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

% ***Reserved on: 12.10.2023***
Pronounced on: 03.11.2023

\+ **W.P.(CRL) 2981/2023 & CRL.M.A. 27792/2023**

AMIT KATYAL ..... Petitioner

Through: Mr. Mukul Rohtagi, Senior Advocate with Ms. Bina Gupta, Mr. Gurpreet Singh, Mr. Bakul Jain, Ms. Sheena, Ms. Akasha Saini, Mr. Shiv Kumar Gupta and Mr. Naman Agarwal, Advocates

versus

DIRECTORATE OF ENFORCEMENT ..... Respondent

Through: Mr. Zoheb Hossain, Special Counsel for ED with Mr. Vivek Gurnani, Mr. Baibhav, Mr. Kartik Sabharwal and Mr. Ankur Tiwari, Advocates

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. By way of present writ petition filed under Article 226 of Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.'), the petitioner seeks grant of following reliefs:

> "i. Issue a Writ of Certiorari of any Writ, Order or Direction of like nature directing the calling of records in

relation to ECIR No. 31/2022 and direct quashing of the proceedings against the Petitioner in the impugned ECIR as an accused; and/or

ii. Issue a Writ of Prohibition of any Writ, Order or Direction of like nature restraining the Respondent from taking any coercive action against the Petitioner in respect of the ECIR No. 31/2022 including conducting further investigation & quashing summon dated 06.10.2023 qua the Petitioner; and/or

iii. Issue a Writ of Declaration of any Writ, Order or Direction for quashing of the Enforcement Directorate case against the petitioner qua ECIR No. 31/2022 by quashing the impugned ECIR, summon dated 06.10.2023 and all the proceedings emanating therefrom; and

iv. Pass any other order or directions that this Hon'ble Court may deem fit and proper in the facts and circumstances of the case in favor of the petitioner.

THE CASE OF PETITIONER

2. The background facts, as disclosed in the petition, are that the family of petitioner owns Krrish group of companies and has been in business of Breweries and Distilleries since the year 1983, and in the real estate business also since 2008. It is stated that the company namely M/s Iceberg Industries Ltd. (previously known as Iceberg Consultants Limited) was incorporated in the year 1994 and the petitioner had become its whole-time director from the date of its incorporation. The said company, for the purpose of setting up a Distillery and Brewery plant had purchased a land of approximately 12 acres in Bihta, Bihar and the petitioner had then set up a plant for Distillery in Bihar under the company M/s Iceberg Industries Ltd. It is stated that since the petitioner's distillery was operating in Bihar, the petitioner had started purchasing small chunks of lands/plots in

Bihar for the purpose of expansion or storage, in the name of several companies such as M/s In-Shape Health & Resorts Pvt. Ltd., M/s Iceberg Hotel & Resorts Ltd., and M/s AK Infosystem Pvt. Ltd. during the years 2006-2011. It is stated that one of the properties ad-measuring 9527 sq. ft. purchased by M/s AK Infosystem Pvt. Ltd. in the year 2007, situated in Rupaspur, Danapur, Patna, Bihar, was purchased for a sale consideration of Rs.10,83,000/-, paid in cash and the owner of the said land Sh. Hazari Rai was relative of one of the recruits in Group-D in Railway Department.

3. It is stated that the distillery at Bihar owned by M/s Iceberg Industries Ltd. was sold to American Beer company namely M/s Molson Coors International. It is stated that after selling the brewery, the petitioner was in a process to wind up his business and properties in Bihar. It is stated that M/s Iceberg Industries Ltd. was also sold to M/s Molson Coors International by means of transfer of complete shareholding. Later, the petitioner had also resigned from the Directorship of M/s Iceberg Industries Ltd. and had completely exited the company. It is submitted that the company M/s AK Infosystem Pvt. Ltd. was sold to Smt. Rabri Devi and Sh. Tej Partap Yadav (family members of Sh. Lalu Prasad Yadav) by means of transfer of complete shareholding, and later, the petitioner had also resigned from the Directorship of the said company and had completely exited the company. It is stated that the petitioner had received complete money with respect to sale conducted for his company from family of Sh. Lalu Prasad Yadav in 2017. In this regard, it is also stated that when the company was transferred to the

family members of Sh. Lalu Prasad Yadav, he or his family were not holding any portfolio in the government, thus, there was no embargo in selling the company to them.

4. It is stated that Central Bureau of Investigation (*'CBI'*), Economic Offence–II branch, New Delhi had registered an RC bearing No. RC2202022E0007 dated 18.05.2022 under Section 120-B of Indian Penal Code, 1860 (*'IPC'*) and Sections 11/12/13(2) read with 13(1) of Prevention of Corruption Act, 1988 (*'PC Act'*) against the then Railway Minister Sh. Lalu Prasad Yadav and others, for entering into a criminal conspiracy to abuse official position in order to obtain pecuniary benefits in the form of land parcels being transferred to his family members and companies thereof in return for appointment to the post of substitute (Group-'D') under the various zones of the Indian Railways (*commonly known as Job for Land Scam*). It is stated that as per allegations in the RC, seven land parcels ad-measuring about 1,05,292 sq. feet, situated at Patna, Bihar were acquired by the family members of Sh. Lalu Prasad Yadav from different persons through five sale deeds and two gift deeds. It is further stated that Directorate of Enforcement had registered an ECIR bearing No. 31/DLZO/2022 on 16.08.2022 on the basis of predicate offences in the RC registered by CBI and had taken up investigation under the provisions of Prevention of Money Laundering Act, 2002 (*'PMLA'*).

5. It is the case of petitioner that during this period, he was summoned by the CBI on several occasions and he had appeared before the agency on every occasion and duly co-operated in the

investigation. It is stated that the investigation in the CBI case had culminated into a chargesheet filed by EO-II, CBI, New Delhi before the Special CBI Court, Rouse Avenue, New Delhi, wherein the petitioner has been made a prosecution witness, after conducting detailed investigation with respect to the petitioner. Thus, it is stated that the petitioner was absolved from commission of any scheduled offence in the predicate offence case and was rather named as a witness.

6. It is stated that after registration of the ECIR, the petitioner had been summoned by the Directorate of Enforcement several times and he had duly appeared before the agency on six occasions and duly submitted various documents as and when directed by the agency. However, it is stated that despite co-operating in the investigation and despite not being an accused in the predicate offence, is being repeatedly called and grilled by the Directorate of Enforcement since he had a business transaction with the family members of Sh. Lalu Prasad Yadav. It is also stated that the questions asked by the CBI and the Directorate of Enforcement are similar as they are investigating the same transaction. It is further stated that despite providing all the possible assistance, raids were conducted at the premises of petitioner and a Look Out Circular was opened against the petitioner at the behest of respondent and the said fact had come to the knowledge of petitioner when the respondent had filed an affidavit in another Writ Petition which is pending before this Court pertaining to seeking permission to travel abroad qua a loan transaction with Union Bank of India where respondent is a performa

party.

7. It is also stated that on 10.03.2023, the respondent had conducted searches at the various premises including the residence of the petitioner and at several offices of the Companies where petitioner had remained as Director at some point of time, and certain cash, documents, mobile phone, laptop, etc. were seized during the search.

8. The grievance of the petitioner is that the Directorate of Enforcement has now summoned him vide two impugned notices whereby he has been called upon to produce more than 20 years old documents which are not related to the petitioner in any manner as he is no longer associated with any of the entities of which documents are summoned and those entities were sold long back in the year 2010-11 to other international and national companies and thus, the said documents could not be produced by him. It is stated that from the conduct of the respondent i.e. seizing the material and further issuing the Look Out Circular against the petitioner shows that the respondent is implicating the petitioner in the ECIR, which is not permissible under law and the proceedings are liable to be quashed.

ARGUMENTS ADDRESSED ON BEHALF OF PETITIONER

9. Learned Senior Counsel for the petitioner argues that the petitioner has been absolved from the schedule offences in the RC registered by the CBI and thus, the proceedings under PMLA are not maintainable in terms of the law laid down in case of ***Vijay Madanlal Choudhary v. Union of India*** *2022 SCC OnLine SC 929*. In this

regard, it is submitted that the petitioner is not even an accused in the predicate offence and since there is no predicate offence against the petitioner, the question of the ECIR being sustained against the petitioner in isolation does not arise, as also held by this Court in the case of ***Harish Fabiani v. Enforcement Directorate*** *2022 SCC OnLine Del 3121*. It is further submitted that in the scheduled offence wherein the CBI has registered an RC, the statement of the petitioner had been recorded under Section 161 and 164 of Cr.P.C. and the petitioner has been cited as a witness in the chargesheet filed by the CBI, and thus, the proceedings under PMLA cannot be initiated against the petitioner.

10. It is also argued that as per Section 44 of the PMLA, the prosecution by CBI and by the Directorate of Enforcement is to be tried together by the same judge, and therefore, it would give rise to a situation where the petitioner is a witness in the case registered by the CBI and will be an accused in the case registered by the Directorate of Enforcement.

11. Thus, the case of the petitioner as argued by the learned Senior Counsel is summed up as under:

a) Petitioner is not an accused in the predicate offence registered by CBI.
b) CBI had summoned the petitioner and sought several documents which were duly supplied by the petitioner.
c) CBI got the statement of petitioner recorded as a witness in the predicate offence.
d) In the chargesheet filed by the CBI, the Petitioner is not an

accused and he has not been summoned as an accused by the learned Sessions Court

e) CBI had investigated the complete transaction and had found no involvement of the present petitioner

f) No ill-intention or *mens rea* was attributed to the petitioner with respect to purchase of 01 piece of land involved in the alleged *Job for Land Scam*.

g) CBI had duly investigated the sale transactions and had found that the properties were purchased by the petitioner from his valid source of income

h) Thus, the proceedings against the petitioner under the present ECIR, including issuance of summons, are liable to be quashed.

ARGUMENTS ADDRESSED ON BEHALF OF RESPONDENT

12. Learned Special Counsel for the respondent/Directorate of Enforcement, while opposing the present petition, argues that the prayer in this petition seeking quashing of ECIR against the petitioner herein is not maintainable. In this regard, reliance is placed on the decision in case of ***Hukum Chand Garg & Anr. v. State of Uttar Pradesh & Ors.*** *SPL (Crl.) No. 762/2020* to argue that a person who is not named in the ECIR has no locus to seek relief such as quashing of ECIR. It is further argued that in the garb of a petition filed under Article 226 of Constitution and Section 482 of Cr.P.C., the petitioner is essentially seeking anticipatory bail, and such a practice has time and again been frowned upon by the Hon'ble Apex Court.

13. It is argued by learned Special Counsel that the present ECIR pertains to the *Railway Job for Land Scam* and the respondent agency is investigating the trail of proceeds of crime, and the role of petitioner is also being investigated for which impugned summons have been issued to him to appear before the respondent with the necessary documents, etc. It is further submitted that the issue being raised by the petitioner stands settled in case of ***Vijay Madanlal Choudhary*** *(supra)* that the offence of money laundering is an independent offence and one need not be named as an accused in the predicate offence.

14. As regards the contention qua Section 44 of PMLA raised by the learned Senior Counsel for the petitioner and the argument that petitioner is a witness in the predicate offence, it is submitted by the learned Special Counsel for respondent that a similar argument was earlier rejected by a Co-ordinate Bench of this Court in case of ***Benoy Babu v. Directorate of Enforcement*** *2023 SCC OnLine Del 3771*.

15. Therefore, in view of aforesaid submissions, it is prayed that present petition be dismissed.

ANALYSIS AND FINDINGS

16. The event that prompts the petitioner to approach this Court is the issuance of summons bearing number PMLA/SUMMON/DLZO/ 2023/1542, dated 06.10.2023, under Section 50(2)(3) of PMLA by the Directorate of Enforcement to the petitioner *vide* which he has been asked to appear before the investigating officer on 09.10.2023.

17. As per the case set out by the petitioner, *he apprehends* that in light of the recent conduct of the Directorate of Enforcement i.e. conducting raids at his premises, *he may be arrested* in the present ECIR if he joins investigation in compliance of the summons received, and accordingly, he has sought quashing of the summons issued by the Directorate of Enforcement.

18. Since the petitioner has sought quashing of impugned summons, it shall be germane to consider the position of law in this regard. At the outset, this Court deems it most appropriate to reproduced Section 50 of PMLA, which reads as under:

> "**50. Powers of authorities regarding summons, production of documents and to give evidence, etc**.—
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> (1) The Director shall, for the purposes of section 13, have the same powers as are vested in a civil court under the Civil Procedure Code, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:—
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> (a) discovery and inspection;
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> (b) enforcing the attendance of any person, including any officer of a reporting entity, and examining him on oath;
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> (c) compelling the production of records;
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> (d) receiving evidence on affidavits;
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> (e) issuing commissions for examination of witnesses and documents; and
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> (f) any other matter which may be prescribed.
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> (2) The Director, Additional Director, Joint Director, Deputy Director or Assistant Director shall have power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this Act.
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> (3) All the persons so summoned shall be bound to attend in person or through authorised agents, as such officer

> may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.
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> (4) Every proceeding under sub-sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Penal Code, 1860 (45 of 1860).
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> (5) Subject to any rules made in this behalf by the Central Government, any officer referred to in sub-section (2) may impound and retain in his custody for such period, as he thinks fit, any records produced before him in any proceedings under this Act:
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> Provided that an Assistant Director or a Deputy Director shall not—
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> (a) impound any records without recording his reasons for so doing; or
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> (b) retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the Joint Director."

19. The Hon'ble Apex Court in case of ***Vijay Madanlal Choudhary*** *(supra)* has made the following discussion on the scope of Section 50 and the power to issue summons therein:

> "425. Indeed, sub-section (2) of Section 50 enables the Director, Additional Director, Joint Director, Deputy Director or Assistant Director to issue summon to any person whose attendance he considers necessary for giving evidence or to produce any records during the course of any investigation or proceeding under this Act. We have already highlighted the width of expression "proceeding" in the earlier part of this judgment and held that it applies to proceeding before the Adjudicating Authority or the Special Court, as the case may be. Nevertheless, sub-section (2) empowers the authorised officials to issue summon to any person. We fail to understand as to how Article 20(3) would come into play in respect of process of recording statement pursuant to such summon which is only for the purpose of collecting

information or evidence in respect of proceeding under this Act. Indeed, the person so summoned, is bound to attend in person or through authorised agent and to state truth upon any subject concerning which he is being examined or is expected to make statement and produce documents as may be required by virtue of sub-section (3) of Section 50 of the 2002 Act. The criticism is essentially because of subsection (4) which provides that every proceeding under sub-sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the IPC. Even so, the fact remains that Article 20(3) or for that matter Section 25 of the Evidence Act, would come into play only when the person so summoned is an accused of any offence at the relevant time and is being compelled to be a witness against himself. This position is well-established.

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431. In the context of the 2002 Act, it must be remembered that the summon is issued by the Authority under Section 50 in connection with the inquiry regarding proceeds of crime which may have been attached and pending adjudication before the Adjudicating Authority. In respect of such action, the designated officials have been empowered to summon any person for collection of information and evidence to be presented before the Adjudicating Authority. It is not necessarily for initiating a prosecution against the noticee as such. The power entrusted to the designated officials under this Act, though couched as investigation in real sense, is to undertake inquiry to ascertain relevant facts to facilitate initiation of or pursuing with an action regarding proceeds of crime, if the situation so warrants and for being presented before the Adjudicating Authority. It is a different matter that the information and evidence so collated during the inquiry made, may disclose commission of offence of money-laundering and the involvement of the person, who has been summoned for making disclosures pursuant to the summons issued by the Authority. At this stage, there would be no formal document indicative of likelihood of involvement of such person as an accused of offence of money-laundering. If the statement made by him reveals the offence of money-laundering or the existence of proceeds of crime, that becomes actionable under the Act itself. To put it

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

20. On behalf of the respondent, reliance has been placed upon decision of Hon'ble Apex Court in case of ***Kirit Shrimankar v. Union of India & Ors.*** *W.P.(Crl.) No. 109/2013*, wherein the writ petitions had been filed on the ground of apprehension of getting arrested under provisions of Customs Act, 1962 because the officers concerned had conducted a search at the residence of ex-wife of petitioner therein. Though the writ petitions therein were dismissed as withdrawn, it was observed by the Hon'ble Apex Court that the petition was highly premature based on averments which in no way could be termed as *prima facie* apprehension of arrest. Relevant observations of the Hon'ble Apex Court are extracted hereunder:

> "...In fact, when we perused the averments contained in the Writ Petition the provocation for the petitioner to file this writ petition was the so-called search conducted in the residential premises of the petitioner's ex-wife on 11.06.2013, who was residing at C-103, Gokul Divine, James Wadi, Irla, Ville Parle (West), Mumbai-400 056 and nothing incriminating was detected in the said search. It was further averred therein that the Officers threatened that the petitioner would be arrested, incarcerated in jail and would face dire consequence if he would not submit to their dictates. On that basis the writ petition came to be filed in this Court under Article 32 of the Constitution of India. We, therefore, expressed that it was highly premature for the petitioner to seek for extraordinary constitutional remedy under Article 32 of the Constitution of India based on such flimsy averments contained in the writ petition, inasmuch as such averments cannot form the basis for a prima facie apprehension of arrest. We, therefore, also expressed that the writ petition does not merit any consideration to be dealt with on the various issues raised, inasmuch as it will be for the petitioner to work out his remedy as and when any appropriate positive action is taken against the petitioner. In the course of hearing, learned Senior Counsel appearing for the petitioner now seeks to withdraw the writ petition reserving petitioner's liberty to work out his remedy in future, if any such situation arises..."

21. In case of ***Commissioner of Customs, Calcutta v. M.M. Exports*** *(2010) 15 SCC 647*, the Hon'ble Apex Court, while dealing with a case of issuance of summons under Section 108 of Customs Act, had expressed that except in exceptional cases, High Courts should not interfere at the stage of issuance of summons. The relevant observations read as under:

> "1. By consent the impugned order is set aside. However, we wish to make it clear that as far as possible the High Court should not interfere at the stage when the Department has issued the summons. This is not one of those exceptional cases where the High Court should have interfered at the stage of issuance of the summons..."

22. A Co-ordinate Bench of this Court in ***Virbhadra Singh v. Enforcement Directorate*** *2017 SCC OnLine Del 8930*, while refusing to quash the summons issued under Section 50 of PMLA, had made the following important observations:

> "141. The Enforcement officers empowered by PMLA to make investigation into the offences under the said law are not to be equated with police officers. The law confers upon them requisite powers to carry out investigation and collect evidence. The said power includes the power to issue summons to "any person" whose attendance is considered "necessary" and compelling his attendance, whether to "give evidence" or to "produce any records" and to examine him "on oath", in terms of Section 50(2) and (3), or to put any person under arrest (without warrant) upon satisfaction as to his complicity. These powers necessary for investigation do not render the authorities under PMLA same as police. The general guidelines governing the arrest procedure, as envisaged in the Code of Criminal Procedure or in terms of judicial dicta, control the exercise of such power by them. The fundamental rights relating to criminal prosecutions, in general, and against self-incrimination, in particular, are not denied here. Similarly, the rights guaranteed to an arrestee including for authorization for continued detention as per the general criminal law continue to regulate and, for this purpose, Section 167 Cr.P.C. continues to apply mutatis mutandis, all references pertaining to the police or their procedure for investigation to be read appropriately modified in relation to officers empowered by PMLA to investigate.
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> 143. It is clear from the above discussion that the Prevention of Money-Laundering Act, 2002 is a complete Code which overrides the general criminal law to the extent of inconsistency. This law establishes its own enforcement machinery and other authorities with adjudicatory powers and jurisdiction. The enforcement machinery is conferred with the power and jurisdiction for investigation, such powers being quite exhaustive to

> assure effective investigation and with built-in safeguards to ensure fairness, transparency and accountability at all stages. The powers conferred on the enforcement officers for purposes of complete and effective investigation include the power to summon and examine "any person". The law declares that every such person who is summoned is bound to state the truth. At the time of such investigative process, the person summoned is not an accused. Mere registration of ECIR does not make a person an accused. He may eventually turn out to be an accused upon being arrested or upon being prosecuted. No person is entitled in law to evade the command of the summons issued under Section 50 PMLA on the ground that there is a possibility that he may be prosecuted in the future. The law declared in Nandini Satpathy (supra) concerning the statements under Section 161 Cr.P.C. recorded by the police, and in other pronouncements concerning similar powers of officers of the Customs Department, as noted earlier, provide a complete answer to the apprehensions that have been expressed.
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> 146. There is nothing shown to the court from which it could be inferred that the issuance of summons by the respondents to the petitioners for investigation into the ECIR, in exercise of statutory powers, has caused, or has the effect of causing, any prejudice to any of them..."

23. Thus, it is significant to note at this juncture that the power conferred upon the authorities by virtue of Section 50 of PMLA empower them to summon 'any person' whose attendance may be crucial either to give some evidence or to produce any records during the course of investigation or proceedings under PMLA. The petitioner herein has been summoned *vide* impugned notice dated 06.10.2023 whereby he has been called upon to submit certain documents and records, which are deemed necessary by the Directorate of Enforcement for the purpose of investigation in the

Railway Job for Land Scam case, for which the present ECIR has been registered.

24. A perusal of the chargesheet filed by the CBI in the predicate offence, and the reply filed by Directorate of Enforcement in another writ petition i.e. W.P.(C) 16957/2022 preferred by the petitioner in some other case for seeking permission to travel abroad, both of which have been placed on record by the petitioner, throws light on the position of the petitioner in the alleged *Railway Job for Land Scam.* To put it succinctly, the petitioner herein was the Director and major shareholder of M/s. AK lnfosystem Pvt Ltd at the time when the company had received land parcel from relative of a candidate, who was selected as Group-D substitute in Indian Railways, and later, the said company had been handed over to the family members of Sh. Lalu Prasad Yadav in 2014 by the petitioner without getting any monetary benefits. It is also the case of Directorate of Enforcement that the proceeds of crime were utilised to purchase a property in New Friends Colony, New Delhi, which was purchased in the name of one company namely M/s. AB Exports Private Limited, and the petitioner who was a close aid of Sh. Lalu Prasad Yadav had applied for the electricity connection at the said property, to allegedly facilitate its enjoyment at the hands of Sh. Lalu Prasad Yadav and his family members.

25. Thus, the investigation in the present ECIR is still continuing and the petitioner has merely been summoned to appear and submit certain documents. Even as per the own case of petitioner, he has joined investigation in the present ECIR upon being summoned by

the Directorate of Enforcement on six occasions in past, between March till August 2023. Thus, no tenable grounds have been shown now as to why the impugned summons deserve to be quashed.

26. Even otherwise, as held in several judicial precedents discussed above, this Court cannot throttle the investigative process at the stage of issuance of summons to the petitioner.

27. The other alternate relief sought by the petitioner is for quashing of present ECIR qua the petitioner. However, having examined the records of the case and the law on point, this Court is of the opinion that the prayer for quashing of ECIR is highly premature in the present case, for the reasons discussed in the succeeding paragraphs.

28. *Firstly*, it is crucial to note that on one hand, the petitioner states that he is not in possession of the copy of ECIR and is not aware about its contents including as to whether he has been named in the ECIR or not, and on the other, he prays for quashing of ECIR insofar as it relates to him. Thus, the inherent contradiction lies in the fact that though the petitioner himself does not know whether he is accused or not in the ECIR and states that he apprehends his implication in the case merely because he is being repeatedly summoned, at the same time, he has filed this petition for quashing of ECIR.

29. *Secondly*, the petitioner has not placed on record the copy of ECIR which is sought to be quashed since he is not in possession of the same. In this regard, it is relevant to note that it is not mandatory for the Directorate of Enforcement to furnish a copy of ECIR to the

person who is under investigation, as held by Hon'ble Apex Court in ***Vijay Madanlal Choudhary*** *(supra),* and the petitioner herein has only been summoned under Section 50 of PMLA.

30. During the course of arguments, one of the contentions raised by the learned Special Counsel for Directorate of Enforcement was also that 'a person who is named in the ECIR cannot seek its quashing', and in this regard, the attention of this Court was also drawn by learned Special Counsel to the judgment titled ***Hukum Chand Garg & Ors. v. The State of Uttar Pradesh & Ors.*** *SLP(Crl.) No. 762/2020* of the Hon'ble Apex Court in which it was held as under:

> "...It is not in dispute that the petitioners have not If the been named as accused in the said crime. petitioners have not been named as accused in the said crime, the question of quashing of stated FIR or the case the Central Bureau of now under investigation by Investigation (CBI) arising from the said crime, does not arise as the petitioners will have no locus to seek such a relief..."

31. Thus, in these circumstances, when the petitioner has only been summoned under Section 50 of PMLA, and the ECIR is not available on record, nor the petitioner has made out any ground at this stage for which this Court should pass any direction to call upon the respondent to place before this Court a copy of ECIR, which is also one of the prayers in this petition, this Court is of the opinion that the prayer for quashing of ECIR is premature and without any merit.

32. Before proceeding any further, it will also be important to appreciate the argument raised on behalf of petitioner that since the

petitioner has not been made an accused, but rather a witness in the predicate offence by the CBI, he cannot be made an accused in the PMLA case by the Directorate of Enforcement.

33. In this regard, reliance was placed upon the following observations of the Hon'ble Apex Court in case of ***Vijay Madanlal Choudhary*** *(supra)*:

> "467. In light of the above analysis, we now proceed to summarise our conclusion on seminal points in issue in the following terms:—
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> (v)(d) The offence under Section 3 of the 2002 Act is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence. It is concerning the process or activity connected with such property, which constitutes the offence of money-laundering. The Authorities under the 2002 Act cannot prosecute any person on notional basis or on the assumption that a scheduled offence has been committed, unless it is so registered with the jurisdictional police and/or pending enquiry/trial including by way of criminal complaint before the competent forum. If the person is finally discharged/acquitted of the scheduled offence or the criminal case against him is quashed by the Court of competent jurisdiction, there can be no offence of money-laundering against him or any one claiming such property being the property linked to stated scheduled offence through him."

34. Reliance was also placed upon judgments of Hon'ble Apex Court in case of ***Parvathi Kollur v. State*** *2022 SCC OnLine SC 1975*, ***Indrani Patnaik v. Enforcement Directorate*** *W.P.(C) No. 368/2021* and of Hon'ble Division Bench of this Court in case of ***Harish Fabiani*** *(supra),* in which the aforesaid principle laid down in case of ***Vijay Madanlal Choudhary*** *(supra)* was followed.

35. To rebut these argument, reliance on behalf of respondent/ Directorate of Enforcement was placed on the following observations of Hon'ble Apex Court in case of ***Vijay Madanlal Choudhary*** *(supra)* to argue that the offence of money laundering is independent offence and one need not be named as an accused in the predicate offence:

> "269. From the bare language of Section 3 of the 2002 Act, it is amply clear 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. Thus, involvement in any one of such process or activity connected with the proceeds of crime would constitute offence of money-laundering. This offence otherwise has nothing to do with the criminal activity relating to a scheduled offence — except the proceeds of crime derived or obtained as a result of that crime.
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> 295. As aforesaid, in this backdrop the amendment Act 2 of 2013 came into being. Considering the purport of the amended provisions and the experience of implementing/ enforcement agencies, further changes became necessary to strengthen the mechanism regarding prevention of money-laundering. It is not right in assuming that the attachment of property (provisional) under the second proviso, as amended, has no link with the scheduled offence. Inasmuch as Section 5(1) envisages that such an action can be initiated only on the basis of material in possession of the authorised officer indicative of any person being in possession of proceeds of crime. The precondition for being proceeds of crime is that the property has been derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence. The sweep of Section 5(1)

> is not limited to the accused named in the criminal activity relating to a scheduled offence. It would apply to any person (not necessarily being accused in the scheduled offence), if he is involved in any process or activity connected with the proceeds of crime. Such a person besides facing the consequence of provisional attachment order, may end up in being named as accused in the complaint to be filed by the authorised officer concerning offence under Section 3 of the 2002 Act..."

36. There can be no two views about the law laid down by the Three-judge Bench of Hon'ble Apex Court in case of ***Vijay Madanlal Choudhary*** *(supra)* whereby it has been held that if a person is finally discharged/acquitted of the scheduled offence or the criminal case against him is quashed by the Court, there can be no offence of money laundering against him, as argued on behalf of petitioner.

37. However, the facts of the present case are entirely distinguishable and the ratio of the aforesaid decisions cannot be made applicable to the present case for the following reasons:

i. *Firstly*, though the learned Senior Counsel for the petitioner submitted during the course of arguments that the petitioner is a witness in the case registered by the CBI, the learned Special Counsel for the Directorate of Enforcement stated that he was not aware about the same. Further, as disclosed from petition, the petitioner states that he has been made as a witness in the chargesheet as either PW-36 or PW-37 since the names of these witnesses have not been disclosed. In this Court's opinion, when the names of PW-36 and PW-37 have not been disclosed in the

chargesheet itself in the interest of pending investigation, this Court cannot come to a conclusion that the petitioner is one these witnesses whose names have not been disclosed. Thus, nothing has been placed before this Court which shows that petitioner herein is a witness in the CBI case. Even otherwise, the investigation in the CBI case is also pending and at this stage, the petitioner cannot be said to have been 'finally discharged/ acquitted in the scheduled offence'.

ii. *Secondly*, a bare reading of the decisions cited on behalf of the petitioner would reflect that the same takes into account a situation where the person concerned is an 'accused' of offence of money laundering. As already observed in the preceding discussion, it is not known at this stage whether the petitioner is even named in the ECIR and whether he will be made an accused in this case, and he has only been summoned under Section 50 of PMLA to join investigation, which he has joined in past on several occasions also.

38. Therefore, the argument that petitioner, being not an accused or being a witness in the predicate offence, cannot be made an accused in the ECIR is also premature to raise and deal with at this stage, in view of the reasons stated hereinabove.

39. The third prayer of the petitioner relates to directing the Directorate of Enforcement to not take any coercive steps against the petitioner in the present ECIR.

40. In this regard, this Court notes that the petitioner herein in the past has been summoned by the Directorate of Enforcement on about

six occasions, as per the own case of petitioner, and has not been arrested till date. It is also not in dispute that the petitioner has also not been arrested by the CBI in the RC pertaining to predicate offence. Merely because once again a summon has been issued under Section 50 of PMLA, no case for grant of no-coercive steps can be made out. It is also clear as per the scheme of PMLA that power to issue summons under Section 50 of PMLA is different from the power to arrest under Section 19 of PMLA, and the issuance of summons to join investigation and give some evidence or document to the investigation agency cannot be presumed to culminate into the arrest of person being so summoned. By the decisions of Hon'ble Apex Court in cases of ***Vijay Madanlal Choudhary*** *(supra),* ***V. Senthil Balaji v. State*** *2023 SCC OnLine SC 934* and ***Pankaj Bansal v. Union of India*** *2023 SCC OnLine SC 1244,* the law on exercise of power under Section 19 and the inherent safeguards therein and the duty of the concerned authority/officer to comply with the mandate of the Act also stands settled.

41. While adjudicating upon such a prayer, this Court deems it appropriate to refer to the decision of the Hon'ble Apex Court in case of ***Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra & Ors.*** *2021 SCC OnLine SC 315,* whereby the Hon'ble Apex Court had cautioned the High Courts to not pass order of 'no-coercive steps' in petitions filed under Article 226 of Constitution of India or Section 482 of Cr.P.C. since the same essentially reduces such proceedings to the nature of anticipatory bails. The observations of the Hon'ble Apex Court in this regard read as under:

"67. This Court in the case of Habib Abdullah Jeelani (supra), as such, deprecated such practice/orders passed by the High Courts, directing police not to arrest, even while declining to interfere with the quashing petition in exercise of powers under Section 482 Cr. P.C. In the aforesaid case before this Court, the High Court dismissed the petition filed under Section 482 Cr. P.C. for quashing the FIR. However, while dismissing the quashing petition, the High Court directed the police not to arrest the petitioners during the pendency of the investigation. While setting aside such order, it is observed by this Court that such direction amounts to an order under Section 438 Cr. P.C., albeit without satisfaction of the conditions of the said provision and the same is legally unacceptable. In the aforesaid decision, it is specifically observed and held by this Court that "it is absolutely inconceivable and unthinkable to pass an order directing the police not to arrest till the investigation is completed while declining to interfere or expressing opinion that it is not appropriate to stay the investigation". It is further observed that this kind of order is really inappropriate and unseemly and it has no sanction in law. It is further observed that the courts should oust and obstruct unscrupulous litigants from invoking the inherent jurisdiction of the Court on the drop of a hat to file an application for quashing of launching an FIR or investigation and then seek relief by an interim order. It is further observed that it is the obligation of the court to keep such unprincipled and unethical litigants at bay.

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71. Thus, it has been found that despite absolute proposition of law laid down by this Court in the case of Habib Abdullah Jeelani (supra) that such a blanket order of not to arrest till the investigation is completed and the final report is filed, passed while declining to quash the criminal proceedings in exercise of powers under Section 482 Cr. P.C., as observed hereinabove, the High Courts have continued to pass such orders. Therefore, we again reiterate the law laid down by this Court in the case of Habib Abdullah Jeelani (supra) and we direct all the High Courts to scrupulously follow the law laid down by this Court in the case of Habib Abdullah Jeelani (supra) and the law laid down by this

> Court in the present case, which otherwise the High Courts are bound to follow. We caution the High Courts again against passing such orders of not to arrest or "no coercive steps to be taken" till the investigation is completed and the final report is filed, while not entertaining quashing petitions under Section 482 Cr. P.C. and/or Article 226 of the Constitution of India.

42. A similar prayer seeking no-coercive steps upon issuance of summons under Section 50 of PMLA was sought by the petitioner in ***Ashish Mittal v. Directorate of Enforcement*** *2023 SCC OnLine Del 6678* and while declining to grant such a relief, the Co-ordinate Bench had observed that since the remedy under Section 438 of Cr.P.C. i.e. anticipatory bail was available to the petitioner in case he apprehended any arrest in the ECIR, the question of granting any interim relief of no-coercive steps did not arise. The relevant observations are reproduced hereunder for reference:

> "46. In the opinion of this court, section 438 Cr. P.C. does not require a formal accusation and the word 'may' preceding the words 'be arrested' and 'on accusation' signifies that both the arrest and accusation are anticipatory. That is to that, firstly, an application under section 438 can only be filed by a person who is yet to be arrested. Secondly, an application under section 438 can be filed irrespective of whether there is a formal accusation (e.g. FIR), which in a case under the PMLA would mean whether or not there is a prosecution complaint.
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> 47. Though a person can seek protection under Article 20(3) of the Constitution of India only ex-post i.e., only after formally being made an accused, on the other hand a person can seek relief under section 438 Cr. P.C. ex-ante i.e., prior to both arrest and accusation. To interpret the provisions of section 438 differently in the context of PMLA would be contrary to two Constitution Bench decisions of the Supreme Court in Gurbaksh Singh Sibbia (supra) and Sushila Aggarwal (supra), which

> expressly lay-down that the filing of an FIR, viz. formal accusation, is not a condition precedent for filing an application under section 438 Cr. P.C.
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> 48. For completeness, it may also be noticed that section 65 of the PMLA makes the provisions of the Cr. P.C. applicable inter-alia to an arrest made under PMLA "… insofar as they are not inconsistent with the provisions …" of the PMLA. To be sure, though section 71 of the PMLA contains a non-obstante clause, there is nothing in the PMLA which restricts the court from granting relief under section 438 Cr. P.C. in an appropriate case. The only rider being that the twin conditions in section 45 of the PMLA will also have to be satisfied. In the opinion of this court therefore, there is no requirement in law for a prosecution complaint to have been filed for a person to maintain an application under section 438 Cr.P.C. Save for the stringent twin-conditions contained in section 45 PMLA, there is no provision in the PMLA which modifies the provisions of section 438 Cr. P.C.
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> 49. In fact it is the respondent's stand that the petition is not maintainable since the petitioner has no locus standi to seek quashing of an ECIR or the prosecution complaint in which he is not an accused. The Satpathy v. PL Dani, (1978) 2 SCC 424 at para 21 respondent has also said that there is an alternate, efficacious remedy available to the petitioner, by way of an application seeking anticipatory bail under section 438 Cr. P.C., which remedy he would be entitled to seek at the appropriate stage..."

43. Therefore, considering the law laid down by the Hon'ble Apex Court and the facts of the present case, no case is made out for directing the respondent to not take any coercive steps against the petitioner.

44. Thus, in view of the foregoing discussion and reasons stated above, this Court is not inclined to quash the impugned summons or the ECIR against the petitioner or to grant any relief of no-coercive

steps as prayed by the petitioner.

45. Needless to say, the observations made hereinabove shall not be construed as opinion of this Court on the merits of the case and the same are for the sole purpose of deciding the present petition.

46. Accordingly, the present petition stands dismissed alongwith pending application.

47. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

NOVEMBER 3, 2023/kd