

IN THE HIGH COURT OF JHARKHAND AT RANCHI
B.A. No. 11214 of 2022

Rajeev Kumar Petitioner
Versus
The State through Enforcement Directorate,
Zonal Office, Ranchi. Opposite Party

CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner : Mr. Nilesh Kumar, Advocate.
: Ms Sonal Sodhani, Advocate.
For the ED : Mr. Anil Kumar, A.S.G.I.
: Ms Chadana Kumari, A.C. to A.S.G.I.

04/ 09.11.2022 Heard Mr. Nilesh Kumar, learned counsel appearing for the petitioner and Mr. Anil Kumar, learned A.S.G.I. appearing for the ED.

2. The petitioner is seeking regular bail, in connection with ECIR Case No. 05 of 2022, which has been instituted for the offence under Section 3 read with Section 4 of Prevention of Money Laundering Act [hereinafter referred to as the PML Act] with scheduled offence under Section 120-B and Section 384 of the IPC and Section 7A of the Prevention of Corruption Act, pending in the court of learned A.J.C.-XVIII-cum-Special Judge, Prevention of Money Laundering Act, Ranchi.

3. The complaint was lodged on the basis of the official complaint vide Enforcement Case Information Report ECIR No. RNZO/11/2022 dated 10.08.2022 wherein, it has been alleged that the complainant of the predicate offence Amit Kumar Agrawal came to know through media and other sources that a Public Interest Litigation has been filed at Jharkhand High Court at Ranchi vide Case No. 4290/2021 by one Shiv Shankar Sharma, represented by Rajiv Kumar (Advocate), petitioner, wherein some of the companies including his companies are involved in laundering of black money and political money and that these companies are used as Shell Companies by politicians and it is further alleged that the suspect of this ECIR are hand in gloves in filing such PIL against different businessman and their companies and later on compromise in lieu of huge amount of money on the assurance to settle the issue by managing Courts, Court officers and other Government agencies.

It is further alleged by the complainant that the accused Rajiv Kumar consented in giving him relief against a huge amount of Rs. 10 Crore as bribe for payment to different Government officials to minimize the issue and later on the amount was reduced to Rs. One

crore to be paid in two installments of Rs. 50 lakhs. The complainant then forwarded the complaint to the Officer-in-Charge, Hare Street Police Station, Kolkata, as he is not willing to pay such amount as bribe and a trap was laid at Quest Mall, Beck Bagan Row, Kolkata and the accused was trapped red handed. It reveals that the accused has indulged into criminal act relating to commission of cognizable offence under Section 7A of the P.C. Act along with Section 120-B and Section 384 of the Indian Penal Code which are scheduled offences under the PML Act and he is associated with the commission of offence of money laundering and helped them to amass illegal money and that money has been termed as “proceeds of crime” as defined under Section 2(i)(u) of PML Act, 2002 i.e. tainted money by commissioning of Scheduled offence under PML Act, 2002 and protect the same as untainted property which is an offence under Section 3 and punishable under Section 3 of the PML Act, 2002. Accordingly, present first information report has been instituted.

4. Mr. Nilesh Kumar, learned counsel appearing for the petitioner submits that the petitioner is an innocent person and he has been falsely implicated in this case. He submits that after going through the entire complaint, no case under the PML Act, 2002 is made out so far as this petitioner is concerned. He further submits that the petitioner is a renowned lawyer and filed several cases including the Public Interest Litigations before this Hon’ble court and pointed out the illegality, irregularity and corruptions prevailed or prevailing in the society and for that he has filed one Public Interest Litigation, being W.P. (PIL) No. 4290 of 2021. He further submits that in the said PIL, the officials of the State including one Amit Kumar Agrawal are apprehending certain orders and that’s why the petitioner has been trapped on the false allegation made by one Amit Kumar Agrawal. He also submits that one Sonu Agrawal has called the petitioner at Kolkata and through Sonu Agrawal, Amit Kumar Agrawal has come into the picture. He further submits that earlier Amit Kumar Agrawal and other interested persons tried to trap the petitioner in one or another case, only to take benefits of the implication in the proceedings of Public Interest Litigation and somehow succeeded to implicate this petitioner with the help of the other interested persons and

this petitioner was arrested in Hare Street P.S. Case No. 222 of 2022 on 31.07.2022. He submits that the admittedly nothing was recovered from the possession of this petitioner, but somehow in a very haste manner, the alleged trap was conducted without following the minimum requirement of the pre-trap or post-trap proceeding and the petitioner was remanded to Special Court at Kolkata. He further submits that even a preliminary enquiry has not been taken place before such remand. He submits that in very haste manner has been considered by the learned Special Court, while granting bail in Special Case No. 03 of 2022 (arising out of Hare Street P.S. Case No. 222 of 2022) vide order dated 12.09.2022. He took the court to the said order, annexed with the petition and submits that the considering this aspect of the matter, the learned court has granted bail to the petitioner on 12.09.2022. He submits that on the basis of the scheduled offence, the present case has been lodged by the ED and the petitioner has been taken into remand on 18.08.2022 virtually and physically on 28.08.2022. He submits that since the petitioner has already been granted bail in Hare Street P.S. Case No. 222 of 2022 and this case is arising out of the scheduled offence of that case, the petitioner may kindly be allowed on regular bail.

5. Learned counsel appearing for the petitioner submits that the alleged place of occurrence is shown as Quest Mall, Kolkata (West Bengal), whereas the case has been instituted in the Hare Street police station, which was not the jurisdiction of that police station and Amit Kumar Agrawal, who is having the close association with the officers of that police station and before trapping, the case has already been registered and thereafter the petitioner has been arrested at Quest Mall. He further submits that the ED has reported that it has come during investigation that the office and residence of Amit Kumar Agrawal have not come under the jurisdiction of the Hare Street police station at Kolkata. He further submitted the Amit Kumar Agrawal has been apprehended by the police and now he is jail custody in the present case. He draws the attention of the court to the application filed under Section 167 Cr.P.C. read with Section 65 and 19(3) of the PML Act, submitted by the ED before the learned Special Judge at Ranchi. By way of referring the paragraphs, he submits that the ED has also come to the conclusion that Amit Kumar Agrawal stated falsely in this complaint that Rajeev

Kumar assured him that he has lot of big contacts and by that he will keep the Government agencies silent against, if he will pay the bribe. By way of referring para-7 of the said application, he submits that Amit Kumar Agrawal himself influencing and offering bribe to Rajeev Kumar, who is also keen to accept the same. By way of referring para-8, he submits that it has come that it was alleged that several companies of Amit Kumar Agrawal were alleged to launder the black money for politicians and it has come in the said paragraph that Amit Kumar Agrawal was anticipating orders from High Court in the aforementioned PIL, foreseeing further investigation into his companies and only for that the petitioner has been trapped. He submits that he read the entire application of the ED and submits that Amit Kumar Agrawal has falsely implicated this petitioner in a trap. He further submits that the investigation has already been completed and chargesheet has also submitted and now the cognizance has also been taken and the petitioner is not a flight risk, as such he may kindly be allowed the regular bail, as he is a practicing advocate of this Court and he will not tamper with any evidence, if he is allowed regular bail.

6. Learned counsel appearing for the petitioner draws the attention of the court to the chargesheet, brought on record by the ED by way of filing counter affidavit and submits that it has come in the chargesheet at para-3.2 that Amit Kumar Agrawal has hatched a conspiracy and contacted this petitioner and influenced him to come to Kolkata. By way of referring para-6.1, he submits that one Vishnu Agrawal came to the house of the petitioner and told the petitioner that Sonu Agrawal wanted to talk to you. He submits that in the chargesheet, it has also come that Sonu Agrawal requested the petitioner to come to Kolkata for a discussion about a matter. The petitioner along with his son reached at Kolkata, thereafter the petitioner was asked to come to Quest Mall, Kolkata. The petitioner along with his son arrived at Quest Mall, Kolkata, where Sonu Agrawal requested him to meet Amit Kumar Agrawal, who was sitting in a Mercedes Car on the driver's seat. He further submits that the fact with regard to jurisdiction of the Hare Street police station has also come in the said chargesheet. By way of referring para-7.3, he submits that in the chargesheet, it has also come that Amit Kumar Agrawal with the help of acquainted Kolkata Police Officials,

outside their jurisdiction, trapped the petitioner. By way of referring para-7.7 of the chargesheet, he submits that the excerpt of the chats between Sonu Agrawal and Amit Kumar Agrawal has been stated therein. It has been stated herein that Amit Kumar Agrawal tricked Sonu Agrawal into bringing the petitioner to Kolkata, which is clear from the excerpts recorded in the said paragraph between the Sonu Agrawal and Amit Kumar Agrawal. In the chargesheet, it has come that on the scrutiny of the said conversation, the accused No. 1 (Amit Kumar Agrawal) initiating the discussions to take bribe. In para-7.17 of the said chargesheet, it has come that Amit Kumar Agrawal deliberately created a façade that he was coerced to give a bribe to the petitioner, but investigation revealed that he called him to Kolkata and voluntarily offered a bribe to him. He further submits that in so many words, it has also come that PC Act and the extortion under Section 384 IPC have not been attracted in the case in hand so far as this petitioner is concerned. He submits that the PML Act was examined recently by the Hon'ble Supreme Court in the case of ***Vijay Madanlal Choudhary & Ors. Versus Union of India & Ors.***, reported in 2022 SCC Online SC 929. Paras-253, 281, 400 and 401 of the said judgment are quoted hereinbelow:-

“253. Tersely put, it is only such property which is derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence can be regarded as proceeds of crime. The authorities under the 2002 Act cannot resort to action against any person for money-laundering on an assumption that the property recovered by them must be proceeds of crime and that a scheduled offence has been committed, unless the same is registered with the jurisdictional police or pending inquiry by way of complaint before the competent forum. For, the expression “derived or obtained” is indicative of criminal activity relating to a scheduled offence already accomplished. Similarly, in the event the person named in the criminal activity relating to a scheduled offence is finally absolved by a Court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of the criminal case (scheduled offence) against him/her, there can be no action for money-laundering against such a person or person claiming through him in

relation to the property linked to the stated scheduled offence. This interpretation alone can be countenanced on the basis of the provisions of the 2002 Act, in particular Section 2(1)(u) read with Section 3. Taking any other view would be rewriting of these provisions and disregarding the express language of definition clause “proceeds of crime”, as it obtains as of now.

281. The next question is: whether the offence under Section 3 is a standalone offence? Indeed, it is dependent on the wrongful and illegal gain of property as a result of criminal activity relating to a scheduled offence. Nevertheless, it is concerning the process or activity connected with such property, which constitutes offence of money-laundering. The property must qualify the definition of “proceeds of crime” under Section 2(1)(u) of the 2002 Act. As observed earlier, 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 crime properties. Indeed, in the event of acquittal of the person concerned or being absolved from allegation of criminal activity relating to scheduled offence, and if it is established in the court of law that the crime property in the concerned case has been rightfully owned and possessed by him, such a property by no stretch of imagination can be termed as crime property and ex-consequenti proceeds of crime within the meaning of Section 2(1)(u) as it stands today. On the other hand, in the trial in connection with the scheduled offence, the Court would be obliged to direct return of such property as belonging to him. It would be then paradoxical to still regard such property as proceeds of crime despite such adjudication by a Court of competent jurisdiction. It is well within the jurisdiction of the concerned Court trying the scheduled offence to pronounce on that matter.

400. It is important to note that the twin conditions provided under Section 45 of the 2002 Act, though restrict the right of the accused to grant of bail, but it cannot be said that the conditions provided under

Section 45 impose absolute restraint on the grant of bail. The discretion vests in the Court which is not arbitrary or irrational but judicial, guided by the principles of law as provided under Section 45 of the 2002 Act. While dealing with a similar provision prescribing twin conditions in MCOCA, this Court in Ranjitsing Brahmajeetsing Sharma⁶³⁴, held as under:

“44. The wording of Section 21(4), in our opinion, does not lead to the conclusion that the court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act. If such a construction is placed, the court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the applicant. Such cannot be the intention of the legislature. Section 21(4) of MCOCA, therefore, must be construed reasonably. It must be so construed that the court is able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. Similarly, the Court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in futuro must be an offence under the Act and not any other offence. Since it is difficult to predict the future conduct of an accused, the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence.

45. It is, furthermore, trite that for the purpose of considering an application for grant of bail, although detailed reasons are not necessary to be assigned, the order granting bail must demonstrate application of mind at least in serious cases as to why the applicant has been granted or denied the privilege of bail.

46. 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. However,

while dealing with a special statute like MCOCA having regard to the provisions contained in sub-section (4) of Section 21 of the Act, the court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. The findings recorded by the court while granting or refusing bail undoubtedly would be tentative in nature, which may not have any bearing on the merit of the case and the trial court would, thus, be free to decide the case on the basis of evidence adduced at the trial, without in any manner being prejudiced thereby”

(emphasis supplied)

401. We are in agreement with the observation made by the Court in Ranjitsing Brahmajeetsing Sharma⁶³⁵. 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 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 Prasad⁶³⁶, 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.

7. Learned counsel appearing for the petitioner submits that rigor of Section 45 of the PML Act is not attracted, so far as this petitioner is concerned and it is the discretion of the court to decide that the rigor has been made or not, in the light of Section 45(ii) of the PML Act. He submits that in the economic offence cases, the Hon’ble Supreme Court has interfered with the matter and granted bail to the accused persons. He relied in the case of ***P. Chidambaram Versus Directorate of Enforcement***,

reported in (2020) 13 SCC 791. He further submits that the case of *Ranjitsing Brahmajeetsing Sharma Versus State of Maharashtra & Anr.*, reported in (2005) 5 SCC 294 was considered by the Hon'ble Supreme Court in the case of *Vijay Madanlal Choudhary & Ors. (Supra)*. He submits that in the case of *Maharashtra Control of Organized Crime Act*, identical provision is there and discussion of this aspect in the case of *Ranjitsing Brahmajeetsing Sharma (supra)*, the bail has been granted, which has been considered by the Hon'ble Supreme court in the case of *Vijay Madanlal Choudhary & Ors. (Supra)*. Learned counsel appearing for the petitioner submits that Shiv Shankar Sharma has been granted anticipatory bail in the case of Kolkata by one of the Kolkata Court.

8. On these grounds, learned counsel appearing for the petitioner submits that the petitioner may kindly be enlarged on regular bail and the petitioner is ready with the condition, if the bail is granted to him by this Hon'ble Court.

9. Per contra, Mr. Anil Kumar, learned A.S.G.I. appearing for the ED submits that the petitioner has been apprehended with cash. By way of referring para-5.7 of the counter affidavit, filed by the ED, he submits that it has come that the petitioner was approached by Amit Kumar Agrwal through one Sonu Agrawal and Sonu Agrawal contacted the petitioner through Vishnu Agrawal and requested the petitioner to come to Kolkata as Amit Kumar Agrawal wanted to meet him in reference to one PIL, pending before the Jharkhand High Court, Ranchi, wherein he is being linked with Chief Minister of Jharkhand, Shri Hemant Soren. All the arrangement for his air tickets, stay at Kolkata and a vehicle at Kolkata Airport was arranged by Sonu Agrawal. He further submits that on 13.07.2022, the petitioner met Amit Kumar Agrawal on the 3rd floor of the Quest Mall and during the meeting, the petitioner agreed to give relaxation to Amit Kumar Agrawal in W.P. (PIL) No. 4290 of 2021 and in lieu of that the money was offered, which was the proceeds of crime, in view of Section 2(1)(u) of the PML Act. By way of drawing the attention of the court towards para-6.8 of the counter affidavit, he submits that the ED has accessed the video footage of the incident, from where, the petitioner can be clearly seen to have been receiving the cash and getting trapped red handed. He submits in view of above, the contention of the petitioner is not correct. By way of referring para-6.10 of the counter affidavit, he

submits that the petitioner acquired proceeds of crime amounting to Rs. 50 lakhs from Amit Kumar Agrawal, with intention to compromise the *PIL in question*. He refers to para-269 of the judgment rendered in *Vijay Madanlal Choudhary & Ors. (Supra)* and submits that it has been held that process or activity in any form is one of the concealment, possession, acquisition, use of proceeds of crime as much as projecting it as untainted property or claiming to be so. Relying on this paragraph, he submits that even assuming for the time being that Section 7 of the Prevention of Corruption Act is not attracted, Section 384 IPC is also there and the same is also a scheduled offence, prescribed under the PML Act. He further submits that however, these are the subject matter of trial and the petitioner does not deserve the regular bail.

10. In view of the above facts and submissions of the parties, the court has gone through the materials available on record and finds that ECIR Case No. 5 of 2022 was registered against the petitioner, as in view of the fact that he was trapped in Hare Street P.S. Case No. 222 of 2022 on 13.07.2022 with the allegation that he has received an amount of Rs. 50 lakhs by one Amit Kumar Agrawal for managing the PIL. Thereafter, the petitioner was already in custody in that case with effect from 31.07.2022. The petitioner was remanded virtually on 18.08.2022 and physically on 28.08.2022 in ECIR Case No. 5 of 2022 before the learned Special Judge, under the PML Act, Ranchi. On perusal of the report, filed under Section 167 Cr.P.C. read with Sections 65 and 19(3) of PML Act by the ED before the learned Special Judge, PML Act, Ranchi, it transpires that in course of investigation, ED came to the conclusion that Amit Kumar Agrawal contacted the petitioner with the help of Sonu Agrawal and Amit Kumar Agrawal falsely stated in the complaint to the police that the petitioner has contacted him for settling the PIL. It has come in the said report that no court official or government official name has been taken either by Amit Kumar Agrawal or by this petitioner. In para-7 of the said report, it has come that Amit Kumar Agrawal himself tried to influence the petitioner. It has been revealed in the said report that Amit Kumar Agrawal hatched the conspiracy for trapping the petitioner to frustrate the PIL. It has also come that with the help of acquainted police officials, Amit Kumar Agrawal hatched the conspiracy. It has also come in para-8 that Amit Kumar Agrawal knowingly register the FIR under the PC Act, in order to show

that the PIL was the result of conspiracy between the petitioner and others. It has also come that in anticipation that the shell companies of Amit Kumar Agrawal have been enquired into by the ED, that's why this petitioner has been implicated in this case. It has also come that Amit Kumar Agrawal has tried to falsely coerce this petitioner. In para-17 of the said report, it has come that the name of Amit Kumar Agrawal cropped up in the investigation of illegal mining case, having proceeds of crime of more than Rs. 1000 cores. It has also come that a substantial portion of this proceeds of crime was being laundered through the companies of Amit Kumar Agrawal and he was working for larger sinister design for getting larger benefit out of it by sacrificing the petitioner under the ambit of law involving extortion and bribing. These all facts have come in the report submitted by the ED before the Special Court at Ranchi.

11. Annexure-C is the chargesheet filed under Section 173(2) of Cr.P.C. to the counter affidavit filed on behalf of the ED. The Court has perused the said chargesheet and the same was also placed by the learned counsel appearing for the petitioner, who is arguing on behalf of the petitioner for seeking regular bail for the petitioner. In the chargesheet, it has come that Amit Kumar Agrawal has hatched the conspiracy and contacted Rajeev Kumar with the help of Sonu Agrawal to come to Kolkata. In para-6.1 of the said chargesheet, it has come that Sonu Agrawal has stated that his friend Amit Kumar Agrawal is in a problem in the matter of PIL, filed before the High Court with respect to corruption matter, who is linking with the Chief Minister of Jharkhand and he wanted to meet the petitioner. The petitioner-Rajeev Kumar has disclosed, which has come in the chargesheet that the police has continuously pressurizing him to say that he extorts money from the government officials. He was also pressurized to accept that he was extraneous connections with the ED officials. Thus, it appears that allegation has been against the ED officials to malign the reputation by one Amit Kumar Agrawal. What has been discussed above, with regard to the report under Section 167 Cr.P.C. as well as Section 65 and 19(3) of PML Act that has been more elaborately incorporated in the chargesheet. Thus, it has been disclosed from the fact that the police officials has influence with said Amit Kumar Agrawal and lodged the Hare Street P.S. Case No. 222 of 2022 against the petitioner and one Shiv Shankar Sharma. The statement of Sonu Agrawal was

recorded, wherein he has stated that he was shocked and shouted upon Amit Kumar Agrawal knowing that he had made a trap for Rajeev Kumar. It has come in the chargesheet at para-7.2 that accused No. 1 Amit Kumar Agrawal drafted a misleading complaint and frivolously linked the accused No. 2 Rajeev Kumar and Shiv Shankar Sharma and the only *mens rea* behind this was to check and hamper the ongoing PIL for his gain by Amit Kumar Agrawal and for that he withdrew the amount of Rs. 60 lakhs from his bank account, out of which Rs. 50 lakhs was used to trap the petitioner. In para-7.3, it has come that a trap was made with the assistance of certain acquainted Kolkata police officials outside their jurisdiction, with the sole objective to trap the petitioner. It has also come in the said para that Amit Kumar Agrawal filed the complaint and FIR has been lodged in a police station outside the limits of his residence as well as his office without any due diligence. That chats between the Amit Kumar Agrawal and Sonu Agrawal has been discussed in para 7.7 of the chargesheet, which has been accepted by Amit Kumar Agrawal that the said chat was of 07.10.2022. Amit Kumar Agrawal concealed before the ED and cooked the story of threat or fear from the petitioner, which has come in para-7.16 of the said chargesheet. It has further been disclosed that the said case of bribery is nothing but to invoice Government Agencies in trouble and motivated by the anticipated legal benefit in W.P.(PIL) No. 4290 of 2019. It has also come that the name of Amit Kumar Agrawal was cropped up in investigation in the illegal mining case under reference No. ECIR 04/2022 (ECIR RNZO/03/2022 dated 08.03.2022) having proceeds of crime more than Rs. 1000 Crores. It *prima facie* suggests that Amit Kumar Agrawal has hatched the conspiracy not against the petitioner, but against the ED officials as well as Government officials and judiciary, which is a serious matter. It is expected that this allegation will be investigated by investigating agencies. Amit Kumar Agrawal has been made accused in this case and taken into custody and still he is in judicial custody.

12. The rigor of Section 45 of the PML Act has not *res integra*, as has been held by the Hon'ble Supreme Court in the case of ***Gautam Kundu v. Directorate of Enforcement***, reported in (2015) 16 SCC 1, wherein the Hon'ble Supreme Court has occasioned to examine paragraph Nos.28 to 30, which reads as under:-

“28. Before dealing with the application for bail on merit, it is to be considered whether the provisions of Section 45 of PMLA are binding on the High Court while considering the application for bail under Section 439 of the Code of Criminal Procedure. There is no doubt that PMLA deals with the offence of money-laundering and Parliament has enacted this law as per commitment of the country to the United Nations General Assembly. PMLA is a special statute enacted by Parliament for dealing with money-laundering. Section 5 of the Code of Criminal Procedure, 1973 clearly lays down that the provisions of the Code of Criminal Procedure will not affect any special statute or any local law. In other words, the provisions of any special statute will prevail over the general provisions of the Code of Criminal Procedure in case of any conflict.

29. Section 45 of PMLA starts with a non obstante clause which indicates that the provisions laid down in Section 45 of PMLA will have overriding effect on the general provisions of the Code of Criminal Procedure in case of conflict between them. Section 45 of PMLA imposes the following two conditions for grant of bail to any person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule to PMLA:

- (i) That the prosecutor must be given an opportunity to oppose the application for bail; and*
- (ii) That the court must be satisfied that there are reasonable grounds for believing that the accused person is not guilty of such offence and that he is not likely to commit any offence while on bail.*

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.”

13. Rigor of Sub-Section-(i) of Section 45 of PML Act is not in dispute, the court comes to a conclusion either to allow or reject the bail, these two conditions are required to be followed. ED has been provided full opportunity to oppose the bail. *Prima facie* the records are required to be considered for believing that the accused persons are not guilty of such offence and that he is not likely to commit any offence while on bail. Proviso to said Section speaks of granting bail, if it is less than Rs. 1 crore. In the case of ***P. Chidambaram (Supra)***, the bail aspect has been considered in para-22 and 23 of the said judgment, which is quoted hereinbelow:-

“22. The learned senior counsel for the appellant has also placed reliance on the decision on the decision in the case of Sanjay Chandra vs. CBI, (2012) 1 SCC 40 with specific reference to paragraph 39 which reads as hereunder:

“ Coming back to the facts of the present case, both the courts have refused the request for grant of bail on two grounds: the primary ground is that the offence alleged against the accused persons is very serious involving deep-rooted planning in which, huge financial loss is caused to the State exchequer; the secondary ground is that of the possibility of the accused persons tampering with the witnesses. In the present case, the charge is that of cheating and dishonestly inducing delivery of property and forgery for the purpose of cheating using as genuine a forged document. The punishment for the offence is imprisonment for a term which may extend to seven years. It is, no doubt, true that the nature of the charge may be relevant, but at the same time, the

punishment to which the party may be liable, if convicted, also bears upon the issue. Therefore, in determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration.”

The said case was a case of financial irregularities and in the said circumstance this Court in addition to taking note of the deep-rooted planning in causing huge financial loss, the scope of consideration relating to bail has been taken into consideration in the background of the term of sentence being seven years if convicted and in that regard it has been held that in determining the grant or otherwise of bail, the seriousness of the charge and severity of the punishment should be taken into consideration.

23. Thus from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of “grave offence” and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic

offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provides so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case to case basis on the facts involved therein and securing the presence of the accused to stand trial.”

14. The petitioner is a practicing advocate, in that circumstance, the liability of the petitioner for further investigation, interrogation and facing trial is not jeopardized and he is already held to be not at ‘flight risk’ and there is no possibility of tampering the evidence or influencing / intimidating the witnesses, as has been submitted by the Mr. Nilesh Kumar, learned counsel appearing for the petitioner. It has been reported that in Hare Street P.S. Case No. 222 of 2022, the petitioner has already been granted bail and this case has been registered on the basis of that case, which is in view of the provisions of PML Act and the offence is also coming under the scheduled offence.

15. Considering all these aspects of the matter including the duration of custody of the petitioner in the present case, as he is in jail custody since 18.08.2022, the court comes to a conclusion that he is entitled to be granted bail.

16. What has been discussed hereinabove is only for consideration of bail and the opinion of this court shall not be treated on merit and all the contentions of the parties are left open for the evidence in course of trial.

17. For the reasons and analysis given hereinabove and considering the materials available on record, which has come in the report as well as chargesheet, the court is inclined to grant regular bail to the petitioner.

18. Accordingly, the petitioner is directed to be released on regular bail, on furnishing bail bond of Rs.1,00,000/- (Rupees one lakh) with two sureties of the like amount each to the satisfaction of learned A.J.C.-XVIII-cum-Special Judge, Prevention of Money Laundering Act,

Ranchi, in connection with ECIR Case No. 05 of 2022, subject to the condition that (i) he will deposit the *Passport* before the concerned Court and shall remain in deposit with the concerned court, (ii) the petitioner shall not leave the country without specific orders to be passed by the learned Special Judge and with the further condition that the petitioner shall made himself available for interrogation in course of further investigation, as and when required, (iii) the petitioner shall not tamper with the evidence or make attempt to intimidate or influence the witnesses.

19. Mr. Anil Kumar, learned A.S.G.I. appearing for the ED submits that finding in the judgment may not have a bearing qua to the other accused.

20. In view of such submission, it is needless to say that the findings in the present order, shall not have any bearing qua to the other accused in the case and the same shall be considered independently on its own merit.

21. This petition is disposed of as such.

(Sanjay Kumar Dwivedi, J.)

Amitesh/-