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

\+ W.P.(CRL) 2970/2024, CRL.M.A. 28942/2024 & CRL.M.A. 28943/2024

MANOJ JAYASWAL & ANR. .....Petitioners

Through: Mr. Abhimanyu Bhandari, Senior Advocate with Mr. Gurpreet Singh, Mr. Pallav Srivastava, Ms. Namisha Gupta, Ms. Tanya Aggarwal, Advocates for P-1
Mr. Abhijat, Senior Advocate with Mr. Gurpreet Singh, Mr. Pallav Srivastava, Advocates for P-2

versus

DIRETORATE OF ENFORNCENMENT .....Respondent

Through: Mr. Zoheb Hossain, Special Counsel for ED with Mr. Vivek Gurnani, Standing Counsel along with Mr. Kartik Sabharwal, Mr. Pranjal Tripathi, Mr.Kanishk Maurya, Mr. S. Vats, Advocates and Ms. Rachna, Deputy Director, ED
Mr. O.P Gaggar and Mr. Sachindra Karn, Advocates for R-2.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% **24.01.2025**

1. Through the present criminal writ petition under Article 226 read with 227 of the Constitution of India, 1950 and Section 528 of the Bhartiya Nyaya Suraksha Sanhita, 2023 (Section 482 of the Code of Criminal

Procedure, 1973),[1] the Petitioners seek a writ of Mandamus for quashing the ECIR bearing No. ECIR/NGSZO/02/2023[2] dated 23rd January, 2023 and all the proceedings emanating therefrom, including the searches, seizures, and freezing of bank accounts conducted pursuant thereto.

2. The relief sought in the present petition reads as follows:

> *"A. Pass necessary orders and directions, thereby issuing a writ of Mandamus for quashing of the impugned ECIR bearing No. ECIR/MGSZO/02/2023 and all proceedings arising therefrom.*
> *AND*
> *B. Pass necessary orders and directions, thereby tagging the* ***W.P. Crl. 151/2023*** *titled* ***Manoj Jayaswal vs. Central Bureau of Investigation & Anr.*** *pending before this Hon'ble Court seeking quashing of the said FIR and proceedings arising therefrom with the present matter and permitting the averments made and the grounds raised in the CBI's petition be read as part and parcel of the present Petition.*
> *AND*
> *C. Pass necessary orders and directions, thereby staying the further proceedings arising out of ECIR bearing No. ECIR/MGSZO/02/2023 till Chargesheet is filed by the Central Bureau of Investigation bearing no. RC/223/2022/A/0008 dated 20.12.2022 for offence U/s 120-B R/w 420, 468, 471 of the Indian Penal Code, 1872 and Section 13 (2) r/w Section 13 (1) (d) of the Prevention of Corruption Act, 1988 i.e., the predicate offence, in view of the order passed by the Hon'ble Apex Court in* ***S Martin Vs Directorate of Enforcement in Special Leave to Appeal (Crl.) No.4768/2024 vide order dated 10-04-2024 and in Vijay Mandanlal Choudhary and others v. Union of India, 2022 SCC Online SC 929*** *and also judgment dated 15.03.2024 passed by the Hon'ble Jammu and Kashmir High Court in Anil Kumar* ***Aggarwal Vs Enforcement Directorate in WP (Crl.) No. 09/2024 in C.M No. 648/2024.***
> *AND*
> *D. Pass necessary orders and directions, thereby setting aside:*
> *i. The entire Search proceedings including the Panchnama dated 12.08.2024 at Plot No. 50 & 51, Prashant Nagar, Atchatapuram, Visakhapatnam-530046 in relation to search and seizure proceedings conducted on 12.08.2024 by respondent/ED.*
> *ii. Freezing order dated 12.08.2024 passed u/s 17(1-A) of PMLA, 2002 by Respondent No. 1, Directorate of Enforcement whereby Bank*

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[1] "CrPC"
[2] "Impugned ECIR"

Accounts of Petitioner were frozen.
AND
E. Pass necessary orders and directions, thereby permitting the Petitioners and its group Companies to operate the bank accounts as mentioned in ***Para F.4.1.8****. of the present Petition by maintaining the balance in the bank account as on date of freezing.*
AND
F. Pass necessary orders and directions, thereby directing the Respondent No. 1 to release all the documents, property and devices seized during the aforementioned illegal search and seizure conducted by the respondent on 12.08.2024 at premises of the Petitioner.
AND
G. Pass necessary orders and directions, thereby directing the Complainant to comply with the judgment of the Hon'ble Supreme Court in Paramvir Singh Saini vs Baljit Singh & others, SLP (Crl.) No. 3543 of 2020, thereby directing the investigating agency to conduct investigation under audio visual CCTV surveillance.
AND
H. Pass necessary orders to the Complainant in compliance of the judgment of the Hon'ble Supreme Court in Paramvir Singh Saini vs Baljit Singh & others, SLP (Crl.) No. 3543 of 2020 thereby directing them to preserve and produce the CCTV footage of the investigation conducted before this Hon'ble Court.
AND
I. Pass necessary orders and directions thereby permitting the presence of the advocate for the Applicant/ Accused throughout his interrogation by the Complainant and in terms of the law laid down in Vijay Sajnani v. Union of India and Ors., 2017 (345) ELT 323 (Three Judge Bench), and if confidential questions are being asked, then the advocate may be kept at an outside hearing distance.
AND
J. Pass necessary orders and directions to the effect that the Respondent No. 1 ought to restrict its interrogation of the Petitioner No. 1 only during reasonable time in the day.
AND
K. Any other relief or order which the Hon'ble Court may deem fit and proper in the facts and circumstances of the case may also kindly be granted in favor of the applicant."

3. The Petitioners contend that the Directorate of Enforcement[3] registered the Impugned ECIR based on FIR No. RC/223/2022/A/0008

[3] "ED"

dated 20th December, 2022, registered by CBI, for offences under Sections 120-B read with 420, 468, 471 of the Indian Penal Code, 1872 and Section 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act, 1988. The Petitioners assert the said FIR in itself is vitiated, having been registered by the CBI based on an unlawful complaint filed by Respondent No. 2 (Union Bank of India).[4] In this context, Petitioner No.1 filed a writ petition [W.P.(Crl.) 151/2023 titled *Manoj Kumar Jayaswal vs. Central Bureau of Investigation & Anr]* seeking quashing of the said FIR, and the proceedings arising therefrom. While the said petition is pending consideration, this Court *vide* order dated 24th January, 2023, made the following prima *facie* observations while issuing notice:

> *"**W.P.(CRL) 151/2023 & CRL.M.A. 1422/2023***
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> *This is a petition seeking quashing of the FIR No. RC/223/2022/A/0008 dated 20.12.2022 for offence under Section 120B read with Section 420/468/471 IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and proceedings emanating therefrom.*
>
> *It is stated by Mr. Aggarwal, learned counsel appearing for the petitioner that the FIR is violative of an order dated 01.10.2020 passed by 17th Jt. Civil Judge Sr. Dn., Nagpur which has categorically directed the respondents to maintain status quo from reporting any complaint / information given by defendant banks.*
>
> *Mr. Aggarwal, learned counsel amongst other grounds states that in the present case, there is a CDR of 2013 and which, as per the RBI guidelines, is only offered to creditors against whom there are no allegations of fraud. The very fact that the CDR was offered to the petitioners shows that there were no allegations of fraud against the petitioners. He also states that there is an inordinate delay in registering of the FIR.*
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> *For the aforesaid reasons, issue notice. Mr. Sharrma, learned special counsel accepts notice for the respondent No.1. Mr. Sagar, learned counsel accepts notice for the respondent No.2, seeks and is granted 6 weeks to file a reply. Petitioners may file a rejoinder within 4 weeks thereafter.*
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> *List on 06.04.2023.*

[4] Respondent Bank

CRL.M.A. 1421/2023-STAY

Issue notice.

The notice is returnable on 06.04.2023.

Prima facie in view of the fact that there is an interim order dated 01.10.2020 passed by 17th Jt. Civil Judge Sr. Dn., Nagpur and in view that there is delay in registering of the FIR, it is directed that in case the respondent requires custodial interrogation of the petitioner, they shall give him an advance notice of 7 working days.

This order is being passed in view of peculiar facts and circumstances noted above and shall not be treated as a condition precedent in any other.

List on 06.04.2023."

(Emphasis Supplied)

4. Relying on the aforenoted observation, Mr. Abhimanyu Bhandari, Senior Counsel for Petitioner No.1, argues that the instant ECIR registered by ED is liable to be quashed. He argues that, in light of the interim order dated 1st October, 2020 passed by the Civil Judge, Nagpur, this Court has found *prima facie* case merit in the case of the Petitioner. The operative portion of the order dated 1st October 2020, highlighted by him, reads as follows:

"7. In Bank of India Vs. Gupta Coal India Pvt. Ltd. In Civil Revision Application No. 97/2017, the Hon'ble Nagpur Bench of Bombay High Court presided over by Hon'ble A.S. 162 Chandurkar Judge has held that, in case of fraud the filing of civil suit before civil court with justified. Hence, in cases of fraud suit before civil court is maintainable. In Mardia Chemical Ltd. Vs. Union of India reported in 2004(4) SCC 311 it is held by Hon'ble Supreme Court that, bank has to device and follow mechanism for declaration of account as nonperforming asset as per Reserve Bank of India guidelines. In the present proceedings, the mandate of law has not been followed. Therefore, it seems that entire proceedings has been initiated by the defendants without serving any notice.

8. ***I have also gone through the various citations wherein under the similar set of facts and dispute, it is held that suit before civil court is maintainable. In view of these defendant bank or any other authority are directed to maintain status-quo from reporting any complaint/information given by defendant banks on the basis of reporting and/or to file any***

complaint and act upon any such complaint against plaintiff to Central Fraud Registry till the appearance of defendants. Plaintiffs to comply as per Order 39 Rule 3(A) of C.P.C. E.P. and S.B. allowed if prayed for."

(Emphasis Supplied)

5. Mr. Bhandari argues that this interim order was not challenged by Respondent No. 2 Bank before any higher forum. He submits that, in blatant disregard of the said interim order, Respondent Bank filed a complaint on 27th May, 2021, which ultimately culminated in the FIR dated 20th December, 2022. He highlights that this conduct of Respondent Bank, was in direct contempt of the directions to maintain *status quo*. He further states that although the aforenoted order was vacated during the proceedings, Petitioner No. 1 assailed the order before the District and Additional Sessions judge. In the appeal proceedings, by order 6th March, 2023, the interim order dated 1st October, 2020 was directed to be continued. Against the vacation of the interim order dated 6th March, 2023, Petitioner No.1 approached the Bombay High Court by way of *Writ* Petition [(WP) No. 5275 of 2024], wherein the High Court, by order dated 5th September, 2024 directed that the interim order dated 6th March, 2023 of the Appellate Court shall remain in operation till the next date. This relief, Mr. Bhandari submits, was subsequently extended during further proceedings.

6. Mr. Bhandari further emphasises that there has been an undue delay in the registration of the FIR, as Respondent Bank filed the complaint eight years after the alleged offence took place. Moreover, it took the CBI more than a year and a half to register the FIR after receiving the complaint from Respondent Bank. Mr. Bhandari emphasises that since the passing of the order dated 24th January, 2023 by this court, the CBI has neither issued any summons to Petitioner No. 1, nor conducted any searches against him. This,

he contends, reflects the lack of urgency or substantial progress in the investigation and reinforces the Petitioners' assertion that the FIR, as well as the ECIR based on it, is unwarranted and *malafide*.

7. Mr. Bhandari further places reliance on judgment dated 07th March, 2024 in ***Sanjay Jain vs. Enforcement Directorate,***[5] to argue that the initiation and continuation of proceedings under the Prevention of Money Laundering Act, 2002[6] hinges on the existence of a predicate offence. He contends that if the predicate offence lacks legal or factual validity, as appears to be the case here, from an objective assessment of the available material, there is a reasonable basis to conclude that Petitioner No. 1 is not guilty of an offence under PMLA. He further submits that Petitioner No. 1 had acted *bona fide* by informing Respondent No. 1 about the alleged unlawful actions of Respondent No. 2 bank through a formal letter, in which Petitioner No. 1 also expressed his willingness to cooperate fully and sought an opportunity to be heard. This, he argues, demonstrates the Petitioner's non-evasive conduct.

8. Mr. Bhandari also refers to the observations made by this Court in W.P. (Crl.) 151/2023, wherein the Petitioner sought quashing of the FIR dated 20th December, 2022, registered under Sections 120B read with 420, 468, and 471 of the IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. He draws attention to the interim order passed by this Court on 24th January 2023 in the said proceedings. Mr. Bhandari submits that despite the *prima facie* findings of this Court and the ongoing legal proceedings, Respondent No. 1 proceeded to take coercive

[5] ***Bail Appln. 3807/2022***
[6] PMLA

actions, including multiple searches at Petitioner No. 1's residential premises, the properties of his family members, and various business offices. These actions, according to Mr. Bhandari, were not only unwarranted but also intended to cause undue harassment, disrupt normalcy in the Petitioner's life, and impede his business operations. He further argues that such measures, in the absence of credible material linking the Petitioner to the alleged offence, reflect an abuse of the process of law.

9. It is also highlighted that the premises of Petitioner No. 2-Company were also subjected to search operations, leading to the seizure of various materials and the freezing of multiple bank accounts. This was done despite Petitioner No. 2 not being named as an accused in the predicate FIR, which was primarily based on the bank's complaint following a forensic audit. Petitioner No. 2 has no business dealings, investments, or financial transactions with Corporate Power Ltd., the entity at the centre of the alleged predicate offence. Despite the absence of any direct or indirect nexus between Petitioner No. 2 and the company in question, the enforcement agency proceeded with coercive actions, which, as contended, were baseless and unwarranted.

10. In a nutshell, Mr. Bhandari emphasises that the existence of the scheduled offences is *sine qua non* for ED to exercise jurisdiction under PMLA. Since the scheduled offence is under scrutiny before this Court, ED ought not to continue with the investigation under the Impugned ECIR. He submits that if Petitioner No.1 succeeds in W.P. (Crl) 151/2023, the entire investigation and the Impugned actions of ED in the intervening period would become void *ab initio.* He emphasises that any evidence collected by Respondent No. 1 during the intervening period would be rendered

inadmissible as 'fruits of the poisonous tree,' as the very foundation of the investigation would stand invalidated.

11. In light of these submissions, Mr. Bhandari urges the Court to quash the Impugned ECIR and all proceedings emanating therefrom. He submits that such an approach would prevent unnecessary harassment of the Petitioners and ensure that the actions of Respondent No. 1 are in strict conformity with the statutory mandate and judicial pronouncements governing the PMLA.

12. On the contrary, Mr. Zoheb Hossain, SPP for ED, strongly opposes the present petition. He submits that the matter is still at the stage of investigation. As of now, the investigation has revealed that Corporate Power Limited, as well as its Promoters and Directors, which includes Petitioner No. 1, have indulged in bank fraud of Rs. 4037 crores. The investigation has unveiled that the loan amounts were routed through a complex web of transactions, involving nearly 800 entities, many of which appear to be dummy or shell entities, with no genuine business operations. It is further revealed that the funds were siphoned off and not utilised for the purposes for which the loans were originally sanctioned. As regards, Petitioner No. 2, he submits that it is one of the entities to whom the proceeds of crime have been transferred by Petitioner No. 1. He asserts that the transfer of funds to Petitioner No. 2 was orchestrated through layers of intermediaries, thereby raising significant suspicion about its role in facilitating the laundering of the proceeds of crime. He emphasises that the provisions of the PMLA empower the ED to probe such entities, even if they are not directly involved in the predicate offence, as long as they have received or handled proceeds of crime.

13. Mr. Hussain further asserts that the ED is well within its jurisdiction to conduct an independent investigation under the PMLA, irrespective of the status of the predicate offence, as the statutory framework under the PMLA permits the investigation of proceeds of crime independently of the predicate offence.

14. The Court has considered the aforenoted contentions but remains unpersuaded by Mr. Bhandari's submissions. Firstly, it must be highlighted that this Court's order dated 24th January, 2023, while issuing notice, merely reflects a *prima facie* view and does not impose any restraint on the CBI from continuing its investigation into the alleged predicate offences. The interim protection granted therein is limited to ensuring that the Petitioner's custodial interrogation, if deemed necessary, is preceded by a prior notice of seven working days. This order, therefore, cannot be construed as an impediment to the investigation or the registration of the Impugned ECIR by the Directorate of Enforcement.

15. Secondly, the essence of the Petitioners' submissions primarily hinges on the order dated 1st October, 2020, passed by the Civil Judge, Nagpur, directing the Respondent Bank to maintain *status quo* and restraining it from reporting any complaint or information regarding the Petitioner's accounts. This interim order, which had initially been relied upon by the Petitioners to challenge the CBI's action, was subsequently vacated. It must be noted that through order dated 14th February, 2023, the Civil Judge, Nagpur, rejected the Petitioner's application under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908, holding that the relief sought to restrain the Respondent Bank from reporting the alleged irregularities was not maintainable under Section 41 of the Specific Relief Act, 1963. This

rejection of interim relief was subsequently upheld by the Appellate Court on 6th August, 2024. While it is true that the Petitioner approached the Bombay High Court, and the High Court extended the operation of the interim order dated 6th March, 2023, the stay granted by the High Court is in the nature of a procedural safeguard pending adjudication and does not conclusively nullify the investigative proceedings initiated by the CBI or the ED or even comments on the merits of the interim order. The pendency of the civil dispute or the interim orders therein does not automatically foreclose the jurisdiction of the investigative authorities to proceed under the applicable penal statutes, particularly when allegations of fraud and laundering of public funds are involved.

16. Further, it is an undisputed fact that the CBI has registered an FIR for the scheduled offences, which forms the basis for invoking the provisions of the PMLA. The CBI is actively investigating the allegations of fraud amounting to Rs. 4037 crores, and the predicate offence thus provides the necessary trigger for the ED to initiate its investigation into offences under Sections 3 and 4 of the PMLA. The Supreme Court in ***Vijay Madanlal Choudhary v. Union of India***[7] has held that once the existence of a predicate offence is established, the ED has the jurisdiction to proceed with an independent investigation into the laundering of proceeds of crime.

17. Moreover, challenge on the merits of the case, cannot ordinarily be considered at this stage. The existence of a predicate offence and the registration of the ECIR, have provided a valid foundation for the ongoing investigation. The Directorate of Enforcement has provisionally attached

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[7] Judgement dated 27th July, 2022 passed in SLP (Crl) No. 4634 of 2014.

properties of the Petitioner, valued at approximately Rs. 543 crores, on *prima facie* assessment of proceeds of crime. This Court finds no reason to prematurely interject into the investigative process, especially when the Petitioners have statutory remedies under the Act, to challenge the attachment order, before the Adjudicating Authority and Appellate forums

18. The Court has also considered the pendency of W.P. (Crl.) 151/2023, where the challenge to the FIR for the predicate offence is under adjudication. It is well settled that an ECIR can be quashed in case the accused is acquitted of the predicate offence,[8] or if the predicate offence is quashed by a competent court or if there is no evidence to establish the proceeds of crime. In the present case, while proceedings for quashing of the predicate FIR are pending before this Court, the predicate offence has not been quashed, nor has Petitioner No. 1 been acquitted. The predicate offence remains registered and is under investigation by the CBI, therefore, it cannot be said that the foundation of the ECIR is invalid. The mere pendency of proceedings challenging the predicate offence cannot serve as a ground for quashing the ECIR unless the predicate offence itself is conclusively quashed.

19. It is also pertinent to note that, search operations were carried out by the ED in 14 official and residential premises during money laundering investigation into the bank loan fraud allegedly committed by Corporate Power Limited and their Promoters/ Directors Manoj Jayaswal, Abhijeet Jayaswal, Abhishek Jayaswal and others. During the search operation, the ED is said to have seized a substantial quantity of incriminating documents

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[8] ***Vijay Madanlal Choudhary v. Union of India***, Judgement dated 27th July, 2022 passed in SLP (Crl) No. 4634 of 2014.

and froze proceeds of crime amounting to Rs 209.08 Crore, which included listed shares, securities, mutual funds, fixed deposits, and bank balances. Additionally, cash totalling Rs 55.85 Lakh was also seized during the proceedings. Thus, on a *prima facie* view, it cannot be said that there is no evidence to establish the proceeds of crime.

20. As regards the Petitioners' contention of undue delay in registering the predicate FIR and the subsequent ECIR, the Court finds no merit in the argument. The delay in registration, if any, does not, by itself, vitiate the proceedings under the PMLA. The ED's jurisdiction arises from the existence of a predicate offence, and the mere lapse of time between the alleged commission of the offence and the initiation of investigation does not negate the gravity of the allegations or render the proceedings invalid. The issue of delay in registering the FIR and their consequences, can be raised in W.P. (Crl.) 151/2023, and not the present petition. Thus, in the opinion of the court, the Petitioners have not made out any grounds for quashing the Impugned ECIR.

21. Mr. Abhijat, Senior Counsel for Petitioner No. 2, submits that the grievance of Petitioner No. 2 is confined solely to the freezing of its bank accounts. He submits that Petitioner No. 2 intends to avail appropriate remedies under the law to challenge the freezing order and seeks clarification that the plea raised by Petitioner No. 2 has not been adjudicated upon in the present proceedings. Accordingly, it is clarified that the Court has not expressed any opinion or made any observations on the specific plea raised by Petitioner No. 2 regarding the freezing of its bank accounts. Should Petitioner No. 2 pursue such remedies, the Court considering such a request shall consider the same uninfluenced by the present order.

22. As regards prayers G, H, I, J, of the instant petition, without going into merits of the procedural irregularities alleged, it is clarified that the investigation into the offences alleged under the impugned ECIR, will be conducted by the ED in accordance with the due procedure of law.

23. With the above directions, the present petition is dismissed along with pending applications.

SANJEEV NARULA, J

JANUARY 24, 2025/ab