

IN THE HIGH COURT OF JHARKHAND AT RANCHI
B.A. No. 9548 of 2024

Alamgir Alam S/o Late Sanaul Haque, Sex-Male, Age-74
Years, Resident of Sector-2, Dhurwa, P.O. Dhurwa P.S.
Jagarnathpur, District-Ranchi, 834002 Jharkhand.

.....**Petitioner**

Versus

The Directorate of Enforcement, Union of India represented
through, Assistant Director, Ranchi Zonal Office, Plot
Number 1502/B, Airport Road, Hinoo, P.O. and P.S. Hinoo,
District:- Ranchi, Jharkhand (ed-ranchi@gov.in)

.....**Opposite Party**

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD

For the Petitioner : Mr. S. Nagamuthu, Sr. Advocate
Mr. Sameer Saurabh, Advocate
Mr. Kishlaya Prasad, Advocate
Mr. Yuvraj Singh, Advocate

For the Opp. Party : Mr. Zohab Hossain, Advocate
Mr. Amit Kumar Das, Advocate
Mr. Saurav Kumar, Advocate
Mr. Varun Girdhar, Advocate
Mr. Pranjal Tripathi, Advocate

C.A.V. on 20/06/2025 *Pronounced on 11/07/2025*

Prayer:

1.The instant application has been filed under Section 45
of the PML Act, 2002 read with Sections 439 and 440 of the
Code of Criminal Procedure, 1973 and an application under
Sections 483 and 484 of the Bhartiya Nagrik Suraksha
Sanhita, 2023 praying for grant of bail in connection with
ECIR Case No. 2 of 2023 arising out of
ECIR/RNSZO/16/2020 dated 17.09.2020 for the offence
under Section 3 of the Prevention of Money Laundering Act,

2002 [hereinafter referred to as PML Act, 2002] punishable under Section 4 of the Prevention of Money Laundering Act, 2002, based on FIR bearing No. 13/2019 registered by Anti-Corruption Bureau, Jamshedpur under Section 7(a) of the Prevention of Corruption Act (amended as on 2018) [hereinafter referred to as P.C. Act, 2018] pending in the court of learned A.J.C. XVIII-cum-Special Judge, PML Act, Ranchi.

Factual Matrix of the Case

2.An ECIR bearing No. ECIR/RNSZO/16/2020 was recorded on 17.09.2020 based on the FIR bearing No. 13/2019 dated 13.11.2019, registered by ACB Jamshedpur, under section 7(a) of the Prevention of Corruption Act, (amended as on 2018). Subsequently, Charge-sheet dated 11.01.2020 was submitted by ACB against Alok Ranjan and Suresh Prasad Verma under Section 7 (b) of P.C. Act, 2018 and under Sections 120B and 201 of the Indian Penal Code, which are scheduled offences under Part-A, Paragraph 1 of the PML Act, 2002.

3.During the course of investigation upon Veerendra Kumar Ram and his close associates, several searches were conducted under Section 17 PML Act 2002 to investigate the role of the accused persons and their close associates, wherein it was found that part of the proceeds of crime is

acquired in the form of commission/bribe in lieu of allotment of tenders by Veerendra Kumar Ram, the then Chief Engineer in Rural Works Department, Jharkhand. The said bribe money was getting routed by the Delhi based CA Mukesh Mittal to the bank accounts of family members of said Veerendra Kumar Ram with the help of bank accounts of Delhi based Mukesh Mittal's employees/relatives.

4.It is also alleged that Veerendra Kumar Ram used to give cash to CA Mukesh Mittal who with the help of other entry providers used to take entries in the bank accounts of his employees and relatives and then such fund was transferred by Mukesh Mittal into the bank accounts of the co-accused Rajkumari (wife of Veerendra Kumar Ram) and Genda Ram (father of Veerendra Kumar Ram).

5.Further, it is also alleged that some bank accounts, opened (at Delhi) on the basis of forged documents, were also being used in such routing of funds. Therefore, findings related to such routing of funds were shared with the Delhi Police under Section 66(2) of the PMLA by the I.O. Further, on the basis of the information shared U/s 66(2) of PMLA, 2002, an FIR No. 22/2023 was registered by Economic Offence Wing (EOW), Delhi against (i) Veerendra Kumar Ram, (ii) Mukesh Mittal and (iii) unknown Others

under Sections 419, 420, 465, 466, 468, 471, 473, 474, 476, 484, and 120-B of IPC, 1860 and under Sections 7 and 5 of Specified Bank Notes (Cessation of Liabilities) Act, 2017.

6.Consequently, in the light of additional facts emerging out of investigation, FIR No.22/2023 registered by the EOW, Delhi was merged with the investigation of ECIR No. RNSZO/16/2020.

7.A prosecution complaint vide ECIR Case No. 02/2023 was filed before the learned Special Court, (PMLA), Ranchi on 21.04.2023 against Veerendra Kumar Ram; Alok Ranjan, Rajkumari and Genda Ram and cognizance of the same was taken by the learned Special Judge, PMLA, Ranchi on 29.04.2023.

8.Further, a supplementary prosecution complaint vide ECIR Case Number 02/2023 under Section 45 of PMLA, 2002 was filed before the learned Special Court (PMLA), Ranchi on 20.08.2023 against Veerendra Kumar Ram, Alok Ranjan, Rajkumari, Genda Ram, Mukesh Mittal, Tara Chand, Neeraj Mittal, Ram Prakash Bhatia, Harish Yadav and Hirdaya Nand Tiwari and the cognizance of the same is taken on 22.08.2023.

9.During the further course of investigation searches were conducted on 06-05-2024, 07-05-2024, 08-05-2024, 09-

05-2024, 10-05-2024 and 24-05-2024 under section 17 of the PMLA, 2002 in the premises of Sanjeev Kumar Lal, Jahangir Alam, Munna Singh, Kuldip Kumar Minz, Vikash Kumar, Raj Kumar Toppo, Ajay Tirkey, Rajiv Kumar Singh, Amit Kumar and Santosh Kumar at various places.

10. As a result of the search, huge cash was recovered and seized from the residential premises of Jahangir Alam situated at Flat No. 1A, Sir Syed Residency, Kumhartoli, Ranchi. Further, huge cash have been recovered and seized from the residential premises of Munna Singh situated at Flat No. 1A, Kashmiri Gali, PP Compound, Ranchi. Munna Singh stated that he used to collect cash from the engineers/contractors on the instruction of Sanjeev Lal. Thereafter, searches were also conducted at the residences of these engineers viz. Rajiv Kumar, Santosh Kumar, Rajkumar Toppo, Ajay Tirkey and Amit Kumar.

11. Accordingly, on 07-05-2024 Sanjeev Kumar Lal and Jahangir Alam were arrested for the commission of the offence under sections 3 and 4 of the PMLA, 2002.

12. Alamgir Alam (present petitioner) being the minister of Department of Rural Works (RWD) and all the departments under it, he is at the top in the syndicate of commission collection. Sanjeev Kumar Lal used to collect the share of 1.35 % of minister Alamgir Alam on his behalf

from Asst. Engineers/Executive Engineers via Chief Engineers.

13. Accordingly, Sanjeev Kumar Lal has instructed departmental engineers to hand over the petitioner's commission to Munna Singh and/or his brother Santosh Kumar alias Rinku Singh. Further Munna Singh has stated that he has collected a total of Rs. 53 crores of commission from such engineers/contractors and handed over Rs.50 crores approx. to Sanjeev Lal through Jahangir Alam. Thus, the same amount was acquired by the petitioner through Sanjeev Kumar Lal, out of this Rs.53 crores, an amount of Rs.35 crores approx. was seized during the search proceedings.

14. Further, it has been alleged that the petitioner also acquired a commission amount of Rs. 3 crores from Veerendra Kumar Ram through one engineer of the department and same transaction was also assisted by Sanjeev Kumar Lal in September 2022.

15. It is also alleged that the petitioner is found to be directly indulged and actually involved in possession and concealment of at least Rs 35 crores of the Proceeds of Crime through Sanjeev Kumar Lal and he has also been found to be directly indulged and actually involved in

acquisition and concealment of at least Rs. 56 crores of the Proceeds of Crime.

16. A supplementary prosecution complaint vide ECIR Case Number 02/2023 under Section 45 of PMLA, 2002 has been filed before the Learned Special Court (PMLA), Ranchi on 04.07.2024 against Veerendra Kumar Ram, Alok Ranjan, Rajkumari, Genda Ram, Mukesh Mittal, Tara Chand, Neeraj Mittal, Ram Prakash Bhatia, Harish Yadav, Hirdya Nand Tiwari, Alamgir Alam the present petitioner, Sanjeev Kumar Lal and Jahangir Alam and the cognizance of the same was taken on 12.07.2024.

17. Thereafter, the present petitioner preferred Misc. Cri. Application No. 2190 of 2024 for grant of bail but the same was rejected vide order dated 09.08.2024 by the court of learned Additional Judicial Commissioner-XVIII-cum-Special Judge, PML Act, Ranchi. Hence the present petition has been filed.

Argument advanced by learned senior counsel for the petitioner:

18. Mr. S. Nagamuthu, learned senior counsel appearing for the petitioner has argued *inter alia* on the following grounds:

- I. That the petitioner is quite innocent and has falsely been implicated in this case with oblique motive and *mala fide* intention to harass the petitioner.

II.The petitioner has duly cooperated with the investigation agency and further as and when required he appeared before them despite that he has been arrested in the present case.

III.The petitioner is a sitting M.L.A. of the Jharkhand State Legislative Assembly having portfolio of Rural Development Department but the petitioner was not the minister at the relevant period of time, when it is alleged that 'proceeds of crime' was collected by way of commission in awarding tender.

IV.It is admitted fact that neither the petitioner was named in the initial predicate offence [FIR No. 13/2019] nor he was named in the ECIR. Therefore, petitioner's involvement cannot be made out on the ground of demand of gratification since the petitioner was not minister at the relevant point of time and hence there was no question of implicating the present petitioner of any demand to be made by him of its share.

V.Furthermore, the petitioner even cannot be implicated for the offence said to be committed in the financial year 2014-15; 2015-16; 2016-17; 2018-19 since, he was not the Minister during the relevant time.

VI.The first occurrence of committing offence is prior to the date of his becoming minister. He was elected and made minister in the State Legislative Assembly on 27.12.2019 whereas the complaint is dated 13.11.2019 registered under Section 7(a) of the Prevention of Corruption Act for demanding gratification by the junior engineer to the tune of Rs. 28 lacs. Upon which, a trap team was constituted on 14.11.2019, in which one Suresh Prasad Verma, the then Junior Engineer was arrested. One Alok Ranjan, who was the tenant of said Suresh Prasad Verma, was arrested and from his house about Rs. 2.45 crore was recovered. It has been contended that the said occurrence is prior to becoming of the petitioner as Minister and as such the petitioner cannot be correlated with the instance of recovery made either from the house of the said Suresh Prasad Verma or from the house of the Alok Ranjan.

VII.The complaint was made by way of ECIR No. 16 of 2020 on 17.09.2020 against Alok Ranjan and Suresh Prasad Verma, who are accused in the predicate case. The ECIR complaint case was again instituted on 21.04.2023 being ECIR Complaint Case No. 2 of 2023 against four accused persons, namely, Veerendra

Kumar Ram (Chief Engineer); Alok Ranjan; Rajkumari and Genda Ram. The first supplementary complaint was made on 20th August, 2023 wherein (i).Mukesh Mittal, (ii).Tara Chand (iii).Neeraj Mittal; (iv).Ram Prakash Bhatia (v).Harish Yadav (vi).Hirdya Nand Tiwari were made accused.

VIII. The second supplementary complaint was made on 04.07.2024, in which, the present petitioner has been arrayed as accused no. 11; Sanjeev Kumar Lal, the Private Secretary to the Minister as accused no. 12; and Jahangir Alam, the friend of Sanjeev Kumar Lal as accused no. 13.

IX. The ground has been taken by referring to the complaint showing the role of the present petitioner in commission of offence of money laundering that for tenders floated in the concerned Department of Rural Works Division; Department of Panchayati Raj; Department of Rural Road Development Authority and Rural Development Special Division, of which the petitioner is minister, 3% commission has been collected for the tenders floated by the departments.

X. It is alleged that the petitioner pressurized the Chief Engineer to collect commission and gave him his share of 1.35% through his PS, Sanjeev Kumar Lal.

But no case has been instituted of demanding commission from his agent by deputing the agent to collect the money by way of commission in lieu of allotting the work in favour of one or the other contractor. It has been submitted that in absence of any predicate offence no case can be said to be made out or even initiated under Section 3 of the PMLA Act.

XI. From the accusation, it is evident that allegation has been leveled that Rs. 3 Crores was given to the petitioner through his private secretary, namely, Sanjeev Kumar Lal but said Sanjeev Kumar Lal in his statement recorded under Section 17 and 50 of the Act, 2002 has nowhere stated that after collecting the amount from the engineers he had delivered a single penny to the petitioner.

XII. Even from perusal of entire record, it is evident that there is no evidence to prove that any amount of commission reached to the hand of petitioner. It is stated that cash totaling Rs. 37.55 crores approx. has been recovered from the various premises of Sanjeev Kumar Lal, Jahangir Alam and other persons but none of them have stated that they had paid any amount of commission directly to the petitioner.

XIII. Furthermore, from the entire complaint as well as the documents of the complainant, there is no evidence that petitioner being the Minister of Rural Development Department had ever demanded or received any amount from engineers, contractors or any persons.

XIV. So far recovery of cash amounting to Rs. 32,20,78,900/- from the flat of Jahangir Alam is concerned, in the complaint it is averred that he is close associate of Sanjeev Kumar Lal and he acts as a close trusted aid of Sanjeev Kumar Lal. Even the said Sanjeev Kumar Lal has nowhere in his statement, recorded under Section 17 and 50 of the PMLA, has stated that the petitioner has ever directed him to collect his share from the engineers.

XV. Further, in the complaint, statement of 34 persons, including engineers, contractors, Sanjeev Kumar Lal, Jahangir Alam and other engineers were recorded but none of them have stated that the petitioner ever demanded any amount of commission from them or they have stated that amount collected by Sanjeev Kumar Lal have reached to the hand of petitioner.

XVI. It has been submitted that co-accused Sanjeev Kumar Lal had the knowledge that prior to taking over the

charge of petitioner as Minister of Rural Development Department, it was prevalent that some amount of commission were taken in the name of minister, as such there is possibility that Sanjeev Kumar Lal with intention to generate money put the impression upon the contractors and engineers to give him the amount of commission and after being exposed by the ED, he had made exculpatory statement that he used to collect amount of commission of the share of Minister.

XVII. Herein, there is no evidence on record that the said collection of amount of commission was in knowledge of the petitioner and any amount of commission reached in the hand of the petitioner and the same can be corroborated from the fact that nothing has been recovered from the premise of the petitioner, as such no offence of Money Laundering is made out against the petitioner.

XVIII. Furthermore, the petitioner has fully co-operated with the investigation while his statement has been recorded under Section 50 of the PML Act 2002, many times but even then, he has been taken into custody on 15.05.2024 and since then he is languishing in judicial custody.

XIX. The submission has been made that the petitioner has been implicated in the present case on the basis of statement recorded under Section 50 of the PML Act of the co-accused, who was already in custody, hence, the statement recorded under Section 50 of the PML Act of the co-accused, who were already in custody cannot be used against the present petitioner.

XX. Submission has been made that according to Section 19 of the PML Act, arrest can only be effectuated when there are valid '*reasons to believe*', that the person is guilty of offence under PMLA and such '*reasons to believe*' must be founded on credible and substantive material evidence and the same has been reduced in writing and furnished to the arrestee as has been held by the Hon'ble Apex Court in the case of ***Arvind Kejriwal Vs. Directorate of Enforcement [2024 SCC OnLine 1703]*** but the principles as laid down in the said case has not been complied with in the instant case.

XXI. Learned senior counsel has relied upon paragraph 253 of the case of the ***Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors., (2022) SCC OnLine SC 929*** in order to buttress his argument on

the issue of statement recorded under Section 50 of the PML Act.

XXII. Raising the ground of parity, submission has been made that taking the ground of long incarceration and further there is no possibility of a trial even commencing in the near future, co-accused Veerendra Kumar Ram has been granted bail by the Hon'ble Supreme Court vide order dated 18.11.2024 in Cr. Appeal No. 4615 of 2024. Likewise, accused Harish Yadav was already granted bail vide order dated 30.08.2024 in Special Leave petition (Crl.) No. 6174 of 2024 on the ground that prima facie it is very difficult to attribute any direct role, and thus, the twin tests laid down under Section 45(1) of the PMLA are satisfied and also that of long incarceration.

XXIII. Accused Tara Chand has also been granted bail by the Hon'ble Supreme Court vide order dated 25.11.2024 in Cr. Appeal No. 4760 of 2024 on the ground that it is difficult to attribute any direct role and also on principle of parity, as accused Harish Yadav has been granted bail. Furthermore, other accused persons, namely, Rajkumari, Genda Ram, Mukesh Mittal, Neeraj Mittal and Ram Prakash Baitha have also been granted regular bail by the Hon'ble Apex Court.

XXIV. In the case at hand, the petitioner is in custody since 15.05.2024 i.e., for more than 13 months and it is not likely that the trial would conclude in near future since only one witness has been examined, therefore, taking into consideration the law laid down in the case of ***Manish Sisodia Vs. Directorate of Enforcement [2024 SCC OnLine SC 1920; Union of India Vs. K.A. Najeeb [(2021) 3 SCC 713]; Arvind Kejriwal Vs. Enforcement Directorate (supra) and V. Senthil Balaji Vs. State represented by the Deputy Director & Ors. (2024) 3 SCC 51*** the petitioner may be directed to be released on bail

XXV. Further, submission has been made that the petitioner is suffering from various ailment having the age of about 75 years.

XXVI. It has been contended that there is no allegation said to be committed so as to attract the offence under Section 3 of the PML Act since there is no allegation of laundering of money against the petitioner.

19. Learned counsel for the petitioner, based upon the aforesaid grounds, has submitted as per the ground agitated hereinabove, it is a fit case where the petitioner is to be given the benefit of privilege of bail.

Argument advanced by learned counsel for the opposite party-Enforcement Directorate:

20. While on the other hand, Mr. Zohab Hossain, assisted by Mr. Amit Kumar Das, learned counsel for the opposite party-Enforcement Directorate has seriously opposed the said submission/ground both based upon the fact and the law as referred hereinabove, on the following grounds.

I. Submission has been made that the argument that merely because petitioner was not the minister on the date when the FIR No. 13 of 2019 was registered or he was not the minister on the collection of the money for the financial year 2014-15; 2015-16; 2016-17; 2018-19, is having no aid to the petitioner reason being that the applicability of Section 3 of the PML Act wherein specific stipulation has been made that whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.

II. It has been contended by referring to Section 3(ii) of the PML Act, 2002 that the process or activity connected with proceeds of crime is a continuing

activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.

III. The argument, therefore, has been advanced that even though the initial offence is prior to the becoming of minister of the petitioner but the statement which was recorded by his private secretary, namely, Sanjeev Kumar Lal, or the engineers who have fully supported the fact of demanding commission to the tune of 1.5% from the contractors to be collected by the engineers or agents for the purpose of handing over to the minister, clarifies that the petitioner was directly as also indirectly involved in the process or activity connected with the proceeds of crime in acquisition of money and the same has been treated to be continuing activity when the FIR was instituted in view of statement of Private Secretary, namely, Sanjeev Kumar Lal and one Jahangir Alam and other engineers who were even not in custody at that time of collection of money from the contractors, hence, irrespective of the fact that the petitioner on the date of institution of FIR was

minister or not but taking into consideration the fact that he immediately after taking oath as minister has indirectly involved in the collection of money and subsequent thereto directly involved in getting the money from either from the contractor or engineer, as has been stated by them in the statement under Section 50 of the PML Act, therefore, the involvement of the petitioner cannot in the alleged crime cannot be denied.

IV. Hence, merely because the petitioner has become minister on 27.12.2019 will not suffice to show his innocence.

V. The question of non-institution of FIR of the charge as contained in complaint against the petitioner, as has been argued on behalf of the petitioner will also have no aid reason being that the said offences are continuing offence of collecting money by the minister directly involve in collection of the said money which is connected with the proceeds of crime by way of continuing activity as stipulated in Section 3 (ii) of the PML Act, hence the petitioner is deeply involved in commission of crime.

VI. It has been submitted that the proceeds of crime have been defined under Section 2(u) of PML

Act, 2002 which means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad. It has been contended that the statement, as has been recorded under Section 50 of the PML Act, 2002 is very much clear of the involvement of the present petitioner in relation to collection of money involved in the criminal case registered under Section 7(a) of the Prevention of Corruption Act, 2018 and by way of continued process, the ED has filed supplementary complaint in which complicity of the present petitioner has been surfaced.

VII. Argument has been advanced that the petitioner being minister, people representative, has been found to be indulged in such type of collection of money as has been recovered from the house of the Jahangir Alam to the tune of Rs. 32,20,78,900/- having been corroborated by the private secretary to the minister, namely, Sanjeev Kumar Lal and further the aforesaid fact has been corroborated by the

statement as recorded under Section 50 of the different accused persons and the engineers who were not in custody during the relevant period of time.

VIII. Submission has been made that ground which has been advanced that neither the statement of the Sanjeev Kumar Lal nor the statement of Jahangir Alam, is to be taken into consideration since it is recorded while they were in custody but the law is otherwise as has been held by Hon'ble Apex Court in the case of ***Rohit Tandon vs. Directorate of Enforcement (2018) 11 SCC 46*** wherein the statement if recorded of the co-accused persons in custody under Section 50 of the PML Act will also have the impact in implicating a person under Section 3 of the PML Act and exactly the case herein.

IX. It has been submitted that otherwise also it is not the case where only the statement of the co-accused persons have been recorded under Section 50 of the PML Act but the statement of the engineers, who were not in custody on the date of recording of their statement, have been taken who have specifically stated in their statements under Section 50 of the PML Act that on the direction of the concerned minister as was being informed by his private

secretary, Sanjeev Kumar Lal, the money was collected from the contractors and the share of the present petitioner in the capacity of minister was 1.35 %, which was being collected either by the private secretary, Sanjeev Kumar Lal or by his agent, Jahangir Alam.

X. The statement, therefore, has been made that since the cogent evidence has been collected both of the co-accused persons, who have been remanded to the judicial custody, and the other engineers who were not the accused, hence the petitioner is directly involved in commission of crime of obtaining money/commission said to be 'proceeds of crime'.

XI. Learned counsel has argued by referring to Sections 19 and 45 of the PML Act, that Section 19 confers power upon the prosecuting agency either the Director or the Deputy Director or Assistant Director to arrest a person on the basis of his satisfaction of reason to believe of involvement of one or the other in commission of crime and the ground for arrest is to be given to the person concerned. While on the other hand Section 45 of the PML Act confers power upon the court to consider the issue of bail of the said person and on being satisfied that no *prima facie* case

is being made out then only the prayer for bail is to be considered on the ground that there is sufficient ground for believing that he is not guilty of such offence and he is not likely to commit any offence while on bail.

XII. It has been submitted that twin conditions have been provided under Section 45 of the Act 2002 but herein the first condition is of bearing which pertains to the satisfaction of the court of the reasonable ground for believing that he is not guilty of such offence and there is no likelihood of committing any offence while on bail. It has been submitted based upon the grounds i.e., recovery of huge amount from the house of Jahangir Alam, a close associate of the petitioner and co-accused Sanjeev Kumar Lal, who is private Secretary to the minister; the recovery of the diary having with code-word therein for the purpose of transmitting the amount as also the scripted letter head addressed to the minister have been found from the house of Jahangir Alam where huge amount of money has been recovered, hence, it is not a case to have the believe of reasonable ground that the petitioner is not guilty of the offence.

XIII. So far as the grounds of parity is concerned, the case of the present petitioner is quite distinct to that of other co-accused persons, who have been granted bail by the Hon'ble Apex Court, not only on the long incarceration but as also on the ground that there direct involvement of the petitioner, who is none other than a people representative, therefore, submission has been made that no consideration is to be given on the issue of parity on the aforesaid distinguishable fact.

XIV. So far as the medical ground as has been taken, it is evident that the nature of disease, which has been shown, is not such a nature which is vital for life rather no such medical certificate has been annexed with the application.

XV. It has been submitted by referring to the judgment rendered by Hon'ble Apex Court in the case of ***State through Deputy Commissioner of Police v. Jaspal Singh Gill, (1984) 3 SCC 555*** that the medical ground can only be taken into consideration for the purpose of release of the accused person on bail if the disease of the accused person is fatal and it is not treatable by the authorised prison's doctor. Learned counsel based upon the aforesaid ground has

submitted that it is not a case wherein the petitioner is to be released on bail.

XVI. Submission has been made that the petitioner was the minister in the Jharkhand State Legislative Assembly, a people representative and a public figure, and as such, it is not expected for the person like the present petitioner to indulge himself in such nature of crime.

21. Learned counsel for the respondent-Enforcement Directorate, based upon the aforesaid grounds, has submitted that it is not a fit case where the prayer for bail is to be allowed taking into consideration his involvement in directly acquiring the proceeds of crime.

Discussion:

22. This Court has heard the learned counsel for the parties, gone across the pleading available on record as also the finding recorded by learned trial court.

23. This Court, before appreciating the argument advanced on behalf of the parties, deems it fit and proper to discuss herein some of the provision of law as contained under the Act, 2002 with its object and intent.

24. The Act was enacted to address the urgent need to have a comprehensive legislation *inter alia* for preventing money-laundering, attachment of proceeds of crime, adjudication

and confiscation thereof including vesting of it in the Central Government, setting up of agencies and mechanisms for coordinating measures for combating money-laundering and also to prosecute the persons indulging in the process or activity connected with the proceeds of crime.

25. The issues were debated threadbare in the United Nation Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Basle Statement of Principles enunciated in 1989, the FATF established at the summit of seven major industrial nations held in Paris from 14th to 16th July, 1989, the Political Declaration and Noble Programme of Action adopted by United Nations General Assembly vide its Resolution No. S-17/2 of 23.2.1990, the United Nations in the Special Session on countering World Drug Problem Together concluded on the 8th to the 10th June, 1998, urging the State parties to enact a comprehensive legislation. This is evident from the introduction and Statement of Objects and Reasons accompanying the Bill which became the 2002 Act. The same reads thus:

“INTRODUCTION

Money-laundering poses a serious threat not only to the financial systems of countries, but also to their integrity and sovereignty. To obviate such threats international community has taken some initiatives. It has been felt that to prevent money-laundering and connected activities a comprehensive legislation is urgently needed. To achieve this objective the Prevention of Money-laundering Bill, 1998 was introduced in

the Parliament. The Bill was referred to the Standing Committee on Finance, which presented its report on 4th March, 1999 to the Lok Sabha. The Central Government broadly accepted the recommendation of the Standing Committee and incorporated them in the said Bill along with some other desired changes.

STATEMENT OF OBJECTS AND REASONS

It is being realised, world over, that money-laundering poses a serious threat not only to the financial systems of countries, but also to their integrity and sovereignty. Some of the initiatives taken by the international community to obviate such threat are outlined below:—

(a) the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, to which India is a party, calls for prevention of laundering of proceeds of drug crimes and other connected activities and confiscation of proceeds derived from such offence.

(b) the Basle Statement of Principles, enunciated in 1989, outlined basic policies and procedures that banks should follow in order to assist the law enforcement agencies in tackling the problem of money-laundering.

(c) the Financial Action Task Force established at the summit of seven major industrial nations, held in Paris from 14th to 16th July, 1989, to examine the problem of money-laundering has made forty recommendations, which provide the foundation material for comprehensive legislation to combat the problem of money-laundering. The recommendations were classified under various heads. Some of the important heads are—

- (i) declaration of laundering of monies carried through serious crimes a criminal offence;*
- (ii) to work out modalities of disclosure by financial institutions regarding reportable transactions;*
- (iii) confiscation of the proceeds of crime;*
- (iv) declaring money-laundering to be an extraditable offence;*
- and*

(v) promoting international co-operation in investigation of money-laundering.

(d) the Political Declaration and Global Programme of Action adopted by United Nations General Assembly by its Resolution No. S-17/2 of 23rd February, 1990, inter alia, calls upon the member States to develop mechanism to prevent financial institutions from being used for laundering of drug related money and enactment of legislation to prevent such laundering. (e) the United Nations in the Special Session on countering World Drug Problem Together concluded on the 8th to the 10th June, 1998 has made another declaration regarding the need to combat money-laundering. India is a signatory to this declaration.”

26. It is thus evident that the Act, 2002 was enacted in order to answer the urgent requirement to have a comprehensive legislation *inter alia* for preventing money-laundering, attachment of proceeds of crime, adjudication and confiscation thereof for combating money-laundering and also to prosecute the persons indulging in the process or activity connected with the proceeds of crime.

27. It needs to refer herein the definition of “proceeds of crime” as provided under Section 2(1)(u) of the Act, 2002 which reads as under:

*“2(u) **“proceeds of crime”** means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property 3[or where such property is taken or held outside the country, then the property equivalent in value held within the country] 4[or abroad]; [Explanation.—For the removal of doubts, it is hereby clarified that "proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property which may directly or*

indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence;]”

28. It is evident from the aforesaid provision that “proceeds of crime” means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad.

29. In the explanation part of the aforesaid Section, it has been referred that for the removal of doubts, it is hereby clarified that "proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence.

30. It is, thus, evident that the reason for giving explanation under Section 2(1)(u) is by way of clarification to the effect that whether as per the substantive provision of Section 2(1)(u), the property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country but by way of explanation the proceeds of crime has been given broader implication by including property not only derived or obtained

from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence.

31. The “property” has been defined under Section 2(1)(v) which means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located.

32. The schedule has been defined under Section 2(1)(x) which means schedule to the Prevention of Money Laundering Act, 2002. The “scheduled offence” has been defined under Section 2(1)(y) which reads as under:

“2 (1)(y) “scheduled offence” means— (i) the offences specified under Part A of the Schedule; or (ii) the offences specified under Part B of the Schedule if the total value involved in such offences is [one crore rupees] or more; or (iii) the offences specified under Part C of the Schedule.”

33. It is evident that the “scheduled offence” means the offences specified under Part A of the Schedule; or the offences specified under Part B of the Schedule if the total value involved in such offences is [one crore rupees] or more; or the offences specified under Part C of the Schedule.

34. The offence of money laundering has been defined under Section 3 of the Act, 2002 which reads as under:

“3. Offence of money-laundering. —Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the [proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming] it as untainted property shall be guilty of offence of money-laundering. [Explanation.— For the removal of doubts, it is hereby clarified that,— (i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:— (a) concealment; or (b) possession; or (c) acquisition; or (d) use; or (e) projecting as untainted property; or (f) claiming as untainted property, in any manner whatsoever; (ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.]”

35. It is evident from the aforesaid provision that “offence of money-laundering” means whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.

36. It is further evident that the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the

proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.

37. The punishment for money laundering has been provided under Section 4 of the Act, 2002.

38. Further, Section 50 of the Act, 2002 confers power upon the authorities regarding summons, production of documents and to give evidence. For ready reference, Section 50 of the Act, 2002 is quoted as under:

“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— (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].”

39. It needs to refer herein that the various provisions of the Act, 2002 alongwith interpretation of the definition of “**proceeds of crime**” has been dealt with by the Hon’ble Apex Court in the case of **Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors., (supra)** wherein the Bench comprising of Three Hon’ble Judges of the Hon’ble Supreme Court have decided the issue by taking into consideration the object and intent of the Act, 2002, as would appear from paragraph 128, 129 and 130. For ready reference, relevant paragraph is being referred as under:

“128. To put it differently, the section as it stood prior to 2019 had itself incorporated the expression “including”, which is indicative of reference made to the different process or activity connected with the proceeds of crime. Thus, the principal provision (as also the Explanation) predicates that if a person is found to be directly or indirectly involved in any process or activity connected with the proceeds of crime must be held guilty of offence of money laundering. If the interpretation set forth by the petitioners was to be accepted, it would follow that it is only upon projecting or claiming the property in question as untainted property, the offence would be complete. This would undermine the efficacy of the legislative intent behind Section 3 of the Act and also will be in disregard

of the view expressed by the FATF in connection with the occurrence of the word “and” preceding the expression “projecting or claiming” therein.

129.This Court in Pratap Singh v. State of Jharkhand, enunciated that the international treaties, covenants and conventions although may not be a part of municipal law, the same be referred to and followed by the Courts having regard to the fact that India is a party to the said treaties. This Court went on to observe that the Constitution of India and other ongoing statutes have been read consistently with the rules of international law. It is also observed that the Constitution of India and the enactments made by Parliament must necessarily be understood in the context of the present-day scenario and having regard to the international treaties and convention as our constitution takes note of the institutions of the world community which had been created.

130.In Apparel Export Promotion Council v. A.K. Chopra, the Court observed that domestic Courts are under an obligation to give due regard to the international conventions and norms for construing the domestic laws, more so, when there is no inconsistency between them and there is a void in domestic law. This view has been restated in Githa Hariharan, as also in People's Union for Civil Liberties, and National Legal Services Authority v. Union of India.”

40. The implication of Section 50 has also been taken into consideration. Relevant paragraph, i.e., paragraphs- 327 to 332, 338, 339, 342 are quoted as under:

“327. The validity of this provision has been challenged on the ground of being violative of Articles 20(3) and 21 of the Constitution. For, it allows the authorised officer under the 2002 Act to summon any person and record his statement during the course of investigation. Further, the provision mandates that the person should disclose true and correct facts known to his personal knowledge in connection with the subject matter of investigation. The person is also obliged to sign the statement so given with the threat of being punished

for the falsity or incorrectness thereof in terms of Section 63 of the 2002 Act. Before we proceed to analyse the matter further, it is apposite to reproduce Section 50 of the 2002 Act, as amended. -----:

330. *By this provision, the Director has been empowered to exercise the same powers as are vested in a civil Court under the 1908 Code while trying a suit in respect of matters specified in sub-section (1). This is in reference to Section 13 of the 2002 Act dealing with powers of Director to impose fine in respect of acts of commission and omission by the banking companies, financial institutions and intermediaries. From the setting in which Section 50 has been placed and the expanse of empowering the Director with same powers as are vested in a civil Court for the purposes of imposing fine under Section 13, is obviously very specific and not otherwise.*

331. *Indeed, sub-section (2) of Section 50 enables the Director, Additional Director, Joint Director, Deputy Director or Assistant Director to issue summon to any person whose attendance he considers necessary for giving evidence or to produce any records during the course of any investigation or proceeding under this Act. We have already highlighted the width of expression “proceeding” in the earlier part of this judgment and held that it applies to proceeding before the Adjudicating Authority or the Special Court, as the case may be. Nevertheless, sub-section (2) empowers the authorised officials to issue summon to any person. We fail to understand as to how Article 20(3) would come into play in respect of process of recording statement pursuant to such summon which is only for the purpose of collecting information or evidence in respect of proceeding under this Act. Indeed, the person so summoned, is bound to attend in person or through authorised agent and to state truth upon any subject concerning which he is being examined or is expected to make statement and produce documents as may be required by virtue of sub-section (3) of Section 50 of the 2002 Act. The criticism is essentially because of subsection (4) which provides that every proceeding under sub-sections (2) and (3)*

shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the IPC. Even so, the fact remains that Article 20(3) or for that matter Section 25 of the Evidence Act, would come into play only when the person so summoned is an accused of any offence at the relevant time and is being compelled to be a witness against himself. This position is well-established.

332.*The Constitution Bench of this Court in M.P. Sharma had dealt with a similar challenge wherein warrants to obtain documents required for investigation were issued by the Magistrate being violative of Article 20(3) of the Constitution. This Court opined that the guarantee in Article 20(3) is against “testimonial compulsion” and is not limited to oral evidence. Not only that, it gets triggered if the person is compelled to be a witness against himself, which may not happen merely because of issuance of summons for giving oral evidence or producing documents. Further, to be a witness is nothing more than to furnish evidence and such evidence can be furnished by different modes. The Court went on to observe as follows: “Broadly stated the guarantee in article 20(3) is against “testimonial compulsion”. It is suggested that this is confined to the oral evidence of a person standing his trial for an offence when called to the witness-stand. We can see no reason to confine the content of the constitutional guarantee to this barely literal import. So to limit it would be to rob the guarantee of its substantial purpose and to miss the substance for the sound as stated in certain American decisions. The phrase used in Article 20(3) is “to be a witness”. A person can “be a witness” not merely by giving oral evidence but also by producing documents or making intelligible gestures as in the case of a dumb witness (See section 119 of the Evidence Act) or the like. “To be a witness” is nothing more than “to furnish evidence”, and such evidence can be furnished through the lips or by production of a thing or of a document or in other modes. So far as production of documents is concerned, no doubt Section 139 of the Evidence Act says that a person producing a document on summons is*

not a witness. But that section is meant to regulate the right of cross examination. It is not a guide to the connotation of the word “witness”, which must be understood in its natural sense, i.e., as referring to a person who furnishes evidence. Indeed, every positive volitional act which furnishes evidence is testimony, and testimonial compulsion connotes coercion which procures the positive volitional evidentiary acts of the person, as opposed to the negative attitude of silence or submission on his part. Nor is there any reason to think that the protection in respect of the evidence so procured is confined to what transpires at the trial in the court room. The phrase used in article 20(3) is “to be a witness” and not to “appear as a witness”. It follows that the protection afforded to an accused in so far as it is related to the phrase “to be a witness” is not merely in respect of testimonial compulsion in the court room but may well extend to compelled testimony previously obtained from him. It is available therefore to a person against whom a formal accusation relating to the commission of an offence has been levelled which in the normal course may result in prosecution. Whether it is available to other persons in other situations does not call for decision in this case.” (emphasis supplied)

338. *In the context of the 2002 Act, it must be remembered that the summon is issued by the Authority under Section 50 in connection with the inquiry regarding proceeds of crime which may have been attached and pending adjudication before the Adjudicating Authority. In respect of such action, the designated officials have been empowered to summon any person for collection of information and evidence to be presented before the Adjudicating Authority. It is not necessarily for initiating a prosecution against the noticee as such. The power entrusted to the designated officials under this Act, though couched as investigation in real sense, is to undertake inquiry to ascertain relevant facts to facilitate initiation of or pursuing with an action regarding proceeds of crime, if the situation so warrants and for being presented before the Adjudicating Authority. It is a different matter that*

the information and evidence so collated during the inquiry made, may disclose commission of offence of money-laundering and the involvement of the person, who has been summoned for making disclosures pursuant to the summons issued by the Authority. At this stage, there would be no formal document indicative of likelihood of involvement of such person as an accused of offence of money laundering. If the statement made by him reveals the offence of money laundering or the existence of proceeds of crime, that becomes actionable under the Act itself.

339.*To put it differently, at the stage of recording of statement for the purpose of inquiring into the relevant facts in connection with the property being proceeds of crime is, in that sense, not an investigation for prosecution as such; and in any case, there would be no formal accusation against the noticee. Such summons can be issued even to witnesses in the inquiry so conducted by the authorised officials. However, after further inquiry on the basis of other material and evidence, the involvement of such person (noticee) is revealed, the authorised officials can certainly proceed against him for his acts of commission or omission. In such a situation, at the stage of issue of summons, the person cannot claim protection under Article 20(3) of the Constitution. However, if his/her statement is recorded after a formal arrest by the ED official, the consequences of Article 20(3) or Section 25 of the Evidence Act may come into play to urge that the same being in the nature of confession, shall not be proved against him. Further, it would not preclude the prosecution from proceeding against such a person including for consequences under Section 63 of the 2002 Act on the basis of other tangible material to indicate the falsity of his claim. That would be a matter of rule of evidence.*

342.*It is, thus, clear that the power invested in the officials is one for conducting inquiry into the matters relevant for ascertaining existence of proceeds of crime and the involvement of persons in the process or activity connected therewith so as to initiate appropriate action against such*

person including of seizure, attachment and confiscation of the property eventually vesting in the Central Government.”

41. It is evident from the observation so made as above that the purposes and objects of the 2002 Act for which it has been enacted, is not limited to punishment for offence of money-laundering, but also to provide measures for prevention of money-laundering. It is also to provide for attachment of proceeds of crime, which are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceeding relating to confiscation of such proceeds under the 2002 Act. This Act is also to compel the banking companies, financial institutions and intermediaries to maintain records of the transactions, to furnish information of such transactions within the prescribed time in terms of Chapter IV of the 2002 Act.

42. The predicate offence has been considered in the aforesaid judgment wherein by taking into consideration the explanation as inserted by way of Act 23 of 2019 under the definition of the “proceeds of crime” as contained under Section 2(1)(u), whereby and whereunder, it has been clarified for the purpose of removal of doubts that, the "proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a

result of any criminal activity relatable to the scheduled offence, meaning thereby, the words “any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence” will come under the fold of the proceeds of crime.

43. So far as the purport of Section 45(1)(i)(ii) is concerned, the aforesaid provision starts from the *non-obstante* clause that notwithstanding anything contained in the Code of Criminal Procedure, 1973, 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 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.

44. Sub-section (2) thereof puts limitation on granting bail specific in subsection (1) in addition to the limitations under the Code of Criminal Procedure, 1973 or any other law for the time being in force on granting of bail.

45. The explanation is also there as under sub-section (2) thereof which is for the purpose of removal of doubts. A clarification has been inserted 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, and accordingly the officers authorised under this Act are empowered to arrest an accused without warrant, subject to the fulfilment of conditions under section 19 and subject to the conditions enshrined under this section.

46. The fact about the implication of Section 45 has been interpreted by the Hon'ble Apex Court in **Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors.**(*supra*) at paragraphs-268-270. For ready reference, the said paragraphs are being referred as under:

"268. Section 45 has been amended vide Act 20 of 2005, Act 13 of 2018 and Finance (No. 2) Act, 2019. The provision as it obtained prior to 23.11.2017 read somewhat differently. The constitutional validity of Sub-section (1) of Section 45, as it stood then, was considered in Nikesh Tarachand Shah. This Court declared Section 45(1) of the 2002 Act, as it stood then, insofar as it imposed two further conditions for release on bail, to be unconstitutional being violative of Articles 14 and 21 of the Constitution. The two conditions which have been mentioned as twin conditions are: (i) that there are reasonable grounds for believing that he is not guilty of such offence; and (ii) that he is not likely to commit any offence while on bail.

269. According to the petitioners, since the twin conditions have been declared to be void and unconstitutional by this Court, the same stood obliterated. To buttress this argument, reliance has been placed on the dictum in State of Manipur.

270. The first issue to be answered by us is: whether the twin conditions, in law, continued to remain on the statute book post decision of this Court in Nikesh Tarachand Shah and if yes, in

view of the amendment effected to Section 45(1) of the 2002 Act vide Act 13 of 2018, the declaration by this Court will be of no consequence. This argument need not detain us for long. We say so because the observation in State of Manipur in paragraph 29 of the judgment that owing to the declaration by a Court that the statute is unconstitutional obliterates the statute entirely as though it had never been passed, is contextual. In this case, the Court was dealing with the efficacy of the repealing Act. While doing so, the Court had adverted to the repealing Act and made the stated observation in the context of lack of legislative power. In the process of reasoning, it did advert to the exposition in BehramKhurshidPesikaka and Deep Chand including American jurisprudence expounded in Cooley on Constitutional Limitations and Norton v. Shelby County.”

47. Subsequently, the Hon’ble Apex Court in the case of **Tarun Kumar vs. Assistant Director Directorate of Enforcement, (2023) SCC OnLine SC 1486** by taking into consideration the law laid down by the Larger Bench of the Hon’ble Apex Court in **Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors.(supra)**, has laid down that since the conditions specified under Section 45 are mandatory, they need to be complied with. The Court is required to be satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and he is not likely to commit any offence while on bail. It has further been observed that as per the statutory presumption permitted under Section 24 of the Act, the Court or the Authority is entitled to presume unless the contrary is proved, that in any proceedings relating to

proceeds of crime under the Act, in the case of a person charged with the offence of money laundering under Section 3, such proceeds of crime are involved in money laundering. Such conditions enumerated in Section 45 of PML Act will have to be complied with even in respect of an application for bail made under Section 439 Cr. P.C. in view of the overriding effect given to the PML Act over the other law for the time being in force, under Section 71 of the PML Act.

48. For ready reference, paragraph-17 of the said judgment is quoted as under:

“17. As well settled by now, the conditions specified under Section 45 are mandatory. They need to be complied with. The Court is required to be satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and he is not likely to commit any offence while on bail. It is needless to say that as per the statutory presumption permitted under Section 24 of the Act, the Court or the Authority is entitled to presume unless the contrary is proved, that in any proceedings relating to proceeds of crime under the Act, in the case of a person charged with the offence of money laundering under Section 3, such proceeds of crime are involved in money laundering. Such conditions enumerated in Section 45 of PML Act will have to be complied with even in respect of an application for bail made under Section 439 Cr. P.C. in view of the overriding effect given to the PML Act over the other law for the time being in force, under Section 71 of the PML Act.”

49. The Hon’ble Apex Court in the said judgment has further laid down that the twin conditions as to fulfil the requirement of Section 45 of the Act, 2002 before granting the benefit of bail is to be adhered to which has been dealt

with by the Hon'ble Apex Court in ***Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors. (supra)*** wherein it has been observed that the accused is not guilty of the offence and is not likely to commit any offence while on bail.

50. In the judgment rendered by the Hon'ble Apex Court in ***Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors. (supra)*** as under paragraph 284, it has been held that the Authority under the 2002 Act, is to prosecute a person for offence of money-laundering only if it has reason to believe, which is required to be recorded in writing that the person is in possession of "proceeds of crime". Only if that belief is further supported by tangible and credible evidence indicative of involvement of the person concerned in any process or activity connected with the proceeds of crime, action under the Act can be taken to forward for attachment and confiscation of proceeds of crime and until vesting thereof in the Central Government, such process initiated would be a standalone process.

51. So far as the issue of grant of bail under Section 45 of the Act, 2002 is concerned, at paragraph-412 of the judgment rendered in ***Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors. (supra)*** it has been held therein by making observation that whatever form the relief

is couched including the nature of proceedings, be it under Section 438 of the 1973 Code or for that matter, by invoking the jurisdiction of the Constitutional Court, the underlying principles and rigors of Section 45 of the 2002 must come into play and without exception ought to be reckoned to uphold the objectives of the 2002 Act, which is a special legislation providing for stringent regulatory measures for combating the menace of money-laundering.

52. The Hon'ble Apex Court in the case of ***Gautam Kundu vs. Directorate of Enforcement (Prevention of Money-Laundering Act), Government of India through Manoj Kumar, Assistant Director, Eastern Region, (2015) 16 SCC 1*** has been pleased to hold at paragraph -30 that the conditions specified under Section 45 of PMLA are mandatory and need to be complied with, which is further strengthened by the provisions of Section 65 and also Section 71 of PMLA. Section 65 requires that the provisions of Cr.P.C shall apply insofar as they are not inconsistent with the provisions of this Act and Section 71 provides that the provisions of PMLA shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. PMLA has an overriding effect and the provisions of CrPC would apply

only if they are not inconsistent with the provisions of this Act.

53. Therefore, the conditions enumerated in Section 45 of PMLA will have to be complied with even in respect of an application for bail made under Section 439 CrPC. That coupled with the provisions of Section 24 provides that unless the contrary is proved, the authority or the Court shall presume that proceeds of crime are involved in money-laundering and the burden to prove that the proceeds of crime are not involved, lies on the appellant. For ready reference, paragraph-30 of the said judgment reads as under:

“30. The conditions specified under Section 45 of PMLA are mandatory and need to be complied with, which is further strengthened by the provisions of Section 65 and also Section 71 of PMLA. Section 65 requires that the provisions of CrPC shall apply insofar as they are not inconsistent with the provisions of this Act and Section 71 provides that the provisions of PMLA shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. PMLA has an overriding effect and the provisions of CrPC would apply only if they are not inconsistent with the provisions of this Act. Therefore, the conditions enumerated in Section 45 of PMLA will have to be complied with even in respect of an application for bail made under Section 439 CrPC. That coupled with the provisions of Section 24 provides that unless the contrary is proved, the authority or the Court shall presume that proceeds of crime are involved in money-laundering and the burden to prove that the proceeds of crime are not involved, lies on the appellant.”

54. Now adverting to the fact of the present case, learned senior counsel for the petitioner has submitted that the allegation leveled against the present petitioner cannot be said to attract the ingredient of Section 3 of PMLA. While on the other hand, the learned counsel appearing for the ED has submitted by referring to various paragraphs of prosecution complaint that the offence is very much available attracting the offence under provisions of PML Act.

55. This Court, in order to appreciate the rival submission, is of the view that various paragraphs of prosecution complaint upon which the reliance has been placed on behalf of both the parties, needs to be referred herein so as to come to the conclusion as to whether the parameter as fixed under Section 45(ii) of the Act 2002, is being fulfilled in order to reach to the conclusion that it is a fit case where regular bail is to be granted or not.

56. In order to reach to conclusion regarding share of the accused persons in commission against allotment of tenders and accumulation of 'proceeds of crime', this Court needs to refer the relevant paragraph 7 of the prosecution complaint, which reads as under:

“7. INVESTIGATION LEADING TO FURTHER SEARCHES UNDER PMLA:

7.1 During the course of the investigation, Veerendra Kumar Ram was arrested u/s 19 of PMLA, 2002 on 23.02.2023 for the offence defined under Section 3 of PMLA. During his custodial

interrogation, Veerendra Kumar Ram disclosed that he was taking commission against the allotment of tenders from the contractors. He further disclosed in his statement that the commission amount taken from the contractors is 3.2% of the total tender value and that his share was 0.3% of the total tender value which at some postings was higher than 0.3%. However, given the total Proceeds of Crime acquired by him, it is believed that the percentage (%) of commission varied from 0.3% to 1% of the tender value which is being stated by him under Section 50 of PMLA, 2002.

7.2 *Veerendra Kumar Ram in his statement further stated that the whole process of collection and distribution of commission was taken care of by the assistant engineers posted at the Rural Development Special Zone and Rural Works Department. He further stated that the share of Minister Alamgir Alam was 1.5% of the allocated tender amount. Investigation revealed that Rs. 3 crores were given to Alamgir Alam by engineers of the Rural Works Department through his PS Sanjeev Kumar Lal in September 2022.*

7.3 *Further, it was ascertained that the amount of commission on behalf of Alamgir Alam was getting collected by Sanjeev Kumar Lal (his PS). Further, it was ascertained that a person named Jahangir Alam collects such commission on the instructions of Sanjeev Kumar Lal who is an associate of Sanjeev Kumar Lal. During investigation, it was found that Sanjeev Kumar Lal resides at Booty Road, Ranchi which is a government accommodation. During analysis of the seized mobile phone of Veerendra Kumar Ram, contact details of Sanjeev Kumar Lal was found as 'Sanjeev Lal PA of RDD Minister' and two mobile nos. (9939121851 and 8789745592) are saved in the said contact's name. Further, SDR, CAF and CDR of the aforesaid mobile nos, were sought and it was revealed that the mobile no. 9939121851 is in the name of Sanjeev Kumar Lal himself. However, another mobile no. 8789745592 was found to be in the name of Jahangir Alam, S/o- Ekramul Haque. Thus, it became evident that Jahangir Alam is a close associate of Sanjeev Kumar Lal and the*

Jahangir acts as a close trusted aid of Sanjeev Kumar Lal. Further, analysis of the CDR and tower location of both mobile nos. was also made and it was found that they live in very close proximity to the government accommodation and it was found during search that they were residing in the same government residence. Further, it was gathered that there is a flat in the name of Jahangir Alam which was used by Sanjeev Kumar Lal for secreting the proceeds of crime. It was also gathered that the wife of Sanjeev Lal @ Sanjeev Kumar Lal is involved in businesses related to construction and is a director/partner/shareholder in an entity with one builder Munna Singh. It was learnt that the proceeds of crime in the form of cash acquired by the officials/officers of the Rural Development Department are deposited to a builder on the instructions of Sanjeev Kumar Lal. Therefore, on the basis of reasons to believe, search u/s 17 of PMLA, 2002 was conducted at seven premises on 06.05.2024.

7.4.*As a result of the search, huge cash to the tune of Rs 32.20 crores was recovered and seized on 06/07.05.2024 from the premises of Jahangir Alam i.e. Flat No. 1A, Sir Syed Residency, Kumhartoli, Ranchi.*

.....

Further, huge cash amount to the tune of Rs. 2.93 Crore have been recovered and seized on 06.05.2024 from the premises of Munna Singh i.e. Flat No. 1A Kashmiri Gali, PP Compound, Ranchi, Jharkhand.

7.5 *On the basis of statement recorded of Munna Singh wherein he stated that he used to collect such cash from the engineers/contractors on the instruction of Sanjeev Lal, searches were also conducted at the residences of these engineers viz. **Rajiv Kumar, Santosh Kumar, Rajkumar Toppo, Ajay Tirkey & Amit Kumar** on 07.05.2024.*

7.6 *Further, as a result of the search on 07.05.2024 at the Residential premises of Rajeev Kumar Singh i.e. E-4, Mecon Vatika, Kalyanpur Hatiya, Ranchi Jharkhand-834003, a huge cash amount to the tune of Rs. 2.13 Crore have been recovered and seized.*

7.7 *Apart from the above, as a result of the search other cash amounts that were recovered and seized on different dates from the other premises.*

.....

In this way, Cash totalling to Rs. 37.55 Crores Approx. has been recovered and seized from the various premises searched u/s 17 of the PMLA, 2002 on 06th, 07th and 08th of May 2024.

7.8 *Apart from the above cash amounts several digital devices, incriminating documents and records were found and seized from the aforesaid premises during the course of searches on 06.05.2024, 07.05.2024, 08.05.2024, 10.05.2024 & 24.05.2024 under section 17 of the Prevention of Money Laundering Act, 2002.....”*

57. This Court has also gone through the averments made in the prosecution complaint regarding *modus operandi* of generation of ‘proceeds of crime’, wherein it has been stated that total of 18 searches were conducted u/s 17 of PMLA in Ranchi, at the premises of Sanjeev Kumar Lal, Jahangir Alam, some Engineers and other persons on different dates. As a result of search, huge amount of cash to the tune of Rs. 37.55 Crore, digital devices, records and various incriminating documents were recovered which gave details with regard to the various individuals involved in the process of generation and distribution of proceeds of crime. Statement of various Chief Engineers/Engineers of RWD, JSRRDA and RDSD were recorded u/s 50 of PMLA, 2002 wherein they have *inter alia* stated that commission is collected by the engineers/officials from contractors/companies/firms against tender allocation in

the RWD, JSRRDA and RDSD departments. The commission of 3% of the total amount mentioned in LOA (Letter of Acceptance) is fixed for tender allotment, the distribution of which among the Minister, bureaucrats, engineers and other officials is distributed as -(a) 1.35%- Minister, Alamgir Alam (through his PS Sanjeev Kumar Lal; (b) 1.65% Top bureaucrats and other engineers/officials. They also stated that the collection of commission for minister, Alamgir Alam, has been done by Sanjeev Kumar Lal through his person/agent and for other persons the commission has been collected by Chief Engineer, JSRRDA himself and, through his selected persons. For ready reference, the relevant portion of paragraph 8 is quoted as under:

“8. GENERATION OF PROCEEDS OF CRIME

8.1 A total of 18 searches were conducted u/s 17 of PMLA in Ranchi, at the premises of Sanjeev Kumar Lal, Jahangir Alam, some Engineers and other persons on different dates. As a result of the search huge amount of cash to the tune of Rs. 37.55 Crore, digital devices, records and various incriminating documents were recovered which gave details with regard to the various individuals involved in the process of generation and distribution of proceeds of crime.

8.2 Sanjeev Kumar Lal during his ED Custody interrogation also stated that the commission in the range of 3 to 4 % of the total tender amount is collected in cash by the Asst. Engineers/Executive Engineers of the respective departments. He further stated that he used to collect the share of 1.35 % of minister Alamgir Alam on his behalf from Asst. Engineers/Executive Engineers via Chief Engineers. He

further stated that first of all, the Asst. Engineers/Executive Engineers used to inform him regarding handing over the share of Alamgir Alam and they requested Sanjeev Kumar Lal to send some person to collect cash i.e. commission.

Thereafter, Sanjeev Kumar Lal used to instruct Munna Singh who was his close friend, and/or his brother (Santosh Kumar) to collect cash from the said engineers. Sanjeev Kumar Lal further instructed Jahangir Alam to stand near Abhinandan Marriage hall, near Rani Hospital and Deendayal Nagar, Ranchi with his Aprilia scooter bearing Registration No. JH01ES8402, where Rinku alias Santosh Kumar (brother of Munna Singh) handed over bags filled with currency/note bundles, and after receiving those bags, he used to park the said bags beneath bed and almirah at his Flat No. 1A, Sir Syed Residency, Kumhartoli, Ranchi safely. Thus, it is ascertained that Sanjeev Kumar Lal takes care of the collection of commission on behalf of Minister Alamgir Alam.

8.3 Statements of various Chief Engineers/Engineers of RWD, JSRRDA and RDSD were recorded u/s 50 of PMLA, 2002 wherein they have inter alia stated that commission is collected by the engineers/officials from contractors/companies/firms against tender allocation in the RWD, JSRRDA and RDSD departments. The commission of 3% of the total amount mentioned in LOA (Letter of Acceptance) is fixed for tender allotment, the distribution of which among the Minister, bureaucrats, engineers and other officials is distributed as under:

(a) 1.35%- Minister, Alamgir Alam (through his PS Sanjeev Kumar Lal)

(b) 1.65% Top bureaucrats and other engineers/officials

They also stated that the collection of commission for minister Alamgir Alam has been done by Sanjeev Kumar Lal through his person/agent and for other persons the commission has been collected by Chief Engineer, JSRRDA himself and, through his selected persons.

8.4 Further, From the statements of Sanjeev Kumar Lal and aforesaid Chief Engineers/Engineers of RWD, JSRRDA and RDSD the modus operandi of allocation of Tenders and collection of

commission against the tenders has surfaced which is detailed as under:

(i) The modus operandi regarding collection of commission against allotment tenders starts with the floating of tenders by RWD, RDSD and JSRRDA for the construction of roads, bridges and other government buildings in Jharkhand.

Firstly, the Government takes decision to construct road/bridge, the Detailed Project Report (DPR) is prepared by Executive Engineer. Thereafter, the technical sanction is approved by the competent Authority i.e. up to 1.00 Crore by Superintendent Engineer and more than 01.00 Crore by Chief Engineer. After that sanctioned estimate is sent to the Department/Secretary and processed by the Department for Administrative Approval (AA) duly approved by the Hon'ble Minister of the department. Once the Administrative Approval (AA) sanction letter is issued by the Secretary, it is sent to Chief Engineer for Tender Process.

Further, Apart from huge cash as mentioned above, several documents including letters on official letterheads were found from the said premise of Jahangir Alam, which were kept there on the instructions of, and under the possession of Sanjeev Kumar Lal, as PS to Alamgir Alam RDD minister, which clearly establishes that Sanjeev Kumar Lal was using the said premise of Jahangir Alam as a safe house for keeping cash, documents/records and other belongings related to Minister Alamgir Alam and himself.

.....

.....

8.15 *Further, Apart from huge cash as mentioned above, several documents including letters on official letterheads were found from the said premise of Jahangir Alam, which were kept there on the instructions of, and under the possession of Sanjeev Kumar Lal, as PS to Alamgir Alam RDD minister, which clearly establishes that Sanjeev Kumar Lal was using the said premise of Jahangir Alam as a safe house for keeping cash, documents/records and other belongings related to Minister Alamgir Alam and himself.....*

8.16.*That, several documents and records pertaining to Sanjeev Kumar Lal were seized from the said premise of Jahangir Alam including several torn pages of a few diaries and notes. When*

these torn pages of diaries were confronted with Sanjeev Kumar Lal, he in his statements recorded u/s 50 of PMLA, 2002 has inter alia stated that these torn pages and notes contain the calculations (Hisab Kitab) of cash/commission collected against the allocation of tenders of RWD, JSRRDA and RDSD.....”

58. In order to prove the allegation, statements of several persons were recorded under the provisions of PMLA, the gist of the statements is quoted as under:

"10. BRIEF DETAILS OF PERSONS EXAMINED UNDER SECTION 17 AND 50 OF PMLA, 2002.

During the course of the search and investigation, statements of several persons were recorded under the provisions of PMLA, the gist of the statements relevant to this investigation is as under:

10.1. Veerendra Kumar Ram: *Veerendra Kumar Ram is a chief engineer in Rural Department Special Zone and also in additional charge of Rural Works Department. In his statement recorded u/s 50 of PMLA during custodial interrogation and in judicial custody on different dates wherein he inter alia accepted that commission was taken in lieu of allotment of tenders and that the total commission was 3.2% of tender value and that his share of commission was 0.3% of the total tender amount which varies from 0.3% to 1%. The share of Minister Alamgir Alam is around 1.5% of the allocated tender amount. He further stated that the whole process of collection and distribution of commission was taken care of by the assistant engineers posted at Rural Development Special Zone and Rural Works Department. He further stated that Rs. 3 crores were given to Alamgir Alam by engineers of Rural Works Department through his PS Sanjeev Kumar Lal in September 2022.*

During analysis of the seized mobile phone of Veerendra Kumar Ram, contact details of Sanjeev Lal was found as 'Sanjeev Lal PA of RDD Minister' and two mobile nos. (9939121851 and 8789745592) are saved in the-said-contact's name.

10.2. Alamgir Alam: *He is the minister of RWD and other departments. He was arrested on 15.05.2024 and during his ED custodial interrogation u/s 50 of PMLA, 2002, he showed complete non-cooperation, by not divulging the true facts about Rs. 56 crores which are the Proceeds of Crime acquired by him and other seized records and documents. He has not disclosed the true facts even in his statements recorded u/s 50 of PMLA, 2002 during his ED Custody and Judicial Custody. He failed to discharge the burden of proof which is bestowed upon him u/s 24 of PMLA.*

10.3. Sanjeev Kumar Lal: *He is PS to minister Alamgir Alam. He was arrested on 07.05.2024 and during his ED custodial interrogation u/s 50 of PMLA, 2002, he showed complete non-cooperation, by not divulging the true facts about 53 crores initially, which are the Proceeds of Crime acquired by Alamgir Alam and himself and other seized records and documents.*

When he was shown the evidences, he disclosed that he was collecting the share of Minister Alamgir Alam (1.35%) from the total commission which is 3% of total tender amount that was collected against the tenders of RWD, JSRRDA, RDSD, RDSD and RDSZ. He has instructed the Chief-Engineers and other engineers to collect the commission and give him the share of Minister Alamgir Alam. He instructed Santosh Kumar, brother of Munna Singh to collect commission/cash from Chief Engineers and other engineers and hand over the same to Jahangir Alam. He further instructed Jahangir Alam to collect cash/commission from Santosh Kumar, brother of Munna Singh and store the same at his (Jahangir Alam's) premises safely. He further accepted that the cash amount recovered and seized from the premises of Munna Singh and Rajeev Kumar Singh during the search is also the commission amount of Alamgir Alam which was yet to be handed over to Jahangir Alam. He maintained the calculations (Hisab Kitab) of the collected commission of Alamgir Alam in torn pages of diaries.

He has also taken his share of around Rs. 2.05 Crore from the commission and invested the same in immovable and movable properties in his name and in the name of his family members.

Further, Sanjeev Kumar Lal stated u/s 50 of PMLA that Munna Singh and his brother were not aware that the money they were collected, was the commission amount against the tenders. They did the same on his instructions.

10.4. Jahangir Alam: *He is a close aide of Sanjeev Kumar Lal. He was arrested on 07.05.2024 and during his ED custodial interrogation u/s 50 of PMLA, 2002, he showed complete non-cooperation, by not divulging the true facts about Rs. 32.20 crore initially, which are the Proceeds of Crime acquired by Alamgir Alam and Sanjeev Kumar Lal and other seized records and documents.*

He further stated that the cash amount seized from his said premises belongs to Sanjeev Kumar Lal, and he collected the aforesaid huge cash amount i.e. Rs. 32.20 Crore on the instructions of Sanjeev Kumar Lal. *He further stated that about 4 to 5 months ago Sanjeev Kumar Lal instructed him to stand near Abhinandan Marriage hall, near Rani Hospital and Deendayal Nagar, Ranchi with his Aprilia scooter bearing, where Rinku alias Santosh Kumar (brother of Munna Singh) handed over bags filled with currency/note bundles, and after receiving those bags, he used to park the said bags beneath bed and almirah at his Flat No. 1A, Sir Syed Residency, Kumhartoli, Ranchi safely. He has also taken cash around Rs. 40.40 Lakhs from Sanjeev Kumar Lal and invested the same in immovable and movable properties in his name with the help of his friends. With respect to jewellery seized from his premises, he in his statement recorded in judicial custody, has accepted that the seized jewellery belongs to him and the said jewellery items was purchased by him in cash, however, he has no invoice in support of such purchase.*

10.5. Reeta Lal: *Statements of Reeta Lal W/o Sanjeev Kumar Lal were recorded u/s 50 of PMLA wherein she inter alia stated that she is a housewife and her source of income is agriculture. She has purchased immovable properties in Khunti, Bariyatu, Kanke Road and Pundag. She further stated that she is a partner in Tejaswini Buildcon with Munna Singh. She transferred Rs 10 Lakhs on 22.04.2022 to the bank account of Tejaswini Buildcon*

as an investment. She further stated that she has invested Rs. 21-22-Lakhs in the said firm. She further stated that she has received Rs. 9,00,000/- from TEJASWINI BUILDCON as a partner against her aforesaid investment made in Tejaswini Buildcon which has been further used for purchase of aforesaid property. Further, regarding the source of funds for the purchase of the said property, she stated that it is either a loan taken from various persons or her agriculture income, but she failed to produce any documents regarding her aforesaid loans and agriculture income.

10.6. Munna Singh: Statements of Munna Singh were recorded u/s 50 of PMLA wherein he inter alia stated that the huge cash amount seized from his premises i.e. Rs. 2.93 Crore is the commission amount which was yet to be handed over to the person of Sanjeev Kumar Lal. He further stated that Rs. 50 Crore were collected from assistant engineers, and he sent it to Sanjeev Kumar Lal during the period of 8 to 9 months. When asked about regarding Rs. 50 Crore already sent to Sanjeev Kumar Lal but only Rs. 32.20 Crore have been recovered and seized from the premises of Jahangir Alam he stated that only Sanjeev Kumar Lal can explain the same. Further, a diary was recovered and seized from the premises of Munna Singh which contains the details of commission amount of around Rs. 50 Crore collected from the Chief and other engineers of RWD, JSRRDA and RDSD. Further, Munna Singh has stated in his statement recorded on u/s 50 of PMLA, that he has not received any share from the commission he used to collect. He did the collection and handing over of the cash only following the instructions of Sanjeev Kumar Lal. Munna Singh further stated that he showed his inability and objected against the collection of cash and he tried to know the source of funds from Sanjeev Kumar Lal, however, Sanjeev Kumar Lal never revealed him the actual source of the cash collected. Sanjeev Kumar Lal always told him that there would be no issue in aforesaid task.

10.7. Santosh Kumar alias Rinku: Statements of Santosh Kumar alias Rinku, brother of Munna Singh were recorded u/s 50 of PMLA wherein he inter alia stated that he following the

instructions of Sanjeev Kumar Lal has collected the commission/cash from the Chief and other engineers, and handed over the same to the person of Sanjeev Kumar Lal. He further stated that he has received cash-several times from various persons.

10.8. Rajkumar Toppo: Statement of Rajkumar Toppo, **Executive Engineer** was recorded u/s 50 of PMLA wherein he inter alia stated that he was aware of the fact that the commission was collected by the engineers/official from Contractors/companies/firms in lieu of allocation of tender in the departments. He further stated that **the commission is 3% of total LOA, for the allotment of tenders. The said 3% commission amount is distributed as under:**

(a) 1.35% Minister, Alamgir Alam (through his PS Sanjeev Kumar Lal)

(b) 1.65% Top bureaucrats and other engineers/officials

He further stated that on the instructions of Sanjeev Kumar Lal and his Chief-Engineer Singrai Tuti he has collected around Rs. 5 Crore commission from the contractors and further handed over to Santosh Kumar, brother of Munna Singh for giving the same to Sanjeev Kumar Lal. He further stated when he was confronted with the documents seized from his premises on 07.05.2024, that 'U' stands for Umesh Kumar, "DS" code stands for Deposited Sum, "H" code stands for Ministry (Hon'ble Minister Alamgir Alam) and Ce stands for Chief Engineer.

10.9. Ajay Tirkey: Statement of Ajay Tirkey, **Executive Engineer**, JSRRDA was recorded u/s 50 of PMLA wherein he inter alia stated that he was aware of the fact that the commission was collected by the engineers/official from contractors/companies/firms in lieu of allocation of tender in the departments. He further stated that the commission is 3% of the total LOA, for allotment of tenders. The said 3% commission amount is distributed as under:

(a) 1.35% Minister, Alamgir Alam (through his PS Sanjeev Kumar Lal)

(b) 1.65% Top bureaucrats and other engineers/officials

He further stated that on the instructions of Sanjeev Kumar Lal and his Chief Engineer Promod Kumar, he has collected around Rs. 6.36 Crore against the total tender amount of Rs. 212 Crores. Out of which 2.86 Crores i.e. share of Alamgir Alam has been handed over to Sanjeev Kumar Lal.

10.10. Ajay Kumar: Statement of Ajay Kumar, **Executive Engineer, JSRRDA** was recorded u/s 50 of PMLA wherein he inter alia stated that he was aware of the fact that the commission was collected by the engineers/official from contractors/companies/firms in lieu of allocation of tender in the *निदेशालय* departments. He further stated that the commission is 3% of total LOA, for allotment of tenders. The said 3% commission amount is distributed as under:

(a) 1.35% Minister, Alamgir Alam (through his PS Sanjeev Kumar Lal)

(b) 1.65% - Top bureaucrats and other engineers/officials

He further stated that on the instructions of Sanjeev Kumar Lal and his Chief Engineer Pramod Kumar he has collected around Rs. 4.77 Crore against total tender amount of Rs. 150 Crores. Out of which 2.295 Crores i.e. share of Alamgir Alam has been handed over to Sanjeev Kumar Lal.

10.11.Ashok Kumar Gupta: Statement of Ashok Kumar Gupta, **Executive Engineer** was recorded u/s 50 of PMLA wherein he inter alia stated that he was aware of the fact that the commission was collected by the engineers/official from contractors/companies/firms in lieu of allocation of tender in the departments. He further stated that the commission is 3% of total LOA, for allotment of tenders. The said 3% commission amount is distributed as under:

(a) 1.35%- Minister, Alamgir Alam (through his PS Sanjeev Kumar Lal)

(b) 1.65% Top bureaucrats and other engineers/officials

He further stated that on the instructions of Sanjeev Kumar Lal and his Chief-Engineers Singrai Tuti and Pramod Kumar he has collected around Rs. 10.50 Crore commission from the contractors. He further stated that he along with Ajay Kumar had

handed over Rs. 4.72 Crores to Sanjeev Kumar Lal as share of Minister Alamgir Alam.

10.12. Santosh Kumar: Statement of Santosh Kumar, **Executive Engineer** was recorded u/s 50 of PMLA wherein he inter alia stated that he was aware of the fact that the commission was collected by the engineers/official from contractors/companies/firms in lieu of allocation of tender in the departments. He further stated that the commission is 3% of the total LOA, for allotment of tenders. The said 3% commission amount is distributed as under:

(a) 1.35% Minister, Alamgir Alam (through his PS Sanjeev Kumar Lal)

(b) 1.65% Top bureaucrats and other engineers/officials

He further stated that on the instructions of Sanjeev Kumar Lal and his Chief-Engineer Rajiv Lochan he has collected around Rs. 20 Crore commission from the contractors, and further handed over to Santosh Kumar, brother of Munna Singh for giving the same to Sanjeev Kumar Lal.

10.13. Singrai Tuti: Statement of Singrai Tuti, **retired Chief-Engineer, JSRRDA** was recorded u/s 50 of PMLA wherein he inter alia stated that he was aware of the fact that the commission was collected by the engineers/official from contractors/companies/firms in lieu of allocation of tender in the departments under his portfolios. He further stated that the commission is 3% of total LOA, for the allotment of tenders. The said 3% commission amount is distributed as under:

(a) 1.35% Minister, Alamgir Alam (through his PS Sanjeev Kumar Lal)

(b) 1.65% Top bureaucrats and other engineers/officials

He further stated that on the instructions of Sanjeev Kumar Lal, PS to Alamgir Alam he has collected around Rs. 18 Crore through Assistant Engineers against a total tender amount of Rs. 600 Crores. Out of which 12 Crores i.e. share of Alamgir Alam has been handed over to Sanjeev Kumar Lal. He further stated that Sanjeev Kumar Lal told him that the excess commission amount would be adjusted in future. He further stated that during one of his visits to Project Bhavan in April 2023 Minister Alamgir Alam

had asked him about his share in commission against the allotment of tenders and Alamgir Alam also told him that his PS Sanjeev Kumar Lal would handle the collection of commission on his behalf and also told him to follow the directions of Sanjeev Kumar Lal in this regard.

10.14. Surendra Kumar: Statement of Surendra Kumar, **Chief-Engineer, RDSD** was recorded u/s 50 of PMLA wherein he inter alia stated that he was aware of the fact that the commission was collected by the engineers/official from contractors/companies/firms in lieu of allocation of tender in the departments under his portfolios. He further stated that the commission is 3% of the total LOA, for allotment of tenders. The said 3% commission amount is distributed as under:

(a) 1.35% Minister, Alamgir Alam (through his PS Sanjeev Kumar Lal)

(b) 1.65% Top bureaucrats and other engineers/officials

He further stated that on the instructions of Sanjeev Kumar Lal, PS to Alamgir Alam he has collected around Rs. 15 Crore through Assistant Engineers and the same was handed over to Rajeev Kumar Singh, his known one, and further Rajeev Kumar Singh handed over the same to Munna Singh for giving it to Sanjeev Kumar Lal.

10.15. Pramod Kumar: Statement of Pramod Kumar, **Chief-Engineer, JSRRDA** was recorded u/s 50 of PMLA wherein he inter alia stated that he was aware of the fact that the commission was collected by the engineers/official from contractors/companies/firms in lieu of allocation of tender in the departments under his portfolios. He further stated that the commission is 3% of total LOA, for the allotment of tenders. The said 3% commission amount is distributed as under:

(a) 1.35%- Minister, Alamgir Alam (through his PS Sanjeev Kumar Lal)

(b) 1.65% Top bureaucrats and other engineers/officials

He further stated that on the instructions of Sanjeev Kumar Lal, PS to Alamgir Alam he has collected around Rs. 10.5 Crore against total LOAs of Rs. 300 Crores, through Assistant Engineers. Out of which 7.50 Crore was handed over to Sanjeev

Kumar Lal. He further stated that he kept his share of Rs. 1.75 Crore and the rest amount was distributed among others.

10.16. Rajiv Lochan: *Statements of Rajiv Lochan, retired Chief-Engineer, RWD were recorded u/s 50 of PMLA wherein he inter alia stated that he was aware of the fact that the commission was collected by the engineers/official from contractors/companies/firms in lieu of allocation of tender in the departments under his portfolios. He further stated that the system of collecting commission from contractors was prevalent even before he taking the charge as Chief Engineer in RWD. He further stated that some person of Sanjeev Kumar Lal used to collect commission amount from his subordinate assistant engineers time to time. He further stated that Sanjeev Kumar Lal used to forward his instructions to Assistant Engineers through Santosh Kumar, Executive Engineer and/or other executive engineers to collect commission amount, and this system had been continuously followed. He further stated that he had collected Ra. 9 Crores through his subordinate engineers, and same was further handed over to Sanjeev Kumar Lal. He further stated that the commission is 3% of total LOA, for allotment of tenders. The said 3% commission amount is distributed as under:*

(a) 1.35% Minister, Alamgir Alam (through his PS Sanjeev Kumar Lal)

(b) 1.65% Top bureaucrats and other engineers/officials

10.17. Ramesh Ojha: *Statement of Ramesh Ojha, Retired Assistant Engineer, RWD and RDSZ was recorded u/s 50 of PMLA wherein he inter alia stated that Veerendra Kumar Ram instructed and pressurized him to receive a commission in lie of allotment of tenders.*

He further stated that the commission is 3% of total LOA, for the allotment of tenders. The said 3% commission amount is distributed as under:

(a) 1.35% Minister, Alamgir Alam (through his PS Sanjeev Kumar Lal)

(b) 1.65% Top bureaucrats and other engineers/officials

He further stated that the commission was collected by the then Chief Engineer Veerendra Kumar Ram by his selected person

and through him. Further, he has collected and handed over Rs. 1.5 Crore to Veerendra Kumar Ram.

10.18. Umesh Kumar: Statement of Umesh Kumar, Executive Engineer was recorded u/s 50 of PMLA wherein he inter alia stated that he was aware of the fact that the commission was collected by the engineers/official from contractors/companies/firms in lieu of allocation of tender in the departments under portfolio of Chief Engineer Singrai Tuti. He further stated that the commission is 3% of total LOA, for allotment of tenders.

The said 3% commission amount is distributed as under:

(a) 1.35% Minister, Alamgir Alam (through his PS Sanjeev Kumar Lal)

(b) 1.65% Top bureaucrats and other engineers/officials

He further stated that during his period as superintending engineer in JSRRDA he has collected around Rs. 3.5 to 3.8 Crore commission amount from contractors through his executive/assistant Engineers on behalf of his Chief-Engineer Singrai Tuti and further handed over to the person of Sanjeev Kumar Lal.

10.19. Siddhant Kumar: Statement of Siddhant Kumar, Executive Engineer, RDSZ was recorded u/s 50 of PMLA wherein he inter alia stated that Veerendra Kumar Ram instructed and pressurized him to receive commission in lieu of allotment of tenders.

Similar was the statement of other engineers, as mentined in the prosecution complaint.

59. From the statement so recorded of the accused persons as also of the Statement of various Chief Engineers/Engineers of RWD, JSRRDA and RDSD recorded u/s 50 of PMLA, it is evident that they all are consistent in their statement that the commission is 3% of total LOA is for the allotment of tenders. The said 3% commission amount is distributed in share of 1.35% Minister, Alamgir Alam

through his PS Sanjeev Kumar Lal and rest 1.65% Top bureaucrats and other engineers/officials.

60. Role of the present petitioner along with his close allied in the commission of offence of money laundering, in particular, who have been arrayed as accused in the second supplementary prosecution, as mentioned at paragraph 15.1 of the prosecution complaint has been made. For ready reference, the same is quoted as under:

“15.1 Role of the accused persons in the commission of offence of money laundering.

1.Alamgir Alam [Accused No. 11]-

a) Alamgir Alam is Minister of (i) Department of Rural Works (RWD), (ii) Department of Panchayati Raj and (iii) Department of Rural Development (RDD). Jharkhand State Rural Road Development Authority (JSRRDA) and Rural Development Special Division (RDSD) are the part of the Department of Rural Works (RWD). RWD, JSRRDA and RDSD constructs the roads and bridges in the state of Jharkhand, for which tenders are floated by these departments, against which 3% commission has been collected. He being the minister of these departments, is all in all and at the top echelon in the syndicate of commission collection.

b) He has pressurised and compelled the Chief Engineer under his portfolio to collect commission and give him his share through his PS Sanjeev Kumar Lal.

c) He has instructed Sanjeev Kumar Lal to collect his 1.35% share in total commission which is 3% of total tender value(Discussed in detail in Para 8.2 88.3).

d) Accordingly, Sanjeev Kumar Lal has instructed departmental engineers to hand over the commission part of Alamgir Alam to Munna Singh and/or his brother Santosh Kumar alias Rinku Singh. Further Munna Singh has stated that he has collected a total of Rs. 53 crores of commission

from such engineers/contractors and handed over Rs.50 crores approx. to Sanjeev Lal through Jahangir Alam. Thus, the same amount of PoC was acquired by Alamgir Alam through Sanjeev Kumar Lal, out of this Rs.53 crores, an amount of Rs.35 crores approx. was seized during the search proceedings.

***e)** Further, it is ascertained from the statement of Veerendra Kumar Ram and Sanjeev Kumar Lal that Alamgir Alam also acquired a commission amount of Rs. 3 crores from Veerendra Kumar Ram through one engineer of the department and same transaction was also assisted by Sanjeev Kumar Lal in September 2022.*

***f)** Thus, Alamgir Alam is found to be directly indulged and actually involved in possession and concealment of atleast Rs 35 crores of the Proceeds of Crime through Sanjeev Kumar Lal and he has also found to be directly indulged and actually involved in acquisition and concealment of atleast Rs. 56 crores of the Proceeds of Crime.*

2.Sanjeev Kumar Lal (Accused No.-12):

***a)** He is the PS to Minister Alamgir Alam, and he has misused his official position for collection of commission on behalf of Minister Alamgir Alam.*

***b)** He has pressurised, threatened and instructed the Chief-Engineers and other engineers to collect commission and give him the share of Minister Alamgir Alam.*

***c)** He is the person who is controlling whole syndicate of collection of commission against tenders from top to bottom on behalf of Minister Alamgir Alam.*

***d)** He instructed Santosh Kumar, brother of Munna Singh to collect commission/cash from Chief Engineers and other engineers and hand over the same to Jahangir Alam.*

***e)** He instructed Jahangir Alam to collect cash/commission from Santosh Kumar, brother of Munna Singh and store the same at his (Jahangir Alam's) premises safely.*

***f)** He has taken his share of around Rs. 2.05 Crore from the commission and integrated the proceeds of crime in*

immovable and movable properties in his name and in the name of his family members and associates. He has purchased immovable properties, plot alongwith building at Bariyatu, which was also renovated by him and plot at Pundag, Ranchi in the name of his wife using proceeds of crime. He has also found to be involved in using PoC more than Rs 2.05 crores, for purchasing immovable properties in the name of himself, his wife and his close aid Jahangir Alam. Hence, Sanjeev Kumar Lal is directly enjoying the proceeds of crime by its concealment, possession, utilisation and acquisition.

g) *Sanjeev Kumar Lal is the mastermind and has played vital role in this syndicate/organized structure of illegal collection of proceeds of crime.*

h) *He is found to be directly indulged and actually involved and knowingly assisted Alamgir Alam in acquisition, possession and concealment of the Proceeds of Crime at least to the tune of Rs. 56 crores.*

i) *He is also found to be directly indulged and actually involved in the acquisition and concealment of PoC at least to the tune of Rs. 2.05 crores and claimed the proceeds of crime as untainted.*

j) *He has also found to be directly indulged and actually involved in using Proceeds of crime in at least 4 (four) immovable properties which he acquired in his own name, in name of his wife and his close aide Jahangir Alam and same four properties have been attached u/s 5(1) of the PMLA, 2002 and also being prayed for confiscation.*

3. Jahangir Alam (Accused No.-13)

(a) *Jahangir Alam is close associate of Sanjeev Kumar Lal, and has collected commission on behest of Sanjeev Kumar Lal.*

(b) *Following the instructions of Sanjeev Kumar Lal, he has collected cash/commission from Santosh Kumar, brother of Munna Singh.*

(c) He has played vital role in collection of cash/commission and concealment of the proceeds of crime clandestinely at his premises.

(d) He has also taken cash around Rs. 40.40 Lakhs from Sanjeev Kumar Lal which is commission amount against tenders i.e. Proceeds of Crime and invested the same in immovable and movable properties in his name. He has purchased immovable properties, flat at Sir Syed Residency and plot at Pundag, Ranchi.

(e) Jahangir Alam is the key person who has facilitated the movement and hiding of cash/commission i.e. Proceeds of Crime.

(f) He is found to be directly indulged, actually involved and knowingly assisted Sanjeev Kumar Lal in acquisition, possession and concealment of the Proceeds of Crime at least to the tune of Rs. 50 crores approx. and jewellery worth Rs 14.50 lakhs approx.

(g) He is found to be directly indulged and actually involved and knowingly assisted Sanjeev Kumar Lal in utilisation, possession and concealment of Proceeds of Crime to the tune of Rs. 1,10,25,000/- for purchasing two immovable properties in his own name and claimed the proceeds of crime as untainted, which were attached u/s 5(1) of the PMLA, 2002 and also being prayed for confiscation vide this PC.

(h) Jahangir Alam has also found to be actually involved and knowingly assisted Sanjeev Kumar Lal in utilising Proceeds of crime in purchasing one vehicle viz. Tata Harrier having Reg. No. JH01DK-7459 which was seized u/s 17(1-A) of the Act, same vehicle was also used for commissioning of an offence under the Act, and also being prayed for confiscation.

61. Herein, it has come in the statement of the accused Veerendra Kumar Ram that the share of Minister Alamgir Alam was 1.35% of the allocated tender amount. Investigation revealed that Rs. 3 crores was given to Alamgir Alam by engineers of the Rural Works Department through

his PS Sanjeev Kumar Lal in September 2022. Further, it has come in the statement of the aforesaid accused that the amount of commission on behalf of Alamgir Alam was getting collected by Sanjeev Kumar Lal (personal secretary of petitioner Alamgir Alam) and a person named Jahangir Alam who is an associate of Sanjeev Kumar Lal collected such commission on the instructions of Sanjeev Kumar Lal.

62. It has further come on record that analysis of the seized mobile phone of Veerendra Kumar Ram, contact details of Sanjeev Kumar Lal was found as 'Sanjeev Lal PA of RDD Minister'. It is evident from the aforesaid complaint that huge cash to the tune of Rs 32.20 crores was recovered and seized on 06/07.05.2024 from the premises of Jahangir Alam i.e. Flat No. 1A, Sir Syed Residency, Kumhartoli, Ranchi.

63. It has further come on record that a total of 18 searches were conducted u/s 17 of Act 2002, in Ranchi, at the premises of Sanjeev Kumar Lal, Jahangir Alam, some Engineers and other persons on different dates. As a result of the search huge amount of cash to the tune of Rs. 37.55 Crore, digital devices, records and various incriminating documents were recovered which gave details with regard to the various individuals involved in the process of generation and distribution of proceeds of crime.

64. Sanjeev Kumar Lal during his ED Custody interrogation also stated that the commission in the range of 3 to 4 % of the total tender amount is collected in cash by the Asst. Engineers/Executive Engineers of the respective departments. He further stated that he used to collect the share of 1.35 % of minister Alamgir Alam on his behalf from Asst. Engineers/Executive Engineers via Chief Engineers.

65. It has also come on record that Statements of various Chief Engineers/Engineers of RWD, JSRRDA and RDSD were recorded u/s 50 of PMLA, 2002 wherein they have *inter alia* stated that commission is collected by the engineers/officials from contractors/companies/firms against tender allocation in the RWD, JSRRDA and RDSD departments. The commission of 3% of the total amount mentioned in LOA (Letter of Acceptance) is fixed for tender allotment, the distribution of which among the Minister, Alamgir Alam (through his PS Sanjeev Kumar Lal) was 1.35%.

66. Thus, from the complaint it appears that apart from huge cash as mentioned above, several documents including letters on official letterheads were found from the premise of Jahangir Alam, which were kept there on the instructions of, Sanjeev Kumar Lal, as PS to Alamgir Alam RDD minister, which indicates that Sanjeev Kumar Lal was using the said

premise of Jahangir Alam as a safe house for keeping cash, documents/records and other belongings.

67. Thus, from perusal of the entire prosecution complaint *prima facie* it appears that the whole modus-operandi regarding collection of commission and later distribution has been illustrated to the respondent ED by the co-accused Veerendra Kumar Ram and Sanjeev Kumar Lal, during their statement's u/s 50 of PMLA, which are mentioned in Para-10.1 and 10.3 of the prosecution complaint dated 04.07.2024.

68. Further, the similar is the statements of witnesses Raj Kumar Toppo, Executive Engineer given in Para-10.8, Ajay Kumar, Executive Engineer in Para- 10.9, Ajay Tirkey, Executive Engineer in Para-10.10, Ashok Kumar Gupta, Executive Engineer in Para-10.11, Santosh Kumar, Executive Engineer mentioned in Para-10.12, Singrai Tuti, Retd Chief Engineer in Para-10.13, Surendra Kumar, Chief Engineer in Para-10.14, Pramod Kumar, Chief Engineer in Para-10.15, Rajeev Lochan, Chief Engineer in Para-10.16, Ramesh Ojha, Retd Assistant Engineer in Para-10.17, Umesh Kumar, Executive Engineer in Para-10.18 and Siddhant Kumar, Executive Engineer in Para-10.19 as recorded u/s 50 PMLA and also mentioned in the prosecution complaint dated 04.07.2024.

69. At this juncture it needs to refer herein that it is settled connotation of law that at the stage of considering bail, the duty of the Court is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities and Court should not venture into the merit of the case by analyzing that whether conviction is possible or not. Meaning thereby at this stage the Court has to see the *prima facie* case only.

70. The Hon'ble Apex Court in the case of **Rohit Tandon v. Directorate of Enforcement** (*supra*) while referring the ratio of **Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra & Ors., (2005) 5 SCC 294** has categorically held that the Court ought to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. The duty of the Court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities.

71. Further the Hon'ble Apex Court in the case of **Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors(supra)** has reiterated the same view and has observed that the Court while dealing with the application for grant of bail need not to delve deep into the merits of the case and only a view of the court based on available material on

record is required. For ready reference the relevant paragraph is being quoted as under:

303. *We are in agreement with the observation made by the Court in Ranjitsing Brahmajeetsing Sharma [Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra, (2005) 5 SCC 294 : 2005 SCC (Cri) 1057] . The Court while dealing with the application for grant of bail need not delve deep into the merits of the case and only a view of the court based on available material on record is required. The court will not weigh the evidence to find the guilt of the accused which is, of course, the work of the trial court. The court is only required to place its view based on probability on the basis of reasonable material collected during investigation and the said view will not be taken into consideration by the trial court in recording its finding of the guilt or acquittal during trial which is based on the evidence adduced during the trial. As explained by this Court in Nimmagadda Prasad [Nimmagadda Prasad v. CBI, (2013) 7 SCC 466 : (2013) 3 SCC (Cri) 575] , the words used in Section 45 of the 2002 Act are “reasonable grounds for believing” which means 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.*

72. This Court is now re-adverting to the fact of the case. On perusal of the Paras- 8.16, 8.18, 8.19, 8.20 & 8.26 of the prosecution complaint where the images of the hand written notes etc. have been mentioned/displayed, which depicts that the accounting of the collections and distributions of the commission were being maintained in the diaries or note books seized by the agency from the locations related to the Personal secretary of the present petitioner, where the code name the petitioner with his

specific share in that commission is also mentioned. Thus from the aforesaid it is evident that prosecuting agency has arrested the present petitioner not only on basis of the statement of the persons recorded u/s 50 PMLA rather there is other evidence also available on record.

73. Thus, on the basis of the material available in prosecution complaint the role of the present petitioner in the alleged money laundering cannot be negated.

74. So far, the issue of non-availability of money trail as raised by the learned counsel for the petitioner is concerned it has come on the record that a huge cash of Rs.32.20 crore was recovered and seized from the premises of Jahangir Alam an associate of Sanjeev Kumar Lal who was personal Secretary to the Minister i.e. the applicant herein. It is also pertinent to note that several incriminating notes and pages of diaries were also found during search and seizure which was maintained by Sanjeev Kumar Lal recording the share of the minister Alamgir Alam from the total commission collected from the tenders. By way of Section 50 statement Sanjeev Kumar Lal, the personal Secretary to the Minister/applicant, has admitted the contents of these seized pages and the fact that he was collecting commission on behalf of the applicant/minister as recorded in the '*Hisab-Kitab*' seized by ED corroborates the factum of

recovery. He further decoded the code words and clearly mentioned that the applicant/minister was the beneficiary of commission amount.

75. Thus, this Court is of prima facie view that the contention of the petitioner that the prosecution has failed to establish the entire money trail, is without any factual basis and moreover section 3 of PMLA nowhere requires the entire money trail or where the money eventually went.

76. It needs to refer herein that the Hon'ble Apex Court in the case of ***Rana Ayyub v. Directorate of Enforcement*** (2023) 4 SCC 357 observed as follows:

"19. The word "money-laundering" is defined in Section 2(1)(p) of the Act to have the same meaning as assigned to it in Section 3. Section 3 of the Act makes a person guilty of the offence of money laundering, if he (1) directly or indirectly attempts to indulge, or (n) knowingly assists or, (im) knowingly is a party, or (iv) is actually involved in any process or activity. Such process or activity should be connected to "proceeds of crime" including its concealment or possession or acquisition or use. In addition, a person involved in such process or activity connected to proceeds of crime, should be projecting or claiming it as untainted property. The Explanation under Section 3 makes it clear that even if the involvement is in one or more of the following activities or processes, namely: (i) concealment; (ii) possession; (im) acquisition; (iv) use; (o) projecting it as untainted property, or (vi) claiming it as untainted property, the offence of money-laundering will be made out.

20. Thus, Section 3 comprises of two essential limbs, namely: (i) involvement in any process or activity, and (ii) connection of such process or activity to the proceeds of crime. The expression "proceeds of crime" is defined in Section 2(1)(u) to mean any

property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad."

77. In the light of the aforesaid statutory definitions, it can safely be inferred that it is enough if the prosecution establishes that there was generation of proceeds of crime and the accused was involved in any process or activity in connection with the proceeds of crime. Therefore, it is considered view of this Court that since concealment of the proceeds of crime is itself an offence it is not necessary for the prosecution to establish the money trail.

78. Further, in view of above, *prima facie* it appears that there is direct complicity of the petitioner in collecting money through his private secretary, Sanjeev Kumar Lal which has come in evidence in the statement recorded under Section 50 of the PML Act and the diary making reference of the said fact showing the complicity of the present petitioner in collecting commission in lieu of tender. Therefore, in view of Section 3 of the PML Act particularly its explanation part, the aforesaid argument is having no substance.

79. So far, the contention as raised by the learned counsel for the petitioner that the 'reason to believe' has not been furnished to the petitioner is concerned, it has been argued that the judgment in the case of **Arvind Kejriwal**

was pronounced on 12.07.2024 while the present petitioner has been taken into custody on 15.05.2024 hence whatever has been laid down by Hon'ble Apex Court in the case of **Arvind Kejriwal** will have no retrospective application.

80. The learned counsel for ED in order to buttress his argument has relied upon the judgment rendered by Delhi High Court in the case of **Arvind Dham vs. Union of India [2024 SCC OnLine Del 8490]**, in which, the Delhi High Court has taken into consideration the aforesaid fact and on the principle of retrospectively the judgment passed by Hon'ble Apex Court in the case of **Arvind Kejriwal** has not been followed.

81. It has been contended that the said order passed by the Delhi High Court has been questioned before the Hon'ble Apex Court by filing SLP(Cr.) No. 017357 of 2024 and the order passed by the Delhi High Court in **Arvind Dham (supra)** has been upheld by the Hon'ble Supreme Court.

82. It needs to refer herein that from the record it is evident that during the arrest of the petitioner the directions of the Hon'ble Court given in the cases of **Pankaj Bansal vs Union of India 2023 SCC Online SC 1244** and **Ram Kishore Arora vs Directorate of Enforcement, 2023 SCC Online SC 1682** have been fully complied as the grounds mentioned explicitly in a separate memo handed over to the

petitioner in writing before his arrest u/s 19 of PMLA, 2002 on 15.05.2024. Further, petitioner had never challenged the arrest or remand order which was passed by learned court after considering the material and other evidence supporting the arrest.

83. Argument has been advanced by referring to provision of Section 22 of the PML Act, 2002 wherein it has been provided of presumption as to records or property in certain cases, in which it is provided that where any records or property are or is found in the possession or control of any person in the course of a survey or a search, [or where any record or property is produced by any person or has been resumed or seized from the custody or control of any person or has been frozen under this Act or under any other law for the time being in force, it shall be presumed that (i) such records or property belong or belongs to such person; (ii) the contents of such records are true; and (iii) the signature and every other part of such records which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that persons' handwriting, and in the case of a record, stamped, executed or attested, that it was executed or

attested by the person by whom it purports to have been so stamped, executed or attested.

84. From perusal of section 22 of the Act 2002 it is evident that if any books of account, documents, money, bullion, jewellery, or other valuable article or thing are found in possession or control of any person during a search under this Act, then it may be presumed that such items belong to such person and the contents of the books or documents are true, and the signature and handwriting in such documents are of the person to whom they are attributed.

85. Hence, it appears that the petitioner is directly indulged and is actually involved in all the activities connected with the offence of money laundering. i.e., use or acquisition, possession, concealment, and projecting or claiming as untainted property, as defined u/s 3 of PMLA, 2002.

86. Further, the role of the petitioner in the laundering of proceeds of crime generated out of the commission of scheduled offence has been discussed in detail in the prosecution complaint and supplementary prosecution complaint as well as the paragraphs abovementioned.

87. The contention of learned counsel for the petitioner that petitioner is not the named accused in the first FIR and

as such his culpability in alleged crime cannot be fully established.

88. In this context it is pertinent to mention here that the provisions of the PMLA is an independent offence and the investigation conducted by the Enforcement Directorate under the PMLA, 2002 is triggered after committing, the commission of a scheduled offence, out of which proceeds have been generated. During the investigation, there is the active involvement of the petitioner in the layering, transfer and use as well as the petitioner entering into transactions to launder the proceeds of crime generated out of such scheduled offence.

89. Thus, *prima-facie*, it appears that the petitioner has involved himself in accumulating proceeds of crime and the aforesaid plea of the learned counsel for the petitioner doesn't hold water. Further the Hon'ble Apex Court in ***Pavna Dibbur v. Directorate of Enforcement (Criminal Appeal No. 2779/2023)*** held that the who could commit an offence under the PMLA maybe not be named in the scheduled offence.

90. Further the offence of money laundering as contemplated in Section 3 of the PMLA has been elaborately dealt with by the three Judge Bench in ***Vijay Madanlal Choudhary (supra)***, in which it has been observed that

Section 3 has a wider reach. The offence as defined captures every process and activity in dealing with the proceeds of crime, directly or indirectly, and is not limited to the happening of the final act of integration of tainted property in the formal economy to constitute an act of money laundering. Of course, the authority of the Authorised Officer under the Act to prosecute any person for the offence of money laundering gets triggered only if there exist proceeds of crime within the meaning of Section 2(1)(u) of the Act and further it is involved in any process or activity. Not even in case of existence of undisclosed income and irrespective of its volume, the definition of “Proceeds of Crime” under Section 2(1)(u) will get attracted, unless the property has been derived or obtained as a result of criminal activity relating to a scheduled offence. The property must qualify the definition of “Proceeds of Crime” under Section 2(1)(u) of the Act. As observed, in all or whole of the crime property linked to scheduled offence need not be regarded as proceeds of crime, but all properties qualifying the definition of “Proceeds of Crime” under Section 2(1)(u) will necessarily be the crime properties.

91. It is required to refer herein that the Hon'ble Apex Court in the case of ***Pavana Dibbur vs. The Directorate of Enforcement*** passed in **Criminal Appeal No. 2779 of 2023**

has considered the effect of the appellant not being shown as an accused in the predicate offence by taking into consideration Section 3 of the Act, 2002. The Hon'ble Apex Court by interpreting the provision of Section 3 of the Act, 2002 has come out with the finding that on a plain reading of Section 3, unless proceeds of crime exist, there cannot be any money laundering offence.

92. Based upon the definition Clause (u) of sub-section (1) of Section 2 of the Act 2002 which defines “proceeds of crime”, the Hon'ble Apex Court at paragraph-12 has been pleased to observe that clause (v) of sub-section (1) of Section 2 of PMLA defines “property” to mean any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible.

93. To constitute any property as proceeds of crime, it must be derived or obtained directly or indirectly by any person as a result of criminal activity relating to a scheduled offence. The explanation clarifies that the proceeds of crime include property, not only derived or obtained from scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence. Clause (u) also clarifies that even the value of any such property will also be the proceeds of crime.

94. At paragraph-14 of the aforesaid judgment, it has observed by referring the decision rendered by the Hon'ble Apex Court in ***Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors.(supra)*** that the condition precedent for the existence of proceeds of crime is the existence of a scheduled offence. At paragraph-15 the finding has been given therein that on plain reading of Section 3 of the Act, 2002, an offence under Section 3 can be said to be committed after a scheduled offence is committed. By giving an example, it has been clarified that if a person who is unconnected with the scheduled offence, knowingly assists the concealment of the proceeds of crime or knowingly assists the use of proceeds of crime, in that case, he can be held guilty of committing an offence under Section 3 of the PMLA. Therefore, it is not necessary that a person against whom the offence under Section 3 of the PMLA is alleged must have been shown as the accused in the scheduled offence.

95. So far as the facts of the present case are concerned, the respondent ED has placed heavy reliance on the statements of witnesses and the documents produced by them under Section 50 of the said Act, to prima facie show the involvement of petitioner in the alleged offence of money laundering under Section 3 thereof.

96. The three Judge Bench the Hon'ble Apex Court in the case of ***Rohit Tandon vs. Directorate of Enforcement (supra)*** held that the statements of witnesses recorded by Prosecution – ED are admissible in evidence in view of Section 50. Such statements may make out a formidable case about the involvement of the accused in the commission of the offence of money laundering. For ready reference the relevant paragraph is being quoted as under:

31. Suffice it to observe that the appellant has not succeeded in persuading us about the inapplicability of the threshold stipulation under Section 45 of the Act. In the facts of the present case, we are in agreement with the view taken by the Sessions Court and by the High Court. 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. Further, the courts below have justly adverted to the antecedents of the appellant for considering the prayer for bail and concluded that it is not possible to hold that the appellant is not likely to commit any offence ascribable to the 2002 Act while on bail. Since the threshold stipulation predicated in Section 45 has not been overcome, the question of considering the efficacy of other points urged by the appellant to persuade the Court to favour the appellant with the relief of regular bail will be of no avail. In other

words, the fact that the investigation in the predicate offence instituted in terms of FIR No. 205/2016 or that the investigation qua the appellant in the complaint CC No. 700 of 2017 is completed; and that the proceeds of crime are already in possession of the investigating agency and provisional attachment order in relation thereto passed on 13-2-2017 has been confirmed; or that charge-sheet has been filed in FIR No. 205/2016 against the appellant without his arrest; that the appellant has been lodged in judicial custody since 2-1-2017 and has not been interrogated or examined by the Enforcement Directorate thereafter; all these will be of no consequence.

97. In a recent judgment, the Hon'ble Supreme Court in **Abhishek Banerjee & Anr. 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 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."

98. 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.

99. 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 Apex 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.

100. 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.

101. In the instant case, it has been found that during the course of investigation statement so recorded of the accused persons as also of the statement of various Chief Engineers/Engineers of RWD, JSRRDA and RDSD and the witnesses were recorded u/s 50 of PMLA, who all are consistent in their statement that the commission is 3% of total LOA, for the allotment of tenders. The said 3% commission amount is distributed in share of 1.35% Minister, Alamgir Alam through his PS Sanjeev Kumar Lal and rest 1.65% Top bureaucrats and other engineers/officials.

102. Thus, the petitioner knowingly is as the party and is actually involved in all the activities connected with the offence of money laundering. i.e., use or acquisition, possession, concealment, and projecting or claiming as untainted property.

103. 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 under Section 24 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."

104. 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.

105. 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 other evidences which indicate the applicant's active role in the alleged money laundering activities.

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

107. With regard to the above, this Court has referred to the judgment of the Hon'ble Supreme Court in **Prem**

Prakash v. Union of India through Directorate of Enforcement, (2024) 9 SCC 787, wherein, the following observations were made:

"18.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.

108. Be it noted that the legal presumption under Section 24(a) of the Act 2002, 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 of the accused.

109. 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.

110. 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.

111. In the case of **Collector of Customs & Ors. v. D. Bhoormall (1974) 2 SCC 544** proceedings were initiated under Section 167(8)(c) of the Customs Act for confiscation of contraband or smuggled goods and it was observed by the Hon'ble Apex Court that on the principle underlying Section 106, Evidence Act, the burden to establish those facts is cast on the person concerned; and, if he fails to establish or explain those facts, an adverse inference of facts may arise against him. The relevant paragraph of the aforesaid Judgment is being quoted as under:

“Since it is exceedingly difficult, if not absolutely impossible, for the prosecution to prove facts which are especially within the knowledge of the opponent or the accused, it is not obliged to prove them as part of its primary burden.

... On the principle underlying Section 106, Evidence Act, the burden to establish those facts is cast on the person concerned; and, if he fails to establish or explain those facts, an adverse inference of facts may arise against him, which coupled with the presumptive evidence adduced by the prosecution or the Department would rebut the initial presumption of innocence in favour of that person, and in the result, prove him guilty.”

112. Thus, in light of the aforesaid principles and the law enunciated by the Hon'ble Supreme Court in **Vijay Madanlal Choudhary (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/ED.

113. 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.

114. Thus, from the entire discussion it is evident that the petitioner is an influential person being Cabinet Minister in the State of Jharkhand and the evidence collected during investigation by the agency broadly speaks that the co-accused Veerandra Kumar Ram used to collect commission in terms of allocation of tender and execution of work and the said commission/fixed share of 1.35% was distributed among his seniors and politicians and the said commission is also collected by co-accused Sanjeev Kumar Lal, P.S. of the present petitioner through certain persons. It has also been submitted that during the investigation, it has been ascertained that the entire collection and distribution of commission was taken care of by the assistant engineers posted at the Rural Development Special Division and Rural

Works Department. Further, it was also found that the share of the petitioner, who was the Minister, was 1.35% of the allocated tender amount and also, in one of the instances, it was found that the petitioner had received his share of commission of Rs. 3 Crore which was sent by one Assistant Engineer in September 2022 which was facilitated by one of his close persons.

115. Further during statement made under Section 50 of PMLA, 2002 and in one of the instances Veerendra Kumar Ram disclosed that crores of the commission were handed over to the co-accused Sanjeev Kumar Lal, Personal Secretary of the present petitioner, in September 2022. It has also come that co-accused Jahangir Alam was assisting Sanjeev Kumar Lal and was hoarding the said commission on the instruction of Sanjeev Kumar Lal and the said Sanjeev Kumar Lal takes care of the collection of commission, and Jahangir Alam collected the same at the instruction of Sanjeev Kumar Lal, who in turn was doing so on behalf of the present petitioner.

116. Now in the light of aforesaid discussion at this juncture this Court thinks it fit to revisit the scope of Section 45 of the PML Act 2002. As discussed in preceding paragraphs that Section 45 of the PMLA Act, 2002 provides twin test. First '*reason to believe*' is to be there for the

purpose of reaching to the conclusion that there is no *prima facie* case and second condition is that the accused is not likely to commit any offence while on bail.

117. Sub-section (1)(ii) of Section 45 of the Act, 2002, provides that if 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, meaning thereby, the parameter which is to be followed by the concerned court that satisfaction is required to be there for believing that such accused person is not guilty of such offence and is not likely to commit offence while on bail.

118. Section 45(2) of the Act 2002 provides to consider the limitation for grant of bail which is in addition to the limitation under the Code of Criminal Procedure, 1973, i.e., limitation which is to be considered while granting the benefit either in exercise of jurisdiction conferred to this Court under BNSS 2023 is to be taken into consideration.

119. It is, thus, evident by taking into consideration the provision of Sections 19(1), 45(1) and 45(2) of PML Act that the conditions provided therein are required to be considered while granting the benefit of regular bail in exercise of power conferred under statute apart from the twin conditions

which has been provided under Section 45(1) of the Act, 2002.

120. Thus, Section 45 of the PMLA turns the principle of bail is the rule and jail is the exception on its head. The power of the Court to grant bail is further conditioned upon the satisfaction of the twin conditions prescribed under Section 45(1) (i) and (ii) PMLA. While undertaking this exercise, the Court is required to take a *prima facie* view on the basis of materials collected during investigation. The expression used in Section 45 of PMLA are “reasonable grounds for believing” which means that the Court has to find, from a *prima facie* view of the materials collected during investigation that there are reasonable grounds to believe that the accused has not committed the offence and that there is no likelihood of him committing an offence while on bail. Recently, in ***Tarun Kumar v Assistant Directorate of Enforcement, (supra)*** the Hon’ble Supreme Court has held as under:

“17.As well settled by now, the conditions specified under Section 45 are mandatory. They need to be complied with. The Court is required to be satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and he is not likely to commit any offence while on bail. It is needless to say that as per the statutory presumption permitted under Section 24 of the Act, the Court or the Authority is entitled to presume unless the contrary is proved, that in any proceedings relating to proceeds of crime

under the Act, in the case of a person charged with the offence of money laundering under Section 3, such proceeds of crime are involved in money laundering. Such conditions enumerated in Section 45 of PML Act will have to be complied with even in respect of an application for bail made under Section 439 Cr. P.C. in view of the overriding effect given to the PML Act over the other law for the time being in force, under Section 71 of the PML Act.”

121. This Court, based upon the imputation as has been discovered in course of investigation, is of the view that what has been argued on behalf of the petitioner that proceeds cannot be said to be proceeds of crime is not fit to be acceptable because as would appear from the preceding paragraphs, money which has been alleged to be obtained by the petitioner/accused has been routed through his Private Secretary, Sanjeev Kumar Lal.

122. If there is a *prima facie* material to show that the amount has been received by misusing the position of the petitioner that by itself will be construed as proceeds of crime and it is not necessary for the respondent to further establish that such proceeds of crime was projected as untainted money subsequently. This is in view of the amendment that was made to Section 3 of PMLA through Act 23 of 2019. This position was also made clear by the Hon'ble Apex Court in ***Directorate of Enforcement.V. Padmanabhan Kishore reported in 2022 SCC Online SC***

1490. For ready reference, the relevant paragraph of the judgment is quoted as under:

“12. The definition of “proceeds of crime” in the PML Act, inter alia, means any property derived or obtained by any person as a result of criminal activity relating to a scheduled offence. The offences punishable under Sections 7, 12 and 13 are scheduled offences, as is evident from Para 8 of Part-A of the Schedule to the PML Act. Any property thus derived as a result of criminal activity relating to offence mentioned in said Para 8 of Part-A of the Schedule would certainly be “proceeds of crime”.

14. The said Section 3 states, inter alia, that whoever knowingly assists or knowingly is a party or is actually involved in any process or activity connected with proceeds of crime including its concealment, possession, acquisition or use shall be guilty of offence of money-laundering (emphasis added by us).”

123. Further, at the stage of recording statements during enquiry, it cannot be construed as an investigation for prosecution. The process envisaged under Section 50 of PMLA is in the nature of an inquiry against the proceeds of crime and it is not an investigation and the authorities who are recording the statements are not police officers and therefore, these statements can be relied upon as admissible piece of evidence before the Court. The summons proceedings and recording of statements under PMLA are given the status of judicial proceedings under Section 50(4) of PMLA. When such is the sweep of Section 50 of PMLA, the statements that have been recorded by the respondent and which have been relied upon in the

complaint must be taken to be an important material implicating the petitioner. The co-accused or the suspected persons in the predicate offence cannot automatically be brought within the same status in the PMLA proceedings and it is always left open to the authorities to deal with them as witnesses.

124. The statements that were recorded from the witnesses during the investigation have been dealt with in prosecution complaint and many of the statements clearly implicate the petitioner. Therefore, the statements that have been recorded from the witnesses and which has been relied upon, is also a strong material that prima facie establishes the offence of money laundering against the present petitioner.

125. Thus, on the basis of the discussion made hereinabove, the contention of the learned counsel for the petitioner that even if the entire ECIR will be taken into consideration, no offence will be said to be committed so as to attract the ingredients of Sections 3 & 4 of the P.M.L. Act, 2002, is totally misplaced in the light of accusation as mentioned in prosecution complaint.

126. Further, contention has been raised that a prosecution complaint against the petitioner has already been filed and, thus, investigation is complete and

therefore, no purpose would be served in keeping the petitioner in judicial custody.

127. In the aforesaid context, it is settled position of law that the mere fact that investigation is complete does not necessarily confer a right on the accused/petitioner to be released on bail.

128. In the context of aforesaid contention, it would be relevant to note here that in the instant case mere completion of the investigation does not cause material change in circumstances.

129. Further, it is settled proposition of law that the filing of charge-sheet is not a circumstance that tilts the scales in favour of the accused for grant of bail and needless to say, filing of the charge-sheet does not in any manner lessen the allegations made by the prosecution.

130. At this juncture, it would be apposite to refer the decision of Hon'ble Supreme Court rendered in the case of ***Virupakshappa Gouda & Anr. vs. State of Karnataka & Anr., (2017) 5 SCC 406***, wherein, at paragraph-12, the Hon'ble Apex Court has observed which reads as under:

“12. On a perusal of the order passed by the learned trial Judge, we find that he has been swayed by the factum that when a charge-sheet is filed it amounts to change of circumstance. Needless to say, filing of the charge-sheet does not in any manner lessen the allegations made by the prosecution. On the contrary, filing of the charge-sheet

establishes that after due investigation the investigating agency, having found materials, has placed the charge-sheet for trial of the accused persons.”

131. Thus, this Court, after taking note of the settled legal proposition, is of view that the aforesaid contention is not tenable in the eye of law.

On the issue of Parity:

132. The learned counsel for the petitioner has raised the ground of parity with respect to co-accused person, namely, Veerendra Kumar Ram who has been granted bail by the Hon’ble Supreme Court vide order dated 18.11.2024 passed in Cr. Appeal No. 4615 of 2024. Likewise, accused Harish Yadav was already granted bail vide order dated 30.08.2024 in Special Leave petition (Crl.) No. 6174 of 2024. Further, accused Tara Chand has also been granted bail by the Hon’ble Supreme Court vide order dated 25.11.2024 in Cr. Appeal No. 4760 of 2024. Furthermore, other accused persons, namely, Rajkumari, Genda Ram, Mukesh Mittal, Neeraj Mittal, Ram Prakash Baitha and Harish Yadav have also been granted regular bail by the Hon’ble Apex Court.

133. Now coming to the ground of parity as raised by the learned counsel for the petitioner, the law is well settled that the principle of parity is to be applied if the case on fact is exactly similar then only the principle of parity in the matter of passing order is to be passed but if there is

difference in between the facts then the principle of parity is not to be applied.

134. It is further settled connotation of law that Court cannot exercise its powers in a capricious manner and has to consider the totality of circumstances before granting bail and by only simple saying that another accused has been granted bail is not sufficient to determine whether a case for grant of bail on the basis of parity has been established. Reference in this regard may be made to the judgment rendered by the Hon'ble Apex Court in **Ramesh Bhavan Rathod vs. Vishanbhai Hirabhai Makwana & Anr., (2021) 6 SCC 230**, wherein, it has been held as under:

“25. We are constrained to observe that the orders passed by the High Court granting bail fail to pass muster under the law. They are oblivious to, and innocent of, the nature and gravity of the alleged offences and to the severity of the punishment in the event of conviction. In Neeru Yadav v. State of U.P. [Neeru Yadav v. State of U.P., (2014) 16 SCC 508 :], this Court has held that while applying the principle of parity, the High Court cannot exercise its powers in a capricious manner and has to consider the totality of circumstances before granting bail. This Court observed : (SCC p. 515, para 17)

“17. Coming to the case at hand, it is found that when a stand was taken that the second respondent was a history-sheeter, it was imperative on the part of the High Court to scrutinise every aspect and not capriciously record that the second respondent is entitled to be admitted to bail on the ground of parity. It can be stated with absolute certitude that it was not a case of parity and, therefore, the impugned order [Mitthan Yadav v. State of U.P., 2014 SCC OnLine All 16031] clearly exposes the non-application of mind. That apart, as a matter of fact it has been

brought on record that the second respondent has been charge-sheeted in respect of number of other heinous offences. The High Court has failed to take note of the same. Therefore, the order has to pave the path of extinction, for its approval by this Court would tantamount to travesty of justice, and accordingly we set it aside.

26. Another aspect of the case which needs emphasis is the manner in which the High Court has applied the principle of parity. By its two orders both dated 21-12-2020 [*Pravinbhai Hirabhai Koli v. State of Gujarat*, 2020 SCC OnLine Guj 2986] , [*Khetabhai Parbatbhai Makwana v. State of Gujarat*, 2020 SCC OnLine Guj 2988] , the High Court granted bail to Pravin Koli (A-10) and Kheta Parbat Koli (A-15). Parity was sought with Sidhdhrajsinh Bhagubha Vaghela (A-13) to whom bail was granted on 22-10-2020 [*Siddhrajsinh Bhagubha Vaghela v. State of Gujarat*, 2020 SCC OnLine Guj 2985] on the ground (as the High Court recorded) that he was “assigned similar role of armed with stick (sic)”. Again, bail was granted to Vanraj Koli (A-16) on the ground that he was armed with a wooden stick and on the ground that Pravin (A-10), Kheta (A-15) and Sidhdhrajsinh (A-13) who were armed with sticks had been granted bail. The High Court has evidently misunderstood the central aspect of what is meant by parity. Parity while granting bail must focus upon the role of the accused. Merely observing that another accused who was granted bail was armed with a similar weapon is not sufficient to determine whether a case for the grant of bail on the basis of parity has been established. In deciding the aspect of parity, the role attached to the accused, their position in relation to the incident and to the victims is of utmost importance. The High Court has proceeded on the basis of parity on a simplistic assessment as noted above, which again cannot pass muster under the law.”

135. The Hon’ble Apex Court in **Tarun Kumar Vs. Assistant Director Directorate of Enforcement** (supra) wherein at paragraph-18, it has been held that parity is not the law and while applying the principle of parity, the Court

is required to focus upon the role attached to the accused whose application is under consideration.

136. Now, this Court is adverting to the facts of instant case to decide the issue of parity in the backdrop of aforesaid settled legal ratio and as such thinks it fit to discuss herein distinguishable facts in the case of present petitioner to that of the case of co-accused persons who have been granted bail.

137. This Court, in order to verify the issue of principle of parity, has gone through the order by which, co-accused have been enlarged on the bail and found that there is allegation upon the said co-accused persons that they have worked as a pawn in their individual capacity in the alleged commission of crime and further the Hon'ble Apex Court prima-facie has not found their direct involvement in the alleged offence but herein the close associate of the petitioner namely Sanjiv Kumar Lal who was personal secretary of the present petitioner has taken the tainted money fixed as percentage or as '*cut*' in lieu of the award of contract in the department concerned.

138. It is evident from record that the Petitioner was Minister of (i) Department of Rural Works (RWD), (ii) Department of Panchayati Raj and (iii) Department of Rural Development (RDD). Jharkhand State Rural Road

Development Authority (JSRRDA) and Rural Development Special Division (RDSD) are part of the Department of Rural Works (RWD). It has been alleged that the petitioner being the minister of these departments, was all in all and at the top echelon in the syndicate of commission collection. Petitioner compelled the Chief Engineer under his portfolio to collect commission and give him his share through his Personal Secretary Sanjeev Kumar Lal.

139. It has been alleged against the petitioner in the counter affidavit that he is the key person who is at the top of the hierarchy and receives commission collected from the subordinates and also controls the whole syndicate of collection of commission. It has come on record that the petitioner has misused his official position and acquired proceeds of crime by collecting bribes as a commission/bribe from the contractors in lieu of allotments of tenders with the help of his the then PS Sanjeev Kumar Lal.

140. Further, there is substantial documentary evidence that reveals the role of the petitioner in detail as already discussed in Supplementary Prosecution Complaints as above.

141. Applying the principle of parity, this Court is of the view as per the judgment rendered by the Hon'ble Apex

Court rendered in **Tarun Kumar (Supra)** that the benefit of parity is to be given if the facts/involvement of the petitioner is identical to the persons with whom parity is being claimed but that is not the case herein.

142. This Court, on the basis of the discussion with respect to the involvement of the petitioner, *vis-à-vis*, the other co-accused person, is of the view that the case of the petitioner is quite distinguishable to that of the case of the co-accused persons therefore, is of the considered view that it is not a fit case for applying the principle of parity.

143. It is pertinent to mention here that the Hon'ble Apex Court in **P. Chidambaram v. Central Bureau Investigation reported in 2020 13 SCC 337** has come up with triple test under Section 439 of Cr.PC, while dealing with cases involving economic offences. The principles that were summarised in this judgment is extracted hereunder:

“21.The jurisdiction to grant bail has to be exercised on the basis of the well-settled principles having regard to the facts and circumstances of each case. The following factors are to be taken into consideration while considering an application for bail: (i) the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution; (ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses; (iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence; (iv) character, behaviour and standing of the accused and the circumstances which are peculiar to the

accused; (v) larger interest of the public or the State and similar other considerations.”

144. This Court, on the basis of aforesaid discussion, factual aspect as also the legal position, is of the *prima-facie* view that there is no ‘reason to believe’ by this Court that the petitioner is not involved in managing the money said to be proceeds of crime.

145. This Court while considering the prayer for regular bail has taken into consideration that though this Court is not sitting in appeal on the order passed by learned trial court but only for the purpose of considering the view which has been taken by learned court while rejecting the prayer for bail, this Court is also in agreement with the said view based upon the material surfaced in course of investigation, as referred hereinabove.

146. This Court is conscious of this fact that while deciding the issue of granting bail in grave economic offences it is the utmost duty of the Court that the nature and gravity of the alleged offence should have been kept in mind because corruption poses a serious threat to our society should be dealt with by iron hand.

147. Further, it is required to refer herein that the Money Laundering is an economic offence and economic offences comes under the of grave offences hence needs to be visited with a different approach in the matter of bail as held by the

Hon'ble Apex court in the case of **Y. S Jagan Mohan Reddy v/s C. B. I.**, reported in **(2013) 7 SCC 439**. For ready reference, the relevant paragraphs of the aforesaid judgments are being quoted as under:

“34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.”

148. Similarly, the Hon'ble Apex Court in case of **Nimgadda Prasad Vs. C.B.I., reported in (2013) 7 SCC 466** has reiterated the same view in paragraphs-23 to 25 which reads as under:

“23. Unfortunately, in the last few years, the country has been seeing an alarming rise in white-collar crimes, which has affected the fibre of the country's economic structure. Incontrovertibly, economic offences have serious repercussions on the development of the country as a whole. In State of Gujarat v. Mohanlal Jitmalji Porwal [(1987) 2 SCC 364 : 1987 SCC (Cri) 364] this Court, while considering a request of the prosecution for adducing additional evidence, inter alia, observed as under: (SCC p. 371, para 5)

“5. ... The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white-collar

crimes with a permissive eye unmindful of the damage done to the national economy and national interest.”

24. *While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/ State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the legislature has used the words “reasonable grounds for believing” instead of “the evidence” which means the court dealing with the grant of bail can only satisfy itself as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.*

25. *Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep-rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as a grave offence affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.”*

149. The Hon’ble Apex Court in the case of **Central Bureau of Investigation Vs Santosh Karnani and Another, 2023 SCC OnLine SC 427** has observed that corruption poses a serious threat to our society and must be dealt with iron hands. The relevant paragraph of the aforesaid judgment is being referred as under:-

“31. The nature and gravity of the alleged offence should have been kept in mind by the High Court. Corruption poses a serious threat to our society and must be dealt with iron hands. It not

only leads to abysmal loss to the public exchequer but also tramples good governance. The common man stands deprived of the benefits percolating under social welfare schemes and is the worst hit. It is aptly said, "Corruption is a tree whose branches are of an unmeasurable length; they spread everywhere; and the dew that drops from thence, Hath infected some chairs and stools of authority." Hence, the need to be extra conscious."

150. It requires to refer herein that the Hon'ble Apex Court in catena of judgments has held that the economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

151. The Hon'ble Apex Court has further observed that with the advancement of technology and Artificial Intelligence, the economic offences like money laundering have become a real threat to the functioning of the financial system of the country and have become a great challenge for the investigating agencies to detect and comprehend the intricate nature of transactions, as also the role of the persons involved therein. Reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in the case of ***Tarun Kumar vs. Assistant Director Directorate***

of Enforcement (supra). The relevant paragraphs of the aforesaid Judgment are being quoted as under:

“22. Lastly, it may be noted that as held in catena of decisions, the economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country. Undoubtedly, economic offences have serious repercussions on the development of the country as a whole. To cite a few judgments in this regard are Y.S. Jagan Mohan Reddy v. Central Bureau of Investigation, Nimmagadda Prasad v. Central Bureau of Investigation, Gautam Kundu v. Directorate of Enforcement (supra), State of Bihar v. Amit Kumar alias Bachcha Rai. This court taking a serious note with regard to the economic offences had observed as back as in 1987 in case of State of Gujarat v. Mohanlal Jitmalji Porwal as under:—

“5... The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to books. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the National Economy and National Interest...”

23. With the advancement of technology and Artificial Intelligence, the economic offences like money laundering have become a real threat to the functioning of the financial system of the country and have become a great challenge for the investigating agencies to detect and

comprehend the intricate nature of transactions, as also the role of the persons involved therein. *Lot of minute exercise is expected to be undertaken by the Investigating Agency to see that no innocent person is wrongly booked and that no culprit escapes from the clutches of the law. When the detention of the accused is continued by the Court, the courts are also expected to conclude the trials within a reasonable time, further ensuring the right of speedy trial guaranteed by Article 21 of the Constitution.*

24. With the afore-stated observations, the appeal is dismissed.”

152. This Court, considering the aforesaid material available against the petitioner in such a grave nature of offence and applying the principle of grant of bail wherein the principle of having *prima facie* case is to be followed, is of the view that it is not a fit case of grant of bail.

153. Having regard to the entirety of the facts and circumstances of the case, this Court is of the opinion that the petitioner has miserably failed to satisfy this Court that there are reasonable grounds for believing that he is not guilty of the alleged offences. On the contrary, there is sufficient material collected by the respondent-ED to show that he is *prima facie* guilty of the alleged offences.

154. For the foregoing reasons, having regard to facts and circumstances, as have been analyzed hereinabove, since the petitioner has failed to make out a special case to exercise the power to grant bail and considering the facts and parameters, necessary to be considered for adjudication

of bail, this Court does not find any exceptional ground to exercise its discretionary jurisdiction to grant bail.

155. Therefore, this Court is of the view that it is not a case where the prayer for bail is to be granted, as such the instant application stands dismissed.

156. It is made clear that any observations made herein are *prima-facie* for consideration of matter of bail only and the view expressed herein shall not be construed as an 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.

(Sujit Narayan Prasad, J.)

Alankar/-
A.F.R.