

**IN THE COURT OF MS. NEELOFER ABIDA PERVEEN,
SPECIAL JUDGE (PC ACT), CBI-22, ROUSE AVENUE
COURT, NEW DELHI.**

**ED vs. Bharat Rana Chaudhary
CT No.09/2023
ECIR/02/DLZO-II/2015
CNR No.DLCT11000**

12.07.2023

ORDER

This is an application u/s 439 Cr.P.C., for grant of bail filed on behalf of applicant/accused Bharat Rana Chaudhary.

1. Ld. Counsel for the accused /applicant submitted that the present case was registered way back in 2015 and the applicant/accused was arrested by the ED on 14.02.2023 and after completion of investigations, the present prosecution complaint was filed on 10.04.2023, although cognizance has not yet been taken by the Court. That while treating the offences u/s 419, 420, 465, 467, 468, 471 r/w 120B IPC and Sections 13(2) r/w 13(1)(d) of P.C. Act contained in the FIR(s) No. RC 220/2014/E/0006 dated 02.04.2014 and RC 220/2014/E/0005 dated 28.03.2014 registered by CBI as 'Scheduled Offences' on 28.02.2015, the complainant ED had registered ECIR/DLZO-II/02/2015 U/s 3 r/w section 4 of PMLA. That during the course of investigation, another connected/identical FIR was added to the array of scheduled offences i.e. RC 220/2014/E/0006 dated 02.04.2014. That in all the said three schedule offences cases registered for loss to the Punjab National Bank due to default in repayment of credit facilities where the maximum punishment under section 467 IPC is life imprisonment and 10 years

imprisonment under the PC Act, the applicant is already on bail whereas, in the present case, the maximum sentence envisaged is only 7 years. That on 29.04.2022, Provisional Attachment Order No.06/2022 was passed u/s 5(1) of PMLA and the properties alleged to be 'proceeds of crime' have been provisionally attached.

(i) That the applicant/accused Bharat Rana Chaudhary had joined investigation with ED and rendered full co-operation and assistance, despite that, on 14.02.2023, the applicant was arrested by the ED from his residence in a blatantly highhanded manner as the prerequisites for exercise of power under section 19 of PMLA were not satisfied, whatsoever. That grounds of arrest as contemplated under 19 of PMLA were not informed or communicated to him, and that till date it is also unclear as to what triggered the ED to arrest the applicant after 8 years. That the applicant was produced before this Hon'ble Court on 15th February, 2023 and his remand to ED custody was sought. That vide order dated 16.02.2023 passed by the Court, the application seeking ED custody remand of the applicant was dismissed and accused/applicant was instead remanded to judicial custody where he is languishing ever since. That during the investigation on 25.02.2023 the applicant had earlier approached this Hon'ble Court seeking bail only on medical grounds in terms of the proviso section 45 of PMLA on the ground of his mental ailments, which application was rejected by the Court on 15.03.23. That on 10.04.2023, the present prosecution complaint has been filed against the applicant/accused and 10 other accused who have not been arrested by the ED in the present case.

(ii) That there was no justifiable cause or reason to believe to arrive at a satisfaction for the applicant's arrest in the present case which was under investigation for the last 8 years i.e. since 28.02.2015. That section 19 of PMLA is a special provision which prescribes certain pre-requisites before effecting arrest. The authorised Officer must have material in his possession on the basis whereof he has reasons to believe that the accused has been guilty of the offence of money laundering which reasons must be recorded in writing. That the parameters as contemplated under section 19 are much higher in degree and of the most sterling character thereby rendering the exercise of power to arrest only if the case falls in that exceptional category. That none of the pre-requisites under section 19 are satisfied warranting the arrest of the applicant in this case. That from the contents of the remand application it is deduced that the arrest of the applicant was made to prevent inter alia tampering of evidence, influencing of witnesses, frustration of proceeds of crime, derailment of money laundering investigations.

(iii) That the said reasons are not the ingredients contemplated under section 19 of PMLA. The only reason which could justify the arrest of a person is if there are reasons to believe that he is guilty of money laundering. The said ingredient is conspicuously missing in the present case. That in any case each of the apprehensions expressed by the ED now stand obliterated as investigation stands completed upon filing of prosecution complaint and the same cannot now be derailed as was apprehended by ED, as the prosecution complaint is already filed and the entire material is before the court therefore, the applicant

is in no position to tamper with evidence or influence the witnesses which are mostly official in nature. Also, the alleged 'proceeds of crime' have already been secured by passing of two provisional attachment orders and therefore the same cannot be alienated or frustrated.

(iv) That it was alleged against the accused that he deliberately avoided to join investigation. That in case there was any non-cooperation or evasion of summons by the applicant, the correct remedy which ought to have been invoked was either under section 63 of PMLA or under section 174 of IPC. Admittedly, no such action has been taken in the present case. Therefore, the ED is in no position to claim non-cooperation on the part of the applicant. That power to arrest under section 19 of PMLA cannot be a substitute to specific powers under section 63 of PMLA or Section 174 of IPC. That the applicant was not arrested during the course of investigations spanning over 8 years. There was no complaint or grievance of any non-co-operation by applicant at any stage made before/ in any forum. That further incarceration/ custody of the applicant is now no longer required, as even after 4 months of judicial custody of the applicant, the ED has not even once tried to record his statement. ED therefore now is in no position to complain about the alleged non-cooperation on the part of the applicant.

(v) That the allegations which form the basis of the present investigations by ED, rest upon mere surmises, conjectures, emotions prejudices and beliefs. The veracity of such allegations is yet to be investigated and looked into and the applicant is sanguine to expose the falsity and hollowness of such allegations

at an appropriate stage, however, the invasion of his liberty 8 years after registration of ECIR without qualifying the higher threshold for effecting arrest as contemplated under section 19 (1) of PMLA, is absolutely preposterous and demonstrates a naked subversion of law. That ED has failed to demonstrate as to how the applicant has been involved in acquiring, concealing and/or projecting any 'proceeds of crime' as untainted. Even the statements under Section 50 PMLA relied on by the ED (at page 25 of the Complaint) categorically state that the premises of the Applicant contained sufficient stocks and that due verification was done before sanctioning any loans to the applicant. That insofar as non- applicability of twin limitations under Section 45 of PMLA is concerned, it is submitted that the judgment dated 27.7.22 in Vijay Madanlal Chaudhary vs. union of India SLP (Crl.) 4634 of 2014 reported as 2022 SCC online SC 929 is under review before the Hon'ble Supreme Court as a notice has been issued in review petition (Crl.). 219 of 2022 vide order dated 25.08.2022, hence the issue as to whether such twin conditions have been revived or not after the judgement rendered by H'ble the Apex Court in Nikesh Tara Chand is still under active consideration of the Hon'ble Apex Court.

(vi) That in the present case, the maximum sentence envisaged is 7 years imprisonment and therefore, the applicant would also be entitled to be released in view of the ratio of law laid down by the Hon'ble Supreme Court in Arnesh Kumar vs. State of Bihar (2014) 8 SCC 273 as reiterated by the Hon'ble Supreme Court vide the Order dated 07.05.2021 passed in Suo Moto Writ Petition (Civil) No. 1 of 2020. That trial is likely to take long

time which would necessitate release of the applicant pending trial as cognizance is yet to be taken by this Hon'ble Court on the prosecution complaint and the applicant has been kept in custody without even supplying him a copy of the material/relied upon documents filed against him running into thousands of pages. Considering that there are 10 other accused who have not been arrested and the applicant is the only accused in judicial custody, after issuance of process, securing the presence of other 10 co-accused, supplying copies of prosecution complaint RUDs etc. to them and other formal proceedings pertaining to bail, supply of documents would itself take sufficient time and the applicant's incarceration during such process would amount to a pre-trial punitive custody which is unwarranted. That record is voluminous in nature, running into thousands of pages. That as per the mandate of section 44, the trial for scheduled offences and the offence of money laundering would also have to be tried together, on which proceedings there is a deemed stay in operation.

(vii) That the medical ailments of the accused/applicant are precarious and require constant monitoring and treatment from expert Doctors. That in the course of the prosecution launched by CBI i.e. the scheduled offences, pursuant to the dismissal of his application under Section 329/330 CrPC, the Applicant's petition bearing CrI.M.C. No. 2164 of 2021 is already sub-judice before the Hon'ble Delhi High Court wherein, interim relief has been granted. That the Applicant also qualifies the triple test as laid down by the Hon'ble Supreme Court for grant of bail. That the applicant has always been in possession of his Passport and he

has not traveled abroad after 2014 and never even tried to escape the country. It can be safely concluded that the Applicant is not a flight risk and he is ready and willing to even deposit his passport. Applicant's wife and minor son are also permanent residents of Noida. Applicant has deep roots in society & there is no likelihood of the applicant either absconding or running away from trial. Applicant undertakes not to influence any witness or tamper with any evidence and is ready to comply with any condition imposed by this Hon'ble Court. That though the present application has not been filed involving the proviso to section 45 PMLA, however it is required to be considered that the health condition of the accused/applicant has deteriorated significantly and he has been losing weight at an alarming rate. That further incarceration is hazardous to his already precarious health condition including the mental ailment he admittedly has been suffering from since long. Ld. counsel for the applicant/accused has referred to judicial pronouncements reported as *Ranjitsing Bramhajeetsing Sharma Vs. State of Maharashtra & Ors.* (2005) 5 SCC 294, and *Dr. Lakhwinder Singh Vs. ED.*

2. Ld. SPP for ED on the other hand submitted that the nature of accusations in the present case, the gravity of the offence, needs to be analysed as money laundering is an economic offence. That the gravity of the offence has nothing to do with the punishment provided for the same, but is to be judged by the impact the offence has on the society, economy, financial stability and integrity of the country. It is well settled that the economic offences constitute a class apart and a class by itself, as it cuts the very root of probity and purity of public administration

and results in eroding the public confidence which it reposes on the government elected by it, and are considered to be the gravest offences against the society at large and hence are required to be treated differently in the matter of bail.

(i) That the mandatory twin conditions u/s 45 are not fulfilled in the case of the accused/applicant and it is for this reason that the Ld. Defence Counsel has not adverted to section 45 PMLA at all in his submissions. That the accused/applicant can only be released on bail if this Hon'ble Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail. That there are no reasonable grounds for believing that he is not guilty of the offence of money laundering and that he is not likely to commit any offence while on bail. That the rigors of these twin conditions under section 45(1) of the Prevention of Money Laundering Act, 2002 have not been satisfied by the accused/applicant. That accused Bharat Rana Chaudhary with the help of others took loan from Punjab National Bank on the basis of false, forged and fabricated valuable securities, fake identity documents, forged rental deeds, forged collateral security papers, fake audited balance sheets and other documents.

(ii) That on the basis of forged and fabricated documents Bharat Rana Chaudhary took Cash Credit Facility in the name of different firms namely M/s Surya Impex, M/s Jupiter Trading and M/s Four Season Agro Products Ltd/ Four Seasons Sortex Pvt. Ltd., during the period 2010 to 2011, and by way of fraudulent means Bharat Rana Chaudhary siphoned off the loan funds and never utilized the same in the business activity of these firms.

Bharat Rana Chaudhary has thereby fraudulently availed total Rs.29,50,00,000/- cash credit limit in these 03 firms during the period 2010 to 2011 and diverted these funds, which are the total proceeds of crime in their case, which is a huge loss occasioned to the public money.

(iii) That the involvement of the accused/applicant, and the commission of the offence of money laundering by him has been duly established in the prosecution complaint dated 10.04.2023 filed by the agency and sufficient material has been collected demonstrating the same however investigation qua the tracing of POC of nearly 20 crores is pending in the instant case.

(iv) That the offence of money-laundering is an independent offence regarding the process or activity connected with the proceeds of crime which had been derived or obtained as a result of criminal activity relating to or in relation to a scheduled offence. The process or activity can be in any form, be it one of concealment, possession, acquisition, use of proceeds of crime as much as projecting it as untainted property or claiming it to be so, and involvement in any one of such process or activity connected with the proceeds of crime would constitute offence of money-laundering. The offence of money laundering otherwise has nothing to do with the criminal activity relating to a scheduled offence, except that the proceeds of crime are derived or obtained as a result of that crime. Therefore, simpliciter that bail has been granted in the CBI case cannot be ground for grant of bail in the PMLA case, as the proceedings in the PMLA case are independent of the CBI case. That even under section 44 of the PMLA Act 2002 it is provided that Special Court while

dealing with the offence under this Act, during investigation, enquiry or trial under this Act, shall not be dependent upon any orders passed in respect of the scheduled offence, and that the trial of scheduled offence case/s, and that under PMLA, though required to be before the same Court, is not to be understood as joint trial.

(v) That the applicant is not of unsound mind and various evidences have been already submitted to this Hon'ble court reflecting the soundness of the applicant's mind. Moreover this Hon'ble Court while dismissing the previous bail application of the accused/applicant had observed in its order dated 15.02.2023 that *“The condition is being managed with medication and no institutionalization as such has necessitated in connection with the condition complained of”* That if the accused is granted bail he may try so siphon away the proceeds of crime, as POC of around 20 crores is yet to be traced. That FIR no RC2202014E0013 dated 17.11.2014 was not included in the scheduled offences while registering the ECIR. That during investigation several summons dated 12.03.2018, 04.06.2018, 05.03.2020, 14.10.2020, 24.02.2021, 07.10.2021, 02.03.2022, 20.06.2022, 22.06.2022, 13.07.2022 were issued to the applicant. He appeared on 04.12.2020 in response to summons dt. 14.10.2020 which was issued for appearance on 23.10.2020 and he requested that he was not feeling well and requested to postpone the recording of statement on 09.12.2020 but he did not join the investigation on 09.12.2020. That Bharat R. Chaudhary has never joined the investigation and has been non-cooperative, throughout, and on this ground alone, he is not entitled to any

concession.

(vi) That the prerequisites for exercise of power of arrest under section 19 of PMLA were satisfied before arresting the applicant on 14.02.2023 viz. the reason to believe was recorded in writing that the applicant is guilty of offence of money laundering which reasons are duly mentioned in the remand application dated 15.02.2023. That the very first ground as mentioned in the first remand application for arresting the applicant is to the effect that there is material evidence and reasons to believe that the said accused is guilty of offence of money laundering as per section 3 punishable under section 4 of the PMLA and that the Accused is involved in the laundering of proceeds of crime and has been involved in projecting the proceeds of crime as untainted. That the grounds of arrest as contemplated under section 19 of PMLA were duly informed to the applicant and Ms. Yashoda Rana wife of the applicant after which she had put her signature on the grounds of arrest of the applicant. That the applicant's incarceration is warranted under the circumstances that investigation to trace out the rest of the "proceeds of crime" which is nearly 20 crores, is ongoing and considering the applicant's previous conduct, if he is released on bail, he might tamper with the evidences.

(vii) That during the search conducted at applicant's house Le. H. No. 238, Sector- 15A, Noida on 13.05.2022/14.05.2022, enough evidences were gathered suggesting that he was tampering with the evidences and creating false evidences to justify the transactions in his firm's account. That so far as the interim relief in respect of the application under section 329/330

Cr.PC is concerned, one the orders passed in the CBI case/scheduled offence cases does not have any bearing on the proceedings being conducted under the provisions of PMLA, and second that the reason that the interim relief has been granted to the applicant by the H'ble High Court is because he is claiming himself to be of sound mind, while the evidences that has been gathered during the investigation conducted by the ED, clearly shows that the applicant has stable mind and is aware of the proceedings going on against him. That the previous application for grant of bail was rejected by this Hon'ble Court based on the evidences submitted by this agency and on the basis of the report received from the Tihar Prisons Authority reflecting that his mental condition is stable.

(viii) Ld. SPP for ED has relied upon judicial pronouncements rendered in Vijay Madanlal Chaudhary vs. union of India SLP (Crl.) 4634 of 2014, Y.S. Jagan Mohan Reddy V. CBI (2013) 7 SCC 466, Nimmigadda Prasad V. CBI (2003) 7 SCC 466, CBI Vs. Ramendu Chattopadhyay (2020) 12 SCC 396, State of Gujarat V. Mohan Lal Jitamalji Porwal (1987) 2 SCC 364, Ram Narain Popli Vs. CBI 2003 (3) SCC 641, State of Bihar V. Amit Kumar (2017) 12 SCC 751, Anil Kumar Yadav V. State (NCT of Delhi), (2018) 12 SCC 129, Gautam Kundu V. ED (2015) 16 SCC 1 Sunil Dahiya V. State (NCT of Delhi) (2016) SCC Online Del 5566, UOI V. Hassan Ali (2011) 10 SCC 235, Vakamulla Chandrashekhar Vs. Enforcement Directorate 2017 SCC Online Del 12810, Moin Akhtar Qureshi Vs. UOI & Ors. 2017 SCC Online Del 12108, Chhagan Chandrakant Bhujgal vs. UOI & Ors. 2016 SCC Online Bom 9938.

3. I have heard the Ld. Counsel for the accused/applicant, Ld. SPP for ED, perused the record as well as the medical health status report called from the Jail superintendent concerned in the main case and gone through the judicial pronouncements cited.

4. The accused/applicant is arrested by the Directorate in ECIR/02/DL70/2015 on 14.5.2023, recorded on 28.02.2015 for the offence of money laundering in respect of certain credit facilities availed by the accused/applicant from Punjab National Bank (PNB) Wazirpur, Delhi, during the period from 2010 to 2012, in the name of multiple firms, which accounts turned NPA, and in respect whereof, FIR No. RC220/2014/E/0065, FIR No. RC220/2014/E/006 and FIR No. RC220/2014/E/0013, for criminal conspiracy, cheating and forgery as well as for offences under the Prevention of Corruption Act were registered and investigated into by CBI and are pending trial in this Court, in aggregate involving proceeds of crime to the tune of Rs.29.50 crore.

5. The said cases were registered on the written complaint of the then AGM, PNB, on a set of allegations that in the year 2007 the accused-applicant had started a company in the name of M/s Jupiter Trading Company for rice trading and for the said business on 28.04.2010 he opened a Current Account at Punjab National Bank (PNB) Wazirpur, Delhi. In order to show that his said business is flourishing he began indulging in kite flying operations in the account through his several employees and befriended the Chief Manager and the senior manager of advances section to aid in his nefarious designs. In conspiracy

with such bank officials he opened several fictitious Current Accounts in the name of M/s Jahan Enterprises, M/s Delhi Trading, M/s Phoenix Traders, M/s R.S. Enterprises, M/s Surya Impex, M/s Mittal and Mittal Commodities, M/s Orient Trading Company, M/s Bharat Food Corporation, M/s Hariom Trading Company, M/s Krishna and Krishna Enterprises, at various banks including PNB, Wazirpur Branch and for the purposes he fabricated his employees' photographs, identity documents enroped them by obtaining their signatures on the bank documents for opening the multiple current accounts. The signed cheque books of these companies, once the current accounts had been established in such manner, were collected from the respective employees and kept in the custody of the accused /applicant and transactions were fabricated inter se/ amongst these fictitious Current Account holders to fake, falsify and inflate business in the said entities.

6. Then in the year 2010, the accused/applicant applied for sanction of Cash Credit facility of Rs.3.75 crores for his firm M/s Jupiter Trading Company, for his rice trading business, and furnished forged title deeds of the property situated at No.238, Sector 15A, Noida as collateral Security, projecting himself as the owner. Cash Credit facility of Rs.3.75 crores was sanctioned by the Chief Manager of the Bank in connivance and conspiracy with the accused/applicant in favour of M/s Jupiter Trading company on 1.5.2010, as the said amount lay within the financial powers of the Chief Manager, which was increased to 475 lacs on 14.7.2010 by way of PACL of Rs. 50 lacs, and further enhanced up to Rs.9.5 crores by Circle office, PNB. The property

mortgaged as collateral was replaced twice at the instance of the accused/applicant, from property situated at No.238, Sector 15A, Noida to property situated at No.467, Sector 15A, Noida, and then to property situated at NR-9/7 Sector XX, GMP, Raj Nagar, Ghaziabad, and the so-called owners of the said immovable properties Sh. Virender Man Singh and Sh. Upender Kumar Singh were also shown as co-guarantors. The title deeds of the property mortgaged initially were forged and the title deeds of the property shown in the name of the guarantor were also manipulated by the accused/applicant. The title deeds of the properties deposited in lieu thereof as well as the guarantors that substituted the initial guarantor were all forged documents and fake identities. The accused/applicant failed to repay the Cash Credit, the said account was declared as NPA, with outstanding at Rs.12,49,07,413/- app. regarding which RC5(E)/2014 was registered by CBI on the written complaint of the bank in the year 2014.

7. Then in the year 2011, accused/applicant floated another firm in the name of M/s Four Season Agro Products also as his Proprietorship, with its office situated at No.5-13, 2nd floor, Pankaj Plaza, Karkardooma Community Centre, Delhi-110092, opened a Current Account No. 0637002100056365 in the name of M/s Four Season Agro Products at PNB, Wazirpur Branch and on 13.12.2011, applied for Cash Credit facility of Rs.1800 Lakhs for his new firm M/s Four Season Agro Products falsely claiming that his firm is engaged in rice trading for the last 15 years enjoying a turnover of Rs.5623.52 lakhs as on 31.03.2011 with working capital of Rs.259.76 Lakhs and unsecured loans of

Rs.123.96 lakhs, furnishing forged balance sheets in support. He fraudulently offered forged Title Deed pertaining to the residential premises at No.238, Sector-15-A, Noida, Uttar Pradesh and registered Rental Deed dt. 12.01.2012 of a Godown ad-measuring 1600 Sq. yards plot with building, situated at 360, Near Narayan Dharm Kana Alipur Garhi, Delhi shown to have been executed between the accused/applicant and one Shri V.K. Gupta. Ramesh Sharma impersonating as Vinod Kumar Bhalla stood Guarantor for the loan of M/s Four Season Agro Products. The accused/applicant had thus mortgaged the same forged lease deed of 238, Sector 15 A, Noida, twice in the same PNB Wazirpur Branch. Cash Credit Facility FBWC CCH/BD (Fund Based Working Capital Cash Credit Facility/ Book Debts) for Rs. 1600 Lakhs to M/s Four Season Agro Products was finally sanctioned on 04.01.2012 with the condition that 75 % of the limit shall be disbursed in the first go, and the remaining 25% of the limit shall be released subject to the condition that said Proprietorship firm should be converted to Private Limited Company within one month.

8. As per the condition of Sanction letter, 75% of CC Limit i.e. Rs.1200 Lakhs was credited to the Cash Credit Account of M/s. Four Season Agro Products. On receipt of Rs.1200 Lakhs in his firm's account, the accused/applicant immediately started diverting the sanctioned amount to his various firms' Current Accounts and to the various Current accounts as administered by one Shekar Kumar Gupta, within three days contrary to the Cash Credit Facility guidelines by way of RTGS transfer from his Current Account No. 0637008700003529. From this amount,

Rs.312 Lakhs was transferred to the Loan Account No. 37002002100027622 in the joint names of the accused /applicant, Smt. Usha Chaudhry his mother and Smt. Yulia Rana his wife maintained at PNB Housing Finance Limited, Sector 18, Noida, UP which loan was secured by mortgaging the original Title Deed of residential property at No. 238, Sector-15A, Noida, U.P., which stood in the name of Smt. Usha Chaudhry, forged lease deed of this same very property had been submitted to PNB Wazirpur Branch for availing this Cash Credit facility.

9. After the receipt of 75% of CC Limit, as per the stipulation of PNB, Circle Office, on 10.01.2012, the accused-applicant incorporated his firm as M/s Four Season Rice Sortex Private Limited with the same address, introducing co-accused Sanjeev Kumar Singh as another Director of M/s Four Season Rice Sortex Private Limited registered with the Registrar of Companies, Kanpur, Uttar Pradesh. In the first week of March 2012, he applied for the release of remaining 25% of CC Limit as he had converted the Proprietorship firm into Private Limited Company, as per the terms of sanction, which was sanctioned by the Head Office on 14.3.2012. After receipt of the Sanction from the Circle Office, on 21.03.2012 a Current Account in the name of M/s Four Season Rice Sortex Pvt. Ltd. was opened by the accused/applicant. Sanjeev Kumar Singh, a co-accused, was shown as another Director in M/s Four Season Rice Sortex Private Ltd. who submitted his personal Guarantee and the same Ramesh Sharma impersonating as Vinod Kumar Bhalla signed the said loan documents alongwith the accused/applicant as Co-Guarantor. An amount of Rs.400 Lakhs, towards remaining 25 %

of CC Limit was released in the account of M/s Four Season Rice Sortex Private Limited which was also diverted by the accused/applicant through RTGS transfer from his current Account No. 0637008700003547 to various current accounts. Following the receipt of the entire CC limit of Rs.1600lacs he stopped operations in the accounts and on 12.10.2012 the accounts turned NPA, and became the subject matter of FIR RC No. 220-2014-E0006, pending trial.

10. The third FIR i.e. FIR RC No.220-2014-E0013 is in respect of the credit facilities availed from the same Branch in the amount of Rs. 375 lacs in the name of M/s Surya Impex, proprietorship concern purportedly of one Vivek Gill. Towards this credit facility, loan application dated 26.03.2010 was received in the Branch from M/s Surya Impex through its proprietor Vivek Gill alongwith financial data, income tax returns of the borrower as well as the guarantor, copy of title documents pertaining to the property proposed as collateral security bearing No. 3, Sector 15A, Noida, U.P., the office of the firm was shown at 1727/3, RITCO Rice, Palace, Naya Bazar, Delhi and godown at No. 78-83 Meen Bokoli, Delhi. The loan facility was sanctioned in favour of M/s Surya Impex on 07.03.2010 with Avtar Singh Gill as guarantor. The entire facility of Rs.375 lacs was availed within 10 days. The sanction limit was renewed on 21.03.2010 for a period of three months, the mortgage property was replaced on 22.05.2010 with another property situated at No. 451, Sector-15 A Noida owned by one L.C. Guatam, who also furnished his personal guarantee. His property was replaced on 12.01.2012 with property at No. 3/61 Raj Nagar, Colony,

Ghaziabad owned by Ms. Ram Roshni of Rajori Garden, New Delhi also signing as co-guarantor. The entire funds were siphoned off and the account became NPA on 09.10.2012.

11. When SARFAESI proceedings were initiated it came to light that the property title deeds of which were deposited as collateral security had been taken on lease by one Vinay Mittal, a business associate of accused /applicant and a co-accused, from its owner Smt. Ram Roshni, by paying three months advance rent but was never utilized. This had been done with the sole purpose of ensuring positive valuation and verification reports. As no rent was paid after the initial deposit the owner retrieved the possession. A well thought out and elaborate conspiracy was hatched under the aegis of the accused /applicant to defraud the bank and in pursuance thereto one Pradeep Jain got opened a current account with the branch in the name of M/s Surya Impex impersonating as Vivek Gill using the photographs of one Manish Ghai, his relative, by submitting fake identity documents. The same Pardeep Jain had another current account in the name of M/s Surya Impex maintained at State Bank of India, SME Branch, South Extension, New Delhi where his real photographs was affixed as proprietor. Alongwith the loan application title deeds of the immovable property in the name of father of Vivek Gill, rent deed of godown premises and office premises and other financial documents such as balance sheets were submitted, all forged and fabricated, besides one fabricated permission to mortgage the said immovable property purported issued by NOIDA authority was also furnished. Even the due diligence verification report in respect of the borrower

Vivek Gill and the guarantor Avtar Singh Gill were forged and fabricated. The office premises infact had been taken on rent by the accused/applicant and Vinay Mittal through a property dealer, and the owner denied having executed any rent agreement with any Vivek Gill as proprietor of M/s Surya Impex. It could not be identified as to who had signed the loan agreement as guarantor in the name of Avtar Singh Gill.

12. The immovable property that was initially mortgaged was in the name of Vivek Gill. Both, the purported borrower and initial garantor, Vivek Gill and Avtar Singh Gill were traced as residents of Khanpur, Delhi. Neither Vivek Gill nor his father Avtar Singh Gill had ever visited PNB, Wazirpur Branch nor signed any loan document for M/s Surya Impex. The said L.C. Gautam who was replaced as the guarantor had infact passed away in the year 1998, the real name of the person whose photographs were found affixed as guarantor replacing Avtar Singh Gill on the loan documents was revealed as Gulshan Kumar Dhawan, another co-accused, whose signatures and other forged identity documents were procured by the accused/applicant and co-conspirators. Smt. Ram Roshni who had purportedly replaced Sh. L.C. Gautam as guarantor being owner of property no.3/61, Raj Nagar Colony, Ghaziabad denied having signed any such the banking documents. The photographs on the documents supposedly of Smt. Ram Roshni were found to be of one Smt. Meera Kundra an acquaintance of the accused /applicant. After the last change in the mortgage property, transactions in the loan account of M/s Surya Impex stopped completely. The entire cash credit facility of Rs. 375 lacs was

fully availed and siphoned away by transferring the same in the bank accounts of M/s Shree Hanuman Enterprises, M/s Shree Pawan Traders, M/s Bhagwati Enterprises, M/s Bajrang Lal Mahendra Kumar, M/s R.R. Trading Company, M/s Bharat Food Corporation, M/s Delhi Trading Company, M/s Hariom Trading Company etc.

13. The investigation under PMLA was undertaken in respect of the Rs. 29.50 crores of Proceeds of Crime generated as an outcome of such large scale manipulation, multifarious fabrication of data and documents, creation of multiple fake identities and brazen impersonation, all imputed as the handiwork and brainchild of the accused/applicant, in order to uncover the money trail, to track the ultimate beneficiary/ies, to determine and ascertain the processes deployed to launder and infuse the proceeds of crime in the mainstream economy as white money or money generated and acquired from lawful sources and through legal means. The accused/applicant was arrested in the present case on 14.2.2023 and was sent to Judicial custody though his custody was desired by the Directorate, considering the interim relief in his favour allowed in CrI. MC No.2164/2021, the Judicial custody was then extended from time to time. One application u/s 45 PMLA r/w Section 439 Cr.P.C., on behalf of accused Bharat R. Chaudhary for grant of bail as sick and infirm person invoking the proviso to section 45 PMLA was dismissed on 15.3.2023. Prosecution complaint u/s 44 & 45 of Prevention of Money Laundering Act, 2002, for commission of offence of Money Laundering as defined u/s 3, r/w Sec. 70, punishable u/s 4 of PMLA was filed on 10.4.2023 against Bharat R. Chaudhary

and ten others.

14. It emerges from a perusal of the complaint that in the course of investigation under PMLA statements of various witnesses including employees of the accused/applicant had been recorded, searches were carried and documents were seized. From the statements of witnesses and analysis of documents seized it transpired that no physical work was being done at the house-cum-office of Bharat R. Chaudhary at H. No. 238, Sector 15A, Noida. No other offices or godowns were established by him for the purposes of business, however, he had shown on papers that he was in the business of trading of rice. For securing credit facilities against collateral securities, the accused/applicant used to search an empty plot/house which was locked for a long time, as his father was an IAS officer and was Chairman of Noida Authority, by using his links in the revenue authority, he used to get original documents from the Sub Registrar's office, one Sandeep Khera then used to prepare the forged documents similar to the original property documents, through his co-accused Vinay Mittal or his CA. Shashi Raman forged ID cards in the name of the person who was the original owner in the property documents used to be procured. Then, his employees or other persons were arranged by one Ramesh Sharma for opening of a bank account of any firm which was to be controlled by Bharat R. Chaudhary.

15. The Chief Manager co-accused P.R. Arora or Sr. Manager Naresh Sharma of Punjab National Bank would be called to the residence of the accused/applicant for opening a bank account in the name of firm which used to be controlled by

Bharat R. Chaudhary. On the strength of forged property documents prepared CC Facility/ Loan used to be applied by Bharat R. Chaudhary which was got sanctioned through said Bank officials, and for this 5% commission of the sanctioned CC limit was given in cash to co-accused bank officials. Co-accused Vinay Mittal, by using his contacts, used to manage godown/firm's office (not belonging to firm/Bharat R. Chaudhary) for the purpose of visit/verification by the bank officials. For this co-accused bank official P. R. Arora used to send his bank officials with Vinay Mittal or the co-accused bank officials themselves used to personally verify the godown. The received sanctioned CC facility was transferred into different firm's bank accounts opened in his name and in the names of his employees. The amounts were also transferred into different bank accounts through Mr. Shekhar Gupta and Mr. Sanjeev Harinandan entry operators who took commission of 2% of the transactions, who used to provide cash against cheques deposited in the accounts of Firm provided by them and the cash received was again routed back to accused Bharat R. Chaudhary.

16. The accused/applicant is alleged to be the main mastermind who defrauded the bank, acquired the POC, diverted the same and is by all accounts the ultimate beneficiary. Offence of money laundering as defined under section 3 of the Act is made cognizable and non-bailable by virtue of section 45 of the Act. On the aspect of bail to an accused arrested on the allegations of money laundering, stringent stipulations are enacted under section 45 PMLA in the following terms:

45. Offences to be cognizable and non-bailable

(1) [Notwithstanding anything contained in the Code of

Criminal Procedure, 1973 (2 of 1974), no person accused of an offence [under this Act] shall be released on bail or on his own bond unless-

- (i) *the Public Prosecutor has been given an opportunity to oppose the application for such release; and*
- (ii) *where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail;*

Provided that a person who is under the age of sixteen years of is a woman or is sick or infirm [or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees], may be released on bail, if the special court so directs;

.....

17. The manner and nature of satisfaction to be arrived at for the exercise of the discretion in favour of the accused in custody in connection with offences under the PMLA, was pondered upon and explicated by the H'ble Apex Court in ***Rohit Tandon v. Directorate of Enforcement, (2018) 11 SCC 46*** vis a vis the twin conditions stipulated under section 45 of the Act as follows:

22. It is not necessary to multiply the authorities on the sweep of Section 45 of the 2002 Act which, as aforementioned, is no more res integra. The decision in Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra [Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra, (2005) 5 SCC 294 : (2005) SCC (Cri) 1057] and State of Maharashtra v. Vishwanath Maranna Shetty [State of Maharashtra v. Vishwanath Maranna Shetty, (2012) 10 SCC 561 : (2013) 1 SCC (Cri) 105] dealt with an analogous provision in the Maharashtra Control of Organised Crime Act, 1999. It has been expounded that the Court at the stage of considering the application for grant of bail, shall consider the question from the angle as to whether the accused was possessed of the requisite mens rea. The Court is not required to record a positive finding that the accused had not committed an offence under the Act. The Court ought to maintain a delicate balance

between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. The duty of the Court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. (emphasis supplied). Further, the Court is required to record a finding as to the possibility of the accused committing a crime which is an offence under the Act after grant of bail.

23. In *Ranjit singh Brahmajeet singh Sharma* [Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra, (2005) 5 SCC 294 : (2005) SCC (Cri) 1057] , in paras 44 to 46 of the said decision, this Court observed thus : (SCC pp. 318-19)

“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 future 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.”

18. This provision i.e. section 45 PMLA, was then struck down as unconstitutional by H'ble **Apex Court in *Nikesh Tarachand Shah v. Union of India, (2018) 11 SCC 1*** with the following observations:

46. We must not forget that Section 45 is a drastic provision which turns on its head the presumption of innocence which is fundamental to a person accused of any offence. Before application of a section which makes drastic inroads into the fundamental right of personal liberty guaranteed by Article 21 of the Constitution of India, we must be doubly sure that such provision furthers a compelling State interest for tackling serious crime. Absent any such compelling State interest, the indiscriminate application of the provisions of Section 45 will certainly violate Article 21 of the Constitution. Provisions akin to Section 45 have only been upheld on the ground that there is a compelling State interest in tackling crimes of an extremely heinous nature.

.....

54. Regard being had to the above, we declare Section 45(1) of the Prevention of Money-Laundering Act, 2002, insofar as it imposes two further conditions for release on bail, to be unconstitutional as it violates Articles 14 and 21 of the Constitution of India. All the matters before us in which bail has been denied, because of the presence of the twin conditions contained in Section 45, will now go back to the respective courts which denied bail. All such orders are set aside, and the cases remanded to the respective courts to be heard on merits, without application of the twin conditions contained in Section 45 of the 2002 Act. Considering that the persons are languishing in jail and that personal liberty is involved, all these matters are to be taken up at the earliest by the respective courts for fresh decision. The writ petitions and the appeals are disposed of accordingly.

19. Hon'ble the Apex Court recently in *Vijay MadanLal Chaudhary & ors Vs. Union of India & ors.* has upheld the promulgation of the twin conditions in the following words:

120. In the case of Nikesh Tarachand Shah, as aforesaid, this Court declared the twin conditions in Section 45(1) of the 2002 Act as unconstitutional being violative of Articles 14 and 21 of the Constitution. That conclusion reached by this Court is essentially on account of two basic reasons. The first being that the provision, as it existed at the relevant time, was founded on a classification based on sentencing of the scheduled offence and it had no nexus with objectives of the 2002 Act; and secondly, because the twin conditions were restricted only to a particular class of offences

within the 2002 Act, such as offences punishable for a term of imprisonment for more than three years under Part A of the Schedule, and not to all the offences under the 2002 Act. In paragraph 1 of the same decision, the Court had noted that the challenge set forth in the writ petition was limited to imposing two conditions for grant of bail wherein an offence punishable for a term of imprisonment for more than three years under Part A of the Schedule to the Act is involved. This aspect has been thoroughly analysed by the Court in the said decision. The Court also noted the legislative history for enacting such a law and other relevant material from paragraph 11 onwards upto paragraph 43. It adverted to several circumstances and illustrations to conclude that the provision, as it stood then, on the face of it, was discriminatory and manifestly arbitrary. Eventually in the operative order, being paragraph 54 of the decision, the Court declared that Section 45(1) of the 2002 Act, as it stood then, insofar as it imposes two further conditions for release on bail, to be unconstitutional as it violated Articles 14 and 21 of the Constitution.

121. By the amendment vide Act 13 of 2018, the defects noted by this Court in the aforementioned decision have been duly cured by deleting the words “unishable for a term of imprisonment of more than three years under Part A of the Schedule” in Section 45(1) of the 2002 Act and substituted by words “under this Act”. The question is: whether it was open to the Parliament to undo the effect of the judgment of this Court declaring the twin conditions unconstitutional? On a fair reading of the judgment, we must observe that although the Court declared the twin conditions as unconstitutional, but it was in the context of the opening part of the sub-section (1) of Section 45, as it stood then, which resulted in discrimination and arbitrariness as noticed in the judgment. But that opening part referring to class of offences, namely punishable for a term of imprisonment of more than three years under Part A of the Schedule having been deleted and, instead, the twin conditions paragraph 54 of the decision, the Court declared that Section 45(1) of the 2002 Act, as it stood then, insofar as it imposes two further conditions for release on bail, to be unconstitutional as it violated Articles 14 and 21 of the Constitution.

121. By the amendment vide Act 13 of 2018, the defects noted by this Court in the aforementioned decision have been duly cured by deleting the words “punishable for a term of imprisonment of more than three years under Part A of the Schedule” in Section 45(1) of the 2002 Act and substituted by words “under this Act”. The question is: whether it was open to the Parliament to undo the effect of the judgment of this Court declaring the twin conditions unconstitutional? On a fair reading of the judgment, we must observe that although the Court declared the twin conditions as unconstitutional, but it was in the context of the opening part of the sub-section (1) of Section 45, as it stood then, which resulted in discrimination and arbitrariness as noticed in the judgment. But

that opening part referring to class of offences, namely punishable for a term of imprisonment of more than three years under Part A of the Schedule having been deleted and, instead, the twin conditions have now been associated with all the offences under the 2002 Act, the defect pointed out in the stated decision, stands cured. To answer the question posed above, we may also usefully refer to the enunciation of the Constitution Bench of this Court, which recognizes power of the Legislature to cure the defect when the law is struck down by the Constitutional Court as violative of some fundamental rights traceable to Part-III of the constitution. It has been consistently held that such declaration does not have the effect of repealing the relevant provision as such. For, the power to repeal vests only in the Parliament and none else. Only upon such repeal by the Parliament, the provision would become non est for all purposes until re-enacted, but it is open to the Parliament to cure the defect noticed by the Constitutional Court so that the provision, as amended by removing such defect gets revived. This is so because, the declaration by the Constitutional Court and striking down of a legal provision being violative of fundamental rights traceable to Part III of the Constitution, merely results in the provision, as it existed then, becoming inoperative and unenforceable, even though it may continue to remain on the statute book.

125. From the above discussion, it is amply clear that the twin conditions declared as unconstitutional by this Court in Nikesh Tarachand Shah was in reference to the provision, as it existed at the relevant time, predicating application of Section 45 of the 2002 Act to only offences punishable for a term of imprisonment of more than three years under Part A of the Schedule of the 2002 Act and not even linked to the offences of money-laundering under the 2002 Act. The reasons which weighed with this Court for declaring the twin conditions in Section 45(1), as it stood at the relevant time, unconstitutional in no way obliterated the provision from the statute book. Therefore, it was open to the Parliament to cure the defect noted by this Court and to revive the same provision as in the present form, post amendment Act 13 of 2018 with effect from 19.4.2018.

127. There is no challenge to the provision on the ground of legislative competence. The question, therefore, is: whether such classification of offenders involved in the offence of money-laundering is reasonable? Considering the concern expressed by the international community regarding the money-laundering activities world over and the transnational impact thereof, coupled with the fact that the presumption that the Parliament understands and reacts to the needs of its own people as per the exigency and experience gained in the implementation of the law, the same must stand the test of fairness, reasonableness and having nexus with the purposes and objects sought to be achieved by the 2002 Act. Notably, there are several other legislations where such twin conditions have been provided for. Such twin conditions in the

concerned provisions have been tested from time to time and have stood the challenge of the constitutional validity thereof. The successive decisions of this Court dealing with analogous provision have stated that the Court at the stage of considering the application for grant of bail, is expected to consider the question from the angle as to whether the accused was possessed of the requisite mens rea. The Court is not required to record a positive finding that the accused had not committed an offence under the Act. The Court ought to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. The duty of the Court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. Further, the Court is required to record a finding as to the possibility of the accused committing a crime which is an offence under the Act after grant of bail.

131.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. 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 Prasad, 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.

20. The broad probabilities are to be reckoned at this stage, meticulous appreciation of evidence is not warranted for the purposes recording the satisfaction required under Section 45 PMLA, though a deeper probe into the material collated may be necessitated, but the exercise is only to assuage the genuineness of the imputations, not record a finding of guilt or acquittal. From

the contents of the prosecution complaint and material relied upon, as adverted to in the preceding paragraphs, the accused/applicant is portrayed as the mastermind, the kingpin, the main accused who devised this elaborate scheme for siphoning of bank funds, the acquisition processing and laundering of the proceeds of crime and the ultimate beneficiary of a major portion of the proceeds of crime generated from the commission of the predicate offences. He associated several others including bank officials in the several processes attending the proceeds of crime who have been arraigned in the prosecution complaint. From the nature of such allegations as are raked against the accused/applicant, and are noted above, the rigors of the twin conditions would be directly and inescapably applicable with full vigor against the accused/applicant.

21. Ld. Counsel has questioned the grounds of arrest as not in consonance with the perquisites delineated u/s 19 PMLA. I don't see the necessity at this stage of inquiring into the sufficiency or propriety of the grounds of arrest, when the prosecution complaint detailing involvement of the accused/applicant and crystallizing the incriminating material already stands filed, even cognizance of the offence of money laundering on the basis thereof also stands taken. It also deserves to be noted that the accused/applicant was produced before this Court on 15.2.2023 following his arrest on 14.2.2023 and was remanded to JC in the presence of his Counsel while rejecting the application for ED custody and the custody was extended from time to time first under section 167 Cr.PC pending investigation and then under section 309 Cr.PC, after the filing of the

prosecution complaint, neither the arrest nor the orders of remand were challenged at any stage on his behalf. For that matter the accused had applied for bail as a sick and infirm person invoking the proviso to section 45 PMLA and not on the ground of unlawful arrest, which application was dismissed, and no challenge was set up to the said order on the ground that the arrest had not been for justifiable reasons as per section 19 of the Act. Now the grounds for arrest need not be gone into to assess if there existed sufficient grounds with the authorized officer to believe that the accused had committed money laundering.

22. The prosecution complaint against him and 10 others stands filed, the accused for the exercise of the concession in his favour has to brace up and meet the rigors of the twin conditions imposed under section 45 PMLA. It is no longer the satisfaction of the IO but the satisfaction of the Court that is now required to be recorded as mandated u/s 45 that the accused may not be guilty of the offence of money laundering. It is for the accused/applicant to demonstrate, though on broad probabilities alone, that he is not guilty of the offence of money laundering. No such contention is raised, nor any material adverted to suggesting any inference contrary to the case set up against the accused-applicant under the prosecution complaint as the mastermind who availed the credit facilities fraudulently on the basis of large scale fabrication and manipulation in favour of multiple entities and engineered the diversion/concealment and processing of the proceeds of crime and is the repository of a major portion if not the entire POC. The Full Bench judgement of H'ble the Apex Court in Vijay Madan lal Chaudhary still holds

sway even if on certain aspects its review has been requisitioned.

23. The judgments relied upon by the Ld. Counsel for the accused/applicant are distinguishable on facts. In *Lakhwinder Singh*, bail was granted noting glaring lacunae in the prosecution's case, the POC quantified were not justified from the record, no such lacunae is shown in the present case. In the present case the proceeds of crime generated from the credit facilities obtained fraudulently from the Bank are quantified at 29.50 Crores, investigation under PMLA has been able to identify the processing of around 26 crores of the POC, and trace the end user of 9.37 Crores as submitted before this Court by the Ld. SPP for ED, further investigation to track the end user of the remaining POC continues, but it has also been unearthed during investigation that the POC generated was processed in a manner that it reverted back to the accused/applicant, though some amounts were acquired by the Bank officials and paid to entry operators also. In *Ranjit Singh Brahamjet Singh*, there was no material to harness the mens rea for the offences alleged in the Telgi fake stamp case against the Commissioner of Police during whose tenure the scam was perpetrated, the applicant before the Court is the main accused, the mastermind of a rather devious and elaborate scheme of money laundering.

24. The health status of the accused has also been emphasized upon as a ground warranting his enlargement on bail. It emerges that the accused when produced before the court on 04.07.2023 and then on 05.07.2023 had complained that he has been loosing weight at an alarming rate and that the necessary medication is not being timely provided to him in custody and

report of the Jail Superintendent was called for in this regard. As per the report of the Jail Superintendent, on 23.06.23, 06.07.2023, when the accused was reviewed by jail visiting psychiatrist he gave history of loose stools since 15 days, he was taking medicines regularly, it was also noted that inmate was not taking food due to the reasons best known to him and was advised to continue medication as directed/advised. Information has been received from the co-inmates that the accused has reduced his intake of food since the admission in jail. On 15.02.2023, the day patient was lodged in jail his weight was 115kg and at present his weight is 85.7kg. The medicines (Tab. Lamtor 100mg) which are not available in the jail medical store were being locally purchased through proper channel and for such reason there might have occasioned some delay in the due process in the getting medicines but whenever necessary, the purchases were also made in emergency through prison Welfare Fund.

25. Presently, the accused is reported to be behaviorally and vitally stable, he is being provided all psychiatrist medications as prescribed by RML Hospital and jail dispensary. Considering the report directions have been passed on 08.07.2023 to the Jail Superintendent concerned to ensure that all necessary steps are taken in advance for timely procurement of this medicine so that the condition which is being duly maintained with medication is not aggravated in any manner. Special diet if need be considering that the accused in custody has been losing weight and has been complaining of loose stool for the past 15 days, may also be prescribed so that accused is

able to regain and maintain his health and further health status reports have been called for in respect of the accused/applicant. Accused in custody appears to have reduced his food intake. Some loss in appetite and corresponding weight loss can be reasonably expected, considering the acclimatisation process of adjusting to the drastic change and given the attending regimen and rigors. The health condition of the accused/applicant presents no such emergent situation warranting exceptional and extraordinary measures at this stage, appropriate medication and special diet required to control and treat the loose stools can be provided in custody.

26. The allegations are exceedingly serious, the offence grave, not merely from the standpoint of the large volume of POC involved, the modus operandi was so elaborate and sinister that accused/applicant adopting such devious designs succeeded in duping the bank multiple times siphoning of huge amounts of public money in the process, layering and re-routing the same to himself and gratifying other unsavory elements and operations in the process. It is indeed such unscrupulous shenanigans that erode public trust and weaken the foundations of the economy, and warrant for economic offences to be treated as a separate class unto itself. There is no material placed before this Court to record a prima facie satisfaction in favour of the accused that the accused is not guilty of money laundering. There is another aspect relevant for the purposes of Sec. 45 PMLA, the accused/applicant had failed to join investigation despite being summoned on numerous occasions and is shown to have been non-cooperative all along. Also, the search at his premises lead to

seizure of documents indicating that these were in the process of being fabricated. The end user of the POC, a substantial part is yet untraced, the possibility does not sound too baseless and farfetched of the accused tampering with evidence to evade the discovery of end user of POC that remains to be unearthed. That the accused is not likely to commit similar offence also is not satisfied in favour of the accused. This application for grant of bail is therefore bound to fail on the touchstone of the twin conditions prescribed under section 45 PMLA, and stands dismissed accordingly.

Dasti.

Copy be sent to the accused in custody through Jail Superintendent concerned.

NEELOFER ABIDA PERVEEN
Special Judge (PC Act) CBI-22
Rouse Avenue Courts,
New Delhi/12.07.2023