

Gautam Kundu vs Manoj Kumar Assistant Director, ... on 16 December, 2015

Equivalent citations: AIR 2016 SUPREME COURT 106, (2016) 1 JLJR 291 (2016) 158 ALLINDCAS 43 (SC), (2016) 158 ALLINDCAS 43 (SC)

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Bench: Pinaki Chandra Ghose, R.K. Agrawal

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1706 OF 2015
(Arising out of SLP(CrL.) No.6701 of 2015)

GAUTAM KUNDU ... APPELLANT(S)

:VERSUS:

MANOJ KUMAR, ASSISTANT DIRECTOR,
EASTERN REGION, DIRECTORATE OF
ENFORCEMENT (PREVENTION OF MONEY
LAUNDERING ACT) GOVT. OF INDIA ... RESPONDENT(S)

J U D G M E N T

Pinaki Chandra Ghose, J.

1. Leave granted.

2. This appeal, by special leave, is directed against the judgment and order dated 21st July, 2015 passed by the High Court of Calcutta in CRM No.6285 of 2015, whereby the High Court has rejected appellant's application for bail under Section 439 of the Code of Criminal Procedure, 1973. The appellant was arrested on 25.03.2015 in relation to an offence alleged to have been committed under Section 3 of the Prevention of Money Laundering Act, 2002, (hereinafter referred to as "PMLA").

3. The appellant is the Chairman of Rose Valley Real Estate Construction Ltd. (hereinafter referred to as the "Rose Valley"), a public company incorporated in the year 1999 and registered under the Companies Act, 1956. Certain non-convertible debentures were issued by the Rose Valley by 'private placement method.' No advertisements etc. were issued to the public. The said debentures were issued to the employees of the Company and to their friends and associates after fulfilling the

formalities for private placement of debentures. Thus, the appellant collected money by issuing secured debentures by way of private placement in compliance with the guidelines issued by the Securities and Exchange Board of India from time to time.

4. On 26.03.2013, the Adjudicating Officer, SEBI, passed an order imposing a penalty of Rs.1 crore upon the Rose Valley for violation of the provisions of Sections 11(C) of the Securities and Exchange Board of India Act, 1992 (hereafter referred to as the SEBI Act) which was reduced to Rs.10 lakhs by the Securities Appellate Tribunal, Mumbai. A letter was issued on 26.06.2013 by the Securities and Exchange Board of India ("SEBI") to the appellant Rose Valley informing the appellant about the offences alleged to have been committed by it under the Companies Act, SEBI Act & Regulations, and Section 405 of the Indian Penal Code. The appeal filed by the appellant before the Securities Appellate Tribunal was allowed on 12.12.2013, holding that the appellant Company has repaid all the money collected from the investors. It was further held by the Securities Appellate Tribunal that there are no grounds for violation of Section 11(C)(3) of the SEBI Act.

5. On the basis of the aforementioned letter dated 26.06.2013 issued by SEBI, the respondent filed a report being ECIR No.KIZO/02/2014 dated 27.02.2014, alleging commission of offence by the Rose Valley and its officers, punishable under Section 24 of the SEBI Act. Thereafter, search and seizure was conducted at the offices of the Rose Valley.

6. A complaint was filed by the respondent authorities, being C/14214 of 2013, alleging that the Rose Valley transferred the money raised by issue of debentures from the account of one company to that of another company. It is also alleged that the money collected by issuing the debentures for the purpose of one business has been invested in some other business. The proceedings under Section 24 of the SEBI Act has been challenged in the High Court by way of revision and the said revision is pending for hearing and further proceeding of the complaint case, being C/14214 of 2013, has been stayed by the High Court. The High Court also directed the respondent not to take any coercive measure against the appellant.

7. Vide its order dated 18.06.2014, SEBI directed the appellant Rose Valley to refund the money to the customers of the Ashirbad Scheme. This order was challenged before the Securities Appellate Tribunal by way of Appeal No.233 of 2014. On 19.06.2014, a Show Cause Notice under Section 8(1) of the PMLA was served upon Rose Valley and its officials. Rose Valley filed a writ petition before the High Court of Calcutta challenging the said Show Cause Notice. The said writ petition was dismissed by the learned Single Judge of the High Court. Thereafter, the matter was taken in appeal before the Division Bench of the Calcutta High Court, being AST No.345 of 2014. The Division Bench of the High Court dismissed the said appeal and directed the appellant Rose Valley to appear before the Adjudicating Authority under Section 8 of the PMLA and directed the Adjudicating Authority to decide the preliminary objections as may be raised by the Rose Valley, including the applicability of the PMLA as also the validity of the search and seizure against Rose Valley. It was further directed that the Adjudicating Authority should pass a reasoned order in the matter and communicate the same to the appellant Rose Valley within two days from the date of passing such order.

8. A complaint was filed by the respondent on April 2, 2015, in the Court of learned Chief Judge, City Sessions Court at Kolkata, against the appellant under Section 4 of PMLA, though no offence is made out against the appellant under Section 3 of the PMLA. The said complaint has been registered as ML Case No.3 of 2015. Despite having fully cooperated with the investigation, the appellant was arrested on 25.03.2015 on suspicion of having committed an offence punishable under the provisions of the PMLA and is detained in custody since then.

9. While the appellant was in custody, his father expired on 06.04.2015 upon which he moved an application before the High Court of Calcutta for interim bail to perform the rituals for his deceased father. The High Court vide its order 08.04.2015, directed release of the appellant on provisional bail for two weeks on the conditions mentioned in the said order. On completion of the period of provisional bail, the appellant duly surrendered before the Court of learned Chief Judge, City Sessions Court at Kolkata.

10. On 06.07.2015, the appellant filed a fresh bail application under Section 439 of the Code of Criminal Procedure before the High Court of Calcutta, being CRM No.6285 of 2015. Vide impugned judgment and order the High Court has rejected the said application of the appellant holding that no order has yet been passed by any competent Court of law that no offence is made out against the appellant under Section 24 of the SEBI Act. It is pertinent to mention here that a criminal revision praying for quashing of the proceedings initiated against the appellant under Section 24 of the SEBI Act is still pending for decision before the High Court.

11. Aggrieved by the rejection of the bail application filed under Section 439 of the Code of Criminal Procedure, the appellant has approached this Court through this appeal by special leave.

12. We have heard Mr. Gopal Subramaniam, learned senior counsel appearing for the appellant and also Mr. Ranjit Kumar, learned Solicitor General for India. For proper appreciation of submission made by learned counsel appearing for the parties, it would be necessary to consider the authorities cited on behalf of the both parties.

13. Mr. Gopal Subramaniam, learned senior counsel appearing for the appellant submitted that there is no offence made out under PMLA against the appellant as Section 24 of the SEBI Act is not a separate scheduled offence under the PMLA. Section 12A read with Section 24 of SEBI Act is the scheduled offence under the PMLA since 2009. Neither the complaint filed by SEBI nor the complaint filed by the respondent (which is based entirely on SEBI complaint) prosecutes the appellant for violation of Section 12A read with Section 24 of the SEBI Act.

14. According to learned senior counsel for the appellant, Section 24 of the SEBI Act was printed separately in the Schedule of PMLA for the first time vide PMLA (Amendment) Act, 2012 w.e.f. 15.02.2013, which is clearly an inadvertent typographical error. The description of offence given under paragraph 11 of the Schedule to PMLA for Section 24 of the SEBI Act reads as "acquisition of securities or control", which is different from the description given to the Section under the SEBI Act, which describes the Section as "Offences". Rather the heading "acquisition of securities or control" is part of the heading of Section 12A read with Section 24 which is the scheduled offence.

The relevant extract of the Schedule to the PMLA, as it stood after the 2009 Amendment, is as follows:

Paragraph 8 - The Securities and Exchange Board of India Act, 1992 (15 of 1992) |12A read with Section |Prohibition of manipulative and deceptive | |24 |devices, insider trading and substantial | | |acquisition of securities or control | The relevant extract of the Schedule to the PMLA as it stands today after the Amendment Act of 2012 w.e.f. 15.02.2013 is as follows:

Paragraph 11 - The Securities and Exchange Board of India Act, 1992 (15 of 1992) |12A read with Section|Prohibition of manipulative and deceptive | |24 |devices, insider trading and substantial. | |Section 24 |Acquisition of securities or control |

15. The learned senior counsel for the appellant submitted that if the offences prescribed against the sections in paragraph 11 in both the rows are read together, the same will appear as the heading of Section 12A of the SEBI Act. A conjoint reading of two rows under paragraph 11 of Part A of the Schedule would show that the same is in substance a reproduction of paragraph 8 of Part B of the Schedule of PMLA as was prevailing prior to the amendment effected on 15.02.2013 and therefore, the position remains unchanged. Section 12A of the SEBI Act is as follows:

"Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A. No person shall directly or indirectly -

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognized stock exchange;

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognized stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(d) engage in insider trading;

(e) deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a

manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(f) acquire control of any company or securities more than the percentage of equity share capital of a company whose securities are listed or proposed to be listed on a recognized stock exchange in contravention of the regulations made under this Act."

Section 24 of the SEBI Act reads as follows:

"24. Offences. - (1) Without prejudice to any award of penalty by the Adjudicating Officer under this Act, if any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules or regulations made thereunder, he shall be punishable with imprisonment for a term which may extend to ten years, or with fine, which may extend to twenty-five crore rupees or with both.

(2) If any person fails to pay the penalty imposed by the Adjudicating Officer or fails to comply with any of his directions or orders, he shall be punishable with imprisonment for a term which shall not be less than one month, but which may extend to ten years or with fine, which may extend to twenty-five crore rupees or with both."

16. According to the learned senior counsel for the appellant, the fact that no new offence was meant to be added by way of the 2012 amendment, is clear from a plain reading of the "Statement of Objects and Reasons" to the Amendment of 2012, as well as the "Notes on Clauses" on the Amendment Act, 2012 and from a comparison of the Schedules of PMLA of 2009 and amended PMLA of 2012. It is submitted by the learned senior counsel for the appellant that the respondent is wrongly reading Section 24 of SEBI Act simpliciter as a separate scheduled offence, whereas Section 24 is a general penal provision for violation of any and every provisions of the SEBI Act or any rules or regulations made thereunder.

17. It was further submitted by the learned senior counsel appearing for the appellant that if the intent of the legislature was to incorporate Section 24 of SEBI Act alone as an offence, in that event, there would have been no necessity to incorporate "12A read with Section 24" inasmuch as Section 24 of the SEBI Act prescribes that all violations of provisions of SEBI Act would be punishable in terms of Section 24 of the SEBI Act, 1992. Had that been the intention of the legislature, the legislature would have mentioned either "offences and penalties under SEBI Act, 1992" or only Section 24 and the heading thereof, as scheduled offence. There was or could be no necessity to specify section 12A separately if the legislature intended to incorporate Section 24 as a separate scheduled offence.

18. Further, the Enforcement Directorate's own document titled "FAQs" on their website mentions the Schedule to PMLA which treats Section 12A r/w Section 24 of the SEBI Act as a scheduled offence and not Section 24 alone. Similarly, the Schedule to PMLA on the website of the Ministry of Finance- Financial Intelligence Unit also mentions S.12A r/w 24 of the SEBI Act as the scheduled

offence and not Section 24 alone. This reflects the authority/government's own understanding of the Schedule. Thus, it can be safely said that the printing of Section 24 of SEBI Act separately under the Schedule to the PMLA is vide an inadvertent typographical error that has crept into the legislation as is apparent from the marginal note therein. It is an accepted principle of interpretation of statutes that where an inadvertent grammatical or other error has palpably crept into the legislation, the Court is at liberty to disregard the error in applying the statute. (*Afcons Infrastructure Ltd. v. Cherian Verkey Construction Co. (P) Ltd.*, (2010) 8 SCC 24).

19. Learned senior counsel for the appellant further submitted that the description given to the offence under Section 24 of SEBI Act, in the Schedule to PMLA is "acquisition of securities or control", and even if Section 24 is treated as a separate scheduled offence, the words used in the description have to be given meaning to and its application has to be restricted to the offence described under it in the Schedule. The learned senior counsel for the appellant further submitted that this Court has held in numerous judgments that the Court should give meaning to each and every word used by the legislature and it is not a sound principle of construction to brush aside words in a statute as being inapposite surplus, if they can have a proper application in circumstances conceivable within the contemplation of the statute. [See: *Gurudevatta VKSSS Maryadit v. State of Maharashtra*, (2001) 4 SCC 534 at para 26]. It has also been held by this Court that "the courts always presume that the legislature inserted every part thereof for a purpose and the legislative intent is that every part of the statute should have effect. The legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the legislature will not be accepted except for compelling reasons." [*Visitor, AMU v. K.S. Misra*, (2007) 8 SCC 593, at para 13)].

20. Therefore, learned senior counsel for the appellant submitted, the words "acquisition of securities or control", appearing next to Section 24 of the SEBI Act in the Schedule to the PMLA must be given due meaning and construed to mean that only that extent of the offence which pertains to ""acquisition of securities or control" is a punishable offence under PMLA and not any other violation under the SEBI Act.

21. It was further submitted by the learned senior counsel for the appellant that Section 24 alone cannot by itself be a scheduled offence under the PMLA since it does not enumerate a specific offence rather it is the nature of a "catch-all" penal provision, which imposes punishment for any contravention of the SEBI Act, Rules or Regulations and does not precisely define or specify any offence in particular. Inclusion of Section 24 as a separate offence would be a violation of the basic principle of criminal jurisprudence that 'criminal law has to be clear and unambiguous.' It has been held by this Court in numerous judgments that criminal law ought to be absolutely clear, specific and not vague, failing which it would suffer from arbitrariness. [Ref: (i) *State of Madhya Pradesh v. Baldeo Prasad*, (1961) 1 SCR 970; (ii) *Harakchand Ratanchand Banthia & Ors. v. Union of India & Ors.*, (1969) 2 SCC 166; and (iii) *A.K. Roy & Ors. v. Union of India & Ors.*, (1982) SCR 272].

22. It was alternatively submitted by the learned senior counsel appearing for the appellant that assuming if Section 24 simplicitor is treated as a scheduled offence, it was introduced vide PMLA (Amendment) Act, 2012, w.e.f. 15.02.2013 i.e. much after the offences were alleged to have been

committed and bar against ex-post facto laws under Article 20(1) would be attracted. Section 2(u) of PMLA defines "proceeds of crime" and states that it must be as a result of criminal activity relating to a scheduled offence. Under Section 3 of the PMLA, in order for the offence of money laundering to be triggered, it must be established at the threshold that the "proceeds of crime" was as a result of criminal activity relating to a scheduled offence on the date such crime was committed. He submitted that the offences are alleged to have been committed between the years 2001 and 2007. The offence under Section 12A r/w Section 24 of SEBI Act became scheduled offence only by way of the Prevention of Money Laundering (Amendment) Act, 2009 w.e.f. 01.06.2009, much after the alleged commission of crime and the appellant is admittedly not accused of violation of Section 12A r/w Section 24 of the SEBI Act.

23. Mr. Ranjit Kumar, learned Solicitor General appearing on behalf of the respondent, on the other hand, submitted that Rose Valley Group of Companies floated as many as 27 companies although two out of them, i.e. Rose Valley Real Estate Construction Ltd. ("Rose Valley") and Rose Valley Hotels Entertainment Ltd. were the front runners to allure the investors to invest in (i) Ashirbad Scheme, (ii) Time Share Scheme, and (iii) Debenture Scheme, promising high returns to the investors and the funds so collected from the public at large were subsequently laundered in associated companies. Rose Valley made a public issue of debentures without filing any offer document in violation of Section 56 of the Companies Act, 1956, nor did it file statement in lieu of prospectus as claimed by it. On the basis of the information/documents received from SEBI, the respondent filed a complaint in the Court of Chief Metropolitan Magistrate at Calcutta for Scheduled Offence under Section 24 of the SEBI Act. The respondent conducted searches of the premises of the Rose Valley Group on 22.05.2014 and 23.05.2014, resulting into seizure of incriminating documents and Indian currency of Rs.37.07 lacs. The respondent's action of search and seizure was challenged by the appellant by filing a writ petition before the High Court of Calcutta which was dismissed on 7.7.2014.

24. He further submitted that the investigation conducted by the respondent revealed that Rose Valley illegally and fraudulently collected public money from the general public in the State of West Bengal, Assam, Tripura and Odisha, amounting to Rs.12363.63 crores (approx). In addition to this, Rose Valley illegally and fraudulently collected public funds from the States of Karnataka, Bihar, Maharashtra, Jharkhand, Uttar Pradesh, Delhi, Madhya Pradesh, amounting to more than Rs.3120.97 crores (approx). Therefore, the funds of Rs.12.82 crores collected from the general public under the garb of Debenture Schemes is a tip of the iceberg.

25. Mr. Ranjit Kumar, learned Solicitor General further submitted that the "scheduled offences" and "offence of money laundering" are mutually exclusive and independent of each other. Section 3 of the PMLA deals with the offence of money laundering punishable under Section 4 of the said Act, whereas the 'Schedule' to PMLA involving offences under 28 paragraphs enable the respondent to conduct the investigation for the collection of evidence relating to offence of money laundering. In the present case, the respondent filed the complaint under Section 45 of PMLA and cognizance of the same has been taken by the Special Court on 02.04.2015 under Section 44(1)(b) of PMLA. He further submitted that the complaint filed by SEBI has nothing to do with the merits of the present case and the High Court stayed the proceedings of the SEBI complaint on the ground that the CMM

had no authority to take cognizance of the offence as the latest amendment in Section 26 of SEBI Act makes the offence triable by the Court of Sessions.

26. The learned Solicitor General submitted that Section 45 of PMLA refers only to the term 'Special Court' and therefore has to be given restricted meaning. According to him, PMLA is a 'Special Law' applicable to the subject of money laundering, and deals with economic offenders and white collar criminals. The object of PMLA is to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money- laundering. To enable the scheme of the Act, reliance was placed on various provisions of the PMLA. He further submitted that Section 44 of the PMLA only confers jurisdiction on the Special Court to deal with offences under the PMLA. Section 45 of PMLA makes the offence of money laundering cognizable and non-bailable and also provides that notwithstanding the provisions of Criminal Procedure Code, 1973, no person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule shall be released on bail or on his own bond, unless the Public Prosecutor has been given an opportunity to oppose the application for such release.

27. The learned Solicitor General lastly submitted that 'money laundering' being an economic offence poses a serious threat to the National Economy and National Interest and committed with cool calculation and deliberate design with the motive of personal gain regardless of the consequences to the society. Hence, for Money Launderers 'jail is the rule and bail is an exception, which finds support from many landmark judgments of this Court.

28. Before dealing with the application for bail on merit, it is to be considered whether the provisions of Section 45 of the PMLA are binding on the High Court while considering the application for bail under Section 439 of the Code of Criminal Procedure. There is no doubt that PMLA deals with the offence of money laundering and the Parliament has enacted this law as per commitment of the country to the United Nations General Assembly. PMLA is a special statute enacted by the Parliament for dealing with money laundering. Section 5 of the Code of Criminal Procedure, 1973 clearly lays down that the provisions of the Code of Criminal Procedure will not affect any special statute or any local law. In other words, the provisions of any special statute will prevail over the general provisions of the Code of Criminal Procedure in case of any conflict.

29. Section 45 of the PMLA starts with a non obstante clause which indicates that the provisions laid down in Section 45 of the PMLA will have overriding effect on the general provisions of the Code of Criminal Procedure in case of conflict between them. Section 45 of the PMLA imposes following two conditions for grant of bail to any person accused of an offence punishable for a term of imprisonment of more than three years under Part-A of the Schedule of the PMLA: (i) That the prosecutor must be given an opportunity to oppose the application for bail; and (ii) That the Court must be satisfied that there are reasonable grounds for believing that the accused person is not guilty of such offence and that he is not likely to commit any offence while on bail.

30. The conditions specified under Section 45 of the PMLA are mandatory and needs to be complied with which is further strengthened by the provisions of Section 65 and also Section 71 of the PMLA. Section 65 requires that the provisions of Cr.P.C. shall apply in so far as they are not inconsistent

with the provisions of this Act and Section 71 provides that the provisions of the PMLA shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. PMLA has an overriding effect and the provisions of Cr.P.C. would apply only if they are not inconsistent with the provisions of this Act. Therefore, the conditions enumerated in Section 45 of PMLA will have to be complied with even in respect of an application for bail made under Section 439 of Cr.P.C. That coupled with the provisions of Section 24 provides that unless the contrary is proved, the Authority or the Court shall presume that proceeds of crime are involved in money laundering and the burden to prove that the proceeds of crime are not involved, lies on the appellant.

31. It was submitted on behalf of the appellant that Section 12A read with Section 24 of the SEBI Act does not include Section 24 of the said Act as a scheduled offence but it is only Section 12A which is to be construed as a scheduled offence as the description of offence against Section 24 of the SEBI Act mentioned under paragraph 11 of the Schedule to PMLA is part of Section 12A of the said Act. In this context it was submitted by the learned Solicitor General that PMLA being a Special Statute cannot be given restricted meaning while interpreting its provisions including the Schedule which is an integral part of this Act. PMLA has been enacted by the Parliament as per commitment of the country to the United Nations and having global dimensions and cannot be confined to national boundaries of our country. Moreover, its legislative intent has to be gathered from the plain reading of the language used in the provisions of the Act and the Schedule appended thereunder. Hence, there is no ambiguity that Section 24 of the SEBI Act is a scheduled offence under Paragraph 11 of the Schedule. The fact remains that Section 24 of the SEBI Act is inclusive in nature and also includes Section 12A within its ambit and scope. Further, on perusal of various offences listed in the Schedule in 28 Paragraphs, it could be seen that only penal provisions of the Statutes have been incorporated in the Schedule. There is no denying the fact that Section 24 of the SEBI Act is a penal provision of inclusive nature and thus it clearly reflects the legislative intent of a scheduled offence under PMLA. Admittedly, the complaint was filed by SEBI against the appellant on the allegation of committing offence punishable under Section 4 of PMLA. The complaint reveals that SEBI received a letter from the Ministry of Corporate Affairs, Office of the Registrar of Companies ("ROC"), West Bengal, with reference to Rose Valley in which the ROC had stated that Rose Valley has repeatedly issued debentures in the years 2001-2002, 2004-2005, 2005-2006 and 2007- 2008 to more than 49 persons in each financial year without filing offer documents with either the ROC or the SEBI and requested SEBI to investigate into the matter. From the information provided by ROC, it was observed that Rose Valley had raised a total sum of Rs.1282.225 lakhs from 2585 persons by issuing secured debentures to the general public without complying with the norms related to IPO of securities as per first provision to Section 67(3) of the Companies Act, 1956. Rose Valley by making public issue of debentures during the period between 2001-2002 to 2007-2008, without complying with the public issue norms, violated the provisions of erstwhile SEBI (Disclosure and Investor Protection) Guidelines, 2000 and the provisions of Section 117(A) of the Companies Act, 1956 and other provisions of SEBI Act which is a Scheduled Offence under PMLA.

32. We have heard the learned counsel for the parties. At this stage we refrained ourselves from deciding the questions tried to be raised at this stage since it is nothing but a bail application. We cannot forget that this case is relating to "Money Laundering" which we feel is a serious threat to the

national economy and national interest. We cannot brush aside the fact that the schemes have been prepared in a calculative manner with a deliberative design and motive of personal gain, regardless of the consequence to the members of the society.

33. With regard to the questions raised by Mr. Gopal Subramaniam, learned senior counsel appearing on behalf of the appellant, at this stage, we do not think that we should answer or deal with the same in view of the fact that the matter is pending before a Division Bench of the High Court in writ jurisdiction, as has been pointed out before us. Hence, any observation or remarks made by us may cause prejudice to the case of both the sides. Therefore, we feel that it would be proper for us only to deal with the matter concerning bail. We note that admittedly the complaint is filed against the appellant on the allegations of committing the offence punishable under Section 4 of the PMLA. The contention raised on behalf of the appellant that no offence under Section 24 of the SEBI Act is made out against the appellant, which is a scheduled offence under the PMLA, needs to be considered from the materials collected during the investigation by the respondents. There is no order as yet passed by a competent court of law, holding that no offence is made out against the appellant under Section 24 of the SEBI Act and it would be noteworthy that a criminal revision praying for quashing the proceedings initiated against the appellant under Section 24 of SEBI Act is still pending for hearing before the High Court. We have noted that Section 45 of the PMLA will have overriding effect on the general provisions of the Code of Criminal Procedure in case of conflict between them. As mentioned earlier, Section 45 of the PMLA imposes two conditions for grant of bail, specified under the said Act. We have not missed the proviso to Section 45 of the said Act which indicates that the legislature has carved out an exception for grant of bail by a Special Court when any person is under the age of 16 years or is a woman or is a sick or infirm. Therefore, there is no doubt that the conditions laid down under Section 45A of the PMLA, would bind the High Court as the provisions of special law having overriding effect on the provisions of Section 439 of the Code of Criminal Procedure for grant of bail to any person accused of committing offence punishable under Section 4 of the PMLA, even when the application for bail is considered under Section 439 of the Code of Criminal Procedure.

34. We have further noted the directions given by this Court in *Subrata Chattoraj v. Union of India and Ors.*, (2014) 8 SCC 768, in particular to paragraph 35.4.

35. We cannot brush aside the fact that the appellant floated as many as 27 companies to allure the investors to invest in their different companies on a promise of high returns and funds were collected from the public at large which were subsequently laundered in associated companies of Rose Valley Group and were used for purchasing moveable and immoveable properties.

36. We do not intend to further state the other facts excepting the fact that admittedly the complaint was filed against the appellant on the allegation of committing offence punishable under Section 4 of the PMLA. The contention made on behalf of the appellant that no offence under Section 24 of the SEBI Act is made out against the appellant, which is a scheduled offence under the PMLA, needs to be considered from the material collected during the investigation and further to be considered by the competent court of law. We do not intend to express ourselves at this stage with regard to the same as it may cause prejudice the case of the parties in other proceedings. We are sure that it is not

expected at this stage that the guilt of the accused has to be established beyond reasonable doubt through evidences. We have noted that in *Y.S. Jagan Mohan Reddy v. Central Bureau of Investigation*, (2013) 7 SCC 439, this Court has observed that the economic offences having deep rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of country. In *Union of India v. Hassan Ali Khan*, (2011) 10 SCC 235, this Court has laid down that what will be the burden of proof when attempt is made to project the proceeds of crime as untainted money. It is held in the said paragraph that allegations may not ultimately be established, but having been made, the burden of proof that the monies were not the proceeds of crime and were not, therefore, tainted shifted on the accused persons under Section 24 of the PML Act, 2002. The same proposition of law is reiterated and followed by the Orissa High Court in the unreported decision of *Smt. Janata Jha v. Assistant Director, Directorate of Enforcement (CRLMC No. 114 of 2011 decided on December 16, 2013)*. Therefore, taking into account all these propositions of law, we feel that the application for bail of the appellant should be seen at this stage while the appellant is involved in the economic offence, in general, and for the offence punishable under Section 4 of the PMLA, in particular.

37. We have further noted that the High Court at the time of refusing the bail application, duly considered this fact and further considered the statement of the Assistant General Manager of RBI, Kolkata, seizure list, statements of directors of Rose Valley, statements of officer bearers of Rose Valley, statements of debenture trustees of Rose Valley, statements of debenture holders of Rose Valley, statements of AGM of Accounts of Rose Valley and statements of Regional Managers of Rose Valley for formation of opinion whether the appellant is involved in the offence of money laundering and on consideration of the said statements and other materials collected during the investigation, the High Court specifically stated as follows:

“By making a pragmatic approach to the provision of Section 45(1) of the P.M.L. Act and on consideration of the antecedents of the petitioner in collection of money from open market for issuing secured debentures in violation of the guidelines of SEBI and on further consideration of the manner of keeping accounts of Rose Valley, I am unable to hold that the petitioner is not likely to commit any offence while on bail. As a result, I cannot persuade myself to grant bail to the petitioner at this stage. So, prayer for bail is rejected. The application is dismissed.”

38. In these circumstances, we do not find that the High Court has exercised its discretion capriciously or arbitrarily in the facts and circumstances of this case. We further note that the High Court has called for all the relevant papers and duly taken note of that and thereafter after satisfying its conscience, refused the bail. Therefore, we do not find that the High Court has committed any wrong in refusing bail in the given circumstances. Accordingly, we do not find any reason to interfere with the impugned order so passed by the High Court and the bail, as prayed before us, challenging the said order is refused. Consequently the appeal is dismissed.

.....J (Pinaki Chandra Ghose)J (R.K. Agrawal) New Delhi;

December 16, 2015.