



2025:DHC:11894



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on : 11.09.2025

Judgment pronounced on : 24.12.2025

+ **CRL.REV.P. 249/2025, CRL.M.A. 19848/2025 & CRL.M.A. 19850/2025**

RAKESH KUMAR GULATI

..... Petitioner

versus

**DIRECTORATE OF
ENFORCEMENT**

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Aman Pathak, Adv.

For the Respondent : Mr. Zoheb Hussain, Spl. Counsel (through VC), Mr. Vivek Gurnani, Panel Counsel with Mr. Pranjali Tripathi & Mr. Kartik Sabharwal, Adv.

**CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN**

JUDGMENT

1. The present petition is filed challenging the order on cognizance dated 25.09.2024 (hereafter '**impugned order**'), passed by the learned Additional Sessions Judge ('**ASJ**'), Central District, Tis Hazari Courts, Delhi in CC No. 01/2024.



2. By the impugned order, the learned Trial Court took cognizance of the offence under Section 3 of the Prevention of Money-Laundering Act, 2002 ('PMLA') read with Section 70 of PMLA, as is punishable under Section 4 of PMLA. Consequently, summons' were issued to the accused persons.

3. Shorn of unnecessary details, the brief facts of the present case are as under:

3.1. On 31.12.2020, FIR No. RCHG2020A0021 was registered by the Central Bureau of Investigation, ACB, Chandigarh against M/s Sunstar Overseas Limited ('accused company') and its then directors for the offences under Section 120B read with Sections 406/409/420 of the Indian Penal Code, 1860 ('IPC') and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 on the basis of a complaint filed by the then Chief Manager of Punjab National Bank, Sonapat, Haryana. It is alleged that the accused company and the accused persons availed various credit facilities from a Consortium of 9 lender banks, however, they allegedly siphoned off the said loan funds thereby failing to repay the said loan amount to the banks. It is further alleged that the accused company also violated the terms and conditions of the loan agreements in respect of the hypothecated goods inasmuch as the said goods were disposed of without depositing the sale proceeds in their cash credit accounts. It is alleged that by the said acts, the accused company acting through its directors/promoters/employees caused wrongful loss of ₹951.88 crore



to the consortium bank. It is alleged that the accused company also failed to submit stock report after July, 2017 as a result of which the said loan accounts of the accused company were declared NPAs with effect from 31.03.2017.

3.2. Since the FIR disclosed commission of the offences specified in the schedule appended to PMLA, the Directorate of Enforcement ('ED') started investigation *vide* ECIR/GNZO/09/2021 dated 09.04.2021 for the alleged money laundering under Sections 3/4 of the PMLA.

3.3. Subsequently, upon the conclusion of investigation, chargesheet was filed by the CBI on 25.01.2023 in the Court of Ld. Special Judicial Magistrate, Panchkula, Haryana.

3.4. Thereafter, on 01.07.2024, the Petitioner herein was arrested by the ED and, the Prosecution Complaint was filed by the Enforcement Directorate on 29.08.2024 *qua* 25 Accused Persons/entities for committing money laundering punishable under Section 4 of the PMLA. The petitioner is Accused No. 11 in the aforesaid complaint.

3.5. Pursuant to the same, the learned Trial Court took cognizance of the prosecution complaint by way of the impugned order. It was observed that although further investigation was still pending, there were sufficient grounds to proceed against the accused persons, including the petitioner. The learned Trial Court noted that from the perusal of the material on record including the statements recorded



during investigation, *prima facie* there existed sufficient material to believe at this stage that through a series of concerted actions and by way of a complex web of companies and multiple layers of financial transactions, the funds were concealed, diverted and siphoned off by the accused company through its then promoters, directors and other persons by indulging in sham transactions with related and unrelated companies. It was noted further that through a series of sham transactions the accused company and accused persons further indulged in acquisition, concealment, possession in order to eventually regain indirect yet actual control of the accused company with the help of a shell entity namely M/s. Umaiza Infracon LLP and dummy entity namely M/s Shivakriti Agro Pvt. Ltd. thereby causing huge loss to the bankers.

3.6. Aggrieved by the same, the present petition is filed by the petitioner.

4. The petitioner has contested the impugned order on the limited ground of the same having been passed without affording an opportunity to the petitioner of being heard on the point of cognizance.

5. The learned counsel for the petitioner submitted that as per the proviso of Section 223 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS'), even the proposed accused has a right to be heard at the stage of cognizance in every case instituted upon a complaint. He submitted that prosecution complaint in the present case was filed after the BNSS, 2023 came into force. It was consequently argued that



cognizance taken pursuant to the same ought to be governed by the provisions of BNSS and not the Code of Criminal Procedure, 1973.

6. It was further argued that the prosecution complaint in the present case was filed on 29.08.2024 and consequently the provisions of Sections 223-226 of the BNSS would govern the procedure of cognizance and dismissal of complaint. Reliance was placed on the judgment in ***Kushal Kumar Agarwal v. Directorate of Enforcement : 2025 INSC 760***, to contest that in case of non-compliance with the proviso to the Sub-Section (1) of Section 223 of the BNSS, the cognizance order should be set aside.

7. On the other hand, the learned Special Counsel for the respondent department submitted that the present petition is liable to be dismissed on the ground of delay of 10 months in preferring the challenge to the impugned order. He submitted that the impugned order was passed way back on 25.09.2024, however, the ground of denial of pre-cognizance hearing was never agitated before the learned Trial Court even though the petitioner was regularly appearing before the learned Trial Court through his counsel. He submitted that the petitioner could have applied for a pre-cognizance hearing before the learned Trial Court at any point of time yet this course of action was not preferred by the petitioner and the present petition has been preferred only as an afterthought to waste judicial time.

8. He submitted that even otherwise the petitioner has already been heard by the learned Trial Court while deciding his bail



application as per the rigours under Section 45 of the PMLA where the consideration is whether there is reasonable ground for believing that the person is guilty of the offence or not. He submitted that the petitioner's bail application was rightly rejected by the learned Trial Court after a detailed hearing where the learned Trial Court noted that it could not be said that there is reasonable ground for believing that the petitioner is not guilty.

9. He emphasised that the term 'cognizance' is not defined either under the CrPC or the BNSS. Reliance was placed on the judgment of the Hon'ble Apex Court in the case of **Chief Enforcement Officer v. Videocon International Ltd. : (2008) 2 SCC 492** to argue that the term cognizance only connotes 'to become aware of' and when used with reference to a Court, it implies 'to take notice of judicially.'

10. He submitted that while the petitioner has vehemently argued that he was denied the pre-cognizance hearing, he has failed to show that any prejudice was caused to him. He submitted that mere alleged breach of natural justice does not suffice to interfere unless prejudice is shown by the one alleging breach of natural justice. He submitted that prejudice is a question of fact and has to be pleaded.

ANALYSIS

11. In the present case, the petitioner has challenged the impugned order whereby the learned Trial Court took cognizance of the offence under Section 3 read with Section 70 of the PMLA punishable under



Section 4 of the PMLA and summons were issued against the accused persons. The petitioner has challenged the impugned order only on a narrow ground that cognizance was taken by the learned Trial Court without affording him the benefit of a pre-cognizance hearing in terms of Section 223 of the BNSS. It has consequently been prayed that since the petitioner was deprived of his right to be heard, the impugned order be set aside.

12. Before this Court ventures into the exercise of dealing with the singular ground pressed by the petitioner to challenge the impugned order, at the outset, it is relevant to note that the present revision petition has been belatedly preferred by the petitioner. The petitioner along with the petition has also filed an application being, CrI.M.A.19850/2025, seeking condonation of delay of 198 days in filing the present petition on the ground as reproduced hereunder:

“It is respectfully submitted that the delay in filing the present Revision Petition, after counting 90 days from the date of cognizance order is 198 days. However, it is submitted that the delay in filing the present Revision Petition was neither intentional nor deliberate, but was due to bonafide and unavoidable circumstances, as the Petitioner was in judicial custody pursuant to the proceedings initiated against him and was enlarged on regular bail on 07.05.2025 by the Hon’ble High Court of Delhi. It is only thereafter, that the Petitioner was in a position to take proper legal advice, and instruct his counsel to prepare and file the present petition. Therefore, it is humbly submitted that from the date the petitioner was enlarged on regular bail i.e., 07.05.2025, the Petitioner is well within limitation to file the present revision petition.”

13. The sole ground raised by the petitioner for having filed the present petition belatedly is that the petitioner was in Judicial custody



and was enlarged on regular bail only on 07.05.2025. It has been contended that it was only thereafter that the petitioner was in a position to take a proper legal advice, instruct his counsel, prepare and file the present petition.

14. In that regard, this Court first deems it apposite to chalk out the events that transpired before the present petition was filed. The petitioner was arrested in the present case on 01.07.2024. The prosecution complaint was filed on 29.08.2024 and the impugned order was thereafter passed way back on 25.09.2024, that is, 10 months before the present petition was preferred. Evidently, at the time when the impugned order was passed and even thereafter on as many as 13 occasions, the petitioner was duly represented by a counsel before the learned Trial Court, despite which neither any ground that the petitioner was denied pre-cognizance hearing was agitated by the petitioner nor any petition challenging the impugned order was preferred before this Court before July, 2025. In fact, the order dated 22.03.2025 passed by the learned Trial Court also indicates that an application was moved on behalf of the petitioner seeking legible copy of the documents filed with the complaint as well as a list of unrelayed documents.

Even if the ground of the petitioner was to be *prima facie* taken note of that he could not file the petition because he was in judicial custody, yet it is apparent from the record that he was enlarged on bail



on 07.05.2025 and the present petition was still filed after two months that is on 10.07.2025.

15. It is well settled that while dealing with an application for condonation of delay under the Limitation Act, 1963 or any other similar statute, a liberal and justice-oriented approach must be adopted by the Courts, when 'sufficient cause' had been shown by the applicant for not having filed the appeal within the period prescribed. However, in the present case, not only do the explanations rendered in the application not depict sufficient cause for condoning the delay but they also fail to inspire confidence and rather seem like an afterthought especially in the light of the fact that in the interregnum the petitioner was duly represented by a counsel before the learned Trial Court and the issue of not being afforded a pre-cognizance hearing was never agitated. In the opinion of this Court, subsequently receiving different legal advice cannot be a ground for condoning the delay.

16. Even otherwise, the impugned order is only one whereby the learned Trial Court took cognizance of the offence under Section 3 of the PMLA read with Section 70 of PMLA, as is punishable under Section 4 of PMLA and issued summons to the accused persons.

17. It is well settled that taking cognizance does not involve any formal action and the Magistrate is not even required to pass a speaking order at the stage of taking cognizance [Ref. *U.P. Pollution Control Board v. Mohan Meakins Limited and Ors.* : (2000) 3 SCC



745]. Cognizance is taken when the Magistrate first takes judicial notice of an offence. In the case of ***Darshan Singh Ram Kishan v. State of Maharashtra : (1971) 2 SCC 654***, the Hon'ble Apex Court had held as under:

“8. As provided by Section 190 of the Code of Criminal Procedure, a Magistrate may take cognizance of an offence either, (a) upon receiving a complaint, or (b) upon a police report, or (c) upon information received from a person other than a police officer or even upon his own information or suspicion that such an offence has been committed. As has often been held, taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance, therefore, takes place at a point when a Magistrate first takes judicial notice of an offence. This is the position whether the Magistrate takes cognizance of an offence on a complaint, or on a police report, or upon information of a person other than a police officer. Therefore, when a Magistrate takes cognizance of an offence upon a police report, prima facie he does so of the offence or offences disclosed in such report.”

(emphasis supplied)

18. In the case of ***Chief Enforcement Officer v. Videocon International Ltd. (supra)***, it was observed that no universal rule can be laid for when a Magistrate is stated to have taken cognizance and observed as under:

“19. The expression "cognizance" has not been defined in the Code. But the word (cognizance) is of indefinite import. It has no esoteric or mystic significance in criminal law. It merely means "become aware of" and when used with reference to a court or a Judge, it connotes "to take notice of judicially". It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone.



20. *"Taking cognizance" does not involve any formal action of any kind. It occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance is taken prior to commencement of criminal proceedings. Taking of cognizance is thus a sine qua non or condition precedent for holding a valid trial. Cognizance is taken of an offence and not of an offender. Whether or not a Magistrate has taken cognizance of an offence depends on the facts and circumstances of each case and no rule of universal application can be laid down as to when a Magistrate can be said to have taken cognizance."*

(emphasis supplied)

19. Further in the case of ***Yogesh Mittal vs. Enforcement Directorate : 2018 SCC OnLine Del 6565***, this Hon'ble Court was noted as under:

"25. It is thus trite law that cognizance is taken of the offence and not the offender. It is also well settled that cognizance of an offence/offences once taken cannot be taken again for the second time. Since this Court has already taken a view that a supplementary complaint on additional evidence qua the same accused or additional accused who are part of same larger transactions/conspiracy is maintainable however, with the leave of the Court and cognizance is taken of the offence/offences, not the offender and in case no new offence is made out from the additional material collected during further investigation, supporting an earlier offence on which cognizance has already been taken or additional accused are arrayed no further cognizance is required to be taken."

20. As adumbrated above, the term 'cognizance' merely denotes to take notice of an offence with a view to initiate proceedings in respect of an offence. Further, the term 'cognizance' does not entail any formal action and occurs as soon the Magistrate applies his mind to the suspected commission of the offence. In the present case, as noted above, the only contention pressed before this Court by the petitioner



is whether the impugned order can be sustained considering that the petitioner was not afforded an opportunity of being heard.

21. In that regard, this Court first deems it apposite to take note of the fact that on 25.09.2024, at the time when the impugned order was passed, it is manifestly evident from the record that the *petitioner* (produced from judicial custody from CJ-07 Tihar Jail on video conferencing) along with *his counsel* were *present* before the Court. Considering their presence at the time when the impugned order was being passed, it would only be safe to presume that the petitioner was heard by the learned Trial Court before the impugned order was passed. In that regard, it is firstly unclear to this Court as to how and in what manner is the petitioner asserting that he was denied of his right of being heard when the record clearly indicates his presence. Consequently, in the absence of any material to indicate in what manner the petitioner was precluded from exercising his right *despite* his presence, and the subsequent inaction on the part of the petitioner to agitate the said issue before the learned Trial Court even though he was proactively participating in the proceedings, the contention raised by the petitioner at this stage only appears to be an afterthought.

22. Even otherwise, it is pertinent to note that after the impugned order was passed, the petitioner preferred a bail application before the learned Trial Court and was heard extensively on merits. The bail application was dismissed by the learned Trial Court by order dated 18.12.2024. It is pertinent to note that as per Section 45 of the PMLA,



no person can be enlarged on bail unless the twin conditions embodied therein are satisfied: *first*, the Public Prosecutor is afforded an opportunity to oppose the application, and *second*, when the application is opposed, the Court is satisfied that there are *reasonable grounds* for believing that he is not guilty of such offence and he is not likely to commit any offence while on bail. Pertinently, while dismissing the bail application, the learned Trial Court specifically noted that considering the nature and gravity of the offence, the petitioner's role and the *prima facie* incriminating evidence brought on record, the petitioner failed to satisfy the twin conditions under Section 45 of the PMLA. Admittedly, the petitioner on that occasion was heard significantly on merits. It is not the case of the petitioner that on such occasion the complaint as well as the other material on record was not taken into consideration while dismissing the bail application.

23. While the petitioner was subsequently enlarged on bail by this Court by order dated 07.05.2025, the bail was granted only considering the delay in trial and while noting that the continued incarceration of the petitioner with no possibility of the trial being completed in the near future was against Article 21 of the Constitution of India. Thus, in the opinion of this Court, since the petitioner has already been heard extensively on the point of *prima facie* satisfaction of guilt, agitating a pre-cognizance hearing at this juncture is of no avail.



24. Reliance has also been placed by the petitioner on the case of ***Kushal Kumar Agarwal v. Directorate of Enforcement*** (*supra*) to argue that in case of non-compliance of the proviso to the Sub-Section (1) of Section 223 of the BNSS, the cognizance order should be set aside. It is not in doubt that Section 223 of the BNSS mandates that the accused ought to be heard, however, the said case is not applicable to the facts of the present case. As noted above, the petitioner was present at the time when the impugned order was being passed and has not pointed out how and in what manner was he denied of his right of being heard. Furthermore, even thereafter at the time of consideration of his bail application, the learned Trial Court extensively heard the petitioner on merits and also considered the complaint as well as the other material on record while dismissing his bail application. The present case thus is not one where it can be said that the petitioner was not heard.

25. Further, as also rightly pointed out by the respondent department, the petitioner has failed to carve out any prejudice caused to him. Evidently, the petitioner has sought pre-cognizance hearing almost 10 months after the impugned order was passed that too when the petitioner was proactively participating in the proceedings before the learned Trial Court through his counsel despite which the petitioner has failed to show how, if any, prejudice was caused to him. It has merely been asseverated that the denial of pre-cognizance hearing resulted in grave prejudice to the petitioner. The Hon'ble Apex Court in the case of ***State of U.P. v. Sudhir Kumar Singh*** :



(2021) 19 SCC 706 while placing reliance on the case of *Aligarh Muslim University v. Mansoor Ali Khan [Aligarh Muslim University v. Mansoor Ali Khan : (2000) 7 SCC 529* noted as under:

39. In *Aligarh Muslim University v. Mansoor Ali Khan [Aligarh Muslim University v. Mansoor Ali Khan, (2000) 7 SCC 529 : 2000 SCC (L&S) 965]*, the aforesaid authorities were relied upon, and the answer given was **that there is no absolute rule, and prejudice must be shown depending on the facts of each case, as follows : (SCC pp. 539-40, paras 24-25)**

“24. The principle that in addition to breach of natural justice, prejudice must also be proved has been developed in several cases. In *K.L. Tripathi v. SBI [K.L. Tripathi v. SBI, (1984) 1 SCC 43 : 1984 SCC (L&S) 62]* Sabyasachi Mukharji, J. (as he then was) also laid down the principle that not mere violation of natural justice but de facto prejudice (other than non-issue of notice) had to be proved. It was observed, quoting *Wade's Administrative Law (5th Edn., pp. 472-75)*, as follows : (SCC p. 58, para 31)

‘31. ... [I]t is not possible to lay down rigid rules as to when the principles of natural justice are to apply, nor as to their scope and extent. ... There must also have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the facts and circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with, and so forth.’ Since then, this Court has consistently applied the principle of prejudice in several cases. The above ruling and various other rulings taking the same view have been exhaustively referred to in *State Bank of Patiala v. S.K. Sharma [State Bank of Patiala v. S.K. Sharma, (1996) 3 SCC 364 : 1996 SCC (L&S) 717]*. In that case, the principle of “prejudice” has been further elaborated. The same principle has been reiterated again in *Rajendra Singh v. State of M.P. [Rajendra Singh v. State of M.P., (1996) 5 SCC 460]*

The “useless formality” theory, it must be noted, is an exception. Apart from the class of cases of “admitted or indisputable facts leading only to one conclusion” referred to



above, there has been considerable debate on the application of that theory in other cases. The divergent views expressed in regard to this theory have been elaborately considered by this Court in M.C. Mehta [M.C. Mehta v. Union of India, (1999) 6 SCC 237] referred to above. This Court surveyed the views expressed in various judgments in England by Lord Reid, Lord Wilberforce, Lord Woolf, Lord Bingham, Megarry, J. and Staughton, L.J. etc. in various cases and also views expressed by leading writers like Profs. Garner, Craig, de Smith, Wade, D.H. Clark, etc. Some of them have said that orders passed in violation must always be quashed for otherwise the court will be prejudging the issue. Some others have said that there is no such absolute rule and prejudice must be shown. Yet, some others have applied via media rules. We do not think it necessary in this case to go deeper into these issues. In the ultimate analysis, it may depend on the facts of a particular case.”

(emphasis supplied)

26. Further in the case of ***Fertico Mktg. & Investment (P) Ltd. v. CBI : (2021) 2 SCC 525***, the Hon’ble Apex Court noted as under:

23. It will also be apposite to note the following observations of this Court in State of Karnataka v. Kuppaswamy Gownder [State of Karnataka v. Kuppaswamy Gownder, (1987) 2 SCC 74 : 1987 SCC (Cri) 280] , while considering the provisions of Section 465 CrPC : (SCC pp. 79-80, para 14)

“14. The High Court, however, observed [Kuppaswamy Gownder v. State of Karnataka, 1981 SCC OnLine Kar 220 : (1981) 2 Kant LJ 509] that provisions of Section 465 CrPC cannot be made use of to regularise this trial. No reasons have been stated for this conclusion. Section 465 CrPC reads as under:

‘465. Finding or sentence when reversible by reason of error, omission or irregularity.—(1) Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered by a court of appeal,



confirmation or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution, unless in the opinion of that court, a failure of justice has in fact been occasioned thereby. (2) In determining whether any error, omission or irregularity in any proceeding under this Code, or any error, or irregularity in any sanction for the prosecution has occasioned a failure of justice, the court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.’ It is provided that a finding or sentence passed by a court of competent jurisdiction could not be set aside merely on the ground of irregularity if no prejudice is caused to the accused. It is not disputed that this question was neither raised by the accused at the trial nor any prejudice was pleaded either at the trial or at the appellate stage and therefore in the absence of any prejudice such a technical objection will not affect the order or sentence passed by the competent court. Apart from Section 465, Section 462 provides for remedy in cases of trial in wrong places. Section 462 reads as under:

‘462. Proceedings in wrong place.—No finding, sentence or order of any criminal court shall be set aside merely on the ground that the inquiry, trial or other proceedings in the course of which it was arrived at or passed, took place in a wrong Sessions Division, district, sub-division or other local area, unless it appears that such error has in fact occasioned a failure of justice.’ This provision even saves a decision if the trial has taken place in a wrong Sessions Division or sub-division or a district or other local area and such an error could only be of some consequence if it results in failure of justice, otherwise no finding or sentence could be set aside only on the basis of such an error.”

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In the present case, there are no pleadings by the public servants with regard to the prejudice caused to them on



account of non-obtaining of prior consent under Section 6 of the DSPE Act qua them specifically in addition to the general consent in force, nor with regard to miscarriage of justice.

(emphasis supplied)

27. As noted above but for the averment of the petitioner that prejudice has been caused, nothing has been pleaded or asserted to corroborate the same. Further, highlighting prejudice in the present case assumes heightened significance considering the delay in agitating the denial of pre-cognizance hearing. At the cost of repetition, this Court deems it apposite to make a mention of the fact that the impugned order records the presence of petitioner (judicial custody from CJ-07 Tihar Jail through video conferencing mode) and his counsel on the date when the impugned order was passed. It is not the case of the petitioner that on the said date as well, he was denied an opportunity to raise his contentions. Thereafter as well, the petitioner has been duly represented by his counsel before the learned Trial Court yet no ground of denial of his right to be heard was pressed at any stage. The present petition too has been filed with a delay of 198 days without any sufficient cause. The petitioner was also heard on merits at the time when he preferred the bail application before the learned Trial Court on the aspect of *prima facie* satisfaction of guilt. Consequently, at this stage, in the dearth of any prejudice specifically shown, especially when the petition has been preferred belatedly and when the petitioner was duly represented by his counsel at all stages before



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the learned Trial Court, this Court does not find any reason to entertain the present petition.

28. The present petition is accordingly dismissed. Pending applications also stand disposed of.

AMIT MAHAJAN, J

DECEMBER 24, 2025

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