistrate during the course of investigation, as per requirements of Section 170(2) of the Code.

48. It was further observed in *Siddharth Vashisth @ Manu Sharma* (supra) that certain rights of the accused flow from the codified law as well as equitable concepts of constitutional jurisdiction as substantial variation to such procedure, would frustrate the very basis of fair trial to claim documents which within the purview of Section 207, 243 read with Section 173 must be read in its entirety. The power of the Court under Section 91 Cr.P.C. to summon documents signifies and provides precepts which will govern the right of the accused to claim copies of the statements and documents which the Prosecution has collected during the investigations and upon which they rely.

49. In *P. Gopalakrishnan @ Dilip vs. State of Kerala* AIR 2020 SC 1, the Apex Court similarly held that under Section 207 Cr.P.C., Magistrate is under an obligation to provide the entire chargesheet along with the statements and documents relied upon by the Prosecution.

50. However, in the case of *Dinesh Puri* (supra) this Court had clarified that the documents though collected during the investigations but not relied upon, are required to be provided to the accused, though not under Section 207 Cr.P.C. but under Section 91, 233 and 243 Cr.P.C at the time of evidence to confront the Prosecution witness and also for leading the defence.

51. The Coordinate Bench of this Court in *Dharambir (supra)*, while considering the question on discretion of Prosecution in classifying the documents gathered during investigation as "relevant" or otherwise and consequently choosing to 'rely upon' the same and furnishing the copies to the accused, has held that *"...in terms of Sections 207 (v) read with Section 173 (5) (a) Cr.P.C., the prosecution is obliged to furnish to the accused copies of only such documents that it proposes to rely upon as indicated in the charge sheet or of those already sent to the court during investigation"*.

52. Furthermore, this Court in *Dharambir* (supra), on the issue of power of Trial Court or High Court in directing supply of copy of documents when they are not relied upon by the prosecution, has held that *"the trial court or this court cannot, at the pre-charge stage, direct the prosecution to furnish copies of documents other than that which it proposes to rely upon or which have already been sent to the court during investigation".*

53. In *Sarla Gupta and Ors. Vs. Directorate of Enforcement* AIR OnLine 2009 Del 1155 while dealing with the specific question whether the accused persons are entitled only to the documents which form part of the

Chargesheet/Complaint relied upon by the Prosecution, *it was observed that the documents not relied upon by the Prosecution can only be provided at the post charge stage under other provisions of the Code.*

54. From the aforesaid judgments, it is clear that the documents not relied upon by the Prosecution, cannot be furnished to the accused at the time of Charge by resorting to Section 91 Cr.P.C; such documents can be made available only post framing of the Charge.

55. The landmark judgment of the Apex Court in *State of Orissa vs. Debendra Nath Padhi,* AIR 2005 SC 359 has crystallised the law on this aspect, wherein the issue was *whether the trial Court, at the time of framing of charge, considers material filed by the accused?*

56. The Apex Court after a brief discussion on Sections 209, 227, and 228 held that jurisdiction under Section 91 of the Code, when invoked by accused, the necessity and desirability would have to be seen by the Court in the context of the purpose - investigation, inquiry, trial or other proceedings under the Code. It would also have to be borne in mind that law does not permit a roving or fishing inquiry. It was held that *"...no provision in the Code grants to the accused any right to file any material or document at the stage of framing of charge. That right is granted only at the stage of the trial."* The Court has further held that looking into any documents supplied by the Accused at the stage of framing of Charge would amount to a mini trial, which would defeat the object of the Code. The Accused can only be heard on the record and documents filed along with it, by the Prosecution.

57. However, the Apex Court noted an exception to this general rule of law by placing reliance on the judgment of *Minakshi Bala vs. Sudhir Kumar*

& Ors., (1994) 4 SCC 142, wherein it was held that in exceptional cases the Court can look into only those *documents which are of unimpeachable and sterling quality.*

58. Likewise, the Apex Court in *Nitya Dharmananda alias K Lenin & Anr. vs. Sri Gopal Sheelum Reddy & Anr.*, AIR 2017 SC 5846 has held that the Court has to ordinarily proceed with framing of Charge on the basis of the material on record, but if the court is satisfied that *there is material of sterling quality which has been withheld by the investigator/prosecutor, the Court is not debarred from summoning or relying upon the same even if such document is not a part of the Chargesheet.* This does not mean that the defence has a right to invoke Section 91 Cr.P.C *de hors* the satisfaction of the court, at the stage of Charge.

59. The present ECIR/09/DZ/2013 dated 15.05.2013 was registered in the backdrop of the CBI case bearing RC no. DAI 2010-A-0026/2010 dated 16.06.2010, wherein the Trial has resulted in conviction against which the Appeal is pending.

60. During the investigations in the present ECIR, these Letters were written by the Respondent/ED through its Deputy Director to the Supdt. Engineer (EDMC) for withholding Rs. 3.62 crores.

61. It is contended by the Petitioner that these Letters ensured that a sum of Rs 3.62 Crores is not released to *M/s Sweka;* which shows that this property of Rs 3.62 Crores has not come in hands of *M/s Sweka*, though it is entitled to the same and thus, this *property of Rs 3.62 Crores has not yet been derived or obtained*.

62. The three Letters which are sought by the Petitioner are neither forming part of the Complaint nor have they been relied upon by the Prosecution. Pertinently, these Letters had been written by the Investigating Agency while investigating the allegations of there being the proceeds of funds to tune of Rs.3.62 crores, to the Superintendent, MCD requesting the concerned MCD Authorities not to release the amount in favour of the accused persons without their prior approval as the same amounts to be the 'proceeds of crime'.

63. However, the Complaint states that the proceeds of crime in the sum of Rs. 1,42,83,000/- have already been received by the accused persons and dissipated in the mainstream economy. Therefore, there was a need to attach the properties equivalent to the said amount, which has admittedly been done.

64. The Trial Court has rightly observed that even if the meaning of money laundering (u/s 2 (P) & u/s 3 PMLA) and '***the proceeds of crime'*** (u/s 2 (u) of the PMLA) are construed in their narrow meaning, even then the Application in hand is found to be devoid of merits as it is not merely actual and physical possession of the alleged 'proceeds of crime' which amounts to be an offence under the relevant provision, but also in various other senses as has been clearly deciphered in the very definition clause u/s 3 of the PMLA of 2002 in its literal meaning.

65. Thus, the said Letters even if summoned, would not add value to the case of the Petitioner/Accused at the stage of Charge.

66. In any case, the accused has no right to have any document summoned at request, especially at the stage of framing of Charge.

67. In the light of the aforesaid discussion, it is hereby held that the learned Special Judge has rightly observed that Section 91 Cr.P.C. can be invoked only when the production of documents is either ***necessary*** or ***desirable***, in terms of Section 91 Cr.P.C. The Request Letters in question are neither necessary nor desirable at the stage of consideration of Charge. Moreover, the copy of the same is already available with the Petitioner. Moreover, prima Facie, it is also not shown that the Respondent is relying on these Letters at this stage of Charge.

Conclusion:

68. In view of the aforesaid discussion the Trial Court while dismissing the Application under Section 91, has rightly held that the Request Letters in question are neither necessary nor desirable at least at the stage of consideration on charge. Hence, there is no infirmity in the impugned Order, whereby the Application under Section 91 Cr.P.C. of the Petitioner, has been dismissed.

69. The Petition is accordingly dismissed, along with the pending Application(s), if any.

70. Nothing contained in this Order is an expression on the merits of the case.

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 20, 2025
VA