Anwar Dhebar vs Directorate Of Enforcement on 28 February, 2025

1

2025:CGHC:10085
AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

ORDER RESERVED ON 06.02.2025
ORDER DELIVERED ON 28.02.2025

MCRC No. 8965 of 2024

1 - Anwar Dhebar S/o Late Haji Zikar Dhebar Aged About 50 Years R/o Dhebar House, Pension Bada (Details Wrongly Mentioned In Certified Copy Of Impugned Order), District : Raipur, Chhattisgarh

...Applicant

versus

1 - Directorate Of Enforcement Through-Assistant Director. E.D., Raipur Zonal Office (Details Wrongly Mentioned As Assistant Director (Pmla) Directorate Of Enforcement, Raipur Zonal Office, Raipur C.G. In Certified Copy Of Impugned Order Annex. A/1), District : Raipur, Chhattisgarh

... Respondent(s)

For Applicant : Shri Arshdeep Khurana, Advocate through VC assisted by Shri Sourabh Dangi and Shri Sajal Kumar Gupta, Advocates For Respondent/ED : Dr. Saurabh Kumar Pandey, Advocate (HON'BLE SHRI JUSTICE ARVIND KUMAR VERMA) CAV ORDER By way of present application under Section 483 of the Bhartiya Nagrik Suraksha Sanhita, 2023 ('BNSS') on behalf of the applicant herein, the applicant is seeking grant of regular bail in ECIR/RPZO/04/2024 dated 11.04.2024 for the offence under Section 3 read with Section 4 of the Prevention of Money Laundering Act, 2002.

2. Facts of the case in brief are that the applicant was absconding till he was arrested on 06.05.2023 in ECIR/RPZO/11/2022. Search Operation under Section 17 of the PMLA was conducted at his premises and was found hiding at a hotel and he was arrested.

Chhatisgarh State police registered an FIR bearing No. 04/2024 dated 17.01.2024 at EOW/ACB, Raipur under Sections for the offence punishable under Sections 120-B, 420,467,468,471 of IPC and Section 7 & 12 of the Prevention of Corruption Act against Mr. Anil Tuteja (retired IAS) then Joint

Secretary in CG State, Anwar Dhebar, Mr. Arunpati Tripathi (ITS) then Special Secretary, Government of Commerce and industry Department and MD CG State Marketing Corporation Ltd. Mr. Vikas Agarwal @ Subbu, Mr. Sanjay Diwan and Others for collecting commissions and supplying unaccounted liquor to government liquor shops resulting in an approximate loss of Rs. 2161 crores to the government.

3. The manufacturers of country liquor in Chhattisgarh namely CG Distilleries Ltd., M/s. Bhatia Wine Merchant Private ltd. And Welcome Distilleries Pvt. Ltd. Are licensed to supply country liquor in the State. It is alleged that Co-accused Anwar Dhebar took advantage of his political influence and family relations with Anil Tuteja and in association with Arunpathi Tripathi, the Managing Director of CSMCL lead to increase in the rate of liquor production and supply and in return gained illegal commissions amounting to lakhs of rupees from the distillery owners which is called Part -A.

4. Similarly, a new system which ran parallel to the existing system of selling country liquor through government shops was created without any records from distillery operators, which involved constructing duplicate holograms and selling them separately through government liquor shops. The illegal sale of these duplicate holograms resulted in earning worth crores of rupees in which several individuals were implicated including distillery owners, bottle supplier agencies, duplicate hologram supplying agencies, agencies involved in the collection of money. These illicit sale took place during the years 2019-20,2020-21 and 2021-22 and is called Part-B.

5. Additionally, the collection of bribes from foreign liquor manufacturers FL-10A license was implemented, which was granted to three favoured firms of Anwar Dhebar. The license FL-10A was granted to Mr. Sanjay Mishra and Manish Mishra of M/s. Nexgen power Engitech Pvt. Ltd. , Mr. Atul Kumar Singh and Mr. Mukesh Manchanda of M/s. Om Sai Beverage Pvt. Ltd. And Mr. Ashish Saurabh Kedia of M/s. Dishita Ventures Pvt. Ltd. These license holders were granted tender for the supply of foreign liquor through a conspiracy. All the three licence holding firms procured liquor from foreign liquor manufacturing Companies and made it available to the State government, making a profit of 10%. Out of this profit, 60% was given to the syndicate and the remaining 40% was received by the license holders.

The syndicate received commission from the distillery owners by increasing, parallel manufacturing and supplying duplicate liquor through the F-10-A license.

6. The FIR for the predicate offence as discussed above is registered by ACB/EOW, Raipur under Sections 120-B, 420,467 and 471 IPC and Sections 7 & 12 of the PC Act which are the scheduled offence included in paragraphs 1 &8 of Part A of the Schedule to PMLA, 2002 as defined under Section 2(1)(y) of the Act and accordingly, enquiries were initiated under the PMLA against the suspected persons after recording the facts of scheduled ofence and initiating money laundering investigation in file No. ECIR/RPZO/04/2024 on 11.04.2024 by the officials of Directorate of Enforcement, Raipur.

7. The Enforcement Directorate has analyzed the predicate offence including the statement recorded under Section 50 of the PMLA, 2002 shared by the Assistant Director. During investigation,

statements of distillers, FL-10A licenses, manpower supplier agencies and others were recorded under Section 50 of the PMLA, 2002. Ont he basis of the above documents and records it has been established that a well planned systematic conspiracy was executed by the syndicate to earn illegal commission in the sale and licensing of liquor in the State of Chhattisgarh.

8. The excise policy in the State of Chhattisgarh was amended in the year 2017 The excise policy in the State of Chhattisgarh was amended in the year 2017 and CSMCL in February, 2017, was thus created with the responsibility to exclusively retail liquor in the State of Chhattisgarh through its stores. The CSMCL was established with the vision to provide genuine liquor, to stop sale of illegal Liquor, to provide liquor on MRP. It established its own stores to retail the liquor/beer/wine/country liquor after procuring liquor from manufacturers directly and IMFL from another State PSU CSBCL.

9. It has also been revealed that with the advent of new policy in the State, CSMCL was incorporated and it established its own stores to retain the liquor/beer/wine/country liquor after procuring country liquor directly from manufacturers and IMFL was procured from suppliers and stored in warehouses of another State Public Sector Undertaking, Chhattsigarh State Beverage Corporation Limited (CSBCL). The shops were supposed to be run by outsourced staff and cash collected was to be done by private vendors/Bank representatives.

10. Liquor was divided into two categories namely Country liquor and Indian Manufactured Foreign Liquor (IMFL). Country Liquor was produced in the State of Chhattisgarh through three distilleries :

I) M/s. Chhattisgarh Distilleries Ltd.

ii) M/s. Bhatia Wines and Merchants Pvt. Ltd.

iii) M/s. Welcome Distilleries Pvt. Ltd.

The CSMCL became the tool in the hands of the syndicate which was used by it to enforce a parallel excise department. The syndicate comprises of senior bureaucrats of State, politicians and officials of excise department. In February 2019, Arun Pati Tripathi (ITS Offier) was chosen by the syndicate to lead the CSMCL and later on he was made the Managing Director of the organization at the behest of present applicant Anwar Dhebar.

11. It is submitted that the as part of the conspiracy, Arun Pati Tripathi was assigned with the task to maximize the bribe commission collected on liquor procured by M/s. CSMCL and to make necessary arrangement for sale of non-duty paid liquor in the CSMCL run shops. Arun Pati Tripathi was supported by the present applicant Anwar Dhebar and Senior IAS Officer in this operation. In furtherance of his plans, Anwar Dhebar gave the task of cash collecting to Vikas Agrawal @ Subbu and the logistics were set to be the responsibility of the present applicant - Arvind Singh. Thus, the syndicate took its shape. SUBMISSION ON BEHALF OF THE APPLICANT

12. Contention of Shri Khurana, learned counsel for the applicant is that the applicant has been arrested in the aforesaid cases on false pretext despite the fact that there is no recovery from of any incriminating material, unaccounted ash or disproportionate assets. The applicant has undergone custody of over 333 days in relation to the same allegations by different agencies. He submits that the said ECIR is essentially a second ECIR, the first being ECIR bearing ECOR/RPZO/11/2022 which was quashed by the Apex Court vide order dated 08.04.2024 with a categorical finding that no scheduled ofence is made out and there were no proceeds of crime in relation to the ECIR 11 and the Prosecution Complaint filed therein. The said ECIR was registered merely 3 days after the quashing of the 1st ECIR on the same alleged liquor scam making the same allegations arising of the same transaction.

13. Based upon the Prosecution Complaint filed by the Income Tax Department bearing Ct. Case No. 1183/2022 under Sections 276(C)/277/278/278E of the IT Act read with Section 120-B/191/199/200/204 IPC the Ed registered an ECIR bearing No. ECIR/RPZO/112022. The ED considered Section 120-B IPC standalone as the underlying scheduled offence.

14. It is submitted that the ED had filed the first Prosecution Complaint in the said ECIR arraigning co-accused of the applicant as an accused therein. Pertinently, the Prosecution Complaint was nothing but an exact replica of the Prosecution Complaint filed in the ECIR 11, wherein the Applicant was made an accused and which was quashed by the Apex Court vide order dated 08.04.2024. On 08.08.2024, pursuant to the production warrant, the applicant was produced before this Court and was arrested by the Prosecuting Agency for the second time in relation to the same alleged liquor scam to which the applicant had opposed and he was remanded to ED custody. On 14.08.2024, the applicant preferred petition bearing Cr.M.P. No. 2276/2024 which was dismissed vide order dated 23.08.2024. On 20.08.2024, this Court had dismissed the batch of petitions challenging inter alia the Chhattisgarh FIR and the ECIR 04. On 30.08.2024, the ED filed supplementary Prosecution Complaint in thee said ECIR and the applicant was not arraigned as accused. Therafter on 5.10.2024, the respondent/ED filed a second supplementary Prosecution Complaint in the said ECIR arraigning the applicant as accused. The learned Special Judge (PMLA) Raipur took cognizance of the offence under Section 3 of the PMLA and investigation is going on.

15. On 27.11.2024, the co-accused (Trilok Singh Dhillon) was granted bail by the Apex Court in the Chhattisgarh FIR (SLP Crl.) No. 14697/2024 which shall become operative from 15.01.2025. Co-accused Arun Pati Tripathi had approached the Apex Court in SLP (Cr.) No. 16219/2024 seeking bail in relation to the said ECIR. Thereafter on 6.12.2024 the petition challenging the arrest of the applicant in relation to the said ECIR was heard on the date when the Apex Court granted permission to the applicant to withdraw the petition and seek bail from this Court. On 7.12.2024, the applicant filed application under Section 483 of the Bhartiya Nagrik Suraksha Sanhita, 2023 before the Special Judge (PMLA), Raipur seeking regular bail which was dismissed. Against which the applicant has come before this Court.

16. Contention of the learned counsel for the applicant is that the learned Special Judge had erroneously dismissed the application of the applicant. He submits that even if the allegation is one of the grave economic ofence, it is not a rule that bail should be denied in every case. The

consideration has to be made on a case to case basis on the facts. The primary object is to secure t he presence of the accused to stand trial. He has plaed his reliance in the matter of P.Chidambaram Vs. ED (2020) 13 SCC 791.

17. He contended that the investigation against the applicant is concluded, the applicant had suffered 20 days of ED custody and 194 days of judicial custody in relation to the alleged liquor scam. He submits that there is no apprehension of violation of the triple test and if the applicant is denied bail at this stage,he will remain in custody for an indefinite period. He has placed his reliance in the matter of Satender Kumar Anitl Vs. CBI SLP 5191/2021; Krishnan Subramanian Vs. State NCT of Delhi 2022 SCC Online Del 1384. He submits that there has been no recovery of any unaccounted assets or incriminating material from the applicant or his family members.

18. It is submitted that as per the ED, investigation against 11 persons including the applicant is complete and three prosecution complaints against 11 accused persons spanning to nearly 20,000 pages with over 30 witnesses and 250 documents have been filed by the investigating agency and the investigation is going on. Despite the alleged huge scam, prosecution complaint has been filed against 11 persons. Even as per allegations made in the complaint filed by the ED role of other individuals have also been surfaced.

The status of trial in the scheduled offence must be taken into account while considering the issue of delay in trial in the PMLA case because the PMLA proceedings are contingent on the proceedings in the scheduled offence. In the matter of Senthil Balaji Vs. Directorate of Enforcement Crl. App. No. 4011/2024, it has been held as under:

> "21. Hence, the existence of a scheduled offence is sine qua non for alleging the existence of proceeds of crime. A property derived or obtained, directly or indirectly, by a person as a result of the criminal activity relating to a scheduled offence constitutes proceeds of crime. The existence of proceeds of crime at the time of the trial of the offence under Section 3 of PMLA can be proved only if the scheduled offence is established in the prosecution of the scheduled offence. Therefore, even if the trial of the case under the PMLA proceeds, it cannot be finally decided unless the trial of scheduled offences concludes. In the facts of the case, there is no possibility of the trial of the scheduled offences commencing in the near future. Therefore, we see no possibility of both trials concluding within a few years."

19. The scheduled offence trial will be significantly delayed because:

> (a) The investigating agency in the scheduled offence has submitted before the court that at least 3 to 4 more charge sheets are yet to be filed in the scheduled offence.
>
> (b) There are total 70 accused persons in the Chhattisgarh FIR while charge sheet has only been filed against 11 persons.

(c) There are over 400 witnesses in the scheduled offence. Even the Apex Court has opined that the trial isnot likely to conclude soon in the scheduled offence.

(d) charges cannot be framed therein until investigation is completed by the agency.

20. There is no scope of the trial to commence and the proceedings before the learned Special Judge are at the stage of Section 207 Cr.P.C. proceedings and no charges have been framed therein. He contended that the applicant has a fundamental right to liberty and his liberty cannot be curtailed in such a manner and the same is violative of Article 21 of the Constitution of India. He ought to have been released from custody in relation to the Chhattisgarh FIR. He has placed his reliance in the matter of Manish Sisodia Vs. ED, SLP Crl. No. 8781 of 2024, wherein it has been held as under:

49. We find that, on account of a long period of incarceration running for around 17 months and the trial even not having been commenced, the appellant has been deprived of his right to speedy trial.

50. As observed by this Court, the right to speedy trial and the right to liberty are sacrosanct rights. On denial of these rights, the trial court as well as the High Court ought to have given due weightage to this factor.

XXX XXXX XXX

54. In the present case, in the ED matter as well as the CBI matter, 493 witnesses have been named. The case involves thousands of pages of documents and over a lakh pages of digitized documents. It is thus clear that there is not even the remotest possibility of the trial being concluded in the near future. In our view, keeping the appellant behind the bars for an unlimited period of time in the hope of speedy completion of trial would deprive his fundamental right to liberty under Article 21 of the Constitution. As observed time and again, the prolonged incarceration before being pronounced guilty of an offence should not be permitted to become punishment without trial."

21. Similarly, in the matter of Bibhav Kumar Vs. State (NCT of Delhi) 2024 SCC Online SC 2646, wherein the bail was granted inter alia on the ground that he has been in custody for 100 days. It further reads as under:

"4. It is not a matter of dispute that the investigation is complete and the charge sheet has been filed. Keeping that stage in mind, we do not deem it necessary to hear learned Senior Counsel for the petitioner or learned Additional Solicitor General of India on the point as to whether a prima facie case under Section 308 IPC is made out or not. That issue exclusively falls within the domain of the Trial Court and the parties shall be at liberty to raise their respective contentions in this regard before the Trial Court at an appropriate stage.

> 5. Adverting to the prayer made by the petitioner for grant of bail, we find that there are more than 51 witnesses proposed by the prosecution to be examined as can be seen from the charge sheet, a copy whereof has been placed on record. The conclusion of trial will, thus, take some reasonable time. The petitioner is already in custody for more than 100 days. In the event of his release, the petitioner, at this stage, is not likely to hamper or cause impediment in the investigation which is already complete."

22. Further in the matter of Javed Gulam Nabi Shaikh Vs. State of Maharastra, 2024 SC Online SC 1693, it has been observed as under:

> 7. Having heard the learned counsel appearing for the parties and having gone through the materials on record, we are inclined to exercise our discretion in favour of the appellant herein keeping in mind the following aspects:
>
> (i) The appellant is in jail as an under-trial prisoner past four years;
>
> (ii) Till this date, the trial court has not been able to even proceed to frame charge; and
>
> (iii) As pointed out by the counsel appearing for the State as well as NIA, the prosecution intends to examine not less than eighty witnesses.
>
> XXXX XXXX XXXX
>
> 9.Over a period of time, the trial courts and the High Courts have forgotten a very well settled principle of law that bail is not to be withheld as a punishment.
>
> 10. In the aforesaid context, we may remind the trial courts and the High Courts of what came to be observed by this Court in Gudikanti Narasimhulu & Ors. v. Public Prosecutor, High Court reported in (1978) 1 SCC 240. We quote:
>
> "What is often forgotten, and therefore warrants reminder, is the object to keep a person in judicial custody pending trial or disposal of an appeal. Lord Russel, C.J., said [R V. Rose, (1898) 18 Cox] :
>
> "I observe that in this case bail was refused for the prisoner. It cannot be too strongly impressed on the, magistracy of the country that bail is not to be withheld as a punishment, but that the requirements as to bail are merely to secure the attendance of the prisoner at trial."

23. The Apex Court in the cases of prolonged incarceration and delay in trial, the Prosecution should not even oppose the bail on the ground of seriousness of offence. He has referred to the judgment of Gulam Nabi shaikh Vs. State of Maharastra, 2024 SCC OnLine SC1693, wherein it has been

observed that :

> "19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime."

24. It is contended that the investigating agency in the scheduled offence has submitted that at least 3 to 4 more charge sheets are yet to be filed in the scheduled offence. There are nearly 70 accused persons in the Chhattisgarh FIR and the charge sheet has been filed only against 11 persons. There are over 400 witnesses in the scheduled offence. The Apex Court has opined that the trial is not likely to conclude in the scheduled offence vide order dated 12.12.2024 in SLP (Crl.) No. 16219/2024. He submits that the applicant has a fundamental right to liberty and his liberty cannot be curtained in such a manner indefinitely. The same is violative of Article 21 of the Constitution. Time and again it has been reiterated by the Apex Court that the Right to Speedy Trial is a facet of the fundamental right to life of an accused under Article 21 of the Constitution of India. He has placed his reliance in the matter of Manish Sisodia Vs. CBI and ED (2023) SCC OnLine SC 1393 wherein it has been held that :

> "27. However, we are also concerned about the prolonged period of incarceration suffered by the appellant - Manish Sisodia. In P. Chidambaram v. Directorate of Enforcement48, the appellant therein was granted bail after being kept in custody for around 49 days, relying on the Constitution Bench in Shri Gurbaksh Singh Sibbia and Others v. State of Punjab, (1980) 2 SCC 565. and Sanjay Chandra v. Central Bureau of Investigation, (2012) 1 SCC 40 that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case. Ultimately, the consideration has to be made on a case to case basis, on the facts. The primary object is to secure the presence of the accused to stand trial. The argument that the appellant therein was a flight risk or that there was a possibility of tampering with the evidence or influencing the witnesses, was rejected by the Court. Again, in Satender Kumar Antil v. Central Bureau of Investigation and Another, (2022) 10 SCC 51 this Court referred to Surinder Singh Alias Shingara Singh v. State of Punjab (2005) 7 SCC 387 and Kashmira Singh v. State of Punjab, (1977) 4 SCC 291 to emphasize that the right to speedy trial is a fundamental right within the broad scope of Article 21 of the Constitution. In Vijay Madanlal Choudhary (supra), this Court while highlighting the evil of economic offences like money laundering, and its adverse impact on the society and citizens, observed that arrest infringes the fundamental right to life.

49 In P. Chidambaram v. Central Bureau of Investigation, (2020) 13 SCC 337, the appellant therein was granted bail after being kept in custody for around 62 days.

This Court referred to Section 19 of the PML Act, for the in-built safeguards to be adhered to by the authorized officers to ensure fairness, objectivity and accountability. Vijay Madanlal Choudhary (supra), also held that Section 436A of the Code can apply to offences under the PML Act, as it effectuates the right to speedy trial, a facet of the right to life, except for a valid ground such as where the trial is delayed at the instance of the accused himself.

In our opinion, Section 436A should not be construed as a mandate that an accused should not be granted bail under the PML Act till he has suffered incarceration for the specified period. This Court, in Arnab Manoranjan Goswami v.

State of Maharashtra and Others (2021) 2 SCC 427, held that while ensuring proper enforcement of criminal law on one hand, the court must be conscious that liberty across human eras is as tenacious as tenacious can be.

29. Detention or jail before being pronounced guilty of an offence should not become punishment without trial. If the trial gets protracted despite assurances of the prosecution, and it is clear that case will not be decided within a foreseeable time, the prayer for bail may be meritorious. While the prosecution may pertain to an economic offence, yet it may not be proper to equate these cases with those punishable with death, imprisonment for life, ten years or more like offences under the Narcotic Drugs and Psychotropic Substances Act, 1985, murder, cases of rape, dacoity, kidnapping for ransom, mass violence, etc. Neither is this a case where 100/1000s of depositors have been defrauded.

The allegations have to be established and proven. The right to bail in cases of delay, coupled with incarceration for a long period, depending on the nature of the allegations, should be read into Section 439 of the Code and Section 45 of the PML Act. The reason is that the constitutional mandate is the higher law, and it is the basic right of the person charged of an offence and not convicted, that he be ensured and given a speedy trial. When the trial is not proceeding for reasons not attributable to the accused, the court, unless there are good reasons, may well be guided to exercise the power to grant bail. This would be truer where the trial would take years."

25. Further he has relied upon the decisions of Satender Kumar Antil Vs. Central Bureau of Investigation (2002) 10 SCC 561; Surinder Singh Alias Shingara Singh Vs. State of Punjab (2005)7 SCC 387 and Kashmira Singh Vs. State of Punjab (1977) 4 SCC

291. In the matter of Manish Sisodia Vs. ED and CBI (supra), it has been held that :

> 37. Insofar as the contention of the learned ASG that since the conditions as provided under Section 45 of the PMLA are not satisfied, the appellant is not entitled to grant of bail is concerned, it will be apposite to refer to the first order of this Court. No doubt that this Court in its first order in paragraph 25, after recapitulating in paragraph 24 as to what was stated in the charge-sheet filed by the CBI against the appellant, observed that, in view of the aforesaid discussion, the Court was not inclined to accept the prayer for grant of bail at that stage. However, certain

> paragraphs of the said order cannot be read in isolation from the other paragraphs. The order will have to be read in its entirety. In paragraph 28 of the said order, this Court observed that the right to bail in cases of delay, coupled with incarceration for a long period, depending on the nature of the allegations, should be read into Section 439 Cr.P.C. and Section 45 of the PMLA.

The Court held that the constitutional mandate is the higher law, and it is the basic right of the person charged of an offence and not convicted that he be ensured and given a speedy trial. It further observed that when the trial is not proceeding for reasons not attributable to the accused, the court, unless there are good reasons, would be guided to exercise the power to grant bail. The Court specifically observed that this would be true where the trial would take years. It could thus clearly be seen that this Court, in the first round of litigation between the parties, has specifically observed that in case of delay coupled with incarceration for a long period and depending on the nature of the allegations, the right to bail will have to be read into Section 45 of PMLA.

XXXX XXXX XXXX

39. A Division Bench of this Court in the case of Ramkripal Meena v. Directorate of Enforcement5 was considering an application of the petitioner therein who was SLP(Crl.) No. 3205 of 2024 dated 30.07.2024 to receive a bribe of rupees five crore and from whom, an amount of Rs.46,00,000/- was already recovered. In the said case, the petitioner was arrested on 26th January 2022 in connection with FIR No. 402/2021 registered against him for the offences punishable under Sections 406, 420, 120B of IPC and Section 4/6 of the Rajasthan Public Examination (Prevention of Unfair Means) Act, 1992. He was released on bail by this Court vide order dated 18th January 2023. Thereafter, the petitioner was arrested by the ED on 21st June 2023. The Court observed thus:

> "7. Adverting to the prayer for grant of bail in the instant case, it is pointed out by learned counsel for ED that the complaint case is at the stage of framing of charges and 24 witnesses are proposed to be examined. The conclusion of proceedings, thus, will take some reasonable time. The petitioner has already been in custody for more than a year. Taking into consideration the period spent in custody and there being no likelihood of conclusion of trial within a short span, coupled with the fact that the petitioner is already on bail in the predicate offence, and keeping in view the peculiar facts and circumstances of this case, it seems to us that the rigours of Section 45 of the Act can be suitably relaxed to afford conditional liberty to the petitioner. Ordered accordingly."

44. The learned Special Judge and the learned Single Judge of the High Court have considered the applications on merits as well as on the grounds of delay and denial of right to speedy trial. We see no error in the judgments and orders of the learned Special Judge as well as the High Court in considering the merits of the matter. In view of the observations made by this Court in the first order, they were entitled to consider the same. However, the question that arises is as to whether the trial court and the High Court have correctly considered the observations made by this Court with regard to right to speedy trial and prolonged period of incarceration. The courts below have rejected

the claim of the appellant applying the triple test as contemplated under Section 45 of the PMLA. In our view, this is in ignorance of the observations made by this Court in paragraph 28 of the first order wherein this Court specifically observed that right to bail in cases of delay coupled with incarceration for a long period should be read into Section 439 Cr.P.C. and Section 45 of the PMLA.

26. It is well settled that the object of bail is neither punitive nor preventative. The primary purpose of bail in a criminal case is to ensure that the accused will submit to the jurisdiction of the Court and be in attendance whenever his presence is required. Deprivation of liberty must be considered punishment unless it can be required to ensure that an accused person will stand trial when called upon. Punishment can only begin after conviction and necessity is the operative test. in the matter of Manish Sisodia 3 (2024) SCC OnLine SC 920, it has been held as under:

> "54. In the present case, the appellant is having deep roots in the society. There is no possibility of him fleeing away from the country and not being available for facing the trial. In any case, conditions can be imposed to address the concern of the State.
>
> 55. Insofar as the apprehension given by the learned ASG regarding the possibility of tampering the evidence is concerned, it is to be noted that the case largely depends on documentary evidence which is already seized by the prosecution. As such, there is no possibility of tampering with the evidence. Insofar as the concern with regard to influencing the witnesses is concerned, the said concern can be addressed by imposing stringent conditions upon the appellant."

27. In the matter of Gudikanti Narasimhulu Vs. Public Prosecutor, High Court of Andhra Pradesh (1978) 1 SCC 240 it has been held as under:

> The significance and sweep of Art. 21 make the deprivation of liberty 'a matter of grave concern and permissible only when the law authorizing it is reasonable, even-handed and geared to the goals of community good and State necessity spelt out in Art. 19. Indeed, the considerations I have set out as criteria are germane to the constitutional proposition I have deduced. Reasonableness postulates intelligent care and predicates that deprivation of freedom- by refusal of bail is not for punitive purpose but for the bi-focal interests of justice- to the individual involved and society affected."

28. In the matter of Javed Gulam Nabi Shaikh Vs. State of Maharashtra, 2024 SCC OnLine SC 1693, it has been held as under:

> 10. In the aforesaid context, we may remind the trial courts and the High Courts of what came to be observed by this Court in Gudikanti Narasimhulu & Ors. v. Public Prosecutor, High Court reported in (1978) 1 SCC 240. We quote:
>
> "What is often forgotten, and therefore warrants reminder, is the object to keep a person in judicial custody pending trial or disposal of an appeal. Lord Russel, C.J.,

said [R v. Rose, (1898) 18 Cox] :

> "I observe that in this case bail was refused for the prisoner. It cannot be too strongly impressed on the, magistracy of the country that bail is not to be withheld as a punishment, but that the requirements as to bail are merely to secure the attendance of the prisoner at trial."

11. The same principle has been reiterated by this Court in Gurbaksh Singh Sibba v. State of Punjab reported in (1980) 2 SCC 565 that the object of bail is to secure the attendance of the accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial and that it is indisputable that bail is not to be withheld as a punishment.

29. He contended that the applicant shall be severely prejudiced and prejudged if he is continually remanded to custody. It is imperative for the proper and effective defence of the applicant and as a step to ensure the fair trial of the applicant, he be on bail unless there are overwhelming considerations otherwise. It is submitted that there are over 70 witnesses named in the prosecution complaint filed by the ED in the said ECIR. It has been four months since the arrest of the applicant in the present case and over two months since the date of filing of the prosecution complaint against the applicant. He submits that the arrest of applicant is completely malafide and he cannot be arrested twice for the same alleged offence. The applicant has already been subjected to illegal custody of the ED in relation to the same set of allegations and alleged transactions for a period of over 2.5 months. Since the Prosecution complaint against the applicant stood filed in the first ECIR there was no necessity of any arrest or custodial interrogation of the applicant and the applicant could not have been arrested in the same for the allegations for a second time.

30. It is contended by the learned counsel for the applicant that the ED had relied upon the same inadmissible material including some whatsapp chats which was not enough to make the applicant an accused in the Prosecution Complaint filed in ECIR 11. The series of facts clearly demonstrates that there was no necessity to arrest the applicant and he was not arraigned as an accused in the prosecution Complaint dated 19.06.2024 solely to keep alive the prospects of arrest of the applicant in the said ECIR and deny him the benefit of the law laid down by the Apex Court in the matter of Tarsem Lal Vs. Enforcement Directorate, 2024 SCC Online SC 971. he submits that the only material relied upon by the ED while affecting the arrest of the applicant was the material collected during an illegal investigation which has been quashed by the Apex Court on 08.04.2024. He submits that the statements recorded in the ECIR 11 and being relied upon in the ECIR 04 apart from being quashed by the Apex Court have also been retracted by multiple individuals as the officers of the ED in ECIR 11 had coerced, threatened and made them sign pre-typed statements. He contended that the arrest under PMLA can be effected only when an accused is considered to be guilty of the ofence under Section 3 of the PMLA and guilt can only be established on admissible material.

31. Next contention of the counsel for the applicant is that there has been no recovery of any unaccounted money or disproportionate asset from the applicant despite conducting investigation by the respondent/Agency. It is settled law that mere apprehension of the agency without any basis

cannot be a ground to reject bail. More so when the accused has been in custody for long period and charge sheet has been filed. He has placed his reliance in the matter of P. Chidambaram Vs. Directorate of enforcement (2020) 13 SCC 791, wherein it has been observed as under:

26. Section 3 of PMLA stipulates "money-

laundering" to be an offence. Section 3 of PMLA states that whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of the crime and projecting it as untainted property shall be guilty of the offences of money laundering. The provisions of the PMLA including Section 3 have undergone various amendments.

The words in Section 3 "with the proceeds of crime and projecting" has been amended as "proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming" by the Amendment Act 2 of 2013 (w.e.f. 15.02.2013).

27. Section 4 of PMLA deals with punishment for money laundering. Prior to Amendment Act 2 of 2013, Section 4 provided punishment with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and the fine which may extend to Rs.5,00,000/-. By Amendment Act 2 of 2013, Section 4 is amended w.e.f. 15.02.2013 vide S.O. 343(E) dated 08.02.2013. Now, the punishment prescribed under Section 4 of PMLA to the offender is rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and the offender is also liable to pay fine. The limit of fine has been done away with and now after the amendment, appropriate fine even above Rs.5,00,000/- can be imposed against the offender.

29. The term "reason to believe" is not defined in PMLA. The expression "reason to believe" has been defined in Section 26 of IPC. As per the definition in Section 26 IPC, a person is said to have "reason to believe" a thing, if he has sufficient cause to believe that thing but not otherwise. The specified officer must have "reason to believe" on the basis of material in his possession that the property sought to be attached is likely to be concealed, transferred or dealt with in a manner which may result in frustrating any proceedings for confiscation of their property under the Act. It is stated that in the present case, exercising power under Section 5 of the PMLA, the Adjudicating Authority had attached some of the properties of the appellant. Challenging the attachment, the appellant and others are said to have preferred appeal before the Appellate Tribunal and stay has been granted by the Appellate Authority and the said appeal is stated to be pending.

30. As rightly submitted by the learned Solicitor General, sufficient safeguards are provided under the provisions of PMLA. Under Section 5 of PMLA, the Director or any other officer not below the rank of Deputy Director authorised by the Director for the purposes of Section 5 who passed the impugned order is required to have "reason to believe" that the properties sought to be attached would be transferred or dealt with in a manner which would frustrate the proceedings relating to confiscation of such properties.

Further, the officer who passed the order of attachment is required to record the reasons for such belief. The provisions of the PMLA and the Rules also provide for manner of forwarding a copy of the order of provisional attachment of property along with material under sub-section (2) of Section 5 of PMLA to the Adjudicating Authority.

31. In order to ensure the safeguards, in exercise of power under Section 73 of PMLA, the Central Government has framed "The Prevention of Money-Laundering (The Manner of Forwarding a Copy of the Order of Provisional Attachment of Property along with the Material, and Copy of the Reasons along with the Material in respect of Survey, to the Adjudicating Authority and its period of Retention) Rules, 2005". Rule 3 of the said Rules provides for manner of forwarding a copy of the order of provisional attachment of property along with the material under sub-

section (2) of Section 5 of the Act to the Adjudicating Authority. Rule 3 stipulates various safeguards as to the confidentiality of the sealed envelope sent to the Adjudicating Authority.

32. Section 17 of PMLA deals with the search and seizure. Section 17 which deals with search and seizure states that where the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section on the basis of the information in his possession has "reason to believe" (reason for such belief to be recorded in writing) that any person has committed an offence which constitutes the money laundering or is in possession of any proceeds of crime involved in money laundering etc. may search building, place and seize any record or property found as a result of such search. Section 17 of PMLA also uses the expression "reason to believe" and "reason for such belief to be recorded in writing". Here again, the authorised officer shall immediately on search and seizure or upon issuance of freezing order forward a copy of the reasons so recorded along with the material in his possession to the Adjudicating Authority in a "sealed envelope" in the manner as may be prescribed and such Adjudicating Authority shall keep such reasons and material for such period as may be prescribed. In order to ensure the sanctity of the search and seizure and to ensure the safeguards, in exercise of power under Section 73 of PMLA, the Central Government has framed "The Prevention of Money-Laundering (Forms, Search and Seizure or Freezing and the Manner of Forwarding the Reasons and Material to the Adjudicating Authority, Impounding and Custody of Records and the period of Retention) Rules, 2005"."

32. It has been contended by the counsel for the applicant that bail can be granted even if there is a ground to believe that trial would not conclude in near future. The Court does not have to wait for 436-A Cr.P.C. As has been held in the matter of Manish Sisodia Vs.ED SLP (Crl.) No. 8781 of 2024, "28. Detention or jail before being pronounced guilty of an offence should not become punishment without trial. If the trial gets protracted despite assurances of the prosecution, and it is clear that case will not be decided within a foreseeable time, the prayer for bail may be meritorious. While the prosecution may pertain to an economic offence, yet it may not be proper to equate these cases with those punishable with death, imprisonment for life, ten years or more like offences under the Narcotic Drugs and Psychotropic Substances Act, 1985, murder, cases of rape, dacoity, kidnaping for ransom, mass violence, etc. Neither is this a case where 100/1000s of depositors have been defrauded.

The allegations have to be established and proven. The right to bail in cases of delay, coupled with incarceration for a long period, depending on the nature of the allegations, should be read into Section 439 of the Code and Section 45 of the PML Act. The reason is that the constitutional mandate is the higher law, and it is the basic right of the person charged of an offence and not convicted, that he be ensured and given a speedy trial. When the trial is not proceeding for reasons not attributable to the accused, the court, unless there are good reasons, may well be guided to exercise the power to grant bail. This would be truer where the trial would take years."

33. Next contention of the counsel for the applicant is that the arrest under PMLA can be effected only when an accused is considered to be guilty of the offence under Section 3 of the PMLA and guilt can only be established on admissible material. He submits that the only material available with the ED while effecting arrest of the applicant was the material collected during an illegal investigation which has been quashed by the Apex Court on 08.04.2024. A comparison of the grounds of arrest in the first ECIR and first Prosecution complaint vis-a vis grounds of arrest in second ECIR and second Prosecution complaint shows that the basis of arresting the applicant in both the ECIRs is identical. There is no new material which has been relied upon by the ED in the second ECIR necessitating the arrest of the applicant. He submits that a departmental enquiry was also conducted by the Excise Department which concluded that there was no offence committed and the entire sale of liquor was carried out in a legal manner. It is contended that no new statement has been relied upon in the grounds of arrest. In the second ECIR, investigating the same offence is completely illegal and tenable in law. The arrest of the accused is amenable to judicial review and arresting a person without the need and necessity of arrest would render it to be illegal. It is further contended that there has been no recovery of any unaccounted money, incriminating material, illegal liquor bottles or counterfeit holograms from the applicant or any other individual to implicate the present applicant. It is contended that 115 properties have alleged POC of 105 crores attached and confirmed by the Adjudicating Authority. The said attachment has been challenged before the Appellate Tribunal. Thus, the material relied upon by the ED is inadmissible as the whole case of the ED essentially stems upon the statements made by certain co- accused persons under Section 50 of the PMLA and certain whatsapp chats collected by the IT department during the course of raids conducted in the year 2020. It is contended that the applicant satisfies the twin conditions under Section 45 of the pMLa. Section 45 of the PMLA is not even applicable in the instant case given the prolonged period of incarceration of the applicant. He has placed his reliance in the matter of Manish Sisodia Vs. ED, SLP Crl. No. 8781 of 2024, wherein it has been held as under:

> 49. We find that, on account of a long period of incarceration running for around 17 months and the trial even not having been commenced, the appellant has been deprived of his right to speedy trial.
>
> 50. As observed by this Court, the right to speedy trial and the right to liberty are sacrosanct rights. On denial of these rights, the trial court as well as the High Court ought to have given due weightage to this factor.
>
> XXXX XXXX
>
> XXXX
>
> 53. The Court further observed that, over a

> period of time, the trial courts and the High Courts have forgotten a very well-settled principle of law that bail is not to be withheld as a punishment. From our experience, we can say that it appears that the trial courts and the High Courts attempt to play safe in matters of grant of bail. The principle that bail is a rule and refusal is an exception is, at times, followed in breach.

On account of non-grant of bail even in straight forward open and shut cases, this Court is flooded with huge number of bail petitions thereby adding to the huge pendency. It is high time that the trial courts and the High Courts should recognize the principle that "bail is rule and jail is exception".

54. In the present case, in the ED matter as well as the CBI matter, 493 witnesses have been named. The case involves thousands of pages of documents and over a lakh pages of digitized documents. It is thus clear that there is not even the remotest possibility of the trial being concluded in the near future. In our view, keeping the appellant behind the bars for an unlimited period of time in the hope of speedy completion of trial would deprive his fundamental right to liberty under Article 21 of the Constitution. As observed time and again, the prolonged incarceration before being pronounced guilty of an offence should not be permitted to become punishment without trial."

34. In the matter of Vijay Nair Vs. Directorate of Enforcement SLP Crl. Diary No. 22137 of 2024, it has been observed as under:

> "7.The materials on record indicate that one Dinesh Arora who was arrayed as an accused in the case and who thereafter turned approver, in his 12th statement had implicated the accused petitioner but in all his previous statement(s) given under Section 50 of the Act, there was no implication for the petitioner. The Directorate of Enforcement has submitted as many as 9 prosecution complaints, one after the other and in the meantime, the petitioner has been in custody for about 22 months. As earlier noted, in the event of conviction, the maximum sentence that can be imposed on the petitioner is 7 years.
>
> XXXX XXXX XXXX
>
> 9. 9. Mr. S.V. Raju would further place reliance on the three-judge bench decision of this Court in Vijay Madanlal Choudhary v. Union of India2 to argue that stringent conditions of Bail under Section 45 of the Act have to be satisfied before granting Bail. However, this Court in a series of decisions has held that the rigours under Section 45 can be relaxed if the custody is for a considerable period of time and there is no likelihood of conclusion of trial within a short span."

35. It is contended that the ED has relied entirely on the statements of co-accused which are not substantive piece of evidence and the prosecution cannot start with such evidence to establish a case. He has relied upon the decision of Prem Prakash Vs. ED, SLP (Crl.) No. 5416 of 2024, wherein it has been held as under:

> "37. Being a co-accused with the appellant, his statement against the appellant assuming there is anything incriminating against the present appellant will not have the character of substantive evidence. The prosecution cannot start with such a statement to establish its case. We hold that, in such a situation, the law laid down under Section 30 of the Evidence Act by this Court while dealing with the confession of the co-accused will continue to apply."

36. The applicant is not involved in the commission of or in any activity relating to the alleged offences. Most of the statements relied upon by the ED have been retracted by those individuals admitting to the fact that the same were extracted by means of coercion and threats. It is contended that the investigation conducted by the ED was in a pick and choose manner. The manner in which the investigation has been carried out by the ED in a selective and pick and choose manner in its investigation clearly shows the targeted nature of the investigation conducted by it. He submits that no attachment of property against accused persons ie. the distillers despite quantifying the same at over 238 crores. No proceedings under Section 8 of the PC Act was initiated against them. The Excise Officers against who there is incriminating material have not been made accused.

37. It is next contended that the applicant satisfies the triple test for grant of bail. The applicant is neither a flight risk nor would influence any witness or tamper with any evidence. The entire material is documentary and is in the custody of the Court. The applicant does not have the propensity to evade the process of law and no such allegation has been made against the applicant seeking police/judicial custody. He contended that in catena of judgments including the recent one of P.Chidambaram Vs. CBI 2020 13 SCC 337, that while dealing with the bail application it is not in dispute that 'three factors' or the 'triple test' must be seen /satisfied viz. (I) flight risk; (ii) likelihood of tampering with evidence and (iii) likelihood of influencing witnesses. Pertinently all the three facts are satisfied by the applicant and as such the applicant may be granted bail.

38. Dr.Sourabh Pandey, in reply to the above contentions of the learned counsel for the applicant, it is submitted by learned counsel for the respondent/ED that that applicant acted as strongman who ran the liquor syndicate for his political benefactors and in association with the topmost bureaucrat Anil Tuteja. Both of them orchestrate the entire liquor scam by using the vantage of Anil Tuteja (retired IAS). The applicant posted officials of his choice in the Excise Department and thus became the de facto Excise Minister. He ran the entire bribe collection racket for Part-A, C and FL-10A license holders. He ran the unprecedented scam of selling unaccounted illicit liquor from the State run shops. The applicant through his political affiliations and with the active support of Anil Tuteja, Arun Pati Tripathi and Niranjan Das, controlled all the limbs of liquor trade to run the manufacture and sale of illicit country liquor that too, from State run shops. All the accused persons in the Chhattisgarh Liquor scam ran this racket for 2 years selling more than 40 lakh cases of illicit liquor with active connivance of distillers, hologram makers, bottle suppliers, transporters, shop keepers, cash collection agencies, District Excise officials etc. without registration of even a single FIR. This racket came to end only after the raids by the Income Tax Department in June 2022 and subsequent action by answering respondent ie. Enforcement directorate. The audacity and brazeness of the scam and losses to Chhattisgarh Exchequer are staggering. This shows that such a same of selling illegal liquor from State run shops can be run only with the concurrence and the active support of

then biggest political authority of the State of Chhattisgarh. The applicant apart from being responsible for the acquisition of proceeds of crime worth more than 2100 crores, was also responsible for layering the proceeds of crime and concealing them.

39. The applicant is responsible for selecting and hiring ground level members of the liquor syndicate. He himself is affiliated with political outfit and is the brother of Aijaz Dhebar (Mayor of Raipur). The applicant is the one who sponsored the name of co-accused Arunpati Tripathi as the Managing Director, CSMCL to Anil Tuteja. He along with his associates Arvind Singh and Vikas Agarwal @ Subbu ensured strong control over the scheme of illegal commission from collection in the sale of liquor. The applicant used to provide logistical support, cash collection and cash delivery services for the syndicate. There are various whatsapp chats between the applicant and Vikas Agrawal @ Subbu and Arvind Singh related to the commission collected and sale of Part-B liquor.

40. Further allegation against the applicant is that the applicant ensured the commission paid by the liquor suppliers timely. Apart from collecting commission on sale of accounted liquor (Part-A) and sale of unaccounted liquor (Part-B) also charged quid pro quo bribes from main distillers so that they can form a cartel and divide the entire market share among themselves. This was known as Part C earnings. This was an annual commission which was paid the main distillers for getting fixed share in the market purchase of CSMCL. Kedia Group got 52% share, Bhatia Group got 30% and Welcome Group go 18% share which was paid on percentage basis of the market share allotted to them.

41. From the investigation conducted by the respondent/Agency it was also revealed that the role of M/s. AJS Agro Pvt. Ltd. Which is associated with the applicant was used by the applicant to earn commission in banking channel. As part of the modus operandi the distillers purchased grians through the M/s. AJS Agro Trade Pvt. Ltd. and commission was paid to the applicant. This was done to generate accounted money which could be used to make more investments and large cash could be layered into those deals and was in continuous process of acquiring new proceeds of crime and layering and concealing the earned ill gotten cash.

42. It is alleged that the applicant and co-accused Anil Tuteja were receiving almost 15% of the revenue generated by the syndicate out of the sale of Part-B liquor. Asper the investigation conducted so far, a total of Rs. 40.67 lac cases of Part-B liquor have been found to be supplied to syndicate which implied that amount of Rs. 120 crores was earned illegally out of the sale of unaccounted liquor. Digital evidences show the payments to the tune of Rs. 14.41 crores from the present applicant and therefore it can be held that Rs. 105 crores out of the sale proceeds of Part-B liquor was lying with the applicant. The applicant utilized the proceeds of crime in acquiring assets in his name and in the name of his family members.

43. It is contended by the counsel for the respondent that the mandatory twin conditions of Section 45 of the PMLA are not being satisfied and one of the conditions prescribed by the Section pertains to a finding by the court that the accused is not guilty of the offence of Money Laundering an that he is not likely to commit any offence while on bail to this, it is submitted that the possibility of accused being "not guilty of the offence of money laundering" is highly unlikely. In fact the applicant was

evading summons under Section 50 of the PMLA in ECIR/RPZO/11/2022 and therefore the previous actions of the applicant has not been conducive with the due process of law. In the backdrop of these circumstances, it cannot be ruled that the applicant if released of bail, repeat his previous actions again. It is submitted that in the light of judgment dated 22.07.2022 of the Apex Court in Vijay Madanlal Choudhary & Others Vs. Union of India and Others, SLP (Crl.) No. 4634 of 2014, it is no longer res integra that the twin conditions under Section 45 of the PMLA have to be met before grant of bail. Relevant observation is as under:

> 135. We are conscious of the fact that in paragraph 53 of the Nikesh Tarachand Shah, (2018) 11 SCC 1 the Court noted that it had struck down Section 45 of the 2002 as a whole.

However, in paragraph 54, the declaration is only in respect of further (two) conditions for release on bail as contained in Section 45(1), being unconstitutional as the same violated Articles 14 and 21 of the Constitution. Be that as it may, nothing would remain in that observation or for that matter, the declaration as the defect in the provision [Section 45(1)], as existed then, and noticed by this Court has been cured by the Parliament by enacting amendment Act 13 of 2018 which has come into force with effect from 19.4.2018. We, therefore, confined ourselves to the challenge to the twin conditions in the provision, as it stands to this date post amendment of 2018 and which, on analysis of the decisions referred to above dealing with concerned enactments having similar twin conditions as valid, we must reject the challenge. Instead, we hold that the provision in the form of Section 45 of the 2002 Act, as applicable post amendment of 2018, is reasonable and has direct nexus with the purposes and objects 642 Supra at Footnote No.3450 sought to be achieved by the 2002 Act to combat the menace of money-

laundering having transnational consequences including impacting the financial systems and sovereignty and integrity of the countries."

44. Further, in Sajjan Kumar Vs. Directorate of Enforcement, 2022 SCC Online Del. 1769, it has been held that:

> "27. In matter of regular bail, Court must consider aspects including but not limited to, the larger interest of the State or public-another factor relevant would be the gravity of the alleged offence and/or nature of allegations levelled- Economic offences constitute a class apart and need to be visited with a different approach, given their severity and magnitude."

45. Learned counsel for the respondent submits that the applicant applied for bail in ACB/EOW case before this Court vide M.Cr.C. No. 3455/2024 on medical condition and was granted bail. However, it was challenged by the State of CG before the Apex Court vide SLP (Crl) No. 9395/2024 and it was ordered that independent medical scrutiny of the applicant be conducted at AIIMS Raipur and no substantial medical issues were found with the applicant.

46. He next contended that the applicant is suffering from long incarceration to which it has been stated that the applicant has been arrested in the present case on 08.08.2024 and he has been arraigned as an accused in the Prosecution Complaint dated 15.10.2024 filed by the ED. The applicant has to satisfy the conditions provided in Section 45 of the PMLA prior to grant of bail. That looking into the period of custody, it seems that the applicant does not qualify the conditions mentioned in Section 436-A of the Cr.P.C, and cannot take the benefit under the said Section.

47. Reply to the next submission of the counsel for the applicant that there is long delay in trial is misconceived and denied. It is submitted that the PMLA Court, Raipur has taken the cognizance of all the PCs dated 19.06.2024, 20.08.2024 and 5.10.2024 and the trial has commenced. ED had demonstrated the modus operandi adopted by the applicant for commission of offence of money laundering and investigation against the applicant is complete but the investigation in money trial and identification of remaining proceeds of crime and the persons involved therein is still going on. He submits that the trial in the PMLA is at the appearance stage and next date of hearing is scheduled for 22.03.2025. He contended that the investigation is going on and the Special Court has issued summons to the accused after taking cognizance upon the prosecution complaint and 35 witnesses in the Prosecution Complaint has been filed by the ED. It is also contended that there is no iota of doubt that the Right to Speedy Trial is a foundational facet of the The Right to life and Personal Liberty given under Article 21 of the Constitution of India. However, if the accused is enlarged on bail, then being a very influential person there would be a chance that he would induce the witnesses and tamper with the evidences and the trial would further get delayed. Therefore to ensure the fundamental right to speedy trial, the applicant may not be granted bail.

48. Next contention of the learned counsel for the respondent/ED is that the applicant was arrested in two different ECIRs ie. ECIR/RPZO/11/2022 and ECIR/RPZO/04/2024 and it is within the ambit of law. It is submitted that the applicant had filed SLP No. 12153/2024 against the order dated 20.08.2024 in Cr.M.P. No. 860/2024 and 1186/2024 of this Court wherein the applicant had raised allegation of double arrest, illegality of the ECIRs and malafide investigation but since there is no merit in the averment and not sustainable in the eye of law, he withdrew the petition on 6.12.2024.

49. Learned counsel for the respondent next contended that from the conduct of the applicant,it appears that he has been trying to delay the proceedings before the agency as well as before the court. In the matter of Pankaj Grover Vs. ED, Criminal Misc. Anticipatory Bail application under Section 438 Cr.P.C. No. 7661 of 2021, it has clearly been held that the accused in economic offences/PMLA cases are in possession of huge proceeds of crime and may use those to influence witnesses. It has also been held that since such offences are committed mostly be influential persons, there is high likelihood of their using influence to tamper with the evidence and influence witnesses. Relevant observation of the court is as follows:is as under:

> "38.... Crimes are now committed by influential persons belonging to upper class in organized manner after well planning by use of modern gadgets in course of performance of their official, professional, business activities in which they have expertise. Criminal Acts committed by professionals, businessmen and public

servants, it is very difficult to identify whether sober and civilized activity was committed or criminal act was committed. Such criminals have no criminal self image, further by societal members there is no labelling which affect seriously pursuits to cope with crime and criminality,. Economic offenders are only concerned with their personal gain even at the cost of irreparable and serious loss to society.

"40.... Criminal acts committed by such persons are creating a serious challenge before criminal justice system; It is difficult to identify whether crime was committed, when it is identified that crime was committed, it is difficult to find out clues and thereby evidences; when evidences are available, nature of evidences is completely different as not possible to be collected by simple investigating presented by prosecution agency and ultimately to convict and sentence; when sentenced simple sentence is not effective to deal with such modern criminals and their criminality. A criminal of such modern criminality are respected and influential persons with position, status, standing and means thereby they are always in situation to influence proceeding in investigation and prosecution, taper with the evidences and pressurize witnesses.

42. .... Usually socio economic offenders abscond to some other country and after that it becomes difficult to bring them back and complete the criminal proceeding against them. Further, their monetary sound condition particularly proceed of crime obtained not by honest working but by deceiving others causes more prone situation for influencing witnesses and other evidences. Furthermore, status and position of offender provides opportunity to influence investigation and prosecution."

50. Thus, it is submitted by the learned counsel for the respondent that there is a high likelihood that the applicant if released on bail might attempt to frustrate the present proceedings by influencing witnesses or tampering with crucial evidences. Therefore in the present case, which pertains to the offence of money laundering to the tune of more than R. 2100 crores should not be granted bail. In catena of judgments, it has been held by the Court that economic offences constitute a separate class of offence and bail should normally not be granted in such cases. In Mohd. Arif Vs. ED 2020 SCC OnLine Ori. 544, it has been described that the impact of the offence of Money laundering has called the money laundering as an act of financial terrorism not only posing a serious threat to the financial system of the country but also to the integrity and sovereignty of a nation and reiterated the view of the Apex Court of denial of bail in cases of economic offences. Relevant observation is as under:

"22. the offence of money laundering is nothing but an act of financial terrorism that poses a serious threat not only to the financial system of country but also the integrity and sovereignty of a nation. The International Monetary Fund estimates that laundered money generates about $590 billion to $1.5 trillion per year, which constitutes approximately two to five percent of the world's gross domestic product. The Supreme Court of India has consistently held that economic offences are sui generis in nature as they stifle the delicate economic fabric of a society. These

> offences permeate to human consciousness posing numerous questions on the very integrity of the business world. The offences, such as this, are committed with a deliberate design with an eye on personal profit and often shown to be given scant regard for a sordid residuum left behind to be borne by the unfortunate "starry eyed" petty investors. The perpetrators of such deviant "schemes" including the petitioner herein, who promise utopia to their unsuspecting investors seem to have entered in a proverbial "faustian bargain" and are grossly unmindful of untold miseries of the faceless multitudes who are left high and dry and consigned to the flames of suffering."

51. The economic offences constitute a class apart and need to be visited with different approach, therefore in Y.S. Jagan Mohan Reddy Vs. Central Bureau of Investigation; (2013) 7 SCC 439, wherein Hon'ble the Apex Court in paragraphs 34 & 35 has held as under:-

> "34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. 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 the country.
>
> 35. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations."

52. Furthermore, in the matter of State of Gujarat Vs. Mohanlal Jitamalji Porwal & Others, (1987) 2 SCC 364, it has been specifically held that :

> "...5. The Community or the State is not a person- non-grata whose cause may be treated with disdain. The entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to books. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community.

53. In view of the above legal grounds, it is submitted by the learned counsel for the respondent that the bail application filed on behalf of the applicant may be dismissed. Learned counsel for the respondent further submits that the role of the applicant in the present case established the guilt of the applicant in the commission of the offence of money laundering. It is also reiterated that satisfaction of triple test is not sufficient for persons arrested under PMLA, 2002 as this triple test stage will come when the applicant satisfy the twin conditions given under the Section 45 of the PMLA, 2002. The Apex Court in the case of Gudikanti Narasimhulu and Others Vs. Public

Prosecutor, High Court of Andhra Pradesh (1978) 1 SCC 240, has observed that the objective to keep a person in judicial custody pending trial or disposal of an appeal is to secure the attendance of the prisoner at trial. Moreover, he submits that the delay in trial is no ground for bail keeping in view the fact that the ED is working in a timely manner as per the due process of law. The Special Court had issued summons to the accused after taking cognizance upon the Prosecution Complaint. There is no iota of doubt that the Right to Speedy Trial is a foundational facet of the Right to Life and Personal Liberty given under Article 21 of the Constitution of India. However, if the accused be enlarged on bail, then being such a influential person, there would be a chance that he would induce the witnesses and tamper with the evidence and consequently, the trial would further get delayed. Therefore to ensure/secure the fundamental right to speedy trial of the applicant he may not be granted bail. In the matter of State of Bihar Vs. Amit Kumar (2017) 13 SCC 751, the Apex Court has held that :

> "11. Although there is no quarrel with respect to the legal propositions canvassed by the learned counsels, it should be noted that there is no straight jacket formula for consideration of grant of bail to an accused. It all depends upon the facts and circumstances of each case. The Government's interest in preventing crime by arrestees is both legitimate and compelling. So also is the cherished right of personal liberty envisaged under Article 21 of the Constitution. Section 439 of The Code of Criminal Procedure, 1973, which is the bail provision, places responsibility upon the courts to uphold procedural fairness before a person's liberty is abridged. Although 'bail is the rule and jail is an exception' is well established in our jurisprudence, we have to measure competing forces present in facts and circumstances of each case before enlarging a person on bail.
>
> 14. Further we cannot lose sight of the fact that the investigating agency is going to file additional charge sheet. Therefore, the respondent's presence in the custody may be necessary for further investigation. Furthermore we cannot approve the order of the High Court, in directing the concerned investigating authority to file the charge sheet within a month, as the case involves almost 32 accused and a complex modus operandi."

54. It is next contended by the learned counsel for the respondent that the applicant was arrested in a completely legal manner under Section 19 of the PMLA. The claim of the applicant that he was arrested twice, to this it is submitted that the applicant was arrested in two different ECIRs. Oit is submitted that the applicant filed application before this Court wherein he has also alleged about the same however, the same was dismissed by the Division Bench vide its order dated 23.08.2024 in Cr.M.P. No. 2276/2024 holding that:

> "15. We have perused the order dated 08.08.2024 passed by the Special Judge (PMLA). The ED had filed an application under Section 167 Cr.P.C. and prayed for 7 days custodial remand against the petitioner-Anwar Dhebar and one co-accused Arunpati Tripathi on the ground that the investigation was incomplete. The true copy Registrar (Judicial) order dated 08.08.2024 passed by the learned Special Judge,

> PMLA is quite detailed one and it has assigned the reasons for allowing. The petitioner had taken a plea before the learned Special Judge that the ECIR/RPZO/11/2022 was already quashed by the Hon'ble Supreme Court and as such, the second ECIR was not maintainable on the basis of some materials. This issue has also been dealt with by this Court in Cr.M.P. No. 721/2024."

55. It is further submitted that this Court after considering the facts and circumstances of the present case has passed the order wherein various facts were challenged. Relevant extracts are as under:

> "140. According to the petitioners, the ECIR/RPZO/04/2024 is a second ECIR in relation to the same alleged transaction and has been registered on the basis of the same underlying schedule offence for a second time and all proceedings and investigation in relation tot he same are thus liable to be quashed. ECIR/RPZO/11/2022 was registered on the basis of prosecution complaint filed by the ITD before learned ACMM Court, Tis Hazari New Delhi.
>
> However, the new ECIR bearing No. ECIR/RPZO/04/2024 has been recorded on the basis of FIR bearing No. 04/2024 registered by ACB/EOW Raipur. In the first ECIR, the scheduled offence was Section 120-B IPC and in the second ECIR, the scheduled offence is 420,467,468,471 and 120-B IPC, 7& 12 of the PC Act, 1988. Therfore, shcedule offence in both the ECIRs is different from each other. The Supreme Court inWP(CR) No. 153/2023 was apprised about the recording of new ECIR on the basis of FIR. In this regard, Supreme Court did not bar the ED from recording of new ECIR."
>
> "143. ... ED has been conducting a detailed investigation into the subject ECIR and the role of the petitioners have been clearly brought out in the case. Investigation conducted has revealed that the assets purchased in the name of entities controlled by petitioners and in the name of their family members during relevant period were procured out of proceeds of crime.
>
> Thus, in light of strong evidences, there is no scope of mala fide in the whole investigation. Digital evidence, flow of funds and statements of multiple entities under Section 50 of the PMLA, 2002 collected during the course of investigation clearly established the role of petitioner."

56. Further, Apex Court in the case of State of Orissa Vs. Mahimandanda Mishra 2018 (10) SCC 516 arising out of Criminal Appeal No. 1175 of 2018 while referring to Anil Kumar Yadav Vs. State (NCT) of Delhi, 2017 has stated that the court must not go into the merits of the case while considering the bail applications. Relevant portion is as under:

> "It is by now well settled that at the time of considering an application for ail, the Court must take into account certain factors such as the existence of a prima facie

> case against the accused, the gravity of the allegations, position and status of the accused, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of tampering with the witnesses and obstructing the courts as well as the criminal antecedents of the accused. It is also well settled that the Court must not go into deep into merits of the matter while considering an application for bail. All that needs to be established from the record is the existence of a prima facie case against the accused."

57. It is contended that the proceeds of crime to the tune of about 105 crores was attached and the same has been confirmed by the Adjudicating Authority vide order dated 7.10.2024 in OC No. 2318/2024. It is submitted that detailed modus operandi used by the applicant for generation and use of proceeds of crime is mentioned in the Prosecution Complaint dated 5.10.2024 along with money trial investigation. It is further submitted that the statements were recorded without any threat, fear, force or coercion and under CCTV surveillance. From the evidence it is clear that the applicant is involved in the Chhattisgarh Liquor Scam case. The fact that there is no recovery of unaccounted money, incriminating material, counterfeit holograms etc. from the applicant, to this it is submitted that there are multiple properties belonging to the applicant which are found to be proceeds of crime and hence attached. The seizure made by ACB/EOW of half burnt counterfeit holograms from the premises are linked to the applicant.

58. Further contention of the learned counsel for the respondent is that there are 3 prosecution complaints filed till date and whom to arrest and when to arrest are sole prerogative of investigating agency which are determined on the basis of specific circumstances of each case and are done only in the interest of concluding the investigation with optimum usage of resources and within the reasonable time frame. Lastly, it has been contended by the learned counsel for the respondent that conditions of triple test are in addition to the twin conditions mentioned in Section 45 of the PMLA. It is submitted that the applicant has been an accused in the money laundering offence and the twin conditions have not been satisfied by the applicant. The respondent has substantive evidences which will prove the guilt of the accused in the trial and therefore it the applicant be released on bail at this stage, there are high chances that the accused will tamper with the evidence and influence the witnesses.

ANALYSIS

59. Heard learned counsel for the parties at length and perused the records as well as the documents annexed with utmost circumspection.

60. In the instant case, there are nearly 70 accused persons while charge sheet has only been filed against 11 persons. There are 457 witnesses in the scheduled offence and the trial is not likely to conclude in the near future. Section 45(1) of the PMLA, reverses the presumption of innocence at the stage of bail as an accused. According to him, the accused at this stage can never show that he is not guilty. It is also maintained that these are disproportionate and excessive conditions for a bail. The twin condition is in violation of Article 21 of the Constitution by virtue of the nature of the offence under PMLA. It is stated that presumption of innocence is a cardinal principle of Indian

criminal jurisprudence.

61. Prima facie, it appears that the applicant was involved in the criminal acts of the syndicate and is in possession of the proceeds of crime and that he received commission from the liquor suppliers. The applicant acted as a strongman who ran the liquor syndicate for his political benefactors in association with the topmost bureaucrat Anil Tuteja. The applicant ran the entire bribe collection racket for Part-A,C and FL-10A license Holders and the unprecedented scam of selling unaccounted liquor from the State run shops. This apart, he was responsible for acquisition of process of crime and concealing them.

62. The Apex Court has held that the power of ED to arrest must be based on objective and fair consideration of material against a person. Under the PMLA, ED officers can arrest a person if they have reasons to believe based on the material in their possession that the individual is guilty. The provision for bail under Section 45 of PMLA lays down two essentials which are to be fulfilled for grant of bail. These conditions are called the 'twin conditions'. The two conditions that are to be established are that firstly, there are reasonable grounds for believing that the accused is not guilty of such offence and secondly, the accused is not likely to commit an offence while on bail.

63. In Nikesh Tarachand Shah Vs. Union of India (Tarachand), the Apex Court decided on the constitutionality of section 45 of PMLA, 2002 and the twin-conditions of bail attached to it. It held the same to be unconstitutional in the light of article 21 of the Constitution which stipulates for "no person shall be deprived of his life or personal liberty except according to the procedure established by the law"; essentially holding that constitutional provisions prevail over laws such as PMLA. In Vijay Madanlal Choudhary Vs. Union of India (Vijay Madanlal) case of 2022, three judge bench of the Supreme Court decided on the constitutionality of various provisions of PMLA including section 45, as revived in 2018. The court arrived at the conclusion that even though the provision is very stringent and that it goes against the principle of bail being a rule, it is perfectly valid.

64. The inference from this verdict leads us to the fact that the court viewed section 45 of PMLA to be a provision that aims to achieve the purpose of the legislation; that is, to prevent the serious crime of money laundering. Essentially, the court views this provision from a narrow lens of 'seriousness of the crime' rather than the wider constitutional validity. Though it is within the power of the court to deem a provision unconstitutional through judicial review, it can be inferred that the legislature was dissatisfied with the order. The amendment emphasized on the point that the bail conditions should be followed with uniformity for all offences. The legislature intends to follow a zero-tolerance policy towards money laundering. This is pertinently so because of the fact that offences pertaining to money laundering are deemed to be of high seriousness besides being complex offences that involve a threat not only to the financial institutions but also to the sovereignty and integrity of the nation as enunciated in the statement of objects and reasons of the Act itself.

65. It is true that money laundering that is connected to terror financing and other such serious offences ought to be treated with great caution and stringency but there are offences which are not as serious as the former. While the fight against terror funding is a step in the right direction by the

legislature, there are several cases where the rights of the accused are being violated due to the actions of a few outliers.

66. There exists a need to move from the current one-size-fits-all approach towards an approach that underscores the differences between the offences on the basis of their gravity and seriousness. The SC, in the case P. Chidambaram v. Directorate of Enforcement of 2019, stated that in determining whether to grant bail both the seriousness of the crime, and the severity of the punishment are to be taken into account. In the case, bail was granted on the following grounds - firstly, the allegations against the accused were not severe; secondly, possibility of the accused tampering with evidence was low; and thirdly, humanitarian grounds like the health of the accused were considered.

67. A provision like section 45, being as rigid as it is, does not allow for such an analysis. In the interest of upholding the fundamental rights of the citizens, the legislature must relax the provision to provide wiggle room to the courts to determine bail on a more case-to-case basis. This would prevent minor bail cases reaching the apex court as the lower courts are hesitant to oppose the inflexible provision. Nevertheless, the court should also recognize the legislature's wariness towards money laundering and pass orders such that it balances caution with liberty.

68. A balanced approach which harmonizes judicial interpretations and legislative intent must be adopted without compromising on justice, fairness and liberty. The balance can be achieved by undertaking thorough research for collocation or stratification of money laundering offences based on their gravity and seriousness. The court has to rely on a preliminary assessment of merits, without a deep dive into the evidence, balancing considerations of potential flight risk, and ensuring a separate evaluation from the final trial outcome.

69. However, the Apex Court has held that the power of ED to arrest must be based on objective and fair consideration of material against a person. Under the PMLA, ED officers can arrest a person if they have reasons to believe based on the material in their possession that the individual is guilty. It has been held by the Apex Court that PMLA allowed arrests on the subjective opinion of ED officer, the court said an officer's "reasons to believe" that a person was guilty an deserved arrest should not be based on mere suspicion. "Suspicion requires a lower degree of satisfaction and does not amount to belief. Belief is beyond speculation or doubt.... Existence and validity of the 'reasons to believe' goes to the root of the power to arrest. The subjective opinion of the arresting officer must be founded and based upon fair and objective consideration of the material, as available with them on the date of arrest.

70. The judiciary's interpretative role in shaping due process within the PMLA represents a significant stride. Emphasizing the written communication of arrest grounds is vital for transparency and accountability. However, this positive development raises practical questions for the ED. The nuanced compromise between oral communication and subsequent provision of written grounds reflects the judiciary's understanding of law enforcement challenges.

71. An analysis of section 19 of the PMLA unveils a delicate interplay between legal principles, enforcement challenges, and evolving due process standards. The judiciary's commitment to balancing prompt law enforcement with the protection of individual rights, particularly the right to receive timely notification of arrest grounds, not only adds value but also amplifies the ongoing conversation about the equitable consideration of security and justice in the context of any crime, whether financial or otherwise. On perusal of the records, it is found that the ED has shown the reason to believe that the applicant is guilty of the proceeds of crime. On the basis of statements recorded under Section 50 of the PMLA however, retraction statement is made by the co-accused persons namely Arun Pati Tripathi, Nitesh Purohit and Arvind Singh.

72. The confessional statement of a co-accused under Section 50 of the PMLA is otherwise, not a substantive piece of evidence and can be used only for the purpose of corroboration in support of other evidence to impart assurance to the Court in arriving at a conclusion of guilt.It is expedient for this Court to extract Section 45 of the PML Act, 2002, which reads as under:-

> "Section 45 of PMLA, 2002- Offences to be cognizable and non-bailable.-- (1) [Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence [under this Act] shall be released on bail or on his own bond unless--]
>
> (i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and
>
> (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:
>
> Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm [or is accused either on his own or along with other co- accused of money-laundering a sum of less than one crore rupees], may be released on bail, if the Special Court so directs:
>
> Provided further that the Special Court shall not take cognizance of any offence punishable under Section 4 except upon a complaint in writing made by--

(i) the Director; or

(ii) any officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government.

[(1-A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorized, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.] (2) The limitation on granting of bail specified in [* * *]

sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail."

73. The Apex Court in the matter of Directorate of Enforcement Vs. Aditya Tripathi (Criminal Appeal No. 1401/2023) decided on 12.05.2023 has held as under:-

> 6. At the outset, it is required to be noted that respective respondent No. 1 - accused are facing the investigation by the Enforcement Directorate for the scheduled offences and for the offences of money laundering under Section 3 of the PML Act punishable under Section 4 of the said Act. An enquiry/investigation is still going on by the Enforcement Directorate for the scheduled offences in connection with FIR No. 12/2019. Once, the enquiry/investigation against respective respondent No. 1 is going on for the offences under the PML Act, 2002, the rigour of Section 45 of the PML Act, 2002 is required to be considered. Section 45 of the PML Act, 2002 reads as under: -
>
> "45. Offences to be cognizable and non-bailable.
>
> -- (1) [Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence [under this Act] shall be released on bail or on his own bond unless--]
>
> (i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and
>
> (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:
>
> Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm [or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees], may be released on bail, if the Special Court so directs:
>
> Provided further that the Special Court shall not take cognizance of any offence punishable under Section 4 except upon a complaint in writing made by--
>
> (i) the Director; or
>
> (ii) any officer of the Central Government or a State Government authorized in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government.

[(1-A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorized, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.] (2) The limitation on granting of bail specified in [* * *] sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail." By the impugned judgment(s) and order(s) and while granting bail, the High Court has not considered the rigour of Section 45 of the PML Act, 2002he Supreme Court on July 12 held that the power to arrest under the Prevention of Money Laundering Act (PMLA) cannot be exercised on the "whims and fancies"

of Directorate of Enforcement (ED) officers. 6.1 Even otherwise, the High Court has not at all considered the nature of allegations and seriousness of the offences alleged of money laundering and the offences under the PML Act, 2002. Looking to the nature of allegations, it can be said that the same can be said to be very serious allegations of money laundering which are required to be investigated thoroughly. 6.2 Now so far as the submissions on behalf of the respective respondent No. 1 that respective respondent No. 1 were not named in the FIR with respect to the scheduled offence(s) and/or that all the other accused are discharged/acquitted in so far as the predicated offences are concerned, merely because other accused are acquitted/discharged, it cannot be a ground not to continue the investigation in respect of respective respondent No. 1. An enquiry/investigation is with respect to the scheduled offences. Therefore, the enquiry/investigation for the scheduled offences itself is sufficient at this stage. 6.3 From the impugned judgment(s) and order(s) passed by the High Court, it appears that what is weighed with the High Court is that charge sheet has been filed against respective respondent No. 1 - accused and therefore, the investigation is completed. However, the High Court has failed to notice and appreciate that the investigation with respect to the scheduled offences under the PML Act, 2002 by the Enforcement Directorate is still going on. Merely because, for the predicated offences the charge sheet might have been filed it cannot be a ground to release the accused on bail in connection with the scheduled offences under the PML Act, 2002. Investigation for the predicated offences and the investigation by the Enforcement Directorate for the scheduled offences under the PML Act are different and distinct. Therefore, the High Court has taken into consideration the irrelevant consideration. The investigation by the Enforcement Directorate for the scheduled offences under the PML Act, 2002 is till going on.

7. As observed hereinabove, the High Court has neither considered the rigour of Section 45 of the PML Act, 2002 nor has considered the seriousness of the offences alleged against accused for the scheduled offences under the PML Act, 2002 and the High Court has not at all considered the fact that the investigation by the Enforcement Directorate for the scheduled offences under the PML Act, 2002 is still going on and therefore, the impugned orders passed by the High Court enlarging respective respondent No. 1 on bail are unsustainable and the matters are required to be remitted back to the High Court for afresh decision on the bail applications after

taking into consideration the observations made hereinabove."

74. The Apex Court has held that the power to arrest under the Prevention of Money Laundering Act (PMLA) cannot be exercised on the "whims and fancies" of Directorate of Enforcement (ED) officers. The court wondered if the ED even had a consistent, uniform and "one-rule-for-all" policy on when they should arrest people. It said the ED's power to arrest must be based on objective and fair consideration of material against the accused.

CONCLUSION

75. Thus, from the documents and submissions of the counsel for the applicant, it appears that the applicant had actively participated in the commission of predicate offence; had acquired proceeds of crime and had substantial share in proceeds of unaccounted liquor cannot be ignored. The investigation against 11 persons including the applicant is complete and three prosecution complaints against 11 accused persons spanning to nearly 20,000 pages with over 30 witnesses and 250 documents have been filed by the investigating agency and the investigation is going on. Despite the alleged huge scam, prosecution complaint has been filed against 11 persons. Even as per allegations made in the complaint filed by the ED, role of other individuals have also been surfaced.+There is no attachment of property againstaccused persons being distillers despite quantifying the same at over 200 crores and no proceedings under Section 8 of the PC Act has been initiated against them. Though it is true that the applicant has suffered long period of incarceration and the trial has not yet commenced and is not likely to conclude but the right to bail in cases of delay, coupled with incarceration for a long period, depending on the nature of the allegations, should be read into Section 439 of the Code of Criminal Procedure and Section 45 of the PML Act. there is substantial material indicating a strong nexus between the applicant and the other accused persons in the commission of the crime. There were documents and evidences that reflected the involvement of the applicant who is the key conspirator and beneficiary from the said scam. Records show that the grounds of arrest was communicated to the applicant by the ED in writing. Thus, without giving any observation as to whether the statement recorded under Section 50 of the PMLA are admissible in evidence, but their thorough consideration should be reserved for the trial court. It emphasized that at the bail stage, these statements can be examined to ascertain whether there are reasonable grounds to believe that the applicant is not guilty. There is a difference between the admissibility of a statement of an accused recorded under Section 50 of the Prevention of Money Laundering Act (PMLA) and its evidentiary value.

76. In view of the aforesaid, it can be foreseen that while the High Court in the specific facts and circumstances (where there was prima facie material against the petitioner) came to the conclusion that mere possession of proceeds of crime and upholding such proceeds as untainted would be sufficient to invoke the provisions of PMLA, however, the ratio of the said judgment may have the potential to have an unintended fallout in a different set of facts. Depending on the facts of the case, such an interpretation may include persons who might have no genuine knowledge and connection with the predicate offence and/ or the tainted money circulated by the actual accused persons and may have to go through the rigours of trial for no fault. A balanced pragmatic interpretation/ view of the provisions of the Act would help in minimizing instances where there is an element of no

genuine/ actual knowledge. the Supreme Court in Vijay Madanlal (supra) judgment interprets Section 3 in a manner to conclude that knowledge may not be a necessary ingredient, however, the said view may not be entirely correct in certain circumstances. Mens rea is a critical ingredient for any criminal offence and therefore requires its presence in any action or consequence which arises out of or in relation to an offence. It is important that to prosecute someone for mere possession of purported proceeds of crime, there should be an equal burden on the prosecution to prove at least a prima facie link to the proceeds of crime as defined under the Act.

77. The Supreme Court have further gone on to state that property indirectly obtained would mean property derived or obtained from the sale proceeds or in lieu of or in exchange of the "property" directly derived or obtained as a result of criminal activity relating to a scheduled offence. It was further held that the Explanation added in 2019 does not travel beyond the intent of tracking and reaching up to the property derived or obtained directly or indirectly as a result of criminal activity relating to a scheduled offence and the explanation is only a clarification and not to increase the width of the main definition "proceeds of crime". It was further stated that every crime property need not be termed as "proceeds of crime" but the converse may be true. It was held that if some other property is purchased or derived from the "proceeds of crime" then even such subsequently acquired property must be regarded as tainted property and actionable under the PMLA.

78. Money laundering is understood to encompass a scenario in which an individual commits an offense outlined in the PMLA schedule, leading to the generation of property. This property subsequently qualifies as the proceeds of the crime. Furthermore, the individual engaged in activities such as concealment, possession, or utilization of said proceeds of crime, shall be deemed to have committed the offense of money laundering.

79. Therefore, the quantification of the Proceeds of Crime involves a multifaceted approach. It begins with the identification of initial assets stemming from criminal activity, subsequently encompassing any assets obtained through these initial proceeds.

80. It is thus held that in the investigation conducted during the predicate offence, the applicant being the orchestrator of the entire liquor scam in the State of CG, was involved in money laundering and proceeds of crime along with other co-accused therefore, the entitlement of the applicant to get bail under PMLA, 2002, is not acceptable and considering the entirety of the matter, this Court is of the opinion that the applicant is unable to satisfy twin conditions for grant of bail under Section 45 of the PMLA, 2002, as such, it is not a fit case for grant of bail to the applicant for the reasons mentioned hereinabove.

81. Accordingly, the prayer for bail made by the applicant under Section 483 of the Bhartiya Nagrik Suraksha Sanhita, 2023 ('BNSS') read with Section 45 of the PMLA, for the alleged offence punishable under Sections 3 & 4 of the PMLA, 2002 is hereby rejected.

Sd/-

(Arvind Kumar Verma) Judge SUGUNA DUBEY DUBEY Date: