

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

(Through Virtual mode)

Bail application no. 51/2025 with
CrIM No. 331/2025

Naresh Kumar Gulia

.....Appellant(s)/Petitioner(s)

Through: Mr. Adwait Singh Sirohi, adv with
Mr. Hemant Mishra, adv and
Mr. Abid Khan, adv

vs

Directorate of Enforcement and anr.

..... Respondent(s)

Through: Mr. Vishal Sharma, DSGI

Coram: HON'BLE MR. JUSTICE MOHD. YOUSUF WANI, JUDGE

JUDGMENT

15.07.2025

1. Through the medium of the instant petition having been filed under the provisions of Section 482 of **Bhartiya Nagarik Suraksha Sanhita, 2023**, (hereinafter referred to as the "BNSS" for short), the petitioner has sought the grant of pre-arrest bail in his favour in respect of the case No. ECIRO/SRZO/922 U/ss 3 & 4 of **Prevention of Money Laundering Act 2002**, (hereinafter referred to as the "PMLA" for short), registered with respondent No.1 on the grounds, *inter alia* that he is a law abiding and peace loving citizen of India having deep roots and commanding great respect in the society; that he is presently residing at House No. 63 Ghati River Valley, Dhoran Goan, Dehradun alongwith his family since June, 2019 in connection with the higher studies of his children, having his permanent address as VPO Lath The-Gohana, Sonipat, Haryana; that he is having clear antecedents at his credit and has never been involved in any

case till the time the respondent No.1 implicated him falsely and frivolously in ECIR/02/SRZO/2022 U/ss 3 and 4 of PMLA, despite himself being a victim of the alleged crime; that the main accused whose names came first in the basic complaint filed before the District Magistrate, Leh namely A.R Mir and Ajay Kumar Choudhary have already been granted bail which fact entitles him to be treated with parity; that all the evidence referred to by the respondent no.1 is documentary in nature and as such there is no need of his custodial interrogation in the case; that the investigation in the case has been pending since long and the final charge report is yet to be filed; that he knew about the registration of the case with the Directorate of respondent No.1 only on 25.01.2025 when the personnel from ED conducted a raid at his house in Dehradun as he had been named by one of the co-accused; that till the filing of the application he did not receive any notice or information for association with the Investigation Agency; that he was not knowing that his brother with whom he is not having cordial relationship was being investigated for a crime; that it was subsequently learnt by him that adjudicating Authority on 14.01.2025, on the basis of some summons dated 14.12.2024 purportedly issued against him for his appearance through video conferencing (VC) before him on 27.12.2024, which notice he never received, had passed ex-parte attachment order without application of mind and appreciation of facts; that he is ready and willing to associate during investigation of the case and to make his statements in respect of the required issues; that he is a Matriculate of 1997 who joined the Indian Army on 28.04.1998 from Rohtak BRO and during his service period rendered services at so many places including Jabalpur, Jammu, Leh, Delhi, UN Peace keeping force (Congo) and after rendering the services for 18 years, finally took VRS on 31.01.2016 when he was holding the rank of Hawaldar;

that in the year 2017 he was approached by the owner of a Company namely “Emollient Coin” to work with the same, as an employee (promoter); that he was offered to serve the Company on account of his past administrative experience from military career; that he also attended various meetings and seminars for which he was paid by the Company; that he was also required to invest some amount and to also associate/refer some of his friends and relatives with the business concern of the company; that he invest a sum of Rs. 10/- lacs from his retirement fund and besides prevailed upon some of his acquaintances to also join the business of the company; that he had no relation in terms of ownership with “The Emollient Coin Ltd” bearing registration no. 10987434 being incorporated on 28.09.2017 with its Registered office at 90, Paul Street old street Shoreditch London, UK with Henry Maxwell R/o 110, Theydon Street Walthamstow, London U.K; that a case FIR No. 16/2020 dated 05.03.2020 came to be registered against A.R Mir & Ajay Kumar Choudhary at Police station Leh, Ladakh U/s 420 IPC corresponding to Section 318 of the BNSS; that it is wrongly alleged that he represents the “Emollient company Ltd” as promoter in India and abroad with Mr. Channi Singh as promoter in North India; that it is also wrongly alleged that the said company was dissolved on 05.03.2019; that it is also wrongly alleged that another company “M/s Tech Coin Ltd” was registered on 25.03.2019 to run the Ponzi scheme of fake crypto currency “Emollient/Tech Coin” which company was also dissolved on 12.01.2021 thereby cheating hundreds of people; that it is wrongly alleged that he and the other two co-accused have lured innocent public to purchase self-generated Emollient fake crypto currency by taking cash or money transferred into the bank accounts under the control of suspects; that it is also wrongly alleged that they exchanged their bit coins

with the said crypto-currency through their mobile applications with the assurance of 10% monthly returns with the locking period of 10 months to be extended to 20 months with offer of 7% commission on the public investment; that it is also wrongly alleged that the afore-named Ajay Kumar and A.R Mir as Directors of Company “Annie Multi Trade Private Limited” had also opened an account with the J&K Bank at Jammu and parked the proceeds obtained under the aforesaid Ponzi scheme with intention to purchase plots/land; that it is also wrongly alleged without any documentary proof that he received Rs.2.05 Crores from Sh. Ajay Kumar Choudhary (co-accused) out of the business income from “The Emollient Coin Ltd”; that it is also wrongly alleged that huge amount in Crores was credited to their bank accounts out of the money received from the public by cheating them under the “The Emollient Coin scheme”; that the house which was raided by the Directorate of the respondent No.1 was not belonging to him at that time; that no statement recorded U/s 50 of the PMLA is admissible against the accused; that no incriminating evidence has been found by the investigating agency against him and instead fake and concocted stories have been hatched regarding the receipt of cash by him and his brother just as an eyewash to falsely implicate and make him a scape goat to shield the actual culprits; that he is not involved in any alleged act of money laundering and has only been made a scapegoat for the crimes done by the others despite himself being the victim of the crime; that he had already filed a similar application before the High Court of Delhi which came to be withdrawn by him with liberty to approach this jurisdictional Court; that he was never named in the basic complaint/FIR; that other co-accused have already been granted regular and anticipatory bail which justifies his equal treatment on parity; that he is

willing to surrender his passport before the adjudicating authority or any other authority as directed by the court; that he shall be greatly prejudiced in terms of his fundamental rights of life and liberty in case he is being arrested on false and frivolous grounds; that since he is deeply rooted in the society as such there is no question of his misusing the concession of bail and that he shall abide by any conditions that may be imposed by this Court.

2. The respondent No.1 i.e., Enforcement Directorate has very vehemently resisted the bail application on the grounds that all the averments, grounds and submissions made by the petitioner in the bail application are absolutely false, vague, non-specific, baseless and concocted warranting outright rejection of the petition. That the petitioner is not a senior citizen as alleged as his Date of Birth (DOB) is 4th June 1981 which reveals him of the age of 46 years only. That the petitioner cannot seek parity as the case of each individual accused is to be considered and appreciated in its own backdrop. That the petitioner has been evading investigation and has demonstrably failed to co-operate with authorities. That despite being served with multiple summons he has persistently sought to elude the legal process thereby indicating clear intention to frustrate the course of justice. That the petitioner is involved in heinous and multi-dimensional economic scam, as such, cannot claim extra ordinary concession of pre-arrest bail. That the petitioner cannot raise the issue on admissibility or otherwise of the evidence being collected by the Investigating Agency at the initial stage of investigation as being the concern of the trial. That the petitioner is the actual master mind who was the promoter and managed the company “The Emollient Coin Ltd” for running the business of selling a fake “crypto currency” and “Emollient Coin” and

chain multi-level marketing business. That he also designed and managed fake mobile applications “Emollient Coin” for the said fraud scheme which was under his control. That however, the said company was deliberately struck off and dissolved on 05.03.2019, whereafter with ill intention he incorporated another company “M/s Tech Coin Ltd” registration no. 11903739 dated 25th March 2019 with its registered office at the same place of the “The Emollient Coin Ltd”. That in Sept., 2019 the value of the said fake coin was deliberately driven down by the applicant before the completion of locking period and the said mobile application suddenly stopped working in the month of October/November 2019, thereby cheating hundreds of gullible people who lost their hard earned money, however, the said company was also dissolved on 12.01.2021. That the petitioner along with various team leaders namely Ajay Kumar Choudhary and A. R Mir had organized various seminars and at many places in India including J&K and Ladakh and also in other countries including Vietnam, Philippines, and Cambodia to entice the people into the said Ponzi Scheme. That the petitioner and other co-accused dishonestly lured hundreds of innocent people not only from India but also from South Asian countries to purchase self-generated fake crypto Emollient Coin by taking cash or money transferred into the bank accounts under the control of suspects or exchange their “bit coin” with the said “crypto coin” through their mobile application with the assurance of returns up to 40% with the locking period of 10 months to be extendable to 20 months with the promise of commission up to 7% on the investment made by the subscribers. That during the course of investigation searches under section 17 of PMLA were conducted at six premises of Shri Ajay Kumar Choudhary, A. R Mir, Mrs. Tashi Lambo and Shri Naresh Gulia on 02.08.2024 and various documents were seized during

the course of such searches across Jammu, Leh and Sonipat (Haryana). That the evidence was scrutinized and *modus operandi* unearthed. It is stated that in respect of retention of seizure of cash, digital devices and bank accounts, an OA bearing No.1311/2024 dated 29.08.2024 was filed before the learned Adjudicating Authority under PMLA, New Delhi on 30.8.2024 which was confirmed by the learned Adjudicating Authority on 06.01.2025. That during the course of search, the petitioner was not available at his address i.e., Gali No. 24, Mayur Vihar, Sec-21, Sonipat, Haryana. That during the course of such search dated 02.08.2024, cash amount of Rs. 91/- lac has been seized under the Panchnama. That the co-accused Mr. Ajay Kumar Choudhary and A. R Mir during their statements admitted the handing over of the cash to the petitioner through the desired mode. That during the course of investigation it has been established that petitioner is in possession of proceeds of crime to the tune of Rs. 6.05 Crores who despite receiving two summons for recording his statement U/s 50 of the PMLA is intentionally and deliberately avoiding his association, for siphoning of the proceeds of crime accumulated by him. That the petitioner is not co-operating in the investigation which is causing injustice to the innocent people who invested their hard earned money bonafidely in the said bogus "Crypto currency/Emollient Coin" Ponzi scheme of the petitioner. That petitioner has wrongly invoked the jurisdiction of this court seeking of pre-arrest bail as he has failed to establish the proximity between his act and the jurisdiction of this court invoked by him. That the bar imposed U/s 45 of the PMLA under the twin conditions is applicable in case of regular bail and as such the said twin conditions are deemed to be imported with great force in an anticipatory bail application. That the proceeds of crime generated by offences committed by all the accused have been traced out to the tune of

Rs. 6.05 crores which specifically involved the petitioner to the tune of Rs.57/- lacs as said amount was found to have been transferred by Shri A.R Mir and Ajay Kumar Choudhary from the bank account of M/s Annie Multitrade Pvt. Ltd to the nominated accounts of the petitioner as per his directions. That there are more than 2000 people in Leh alone who have been cheated through the scam under investigation. That the petitioner has been absconding and his last known whereabouts were in Thailand as per the investigation conducted by the respondent. That he has not joined the investigation despite receiving the summons from the respondent and thus there exists strong suspicion that he is not within the territorial limits of India. That the petitioner's presence in custody is imperative for the logical and result oriented investigation.

3. I have heard the learned counsel for the parties and considered their submissions. The law referred to and relied upon from both the sides has also been perused.

4. The facts of the prosecution case are that based on a compliant received from the Additional District Magistrate, Leh, an FIR No. 16/2020 dated 05.03.2020 was registered under Section 420 of IPC, 1860 by the Police at Police Station, Leh against Mr. A.R. Mir S/o Aziz Mir, Mr. Ajay Kumar Choudhary S/o Satpal Choudhary & Others. That as per the said FIR, an inquiry was conducted by the committee constituted by District Magistrate Leh against Mr. A. R. Mir and his agents who were running an Emollient coin business from the office located at Anjuman Moin-Ul-complex opposite SNM Hospital, Leh which was sealed by the said committee for cheating many innocent individuals by assuring them to double their investment. That an FIR No. 16/2020 dated 05.03.2020 was

registered under Section 420 of IPC which is a scheduled offence under Part-A, Paragraph 1 of Scheduled to PMLA, 2002, an ECIR bearing No. ECIR/SRZO/02/2022 dated 25.03.2022 was recorded and investigation under PMLA, 2022 was initiated. That the District Police Office Leh (Ladakh) vide its letter dated 07.03.2022 informed that the scheduled offence has generated proceeds of crime by way investments made by 2508 investors to the tune of Rs. 7,34,36,267/- Crore (approx.). That, during the course of investigation, Proceeds of Crime are estimated to the tune of Rs. 16.81 Crore. That the estimation has been calculated as per the material in shape of bank account statements, ITRs and statement recorded under Section 50 of Prevention of Money Laundering Act, 2002. That the petitioner is the actual master mind who was the promoter and managed the company "The Emollient Coin Ltd" for running the business of selling a fake "crypto currency" and "Emollient Coin" and chain multi-level marketing business. That he also designed and managed fake mobile applications "Emollient Coin" for the said fraud scheme which was under his control. That however, the said company was deliberately struck off and dissolved on 05.03.2019, whereafter with ill intention he incorporated another company "M/s Tech Coin Ltd" registration no. 11903739 dated 25th March 2019 with its registered office at the same place of the "The Emollient Coin Ltd". That in Sept., 2019 the value of the said fake coin was deliberately driven down by the applicant before the completion of locking period and the said mobile application suddenly stopped working in the month of October/November 2019, thereby cheating hundreds of gullible people who lost their hard earned money, however, the said company was also dissolved on 12.01.2021. That the petitioner along with various team leaders namely Ajay Kumar Choudhary and A. R Mir had organized various

seminars and at many places in India including J&K and Ladakh and also in other countries including Vietnam, Philippines, and Cambodia to entice the people into the said Ponzi Scheme. That the petitioner and other co-accused dishonestly lured hundreds of innocent people not only from India but also from South Asian countries to purchase self-generated fake crypto Emollient Coin by taking cash or money transferred into the bank accounts under the control of suspects or exchange their “bit coin” with the said “crypto coin” through their mobile application with the assurance of returns up to 40% with the locking period of 10 months to be extendable to 20 months with the promise of commission up to 7% on the investment made by the subscribers. That during the course of investigation searches under section 17 of PMLA were conducted at six premises of Shri Ajay Kumar Choudhary, A. R Mir, Mrs. Tashi Lambo and Shri Naresh Gulia on 02.08.2024 and various documents were seized during the course of such searches across Jammu, Leh and Sonipat (Haryana). That the evidence was scrutinized and *modus operandi* unearthed. It is stated that in respect of retention of seizure of cash, digital devices and bank accounts, an OA bearing No.1311/2024 dated 29.08.2024 was filed before the learned Adjudicating Authority under PMLA, New Delhi on 30.8.2024 which was confirmed by the learned Adjudicating Authority on 06.01.2025. That during the course of search, the petitioner was not available at his address i.e., Gali No. 24, Mayur Vihar, Sec-21, Sonipat, Haryana. That during the course of such search dated 02.08.2024, cash amount of Rs. 91/- lac has been seized under the Panchnama. That the co-accused Mr. Ajay Kumar Choudhary and A. R Mir during their statements admitted the handing over of the cash to the petitioner through the desired mode. That during the course of investigation it has been established that petitioner is in possession of

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5. Keeping in view the perusal of the instant bail application, the objections filed in rebuttal and the consideration of the rival arguments advanced on both the sides, this Court in the light of law on the subject is convinced that it may not meet the ends of justice in case the petitioner is granted the extra ordinary concession of pre-arrest bail, which is aimed at to

protect only those who genuinely apprehend their arrest on false and frivolous grounds.

6. Originally, concept of pre-arrest bail was conceived after confronting with the situations in the society whereunder on account of political and other rivalries and differences, arrests used to be managed and facilitated on account of frivolous charges. With widened scope of the concept of the liberty under the judicial pronouncements, the concession of pre-arrest bail came to be extended also to those whose involvement was no doubt *prima facie* established in the crime but no need was felt to have them in custody for their interrogation. Thus, pre-arrest bail used to be extended to those accused regarding whom no apprehension of their misuse of the concession of bail by non-cooperation during investigation or their absconding at the trial or threatening of the prosecution witnesses was felt. Such concession of pre-trial bail used to be extended in the cases where the procedural law or any special statute did not place an immediate embargo on the grant of bail.

7. No doubt the Hon'ble Apex Court in its judgment cited as ***"Siddharam Satlingappa Mhetre vs. State of Maharashtra"*** decided on 02.12.2010, Air 2011 SC 312, has interpreted the law on the subject of the anticipatory bail with a very outlook and while interpreting concept of the liberty guaranteed under Article 21 of the Constitution of our country in a flexible and broader sense, so much so that the Hon'ble Apex court held the earlier law on the subject as laid down in Chain Lal vs. State of Madhya Pradesh (1976) 4 SCC 572; Salau-ud-din Abdul Samad Heikh vs. State of Maharashtra AIR 1996 SC 1042; K. L. Verma vs. state and another 1996 (7) SCALE 20; Sunita Devi vs. State of Bihar and another AIR @)% SC 498; 2005 AIR (Criminal) 112; Adri Dharan

Das vs. state of West Bengal AIR 2005 SC 1057 and Naresh Kumar Yadoo vs. Ravinder Kumar and others 2008 AIR (SC 218) decided on 23rd October 2007, as per incuriam.

8. The Hon'ble Apex Court in the above referred judgment ***Siddharam Satlingappa Mhetre*** laid down the following factors and parameters for consideration while dealing with anticipatory bail:

- a) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- b) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;
- c) The possibility of the applicant to flee from justice;
- d) The possibility of the accused's likelihood to repeat similar or the other offences.
- e) Whether the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;
- f) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;
- g) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of section 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;
- h) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;
- i) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

- j) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution in the normal course of events, the accused is entitled to an order of bail.

9. In its judgment titled *Sushila Aggarwal and ors vs. State (NCT of Delhi)* and another decided on 29th January 2020, a larger bench of Hon'ble Apex Court was pleased to *inter-alia* lay down the following guiding principles for consideration of the pre-arrest bail application by the Courts:

- (i) Nothing in Section 438 Cr. P.C. compels or obliges courts to impose conditions limiting relief in terms of time, or upon filing of FIR, or recording of statement of any witness, by the police, during investigation or inquiry, etc. While considering an application (for grant of anticipatory bail) the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence (including intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc. The courts would be justified and ought to impose conditions spelt out in Section 437 (3), Cr. PC [by virtue of Section 438.
- (ii) The need to impose other restrictive conditions, would have to be judged on a case by case basis, and depending upon the materials produced by the state or the investigating agency. Such special or other restrictive conditions may be imposed if the case or cases warrant, but should not be imposed in a routine manner, in all cases. Likewise, conditions which limit the grant of anticipatory bail may be granted, if they are required in the facts of any case or cases; however, such limiting conditions may not be invariably imposed.
- (iii) Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion; equally whether and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court.
- (iv) Anticipatory bail granted can, depending on the conduct and behaviour of the accused, continue after filing of the charge sheet till end of trial. An order of anticipatory bail should not

be blanket in the sense that it should not enable the accused to commit further offences and claim relief of indefinite protection from arrest. It should be confined to the offence or incident, for which apprehension of arrest is sought, in relation to a specific incident. It cannot operate in respect of a future incident that involves commission of an offence.

- (v) An order of anticipatory bail does not in any manner limit or restrict the rights or duties of the police or investigating agency, to investigate into the charges against the person who seeks and is granted pre-arrest bail.

10. Admittedly, while considering the anticipatory bail under section 482 of the BNSS, the court has to primarily satisfy itself regarding the conditions precedent for seeking such special relief and when such prior conditions are fulfilled, then the court has to consider all those principles and guiding rules which are necessary under law for consideration of a regular bail application., *inter alia* including the following:

- i) The judicial discretion must be exercised with the utmost care and circumspection.
- ii) That the Court must duly consider the nature and the circumstances of the case including:
 - a. A reasonable apprehension of the witnesses being tampered;
 - b. Investigation being hampered or
 - c. The judicial process being impeded or subverted.
- iii) The liberty of an individual must be balanced against the larger interests of the society and the State;
- iv) The court must weigh in the judicial scales, pros and cons varying from case to case all along bearing in mind two paramount considerations viz;
- v) Grant of bail quo an offence punishable with death or imprisonment for life is an exception and not the rule;
- vi) The court at this stage is not conducting a preliminary trial but only seeking whether there is a case to go for trial;
- vii) The nature of the charge is the vital factor, the nature of evidence is also pertinent, the punishment to which the party may be liable also bears upon the matter and the likelihood of the applicant interfering with the witnesses or otherwise polluting the course of justice.
- viii) The facts and circumstances of the case play a predominant role.

(AIR 1962 SC 253; AIR 1978 SC 179; AIR 1978 429; 2003(ii) SLJ 389; 2004 (7) SCC 525; 2005 (1) SLJ 189; AIR 2005 SC 716; AIR 2007 SC 32458; AIR 2007 SC 451 and 2007 (ii) SLJ 634.

11. The Hon'ble Apex Court in Gur Bakash Singh vs. State of Punjab AIR 1980 SC 1632, referred to the following extract from the American jurisprudence having bearing on the subject of bail, *"where the grant of bail lies within discretion of the court, granting or denial is regulated to a large extent, by the facts and circumstances of each particular case. Since the object of detention order/imprisonment of the accused is to secure his appearance and submission to jurisdiction and the judgment of the court, the preliminary enquiry is whether a recognizance or bond would effect that end. It is thus clear that the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or necessarily justifying the grant or refusal of bail."*

12. It has been held in State of Rajasthan Jaipur vs. Balchand AIR 1977 SC 2447 I that it is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh with the court when considering the question of bail.

13. It is a trite that two paramount considerations viz: likelihood of accused fleeing from justice and his tampering with prosecution evidence relate to the ensuring of fair trial of the case in a court of justice, It is essential that due and proper weightage should be bestowed on these two factors apart from others. The requirements as to bail are

merely to secure the attendance of the accused at the trial (Gurcharan Singh vs. State (Delhi Administration) AIR 1978 SC 179; G. Nara Simhula vs. Public Prosecutor Andhra Pradesh AIR 1978 SC 429; Assad Ullah Khan and Others vs. State of Jammu & Kashmir SLJ 1980 J&K 31; Jeet Ram and etc. etc. vs. State of Himachal Pradesh 2003 Cr. Law Journal 736).

14. Bail or jail at the pre-trial or post conviction stage belongs to the blurred area of the criminal justice system and largely hinges on the hunch of the bench, otherwise called judicial discretion. Personal liberty deprived when bail is refused is too precious a value of our constitutional system recognized under Article 21 that the crucial power to negate it is a great trust exercisable not casually but judiciously with lively concern for the cost to the individual and the community. After all personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of procedure established by law (G. N. Nara Simhula vs. Public Prosecutor Andhra Pradesh AIR 1978 SC 429).

15. Admittedly the provisions of Section 45 of PMLA restrict granting of even regular bail to an accused involved in the offences under the Act by laying down the twin conditions requiring an opportunity of being provided to the Public Prosecutor to oppose the bail application and after the said opportunity is provided to the Public Prosecutor 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.

16. It is profitable to reproduce the provision of Section 45 PMLA for the sake of convenience:-

Section 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 a 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.

'[(1A) 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 authorised, 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'.

17. The petitioner is alleged to be involved in heinous offences of economic nature by being connected with the proceeds of crime. He is alleged to have cheated thousands of people by luring them to part with their hard earned money under the false hope and expectation of high percentage of profit/commission, by dragging them to the bogus "crypto currency/Emollient Coin" Ponzi Scheme.

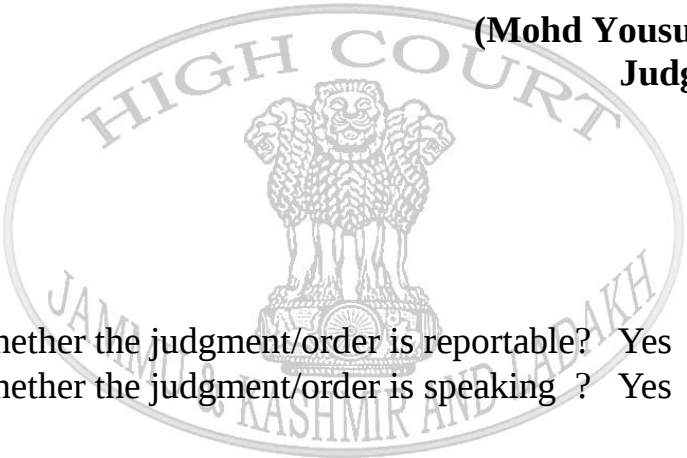
18. The petitioner is alleged to have absconded during investigation of the case and to have not turned up for cooperation with the investigating agency despite issuance of formal notices under law.

19. The presence of the accused in custody before the Investigating Agency appears to be imperative in the facts and circumstances of the case for the logical and result oriented investigation in the case.

20. For the fore going discussion, there appears to be no merit in the application which is dismissed.

(Mohd Yousuf Wani)
Judge

Jammu
15.07.2025
Ayaz

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- The seal of the Jammu and Kashmir High Court is a circular emblem. It features a central figure of a lion standing on a pedestal, with the words "HIGH COURT" arched above it and "JAMMU & KASHMIR" arched below it. The entire seal is rendered in a light gray, semi-transparent style.
- i) Whether the judgment/order is reportable? Yes
 - ii) Whether the judgment/order is speaking ? Yes