



2025:DHC:466



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

% **Date of order: 28th January, 2025**

+ **BAIL APPLN. 3776/2024**

RAJESH KUMAR

.....Petitioner

Through: **Mr. Harshit Sethi, Ms. Mansi Tripathi
and Mr. Kartik Yadav, Advocates**

versus

DIRECTORATE OF ENFORCEMENT

.....Respondent

Through: **Mr. Arkaj Kumar, Standing Counsel
with Ms. Vaishnavi Bhargava, Mr.
Aakash Mishra and Mr. Ishank Jha,
Advocates**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant bail application has been filed on behalf of the applicant/petitioner under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter "BNSS") and/or Section 439 of the Code of Criminal Procedure, 1973 (hereinafter "CrPC") read with Section 45 of the Prevention of Money Laundering Act, 2002 (hereinafter "PMLA") seeking grant of regular bail in ECIR/DLZO-II/03/2024 dated 22nd April, 2024 registered under Sections 3 and 4 of the PMLA, arising out of FIR No. 59/2024 dated 12th March, 2024, registered at Police Station - Crime Branch, Delhi for offences punishable under Sections 274, 275, 276, 420, 468, 471 read with 120B and 34 of the Indian Penal Code, 1860 (hereinafter "IPC").

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2. The brief facts that led to the filing of the instant application are that on 12th March, 2024, FIR No. 59/2024 was registered at Police Station – Crime Branch, Delhi under Sections 274, 275, 276, 420, 468, 471 read with 120B and 34 of the IPC, based on a complaint by SI Gulab Singh. The complaint alleged the involvement of several accused persons in the procurement, manufacturing and sale of spurious anti-cancer medicines.

3. In the said FIR, it has been alleged that the primary accused, namely Vipphil Jain and Suraj Shat, in collusion with their several associates, were engaged in the illegal procurement of empty vials and raw materials of anti-cancer drugs such as Keytruda and Opdyta. These counterfeit drugs were allegedly manufactured and distributed in the market to unsuspecting cancer patients.

4. Pursuant to the information received, the police formed six teams to conduct simultaneous raids across Delhi-NCR on 11th March, 2024. During the raid at Flat No. 1101, Block-2, Eleventh Floor, CSP Units, DLF Capital Greens, Moti Nagar, New Delhi, the accused persons were allegedly caught in the act of filling empty vials with unauthorized substances and packaging them using specialized machinery. The police seized a substantial quantity of raw materials, counterfeit vials, packaging equipment etc.

5. Based on the FIR, the Directorate of Enforcement (hereinafter “ED”) initiated ECIR/DLZO-II/03/2024 on 16th March, 2024 under Sections 3 and 4 of the PMLA. On 8th May, 2024, the Police filed chargesheet before the learned Trial Court in the predicate offence under Sections 274, 275, 276, 308, 406, 420, 34 and 120B of the IPC. The applicant was not named in the



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said chargesheet.

6. After the registration of the ECIR, the applicant was summoned by the investigating agency under Section 50 of the PMLA on multiple occasions. The first summons were issued on 21st May, 2024 (Annexure-P3), directing the applicant to appear on 27th May, 2024, however, the applicant failed to comply with the summons, citing his father's ongoing medical treatment, and sought additional time to appear after 6th June, 2024 vide his email dated 2nd June, 2024.

7. On 6th June, 2024, the respondent filed the first prosecution complaint under Section 44/45 of the PMLA. Subsequently, second summons were issued on 12th June, 2024, asking the applicant to remain present before the ED on 24th June, 2024. Following the repeated non-appearance, the investigating agency issued fresh summons on 2nd July, 2024, directing the applicant to appear on 9th July, 2024, to which he finally complied and appeared before the ED. Upon his appearance on the said date, the respondent proceeded to arrest the applicant after providing the applicant with memo of arrest and grounds of arrest. It has been alleged that the applicant has been known to the co-accused Akshay Kumar since 2012-2013. In the year 2022, both the applicant and Akshay Kumar planned to establish a business dealing with medicines. The applicant offered to arrange the necessary funds, following which they opened M/s Delhi Medicine Hub at Sector-11, Booth No. 39, Chandigarh for retail selling of cancer related medicines.

8. On 20th July, 2024, the respondent filed the first supplementary

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prosecution complaint implicating a total of 16 accused persons including the applicant. Subsequently, the learned Special Judge, vide its order dated 21st September, 2024, took cognizance of both, the prosecution complaint as well as the first supplementary prosecution complaint.

9. The applicant then filed a bail application seeking grant of regular bail, however, vide order dated 4th October, 2024, the said bail application was dismissed by the learned Court below. Hence, the present bail application.

10. Learned counsel appearing on behalf of the applicant submitted that the arrest of the applicant was unwarranted and conducted in violation of Section 19 of the PMLA, which requires 'reasons to believe' before an arrest.

11. It is submitted that there was no material evidence to justify his arrest and that the grounds of arrest were merely a mechanical reproduction of statutory language without specific allegations. It is also submitted that he had cooperated with the investigation by responding to all summons and providing the necessary documents, and thus, there was no necessity for his custodial interrogation.

12. It is submitted that there is no direct evidence linking the applicant to the alleged 'proceeds of crime'. It is submitted that the applicant is a mere investor in M/s Delhi Medical Hub and was not involved in its day-to-day operations. It is submitted that the respondent relies primarily on the statement of co-accused Akshay Kumar recorded under Section 50 of the PMLA, which the applicant argues, is inadmissible in law and cannot be



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used as the sole basis for his arrest or continued detention.

13. It is submitted that the alleged amount involved in the money laundering case does not exceed Rs. 1 crore, which according to the proviso to Section 45(1) of the PMLA, exempts him from the twin conditions for bail.

14. It is submitted that neither the Prosecution Complaint nor the applicant's statement recorded under Section 50 of the PMLA alleges that the applicant had any awareness or knowledge that the subject medicines were not genuine. It is submitted that in the absence of any specific assertion or material to establish the applicant's conscious knowledge regarding the spurious nature of the medicines, it cannot be inferred that the applicant had knowingly participated in the process of money laundering.

15. It is submitted that the applicant was neither named in the initial FIR nor in the chargesheet filed by the Delhi Police in the predicate offence. It is submitted that the name of the applicant only surfaced due to the statement of a co-accused recorded under Section 50 of the PMLA, and there is no documentary or circumstantial evidence proving his involvement in the criminal activity.

16. It is submitted that the investigation is complete, prosecution complaints have been filed, and further incarceration serves no purpose.

17. It is submitted that the trial is likely to be prolonged due to the voluminous nature of the record and the involvement of multiple accused persons, making prolonged detention unjustified.

18. Therefore, in view of the foregoing submissions, it is prayed that the



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instant application may be allowed, and the applicant be released on bail.

19. *Per Contra*, learned counsel appearing on behalf of the respondent ED vehemently opposed the instant application submitting to the effect that the same is liable to be dismissed being devoid of any merit.

20. It is submitted that the offence of money laundering as alleged against the applicant, is of a serious nature and has far-reaching consequences, particularly given the involvement in sale of spurious anti-cancer medicines. It is also submitted that the alleged offence not only involves financial fraud but also endangers public health and safety, thus justifying stringent legal action.

21. It is submitted that the applicant was not merely an investor in M/s Delhi Medical Hub but was actively involved in the financial management of the firm. It is submitted that the applicant knowingly facilitated transactions involving the proceeds of crime generated through the illegal trade of counterfeit medicines.

22. It is submitted that there is sufficient material evidence, including financial records, electronic data and statements of co-accused persons, to establish the applicant's role in the laundering of illicit proceeds. It is submitted that the financial trail indicates the applicant's complicity in concealing and projecting 'proceeds of crime' as legitimate.

23. It is submitted that the applicant's conduct, such as transactions made via hawala channels and in third-party accounts indicates his direct involvement in the generation and layering of proceeds of crime, thereby falling squarely within the ambit of Section 3 of the PMLA.



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24. It is submitted that the applicant has not satisfied the twin conditions under Section 45 of the PMLA, which requires demonstrating/proving that he is not guilty of the offence and that he is unlikely to commit any offence while on bail.

25. It is also submitted that the investigation is still ongoing, and further evidence is being uncovered to establish deeper links within the financial network. Given the applicant's influential position and access to resources, there exists a substantial risk of influencing witnesses and tampering of evidence.

26. It is submitted that the learned Special Judge has already rejected the applicant's bail plea, citing the gravity of the offence and the involvement of substantial proceeds of crime. It is submitted that the applicant poses a flight risk, given the serious nature of allegations and the potential for a severe sentence upon conviction.

27. It is submitted that the PMLA attributes liability not just to individuals but to all conspirators involved in an offence and since the proceeds of crime generated from the offence in the instant case benefit all the accused directly or indirectly, the applicant herein cannot claim immunity based on the quantum of money involved in the specific transactions pertaining to him. Therefore, the applicant, by his active participation, is liable for the entire proceeds of crime, and thus, the instant bail application is liable to be rejected.

28. It is also submitted that the applicant herein cannot seek exemption from the rigors of Section 45 of the PMLA by stating that the proceeds of



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crime attributed to him is less than Rs. 1 Crore. It is further submitted that the entire crime and entire transactions which have been funneled among all the accused persons have to be taken into consideration for the constitution of an offence under Section 45 of the PMLA.

29. Therefore, in view of the foregoing submissions, it is prayed that the instant application may be dismissed.

30. Heard the counsel for the parties at length and perused the material available on record.

31. In light of the submissions made before this Court, it is made out that the grounds contended by the applicant for grant of bail are multifold. *Firstly*, it has been contended that the applicant's arrest was not conducted in compliance with the provisions of Section 19 of the PMLA which requires 'reasons to believe' before making an arrest. *Secondly*, the statements made by co-accused Akshay Kumar under Section 50 of the PMLA form the sole basis for the applicant's arrest which are not sufficient to justify his arrest. *Lastly*, the applicant is exempted from the twin conditions of bail under Section 45 of the PMLA. However, even if it is assumed for the sake of arguments that he is not exempted under the proviso, the applicant satisfies the twin conditions prescribed under the aforesaid provision.

32. Learned counsel for the applicant has contended that the applicant's arrest was not conducted in compliance with the provisions of Section 19 of the PMLA which requires 'reasons to believe' before making an arrest. It has been further argued that the statements made by co-accused Akshay



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Kumar under Section 50 of the PMLA form the sole basis for the applicant's arrest which are not sufficient to justify the applicant's arrest.

33. The question before this court is whether the applicant's arrest was carried out in adherence to the statutory requirements under Section 19 of the PMLA which mandates that the authorized officer must have 'reason to believe' based on material evidence before arresting an individual accused of money laundering. The said provision reads as under:

“Section 19. Power to arrest

(1) If the Director, Deputy Director, Assistant Director or any other officer authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession, reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

(2) The Director, Deputy Director, Assistant Director or any other officer shall, immediately after arrest of such person under sub-section (1), forward a copy of the order along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such order and material for such period, as may be prescribed.

(3) Every person arrested under sub-section (1) shall, within twenty-four hours, be taken to a [Special Court or] Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction:

Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the [Special Court or] Magistrate's Court.”



50. The following ingredients can be culled out from the reading of Section 19(1) of PMLA: *firstly*, the officer concerned must have some “material in his possession”. *Secondly*, on the basis of such material, the officer should have a ‘reason to believe’ that any person has been ‘guilty’ of an offence punishable under PMLA. *Thirdly*, such reasons should be recorded in ‘writing’ by the officer concerned and *lastly*, the person so arrested should be ‘informed of the grounds of arrest’.

34. The compliance of these conditions is undoubtedly mandatory, which is also fortified by the explanation added to Section 45 of the PMLA, which provides as under:

“Section 45. Offences to be cognizable and non-bailable.

*Explanation. For the removal of doubts, it is clarified that the expression "Offences to be cognizable and non-bailable" shall mean and shall be deemed to have always meant that all offences under this Act shall be cognizable offences and non-bailable offences notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (2 of 1974), and accordingly the officers authorised under this Act are empowered to arrest an accused without warrant, **subject to the fulfillment of conditions under section 19** and subject to the conditions enshrined under this section.”*

35. Having examined the statutory framework governing the power of arrest under Section 19 of the PMLA, this Court shall now proceed to consider the judicial precedents that have interpreted and applied these provisions in various factual contexts.



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36. In **Vijay Madanlal Choudhary v. Union of India, (2023) 12 SCC 1**, the Hon'ble Supreme Court had made the following observations:

“208. 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 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.”

37. Further in the case of **V. Senthil Balaji v. State, (2024) 3 SCC 51**, the Hon'ble Supreme Court has explained the mandate of Section 19 of the PMLA by observing the following:

“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 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.”

38. In case of ***Pankaj Bansal v. Union of India, (2024) 7 SCC 576***, the Hon’ble Supreme Court while reiterating the principles laid down in case of ***Vijay Madanlal Choudhary (Supra)*** has made the following observations on the scope of Section 19 of the PMLA:

“17. At this stage, it would be apposite to consider the case law that does have relevance to these appeals and the issues under consideration. In Vijay Madanlal Choudhary [Vijay Madanlal Choudhary v. Union of India, (2023) 12 SCC 1 : 2022 SCC OnLine SC 929 : (2022) 10 Scale 577] , a three-Judge Bench of this Court observed that Section 65 PMLA predicates that the provisions of the Code of Criminal Procedure, 1973, shall apply insofar as they are not inconsistent with the provisions of PMLA in respect of arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings thereunder. It was noted that Section 19 PMLA prescribes the manner in which the arrest of a person involved in money laundering can be effected. It was observed that such power was vested in high-ranking officials and that apart, Section 19 PMLA provided inbuilt safeguards to be adhered to by the authorised officers, such as, of recording reasons for the belief regarding involvement of the person in the offence of money laundering and, further, such reasons have to be recorded in writing and while effecting arrest, the grounds of arrest are to be informed to that person.”



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39. The inference drawn from the above judicial pronouncements is that Section 19 of the PMLA imposes procedural safeguards on the arresting authority, thereby, ensuring that arrests are not made arbitrarily but are based on well-founded reasons which are also recorded in writing. The decisions quoted in the foregoing paragraphs reaffirm that compliance with these procedural requirements is mandatory, and any deviation from the prescribed framework could vitiate the arrest. The courts have consistently emphasized that the power to arrest under the PMLA is vested in high-ranking officials and must be exercised with due diligence, ensuring that the accused is informed of the grounds of arrest and that the requisite material is submitted to the adjudicating authority in a sealed manner.

40. In the present case, it has been argued on behalf of the applicant that his arrest was conducted in a mechanical manner without recording specific reasons for belief of guilt. The grounds of arrest, as communicated, were allegedly a verbatim reproduction of statutory language without reference to specific material evidence.

41. Conversely, the respondent argues that the arrest was made after due consideration of financial records and electronic evidence establishing the applicant's role in laundering proceeds of crime. It has been submitted that all statutory requirements were met and that the arrest was necessary to prevent the tampering and destruction of evidence and influence over witnesses.

42. In assessing the legality of the applicant's arrest, this Court must carefully examine the contents of the grounds of arrest provided to the



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applicant at the time of his arrest which has been placed on record as Annexure P-8 to the present bail application. This Court shall now proceed to analyze the relevant portions of the grounds of arrest of the applicant herein. The extracts are reproduced herein below for reference:

“..GROUNDS OF ARREST OF RAJESH KUMAR S/O SHRI HANS RAJ IN ECIR NO ECIR/DLZO-11/03/2024 DATED 16.03.2024

That FIR No. 59/2024, dated 12.03.2024, was registered in Crime Branch, Delhi Police, New Delhi for offences under sections 274/275/276/420/ 468/471/12013 and 34 of Indian Penal Code, 1860, against Sh. Vipnil Jain S/o Late Sh. Pawan Kumar Jain r/o H. No. T 21, Gali No. 8, Gautumpupri, New Seelampur, Bhajanpura, North East, Delhi and Sh. Suraj Shat S/o Sh. Kartik Shat r/o G 315/5, Gali No. 15, West Karawal Nagar, North East, Delhi.

*During the investigations, it is revealed that you, Rajesh Kumar, is a partner in M/s Delhi Medicine Hub along with Akshay Kumar. Akshay Kumar, during his statement recorded under section 50 of the PMLA on 05.04.2024, admitted that he came in contact with Tushar Chauhan through India Mart Online Application for purchase of Cancer Medicine. *** Further Akshay Kumar admitted that you both took all financial and business decision mutually and you both have control over business of anti-cancer medicines in Ws Delhi Medicine Hub. That whatsapp chats between Neeraj Chauhan and you, Rajesh Kumar, revealed that you, Rajesh Kumar demanded sealed and unsealed Keytruda injection from Neeraj Chauhan. You, Rajesh Kumar through his firm i.e. Ws Delhi Medicine Hub further sold these anti-cancer medicines in open market including Hospital/s. Further, it is to mention that money for the purchase of such spurious anti-cancer medicines was transferred from*



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the bank accounts of M/s Delhi Medicine Hub to the accounts of family members of Viphil Jain, Suraj Shat, Tushar Chauhan and others.

That further, it is revealed that you, Rajesh Kumar and Akshay Kumar had sold anti-cancer medicines procured from Neeraj Chauhan and others in open market and payments were received in the bank account of M/s Delhi Medicine.

That, you, Rajesh Kumar was associated in running a fake anti-cancer medicine syndicate and involved to sell the said fake anti-cancer medicine with your other associates in open market and thereby you involved yourself in generation of Proceeds of Crime. Further, you have transferred such proceeds of crime in the accounts of your associates and their family members. Therefore, I have reasons to believe that you, Rajesh Kumar is guilty of having committed the offence of money laundering under Section 3 of PMLA, 2002 punishable under section 4 of the said Act.

*Therefore, analysis of the material gathered clearly points out that you, Rajesh Kumar is involved in acquisition and utilization of proceeds of crime generated out of the criminal activity. Therefore you have committed the offence of money laundering under Section 3 of PMLA, 2002 punishable under Section 4 of the said act. *** Hence your custodial interrogation is required. Therefore, you are arrested as per provisions of section 19 of PMLA, 2002..."*

43. After thorough examination of the grounds of arrest, it becomes evident that the investigating agency has outlined specific details



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highlighting the applicant's involvement in the alleged offence. It is observed that the applicant was duly informed about his firm's involvement and that the applicant was a partner in M/s Delhi Medicine Hub along with co-accused Akshay Kumar and both mutually took financial and business decisions regarding the procurement and sale of spurious anti-cancer medicines, which is clearly evident from the grounds of arrest.

44. Further, the applicant, through his firm, M/s Delhi Medicine Hub, facilitated the sale of counterfeit medicines in the open market, including hospitals, thereby actively participating in the distribution of fake medicines.

45. It is also evident from the bare reading of the grounds of arrest that the generated proceeds of crime were allegedly transferred to the accounts of the associates and their family members. This shows the role of the applicant in the laundering and distribution of the illicit gains.

46. The investigating authority has also relied on statements recorded under Section 50 of the PMLA, which reveal that the applicant was directly involved in sourcing counterfeit medicines without invoices, demanding sealed and unsealed Keytruda injections, and receiving payments through both formal banking channels and illegal hawala transactions. The relevant portion of various statements recorded under Section 50 of the PMLA is as under:

“..Statement of Shri Akshay Kumar S/o Shri Nilaman Ram Sharma Rio 599, Burail, Sector-45, Chandigarh-160047; having DOB: 30.09.1985; mobile no 6239172836 and 9855003814, Email id: akshaykankar25@gmail.com, Aged-39 years, recorded before the Assistant Director, Enforcement



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Directorate u/s 50 of PMLA, 2002 on 23.05.2024,

In response to the summon no. PMLA/Summon/DLZO2 /2024/2496 dated 27.03.2024 and in compliance of order dated 22.05.2024 passed by Hon'ble Special PMLA, Court, Tis Hazari-West; I, Akshay Kumar S/o Shri Maman Ram Sharma presently residing at 1094, 2nd Floor, Sector-39B, Chandigarh; has appeared before Shri Praveen Kumar, Assistant Director, Directorate of Enforcement, Delhi Zonal Office-II, New Delhi on 23.05.2024, to tender my statement u/s 50 of PMLA, 2002. I have been explained the provisions of section 50 of PMLA, 2002 and I understand that I have to give my true and correct statement. I have been explained that my statement can be used as evidence against me or any other person in the proceedings under the PMLA, 2002. I understand that giving false statement is punishable offence under the law.

I proceed to tender my further statement:

Q.1. Please peruse your earlier statement recorded on 05/04/2024 u/s 50 of PMLA, 2002.

Ans. I state that I carefully gone through my above statement recorded on 05/04/24. I put my dated signature on the photocopy of my above statement.

Q2. Please peruse bank account statement of M/S. DELHI Medicine hub bearing account no. 078205001511 from 24/03/2024 to 23/03/2024 maintained with ICICI Bank Limited. Please explain the payment made to Vikas Chhabra from the said account.

Ans. I state that I carefully gone through the above said bank account of M/S. Delhi Medicine hub and I put my dated signature on each page of the said bank account.

I state that I used to make payment to Vikas Chhabra in respect of purchase of spacers anti cancer medicines. As I stated in my earlier statement dated 05/04/2024, I used to purchase spacers anti cancer medicines from Vikas Chhabra and Vikas Chhabra. I used to make payment

Praveen Kumar
23/05/24



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to Hiraaj Chauhan from the above said,
bank account statement of M/s. Delhi Medicare
ltd., I identify the transactions belong to
Payment made to Hiraaj Chauhan from above
said bank account in respect of purchase
of sponsor anti cancer medicines, detail as
under.

Date	Debit amount	Credit amount
06-11-2023	100000	-
06-11-2023	10000	-
06-11-2023	100000	-
20-11-2023	300000	-
23-11-2023	453000	-
04-12-2023	450000	-
06-12-2023	300000	-
20-12-2023	200000	-
20-12-2023	400000	-
11-01-2024	500000	-
11-01-2024	30000	-
16-01-2024	100000	-
16-01-2024	300000	-
09-02-2024	500000	-

Hiraaj Chauhan
23/05/24

23/05/24



I further state that I went to make Payment to Neeraj Chatam by using the said bank account on the instruction of Neeraj Chatam. On perusal of the said above bank account statement of M/s Delhi Medicine Hub, I identify the transactions belongs to Payment made to Neeraj Chatam on instruction of Neeraj Chatam from above said bank account in respect of purchase of spurious anti cancer medicines from Neeraj Chatam and Tushar Chatam, details as under :-

Date	Debit Amount	Credit amount
01-11-2023	450000	-
01-11-2023	200000	-
04-12-2023	450000	-
04-12-2023	300000	-

Further, I state that I also identify the transactions belongs to Payment made to Tushar Chatam in respect of purchase of spurious anti cancer medicines.

Date	Debit amount	Credit amount
26-09-2023	162000	-

Neeraj Kumar
23/05/24

23/05/24

In addition to above, I state that I made Payment to two persons whose account numbers were provided by Neeraj Chatam instructed me to transfer the funds to the said provided bank accounts. On instruction of Neeraj Chatam I transferred funds from bank account of M/s. Delhi MEDICINE HUB to the bank accounts provided by Neeraj Chatam. I state that during transferring the funds to the above said funds I marked in the description of Payments as "Yadav N" and "N Yadav" and therefore on perusal of bank accounts of M/s. Delhi medicine hub, I identify the said transactions made under the instructions of Neeraj Chatam and I state that these Transactions were made in respect of purchase of spurious anti cancer medicines from Neeraj Chatam and Tushar Chatam, details as under :-

Neeraj Kumar
23/05/24

23/05/24



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Date	Debit amount	Credit amount
06-11-2023	100000	-
06-11-2023	100000	-
06-11-2023	100000	-
20-11-2023	300000	-
23-11-2023	493000	-
04-12-2023	450000	-
06-12-2023	300000	-
20-12-2023	300000	-
20-12-2023	400000	-
11-01-2024	500000	-
11-01-2024	30000	-
16-01-2024	400000	-
16-01-2024	300000	-
09-02-2024	500000	-

Harveen Kumar
23/05/24

AW
23/05/24

I further state that on instruction of Steeraj Chauhani, I also transferred funds to the bank account of Sonam Jain wife Vipul Jain, Deepali Jain wife Vipul Jain and Vipul Jain. The total amount transferred to the Vipul Jain and member of his family for the purchase of expensive anti cancer medicines viz. Keytruda, Opdivo, Perspecta, Tecentriq, Bexatas from Steeraj Chauhani and Twinkle Chauhani.

Q3. Please provide bank account statement of M/s. Delhi medicine hub trading account no. 0782 05001511 from 29.03.2023 to 23.03.2024 maintained with SBI Bank Limited. Please explain the payment received in the said bank account from various entities/Person.

Ans. I state that I carefully gone through the above said bank account of M/s Delhi medicine hub and I put my dated signature on each page of the said bank account.

Harveen Kumar
23/05/24

AW
23/05/24

Signature Not Verified

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Date	Debit amount	Credit amount
07-10-2023	-	315000
18-10-2023	-	393000
18-12-2023	-	246000
26-02-2023	-	528000

I further state that I purchased superior anti cancer medicines viz. Keytruda, opdyks, Perjeta, Tecentiq from 'Gauraj' Chambers and Tishar Chambers and supplied the same to Shri Omshankar Sharma Sahib C Eye hospital Trust on bill. I raised invoice in the name of aforesaid hospital and sale proceeds of aforesaid medicines anti cancer medicines were received in the bank account of M/s. Delhi Medicine Lmb. On perusal of bank account of M/s. Delhi Medicine Lmb. I identify the date wise transactions in respect of funds received from Shri Omshankar Sharma Sahib C Eye hospital Trust; detail as under :-

Between sum ar
23/05/24

23/05/24

I state that I used to purchase superior anti cancer medicines viz. Keytruda, opdyks, Perjeta, Tecentiq, Bonatas and sold the same to M/s. Royal Biotech, through Transindia oppal, Arode. I state that on perusal of the aforesaid bank account of M/s. Delhi Medicine Lmb. I identify the Transactions / Funds received from M/s Royal Biotech which were nothing but the sale proceeds of the said superior anti cancer medicines earlier purchased from 'Gauraj' Chambers and Tishar Chambers, detail as under:-

Date	Debit amount	Credit amount
02-05-2023	-	257000
03-05-2023	-	110143
11-05-2023	-	246761
29-05-2023	-	269523
26-06-2023	-	157712
14-07-2023	-	69321
22-07-2023	-	67050
16-08-2023	-	524000
21-08-2023	-	262000
31-08-2023	-	393000
01-09-2023	-	393000
21-09-2023	-	917000

Between sum ar
23/05/24

23/05/24



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Date	Debit amount	Credit amount
20-6-2023	-	252000
20-6-2023	-	85000
17-07-2023	-	252000
21-08-2023	-	252000
24-08-2023	-	120000
12-11-2023	-	750,000
22-11-2023	-	384000
22-11-2023	-	574000
22-11-2023	-	250000
04-12-2023	-	634000
06-12-2023	-	94000
20-12-2023	-	1011096
28-12-2023	-	567492
05-01-2024	-	439607
11-01-2024	-	503520
16-01-2024	-	513541
24-01-2024	-	124887
03-02-2024	-	827177
06-02-2024	-	1582422
17-02-2024	-	238776
05-03-2024	-	695527
05-03-2024	-	503520
12-03-2024	-	
Balance		

3 further state that I and Rajesh Kumar both Partners of M/s Delhi Medicine HbB met with the purchasing authority of Shri Omkarbharan Shri's C Eye Hospital trust, Chembur, we offered to the said purchasing authority of the said hospital the we can provide anti cancer medicines viz: Keytruda, Opdivo, Parjeta, Tecentry. - Bvates at lower price than market price. The purchasing authority of the said hospital accepted our offer and they raised demand.

On the demand raised by the hospital, first we purchased Opdivo anti cancer medicines viz: Keytruda, Opdivo, Parjeta, Tecentry Bvates from their channels and transfer channel and sold the same to Shri Omkarbharan Shri's C Eye Hospital trust Chembur and all the proceeds were received in the bank account of M/s Delhi MEDICINE HbB.

The above statement is according to the
 Balance
 23/05/24

Signature Not Verified

Digitally Signed
 By: GAURA SHARMA
 Signing Date: 29.01.2025
 16:51:25

BAIL APPLN. 3776/2024

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I to II have been written by me without any force, threat or coercion. I have signed each page of my statement.

Before me
between
23/05/24

23/05/24
(Akshay Kumar)

***..”

47. The financial records cited hereinabove indicate substantial money transfers from M/s Delhi Medicine Hub to the accounts of known associates involved in the counterfeit medicine syndicate. These transactions, along with the applicant's control over the business operations, substantiate the claim that he was engaged in money laundering activities.

48. This Court is satisfied that the investigating authority followed due process and substantiated the 'reason to believe' with concrete evidence rather than mere suspicion. Accordingly, the challenge to the legality of the arrest is without merit, and no relief is warranted to the applicant on this ground.

49. Having examined and determined the first issue regarding the legality of the applicant's arrest under Section 19 of the PMLA, this Court shall now proceed on to the second interconnected ground raised by the applicant, i.e., the statements made by the co-accused Akshay Kumar under Section 50 of the PMLA form the sole basis for the applicant's arrest which is not sufficient to justify the applicant's arrest. The said provision reads as under:



“Section 50. Powers of authorities regarding summons, production of documents and to give evidence, etc

(1) The Director shall, for the purposes of section 13, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely: -

- (a) discovery and inspection;*
- (b) enforcing the attendance of any person, including any officer of a [reporting entity] and examining him on oath;*
- (c) compelling the production of records;*
- (d) receiving evidence on affidavits;*
- (e) issuing commissions for examination of witnesses and documents; and*
- (f) any other matter which may be prescribed.*

(2) The Director, Additional Director, Joint Director, Deputy Director or Assistant Director shall have power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this Act.

(3) All the persons so summoned shall be bound to attend in person or through authorised agents, as such officer may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.

(4) Every proceeding under sub-sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860).

(5) Subject to any rules made in this behalf by the Central Government, any officer referred to in sub-section (2) may impound and retain in his custody for such period, as he thinks fit, any records produced before him in any proceedings under this Act:

Provided that an Assistant Director or a Deputy Director shall not-



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(a) impound any records without recording his reasons for so doing; or
(b) retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the [Joint Director].”

50. A careful reading of the provision reveals that the authorities empowered under Section 50 of the PMLA possess the authority to enforce discovery and inspection, compel the attendance of individuals, examine them on oath, require the production of records, receive evidence through affidavits, and issue commissions for the examination of witnesses and documents.

51. The provision further clarifies that any person summoned under subsection (2) is legally bound to comply, state the truth regarding matters under inquiry, and produce the requisite documents as directed by the authorities. It is pertinent to note that such proceedings are deemed to be judicial proceedings under Sections 193 and 228 of the IPC.

52. Having examined the scope and application of Section 50 of the PMLA, the core question that now arises for consideration is whether the statements recorded under this provision are admissible as evidence and to what extent they can be relied upon to justify the applicant’s arrest and continued detention.

53. The Hon’ble Supreme Court in ***Rohit Tandon v. Directorate of Enforcement***, (2018) 11 SCC 46 made the following observations regarding the admissibility of statements recorded under Section 50 of the PMLA:



*“We have independently examined the materials relied upon by the prosecution and also noted the inexplicable silence or reluctance of the appellant in disclosing the source from where such huge value of demonetised currency and also new currency has been acquired by him. **The prosecution is relying on statements of 26 witnesses/accused already recorded, out of which 7 were considered by the Delhi High Court. These statements are admissible in evidence, in view of Section 50 of the 2002 Act.** The same makes out a formidable case about the involvement of the appellant in commission of a serious offence of money laundering. It is, therefore, not possible for us to record satisfaction that there are reasonable grounds for believing that the appellant is not guilty of such offence.”*

54. In a recent judgment, the Hon’ble Supreme Court in ***Abhishek Banerjee v. Enforcement Directorate, (2024) 9 SCC 22*** has again made similar observations:

“21. ...Section 160 which falls under Ch. XII empowers the police officer making an investigation under the said chapter to require any person to attend within the limits of his own or adjoining station who, from the information given or otherwise appears to be acquainted with the facts and circumstances of the case, whereas, the process envisaged by Section 50 PMLA is in the nature of an inquiry against the proceeds of crime and is not “investigation” in strict sense of the term for initiating prosecution; and the authorities referred to in Section 48 PMLA are not the police officers as held in Vijay Madanlal [Vijay Madanlal Choudhary v. Union of India, (2023) 12 SCC 1] .

22. It has been specifically laid down in the said decision that the statements recorded by the authorities under Section 50 PMLA are not hit by Article 20(3) or Article 21 of the Constitution, rather such statements recorded by the authority in the course of inquiry are deemed to be the judicial



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proceedings in terms of Section 50(4), and are admissible in evidence, whereas the statements made by any person to a police officer in the course of an investigation under Ch. XII of the Code could not be used for any purpose, except for the purpose stated in the proviso to Section 162 of the Code. In view of such glaring inconsistencies between Section 50 PMLA and Sections 160/161CrPC, the provisions of Section 50 PMLA would prevail in terms of Section 71 read with Section 65 thereof.”

55. In light of the foregoing judicial pronouncements, it is evident that statements recorded under Section 50 of the PMLA hold evidentiary value and are admissible in legal proceedings. The Hon’ble Supreme Court, while emphasizing the legal sanctity of such statements, observed that they constitute valid material upon which reliance can be placed to sustain allegations under the PMLA.

56. In the aforesaid judgment, the Hon’ble Supreme Court also reaffirmed the admissibility of Section 50 of the PMLA distinguishing them from statements recorded under the CrPC. The Court underscored that such statements, being recorded during an inquiry rather than an investigation, are not subject to the restrictions under Article 20(3) and Article 21 of the Constitution. Instead, they are deemed to be judicial proceedings under Section 50(4) of the PMLA and, therefore, admissible as evidence in proceedings under the PMLA. The Hon’ble Court further clarified that the provisions of Section 50 of the PMLA having an overriding effect by virtue of Sections 65 and 71 of the PMLA prevail over the procedural safeguards under the CrPC.



57. Accordingly, this Court is of the considered view that statements recorded under Section 50 of the PMLA are admissible in evidence and can be relied upon to establish culpability in money laundering cases.

58. Having examined the admissibility of statements recorded under Section 50 of the PMLA, this Court shall now proceed to analyze the statutory framework governing the burden of proof in proceedings related to proceeds of crime.

*“24. **Burden of proof.** --In any proceeding relating to proceeds of crime under this Act, -- (a) in the case of a person charged with the offence of money-laundering under section 3, the Authority or Court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money-laundering; and
(b) in the case of any other person the Authority or Court, may presume that such proceeds of crime are involved in money-laundering.”*

59. From the bare perusal of Section 24 of the PMLA, it is evident that once a person is charged with the offence of money laundering under Section 3 of the PMLA, the law presumes that the proceeds of crime are involved in money laundering unless the contrary is proven by the accused.

60. In the present case, the investigating agency has relied not only on the statement of co-accused under Section 50 of the PMLA but also on financial records, WhatsApp communications, and transactional data, which indicate the applicant's active role in the alleged money laundering activities.

61. By virtue of Section 24 of the PMLA, the respondent is not required to conclusively establish the applicant's guilt at the pre-trial stage, rather, the



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applicant must demonstrate that the proceeds of crime attributed to him are not linked to money laundering. In the absence of any rebuttal by the applicant, the presumption under Section 24 of the PMLA stands in favor of the respondent, thereby, justifying his continued detention.

62. With regard to the above, this Court has referred to the judgment of the Hon'ble Supreme Court in **Prem Prakash v. Enforcement Directorate, (2024) 9 SCC 787**, wherein, the following observations were made:

“In Vijay Madanlal Choudhary [Vijay Madanlal Choudhary v. Union of India, (2023) 12 SCC 1] dealing with Section 24 PMLA, the three-Judge Bench held as under : (SCC pp. 229-31, paras 237 & 239-40)

*“237. Be that as it may, we may now proceed to decipher the purport of Section 24 of the 2002 Act. In the first place, it must be noticed that the legal presumption in either case is about the involvement of proceeds of crime in money-laundering. This fact becomes relevant, only if, the prosecution or the authorities have succeeded in establishing at least three basic or foundational facts. **First, that the criminal activity relating to a scheduled offence has been committed. Second, that the property in question has been derived or obtained, directly or indirectly, by any person as a result of that criminal activity. Third, the person concerned is, directly or indirectly, involved in any process or activity connected with the said property being proceeds of crime. On establishing the fact that there existed proceeds of crime and the person concerned was involved in any process or activity connected therewith, itself, constitutes offence of money-laundering. The nature of process or activity has now been elaborated in the form of Explanation inserted vide Finance (No. 2) Act, 2019. On establishing these foundational facts in terms of Section 24 of the 2002 Act, a legal presumption would arise that such proceeds of crime are involved in money-laundering. The fact***



that the person concerned had no causal connection with such proceeds of crime and he is able to disprove the fact about his involvement in any process or activity connected therewith, by producing evidence in that regard, the legal presumption would stand rebutted.

239. Be it noted that the legal presumption under Section 24(a) of the 2002 Act, would apply when the person is charged with the offence of money-laundering and his direct or indirect involvement in any process or activity connected with the proceeds of crime, is established. The existence of proceeds of crime is, therefore, a foundational fact, to be established by the prosecution, including the involvement of the person in any process or activity connected therewith. Once these foundational facts are established by the prosecution, the onus must then shift on the person facing charge of offence of money-laundering—to rebut the legal presumption that the proceeds of crime are not involved in money-laundering, by producing evidence which is within his personal knowledge. In other words, the expression “presume” is not conclusive. It also does not follow that the legal presumption that the proceeds of crime are involved in money-laundering is to be invoked by the authority or the court, without providing an opportunity to the person to rebut the same by leading evidence within his personal knowledge [Sarbananda Sonowal v. Union of India, (2005) 5 SCC 665] .

240. Such onus also flows from the purport of Section 106 of the Evidence Act. Whereby, he must rebut the legal presumption in the manner he chooses to do and as is permissible in law, including by replying under Section 313 of the 1973 Code or even by cross-examining prosecution witnesses. The person would get enough opportunity in the proceeding before the authority or the court, as the case may be. He may be able to discharge his burden by showing that he is not involved in any process or activity connected with the proceeds of crime. In any



case, in terms of Section 114 of the Evidence Act, it is open to the court to presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case. Considering the above, the provision under consideration [Section 24(a)] by no standards can be said to be unreasonable much less manifestly arbitrary and unconstitutional.”

63. In light of the principles enunciated by the Hon’ble Supreme Court in ***Vijay Madanlal Choudhary (Supra)*** and reiterated in ***Prem Prakash (Supra)***, this Court must determine whether the foundational facts necessary to invoke the presumption under Section 24 of the PMLA have been established by the respondent. The Hon’ble Supreme Court has categorically held that the prosecution must satisfy three essential ingredients. *First*, the commission of a scheduled offence must be established. *Second*, the property in question must be shown to have been derived or obtained, directly or indirectly, as a result of such criminal activity and *third*, the accused must be linked, directly or indirectly, to any process or activity connected with the proceeds of crime.

64. The materials placed on record indicate that the applicant, as a partner in M/s Delhi Medicine Hub, actively participated in the procurement and sale of spurious anti-cancer medicines. The investigation has revealed that the applicant's firm engaged in financial transactions involving the proceeds of crime, including payments made through banking channels and hawala transactions.



65. The financial records submitted by the respondent further substantiate the extent of profits accrued by M/s Delhi Medicine Hub in its account maintained in ICICI Bank through the sale of spurious anti-cancer medicines. The data presented in Table-13, extracted from the prosecution complaint, provides a detailed breakdown of the number of vials sold, the profit earned per vial, and the total profit generated by the firm.

TABLE-13

Sr. no.	Name of the drug/ anti-cancer medicine	No. of vials of anti-cancer medicines sold by DMH	Profit earned by DMH per vial	Total profit earned by DMH
1	Keytruda	38	10,000	3,80,000
2	Tecentriq	8	12,000	96,000
3	Perjeta	5	9,000	45,000
4	Infinzi	36	10,000	3,60,000
Grand Total				8,81,000/-

66. The allegations against the applicant herein specifically highlight the flow of funds from the applicant's firm to the accounts linked with known associates involved in the counterfeit medicine syndicate, thereby establishing the existence of proceeds of crime and the applicant's involvement in the process of money laundering.

67. Applying the legal presumption under Section 24(a) of the PMLA, once the respondent has demonstrated these foundational facts, the onus



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shifts to the applicant to rebut the presumption that the proceeds of crime were not involved in money laundering. The applicant, however, has failed to provide any credible evidence to rebut this presumption. Mere denial of involvement or assertion of being an investor in the firm without day-to-day operational control is insufficient to discharge the burden imposed by the statute.

68. Furthermore, as clarified by the Hon'ble Supreme Court in various judgments, the presumption under Section 24(a) of the PMLA does not operate conclusively and allows the accused an opportunity to rebut the same through cross-examination, production of evidence, or explanations under Section 313 of the CrPC. In the absence of any such rebuttal, the presumption stands in favor of the respondent, and the applicant's continued detention is justified under the PMLA.

69. Therefore, it is observed by this Court that the respondent had sufficient material in its possession, including financial records, digital evidence, and the applicant's communications, to establish a valid 'reason to believe' that the applicant was guilty of the offence of money laundering. The procedural safeguards under the Act were duly followed, and the challenge to the legality of the arrest is without any merit.

70. Furthermore, the contention that the applicant's arrest was solely based on the statement of co-accused Akshay Kumar under Section 50 of the PMLA is unfounded.

71. It is observed by this Court that the respondent has presented corroborative material, including financial transactions and records, linking



the applicant to the proceeds of crime. Considering the presumption under Section 24 of the PMLA, the burden shifted to the applicant to disprove his involvement in the alleged offence. However, the applicant has failed to provide any credible evidence to rebut the statutory presumption.

72. In view of the foregoing analysis, this Court finds that the applicant's arrest was conducted in compliance with the statutory mandate of Section 19 of the PMLA.

73. Moving further, it has been argued on behalf of the applicant that the applicant is exempted from the twin conditions of bail under Section 45 of the PMLA. However, even if it is assumed for the sake of arguments that he is not exempted under the proviso, the applicant satisfies the twin conditions prescribed under the aforesaid provision.

74. In order to adjudicate the instant issue, this Court shall first peruse the text of Section 45 of the PMLA, which lays down the statutory mandate regarding the grant of bail in such cases and establishes the twin conditions that the applicant must fulfill to secure release on bail.

“Section 45. Offences to be cognizable and non-bailable.

(1) [Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence 2[under this Act] shall be released on bail or on his own bond unless--]

(i) the Public Prosecutor has been given a opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:



Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm, 3[or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees] may be released on bail, if the Special Court so directs:

Provided further that the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by—

(i) the Director; or

(ii) any officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government.

[(1A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.]

(2) The limitation on granting of bail specified in sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

[Explanation.--For the removal of doubts, it is clarified that the expression "Offences to be cognizable and non-bailable" shall mean and shall be deemed to have always meant that all offences under this Act shall be cognizable offences and non-bailable offences notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (2 of 1974), and accordingly the officers authorised under this Act are empowered to arrest an accused without warrant, subject to the fulfillment of conditions under section 19 and subject to the conditions enshrined under this section.]”



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75. This Court shall now proceed to analyze the statutory framework under Section 45 of the PMLA which governs the grant of bail in cases of money laundering. Section 45 imposes stringent conditions on the grant of bail. A careful reading of the provision reveals the following essential ingredients that must be satisfied before bail is granted.

76. *Firstly*, Section 45(1) of the PMLA mandates that no person accused of an offence under the PMLA shall be released on bail or on his own bond unless two cumulative conditions are satisfied: (i) the Public Prosecutor must be given an opportunity to oppose the bail application; and (ii) if the Public Prosecutor opposes the application, the Court must be satisfied that there are reasonable grounds for believing that the accused is not guilty of the offence and is not likely to commit any offence while on bail.

77. *Secondly*, Section 45(2) of the PMLA provides that the limitations on the grant of bail under sub-section (1) are in addition to the limitations imposed under the CrPC, or any other law applicable at the time. This makes it clear that the provisions of the PMLA are to be applied over and above the general principles of bail applicable to criminal offences under the CrPC, thereby reinforcing the stringent approach adopted by the legislature in dealing with money laundering offences.

78. *Thirdly*, the proviso to Section 45(1) of the PMLA carves out an exception to the rigorous twin conditions by allowing bail to be granted, at the discretion of the Special Court, to specific categories of persons, namely: (i) individuals below the age of sixteen years, (ii) women, (iii) persons who



are sick or infirm, and (iv) those accused, either alone or with others, of money laundering involving a sum of less than rupees one Crore.

79. Following a perusal of the statutory provision, it becomes imperative to examine the judicial pronouncements that have interpreted and applied Section 45 of the PMLA in various factual contexts.

80. The Hon'ble Supreme Court in ***Nikesh Tarachand Shah v. Union of India***, (2018) 11 SCC 1 struck down the twin conditions as unconstitutional. However, the legislature subsequently amended the provision to cure the defects, and it has since been upheld in ***Vijay Madanlal Choudhary*** (*Supra*), reaffirming the strict nature of bail conditions under the PMLA. In ***Prem Prakash*** (*Supra*), the Hon'ble Supreme Court has also delved into the principles pertaining to bail in PMLA matters. The relevant paragraphs are as under:

“Section 45 PMLA — Contours

10. Considering that the present is a bail application for the offence under Section 45 PMLA, the twin conditions mentioned thereof become relevant. Section 45(1) PMLA reads as under:

“45. Offences to be cognizable and non-bailable. — (1) *Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence [under this Act] shall be released on bail or on his own bond unless—*

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:



Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees, may be released on bail, if the Special Court so directs:

Provided further that the Special Court shall not take cognizance of any offence punishable under Section 4 except upon a complaint in writing made by—

(i) the Director; or

(ii) any officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government.”

11. In Vijay Madanlal Choudhary v. Union of India [Vijay Madanlal Choudhary v. Union of India, (2023) 12 SCC 1] , this Court categorically held that while Section 45 PMLA restricts the right of the accused to grant of bail, it could not be said that the conditions provided under Section 45 impose absolute restraint on the grant of bail. Para 302 is extracted hereinbelow : (SCC p. 259)

“302. 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.”

These observations are significant and if read in the context of the recent pronouncement of this Court dated 9-8-2024 in Manish Sisodia v. Enforcement Directorate [Manish Sisodia v. Enforcement Directorate, (2024) 12 SCC 660 : 2024 SCC OnLine SC 1920] , it will be amply clear that even under PMLA the governing principle is that “Bail is the Rule and Jail is the Exception”. In para 52 of Manish Sisodia [Manish Sisodia v.



Enforcement Directorate, (2024) 12 SCC 660 : 2024 SCC OnLine SC 1920], this Court observed as under:

“52. ... From our experience, we can say that it appears that the trial courts and the High Courts attempt to play safe in matters of grant of bail. The principle that bail is a rule and refusal is an exception is, at times, followed in breach. On account of non-grant of bail even in straightforward open-and-shut cases, this Court is flooded with huge number of bail petitions thereby adding to the huge pendency. It is high time that the trial courts and the High Courts should recognise the principle that “bail is rule and jail is exception.”

12. All that Section 45 PMLA mentions is that certain conditions are to be satisfied. The principle that, “bail is the rule and jail is the exception” is only a paraphrasing of Article 21 of the Constitution of India, which states that no person shall be deprived of his life or personal liberty except according to the procedure established by law. Liberty of the individual is always a Rule and deprivation is the exception. Deprivation can only be by the procedure established by law, which has to be a valid and reasonable procedure. Section 45 PMLA by imposing twin conditions does not re-write this principle to mean that deprivation is the norm and liberty is the exception. As set out earlier, all that is required is that in cases where bail is subject to the satisfaction of twin conditions, those conditions must be satisfied.

Scope of inquiry under Section 45 PMLA

16. Coming back to the scope of inquiry under Section 45, Vijay Madanlal Choudhary [Vijay Madanlal Choudhary v. Union of India, (2023) 12 SCC 1], while reiterating and agreeing with the holding in Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra [Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra, (2005) 5 SCC 294 : 2005 SCC (Cri) 1057], held that the court while dealing with the application for grant of bail in PMLA need not delve deep into the merits of the case



and only a view of the court based on the available material available on record is required. It held that the court is only required to place its view based on probability on the basis of reasonable material collected during investigation. The words used in Section 45 are “reasonable grounds for believing” which means that 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.”

81. Having considered the legislative intent behind Section 45 and the judicial precedents interpreting its application, this Court shall now proceed to apply the established principles to the facts of the present case to assess whether the applicant has successfully discharged the burden of proving that he is not guilty of the alleged offence and is unlikely to commit any offence while on bail.

82. The applicant has contended that the alleged offence pertains to an amount below Rs. 1 Crore, which should exempt him from the rigors of Section 45 of the PMLA in light of its proviso.

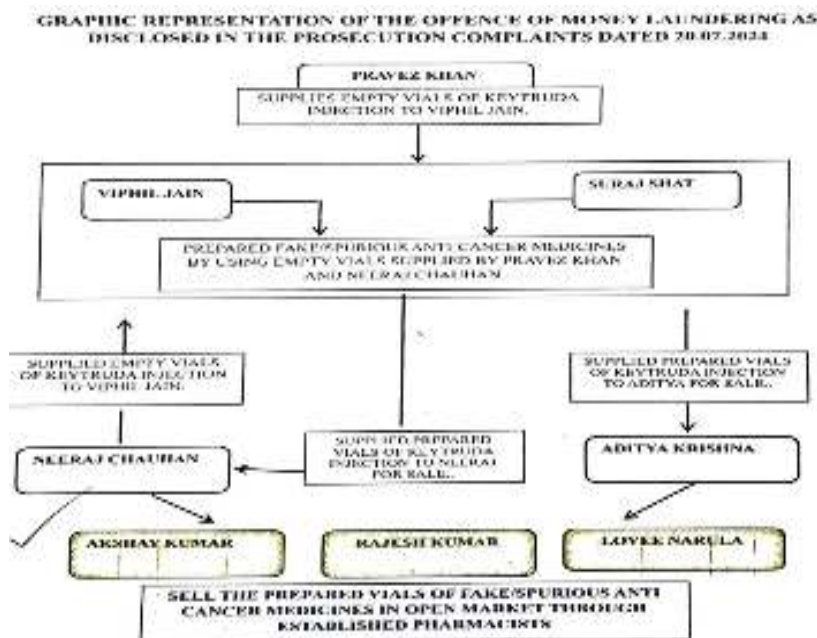
83. The material on record demonstrates that the accused persons operated in a highly coordinated and systematic manner, with clear understanding and collaboration among them to facilitate the offence.

84. The evidence shows deliberate concealment of the origin of funds, the use of entities such as M/s Delhi Medicine Hub, and the layering of transactions to evade detection by regulatory authorities. The sheer scale of operations, involving the movement of funds across multiple jurisdictions, use of hawala channels, and sale of counterfeit medicines to unsuspecting



patients and hospitals, underscores the organized and syndicated nature of the offence.

85. The respondent has provided a detailed representation of the modus operandi of the accused persons in the form of a graphic illustration.



86. As emphasized by the Hon'ble Supreme Court in a catena of judgments, the offence of money laundering must be viewed in the context of the entire criminal enterprise rather than in isolation with respect to individual roles. The collective nature of the operations, the financial interlinkages between the accused persons, and the fraudulent intent evidenced through sustained unlawful activity, leave no doubt that the applicant was an integral part of the broader scheme to launder proceeds of crime. At this stage, this Court has referred to the judgment of the Hon'ble



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Supreme Court passed in the matter of ***Saumya Chaurasia v. Enforcement Directorate, (2024) 6 SCC 401***, wherein, the Hon'ble Court extensively discussed the working of a syndicate and how the proceeds of crime are attributable to the same along with the discretion granted to the Courts under the proviso to Section 45 of the PMLA. The relevant paragraphs of the same are as under:

“..19. As stated hereinabove, the supplementary complaint was filed against the appellant along with the other accused on 30-1-2023, in which the summary of investigative findings against each of the accused persons have been recorded in Para 8 thereof. The details of the investigation conducted by the respondent ED have been stated in Para 9 and the role of each accused including the appellant in the commission of alleged offence of money laundering has been stated in Para 10 thereof, which reads as under:

“10. Role of accused in the offence of money laundering

A. Evidences of offence of money laundering against Smt Saumya Chaurasia—

Mrs Saumya Chaurasia is an officer of the Chhattisgarh State Civil Services who was posted as the Deputy Secretary in the Office of Chief Minister of Chhattisgarh and was working as an OSD to CM. Despite being relatively very junior in the bureaucratic hierarchy, she enjoyed unprecedented power and control because of her direct access to higher political powers. Information shared by the Income Tax Department and analysis of documents and digital devices seized during the searches conducted under Section 17 PMLA, 2002 revealed that Smt Saumya Chaurasia, Deputy Secretary working in the Chief Minister's Office, is one of the key persons in creation of the syndicate headed by Shri Suryakant Tiwari. An extortion racket of this magnitude and nature was possible only when multiple State agencies fell in place and everyone supported the illegal



acts of Suryakant Tiwari. This was made possible by Saumya Chaurasia so that pliant officers were posted in the coal mining districts who would listen to Suryakant Tiwari. Also, it was an unwritten rule that instructions of Suryakant Tiwari meant the voice of Saumya Chaurasia and the powers to be. The fact that Suryakant Tiwari had personal and close official dealings with her and was carrying her instructions to the officers, made it possible for Suryakant Tiwari to also command senior district level officers. This illegal authority was essential for him to run his empire of illegal extortion from coal & iron pellet transportation. Without his concurrence, no NOC was issued by the district machinery. All this was made possible by the fact that he was in the good books of Mrs Saumya Chaurasia. Therefore, she has directly indulged in the offence of money laundering as defined under Section 3 PMLA, 2002 being actually involved in the process of money laundering by way of possession, concealment, use, acquisition and projecting the proceeds of crime as untainted property.

As per the findings of the investigation, it can be inferred that Saumya Chaurasia has directly acquired "proceeds of crime" as defined under Section 2(l)(u) PMLA, 2002 to an extent of more than Rs 30 crores. ED's investigation makes it evident that although all the money of extortion on coal & iron pellet transportation was collected by the syndicate of Suryakant Tiwari, he was not the final beneficiary of this scam. He did utilise large amounts of money for purchasing benami assets, but big chunks of the money were transferred to Saumya Chaurasia, spent on political funding and transferred as per the instructions of higher powers.

Mr Manish Upadhyay, a relative of Mr Suryakant Tiwari, is a close associate of both Mrs Saumya Chaurasia & Mr Suryakant Tiwari. ED investigation has established that Mr Manish Upadhyay was inserted in as an extra layer of protection for cash dealings between Mr Suryakant Tiwari and Mrs Saumya



Chaurasia. He used to transport cash from Mr Suryakant Tiwari to Mrs Saumya Chaurasia.

ED investigation has established that Mrs Saumya Chaurasia and her family went on a spree of acquiring immovable assets during the period which coincided with the coal levy scam. These assets of which she is the real beneficial owner were identified and attached by issuance of provisional attachment orders(s) as detailed in succeeding paragraphs. ”

20. The evidence relating to strong relations between the appellant and Mr Suryakant Tiwari, between the appellant and Mr Manish Upadhyay, and between the appellant and Mr Anurag Chaurasia; the evidences of movement of funds acquired out of extortion syndicate run by Mr Suryakant Tiwari to Manish Upadhyay, proxy of the appellant; the utilisation of proceeds of crime and acquisition of properties by the appellant in the name of her mother Shanti Devi and cousin Mr Anurag Chaurasia along with the details of the said properties, etc. have been detailed in the said prosecution complaint, which leave no doubt in the mind of the Court that prima facie the appellant has been found involved in the commission of the offence of money laundering as defined in Section 3 of the said Act.

21. The next question that falls for consideration before the Court is whether the appellant being a woman should be granted the benefit of the first proviso to Section 45 PMLA, which reads as under:

“45. Offences to be cognizable and non-bailable.—(1)

**** * ****

Provided that a person who is under the age of sixteen years or is a woman or is sick or infirm [or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees], may be released on bail, if the Special Court so directs:..”

87. Moreover, it is pertinent to mention here that the word used in the



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proviso to Section 45 of the PMLA is 'may' which indicates that it is the discretion of the Court concerned and it is not a mandate. As observed by the Hon'ble Supreme Court in a catena of judgments, it is the discretion of the Court and all the other relevant factors are needed to be weighed in while adjudicating the bail application. The relevant factors include the gravity of the offence, likelihood of reoccurrence, criminal antecedents etc.

88. In view of the foregoing, this Court holds that the applicant cannot claim the benefit of the monetary threshold exemption under the proviso to Section 45 of the PMLA.

89. The entire scheme of laundering illicit funds, as uncovered by the investigation, extends far beyond the threshold of one crore rupees, and the applicant's role must be assessed in the broader context of the criminal conspiracy in which he actively participated.

90. It is evident that an entire syndicate with established network and properly defined roles exist and operates at different levels, which, when taken into consideration in entirety clearly establish that the proceeds of crime are more than Rs. 1 Crore, and thus, the proviso is not applicable in the present case.

91. Now this Court shall decide as to whether the applicant satisfies the twin conditions of bail under Section 45 of the PMLA.

92. It is well settled, as reiterated by the Hon'ble Supreme Court in ***Vijay Madanlal Choudhary (Supra)*** and ***Manish Sisodia v. Enforcement Directorate, 2024 SCC OnLine SC 2274***, that while the stringent twin conditions under Section 45 of the PMLA restrict the right to bail, they do



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not impose an absolute bar. The discretion of the court in granting bail remains judicial and must be exercised in accordance with the settled legal principles. The governing principle that “bail is the rule, and jail is the exception” must be harmonized with the legislative mandate that requires satisfaction of the conditions laid down under Section 45 before bail can be granted.

93. In the present case, the respondent has placed on record material indicating the applicant’s active involvement in the procurement and sale of spurious anti-cancer medicines, the proceeds of which were funneled through various channels, including formal banking and *hawala* transactions. The grounds of arrest, along with financial records and electronic evidence, establish a *prima facie* case of money laundering. The applicant’s role in the laundering of illicit proceeds through his firm, M/s Delhi Medicine Hub, stands corroborated by the investigative findings, including statements under Section 50 of the PMLA and independent documentary evidence.

94. The applicant has failed to discharge the burden placed upon him under Section 45(1)(ii) of the PMLA, which requires him to establish that there are reasonable grounds for believing that he is not guilty of the offence. The material produced by the respondent, including financial transactions linked to the proceeds of crime and the applicant’s own admissions, points to his direct and active involvement in the offence. Mere assertions that the applicant was a passive investor and was unaware of the illegality of the transactions do not satisfy the threshold required to



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overcome the presumption under the PMLA.

95. Further, the second limb of Section 45(1)(ii) of the PMLA, which mandates that the applicant must satisfy the Court that he is not likely to commit any offence while on bail, is also not met.

96. The nature of the offence, involving a sophisticated network for the distribution of counterfeit medicines targeting vulnerable patients, demonstrates a potential for reoffending if bail is granted. The involvement of multiple entities and associates in the fraudulent scheme raises a genuine apprehension that the applicant, if released, may influence witnesses and tamper with evidence, thereby jeopardizing the ongoing investigation.

97. In view of the facts and circumstances, this Court finds that the twin conditions prescribed under Section 45 of the PMLA have not been satisfied. The evidence on record, the ongoing nature of the investigation, and the applicant's alleged role in the broader financial syndicate indicate that the rigors of Section 45 continue to apply.

98. The present bail application has also been filed under Section 439 of the CrPC, therefore, this Court, while considering the plea for bail, deems it necessary to evaluate the applicant's case through well-established principles governing the grant of bail under the said provision. Notwithstanding the rigors of Section 45 of the PMLA, the courts have consistently applied the 'triple test' as a guiding framework while considering bail applications under special statutes, including the PMLA.

99. The triple test, derived from Section 439 of the CrPC, consists of the various parameters. *First*, whether the accused is likely to abscond or evade



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the process of law if released on bail. Given the nature of offences under the PMLA, which often involve complex financial transactions and cross-border elements, the potential for absconding is a significant concern. *Second*, whether the accused, if released, is likely to influence witnesses or tamper with evidence. In money laundering cases, where the trail of proceeds of crime is intricate and dependent on multiple records and statements, the possibility of interference with ongoing investigations remains high, and *third*, whether there is a reasonable apprehension that the accused may indulge in similar offences if granted bail, thereby prejudicing the ongoing investigation and endangering public interest.

100. In ***Satender Kumar Antil v. CBI, (2022) 10 SCC 51***, the Hon'ble Supreme Court has held that while granting bail, the gravity of the allegations must be taken into account.

101. Applying the aforesaid principle to the present case, this Court finds that the gravity of the allegations against the applicant is of a serious nature, involving the alleged laundering of proceeds derived from the sale of spurious anti-cancer medicines. The offence not only entails significant financial implications but also poses a grave risk to public health and safety.

102. As observed in the foregoing paragraphs, but not being repeated for the sake of brevity, the applicant in the present case is alleged to have played an active role in the procurement, distribution, and financial management of the illicit business.

103. The evidence on record, including financial transactions and digital communications, suggests a well-orchestrated operation which demands a



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higher threshold of scrutiny before granting bail. The investigating agency has highlighted the potential risk of the applicant tampering with evidence and influencing witnesses, thereby affecting the integrity of the ongoing investigation.

104. In the present case, the applicant has failed to demonstrate that his release would not pose a risk to the investigative process. The applicant's financial dealings, the intricate network of the accused persons, and the continuing investigation reinforce the respondent's concerns regarding the potential for obstruction of justice.

105. In the present case, the applicant has failed to demonstrate that his release would not pose a risk to the investigative process. The applicant's financial dealings, the intricate network of the accused persons, and the continuing investigation reinforce the respondent's concerns regarding the potential for obstruction of justice.

106. Thus, in addition to failing to fall under the proviso to Section 45 of the PMLA and satisfy the twin conditions under Section 45(1) of the PMLA; the applicant also fails to meet the general considerations under the triple test for the grant of bail. Consequently, the applicant's continued detention is warranted to ensure the integrity of the investigation and prevent any potential misuse of the judicial process.

107. Having dealt with all the issues, this Court is of the view that considering the filing of the first supplementary prosecution complaint and the ongoing nature of the investigation, this Court is not satisfied that the applicant has fulfilled the twin conditions under Section 45 of PMLA. The



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respondent has presented sufficient material to warrant further investigation, including financial records, electronic evidence, and statements of co-accused implicating the applicant. These materials suggest an active involvement in laundering proceeds of crime and a pattern of financial transactions that need further investigation.

108. The ongoing investigation is an extensive and meticulous effort by the investigating agency to unearth a broader nexus of financial misconduct and uncover deeper layers of the alleged offence. As new evidence continues to emerge, it may further solidify the allegations against the applicant. The complexity of the financial trail and its potential societal and national ramifications require continued custodial interrogation.

109. In light of the above discussions on facts and law, it is held that the applicant has been unable to put forth any propositions before this Court that are sufficient for grant of bail and thus, the same are rejected. In view of the same, this Court is not inclined to release the applicant on bail and the instant application, is, hereby, dismissed along with the pending applications, if any.

110. The applicant, if on interim bail, is directed to surrender before the Court concerned within a period of seven days from today and the sureties/bail bond, if any shall stand discharged. If the applicant fails to surrender as directed, the investigating agency shall take appropriate steps to take the applicant in custody to secure his presence.

111. It is made clear that any observations made herein are only for the purpose of deciding the present petition and shall not be construed as an



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expression on the merits of the case. The learned Trial Court shall proceed with the matter uninfluenced by any observations made by this Court and shall decide the case strictly in accordance with law.

112. The order will be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

JANUARY 28, 2025

rk/ryp/mk

Click here to check corrigendum, if any

Signature Not Verified

Digitally Signed
By: GAURAV SHARMA
Signing Date: 29.01.2025
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