



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

% **Date of order : 9th June 2023**

+ **BAIL APPLN. 2030/2023, CRL. M.A. No. 16388- 89/2023**

BASANT BANSAL Applicant

Through: Dr.Abhishek Manu Singhvi with
Mr.N. Hariharan, Sr. Advocates
with Ms.Sonali Jaitley Bakshi,
Mr.Jayesh Bakshi, Mr.Vijay Nair,
Mr.Sanjay Abbot, Mr.Rajat Juneja,
Mr.Ravi Tyagi, Mr.Mayank
Mishra, Ms. Manmilan Sidhu,
Mr.Ankit Tyagi and Ms. Sudiksha
Saini, Advocates.
Mr. Manoranjan Sharma,
Mr.Anmol Kumar with Mr.Saqib
Ansari, Advs. for applicant

versus

**STATE (GOVT. OF NCT OF DELHI)
& ORS.**

... Respondents

Through: Mr.Zoheb Hossain, Spl. Counsel
for ED with Mr.Vivek Gurnani,
Mr.Hasnain Khawaja, Mr. Kartik
Sabharwal Advocates with
Mr.Saket Singh, DD, ED.

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The Applicant has approached this Court inter alia seeking anticipatory bail since the Applicant apprehends his arrest in connection



with ECIR No. F. No. GNZO/10/2021 (hereinafter to be referred as “ECIR”) dated 15th June 2021 registered by the Enforcement Directorate (‘ED’) under Section 3 and Section 4 of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as “PMLA”).

FACTUAL MATRIX

2. The background of the matter is that between the period of years 2018-2020, 13 FIRs were registered by certain allottees of two separate residential projects, ‘Skyon’ and Floors, plots and Villas, undertaken by the IREO Group, i.e., M/s IREO Pvt. Ltd. and M/s IREO FiveRiver Pvt. Ltd., respectively, on the ground of delay in handing over/delivery of possession of apartments/ commercial units. There were no specific allegations against the Applicant, his family members, the M3M Group or any of its entity in the said FIRs.

3. While investigation into the said FIRs against the IREO Group of Companies, the Respondent/ED came to register the ECIR No. F.No.GNZO/10/2021 on 15th June 2021. In this ECIR as well, the applicant or the M3M Group of Companies were not arrayed as accused and no allegations were levelled against them.

4. Thereafter, on 14th January 2022, the Respondent filed a Prosecution Complaint bearing registration No. 01/2022 titled ‘*Asst. Director, Directorate of Enforcement vs. Lalit Goyal & Ors*’ against 7 accused under Section 200 of the CrPC and Section 44 and 45 of the PMLA for offences under Section 3 read with Section 70 punishable



under Section 4 of PMLA and subsequently, the number of FIRs also raised from 13 to 30.

5. On 21st January 2022, the learned Special Judge (PMLA), Panchkula, Haryana took cognizance of the Prosecution Complaint filed by the respondent.

6. On 12th May 2023, the Respondent issued summons no. PMLA/SUMMON/GNZO/2023/439 to the M3M India Pvt. Ltd. calling upon it to appear to provide information and documents pertaining to transactions of M3M with certain companies. A summon was also issued to the applicant herein directing him to appear in person on 29th May 2023 at 10:30 AM at the ED office in New Delhi, in the capacity of authorized representative.

7. On 1st June 2023, the Respondent along with other officials carried out raised on properties belonging to the M3M and its Group Companies including the undernamed premises:

- a. Registered office at M3M IFC, Tower A, Sector 66, Gurugram.
- b. CRM Office at M3M, UBP, 7th Floor, Sector 67, Gurugram.
- c. Head Office of Smart World at M3M IFC, Tower-B, Sector 66, Gurugram (Group Company of M3M).
- d. Residential premises of the Applicant and other family members being 31st, 32nd and 34th Floors, St. Andrews, Sector



65, M3M Golf Estate, Medawas (85), Gurugram, Haryana -
122101.

8. In pursuance of the raids and inquiry, the respondent also seized numerous assets, including cars, cash, jewellery etc. and also issued letters to bankers of M3M and its Group Companies directing that various bank accounts of the Company and its group concerns be marked as 'debit freeze' accounts.

9. Thereafter, fresh summons were issued by the Respondent/ED bearing F. No. ECIR/GNZO/10/2021/006 dated 6th June 2023 to the applicant seeking his personal experience on 7th June 2023.

10. The Applicant, along with Roop Kumar Bansal and Pankaj Bansal and M3M, through its authorized representative, approached this Court under Article 226 of the Constitution of India in W.P. (Crl) No. 1751/2023 seeking protection against the respondent.

11. The Applicant received summons from the respondent on 7th June 2023 for appearance on the same day and thereafter, for appearance on 8th June 2023. The summons were also received by Roop Kumar Bansal for appearance on 8th June 2023 who was arrested and detained when he appeared before the respondent.

12. Therefore, the applicant has grave apprehension that the respondent will arrest him as well in relation to the above said cases.

SUBMISSIONS

(On behalf of the Applicant)



13. Dr. Abhishek Manu Singhvi, learned Senior Counsel appearing on behalf of the Applicant contended that under Section 438 of the Cr.P.C. that there is a concurrent jurisdiction casted upon the Court of Session and High Court. The Concurrent jurisdiction does not bar the applicant from approaching High Court first. It is submitted that the parallel has been drawn from the writ jurisdiction which is concurrent under Article 32 of the Constitution of India to approach the Hon'ble Supreme Court and under Article 226 of the Constitution of India to approach High Court. The petitioner can approach the Court under Article 32 of the Constitution of India directly to Hon'ble Supreme Court or to High Court under Article 226 of the Constitution of India. There is no such impediment for the petitioner to approach the Supreme Court directly under Article 226 of the Constitution of India.

14. It is contended that the ECIR was lodged in the year 2021 and after a gap of almost 2 years, the respondent has commenced a relentless hunt to falsely implicate the Applicant and his family members.

15. The Applicant duly responded to the summons by submitting his response dated 29th May 2023 and duly participated in the investigation. Despite all information having been provided, on 01st June 2023, the Respondent along with other officials carried out illegal raids on the following addresses belonging to the M3M and its group companies:

- a. Registered office at M3M IFC, Tower A, Sector 66, Gurugram.
- b. CRM Office at M3M, UBP, 7th Floor, Sector 67, Gurugram.



c. Head Office of Smart World at M3M IFC, Tower-B, Sector 66, Gurugram (group company of M3M).

d. Residential premises of the Applicant and other family members being 31st, 32nd and 34th Floors, St. Andrews, Sector 65, M3M Golf Estate, Medawas (85), Gurugram, Haryana - 122101.

16. It is submitted that throughout the course of the unlawful search and seizure, numerous senior employees of M3M were kept under illegal confinement from 01st June 2023 to 4th June 2023 by the officials of the Respondent.

17. It is submitted the officials of the respondent without complying with the procedure prescribed under the PMLA for Search and Seizure seized numerous valuable items including cars, electronic devices, jewelry, cash, without any reason to believe that the same were proceeds of crime or in any way connected with the transaction under investigation.

18. It is submitted that the items and valuables so seized by the Respondent and their officials are not proceeds of crime and have no connection with the subject ECIR. It is further submitted that none of the goods/ valuables/ accounts frozen or seized by the Respondent personally belong to the Applicant. It is submitted that this is wholly unlawful as the Respondent overreached and even froze the bank accounts of group entities which had nothing to do with any of the allegations made in the subject ECIR.



19. It is contended that the Respondent issued a press dated 05th June 2023 alleging that money had been siphoned off through the M3M Group of companies and that incriminating evidence had been discovered during search / seizure. However, this is totally contradictory to the seizure memos where no such observation is recorded and only demonstrates the predetermined manner in which the Respondents are operating.

20. It is submitted that Mr. Yateesh Wahaal, having been duly authorized by the Applicant, appeared before the Respondent on 6th June 2023 at its office in New Delhi in compliance with the summons issued to the Applicant dated 4th June 2023, directing to appear, '*in person or through its authorized representative*'. However, the Respondent took strong exception to the fact that the Applicant was represented by an authorized representative and had not appeared personally, despite the summons clearly permitting appearance through an authorized representative. It is submitted that the Applicant has not been arrayed as an Accused in the proceedings pertaining to predicate offences nor has been arrayed as an Accused in the prosecution complaint regarding scheduled offences made by the Respondent and hence, any proceedings under the PMLA are wholly illegal, unlawful and non-est in the eyes of law. Without any link to the scheduled or predicate offences, no proceedings under the PMLA lie against the Applicant herein and in fact, the PMLA cannot be invoked to curtail or otherwise restrict the liberty of the Applicant herein.



21. In utter haste and to mount pressure, the Respondent issued fresh summons dated 6th June 2023 to the Applicant seeking his personal appearance at its Delhi office on 7th June 2023 at 11:00 AM and specifically striking off the ability to send an authorized representative. It is submitted that the Applicant is already terrorized and agonized by the arbitrary conduct of the Respondent as around 20 officials of Respondents had arrived at the residence of the Applicant to serve the summons.

22. It is submitted that on 7th June 2023, the Applicant received summons from the Respondent for appearance before it on 8th June 2023 at 11:00 AM for recording his statement. It is submitted that similar summons for appearance on 8th June 2023 at 11:00 AM were also received by Mr. Roop Kumar Bansal for recording his statement. In response to the aforesaid summons, Mr. Roop Kumar Bansal appeared before the Respondent on the said day at 11:00 AM sharp to join investigation. However, Mr. Roop Kumar Bansal was detained and arrested at 11:00 AM itself. It is submitted that the Respondent in order to show that the documents/statement were given voluntarily by Mr. Roop Kumar Bansal has deliberately shown the arrest at about 9:30 PM on 8th June 2023.

23. It is submitted that the Applicant has offered his complete and earnest cooperation to the Respondent since the registration of the ECIR till date and no allegation of non-cooperation of any kind has been made by the Respondent herein.



24. It is submitted that the Applicant has neither any proceeds of crime nor any property in this regard and hence there is no reason to curtail his civil liberties or take coercive action against him for the same. the applicant undertakes to abide by all conditions imposed upon him by this Hon'ble Court or any other Court in light of the conditions of Section 438 of Cr.P.C.

25. It is further submitted that there is no need for the twin conditions under the Section 45 of PMLA are not attracted against the Applicant herein in the given fact and circumstances and in light of the judgment of this Court in *Vijay Agrawal through Parokar v. Directorate of Enforcement (Bail Application No. 1762/2022)* dated 29th May 2023. The petitioner has placed reliance on the judgment of *Sanjay Raghunath Aggarwal v. Directorate of Enforcement, Crl. Appl. 1198 /2023* dated 20th April 2023

26. It is submitted that Section 438 of the Cr.P.C. seeks to protect the personal liberty of an individual which is a component of the right to life and liberty under Article 21 of the Constitution. Therefore, anticipatory bail is a statutory right in consonance with the Right to life and personal liberty under Article 21 of the Constitution of India. Hence, if the Applicant is arrested, it shall be in direct violation of his fundamental right under Article 21 of Constitution of India.

27. The learned senior counsel submitted that the primary accused in the matter, Lalit Goel, the promoter of IREO Group has already been



granted regular bail in the matter on 24th April 2022 and the same has not been challenged by the respondent.

28. It is submitted that the Applicant apprehends that whilst offering cooperation to the Respondent, he will be arrested in the same illegal and unlawful manner as his brother was arrested and hence the Applicant is constrained to approach this Court, by way of the present Application filed under Section 438 read with Section 482 of Cr.P.C. apprehending arrest.

(On behalf of the Respondent)

29. *Per Contra*, Mr Zoheb Hossain, appearing on behalf of the respondent vehemently opposed the instant bail application and contended that the Applicant should have approached the Court of Sessions first for the purpose of Anticipatory Bail.

30. Learned Counsel for the respondent relying on the judgment of ***Harendra Singh v. State of Uttar Pradesh, 2019 SCC OnLine All 4571*** para 21, which was subsequently relied on by the Larger Bench of Allahabad High Court in ***Ankit Bharti and Ors. v. State of U.P, MANU/UP/0498/2020*** to contend that the bail application filed under Section 438 of the Cr.P.C. is not maintainable before the High Court without exhausting the remedy before the Court of Sessions which has concurrent jurisdiction. It is only in exceptional or extraneous circumstances the applicant should approach the High Court directly under the said provision It further relied on the judgment of ***Monu Kapoor v.***



Directorate of Revenue, 2019 SCC OnLine Del 11829 by this Court to bolster its argument.

31. It is submitted that it was claimed that M3M group, through its flagship company M/s Misty Meadows Pvt. Ltd, owned 78 acres of land (market value of Rs. 4 crore) at Bhiwadi, Rajasthan and the said development rights of the 78 acres land were transferred to the below mentioned five different companies;

A1. M/s Innovative Realtech Pvt. Ltd.

A2. M/s Cygnus Propbuild Pvt. Ltd.

A3. M/s Aadi Buildwell Pvt. Ltd.

A4. M/s Base Realtors Pvt. Ltd.

A5. M/s Vision Multiplex Pvt. Ltd.

32. It is further submitted that in return of such transfer of agreement, M/s Misty Meadows Pvt. Ltd. received Rs. 2 crore from each of the above 05 entities. Such arrangement took place claiming that the above companies are different from M3M group. During the investigation, it was observed that these entities are shell companies and related to M3M Group. The same development rights received from M3M group company were thereafter, transferred by these five companies to the 10 IREO Group companies for which they received the following payments at artificially inflated value for development of the said land from those 10 IREO Group companies which in turn had received the said amount from M/s IREO Pvt. Ltd. It is also submitted that upon investigation and the search and seizure, huge amounts of funds were recovered.



33. It is submitted that the 10 IREO group companies had received huge amounts from its flagship company, namely M/s IREO Pvt. Ltd. From 13th October 2010 to 23rd March 2011. In addition to the above, it is identified that M/s Base Realtors Pvt. Ltd. received another Rs. 08 crore from another IREO group company, namely M/s Mews Conbuild Pvt. Ltd. It is further submitted that during investigation no agreement was submitted / identified, but money trail shows the receipt of such amount on 30th March 2011 and 31st March 2011. This enormous fund was later on transferred to M/s Grand Realcon Pvt. Ltd. on 06th April 2011.

34. It is submitted that in the similar way huge amounts were diverted for the development rights of a land which could not be developed for commercial purposes and it was never intended to be developed as IREO did not apply for any licenses, no designs were prepared, no employees were hired for the project.

35. It is further contended that huge amounts were diverted to M3M group companies after layering of funds. The diversion of fund took place in 17 companies, 10 of which M3M during investigation accepted to be its own / related entities while denied / did not mention for the other 07 companies. During investigation the remaining 07 companies were also proven to be M3M group companies.

36. It is submitted that during investigation, it was *inter-alia* revealed that all the companies through which funds were routed by IREO group to M3M group are shell companies owned / controlled / managed by M3M group and its controllers only.



37. It is submitted that upon further investigation, survey proceedings under Section 16 of PMLA, 2002 were also carried out at the business premises of the 09 shell entities wherein it was revealed that these entities are shell companies without any business and their offices are in a single narrow room managed by 1-2 persons. None of the Directors of the entity, books of accounts, employee or any other infrastructure was found to be present during the survey operations as well as one of the premise was found to be closed for last few days which clearly shows the entities as shell companies with no actual business.

38. It is submitted that during investigations, summons to the purported Directors / Authorised Signatories were issued and served but remained non-complied / non-attended. From discreet enquiry / the sources, it came to knowledge that all the Summons were finally destined to M3M Group by hand pickup and delivery. Summons to the controllers / Directors / ex-Directors of M3M group, namely Basant Bansal and Roop Kumar Bansal, were also issued but remain non-complied.

39. It is submitted that statement of a person named Mr. Satyawan S/o Sadharam who worked as Patwari with M3M Group during the period 2009-2013 and was appointed as Director / Authorised Signatory of following companies by the senior authorities of M3M group. M/s Innovative Realtech Pvt. Ltd., M/s Cygnus Propbuild Pvt. Ltd., M/s Aadi Buildwell Pvt. Ltd., M/s Vision Multiplex Pvt. Ltd., M/s Focus Realcon Pvt. Ltd. and M/s Sunrise Propbuild Pvt. Ltd. It is contended that in the statement, he submitted to have been just following the directions of



Senior Officers of M3M Group and signed papers, cheques on their directions in his capacity as Director / Authorised Signatory. His salary slip issued by M/s M3M India Limited in support of his employment with M3M group companies for the Month of June, 2012 & October, 2012.

40. It is submitted that there are 17 companies in which the funds amounting to Rs. 404 crores were received by M3M flagship / related companies. It is submitted that 10 of which were accepted by the M3M group in their submissions dated 2nd May 2022 and 18th May 2023. The remaining 07 companies though not admitted / denied by the M3M group as their related entity, yet on investigation they were identified to be linked / related company of the M3M group.

41. It is submitted that the ownership / control / linkage of the M3M group over the above 07 entities had been denied by M3M Group in its submission dated 2nd May 2022 and statement dated 18th May 2023 by Mr. Yateesh Wahaal, Director Finance, M3M Group indicated that M3M Group has made efforts to hide the facts / provide incorrect facts to this office and tried to mislead the investigation. It is submitted that there is a key involvement in Money Laundering with Mr. Lalit Goyal of IREO group as upto date no project has ever been started or completed as per the agreement for transfer of development rights and there was never an intention-to develop the land but whole transaction done merely to divert huge investors/customers funds from IREO Group to M3M Group by layering through shell companies which itself were controlled / owned / managed by M3M group.



42. It is submitted that Mr. Basant Bansal and Mr. Roop Kumar Bansal founded M/s M3M India Limited in Gurgaon in 2010 which was admitted by Mr. Roop Kumar Bansal in his statement dated 23rd December 2021. It is further submitted that the records of the said entity for FY 2010-11 shows Mr. Basant Bansal as Managing Director and Mr. Roop Kumar Bansal as Director along with other family members also as Directors who were indulged in the diversion of the funds from the IREO group.

43. It is submitted that for verification of the above facts and findings, the key managerial persons of the M3M group, including Basant Bansal, Roop Kumar Bansal, Pankaj Bansal and other office bearers of the M3M group did not join the investigation during the course of the search proceedings.

44. It is submitted that summons dated 04th June 2023 and 06th June 2023 were served to Basant Bansal and Roop Kumar Bansal but they are yet to join investigation before the Directorate. It is further submitted that summons dated 07th June 2023 was served to Basant Bansal and Roop Kumar Bansal and Roop Kumar Bansal appeared on 8th June 2023 and he was arrested on 08th June 2023. However, Basant Bansal is yet to join investigation and his reply of summon dated 12th May 2023 vide letter dated 29th May 2023 submitted that he was neither involved in day to day affairs of M/s M3M India Private Limited nor a director or held any managerial position with the company. It is submitted that on scrutiny of MCA records, it is observed that Mr. Basant Bansal was director of M/s



Tremendous Comped Private Limited (Now M3M India Private Limited) till 08th December 2010 and he was also one of the shareholders in M/s Misty Meadows Private Limited as on 31st March 2011. It is submitted that the transactions were made between. 13th October 2010 to 23rd March 2011

45. It is thus contended that is clear that he was trying to evade the information and misleading the investigation. He has failed to join the investigation in compliance with the summons dated 4th June 2023, 06th June 2023 and 7th June 2023.

46. It is contended that the twin test under Section 45 of the PMLA needs to be satisfied even during the granting of anticipatory bail. The respondent has relied on the judgment of the Hon'ble Supreme Court in the case of ***Directorate of Enforcement v. Gopal Reddy (Crl. Appeal 534/2023)*** dated 24th February 2023, wherein it was held as follows:

“6.2 While granting the anticipatory bail, what is weighed with the High Court and what is observed by the High Court is as under: - “A careful reading of the aforesaid legal position and in the light of the circumstances of the case on hand, which clearly indicates that the 1st respondent has a doubt regarding the involvement of the petitioner in commission of the crime and he is being summoned for disclosure and in case of his non-disclosure of any material, on the pretext of non-co-operation, the 1st respondent may proceed to arrest him. The petitioner is a retired employee aged about 60 years and is a permanent resident of Hyderabad, Further, major part of the investigation has been completed with



respect to the incriminating documents and digital devices, which have already been seized. Hence, there may not be a chance of tampering with the investigation at this stage, because as rightly pointed out by the learned Senior Counsel for the petitioner that a criminal case has already been filed against the other accused and the same is pending before the Special Court at Bhopal.”

6.3 From the aforesaid, it can be seen that the High Court has not at all considered the nature of allegations and the seriousness of the offences alleged against respondent No. 1. As per the catena of decision of this Court, more particularly, observed in the case of P. Chidambaram (supra) in case of economic offences, which are having an impact on the society, the Court must be very slow in exercising the discretion under Section 438 of Cr.PC.

7. Considering the overall facts and circumstances of the case and the reasoning given by the High Court and as observed hereinabove, the rigour of Section 45 of the Act, 2002 shall be applicable even with respect to the application under Section 438 Cr.PC and therefore, the impugned judgment and order passed by the High Court granting anticipatory bail to respondent No. 1 herein in connection with F. No. ECIR/HYZO/36/2020 dated 15.12.2020 is unsustainable. Consequently, the impugned judgment and order passed by the High Court granting anticipatory bail to respondent No. 1 is hereby quashed and set aside. Respondent No. 1 be dealt with in accordance with law. However, it is observed and made clear that after respondent No. 1 is arrested, if he files any regular bail



application, the same be considered in accordance with law and on its own merits and considering the material collected during enquiry/investigation of the case. Present appeal is accordingly allowed. No costs.”

47. The respondent to further bolster its argument has relied on the case of ***Vijay Madanlal Choudhary and Others v. Union of India and Others, 2022 SCC OnLine 929***, wherein in was held as follows:

“411. Suffice it to observe that it would be preposterous and illogical to hold that if a person applies for bail after arrest, he/she can be granted that relief only if the twin conditions are fulfilled in addition to other stipulations predicated in the 1973 Code; but another person, who is yet to be arrested in connection with the same offence of money-laundering, will not be required to fulfil such twin conditions whilst considering application for grant of bail under Section 438 of the 1973 Code. The relief of bail, be it in the nature of regular bail or anticipatory bail, is circumscribed by the stipulations predicated in Section 45 of the 2002 Act. The underlying principles of Section 45 of the 2002 Act would get triggered in either case before the relief of bail in connection with the offence of money-laundering is taken forward. Any other view would be counterproductive and defeat the purposes and objects behind the stringent provision enacted by the Parliament for prevention of money-laundering and to combat the menace on account of such activity which directly impacts the financial systems, including the sovereignty and integrity of the country.



412. As a result, we have no hesitation in observing that in 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.

413. There is, however, an exception carved out to the strict compliance of the twin conditions in the form of Section 436A of the 1973 Code, which has come into being on 23.6.2006 vide Act 25 of 2005. This, being the subsequent law enacted by the Parliament, must prevail.”

48. Therefore, it is submitted that the Applicant is not entitled for any interim protection.

ANALYSIS AND CONCLUSION

49. It has been contended by the respondent that there the Applicant should have approached the Court of Sessions first for the Bail Application.

50. Before delving into the analysis, the relevant portion of Section 438(1) of CrPC has been reproduced below to enunciate the scope of jurisdiction of this Court for entertaining the Anticipatory Bail:

“438. Direction for grant of bail to person apprehending arrest.



(1) When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.”

51. It is clear upon perusal of Section 438(1) of Cr.P.C, that the provision gives concurrent jurisdiction to both the Court in entertaining an Anticipatory Bail Application. There is no bar on approaching this Court directly under Section 438 of CrPC for the purpose of bail. It is discretionary for the Applicant either to approach the High Court or the Court of Session. There is no restraint cast upon the Applicant to approach this Court first. It is based upon the discretion of the Applicant which Court they want to approach since both the Court have concurrent jurisdiction and the same cannot be restricted by construing the provision of Section 438 of Cr.P.C. narrowly. Section 438 is a procedural provision that is concerned with the personal liberty of the individual, who is entitled to the benefit of the presumption of innocence since he is not, on the date of his application for anticipatory bail, convicted of the offense in respect of which he seeks bail. An over-generous infusion of constraints and conditions not to be found in Section 438 can make its provision constitutionally vulnerable since the right to personal freedom cannot depend on compliance with unreasonable restrictions. The beneficent provision contained in Section 438 must be saved, not jettisoned. These observations have been made in the context that earlier the view taken was that the power of granting anticipatory bail was



somewhat extraordinary in character and in exceptional cases it should be granted

52. Therefore, this Court is of the view that this Court has the jurisdiction to entertain the bail application under Section 438 even when the applicant has not approached the Court of Sessions first.

53. To argue upon the limited purposes for which the parties are before this Court today, reference has been made to the twin test which has been provided under the PMLA and which has been relied upon the Courts while considering cases under the Act. The twin conditions serve as a definitive test for the Courts to form an opinion.

54. It is submitted by the Applicant that the twin conditions under the PMLA are not attracted against the Applicant herein in the given fact and circumstances. Moreover, the test is not in itself absolute in cases of anticipatory bail, in light of the judgment of this Court in *Vijay Agrawal (Supra)*. In the said case, it was held as under:

"30. The jurisprudence of the bail positively lays down that a liberty of a person should not ordinarily been interfered with unless there exist cogent grounds. Despite, the twin conditions, it is not necessary that at the stage of bail, the Court has to come to the conclusion that the Applicant is not guilty for such an offence. The Court is at the stage of has to examine the case on the scale of broad probabilities. The Court at this stage is required to record an objective finding on the basis of material available on record and no other purpose.



33. *It is an admitted case that the Applicant was not an accused in the predicate offence. The Applicant's name also did not appear in the ECIR and in the first complaint filed by the E.D the name or role of the accused was not mentioned. It may again be reiterated even at the cost of the brevity that even as per the Vijay Madanlal Choudhary (Supra) though, the twin conditions provided under Section 45 of 2002 Act, restrict the right of accused to grant of bail but cannot be said that the conditions provided under Section 45 impose absolute restraint on the grant of bail. It is a settled proposition that the discretion vested in the Court has to be exercised in accordance with the law and has to be guided by the principles of law.*

35. *In the present case, the Applicant is stated to be renowned developer and his plea that he did not know that he is dealing with the tainted money cannot be brushed aside mechanically. If the liberty of an individual is concerned, the Court cannot proceed merely on the basis of assumptions and presumptions. The evidentiary value of the statement recorded under Section 50 of PMLA has to be tested at the end of the trial and not at the stage of bail. The twin conditions of Section 45 do not put an absolute restraint on the grant of bail or require a positive finding qua guilt. "*

55. There is no doubt that in order to link any accused with the offences under the PMLA, the twin test must be satisfied. In the instant case, the respondent/ED has yet not been able to show whether that the Applicant has been charged with or even linked to the Scheduled Offences as provided under the PMLA.



56. At this juncture, it is deemed apposite to refer to the judgment passed by the Allahabad High Court in the case of ***Siddharth Varadarajan v. State of UP, 2020 SCC Online All 620***, wherein the Court has enunciated the jurisprudence of the Section 438 of the Cr.P.C. as under :

“27. The concept of anticipatory bail was introduced in Cr.P.C. by 1973 amendment. The said provision can be invoked by a person who has a “reasonable apprehension” that he may be arrested for committing a non-bailable offence. The main purpose for incorporating Section 438 in Cr.P.C. was that the liberty of an individual should not be unnecessarily jeopardised. Right to life and personal liberty are one of the important fundamental rights guaranteed by the constitution and therefore, no person should be confined or detained in any manner unless he has been held guilty.

X

X

X

30. The ‘bail’ means as per Wharton's Law Lexicon, to “set at liberty a person arrested on security being taken for his appearance’.

31. As per the Encyclopaedia Britannica, the bail is a procedure by which a Judge : or Magistrate sets at liberty one who has been arrested, upon receipt of security to ensure the release prisoner's latter appearance in Court for further proceedings. 32. In Nagendra v. King Emperor, AIR 1924 Cal 476, it is held that the object of the bail is to secure the attendance of the accused at the time of the trial and that the proper test to be applied for the solution of the question whether bail should be granted or not is whether it is probable that the party will appear to take his trial.



33. Thus, it is clear that the object of the bail is to secure the attendance of the accused at the trial. The accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself in, the trial than if he is in custody. In other words, as the Apex court holds, a presumed innocent person must have his freedom in the form of bail to enable him to establish his innocence at the trial.

34. In *Savitri Agarwal v. State of Maharashtra*, (2009) 8 SCC 325, the Hon'ble Supreme Court has held that while exercising the power under sub-section 1 of Section 438 Cr.P.C., the Court must be satisfied that the applicant invoking the provision has reasons to believe that he is likely to be arrested for committing non-bailable offence and such belief must be founded on reasonable grounds.

35. Section 438 Cr.P.C. contemplates an application to be made by a person apprehending arrest on an accusation of having committed a non-bailable offence. It is indicative of the fact that the application for anticipatory bail is pivoted on an apprehension of arrest which invites exercise of power under Section 438 of Cr.P.C. The expression "reason to believe" or reasonable apprehension of arrest, a term substitute for each other is the governing factor to let off a person on anticipatory bail where submission of charge-sheet, is an idle parade. It is settled law now that the submission of the charge-sheet is not a lock gate for the applicant to be enlarged on anticipatory bail but it ensures generation of apprehension of arrest. "Reason to believe" or apprehension of arrest for having committed a non-bailable offence does not grant any licence to any wrong-doer to be enlarged on anticipatory bail.



36. According to the rule of construction, the expression “reason to believe” should be construed with the aim, object and scheme of Section 438 Cr.P.C. The inflammatory allegations having their pedestal on falsity, malafide, and motive afford considerable grounds to be enlarged on anticipatory bail as the object of it is to protect an individual from humiliation and harassment. Thus, the expression “reason to believe” must be the belief of reasonable mind where the petitioner or the individual is immune. The “reason to believe” never contemplates nor it accords any licence to any individual to commit the offence and to seek protection within the realm of Section 438. The expression “reasonable belief” fosters a belief of genuine belief apprehension of arrest of an allegation which prima facie is insubstantial and made with a sinister motive, the object being to malign a person where his arrest by prosecuting agency is immediate than remote. But when a non-bailable offence has been committed by an accused, such “reason to believe” or apprehension of arrest can never be equated with the genuine belief of apprehension of arrest proceeding from prima facie substantial material entitling him to pre-arrest bail. The section can never be used by any individual to cultivate his rights when he is prima facie liable for an accusation and does not commensurate with his innocence. Reasonable belief is not colourable belief.

37. Section 438(1) Cr.P.C. provides that when any person has reason to believe that he may be arrested, he may approach the High Court or Sessions Court. It does not refer to a particular time or stage to have such an apprehension of arrest. However, the words and the language under Section 438(1) and (3) are so clear, so as to lead to the conclusion that whenever any person



apprehends that he may be arrested for a non-bailable offence, he may seek for anticipatory bail, irrespective of the stages.

41. The grounds on which apprehension of arrest is based must be capable of being examined by the Court objectively. Then alone the Court can determine whether the applicant has reason to believe that he would be arrested. Therefore, Section 438 Cr.P.C. cannot be invoked, unless there is some material on the basis of which the Court can come to the conclusion that the apprehension of the petitioner for the arrest is genuine.

42. In the case of Gurbaksh Singh Sibbia (supra), the Hon'ble Supreme Court went to the extent of observing that in some circumstances even without registration of the F.I.R., the Court can grant the relief of anticipatory bail, if the reasonable belief of the apprehension is established before the Court by giving the details of the events and facts.

57. Moreover, it has been settled that jail is exception and bail is the rule, as has also been observed in spirit in the landmark judgment passed by the Hon'ble Supreme Court in ***Sushila Aggarwal vs. State of NCT of Delhi, (2020) 5 SCC 1*** that arrest should be done in the rarest of the rare case. Even if the authorities are not satisfied then jail is the last weapon in the hand of the Authorities. The relevant portion of the judgment is reproduced hereunder:

“79. The view that this Court expresses about the prosecution's option to apply for a direction to arrest the accused, finds support in Pradeep Ram [Pradeep Ram v. State of Jharkhand, (2019) 17 SCC 326 : 2019



SCC OnLine SC 825] wherein this Court held as follows :
(SCC pp. 340-45, paras 23, 27, 29-31)

“23. Both Sections 437(5) and 439(2) empowers the court to arrest an accused and commit him to custody, who has been released on bail under Chapter XXXIII. There may be numerous grounds for exercise of power under Sections 437(5) and 439(2). The principles and grounds for cancelling a bail are well settled, but in the present case, we are concerned only with one aspect of the matter i.e. a case where after accused has been granted the bail, new and serious offences are added in the case. A person against whom serious offences have been added, who is already on bail can very well be directed to be arrested and committed to custody by the court in exercise of power under Sections 437(5) and 439(2). Cancelling the bail granted to an accused and directing him to be arrested and taken into custody can be one course of action, which can be adopted while exercising power under Sections 437(5) and 439(2), but there may be cases where without cancelling the bail granted to an accused, on relevant consideration, court can direct the accused to be arrested and committed to custody. The addition of serious offences is one of such circumstances, under which the court can direct the accused to be arrested and committed to custody despite the bail having been granted with regard to the offences with which he was charged at the time when bail was considered and granted.

27. We may have again to look into provisions of Sections 437(5) and 439(2) CrPC. Sub-section (5) of Section 437 CrPC uses expression ‘if it considers it necessary so to do, direct that such person be arrested and commit him to custody’. Similarly,



sub-section (2) of Section 439 CrPC provides: 'may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody'. A plain reading of the aforesaid provisions indicates that provision does not mandatorily provide that the court before directing arrest of such accused who has already been granted bail must necessarily cancel his earlier bail. A discretion has been given to the court to pass such orders to direct for such person be arrested and commit him to the custody which direction may be with an order for cancellation of earlier bail or permission to arrest such accused due to addition of graver and non-bailable offences. The two-Judge Bench judgment in Mithabhai Pashabhai Patel [Mithabhai Pashabhai Patel v. State of Gujarat, (2009) 6 SCC 332 : (2009) 2 SCC (Cri) 1047] uses the word "ordinarily" in para 18 of the judgment which cannot be read as that mandatorily bail earlier granted to the accused has to be cancelled before the investigating officer to arrest him due to addition of graver and non-bailable offences.

29. Relying on the abovesaid order, the learned counsel for the appellant submits that respondent State ought to get first the order dated 10-3-2016 [Pradeep Ram v. State of Jharkhand, 2016 SCC OnLine Jhar 3254] granting bail to the appellant cancelled before seeking custody of the appellant. It may be true that by mere addition of an offence in a criminal case, in which the accused is bailed out, investigating authorities itself may not proceed to arrest the accused and need to obtain an order from the court, which has released the accused on the bail. It is also open for the accused, who is



already on bail and with regard to whom serious offences have been added to apply for bail in respect of new offences added and the court after applying the mind may either refuse the bail or grant the bail with regard to new offences. In a case, bail application of the accused for newly added offences is rejected, the accused can very well be arrested. In all cases, where the accused is bailed out under orders of the court and new offences are added including offences of serious nature, it is not necessary that in all cases earlier bail should be cancelled by the court before granting permission to arrest an accused on the basis of new offences. The powers under Sections 437(5) and 439(2) are wide powers granted to the court by the legislature under which the court can permit an accused to be arrested and commit him to custody without even cancelling the bail with regard to earlier offences. Sections 437(5) and 439(2) cannot be read into restricted manner that order for arresting the accused and commit him to custody can only be passed by the court after cancelling the earlier bail.

30. Coming back to the present case, the appellant was already into jail custody with regard to another case and the investigating agency applied before the Special Judge, NIA Court to grant production warrant to produce the accused before the court. The Special Judge having accepted the prayer of grant of production warrant, the accused was produced before the court on 26-6-2018 and remanded to custody. Thus, in the present case, production of the accused was with the permission of the court. Thus, the present is not a case where investigating agency itself has taken into custody the appellant after addition of new offences rather the accused was produced in the court in pursuance



of production warrant obtained from the court by the investigating agency. We, thus do not find any error in the procedure which was adopted by the Special Judge, NIA Court with regard to production of the appellant before the Court. In the facts of the present case, it was not necessary for the Special Judge to pass an order cancelling the bail dated 10-3-2016 [Pradeep Ram v. State of Jharkhand, 2016 SCC OnLine Jhar 3254] granted to the appellant before permitting the appellant-accused to be produced before it or remanding him to the judicial custody.

31. In view of the foregoing discussions, we arrive at the following conclusions in respect of a circumstance where after grant of bail to an accused, further cognizable and non-bailable offences are added—

31.1. The accused can surrender and apply for bail for newly added cognizable and non-bailable offences. In event of refusal of bail, the accused can certainly be arrested.

31.2. The investigating agency can seek order from the court under Sections 437(5) or 439(2) CrPC for arrest of the accused and his custody.

31.3. The court, in exercise of power under Section 437(5) or 439(2) CrPC, can direct for taking into custody the accused who has already been granted bail after cancellation of his bail. The court in exercise of power under Section 437(5) as well as Section 439(2) can direct the person who has already been granted bail to be arrested and commit him to custody on addition of graver and non-bailable offences which may not be necessary always with order of cancelling of earlier bail.



31.4. In a case where an accused has already been granted bail, the investigating authority on addition of an offence or offences may not proceed to arrest the accused, but for arresting the accused on such addition of offence or offences it need to obtain an order to arrest the accused from the court which had granted the bail.”

85. Having regard to the above discussion, it is clarified that the court should keep the following points as guiding principles, in dealing with applications under Section 438 CrPC:

85.1. As held in Sibbia [Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 : 1980 SCC (Cri) 465] , when a person apprehends arrest and approaches a court for anticipatory bail, his apprehension (of arrest), has to be based on concrete facts (and not vague or general allegations) relatable to a specific offence or particular offences. Applications for anticipatory bail should contain clear and essential facts relating to the offence, and why the applicant reasonably apprehends his or her arrest, as well as his version of the facts. These are important for the court which is considering the application, the extent and reasonableness of the threat or apprehension, its gravity or seriousness and the appropriateness of any condition that may have to be imposed. It is not a necessary condition that an application should be moved only after an FIR is filed; it can be moved earlier, so long as the facts are clear and there is reasonable basis for apprehending arrest.

85.2. The court, before which an application under Section 438 is filed, depending on the seriousness of the threat (of arrest) as a measure of caution, may issue notice to the Public Prosecutor and obtain facts, even while granting limited interim anticipatory bail.



85.3. Section 438 CrPC does not compel or oblige courts to impose conditions limiting relief in terms of time, or upon filing of FIR, or recording of statement of any witness, by the police, during investigation or inquiry, etc. While weighing and considering an application (for grant of anticipatory bail) the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence (including intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc. The courts would be justified — and ought to impose conditions spelt out in Section 437(3) CrPC [by virtue of Section 438(2)]. The necessity to impose other restrictive conditions, would have to be weighed on a case-by-case basis, and depending upon the materials produced by the State or the investigating agency. Such special or other restrictive conditions may be imposed if the case or cases warrant, but should not be imposed in a routine manner, in all cases. Likewise, conditions which limit the grant of anticipatory bail may be granted, if they are required in the facts of any case or cases; however, such limiting conditions may not be invariably imposed.

85.4. Courts ought to be generally guided by the considerations such as nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while assessing whether to grant anticipatory bail, or refusing it. Whether to grant or not is a matter of discretion; equally whether, and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court.

85.5. Anticipatory bail granted can, depending on the conduct and behaviour of the accused, continue after filing of the charge-sheet till end of trial. Also orders of anticipatory bail should not be “blanket” in the sense that it should not enable the accused to commit further



offences and claim relief. It should be confined to the offence or incident, for which apprehension of arrest is sought, in relation to a specific incident. It cannot operate in respect of a future incident that involves commission of an offence.

85.6. *Orders of anticipatory bail do not in any manner limit or restrict the rights or duties of the police or investigating agency, to investigate into the charges against the person who seeks and is granted pre-arrest bail.*

85.7. *The observations in Sibbia [Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 : 1980 SCC (Cri) 465] regarding “limited custody” or “deemed custody” to facilitate the requirements of the investigative authority, would be sufficient for the purpose of fulfilling the provisions of Section 27, in the event of recovery of an article, or discovery of a fact, which is relatable to a statement made during such event (i.e. deemed custody). In such event, there is no question (or necessity) of asking the accused to separately surrender and seek regular bail. Sibbia [Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 : 1980 SCC (Cri) 465] had observed that : (SCC p. 584, para 19)*

“19. ... if and when the occasion arises, it may be possible for the prosecution to claim the benefit of Section 27 of the Evidence Act in regard to a discovery of facts made in pursuance of information supplied by a person released on bail by invoking the principle stated by this Court in State of U.P. v. Deoman Upadhyaya [State of U.P. v. Deoman Upadhyaya, AIR 1960 SC 1125 : (1961) 1 SCR 14 : 1960 Cri LJ 1504] .”

85.8. *It is open to the police or the investigating agency to move the court concerned, which granted anticipatory bail, in the first instance, for a direction under Section*



439(2) to arrest the accused, in the event of violation of any term, such as absconding, non-cooperating during investigation, evasion, intimidation or inducement to witnesses with a view to influence outcome of the investigation or trial, etc. The court, in this context, is the court which grants anticipatory bail, in the first instance, according to prevailing authorities.

85.8. *It is open to the police or the investigating agency to move the court concerned, which granted anticipatory bail, in the first instance, for a direction under Section 439(2) to arrest the accused, in the event of violation of any term, such as absconding, non-cooperating during investigation, evasion, intimidation or inducement to witnesses with a view to influence outcome of the investigation or trial, etc. The court, in this context, is the court which grants anticipatory bail, in the first instance, according to prevailing authorities.*

85.9. *The correctness of an order granting bail, can be considered by the appellate or superior court at the behest of the State or investigating agency, and set aside on the ground that the court granting it did not consider material facts or crucial circumstances. (See Prakash Kadam v. Ramprasad Vishwanath Gupta [Prakash Kadam v. Ramprasad Vishwanath Gupta, (2011) 6 SCC 189 : (2011) 2 SCC (Cri) 848] , Jai Prakash Singh [Jai Prakash Singh v. State of Bihar, (2012) 4 SCC 379 : (2012) 2 SCC (Cri) 468] and State of U.P. v. Amarmani Tripathi [State of U.P. v. Amarmani Tripathi, (2005) 8 SCC 21 : 2005 SCC (Cri) 1960 (2)] .) This does not amount to “cancellation” in terms of Section 439(2) CrPC.*

85.10. *The judgment in Mhetre [Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514] (and other similar decisions) that restrictive conditions cannot be imposed at all, at the time of granting anticipatory bail are hereby overruled.*



Likewise, the decision in Salauddin [Salauddin Abdulsamad Shaikh v. State of Maharashtra, (1996) 1 SCC 667 : 1996 SCC (Cri) 198] and subsequent decisions (including K.L. Verma [K.L. Verma v. State, (1998) 9 SCC 348 : 1998 SCC (Cri) 1031] , Nirmal Jeet Kaur [Nirmal Jeet Kaur v. State of M.P., (2004) 7 SCC 558 : 2004 SCC (Cri) 1989]) which state that such restrictive conditions, or terms limiting the grant of anticipatory bail, to a period of time are hereby overruled.

86. In conclusion, it would be useful to remind oneself that the rights which the citizens cherish deeply, are fundamental — it is not the restrictions that are fundamental. Joseph Story, the great jurist and US Supreme Court Judge, remarked that “personal security and private property rest entirely upon the wisdom, the stability, and the integrity of the courts of justice”.

58. In the matter at hand, it has been stated that three times the Applicant and the M3M Group were summoned and on all the occasions the representative on their behalf appeared and cooperated in the investigation. Further, the respondent has already seized numerous assets, including cars, cash, jewelry, etc. and also issued letters to bankers of M3M and its Group Companies directing that various bank accounts of the Company and its group concerns be marked as 'debit freeze' accounts. Moreover, the Applicant has yet not been implicated in any Scheduled Offences as provided under the PMLA and in fact, the ECIR does not even find mention of the name of the Applicant or any of the M3M Companies. It has also been submitted that the when summoned by the respondent, one of the representatives on behalf of the Applicant or the



M3M Group has always appeared before the respondent for inquiry and investigation.

59. Furthermore, the primary accused in the matter, Lalit Goel, the promoter of IREO Group, has already been granted regular bail in the matter on 24th April 2022 and the same has not been challenged by the respondent. Besides this, the learned counsel for the Respondent has sought one weeks' time to file Status Report and the relevant document to support his case.

60. Therefore, in the above facts and circumstances, the totality of the matter, the fact that the Applicant has not been named in the ECIR and that the respondent has not yet been able to implicate the Applicant in any of the Scheduled Offences under the PMLA, in the interest of justice as well as considering the mandate of Article 21 of the Constitution of India, this Court is of the considered opinion that the Applicant may be granted interim protection till the next date of hearing.

61. Accordingly, in the event of any arrest of the Applicant, he shall be released on bail on his furnishing a personal bond of Rs 10,00,000/- with two sureties of the like amount to the satisfaction of the Investigating Agency, subject to the following conditions:

- a) he shall surrender his passport, if any, to the Investigating Officer and shall under no circumstances leave India without prior permission of the Court concerned;
- b) he shall cooperate in the investigation and appear before the Investigating Officer of the case as and when required;



- c) he shall remain present before the jurisdictional police station on Second and Fourth Saturday of every calendar month for the period of two months or till filing of the final report, whichever is earlier;
- d) he shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case;
- e) he shall provide his mobile number(s) to the Investigating Officer and keep it operational at all times;
- f) he shall drop a PIN on the Google map to ensure that his location is available to the Investigating Officer; and
- g) In case of change of residential address and/or mobile number, the same shall be intimated to the Investigating Officer/Court concerned by way of an affidavit.

62. It is clarified that all the observations contained in this order are only for the limited purpose of adjudication *qua* interim protection and shall not prejudice the final outcome in any manner.

63. The learned counsel appearing on behalf of the respondent seeks and is granted one week's time to file Status Report as well as other documents he may wish to file to support his arguments. The learned counsel for the petitioner is also granted one week's time, thereafter, to file reply, if any.



64. List on 5th July, 2023 before Roster Bench.
65. The order be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
VACATION JUDGE

JUNE 9, 2023
gs/db/ms

HIGH COURT OF DELHI



भारतमेव जयते