

# **Udhaw Singh vs Directorate Of Enforcement Lko. on 31 January, 2025**

**Author: Rajesh Singh Chauhan**

**Bench: Rajesh Singh Chauhan**

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2025:AHC-LK0:6821

Court No. - 11

Case :- APPLICATION U/S 482 No. - 850 of 2025

Applicant :- Udhaw Singh

Opposite Party :- Directorate Of Enforcement Lko.

Counsel for Applicant :- Purnendu Chakravarty, Anuj Taandon

Counsel for Opposite Party :- Rohit Tripathi

Hon'ble Rajesh Singh Chauhan, J.

1. Heard Shri Purnendu Chakravarty, learned counsel assisted by Shri Anuj Taandon, learned counsel for the applicant and Shri Kuldeep Srivastava, learned counsel for the Directorate of Enforcement (ED)/ opposite party.

2. By means of this application filed under Section 482 Cr.P.C., the applicant has prayed for the following relief:-

"Wherefore, it is most respectfully prayed that in the aforesaid facts and circumstances the application preferred under Section 528 of Bharatiya Nagarik

Suraksha Sanhita, 2023 (BNSS) corresponding to Section 482 Cr.P.C. may kindly be allowed and the impugned order dated 09.01.2025 along with order dated 08.01.2025 passed by the learned Court of Special Judge, Anti Corruption CBI West/ Special Judge, PMLA, Lucknow passed in Case No.1008 of 2024 ECIR/5/PMLA/LKZO/2021 U/S 3 & 4 of PMLA, 2002, Police Station-Directorate of Enforcement, Lucknow Zonal Office may kindly be quashed/ set aside in the interest of justice,"

3. Attention has been drawn towards Annexure No.3 of the petition/application, which is an application filed by the Director of Enforcement (ED) under Section 50 of the Prevention of Money Laundering Act, 2002 (here-in-after referred to as the "PMLA, 2002"). The aforesaid application was filed on 08.01.2025 and the same has been decided on the same date i.e. 08.01.2025 whereby that application has been allowed giving permission to Investigating Agency to confront the applicant in Jail in respect of the material / evidence collected during further investigation in respect of other accused persons by recording statement.

4. Shri Purnendu Chakravarty has stated that against the present applicant the charge-sheet has been filed after completion of the investigation, therefore, the statement of the present applicant should have not been recorded during the course of further investigation of other persons. Even if during further investigation any material or evidence etc. has been found, which is relating to the present applicant, at least an advance copy of the application filed by the ED should have been provided to the present applicant in Jail so that he may approach his Advocate to oppose such application but no advance copy of that application has been provided to the present applicant or his counsel and that application was allowed by the learned trial court without any opposition on behalf of the present applicant.

5. Shri Chakravarty has stated that on the next date of order dated 08.01.2025 the counsel for the present applicant has filed an application on 09.01.2025 for recall of order dated 08.01.2025 making prayer that order dated 08.01.2025 be recalled and the applicant be provided an opportunity of hearing before disposal of such application. That application has been rejected by the learned trial court on the same date i.e. 09.01.2025 in the light of Explanation (ii) of Section 44 (1) of the PMLA, 2002.

6. Since learned counsel for the applicant had placed reliance upon the decision of this Court rendered in the case in re: Jaspreet Singh Garewal vs. State of U.P. & another (Case: Application U/S 482 No.38644 of 2016) wherein this Court recalled its order only for the reason that before passing order an opportunity to the opposite party was not given, learned trial court has observed that the aforesaid decision would not be applicable in the present case inasmuch as the investigation is going on in an issue in question and during investigation some material have been found which should be confronted with the present applicant as that material relates with the present applicant.

7. The learned trial court has also observed that the issue in question is a serious issue having fraud, forgery and bungling etc. to the tune of thousands crore and the accused applicant would have an opportunity to admit such material or deny the same. The learned trial court has also observed that

the Investigating Agency has right to file subsequent complaint under Section 44 of the PMLA, 2002.

8. Shri Purnendu Chakravarty has drawn further attention of this Court towards Section 50 (3) of the PMLA, 2002, which categorically provides that all the persons so summoned shall be bound to attend in person or through authorized 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.

9. Shri Chakravarty has submitted that the mandate of the aforesaid provision is that before recording the statement of an accused person he should be summoned and this exercise has not been undertaken in this case inasmuch as an application dated 08.01.2025 has been allowed without providing an advance copy to the present applicant or his counsel.

10. Replying the aforesaid contention of Shri Chakravarty, Shri Kuldeep Srivastava, learned counsel for the ED/ opposite party has placed reliance upon the dictum of Apex Court rendered in the case in re: Abhishek Banerjee and another vs. Directorate of Enforcement reported in (2024) 9 SCC 22 referring para-22 whereby the Apex Court has interpreted the scope of Section 50 of PMLA, 2002. Para-22 of the aforesaid decision reads as under:-

"22. It has been specifically laid down in the said decision that the statements recorded by the Authorities under Section 50 of PMLA are not hit by Article 20(3) or Article 21 of the Constitution, rather such statements recorded by the authority in the course of inquiry are deemed to be the Judicial proceedings in terms of Section 50(4), and are admissible in evidence, whereas the statements made by any person to a Police Officer in the course of an investigation under Chapter XII of the Code could not be used for any purpose, except for the purpose stated in the proviso to Section 162 of the Code. In view of such glaring inconsistencies between Section 50 PMLA and Section 160/161 Cr.P.C, the provisions of Section 50 PMLA would prevail in terms of Section 71 read with Section 65 thereof."

11. Therefore, as per Shri Srivastava, the Investigating Agency has rightly filed an application before the learned trial court as during the course of further investigation in respect of other accused persons some relevant material and evidence have been found which relates to the present applicant and without confronting such material with the present applicant, he could have not been declared the property of the present applicant. He has further submitted that had the applicant been not languished in the judicial custody he would have been given a summon but since he is in judicial custody, therefore, the permission has been sought from the Court to confront those material with the present applicant by recording his statement in the Jail.

12. Shri Srivastava has further submitted that if the material/ evidence does not belong to the present applicant, as it would be shown to him at the time of recording his statement, he may very well deny but if that material belongs to him, he may apprise the Investigating Agency clearly.

13. Having heard learned counsel for the parties and having perused the material available on record, I am of the considered opinion that in view of Section 44 of PMLA, 2002 the subsequent complaint may be filed and in view of Section 50 of PMLA, 2002 such statement of the present applicant may be recorded but as an abundant precaution a copy of the application dated 08.01.2025 should have been given to the present applicant. However, further investigation is going on in an issue in question and some material / evidence is said to have been collected by the Investigating Agency, which is/ are related to the present applicant, therefore, such material or evidence must be confronted with the present applicant and his statement should be recorded on that point.

14. In view of the facts and circumstances of the issue in question, non providing the advance copy of the application dated 08.01.2025 to the present applicant would not violate his principles of natural justice inasmuch as he could have not opposed such application but so as to balance the equity and protecting the rights of the present applicant of fair trial, I find it appropriate that the statement of the present applicant pursuant to the order dated 08.01.2025 would be recorded in the Room of the Superintendent of Jail or Jailer of the Jail, Lucknow in the presence of his counsel so that he could take proper assistance from his counsel. The Superintendent of Jail, Lucknow shall make proper arrangements to that effect so that the aforesaid statement could be recorded smoothly without any pressure. The aforesaid statement would be recorded on 06.02.2025 at about 10:30 a.m.. It is needless to say that no interruption of any kind whatsoever would be done from either side.

15. In view of the aforesaid observations and directions, the instant application/petition is disposed of finally.

16. Let a copy of this order be provided to the Superintendent of Jail, Lucknow by the Registry of this Court within three working days for making appropriate arrangements in terms of this order.

[Rajesh Singh Chauhan,J.] Order Date :- 31.1.2025 Suresh/