IN THE COURT OF SPECIAL JUDGE:
PC ACT (CBI) - 04, ROUSE AVENUE COURTS, DELHI.

I.A. No.1/2023 & 3/2023

CNR No. DLCT11- 00338-2023
CBI No. 55/2023
CBI Vs. Ashutosh Kumar & Anr.

RC DAI-2016-A-0020
U/s 109 IPC r/w Sec. 13 (2) r/w 13 (1) (e) of PC Act

O R D E R

1. By this common order, I shall dispose off the application **(bearing I.A No.1/2023)** preferred by Applicant Ashutosh Kumar (HUF) seeking directions to remove the condition of maintaining minimum balance as on 30.04.2016 as mandated vide order dated 02.12.2026 & further directions to CBI to return original property papers of applicant HUF seized during the investigation. The another separate application **(bearing I.A. No.3/2023)** of Enforcement Directorate (E.D) praying not to release/return the documents seized by CBI is also being disposed off by this order being interconnected.

2. It is, inter alia, pleaded in the application (I.A No.1/2023) moved by Ashutosh Kumar HUF that the present FIR No. RC DAI-2016-A-0020 was lodged against the *Karta* namely Ashutosh Kumar under Section 13 (2) r/w 13 (1) (e) of PC Act 1988 alleging that during the **Check Period 01.01.2008 to**

30.04.2016, the applicant had acquired assets disproportionate to the tune of Rs.25,70,82,371/- which included the assets in the name of applicant HUF. Thereafter, certain bank accounts of the Applicant HUF were freezed. **The applicant herein approached the Court for defreezing the bank accounts on the ground that applicant HUF is the separate legal entity than its *Karta*. Therefore in view of statutory the provisions its assets/income cannot be treated as assets/income of its *Karta* including for purpose of Disproportionate Assets (DA) case**. The applicant further took the plea that Karta was not a public servant for purpose of PC Act 1988 during the aforesaid check period as the alleged employer M/s Handicrafts and Handlooms Export Corporation **(hereinafter in short 'M/s HHEC')** went on record holding that initial appointment of applicant Ashutosh Kumar in M/s HHEC was illegal and void *ab-initio*. Further, it was the ground that not only its assets/income were disclosed to Income Tax Authorities, but the same were also informed to M/s HHEC and therefore, no case is made out against its *Karta* as well.

3. Vide order dated 01.12.2016, Ld. Predecessor directed de-freezing of the accounts of applicant subject to the condition of maintenance of minimum balance as on 30.04.2016 till further orders. Thereafter, applicant by way of application dated 03.08.2018, approached the court for removal of said condition of maintenance of minimum balance. It was disposed off vide order dated 03.02.2021 with directions to the applicant to approach the court again in case of exigencies.

4. The applicant again approached the court vide application dated 01.09.2021 wherein the submissions of CBI was recorded to the effect that investigation shall be completed by December 2021. Thus, the said application of the applicant was dismissed on the ground that no new facts regarding financial exigencies were pleaded.

5. It is further submitted that the CBI now having completed the investigation and filed chargesheet in the present matter on 27.04.2023. Therefore, in view of the changed circumstances, the applicant is again praying for removal of cap of maintenance of minimum balance on its bank accounts as mandated vide order dated 02.12.2016. Apart form that the applicant is praying for return of property documents in the name of the applicant.

6. In addition to above, the applicant has taken the following grounds in support of his application:

(i) The applicant HUF has constitutional right to enjoy the property as envisaged under Article 300A of the Constitution.

(ii) The freezing order dated 03.05.2016 was passed under Section 102 Cr.P.C which can only be invoked qua property ***(a) stolen or suspected to be stolen property (b) property which is the subject of crime under investigation or (c) has link with the commission of offence for which the police officer is investigating into.*** It is, hence, submitted that none of the above three conditions are present in the present case. In this regard, reliance is placed upon judgments of Hon'ble Supreme Court viz; **Sri Jayendra Saraswathy Swamigal T.N. V. State of T.N &**

Ors, (2005) 8 SCC 771, M.T Enrica Lexie & Anr V. Doramma & Ors (2012) 6 SCC 760 and Siddhrama Satlingappa Mhetre V. State of Maharashtra & Ors (2011) 1 SCC 694. Further reliance is placed upon judgments viz; **Nevada Properties Pvt Ltd V. State of Maharashtra & Anr (2019) 20 SCC 119.**

(iii) The amount referred bank accounts are admittedly liability of applicant HUF which cannot be attached in terms of ratio of judgment of **Hon'ble High Court of Delhi in case titled "S.B International V. The Asstt. Director, Directorate of Revenue Intelligence & Ors, 2018 SCC OnLine Del 7052**.

(iv) The Hon'ble Court vide order dated 02.12.2016 permitted defreezing of bank accounts of the applicant, however, cap of maintaining balance was kept in view of pending investigation which is now complete.

(v) The accounts as mentioned in letter dated 03.05.2016 and order dated 02.12.2016 are the property of the applicant HUF and its Karta cannot claim the said property as his own exclusive property in view of Section 2 (31) of the Income Tax Act 1961. In this regard, the reliance is placed upon judgments of Hon'ble Supreme Court in cases titled **CIT, Ludhiana V Om Prakash (1999) 6 SCC 349, Jagatram Ahuja V. Commission of Gift Tax, Hyderabad (2000) 8 SCC 249, MD Dhanwatey V CIT, Madhya Pradesh AIR 1968 SC 682, CIT, West Bengal V. Kalu Babu Lanchand, AIR 1959 SC 1289 and Commissioner of Gift Tax V. NSG Chettiar (1971) 2 SCC 741 and Kapurchand Shrimal V. Tax Recovery Officer, Hyd. & ors AIR 1969**.

(vi) The liability under Section 13 (1) (e) of PC Act 1988 can be fixed only in accordance with ratio of the judgments viz; **DSP, Chennai V. K. Inbasagarari (2006) 1 SCC 420, Ashok Tshering Bhutia V. State of Sikkim (2011) 4 SCC 402 and Kedarilal V. State of M.P & Ors (2015) 14 SCC 505.**

(vii) As the CBI has already filed the chargesheet in the matter and there is no reason not to remove the cap of maintenance of minimum balance of bank accounts as mentioned in order dated 02.12.2016.

7. Hence, prayer is made to remove the condition of maintenance of minimum balance as on 30.04.2016 as mentioned in order dated 02.12.2016 qua account of M/s Ashutosh Kumar (HUF) as communicated to the Branch Manager, Axis Bank, Laxmi Industrial Estate, New Link Road, Andheri (W), Mumbai vide letter dated 03.05.2016 of CBI as well as bank account no. 31686362426 of M/s Ashutosh Kumar (HUF), State Bank of India, Personal Banking Branch, Lokhandwala Andheri (W) Mumbi. Apart from that it is prayed that direction be issued to CBI to return original property papers of applicant HUF as seized during the investigation.

8. In the reply to the application filed by the CBI, they have denied all the pleas as well as ground's taken by the applicant parawise . The purported claim of creation of HUF is nothing but a front created by accused Ashutosh Kumar Singh to adjust his ill-gotten wealth . It is further stated that case No. RC-11(A)/2016-DLI was registered against applicant Ashutosh

Kumar, the then DGM, M/s HHEC and Kehar Singh, the then Inspector (Investigation), P S Janak Puri, New Delhi under Section 120-B IPC, Section 7,12, 13 (2) r/w 13 (1) (d) of PC Act and they were arrested red handed while handing and accepting bribe amount. Subsequently, searches were conducted by CBI at the residential premises of accused/applicant Ashutosh Kumar @ Ashutosh Kumar Singh the then DGM, HHEC, at Mumbai, Thane and Noida. During searches, substantial movable and immovable properties consisting of documents/ articles/items /cash etc were seized. After conducting scrutiny of seized documents, the instant DA case was registered on 31.05.2016 against applicant Ashutosh Kumar and Smt. Monika Sahay.

9. The investigation in the matter revealed that accused Ashutosh Kumar created Ratneshwar Sahai HUF (PAN AAHHR 4339C) in the year 2004 only, whereas he claims to have created the HUF on 03.03.1999 i.e from the date of death of his father and became its Karta. Accused Ashutosh Kumar applied for PAN number in the name of Ratneshwar Sahai HUF in October 2003 on the basis of forged documents including rent receipts. The said HUF was formed dishonestly and fraudulently by Ashutosh (A-1) after death of his father in order to legitimatize his ill-gotten money/income .It is apparent from the fact that the said HUF is claimed to be created on 03.03.1999 (date on which his father expired) but the bank account of Ratneshwar Sahai HUF was opened only on 18.02.2004. As per the investigation, no record such as account statement, balance-sheets, financial transactions of Ratneshwar HUF prior to 18.02.2004 exist . No property or corpus existed in the name of

said HUF prior to 03.03.1999 or even prior to 18.02.2004. However, all of sudden the said HUF started showing huge agricultural income which is shown to Rs.8,89,95,250/- during the FY-2005-2006 and FY 2008-2009. The income shown before Income Tax department is bogus.

10. The investigation further revealed that as per the entries/documents/details available in the personal file/service book of Applicant Ashutosh Kumar (A-1), he never informed his department HHEC about the movable/immovable properties purchased by him through his personal sources or HUF account. Thus, the investigation establishes that Ratneshwar Sahai HUF was created fraudulently by applicant Ashutosh Kumar after death of his father .Further his claim of partition of said HUF and creation of Ashutosh Kumar HUF is only for legitimatizing ill-gotten money.

11. It is further submitted that since the creation and operation of Ratneshwar Sahai HUF as well as Ashutosh HUF is based on fake and false documents, the property papers of subsequent immovable assets/properties acquired by the applicant Ashutosh in his name or in the name of Ratneshwar Sahai HUF/Ashutosh Kumar HUF cannot be released.

12. Hence, prayer is made for dismissal of the present application being devoid of merits and if the condition of maintaining minimum balance as on 30.04.2016 is removed/relaxed, the applicant Ashutosh (A-1) can siphon off all the ill-gotten money. Therefore, the condition imposed by the

court vide order dated 02.12.2016 is just and proper in view of the facts and circumstances of the case.

13. In the separate application (I.A No.3/2023) moved by Enforcement Directorate (E.D), it is stated that E.D has already recorded/registered ECIR/DLZO-I/30/2023 on the basis of RC No. DAI-2015-A-0020 dated 31.05.2016 of CBI for the offences under Section 3 of Prevention of Money Laundering Act (PMLA), 2002 punishable under Section 4 and under Section 13 (2) r/w 13 (1) (e) of PC Act, 1988. The E.D is the competent authority to investigate and proceed under the PMLA and is already conducting the investigation. The CBI intimated through their letter dated 29.09.2023 regarding pendency of application by Ashutosh Kumar HUF seeking release/return of documents. The documents which have been seized by the CBI are very much relevant for investigation of ECIR/DLZO-I/30/2023 under PMLA, 2002. Thus, the prayer is made for not to release/return the documents seized by CBI.

14. In the reply to the said application of ED, filed on behalf of Ashutosh Kumar HUF, it is, inter alia, stated that E.D has to right to investigate the matter as per the law as the alleged date of commission of the predicate offence is 01.01.1997 to 31.12.2008, when PMLA was not in existence. Thus, it is submitted by the non-applicant since PMLAct 2002 came into effect on 01.07.2005, E.D cannot look into the alleged transactions effected during 01.01.1997 to 30.06.2005. The Ashutosh Kumar HUF by its application has sought return/release of documents of transactions which pertain to post

31.12.2008 i.e beyond the Check Period and therefore, are not subject matter in the present case. Further, it is submitted that it is well settled that in case of acquittal/discharge in predicate offence, the proceedings initiated by E.D under PMLA 2002 are required to be dropped.

15. In support of its plea, Ld. Counsel for non-applicant/ Ashutosh Kumar HUF has relied upon the following judgments:

(i) **Vijay Madanlal Choudhary & Ors. V. UOI & Ors 2022 SCC OnLine SC 929**

(ii) **Pankaj Bansal V. UOI 2023 SCC OnLine SC 1244**

(iii) **Union of India & Anr. V. Ganpati Dealcom (P) Ltd (2023) 3 SCC 315.**

(iv) **Soni Devrajbhai Babubhai V. State of Gujarat & Ors (1991) 4 SCC 298**

(v) **Mahipal Singh V. CBI & Anr (2014) 11 SCC 282**

16. Ld. Counsel for Ashutosh Kumar HUF has primarily argued that the legal entity of HUF is separate from its Karta. The registration of D.A case against the Karta of HUF will not entail any criminal consequences to the HUF nor the property held by HUF in its own name can be seized or attached on account of D.A case against the Karta of HUF.

16.1 It is further argued that all the income sources as well as assets has been duly disclosed to Income Tax Authority which has passed the quasi judicial scrutiny order under Section 143(3) of Income Tax Act. It is also argued that the first order dated 02.12.2016 through which the accounts of the applicant were de-freezed, but a rider was put to maintain the minimum balance as on 30.04.2016 till further orders. The said condition of maintaining balance cannot operate as a permanent condition till conclusion of trial, as it affects the rights of the HUF to enjoy its property. Further, no legal ground has been pleaded by the CBI with respect to the legality of the said condition of maintaining minimum balance as well as return of original property papers in the name of HUF seized during the investigation.

17. Per contra, Ld. Sr. Public Prosecutor for CBI has further vehemently opposed the present application (IA-1/2023) by arguing that the accounts of applicant HUF are nothing but facade by accused Ashutosh Kumar in order to legalize its ill-gotten wealth. The documents submitted by him qua creation of Ratneshwar Sahai HUF have been found to be forged. It is further argued that the bank account was opened in the name of Ratneshwar Sahai HUF only 18.02.2004 i.e after four years of the purported formation as alleged. During the investigation, the assets of said Ratneshwar Sahai HUF were investigated and it was found that Ratneshwar Sahai owned only 1.55 acres of land instead 900 acres (approximate) as claimed by the HUF. The khasra numbers of land belonging to Ratneshwar Sahai HUF, actually belong to Gram Sabha, Pig House, Ponds etc. Therefore, the creation of Ashutosh Kumar HUF which is in turn based upon the purported partition of Ratneshwar Sahai HUF is also bogus one.

18. Ld. SPP for the E.D too has opposed the request for release of documents seized by the CBI concerning the properties allegedly purchased in the name of fake HUF. It is further argued that they have already registered ECIR/DLZO-I/30/2023 and the

matter is still under investigation. The said release of documents will hamper their investigation.

19. Heard and considered.

20. The basis of the application moved by Ashutosh Kumar HUF firstly is the order of Ld. Predecessor dated 02.12.2016. Vide the said order only, the applicant was allowed to operate the accounts, but a rider was put to maintain balance in the said accounts which was available as on 30.04.2016. But, the crucial issue which seems to have been conveniently overlooked by the applicant is the basis of the said order and No Objection given by the applicant. The said order was passed on the basis of No Objection given by the CBI as well as by the Ld. Counsel of the applicant herein. So at that point of time, no objection was given by the applicant qua the said condition which is now being termed as illegal.

20.1 Thereafter, the applicant/ Ashutosh Kumar HUF herein moved two applications which were disposed off on 03.02.2021 and 18.12.2021 by the Ld. Predecessor. The request of the applicant /Ashutosh Kumar HUF for removal of said condition was declined as the investigation in main matter in RC DAI-2016-A-0020 was pending and the purported claim of the applicant regarding validity of the creation of HUF was still under investigation. CBI was still under the process of lifting the veil of HUF if required in order to reach to the conclusion as to the legality of the creation of HUF. The said situation has since then changed and the investigation in RC DAI-2016-A-0020 has already completed. The chargesheet in the matter has too been filed against accused Ashutosh Kumar (A-1) and Monika Sahay

(A-2) for the offence under section 109 of IPC r/w 13 (1) (e) of PC Act.

21. As far as the contention of the applicant/ Ashutosh Kumar HUF regarding the HUF being a validly legally created entity is concerned, the case of the applicant himself appears to be on weak footing. The applicant in the application has claimed that the HUF was created through Deed of HUF Declaration dated 07.01.1998 w.e.f 03.12.1997. It is the date of marriage of the Karta with Monika Sahay (A-2). Similarly, the deed of creation of Ratneshwar Sahay HUF is stated to with effect from 03.03.1999 i.e date of death of father of Karta of HUF. But, surprisingly the Karta Ashutosh Kumar in his representation dated 12.05.2017 Annexure-A-8 which has been given to CBI after the registration of the case claimed that Ashutosh Kumar HUF was created w.e.f 15.01.2011 and PAN Number was allotted to it. Prior to that there was partition in Ratneshwar Sahay HUF. Therefore, the said inherent contradiction in the claim of applicant and its Karta itself reflect upon the claim of creation of Ashutosh Kumar HUF.

22. Now, the issue is as to the legality of said condition put on applicant Ashutosh Kumar HUF for maintaining balance in the accounts held by it when the investigation stands concluded and whether the said condition has to continue till the conclusion of the trial. CBI has failed to point out any legal ground which requires the maintenance of minimum balance pending trial. Admittedly, the said condition puts a impediment in the rights of the applicant to enjoy fruits of its property. Even otherwise, till

date the prosecuting agency/CBI has not moved any request for attachment of the said ill-gotten wealth purportedly in the name of fake HUF which is there claim under Criminal Law Amendment Ordinance 1944. Even the intimation to Enforcement Directorate about the said assets has been only on 29/09/2023ie after about 7 years of the registration of DA case . Nothing prevented them to attach the said assets or proceed under PML Act 2002. But it appears that CBI woke up only after the filing of the present application .

23. As far as the other objection taken qua it is the issue of realization of fine in case the accused named in the chargesheet are found to be guilty for offence under Secion 13 (1) (e) of PC Act, is concerned, same is also without any legal basis. The fine amount can be realized through the mode of recovery as prescribed under Chapter **XXXII Code of Criminal Procedure (Cr.P.C).**

24. Even otherwise, the said issue has been extensively dealt with by the Hon'ble Supreme Court regarding release of the case property pending trial in case titled **Basavva Kom Dyamangouda Patil v. State of Mysore** **AIR 1977 SC 1749**, and the guidelines have been issued as under:

> "5. Section 451 clearly empowers the Court to pass appropriate orders with regard to such property, such as-- (1) for the proper custody pending conclusion of the inquiry or trial;
>
> (2) to order it to be sold or otherwise disposed of, after recording such evidence as it thinks necessary; (3) if the property is subject to speedy and natural decay, to dispose of the same.

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7. In our view, the powers under Section 451 CrPC should be exercised expeditiously and judiciously. It would serve various purposes, namely:

1. owner of the article would not suffer because of its remaining unused or by its misappropriation;

2. court or the police would not be required to keep the article in safe custody;

3. if the proper panchnama before handing over possession of the article is prepared, that can be used in evidence instead of its production before the court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and

4. this jurisdiction of the court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles."

Valuable articles and currency notes With respect to the valuable articles and currency notes, the Supreme Court held as under:

"11. With regard to valuable articles, such as, golden or silver ornaments or articles studded with precious stones, it is submitted that it is of no use to keep such articles in police custody for years till the trial is over. In our view, this submission requires to be accepted. In such cases, the Magistrate should pass appropriate orders as contemplated under Section 451 CrPC at the earliest.

12. For this purpose, if material on record indicates that such articles belong to the complainant at whose house theft, robbery or dacoity has taken place, then seized articles be handed over to the complainant after: (1) preparing detailed proper panchnama of such articles;

(2) taking photographs of such articles and a bond that such articles would be produced if required at the time of trial; and (3) after taking proper security.

13. For this purpose, the court may follow the procedure of recording such evidence, as it thinks necessary, as provided under Section 451 CrPC. The bond and security should be taken so as to prevent the evidence being lost, altered or destroyed. The court should see that photographs of such articles are attested or countersigned by the complainant, accused as well as by the person to whom the custody is handed over. Still

> however, it would be the function of the court under Section 451 CrPC to impose any other appropriate condition.
>
> 14. In case, where such articles are not handed over either to the complainant or to the person from whom such articles are seized or to its claimant, then the court may direct that such articles be kept in bank lockers. Similarly, if articles are required to be kept in police custody, it would be open to the SHO after preparing proper panchnama to keep such articles in a bank locker. In any case, such articles should be produced before the Magistrate within a week of their seizure. If required, the court may direct that such articles be handed back to the investigating officer for further investigation and identification. However, in no set of circumstances, the investigating officer should keep such articles in custody for a longer period for the purposes of investigation and identification. For currency notes, similar procedure can be followed."

25. Therefore, in the said circumstances, there is no legal bar which prevents the applicant herein for enjoying the fruits of its property till the time its legality or legal means through which it was created is decided in the trial of the present case. As far as the issue of release/return of property documents in the name of applicant HUF is concerned, the same are also liable to be released pending trial and the apprehension of Enforcement Directorate can be addressed by putting appropriate condition while ordering the release of said property documents.

26. In view of the aforesaid reasons, the application **(I.A No.1/2023)** of applicant/ Ashutosh Kumar HUF is allowed and **consequently the application moved by E.D bearing I.A No. 3/2023) stands dismissed** subject to the following conditions:

(I) the applicant/ Ashutosh Kumar HUF shall furnish Indemnity Bond alongwith surety bond with a condition to deposit the amount as and when directed by the court to the tune of minimum balance as on 30.04.2016 in the account held by it Axis Bank, Laxmi Industrial Estate, New Link Road,

Andheri (W), Mumbai and A/C No. 31686362426 in State Bank of India as mentioned in the Prayer Clause-A.

(II) The original property documents in the name of HUF be also released to the applicant Ashutosh Kumar HUF subject to filing of certified copies of the same on record and also furnishing of undertaking before the Court to produce the same as and when directed by the Court or before the Enforcement Director during the investigation. The applicant shall not dispose off the properties or create third party in interest in the same till final disposal of the case.

With this, the applications are disposed off accordingly. **<u>It is clarified that nothing observed herein-above shall have any bearing on the merits of DA case or upon the case lodged by E.D.</u>**

Announced in the open Court
on 23.11.2023

(**GAGANDEEP SINGH**)
Special Judge, PC Act, CBI-04
Rouse Avenue Courts, New Delhi