Shri S C Jayachandra vs Enforcement Directorate on 23 February, 2017

Author: P.S.Dinesh Kumar

Bench: P.S.Dinesh Kumar

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

Dated this the 23rd day of February, 2017

BEFORE

THE HON'BLE MR.JUSTICE P.S.DINESH KUMAR

Criminal Petition No.366/2017

BETWEEN :

SHRI S.C.JAYACHANDRA
S/O LATE CHIKKABORAIAH
HOUSE NO.150, 6TH CROSS, BAPUJI LAYOUT
CHANDRA LAYOUT, VIJAYNAGAR
BANGALORE - 560 040 ... PETITIONER

(By Shri.C.V. NAGESH, SENIOR COUNSEL FOR
Shri.SANDEEP PATIL, Adv.,)

AND :

ENFORCEMENT DIRECTORATE
BANGALORE ZONAL OFFICE
3RD FLOOR, 'B' BLOCK, BMTC
BANGALORE-560 027
REP. BY SPECIAL PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BANGALORE - 560 001 ... RESPONDENT

(By Shri.S.MAHESH, Adv.,)

THIS CRL.P IS FILED U/S.439 CR.P.C PRAYING TO ENLARGE THE PETR. ON BAIL IN ECIR/BGZO/13/2016 PENDING ON THE FILE OF XXXII ADDL. CITY CIVIL AND S.J., AND SPL. JUDGE FOR CBI CASES, BANGALORE AND SPECIAL COURT UNDER THE PREVENTION OF MONEY LAUNDERING, FOR THE OFFENCES P/U/Ss.3, 4 AND 8 OF THE PREVENTION OF MONEY LAUNDERING ACT, 2002. THE XXXII ADDL. CITY

CIVIL AND S.J. AND SPL. JUDGE FOR CBI CASES, BANGALORE AND SPECIAL COURT UNDER THE PREVENTION OF MONEY LAUNDERING ACT HAS REJECTED THE BAIL APPLICATION ON 7.1.2017 IN ECIR/BGZO/13/2016.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDER ON 13.02.2017, COMING ON FOR PRONOUNCEMENT OF ORDER, THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

This petition is filed seeking bail in Case No. ECIR/BGZO/13/2016 registered by the respondent, Enforcement Directorate, Bengaluru Zone ('ED' for short) against the petitioner for the offences punishable under Sections 3, 4 & 8 of the Prevention of Money-Laundering Act, 2002 ('PML Act' for short).

2. Heard Shri C.V.Nagesh, learned Senior Counsel for Shri Sandeep Patil, Advocate for the petitioner and Shri S. Mahesh, learned standing Counsel for the respondent - ED.

3. The submissions of Shri C.V. Nagesh, learned Senior Counsel on behalf of the petitioner may be summarized as follows:

> i) Pursuant to an FIR in Crime No.RC 23(A)/2016 registered by the CBI against one Suryanarayana Bairy and others, including the petitioner, ED also registered a case in No. ECIR/BGZO/13/2016 for offences punishable under the provisions of the PML Act.
>
> ii) Petitioner was taken into custody on 3.12.2016 and granted bail on 8.12.2016 by the Special Court.

However, on the following day, petitioner and other accused were remanded to judicial custody till 22.12.2016 to facilitate a Special Public Prosecutor to file objections. Upon an application made by the petitioner, the learned Special Judge granted an Interim Bail to the petitioner and the same was challenged by the ED in Crl.P.No.9737/2016 before this Court and the same was disposed of with a direction to the Special Judge to hear the Regular Bail application on 4.1.2017 and to pass orders within 3 days there from. In pursuance thereof, the learned Special Judge heard the bail petition and by his Order dated 7.1.2017 dismissed the same.

iii) The Anti Corruption Bureau (ACB) have also registered another FIR in Crime No.25/2016 alleging commission of offences under Sections 13(1)(e), 13(1)(d) and 13(2) of Prevention of Corruption Act, 1988 ('PC Act' for short). The petitioner has challenged the same before this Court in W.P.No.3091/2017. By order dated 27.1.2017, this Court has stayed all further proceedings in

Crime No.25/2016.

iv) That ED authorities arrested the petitioner without registering an FIR which is contrary to the law laid down by the Hon'ble Supreme Court in the case of (1) Lalita Kumari v. Government of Uttar Pradesh and others [(2014)2 SCC 1] and (2) Patai alias Krishna Kumar v. State of Uttar Pradesh [(2010)4 SCC 429].

v) It is stated in the grounds of arrest that the instant case has been registered based on the FIR lodged by the CBI; that the persons accused in the FIR are involved in fraudulently exchanging old demonetized currency notes of Rs.500/- and Rs.1,000/- leading to commission of offences under Sections 120B, 420 and 471 IPC; and Section 13(2) read with Section 13(1)(c)(d) of PC Act. It is also stated that the investigation by the ED revealed petitioner's involvement in acquiring/ possessing/ exchanging/converting the old demonetized currency notes of Rs.500/- and Rs.1,000/- into newly introduced currency notes of Rs.2,000/- in connivance with various middle-men. It is further stated that the petitioner appears to be guilty of fraudulently acquiring/possessing/ converting/ exchanging getting converted old demonetized notes into new notes in connivance with several persons by using his official position and that he has amassed wealth disproportionate to his known source of income.

vi) Though the specific case of the ED against the petitioner is acquiring /possessing /converting /exchanging getting converted old demonetized notes into new notes, ED has given up the allegation with regard to exchange of notes and during the pendency of this petition, filed a complaint dated 31.1.2017 before the Principal City Civil and Sessions Judge, Bengaluru contending inter alia that the investigation has revealed that the accused No.1 (petitioner) has mis-used his official position and used accused No.2, 3 and 4 to launder his ill-gotten money and used it to acquire 17 properties through 'proceeds of crime'.

vii) Adverting to the properties described in the complaint lodged by the ED, learned Senior Counsel has filed a compilation containing copies of documents with due notice to the learned standing Counsel for the ED and made following submissions:-

> (a) that there are in all 17 properties alleged to have been acquired from 'proceeds of crime'. Item No.1 namely, Site No.260 was allotted to petitioner's mother-in-law by a House Building Co-operative Society and acquired under a registered Sale Deed dated 4.6.1999. Subsequently, she has gifted the same to her daughter (petitioner's wife) under a Gift Deed dated 29.4.2009, who has in turn gifted it to her brother under a Gift Deed dated 15.5.2009;
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> (b) Item No.2 - namely, Site & House built on property No.191/8 was purchased (as per Sale Deed produced as Document No.33 of compilation) by petitioner's wife, who was an employee with Nationalised Bank.

Petitioner has also declared the same in his Annual Property Returns (Document No.36);

(c) Item No.3 was acquired by petitioner's mother in the year 1999 as per Document No.1 and gifted to the petitioner's wife under a Gift Deed dated 28.6.2004 as per Document No.4 after obtaining permission from the Government of Karnataka vide permission dated 18.12.2003;

(d) Items No.4 & 5 were purchased by petitioner's mother-in-law (as per Document No.27) and gifted to her daughter as per Document No.28, a Gift Deed dated 8.7.2004. The Government of Karnataka has accorded permission to receive the said gift vide communication dated 26.6.2004;

(e) Items No.6, 7 & 8 were purchased under different Sale Deeds and the Government of Karnataka have accorded ex-post facto approval for the said acquisition;

(f) Items No.9 and 10 were purchased on 13.7.2005 and sold on 11.5.2011;

(g) Items No.11 and 12 are the agricultural lands purchased for Rs.2 Lakhs and the Government of Karnataka have accorded ex-post facto approval;

(h) Items No.13 to 16 do not belong to the petitioner's family; and

(i) Item No.17 is the construction put up on items described at Sl.No.4, 5, 6, 7 and 8.

4. With the above facts on hand, the learned Senior Counsel submitted that the ED could invoke the provisions of PML Act only if there is an occurrence of any offence described in the schedule. As per the grounds of arrest, the petitioner was involved in acquiring/ possessing/ converting/ exchanging / getting converted old demonetized notes into new notes. However, the complaint is based on the FIR registered by the Karnataka Lokayukta Police alleging commission of offences under Section 13(1)(e) read with 13(2) of the PC Act. He argued that the ED was not thus sure of offences, if any committed by the petitioner. The allegation was exchanging of demonetized notes. The RBI had placed an embargo from exchanging demonetized notes in excess of Rs.4,500/-. Therefore, if at all there was any violation of such direction, it could be an offence under the RBI Act attributable to the banker, and at any rate, it cannot be construed as an offence committed by the petitioner. Further,

offence under the RBI Act is not a scheduled offence under the PML Act. This Court having stayed further investigation pursuant to the FIR lodged by ACB, the complaint lodged by the ED would be wholly unsustainable.

5. In sum and substance, Shri C.V. Nagesh, submitted that:

a) The ED has arrested the petitioner without registering an FIR;

b) Thirteen Properties which are sought to be described as 'proceeds of crime' are owned and possessed by the petitioner and his wife legitimately. Four other properties do not belong to the petitioner's family;

c) Petitioner's wife was working as a Senior Officer in the Bank and had her own savings;

d) Some of the immovable properties were lawfully gifted to his wife by her mother; and

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e) Petitioner has kept his employer namely, the Government of Karnataka informed with regard to every acquisition and continued to file Annual Property Returns in which all the properties owned and possessed by the family are disclosed. Once the employer, Government of Karnataka have accorded permission to acquire properties and the same are reflecting in the Annual Property Returns, such properties cannot be described as having been acquired from out of 'proceeds of crime'.

6. On the question of law, the learned Senior Counsel has advanced two principal contentions. Firstly, that the rigor of Section 45 of PML Act is not applicable to the facts of this case and secondly that even if it is held to be applicable, the petitioner's case deserves consideration on merits.

7. Amplifying his submission, learned Senior Counsel submitted that in CRWP No.595/2016 (O & M)

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[Gorav Kathuria v. Union of India and others], the Hon'ble High Court of Punjab & Haryana has held that the limitation for grant of bail under Section 45(1) of PML Act is not applicable to those persons accused of offences which were earlier listed in Part-B of the schedule prior to amendment in the year 2013 and admittedly, Section 13 of the PC Act was in Part-B of the Schedule of offences prior to amendment in the year 2013. He further submitted that, the said judgment of Hon'ble High Court of Punjab & Haryana has been held to be correct in Crl.A.No.737/2016 by the Hon'ble Supreme Court. Therefore, the limitations prescribed in Section 45(1) of the PML Act to grant bail shall not be applicable to the facts of this case. Hence, this Court will have to consider the instant petition only under the provisions of Cr.P.C. He argued that while considering this petition under the provisions of Cr.P.C., it is to be noted that in the complaint filed by the ED before the Principal City Civil & Sessions Judge, during the pendency of this petition, it is stated that the genesis of the instant complaint is the FIR registered by CBI in Crime

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No.91/2008 dated 17.12.2008 under Section 13(1)(e) r/w Section 13(2) of the PC Act. There is also a reference to the FIR RC 23(A)/2016 registered by CBI/ACB/BLR dated 3.12.2016 which is registered for involvement in fraudulently exchanging/converting the old demonetized currency for offences punishable under Section 120-B r/w Sections 420, 406, 409, 468, 471 & 477-A of IPC, 1860 and Section 13(2) r/w Section 13(1)(c) & Section 13(1)(d) of PC Act. He submitted that during the

course of Income Tax raid, a sum of Rs.27 Lakhs were seized from the two premises belonging to the petitioner out of which Rs.5 Lakhs was in new currency of denominations of Rs.2,000/-. The remaining cash was in the form of demonetized currency of Rs.500/- and Rs.1,000/-. In the complaint, ED has prayed to take cognizance of the complaint and to proceed against the petitioner and other accused named therein. ED has mentioned 17 properties as 'proceeds of crime'. The list of witness contains five names. The first and second witnesses are Assistant Director and Deputy Director respectively

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working with ED, the third and fifth witnesses are Assistant Engineer and Assistant Statistical Officer with the Lokayukta and the fourth witness is a Retired Additional Director of Horticulture Department. Thus, all witnesses are Government Officers and the entire case of the ED is based on documentary evidence. Therefore, there should be no apprehension of any tampering of evidence.

8. He further submitted that petitioner is a Senior Officer with the State Government. He has strong roots in the Society. Therefore, the apprehension of ED with regard to attendance before the Investigating Authority and the Court is also not well founded.

9. With these submissions, Shri C.V. Nagesh, prayed that this petition may be allowed and petitioner be enlarged on bail.

10. Shri S. Mahesh, learned standing Counsel for the respondent - ED strongly opposed the petition. He submitted that the offences alleged against the petitioner are predicate

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offences mentioned in Part - A of the schedule. Countering the argument with regard to registration of FIR, he submitted that Section 19(1) of PML Act empowers an authorized officer to arrest any person, if he has reason to believe that such person is guilty of an offence punishable under the said Act and soon thereafter inform him of the grounds for such arrest. Therefore, the arrest of petitioner under the Act is strictly in consonance with Section 19 and therefore, the rulings in the case of Lalita Kumari and Patai @ Krishna Kumar, supra are not applicable to the facts of this case.

11. In response to the principal argument that the limitations contained in Section 45 are not applicable to the case on hand in view of the judgment of Hon'ble Punjab & Haryana High Court in Gorav Kathuria's case, he submitted that the issue is no more res integra. The Hon'ble Supreme Court in Gautam Kundu v. Manoj Kumar, Assistant Director, Eastern Region Directorate of Enforcement (Prevention of Money Laundering Act) Govt. of India reported in AIR 2016 SC 106, has categorically held that the provisions of Section 45 of

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the PML Act are binding on the High Court while considering the application for bail under Section 439 Cr.P.C. On facts, he submitted that it is irrefutable that demonetized currency of Rs.22 Lakhs and new currency of Rs.2,000/- worth Rs.5 Lakhs were found in the two premises belonging to the petitioner. The search/raid was conducted on 30.11.2016. The currency was demonetized with effect from 8.11.2016. Petitioner's explanation that the consideration amount received from three prospective purchasers of Flats constructed by M/s.Shaakya Infrastructure Private Limited belonging to his wife and son is incorrect, as the said three prospective purchasers are fictitious. Adverting to the three affidavits of the prospective purchasers filed by the petitioner, he submitted that the said three affidavits of the prospective purchasers namely, H. Nischal Anantha Purshotham, Devanand and Anil Rathod disclose that the first two of them had handed over the sum of Rs.10 Lakhs each and the third had given Rs.7 Lakhs into the hands of petitioner's wife between 5.8.2016 and 5.10.2016. Petitioner has admitted in

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his statement recorded under Section 50(2)&(3) of PML Act that one Jayaram had arranged for exchange of Rs.5 Lakhs. He has also admitted that the said Jayaram and associates had arranged exchange of Rs.2 Crores; one Sreesha and associates had arranged exchange of Rs.75 Lakhs. He further submitted that the demonetized currency having face value of Rs.6,12,50,000/- has been exchanged for Rs.4,90,00,000/- by using six persons namely, Selvam, Jayaram, Sreesha, Umesh, Prathik Daga and Arun.

12. Shri S. Mahesh, further submitted that in the statements recorded by the ED under Section 50 of PML Act, petitioner's wife has categorically stated that she had no clue about the income and expenditure of the family and that her husband looked after the affairs. He submitted that instant complaint has been filed by the ED against the petitioner based on the earlier FIR filed by the Lokayukta in FIR No.91/2008 for the check period 1.2.1985 to 18.12.2008 for possession of disproportionate assets worth Rs.1,72,73,000/- during the said check period. He further submitted that the

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petitioner has again indulged in illegal acts and got demonetized currency worth Rs.6,12,50,000/- exchanged. In sum and substance, his argument is that the petitioner, who was alleged of possessing assets disproportionate to his known source of income by the Lokayukta in the year 2008 and has again indulged in converting demonetized currency of Rs.6,12,50,000/- by using his aids. He placed reliance on the judgment of the Hon'ble Supreme Court in the case of Union of India v. Hassan Ali Khan and another reported in (2011) 10 SCC 235 and prayed for dismissal of this petition.

13. Replying to the submissions of Shri S. Mahesh, Shri C.V. Nagesh, argued that the ruling in the case of Hassan Ali, supra, is not applicable to the facts of this case. The ramifications involved in the said case are very serious in nature. It was alleged against the first respondent therein that he had not accounted for astronomical sums of foreign exchange dealt by him, which was Rs.11,04,12,68,85,303/-. In contra distinction, the petitioner has explained the mode of acquisition

of immovable properties. Petitioner has also

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disclosed the source of Rs.27 Lakhs found in his house by filing the affidavits of the prospective purchasers. Therefore, the authority in the case Hassan Ali, supra cited by the learned Counsel for the ED is not applicable to the facts of this case.

14. I have carefully considered the submissions of Shri C.V. Nagesh, learned Senior Counsel and Shri S. Mahesh, learned Standing Counsel for the ED; and perused the records.

15. The controvertible facts of the case are that the Income Tax Authorities conducted a raid on the premises belonging to the petitioner and seized demonetized currency of Rs.22 Lakhs and Rs.5 Lakhs in the form of new currency notes having face value of Rs.2,000/-. Petitioner is an Engineer working with the State Government. He has held various positions from 2003 till date such as Executive Engineer, Superintendent Engineer, Chief Engineer (Minor Irrigation), Chief Engineer (Bruhat Bengaluru Mahanagara

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Palike), Managing Director (State Development Corporation) and Chief Project Officer (Karnataka State Highway Improvement Project).

16. CBI has registered an FIR bearing RC No.23(A)/2016. The petitioner was arrested in the said case and this Court has granted bail in Crl.P.No.9791/2016 on 10.1.2017. The ACB has registered an FIR on 5.12.2016. The proceedings pursuant to the said FIR have been stayed by this Court in W.P.No.3091/2017. In this petition, the petitioner is seeking enlargement on bail in the case registered by the ED in EICR/BGZO/13/2016 for offences punishable under Sections 3, 4 & 8 of PML Act.

17. It is argued on behalf of the petitioner that, the provisions of Section 45(1) of the PML Act have been read down by the Hon'ble High Court of Punjab & Haryana in Gorav Kathuria's case. Hence, this legal issue is first examined. It is relevant to note that the petitioner in Gorav Kathuria's case has challenged the vires of:

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(a) Section 2(y)(ii) of PML Act as amended vide Section 145(ii) of the Finance Act, 2015 enhancing the monetary threshold for offences specified under Part - B of the schedule from the total value involved in such offence from Rs.30 lakhs or more to Rs.1 Crore or more;

(b) Insertion of Section 132 of Customs Act, 1952 in Part - B of the schedule in PML Act vide Section 151 of the Finance Act, 2015;

18. The prayers contained in the said writ petition have been extracted in the judgment of the Hon'ble Punjab & Haryana High Court, which reads as follows:

> "8. A compilation of judgments has been submitted by the petitioner in support of his submissions. The following prayers are made by him in the instant petition:-
>
> i) Issue appropriate writ, order or direction in the Petitioner's challenge to the vires qua criminal cases, of firstly the sub-clause (ii) of clause (y) of section 2 of PMLA, and secondly, the insertion of Part-B in the Schedule in PMLA, as amended vide section 145(ii) and section 151 of the Finance Act, 2015, with effect from 14.05.2015, for declaring these provisions of PMLA as unconstitutional and ultra vires as the same are contrary to the objects of PMLA warranting stringent conditions for grant
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of bail vide Section 45(1) in criminal cases under PMLA, and are unconstitutional and/or

ii) to issue appropriate writ, order or directions while reading down these provisions for criminal cases, so as to make them constitutional by construing criminal offence under Part B of the Schedule inserted in PMLA w.e.f. 14.5.2015, to be amongst the offences listed in Part-A of the Schedule, so as to apply the stringent pre-conditions for grant of bail vide Section 45(1) in the matters of money laundering irrespective of the magnitude of gravity of the said scheduled offences;

iii) to hold that a private criminal complaint by the petitioner would be maintainable for setting the criminal law into motion and to seek any direction for investigation of offence under Section 3 r/w 4 of PMLA along with the offence under Part B of the Schedule inserted in PMLA w.e.f. 14.05.2015, either under Section 156(3) or under Section 155(2) of the code of Criminal Procedure, as the case may be, pending grant of sanction requisite for taking 'cognizance' in said Scheduled Offence or under PMLA,

iv) issue any other writ, order or directions, which this Hon'ble Court may deem just and fit."

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In paragraphs No.12.23 and 12.24 the Hon'ble Punjab & Haryana High Court has held as follows:

> "12.23 We, therefore, in light of the "Statement of Objects and Reasons" as incorporated in the Prevention of Money- Laundering (Amendment) Bill, 2011 and the above discussion and findings, have no hesitation in holding that the reference to the offences under Part-A of the Schedule in the context of Section 45(1) has to be necessarily read down to apply only those persons who are arrested under Section 19 of PMLA on accusation of money laundering, who are accused of commission of scheduled offences which were listed under the Part A of the Scheduled existing prior to 2013 amendment. In other words, the limitations in grant of bail under Section 45

(1) of PMLA are not applicable to those persons who are arrested under PMLA on accusation of commission of such scheduled offences which were earlier listed under Part B of the Schedule (prior to amendment in Schedule carried out in 2013).

12.24 Consequently, the provisions containing twin limitations in grant of bail under Section 45(1) would override the normal principles governing bail under Sections 438 and 439 qua the persons arrested on accusation of commission of such Scheduled Offences which were earlier listed under Part A of the Schedule. However, only the normal principles governing bail under Section 438 or 439 of the Code would apply in relation to a person arrested under PMLA an accusation of commission of such scheduled offences, which were earlier listed under Part B of the Schedule." .....

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19. Ultimately, the Hon'ble Punjab & Haryana High Court has dismissed the writ petition filed by Gorav Kathuria. Upon an oral prayer seeking leave to appeal to Hon'ble Supreme Court made by the petitioner therein, the Hon'ble Punjab & Haryana High Court recording that it had not come across any precedent in respect of two issues concerning fundamental rights guaranteed under the Constitution under Articles 14 and 21 by the Hon'ble Supreme Court, issued a Certificate on the following two substantial questions of law:

"a) Whether it would be unreasonable and in violation of Article 14 and 21 of the Constitution of India, if the twin limitations in grant of bail stipulated under Section 45(1) of PMLA would be applied even to those persons arrested under PMLA on accusation of commission of only such scheduled offences, which were listed under Part B of the Schedule omitted in 2013 but only for the limited purpose as specified in the "Statement of Objects and Reasons" in the Prevention of Money-Laundering (Amendment) Bill, 2011.

b) Whether as per the provisions of the Code of Criminal Procedure, 1973 read with the provisions of the PMLA and Rules made thereunder, a private individual can set the criminal law into motion by either seeking registration of case for investigation by the authority under PMLA or by directly approaching the

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jurisdictional Magistrate for issuance of directions for investigations to the authority under PMLA, when there is neither any report of commission of any Scheduled offence sent under Section 157 of the Code to the Magistrate nor any complaint for taking cognizance of a Scheduled Offence by an officer authorized to investigate such Scheduled Offence."

20. The Hon'ble Supreme Court in Criminal Appeal No.737/2016 [Gorav Kathuria v. Union of India and others], on 12.8.2016 has passed the following order:

"O R D E R Though the High Court has granted certificate to appeal, we have heard the learned counsel for some time and are of the opinion that the impugned judgment of the High Court is correct.

This appeal is, accordingly, dismissed".

21. The record of proceedings of the Hon'ble Supreme Court in the above criminal appeal made available to this Court in a compilation filed by the learned Counsel for the petitioner shows that the respondent-Union of India was not represented before the Hon'ble Supreme Court.

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22. In the light of submissions made on behalf of both petitioner and respondent with regard to applicability of Section 45, it is necessary to examine whether the judgment in the case of Gorav Kathuria is applicable to the facts of this case. Learned Counsel for the ED has placed strong reliance on the judgment in the case of Gautam Kundu, supra. It was the contention of the petitioner in Gautam Kundu's case that Section 24 of the SEBI Act was printed separately in the Schedule of PML Act for the first time vide PML (Amendment) Act, 2012 with effect from 15.2.2013 by an inadvertent typographical error. It was argued that Section 24 alone cannot by itself be a Scheduled offence under the PML Act. After considering the rival contentions, the Hon'ble Supreme Court has held as follows with regard to Section 45 of the PML Act:

"28. Before dealing with the application for bail on merit, it is to be considered whether the provisions of Section 45 of 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

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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 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 PMLA are mandatory and needs to be complied with, which is further strengthened by the provisions of Section 65 and also Section 71 of PMLA. Section 65 requires that the provisions of Cr.P.C shall apply insofar as they are not inconsistent with the provisions of this Act and Section 71 provides that the provisions of PMLA shall have overriding effect notwithstanding anything inconsistent therewith

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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."

(emphasis supplied) Further in paragraph No.33, the Hon'ble Supreme Court has held as follows:

"33..... 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 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

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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".

(emphasis supplied)

23. Thus, Hon'ble Supreme Court has held in clear and unambiguous terms that the provisions of Section 45 applies to all offences enumerated in Part-A of the Schedule. It is relevant to note that the

judgment of the Gautam Kundu's case is delivered on 16.12.2015. The offences under the provisions of Prevention of Corruption Act, 1988 and Sections 120-B, 420, 406,409, 468, 471, 477-A of IPC have been brought in Schedule-A with effect from 15.2.2013. Thus, the offences alleged against the petitioner herein were already in Part-A of the schedule as on the date on which Hon'ble Supreme Court was considering Gautam Kundu's case. Similarly, offences under the SEBI Act, 1992 which were under consideration in the Gautam Kundu's case were also in Part-B of the schedule prior to the amendment in 2013 but, as on the date of consideration of Gautam Kundu's case by the Hon'ble Supreme Court they were in Part A of the

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schedule. Thus, offences alleged against the petitioner herein and offences under the SEBI Act were both found in Part-B of the Schedule prior to amendment and both were brought in Part 'A' of the schedule with the amendment in 2013. While considering the case under the SEBI Act, the Hon'ble Supreme Court has clearly held that the provisions of Special Statute will prevail over the general provisions of the Code of Criminal Procedure.

24. The petition filed in Kathuria's case was with the prayers extracted hereinabove and challenge to the vires of Section 2(y)(ii) of amended Section 145(ii) of Finance Act, 2015, enhancing the monetary threshold for the offences specified under Part-B of the Schedule from Rs.30,00,000/- or more to 1,00,00,000/- or more and insertion of Section 132 of Customs Act in Part-B. It was held by the Hon'ble Punjab & Haryana High Court that Section 45(1) had to be read down. But it is significant to note that the writ petition has been ultimately dismissed. The Hon'ble Supreme Court has also dismissed the Criminal Appeal and not rendered any

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finding on the substantial questions of law framed by the Hon'ble Punjab & Haryana High Court. In Gautam Kundu's case, the Hon'ble Supreme Court was dealing with SEBI Act brought into Part-A of the Schedule post amendment in 2013. The offences alleged against the petitioner herein were also in Part - B prior to amendment and brought into Part - A of the Schedule in 2013. Therefore, the reliance placed by the learned Counsel for the petitioner on Gorav Kathuria's case will not lead his case any further. Learned Senior Counsel for the petitioner also placed reliance on another judgment of the Hon'ble Supreme Court in the case of Kunhayammed and others v. State of Kerala and another reported in (2000)6 SCC 539 to contend that since a certificate was granted by Hon'ble Punjab & Haryana High Court, the doctrine of merger applies. He placed reliance on paragraph No.41 of the judgment which reads as follows:

> "41. Once a special leave petition has been granted, the doors for the exercise of appellate jurisdiction of this Court have been let open. The order impugned before the Supreme Court becomes an order appealed against. Any order passed thereafter would be an appellate

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> order and would attract the applicability of doctrine of merger. It would not make a difference whether the order is one of reversal or of modification or of dismissal affirming the order appealed against. It would also not make any difference if the order is a speaking or non- speaking one. Whenever this Court has felt inclined to apply its mind to the merits of the order put in issue before it though it may be inclined to affirm the same, it is customary with this Court to grant leave to appeal and thereafter dismiss the appeal itself (and not merely the petition for special leave) though at times the orders granting leave to appeal and dismissing the appeal are contained in the same order and at times the orders are quite brief. Nevertheless, the order shows the exercise of appellate jurisdiction and therein the merits of the order impugned having been subjected to judicial scrutiny of this Court".

25. Learned Senior Counsel pointed out that as the Hon'ble Supreme Court has held that the judgment of the High Court is correct. He stressed on the sentence that 'it would also not make any difference, if the order is a speaking or a non-speaking one' contained in paragraph - 41, extracted above. Thus, he submitted that all findings recorded and law declared d by the Hon'ble Punjab & Haryana High Court in the case of Gorav Kathuria are deemed to be the verdict of Hon'ble Supreme Court.

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26. Shri S. Mahesh on the other hand drew the attention of this Court to paragraph 28 of the very same judgment (Kunhayammed), which reads as follows:

> "28. Incidentally we may notice two other decisions of this Court which though not directly in point, the law laid down wherein would be of some assistance to us. In Shankar Ramchandra Abhyankar v. Krishnaji Dattatreya Bapat [(1969) 2 SCC 74 : AIR 1970 SC 1] this Court vide para 7 has emphasised three preconditions attracting applicability of doctrine of merger. They are: (i) the jurisdiction exercised should be appellate or revisional jurisdiction;
>
> (ii) the jurisdiction should have been exercised after issue of notice;

and (iii) after a full hearing in presence of both the parties. Then the appellate or revisional order would replace the judgment of the lower court and constitute the only final judgment. In Sushil Kumar Sen v. State of Bihar [(1975) 1 SCC 774 : AIR 1975 SC 1185] the doctrine of merger usually applicable to orders passed in exercise of appellate or revisional jurisdiction was held to be applicable also to orders passed in exercise of review jurisdiction. This Court held that the effect of allowing an application for review of a decree is to vacate a decree passed. The decree that is subsequently passed on review whether it modifies, reverses or confirms the decree originally passed, is a new decree superseding the original one. The distinction is clear. Entertaining an application for review does not vacate the decree sought to be reviewed. It is only when the application for review has been allowed that the decree under review is vacated. Thereafter the matter is heard afresh and the decree passed therein, whatever be the

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nature of the new decree, would be a decree superseding the earlier one. The principle or logic flowing from the above said decisions can usefully be utilised for resolving the issue at hand. Mere pendency of an application seeking leave to appeal does not put in jeopardy the finality of the decree or order sought to be subjected to exercise of appellate jurisdiction by the Supreme Court. It is only if the application is allowed and leave to appeal granted then the finality of the decree or order under challenge is jeopardised as the pendency of appeal reopens the issues decided and this Court is then scrutinising the correctness of the decision in exercise of its appellate jurisdiction.

27. He argued that the three pre-conditions attracting the applicability of doctrine of merger include the third and an important condition that the matter is heard in full in the presence of both parties. He pointed out that the respondent- Union of India was not heard before the Hon'ble Supreme Court. He also pointed out that though the High Court had granted the certificate, the substantial questions framed by the High Court were not answered by the Hon'ble Supreme Court and the Criminal Appeal has been dismissed. He thus contended that the judgment of the Hon'ble Punjab & Haryana High Court is not applicable.

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28. The binding effect of a judgment of Hon'ble Supreme Court under Article 141 of the constitution has been considered in various judgments. It may be profitable to extract the following passage contained in the case of Rajput Ruda Meha and others v. State of Gujarat reported in (1980)1 SCC 677 wherein it is held as follows:

> "6.....Neither was it pleaded during the arguments that Section 384 of the Code of Criminal Procedure is ultra vires of the constitution. As the question of validity of Section 384 of the Code of Criminal Procedure was neither raised nor argued, a discussion by the Court after "pondering over the issue in depth" would not be a precedent binding on the courts."....

29. Further, in the case of State of U.P. and another v. Synthetics and Chemicals Limited and another reported in (1991)4 SCC 139, with regard to 'law declared under Article 141 of the Constitution' the Hon'ble Supreme Court has stated thus:

> "39. But the problem has arisen due to the conclusion in the case of Synthetic and Chemicals [(1990) 1 SCC 109] . The question was if the State legislature could levy vend fee or excise duty on industrial alcohol. The bench answered the question in the negative as industrial alcohol being unfit for human consumption the State legislation was
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incompetent to levy any duty of excise either under Entry 51 or Entry 8 of List II of the Seventh Schedule. While doing so the bench recorded the conclusion extracted earlier. It was not preceded by any discussion. No reason or rationale could be found in the order. This gives rise to an important question if the conclusion is law declared under Article 141 of the Constitution or it is per incuriam and is liable to be ignored.

40. 'Incuria' literally means 'carelessness'. In practice per incuriam appears to mean per ignoratium. English courts have developed this principle in relaxation of the rule of stare decisis. The 'quotable in law' is avoided and ignored if it is rendered, 'in ignoratium of a statute or other binding authority'. (Young v. Bristol Aeroplane Co. Ltd. [(1944) 1 KB 718 : (1944) 2 All ER 293]). Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law. In Jaisri Sahu v. Rajdewan Dubey [(1962) 2 SCR 558 : AIR 1962 SC 83] this Court while pointing out the procedure to be followed when conflicting decisions are placed before a bench extracted a passage from Halsbury's Laws of England incorporating one of the exceptions when the decision of an appellate court is not binding.

41. Does this principle extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration. In other words can such conclusions be considered as declaration of law? Here again the English courts and jurists have carved out an exception to the rule of precedents. It has been explained as rule of sub-silentio. "A decision passes sub-silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in

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the decision is not perceived by the court or present to its mind."

(Salmond on Jurisprudence 12th Edn., p. 153). In Lancaster Motor Company (London) Ltd. v. Bremith Ltd. [(1941) 1 KB 675, 677 : (1941) 2 All ER 11] the Court did not feel bound by earlier decision as it was rendered 'without any argument, without reference to the crucial words of the rule and without any citation of the authority'. It was approved by this Court in Municipal Corporation of Delhi v. Gurnam Kaur. [(1989) 1 SCC 101] The bench held that, 'precedents sub- silentio and without argument are of no moment'. The courts thus have been taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not ratio decidendi. In B. Shama Rao v. Union Territory of Pondicherry [AIR 1967 SC 1480 : (1967) 2 SCR 650 : 20 STC 215] it was observed, 'it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down therein'. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake

of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law."

(emphasis supplied)

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30. Therefore, in the light of authoritative pronouncement in Gautam Kundu's case, I am unable to persuade myself to accept the argument advanced on behalf of the petitioner by placing reliance on Gorav Kathuria's case. The resultant position is that, the limitations prescribed in Section 45(1) of the PML Act shall apply to the case on hand.

31. In compliance with Section 45(1), the Public Prosecutor (the Special Counsel for ED) has been given an opportunity to oppose the application. The respondent - ED has strongly opposed release of petitioner on bail.

32. The sum of Rs.27 Lakhs seized during the Income Tax raid is explained in the petition in the following manner:

> "13. At the time when the Income Tax officials conducted raid, an amount of Rs.27,00,000/- was seized from the two premises belonging to the Petitioner. One a residential house in Chandra Layout, Bengaluru and the other being an apartment in Raheja Pebble Bay in Bengaluru. It has been specifically stated before the authorities that the amount was given by three different persons as advances towards the sale consideration of three apartments being constructed by M/s.Shakya Constructions & Developers, a partnership concern. Petitioner's wife Mrs.Bharati and his son Mr.Thrijesh are the partners
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>
> in the said construction firm. The amount given and the persons who have remitted the amount is as under -

NAME OF THE PERSON	AMOUNT REMITTED IN CASH IN RS.	APARTMENT PARTICULARS
Mr.Purushottam	10,00,000/-	Flat No.F-2, First Floor, Shakya Elite, Site No.1335, 1st Block, 1st Stage, Nagarbhavi, Bengaluru.
Mr.Devanand	10,00,000/-	Flat No.S-3, Second Floor, Shakya Elite, Site No.1335, 1st Block, 1st Stage, Nagarbhavi, Bengaluru.
Mrs.Rathod	7,00,000/-	Flat No.303, Shakya Enclave, No.12, 2nd Main, KPA Layout, Chandra

Layout, Bengaluru.

> From the above narrative it can be concluded that the amount of cash found in the premises of Petitioner in fact belong to the partnership concern and not to the Petitioner herein and that there are satisfactory explanations provided as above that are available with the Respondent. Hence, the amount by no stretch of imagination be termed as 'proceeds of the crime' so as to constitute an offence under section 3 of the PML Act, 2002. Therefore, there are reasonable grounds before this Court to hold that Petitioner is not guilty of the offence under the PML Act, 2002 and hence entitled for bail."

(emphasis supplied)

33. Petitioner has filed three affidavits all dated 1.2.2017 by three persons namely, H. Nischal Anantha

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Purshotham, Devanand and Anil Rathod. In his affidavit, Purshotham has stated as follows:-

> "4. I state that I am a genuine person and not a fictitious one as is being contented by the Enforcement Directorate. I reiterate that I did pay to the hands of Smt. Bharathi Jaychandra a total sum of Rs.10,00,000/- in cash on three occasion ie. Rs.5,00,000/- on 5.08.2016, Rs.3,00,000/- on 8.09.2016 and Rs.2,00,000/- on 5.10.2016, by way of advance sale consideration after finalizing the deal for purchase of a unit bearing number No.S-2 (302), Second Floor, Shaakya Elite, No.1133, 1st Block, 1st Stage, Nagarbhavi, Bengaluru".

(emphasis supplied) Paragraph - 4 of Devanand's affidavit reads as follows:-

> "4. I state that I am a genuine person and not a fictitious one as is being contented by the Enforcement Directorate. I reiterate that I did pay to the hands of Smt.Bharathi Jaychandra on 1.09.2016 a sum of Rs.10,00,000/- by way of advance sale consideration after finalizing the deal for purchase of a unit bearing number F-3 (203), First Floor, Shaakya Elite, No.1133, 1st Block, 1st Stage, Nagarbhavi, Bengaluru."

(emphasis supplied) Paragraph - 4 of Anil Rathod's affidavit reads as follows:-

> "4. I state that I am a genuine person and not a fictitious one as is being contented by the Enforcement Directorate. I reiterate that

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I did pay to the hands of Smt.Bharathi Jaychandra on 1.09.2016 a sum of Rs.7,00,000/- by way of advance sale consideration after finalizing the deal for purchase of a unit bearing number No. 302, 3rdFloor, Shaakya Enclave, No.12, 2nd Main, KPA Layout, Chandra Layout Bengaluru".

(emphasis supplied)

34. It is significant to note that, the petitioner's wife, who is said to be the partner of the construction - firm has stated in her statement recorded by the ED as follows:-

Answer to Question No.1:

..... "Other than the above, we have sold 24 apartments in Shakya Enclave and 3 flats are yet to be sold. Out of these 3 apartments, we have received advance of Rs.10 lakhs from one Mrs. Rathod for one apartment and the remaining two are on rent. As for the 25 apartments in Shakya Elite, we have taken booking advance. I just do not know the details as it is dealt by Shri Prashanth G and my husband."....

(emphasis supplied)

35. In reply to a question with regard to the currency notes, petitioner's wife has stated thus:

Answer to Question No.7:

"My husband had brought this amount. He does not consult me. I understand that out of this Rs. 5 lakhs, my husband had got

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some amount exchanged by Shri Prashanth. For the purpose, the old notes were also in the house. Rest of the new notes were got exchanged by my husband only. I do not know how and with the help of whom he got it exchanged. Sir, I am a house wife. I do not interfere in the day to day activities of my husband. He does not consult me and he does not ask my advice. Wherever and whenever I am told to.. I put my signatures on the documents shown to me.

As for the amount found in Pebble Bay the amount of Rs.1 lakh must have been given by my husband to Thrijesh. My son is very, very close to Shri Hardik Gowda who is a contractor and owns many costly cars like Lamborghini etc. He gives my son to drive them."

(emphasis supplied)

36. With regard to the statements recorded by the ED authorities, it was argued by Shri C.V. Nagesh that any statement recorded by the said authority is inadmissible as the same is not recorded after administering oath. This argument was countered by the learned Standing Counsel for the ED that Section 50 of the PML Act is in parimateria with Section 108 of the Customs Act and therefore statement made before ED Authority is admissible in evidence.

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37. A careful perusal of Section 50 of PML Act in juxtaposition with Section 108 of Customs Act shows that Section 50 is in parimateria with Section 108 of Customs Act. It is no more res integra that the statement made before the Customs Authority under Section 108 is admissible in evidence. [See Naresh J. Sukhawani v. Union of India reported in 1995 Supp (4) SCC 663].

38. As noticed hereinabove, the prospective purchasers in their respective affidavits have categorically stated and reiterated that they have paid money in the hands of petitioner's wife between 5.8.2016 to 5.10.2016. The notes with face value of Rs.500/- and Rs.1,000/- were demonetized with effect from 8.11.2016. The sum of Rs. 27 Lakhs found during the raid is sought to be explained as advance sale consideration. Admittedly, seller of the Flat is M/s.Shaakya Constructions, which is said to be Private Limited Company. Income Tax conducted the raid on 30.11.2016. Petitioner's wife has stated in her statement recorded by the ED authorities under Section 50 of PML Act that only one Flat

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was proposed to be sold and the advance amount received was Rs.10 Lakhs. While answering question No.7 put by the ED Authorities, she has categorically stated that her husband had brought the said amount; out of the said sum, Rs.5 Lakhs was exchanged by one Prashanth. She has further stated that, she is a house wife and did not interfere in any transaction and would put her signature on the documents shown to her. The petitioner has also admitted in his statements recorded under Section 50 (2) & (3) of the PML Act that one Jayaram had arranged for the exchange of Rs.5 Lakhs. He has also admitted that Jayaram and associates had arranged exchange of Rs.2 Crores; one Sreesha and associates had arranged exchange of Rs.75 Lakhs.

39. Admittedly, raid was conducted on 30.11.2016. As per the affidavits of the prospective purchasers, the last payment was made on 5.10.2016 on which date, the currency with face value of Rs.2,000/- was not in existence. Therefore, by logical corollary, the said prospective purchasers could not have given money in new currency. It therefore leads to an

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irrefutable inference that, conversion of old demonetized notes into new currency notes having face value of Rs.2,000/- worth Rs.5 Lakhs was got done either by the petitioner or his family member or anybody acting under their instruction. Statements of petitioner's wife before the ED Authorities read with the affidavits of the prospective purchasers show that the explanation with regard to

possession of currency notes is not satisfactory. Therefore, it is difficult to countenance the claim of petitioner that money seized during the raid prima facie belonged to the construction Company.

40. Thus, facts enumerated herein, lead to a logical inference that the currency worth Rs.27 Lakhs both in the form of new and demonetized notes found in the premises of the petitioner do not appear to legitimately belonging to the construction company or the family of petitioner. The petitioner is a high ranking official with the State Government. He has held various important positions as noted above. In the instant complaint by the ED, it is alleged that the disproportionate assets found during the earlier

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check period between 1.2.1985 and 18.12.2008 is 102.69%. It is also stated that the Lokayukta Authority is awaiting approval from the Government of Karnataka for prosecution.

41. Thus, on the heel of an earlier raid conducted in the year 2008 for the check period between 1.2.1985 and 18.12.2008, the current raid by the Income Tax Authorities has taken place on 30.11.2016, wherein currency notes worth Rs.27 Lakhs have been found. There is a specific allegation in the complaint lodged by the ED based on the inculpatory statements of petitioner under Section 50 of the PML Act that petitioner has got old currency notes valued at Rs.6,12,50,000/- converted into new currency notes worth Rs.4,90,00,000/- through six persons. I have held that limitations of Section 45 of PML Act are applicable in the instant case. In terms whereof a person accused of commission of an offence found in Part A of the schedule shall not be released on bail unless the Court is satisfied that there are reasonable grounds to believe that he is not guilty of

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such offence and that he is not likely to commit any offence while on bail.

42. The fact remains that whilst there was an earlier raid in the year 2008 and Lokayukta is awaiting approval from the Government to prosecute the petitioner, the current raid by the Income Tax has taken place. The explanation with regard to legitimacy of ownership of properties listed in the complaint are all subject matters of previous raid in the year 2008 and investigation thereon. Thus, prima facie, it appears that petitioner after a raid in the year 2008, has again indulged in the offences alleged against him in the FIR registered by the CBI on 03.12.2016.

43. In Gautam Kundu's case, the Hon'ble Supreme Court has noticed that no order by a competent Court was passed holding that no offence was made out against the petitioner therein under Section 24 of the SEBI Act. It is precisely recorded thus, in the said case:

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> "33.....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 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."....
>
> (emphasis supplied)

44. Similarly, in the instant case also, there is no order passed by any competent Court holding that the offences alleged against the petitioner, which are scheduled offences are not made out.

45. Thus, in the light of above discussions, two indubitable determinants emerge. Firstly, that even before he was cleared of allegation of acquisition of assets disproportionate to his known source of income of 102.69%

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during the check period 1.2.1985 to 18.12.1988, petitioner has been alleged of converting demonetized currency of Rs.6,12,50,000/- out of which possession of Rs.27 Lakhs has been admitted in the petition itself. Secondly, that the explanation to the possession of Rs.27 Lakhs is not satisfactory.

46. In the circumstances, petitioner's case does not merit recording a finding of satisfaction by this Court to the effect that there are reasonable grounds for believing that the petitioner is not guilty of the offences alleged against him and that he is not likely to commit any offence while on bail.

47. Grant of bail in this case is undebatably contingent upon this Court recording it's satisfaction as required under Section 45(ii) of the PML Act. In view of my finding that the petitioner's case does not merit recording such satisfaction, the said statutory requirement remains unfulfilled.

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48. Resultantly, this petition fails and is accordingly dismissed.

Sd/-

JUDGE cp*