[2024] 8 S.C.R. 955 : 2024 INSC 637

Prem Prakash
v.
Union of India Through The Directorate of Enforcement

(Criminal Appeal No. 3572 of 2024)

28 August 2024

[B.R. Gavai and K.V. Viswanathan,* JJ.]

Issue for Consideration

When a person is in judicial custody/custody in another case investigated by the same Investigating Agency, whether the statements recorded (in the present case, the statements dated 03.08.2023, 04.08.2023, 11.08.2023) for a new case in which his arrest is not yet shown, and which are claimed to contain incriminating material against the maker, would be admissible under Section 50, Prevention of Money Laundering Act, 2002.

Headnotes†

Prevention of Money Laundering Act, 2002 – s.50 – Evidence Act, 1872 – s.25 – Appellant was in judicial custody from 25.08.2022 in connection with another ECIR and while he was in aforesaid judicial custody his arrest was shown in the present ECIR on 11.08.2023 – Statement of the appellant recorded while he was in custody, if admissible u/s.50:

Held: No – When an accused is in custody under PMLA irrespective of the case for which he is under custody, any statement under Section 50 PMLA to the same Investigating Agency is inadmissible against the maker – The person in custody pursuant to the proceeding investigated by the same Investigating Agency is not a person operating with a free mind and it will be extremely unsafe to render such statements admissible against the maker – Statement of the appellant if to be considered as incriminating against him, will be hit by Section 25 of the Evidence Act since he gave the statement whilst in judicial custody, pursuant to another proceeding instituted by the same Investigating Agency – As the appellant was taken from the judicial custody to record the statement, it will be a travesty of justice to render the statement admissible against him – Since the words 'procedure established

* Author

by law' occurring in Article 21 has to be a reasonable and valid procedure – The statement of the appellant under Section 50 cannot be relied upon against him in ECIR No. 5 of 2023 even though the appellant was at that point in custody in ECIR No. 4 of 2022 – Further, statements of the co-accused will not have the character of substantive evidence and the law laid down under Section 30 of the Evidence Act by this Court while dealing with the confession of the co-accused will apply – Statement of the co-accused does not prima facie indicate anything about the role of the appellant in the forgery of sale deed and other documents or being involved in the offence of money laundering – Appellant satisfied the twin conditions under Section 45 – There are reasonable grounds for believing that the appellant is not guilty of the offence of money laundering as alleged under Sections 3 and 4 of the PMLA and the appellant is not likely to commit any offence, if enlarged on bail – Impugned order quashed and set aside – Appellant granted bail. [Paras 27, 32, 34, 37, 45, 49]

Prevention of Money Laundering Act, 2002 – s.45 – Twin conditions under, discussed – Scope of enquiry – "reasonable grounds for believing" – Meaning:

Held: Court while dealing with the application for grant of bail in PMLA need not delve deep into the merits of the case and only a view of the Court based on the available material available on record is required – The words used in Section 45 are "reasonable grounds for believing" which means that 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. [Para 13]

Prevention of Money Laundering Act, 2002 – Bail application – Counter/response in the original Court – Significance:

Held: In cases where the Public Prosecutor takes a considered decision to oppose the bail application, the counter affidavit of the Investigating Agency should make out a cogent case specifically crystallizing albeit briefly the material sought to be relied upon to establish prima facie the three foundational facts in the given case to help the Court at the bail application stage to arrive at a conclusion within the framework laid down in Vijay Madanlal Choudhary case – It is only thereafter the presumption under Section 24 would arise and the burden would shift on the accused. [Para 15]

Prem Prakash v. Union of India Through The Directorate of Enforcement

Case Law Cited

Vijay Madanlal Choudhary and Ors. v. Union of India and Ors. [2022] 6 SCR 382 **: (2022) SCC OnLine SC 929;** *Ramkripal Meena v. Directorate of Enforcement* **SLP (Crl.) No. 3205;** *Javed Gulam Nabi Shaikh v. State of Maharashtra and Another*, **2024 SCC online 1693;** *Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra and Another* [2005] 3 SCR 345 **: (2005) 5 SCC 294;** *Rajaram Jaiswal v. State of Bihar,* **AIR 1964 SC 828;** *Nandini Satpathy v. P.L. Dani and Another* [1978] 3 SCR 608 **: (1978) 2 SCC 424;** *Kashmira Singh v. State of Madhya Pradesh* [1952] SCR 526 **– relied on.**

In Re Elukuri Seshapani Chetti, **ILR 1937 Mad 358;** *Kodangi v. Emperor,* **AIR 1932 Mad 24 – referred to.**

List of Acts

Prevention of Money Laundering Act, 2002; Evidence Act, 1872; Penal Code, 1860.

List of Keywords

Section 50 of the Prevention of Money Laundering Act, 2002; Section 45 of the Prevention of Money Laundering Act, 2002; Section 25 of the Evidence Act, 1872; Article 21 of the Constitution of India; Money laundering; Forgery of sale deed; Judicial custody; Person in judicial custody/custody in another case investigated by the same Investigating Agency; Admissibility of statements recorded; Incriminating material against the maker; Confession of the co-accused; Statements of the co-accused; Bail; 'procedure established by law'; "reasonable grounds for believing".

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 3572 of 2024

From the Judgment and Order dated 22.03.2024 of the High Court of Jharkhand at Ranchi in BA No. 9863 of 2023

Appearances for Parties

Ranjit Kumar, Siddharth Agarwal, Sr. Advs., Indrajit Sinha, Ms. Sneh Singh, Ms. Anusuya Sadhu Sinha, Sowjhanya Shankar, Harsh Yadav, Siddharth Naidu, M/s. KSN & Co., Advs. for the Appellant.

S.V. Raju, ASG, Zoheb Hussain, Annam Venkatesh, Kanu Agrawal, Mrigank Pathak, Ms. Aakriti Mishra, Arvind Kumar Sharma, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

K.V. Viswanathan, J.

1. Leave granted.

2. The present appeal challenges the judgment dated 22.03.2024 of the High Court of Jharkhand at Ranchi in B.A. No. 9863 of 2023. By the said judgment, the High Court dismissed the bail application of the appellant. The appellant sought for regular bail in connection with ECIR Case No. 5 of 2023 in ECIR-RNZO/10/2023 (hereinafter referred to as ECIR Case No. 5 of 2023) registered for the offence under Sections 3 and 4 of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as 'PMLA') and pending before the Court of Special Judge, PMLA, Ranchi.

Brief Facts

3. The predicate offence on the basis of which ECIR No. 5 of 2023 was recorded on 07.03.2023 is an FIR bearing Sadar P.S. Case No. 399 of 2022 registered on 08.09.2022 for offences punishable under Sections 406, 420, 467, 468, 447, 504, 506, 341, 323 and 34 of the Indian Penal Code, 1860 (for short 'IPC'). The appellant was not named as an accused there.

4. In view of Section 420 and 467 of IPC, being Scheduled Offences, ECIR No. 5 of 2023 was registered and investigation under the PMLA was initiated. Even here the appellant was not named though the ECIR did mention certain unknown persons being involved. It is alleged that the investigation revealed falsification of the original records in the Circle Office, Bargain, Ranchi and the Office of Registrar of Assurances, Kolkata respectively and as such custody of the original registers were taken in accordance with law.

5. The substratum of the allegation leading to the complaint lodged under PMLA are as follows:- Umesh Kumar Gope complained that Rajesh Rai, Imtiaz Ahmad, Bharat Prasad, Lakhan Singh, Punit Bhargava and Bishnu Kumar Agarwal fraudulently acquired one

acre of land situated at Plot No. 28, Khata No. 37 Village Gari, Cheshire Home Road P.S. Sadar, Ranchi. The allegation was that accused Rajesh Rai S/o Jagdish Rai illegally and fraudulently made a Power of Attorney in the name of Imtiaz Ahmad and accused Bharat Prasad and on the basis of said Power of Attorney prepared a forged sale deed and sold the above-mentioned parcel of land to accused Punit Bhargava, an accomplice of the appellant for an amount of Rs. 1,78,55,800/-. It is further alleged that the said land was transferred by accused Punit Bhargava to accused Bishnu Kumar Agarwal vide two sale deeds dated 01.04.2021 for a total amount of Rs. 1,80,00,000/- (Rs.1,02,60,000/- and Rs.77,40,000). According to the Enforcement Directorate, accused Bishnu Kumar Agarwal paid Rs. 1,78,20,000/- to accused Punit Bhargava in the account of his firm Shiva Fabcons (Proprietorship firm of accused Punit Bhargava) and out of which Rs. 1,01,57,400/- was transferred to M/s Jamini Enterprises, which according to the respondent-Investigating Agency, was a firm whose beneficial owner is the appellant. The appellant was arrayed as Accused No.8 in the Prosecution Complaint of the Investigating Agency.

6. According to the Investigating Agency, it was confirmed by the Directorate of Forensic Science that Deed No. 184 of 1948, a purported sale deed, by which the property was transferred by the predecessors of Umesh Gope to Jagdish Rai, father of Rajesh Rai was forged. A separate FIR bearing No. 137 of 2023 dated 10.05.2023 for offences under Sections 120-B, 465, 467, 468 and 471 of IPC came to be registered at Hare Street Police Station Kolkata on the basis of the report of the Fact Finding Committee of the Registrar of Assurances, Kolkata. It is stated that the said FIR was also merged into ECIR No. 5 of 2023.

7. It is alleged that it was on the directions of the appellant that the sale deed was executed in favor of Punit Bhargava by Rajesh Rai for an amount of Rs. 1,78,55,800/-; that only Rs. 25 lakhs were transferred from Shiva Fabcons (Proprietorship firm of Punit Bhargava) to Rajesh Rai although the consideration amount was Rs. 1,78,55,800/- and it was shown to have been paid in the sale deed; that out of the aforesaid sum of Rs. 25 lakhs, an amount of Rs. 18 lakhs were transferred from the Bank account of Rajesh Rai to the Bank account of Green Traders (Partnership firm under the control of Md. Saddam

Hussain); that Rs. 7 lakh cash was withdrawn through cheques by Rajesh Rai; that on the directions of the appellant, mutation of the property was done in the name of Punit Bhargava, who was an accomplice of the appellant; that Punit Bhargava sold the property to the Bishnu Kumar Agarwal within a span of two months for Rs. 1.80 crore; that an amount of Rs.56,62,600/- was paid from the account of M/s Chalice Real Estate (Company of Bishnu Kumar Agarwal) on 05.04.2021 to Punit Bhargava's bank account and on 24.06.2021 an amount of Rs. 1,01,57,400/- was transferred from the account of Adarsh Heights Pvt Ltd (Company of Bishnu Agarwal) to Punit Bhargav's bank account; that the entire payment was made in the month of April and June, 2021 but the registration was done on 1st April, 2021 before the receipt of consideration. Finally, it is alleged that an amount of Rs.1,01,57,400/- was transferred to the Bank account of M/s Jamini Enterprises, which is alleged to be a firm controlled and beneficially owned by appellant - Prem Prakash.

8. It is alleged that the appellant conspired with the other accused persons, namely, Afshar Ali @ Afsu Khan, Rajesh Rai, Lakhan Singh, Imtiaz Ahmad, Bharat Prasad, Saddam Hussain, Punit Bhargava, Chhavi Ranjan and Bishnu Kumar Agarwal in the acquisition of proceeds of crime in the form of landed property. It is specifically alleged that the appellant being an accomplice of Bishnu Kumar Agarwal used his connections to assist Bishnu Kumar Agarwal in acquiring the land and that Bishnu Kumar Agarwal transferred the money to Punit Bhargava and the amount was further transferred to Jamini Enterprises.

9. The appellant was taken into custody on 11.08.2023. He was already in custody from 25.08.2022 in ECIR No. 4 of 2022. His application for bail was rejected by the Special Judge on 20.09.2023. He preferred a bail application before the High Court. The High Court has declined bail to the appellant. Aggrieved, the appellant is before us.

10. We have heard Mr. Ranjit Kumar, Learned Senior counsel for the appellant, ably assisted by Mr. Indrajit Sinha and Mr. Siddharth Naidu, learned advocates. We have also heard Mr. S.V. Raju, Learned Additional Solicitor General, ably assisted by Mr. Zoheb Hussain and Mr. Kanu Agarwal for the respondents. Learned Senior Counsels on both sides have placed their respective contentions and also filed detailed written submissions.

SECTION 45 PMLA-CONTOURS

11. Considering that the present is a bail application for the offence under Section 45 of PMLA, the twin conditions mentioned thereof become relevant. Section 45(1) of PMLA reads as under:-

> **"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-
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> (i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and
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> (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:
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> Provided that a person, who, is under the age of sixteen years, or 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:
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> Provided further that the Special Court shall not take cognizance of any offence punishable under Section 4 except upon a complaint in writing made by-
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> (i) the Director; or
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> (ii) any officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government."

In ***Vijay Madanlal Choudhary and Ors. Vs Union of India and Ors.*** reported in (2022) SCC OnLine SC 929, this Court categorically held that while Section 45 of PMLA restricts the right of the accused to grant of bail, it could not be said that the conditions provided under Section 45 impose absolute restraint on the grant of bail. Para 131 is extracted hereinbelow:-

> **"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. …"

These observations are significant and if read in the context of the recent pronouncement of this Court dated 09.08.2024 in Criminal Appeal No. 3295 of 2024 [***Manish Sisodia (II)*** Vs. ***Directorate of Enforcement***], it will be amply clear that even under PMLA the governing principle is that "*Bail is the Rule and Jail is the Exception*". In para 53 of [***Manish Sisodia (II)***, this Court observed as under:-

> "53…..From our experience, we can say that it appears that the trial courts and the High Courts attempt to play safe in matters of grant of bail. The principle that bail is a rule and refusal is an exception is, at times, followed in breach. On account of non-grant of bail even in straight forward open and shut cases, this Court is flooded with huge number of bail petitions thereby adding to the huge pendency. It is high time that the trial courts and the High Courts should recognize the principle that "bail is rule and jail is exception."

All that Section 45 of PMLA mentions is that certain conditions are to be satisfied. The principle that, "*bail is the rule and jail is the exception*" is only a paraphrasing of Article 21 of the Constitution of India, which states that no person shall be deprived of his life or personal liberty except according to the procedure established by law. Liberty of the individual is always a Rule and deprivation is the exception. Deprivation can only be by the procedure established by law, which has to be a valid and reasonable procedure. Section 45 of PMLA by imposing twin conditions does not re-write this principle to mean that deprivation is the norm and liberty is the exception. As set out earlier, all that is required is that in cases where bail is subject to the satisfaction of twin conditions, those conditions must be satisfied.

12. Independently and as has been emphatically reiterated in ***Manish Sisodia (II) (supra)*** relying on ***Ramkripal Meena*** Vs ***Directorate***

of Enforcement (SLP (Crl.) No. 3205 of 2024 dated 30.07.2024) and ***Javed Gulam Nabi Shaikh*** Vs. ***State of Maharashtra and Another,*** 2024 SCC online 1693, where the accused has already been in custody for a considerable number of months and there being no likelihood of conclusion of trial within a short span, the rigours of Section 45 of PMLA can be suitably relaxed to afford conditional liberty. Further, ***Manish Sisodia (II) (supra)*** reiterated the holding in ***Javed Gulam Nabi Sheikh (Supra)***, that keeping persons behind the bars for unlimited periods of time in the hope of speedy completion of trial would deprive the fundamental right of persons under Article 21 of the Constitution of India and that prolonged incarceration before being pronounced guilty ought not to be permitted to become the punishment without trial. In fact, ***Manish Sisodia (II) (Supra)*** reiterated the holding in ***Manish Sisodia (I)*** Vs. ***Directorate of Enforcement*** (judgment dated 30.10.2023 in Criminal Appeal No. 3352 of 2023) where it was held as under:-

> "28. Detention or jail before being pronounced guilty of an offence should not become punishment without trial. If the trial gets protracted despite assurances of the prosecution, and it is clear that case will not be decided within a foreseeable time, the prayer for bail may be meritorious. While the prosecution may pertain to an economic offence, yet it may not be proper to equate these cases with those punishable with death, imprisonment for life, ten years or more like offences under the Narcotic Drugs and Psychotropic Substances Act, 1985, murder, cases of rape, dacoity, kidnaping for ransom, mass violence, etc. Neither is this a case where 100/1000s of depositors have been defrauded. The allegations have to be established and proven. The right to bail in cases of delay, coupled with incarceration for a long period, depending on the nature of the allegations, should be read into Section 439 of the Code and Section 45 of the PML Act. The reason is that the constitutional mandate is the higher law, and it is the basic right of the person charged of an offence and not convicted, that he be ensured and given a speedy trial. When the trial is not proceeding for reasons not attributable to the accused, the court, unless there are good reasons, may well be guided to exercise

> the power to grant bail. This would be truer where the trial would take years."

It is in this background that Section 45 of PMLA needs to be understood and applied. Article 21 being a higher constitutional right, statutory provisions should align themselves to the said higher constitutional edict.

Scope of Inquiry under Section 45 of PMLA

13. Coming back to the scope of inquiry under Section 45, ***Vijay Madanlal Choudhary*** ***(Supra),*** while reiterating and agreeing with the holding in ***Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra and Another*** reported in (2005) 5 SCC 294, held that the Court while dealing with the application for grant of bail in PMLA need not delve deep into the merits of the case and only a view of the Court based on the available material available on record is required. It held that the Court is only required to place its view based on probability on the basis of reasonable material collected during investigation. The words used in Section 45 are "*reasonable grounds for believing*" which means that 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. We deem it fit to extract the relevant portion (Para 131) from ***Vijay Madanlal Choudhary*** ***(supra):***

> "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. While dealing with a similar provision prescribing twin conditions in MCOCA, this court in Ranjitsing Brahmajeetsing Sharma (supra), held as under:
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> "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 the MCOCA, therefore, must be construed reasonably. It must be so construed that the court is able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. Similarly, the court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in futuro must be an offence under the Act and not any other offence. Since it is difficult to predict the future conduct of an accused, the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence.

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

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

We are in agreement with the observation made by the court in Ranjitsing Brahmajeetsing Sharma (supra). 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 (supra), 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."

(emphasis supplied)

Importance of the foundational facts-under Section 24 PMLA

14. In ***Vijay Madanlal Choudhary*** ***(supra)*** dealing with Section 24 of the PMLA, the three-Judge Bench held as under:-

"97. Be that as it may, we may now proceed to decipher the purport of section 24 of the 2002 Act. In the first place, it must be noticed that the legal presumption in either case is about the involvement of proceeds of crime in money-laundering. This fact becomes relevant, only if, the prosecution or the authorities have succeeded in establishing at least three basic or foundational facts. **First, that the criminal activity relating to a scheduled offence has been committed. Second, that the property in question has been derived or obtained, directly or indirectly, by any person as a result of that criminal activity. Third, the person concerned is, directly or indirectly, involved in any process or activity connected with the said property being proceeds of crime. On establishing the fact that there existed proceeds of crime and the person concerned was involved in any process or activity connected therewith, itself, constitutes offence of money-laundering.** The nature

of process or activity has now been elaborated in the form of Explanation inserted vide Finance (No. 2) Act, 2019. On establishing these foundational facts in terms of section 24 of the 2002 Act, a legal presumption would arise that such proceeds of crime are involved in money-laundering. The fact that the person concerned had no causal connection with such proceeds of crime and he is able to disprove the fact about his involvement in any process or activity connected therewith, by producing evidence in that regard, the legal presumption would stand rebutted.

99. Be it noted that the legal presumption under section 24(a) of the 2002 Act, would apply when the person is charged with the offence of money-laundering and his direct or indirect involvement in any process or activity connected with the proceeds of crime, is established. The existence of proceeds of crime is, therefore, a foundational fact, to be established by the prosecution, including the involvement of the person in any process or activity connected therewith. Once these foundational facts are established by the prosecution, the onus must then shift on the person facing charge of offence of money-laundering-to rebut the legal presumption that the proceeds of crime are not involved in money-laundering, by producing evidence which is within his personal knowledge. In other words, the expression "presume" is not conclusive. It also does not follow that the legal presumption that the proceeds of crime are involved in money-laundering is to be invoked by the Authority or the court, without providing an opportunity to the person to rebut the same by leading evidence within his personal knowledge.

100. Such onus also flows from the purport of section 106 of the Evidence Act. Whereby, he must rebut the legal presumption in the manner he chooses to do and as is permissible in law, including by replying under section 313 of the 1973 Code or even by cross-examining prosecution witnesses. The person would get enough opportunity in the proceeding before the Authority or the court, as the case may be. He may be able to discharge his burden by showing that he is not involved in any process or activity

> connected with the proceeds of crime. In any case, in terms of section 114 of the Evidence Act, it is open to the court to presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case. Considering the above, the provision under consideration [section 24(a)] by no standards can be said to be unreasonable much less manifestly arbitrary and unconstitutional."
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> (Emphasis supplied)

Importance of the counter to the bail application – filed in the original Court

15. In view of the importance of the three basic foundational facts that the prosecution needs to establish, the counter/response to the bail application in the original Court is very significant in PMLA bail matters. In cases where the Public Prosecutor takes a considered decision to oppose the bail application, the counter affidavit of the Investigating Agency should make out a cogent case as to how the three foundational facts set out hereinabove are prima facie established in the given case to help the Court at the bail application stage to arrive at a conclusion within the framework laid down in ***Vijay Madanlal Choudhary (supra)***. It is only thereafter the presumption under Section 24 would arise and the burden would shift on the accused. The counter to the bail application should specifically crystallize albeit briefly the material sought to be relied upon to establish prima facie the three foundational facts. It is after the foundational facts are set out that the accused will assume the burden to convince the court within the parameters of the enquiry at the Section 45 stage that for the reasons adduced by him there are reasonable grounds to believing that he is not guilty of such offence.

Analysis and Reasons

16. The contention of the prosecution is that (i) the appellant connived with accused persons, namely, Afshar Ali, Saddam Hussain and others who created a forged Sale Deed No. 184 of 1948, and on the strength of the sale deed the property was sold by Rajesh Rai (associate of Afshar Ali) to Punit Bhargava a close associate of

the appellant; (ii) that Rs. 25 lakhs were transferred to the bank account of Rajesh Rai and later Rs. 18 lakh (out of the 25 lakhs) was transferred to the bank account of M/s Green Traders, a firm controlled by Md. Saddam Hussain even though the sale consideration was Rs. 1,78,55,800/-; (iii) that the appellant is aware of the forgery committed by Afshar Ali & others and intentionally acquired the property in the name of Punit Bhargava, who later sold the property within 2 months to Bishnu Agarwal for Rs. 1.80 crore and out of the said amount, Rs. 1,01,57,400/- was transferred by Punit Bhargava to M/s Jamini Enterprises, a firm controlled and beneficially owned by the appellant; (iv) that the accused persons had full knowledge of the transaction, inasmuch as though the sale deed was executed in favor of Punit Bhargava through accused Rajesh Rai on 06.02.2021, payment was made on 12.02.2021 and that only 25 lakh was paid to Rajesh Rai and mutation was done and thereafter sold to Bishnu Agarwal and all payments were received by Punit Bhargava; (v) that no subsequent payments were to be made further, as according to the prosecution, all concerned knew that the deeds were fake, and (vi) that Bishnu Agarwal made the payment in the month of April and June 2021, but the registration was done on 1st April, 2021 and as such the registration was done before consideration.

(Emphasis supplied)

17. The prosecution relies on the statements under Section 50 of the PMLA of Afshar Ali, Rajdeep Kumar, Md. Saddam Hussain, Punit Bhargava and of the appellant himself. They also rely on the call detail records of the other accused, namely, Afshar Ali and Rajdeep Kumar. They also alleged that the appellant, with the help of another accused person Chhavi Ranjan, by influencing the circle officials got the land mutated and hence, according to the prosecution, the role of the appellant is pivotal.

18. Learned ASG for the respondent has taken us through summary of the statements of the persons mentioned hereinabove, as adverted to in the complaint, filed by the Enforcement Directorate.

Admissibility of the Statement of the Appellant

19. In the oral submissions and also as elaborated in the detailed written submissions by the respondent-Enforcement Directorate, reliance is sought to be placed on the statements of the appellant. This is stoutly

resisted on the side of the appellant by contending that the appellant was in custody from 25th August 2022 in ECIR No. 4/2022; that his arrest was shown in the present case on 11th August 2023 and it is submitted that statements recorded while in custody (although in ECIR No.4/2022) will not be admissible and will be hit by Section 25. The statement of the appellant-Prem Prakash, the summary of which, as given in the complaint, reads as under:-

> "**8.23 Prem Prakash** - In his statement dated 04.08.2023 (RUD No.41) recorded in judicial custody at Birsa Munda Central Jail, Hotwar, Ranchi, he stated that he knows Bishnu Kumar Agarwal as a businessman and sometimes, he has met him during marriage events. He further stated that Punit Bhargava is like his younger brother and he is from his native place, so he knows him since childhood.
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> From his statement dated 03.08.2023, (RUD No.40) it reveals those three persons including Afshar Ali used to visit him for the Cheshire Home Road property. He introduced them with Rajdeep Kumar and got the property verified. After some time, with the consent of Punit Bhargava, he got the property registered in the name of Punit Bhargava and later this property was sold to Bishnu Kumar Agarwal at a consideration price of Rs. 1.78 crores. His statement also reveals that Rajdeep used to visit Chhavi Ranjan on his instructions for the landed properties. However, in his statement dated 15.08.2023, he started concealing facts regarding meeting between Afshar Ali, Md. Saddam Hussain and others with Chhavi Ranjan.
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> It may be mentioned that Rajdeep is a person who worked under Prem Prakash as his employee and had visited the office of the accused Chhavi Ranjan on directions of Prem Prakash with the accused persons Afshar All and Md. Saddam Hussain. This fact has also been admitted by Rajdeep Kumar in his statement under section 50 of PMLA, 2002 recorded on 24.04.2023. (RUD No. 76) Further, several calls have also been identified to have taken place during the scrutiny of the CDR which have also been mentioned below in the relevant para."
>
> (Emphasis supplied)

20. In his statement of 04.08.2023, he stated that he knew Bishnu Kumar Agarwal and has met him during Marriage Events; that Punit Bhargava was like his younger brother who hailed from his native place, and he had known him since childhood. That in his statement of 03.08.2023, he stated that persons including Afshar Ali used to visit him for the Cheshire Home property and that he introduced him to Rajdeep Kumar and got the property verified. That with the consent of Punit Bhargava, he got the property registered in the name of Punit Bhargava and later the property was sold to Bishnu Kumar Agarwal at a consideration of Rs. 1.78 crore. The statement, as summarized, taken as it is does not prima facie make out a case of money laundering against the appellant. It also does not point to the involvement of the appellant prima facie in the forgery.

21. Independent of the above, there is one important issue which arises in this case. It has to be pointed out that the appellant has been in judicial custody from 25.08.2022 in connection with another ECIR, namely, ECIR No. 4 of 2022 and while in judicial custody his arrest was shown in the current ECIR, namely, ECIR No. 5 on 11.08.2023. The statements of the appellant were recorded on 03.08.2023, 04.08.2023, 11.08.2023, 12.08.2023, 14.08.2023, 15.08.2023 and 30.08.2023.

22. The question that arises is when a person is in judicial custody/custody in another case investigated by the same Investigating Agency, whether the statements recorded (in this case the statements dated 03.08.2023, 04.08.2023, 11.08.2023) for a new case in which his arrest is not yet shown, and which are claimed to contain incriminating material against the maker, would be admissible under Section 50?

23. In ***Vijay Madanlal Choudhary*** ***(supra),*** addressing the scope of Section 50, following has been held:-

> **"159….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.'**
>
> **(Emphasis supplied)**

The three-judge Bench in ***Vijay Madanlal Choudhary*** ***(supra)*** has apart from Article 20(3) also adverted to Section 25 of the Evidence Act. Section 25 of the Evidence Act reads as under:-

> **"25. Confession to police officer not to be proved.**- No confession made to a police officer shall be proved as against a person accused of any offence.

24. ***Vijay Madanlal Choudhary*** ***(supra)*** though held that the authorities under the PMLA are not police officers, did anticipate a scenario where in a given case, the protection of Section 25 of the Evidence Act may have to be made available to the accused. The Court observed that such situations will have to be examined on a case-to-case basis. We deem it appropriate to extract Para 172 of ***Vijay Madanlal Choudhary*** ***(supra).***

> "172. In other words, there is stark distinction between the scheme of the NDPS Act dealt with by this court in Tofan Singh (supra) and that in the provisions of the 2002 Act under consideration. **Thus, it must follow that the authorities under the 2002 Act are not police officers.** Ex-consequenti, the statements recorded by the authorities under the 2002 Act, of persons involved in the commission of the offence of money-laundering or the witnesses for the purposes of inquiry/investigation, cannot be hit by the vice of article 20(3) of the Constitution or for that matter, article 21 being procedure established by law. **In a given case, whether the protection given to the accused who is being prosecuted for the offence of money-laundering, of section 25 of the Evidence Act is available or not, may have to be considered on case-to-case basis being rule of evidence."**
>
> (Emphasis supplied)

25. This Court in ***Vijay Madanlal Choudhary*** ***(supra)*** anticipated the myriad situations that may arise in the recording of the Section 50 statement and discussed the parameters for dealing with them. In ***Rajaram Jaiswal*** vs. ***State of Bihar***, AIR 1964 SC 828, a judgment quoted in extenso in ***Vijay Madanlal Choudhary*** ***(supra),*** this Court observed that the expression "police officer " in Section 25 of the Evidence Act is not confined to persons who are members of the regularly constituted police force. Further, setting out the test for determining whether an officer is a "police officer " for the purpose of Section 25 of the Evidence Act, this Court in ***Rajaram Jaiswal (supra)*** held (quoted from para 165 of ***Vijay Madanlal Choudhary*** ***(supra)***

"165(ii) It may well be that a statute confers powers and imposes duties on a public servant, some of which are analogous to those of a police officer. But by reason of the nature of other duties which he is required to perform he may be exercising various other powers also. It is argued on behalf of the State that where such is the case the mere conferral of some only of the powers of a police officer on such a person would not make him a police officer and, therefore, what must be borne in mind is the sum total of the powers which he enjoys by virtue of his office as also the dominant purpose for which he is appointed. The contention thus is that when an officer has to perform a wide range of duties and exercise correspondingly a wide range of powers, the mere fact that some of the powers which the statute confers upon him are analogous to or even identical with those of a police officer would not make him a police officer and, therefore, if such an officer records a confession it would not be hit by S. 25 of the Evidence Act. **In our judgment what is pertinent to bear in mind for the purpose of determining as to who can be regarded a 'police officer' for the purpose of this provision is not the totality of the powers which an officer enjoys but the kind of powers which the law enables him to exercise**. The test for determining whether such a person is a "police officer" for the purpose of S. 25 of the Evidence Act would, in our judgment, be whether the powers of a police officer which are conferred on him or which are exercisable by him because he is deemed to be an officer in charge of police station establish a direct or substantial relationship with the prohibition enacted by S. 25, that is, the recording of a confession. **In other words, the test would be whether the powers are such as would tend to facilitate the obtaining by him of a confession from a suspect or delinquent. If they do, then it is unnecessary to consider the dominant purpose for which he is appointed or the question as to what other powers he enjoys. These questions may perhaps be relevant for consideration where the powers of the police officer conferred upon him are of a very limited character**

and are not by themselves sufficient to facilitate the obtaining by him of a confession."

(Emphasis supplied)

26. Four decades ago, V.R. Krishna Iyer, J. in his inimitable style, speaking for this Court in ***Nandini Satpathy Vs P.L. Dani and Another*** (1978) 2 SCC 424 observed as under:-

> "50. We, however, underscore the importance of the specific setting of a given case for judging the tendency towards guilt. **Equally emphatically, we stress the need for regard to the impact of the plurality of other investigations in the offing or prosecutions pending on the amplitude of the immunity. "To be witness against oneself" is not confined to particular offence regarding which the questioning is made but extends to other offences about which the accused has reasonable apprehension of implication from his answer. This conclusion also flows from "tendency to be exposed to a criminal charge". "A criminal charge" covers any criminal charge then under investigation or trial or which imminently threatens the accused.**"
>
> (Emphasis supplied)
>
> "57. We hold that Section 161 enables the police to examine the accused during investigation. The prohibitive sweep of Article 20(3) goes back to the stage of police interrogation- not, as contended, commencing in court only. In our judgment, the provisions of Article 20(3) and Section 161(1) substantially cover the same area, so far as police investigations are concerned. **The ban on self-accusation and the right to silence, while one investigation or trial is under way, goes beyond that case and protects the accused in regard to other offences pending or imminent, which may deter him from voluntary disclosure of criminatory matter. We are disposed to read 'compelled testimony' as evidence procured not merely by physical threats or violence but by psychic torture, atmospheric pressure, environmental coercion tiring interrogative prolixity,**

> **overbearing and intimidatory methods and the like** – not legal penalty for violation. So, the legal perils following upon refusal to answer, or answer truthfully, cannot be regarded as compulsion within the meaning of Article 20(3). The prospect of prosecution may lead to legal tension in the exercise of a constitutional right, but then, a stance of silence is running a calculated risk. **On the other hand, if there is any mode of pressure, subtle or crude, mental or physical, direct or indirect, but sufficiently substantial, applied by the policeman for obtaining information from an accused strongly suggestive of guilt, it becomes 'compelled testimony', violative of Article 20(3).**"
>
> (Emphasis supplied)

27. In the facts of the present case, we hold that the statement of the appellant if to be considered as incriminating against the maker, will be hit by Section 25 of the Evidence Act since he has given the statement whilst in judicial custody, pursuant to another proceeding instituted by the same Investigating Agency. Taken as he was from the judicial custody to record the statement, it will be a travesty of justice to render the statement admissible against the appellant.

28. The appellant accused cannot be told that after all while giving this statement:- "*you were wearing a hat captioned 'ECIR 5/2023' and not the hat captioned 'ECIR 4/2022'".*

29. A complete reading of ***Vijay Madanlal Choudhary*** ***(supra),*** particularly, paragraphs 159, 165 and 172 mandate us to ask ourselves the query: Is a reasonable inference legitimately possible that, due to the vulnerable position in which the appellant was placed and the dominating position in which the Investigating Agency was situated, in view of the arrest in the other proceeding that, there obtained a conducive atmosphere to obtain a confession? We certainly think so. The question is not whether it actually happened. The question is could it have been possible.

30. We are supported in this view by two old judgments of the Madras High Court. In Re *Elukuri Seshapani Chetti* (ILR 1937 Mad 358) Justice Mockett following the judgment of Justice Jackson *In Kodangi V. Emperor (AIR 1932 Mad 24.)* held as under:-

> **"In my judgment this is clearly a confession, as I have already said, and, as has been pointed out by Jackson J. *In Kodangi V. Emperor (AIR 1932 Mad 24.)* a confession made to the Police in the course of investigating crime A, although it relates to another crime B, is equally inadmissible. The whole spirit of section 25 of the Indian Evidence Act is to exclude confessions to the police and, the moment a statement is found to amount to a confession, I do not think it matters in the slightest of what crime it is said to be a confession."**
>
> (Emphasis supplied)

31. We feel that the principle laid down there on is applicable. In fact, the three-Judge Bench in ***Vijay Madanlal Choudhary*** ***(supra),*** in the para extracted hereinabove, expressly refers to Section 25 of the Evidence Act while dealing with statements recorded when the person is in custody.

32. We have no hesitation in holding that when an accused is in custody under PMLA irrespective of the case for which he is under custody, any statement under Section 50 PMLA to the same Investigating Agency is inadmissible against the maker. The reason being that the person in custody pursuant to the proceeding investigated by the same Investigating Agency is not a person who can be considered as one operating with a free mind. It will be extremely unsafe to render such statements admissible against the maker, as such a course of action would be contrary to all canons of fair play and justice.

33. We also draw support from the way Section 50 is structured. Section 50 reads as under:-

> "**Section 50. Powers of authorities regarding summons, production of documents and to give evidence, etc**.
>
> (1) The Director shall, for the purposes of section 13, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:--
>
> (a) discovery and inspection;

(b) enforcing the attendance of any person, including any officer of a reporting entity and examining him on oath;

(c) compelling the production of records;

(d) receiving evidence on affidavits;

(e) issuing commissions for examination of witnesses and documents; and

(f) any other matter which may be prescribed.

(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.

(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.

(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 Indian Penal Code (45 of 1860).

(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:

Provided that an Assistant Director or a Deputy Director shall not--

(a) impound any records without recording his reasons for so doing; or

(b) retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the Joint Director."

Section 50 (1)(b) speaks of enforcing the attendance of any person, Section 50 (2) speaks of the authorized officials having the power to summon any person whose attendance they consider necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under the Act. Section 50 (3) states that all 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 and Section 50(4) states that every proceeding under sub-Sections (2) and (3) shall be deemed to be in judicial proceeding. A person in judicial custody being not a free person cannot be summoned and any statement to be recorded will be after obtaining the permission of the Court which has remanded him to the judicial custody in the other case.

34. In view of the above and keeping the salutary principle of Article 21 in mind, we hold that since the words '*procedure established by law*' occurring in Article 21 has to be a reasonable and valid procedure, the statement of the appellant under Section 50 cannot be relied upon against the appellant in ECIR No. 5 of 2023 even though the appellant was at that point in custody in ECIR No. 4 of 2022.

Statement of Afshar Ali - Co-accused

35. The appellant was not named in FIR No. 399 of 2023. It appears from the complaint of the respondent-Enforcement Directorate at para 6 that Afshar Ali, Saddam Hussain, Imtiaz Ahmad were arrested on 14.04.2023 in ECIR/RNZO/18/2022 though in the summary of the statements at para 8.12 it is mentioned that Afshar Ali was arrested on 14.04.2023 read with prayer (c) of the complaint it appears that the arrest that is referred to in para 8.12 is the arrest in ECIR/RNZO/18/2022.

36. Accused Afshar Ali was arrested on 14.04.2023 in ECIR/RNZO/18/2022 (a different ECIR) and his statement was recorded on 17.04.2023 in the present ECIR. Afshar Ali is supposed to have stated that since he came to know that the land was under vigilance by the Police and the land had certain disputes. He met with the appellant and the appellant was informed about the disputes and the vigilance of the Police. According to the statement of Afshar Ali, the appellant took stock of the status of the land and called the then Deputy Commissioner - Chhavi Ranjan and told him that the registry of

the Cheshire Home property was to be done after removing the vigilance observed by the Police. Thereafter, the appellant fixed the consideration of Rs. 1.5 crores and after accepting the consideration as fixed, he requested the appellant to arrange for unblocking the two plots of land, which were blocked by the Deputy Commissioner Office. That the appellant demanded Rs. 1 crore for the above work and the amount was adjusted in the said consideration and that it was appellant who asked to do the registration in the name of Punit Bhargava. He also stated that it was the appellant who fixed the deal with Bishnu Kumar Agarwal.

37. Being a co-accused with the appellant, his statement against the appellant assuming there is anything incriminating against the present appellant will not have the character of substantive evidence. The prosecution cannot start with such a statement to establish its case. We hold that, in such a situation, the law laid down under Section 30 of the Evidence Act by this Court while dealing with the confession of the co-accused will continue to apply. In ***Kashmira Singh* vs. *State of Madhya Pradesh*** [1952] SCR 526, this Court neatly summarized the principle as under:-

> "…. The proper way to approach a case of this kind is, first, to marshal the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed, a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course it is not necessary to call the confession in aid. But cases may arise where the judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event the judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept."

Hence, insofar as Afshar Ali's statement is concerned, the Investigating Agency will have to first marshal the other evidence and can at best look at the statement for lending assurance.

Independently, the statement of Afshar Ali does not prima facie indicate anything about the role of the appellant in the forgery of sale deed and other documents or being involved in the offence of money laundering.

Statement of Rajdeep Kumar

38. We have perused the statement, as summarized in the complaint, of Rajdeep Kumar. Rajdeep Kumar merely states that he worked for the appellant and has met Afshar Ali after the appellant introduced him at the house of the appellant regarding dealing of a land situated at Cheshire Home. He further states that he has met Saddam Hussain at the house of the appellant on the above stated land. He further adds that he has also seen Imtiaz Ahmed and Bharat Prasad, close associates of Afshar Ali and Saddam Hussain. Prima facie, we conclude that there is hardly any evidence to implicate the appellant for the offence under Section 3 and 4 of PMLA.

Statement of Md. Saddam Hussain – Co-accused

39. Md. Saddam Hussain was arrested on 14.04.2023 also in ECIR/RNZO/18/2022 (a different ECIR), in his statement of 26.04.2023, in the present ECIR he only speaks of knowing Rajdeep Kumar and meeting him for the purpose of unblocking a piece of land measuring 3.81 acres and about Rajdeep Kumar arranging a meeting with the then Deputy Commissioner - Chhavi Ranjan. His statement like that of Afshar Ali will not have the status of being a substantive evidence and will be of the same character as Afshar's insofar as the co-accused are concerned. In the complaint, the prosecution infers that it was Rajdeep Kumar who was the link between the Deputy Commissioner, Chhavi Ranjan and Prem Prakash and who acted on the instructions of the appellant - Prem Prakash and helped Saddam Hussain for unblocking the land. Prima facie, in our opinion, this statement carries the case of the prosecution no further. The corroboration drawn from his further statement of 29.08.2023 recorded in judicial custody of the above statement adds nothing further to support the prosecution apart from the fact that the statement of 29.08.2023 lacked the character of substantive evidence.

Statement of Punit Bhargava

40. Insofar as the statement of Punit Bhargava is concerned, it was recorded on 09.12.2022. He is supposed to have stated that he knew Bishnu Agarwal since March, 2021 when on the directions of appellant, he sold 1 acre of land to Bishnu Agarwal. He is supposed to have further stated that he had bought the piece of land under

the supervision of Prem Prakash and that under the instructions of Prem Prakash, he acquired a land in his name and accordingly on the instructions of the appellant, he sold it to Bishnu Kumar Agarwal. He stated that on the directions of the appellant, he gave Rs. 25 lakhs to Rajesh Rai through cheque after which the registration and mutation of the property was done but, further added that six post-dated cheques were given for encashing the balance amount later. He is supposed to have stated further that he was not aware as to why rest of the payment was not made even after the registration and mutation and that appellant could perhaps, give a reply. On being asked as to why the property was purchased in his name when it was sold within two months to Bishnu Agarwal, he stated that it was only done on the instructions of Prem Prakash.

41. The statement mentions that apart from 25 lakhs, six post-dated cheques were also given. Thereafter, it only speaks of the appellant advising the purchase and sale of the land. Prima facie, they do not detract from the reasonable grounds of belief that we entertain to the effect that the appellant is not guilty of the offence under Section 3 and 4.

Bishnu Kumar Agarwal (A9) on bail – Order has attained finality

42. We, prima facie, find that from the statements of the appellant and also from the other statements and other material relied upon by the investigating agency, there is nothing to indicate that the petitioner was involved in the creation of the forged deed nor had any knowledge of the forged sale deed of 1948. In the order enlarging Bishnu Kumar Agarwal on bail it was observed that-it was a plausible view to hold that Bishnu Kumar Agarwal was a bonafide purchaser of the property concerned in the present matter. It has also been held therein that no criminality could have been found against Bishnu Kumar Agarwal in the making of the sale consideration later and registration of the sale earlier. Support has been drawn from Section 54 of the Transfer of Property Act. The same order also makes a reference to para 10.6.6 of the complaint filed by the ED where it has been mentioned that the investigation of the Enforcement Directorate has revealed that complainant in FIR No. 399 of 2022, Umesh Kumar Gope was himself frivolously exerting his claim over the said property. Be that as it may, the order of bail granted to Bishnu Kumar Agarwal has attained finality.

43. Moreover, there is no material placed on record to show as to on what basis it is claimed that the beneficial interest in M/s Jamini Enterprises lies with the appellant. Hence, the statements relied upon do not prima facie make out a case of money laundering against the appellant.

44. The complaint also adverts to two other transactions with which Bishnu Kumar Agarwal is being investigated. Nothing can be elicited from the record about the involvement of the appellant and as to the initiation of any proceeding against him with regard to the other transactions with which Bishnu Kumar Agarwal is involved.

45. In this scenario, we hold that the appellant has satisfied the twin conditions under Section 45. Inasmuch as from the material on record, this Court is satisfied that there are reasonable grounds for believing that the appellant is not guilty of the offence of Money Laundering as alleged under Sections 3 and 4 of the PMLA and the Court is further satisfied that the appellant is not likely to commit any offence, if enlarged on bail.

Arguments about criminal antecedents.

46. The Investigating Agency have also referred to ECIR No. 4 as a criminal antecedent. A reference was made to ECIR No. 4 of 2022 pertaining to illegal Stone Mining and related activities in Saheb Ganj, Jharkhand, where the petitioner was arrested on 25.08.2022 and the prosecution complaint was filed on 16.09.2022. Insofar as the bail pertaining to ECIR No. 4 of 2022, which is pending in this Court in SLP (Criminal) No. 691 of 2023, at the after notice stage, the merits of the bail in that case will be independently examined. Having examined the facts of the present case arising out of ECIR No. 5 of 2023 and in view of the findings recorded hereinabove, we do not think that the appellant can be denied bail based on the pendency of the other matter. We say so in the facts and circumstances of the present case as we do not find any justification for his continued detention. The appellant has already been in custody for over one year. The Trial is yet to commence. There is a reference to one more ECIR which the Investigating Agency refers to in their counter, namely, ECIR/RNZO/18/2022 but nothing is available from the record as to whether any proceedings have been taken against the appellant.

Allegation of misuse of Jail facilities by the Appellant

47. Elaborate contentions have been made on the conduct of the appellant about certain facilities having been extended to him in jail. We do not comment on them and if at all there is any violation of the prison Rules, the Investigating Agency ought to take up with the higher officials of the Jail. On the facts of the present case, they are not reasons enough to deny the appellant his liberty.

48. For the reasons stated above, while allowing the appeal, we set aside the judgment dated 22.03.2024 of the High Court of Jharkhand at Ranchi in B.A. No. 9863 of 2023. We clarify that the observations made in this judgment are only for the purpose of disposing of the bail application and they shall not influence the Trial Court, which would proceed in accordance with law and on the basis of the evidence on record.

Conclusion

49. In the result, we pass the following order:-

(i) The appeal is allowed and impugned order dated 22.03.2024 is quashed and set aside.

(ii) The Trial Court is directed to release the appellant on bail in connection with ED Case No. ECIR No. 5 of 2023 on furnishing bail bonds for a sum of Rs. 5 lakh with 2 sureties of the like amount.

(iii) The appellant shall surrender his passport with the Trial Court and the appellant shall report to the Investigating Officer on every Monday and Thursday between 10 and 11 A.M.

(iv) The appellant shall not make any attempt to influence the witnesses and tamper with the evidence.

Pending applications shall stand disposed of.

Result of the case: Appeal allowed.

†*Headnotes prepared by:* Divya Pandey