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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(Civil)/3551/2026

MS GLOBAL ENTRADE
A PARTNERSHIP FIRM HAVING REGISTERED OFFICE AT 2ND FLOOR GAURAV BHAVAN D NEOG PATH GS ROAD GUWAHATI 781005 THROUGH ITS PARTNER MR RAVI GULGULIA
SON OF SHRI RAMLAL GULGULIA RESIDENT OF Z 03 Z 04 SERANIUM BLOCK 7TH FLOOR SUN SYNDICATE ORCHID
HENGRABARI
KAMRUP (M)
ASSAM
PIN-781036

VERSUS

THE DIRECTORATE OF ENFORCEMENT AND ANR.
REPRESENTED BY THE ASSISTANT DIRECTOR
ENFORCEMENT DIRECTORATE
AIZWAL SUB ZONAL OFFICE AT ROOM NO 501
5TH FLOOR MAINAK TOWER
GS ROAD
GUWAHATI
ASSAM

2:PRESENT SINGLE MEMBER OF ADJUDICATING AUTHORITY
UNDER THE PREVENTION OF MONEY LAUNDERING ACT
2002 ROOM NO 26 4TH FLOOR JEEVAN DEEP BUILDING PARLIAMENT STREET
NEW DELHI THROUGH ITS REGISTRAR ADMINISTRATIVE OFFICE

Advocate for : Adrita Bhuyan
Advocate for : SC
ED appearing for THE DIRECTORATE OF ENFORCEMENT AND ANR.

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

04.11.2026

1. Heard Mr. J. Sehgal, learned counsel for the applicant/petitioner. Also heard Ms. L. Devi, learned Standing Counsel for the Enforcement Directorate.

2. The present interlocutory application has been filed by the applicant, seeking permission to substitute the two immovable properties provisionally attached by the Directorate of Enforcement by furnishing a Fixed Deposit Receipt (FDR) for an amount of Rs. 45 lakhs in favor of the Directorate of Enforcement and for the consequential release of the said properties from attachment.

3. The properties in question are described as below:-

   I. Land measuring 2 Bigha 2 Katha situated at Dag No. 370, Patta No. 30 of Village- Teltella, Mouza- Sonapur, District- Kamrup (Metro), Assam, valued in the attachment proceedings at Rs. 28,80,000/-.

   II. Land measuring 4 Katha situated at Dag No. 369, Patta No. 59 of Village-Teltella, Mouza- Sonapur, District- Kamrup (Metro), Assam, valued in the attachment proceedings at Rs. 9,60,000/-, totalling Rs. 38,40,000/-.

4. The applicant's case is that the aforesaid properties were acquired

by registered Sale deeds dated 15.09.2016 from independent funds and that the properties have been attached not as properties directly acquired out of the alleged proceeds of crime, but as properties representing the value thereof.

5. The learned counsel for the petitioner contends that the attachment has caused hardship to the applicant and that the interests that the Directorate of Enforcement seeks to protect can be adequately secured by permitting the substitution of the properties with an FDR of equivalent value.

6. The learned counsel for the petitioner further submits that, without prejudice to the rights and contentions of the applicant in the connected writ petition and in the proceeding under the PMLA Act 2002, the applicant, now, is willing to furnish FDR for a sum of Rs. 45 lakhs in favor of the Directorate of Enforcement, with an exclusive lien in its favor to remain valid and subsisting until final determination of the proceeding or until further orders of the competent authority.

7. It is submitted that the proposed security would adequately protect the Enforcement Directorate's interests while permitting the applicant to obtain release of the immovable properties.

8. Ms. Devi, learned counsel for the Directorate of Enforcement, has vehemently opposed such proposition.

9. The principal objection is that the applicant firm itself is arrayed as an accused in the prosecution complaint and is alleged to have received an aggregate proceeds of crime amounting to Rs. 45 lakhs from entities

connected with the proceeds of crime.

10. According to the learned counsel for the Enforcement Directorate, the amount was subsequently used to make payments to another entity, and since the alleged proceeds were dissipated, the properties in question were attached as properties representing the value thereof.

11. Ms. Devi, learned counsel for the Enforcement Directorate, further contends that the prosecution complaint seeks confiscation of various properties that are sought to be released, and that the proceedings before the adjudicating authorities are currently pending, though presently stayed by virtue of an interim order passed in the connected writ petition.

12. It is also argued that the Act does not provide for substitution of attached property with an FDR, and that permitting such substitution would amount to interfering with the statutory scheme of attachment and confiscation.

13. Referring to a decision of the High Court of Chhattisgarh in WP(C) No. 3241 of 2026, Ms. Devi, learned counsel, argues that the petitioner's argument that a fixed deposit would adequately secure the respondents' interests cannot, by itself, furnish a ground for issuing a mandamus. According to her, the acceptance of a particular form of security and release of property under an attachment is governed by the statutory framework. According to her, this Court may not be inclined to issue a writ of mandamus in the absence of any corresponding legal or statutory right of the petitioner to obtain such substitution.

14. This Court has considered the rival submissions advanced by the learned counsel for the parties and the materials placed on record.

15. At the outset, it is necessary to clarify that this interlocutory application is not for the adjudication of any contention that the properties are unconnected with the alleged proceeds of crime, or that the provisional attachment order is otherwise unsustainable.

The legality of the attachment, the applicability of the concept of its value, and the respective rights and liabilities of the parties are matters for consideration in the appropriate proceedings, including the connected writ petition.

The present application is confined to the nature of security which may be permitted to remain in place during pendency of such proceeding.

16. Section 5 of the PMLA Act provides for the provisional attachment of property in the circumstances and subject to the conditions stipulated therein. The statutory scheme further contemplates adjudication by the adjudicating authority under Section 8 and, upon the requisite determination, the consequences provided under the Act.

17. It is true that the Act does not expressly confer upon an applicant an enforceable right to seek substitution of attached property with an FDR or Bank Guarantee. However, the absence of such an express statutory provision providing for such substitution does not curtail the constitutional jurisdiction of this court under Article 226 of the Constitution of India, more particularly, in an appropriate case, to regulate the continuance of security during the pendency of statutory

proceedings.

As a note of caution, it is recorded herein that such jurisdiction has to be exercised with circumspection and without frustrating or prejudicing the statutory process.

18. In **Esskay Properties and Investment Private Limited versus Union of India, SLP(C) No.9335 of 2022**, by order dated 16.09.2022, the Honorable Apex Court permitted the petitioners to furnish a fixed deposit receipt in substitution of the attached properties with a lien in favor of the concerned authority while preserving the final determination in pending proceedings.

The Apex Court noted the circumstances of the case, including the substantial disparity between the value of the attached properties and the amount sought to be secured.

19. In **Veerbadhrappa G.E. versus State of Karnataka and others**, **WP (Criminal) No. 124 of 2023**, the Apex Court, by order dated 21.04.2023, also permitted furnishing an FDR in lieu of the property sought to be confiscated, subject to the final outcome of the proceedings. Significantly, the Apex Court distinguished a bank guarantee from an FDR and proceeded on the basis that the learned Additional Solicitor General had no objection to furnishing the FDR.

20. The order of the Apex Court dated 30.06.2025 in SLP(C) No. 4025 of 2025 in **M/s M3M India Private Limited and another versus Union of India and others** is also relevant.

In that case, substitution of the attached asset was permitted upon the consent of the Directorate of Enforcement and subject to stringent conditions including the verification of title, absence of encumbrances, deposit of title documents, and other safeguards against alienation. The Hon'ble Supreme Court expressly confined its order to the facts and circumstances of that particular case and stated that it would not be treated as a precedent.

21. In the opinion of this Court, the aforesaid orders do not lay down a proposition that every person whose property is attached under the PMLA Act is entitled to secure its release by furnishing an FDR, nor do they dispense with the requirement of examining the facts and circumstances of each case.

However, in appropriate cases, the Court may consider substituting the attached property with an adequately secured FDR without ending the statutory proceeding or prejudicing the question of confiscation.

22. In the present case, the Directorate of Enforcement alleges that an aggregate amount of Rs. 45 lakh was transferred to the applicant firm through two transactions and that the amount was thereafter used to make payments to another entity. The prosecution complaint states that the applicant firm has been arrayed as an accused.

23. These are serious allegations and cannot be brushed aside merely because the properties proposed to be released were acquired by registered sale deeds in 2016, after the alleged transfer in 2014 to a third entity.

The fact that the properties were not directly acquired from the alleged proceeds of crime is also insufficient. This also does not exclude the possibility of attachment as properties representing the value thereof, provided the statutory requirement is satisfied.

24. Having said so, the nature of the attachment, the value of the properties, and the security now offered by the applicant are relevant considerations for the limited purpose of the present application.

The two properties have been valued in the attachment proceedings at an aggregate amount of Rs. 38,40,000/-. The applicant has now offered to furnish an FDR of Rs. 45 lakhs corresponding to the entire amount which, according to the Enforcement Directorate, was transferred to the applicant firm. The proposed security is thus higher than the aggregate value assigned to the attached properties and now covers the entire amount alleged to have been received by the applicant.

25. The objection of the Directorate that the applicant firm itself is an accused and that the prosecution complaint seeks confiscation of the properties has been duly considered. The fact that the applicant is arrayed as an accused is a relevant circumstance and distinguishes the present case from the case involving an entirely unrelated third-party claimant. However, in the opinion of this Court, the mere fact that the applicant is arrayed as an accused does not foreclose consideration of an appropriate arrangement for securing the property during the pendency of the statutory proceedings and also the connected writ proceeding. However, this opinion at this interlocutory stage should not be understood as expressing any opinion on the applicant's culpability or the

merits of the allegation made against it.

26. I have also considered the Directorate's objection that it has no consent to the proposed substitution.

The consent of the Directorate was a material feature in **Veerbadhrappa** (supra) and **M3M India** (Supra). However, the absence of such consent cannot, by itself, be treated as an absolute bar to this court's exercise of extraordinary jurisdiction under Article 226 of the Constitution of India.

The concern of the court is as to whether the proposed arrangement with appropriate safeguards adequately preserves the interest sought to be protected by the attachment and leaves the statutory authority free to proceed in accordance with law.

27. Having regard to the aggregate value assigned to the attached properties, the amount alleged to have been received by the applicant firm, and the applicants' offer to furnish FDR of Rs. 45 lakh with an exclusive lien in favor of the Directorate of Enforcement, this court is of the view that the interest of the Directorate can, at this stage, be adequately secured by the proposed financial security. The arrangement would preserve the amount in question and would not, by itself, extinguish or dilute the competent authority's power to determine the issues arising under the Act. The applicant, on the other hand, would be permitted to deal with its immovable properties subject to the conditions imposed herein.

28. In view of the aforesaid, the interlocutory application stands allowed,

subject to the following conditions.

I. The applicant shall, within four weeks from today, furnish an FDR for a sum of Rs.45 lakhs issued by a nationalised bank in favour of the Directorate of Enforcement, with an exclusive and continuing lien in favour of the Directorate.

II. The applicant shall, along with the FDR, furnish an affidavit disclosing the source of funds utilized for creating the FDR, supported by relevant bank statements and such other documents as may be necessary to establish the source of funds.

III. The FDR shall be initially valid for a period of not less than one year and shall be renewed from time to time sufficiently in advance of its maturity so that the security remains continuously valid until final determination of the proceeding under the Act or until further orders of the competent court or authority.

IV. The FDR, together with the interest accrued thereon, shall remain subject to an exclusive lien of the Directorate of Enforcement. The applicant shall not be entitled to withdraw, encash, assign, transfer, or otherwise deal with the FDR or the amount secured thereby without the permission of this court or a competent court or authority.

V. Upon receipt of the FDR and the accompanying documents, the Directorate of Enforcement shall verify the genuineness of the FDR, the creation of the requisite lien, and the particulars of the source of funds disclosed by the applicant. Such verification shall be confined

to the genuineness and enforceability of the security and shall not amount to an adjudication of the merits of the proceeding under the Act.

VI. In the event the Directorate identifies any specific material indicating that the funds used to create the FDR are themselves proceeds of crime or are otherwise subject to a legal restraint, it may place such material before this court within two weeks from receipt of the document. In the absence of any such specific objection, the Directorate shall communicate confirmation of the lien and security to the applicant and this court.

VI. Upon verification of the FDR and confirmation of exclusive lien, the Directorate of Enforcement shall take necessary steps in accordance with law to release the aforesaid two immovable properties from the provisional attachment and communicate the release to the concerned registering and revenue authorities as may be necessary.

VII. The applicant shall not create any fresh encumbrance or third-party interest in the aforesaid properties until the formal release of attachment is communicated by the Director. Upon such release, the properties shall stand free from the pre-existing provisional attachment, subject to any other lawful restraint or order that may be operating against them.

29. While parting with the record, it is clarified that the observations made herein shall have no bearing on the merit of the writ petition, including the challenge to the provisional attachment order and other

proceedings initiated under the Act.

30. Accordingly, the interlocutory application stands disposed of in the above terms.

JUDGE

Comparing Assistant